

# **Global problems, local solutions: Unfree labour relations and seafarer employment with crewing agencies in China<sup>1</sup>**

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## **Abstract**

This paper documents and discusses a local labour control regime employed by Chinese crewing agencies to restrict mobility of newly graduated officer seafarers. The shipping industry relies on a stable and skilled seafarer workforce on flexible employment, assembled globally with the help of local crewing agencies. A stable workforce and flexible employment do not seem easily compatible. This paper examines how Chinese crewing agencies help manage this tension in China through analysing the experience of seafarers. It argues that to cater for the demand of international shipping companies, Chinese crewing agencies adopt a particular local labour control regime which re/produces unfree labour relations. The local control regime is built on existing institutional practices in China, structural weaknesses of seafarers, as well as the disjunctions between the local institutional setups and the global chains of labour supply.

## **Keywords**

Crewing agencies, employment contract, flexible employment, labour control regimes, GPNs, unfree labour

## **Introduction**

Shipping is a global industry. To reduce costs, shipping companies routinely optimise their operations by spreading their businesses across several countries. Thus, it is a common practice that ship owners/managers from traditional maritime nations (e.g.

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the UK, Germany, and Norway) register ships in Flag of Convenience countries (e.g. Panama and Liberia) and source seafarers from cheaper labour supply countries (e.g. the Philippines, China, India, and East European countries) on short-term employment contracts through local crewing agencies. This practice gives rise to a seafarer global labour market (ILO 2001). On the one hand, this labour market is characterised by flexible employment. On the other, ship managers strive to have a stable and skilled workforce for two reasons (Drewry 2006). First, seafarers are skilled workers and need to be well trained. Second, shipping is a safety critical industry and the seafarers already familiar with the safety management system of the company perform better. Unsurprisingly, the Shipping KPI (Key Performance Indicator) Standard initiated and implemented in the industry includes the retention rate of seafarers as a KPI.

It seems rather contradictory to retain a stable and skilled workforce on temporary employment. This contradiction is particularly acute when the industry consistently reports a current, as well as projects a future, shortage of seafarer officers in the global labour market (BIMCO/ICS 2015). Since international ship managers have access to seafarers through a network of local crewing agencies, arguably, crewing agencies play an important role in assembling and managing a stable workforce to serve on the international fleet. It is through the agency's mediation between the global market and local seafarers that global socio-economic activities are connected to and grounded in local institutional frameworks.

This paper documents and discusses one strategy – unfree labour – adopted by Chinese crewing agencies to ‘retain’ newly qualified seafarer officers. The discussion draws on the concept of local labour control regime (Jonas 1996) as it captures the role of local institutions and dynamics in labour control in the local-global nexus (Davies et al. 2011; Riisgaard and Hammer 2011). Through examining the experience of Chinese seafarers, this paper advances the argument that while the local control regime is built on the local institutional setups, it also takes advantage of the disjunctions between the local setups and the global chains of labour supply. This paper will also add to the literature on the links between unfree labour and

globalisation/neoliberalism (LeBaron and Ayers 2013; Morgan and Olsen 2014; Phillips and Mieres 2015),

In the next section, we review the literature on labour control regimes and unfree labour. Following an introduction of the Chinese context, we explain the research methods and then present and discuss the research findings. We will conclude the paper by drawing out implications.

### **Labour control regimes and unfree labour**

It is argued that labour control is an inherent imperative in capitalist production (Thompson and Vincent, 2010). For the purpose of cost reduction, production enhancement and thus profit maximisation, management has developed and implemented various strategies, such as early forms of direct, technical and bureaucratic control, and more recent normative control, neo-normative control, and computer control (Callaghan and Thompson, 2001; Sturdy *et al.*, 2010; Elliott and Long 2016), to control the labour process. Labour control nevertheless takes place beyond the workplace and workplace social relations, and the concept of labour control regimes (Jonas 1996; Anner 2015) in various forms, such as factory regimes (Burawoy 1985) and the dormitory labour regime (Smith and Pun 2006), is developed to account for the roles played by state policies and local socio-cultural and economic contexts in labour control. Being embedded in local settings, they are local labour control regimes (Jonas 1996).

