

上海海事法院

服务保障高水平对外开放
涉外海事审判情况通报

(2017-2021)

上海海事法院 服务保障高水平对外开放 涉外海事审判情况通报

(中英文对照本)

Shanghai Maritime Court Report on Foreign-related
Maritime Trials for Serving and Guaranteeing the
High-level Opening Up
(2017-2021)



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2022年6月

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前 言

坚持统筹推进国内法治和涉外法治,是习近平法治思想的核心要义之一,是新发展阶段党中央对涉外法治工作的重要部署,是推进全面依法治国的必经之路。涉外海事审判工作是涉外法治建设的重要组成部分,是实行高水平对外开放,加快建设海洋强国的重要保障。

上海海事法院坚持以习近平新时代中国特色社会主义思想为指导,深入学习贯彻习近平法治思想,落实党中央的决策部署,在上海市委正确领导下和最高人民法院、上海市高级人民法院有力指导下,切实加强涉外海事审判工作,服务推进更高水平对外开放,紧紧围绕服务保障海洋强国战略、“一带一路”建设、浦东新区打造社会主义现代化建设引领区、上海国际航运中心建设等党和国家的工作大局,加强国际海事司法中心建设,公正高效审理了一批具有影响力的精品案件,树立了高水平对外开放的国际海事司法形象。

及时回顾过去五年来涉外海事审判工作的新情况,总结宝贵经验,通报上海海事法院服务保障高水平对外开放的工作举措,对进一步把握涉外法治司法规律,凸显涉外海事审判成效,集中展示高水平对外开放的国际海事司法形象都具有重要的意义。现将2017年至2021年上海海事法院服务保障高水平对外开放涉外海事审判情况通报如下。

Foreword

Adhering to the overall advancement of the domestic rule of law and foreign-related rule of law is one of the core elements of Xi Jinping Thoughts on the Rule of Law, an important deployment of the CPC Central Committee on foreign-related rule of law work in the new development stage and the only way to promote a comprehensive rule of law. Foreign-related maritime trials are an important part of the foreign-related rule of law and an important guarantee for the high-level opening up and accelerated construction of a maritime power.

Under the guidance of Xi Jinping Thoughts on Socialism with Chinese Characteristics for a New Era, Shanghai Maritime Court (hereinafter referred to as the “Court”) has profoundly studied and implemented the Xi Jinping Thoughts on the Rule of Law and the decisions and deployments of the CPC Central Committee. Under the correct leadership of the CPC Shanghai Municipal Committee and the powerful guidance of the Supreme People’s Court and the Higher People’s Court of Shanghai Municipality, the Court has effectively strengthened foreign-related maritime trials to serve and promote the higher-level opening up and strengthened the efforts to build Shanghai into an international maritime justice center while keeping in mind the overall work of the Party and the country including the strategy of building China into a maritime power, the Belt and Road Initiative and the strategy of building the Pudong New Area into a pioneer area for socialist modernization. The Court has tried a number of high-quality cases with international influence in an impartial and efficient manner and established an image of an international maritime justice serving and guaranteeing the high-level opening up.

The Court has reviewed the new situation of foreign-related maritime trials in the past five years, summed up valuable experience and reported work initiatives that the Court has taken to serve and guarantee the high-level opening

up, which is of great importance to further mastering the foreign-related rule of law, highlighting the results of foreign-related maritime trials and intensively displaying the image of international maritime justice serving and guaranteeing the high-level opening up. The foreign-related maritime trials accepted by the Court from 2017 to 2021 for serving and guaranteeing the high-level opening up are reported as follows.

