

Protection of Seafarers' Rights and Interests by International Treaties

Yuchen Su^{1,a,*}

¹*Institute of Law, Dalian Maritime University, No.1 Linghai Road, Dalian, China*
a. 2220211866s@dlnu.edu.cn

**corresponding author*

Abstract: In 2006, the ILO adopted the Maritime Labour Convention, which has had an important impact on the rights of seafarers worldwide and the promotion of the international maritime industry. In recent years, China's labor and social security legal system has been gradually improved, and legal norms such as the Regulations on Seafarers and the Maritime Traffic Safety Law have been promulgated and implemented successively, laying a certain foundation for the system of labor norms for seafarers. However, these special legislation has some limitations, such as not strong operability and not identical with the international treaty system. This paper mainly studies the framework structure and implementation mechanism of maritime labor conventions, finds out China's application method of international law, and puts forward the shortcomings of China's implementation process and corresponding countermeasures and suggestions suitable for the current situation of Chinese seafarers. By combining theory with practice, this paper uses literature analysis and analysis deduction to find out the strategies that can optimize the implementation mechanism in China. At present, China has made a lot of preparations for the implementation of maritime labor conventions, carried out a lot of legislative activities, and has already acquired relevant legislative experience and technology. Improving the labor supervision system and making full use of the tripartite mechanism platform and industry associations are the top priorities for China to better implement international conventions and protect the rights and interests of seafarers in the next stage.

Keywords: MLC, Rights and interests of crew, Social security.

1. Introduction

The crew refers to all staff on board, including the captain, and plays a crucial role in the development of the shipping industry. Qualitative shipping, i.e. safe shipping that is respectful of the marine environment, would not be feasible in the absence of quality work provided by competent maritime labour, enjoying decent working and living conditions aboard. Crew members, as marine workers, also result in the speciality of their work due to the specific nature of their working environment. The harsh working environment at sea and the excessive length of working hours put the crew at a great test [1]. During the coronavirus pandemic, the crew continued to work as a high-risk working species with the virus and its proximity, under the enormous pressures of the working environment caused by uncertainties such as supply of materials and repatriation, and to assume the burden of ensuring the sustained supply of the resources and necessities needed for global production and the smooth

transportation of the materials needed for the fight against the epidemic. It is the dedication and contribution of the crew that ensures the sustained stability and prosperity of the global basic productive life during the epidemic. However, due to the crew being employed by the shipowner, the owner of the ship is severely compromised by its right to rest, as a result of the enormous cost savings, such as the cost of high return costs, for the crews to work on board for prolonged overloads. At the same time, in the maritime field, there is a special transport mechanism for flagship vessels, i.e. a vessel registration system that allows the registration in the country of ships controlled by foreign owners and foreigners and provides more convenient registration requirements and preferential conditions for the owners. Under such a mechanism, shipowners are free to register ships in different countries and to select cheap labour from the world labour market for huge economic benefits. Due to measures to reduce the obligations of shipowners, such as registration costs and taxes, in order to attract the owners of ships from all countries, the legal regulation on the protection of crew's labour rights and interests is often minimal, or even not at all, so that under the flag system, the labour rights, security and litigation rights of the crew are seriously violated [2].

Furthermore, crew members often enter into crew employment contracts with crew labour intermediaries, while the intermediary agency and the shipowner also enter into contracts for the employment of crew and the nature of the crew service lease contracts, the essence of which is the provision of a certain number, a certain condition crew to the owner of the ship, and the associated rights obligations of the contracting crew labor institutions, earning mainly from the difference in the price of the labour force agreed on the two contracts respectively. As the crew does not enter into contracts directly with the owner of the actual employee, it is difficult to protect crew's right to labour remuneration when the intermediary is in debt to the ship's employees. Consequently, due to inequalities in the position of labour parties, crew members of a vulnerable party should be protected, and it is also essential for the development of the shipping industry to study the protection of crew rights and interests. Since China's protection of crew rights and interests is based on international treaties and the current legal system is still inadequate, the aim of this paper is to study the protection of the crew's interests by international Treaties and their application in China.

