

# China's Maritime Adjudication(1984 -- 2014)

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## **Preface**

This year marks the thirtieth anniversary of the establishment of maritime courts in our country. Over the past thirty years, great achievements have been made in our maritime adjudication work, in short, in seven aspects: Firstly, formation of specialized maritime adjudication system. The scheme of second instance finality with three levels of courts (ten Maritime Courts, People's High Courts, and the Supreme People's Court) makes China a jurisdiction with a most comprehensive maritime adjudicatory mechanism together with the biggest number of maritime judicial bodies in the world. Secondly, handling a large volume of maritime cases. The annual caseload rose from a little over 100 cases in the early years to more than 20,000 this year, putting our country at the top of the world for handling maritime disputes. Thirdly, establishing and gradually perfecting comprehensive law system relating to maritime adjudication. There has been adopted in our country, not only the substantive law-the Maritime Code of People's Republic of China (The Maritime Code), accompanied by a series of maritime judicial interpretations on maritime matters, but also a procedural law in its own right – the Maritime Procedure Law of People's Republic of China (The Maritime Procedure Law), forming an independent and systematic adjudicatory scheme for maritime proceedings, which is unique and innovative

both domestically and internationally. Fourthly, forming a specialized team of maritime judges to follow the reform and opening-up policy. Currently, 570 judges are engaged throughout the country in maritime adjudication, who have received higher and specialized education in law, trade and maritime transport, with skills in foreign language; they are apt at research, persistent, diligent, and self-disciplined, with considerable social esteem. Fifthly, implementing the quality maritime adjudication strategy to ensure quality, efficacy and good results of maritime adjudication to provide effective judicial guarantee for reform, development and social stability. In recent years, satisfaction rate for first instance maritime cases have averaged about 90%, the rate of appeal beyond the proceedings under 0.1%, and all maritime disputes resolved within litigation proceedings. Sixthly, obtaining considerable international repute and influence of maritime adjudication in our country. The cases adjudicated in the maritime courts involve litigants from more than 70 countries and regions of the world. Fairly handling a host of major maritime cases has established positive profile of China's judiciary in the world, attracting hundreds of foreign litigants each year, whose cases have no connection with our country, to voluntarily choose our maritime courts for arresting ships and bringing about litigation. Seventhly, while making tremendous progress, the maritime adjudicatory practice has promoted a relevant maritime legal service system involving maritime law firms, education & researches, arbitration and assessment, in line with China becoming an international shipping center. This, to our gratification, is the achievement of the goal of building a maritime judicial center in the Asia-Pacific region before 2010 set by the Supreme People's Court in 1997. Such a great achievement is the result of our great time of reform, the result of foresight of the Communist Party Central Committee and National People's Congress, the result of the concern and encouragement from leadership at various levels, the result of guidance and support from the Party leaders, governments and society, and the result of perseverance of the maritime adjudicatory team. "Manhood by thirty", looking back at this historic point, it will encourage us to build a brighter future for China's maritime adjudication.

## **I. Perfecting Maritime Adjudication Scheme to Build an Asia-Pacific Maritime Judicial Center**

### **A. Setting up Maritime Courts to Lay a Foundation for Professional Maritime Adjudication**

In order to meet the needs of maritime transport and foreign trade development, the Supreme People's Court and the Ministry of Communications, with approval of the Commission for Politics and Law of the Communist Party of China Central Committee, jointly issued the Notice on Establishing Maritime Courts on May 24, 1984, thereby setting up maritime courts in Shanghai, Tianjin, Qingdao, Dalian, Guangzhou and Wuhan, on the basis of 6 preparatory units of water transport courts in Shanghai and the other five cities. The 6 courts were officially established on June 1, 1984. On November 14, 1984, the Standing Committee of the Sixth National People's Congress at the 8th Session passed the Resolution to Set up Maritime Courts in Coastal Port Cities, which stipulated establishment, supervision, jurisdiction, and personnel appointment and removal of the maritime courts. On November 28 of the same year, the Supreme People's Court announced the Decision on Several Issues Concerning Establishment of Maritime Courts, specifically providing for organizations, scope of cases to be entertained matters and jurisdictional territories, such maritime courts being equal to intermediate people's courts of the locus in quo. According to workload, the Supreme People's Court subsequently decided to set up maritime courts in Haikou and Xiamen in 1990, in Ningbo in 1992, and in Beihai in 1999. From 1992 till now, the maritime courts throughout the country have established 39 tribunals dispatched in major port cities within their jurisdictional territories, located in 15 provinces (or Municipalities or Autonomous Regions) to conduct on-site hearing. This has formed specialized maritime adjudication infrastructure covering every port and the entire territorial waters of China, from Heilongjiang River in the north to the islands of Xisha, Zhongsha, Nansha and Huangyan Isle in the south.

After the maritime courts were established, the high people's courts of the locus in quo were designated as the appellate courts. And the special collegiate panels for second instance trial of Maritime cases were set up within the Economic Divisions, the Fourth or Third Civil Division of the Appellate High Court and a specialized team of maritime judges came into existence. In order to strengthen guidance and supervision of adjudicatory work for maritime cases throughout the country, the Supreme People's Court set up the Communications Adjudication Division in March 1987, changing it later to the Fourth Civil Division in the year 2000, for handling first instance trials having national impact, as well as appeals from first instance trials of high people's courts and rehearings of maritime cases, exercising guidance and supervision of the adjudicatory work of all the maritime courts and the appellate high people's courts. Hence, the maritime adjudication system of "second instance finality with three levels of courts" is formed.

#### B. Improving Management System to Push forward Maritime Adjudication

The six maritime courts established under the auspices of the Central Committee in 1984 in Shanghai and elsewhere by the Ministry of Communications, were operated as administrative entities by the port authorities, maritime transport and other navigational authorities under the Ministry. In June 1999, in accordance with the Opinions on the Several Issues for Improving the Management System Concerning Maritime Courts in Dalian and Elsewhere jointly issued by the State Commission Office for Public Sector Reform, the Supreme People's Court, Ministry of Communications, and Ministry of Finance, the first six maritime courts in Shanghai and elsewhere were organizationally transferred to the joint management of the local Party Committees and high people's courts of the locus in quo, thereby completely detached from the Ministry of Communications or its affiliates, and officially incorporated into the national judicial system to remove the institutional obstacles for the scientific development of maritime adjudication work. On November 9, 2006, the Supreme

People's Court issued the Several Opinions Concerning the Development of Maritime Adjudication Work, providing guidance for faster development of maritime adjudication work.

### C. Exploring and Perfecting Maritime Law System to Provide Institutional Guarantee for Maritime Adjudication

In the early years of the maritime courts, there were no special maritime laws to apply on in various aspects of adjudicating maritime cases. The maritime judges had to work hard to study and research, to learn and apply advanced international experiences according to Chinese situations, making great effort for establishing our maritime law system.

First, promoting maritime legislation to ensure reliability of laws in maritime adjudication. The maritime adjudication work provided practical basis and direct cause for the establishment of the maritime law system. The enactment of the Maritime Code in 1992 was a landmark in our maritime legislative history, indicating the beginning of special substantive law for our maritime adjudication. The Maritime Code provides for substantive systems such as maritime liens, limitation of liabilities for maritime claims, insurance subrogation, etc., which require procedural process for proper implementation. To provide for maritime litigation procedures, the Supreme People's Court, pursuant to the Central Committee's resolution, started drafting Maritime Procedure Law in 1994, which was approved in 1999 by the Standing Committee of the National People's Congress, signifying establishment of our maritime legal system, a milestone in our maritime legislation.

Second, enhancing maritime judicial interpretation and gradually perfecting maritime procedure and applicable laws. After the establishment of maritime courts, the Supreme People's Court, to meet the needs of judicial practice, promulgated between 1986 and 1992 the Detailed Provisions on Jurisdiction over Foreign-Related Maritime Cases, Detailed Provisions on Pretrial Arrest of Ship,

Detailed Provisions on Mandatorily Selling the Ship Arrested by Auction to Satisfy Debts, Provisions on the Scope of Cases to be Entertained by Maritime Courts, Detailed (Tentative) Provisions on the Trial of Claims for Personal Injury and Loss of Life at Sea, which standardized treatment of priority problems, filling the gaps in maritime procedures and substantive laws for maritime adjudication, and alleviating in certain degree the situation of lack of rules to follow in maritime proceedings. After the Maritime Code and the Maritime Procedure Law went into effect, further 16 interpretational rules were promulgated in two decades, from 1994 to 2013, including Provisions on Pretrial Arrest of Ships by the Maritime Courts, Provisions on Maritime Court Selling the Ship Arrested by Auction to Satisfy Debts, Provisions on the Trial of Claim for Property Damages Arising out of Ship Collision and Touch, Reply on Limitation Period for Claims by Carrier with regard to Carriage of Goods by Sea against Consignor, Consignee or Holder of Bills of Lading, Reply on Limitation Period for Claims with regard to Carriage Goods in Coastal Waters and Inland River, Several Provisions on Scope of Cases to be Entertained by Maritime Courts, Interpretations on the Several Issues Concerning Application of the Maritime Procedure Law of the People's Republic of China, Reply on Whether Channel Maintenance Dues may be Listed in Maritime Liens, Provisions on Several Issues Concerning Adjudicating Marine Insurance Disputes, Provisions on Several Issues Concerning Adjudicating Ship Collision Disputes, Provisions on Several Issues Concerning Law Application in Adjudicating Disputes Arising out of Delivery of Goods without Production of Original Bills of Lading, Provisions on Adjudicating Disputes Concerning Limitation of Liability for Maritime Claims, Provisions on Several Issues Concerning Adjudicating Disputes of Compensation for Ship Oil Pollution Damage, Opinions(Provisional) on Selection and Appointment of Maritime Court People's Jurors, Provisions on Several Issues Concerning Adjudicating Disputes of Maritime Freight Forwarding, Reply on Whether Small Claim Procedure May Be Adopted in Maritime Courts, which gradually realized "overall coverage" of regular maritime disputes, ensuring the uniform and equitable application of laws.



Third, actively participating in negotiating and drafting international conventions, and endeavoring to form fair and reasonable new orders in the market of international maritime transport. To effectively follow the trend of unification of international maritime laws, the Supreme People's Court continually send maritime judges to attend international maritime law conferences who, by advantage of their professional adjudicatory skills, have participated in the research and drafting of such international maritime treaties as the International Convention on the Arrest of Ships of 1999, Athens Convention relating to the Carriage of Passengers and their Luggage by Sea of 2002, Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, UN Convention on the Contracts of International Carriage of Goods Wholly or Partly by Sea (The Rotterdam Rules), International Convention on Wreck Removal (Draft), which positively reflected the legal positions and amply maintained the overall interest of our country, conducive to establish a new order for fair and equitable international maritime transport. The Chinese work group, headed by the judges of Supreme People's Court, played an active role in preparing the Draft International Convention on Recognition of Foreign Judicial Auction of Ships (the "Beijing Draft", so called as the first draft was finished in Beijing during the 40th CMI Conference). The "Beijing Draft" was officially adopted at the 41st CMI International Conference in Hamburg, Germany, on June 17, 2014.

