

中国海事审判

Maritime Adjudication of China
(2015—2017)

中华人民共和国最高人民法院

The Supreme People's Court of the People's Republic of China

2018 年 11 月

November 2018

特别说明

《中国海事审判（2015—2017）》白皮书以中英两种文字发布，以中文文本为准。

Special Remarks

This paper is published in both Chinese and English. The Chinese version shall be authoritative for interpretation purposes.

前 言

我国是海洋大国，拥有广泛的海洋利益。建设海洋强国是中国特色社会主义事业的重要组成部分。海事审判担负着服务保障海洋强国建设的重要任务。经过 30 余年的发展，我国已经成为世界上海事审判机构最多最齐全、海事案件数量最多的国家。最高人民法院于 2014 年 9 月 2 日召开中国海事审判三十年座谈会，发布《中国海事审判白皮书（1984—2014）》，回顾了我国海事审判过去 30 年的显著成就，同时宣布我国已经成为亚太地区海事司法中心。

新时代开启新征程，期待新作为。习近平总书记在党的十九大报告中提出“坚持陆海统筹，加快建设海洋强国”，为建设海洋强国指明了方向。随着“一带一路”建设的不断推进和国际航运中心继续向亚太地区和我国转移，进一步提升我国海事司法的国际地位和影响力，已是紧迫的现实需求、历史的必然选择以及大国的应有担当。为此，最高人民法院提出建设国际海事司法中心的新目标。

2015 年以来，全国海事审判工作紧紧围绕党和国家工作大局，科学谋划，加强部署，专门制定指导意见和司

法解释，服务保障海洋强国、“一带一路”、长江经济带建设，以及自由贸易试验区（港）等国家战略的实施；充分发挥职能作用，先后审理执行一批具有重大国际影响的海事案件；加强“智慧法院”建设，扩大国际合作交流，海事审判各方面均取得新的成绩。

目 录

特别说明	3
前 言	5
一、全国海事审判执行基本情况.....	1
(一) 总体情况	1
(二) 各类海事案件概况	1
(三) 涉外涉港澳台案件情况	2
(四) 扣押、拍卖船舶情况	4
(五) 执行情况	4
二、加强海事审判工作，服务保障国家战略.....	6
(一) 加强战略部署，强化海事审判服务保障职能	6
(二) 制定海事司法解释，规范统一裁判尺度	7
(三) 依法积极行使海事司法管辖权，维护当事人合法权益	8
(四) 加强审理海洋环境污染责任纠纷案件，保障海洋生态文明建设	9
(五) 探索“三审合一”，努力完善海事审判机制	9
(六) 加强培训调研工作，增强海事司法能力	10
(七) 扩大国际交流合作，提升海事审判国际影响力 ..	11

(八) 加快信息化建设, 全面打造“智慧法院”	12
三、明确裁判规则, 引导行业发展	14
(一) 《1989 年国际救助公约》和《海商法》均允许当事人对救助报酬的确定另行约定	14
(二) 海事请求人可以依法申请扣押和拍卖光船租赁的船舶	15
(三) 海上运输保险合同中的“一切险”, 除包括平安险和水渍险的各项责任外, 还包括被保险货物在运输途中由于外来原因所致的全部或部分损失	16
(四) 《海商法》第 55 条规定的货物实际价值不包括市价损失	16
(五) 《1992 年国际油污损害民事责任公约》下的环境损害赔偿限于合理恢复措施的费用	17
(六) 承运人有合理依据判断货物不适合安全运输的, 可以拒绝装运或者采取合理措施	18
(七) 集装箱超期使用费索赔的诉讼时效应从集装箱免费期届满之日的次日开始起算	18
(八) 托运人主张根据《合同法》第 308 条的规定变更海上货物运输合同, 难以实现或者将严重影响承运人正常运营的, 承运人可以拒绝托运人的请求	19

(九) 船舶建造保险单的保险责任范围应结合相应的造船合同文本, 根据保险单和保险条款确定.....	20
(十) 无人认领船舶和船载货物, 可在公告期间裁定提前拍卖, 保留所得款项.....	21
(十一) 船舶触碰码头责任事故中码头限期清障费用请求为限制性海事赔偿请求.....	22
(十二) 长期超航区航行、不办理签证航行、船员无相关证书的, 将导致船舶所有人丧失限制海事赔偿责任的权利.....	22
(十三) 因船舶设计上的潜在缺陷导致船舶沉没的, 承运人可以依据法律规定不负赔偿责任.....	23
(十四) 船舶所有人不因其雇佣的船长、船员的故意或轻率行为而丧失赔偿责任限制的权利.....	24
(十五) 货物在目的港因超过存储期限无人提取而被海关当局作为弃货处理, 承运人依法可以免除交付货物责任.....	24
(十六) 承运人是否行使留置权并非其向托运人索赔运输费用的必要条件.....	25
结束语	26

TABLE OF CONTENTS

Special Remarks.....	3
Preface.....	27
I. General Introduction of Maritime Adjudication Nationwide	30
1. Overall situation	30
2. Brief introduction of maritime cases by category.....	31
3. Situation of cases involving Hong Kong, Macao, Taiwan and foreign affairs.....	32
4. Situation of vessel seizure and auction	34
5. Situation of enforcement	35
II. Enhancing the role of Maritime Adjudication to Serve and Safeguard National Strategy.....	37
1. Enhancing strategic deployment to improve safeguarding functions of maritime adjudication.....	37
2. Formulating maritime judicial interpretations to standardize adjudicative criterion	39
3. Actively exercising maritime judicial jurisdiction and protect legitimate rights and interests of litigants.....	41

4. Emphasizing adjudication of the cases in relation to dispute over liability from ocean pollution to safeguard marine ecological civilization construction	42
5. Exploring “Three in One” Trial of Civil, Administrative and Criminal Cases Involving Maritime Issues in Courts to perfect maritime adjudicative mechanism.....	43
6. Enhancing training and research to improve maritime judicial competence	45
7. Expanding international cooperation and exchanges to improve global influences of maritime adjudication.....	47
8. Accelerating information construction to build “smart courts” in an all-round manner.....	49
III. Clarifying Adjudicatory Rules to Guide Development of the Shipping Industry.....	52
1. The <i>International Convention on Salvage 1989</i> and the <i>Maritime Law</i> both allow parties to make separate agreement on salvage charges	52
2. The maritime claimant may apply for seizure and auction of vessels subject to bareboat charter	53
3. “All risks” in maritime insurance contract covers not only risks under F.P.A. and W.A. but also total or partial losses of the insured goods resulting from external causes during transit	55

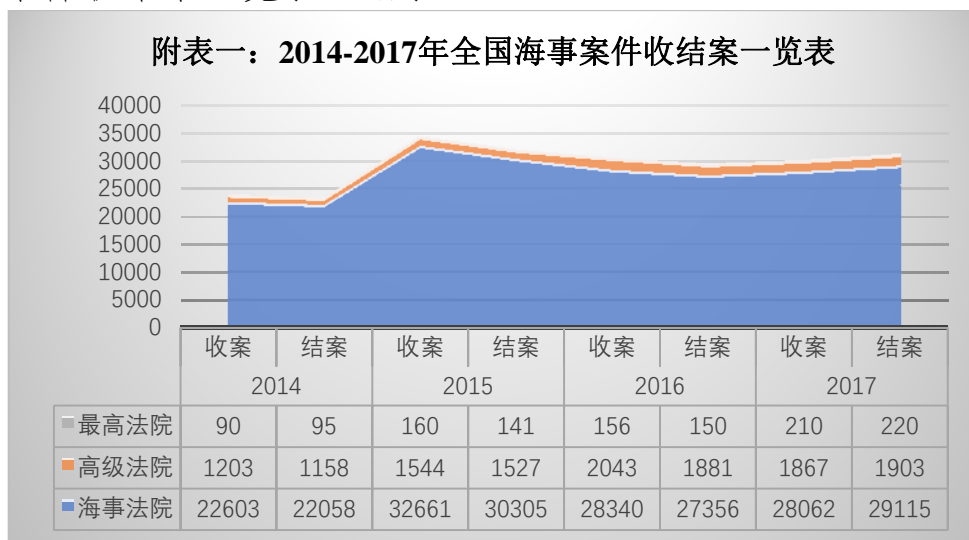
4. The actual value of the goods specified in Article 55 of the *Maritime Law* does not cover the market price loss..... 56
5. *International Convention on Civil Liability for Oil Pollution Damage 1992* provides that compensation for expenditure of reinstatement of environment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken..... 57
6. The carrier may refuse to ship or take reasonable measures to the goods on the basis of reasonable doubt to the safety of the goods 58
7. The time limit for bringing lawsuit on claim for demurrage of a container should be calculated from the day after the expiry date of the free use period of the container59
8. The carrier may refuse the shipper’s claim for modification of the contract of carriage of goods by sea according to Article 308 of the *Contract Law* while this claim is difficult to fulfill or will seriously affect the normal operation of the carrier 60
9. The scope of insurance liability for the shipbuilding insurance policy shall be determined in accordance with the text of the

shipbuilding contract, based on the insurance policy and the insurance clause.....	61
10. Unclaimed ships and cargoes on board may be auctioned in advance during the announcement period, with proceeds retained	63
11. Claim for costs of removal of wreck on the dock shall be deemed to be claim subject to limitation of liability	64
12. The shipowner shall not be entitled to limit liability for maritime claims if the ship sails beyond the sailing area or without visa or license.....	65
13. The carrier may not be liable for the loss of the ship sinking due to latent defect in design	67
14. The shipowner's entitlement to limitation of liability for maritime claims shall not be deprived due to intentional or negligent acts of the master or crew members	67
15. The carrier may be exempted from the responsibility of delivery as the goods unclaimed at the port of destination being disposed of by the custom authorities	68
16. Whether the carrier claims for lien is not a prerequisite for the claim for freight against the shipper	69
Concluding Remarks	71

一、全国海事审判执行基本情况

(一) 总体情况

2015年至2017年，全国三级法院（海事法院——海事法院所在地高级人民法院——最高人民法院）受理各类海事海商、海事行政、海事特别程序以及海事执行案件95043件、审执结92598件。总体而言，2015年至2017年每年的收结案数量均比2014年有较大幅度增长，收结案数量每年达29000件以上。详见2014-2017年全国海事案件收结案一览表（附表一）。

