

Maritime Courts in China and their Jurisdiction¹

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Abstract

In addition to the local people's courts at all levels, China has gradually established maritime courts specifically to handle maritime claims and disputes within their statutory jurisdiction area. However, although the legal framework regulating the allocation of jurisdiction of first-instance civil and commercial cases seems clear and straightforward, conflicts and debates may still arise as to whether to choose a maritime court or a local people's court when deciding over a maritime dispute. This article thus aims to conduct a comprehensive study of Chinese maritime courts, and to examine the reasons for jurisdictional conflicts between them and the local people's courts in China. It concludes that, despite all the legislative efforts made so far, conflicts and uncertainties from time to time arise concerning the appropriate jurisdiction over maritime disputes and claims. Greater clarity and assuredness by the relevant authorities are thus needed for a better and more efficient system for deciding the jurisdiction of maritime cases in China.

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I. Introduction

Under the Chinese judicial system, all legal cases are heard by four levels of people's courts, namely, the Supreme People's Court (SPC), High People's Court (HPC), Intermediate People's Court (IPC), and Primary People's Court (PPC), according to their "territorial impact".⁴ However, determining such "territorial impact" is not unequivocal. A higher-level court may decide to attract into its jurisdiction and consider a case already pending before a lower court. In addition, there are other courts of specialized jurisdiction, including military courts, railway transport courts, intellectual property courts, internet courts and a very recently established financial court.⁵

As the need for establishing specialized courts to hear maritime cases manifested itself, from 1984 onwards maritime courts have been gradually established.⁶ There are currently ten maritime courts. Each has its statutory jurisdiction area, which means that a maritime court may only have jurisdiction as the court of first instance over maritime cases in a specific territorial area. Meanwhile, the HPC in the territorial area of a maritime court shall obtain jurisdiction over maritime cases having great significance.⁷ It may seem that

⁴ According to Articles 17, 18, 19, 20 of the Civil Procedure Law of PRC 2017, the primary people's court shall have jurisdiction over civil cases as a court of first instance; the intermediate people's court shall have jurisdiction over cases which have a major impact within their respective jurisdiction; the high people's court shall have jurisdiction over civil cases which have a major impact within their respective jurisdiction; the supreme people's court shall have jurisdiction over cases which have a major impact nationwide.

⁵ Shanghai Financial Court, established in 2018, was the first specialized financial court.

⁶ See "Decision of The Standing Committee of The National People's Congress on The Establishment of Maritime Courts In Coastal Port Cities", adopted at the Eighth Meeting of the Standing Committee of the Sixth National People's Congress and promulgated for implementation by Order No. 20 of the President of the People's Republic of China on November 14, 1984.

⁷ Under the "Notice by the Supreme People's Court of Adjusting the Standards for the Jurisdiction of the High People's Courts and Intermediate People's Courts over Civil Cases under Original Jurisdiction", which was issued on April 30, 2019 and went into effect on May 1, 2019, The High People's Court shall have jurisdiction as court of first instance over civil cases whose subject matter of the action is valued at 5 billion yuan or more, or over those having a major impact within its jurisdiction. The standards for hierarchical jurisdiction over maritime cases and foreign-related civil cases shall be governed by this Notice.

the system for adjudicating maritime disputes is quite clear, but conflicts and debates still arise over which one to choose, whether a maritime court or a people's court, to decide over a maritime dispute.

This article aims to provide a comprehensive analysis of the jurisdiction of Chinese maritime courts, as well as the jurisdictional conflicts occurring between them and the people's courts in China. First, it will conduct a general review of the Chinese judicial system, paying particular attention to the interactions between the people's courts and maritime courts. Then, the article will discuss the maritime courts and their territorial jurisdictions, as well as subject matter jurisdiction. In this section, all related legal provisions in the national legislations and other legal documents will be highlighted. An analysis of court decisions will help contribute to a better understanding of the relevant issues, and this article will thereafter show that, despite all legislative efforts made, conflicts and uncertainties from time to time arise concerning appropriate jurisdiction over maritime disputes and claims. The article thus concludes that further clarifications by the relevant authorities are necessary for a better and more efficient system of deciding maritime cases in China.

II. Chinese Judicial System: An Overview

According to the Organic Law of the People's Courts of the PRC⁸ (OL), the judicial authority is exercised by the local people's courts, special people's courts and the SPC. The local people's courts, as mentioned, are divided into PPCs, IPCs and HPCs.⁹ The basic

⁸ OL was first adopted in 1979 and was effective as of January 1, 1980; the latest amendment was in 2018.

⁹ Articles 12 and 13 of OL.

authority of the people's courts is to try legal cases,¹⁰ while cases of certain types may be heard by the special people's courts. For the latter, their jurisdiction is usually set down in certain special laws; for instance, the jurisdiction rules of the maritime courts can be found in the Maritime Procedural Law ("MPL")¹¹, as well as other particular regulations and provisions issued by the SPC.¹²

Before 1984, maritime cases in China were heard by the local people's courts located in coastal cities.¹³ The Water Transportation Courts ("WTC") were considered as being the early model for today's maritime courts.¹⁴ They were administratively affiliated, for both bureaucratic and financial reasons, with local harbor administrations under the then Ministry of Communications. Despite WTCs being subject to both the SPC and the local HPC, they actually failed to inspire confidence in parties appearing before them during their short existence. Following the abolition of the very short-lived WTCs in Shanghai, Tianjin and Wuhan, the local people's courts regained hearing maritime cases.¹⁵

In the "Decision of the Standing Committee of the National People's Congress (NPC) on the Establishment of Maritime Courts in Coastal Port Cities"¹⁶ in November

¹⁰ Article 25 of OL.

¹¹ The Special Maritime Procedure Law of the People's Republic of China was adopted by the thirteenth Session of the Standing Committee of the Ninth People's Congress on December 25, 1999, and was implemented as of July 1, 2000.

¹² For example, the "Provisions of the Supreme People's Court on the Scope of Cases to Be Accepted by Maritime Courts" was adopted at the 1,674th meeting of the Judicial Committee of the Supreme People's Court on December 28, 2015, and came into force on March 1, 2016.

¹³ Zhang, Lixing. "Shipping Law and Practice in China—Legal Analysis of the Draft Maritime Code and Maritime Jurisdiction." *Tul. Mar. L.J.* 14 (1989): 209.p.231.

¹⁴ Mo, John. *Shipping Law in China*, (Sweet & Maxwell, 1999), p.362.

¹⁵ *Ibid.*, 362. It is considered that the first six maritime courts in Shanghai, Tianjin, Qingdao, Dalian, Guangzhou and Wuhan were set up based upon the 6 preparatory units of water transport courts in Shanghai and the other five cities: see http://encmt.court.gov.cn/chinamaritimetrial/2016-10/26/c_59481.htm (last accessed 30 July 2019).