2. Protection of the Rights and Interests of Crew Members under International Treaties

2.1. Necessity of International Treaties for the Protection of Crew Members

An international treaty is an international agreement concluded by the subject of international law under international law, which reflects the coordination of States parties and aims at establishing, changing and terminating a relationship of obligations of rights in international law and is usually expressed in writing. International treaties are therefore, in essence, the product of the harmonized will of States. As one of the important sources of international law, international treaties arose alongside the international community and evolved with the evolution of the international society, which has become a universal form of international community in modern international relations. The international nature of shipping production requires the same labour capacity provided by the crew of each country, so that each country trains crew in accordance with the requirements of the STCW Convention, thus forming an international crew labour market. As the legal protection of crew labour is given greater importance in each country and falls within the scope of domestic law, there are differences in national laws, which reflect the role of international treaties in the event of conflict. The International Labour Organization Convention on Maritime Labour, 2006, is the fourth pillar international convention for maritime transport, following the Convention for the Safety of Life at Sea (SOLAS), the MARPOL Convention and the STCW Convention, and has a positive and far-reaching impact on the protection of the fundamental interests of the global crew and promoting the healthy development of the international shipping industry.

2.2. International Labour Organization Crew legislation

Convention on Maritime Labour Due to the fact that past conventions were designated under a specific historical context, the situation had not changed in a timely manner and had only been adapted from a maritime safety perspective to the formulation of the Convention, without taking into account the social standards of crew labor and labour protection from the perspective of labour law, the mandatory provisions on crew labour were too specific and objectively constrained States from ratifying it, causing unfairness to shipowners and governments who consciously protect the rights and interests of crews. In order to more effectively play the protective role of crew law for crew members, to create a system of fragmented crew protection systems, to enhance the effectiveness of the protection system and to safeguard equity, the International Labour Organization established a working group in 1995 and, after four conferences, introduced the 2006 Convention on Maritime Labour in 2006.

The structure of the Convention is divided into preambles, general principles, subsections and codes [3]. In the preamble, Member States expressed their willingness to exercise effective management of ships' working conditions, crew equipment and social affairs, as well as to indicate the basis for legislation, establishing core rights and fundamental principles in general and clarifying the dominant relationship between sub-rules and subsidiary rules. The General Rules provide for the fundamental rights of seafarers, including the right to freedom of association and to collective bargaining, the elimination of all forms of forced and forced labour, the abolition of child labour and the eradication of employment and occupational discrimination, the full implementation of seamen's employment rights, including safe working conditions, equitable employment opportunities, decent work on board, good living conditions, access to social security, and the obligations and responsibilities of the flag State party to implement the Convention through legislation to ships under its jurisdiction, the effective control and control of the institutions for the recruitment and placement of sailors by the exporting country of the State party and the non-Party's refusal to provide more favourable treatment to those States and the need for consultation with the owners and crew organizations in the absence of such organizations with the Trilateral Ad Hoc Committee. The general rule sets out the core powers of crew members, as well as the relevant principles and basic obligations of Member States to ratify them.

The Convention provides for the specific implementation of the fundamental rights and obligations of Member States in its sub-rules. The first is the minimum requirements for seafarers on board, including the prohibition of employing persons under the age of 16 on board the ship, the ban on night work for crew members under 18 years of age, which reflects the ILO system against child labour. The subsection also lays down the conditions of employment of crew members, and the obligation to pay a certain percentage of wages to the crew's family members is explicitly an obligation of the employer. The crew's living rooms, recreational facilities, food and meals, health protection, medical care, welfare and social security are all specified in detail in the subsection.

3. China's Rules for the Application of International Law

In August 2015, the 16th meeting of the Standing Committee of the 12th National People's Congress (NPCSC) ratified the Maritime Labor Convention 2006, and at the same time declared that pension insurance, medical insurance, work injury insurance, unemployment insurance and maternity insurance are the types of tax insurance applicable in China in accordance with the Convention [4]. The Maritime Labor Convention 2006 entered into force for China one year later.