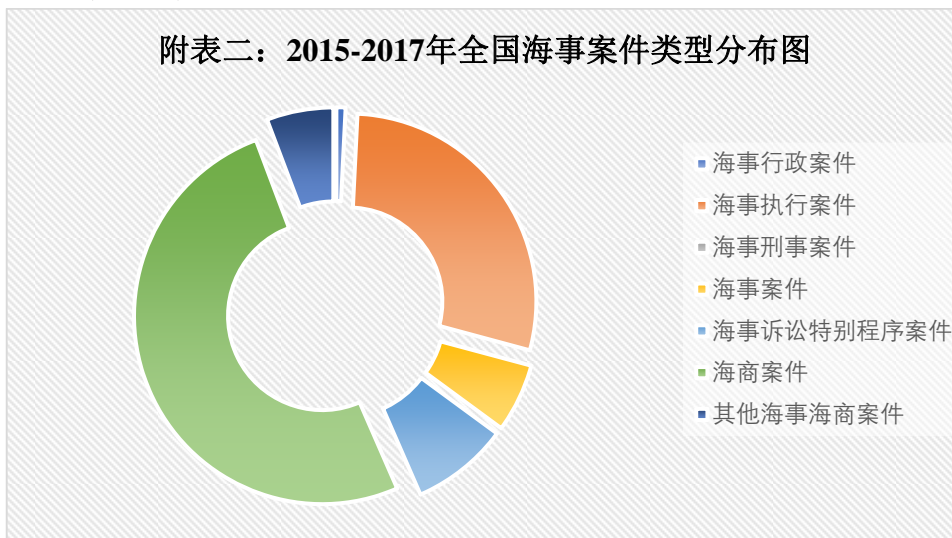


(二) 各类海事案件概况

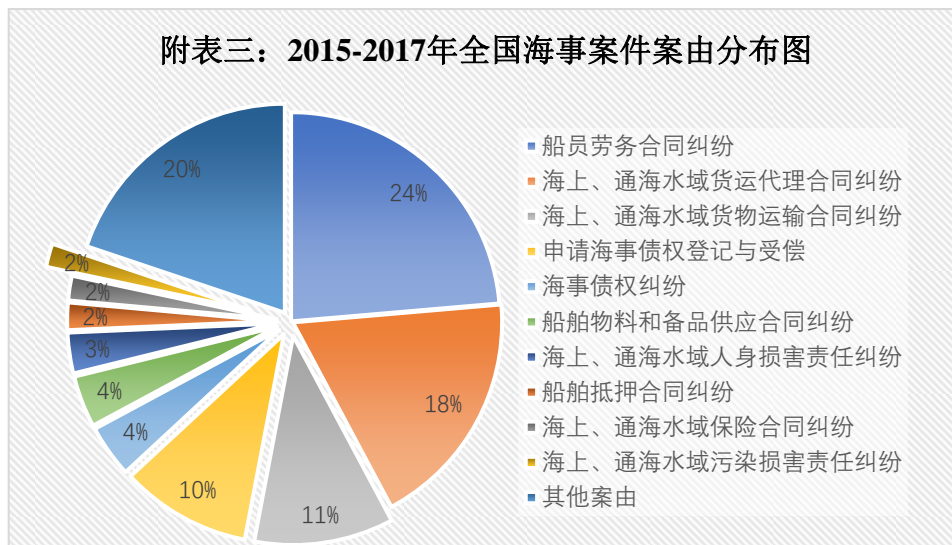
2015年至2017年，海事海商案件收案68445件，结案63901件。其中海商案件占比71.68%，海事诉讼特别程序案件占比11.86%，海事案件占比8.36%，其他海事

海商案件占比 8.10%。海事行政案件收案 1111 件，结案 766 件。海事刑事案件收结案 1 件。详见 2015—2017 年全国海事案件类型分布图（附表二）及 2015—2017 年全国海事案件案由分布图（附表三）。

附表二：2015-2017年全国海事案件类型分布图



附表三：2015-2017年全国海事案件案由分布图



（三）涉外涉港澳台案件情况

2015年至2017年，十家海事法院一审新收涉外案件5565件、涉港澳台案件2616件，合计8181件。审结涉外案件6769件、涉港澳台案件2626件，合计9395件，涉及七十多个国家和地区。

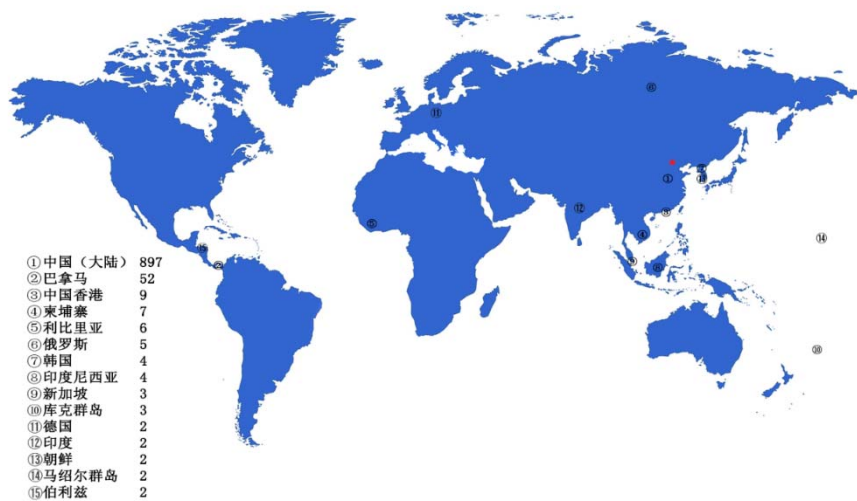
高级人民法院受理涉外案件404件、涉港澳台案件199件，合计603件。审结涉外案件445件、涉港澳台案件239件，合计684件。最高人民法院受理涉外案件101件，涉港澳台案件26件，合计127件。审结涉外案件97件、涉港澳台案件24件，合计121件。

全国共计受理涉外案件6070件、涉港澳台案件2841件，审结涉外案件5740件、涉港澳台案件2569件。案件所涉国家数量排名前十的依次为美国、塞浦路斯、马绍尔群岛共和国、丹麦、新加坡、韩国、法国、希腊、朝鲜、英国。详见2015—2017年全国新收海事海商案件所涉部分国别（地区）分布图（附表四）。



(四) 扣押、拍卖船舶情况

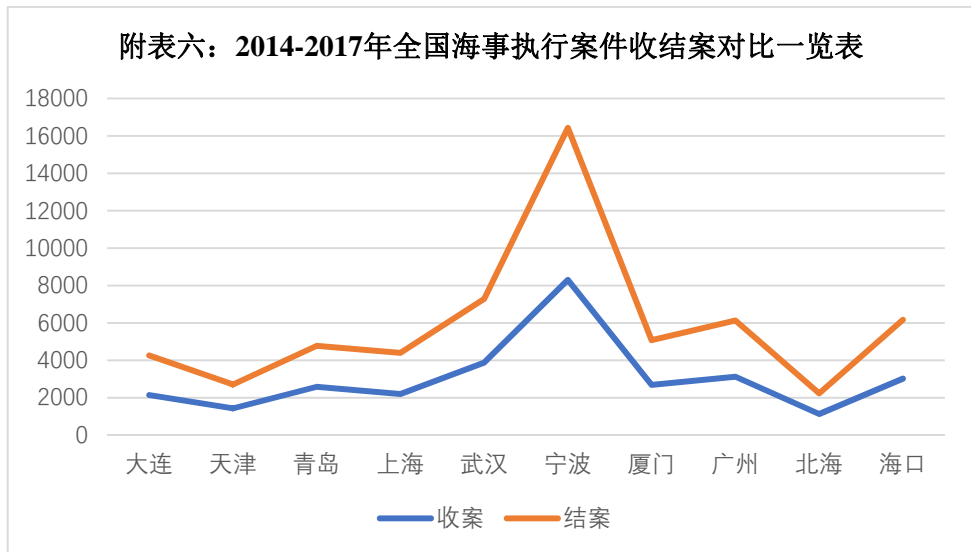
2015年至2017年,十家海事法院扣押船舶2355艘,其中外国籍船舶189艘,港澳台籍船舶174艘。拍卖船舶784艘,其中外轮33艘。除我国船舶以外,被扣押船舶数量前十的船旗国依次为巴拿马、柬埔寨、利比里亚、俄罗斯、韩国、印度尼西亚、新加坡、库克群岛、德国、印度等。详见2015—2017年全国海事法院扣押拍卖船舶所涉部分船旗国别(地区)分布图(附表五)。



(五) 执行情况

海事执行案件收案25316件,结案23894件。其中,新收涉外案件523件、涉港澳台案件505件,合计1028件。执结涉外案件725件、涉港澳台案件607件,合计1332件。详见2014—2017年全国海事执行案件收结案对

比一览表（附表六）。



二、加强海事审判工作，服务保障国家战略

最高人民法院周强院长 2016 年 3 月 13 日在第十二届全国人大四次会议做工作报告时郑重提出“加强海事审判工作，建设国际海事司法中心”。建设国际海事司法中心要以海事审判为抓手，高站位、大格局，着眼于中国特色社会主义事业发展全局，统筹国内国际两个大局，发挥海事审判职能在规范国际航运秩序、保护海洋生态环境、维护国家海洋权益等方面的积极作用。

（一）加强战略部署，强化海事审判服务保障职能

在新的国家战略背景下，统筹国际复杂形势和国内司法需求，最高人民法院制定《关于全面推进涉外商事海事审判精品战略为构建开放型经济体制和建设海洋强国提供有力司法保障的意见》（法〔2015〕205 号）、《关于人民法院服务和保障“一带一路”建设的若干意见》（法发〔2015〕9 号）、《关于司法服务和保障长江经济带发展的意见》（法发〔2016〕8 号）、《关于为自由贸易试验区建设提供司法保障的意见》（法发〔2016〕34 号）等多个司法文件，突出海事法院四个方面的职能，保障相关国家战略的实施：一是面向中华人民共和国管辖的全部海域，积极行使海事司法管辖权；二是依法公正解决涉海纠纷，促进海洋经济健康发展；三是积极发挥专业优势，积极参与

沿江沿海经济社会治理，服务保障民生；四是努力发挥中国司法对外的窗口功能，增强中国海事法治软实力。

（二）制定海事司法解释，规范统一裁判尺度

2015 年以来，最高人民法院先后发布了《关于扣押与拍卖船舶适用法律若干问题的规定》（法释〔2015〕6 号）、《关于海事法院受理案件范围的规定》（法释〔2016〕4 号）、《关于海事诉讼管辖问题的规定》（法释〔2016〕2 号）、《关于审理发生在我国管辖海域相关案件若干问题的规定（一）》（法释〔2016〕16 号）、《关于审理发生在我国管辖海域相关案件若干问题的规定（二）》（法释〔2016〕17 号）以及《关于审理海洋自然资源与生态环境损害赔偿纠纷案件若干问题的规定》（法释〔2017〕23 号）六个司法解释。其中，《关于扣押与拍卖船舶适用法律若干问题的规定》解决了《海事诉讼特别程序法》及其司法解释实施中出现的一些新情况、新问题。《关于海事法院受理案件范围的规定》及《关于海事诉讼管辖问题的规定》，明确了海事法院管辖海事行政案件及陆源污染海域案件的具体类型，扩大了海事案件的受案范围，海事法院的受案范围由原来的 63 类增加至 108 类，并对海事行政案件的类型进行了细化。《关于审理发生在我国管辖海域相关案件若干问题的规定》（一）（二）明确我国海事法院的司

法管辖权覆盖我国管辖的全部海域，内容涵盖了刑事、民事及行政诉讼三个领域，具有较强的综合性，同时根据涉海案件的特殊情况，规定了不同于陆地案件的处理规则。

《关于审理海洋自然资源与生态环境损害赔偿纠纷案件若干问题的规定》明确了自然资源与生态环境损害索赔诉讼的性质与索赔主体，细化了海洋自然资源与生态环境损害赔偿诉讼的特别规则，完善了生态损害赔偿制度。

（三）依法积极行使海事司法管辖权，维护当事人合法权益

全国海事法院根据《联合国海洋法公约》和我国国内法的规定，依法积极行使海事司法管辖权。上海海事法院2016年依法对发生在南海黄岩岛附近海域巴拿马籍“瑞生”轮（M/V FORTUNE LIFE）沉没海难事故相关纠纷行使司法管辖权。厦门海事法院先后于2015年、2016年审理发生在我国钓鱼岛附近海域的中国籍“闽霞渔 01971”轮与巴拿马籍“M/V YUSHAO HARUNA”轮船舶碰撞损害责任纠纷案、中国籍“闽晋渔 05891”轮与希腊籍“天使勇气”轮（M/V ANANGEL COURAGE）船舶碰撞损害责任纠纷案。宁波、海口海事法院于2016年受理发生在我国南沙群岛华阳礁附近沉船引起的船舶保险合同纠纷案。海事法院对钓鱼岛、黄岩岛、西沙群岛、南沙群岛及其附近海域