¹⁶ See "Decision of the Standing Committee of the National People's Congress on the Establishment of Maritime Courts in Coastal Port Cities", which was adopted at the Eighth Meeting of the Standing Committee

1984, it stated that efforts should be made to “exercise state sovereignty through maritime jurisdiction”, “protect the legal rights of the relevant Chinese and foreign individuals and entities”, and “promote shipping business and foreign trade in general”. The relative complexity and highly technical nature of maritime cases were also recognized within the same document. Hence, the necessity and importance of building up a specialized maritime judiciary was officially confirmed at a national level.¹⁷ Before long, the NPC ordered the establishment of maritime courts in major port cities along the PRC’s coast, with the responsibility for the creation of these courts being delegated to the SPC.

In order to fulfill the NPC’s mandate, the SPC, in November 1984, issued a legal document – “Decision on Certain Questions Concerning Establishment of Maritime Courts” (“the 1984 SPC Decision”),¹⁸ which set forth in detail the structure and jurisdiction of the maritime courts. Consequently, maritime courts were first established in six major coastal port cities: Guangzhou, Shanghai, Qingdao, Tianjin, Dalian, and Wuhan. Now there are ten maritime courts in total (see ‘the map’ below), each consisting of an Admiralty Tribunal and a Maritime Commerce Tribunal.

of the Sixth National People's Congress on November 14, 1984 and was promulgated for implementation by Order No. 20 of the President of the People's Republic of China on November 14, 1984.

¹⁷ Tang, Zhengyu. “Maritime Jurisdiction of the People's Republic of China: Legal Framework, Recent Developments, and Future Prospects.” *J. Mar. L. & Com.* 25 (1994) 251-278, p.255.

¹⁸ The 1984 SPC Decision went into effect on November 28, 1984 but has now expired.

Map: Chinese Maritime Courts



The level of a maritime court is the same as that of a local intermediate people’s court, which puts its level as higher than a primary people’s court.¹⁹ The maritime courts have original jurisdiction over “admiralty cases and cases of maritime commerce”, but not over other civil and criminal matters. Appeals from the maritime courts can be heard by the local high people’s courts. The Communication and Transportation Tribunal of the SPC, set up in 1987, can supervise the judicial work of the maritime courts.

III. Maritime Law and Courts

A. Maritime Legal System

The Maritime Code of the PRC, a series of maritime judicial interpretations, together with the MPL and others, form an independent and systematic framework for handling maritime disputes and claims. The most important ones include the following three legislations: 1)

¹⁹ Zhao, Liang, and Li Lianjun. *Maritime Law and Practice in China* (Taylor & Francis, 2017), p.242.

Maritime Code; 2) the MPL and its Interpretation; and 3) the Provisions of the SPC on the Scope of Cases to be Accepted by Maritime Courts 2016. The relevant legal provisions will be analyzed and discussed elsewhere in the article, but what follows below provides a brief description of their legislative purposes or the legal provisions that are most relevant to the jurisdiction issues.

a. Maritime Code of PRC (“MC”)

The MC came into effect in 1993, and includes 15 chapters and 278 articles.²⁰ This law is formulated “...with a view to regulating the relations arising from maritime transport and those pertaining to ships, to securing and protecting the legitimate rights and interests of the parties concerned, and to promoting the development of maritime transport, economy and trade.”²¹

b. The Special Maritime Procedural Law (“MPL”) and its Interpretations

The MPL, which comprehensively covers procedural issues of maritime litigation both internationally and domestically,²² is relevant when deciding jurisdictional issues arising from maritime claims. For a long time, China did not have a comprehensive law on maritime procedures.²³ Therefore, the main source of law in this respect was the Civil Procedural Law (“CPL”) ²⁴, together with some relevant judicial interpretations

²⁰ The Maritime Code was adopted at the 28th meeting of the Standing Committee of the Seventh National People's Congress on November 7, 1992 and was promulgated by Order No. 64 of the President of the People's Republic of China on November 7, 1992; it became effective as of July 1, 1993.

²¹ Article 1 of the MC.

²² Chapter 2 of MPL.

²³ Zhao, Liang and Li, Lianjun, *Maritime Law and Practice in China* (n19), p.216.

²⁴ The Civil Procedure Law of the People's Republic of China, the latest version adopted at the 28th Session of the Standing Committee of the Twelfth National People's Congress on June 27, 2017.

pronounced by the SPC. On 25 December 1999, the MPL was enacted by the NPC.²⁵ The legislation is based both on experiences obtained from the adjudication of maritime cases after the establishment of maritime courts in China, and on international practice. This thus filled in the gap in the legal regime relating to special procedures arising from maritime disputes. The MPL contains 12 chapters and 127 articles, and Chapter 2 addresses jurisdiction issues.

The MPL is classified as a special law compared to the CPL, and therefore has priority over the CPL in the matters of maritime litigation. In many instances it can, however, be supplemented by the latter, although the special rules in the former for maritime litigations shall prevail if there are any conflicts.²⁶

The “SPC’s Interpretation on the Application of the Special Maritime Procedure Law” (hereinafter referred to as the “Interpretation of MPL”) was promulgated in 2002 and came into force one year later. Its Article 2 states:

“The jurisdiction over ... disputed maritime carriage contract cases shall be governed by Chapter 25 of the CPL; where there is no corresponding provision in Chapter 25 of the CPL, items 1) and 2) of paragraph 2 of Article 6 of the MPL and other relevant provisions of the CPL shall apply.”²⁷

²⁵ Zhao, Liang and Li, Lianjun, *Maritime Law and Practice in China* (n19), p.216.

²⁶ Article 2 of the MPL provides that: “The Civil Procedure Law of the People’s Republic of China and this Law shall be applicable to maritime actions brought in the People’s Republic of China. Where the provisions of this Law are applicable, they shall prevail.” Article 97 of the Interpretation of MPL has a similar provision.

²⁷ In the latest CPL 2017, Chapter 24, rather than Chapter 25 of the then CPL, is dedicated to regulating jurisdiction.

c. Provisions of the SPC on the Scope of Cases to Be Accepted by Maritime Courts
2016 (“2016 Provisions”)

The “Provisions of the Supreme People's Court on the Scope of Cases to Be Accepted by Maritime Courts” (hereinafter known as the “2016 Provisions”) were promulgated by the SPC in 2016. The 2016 Provisions contain 114 articles in total, with 108 articles focusing on the types of cases that shall be accepted by maritime courts.

B. Maritime Courts and Their Territorial Jurisdiction

The jurisdictions of all courts, including maritime courts, are based on the administrative divisions designated by the Constitution of the PRC.²⁸ In addition, the legal provisions about “territorial jurisdiction” are contained in Section 2 of the CPL. Territorial jurisdiction here means the authority that a court has over cases within its geographical territory. In the CPL, it states clearly that a civil lawsuit brought against a citizen shall be under the jurisdiction of the people’s court of the place where the defendant has his domicile.²⁹

Maritime courts are primarily established in port cities along the PRC’s coast.³⁰

The designation of the jurisdiction areas for each maritime court is decided by the SPC.³¹

²⁸ See Articles 20, 22, 24 of OL. Also, Articles 30 and 31 lay down detailed rules for the administrative division of the PRC. According to the Constitution of the PRC, the country’s administrative divisions are as follows: (1) The country is divided into provinces, autonomous regions and municipalities directly under the Central Government; (2) Provinces and autonomous regions are divided into autonomous prefectures, counties, autonomous counties, and cities; (3) counties and autonomous counties are divided into townships, nationality townships, and towns.