#### D. Proactively Exercising Maritime Jurisdiction to Promote International Status of Maritime Adjudication

The 10 maritime courts across the country exercise their jurisdiction, in accordance with the Civil Procedure Law of People's Republic of China (hereinafter, referred to the "Civil Procedure"), the Maritime Procedure Law of People's Republic of China (hereinafter, referred to the "Maritime Procedure Law"), and interpretational judicial provisions such as the Supreme People's Court Several Provisions on Scope of Cases to be Entertained by Maritime Courts, across some different administrative regions, entertaining over 4 categories, 63 types of

cases in maritime tort, maritime contracts, other maritime disputes and maritime enforcement, other than of criminal cases. The initial 6 maritime courts in Shanghai and elsewhere officially started on October 1, 1984 to entertain cases, up to 18 in the same year, and totaling 167 in all maritime courts in 1985. That number exceeded 1,000 reaching 1,081 in 1991, 10,089 in 2002 exceeding 10,000, and 20,000 reaching 20,133 in 2012. In 2013, the 10 maritime courts entertained 21,548 cases of various types (11,423 of first instance maritime cases, 5,643 cases of special maritime proceedings, 4,482 cases of maritime enforcement), concluding 21,216 cases to enforcement (11,504 at first instance, 5,471 at special proceedings, 4,241 at enforcement). Over the past thirty years, maritime cases maintained a 10% annual increase, and by end of December 2013, the 10 maritime courts have entertained 225,283 cases of all types since 1984 (131,604 first instance cases, 45,646 special maritime cases, 48,033 maritime enforcement cases), and concluded or enforced 215,826 cases (128,776 at first instance, 40,417 at special maritime proceedings, and 46,633 at enforcement), with a total amount of RMB 146,000,000,000, involving about 70 countries and regions in Asia, Europe, Africa, and North and South Americas. The adjudicatory team of all the country has faithfully executed their constitutional duties, proactively exercised maritime jurisdiction, and properly applied domestic laws, international conventions and customs to handle maritime cases fairly and efficiently for equitable protection of the legitimate rights of domestic and international litigants thereby ensuring effective judicial guarantee for the national reform policy, navigation and trade, and the development of marine economy.

At present, China exceeds all other countries in the world in maintaining special and comprehensive maritime adjudicatory institutions and in taking maritime cases, with a relatively perfect maritime legal system and maritime judicial service system. The goal of building a maritime judicial center for Asia-Pacific region by 2010 set by the Supreme People's Court in early 1997 at the 17th National Judiciary Working Conference has been achieved as scheduled.

## **II. Executing the Full Maritime Adjudication to Safeguard Opening-UP Policy and Development of Marine Economy**

### **A. Adjudicating Maritime Cases by the Law to Maintain Seaborne Trade Orders**

The past thirty years since the founding of the maritime courts has witnessed the several important stages of economic and social experience from the start of reform in the 80's and the gradual formation of market economy in the 90's of the 20th century, to China's accession to WTO, rounds of rapid development of international trade and maritime transport, with the corresponding increase in maritime cases, varying change of case type ratio, and occurring continually new types of legal problems. In close connection with the historical features accompanying stages of economic and social development of our country, the maritime courts, appellate high people's courts and the Supreme People's Court have researched and studied with emphasis on solutions for the new types of cases occurring in these different periods so as to ensure health development of seaborne trade.

1. Exploring and perfecting preservation of maritime claims to ensure that the parties concerned can promptly put up their claims. Because of a ship's high valuable and high mobility, arresting ships has always been an important means in international maritime litigation, as in hundreds of years old practice of "in rem" action popular in history of western developed countries such as Britain or America. When our maritime courts were first established, the Civil Procedure only provided for preservation litigation, without provision as to preservation before the institution of a litigation. On November 26, 1984, Shanghai Maritime Court issued a pretrial order to arrest the Greek ship "Agamemnon", which indicated for the first time that China's maritime court adopted the international practice that maritime claimants may apply for a arrest of ships before instituting an action. On October 18, 1985, Shanghai Maritime Court sold by judicial auction a Panamanian ship "Pomona" owned by Soto Grande

Shipping Corp. S.A. and used the proceeds to satisfy the debt of her owner, setting the first case of judicial auction of a (foreign) ship in our country. Subsequently, maritime courts in Guangzhou, Qingdao and elsewhere followed the suit in arresting and selling ships by auction. Based on the practice of Chinese maritime courts and taking international customs and practice into consideration, the Supreme People's Court issued the Detailed Provisions on Pretrial Arrest of Ship, Detailed Provisions on Mandatorily Selling the Ship Arrested by Auction to Satisfy Debts on January 31, 1986 and on August 29, 1987 respectively, which set the stage for the system concerning ship arrest before instituting an action and mandatory auction of ships in our country, establishing the legal system about preservation before instituting an action in civil litigation proceedings. As the situation evolved, the Supreme People's Court, on July 6, 1994, promulgated Provisions on Pretrial Arrest of Ships by the Maritime Courts and Provisions on Maritime Court Selling the Ship Arrested by Auction to Satisfy Debts (terminating at the same time the previous two rules of 1987). Prior to that, the Civil Procedure in our country had no provisions for evidence preservation and injunction, and such measures in the pretrial stage are indispensable procedural mechanisms for maritime proceedings. In December 1992, Xiamen Maritime Court, upon the request of Xiamen Special Economic Zone Jinjiang Trading Co., Ltd. of Fujian, made an order before instituting an action against The ship "Dafeng" to preserve the logbooks and other relevant evidence, which played a key role in the court's finding of the basic facts of antedated bill of lading by the carrier. In August 1992, Guangzhou Maritime Court, upon the request of Hong Kong Ming Wah Shipping Co., Ltd., owner of the ship "Cicia", ordered the carrier to finish customs clearance immediately, so that the ship could depart from the port. The tentative efforts of the maritime courts have extended application of preservation from the litigation to pretrial stage, from the properties of the parties to evidentiary materials and conducts of the parties, filling up loopholes in the civil procedure, expanding the legal procedure of maritime proceedings, and providing ample procedural guarantee for maritime claimants to assert their claims. Between 1984 and 2013, the maritime courts of the country

made 7,744 arrests (6,084 domestic, 1,660 foreign), and executed 633 auctions of ships (510 domestic, 123 foreign).

2. Fairly handling contract disputes over international carriage of goods by sea and freight forwarding disputes to maintain international trade order. Maritime transport is the major form of international transportation of goods in trade, making up about 85% of the total amount of goods transported over land and sea and by air. Fairly handle contract disputes over international carriage of goods by sea is very significant to ensuring normal business of international trade. According to sample statistics, the maritime courts all over the country entertained 32 cases of contract disputes over carriage of goods by sea in 1987, which made up 16% of all first instance maritime cases entertained; in 1994, 284 of the same type of cases were entertained, making up 21% of all first instance cases; in 2013, 941 cases entertained, making up 8% of all first instance maritime cases entertained. In the early days of the maritime courts, two problems appeared in adjudicating these cases: first, lack of special laws and provisions for judges to base their decision on; second, frequent disputes involving remarks and exceptions noted on the B/L, shippers producing letter of guarantee (L/G) in exchange for clean B/L, damage or shortage of goods, due to import/export of raw materials in large amount such as food and minerals in the country, for which there was urgent need for fair treatment and formulation of rules. The maritime courts gradually established applicable rules based on fundamental legal principles, legal theories and international customs. First of all, it was recognized that the bill of lading has the three basic functions as receipt of goods, evidence of contract of carriage of goods by sea, and a document of title, and those disputes should be adjudicated in recognition of the paramount clauses in the B/L based on the principle of autonomy and that proper application of International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (Hague Rules) and Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (Visby Rules); secondly, it was established that based on good-faith doctrine, the carrier must issue shipping

documents and note defects faithfully, and after issuing clean B/L under shipper's L/G may sue the shipper for reimbursement; and further, carrier's duty of seaworthiness, carrier's exemption from navigational negligence, ship management and goods management were truthfully and reasonably interpreted under the Hague Rules and the Visby Rules. Establishment of applicable rules of the above laws played a fundamental role in maintaining orders in international trade in the early days of the Reform. After the enactment of the Maritime Code in 1992, many new problems emerged in the area of international carriage of goods by sea, specifically, large number of deliveries of goods without original copies of B/L as the first. With the rapid development of container transport, efficiencies were increased for maritime transportation. In many cases, when the goods arrived at port, the consignees were not yet in receipt of the B/L, who for market reasons might desire to take the goods by L/G plus duplicate copies or photocopies of the B/L, while the carriers in turn would be willing to, in consideration of client relationship and port delay, hand over the goods, which led to large amount of delivery of goods without production of the original Bs/L, directly affecting transactional safety of international trade and the healthy development of maritime transport. Second problem is the identity of actual shippers and their right to sue. FOB terms are widely used in our country's export trade. The Maritime Code, in reference to the 1978 UN Convention on the Carriage of Goods by Sea (the Hamburg Rule), provides for contractual shipper and actual shipper, but without specific definition of their rights and obligations, which in reality caused considerable disputes as to identity of actual shipper, and rights and obligations thereof. The third problem is the distinction between non-vessel operation common carrier (NVOCC) and freight forwarder and their respective liabilities. With China's accession to WTO and further opening of shipping service markets, large numbers of foreign and Hong Kong/Macao shipping and trade intermediaries swamped into Chinese market. Due to their benefit-seeking business instinct, they might frequently switch identities to take business in violation of regulations, which caused tremendous freight forwarding disputes in the past 10 years. In 2013, the maritime courts entertained 1472

disputes of freight forwarding contract, more than one's over the contract of international carriage goods by sea, making up 13% of all first instance maritime disputes. The fourth one is the carrier's claim for freight and container detention charges. Being affected by international finance crisis, some owners of goods were unable to take delivery of their goods, some even abandoned the goods, causing carriers to take liens or claim freight against shippers in increasing number of cases. All levels of courts engaged in maritime adjudication, based on the legislative intent of the Maritime Code and actual situation in our international trade development, insisted in finding carriers liable for delivering goods without production of the original B/L, in identifying actual shipper mainly by actual delivery of goods, not by B/L statements, and in sustaining actual shippers' request for the issuance of B/L by carriers, and in allowing carriers to claim freight against shippers for unclaimed goods at port of destination, so as to gradually develop rules to identify NVOCC and freight forwarders, and to provide judicial suggestions to relevant authorities to penalize illegal issuing of B/L and to improve market order in shipping business. In the recent decade, shipping business operators have strengthened their consciousness of law due to regulations by cases of the maritime courts over the years, and as a result major state-owned shipping companies or large-to-medium sized foreign firms rarely get involved in ordinary disputes of arising out of delivering goods without production of the original B/L or illegal detaining of shipping documents, thus international trade and shipping market to continue to develop for the better.

