## Researching the system of Chinese and Vietnamese Law on Seafarers - From the Viewpoint of Maritime Labor Convention 2006

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#### Abstract

In Vietnam, the issues relating to seafarer are specified in many different law normative documents. However, the law regulations are not actually united and suitable with ensuring the seafarer's rights and interests, especially some problems relating to labor contract, wages, insurance regulations, working time... Furthermore, the stipulations of Vietnamese law on adjusting the seafarer relevant issues have not had specific characteristic yet. Thus, it is time to perfect the regulations of Vietnamese law associating with the seafarer's rights and duties as soon as possible, at the same time it is essential to speed up the process of approving Maritime Labor Convention 2006 [MLC 2006] of International Labor Organization in order to create the legal basis for protecting the seafarer's benefit.

Whereas the system of Vietnamese law on seafarers has still lacked or have not had characteristic regulations to create the best protection for seafarer yet. China has had the certain advances in reforming the seafarer law system, for example, they had promulgated Regulations of the People's Republic of China on Seafarers or built Collective Labor Deal. However, the regulations of Chinese law on the social protection of seafarer have not been perfected yet; with the arising problems it has not really had legal basis yet to properly protect the seafarer's benefit. In other hand, China is also in the process of joining MLC 2006. For this reason, this article will analyze the current situation to perfect the system of Chinese and Vietnamese law on seafarers – From the viewpoint of Maritime Labor Convention 2006.

Keywords: seafarer; MLC 2006; labor contract of seafarer; social protection of seafarer; rights

#### 1. Introduction

Hailed as "seafarers' bill of rights", MLC 2006 reflects an international tripartite consensus on agreed minimum standards to help secure conditions of decent work for workers and to also ensure fair competition among employers.

"This convention is an important landmark in the maritime history", General Director of ILO, Mr. Guy Ryder, said: "This is a product of the trilateral dialogue mechanism and international cooperation, push up creating safely and sustainably the living and working condition for seafarers on the basis of the fair competition between the ship-owners in the high globalization industry".

MLC 2006, on the one hand it is the collection of the minimum international standards to ensure the sustainable job for seafarers; on the other hand it helps to create the level playing field between the ship-owners who attained the ship's flag power of nations approved Convention, promote the competition on the basis of effectively ensuring and reliably increasing the shipping. China and Vietnam are in the process of perfecting the law systems on seafarer, in this article the author will analyze some problems which are not suitable with the law system of two nations on seafarer and propose some solutions to amend as well as perfect it.

# 2. Analyzing, comparing the law system between China and Vietnam on seafarer – from the viewpoint of MLC 2006

China and Vietnam have not had the specialized law regulating for seafarer yet; as the result of this situation, when arising the dispute there is not any legal basis to ensure the legitimate rights of seafarer or some problems arise, there is not any management mechanisms to effectively adjust. Many matters arising from the real fact are forcing us to implement the research and analysis about perfecting the Chinese and Vietnamese law system on seafarer labor in the context of China and Vietnam – two nations have the same target on approving and implementing MLC 2006. In this part, it will analyze, compare the Chinese and Vietnamese law system on seafarer labor as well as propose some solutions to perfect it.

#### 2.1 Regulations on the minimum labor age

MLC 2006 regulated "the hiring, recruiting or working on ships under 16 years old is illegal; under the regulated

age nobody is allowed to work on ships. It ensures that there are not any seafarers under the regulated age working on ships."

Both China and Vietnam had joined Convention No.138 about the minimum age for working, 1973 and the labor law of two countries expresses clearly the implementation of this convention. However, seafarer is an occupation which has high characteristic, requests good health and professional ability. That is the reason why we can not totally base on general minimum standards, each nation should base on its own social development and national features. From that, each country can have suitable regulations on seafarer's labor age which can be lower than the Convention's regulation. China had also implemented this article which was expressed in Regulations of the People's Republic of China on Seafarers approved by Council of National Affairs in 2007, in which the regulation of the minimum age on seafarer is 18 years old.

The Vietnam Labor Law amended in 2012, article 3 stipulated "the employer is a person who is enough 15 years old or older, has working ability, works under the labor contract and is paid salary as well as accepted the employee's management and operation. So, the Vietnam Labor Law just has a general regulation on the employer for all careers, it has not expressed the characteristics yet, that is allowing having the sector agreements in particular labor relation or also known as "the labor agreements of sector collective with seafarer". For the shipping industry, seafarers have to be considered as the typical peculiar labor type which gained the worldwide recognition. In Vietnam, until the present time it has not had any specific regulations relating to seafarer yet, even an "open" prescription to issue the separate decisions for the seafarers' future development. In my opinion, wanting to implement this part, it is necessary to build the separate seafarer Law.