3.1. China's Dilemma in Applying Relevant International Regulations

In general, international treaties do not produce legal effects in the country, but need to go through certain “conversion” or “incorporation” procedures to produce effects in that country. In China, the Constitution does not explicitly provide for the relationship between international law and domestic law, so the domestic application of ratified treaties is carried out on a “case-by-case” basis, generally by “incorporation”, i.e., directly incorporating the content of the convention in its entirety into the national legal system by means of general legislative provisions, “conversion”, “transformation” and “incorporation” [5]. In general, “consolidation”, i.e., the adoption of general legislative provisions, directly incorporates the contents of the conventions into the national legal system as a whole, and “transformation”, i.e., the adoption of legislative forms to selectively re-legislate international conventions that need to be applied domestically, or to “consolidate” or “transform” them. Article 268 of China's Maritime Law stipulates: “Where an international treaty concluded or participated in by the People's Republic of China contains provisions different from those of this Law, the provisions of the international treaty shall be applied, except for those which the People's Republic of China has declared its reservations.” This provision not only indicates that the international treaties concluded or participated in by China are an integral part of China's maritime legal system, but also indicates that the treaties take precedence in case of conflict with domestic laws. Therefore, as the drafting country of the maritime labor convention, China has done a lot of preparatory work for the ratification of the convention, the establishment of the corresponding legal system, from the domestic practice, the 2006 Maritime Labor Convention in the domestic application of the transformation of the main.

Due to the 2006 maritime labor convention in the existence of member states negotiated compromise provisions, so not every provision of the provisions of the detailed and clear, some of the provisions of the provisions of the use or even fuzzy, and the lack of practical applicability. Therefore, for China's compliance with the 2006 Maritime Labour Convention will be a long process of domestication. For specific and clear rules, can be directly implanted into our legal system, and for the principle of the rules or our country did not have or inconsistent with the rules, we need to learn from other countries more mature practice, after the specificity of the creation of a part of our legal system. In this process, it is much more difficult to rely on the existing legal system and integrate the existing legal resources of many sectors for absorption and digestion, compared to the domestication process of international conventions that are more technical.

3.2. China's Efforts in Fulfilling Obligations under MLC Regulations

In order to fulfill the obligations of the labor conventions, China has set up a “tripartite consultation” permanent institutions, clear maritime labor field of tripartite consultation institutions, including consultation and consultation, decision-making, the development of collective labor, international exchanges and cooperation responsibilities, the establishment of maritime labor dispute resolution system and night maritime labor supervision system.

3.2.1. Establishment of the “Tripartite Consultation” Standing Body

The Tripartite Commission is a maritime labor agency under the International Labour Office as stipulated in the Maritime Labor Convention, 2006. It is independent of national shipowners' and crews' organizations and, in certain circumstances, replaces shipowners' representative organizations or crews' organizations. It undertakes a general review of the role of the Convention and is entrusted with specialized functions relating to the Code's simplified proposed amendment procedure. It is composed of representatives of Governments that have ratified the Maritime Labor Convention, 2006, and representatives of shipowners and crews selected by the Council.

A tripartite coordination mechanism, whereby government authorities consult with shipowners' and crew organizations to better safeguard the interests of all parties in the maritime labour sector, is gradually being established in China. At the national level, the Tripartite Coordination Mechanism, comprising the Ministry of Transport, the China Seamen's Construction Trade Union and the China Shipowners' Association, is an important part of the framework of the National Tripartite Mechanism for Coordinating Labour Relations, which serves the development of China's shipping industry, the rights and interests of China's seafarers, and the development of China's shipping enterprises, and establishes a platform for the government departments, seafarers' trade unions and shipowners' organizations to carry out regular communication and coordination, which is conducive to the joint resolution of maritime labour relations. It is conducive to jointly solving major problems in maritime labor relations and crew management, and realizing decent work for crew members.

3.2.2. Clarifying the Responsibilities of Tripartite Consultative Bodies in the Maritime Labour Field

In order to make the Maritime Labour Convention 2006 be updated in time to meet the needs of the continuous development of the maritime industry, the Convention not only grants the governments of member states the right to propose amendments to the Convention, but also grants the representative organizations of shipowners and crews such a right, which is conducive to the protection of the interests of the widest range of shipowners and crews as a whole. In order to effectively safeguard the rights and interests of all parties, the Convention stipulates that the Tripartite Specialized Committee to consider the functioning of the Convention and to vote on amendments to the Convention by means of the simplified amendment procedure "shall weight the votes of each representative of shipowners and crews in the Committee so as to ensure that each of them has half of the voting rights of the members present at the meeting. This effectively ensures that the rights of any one of the three parties will not be suppressed.