3. Fairly handling disputes over the liability for ship collision and touch to maintain safety in maritime transportation. Disputes over liability for ship collision and touch are among the most technical maritime cases, to which the maritime courts primarily apply such international conventions which China acceded to, as Convention on the International Regulations for Preventing Collisions at Sea in 1972, International Convention for the Unification of Certain Rules of Law with Respect to Collision in 1910, as well as the Maritime Code provisions concerning ship collisions, along with relevant judicial

interpretations issued by China's Supreme People's Court. Over the past thirty years, the number of cases of ship collision and touch remains relatively steady, the annual number for 1987, 1994 and 2013 being 39, 59 and 165 respectively, at a rate of 19%, 4% and 1% for total maritime cases. Although the number was not large, the cases are usually significant, sensitive and complex, requiring careful treatment, mainly in four respects: First is the difficulty in identifying the hit-and-run ship. Due to rough conditions at sea, when collision occurs at night or with low visibility, sometimes one ship sustains loss of property or life, and the other runs away. It happens in varying degrees that a perpetrator denies everything afterwards or a victim accuses without a proof, and the case, in the absence of direct evidence, has to be tried basically on circumstantial evidence only. Therefore, it is difficult to identify the colliding ship. Second is the difficulty in identifying the proper person liable. It has long been the *in rem* practice under international conventions and the Maritime Code to take the ship as subject liable, but the trial of a case eventually has to fall on certain person. In reality, a ship can be operated under a lease, a charter, or an affiliation, the multiplicity of ship operator causing the difficulty in identifying a proper subject liable. Third is the technicality in allocating liabilities. The evidence for ship collision including the logbook, sailor's testimonies, and survey report after ship collision which may be inconclusive, inaccurate, or falsified or misplaced; it is therefore of primary importance to scientifically and reasonably reestablish the situation of ships' position prior to collision and each party's fault. Fourth is the difficulty in measuring the damages. The ship collision may cause multiple items of damages, including cost of repair, loss of ship supply and cargo, personal injuries and deaths, loss of freight, and ship delays, etc., which is relatively discretionary in calculating. The maritime courts, high people's courts of appeal and the Supreme People's Court, after extended practical exploration, have eventually formulated a series of certain rules and standards. First, in identifying hit-and-run ships, the court must follow the adjudicatory rule in treating circumstantial evidence by emphasizing on whether pieces of circumstantial evidence could form corroborative evidence or could exclude



reasonable doubts or conflicts, and whether proof can be established by preponderance, to be detailed in the court opinions as fair and convincing. In 1996, The Supreme People's Court reheard the case of collision between the ships "Shanwei 12138" and ship "Trade Expansion" (Panamanian), denying the assertion of the party concerned that the ship "Trade Expansion" was the perpetrator, when conflicting pieces of circumstantial evidence were presented. That case clarified the rule for finding facts of ship collision in accordance with circumstantial evidence, and was published in Gazette of the Supreme People's Court, rendering significant guidance for future cases. Second, in identifying the subject of liable, the maritime judicial practice has continually held the party in actual control of the ship to be liable. The Supreme People's Court, in the Provisions on Several Issues Concerning Adjudicating Ship Collision Disputes, requires that the ship owner or bareboat charterer be the subject of liable. Third, in determining degrees of fault in ship collision, procedural function of evidence preservation is fully utilized timely sealing VTS recorded information, radar observation data, and the contents of heading recorders, AIS or VDR. Moreover, the evidentiary rules of secrecy and estoppel formed in practice require that the parties concerned be faithful in completing Investigation Form for Maritime Accident when entertaining complaint or response, refrain from cross-checking the documents before conclusion of evidence, the parties may not reverse the statement made in the investigation form for maritime accident and the evidence adduced, unless new evidence has come to light. In some collision cases, the court may engage experts, by using such scientific methods as computer multimedia in 3-D reconstruction of the collision, to analyze cause of collision and determining the proportion of fault. Fourth, in determining loss and assessing damages, the Supreme People's Court promulgated in 1995 the Provisions on the Trial of Claim for Property Damages Arising out of Ship Collision and Touch, stipulating comprehensive and detailed rules to standardize and unify adjudicatory measures in effect.

4. Fairly handling the disputes related to limitation of liability for maritime claims and marine insurance to maintain risk sharing mechanism in seaborne trade. Early on, seaborne trade was considered as “seaborne adventure.” Recent and modern maritime laws and international maritime conventions have established seaborne risk sharing mechanism, including limitation of liability for maritime claims, marine insurance, exemptions from navigational negligence, and general average, etc. The Maritime code of our country also adopts risk allocating mechanism throughout various sections, and one important function of maritime adjudication is to reasonably share marine risks based on the law to enhance healthy and orderly development of seaborne trade. In an extended period of time after the Maritime Code came into being, there were relatively few cases concerning limitation of maritime liabilities, yet with economic development and impact of inflation, probabilities of large sum of damages in excess of statutory limitation were on the rise over the past decade, more and more cases of applying for constituting the funds of limitation of liability of maritime claims resulted therefrom, such cases totaled 139 in 2013 in all maritime courts. Based on this trend, the Supreme People’s Court promulgated in 2003 and 2010 the interpretation on Maritime Procedure Law and limitation of liability for maritime claims, defining that the limitation is a right to defense, and detailing procedural rules, with a positive explanation of the special terms in the Maritime Code such as “distinct occasion,” “reckless act or omission done of intent or with knowledge that such loss would probably result,” etc. as borrowed from international conventions, filling up the loopholes in relevant provisions of the Maritime Code to further regulate adjudicatory procedures and unify the standard of applying laws, reasonably balancing the interests of the parties with rights and obligations. Marine insurance is a mechanism for social distribution of risk, and compared with regular insurance contracts, carries such unique characteristics, as mobility of the insured objects, greater risks, overlapping of legal issues concerning international commodity transactions and transportation, and complexity of disputes. In recent twenty years, there has been tremendous increase in marine insurance disputes. In 1994 the maritime courts across the

country entertained a total of 31 cases of marine insurance disputes, and in 2013, 243 cases. The Supreme People's Court, by issuing judicial interpretations and directory documents and by case, clarified a series of such important issues as interpretational rules for marine insurance policies, understanding of "all risks," relations between insurance benefit and title to goods, the nature and scope of truthful inform, and subrogation procedure, etc., to preserve the good-faith mechanism in marine insurance and reasonable expectation of risk sharing.

## B. Regulating Adjudication of Marine environmental Pollution Cases to Promote Marine Ecological Civilization

Protection of marine environment through judicial means is one of the important functions of maritime adjudication. Marine environmental pollution cases have the complex features of pollution source (type of case), legal systems, damage assessment, etc. Marine environmental pollution may come from ships, land or offshore oil platforms and other marine operations; in terms of applicable laws, there are domestic laws such as General Principles of Civil Code of China, the Tort Liability Law of China, the Marine Environment Protection Law of China ("Marine Environment Protection Law") and Maritime Code, and international conventions to which China is acceded, such as the 1992 International Convention on Civil Liability for Oil Pollution Damage, and the 2001 International Convention on Liability for Bunker Oil Pollution Damage, etc. Major environmental pollution accidents usually cause great loss to a nation's marine resources and marine ecology. The Marine Environment Protection Law of 1982 applied in the early days by the maritime courts provided no clear legal basis for claim, nor damage assessment rules. Courts of various levels engaged in maritime adjudication exerted active efforts in exploration, and have achieved a series of breakthrough results.

First is to treat marine environment pollution cases as ordinary maritime cases to solve the difficulty in entertaining environmental protection cases. Qingdao Maritime Court in 1985 officially

entertained the case of oil pollution damage caused by the ship “Daqing 232”, kicking off the protection of marine environment by maritime adjudication. Subsequently by 2013, all maritime courts of the country had entertained 2017 cases of various types for marine environmental pollution damages, of which 622 alone were tried by Qingdao Maritime Court.

Second is the proper standing for public interest suit in marine environmental protection cases, i.e., recognizing that of the authorities of marine environment supervisory administration may claim damages for loss of marine resources on behalf of the State. In January 1997, the ship “Ocean Success” owned by Dong Ya Tankers (Pte) Ltd. leaked oil in the water area of Zhanjiang causing a pollution accident. Guangdong Fishery Inspection Corps, Zhanjiang Branch brought a lawsuit in Guangzhou Maritime Court. Both the Maritime Court and subsequently the Guangdong High People’s Court confirmed the standing of Zhanjiang Branch. This is the earliest public interest suit involving environment protection, leading gradually to a nationwide maritime judicial protection of the environment.

Third is to recognize, on basis of respecting professional judgment, rules for assessing scientifically quantifiable marine resource losses. Shanghai Maritime Court in handling the pollution case by the oil tanker “Sea Carrier”, by conducting experiment of acute and subacute toxicity of phenol upon marine resources, and relying on scientific basis, made a finding on the scale of pollution damages to the marine environment in that case. The presiding judge’s explain of this case at an international conference received wide applause.

Fourth is to make sure that polluters may not put up a defense of liability limitation because of the fact that they have met the compulsory emission standards. In 2002, Tianjin Maritime Court and Tianjin High People’s Court, for the first time confirmed in the offshore pollution damage case of Sun Youli and 17 Others of Laoting, Hebei Prov. v. First Paper Mill of Qian’an and 8 Others that liabilities in damages would arise even if emission standard was complied with,

thus expanding the liability standard in environment pollution cases, which was well regarded by legal practitioners, environmental law researchers and lawmaking departments, as a major landmark case both for environmental theoretical studies and legal practice.

Fifth is proper application of special rules for oil pollution damage. The International Convention on Civil Liability for Oil Pollution Damage established, in consideration of the compensation mechanism consented to in the Convention and the special risks associated with the shipping business, the special rules for ship oil pollution damages. In March 2007, Qingdao Maritime Court, in the case of bunker oil pollution cause by the Malaysian ship “MMM Galveston”, ruled that pursuant to the 1992 International Convention on Civil Liability for Oil Pollution Damage which limits environmental pollution damage to restoration cost, and according to the restoration cost estimated in the judicial appraisal report, the owners of the ship “MMM Galveston”, United Ocean Shipping Sdn. Bhd and the West of England Ship Owners Mutual Insurance Association (luxembourg) paid damages to plaintiff Shandong Province Oceanic and Fishery Department in the amount of RMB 14,310,900 with interest.

After long period of judicial practice, experiences have been accumulated in the areas of application of international conventions and domestic laws, principles of liabilities, burdens of proof, appraisals, determination of losses, measure of damages, constituting the funds for oil pollution damage, claimants’ standing for marine environmental public interest, remedies for national resource losses, etc., providing ample contents for public interest litigation under the Marine Environment Protection Law of 1999 and the Civil Procedure Law of 2012, and for future precedents in the nation’s effort in ecological compensation system so as to speed up improvement of ecological civilization.