#### 2.2 Regulations on educating, training, and granting certificate

Seafarers shall not work on a ship unless they are trained or certified as competent or otherwise qualified to perform their duties. Seafarers shall not be permitted to work on a ship unless they have successfully completed training for personal safety on board ship. Training and certification in accordance with the mandatory instruments are adopted by the International Maritime Organization.

In the area of maritime labor, deriving from the target of maritime safety, sea environment protection as well as the guarantee of different benefits on ships, seafarer can only be allowed to work on ships when they are educated, trained and granted the certificate at a certain level. When working on foreign ships, in order to hold a specific title, Vietnam seafarer needs to be educated, trained according to the minimum standard and have International Certificate under STCW Convention 78/10 on the standards of training, granting certificate and watch keeping for seafarer. When fully satisfy all requirements about sea service, age, medical fitness; the seafarers are going to participate in training the professional abilities and be granted the certificate under the provisions. This certificate is normally valid within 5 years.

Both Vietnam and China joined and implemented the International Convention on training standard, certification, seafarer watch keeping on ship in 1978, amended in 2010 (STCW Convention 78/10). However, the organization of implementing this Convention as well as codifying the regulations on educating, training, and granting certificate of China and Vietnam is totally different.

#### China

China considers that the training of maritime human resources is a national policy and is received the special interest especially the management and development task of this resources. Thus, Council of National Affairs had approved "Regulations of the People's Republic of China on Seafarers", promulgated in 2007.

- China government is deeply aware of training qualities such as calm, fearless, courageous and assertive as well as caring about the task of seafarer management. All of these play an important role in developing shipping career and protecting human life on sea as well as preserving environment. Thus, they have built a series of regulation systems on occupation, professional techniques, technical standards, safety requirements on sea and environmental protection. Through the reality, they have formed a comprehensive, effective and special institution on seafarer management. The task of seafarer, training education and quality management in the whole country is grasped thoroughly under "Regulations of the People's Republic of China on Seafarers" by State Council as the above delineation and is also concreted in legal norms by Ministry of Transport. Legal norms currently come into effect for all the tasks of seafarer, training education, examination, quality management, they include:
- Decree on Seafarer Service of the People's Republic of China promulgated by Ministry of Transport in 2008;
- Regulations of the People's Republic of China on the Administration of Seafarer Expatriation promulgated by Ministry of Transport, coming into effect from July 1st 2011;
- Regulations on Examination, Certification of Competence for Seafarers of the People's Republic of

China promulgated by Ministry of Transport on December 27th 2011 (new text has been replaced to fit amended STCW 78/10 Manila);

- Regulations on Managing the Examination Quality, Assessing, Granting Certificate for Seafarer of the People's Republic of China (in effect);
- Regulations on Management, Training Education of the People's Republic of China promulgated by Ministry of Transport on June 22nd 2009, coming into effect from October 1st 2009;
- Regulations on particularly implementing the assessment of training education quality system for seafarer of the People's Republic of China promulgated by Ministry of Transport, coming into effect from June 1st 1998;
- Methods on managing, educating professional examination and granting certificate for mechanic sailor of the People's Republic of China promulgated by Maritime Safety Administration of P.R.C.(中国海事局)
- Methods on seafarer registration management of the People's Republic of China promulgated by Ministry of Transport;
- Methods on training, educating, testing and licensing basic safe speciality of the People's Republic of China;
- Methods on training, educating, testing and licensing emergency speciality and medical assistance on ship of the People's Republic of China promulgated by Marine Monitoring Bureau, Ministry of Transport;
- Methods on training, educating, testing and licensing life raft, lifeboat speciality of the People's Republic of China promulgated by Maritime Safety Administration of P.R.C.

All courses are trained according to IMO Model Courses, STCW of IMO and trained on job training. 44 Model Courses are thoroughly grasped in the program, plan, teaching document, and training education system for seafarer. All Model Courses are officially published in China bilingual in Chinese and English.

#### Vietnam

Currently, Vietnam Maritime Law about seafarer labor only provides a general regulation on educating, training for seafarer without concretely specifying and having the mandatory requirement for ship-owners as well as providers who supply seafarer with the labor export service.