The tripartite coordination mechanism for shipowners' labor in China includes studying the impact of the development situation, policies and systems of the shipping industry on maritime labor relations, coordinating the tripartite's policy propositions on the overall issues of maritime labor relations, studying and agreeing on maritime labor standards such as the labor system of the shipping industry, wage and compensation, working hours, rest and vacation, labor safety and health, life and welfare treatment, and vocational skills training, and pushing forward the establishment and improvement of the It also promotes the establishment and improvement of equal consultation, collective contract system and labor contract system, strengthens the contact, exchange and cooperation with the International Labor Organization and tripartite agencies of various countries, and organizes the participation in relevant contracts.

Among them, collective contract refers to a written agreement between employee representatives or trade unions and the corresponding employing unit or its group organization, for the purpose of regulating labor relations, with the common interests of all workers as the central content. Crew employers are usually shipowners and shipowner-managed ships and crew service organizations, usually represented by shipowners' associations, while the China Seamen's Construction Trade Union and its subordinate units at all levels represent all crew members and reach collective agreements with shipowners or shipowners' associations through negotiations. The profession of seafarers is highly specialized and therefore has more concentrated collective interests, making it suitable for the use of collective contracts. 2009 saw the establishment of the National Tripartite Coordination Mechanism for Maritime Labor Relations, comprising the Ministry of Transport, the China Seamen's Construction Trade Union and the China Shipowners' Association [6]. China's first industry-specific collective agreement, the China Crew Collective Agreement (A), was also officially signed. The Convention stipulates that the collective agreement needs to include crew recruitment and placement,

employment agreement, crew wages, working hours and rest time, vacation, repatriation, shipowner's responsibility, crew's use of shore-based welfare facilities and social security, as well as clarifying the effectiveness of the collective agreement. Compared with the requirements of the Convention, China's crew collective contract involves most of the contents required by the Convention, but the provisions on the crew's use of shore-based welfare facilities are not perfect.

3.2.3. The Establishment of Maritime Labour Dispute Settlement System

The Convention encourages crew members to resolve their labor disputes at the ship's side as far as possible, and then turn to external parties only when it is difficult to resolve. The China Crew Collective Agreement (Class A) stipulates that labor disputes occurring during the crew's stay on board a ship can be resolved through the coordination of the ship's trade union or by filing a complaint with the higher-level trade union. If a crew member finds that the ship on which he/she is working does not comply with the labor standards stipulated in the agreement, he/she can complain to the China Seamen's Construction Trade Union and the China Shipowners' Association; he/she can also complain to the competent maritime authorities of China in the location of the port of call of the ship or in the location of the labor relations of the crew. At the same time, China's procedure for hearing labor dispute cases is that the parties concerned can apply for conciliation to the unit's Labor Dispute Conciliation Committee, and if conciliation fails, they can apply for arbitration to the Labor Dispute Arbitration Committee, or directly apply for arbitration, and if they are not satisfied with the arbitration award, they can file a lawsuit with the court; the court is not allowed to accept cases without labor arbitration, which specifically implements the tripartite mechanism involving the state, labor unions, and the employing units.

3.2.4. Improve the Labour Supervision System

China's current administrative supervision of crew labor is divided into crew general labor inspection and crew labor safety and health inspection. The general labor supervision of crew members is carried out by the administrative department of labor security, and the labor safety and health supervision of crew members is carried out by the maritime administration agency as the competent authority of the industry, in which the state border health quarantine authorities have the right to supervise the health condition of international ships when they enter or leave the country and the health condition of their crew members who may be involved in contagious diseases, and the state safety supervision and management departments have supervisory and guiding duties on the labor safety and occupational hygiene of crew members, which basically meets the requirements of the state. The State Safety Supervision and Administration Department is also responsible for supervising and guiding the labor safety and occupational health of seafarers, which basically meets the requirements of the Maritime Labor Convention 2006 for the administrative supervision of seafarers' labor, including the labor inspection of seafarers in port countries, but the 14 items of the Convention's seafarers' labor inspection projects have not been fully implemented.