²⁹ Article 22 of CPL provides that “... if the place of the defendant’s domicile is different from that of his habitual residence, the lawsuit shall be under the jurisdiction of the people’s court of the place of his habitual residence...” In addition, unlike in common law countries, China does not have actions *in rem*, although China has a well-established legal system for arrest of ships, which works very similar to the action *in rem*.

³⁰ Tang, Zhengyu. “Maritime Jurisdiction of the People's Republic of China: Legal Framework, Recent Developments, and Future Prospects” (n17). p.255.

³¹ Article 3 of 1984 Decision.

The 1984 SPC Decision specified the territorial jurisdiction of the first five maritime courts, which was the first time to break through administrative divisions and areas where the people's courts should have exercised jurisdiction.³² Based upon the theory of “territorial jurisdiction”, cases arising from the adjacent waters of these ports also fall within the jurisdiction of the relevant maritime court. Thus, for example, a maritime case that would otherwise be brought before a local people's court in Qinhuangdao, Hebei Province, according to the general territorial jurisdiction provisions of the CPL, shall actually fall under the jurisdiction of the Tianjin Maritime Court.

With the increased number of maritime courts, a series of legal documents or legislations have been promulgated to adjust and clarify the territorial jurisdiction of the ten maritime courts. These legal documents and their promulgation purposes are listed below in chronological order:

- *The 1984 Decision of the Supreme People's Court on Several Issues Concerning the Establishment of a Maritime Court (expired)*³³

This decision specified the territorial jurisdiction of Guangzhou Maritime Court, Dalian Maritime Court, Qingdao Maritime Court, Shanghai Maritime Court and Tianjin Maritime Court.

- *Notice of the Supreme People's Court on Adjusting the Jurisdiction of Wuhan and Shanghai Maritime Courts 1987 (expired)*³⁴

³² Zhang Yongjian, Wang Shumei, and Fu Xiaoqiang. “The Understanding of the Provisions of the Supreme People's Court on the Jurisdiction of Maritime Litigation.” *Journal of Law Application* 4(2016):82-85. p.82 (in Chinese).

³³ The 1984 SPC Decision took effect on November 28 1984, but is now expired.

³⁴ See “Notice of the Supreme People's Court on Adjusting the Jurisdiction of Wuhan and Shanghai Maritime Courts 1987”, which was issued on 28 July 1987 and took effect on the same day. It has now expired.

This notice adjusted the territorial jurisdiction of Shanghai Maritime Court and specified the jurisdiction of Wuhan Maritime Court.

- *The 1990 Decision of the Supreme People's Court on the Establishment of Haikou and Xiamen Maritime Courts*³⁵

This decision regulates the territorial jurisdiction of Haikou Maritime court and Xiamen Maritime court.

- *The 1992 Decision of the Supreme People's Court on the Establishment of the Ningbo Maritime Court*³⁶

This decision specifies the territorial jurisdiction of Ningbo Maritime court.

- *The 1999 Notice of the Supreme People's Court on the Formal Acceptance of Cases by the Beihai Maritime Court*³⁷

This regulates the territorial jurisdiction of Beihai Maritime Court.

- *Circular of the Supreme People's Court on Adjusting Jurisdictional Areas and Scope of Cases for Dalian, Wuhan and Beihai Maritime Courts 2002*³⁸

This adjusted the areas over which these three maritime courts exercise jurisdiction.

- *The 2006 Circular of the Supreme People's Court on Adjusting the Jurisdiction of Shanghai and Ningbo Maritime Courts*³⁹

³⁵ See “The 1990 Decision of the Supreme People's Court on the Establishment of Haikou and Xiamen Maritime Courts”, which was issued and went into effect on 2 March 1990.

³⁶ See “The 1992 Decision of the Supreme People's Court on the Establishment of the Ningbo Maritime Court”, which was issued and went into effect on 4 December 1992.

³⁷ See “The 1999 Notice of the Supreme People's Court on the Formal Acceptance of Cases by the Beihai Maritime Court”, which was issued and took effect on 1 July 1999.

³⁸ See “Circular of the Supreme People's Court on Adjusting Jurisdictional Areas and Scope of Cases for Dalian, Wuhan and Beihai Maritime Courts 2002”, which was issued and went into effect on 10 December 2002.

³⁹ See “The 2006 Circular of the Supreme People's Court on Adjusting the Jurisdiction of Shanghai and Ningbo Maritime Courts”, which was issued and went into effect on 20 June 2006.

This adjusted the territorial jurisdiction of Shanghai Maritime court and Ningbo Maritime court.

- *The 2016 Provisions of the Supreme People's Court on Issues concerning the Jurisdiction over Maritime Actions*⁴⁰

This adjusted the particular jurisdiction of Dalian Maritime Court and Wuhan Maritime court.

Accordingly, all maritime courts exercise territorial jurisdiction over maritime cases according to the provisions in the above decisions and notices. More specifically, the territorial jurisdiction of each maritime court is now as follows:

- **Guangzhou** Maritime Court has jurisdiction over several major ports in the southern portion of the PRC, including Guangzhou, Huangpu, Shantou, and Zhanjiang.
- **Shanghai** Maritime Court has jurisdiction over several major ports in the southeastern PRC, including Shanghai. The area below Liuhekou is still under the jurisdiction of the Shanghai Maritime Court after the establishment of Wuhan maritime court.⁴¹
- **Qingdao** Maritime Court's jurisdiction covers four major ports in the eastern PRC, including Qingdao, Weihai, Rizhao and Yantai.
- **Tianjin** Maritime Court exercises jurisdiction over cases from the two major ports of Tianjin and Qinhuangdao and the southern part of Bohai, a large gulf in the

⁴⁰ See "The Provisions of the Supreme People's Court on Issues concerning the Jurisdiction over Maritime Actions", which was adopted at the 1674th Session of the Judicial Committee of the Supreme People's Court on December 28, 2015, were thereby issued, and came into force on March 1, 2016.

⁴¹ See "Notice of the Supreme People's Court on Adjusting the Jurisdiction of Wuhan and Shanghai Maritime Courts 1987".

eastern PRC.