的海事案件行使司法管辖权，依法维护当事人合法权益。

（四）加强审理海洋环境污染责任纠纷案件，保障海洋生态文明建设

2015年至2017年，全国海事法院共审理涉及海洋环境污染责任纠纷案件1690件，其中“蓬莱19-3”钻井平台溢油事故引起的环渤海群体性索赔诉讼，涉及群众利益、社会稳定等复杂问题。天津海事法院邀请人大代表、政协委员、专家学者旁听，接受监督。同时，为了更好地向社会进行公开，利用法院官方微博进行全程直播。该案是蓬莱19-3钻井平台溢油事故系列案中首批受理并作出终审判决的案件。

（五）探索“三审合一”，努力完善海事审判机制

随着“一带一路”建设、海洋强国及长江经济带发展等重大国家战略的实施，我国海洋经济迅猛发展，海上活动更加频繁，新类型纠纷不断出现，对海事审判提出了更新更高的要求。最高人民法院在《关于全面深化人民法院改革的意见——人民法院第四个五年改革纲要（2014—2018）》中提出，要改革海事案件管辖制度，进一步理顺海事审判体制，科学确定海事法院管辖范围，建立更加符合海事审判规律的工作机制。海事法院以往以受理与海上贸易航运相关的民商事纠纷为主，继2016年最高人民法院将相关

海事行政案件纳入海事法院管辖范围之后，最高人民法院于2017年2月又指定宁波海事法院试点管辖海事刑事案件。宁波海事法院试点受理宁波“5·7”涉外海上交通肇事案[(2017)浙72刑初1号]，以被告马耳他籍“卡塔利娜”轮(M/V CATALINA)二副艾伦·门多萨·塔布雷(ALLAN MENDOZA TABLATE)犯交通肇事罪判处其有期徒刑三年六个月，一审宣判后被告人在上诉期内未提起上诉。“卡塔利娜”轮案是我国海事法院受理的首例海事刑事案件，该案的顺利审结，开启了我国海事审判“三审合一”的新篇章，为探索以民商事案件为主，合理涵盖其他领域案件的海事管辖制度改革做出了新的尝试。

(六) 加强培训调研工作，增强海事司法能力

海事审判具有专业技术性强、涉外因素多、法律关系复杂、国际影响大等特点，培养一支有能力站在国际海事司法理论和实践前沿的高层次海事审判队伍，是建设国际海事司法中心最重要的保障。三十多年来，中国法院培养了一批懂航海、通外语、精法律的专业化高学历的海事法官队伍。2015年2月4日，《最高人民法院关于全面深化人民法院改革的意见》施行以来，全国各级法院开展了法官员额制改革。截至2017年12月，全国海事法院员额法官320名，上诉审高级人民法院海事

审判岗位的员额法官 68 名。最高人民法院结合审判实践有针对性地开展各种业务培训，推动成立国家法官学院青岛海事分院，并以此为依托，定期举办全国法院国际海洋法律和海事审判实务培训班，解读国家战略、国际条约、法律法规，深入学习交流海事审判业务。利用海事法院与各大高校共建交流机制，不断创新人才培养方式，努力打造高素质国际化法官队伍。与大连海事大学共同设立“海事法官实践培训基地”，组织全国海事法官上船实习，丰富船舶构造、海上航行等专门性知识。与大连海事大学、上海海事大学和中国海洋大学联合设立海洋司法保护理论 research 基地，与中山大学合作共建国际海事法律研究基地，并先后设立国际海事司法广州、上海、浙江基地，在青岛设立国际海事司法研究基地。这些平台充分利用各自的区位优势 and 科研条件，促进海事司法理论的纵深研究，进而提升海事审判工作水平。充分发挥海事审判研讨会主阵地作用，定期举办海事审判研讨会，收集解答海事审判实务疑难问题，形成发现问题、解决问题的长效机制，积极促进海事法官业务能力的提升。

（七）扩大国际交流合作，提升海事审判国际影响力

随着海事审判发展，国际社会对中国海事审判关注与日俱增。在经济全球化时代，不断提升中国司法的公信

力和国际影响力，是建设国际海事司法中心的内在要求和重要标志，也是保障对外开放型经济新体制的客观需要。近年来，最高人民法院与相关国家建立司法交流与合作机制，不断深化司法合作。2017年6月第二届中国—东盟大法官论坛通过的《南宁声明》，推动了互惠原则在司法实践中的新发展。举办中英海事诉讼与海事仲裁研讨会，增进中英海事司法交流。履行《关于向国外送达民事或商事司法文书和司法外文书公约》《关于从国外调取民事或商事证据的公约》等一系列国际司法协助多边条约义务，开通全国四级法院联网的国际司法协助信息化管理平台，在线办理跨境送达、调查取证等司法协助请求，国际司法协助效率明显提升。

（八）加快信息化建设，全面打造“智慧法院”

中共中央办公厅、国务院办公厅于2016年7月联合发布了《国家信息化发展战略纲要》，明确提出“智慧法院”的建设目标，人民法院信息化建设成为国家信息化发展战略的重要组成部分。2016年9月，最高人民法院在大连召开了《全国海事法院派出法庭工作暨信息化建设会议》，专门部署海事司法信息化建设，推动法院信息化与审判工作的全面融合，为促进海事审判体系和审判能力现代化、提升海事司法能力和水平提供坚实的科技支撑。全国海事

法院根据最高人民法院的总体部署，大力推进“互联网+诉讼服务”建设，积极探索网上立案、案件查询、电子送达、网上阅卷、监督建议等功能，便利当事人诉讼；大力开展网上办案，为中外当事人提供优质海事司法服务；全面强化网络公开，及时以英文等发布中国海事司法动态、海事案例，为国内外当事人和专家学者查询研究创造便利条件，有力提升中国海事审判的国际影响力。2016年底，改版后的中国涉外商事海事审判网上线运行。2017年6月，最高人民法院将上海海事法院确立为智慧海事法院（上海）实践基地。各海事法院积极打造审判流程公开、执行信息公开、裁判文书公开以及庭审公开四大平台，推进法院信息化建设，提升司法透明度。开放运用网络诉讼服务平台，开通微博、微信公众号，开展各项诉讼活动，拓展新媒体等公开开庭宣传渠道，充分传播中国海事司法好声音。各级法院的努力受到权威第三方评估机构的关注。自2014年起，中国社会科学院法学研究所每年对外发布年度中国海事司法透明度指数报告。根据2015-2017年《中国海事司法透明度指数报告》，中国海事司法透明度稳步提升，国际影响力不断扩大，海事典型案例和审判白皮书的公开程度明显提高。

三、明确裁判规则，引导行业发展

近年来，全国海事审判队伍紧紧围绕海洋强国、“一带一路”建设、长江经济带发展与自由贸易试验区建设，充分发挥海事审判职能作用，在维护国家海洋权益、引领国际海事规则、提升海事审判理念、统一海事审判尺度等方面取得新进展，形成一批具有典型意义的海事案例。2015年以来，最高人民法院先后发布了海事法院扣押和拍卖船舶十大典型案例，两批涉“一带一路”建设典型案例，2016、2017年海事审判十大典型案例，有力推动了裁判尺度的统一。

（一）《1989年国际救助公约》和《海商法》均允许当事人对救助报酬的确定另行约定

交通运输部南海救助局与阿昌格罗斯投资公司（Archangelos Investments E.N.E.）、香港安达欧森有限公司上海代表处海难救助合同纠纷案[(2015)民申字第3182号]入选“2016年推动法治进程十大案件”。在该案中，海难救助合同的双方当事人明确约定，无论救助是否成功，阿昌格罗斯投资公司均应支付报酬，且以救助船舶每马力小时和人工投入等作为计算报酬的标准。最高人民法院认为，此种救助合同并非《1989年国际救助公约》和《海

商法》规定的“无效果无报酬”的救助合同，而属雇佣救助合同。在《1989年国际救助公约》和《海商法》均允许当事人对救助报酬的确定另行约定，而又对雇佣救助合同没有具体规定的情况下，应适用《中华人民共和国合同法》的相关规定明确当事人的权利义务。

（二）海事请求人可以依法申请扣押和拍卖光船租赁的船舶

根据我国《海事诉讼特别程序法》规定，可以因光船承租人的债务，扣押光船租赁的当事船舶。由于债务人并非船舶所有人，司法实践中对能否拍卖被扣押的光船租赁船舶，产生了“能扣就能卖”“能扣不能卖”等不同意见。《最高人民法院关于扣押与拍卖船舶适用法律若干问题的规定》借鉴1999年《国际扣船公约》等国际公约，参考世界主要航运大国法律，综合考虑我国外贸及航运发展实际情况，明确了因光船承租人的债务而被扣押的光租船舶，海事请求人可以依据《海事诉讼特别程序法》第29条的规定，申请拍卖。

在五矿国际货运有限责任公司申请扣押“海芝”（M/V HAIZHI）轮案〔（2002）甬海温保字第1号〕中，债务人海南龙珠船务有限公司在光租经营“海芝”轮期间欠下债务，而该轮的登记所有人是圣文森特和格林纳丁斯的力涛

航运有限公司。宁波海事法院通过扣押并最终拍卖“海芝”轮，保障了债权人合法权益。

（三）海上运输保险合同中的“一切险”，除包括平安险和水渍险的各项责任外，还包括被保险货物在运输途中由于外来原因所致的全部或部分损失

海南丰海粮油工业有限公司诉中国人民财产保险股份有限公司海南省分公司海上货物运输保险合同纠纷案入选最高人民法院指导性案例（第 52 号）。该案生效判决明确：海上货物运输保险合同中的“一切险”，除包括平安险和水渍险的各项责任外，还包括被保险货物在运输途中由于外来原因所致的全部或部分损失；在被保险人不存在故意或者过失的情况下，由于相关保险合同中除外责任条款所列明情形之外的其他原因，造成被保险货物损失的，可以认定属于导致被保险货物损失的“外来原因”，保险人应当承担运输途中由该外来原因所致的一切损失。

（四）《海商法》第 55 条规定的货物实际价值不包括市价损失

哈池曼海运公司（Hachiman Shipping S.A.）与上海申福化工有限公司、日本德宝海运株式会社（Dorval Kaiun K.K.）海上货物运输合同货损赔偿纠纷案[（2013）民提字第 6 号]，各当事人均同意适用我国《海商法》处理该

案纠纷。根据我国《海商法》第 55 条的规定，承运人对责任期间货物损坏的赔偿额，按照货物受损前后实际价值的差额或者货物的修复费用计算。一审判决以货物修复费用计算货损赔偿额，但根据查明的事实，该案受损货物并未实际修复。二审采用实际价值差额法，但未扣除因货物市价下跌造成的损失。最高人民法院再审判决采用货物贬值率的计算方式，认定涉案货物的赔偿额，排除了市场价格波动对货损赔偿额的影响，符合《海商法》第 55 条规定的精神，明确了货损赔偿额的计算规则。

（五）《1992 年国际油污损害民事责任公约》下的环境损害赔偿限于合理恢复措施的费用

在大连市海洋与渔业局与昂迪玛海运有限公司（Ondimar Transportes Maritimos Ltda）、博利塔尼亚汽船保险协会（The Britannia Steam Ship Insurance Association Limited）海域污染损害赔偿纠纷案[(2015)民申字第 1637 号]中，最高人民法院根据条约用语通常所具有的含义按其上下文并参照条约的目的及宗旨进行善意解释，明确《1992 年国际油污损害民事责任公约》下的环境损害赔偿限于合理恢复措施的费用（含监测评估费用），确保国际条约适用的统一性、稳定性和可预见性，对于指导依法行使海洋环境监督管理权的部门准确索赔类似海洋生态