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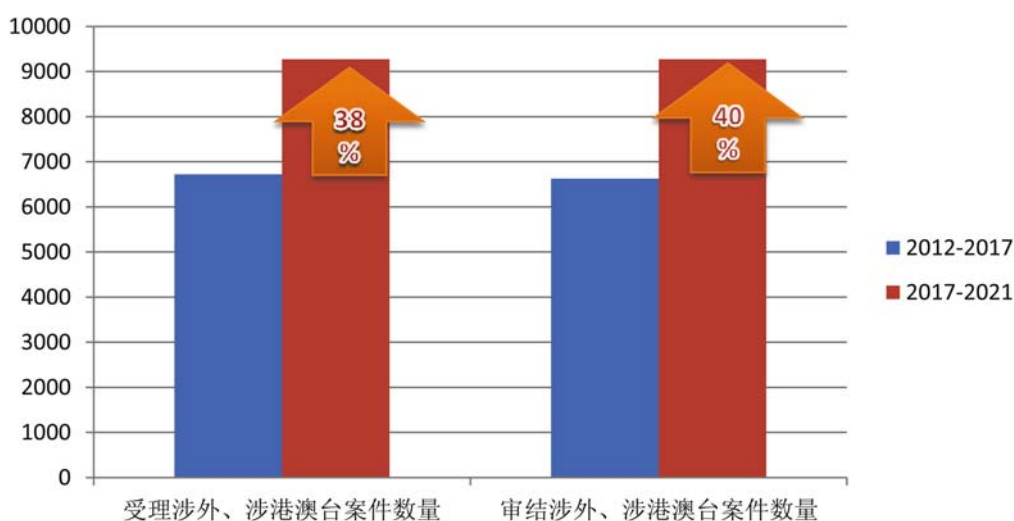
上海海事法院服务保障高水平对外开放涉外海事

审判情况通报(2017-2021)

第一部分

海事审判服务保障高水平 对外开放的基本情况

2017 年至 2021 年,上海海事法院共受理涉外案件(包括诉讼主体、标的物、法律事实涉外)以及涉港澳台案件 9277 件,同比增长 38%,其中涉港澳台案件 1187 件;审结 9279 件,同比增长 40%,其中涉港澳台案件 1193 件。案件总标的额达 104.3 亿元,同比增长 153.59%,占同期全部案件标的总额的 40.2%。上述数据反映出,近年来涉外和涉港澳台案件已经逐步发展成上海海事法院受理案件的重要组成部分。同时,涉外海事审判影响力向纵深发展的格局已经基本形成。



一、涉外海事审判质效稳步提升

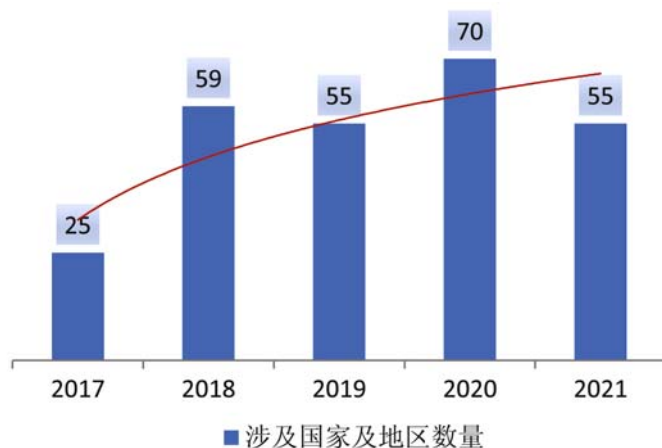
从涉外案件审理时间上看,疫情前(2017 年至 2020 年)上海海事法院平均审理天数总体处于缩短的趋势,涉外海事审判司法服务质量稳步提升。相比 2017 年(307 天),2020 年的平均审理天数降为 179 天,减少了 41%。虽然 2020 年以后平均审理时间上升,但这主要受到三项客观因素叠加影响:一是受疫情影响,多起涉外案件中的域外当事人迟迟无法办妥有关主体身份证明和授权委托书的公证认证手续,严重影响了案件的正常审理进度;二是疫情给涉外案件的事实查明增加了不小的难度,许多国际港口一度陷入停滞状态,相关事实无法查明;三是随着国内疫情呈现局部地区小规模频发的态势,当事人能够参加诉讼的时间客观上受到无法避免的影响。

从平等保护中外当事人合法权益方面看,上海海事法院始终依法严格保护各方当事人合法权益,依法保障航运市场规范健康发展,提升营商环境软实力。涉外海事案件一审服判息诉率达 96.31%,二审发回改判率低,体现了国内外当事人对涉外海事司法服务满意度高,反映出依法平等保护国内外经营者的显著成效。

从承认与执行域外法律文书的情况来看,上海海事法院坚持依法适用《承认与执行外国仲裁裁决公约》等国际公约,积极履行国际司法协助义务,保护涉外当事人合法权益。2017 年至 2021 年共受理申请承认与执行外国仲裁裁决 17 件,审结 15 件;除申请人撤回申请的 7 件外,其余 8 件均予以裁定承认与执行。