Labour control regimes deal with two aspects of labour power (Smith 2006; 2015): effort power – how much effort a worker puts into production cannot be determined by the employer, and mobility power – employers are uncertain to whom a worker would sell his/her labour power and for how long. Control of mobility power is largely outside of the workplace, but it is equally important. Without a stable workforce, production would not be possible (Azmeah 2014). In this context, research shows that low skilled temporary migrant workers are often immune from job-hopping because their visas are often conditional upon employment in a specific company (Kelly 2002; Strauss and

McGrath 2017). Azmeh (2014) compared the labour control regimes in the qualifying industrial zones (QIZ) of Egypt and Jordan and found that these zones were more successful in Jordan than in Egypt. The difference was largely due to labour mobility. QIZs in Egypt relied on domestic workers who could not be easily disciplined to meet the just-in-time production demands as they could choose to vote with their feet. Consequently, many Egyptian factories could not survive due to a lack of disciplined labour. By contrast, QIZs in Jordan largely relied on foreign workers whose passports were taken by their employers upon arrival. As such, these foreign workers could not leave the factories freely and were forced to work under poor working conditions and to meet the just-in-time production demands.

Azmeh's research (2014) points to the issue of unfree labour which overlaps with forced labour (ILO 2009; Morgan and Olsen 2014). While unfree labour takes various forms (McGrath 2013), its core features include: 1) not free to enter into alternative employment relations; 2) not free to exit current employment relations; 3) the terms and conditions of current work contributing to 1) and 2) (Lewis 2015; Olsen and Morgan 2015). Similarly, Phillips and Mieres (2015) point out that in the current era, unfree labour is commonly associated with the preclusion of exit which implies unfreedom to enter alternative employment. The preclusion mechanisms include indebtedness (e.g. through overcharging for services such as accommodation, recruitment, and obtaining work permits), withholding wages, confiscation of documents or possessions, and manipulation of contracts (Phillips and Mieres 2015; LeBaron and Phillips 2018).

Unfree labour is a global problem and according to the ILO (2009) report, tens and millions of people worldwide were its victims. This paper focuses on transnational workers. In the Global North, migration regimes governing transnational/migrant workers are often intertwined with unfree labour (LeBaron and Phillips 2018; Strauss and McGrath 2017; Yea and Chok 2018). First, immigration laws often bind low skilled temporary migrant workers to particular employers. If they want to change employers, they lose work permits. In this way, workers are deprived of mobility power. Second, to secure employment and immigration documents, temporary migrant workers rely

on labour intermediaries or recruitment agencies who charge high fees for the services and make workers victims of debt bondage (Barrientos 2013; LeBaron and Phillips 2018; Olsen and Morgan 2015; Verité 2010). Thus, migration regimes and exploitative practices of labour intermediaries/employers co-produce unfree labour. Needless to say, unfree labour relations are produced in and contingent on the particular configurations of institutional policies and structural factors in local contexts (LeBaron and Phillips 2018; Yea and Chok 2018). In other words, a particular form of unfree labour reflects what Jonas (1996) termed as the local labour control regime.

LeBaron and Phillips (2018: 6) argue that states 'put in place the conditions in which individuals and groups of people become vulnerable to unfree labour, on the one hand, and on the other hand, the conditions in which these labour practices become feasible and coherent management practices...'. This argument rightly emphasises the role played by local institutional actors and policies. 'States' in this context refers to migrant labour receiving countries, and this body of literature uncover the important role played by the local labour control regimes involving migration policies of *labour receiving countries* and exploitative practices of labour intermediaries/employers.

As transnational workers (Sampson 2013), seafarers work offshore, on foreign ships. They are different from immigrant workers working onshore who have been the focus of previous research – since migration policies for seafarers are relaxed in most countries (ILO 2001), migration regimes in foreign countries do not play a significant role in seafarers' shipboard employment. As such, the local labour control regimes related to international seafarers would be different from those governing land-based migration labour. In this context, this paper examines a local labour control regime adopted by Chinese crewing agencies to restrict the mobility of seafarers. It shows that crewing agencies take advantage of institutional policies and practices in China, structural weaknesses of seafarers, as well as the disjunctions between the local institutional arrangements and the global chains of labour supply to create exit barriers. It demonstrates that in this case, the labour supply country (China) instead of labour receiving countries is at the core of this particular local labour control regime.