- The jurisdiction of the **Dalian** Maritime Court reaches to the boundary of Liaoning Province and Hebei Province in the south; in the east, it reaches to the extended sea area at the estuary of Yalu River and the water area of Yalu River, including a part of the Yellow Sea and a part of the Bohai Sea and some islands on the sea, the Songhua River, Tumen River and other navigable water areas and ports connecting the sea within Jilin Province, as well as the Heilongjiang River, Songhua River, Wusuli River and other navigable water areas and ports connecting the sea within Heilongjiang Province.⁴²
- **Wuhan** Maritime Court mainly has jurisdiction over the water areas of the main line and branches of the Yangtze River, which starts from Hejiangmen in Yibin City, Sichuan Province, to the estuary of Liuhe River in Jiangsu Province, including main ports such as Yibin, Luzhou, Chongqing, Fuling, Wanzhou, Yichang, Jingzhou, Chenglingji, Wuhan, Jiujiang, Anqing, Wuhu, Ma'anshan, Nanjing, Yangzhou, Zhenjiang, Jiangyin, Zhangjiagang, and Nantong.⁴³
- **Haikou** Maritime Court has the jurisdiction over ports in Hainan Province and some islands including Xisha, Zhongsha, Nansha and Huangyan Island.⁴⁴
- **Xiamen** Maritime court has the territorial jurisdiction between Fujian Province and Guangdong Province and the junction of Fujian Province and Zhejiang Province in the north, including the southern part of the East China Sea, Taiwan Province, the

⁴² See the “Provisions of the Supreme People’s Court on Issues concerning the Jurisdiction over Maritime Actions”.

⁴³ Ibid.

⁴⁴ See “The 1990 Decision of the Supreme People's Court on the Establishment of Haikou and Xiamen Maritime Courts”.

- sea islands and the port of Fujian Province.⁴⁵
- **Ningbo** Maritime Court exercises jurisdiction over the ports and waters of Zhejiang Province.⁴⁶
 - **Beihai** Maritime Court governs the first-instance maritime cases in the ports and waters of the Guangxi Zhuang Autonomous Region and the Beibu Gulf including its islands and waters. Wuji Island, Weizhou Island and Xieyang Island are also under the jurisdiction of the Beihai Maritime Court.⁴⁷ It also has jurisdiction over the navigable water area connecting the sea, starting from the Lancang River to the Meigong River in Yunnan Province.

IV. Maritime Cases to be Heard by Maritime Courts

A. Defining the Scope of Maritime Cases

Maritime courts are established to hear and determine maritime claims or cases. In all relevant legislations and legal documents, the terms “maritime claim”, “maritime case” and “maritime dispute” are used interchangeably.

It is common, as with some other domestic laws, that the term “maritime claim” does not have any technical meaning.⁴⁸ It is usually associated with the admiralty

⁴⁵ Ibid.

⁴⁶ See “The 1992 Decision of the Supreme People's Court on the Establishment of the Ningbo Maritime Court”. In order to meet the needs of the construction and development of Yangshan Deep-water Harbor Area, upon research the SPC decided to adjust the jurisdiction of Shanghai Maritime Court and Ningbo Maritime Court over Yangshan Harbor and its neighboring sea area, so that cases of dispute over maritime affairs and maritime trade occurring at Yangshan Harbor and its neighboring sea area shall be under the jurisdiction of Shanghai Maritime Court.

⁴⁷ For more details see “The 1999 Notice of the Supreme People's Court on the Formal Acceptance of Cases by the Beihai Maritime Court”.

⁴⁸ Hill, Christopher. *Maritime Law* (LLP, 2003). p.10.

jurisdiction of the court. Before the enactment of the MPL in China, the legal term “maritime claim” appeared together with the arrest of ships. For example, in the then “*Detailed Regulations of the Supreme People's Court on the Arrest of sea Vessels Prior to Litigation*” (now repealed), it defined “maritime claim” as being a right of payment claim which was related to or had resulted from matters concerned with a sea-going vessel’s construction, transaction, charterage, transport undertakings, operations and rescue, as well as ownership, occupancy right, right of mortgage, and priority compensation.⁴⁹ Under the MPL, “arrest” means any detention or restriction on removal of a ship by order of the court for securing maritime claims;⁵⁰ accordingly, the aim of ship arrest is to obtain financial security for a maritime claim and it is by nature a preservative method. This means that a maritime claim is a pre-condition of ship arrest;⁵¹ however, it will lead to an arrest only if other conditions set by law can also be met at the same time.⁵²

With the rapid development of shipping, trade, ports, and mariculture, as well as the utilization of sea areas, the number of maritime cases has increased. It is debated by a researcher that “...the concept of maritime claims is definitely not a special concept for the arresting of ships, but an ordinary, widely used concept.”⁵³ However, it is difficult to limit the scope of maritime claims by providing a comprehensive and clear definition. Instead of defining the concept of “maritime claim” or “maritime case”, the 2016 Provisions lists out different categories of maritime disputes. These include cases such as: maritime

⁴⁹ See part 2 of *Detailed Regulations*, which was promulgated by the SPC in 1994 and replaced by the MPL.

⁵⁰ The MPL, Section II of Chapter III “Preservation of Maritime Claims”.

⁵¹ Li, K. X. “Maritime Jurisdiction and Arrest of Ships under China's Maritime Procedure Law (1999)” *J. Mar. L. & Com.* 32 (2001): 655. p.662.

⁵² Article 23 of MPL.

⁵³ Jin Zhengjia. “The Theory of Maritime Procedure Law.” *Dalian Maritime University DMU Press* (2001). p.88 (in Chinese).

tortious disputes; disputes over maritime contracts; disputes over development and utilization of oceans and water areas leading to the sea, and environmental protection; other cases concerning disputes over maritime affairs; maritime administrative cases; and cases concerning special maritime procedures.

B. Expanding the Jurisdiction of Maritime Courts

Subject matter jurisdiction is the authority of a court to adjudicate cases of a particular type of controversy involved in an action.⁵⁴ Under the 1984 SPC Decision, maritime courts had subject matter jurisdiction over 18 types of cases, including collisions, pollution, personal injury, carriage of goods or passengers by sea, charterparties, marine insurance, general average, salvage, towage, marine exploration, arrests of vessels, and enforcement of administrative rulings and arbitration awards. The subject matter jurisdiction of maritime courts has been greatly expanded. On May 13, 1989, the SPC issued its “Rules Governing Scope of Cases Subject to Jurisdiction of Maritime Courts” (“1989 Rules”).⁵⁵ These Rules have empowered maritime courts to take jurisdiction over 42 types of cases, and have clarified many of the ambiguities concerning subject matter jurisdiction existing in the 1984 SPC Decision. According to the 1989 Rules, a maritime court has jurisdiction over a case if it falls within one of the following categories: Maritime torts, contracts, or commerce; maritime enforcement; or maritime cases involving applications for security. In addition, on December 23, 1989, the SPC issued a Notice regarding implementation of the 1989 Rules.⁵⁶ The Notice stated that: (1) Local people’s courts should not continue to

⁵⁴ Martineau, Robert J. “Subject Matter Jurisdiction as a New Issue on Appeal: Reining in an Unruly Horse.” *BYUL Rev.* (1988): 1.p.3.

⁵⁵ The SPC’s Rules Governing Scope of Cases Subject to Jurisdiction of Maritime Courts 1989 were issued on 13th May 1989 and took effect on 13th May 1989, and are now expired.