4. Problems of China's Seafarers Law System

4.1. Lack of Unified Basic Law

China's current seafarers' law system lacks a law that plays an overarching role in various laws and regulations. When a maritime labor dispute occurs and a legal basis is sought, the Ministry of Communications has various regulations, letters and approvals, but no specific provisions can be found in the legislative basis. For example, the Regulations on Crews only contain generalized provisions on crew insurance, life and workplace, and crew wages. The Maritime Traffic Safety Law

only has three provisions related to the protection of the rights and interests of the crew, the other contents are about the crew's obligations, the Maritime Law only in the crew's ship priority, the crew's wages belong to the common sea loss and the subject matter of the marine insurance contract embodies the protection of the rights and interests of the crew, and therefore can not be called the rights and interests of China's crew protection of the legal system of the foundational laws.

However, the development of special protection of the rights and interests of the crew of the “crew law” is more difficult, which involves the problem is too broad, including coastal transportation routes, ocean voyage, the size of the ship, the crew level, public and private law issues at the same time. At this stage, the function of the temporary use of the “crew regulations” to adjust the crew management-related issues, the “maritime law” to adjust the private law issues.

4.2. Defects in Legislative Content

Crew Regulations is China's legislation for the crew, but the content focuses on the administrative management of the crew, clear crew registration, tenure, training and legal liability and other administrative issues, emphasizing the management, but ignored the protection of the crew. And it lacks legislative purpose and basic principles in its content. Since the Regulations on Seafarers only provide for the protection of the rights of seafarers in principle, we can only seek laws and regulations such as Labor Law and Occupational Disease Prevention and Control Law. However, the work of seafarers is risky, arduous and mobile, so it can't reflect the special protection of seafarers' occupation, and can't adjust the complex employment relationship of seafarers, especially the lack of legal conditions for the termination and cancellation of the contract, and the protective provisions for female seafarers.

4.3. Lack of Legislative Harmonization

The Ministry of Commerce and the Ministry of Transportation can both regulate the maritime transportation sector because it involves trade in services, but there are often problems in the interface and coordination between the two. For example, the Ministry of Transportation formulated the “crew services regulations” and the Ministry of Commerce's “seafarers sent to foreign labor cooperation regulations” conflict in content. Therefore, due to the multiple management of service organizations will lead to the legislation is not uniform.

5. Suggestions for Improvement of the Current Situation

5.1. Strengthen the Construction of Law Enforcement and Enhance the Awareness of Seafarers' Rights Protection

China should assess the existing judicial procedures and optimize them, and strengthen the linkage and collaboration of government departments in order to reduce the time of dispute resolution and improve the efficiency of judicial power to protect the rights and interests of seafarers. We can set up a rights protection hotline and provide legal knowledge training to encourage the crew to strengthen their legal awareness and rights protection consciousness, and report and seek protection in time when they suffer from rights infringement. Only by improving China's internal maritime governance can we further improve China's global maritime governance capability [7].

5.2. Make Full Use of the Tripartite Mechanism Platform and Industry Associations

Utilizing the tripartite mechanism and industry associations in each region to establish a regional seafarers' comprehensive service platform to fully understand and obtain real-time information on seafarers' market elements and seafarers' activities. At the same time, industry associations in

different regions can fully exchange and cooperate with each other to create a fair, just and convenient market environment for seafarers' work, increase the exemption of personal income tax for seafarers, expand the employment paths of seafarers on the road, enhance the attractiveness of seafarers' occupation and promote the employment of seafarers [8].

6. Conclusion

Due to the special nature of seafarers' work, it is necessary to protect the rights and interests of seafarers through special laws and regulations. Attempts can be made to presume the domestic legislative process with international conventions, meet the requirements of international conventions on the protection of crew's rights and interests, improve the applicability of international conventions in domestic legislation, and solve the problems after the current legislation on the protection of labor rights and interests of seafarers. Various departments and industry associations need to make cooperative efforts to pay attention to the protection of the rights and interests of seafarers, pay attention to the latest progress of international conventions, balance the process of the rule of law at home and abroad, and actively exercise the rights and fulfill the relevant obligations under international conventions, so as to promote the construction of a harmonious labor relationship and the development of the shipping industry.

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