More broadly, this paper is also situated in the debate of the links between unfree labour and neoliberalism. It is argued that in the contemporary world, unfree labour is underpinned by neoliberalism (LeBaron and Ayers 2013; Morgan and Olsen 2014), which pushes for labour market deregulation, open borders, and expansion of global production networks (GPNs). Labour market deregulation leads to the proliferation of precarious employment, undermines trade unions, and weakens labour protections. GPNs are characterised by long supply chains, outsourcing, and sub-contracting, with the aim to reduce (labour) costs. While GPNs incorporate more people into the global production system, Phillips and Mieres (2015) argue that in many cases, the cost reduction drive results in adverse incorporation. The word 'adverse' stresses that workers are incorporated into the system under the conditions of precarious employment and weak labour protections. Such adverse conditions facilitate the growth of unfree or forced labour, especially in developing countries where people are desperate for work and labour protection mechanisms are weak (Barrientos 2013; LeBaron and Ayers 2013). Low skilled migrant workers are also more likely to be adversely incorporated due to their vulnerable positions as discussed above.

Though the GPN literature does not pay much attention to the shipping industry, this industry is nevertheless the bloodline of GPNs as it carries about 90 percent of the global trade. As mentioned in the beginning, the industry optimise its operations on a global scale to reduce costs. Such optimisation surely facilitates the expansion of GPNs. This paper will show that the optimisation may also facilitate unfree labour and thus contributes to the discussion of unfree labour and GPNs/neoliberalism.

### **Chinese seafarers**

China has the largest seafarer population in the world (BIMCO/ICS 2015). According to the official statistics (MSA 2018), there were 394,059 registered foreign-going Chinese seafarers with valid certificates (as opposed to those work on the domestic trading fleet) by the end of 2017. In the same year, a total number of 27,301 people obtained (foreign-going) seafarer qualifications and joined the profession.

China has a big national fleet which is crewed by Chinese seafarers. At the same time, China is one of the largest seafarer suppliers to the international fleet, second only to the Philippines. According to the official statistics (MSA 2018), there were 224 Chinese crewing agencies serving foreign shipping companies and collectively they despatched 138,854 seafarers to work on foreign-flag vessels in 2017.

Seafarer employment in China has undergone significant transformations over the last four decades or so (Wu et al. 2007). First, Chinese seafarers started to work on foreign ships in 1979, and the following decades witnessed a growing number of them deployed overseas. Second, the transition from a planned economy to a market one which started in the early 1980s opened the market for private shipping companies and crewing agencies to crop up and grow. As a result, employment of seafarers has been diversified. Third, when the employment market was monopolized by the state- or local government-owned shipping companies, Chinese seafarers were employed for life and their welfare was looked after by their employers. With the deepening of the market reform, seafarers' employment was gradually changed to contract based. Thus, in the 1990s, seafarers working at state- or local government-owned shipping companies had permanent or long-term contracts, while those working for private ship owners and crewing agencies were likely to have medium-term contracts, five years, for example. At the same time, a group of 'freelance' seafarers also appeared in the labour market who secure employment through crewing agencies on contracts covering a tour of duty only. Freelance seafarers do not have incomes when they are not working on ships and their social insurance is arranged by themselves. By contrast, those on a medium-term contract with agencies may have a basic salary while on leave and their social insurance is covered by employers; and as a result, their working wage is likely to be lower compared with that of freelance seafarers because part of it is channelled to the basic salary and social insurance. Therefore, the employment of Chinese seafarers is no longer universally fixed for life to state-owned companies, and a range of employment practices co-exist today. This paper focuses on employment related to Chinese crewing agencies.

## Research methods

This research draws on two sources of data. The first one is discussing threads posted on seafarers' online forums, and the second one is semi-structured interviews conducted with ex-seafarers. Both the authors are experienced researchers in seafarers' rights and welfare, and have been regularly browsing discussion topics on Chinese seafarers' online forums for over a decade. The online observation indicates one recurring theme, the practice of unfree labour in the crewing agencies in China. Among those threads, one was initiated by an ex-seafarer, Jia (pseudonym), and in this thread, Jia wrote a number of posts to provide a detailed account of the process he went through to quit from a crewing agency. Many seafarers contributed to the discussion by providing support to him, revealing their similar experiences, and seeking advice.