C. Handling Carefully Cases Involving Foreign Countries or Regions, Hong Kong, Macao, Taiwan to Serve National Strategy of Opening-Up

The initial purpose of setting up maritime courts was to protect maritime transport, foreign trade, the cause of reform and opening-up, and the professionalism of maritime adjudication which would directly affect the international status of China's judiciary and the legal environment under opening-up policy. The maritime judges have kept their historic mission in mind by reinforcing their sense of duty, persisting in fairness, efficiency and authority, in making appropriate judgments and mediations of cases having profound influence both at home and abroad and continued to endeavor to raise public trust in and international influence of China's maritime adjudication. Over the thirty years, the maritime courts have concluded 64,747 cases involving foreign parties and Hong Kong, Macao and Taiwan parties, rendering judgments involving the amount of about RMB 80 billion, affecting 70 countries and regions including major global countries and major trade partners with China, producing extensive international influence.

The courts participating in maritime adjudication lay great emphasis on proper handling of every case involving foreign or Hong Kong, Macao and Taiwan parties by strictly following the guidance of conflict rules and properly applying domestic, foreign and international laws and customs, providing equal protection of the legitimate interest of Chinese as well foreign parties. Maritime courts in Shandong, Guangxi, Guangdong, Fujian and elsewhere, and the appellate courts, by fully taking the geographic advantage, actively conducted the basic and forward-looking work of collecting, compiling and translating relevant legal documents relating to Korea, ASEAN, Hong Kong and Macao, and Taiwan, to ensure fair and efficient trial of cases involving parties therefrom. The courts have adopted various means to effect service of notices, focusing on professional expert opinions, endeavoring to overcome the difficulties in delivering services and obtaining appraisals for these cases, establishing internal deadlines (e.g., one year) for concluding cases, and continuing to dig for adjudicatory potentials so as to improve trial efficiency.

The courts of various levels fully utilize the Chinese tradition in oriental wisdom of mediation, to timely resolve a host of foreign-related maritime disputes having profound international impact, resulting in positive international reaction. For instance, the Supreme People's Court successfully mediated the jurisdictional issue in the collision case caused by the ship "Heibei Spirit", resolving all litigations in both China and Korea over the collision accident. The mediation efforts by the maritime courts in Wuhan, Guangzhou, and Fujian High Court, in the case of labor dispute concerning the ship "Samho Sapphire", in the dispute over a large sum mortgage loan concerning the Maltese "First Ocean", in the case of personnel injury and loss of life at sea resulting from the Vietnamese ship "Vinashin Sun" colliding with the fishing ship "Minlianyu 0506" respectively, have won accolades from the parties concerned and foreign consulates, have been praised highly by international communities.

With the enhancement of quality and efficiency of China's maritime adjudicatory work and increase of international confidence, more and more parties that have no direct link with China have chosen to sue their maritime cases in China. In the past 15 years, after China's accession to WTO, foreign litigants in at least 2,000 cases voluntarily chose to file their complaint in China's maritime courts. For example, in the damage disputes between the Korean company, Dongnam Leasing Co., Ltd. and the Panamanian shipping company, Paz Shipping S.A. of Panama, the collision took place in international waters, and neither port of departure nor of destination was in China, but the Korea company chose to apply for ship arrest and filing suit in Wuhan Maritime Court. Another example, when the owner of the Bahamas super tanker "M.T. Mariner", defaulted in payment of debts, the creditors from 8 countries of the U.S., U.K., Liberia, etc., all chose to apply for arrest and auction of the tanker in Guangzhou Maritime Court, which timely approved their application, and in addition entertained the mortgage loan dispute applying the Bahamas Merchant Shipping Act, per rules of conflict of China. In a letter from the vice president of JP Morgan Chase Bank, a creditor, the Chinese

court was appraised as quoted to be “fair and straight, careful and responsible, reflecting China’s maritime adjudication being consistent with international practice to fit the need for maritime justice after China’s accession to the WTO.”

In the case of disputes over contract and tort liabilities under the time charter parties between Zhongwei Shipping Company, Chen Zhen, Chen Chun and Mitsui O.S.K. Lines, Ltd. of Japan, the Japanese company, after first instance trial in Shanghai Maritime Court, the appeal in Shanghai High People’s Court, and reappeal in Supreme People’s Court reconsideration, refused to comply with the decision of the court, and Shanghai Maritime Court issued an enforcement decision in the request of the creditors, under which the ship “Baosteel Emotion” owned by Mitsui was arrested on April 19, 2014 in the Majishan Port of Zhoushan, and then was subsequently released after Mitsui complied with the judgment. The trial and enforcement of this case attracted wide attention at home and abroad, producing excellent social effect, manifesting the judicial authority of China.

Over the past 15 years, our maritime cases have been reported or cited by such world renowned journals as Lloyd Law Report, Lloyd’s Maritime and Commercial Law Quarterly and been taken as an important reference for research on Asia-Pacific legal status by world shipping and maritime communities, and China’s maritime judicial status in Asia-Pacific and even in the world has been promoted.

#### D. Implementing Quality Maritime Adjudication Strategy and Insisting on Priority of Handling Cases

Because of the feature that maritime cases are relatively limited in number and scope, and the judges are mostly highly professional, the Supreme People’s Court in 2010 put forward quality maritime adjudication strategy, stressing that maritime cases are noted for quality and brand, by which to achieve public support and social trust.



1. Reinforcing research guidance and unifying standards for judgment. Unified standards of judgment are the intrinsic requirement for judicial justice. After the maritime courts were set up, the Supreme People's Court, the maritime courts and high people's courts of appeal, by taking full advantage of comparative professionalism and concentration, have continued to strive for unified standards for adjudication, endeavoring to preserve the integrity of the nation's maritime courts. First, strengthening maritime adjudication interpretation. The Supreme People's Court, in supervising maritime adjudication, formulated a "three-step" judicial interpretation mechanism, from research report to directive opinions and finally to judicial interpretations, and one or two judicial interpretations are promulgated each year. Second, strengthening the guidance role of decided cases. The Supreme People's Court requires that the maritime courts and high people's courts of appeal submit 5 – 10 cases each year, from which to select a batch of typical model cases for exemplification and promotion on the platform of Gazette of the Supreme People's Court, Selected Cases of the People's Courts, Guide on Foreign-Related Commercial and Maritime Trial, and its internet publication of [www.ccmt.org.cn](http://www.ccmt.org.cn) to intensify promotion and study. In the past five years, over 50 leading and selected maritime cases were published, as well as a collection of cases on the subjects of ship building and salvage and rescue at sea, to provide guidance on issues of application of relevant laws. Third, pushing for full-scale case reevaluation mechanism. The Supreme People's Court, since 2006, has organized reevaluation of case quality in four maritime courts or high people's courts of appeal every year, and some high people's courts of appeal also conducted such work, with timely feedbacks on problems discovered in the reevaluation to make corrections. Fourth, strengthening information exchange and business communication between and among courts dealing with maritime cases. The Supreme People's Court, by information feedback in individual cases, regular circulations on case quality analysis, annual summary of maritime trials, etc., has tried to strengthen internal information exchange on adjudicatory work; the 10 maritime courts have formed a forum hosted in turn annually for

adjudication symposium and enforcement symposium to exchange trial experiences and for voluntary harmonization of adjudicatory standards and judicial activities; the maritime courts and high people's courts of appeal call for maritime case analysis conference each year, and the Supreme People's Court conducts 2 – 3 rounds of training or research every year, to study and summarize the hot and difficult points in maritime trials, in an effort to form uniform understanding and views.

2. Strengthening adjudicatory management and enhancing quality and efficiency of trials. Courts of various levels engaged in maritime adjudication have strengthened the sense of excellence in their adjudicatory work, to achieve the goals of reducing the rate of appeals and remands, increasing the rate of conclusion of cases upon judgment, of settlement, and of compliance with judgment, and eliminating trial exceeding deadline, misjudgment, procedural imperfection, and administrative complaint resulting from judgment; the courts made internal house rules of corresponding workflow of case management, courtroom procedure management, case quality supervision and evaluation management, by adopting planned conclusion, checking pending cases, using quantified notices, early reminding, checking and correcting, etc. to reinforce supervision and management, standardize trial procedure and opinion drafting, and to ensure balanced conclusion of cases, and elimination of conclusion beyond deadlines so as to shorten trial period and enhance trial quality. From 2010 to the end of 2013, the compliance rate of the maritime courts was 90%; The rate of appeal beyond the proceedings was below 0.1% as complaints against maritime judgments were nonexistent for many years in most maritime courts, and work evaluation scores for maritime courts are basically among the best of all types of cases, which shows that the Quality Adjudication Strategy has achieved preliminary success. For example, Shanghai Maritime Court in the 2013 Comprehensive Evaluation of Trial Quality of Shanghai Courts achieved No. 1 in 5 out of 27 indexes, with 14 on or above average, except 1 item which did not participate in the evaluation.

### **III. Enhancing the Role of Maritime Adjudication to Serve Overall Situation of Reform, Development and Stability**

#### **A. Fully Playing Active Roles of Maritime Adjudication to Serve Scientific Development of Economy and Society**

1. Scientific planning of maritime adjudication work in connection with economic and social development. In various historic phases of reform, the maritime courts and high people's courts of appeal, in close connection with the overall situation of economic and social development of national strategies of opening-up and marine development, economic development of foreign trade and maritime shipping, establishment of international and regional shipping centers, and border trade and regional economic cooperation, studied and drafted guiding opinions for maritime judicial services and implementing rules, by fully resorting to maritime judiciary initiatives, endeavoring to promote economic and scientific development, to safeguard social harmony and stability, and to push for modernization of governing ability. For example, Shandong High People's Court in June 2010 issued an Opinion on Fully Utilizing Foreign-Related Maritime Adjudication Function to Provide Effective Judicial Safeguard and Service for the Construction of Blue Economic Zone of Shandong Peninsula, and directed Qingdao Maritime Court to make implementing opinions; Shanghai High People's Court in 2009 issued the Several Opinions on Building "Four Leaderships" and "Four Centers" for Providing Judicial Safeguard by Shanghai Courts, which provided guiding directions for maritime court judicial services; Shanghai Maritime Court implemented the Measures for Providing Judicial Safeguard for Speeding Up Construction of International Shipping Center, etc.; Zhejiang High People's Court issued the Opinion on Providing Judicial Safeguard for Marine Economic Development of Our Province; Guangxi High People's Court issued the Several Opinions on Providing Judicial Safeguard and Legal Services for the Construction of Beibuwan Economic Zone, and the Several Opinions on Providing Judicial Safeguard for the Construction and Development of Golden Waterways of Xi River of Guangxi; which

received appraisal from local provincial or municipal government leaders.