损害具有示范意义。

（六）承运人有合理依据判断货物不适合安全运输的，可以拒绝装运或者采取合理措施

我国作为经修正的《1974年国际海上人命安全公约》的缔约国，应强制适用《国际海运固体散装货物规则》（以下简称《散货规则》）。在徐州天业金属资源有限公司与圣克莱蒙特航运股份公司（San Clemente Shipping, S.A.）、东京产业株式会社（Tokyo Sangyo Kaisha, Ltd.）海上货物运输合同纠纷案〔（2015）民申字第1896号〕中，最高人民法院合理解读《散货规则》的体系和相关条款的文义，从维护海运安全的价值取向出发，认定《散货规则》规定的适运水分极限（TML）系指整批货物的 TML（而不仅仅是其中细小颗粒的 TML），货物是否适运应当对比整批货物的含水量与整批货物的 TML；在托运人没有提供检验报告载明整批货物的含水量与整批货物的 TML 情况下，承运人有合理依据判断货物不适合安全运输的，可以拒绝装运或者适时采取卸载、晒货等合理措施，以保障航行安全。

（七）集装箱超期使用费索赔的诉讼时效从集装箱免费期届满之日的次日开始起算

随着全球贸易增速的放缓，航运市场也经历了持续的

低迷，导致大量海事纠纷的产生，其中集装箱超期使用费纠纷近年来在海事案件中所占比例不断上升，其间出现的问题也不断增加，包括法律关系的界定、滞箱费的计算标准、诉讼时效的起算等，司法实践的标准不尽相同，导致相关航运企业在实务操作中无章可循。在 A.P.穆勒-马士基有限公司（A.P. Moller-Maersk A/S）与上海蝉联携运物流有限公司深圳分公司、上海蝉联携运物流有限公司海上货物运输合同集装箱超期使用费纠纷案[（2015）民提字第 119 号]中，最高人民法院对集装箱超期使用费纠纷的性质和诉讼时效问题作出了明确认定：收货人没有提取集装箱货物长期占用不还箱，导致承运人为履行运输合同提供的集装箱无法投入正常周转，构成违约；承运人可以根据海上货物运输合同关系就迟延履行归还集装箱的义务所造成的违约损失向义务人提出集装箱超期使用费的赔偿请求；此类纠纷的诉讼时效期间为一年，从集装箱免费使用期限届满次日开始起算。

（八）托运人主张根据《合同法》第 308 条的规定变更海上货物运输合同，难以实现或者将严重影响承运人正常运营的，承运人可以拒绝托运人的请求

海上货物运输具有运输量大、航程预先拟定、航线相对固定等特殊性质，托运人要求改港或者退运的请求有时不

仅不易操作，还会妨碍承运人的正常营运或者给其他货物的托运人或收货人带来较大损害。在此情况下，如果要求承运人无条件服从托运人变更运输合同的请求，显失公平，也不利于航运业的发展。

在浙江隆达不锈钢有限公司诉 A.P.穆勒-马士基有限公司（A.P. Moller-Maersk A/S）海上货物运输合同纠纷案〔（2017）最高法民再 412 号〕中，最高人民法院合理平衡海上货物运输合同中各方当事人之利益，明确合同法第 308 条在海上货物运输中的适用规则，对于海商法的完善起到积极的推动作用。

（九）船舶建造保险单的保险责任范围应结合相应的造船合同文本，根据保险单和保险条款确定

我国是海运大国，也是造船大国。多年来我国持有造船订单和实际造船总载重吨位一直位居世界前列，中国人民财产保险股份有限公司船舶建造保险条款是中国国内各保险公司普遍采用的标准条款，目前实践中对其中部分条款产生较大争议和系列诉讼。

中国人民财产保险股份有限公司航运保险运营中心与泰州三福船舶工程有限公司船舶建造保险合同纠纷案〔（2017）最高法民再 242 号〕的焦点是如何理解保险条款中约定承保的“保险船舶任何部分因设计错误而引起的损

失”的含义，还涉及船舶设计错误和有关损失赔偿的认定等一系列比较复杂的法律适用和海事专门技术问题。最高人民法院再审本案，逐一厘清了船舶建造险的法律适用规则、保险条款的解释方法、船舶设计错误及有关损失的认定依据，积极回应了船舶建造业与保险业长期争执不休的法律热点问题，对于指导全国法院其他同类纠纷案件的公正审理、规范相关市场主体的履约行为、促进航运保险业稳定健康发展，均具有积极作用。

（十）无人认领船舶和船载货物，可在公告期间裁定提前拍卖，保留所得款项

温州海事局申请认定财产无主案[(2016)浙72民特728号]是宁波海事法院首例认定海上财产无主案件。能否在公告期间拍卖、变卖财产，法律未作规定。因船舶及船载货物存在保管困难等特殊性和特殊性，不及时处置，将导致费用持续发生，减损财产价值。宁波海事法院根据《海事诉讼特别程序法》有关诉讼中拍卖船舶和船载货物的规定，在公告期间裁定提前拍卖无名船舶及船载油品，减轻了执法部门因保管和处置船舶及船载货物而带来的财力负担，防止船舶发生安全或者环境危险。本案的妥善审理，为有效解决无人认领、无人管控船舶及船载货物处置难、保管难、风险大的问题，提供了一条可行的司法途径。

（十一）船舶触碰码头责任事故中码头限期清障费用请求为限制性海事赔偿请求

《最高人民法院关于审理海事赔偿责任限制相关纠纷案件的若干规定》第 17 条的规定仅涉及沉没、遇难、搁浅或被弃船舶和船上货物清除打捞费用的请求以及船舶之间碰撞所引起的相关追偿，不涵盖码头残骸等其他沉物清除打捞费用的请求及船舶触碰码头和其他设施所引起的相关追偿。最高人民法院审理的广东仁科海运有限公司与中国石化销售有限公司上海分公司罗泾油库船舶触碰损害责任纠纷案[(2014)民提字第 191 号]，明确了在船舶触碰码头责任事故中就码头限期清障的费用向船舶追偿，要求船舶所有人承担触碰损害赔偿赔偿责任，应适用《海商法》第 207 条第 1 款第 1 项的规定，认定为限制性海事赔偿请求。

（十二）长期超航区航行、不办理签证航行、船员无相关证书的，将导致船舶所有人丧失限制海事赔偿责任的权利

海事赔偿责任限制制度是海商法中独具特色且历史渊源悠久的法律制度之一。世界各主要海运国家均规定了海事赔偿责任限制制度，并通过《1976 年海事赔偿责任限制公约》等国际公约的制定不断致力于该制度的国际统一。

我国海商法坚持与国际公约对接的立法精神，充分借鉴吸收国际公约的规定，形成了具有中国特色的海事赔偿责任限制制度。长期以来，国际上对海事赔偿责任限制权利的丧失多持严格的标准和审慎的态度，打破海事赔偿责任限制的案例较少。

毛雪波诉陈伟、嵊泗县江山海运有限公司船舶碰撞损害赔偿责任纠纷案[(2016)最高法民申1487号]明确，判断海事赔偿责任限制权利是否丧失，应综合考量船舶所有人等责任人本人是否对损害结果的发生具有故意，或者明知可能造成损失而轻率地作为或者不作为。但诸多严重违法航行行为(如无证航行、超航区航行、不办理签证航行、肇事后擅自驶离现场等)的集合和长期、屡次或反复实施，可能足以推定船舶所有人等责任人本身构成“明知可能造成损失而轻率地作为或者不作为”。因此，对于严重违法航行的，应当综合行为的内容、性质及违法的严重程度等因素，认定责任人是否丧失海事赔偿责任限制权利。

(十三) 因船舶设计上的潜在缺陷导致船舶沉没的，承运人可以依据法律规定不负赔偿责任

绍兴县金斯顿针纺织有限公司诉商船三井株式会社(Mitsui O.S.K. Lines, Ltd.)海上货物运输合同纠纷案[(2016)浙民终480号]系我国首次适用《海商法》第51

条第 1 款第 11 项的规定判决承运人免责的案件。因涉案船舶沉没无法打捞,船上数据已随船舶一起沉没,该案一、二审法院根据日本船级社等机构对事故船姊妹船的调查报告和专家证人意见,结合船舶正常检验和保养中未发现设计缺陷等事实,认定涉案船舶沉没原因系因经谨慎处理仍未发现的船舶潜在缺陷所致,承运人商船三井株式会社可以依据法律规定不负赔偿责任。

(十四) 船舶所有人不因其雇佣的船长、船员的故意或轻率行为而丧失赔偿责任限制的权利

镇江市自来水公司诉韩国开发银行投资有限公司 (KDB Capital Co, Ltd) 水污染损害赔偿纠纷案[(2015)鄂民四终字第 00060 号], 在认定投资公司应当对事故造成的损失承担赔偿责任的同时,准确适用《海商法》和《最高人民法院关于审理海事赔偿责任限制相关纠纷案件的若干规定》,对船舶所有人的行为后果与其雇佣人员或代理人的行为后果予以区分,认定投资公司作为船舶所有人不因其雇佣的船长、船员的故意或轻率行为而丧失赔偿责任限制的权利。

(十五) 货物在目的港因超过存储期限无人提取而被海关当局作为弃货处理,承运人依法可以免除交付货物责任

广州海德国际货运代理有限公司与福建英达华工贸有限公司海上货物运输合同纠纷案[(2017)粤民终 387号], 二审法院依法审查采信域外证据, 认定涉案货物在目的港码头因超过存储期限无人提取而被海关当局作为弃货处理, 承运人可以免除责任, 不构成无单放货, 判决驳回托运人的诉讼请求, 实现了程序公正与实体公正的统一。

(十六) 承运人是否行使留置权并非其向托运人索赔运输费用的必要条件

招商局物流集团(天津)有限公司与以星综合航运有限公司(ZIM Integrated Shipping Services Ltd)、合肥索尔特化工有限公司海上货物运输合同纠纷案[(2017)津民终 320号], 二审法院认为: 涉案提单系以星航运公司基于招商物流公司按照订舱协议提出的订舱要求所签发, 虽提单记载托运人并非招商物流公司, 但以星航运公司仍有权按照由订舱所形成的运输合同法律关系向订舱的托运人主张权利, 当货物在目的港无人提货时, 以星航运公司有权向合同相对方招商物流公司主张相应权利。承运人留置货物仅为其主张债权的方式之一, 未留置货物并不影响承运人向托运人主张相关费用的权利。

结束语

自 1984 年设立海事法院以来，我国海事司法工作在制度建设、机构体系、司法能力、国际影响等各方面均取得长足进展，国际海事司法中心建设的历史条件初步形成。紧扣国际国内形势，党的十九大提出“坚持陆海统筹，加强建设海洋强国”，以“一带一路”建设为重点，推动形成全面开放新格局，实现中华民族伟大复兴。国际海事司法中心建设迎来了新的战略机遇和挑战。站在新的历史起点上，我们必须坚定信念，立足本职，真抓实干，以习近平新时代中国特色社会主义思想为指导，以建设国际海事司法中心为己任，不断提升审判能力，增强我国海事审判的国际公信力和影响力，争取在全面建设社会主义现代化强国的伟大事业中发挥积极作用。

Preface

China is a major maritime country with extensive maritime interests. Building a strong maritime country is a crucial component of the cause of socialism with Chinese characteristics. Maritime adjudication is of vital importance in serving and ensuring the construction of a strong maritime country. Through over three decades of development, China is second to none in terms of the number of maritime judiciaries, and the quantity of maritime cases. The Supreme People's Court convened a Symposium on the 30th Anniversary of China's Maritime Adjudication on 2nd September, 2014, released the China's Maritime Adjudication White Paper (1984-2014), reviewed the remarkable achievements of maritime adjudication in the past three decades, and declared that China had become a maritime judicial pivot in Asia-Pacific.