The online discussion threads were nevertheless not produced for research and therefore they could not answer all the questions that the researchers might have. To explore some unanswered questions and complement the data collected online, the second author used his professional network and managed to find four ex-seafarers (with pseudonyms Yi, Bing, Ding, and Wu, respectively) who decided to leave the sea in their early seafaring career but encountered exit barriers set up by crewing agencies. They agreed to take part in interviews via emails due to distance. The email interviews afforded the informants more time to reflect on and elaborate their answers. To allow for interview probes and follow-up questions, the interviews were mainly conducted in two rounds. In the first round, the informants were asked to provide an account of their experience of exiting the employment with the crewing agencies. Their responses indicated that they were required to pay, and in the end they paid, a financial penalty to terminate the employment. In the second round, follow-up questions were asked regarding why crewing agencies requested a fee and why they chose to pay in the end instead of resolving the dispute through other means. To clarify a small number of issues, we contacted one of them again after the two rounds of interviews.

The data were collected and thematically analysed in Chinese. Only the quotations in this paper were translated into English.



## **The offline cases**

China has a large number of maritime education and training (MET) universities and colleges, 78 by the end of 2017, and in the same year, they recruited 12,803 new student trainees (MSA 2018). Although MET students acquire different academic qualifications when they graduate, bachelor's degrees or higher education diplomas or certificates, they all have to pass the standard officer qualification exams in the final year in order to obtain a provisional seafarer officer certificate. This certificate indicates that they have successfully completed the phase of shore-based training. To become a fully qualified officer and validate the provisional certificate, a student needs to have a minimum of 12 months at sea (as a cadet) for the phase of shipboard training. This arrangement is in compliance with The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) which sets the international standards for seafarer training.

After obtaining the provisional certificate, a student has two choices to gain sea time. One choice is to sign an employment contract with a shipping company or crewing agency who will send the student on a ship for a cadetship. The typical length of a contract is 60 months at sea. Another choice is not to sign an employment contract with any company, but to become a freelance seafarer. Surely, a freelance seafarer also needs to find job opportunities through crewing agencies, but does not need to sign an employment contract. In general, the majority of students would choose the first option as it guarantees employment. Without an employment contract, it is very difficult for a trainee to find a training ship.

The four interviewees signed medium-term employment contracts with four crewing agencies located in four Chinese cities, with contract length ranging from sixty months at sea for Yi, Bing and Wu to ten calendar years for Ding. In these contracts, one term was that if they prematurely terminate the employment, there would be a financial penalty for breach of contract. While Yi signed the contract without a second thought, Bing, Ding and Wu hesitated when being asked to sign. However, as the managers

threatened not to arrange shipboard training without signing the contract, they had no other choices.

There were a few hidden strings attached to the employment contract. First, it is a common practice that once the contract is signed, the public record (*Dang-An* in Chinese) and in some cases the household registration (*Hu-Kou* in Chinese) of the student would be transferred from the MET institution to the employer. In China, every student has a public record kept by the school recording his/her behaviour and performance at the school. This record is not open to the student, but follows him/her from primary school, high school to the university. Household registration is a residence permit issued by the government on a family basis. The benefits of social security are normally connected with this registration (Zhang, 2016). Upon graduation, these documents would be transferred to the employer to keep a record of his/her employment information. Second, once an employment contract is signed, only this employer can apply on the employee's behalf to the maritime authority for the seaman's book and other certificates, and the employee cannot do it himself/herself. In other words, a seafarer is attached to his/her employer by certificates, and without the employer's consent, s/he cannot work for other crewing agencies. When the contract is terminated, the former employer will notify the maritime authority and the latter will then accept the application from a new employer on behalf of this seafarer.

All the four informants wanted to terminate the employment with the agencies before completing the contract. Wu felt that a career at sea was not what he would like, and Bing and Ding found employment ashore while taking shore leaves, after about one year service at sea. In the third year of his employment with the crewing agency, Yi applied for postgraduate studies and obtained an offer. Inevitably, all of them faced the problem of breach of contract and were requested to pay a financial penalty ranging from RMB 30,000 to 60,000. The justification from the agencies was that they paid the MET institutions a fee when recruiting student trainees and that they had also provided training. Nevertheless, the agencies did not tell the informants the amount they paid to the MET institutions. According to the Labour Contract Law in China, if the employer provides training for an employee, the employer can have an agreement

with the employee on the length of service period and require the employee to pay a financial penalty if the agreement is violated; but the penalty should not exceed the pro rata training costs.

Without paying this penalty, the managers refused to terminate the contract and to return the public record and other documents, such as their household registration. Without the public record and household registration, there would be serious consequences as Yi explained:

It would cause lots of troubles without the public record or household registration. Most employers require it before they could recruit you. Without it, it would cause lots of problems in the future as well when you need to find new employment, apply for professional certificates, arrange for social security, buy a house, and arrange your children's schooling.