二、涉外海事案件辐射面不断扩大

从涉外案件中涉及的地域分布情况来看,涉及的国家及地区遍及亚洲、欧洲、南美洲、北美洲、非洲、大洋洲的九十多个国家及地区。五年以来,平均每年审理的涉外海事案件涉及国家及地区 53 个。2017 年至今,上海海事法院审理的涉外海事审判案件涉及国家及地区数量增长态势明显,司法影响力逐步提升。

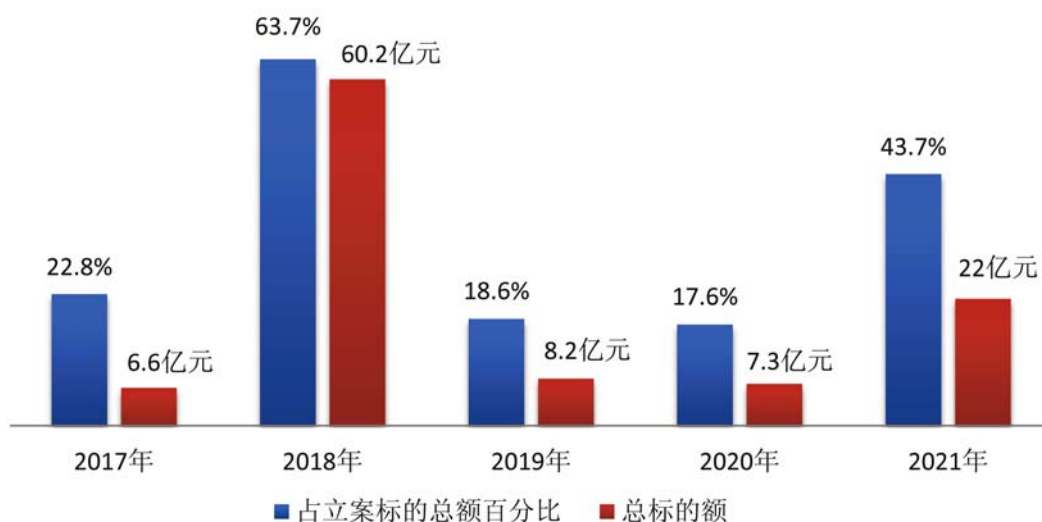


从涉外案件数量上看,一审涉外海事案件占全部案件的比例总体逐步增多,长期处于高位状态。五年以来,平均每年受理涉外海事案件 1855 件,结案 1856 件。2021 年一审海事海商案件中,涉外海事案件收

案占一审收案的 22.5%，涉外海事案件结案占一审结案的 27%。2017 年至今，上海海事法院审理的涉外海事案件占全部海事案件的比重总体呈现出上升趋势。



从涉外案件标的额来看，近年来国际航运市场呈现出波动震荡的趋势。其中，2018 年涉外海事案件标的额升至 60.2 亿元，相比 2017 年大幅上升。2021 年涉外海事案件标的额达 22 亿元，相比 2020 年上升约 200%。从目前看，后疫情时代出口贸易纠纷变数较多，纠纷标的额涨跌幅度较大，航运市场受到了一定影响，相关纠纷仍有继续增多的可能。