2. Strengthening the work of advisory opinions and actively participating in social and economic comprehensive construction. Under the guidance of proactive judicial concept, the maritime courts incorporated advisory opinions into ordinary work mechanism, and strengthened statistic analysis of all types of cases to innovate and enrich the forms of advisory opinions as letters, annuals, and white papers, etc., to release maritime law information and relevant suggestions to the public, concerning various aspects of management and disposal of public properties, people's mediation, maritime insurance, marine environmental protection, sailors' rights protection, business registration and fishery administration, etc. Since 2009, the maritime courts and high people's courts of appeal have issued more than 200 advisory opinion letters to relevant authorities of maritime and marine matters, foreign trade, insurance, environmental protection and business operating units, 80% of which were acted upon, producing satisfactory social effect. For instance, Xiamen Maritime Court issued an advisory opinion in 2011 to PICC Fujian Branch on fishermen liability insurance policy, prompting the Branch to revive its policies by more than redoubling coverage, benefiting 100 thousand fishermen in Fujian. Dalian Maritime Court in 2013 issued an opinion to China Insurance Regulatory Commission on maritime cargo insurance, with the result that the Insurance Association of China sponsored jointly with Dalian Maritime Court a symposium, with 37 insurance companies participating, on the solution of legal difficulties of maritime cargo insurance, which was awarded as "The Best Job Done" by Liaoning Communist Party Commission for its subsidiary.

## B. Making Great Efforts under the Tenet "Judicial Work for the People" to Satisfy the Needs of Society

1. Regularizing tribunals dispatched and reinforcing basic level judicial service functions. The establishment of tribunals dispatched

by maritime courts is to accommodate the actual situation where the maritime court jurisdiction covers long stretch of wide areas of ports, enhancing the courts service function to facilitate litigation. To cope with the development, the Fourth Civil Division of Supreme People's Court, conducted a national working conference on February 12 to 14, 2004 in Shenzhen for the matters of maritime tribunal dispatched, focusing on regularization and systematization of maritime tribunals dispatched, making clear three conditions for setting up tribunal dispatched: first, there has to be certain number of cases, i.e., no less than 100 annually; second, there has to be at least a panel of judges with 1 court marshal; three, there has to be relatively good facilities for conducting trials and work, and other necessary essentials, so that trials can be conducted normally. Subsequently, the Supreme People's Court continually directed the various high people's courts to include the work of maritime tribunals dispatched into their management, by solving staff, organization and financial problems. The maritime courts took measures accordingly to man the panels, unified work manuals, and strengthened workflow management, with strict approval process to guarantee case quality. In 2013, the 39 tribunals dispatched of all the maritime courts entertained 10,936 cases, concluding 10,877, 51% of all cases concluded, and were able to resolve about 92% of the disputes at trial level among their caseloads. The maritime tribunals dispatched have become an important frontier safeguarding judicial protection of economic development and social harmony in the coastal areas.

2. Continuing to expand geographical coverage of maritime judicial service, and endeavoring to cope with the new trend of reform and opening-up. As reform and opening-up policy pushes forward in the inland areas, logistics and container transport business flourishes. The industrial clusters around Bohai, Yangtze Delta, Zhujiang Delta and Southwest coast all established waterless ports in the Northeast, Inner Mongolia, and Yunnan-Guizhou areas, extending outbound transportation port yards to the heartland. As the border navigational trade between the Northeast and Russia, and between Guangxi/Yunnan and ASEAN, the chain of disputes has extended

inland and to the borders. To cope with the new trend, Dalian Maritime Court set up a tribunal dispatched in Harbin, Xiamen Maritime Court went its way to Jiangxi Province, and Tianjin Maritime Court took hundreds of trips to Beijing, Hebei, Shanxi and Inner Mongolia for visits and investigations, and set up 16 circuit points and several trial liaison points at the waterless ports of Baotou of Inner Mongolia and of Houma of Shanxi Province, as well as the international inland port of Pinggu, Beijing, in addition to hosting maritime law training classes for inland foreign trade, finance and insurance, and freight forwarding, further expanding maritime legal services, to cope with the new trend of reform and opening-up, which was well received by the inland foreign trade organizations.

3. Greatly pushing forward measures to the benefit of the people, solving the difficulties for entertaining lawsuits for the ordinary people. As the coastal and riverside economy develops, the 10 maritime courts in the country, to facilitate litigation, besides setting up tribunal dispatched, added a number of circuit points in the past five years, by sending staff, completing case processing windows, promoting mail-in entertaining, e-entertaining and call-in entertaining, strengthening litigation consultation, pre-trial mediation, post-judgment Q&A, with active promotional and circuit trial activities of “house calls” to businesses, port regions, islands and fishery villages. Trials are usually grouped together during fish-ban seasons out of respect for fishing production regularities; the courts conduct on-site one-stop business of case entertaining, mediation and enforcement, based on circuit trial locations, people’s jurors and judicial liaisons, further strengthening the maritime judicial function of serving the locals. The maritime courts in Qingdao, Shanghai, Ningbo, Guangzhou and Beihai made great efforts in building the court information system, using videoed trials for the convenience of the parties, witnesses, appraisers from the distance, and built e-search systems so that the parties may use database terminals or mobile SMS to check the status of cases or enforcements, and maintained e-database for quick review by the parties. The 10 maritime courts of the country actively offered judicial legal aid, in about 1,000 cases every year, to those in

need for postponement, reduction or exemption of court fees in the amount of RMB 10 million; in sailor wage dispute cases and maritime personal injury cases, the courts would order advanced execution, pay the necessary cost, apply for emergency aid, and do everything possible to meet the basic needs of the people.

4. Active experimenting with multiple dispute-solving mechanism to maintain social harmony and stability. The maritime courts by strengthening coordination with freight forwarder associations, fishery associations, ship owner associations, maritime and fishery authorities, arbitral commissions, people's mediation commissions, solicitor offices, etc., experimented and established multiple mechanism to achieve "interfacing litigation with mediation," by inviting people's congress representatives, political consultation commission members, local officials and people from Hong Kong, Macao and Taiwan to participate in the mediation processes, coordinating all social sectors to make the rate of mediation and withdraw greater than 50% at first instance in maritime cases. From 2010 to the end of 2013, settlement rate of first instance cases in all maritime courts of the country reached 57%. The maritime courts in Xiamen and Ningbo, together with local organizations, worked out "litigation free zones" in fishing areas, port areas and sea areas, resolving over a hundred disputes before litigation. The maritime courts pay close attention to major maritime accidents and environmental pollution accidents within their jurisdictions, and actively sought support from local Party Commissions, governments and administrative authorities in charge of maritime, port, fishing, and points, to enhance social risk appraisal and public crisis response mechanisms, and successfully defused a bunch of disputes having wide influence, and resolved public events that might have affected social stability.

C. Actively Engaging in Foreign-Related Judicial Aid to Display International Humanitarianism

Starting from the end of the last century, competition in the international shipping market has been fierce, and there began to emerge the problems of overdue pay and cut-off of ship supplies by some ship owners, resulting in the sensitive situation where Chinese sailors remained on board overseas, and foreign sailors on board in China. The maritime courts of our country actively engaged in judicial aid, leaving touching stories in the history of international maritime judicial practice with excellent international reputation for Chinese judiciary. For instance, The Solar Glory of St. Vincent was detained in the South Korea Port of Inchon for three months due to ship owner's refusal to pay port fees, causing 24 Chinese sailors to be trapped on board. After receiving the call for assistance, Qingdao Maritime Court took effective measures to make ship "Solar Glory" to obtain release from South Korea and brought the ship back to the port of Qingdao, where the ship was arrested and sold by Qingdao Maritime Court to pay in advance for the sailors, which was very well praised by the media. Xiamen Maritime Court entertained a case where a Sierra Leone ship "LEDOR" was abandoned by the ship owner G & G Shipping SH P.K. of Albania. The court, in executing arrest and mandatory order, found that the sailors were trapped on the abandoned ship lacking basic supplies, appointed a Chinese ship to provide humanitarian supplies and made financial arrangements for the ship and the sailors, and even supplied Muslim food for Syrian sailors during Ramadan; when sailors got sick, the court contacted Putian local government to arrange for medical assistance, and arranged with foreign exchange authorities to change their back pay advanced by the consignee into U.S. dollars. At last, the court contacted public security authorities to get the sailors exit visas so that they could go home. Syrian sailors sent a flag of praise to the court with the words "Judges of the People for the People," and the Syrian Embassy also sent a letter of thanks to the court. Over the years the maritime courts in Qingdao, Shanghai, Ningbo, Guangzhou and Beihai made fair decisions in the overdue back pay cases of the vessels, such as The Kamchatka, The African Warrior, "Maxima", "Snowmass", "Eagle Pride", and "Saikat Wind" offered judicial aid and humanitarian aid for over 300 sailors from Russia, Turkey, Ukraine,



Azerbaijan, Burma, Pakistan and Vietnam, gave them justice and guaranteed their safely returning home, which was appraised by their embassies in China and international communities.

#### D. Fully Implementing Judicial Transparency in Active Response to Social Concerns

Over the thirty years, the maritime adjudicatory team of the country took a firm belief in judicial transparency, by strictly implementing transparency of proceedings, to continue innovating methods, channels and scope of transparency, in active response to social concerns, with an excellent status of judicial justice.

1. Insisting on the Principle of Open Trial to achieve fairness. Since the founding of the maritime courts, the filing, hearing and decisions rendered of all the maritime cases have been made open. On the basis of making transparent the items required by law, the maritime courts deepened transparency around 1995 by reforming the way of drafting judgments, so as to reflect in the judgments the entire trial process, with special emphasis on production, cross-examination and admission of evidence along with the courts' reasoning, making the decisions and judgments more convincing and appending applicable laws, regulations and judicial interpretations at the end of the written judgment. Guangzhou Maritime Court in 1999 started experimenting with disclosing dissenting opinions of the judges in the panel, and was called by the media as "transparent court," "unveiling the mystical process of case discussion," and "opening up the last 'dark box' of the trial process."

2. Building public trust by going public with greater effort over the internet. Maritime adjudication was the earliest field of judicial transparency in the internet information age. After China's accession to WTO in 2001, in order to make foreign-related maritime adjudication transparent in China, and raise the level of transparency, the Fourth Civil Division of Supreme People's Court, opened a website with Guangzhou Maritime Court, the "China Foreign-Related

Commercial and Maritime Trial” ([www.ccmt.org.cn](http://www.ccmt.org.cn)) which debuted on January 1, 2002, with the English version in August 2002, and subsequently hyperlinked the webpages of other maritime courts and high people’s courts of appeal, and finally becoming the professional website of foreign-related maritime adjudication in China. At the same time, the Supreme People’s Court required that all judgments carrying legal effect, except for those involving national security, trade secret or personal privacy, be published on the internet, and that any judgment, to qualify for competition for the National Best Maritime Judgment Award, must be available for public review on this website. Accordingly, the maritime courts published their decisions on the internet, and selected typical cases to be translated for publication. The maritime courts and high people’s courts of appeal have also started experimenting with videotaping the entire trial process with automatic recording on disks and electronic database, micro weblogs, and selective live netcasting of trials. Guangzhou Maritime Court opened its English version website on November 30, 2012 to publish its English version of effective judgments to the international communities. Maritime adjudication transparency attracted wide attention from the society. The Institute of Law of China Academy of Social Sciences published on February 24, 2014 the Transparency Index of China Maritime Justice Report (2013), introducing for the first time the idea of using transparency index and its evaluation system. The Supreme People’s Court on October 15, 2013 issued the Tentative Plan on Promoting Three Major Platforms for Judicial Transparency, stepping up full scale judicial transparency. The Fourth Civil Division of the Supreme People’s Court has taken the lead in demonstrating the principle of publishing effective judgments on the internet, with nondisclosure as exceptions, and by December 30, 2013, has published 645 judgments, with a 100% rate of internet publication of cases for the year 2013. The maritime courts followed suit, insisting, on basis of problems and demands, on pushing forward information technology for the active building of the three platforms for making transparent the judgments in effect, the workflow of case trial and the enforcement of judgments rendered in order to deepen judicial transparency. Beihai Maritime Court opened its administration

net in 2013, emphasizing the key importance of the litigants, setting up the columns of simplified proceedings and administration, providing online platform for entertaining, servicing, mediation and other proceedings. Ningbo Maritime Court opened an online auction system, and successfully conducted an online auction on March 25, 2014 of a land property, saving a commissions fee of RMB 61,000 for the bidder. The court also provided recorders for enforcement personnel for audio/visual recording of their enforcement activities so as to achieve full disclosure of the enforcement. The maritime courts conducted exchanges of each other's experiences and competed to innovate their web-pages for foreign-related maritime adjudication, endeavoring to build their judicial transparency platforms into an important window to showcase modern judicial civilization.