As the agencies held the public record and other documents, the four informants decided to negotiate with them. After negotiation, they paid about half of the required penalty and successfully terminated the contracts. According to the informants, there were no standards for the penalty. The agencies did not explain to them how much they had spent on their recruitment and training. The negotiation was more like random bargaining. When asked about how they reached the agreed amount of penalty, Ding explained:

They knew that I did not have much money. After all, I had only worked for one year at sea. They were also aware that I had made up my mind to quit this job. As such, they knew that they could not squeeze too much from me. From my side, I have my public record and other certificates in their hands. ... They showed me the contract and I knew that I could not get away without paying a penalty fee. I felt lucky that the haggling reduced it to RMB20,000 from the initial RMB60,000.

It seems that the amount of penalty rather depended on the managers' estimation of how much the quitter could afford.

For the informants, although they were reluctant to pay, they did not perceive any other alternatives. Although officially speaking Chinese workers are unionised under an official umbrella union organisation, namely All-China Federation of Trade Unions (ACFTU), under the current Chinese political setup, the unions are generally regarded as window-dressing and found to be ineffective in representing workers when labour disputes occur (Chen 2007; Metcalf & Li 2005). The more recent industrial relations literature (Bieler and Lee 2016; Elfstrom 2019; Fu 2017) nevertheless suggests that a number of labour NGOs are active in protecting labour rights and not afraid of organising workers for collective actions in the Pearl River Delta region – a major manufacturing centre in China. Understandably, labour NGOs focus more on manufacturing centres where there are large numbers of factory workers. Seafarers, however, are not concentrated in any particular location and they work offshore. As such, Chinese seafarers and labour NGOs may not be familiar with (or even aware of) each other.

Regarding channels such as labour dispute arbitration or other legal means, the informants did not perceive to be viable. Yi and Ding elaborated on this point:

I did not think about these channels, mainly because I did sign the contract which included the penalty clause. Also, I was not familiar with the law and wanted to settle the issue as quickly as possible. I did not want to drag it on. Furthermore, I consulted some friends and former colleagues and knew that they also paid a penalty when they quitted.

I thought about legal means, but did not feel that it was viable. After all, an individual did not have the resources to fight with a company. Also, I did not have time to fight with them – I needed to get back my public record and certificates as soon as possible. I could not afford to drag it on.

Wu nevertheless went to consult a lawyer. This was because he was sued by the company over refusing to pay the penalty. He was scared and went to consult a lawyer. The lawyer charged a consultation fee of RMB 300, but did not give much useful

information. As it would be very costly to engage the lawyer further in the case, Wu went to the company, negotiated with the managers, and reached an agreement to pay RMB 15,000 instead of the initially requested RMB 30,000. He explained how they reached this agreement:

Later I knew that some people paid more, up to RMB 20,000, while others paid less, about RMB 5,000. There was no standard and all depended on the managers. 'Everybody has to pay. Otherwise, we would lose control.' This was exactly what they told me. I offended them and therefore paid more. If I agreed to pay in the first place, I might be able to resolve it with RMB 5,000.

Therefore, the rule is that even though the amount is negotiable, a seafarer has to pay a penalty to quit. If one did not pay, the company would have problems enforcing this rule in the future.

### **The online cases**

The interview data indicated that it is a norm that a seafarer has to pay to leave a crewing agency within the contracted period – many of their colleagues and friends did so. As they perceived this practice to be common, the four interviewees did not go online to make a complaint, seek advice, or expose the unfair treatment they received. There are other seafarers who did so, however. A major Chinese seafarer online community called the Home to Chinese Seafarers has a dedicated discussion forum for seafarers to expose unfair practices of crewing agencies and warn other of such agencies. The authors browsed the first 200 discussion threads in this forum on 20<sup>th</sup> December 2017 and found that ten of them (5 per cent) were complaints related to unfree labour practices.

Among these ten seafarers, Wang, a cadet who together with another 29 of his college-mates joined a crewing agency upon completing the shore-based training, made a complaint and warned the readers not to join this company:

...The most scaring thing was that the ships they managed were not safe. The majority of those ships were second-hand. I heard that one of my college-mates

experienced three fire accidents in a month on his ship. ... My college-mates were worried about safety and wanted to quit. But the company refused to let them go by holding their certificates and demanding RMB3,000 for compensation. For safety, more than ten of my college-mates have paid the compensation and left the company. I feel sorry for them. However, I am worried about my other college-mates who are still working on their ships.