⁵⁶ See “SPC’s Notice regarding implementation of the 1989 Rules Governing Scope of Cases Subject to

hear cases falling within the jurisdiction of the maritime courts; (2) subject to the consent of the maritime court having jurisdiction, a local non-maritime court may accept simple and small maritime claims that involve no foreign interests and arise in places distant from the maritime court; (3) any dispute between a maritime court and a non-maritime court over jurisdiction is to be resolved first through consultation and then by a determination of a higher level court; and (4) maritime cases that arise from inland waters other than the Changjiang River and the Yalujiang River remain the responsibility of the non-maritime courts. According to this Notice, local people's courts can hear a maritime case under specific circumstances. Although the Notice raised a way of solving jurisdiction conflicts between maritime courts and local people's courts, it did not provide a complete solution, so the complexity of some maritime disputes continued to lead to jurisdictional conflicts. On 9 August 2001, the SPC published "Several Regulations on the Scope for Cases Accepted by Maritime Courts" ("2001 Regulations"),⁵⁷ which laid out 4 categories and 63 types of cases falling within the jurisdiction of maritime courts. More recently, the 2016 Provisions, as discussed above, further expanded the types of maritime cases, so that now 6 categories and 108 types of cases in total can be heard by maritime courts. In principle, if a case falls within the scope provided by the 2016 Provisions, it should be judged by a maritime court; and parties in such disputes are not allowed to bring an action to a local people's court by a jurisdiction agreement.⁵⁸

Jurisdiction of Maritime Courts", which was issued on 23rd December 1989 and went into effect that day, but is now expired.

⁵⁷ See "Some Provisions of the Supreme People's Court on the Scope of Cases to be Entertained by Maritime Courts", adopted by a judicial committee of the SPC at the 1187th meeting on 9th August 2001.

⁵⁸ Zhao, Liang, and Li Lianjun. *Maritime Law and Practice in China*. (n19). p.237. Meanwhile, according to Article 16 of OL, the SPC may also hear such cases at first instance if the cases are complex and have tremendous social impact. This kind of case rarely happens though.

There is an obvious trend that the jurisdiction of maritime courts is expanding. In the 2001 Regulations, as discussed above, maritime cases are classified into four categories, these being: 1) Maritime torts; 2) contracts of maritime trade; 3) other disputes over maritime affairs and maritime trade; and 4) maritime execution cases. Among these, the seemingly catch-all category of “other disputes over maritime affairs and maritime trade” is further elaborated on and specified in the 2016 Provisions, and the category of “maritime execution case” seems to be absorbed into “special maritime procedures” provided in the 2016 Provisions.

The 2016 Provisions specifies one category of maritime cases that is called “cases relating to disputes over development and utilization of oceans and water area leading to the sea and environmental protection”. The purpose of this is to highlight the function of a maritime court in regulating the utilization and exploitation of ocean and water areas leading to the sea, and in protecting the maritime environment.⁵⁹ It actually includes cases relating to utilization and development of energy resources and marine zones, marine science expeditions, fishery, and damage to the environment and oceans.

Maritime administrative cases, which is another category specified in the 2016 Provisions, refers to maritime administrative counterparts, such as natural persons, legal persons, or other organizations who are dissatisfied with the administrative actions taken by maritime administrative organs and their staff relating to the following: vessels and other property at sea or in the water areas leading to the sea and ports; transportation at sea and other auxiliary operations; development and utilization of oceans or protection of

⁵⁹ See the response for the promulgation of the 2016 provision of the judge in SPC. <https://www.chinacourt.org/article/detail/2016/02/id/1810613.shtml>

fishery and other resources; performance of administrative duties or compensation as prescribed in the aforesaid actions; or the application for enforcement of such actions.⁶⁰ When the legal rights and interests of the maritime administrative counterparts are infringed, they can file a lawsuit according to the provisions of laws and regulations, and the maritime court can hear it. Actually, ever since maritime courts came into existence they have been granted jurisdiction over maritime administrative cases, but the jurisdiction over such cases was adjusted to the local people's court in 1991 and 2003 because of the social history background and the change of legal environment.⁶¹ However, maritime administrative cases have the characteristics of strong professionalism, and sometimes involve foreign elements; local people's courts hearing such cases is thus not conducive to overcoming the possibilities of local protection, and the accurate application of the law is sometimes questionable. In line with the needs of judicial practice, a number of maritime courts, including Dalian, Tianjin, Qingdao, Ningbo, Guangzhou, and Haikou maritime courts, had actually since 2010 started to hear some maritime administrative cases with the approval of higher courts, resulting in relatively good social impacts.⁶² Consequently, the 2016 Provisions include and elaborate on maritime administrative cases.⁶³ Nevertheless, it is not possible to itemize maritime administrative cases in an exhaustive way, particularly because of the wide range of unlawful maritime acts, as well as the complexity of enforcement of maritime cases. Therefore, if a litigation against the maritime administrative authority does not belong to any of these specified items, the relevant parties

⁶⁰ The 2016 Provisions, Articles 79-85.

⁶¹ XU Junqiang. "Rethinking the Jurisdiction of Maritime Administrative Cases - Between Reality and Responsibility". *Cross-strait Legal Science*, 4 (2014):82-88. p.83 (in Chinese).

⁶² Zhang Yongjian, Wang Shumei, and Fu Xiaoqiang. "The Understanding of the Provisions of the Supreme People's Court on the Jurisdiction of Maritime Litigation" (n 32), p.83 (in Chinese).

⁶³ Articles 79-85 in 2016 Provision.

may have difficulty in choosing the correct court.

V. Maritime Courts vs. Local People's Courts

Under Chinese law, several different terminologies are used to illustrate jurisdictions of a different nature. Ordinary jurisdiction, otherwise known as general jurisdiction, means the jurisdiction entertained by the people's court over all cases except those that shall be taken by higher courts as otherwise stipulated by Chinese law.⁶⁴ Specialized jurisdiction refers to the power of special courts to hear designated types of cases, a typical example being the jurisdiction held by maritime courts. Exclusive jurisdiction is a particular type of territorial jurisdiction.⁶⁵ Exclusive jurisdiction is mandatory and exclusive, which is not the same as specialized jurisdiction. Thus, exclusive jurisdiction under Chinese law is associated with mandatory stipulations that certain types of cases can only be heard by a specific court; the parties are not allowed to change jurisdiction by agreements, and other courts have no jurisdiction. Exclusive jurisdictions are exclusive, and mandatory compared to other statutory jurisdictions.

In general, except for those cases that will have a major impact nationwide or which the SPC deems shall be tried by itself,⁶⁶ a civil claim may firstly be heard by either a specialized court or a local people's court. However, since the jurisdiction boundary of a

⁶⁴ Article 17 of CPL.

⁶⁵ See Article 33 of CPL, which provides as follows: There are three types of cases that shall be subject to exclusive jurisdiction: (1) Where a dispute is about an immovable property, the court for the place where the immovable property is located shall have jurisdiction; (2) Where a dispute is arising out of harbor operation, the court for the place where the harbor is located shall have jurisdiction; (3) Where a dispute is about succession, the court for the place of the deceased's domicile upon death or where the main property is to be inherited shall have jurisdiction.

⁶⁶ Article 20 of CPL.

specialized court and a local people's court is not entirely clear, this may from time to time result in jurisdictional conflict.⁶⁷ There are three possible types of conflict: 1) The conflict between general jurisdiction of the local people's court and specialized jurisdiction of the maritime court; 2) the conflict between exclusive jurisdiction of local people's courts and specialized jurisdiction of the maritime court; and 3) the conflict between exclusive jurisdictions of the local people's court and the maritime court.