3. Continuing to expand modes of disclosure to satisfy the need of the public to know, supervise and participate in maritime justice. The various courts, while disclosing information on the internet, also took measures to invite anti-corruption supervisors, people's congress representatives and political consultation committee members to audit the hearings of the courts and held activities like "Open Court Day" to reinforce judicial transparency. People's juror is the most direct and most important form of the general public participating in judicial activities. For a long time, the maritime courts, due to professional nature of major maritime cases and generality of minor cases happening in the coastal districts, would select experts and ordinary people as jurors for the maritime cases. As to the unique situation of maritime courts and their tribunals dispatched whose jurisdiction transcends administrative areas, the Supreme People's Court, upon investigation, issued on August 31, 2011 the Opinion(Provisional) on the Selection of People's Jurors for the Maritime Courts which gave specific guidelines for the selection and appointment of people's jurors for the maritime courts. So far, accordingly, the 10 maritime courts and their tribunals dispatched, through the people's congress standing committee on the same level of the district courts, have appointed 190 people's jurors, including experts on ship collisions, bunker oil contamination, and offshore rescue, and government

officials, port officials, employees of enterprises and institution, and well respected local fishermen and islanders, who participated in 1,252 trial cases only in 2013 constituting 11% of first instance maritime cases of the same year, opening the public eye on maritime justice, and bridging the distance between maritime adjudication and the common people, strengthening the public's understanding and trust in the maritime judicial system.

#### **IV. Strengthening the Staff Building and Infrastructure Construction to Ensure Scientific Development of Maritime Adjudication**

##### **A. Emphasizing Overall Staff Building to Achieve Professional Competency of Maritime Adjudication**

Over the past thirty years, the Supreme People's Court, the maritime courts and their high people's courts of appeal persisted in striving for the professionalism of maritime judges, to an obvious success. At the inception of the establishment of maritime courts, the maritime judges were selected from maritime administrations, port authorities and district courts, and a handful of college graduates in law or navigation were recruited at the same time. The judges' knowledge structure and overall quality were in dire need of improvement. The maritime courts worked hard and gradually established a team of maritime judges with firm political beliefs, excellent work attitude and a character of honesty and integrity.

First, strengthening the training of the mind to ensure firm political beliefs. According to the political requirements of the Party and State in different historical phases, political cultivation has always been placed above all, to strengthen idealism and political disciplines, to enhance the judges' consciousness of justice and a sober mind for political correctness, and to properly distinguish between laws and policies, theories and practices, and the rule of law and policy considerations, and to endeavor to preserve the national status in dealing with foreign matters.

Second, intensifying professional training, to ensure professional quality. The Supreme People's Court, the maritime courts and the high people's courts of appeal have taken it as a strategic task to build professional capabilities of the judges. At the inception of the establishment of maritime courts, the urgent work was to get on-job training and knowledge base for the judges, and to train them to be familiar with law, navigation and trade. By the end of 1990's, the purpose of the training was shifted from getting degree education to overall abilities with professional training for specific targets, by sending maritime judges to work and study on ocean-going ships and various ports, organizing exchange visits abroad, further expanding their knowledge in regular civil and commercial laws, maritime laws and shipping practices, as well as foreign languages and international trade.

Over the past thirty years, it has become a trend for the maritime court staff to study and research, with fruitful result. Based on incomplete statistics, the maritime courts, high people's courts of appeal and the Fourth Civil Division of the Supreme People's Court, hosted 6 law journals, published over 70 professional books, and about 500 research reports, and about 2,500 theses and case analyses in domestic or international journals. Of these, annual publications include: Guide for Commercial and Maritime Trials (1-2 volumes a year from 2001) by the Fourth Civil Division, the Maritime Trial Quarterly (1989-1998) and the Annual of Maritime Trials of China (annually from 1999) by Guangzhou Maritime Court, Forum of Maritime Justice Quarterly by Ningbo Maritime Court, and Changjiang Maritime Law Quarterly by Wuhan Maritime Court and Changjiang School of Maritime Law. These publications greatly encouraged maritime judges to study and research, and raised their theoretical capabilities. More than 25% of the theses published by the maritime judges received awards and Wuhan Maritime Court received 4 first prizes in national judicial academic symposiums. By the end of 2013, there are 570 judges working on maritime adjudication, of whom 90% have master or doctoral degrees, and 9 are named as Experts on Judicial Trials of the Nation.

Third, building a down-to-earth working style to ensure justice for the people. The Supreme People's Court, the maritime courts and high people's courts of appeal have always taken it as the fundamental principle of the courts to serve the people, and measure their achievement by the satisfaction of the people, pursuing theme activities for education and practice, adhering to the viewpoint of the masses and reinforcing ties with the people, trying to help the people with their difficulties in entertaining lawsuits, enforcing judgments and petitioning grievances, so as to show justice in every maritime case. By partial statistics, in the past thirty years, 560 maritime court judges have been named Outstanding Judges, Excellent Party Members, Exceptional Adjudicators, and March 8 Red-Banner Holders. The maritime court judges have been well recognized and respected by the society for their excellent working styles.

Fourth, reinforcing system innovation to ensure justice and probity. The Supreme People's Court, the maritime courts and high people's courts of appeal, in close connection with the three fundamental points of "education, system, and supervision," actively explored new ideas for probity, incorruptible education and talks on probity, and implemented "Sunlight Project," by employing probity supervisors, revisiting parties to the case, reporting on major cases, establishing probity guarantee funds, etc., to ensure the probity and self-discipline of the judges. Over the thirty years, the maritime court judges, by solid work achievements and ethics, have indicated that they are a trustworthy team for the Party and the People.

#### B. Improving Infrastructure of the Court to Modernize Maritime Adjudication

Over the thirty years, the infrastructure of the maritime courts has experienced leaping development, basically achieving office modernization, and striving for office intellientialization. In the early days of the courts, there were only rental or self-built offices of a few hundred meters in size, with no official vehicles, and court staff had to take buses or bicycles for work, which was a really hard time. The

hardship of the maritime court was gradually changed, thanks to the support of from the original Ministry of Communications of Central Government and from local party commissions and local governments and appellate courts, from rental offices to independent office towers, to further improvement of infrastructure, the working conditions getting better and better, achieving paperless internal management, intranet administration, digitized court recording, and electronic docketing. Meanwhile, most tribunals dispatched have purchased independent office buildings, and connected with the home court with internet, capable of telework and tele-authentication. By taking a global perspective, the maritime courts have continued to display the new posture of modern judicial civilization.

## **V. Struggling for Ensuring National Strategies of Opening-Up and Building Maritime Power in the Future**

### **A. Summarizing Experience for Future Development of Maritime Adjudication under “Four Persistences”**

In the past thirty years, the maritime courts have closely followed the footsteps of the times of opening-up, keeping in mind the mission for strengthening the nation, marching hard on a difficult but firm path, and have harvested the fruits of their own, and have drawn a beautiful picture on a white paper. The maritime courts are proud and confident of these achievements, and shall see more prosperity in a bright future. Looking back on the history, in summary, we firmly believe the importance of the “Four Persistences”:

1. Persistence in taking the leadership of the Party, the supervision by the people’s congress and the people, is the fundamental guarantee of successful maritime adjudication work. The maritime adjudication work is a major component of the socialist judicial cause of China, which must follow the guidance of Deng Xiaoping Theory, the important thought of Three Represents and the Scientific Outlook on Development, and firmly establish the socialist concept of rule of law, ensure the unity of the leadership of the party, the position of the

people as masters of the country and law-based governance, to ensure political correctness and rightful exercise of the judicial power. By providing fair and equal protection for both domestic and foreign parties, maritime adjudication has created a good judicial environment for the reform and opening-up, shipping trade and marine economic development.

2. Persistence in justice for the people, endeavoring to deliver the consciousness of justice to people in every case and to realize the primary value of maritime adjudication. Only by persisting in justice for the people, can the power delegated by the people be ensured to be used for the people, to satisfy people's specific and realistic need for justice, and to preserve the fundamental interests of the people, guarantee the pursuit of the people for happiness, and further to encourage people's activeness, initiative and innovation in their effort to achieve the Chinese Dream.

3. Persistence in following the general laws of maritime adjudication, while innovatively pushing for the Quality Adjudication Strategy is the powerhouse for the development of maritime adjudication. The history of China's maritime adjudication has shown that incessant innovation in institutions and theories while borrowing from the advanced maritime systems of the world in light of the practical situations of China has been the basic powerhouse for the birth and development of China's maritime judicial system. Over the thirty years, the maritime courts started with difficulties, experimented in practice, and marched forward in reform, creating a bright path. To further develop, the maritime adjudicatory work has to keep close to its nature of professionalism, technicality and internationalism, by obeying its own laws, with persistence in equality, neutrality, transparency, fairness, efficiency and authority, moving in the direction of quality adjudication for all cases. Only in this way, can we continue to acquire public trust, and international confidence.

4. Persistence in the human factor, by reinforcing regularization and professionalism of the maritime judge teams. The most important



thing in maritime justice development is the building of a competent team of judges. It is just because of such a team being faithful to the Party, faithful to the country, faithful to the people, and faithful to the constitution, excelling in what they do, and tough in their training, that maritime justice of China has achieved great development and is now moving up to a new level. The wealth of experience in maritime justice is both the foundation of development and a beacon for the future.