Another cadet, Yang, did not like the ship he was sent to either and made a complaint against the agency. He wrote that there was a lack of fresh water and food on that ship and that he toiled four months on the ship. He wanted to leave but the agency refused to give back his certificates. He continued to write:

I went to the local Public Security Bureau and the local Labour Inspectorate to make a complaint. Also, I went to the news media to expose their misconduct. However, it was useless. They are too powerful. There is not much I can do apart from coming here to expose their behaviour to the seafaring community.

It has been widely reported that in order not to lose seafarers to competitors, Chinese crewing agencies resort to controlling seafarers' certificates (Tang et al. 2016). The cases discussed so far in this paper have shown that agencies also make it difficult for seafarers to move ashore. While the reasons and implications will be discussed in the next section, what is already clear is that whether seafarers wished to leave one particular agency for another shipping company or wanted to move into a job ashore within the contract period, they found it difficult without paying a penalty. They were in a vulnerable position and did not have the resources to fight with a company; and even if they fought, they were likely to lose.

There was one exception, however. Jia, who posted his experience in a different online forum, fought with the agency and refused to pay. As he went further on the road of resistance, his case revealed more exit barriers. Jia signed an employment contract with a crewing agency headquartered in Beijing, the length of which was 60 months at sea. Consequently, his public record and certificates were transferred to the crewing agency. After serving on one foreign ship as a cadet, however, he felt that a career at

sea was not for him, and therefore decided to quit. However, he was asked to pay a USD 6,000 (about RMB 40,000) penalty for premature contract termination. The reason given for this penalty was compensation for cadet training. Jia was infuriated by this request. He did not think that he should pay for this shipboard training because he was working on the ship as a trainee and took on-the-job training. As nobody else could help him, Jia studied the Labour Contract Law, other relevant laws, and the three contracts he had signed – the 60 months employment contract and the cadet shipboard training agreement with the agent as well as the tour-of-duty employment contract with the foreign shipping company. The study convinced him that the shipboard training was, in fact, an internship which did not incur any costs and should not be the ground for compensation.

From his study, Jia also learned that he could make a complaint to the Labour Inspectorate in Beijing. However, he was aware that one of his friends made a similar complaint to the Labour Inspectorate once. In that case, the crewing agency argued that they had the training agreement with the trainee and that the foreign shipping company paid for the training. As the Labour Inspectorate had little experience or knowledge regarding seafaring jobs involving foreign shipping companies, this argument sounded reasonable to them and they could not see anything inappropriate in the conduct of the crewing agency. That case stopped there and then. Theoretically, the Labour Inspectorate or the involved seafarer could contact the involved foreign ship manager to check if they had indeed paid for any training. However, in practice, it was more problematic. Jia tried to establish contact with the foreign shipping company that he served and emailed them a few times but did not get any response. Furthermore, the crewing agency boasted that they had a good relationship with the Labour Inspectorate. Therefore Jia came to the conclusion that it was useless to make a complaint to the Labour Inspectorate.

The next two institutions Jia considered were the Labour Dispute Arbitration Committee (LDAC) and China Maritime Arbitration Commission (CMAC). In his employment contract, it was written that in case of any labour disputes, arbitration application can be made to CMAC Beijing. Furthermore, Jia wrote in a post:

According to Beijing LDAC, Beijing Labour Bureau stipulates that seafaring related labour disputes must be dealt with by CMAC. Why? Maybe this is because they think CMAC is more professional in dealing with this kind of disputes.

However, Jia found that this was not the case. CMAC set up more barriers for access and was not necessarily more professional. Nevertheless, he made an arbitration application to CMAC. He continued in the post:

On the official website of CMAC, it is made clear that they deal with admiralty, maritime, transport, and logistics-related disputes. Only at an inconspicuous place, it mentions that it also deals with seafarers' labour disputes. ... Let's see the differences between the LDAC and CMAC. First ... the LDAC is set up by the Labour Bureau to defend labour rights. In contrast, CMAC is established by the China Council for the Promotion of International Trade to deal with international trade disputes. In this case, are they really competent in dealing with labour disputes and protecting labour rights? Second, the LDAC arbitration service is free for workers, but the CMAC arbitration fee starts from RMB 5,000 depending on the value of the claim. For a worker, such service is expensive. Furthermore, an LDAC arbitration case can be concluded within a month, but a CMAC case takes three months to have the arbitration hearing. Within this period, the worker is not able to find a job and work. It is a huge burden for the worker both financially and mentally. Third, the LDAC arbitrators have rich experience in dealing with labour disputes, but only one in Shanghai out of all the 200 or so CMAS arbitrators covers maritime related labour disputes. If I appointed him as the arbitrator, I would need to prepay all his travelling and accommodation costs. I could not afford that and had to accept the arbitrator appointed by CMAC who specialised in shipping insurance. I spent three hours explaining to him the case and the relevant regulations on this issue. ...