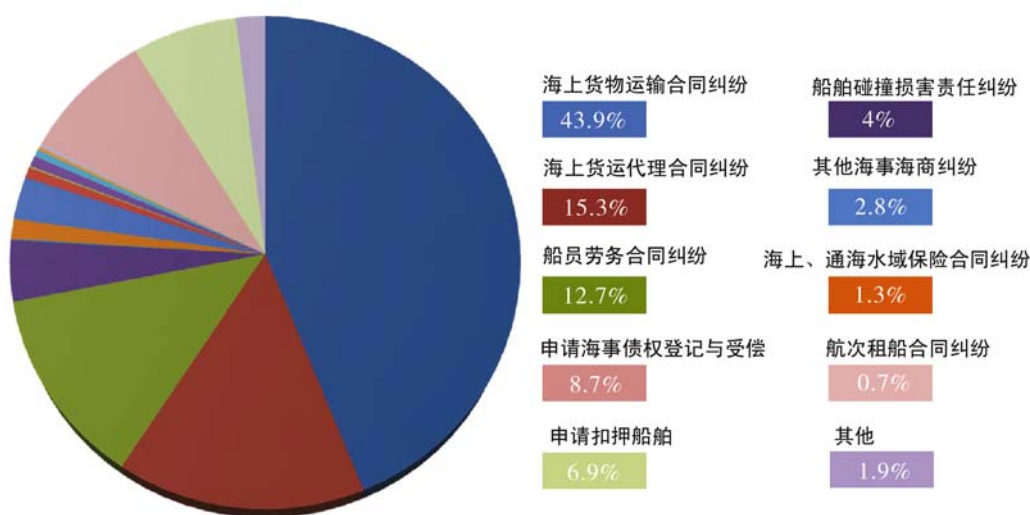


2017-2021年总标的额与其所占立案标的总额的百分比

三、涉外海事案件新情况持续涌现

近年审理的涉外海事案件基本涵盖了上海海事法院所有的收案类型范围。从2017年至2021年,案件类型占比前四位的是海上货物运输合同纠纷(43.9%)、海上货运代理合同纠纷(15.3%)、船员劳务合同纠纷(12.7%)和船舶碰撞损害责任纠纷(4%)。虽然海上货物运输合同纠纷和海上货运代理合同纠纷两大传统类型案件仍占主要份额,但却表现出一些新的变化特点。其中最明显的就是多式联运类型运输纠纷增长较快,尤其是长三角地区海铁联运模式逐渐普及。多区段运输纠纷往往争议较大,其原因在于货损发生在哪个区段不易证明;货物因知识产权、高新技术或者专业用途,损失或残值难以确定;保险公司赔付后代位追偿证据严重缺失等。

值得注意的是,2020年疫情发生后涉外船员劳务合同纠纷曾短暂大幅上升,从2019年的18.67%上升至2020年的26.07%。究其原因主要是疫情使得全球邮轮行业发展受到影响,外籍邮轮船员工资拖欠情况增多,涉外船员劳务合同纠纷数量一度有所上升。



2017-2021年案件类型占比

四、域外法律适用水平显著提升

近年来,随着涉外海事案件数量的增加,涉及到国际公约和外国法适用的情况也开始增多。上海海事法院建立外国法查明平台,依法查明并准确适用外国法或国际公约化解涉外疑难纠纷,屡次获得当事人的好评。上海海事法院依法适用英国法、新加坡法、希腊法、墨西哥法、巴西法、《承认与执行外国仲裁裁决公约》《1974 年海上旅客及其行李运输雅典公约》《1972 年国际海上避碰规则》《国际铁路运输公约》《国际铁路货物运输合同统一规则》等多部外国法或国际公约,审理了一批涉外海事海商案件,彰显了涉外海事司法水平,进一步体现了服务保障高水平对外开放的成效。

上海海事法院服务保障高水平对外开放涉外海事

审判情况通报(2017-2021)

第二部分

涉外海事司法服务保障高水平 对外开放工作举措

一、科学谋划涉外海事司法工作,服务保障国家战略和上海中心工作

上海海事法院始终将涉外海事审判工作与国家发展战略和上海中心工作全方位紧密对接,充分发挥海事审判职能作用,贯彻落实各项服务保障新举措。

(一) 积极履行沿海经济带海事司法管辖职能,主动对接海洋强国战略

建设海洋强国是中国特色社会主义事业的重要组成部分。坚持陆海统筹,发展海洋经济,建设海洋强国是以习近平同志为核心的党中央作出的重大战略部署。在上海市委正确领导和最高人民法院、上海市高级人民法院的有力指导下,上海海事法院大力加强海事审判工作,为建设海洋强国提供有力司法服务和保障。上海海事法院与上海市人民检察院第三分院签订备忘录,全面深化海洋资源保护、海洋环境保护、公益诉讼衔接等多方面立体式合作。在生态环境保护民事公益诉讼的案件中,院、庭长审理案件的比例达 94.7%。在一起由上海市第三人民检察院第三分院检察长作为公益诉讼起诉人,上海海事法院院长担任审判长公开审理的东海违法捕捞渔业资源案件中,上海市人大代表、政协委员、渔业组织以及部分新闻媒体的代表全程旁听了庭审,获得社会广泛好评。法检“两长”同时出庭,充分彰显了上海海事司法积极行使海事司法职