A. Conflict between Specialized Jurisdiction and Ordinary Jurisdiction

The specialized jurisdiction enjoyed by the maritime court precludes the local people's courts from hearing maritime cases. Due to the inherently possible complexities of a legal case, certain confusion existed over its jurisdiction in the early stages when maritime courts were built. Evidence can be found in some previously promulgated legislations. For instance, Article 3 of the 1989 Notice (repealed), as mentioned earlier, stated that if the case fact was simple and the amount of subject matter was small, and the place where the case happened was far from a maritime court, then the local people's court could have jurisdiction with the consent of the relevant maritime court.⁶⁸ This meant that the local people's court could have lawful jurisdiction over a maritime case under some circumstances at that time. However, what did "simple" and "small" actually denote? Due to the lack of adequate rules explaining their meanings, different interpretations and understandings unavoidably developed, and these caused controversies in certain cases.

Now, more rules have been enacted regarding allocation and clarification of the

⁶⁷ Gao Xingge, "Research on the Effectiveness of Specialized Jurisdiction under the Civil Procedure Law". *Journal of Chongqing University* (social science edition), 2018(1):113-122 (in Chinese).

⁶⁸ See Article 3 of the "1989 Notice of the Supreme People's Court regarding implementation of the Scope of Accepted cases of Maritime Courts".

jurisdictions between maritime courts and local people's courts. The rules in this regard mainly include those such as Article 4 of MPL and Article 2 of the Interpretation on CPL. Also, as discussed, the 2016 Provisions specifically prescribe six categories of maritime claims that can be heard by a maritime court. Accordingly, where a civil or administrative case (criminal cases are excluded) falls within these six categories, the case shall be heard by a maritime court.⁶⁹ In addition, where a party files a lawsuit for a dispute that arises from a cause of action involved in the relevant contracts as prescribed in the 2016 Provisions on the ground of tort or other non-contractual cause of action, the lawsuit shall nevertheless be accepted by the maritime court.⁷⁰

Therefore, it appears that the 2016 Provisions, together with other laws, have provided a clear framework for the allocation of jurisdiction between maritime courts and local people's courts. However, sometimes questions may still arise as to whether or not the local people's court has jurisdiction over a particular maritime case, and vice versa. It is interesting to note that, according to Article 112 of the 2016 Provisions, a maritime court may have jurisdiction over cases other than maritime cases in accordance with the specific provisions of laws and judicial interpretations or under the designation of the people's court at a higher level.⁷¹

The CPL lays down several rules to deal with jurisdiction conflicts: Firstly, if a case is brought to a people's court, it will be transferred if the dispute is in effect within the jurisdiction of another court;⁷² secondly, if the people's court deems that the transferred

⁶⁹ Item 110 of the 2016 Provision.

⁷⁰ Item 111 of the 2016 Provision.

⁷¹ Item 112 of the 2016 Provision. This is in order to facilitate the application of any future legislations.

⁷² Article 36 of the CPL provides that where a people's court discovers that a case accepted is not under its jurisdiction, it shall transfer the case to the people's court having jurisdiction, and the people's court to which

case is not under its jurisdiction, it shall report to the high people's court to clarify the jurisdiction;⁷³ and thirdly, if there is any conflict between two people's courts, the dispute shall then be solved by the disputing courts through consultation; or if such consultation fails, the disputing courts shall request for direction from their common superior.⁷⁴ In addition, during the period involved in reporting the case to a superior court for deciding on jurisdiction, the hearing of the dispute will be suspended. If a court renders a ruling on the case prior to the superior court designating jurisdiction, such ruling will be set aside by the superior people's court.⁷⁵ In the absence of relevant rules in the MPL, rules in the CPL can apply equally to any procedural matters that may arise from maritime claims. Therefore, arguably, if a maritime case is brought to a local people's court, it shall be transferred if the dispute is in effect within the jurisdiction of a maritime court; and if a maritime court finds that the case in front of it is not under its jurisdiction, it shall report to the high people's court to clarify the jurisdiction.

In order to protect its legal rights, a party to the dispute can challenge the jurisdiction; but this party can only raise such a challenge during the period allowed.⁷⁶ This can be illustrated in the case *LIN Yibin v. XIE Jun & Shenzhen Zhongzheng International*

the case is transferred shall accept the case.

⁷³ See para 2 of Article 36 of the CPL: "If the people's court to which the case is transferred deems that the transferred case is not under its jurisdiction according to the relevant provisions, it shall report the case to its superior for specified jurisdiction and shall not transfer the case without direction."

⁷⁴ CPL 2017, Article 37. In addition, according to Article 40 of the Interpretation of CPL, where two people's courts with a dispute over jurisdiction request their common superior to specify jurisdiction after their consultations fail, if both courts are people's courts in the same province, autonomous region or municipality directly under the Central Government, the higher people's court of the province, autonomous region or municipality directly under the Central Government shall specify jurisdiction in a timely manner; if both courts are in different provinces, autonomous regions or municipalities directly under the Central Government, and the consultation between the higher people's courts fails, the SPC shall specify jurisdiction in a timely manner.

⁷⁵ Article 41 of Interpretation of CPL.

⁷⁶ Article 127 of CPL.

Freight Forwarding Co. Ltd, Shanghai Branch (Zhongzheng Company).⁷⁷ In this case, during the period allowed, Zhongzheng Company raised a challenge over jurisdiction and said that the company and the plaintiff did not sign a carriage of goods by sea contract, there was no freight forwarding relationship between the two parties, and the consignee had not entrusted the plaintiff to charge for the freight. Therefore, they claimed that the case should be under the jurisdiction of the local people's court. After a careful examination of the plaintiff's complaint, the attached evidence and parties' statements, Shanghai Maritime Court considered that the claim against the defendants that they should return the sea freight charges that had been repeatedly collected, should be deemed to be an unjust enrichment dispute; at the same time, there was no *de factor* freight forwarding contractual relationship between the plaintiff and the defendants. Therefore, the Court considered that the dispute in this case was an ordinary civil dispute and should not be within the specialized jurisdiction of a maritime court. The case should therefore be under the jurisdiction of the people's court of the defendant's domicile, and the courts of the two defendants' residences.⁷⁸

In addition, if a defendant does not submit its answer during the specified period and then appears in court, it is then possible for the local people's court to exercise its jurisdiction over a maritime dispute. In *China Minsheng Banking Co. Ltd, Suzhou Branch v. Jingjiang Longwei Grain and Oil Industry Co. Ltd*,⁷⁹ the dispute concerned "Changjiang Shoreline Terminal Resource" in a mortgage contract. According to the 2016 Provisions

⁷⁷ (2008) HU HAI FA SHANG CHU ZI NO. 49.

⁷⁸ The residence of Zhongzheng Company is located in Huangpu District, Shanghai. The case was finally transferred to the People's Court of Huangpu District.