Fortunately, as aforementioned Jia studied the relevant laws and his contracts and therefore was able to explain and made the arbitrator see his points.



In the arbitration process, the crewing agency argued that as trainees on ships were given and needed to complete the training record book issued by the Maritime Safety Administration (MSA), this training record book was evidence that they were taking training. As a response, Jia contacted the MSA to clarify this matter. The MSA official confirmed that although the word 'training' was on the record book, it was on-the-job training, not training that should be paid by trainees. In the end, Jia successfully terminated his contract without paying the penalty.

### **The re/production and functions of the labour control regime**

The cases presented above reveal the multiple barriers seafarers face when they plan to terminate employment with agencies. The agencies hold seafarers' public records and certificates for ransom. Seafarers either pay the money to terminate the contracts and get back the records and certificates or fight with the agencies through legal means. It is costly either way. Furthermore, the legal means can be risky as the result of the arbitration can go either way. If the seafarer does not have sufficient knowledge to inform the appointed arbitrator who may have limited knowledge and expertise in labour disputes, he/she may lose the case. A seafarer can also bring the dispute to a maritime court. Nevertheless, this again is costly in terms of both time and money without a guarantee of winning. Therefore it is not surprising that the majority of Chinese seafarers choose not to go through the legal channels. It is much faster and requires less effort to negotiate with the agencies and pay a financial penalty if they are determined to leave. After all, they need to settle the dispute quickly so that they could resume normal life and start a new job.

These barriers result in unfree labour relations as they restrict seafarers' freedom: 1) to enter into alternative employment; 2) to exit current employment; and 3) the terms and conditions of current work contributing to 1) and 2). Unlike in previous studies where labour brokers use straightforward debt bondage to curtail mobility (Barrientos 2013; LeBaron and Phillips 2018; Olsen and Morgan 2015; Verité 2010), Chinese crewing agencies use contracts with conditional financial penalties. As Jia's case suggests, the conditional penalties in these contracts may not be legal. But they are rarely challenged and largely function as intended by crewing agencies. The

'theoretically illegal but practically functional' status of the financial penalty arrangements reflect deficiencies in the institutional framework regarding employment and labour rights protection as well as structural weaknesses of seafarers. In terms of structural weaknesses, seafarers are largely individualised without effective union or collective representation (Tang et al. 2016) and thus resource-less as opposed to crewing agencies. Institutional policies and practices afford the agencies the opportunity to take hold of seafarers' public records and other documents for ransom. There are labour rights protection institutions including the Labour Inspectorate, the LDAC and CMAC. Theoretically, they form a safety net. But in practice, while the Labour Inspectorate and the LDAC may have expertise and experience in dealing with labour disputes, they lose competency when crewing agencies deliberately complicate the issue by bringing in a foreign employer. While CMAC has 'maritime' on its title, it mainly deals with commercial disputes. The safety net disintegrates in front of the global labour chains. The situation is made worse by the inaccessibility of foreign employers for any inquiries. Thus the global chains of labour supply significantly weaken the ability of local labour rights protection institutions.

This penalty arrangement serves the interests of crewing agencies in two ways. Regarding seafarers who intend to continue working at sea, the contract binds them to the agency and it is difficult for them to hop agencies. Regarding those who do not want to continue, the binding contract serves to bring in income in the form of financial penalties. In fact, penalty collection is a lucrative side business for agencies. A study shows that less than 50 per cent of MET graduates with a bachelor's degree would remain to work at sea for longer than five years (Yao et al. 2017), which indicates that a large number of seafarers would prematurely terminate their contracts and be required to pay a penalty. Even if crewing agencies are challenged by a determined seafarer, like Jia, and lose the case in arbitration or court, there is no real damage inflicted on them – they only need to terminate the contract with the seafarer and return his/her public record and certificates. One individual case would not stop the practice of unfree labour which has been the norm in the industry in China.