Comparison with strategies and policies on training, educating seafarer of China, Vietnam really needs to learn the experience in order to develop maritime human resources as well as fully obey all regulations of Convention STCW 78/2010. Ministry of Transport had promulgated many law normative documents about title, task under the seafarer's title and the registration of seafarer working on Vietnam ship, expertise standard, seafarer's expertise certificate, and minimum safety edge of Vietnam ship. During the past time, State management authorities have made great efforts in managing, educating, and training seafarer; directing the education training facilities for seafarer to invest technical infrastructure, strengthen professional operation and equipment under the standard of Convention STCW 78/10 and Vietnam law normative documents; also guiding the educating training facilities for seafarer to organize the teacher and coacher training, enhance and invest technical infrastructure as well as equipment. As the result of this situation, the quality of seafarer education and training is continuously improving, it will contribute a great importance in raising the seafarer quality which can satisfy the needs of human resources for Vietnam sea strategy and seafarer export.

Besides the achieved results, the work of seafarer education training has still shortcomings and existences which need to be overcome; the management work of seafarer education training is still losing; the task of education training at some training establishments have not been received enough attention yet. Vietnam needs to implement some solutions as following:

- Review, amend, and support all legal regulations on educating, training, and granting certificate and keep-watching for Vietnamese seafarer on the basis of the regulations of Convention STCW 78/2010, including:
  - Perfect regulations on the task of education, training, keep-watching, health standards and seafarer's licenses, the regime of working time, rest time, title, duty under the title and seafarer registration working on Vietnamese ship under the requirements of Convention STCW 78/2010;
  - Perfect the system of advanced quality management ISO on educating and training seafarer for management agencies and training education establishments.
  - Perfect regulations on licensing education, training to evaluate, licensing for training education establishments.
- Perfect the training, education, cultivation according to the regulations of Convention STCW 78/2010,

including:

- Rebuild or amend, support the training, education, and cultivation programmes on seafarer under the regulations of Convention STCW 78/2010 to unitedly use in the whole country;
- Perfect the question answer exam on professional English maritime officer exam in order to unitedly use in the whole country;
- Organize to translate IMO Model Courses so as to create the basis on compiling teaching documents; at the same time need to translate all Vietnamese education training programs and documented into English.
- Cultivate, train the official lecturer, coach staffs that are suitable with the regulations of Convention STCW 78/2010, implementing under forms:
  - Appoint lecturers, coaches to educate nationwide and abroad;
  - Invite IMO experts, foreign lecturers of seafarer training, education establishments to teach some training courses in Vietnam.
- Invest; upgrade the material facilities of seafarer training, education establishments under the regulations of Convention STCW 78/2010, including the following contents:
  - Invest; purchase the textbook systems, reference documentary and IMO Model Courses;
  - > Invest, purchase, upgrade facilities that serve seafarer training, education.

#### 2.3 Seafarer labor contract

Seafarers' employment agreements shall be agreed to by the seafarer under conditions which ensure that the seafarer has an opportunity to review and seek advice on the terms and conditions in the agreement and freely accepts them before signing. Seafarers signing a seafarers' employment agreement shall be given an opportunity to examine and seek advice on the agreement before signing, as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities. The ship-owner and seafarer concerned shall each have a signed original of the seafarers' employment agreement; Measures shall be taken to ensure that clear information as to the conditions of their employment can be easily obtained on board by seafarers, including the ship's master, and that such information, including a copy of the seafarers' employment agreement, is also accessible for review by officers of a competent authority, including those in ports to be visited.

Labor contract is the best way to change seafarer benefits on legal into benefits in real. However, seafaring is a characteristics occupation; legal regulations for seafarer labor contract also must have characteristics regulations. In the seafarer labor law of developed nations, they have the system to recognize seafarer labor contract through the administration management agency. Seafarer labor contract has really come into legal effect when it is approved by the administration management agency, so that it can guarantee seafarer's benefit in reality. Law on seafarer labor contract of China and Vietnam has not been perfected yet; it has not had the particular regulations on effectively ensuring seafarer's benefit, it has just approved the general stipulations on labor contract. On the other hand, the law consciousness of citizen is still low; it is very hard to ensure the implement of seafarer benefit.

#### China

In the labor law of China, the contents of seafarer labor contract express the self-control meaning of two parties when they sign labor contract. Before the Labor Contract Law is promulgated and enforced, seafarer labor contract clearly shows its own characteristics. Many Chinese law scholars consider that it should not apply Labor Contract Law to seafarer labor contract, because in the seafarer labor contract it must not be bound by compulsory regulations in the labor law. For example, all problems on labor safety, sanitation, working time, rest time, contract time, etc. are not suitable with seafarer labor contract as well as are not compulsory.