## B. Looking forward to Building a Maritime Adjudication Reputation with International Acclaim

In thirty years, we achieved the goal of “Building China into the Center for Asia-Pacific Maritime Judicial Center,” rising rapidly in the international arena of competition. Looking forward, we are full of confidence that China’s maritime judiciary will be more influential in the increasingly fierce competition of the world, playing a greater role in the historic revival of China. Our confidence is based on the following two aspects:

One, continuing shipping trade gives us more space for developing maritime adjudication. Since the beginning of reform and opening-up, we have been undergoing a continued high-speed economic and social development. Currently, there are altogether 1,430 ports in China, with total port throughput and container throughput being on top in the world. According to annual statistics of 2013, China’s foreign trade import and export reached 4.16 trillion, a year-on-year increase of 7.6%; national port throughput reached 11,767 million tons, a year-on-year increase of 9.2%; 10 of China’s ports are ranked as top twenty container ports over the world; China’s merchant fleet totals 172,600 ships, a tonnage of 244,010,300 tons, being in the leading position of world merchant fleets. Annual completed building of ships throughout the country has reached 45,340,000 ton, and in-hand order for ships has reached 131,000,000 tons, making China number one of world’s ship builders. While China is on the rise in shipping business, the traditional big players in shipping business, including the U.K. and the U.S. are on the decline in market share

gradually, and the world's shipping center has continued to shift to Asia-Pacific area. It can be expected that China as a global center for shipping will continue to hold its position. The traditional shipping industry (maritime transport, ship building and port industries), while making its own quantitative headway, is creating a pulling demand for the development of shipping finance, seaborne logistics, marine insurance, maritime arbitration, shipping trade, freight agencies, shipping information and other modern shipping services, breathing new life to the shipping industry. Today the international shipping competition has moved over from hardware to software and comprehensive services. Maritime justice is an important component of the soft power of an international shipping centre. To maintain its status as a world shipping centre, China has to move from the first generation of logistic shipping center type to the second generation of service centers, and on to the third generation upgrade of resource reallocation center, a necessary formation of international shipping service resources and auxiliary service industries to achieve, by setting up shipping trade centers, a global shipping trade market for resource reallocation, and by making maritime laws, rules and standards, form the ability of reallocating core resources in the global shipping soft power. China's maritime judiciary shoulders the heavy task of providing judicial safeguard.

Two, in implementing marine development strategies, China urgently needs to strengthen maritime justice. The 21st century is a century of the oceans, and maintaining marine rights and interests, developing and protecting the ocean has become the hot point and focal point of global competition. The ocean involves the fundamental interest of national sovereignty and national wellbeing. China is a big country with marine rights and interests, with 180,000 kilometers of coast line, governing a water area of 3 million sq. kilometers. Effective preservation and reasonable development of ocean resources is strategically important to enhancing social and economic development and prosperity. The Party and the government have always attached great importance to the marine strategy. Since the 18th Party Congress and its 3rd Session in particular, the question of

oceans and seas has been raised to the level of strategic security, marine economic development and marine ecological civilization. In today's world maritime disputes occur every day, and the maritime judiciary must be sovereignty aware, and actively exercise maritime jurisdiction over all the marine development activities within the waters subject to the authority of China, and actively assert our country's sovereignty. The extent and depth of economic exploration of the ocean by mankind is rapidly increasing, and the importance of oceanic GDP in national economy is conspicuously on the rise. Upon entering the latter phase of the 12th Five Year Plan, the development rate of marine economy continues to be higher than the average national economic development, creating a new picture for the coastal economic development. All this requires the maritime judicial system to pay closer attention to the marine economic development and improve its own workings so as to render better judicial services and judicial safeguard. While marine economic development is picking up speed, marine environment protection is on the whole becoming urgent, for which the maritime judiciary needs to reinforce their handling of cases involving land-originating pollution cases and marine pollution due to oil drilling, ship discharge, ocean projects and others, and preserve the ecological security of the oceans.

Facing the future, China's maritime adjudication will stand at a new starting point, with greater resolution, in closer connection with the national open-up strategies and maritime power strategies, will endeavor to build a maritime judiciary name brand with extensive international influence, and will make valuable contribution to realizing the great Chinese dream of reviving the nation.

## Appendix 1

### Map of Maritime Courts and Tribunals Dispatched



The maritime court and tribunal dispatched by distribution map

Appendix 2:

Diagram of Cases Entertained in Maritime Courts in 1984-2013

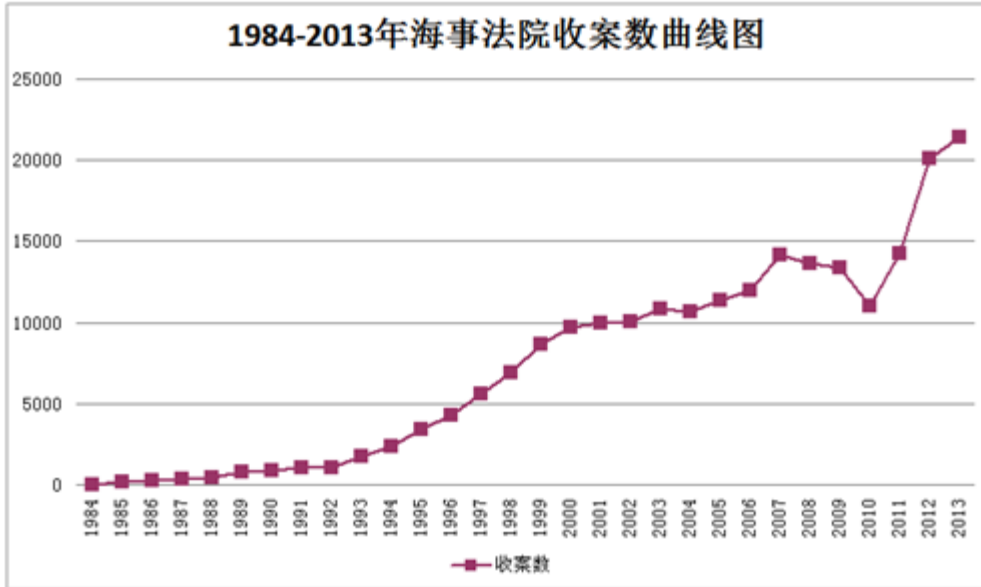
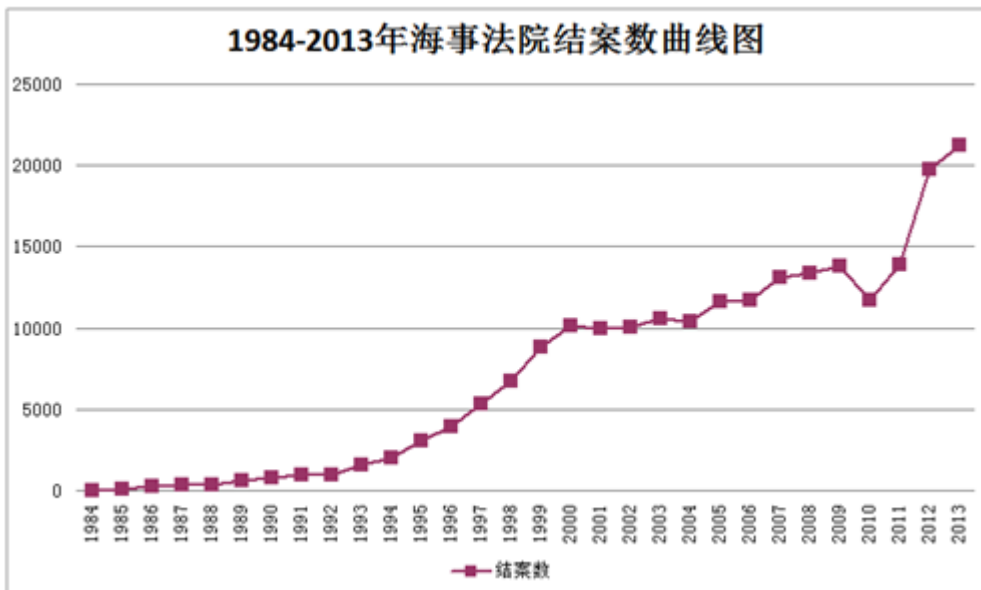
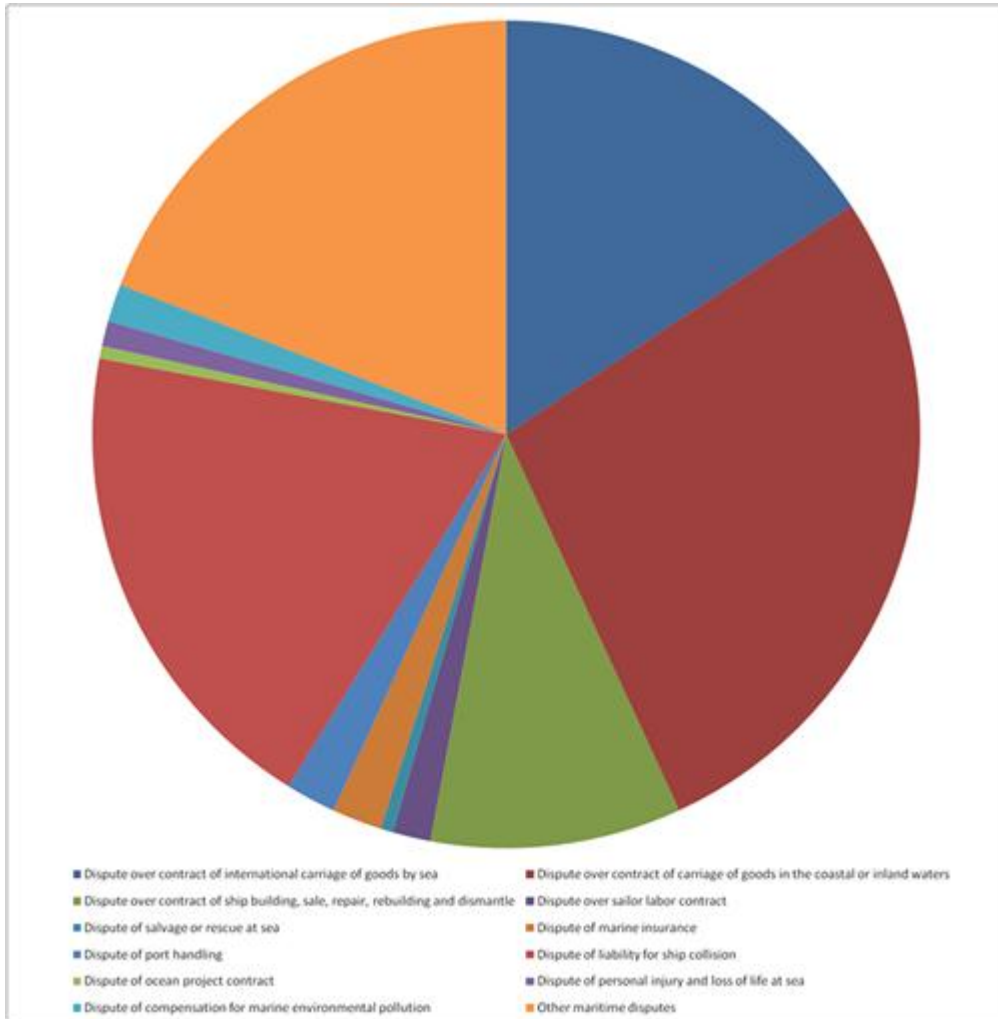