⁷⁹ (2017) SU MIN ZHONG NO,1319.

that would be applicable in this case, the claim would have fallen within the scope of the specialized jurisdiction of a maritime court. However, the defendant in the first instance, Jingjiang Longwei, did not file a jurisdictional objection during the allowed period, and appeared in court. According to the second paragraph of Article 127 of the CPL, the court deemed that the defendant, Jingjiang Longwei, waived its jurisdictional objection and recognized the jurisdiction of the court of first instance in this case. The Court of Appeal held that Suzhou Intermediate People’s Court had jurisdiction according to the following: Firstly, Article 33 of the CPL 2017 lists three kinds of cases over which a people’s court can enjoy exclusive jurisdiction.⁸⁰ Secondly, Article 2, paragraph 2, of the “Interpretation of MPL” clearly states that maritime cases are subject to specialized jurisdiction of a maritime court, which is however not an “exclusive jurisdiction” by nature. Lastly, Article 127 of the CPL further stipulates that if a party has not filed a jurisdictional objection and responds to the defense, the people’s court of the lawsuit will have jurisdiction, except in the event of violation of the level jurisdiction and exclusive jurisdiction.

The retrial procedure under Chinese law is a classic way of protecting procedural justice. In the CPL 2007, Article 179 regulates that the people’s court should re-try the case if the jurisdiction was in violation of legal provisions and was improper.⁸¹ This was regarded as the key rule for ensuring the appropriate allocation of jurisdictions. However, the CPL 2012 deleted this article, a move that was subsequently criticized, but a similar article was still not included in the CPL 2017. Nevertheless, Article 198 recognizes that “[W]here the president of a people's court at any level discovers any error in any effective

⁸⁰ Article 33 of CPL.

⁸¹ Article 179(2) of CPL 2007.

judgment, ruling or consent judgment of the court and deems a retrial necessary, the president shall submit it to the judicial committee for deliberation and decision; where the SPC discovers any error in any effective judgment, ruling or consent judgment of a local people's court at any level, or a people's court at a higher level discovers any error in any effective judgment, ruling or consent judgment of a people's court at a lower level, the Supreme People's Court or the court at a higher level shall have the power to directly retry the case or specify a people's court at a lower level to retry the case.” In addition, the “2016 Provisions of the Supreme People's Court on Issues Concerning the Jurisdiction over Maritime Actions”, as mentioned earlier, stipulates that where a legally effective ruling violates the specialized jurisdiction over a maritime case and needs correction, the people’s court may retry the case according to the provision of Article 198 of the CPL.⁸² Both substantive and procedural laws involved in maritime trials are different from those in general civil cases. Accordingly, the above said two legal provisions may ensure the possibility of retrying a maritime case due to a mistake made in jurisdiction. The quality of a trial would be difficult to guarantee if a maritime case was heard by a local people’s court, where the ordinary procedure and general substantive law are applied. Therefore, the possible application of the retrial system in maritime litigation can ensure that judgement of maritime cases is fair and timely.

B. Conflict between the Exclusive Jurisdiction of the Local People’s Court and the Specialized Jurisdiction of the Maritime Court

Chinese law respects parties’ autonomy; it is thus possible for the parties to a dispute over

⁸² See the “2016 Provisions of the Supreme People’s Court on Issues Concerning the Jurisdiction over Maritime Actions”, Article III (2).

a contract, or any other right or interest in property, to choose a people's court from among a number of options of having jurisdiction over the dispute.⁸³ Nevertheless, it is also emphasized that the provisions in the CPL regarding level jurisdiction and exclusive jurisdiction shall not be violated.⁸⁴ This means that if the parties' jurisdiction agreement violates the provisions on "exclusive jurisdiction", the court that has accepted the case cannot be deemed as being competent, even if no party raises any objection.⁸⁵

Articles 33, 34 and 127 of the CPL are relevant to the exclusive jurisdiction of the general people's court. Article 33, in particular, provides for the exclusive jurisdiction of a local people's court over the following three kinds of cases: (1) Where a dispute is about an immovable property or real estate, the court for the place where the immovable property or real estate is located shall have jurisdiction; (2) where a dispute arises out of harbor operation, the court for the place where the harbor is located shall have jurisdiction; and (3) where a dispute is about succession, the court at the place of the deceased's domicile upon death, or where the main property to be inherited is, shall have jurisdiction.⁸⁶

Clearly, an exclusive jurisdiction refers to a mandatory stipulation that certain types of cases can only be decided by a specific court, so the parties are not allowed to agree to a jurisdiction change. However, there are no rules clarifying the priority if the jurisdictional

⁸³ Article 34 of CPL.

⁸⁴ Article 34 of CPL.

⁸⁵ According to article 127 of CPL, where a party raises any objection to jurisdiction after a case is accepted by a people's court, the party shall file the objection with the people's court during the period of submitting a written statement of defense. The people's court shall examine the objection. If the objection is supported, the people's court shall issue a ruling to transfer the case to the people's court having jurisdiction; or if the objection is not supported, the people's court shall issue a ruling to dismiss the objection. Where a party raises no objection to jurisdiction and responds to the action by submitting a written statement of defense, the people's court accepting the action shall be deemed to have jurisdiction, unless the provisions regarding hierarchical jurisdiction and exclusive jurisdiction are violated.

⁸⁶ Article 33 of CPL.

conflict occurs between the specialized jurisdiction of a maritime court and the exclusive jurisdiction of a local people's court. In *Guangzhou Hehai Dredging Engineering Co. Ltd v. Huizhou Huicheng District Baoma Building Materials Business Department, China Communications Guangzhou Waterway Bureau Co. Ltd, Huizhou Daya Bay Huaying Petrochemical Co. Ltd*,⁸⁷ the appellant thought that the construction project in the case involved a land formation project and distribution terminal project, which was an important method of marine development and utilization. In addition, the project location was Mangzhou Island, and was surrounded by the waters of Daya Bay. It should thus be within the range of the specialized jurisdiction of the maritime court according to the 2001 Regulations. Accordingly, the case should be heard by Guangzhou Maritime Court. However, Huizhou Intermediate People's Court, as the Court of Appeal, determined that the case was a construction contract by nature, and hence was a real estate dispute⁸⁸ which should thus be exclusively heard by the people's court at the place where the real estate was located, according to Article 33 of the CPL.⁸⁹ In contrast, in *Jiangsu Haolong Construction Engineering Co. Ltd v. Zhuhai Hongrun Construction Engineering Co. Ltd*,⁹⁰ the Court of First Instance in Zhuhai, based upon the provisions of Article 33 of the CPL, held that, since the case arising from the construction project contract was a real estate dispute, the people's court was a competent court to hear the case. The Court of Appeal, Zhuhai Intermediate People's Court, however, believed that the project involved in this

⁸⁷ HUI ZHONG FA LI MIN ZHONG ZI [2014] no. 251.

⁸⁸ Article 28 of the interpretation of the CPL provides that real estate dispute means a property dispute arising from the confirmation of rights in real estate, division of real estate, or neighboring relations, among others. The jurisdiction over a contractual dispute involving contracted operations on rural land, tenancy, construction of a building project, or purchase of a policy-based property shall be determined according to the jurisdiction over a real estate dispute.