China has embarked on a new journey in the new era, which necessitates new actions. General Secretary Xi Jinping advocated in the Report of 19th CPC Congress that “we will pursue coordinated land and marine development, and step

up efforts to build China into a strong maritime country”, and pointed out the direction of the construction of a strong maritime country. In the wake of gradual progress of the Belt and Road Initiative, and transfer of the international shipping pivot towards Asia-Pacific region and China, further enhancement of international status and influences of China’s maritime justice has become an urgent and realistic task, an inevitable development trend and a due responsibility of a major country. Hence, the Supreme People’s Court puts forward the new objective as to build an international maritime judicial center.

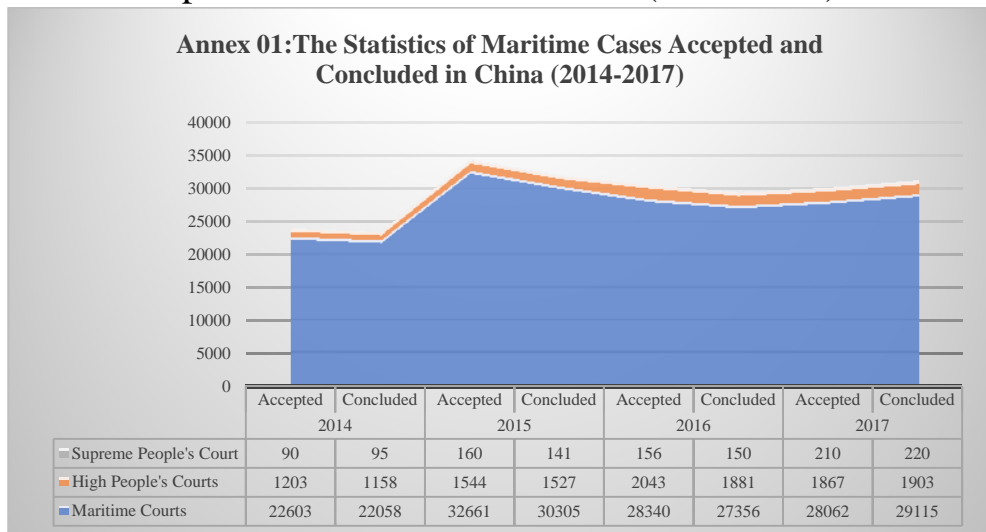
Since 2015, maritime adjudication nationwide is carried out strictly consistent with the overall layout of the Party and the government through scientific planning and considerate deployment. China has formulated specific instructions and judicial interpretation to serve and secure the implementation of national strategies, including National Ocean Strategy, Belt and Road Initiative, Development of Yangtze River Economic Belt, Construction of Pilot Free Trade Zones and Free Trade Ports with Chinese Characteristics. China is giving full play to maritime adjudication and a great number of maritime cases with widespread international influences have been dealt and

enforced. China is attaching importance to the development of “smart courts”, expanding international cooperation and exchanges, and making new headway on maritime adjudication in all aspects.

I. General Introduction of Maritime Adjudication Nationwide

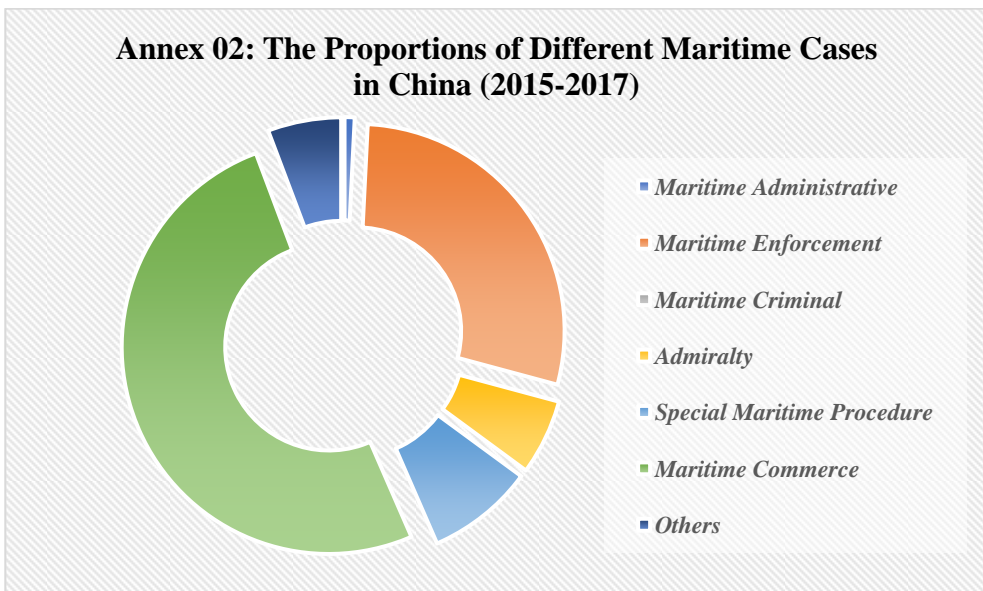
1. Overall situation

From 2015 to 2017, courts at three levels nationwide (Maritime Court-High People’s Court in the place where the Maritime Court is located-Supreme People’s Court) accepted 95,043 cases of admiralty, maritime commerce, maritime administration, special maritime procedure and maritime enforcement. 92,598 cases have been heard, enforced and settled. Generally speaking, the number of cases being accepted and completed annually from 2015 to 2017 is considerably higher than that in 2014, reaching more than 29,000 every year. See Annex 01: The Statistics of Maritime Cases Accepted and Concluded in China (2014-2017).

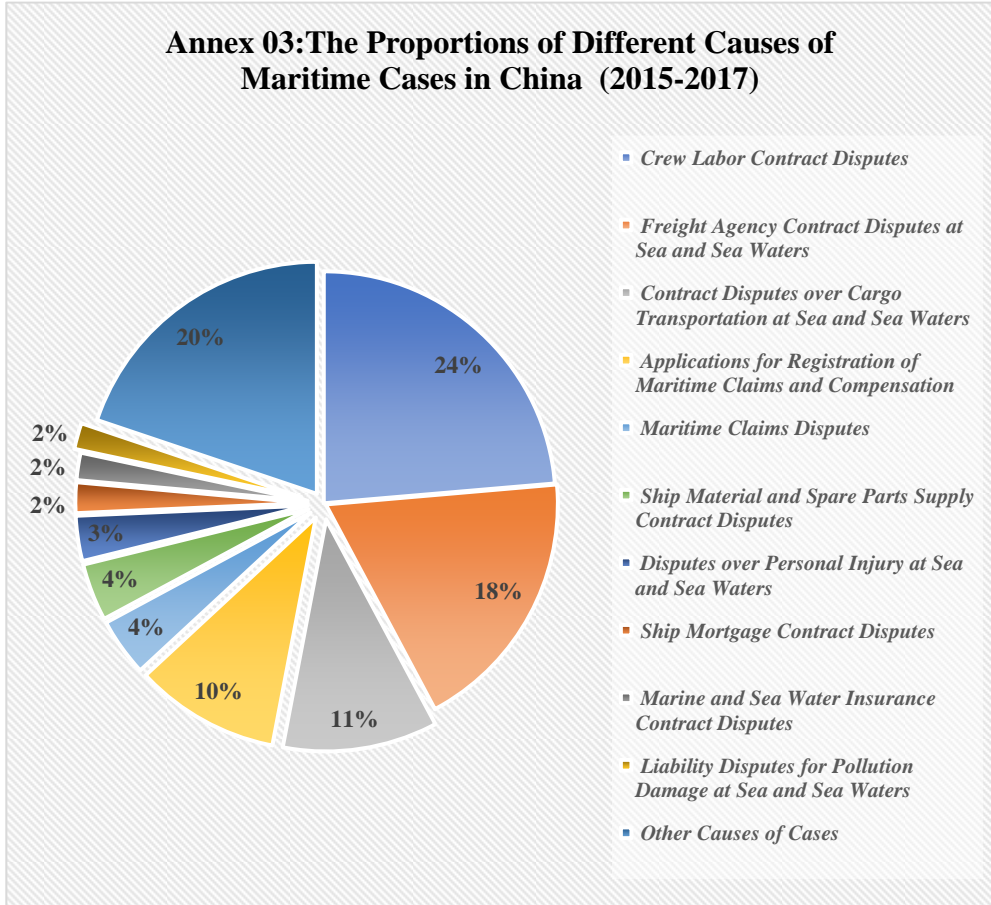


2. Brief introduction of maritime cases by category

68,445 cases of admiralty and maritime commerce were accepted, and 63,901 cases had been concluded, 71.68% of which were cases of maritime commerce, 11.86% of which were cases of special maritime procedure, 8.36% of which were cases of admiralty and 8.10% of other maritime cases. 1,111 maritime administrative cases were accepted, 766 of which had been concluded. One maritime criminal case was accepted and concluded. See Annex 02: The Proportions of Different Maritime Cases in China (2015-2017) and Annex 03: The Proportions of Different Causes of Maritime Cases in China (2015-2017).



Annex 03: The Proportions of Different Causes of Maritime Cases in China (2015-2017)



3. Situation of cases involving Hong Kong, Macao, Taiwan and foreign affairs

From 2015 to 2017, 5,565 cases involving foreign affairs and 2,616 cases involving Hong Kong, Macao and Taiwan affairs, totaling 8,181 cases, were accepted by the ten maritime courts. 6,769 cases involving foreign affairs and 2,626 cases involving Hong Kong, Macao and Taiwan affairs, totaling 9,395 cases, were concluded after being heard,

covering more than 70 countries and regions.

The High People's Court accepted 404 cases involving foreign affairs and 199 cases involving Hong Kong, Macao and Taiwan affairs, 603 cases in total; concluded 445 cases involving foreign affairs and 239 cases involving Hong Kong, Macao and Taiwan affairs, 684 cases in total. The Supreme People's Court accepted 101 cases involving foreign affairs and 26 cases involving Hong Kong, Macao and Taiwan affairs, 127 cases in total; concluded 97 cases involving foreign affairs and 24 cases involving Hong Kong, Macao and Taiwan affairs, 121 cases in total.

6,070 cases involving foreign affairs and 2,841 cases involving Hong Kong, Macao and Taiwan affairs were accepted; 5,740 cases involving foreign affairs and 2,569 cases involving Hong Kong, Macao and Taiwan affairs were concluded throughout the nation. The country that is the most frequently involved in the above mentioned cases is the United States, followed by Cyprus, the Republic of Marshall Island, Denmark, Singapore, the Republic of Korea, France, Greece, the Democratic People's Republic of Korea and the United Kingdom. See Annex 04: The Distribution Map of

Countries (Districts) Involved in Accepted Maritime Cases in China (2015-2017).