However, after implementing the Labor Contract Law of China, whether some compulsory articles in it are applied to seafarer labor contract, currently there is not too much argument. But in the fact, seafarer labor contract does not still have compulsory articles which are stipulated in the Labor Contract Law. In order to ensure better the labor benefit on seafarer, in my opinion the amendment of China Maritime Law must not only have compulsory regulations in the labor contract law, but also have more amendment regulations on the special characteristics of seafarer labor contract. It allows implementing the amendment of some compulsory articles in the labor contract law. In other words, it is necessary to build the standard seafarer labor contract in which can show the special characteristics of seafarer career.

#### Vietnam

According to Vietnamese Law, labor contract is an agreement between employee and employer on particular job with paying wage, working conditions, their duties and obligations in working relationship.

The contents of maritime labor contract must include: task on title; wage (salary, bonus, working overtime, meal allowance and other enjoyed payments); working place (ship name); labor period on ship; the conditions on labor safety, labor hygiene, working time, rest time, the insurance extent and regime of employee.

Concerning with the form of labor contract, it must be put down in writing and it is made in 02 copies, the employee keeps 01 copy, the employer keeps 01 copy. For the temporary jobs which are less than 03 months, two parties can be put down in oral.

However, Vietnam has not had characteristic regulations on seafarer labor contract yet, we have still applied the regulations of Labor Code. The overall trend requests Vietnam to essentially build standard contract on seafarer labor contract such as the clear specific regulations on professional ability, responsible title on ship, education system, labor age, health, wage, other legal income, minimum working conditions to ensure the human safety on ship, create the mechanism for solving the disputes...especially regulations on inspecting seafarer labor contract through the competent authorities.

#### 2.4 Regulations on wage

All seafarers shall be paid for their work regularly and in full in accordance with their employment agreements. Basic pay or wages means the pay, however composed, for normal hours of work; it does not include payments for overtime worked, bonuses, allowances, paid leave or any other additional remuneration.

Consolidated wage means a wage or salary which includes the basic pay and other pay-related benefits; a consolidated wage may include compensation for all overtime hours which are worked and all other pay-related benefits, or it may include only certain benefits in a partial consolidation.

It can be said, seafarer is one of the field whose wage catches up with the world very early. While almost citizens' wage is not still high, seafarer's wage has had good income. Along with the economic development, the wage rate of other occupation is increasing; the income gap between two types of occupation has significantly reduced. On the other hand, in the current difficult economic period, the wage of Vietnamese, Chinese seafarer and other nations in the world reduce. As a result of this situation, many outstanding students graduating from maritime university do not put seafarer occupation on top; many of them have a same mentality "if no other choice they will agree to work on ship". Thus, so as to ensure the maritime development and seafarer quality, it is very necessary for both Vietnam and China to reform law on seafarer's wage system to guarantee their legitimate benefit.

Vietnam Labor Code stipulates hat the employee's wage is paid basing on working productivity and quality; the minimum wage is the slowest level which pays employee who works the simplest task, in the normal working condition and ensures the minimum living requirement of employees as well as their family. There is a new point in Vietnam Labor Code amended in 2012 is that stipulating the sector minimum wage is determined through sector collective negotiation, recorded in sector collective agreement but can not be lower than region wage by Government promulgation. However, Vietnam has not had collective labor agreement on seafarer yet.

Both the current Labor Law of China and Vietnam stipulate the lowest wage of general jobs. However, this number is really not suitable with the serious risk characteristics of working on ship; there is also a difference comparing with the wage of international seafarer. Thus, both Vietnam and China need to build legal regulations on seafarer salary; consider the working characteristic on ship; combine with working wage; economic situation of other countries; and the wage of their own country 's seafarer; set up the seafarer's lowest salary which is accordance with economic situation and citizen's living allowance.

China had collective labor agreement on seafarers, so it partially compensate for the shortages which are not stipulated specifically for seafarer in the Labor Law.

#### 2.5 Health protection, medical care, welfare and social security protection

#### a. About health protection and medical care

MLC 2006 divides the regulation contents of seafarer medical care into two aspects: Firstly, member nations ensure timely and quickly the medical care for seafarer; at the same time they must use medical equipments which are totally same as the medical care and protection on shore. Secondly, on the principle, seafarer must not pay any fees on health care and protection. In the Convention, this problem shows clearly that seafarer is enjoyed the medical care on ship as well as on shore which are achieved the specific standard. So in the process of legislating, the regulations on supporting medical care on ship and on shore for seafarer need to use the Convention standard as the target. In the future, when Vietnam and China promulgate "Seafarer Law", they should consider the particular contents on seafarer medical care in the convention, in which the problem of medical care on ship is a key point to legislate in the future. At the same time, it is essential to consider the establishment of suitable checking monitoring system, from that it can help seafarer to enjoy fully the benefits on

#### medical care.

Both the law system of China and Vietnam have regulations on health protection and medical care for seafarer that are specified in two main contents as following: Firstly, recruitment agency must provide daily essential items for seafarer, including protection and medical appliances, seafarer health file; at the same time implementing the periodic health checking for seafarer, timely preventing and curing some diseases caused by job. Secondly, in the period of working on ship if seafarer sick or injuries, recruitment agency must immediately aid or cure; if seafarer is missing or in death, recruitment agency must immediately work effectively on funeral observances task.