⁸⁹ In this case, Huizhou Intermediate People's Court dismissed the appeal and upheld the original ruling.

⁹⁰ (2017)YUE 04 MIN XIA ZHONG no.197.

case was a dredging project, this being a typical construction project in both ocean and sea navigational waters. Therefore, according to article 55 of the 2016 Provisions, the construction of marine and navigable waters is within the scope of the specialized jurisdiction of the maritime court.

In this regard, perhaps, a conflict between the local people’s court and maritime court can follow the format adopted in some other kinds of disputes. For instance, it is interesting to note that, according to paragraph 4 of article 2 of “Provisions of the Supreme People's Court on Several Issues Concerning the Jurisdiction of Military Courts in Civil Cases”,⁹¹ a case in which the place of the real estate, the harbor, or the residence of the deceased upon death, or the place where the major part of the estate is located, as prescribed by Article 34 of the CPL,⁹² is within a camp and one party concerned is military personnel or a military entity, then the case shall be under the jurisdiction of a military court. This provision stipulates the priority of the specialized jurisdiction of the military courts over the exclusive jurisdiction of a local people’s court in the form of a legal provision. This clearly shows the roles played by the military courts as special courts to facilitate the smooth commencement of litigation.⁹³

Confusions will continue to arise when a court is required to distinguish between the specialized jurisdiction of a maritime court and the exclusive jurisdiction of a people’s court. In the absence of specific guidelines, the result of a case will to a large extent rely

⁹¹ *The Provisions of the Supreme People's Court on Several Issues Concerning the Jurisdiction of Military Courts in Civil Cases*, adopted at the 1553rd Session of the Judicial Committee of the Supreme People's Court on August 20, 2012, which was issued and came into force on September 17, 2012.

⁹² It is article 34 of CPL 2017, which is amended.

⁹³ GAO Xingge, “Research on the Effectiveness of Specialized Jurisdiction under Civil Procedure Law”. (n 68). p.116.

on the discretion of the judges, which will perhaps lead to inconsistencies in cases that share similar facts. Without a doubt, amendments are clearly necessary to clarify the priorities between the specialized jurisdiction of a specialized court and the exclusive jurisdiction of a local people's court.

C. Conflict Between the Exclusive Jurisdiction of the Local People's Court and the Exclusive Jurisdiction of the Maritime Court

Both the MPL and CPL contain specific provisions relating to exclusive jurisdiction. Article 7 of the MPL lists three types of lawsuits that shall be under the exclusive jurisdiction of maritime courts.⁹⁴ It is clear that a lawsuit brought on a dispute over port operations shall be under the jurisdiction of the maritime court of the place where the port is located. However, Article 33 of the CPL provides that a local people's court shall have jurisdiction over a dispute that is about an immovable property or a real estate, even if it arises out of harbor operation.⁹⁵ Accordingly, these articles may lead to jurisdiction conflicts when a port/harbor operation⁹⁶ involves an act of infringement involving real estate. For example, imagine a case where, during the process of everyday port operation, a crane was hoisting construction material and the material dropped and destroyed a store

⁹⁴ Article 7 of the MPL regulates the following maritime litigation that shall be under the exclusive jurisdiction of the maritime courts specified in this Article: (1) A lawsuit brought on a dispute over port operations shall be under the jurisdiction of the maritime court of the place where the port is located; (2) a lawsuit brought on a dispute over pollution damage for a ship's discharge, omission or dumping of oil or other harmful substances, or maritime production, operations, ship scrapping, or repair operations shall be under the jurisdiction of the maritime court of the place where oil pollution occurred, where injury occurred, or where preventive measures were taken; (3) a lawsuit brought on a dispute over the performance of a maritime exploration and development contract within the territory of the People's Republic of China and the sea areas under its jurisdiction shall be under the jurisdiction of the maritime court of the place where the contract is performed.

⁹⁵ Article 33 of CPL.

⁹⁶ Port operations may comprise loading, unloading, transfer, storage, loading and unloading of containers for waterway transport goods within the territory of the People's Republic of China. See *Port cargo operation rules*, which expired in 2016.

near the port. The question arising would be: Which court is the competent court, the maritime court of the port city, or the court where the real estate is located?

In *Ningbo Zhenhai Ningyuan Chemical Storage Co. Ltd v. Zhejiang Industrial Equipment Installation Group Co. Ltd, Zhejiang Zhean Construction Labor Service Co. Ltd*,⁹⁷ the appellant refused to accept the ruling given by Ningbo Maritime Court and appealed to the High People's Court of Zhejiang Province, stating that the port operation dispute was mainly directed at the ship, port facilities, water and underwater construction and other related cases. However, in this case, the equipment installation company was a chemical storage warehouse, and the appellant only implemented the inspection and repair works for the pressure pipelines in its storage tank area. Therefore, the work did not involve ships, port facilities, water, or underwater construction projects. Even if the warehouse were located within the port area, it would not mean that the work performed within this area fell within the meaning of port operation. Therefore, the case was not a port operation dispute, nor was it a maritime case, and should not, therefore, be under the jurisdiction of the Ningbo Maritime Court. Rather, this case was considered to be a construction project contract dispute; therefore, according to Article 28 of the Interpretation of the CPL⁹⁸, the case should be under the exclusive jurisdiction of the local people's court where the real estate was located. Interestingly, the High People's Court did not accept the allegations from the appellant, and stated that the case was a property damage dispute caused by the construction of related projects in the chemical operation area in a port area. The area of

⁹⁷ 2018 ZHE MIN XIA ZHONG NO.197.

⁹⁸ Article 28 of the Interpretation of CPL provides that: 'As mentioned in Article 33(1) of the Civil Procedural Law, "real estate dispute" means a property dispute arising from the confirmation of rights in real estate, division of real estate, or neighboring relations, among others.'

operational activity of this project was in the port of Ningbo, so therefore this case was a port operation dispute. According to the provisions in Article 7 of the MPL, the case should be exclusively heard by the maritime court, and therefore Ningbo Maritime Court was the competent court. This case highlights the fact that if different courts have a different understanding of the types of disputes in litigation, this will undoubtedly result in a barrier to having consistent judgements in disputes that share similar facts.

VI. Conclusions

With the thriving development of China's trade and maritime activities, the number of maritime disputes and claims in China are expected to rise. However, as far as the rules regulating the allocation of jurisdiction of first instance in civil and commercial cases is concerned, the Chinese law approach is currently far from satisfactory. As analyzed in this article, jurisdictional conflicts between the maritime courts and the local people's courts in China continue to occur in certain circumstances. The paper has identified three possible types of conflicts: Conflict between general jurisdiction of the local people's courts and specialized jurisdiction of the maritime courts; conflict between exclusive jurisdiction of the local people's courts and specialized jurisdiction of the maritime courts; and conflict between the exclusive jurisdiction of the local people's courts and that of the maritime courts. Relevant authorities thus need to give clearer and more efficient direction for making decisions on jurisdiction over maritime cases; otherwise, this will have a negative impact in the long run on China's trade and investment environment.