4. Situation of vessel seizure and auction

From 2015 to 2017, 2,355 vessels were seized by the ten maritime courts, including 189 foreign-flagged vessels and 174 vessels registered in Hong Kong, Macao and Taiwan. 784 vessels were auctioned, including 33 foreign vessels. Apart from Chinese vessels, flag countries on the top lists of quantity of seized vessels are: Panama, Cambodia, Liberia, Russia, the Republic of Korea, Indonesia, Singapore, the Cook Islands, Germany, India, etc. See Annex 05: The Distribution Map of Countries (Districts) of Flag of Ships Seized and

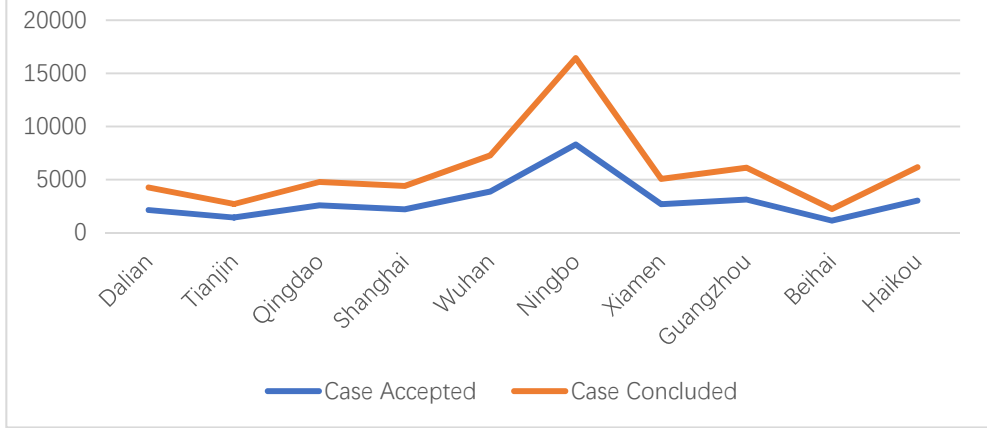
Auctioned in China Maritime Courts (2015-2017).



5. Situation of enforcement

25,316 cases of maritime enforcement were accepted, and 23,894 cases were enforced, wherein 523 foreign-related cases and 505 cases involving Hong Kong, Macao and Taiwan affairs, 1,028 cases in total, were accepted; 725 foreign-related cases and 607 cases involving Hong Kong, Macao and Taiwan affairs, 1,332 cases in total, were enforced. See Annex 06: The Statistics of Maritime Enforcement Cases Accepted and Concluded in China (2014-2017).

Annex 06: The Statistics of Maritime Enforcement Cases Accepted and Concluded in China (2014-2017)



II. Enhancing the role of Maritime Adjudication to Serve and Safeguard National Strategy

Chief Justice Zhou Qiang, President of the Supreme People's Court, solemnly declared when making the work report at the 4th Session of the 12th National People's Congress on 13th March 2016 that “we will reinforce maritime adjudication and build an international maritime judicial center”. The construction of an international maritime judicial center should be driven by maritime adjudication and guided by a far-reaching and broad perspective, focus on the overall layout of the cause of socialism with Chinese characteristics, strike a balance between the situations at home and abroad, and give full play to the positive roles of maritime adjudication in standardizing international shipping order, preserving maritime ecological environment and defending national maritime rights and interests, etc.

1. Enhancing strategic deployment to improve safeguarding functions of maritime adjudication

In light of the new national strategy, the complicated international situation and domestic judicial requirements,

the Supreme People's Court promulgated a number of judicial documents, including *The Opinions of the Supreme People's Court on Comprehensively Carrying Forward the Strategy of Producing Fine Works on the Trial of Cases involving Foreign-related Commercial and Maritime Affairs to Provide Effective Judicial Safeguard for Establishing the Open Economic System and Building up a Maritime Power* (Fa [2015] No. 205), *The Opinions on How Courts Provide Judicial Service and Protection on the Belt and Road Initiative* (Fa Fa [2015] No. 9), *The Opinions on Providing Judicial Service and Protection on the Development of Yangtze River Economic Belt* (Fa Fa [2016] No. 8), and *The Opinions on Providing Judicial Protection for the Construction of Pilot Free Trade Zones* (Fa Fa [2016] No. 34), underlining four roles of a maritime court in securing the implementation of concerned national strategies: **Firstly**, actively exercising maritime judicial power over the entire maritime area within the jurisdiction of the People's Republic of China; **Secondly**, settling maritime disputes legitimately and fairly to promote healthy development of maritime economy; **Thirdly**, actively developing its advantages in expertise, taking the initiative to

get involved in economic and social governance in riverside and coastal areas to serve and protect local livelihoods; **Fourthly**, acting as a window for external judicial exchanges and enhancing the soft power of China's rule of maritime law.

2. Formulating maritime judicial interpretations to standardize adjudicative criterion

Since 2015, the Supreme People's Court successively published 6 judicial interpretations, namely, *Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Seizure and Auction of Ships* (Fa Shi [2015] No. 6), *Provisions of the Supreme People's Court on the Scope of Cases to be Accepted by Maritime Courts* (Fa Shi [2016] No. 4), *Provisions of the Supreme People's Court on the Jurisdiction of Maritime Litigation* (Fa Shi [2016] No.2), *Provisions of the Supreme People's Court on Several Issues concerning the Trial of the Relevant Cases Occurring in Sea Areas under the Jurisdiction of China (I)* (Fa Shi [2016] No. 16), *Provisions of the Supreme People's Court on Several Issues concerning the Trial of the Relevant Cases Occurring in Sea Areas under the Jurisdiction of*

China (II) (Fa Shi [2016] No. 17), *Provisions on Several Issues Concerning the Trial of Cases of Compensation Disputes Arising from Maritime Natural Resource and Eco-Environment Damage* (Fa Shi [2017] No. 23). Among these, *Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Seizure and Auction of Ships* solved some new situations and issues occurred from the implementation of the *Special Maritime Procedure Law of the Peoples Republic of China* and its judicial interpretation. *Provisions of the Supreme People's Court on the Scope of Cases to be Accepted by Maritime Courts* and *Provisions of the Supreme People's Court on the Jurisdiction of Maritime Litigation* clarified specific categories of maritime administrative cases and the cases of marine pollution from land-based sources under the jurisdiction of maritime courts and enlarged the scope of cases subject to maritime adjudication, by expanding the jurisdiction of maritime courts from the previous 63 categories to the current 108 categories of cases, and further detailing the types of maritime administrative cases. *Provisions of the Supreme People's Court on Several Issues concerning the Trial of the*

Relevant Cases Occurring in Sea Areas under the Jurisdiction of China (I) (II) clarified that all the cases arising from the sea area were under the jurisdiction of Chinese maritime courts covering criminal, civil and administrative litigation and a unique handling rule was created according to the specific condition of maritime cases which was different with that of land-based cases. *Provisions on Several Issues Concerning the Trial of Cases of Compensation Disputes Arising from Maritime Natural Resource and Eco-Environmental Damage* defined the nature and claimant for the compensation in ocean resource and eco-environmental damage litigation, elaborated the special rules applicable to ocean resource and eco-environmental damage litigation, and perfected the system of ecological damage compensation.

3. Actively exercising maritime judicial jurisdiction and protect legitimate rights and interests of litigants

Maritime courts nationwide are actively exercising maritime jurisdiction in conformity with the *United Nations Convention on the Law of the Sea* and domestic laws. In 2016, Shanghai Maritime Court exercised jurisdiction over disputes arising from a maritime incident of the sunken

Panama-flagged Vessel M/V FORTUNE LIFE occurred in sea area around Huangyan Island in the South China Sea. Xiamen Maritime Court heard the case of collision between the Chinese Vessel M/V MIN XIA YU 01971 and the Panamanian Vessel M/V YUSHAO HARUNA in 2015, and heard the case of collision between the Chinese Vessel M/V MIN JIN YU 05891 and the Greek Vessel M/V ANANGEL COURAGE in 2016 occurred in sea area around the Diaoyu Islands of China. In 2016, Maritime courts in Ningbo and Haikou accepted the marine insurance case arising from a shipwreck in sea area around the Huayang Reef of the Nansha Islands. Maritime courts in China exercised jurisdiction over maritime cases happened around the Diaoyu Islands, Huangyan Island, Xisha Islands and Nansha Islands to protect the legitimate rights and interests of parties according to the law.

4. Emphasizing adjudication of the cases in relation to dispute over liability from ocean pollution to safeguard marine ecological civilization construction

From 2015 to 2017, maritime courts nationwide heard 1,690 cases in relation to dispute over liability from ocean

pollution, including the lawsuit filed by groups of fishermen resulting from “Penglai 19-3” oil spill incident in Bohai Bay, which involved a range of complicated issues including public benefits and social stability. When hearing the case, Tianjin Maritime Court invited NPC and CPPCC deputies, experts and scholars to observe and supervise the trial. In the meanwhile, to ensure transparency, live streaming of the entire trial of the case was made available on the official Weibo account of the Court. The case is among the first batch of cases in the “Penglai 19-3” oil spill incidents accepted and concluded with a final judgment by court.

5. Exploring “Three in One” Trial of Civil, Administrative and Criminal Cases Involving Maritime Issues in Courts to perfect maritime adjudicative mechanism

In the wake of the implementation of significant national strategies, such as the Belt and Road Initiative, National Ocean Strategy and Development of Yangtze River Economic Belt, China is witnessing substantial growth of marine economy and more frequent maritime activities on one hand, and facing new disputes on the other hand, which required a higher level of maritime adjudication. In the *Opinions of the*

Supreme People's Court on Comprehensive Deepening of Reform of People's Courts – The 4th Five-Year Outline of the Program for Reform of People's Courts (2014-2018), the Supreme People's Court points out that “the system of jurisdiction over maritime cases should be reformed; the system of maritime justice shall be further rectified; the scope of jurisdiction of maritime courts shall be scientifically defined, and working mechanisms better conformed to maritime trial shall be established.” In the past, maritime courts were mainly engaged in handling civil and commercial disputes related to maritime trade and shipping. In 2016, the Supreme People's Court incorporated maritime administrative cases into the jurisdiction of Maritime courts. In February 2017, the Supreme People's Court designated Ningbo Maritime Court as a pilot court to accept maritime criminal cases. As a pilot court, Ningbo Maritime Court accepted and heard the “5.7 Ningbo Foreign-Related Maritime Traffic Accident Case” [(2017) Zhe 72 Xing Chu No.1], and condemned that Mr. Allan Mendoza Tablate, the second officer of the Malta-flagged Vessel M/V CATALINA, the defendant committed crime of traffic accident and was sentenced to a

fixed-term of imprisonment of three years and six months. The defendant did not file an appeal within the appeal period after the announcement of first-instance judgment. The M/V CATALINA case is the first maritime criminal case accepted by a maritime court in China. The successful settlement of the case opens a new chapter for maritime adjudication towards the model of “Three in One” Trial of Civil, Administrative and Criminal Cases Involving Maritime Issues in Courts, and represents new attempts on maritime jurisdiction system reform that centering on civil and commercial cases while reasonably considering cases of other types.