#### b. About seafarer social protection

China and Vietnam had built legal documents on social security which are managed by Labour - Invalids and Social Affairs Industry. However, many social welfare policies are promulgated; they lose the system, the sufficient, the association as well as the support. With building three basic insurance regimes including retirement, health care, unemployment insurance and social allowance system, all of them are the backbone of social security system as nations in the world. Currently, both Vietnam and China are in the period of reforming and perfecting so as to be suitable with the current conditions as well as achieve the social target. The problem of seafarer social welfare is special; yet, Maritime Law of Vietnam and China only has some simple regulations on seafarer such as regulations on seafarer's concept and rights, captain's title, it does not refer to the social security right of seafarer. Moreover China and Vietnam has not joined relevant international conventions yet. Currently the social security of Vietnamese and Chinese seafarer is compared with the basis of worker legislation on shore; shipping companies create their own regulations. Because there are not united legislative standards on seafarer social security to implement and adjust, the social welfare standards which shipping companies create are totally different. As the result of this situation, it will seriously damage the social security benefit of seafarer, reduce the seafarer's enthusiasm, as well as effect badly the development of shipping industry.

#### Vietnam

According to Vietnam law on the seafarer's welfare regime and insurance, when seafarer had signed the long term contract with seafarer Supply Company, that company will pay insurance under the provisions of Vietnam law on the basis of usual and concrete wage without basing on the salary regime working on the sea.

With the body insurance issue for seafarers (or their family), when illness or casualty occur, insurance for seafarer will belong to P&I Insurance (Sponsored and civil liability compensation council of ship-owner – Protection and Indemnity) under the general usage of International Maritime. In the fact of the insurance contract, the insurance money with compensation rate for seafarer's disability which is required from the Vietnam are divided into 14 levels (on the basis os basic salary in accordance with all levels, including the highest level of compensation about \$16.750; in the case of death as \$35.000)

#### China

China has not had the specialized legal regulations on seafarer social security yet. Regulations on working protection and seafarer social security are officially in 2007; State Council promulgated Regulations of the People's Republic of China on Seafarers ("Seafarer Regulations" for short) and "China Social Insurance Law" ("Social Insurance Law" for short), applying for all social workers.

"Seafarer Regulations" stipulate social insurance, including salary, resting time, working and medical conditions, and social welfare for seafarer that is higher than other occupation benefits. Because the legal rank is still low, it is only administrative legal; the problem of ensuring seafarer social security needs to be specified clearly, ranked with the higher legal.

Currently, China has built a policy system on social insurance such as health, unemployment, retirement, etc. Although it is in the process of perfecting, it contributes partially the guarantee of worker benefit. When applying this social insurance policy for seafarer, there are still shortcomings, the reasons are:

- Seafarer has a big mobility; there are not any clear regulations for seafarer to pay social insurance fee, so it makes insurance revenue management complicated and chaotic. At the same time, some shipping companies only care about their own profits they totally do not pay insurance fee for seafarer. Moreover there are more and more seafarers who are appointed to go aboard on business, who will pay social insurance fee for them; it is also an insolvable matter.
- The standard on defining China social insurance is basically regulated on the living standard of citizen on shore; there are different regulations for each region. Basing on this point to set up insurance money for seafarer is totally unsuitable; the wage between seafarer and worker on shore is completely different, it can damage seafarer's benefits a lot.

Thus, in my opinion, China should create special regulations on seafarer on social insurance under the basis of current insurance, legislate insurance money which seafarer must pay, from that seafarers can be received the

insurance money in proportion to their wage. There from, forming social insurance system on seafarer is totally suitable with China situation.

#### 3. Conclusion

The above research and analysis will be suggestion for Vietnamese and Chinese policy makers on law to consider, adjust the seafarer legal system which is in accordance with the international trend as well as the social economic development of two nations. On the one hand, it will push the maritime development; on the other hand, it will protect the legitimate rights and benefits of Chinese and Vietnamese seafarer when Maritime Labor Convention has just come into effect since August 2013.

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