For foreign ship owners, the binding contract certainly helps with maintaining a cheap and yet stable workforce at sea. First, it serves to prevent seafarers from changing crewing agencies, and thus enables ship owners to control seafarers' mobility through agencies. Second, although a big proportion of newly graduated seafarers would leave the sea and thus creates a problem of retention, the binding contract nevertheless allows crewing agencies to extract penalties. As the agencies benefit financially from the penalty, they could afford to offer the crewing services at a lower price. In other words, the penalty can subsidise the crewing services provided. Taken together, the binding contract allows crewing agencies to provide crewing services relatively cheap while at the same time keep a relatively stable pool of seafarers. In fact, research evidence suggests that Chinese crewing agencies have largely relied on the low-cost strategy to open and develop the global market (Tang et al. 2016; Wu et al. 2007).

While Chinese agencies help manage the labour mobility at low costs, foreign ship managers take advantage of flexibility which allows them to adjust the supply of labour. If the market is bad and they manage fewer ships, the foreign employer has no responsibility to the surplus seafarers, and it is the crewing agency who has to find other employers for them. In fact, when the demand is low, many Chinese crewing agencies have the problem of surplus labour (Tang et al. 2016; Zhao et al. 2016). However, the consequence is borne mostly by seafarers – they have to wait for a long time to be dispatched onto a ship for work. When they are not working, they may not have income. According to the Labour Control Law in China, the agencies still have to pay for seafarers' social insurance during the waiting period, but they will recover the costs from the seafarers' salaries when they join the next ship. Therefore, the binding contract with a crewing agency does not lead to a stable income for seafarers, and the risks and consequences of the fluctuating demand are shifted from ship managers to crewing agencies and finally down to seafarers.

More broadly, as the shipping industry is an integral part of GPNs, cheap seafaring labour also sustains GPNs. In this way, while Chinese seafarers are incorporated into GPNs, some of them are adversely incorporated (Phillips and Mieres 2015).

It is necessary to add a caveat here. The binding contract only works on newly graduated officer seafarers who need shipboard training to validate their certificates. When they reach senior levels and have completed the initial contract, they are less likely to renew it with the agency. Many of them choose to become freelance seafarers instead.

## **Conclusion**

This paper has documented and discussed a local labour control regime employed by Chinese crewing agencies to restrict the mobility of newly graduated officer seafarers. The key to this regime is a medium-term employment contract with a conditional financial penalty. If a seafarer wants to terminate the contract before its end, he/she would be requested to pay the financial penalty. While this penalty is largely illegal, it is likely to be functional from the perspective of the crewing agency because the seafarer may not have the resources or make the effort to challenge it. As a result, the seafarer either stays with the crewing agency for the contracted period or has to pay a financial penalty to leave. In effect, those who choose to leave subsidise the crewing agency to provide cheaper crewing services to foreign shipping companies with a relatively stable pool of remaining seafarers. The risks and costs of flexibility are thus transferred to seafarers, while the benefits of it are reaped by Chinese crewing agencies and international shipping companies. This is not to suggest that international shipping companies have taken part in designing this labour control regime. They may or may not be aware of it. However, they create a market demand for a cheap, flexible and yet retainable workforce. It is to cater for this demand that Chinese crewing agencies adopt this regime. This regime also benefits GPNs and GPNs adversely incorporate not only factory and agricultural workers as revealed by the existing literature, but also seafarers as this paper has demonstrated.

This paper tells the story from the perspective of newly qualified seafarers, and we do not claim that this is the full story. Furthermore, the focus of this paper is narrowly on unfree labour, and arguably Chinese crewing agencies employ a range of strategies to control labour. To provide a comprehensive understanding of the labour control issue in relation to Chinese seafarers, more research is needed to include the

perspective of crewing agencies and a large sample of seafarers with a variety of experiences. Notwithstanding the limitations, this paper suggests that the interaction between the global labour chains and local institutional setups in labour supply countries serves to re/produce the local labour control regime. Cross-border labour supply chains make regulation application/enforcement problematic and significantly weakens the ability of local labour rights protection institutions. Thus, Chinese crewing agencies take advantage of not only existing institutional practices in China and structural weaknesses of seafarers but also the disjunctions between the local institutional arrangements and the global chains of labour supply to create exit barriers. This paper reveals that in various ways, the local control regime is intricately linked to global networks/chains. To understand unfree labour, it is essential to unpack these links.

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