6. Enhancing training and research to improve maritime judicial competence

Considering maritime trial is highly professional with multiple foreign-related elements, complicated legal relationships and significant international influence, cultivating a high-end maritime judicial team with the competence in international maritime judicial theories and practices is the most critical foundation for the construction of an international maritime judicial center. In the past over three decades, Chinese courts trained a group of professional and well-educated maritime judges who were

proficient in navigation, foreign languages and application of laws. Since the *Opinions of the Supreme People's Court on Comprehensive Deepening of Reform of People's Courts* came into effect on 4th February 2015, courts at all levels nationwide adopted the quota system for judges. By December 2017, according to the quota system, there were 320 judges in maritime courts nationwide, and 68 judges engaged in handling maritime appeals in High People's Courts. The Supreme People's Court carried out a series of trainings in line with trial practices and established Qingdao Maritime Branch of the National Judges College, based on which training courses on international maritime law and maritime adjudication are regularly opened for courts nationwide. Through the courses, participants learned national strategies, international conventions, laws and regulations, and thoroughly studied and exchanged maritime adjudicatory experiences. In the other aspect, a cooperation and exchange mechanism was also founded between maritime courts and universities, in order to innovate personnel training mode and form a high-end judge with global perspectives. A "Training Base for Maritime Judges" was founded with Dalian Maritime University,

through which maritime judges nationwide were organized to experience navigation on vessels to enrich their professional knowledge on vessel structure and navigation. Research Center for Maritime Judicial Protection was set up through cooperation with Dalian Maritime University, Shanghai Maritime University and Ocean University of China and the international maritime legal research base was also launched with Sun Yat-Sen University. International maritime judicial bases in Guangzhou, Shanghai and Zhejiang, and the international maritime judicial research base in Qingdao were established successively. These platforms, making full use of their respective geological advantages and scientific research conditions, are conducive to in-depth research on maritime judicial theories, which will further enhance the standard of maritime adjudication. The role of maritime trial seminar was fully played and the seminar was regularly opened, in which questions in judicial practice were put forward and solved. In this way, a long-term mechanism for discovering and solving questions was formed and actively promoted the professional competence of maritime judges.

7. Expanding international cooperation and exchanges to improve global influences of maritime adjudication

With development of maritime adjudication, international society is paying more and more attention to maritime adjudication in China. In the era of economic globalization, it is not only inherent requirement and vital symbol to improve Chinese judicial credibility and global influence for building international maritime judicial center, but also objective requirement of safeguarding opening-up economy. In recent years, the Supreme People's Court has established a mechanism for judicial exchanges and cooperation with foreign countries to deepen judicial cooperation. The Nanning Statement approved at the 2nd China-ASEAN Justice Forum in June 2017 brought new impetus for development of the principle of reciprocity in judicial practices. The China-UK Maritime Litigation and Maritime Arbitration Seminar was held to promote maritime judicial exchanges between China and the United Kingdom. Through performing duties prescribed in a number of multilateral international conventions on judicial assistance, such as the *Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters* and the *Convention on the Taking of Evidence Abroad in Civil or Commercial Matters*, an international judicial assistance information

management platform was opened covering four levels of Chinese courts, in which legal instruments could be served abroad on line and investigation and evidence collection could also be handled on line, and the efficiency of international judicial assistance has been considerably improved.

8. Accelerating information construction to build “smart courts” in an all-round manner

The General Office of the Communist Party of China and the General Office of the State Council jointly released the *National Information Development Strategy Outline* in July 2016, which clarified the goal of building “smart courts”, and pointed out the information construction of people’s courts should be a vital part of national information development strategy. In September 2016, the Supreme People’s Court convened the Working Meeting of Detached Tribunals of All-China Maritime Courts and the Meeting of Information Construction in Dalian, at which, information construction of maritime justice was put on the agenda to combine adjudication with court information in an all-round way, thereby providing solid scientific and technological support for modernizing maritime adjudicatory scheme and

adjudicatory competence, as well as reinforcing maritime judicial capabilities and standards. According to the overall deployment by the Supreme People's Court, maritime courts throughout the country are giving priority to the development of "Internet+ Litigation Services", actively exploring online services such as online case-filing, case search, electronic service, online case file viewing, monitoring and supervision, etc. to bring convenience to litigants. Maritime courts are taking advantage of the internet to handle cases to provide litigants at home and abroad with high-quality maritime judicial services. Moreover, maritime courts are attaching importance to comprehensive internet transparency by publishing news related to maritime justice in China and maritime cases written in English to facilitate information query and research by litigants, experts and scholars at home and abroad and enlarge global influences of China's maritime adjudication. In the end of 2016, the upgraded website for China's foreign-related commercial and maritime adjudication was launched and put into operation. In June 2017, the Supreme People's Court designated Shanghai Maritime Court as the (Shanghai) base for smart maritime court practices. All

maritime courts are actively engaged in building four platforms respectively for disclosure of adjudicatory procedure, disclosure of enforcement information, disclosure of judicial documents and open trial, as well as expediting information construction of courts to improve judicial transparency. Online litigation service platforms have been put into use, and Weibo and Wechat official accounts have been opened for all categories of litigation activities. New media platforms and other publicity channels are being utilized to extensively spread good news of China's maritime justice. As of 2014, the *Report on China's Maritime Judicial Transparency Index* has been issued annually by the Institute of Law of the Chinese Academy of Social Sciences. According to the Reports released from 2015 to 2017, transparency of China's maritime adjudication is steadily improving, and global influence of Chinese maritime adjudication is consistently expanding. The extent of disclosure of typical maritime cases and white paper has been remarkably enlarged.

III. Clarifying Adjudicatory Rules to Guide Development of the Shipping Industry

In recent years, maritime judges nationwide closely following the strategy of National Ocean Strategy, Belt and Road Initiative, Development of the Yangtze River Economic Belt and Construction of Pilot Free Trade Zones and Free Trade Ports with Chinese Characteristics, giving full play to the role of maritime adjudication, have been making new progress on safeguarding national maritime rights and interests, leading international maritime rules, improving maritime trial principle and unifying maritime adjudicatory rules, and contributing to a number of maritime cases with typical significance. Since 2015, the Supreme People's Court successively published ten typical cases of seizure and auction of vessels by maritime courts, two batches of typical cases involving the Belt and Road Initiative, and ten typical cases of maritime adjudication in 2016 and 2017, effectively promoting the standardization of adjudicatory criterion.

1. The *International Convention on Salvage 1989* and the *Maritime Law* both allow parties to make separate

agreement on salvage charges

Nanhai Rescue Bureau of the Ministry of Transport v. Archangelos Investments E.N.E, Hong Kong Andaousen Co., Ltd., Shanghai Representative Office, [(2015) Min Shen Zi No. 3182], a case of dispute over a salvage contract, was selected as one of the ten major cases of “Promoting the Rule of Law in 2016”. In this case, parties to the salvage contract specified that no matter whether the salvage succeeds or not, the investment company shall pay the service fee, and the salvage ship per horse power hour and labor cost shall be the standard for calculating the said fee. The Supreme People’s Court concluded that such a salvage contract was a contract of employment salvage, not the “no cure-no pay” salvage contract as provided in the International Convention on Salvage 1989 and the Maritime Law. If the International Convention on Salvage 1989 and the Maritime Law both permit parties involved to otherwise agree upon the salvage fee but set out no concrete provisions for the contract of employment salvage, the *Contract Law* shall be applied in specifying parties’ rights and obligations.

2. The maritime claimant may apply for seizure and auction of vessels subject to bareboat charter

According to the *Special Maritime Procedures Law*, the maritime court may seize the ship if the bareboat charterer of the ship is liable for the maritime claim. Since the debtor is not the owner of the ship. There are different opinions in judicial practices concerning whether the seized bareboat can be auctioned. Some believe that the bareboat subject to seizure necessarily means it is also subject to auction, while others believe that ship is only subject to seizure. Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Seizure and Auction of Ships makes it clear that maritime claimant may apply for auction of the ship according to Article 29 of the Special Maritime Procedures Law, with reference to the International Convention on Seizure of Ships 1999, other international conventions, and the laws of the major shipping countries around the world, and considering actual status of China's foreign trade and shipping development.

In the case that Minmetals International Freight Co., Ltd. applied for the seizure of Vessel M/V HAIZHI [(2002) Yong Hai Wen Bao Zi No. 1], the charterer Hainan Longzhu Shipping Co., Ltd. was held liable for a maritime claim. Even though the registered owner of the vessel was Litao

Shipping Co., Ltd. of Saint Vincent and the Grenadines, the vessel was seized and auctioned by Ningbo Maritime Court to protect the legitimate rights and interests of the creditor.

3. “All risks” in maritime insurance contract covers not only risks under F.P.A. and W.A. but also total or partial losses of the insured goods resulting from external causes during transit

Hainan Fenghai Cereals & Oils Industrial Co., Ltd. v. Hainan Branch of PICC Property & Casualty Co., Ltd., a case of dispute over a marine insurance contract, was selected as one of the Guiding Cases of the Supreme People’s Court (No. 52). The judgment of the case clarified that in addition to Free from Particular Average (F.P.A.) and With Average (W.A.), “all risks” in a marine cargo insurance contract covered total or partial losses for external causes in transit of the insured cargo. Where, in the absence of intention or negligence on the part of the insured, damage to the insured cargo was caused under circumstances other than those listed in the exclusion clauses of the relevant insurance contract, it may be determined that the insured cargo was damaged for “external causes”, and the insurer should undertake all losses for such

external causes in transit.

4. The actual value of the goods specified in Article 55 of the *Maritime Law* does not cover the market price loss

Damage compensation disputes regarding the contract of carriage of goods by sea of Hachiman Shipping S.A. v. Shanghai Shenfu Chemical Co., Ltd. and Japan's Debao Kaiun K.K. [(2013) Min Ti Zi No. 6], the parties agreed to adopt the *Maritime Law of the P.R.C* to deal with the dispute. According to Article 55 of the *Maritime Law*, the damage to the goods shall be calculated on the basis of difference between the values of the goods before and after the damage, or on the basis of the cost of recover of the goods. The first-instance judgment calculated the damages based on the cost of repairing the goods, but according to the facts ascertained, the damaged goods in the case were not actually repaired. The court of second instance adopted the value difference method, but did not deduct the losses caused by the fall in the market price of the goods. The Supreme People's Court's reviewed the case and adopted the calculation method of the depreciation rate of the goods and determined the

compensation amount of the goods involved, excluding the impact of market price fluctuations on the damages of the goods. This conforms to the spirit of Article 55 of the *Maritime Law*, and clarifies the calculation rules for damages.

5. *International Convention on Civil Liability for Oil Pollution Damage 1992* provides that compensation for expenditure of reinstatement of environment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken

In the case of Dalian Ocean and Fisheries Bureau v. Ondimar Transportes Maritimos Ltd. and The Britannia Steam Ship Insurance Association Limited [(2015) Min Shen Zi No. 1637], a dispute over compensation for marine pollution damages, the Supreme People's Court made a good faith interpretation based on the meaning of the treaty term in its context and with reference to the object and purpose of the treaty, clarified that according to the *International Convention on Civil Liability for Oil Pollution Damage 1992*, compensation for expenditure of reinstatement of environment other than loss of profit from such reinstatement shall be limited to costs of reasonable measures of reinstatement actually

undertaken or to be undertaken, to ensure the uniformity, stability and predictability of the application of international treaties. It is of exemplary significance for the authorities exercising the supervision and management of the marine environment to bring accurate claim for such marine ecological damage in accordance with law.

6. The carrier may refuse to ship or take reasonable measures to the goods on the basis of reasonable doubt to the safety of the goods

As a member state to the amended *International Convention for the Safety of Life at Sea 1974*, China shall apply the *International Maritime Solid Bulk Cargo Rules* (hereinafter referred to as *the Bulk Cargo Code*). In the dispute over the contract of carriage of goods by sea between Xuzhou Tianye Metal Resources Co., Ltd. and San Clemente Shipping S.A. and Tokyo Sangyo Kaisha, Ltd. [(2015) Min Shen Zi No.1896], the Supreme People's Court reasonably interpreted the system of *the Bulk Cargo Code* and the meaning of relevant provisions. Based on the Convention's value of maintaining maritime safety, the Supreme People's Court determined that the TML defined in *the Bulk Cargo*

Code means the TML of the whole batch of goods (instead of the TML of the fine particles). Therefore, if the shipper does not provide survey report to indicate the moisture situation and the TML of the whole batch of goods, the carrier, upon a reasonable reason to believe the goods being unsuitable for safe transportation, may refuse to ship or take reasonable measures such as unloading and drying goods to ensure the safety of navigation.