Diagram of Cases Concluded in Maritime Courts 1984-2013

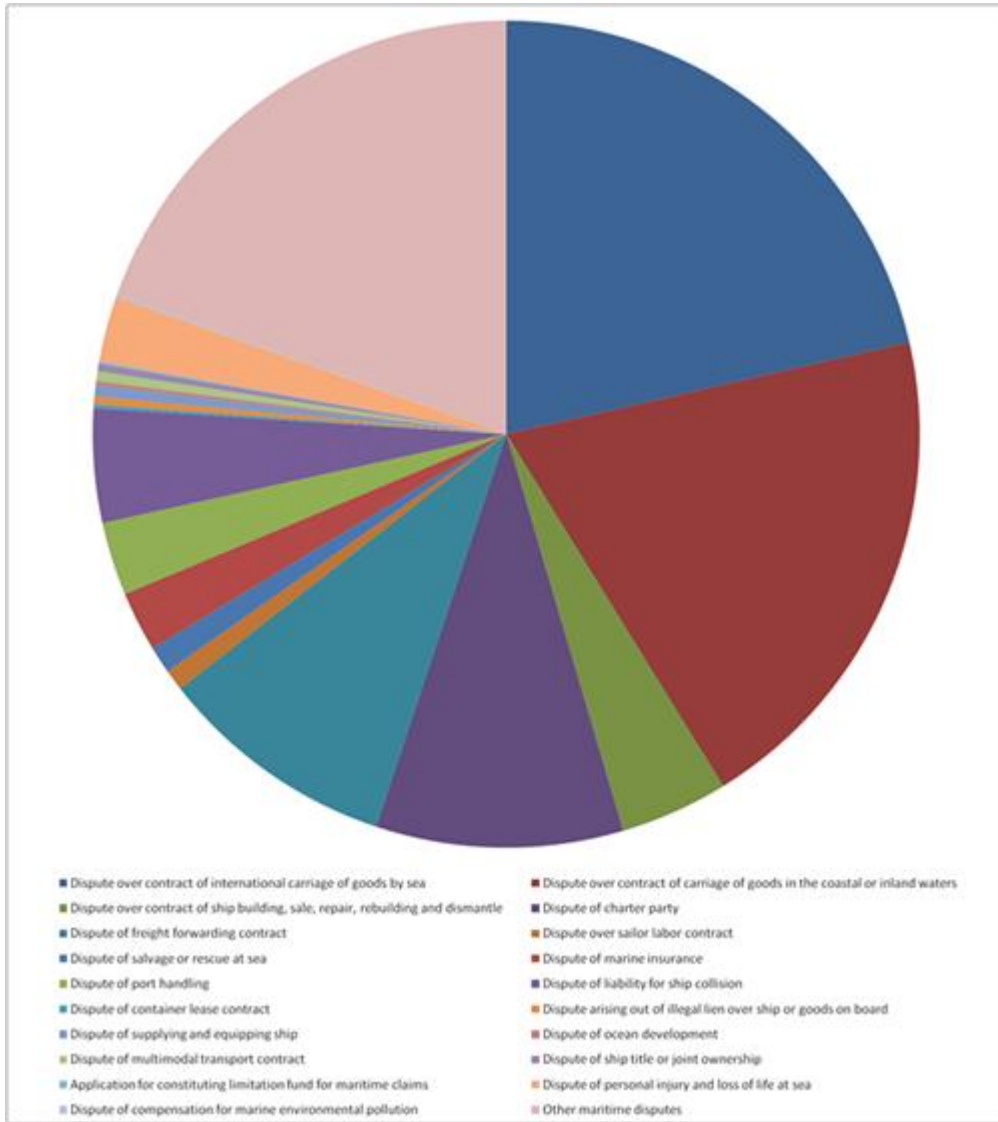


Appendix 3

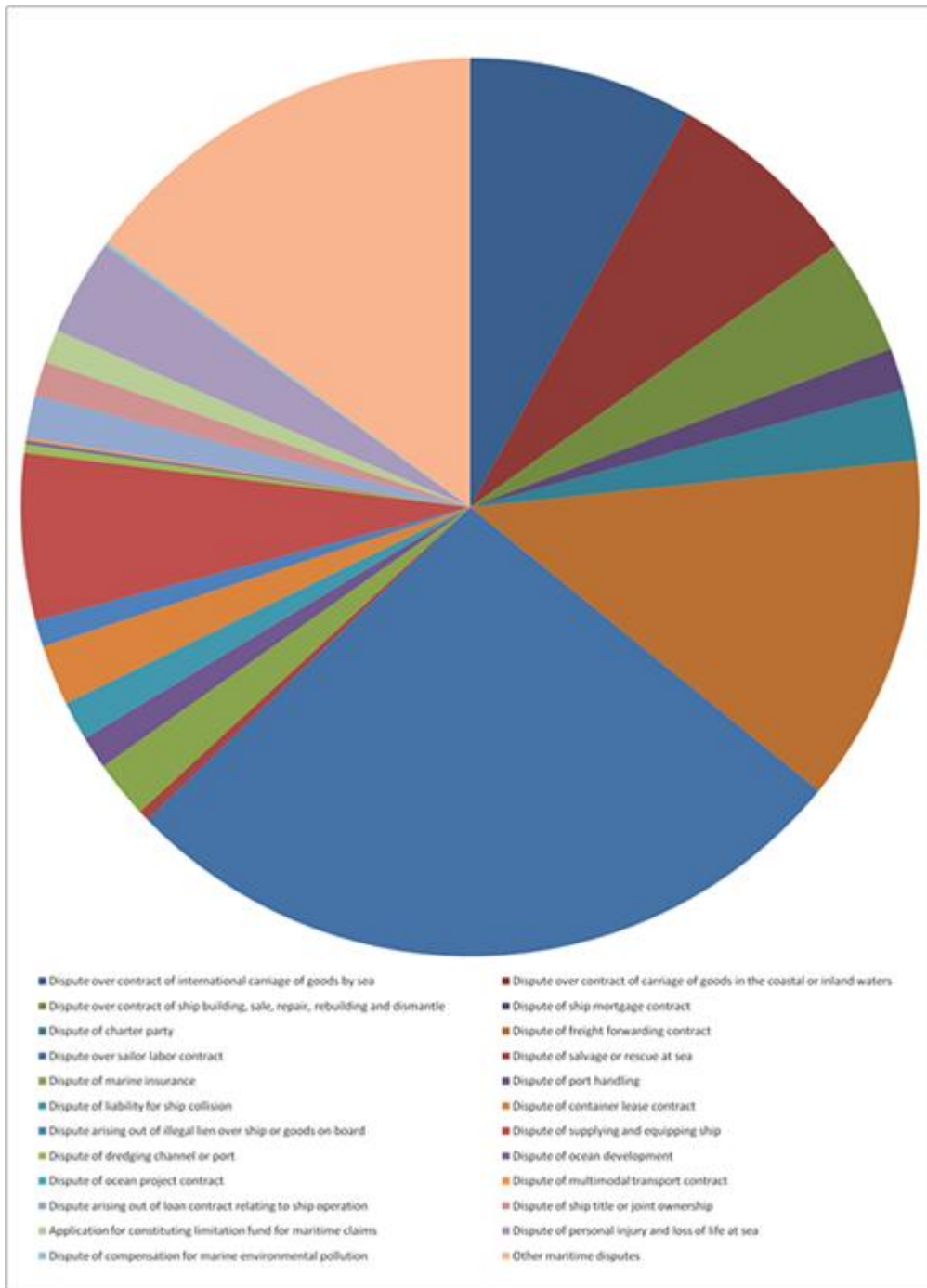
Type Distribution of First Instance Maritime Cases (Entertained) in 1987



Type Distribution of First Instance Maritime Cases (Entertained) in 1994



Type Distribution of First Instance Maritime Cases (Entertained) in 2013



Appendix 4:

Diagram of Ships Arrested by Maritime Courts during 1984-2013





Diagram of Ships auctioned by Maritime Courts during 1984-2013



Appendix 5:

List of Major Maritime Judicial Interpretations

List of Major Maritime Judicial Interpretations			
No.	Issued	Title	Remarks
1	1986.01.31	Detailed Provisions of the Supreme People's Court on Jurisdiction over Foreign-Related Maritime Cases	Repealed

2	1986.01.31	Detailed Provisions of the Supreme People's Court on Pretrial Arrest of Ship.	Repealed
3	1987.08.29	Detailed Provisions of the Supreme People's Court on Mandatorily Selling the Ship Arrested by Auction to Satisfy Debts	Repealed
4	1989.05.13	Provisions of the Supreme People's Court on the Scope of Cases to Be Entertained by Maritime Courts	Repealed
5	1992.05.16	Detailed Provisions (Tentative) of the Supreme People's Court on the Trial of Claims for Personal Injury and Loss of Life at Sea	Repealed
6	1994.07.06	Provisions of the Supreme People's Court on Pretrial Arrest of Ships by the Maritime Courts	Repealed
7	1994.07.06	Provisions of the Supreme People's Court on Maritime Court Selling the Ship Arrested by Auction to Satisfy Debts	
8	1995.08.18	Provisions of the Supreme People's Court on the Trial of Claim for Property Damages Arising out of Ship Collision and Touch	
9	1997.08.05	Reply of the Supreme People's Court on Limitation Period for Claims by Carrier with regard to Carriage of Goods by Sea against Consignor, Consignee or Holder of Bills of Lading	
10	2001.05.24	Reply of the Supreme People's Court on Limitation Period for Claims with regard to Carriage Goods in Coastal Waters and Inland River	
11	2001.09.18	Several Provisions of the Supreme People's Court on Scope of Cases to be Entertained by Maritime Courts	
12	2003.01.06	Interpretations of the Supreme People's Court on the Several Issues Concerning Application of the Maritime Procedure Law of the People's Republic of China	
13	2003.12.08	Reply of the Supreme People's Court on Whether Channel Maintenance Dues may be Listed in Maritime Liens	Repealed
14	2006.11.23	Provisions of the Supreme People's Court on Several Issues Concerning Adjudicating Marine Insurance Disputes	
15	2008.05.19	Provisions of the Supreme People's Court on Several Issues Concerning Adjudicating Ship Collision Disputes	
16	2009.02.26	Provisions of the Supreme People's Court on Several Issues Concerning Law Application in Adjudicating Disputes Arising out of Delivery of Goods without Production of Original Bills of Lading	
17	2010.08.27	Provisions of the Supreme People's Court on Adjudicating Disputes Concerning Limitation of Liability for Maritime Claims	
18	2011.05.04	Provisions of the Supreme People's Court on Several Issues Concerning Adjudicating Disputes of Compensation for Ship Oil Pollution Damage	
19	2011.08.31	Opinions(Provisional) of the Supreme People's Court on Selection and Appointment of Maritime Court People's Jurors	

20	2012.02.27	Provisions of the Supreme People's Court on Several Issues Concerning Adjudicating Disputes of Maritime Freight Forwarding	
21	2013.06.19	Reply of the Supreme People's Court on Whether Small Claim Procedure May Be Adopted in Maritime Courts	