7. The time limit for bringing lawsuit on claim for demurrage of a container should be calculated from the day after the expiry date of the free use period of the container

Following the deceleration of growth in global trade, the shipping market has also experienced a sustained downturn, resulting in a great number of maritime disputes. Among them, disputes over demurrage of containers have accounted for an increasing percentage of maritime cases in recent years. Problems emerging therefrom have continued to increase, including the defining of legal relationships, the standards for calculating demurrage of containers, the time from which the time limit for bringing lawsuit should be counted, etc. The standards used in China's domestic judicial practice have not

been unified, giving rise to a lack of rules for relevant shipping enterprises to follow in their judicial practice. In the case of AP Moller-Maersk A/S v. Shanghai Xen Freight Agency Ltd. Shenzhen Branch, and Shanghai Xen Freight Agency Ltd. [(2015) Min Ti Zi No.119], a dispute over a contract for the carriage of goods by sea and demurrage of containers, the Supreme People's Court made a clear definition on the nature of disputes over demurrage of containers and the time limit for bringing lawsuit: the consignee breached the contract when he/she failed to collect the goods at the port of destination, and caused the containers, provided by the carrier AP Moller-Maersk A/S, were occupied and unavailable to be put into regular use. For the losses incurred therefrom, the carrier was entitled to claim demurrage of containers from consignee. The time limit for AP Moller-Maersk A/S to bring lawsuit on this claim was one year, calculating from the day after the expiry date of the free use period of the container.

8. The carrier may refuse the shipper's claim for modification of the contract of carriage of goods by sea according to Article 308 of the *Contract Law* while this claim is difficult to fulfill or will seriously affect the normal

operation of the carrier

The marine transportation has its special characteristics, considering large freight volume, the pre-planned voyage, and relatively fixed routes. The shipper's claim for alternation of port or withdrawal of goods sometimes not only is difficult to operate, but also would seriously affect the normal operation of the carrier, or cause damages to shipper and consignee of other goods. Under this circumstance, if the carrier is requested to unconditionally satisfy the shipper's request to change the contract of carriage, it is unfair to the carrier and is not favorable to the development of the shipping industry.

In the dispute over contract of carriage of goods by sea of Zhejiang Longda Stainless Steel Co., Ltd. v. AP Moller-Maersk A/S [(2017) Zui Gao Fa Min Zai No. 412], the Supreme People's Court rationally balanced the interests of the parties in the contract and clarified the applicable rules of Article 308 of the *Contract Law* in the carriage of goods by sea, which will play a positive role in perfecting the *Maritime Law*.

9. The scope of insurance liability for the shipbuilding insurance policy shall be determined in accordance with

the text of the shipbuilding contract, based on the insurance policy and the insurance clause

As a major shipping country and a shipbuilding power, China has ranked the top in the world in shipbuilding orders and dead weight tonnage of ship built. The shipbuilding insurance clauses of PICC Property and Casualty Company Limited are the standard clauses widely adopted by various insurance companies in China. However, some of them have caused considerable controversy and given rise to series of lawsuits in practice

The key point in the case of Shipping Insurance Operation Center of PICC Property and Casualty Company Limited v. Taizhou Sanfu Ship Engineering Co., Ltd. [(2017) Zui Gao Fa Min Zai No. 242], a case about disputes over a shipbuilding insurance contract, was how to understand the insurance clause concerning the meaning of “any loss caused by design errors of any part”, and the case involved a series of complicated legal application problems and some issues of maritime expertise. The Supreme People's Court reviewed the case and clarified the applicable rules of the shipbuilding insurance, the interpreting methods of the insurance clauses,

the basis for determining the ship design errors and losses caused by them, and responded actively to the heated debated legal issues of the shipbuilding industry and the insurance industry. It has a positive effect on guiding fair trial of other similar disputes in courts throughout the country, regulating relevant market entities' performance of contracts, and promoting stable and healthy development of the shipping insurance industry.

10. Unclaimed ships and cargoes on board may be auctioned in advance during the announcement period, with proceeds retained

The Wenzhou Maritime Safety Administration made an application for ascertaining property as *bona vacatia* [(2016) Zhe 72 Min Te No. 728] is the first case of the Ningbo Maritime Court to determine the seagoing ship as *bona vacatia*. Whether the ship can be auctioned or sold during the announcement period is not stated in law. Due to the special nature of the ship and the cargo on board, the cost will continue to occur and the value of the property will be reduced. In accordance with the provisions of the *Special Maritime Procedure Law* on the auction of ship and cargo

carried by ship in the litigation, Ningbo Maritime Court ruled in advance to auction the unowned ship and oil carried by the ship during the announcement period, which relieved the MSA of financial burden of custody and disposal of ship and cargo carried by ship, protected the safety of the ship and avoided the occurrence of environmental danger. The trial of this case provides a feasible judicial approach for effectively solving the problems of the unclaimed, unsupervised, high-risk ship and cargo.

11. Claim for costs of removal of wreck on the dock shall be deemed to be claim subject to limitation of liability

Article 17 of the *Several Provisions of the Supreme People's Court on the Trial of Cases of Disputes over the Limitation of Liability for Maritime Claims* only deals with claims for fees on removing the sunk, wrecked, stranded or abandoned vessels and cargo on board and claims for compensation arising from collision between vessels. It does not cover those claims for fees on removing wreckage in the wharf or other wrecks caused by collision between a vessel and the wharf or other facilities. Guangdong Renke Shipping Co., Ltd.,

v. Shanghai Branch of Sinopec Sales Co., Ltd. is a dispute of the collision between vessels at the Luoqing Oil Depot which was heard by the Supreme People's Court [(2014) Min Ti Zi No.191]. The Court clarified the claim for the cost of removal of wreckage on the dock shall be brought against the vessel, and the shipowner shall be held liable for the damage caused by the vessel when touching the dock. Paragraph 1.1 of Article 207 of the *Maritime Law* shall be applied and this shall be deemed to be the claims subject to limitation of liability.

12. The shipowner shall not be entitled to limit liability for maritime claims if the ship sails beyond the sailing area or without visa or license

The limitation of liability for maritime claims is one of the unique legal rules with long history in the maritime law. The world's major shipping countries have stipulated the limitation of liability, and have been committed to the international unification of the rule through the formulation of the international convention such as the *International Convention on Limitation of Liability for Maritime Claims, 1976*. The *Maritime Law* adheres to the spirits of these international conventions, and has formed a rule of the

limitation of liability for maritime claims with Chinese characteristics. In the past, the standards for a shipowner being not entitled to limit liability for maritime claims was strict, and the case wherein the shipowner ineligible to limit the liability for maritime claims was rare.

In the case of *Mao Xuebo v. Chen Wei and Jiangshan Shipping Co., Ltd. of Shengsi County* [(2016) Zui Gao Fa Min Shen No. 1487], a case of dispute over damages compensation liability for ship collision, the Supreme People's Court judged that to decide whether the shipowner shall not be entitled to limit liability for maritime claims, comprehensive considerations shall be given to whether the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result. The shipowner and other liable persons may be presumed intentional or negligent for the damage due to frequent or repeated implementation of seriously illegal sailing (e.g., unlicensed sailing, sailing beyond the navigation area, sailing without a visa, sailing away without permission after causing the accident). Therefore, whether the shipowner

shall not be entitled to limit liability for maritime claims shall take into consideration factors of the content, nature and severity of the illegal sailing.

13. The carrier may not be liable for the loss of the ship sinking due to latent defect in design

The dispute over contract of carriage of goods by sea of Shaoxing County Kingstone Knitting & Textile Co., Ltd. v. Mitsui O.S.K. Lines, Ltd. [(2016) Zhe Min Zhong No. 480] is the first case ruled that the carrier shall be free from liability in accordance with Paragraph 1.11 of Article 51 of the *Maritime Law*. As the ship involved in the case was unable to be salvaged, the ship's data has been sunk with the ship. The courts of the first and second instance, basing on the survey report of the sister ship presented by NKK and other institutions, the expert testimony, taking into consideration the fact of regular maintenances with no design defects being discovered, ruled that the sinking of the ship was caused by latent defect of the vessel undiscoverable through due diligence and the carrier Mitsui Co., Ltd was not liable for the losses.

14. The shipowner's entitlement to limitation of

liability for maritime claims shall not be deprived due to intentional or negligent acts of the master or crew members

In the case of compensation for damages from water pollution of Zhenjiang Water Supply Company v. KDB Capital Co, Ltd [(2015) E Min Si Zhong Zi No. 00060], KDB should be responsible for the losses caused by the accident. The court ruled, with the accurate application of *Maritime Law* and *Several Provisions of the Supreme People's Court on the Trial of Cases of Disputes over the Limitation of Liability for Maritime Claims*, that the consequences of actions of the shipowner should be distinguished from the consequences of the actions of employee or agent. Therefore, KDB as the shipowner shall not lose the right of limitation of liability for maritime claims due to intentional or negligent acts of the master or crew members.

15. The carrier may be exempted from the responsibility of delivery as the goods unclaimed at the port of destination being disposed of by the custom authorities

In the case of Guangzhou Hyde International Freight Forwarding Co., Ltd. v. Fujian Itawa Industry & Trade Co., Ltd. [(2017) Yue Min Zhong No. 387], a case of disputes over a

contract on carriage of goods by sea, the court of second instance examined and adopted the evidences formed abroad and ruled that in the case where the goods involved are disposed of by the customs at the port of destination because they had not been claimed within the storage period, the carrier Hyde Company was exempted from liability and did not constitute cargo delivery without the original bill of lading. The claim of the shipper Itawa Company was rejected, and unification of procedural fairness and substantive justice has been achieved.

16. Whether the carrier claims for lien is not a prerequisite for the claim for freight against the shipper

In the dispute over contract of carriage of goods by sea China Merchants Logistics Group (Tianjin) Co., Ltd. v. ZIM Integrated Shipping Services Ltd. and Hefei Salt Co., Ltd. [(2017) Jin Min Zhong No. 320], the court of second instance believed that the bill of lading was issued by the carrier ZIM based on the shipping order of the shipper China Merchants Logistics. Although China Merchants Logistics was not recorded as shipper in the bill of lading, the carrier ZIM was still entitled to claim right against the shipper China

Merchants Logistics because a contract of carriage of goods had been concluded between them according to the shipping order. Therefore, when the goods were not claimed at the port of destination, the carrier ZIM was entitled to claim for contract rights against China Merchants Logistics due to the doctrine of privity of contract. The carrier's retention of goods is only one of the ways to claim for rights, and the absence of carrier's exercise of the lien does not affect the carrier's right to claim the relevant fees from the shipper.

Concluding Remarks

Since maritime courts were founded in 1984, China's maritime justice has made remarkable progress in all aspects, such as institutional construction, organizational structure, judicial competence and global influences, and is basically qualified to become an international maritime judicial center. Considering the international and domestic situations, the 19th CPC Congress puts forward that "we will pursue coordinated land and marine development, and step up efforts to build China into a strong maritime country", and recognizes that a new pattern of overall openness should be adopted reliant on the Belt and Road Initiative to achieve the great rejuvenation of the Chinese nation. Against this backdrop, the construction of an international maritime judicial center is facing both new opportunities and challenges. In the new of history, we should make down-to-earth and practical efforts with firm conviction, follow the Xi Jinping Thought on Socialism with Chinese Characteristics in the New Era, assume the responsibility of building an international maritime judicial

center, continuously enhance adjudicatory competence, strengthen international credibility and influences of China's maritime adjudication, and make contributions to the great undertaking of comprehensively constructing a strong and modern socialist country.