能,规范引导市场主体经略海洋,主动对接海洋强国战略的决心。在朝鲜豆满江船舶会社与 C. S. 海运株式会社船舶碰撞损害责任纠纷案中,朝韩两国当事人协议约定上海海事法院管辖,充分彰显了中国海事司法的国际公信力与影响力。

(二) 发布首份中英文版涉“一带一路”海事审判专题白皮书,充分发挥海事审判职能作用

共建“一带一路”倡议是以习近平同志为核心的党中央主动应对全球形势深刻变化、统筹国内国际两个大局作出的重大战略决策,是实施新一轮高水平对外开放的重要举措。为积极回应“一带一路”建设中外市场主体的司法关切和司法需求,主动服务和融入“一带一路”建设,上海海事法院以《最高人民法院关于人民法院为“一带一路”建设提供司法服务和保障的若干意见》《上海

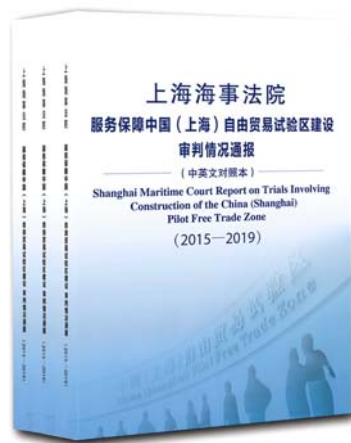


市高级人民法院关于为“一带一路”建设提供司法服务和保障的实施意见》为引领,立足海事审判实际,发布了首份专题涉“一带一路”中英文双语海事审判工作的白皮书,获人民法院报、法制日报、新华社、中新社、解放日报等多家媒体专版刊登,该白皮书的发布进一步提升了上海海事法院涉外海事司法服务保障“一带一路”建设的国际公信力和影响力。上海海事法院还分别与连云港市中级人民法院、南通市中级人民法院签订服务保障“一带一路”司法合作协议,共同优化沿海经济带营商环境,坚定不移地持续推动共建“一带一路”高质量发展。

(三) 制定《上海海事法院服务保障中国(上海)自由贸易试验区临港新片区建设的实施意见》,主动对接自贸区新片区海事司法新需求

设立中国(上海)自由贸易试验区临港新片区是以习近平同志为核心的党中央总揽全局、科学决策作出的进一步扩大开放重大战略部署,是新时代彰显我国坚持全方位开放鲜明态度、主动引领经济全球化健康发展的重要举措。在上海自贸区成立之初,上海海事法院就制定了《上海海事法院服务保障中国(上海)自由贸易试验区建设若干意见》。

2020年,上海海事法院为深入贯彻落实最高人民法院、上海市高级人民法院关于中国(上海)自由贸易试验区临港新片区的指导意见,制定了《上海海事法院服务保障中国(上海)自由贸易试验区临港新片区建设的实施意见》,成为海事司法服务保障上海自贸区建设司法意见的2.0版。上海海事法院以精准把握自贸区新片区海事司法需求为核心,升级



完善海事司法服务保障供给机制,大力支持自贸区投资贸易自由化体系建设,充分发挥司法协同监管作用,全面优化自贸区航运法治化营商环境。

(四)制定《上海海事法院关于支持和保障浦东新区高水平改革开放打造社会主义现代化建设引领区实施意见》,大力支持浦东新区打造社会主义现代化建设引领区

支持浦东新区高水平改革开放、打造社会主义现代化建设引领区是党中央、国务院立足时代特征和现实需要,着眼于推动全面建设社会主义现代化国家、加快构建新发展格局、服务全国和带动长三角一体化发展的战略决策和重大举措。2022年,上海海事法院全面贯彻落实《最高人民法院关于人民法院支持和保障浦东新区高水平改革开放打造社会主义现代化建设引领区的意见》和《上海市高级人民法院关于支持和保障浦东新区高水平改革开放 打造社会主义现代化建设引领区的实施

方案》,制定了《上海海事法院关于支持和保障浦东新区高水平改革开放打造社会主义现代化建设引领区实施意见》。该意见以高度的政治责任感和历史使命感,主动将海事审判各项工作置于支持上海浦东引领区建设的大局中,系统谋划、精准施策、统筹实施、协调推进,加快形成与上海浦东引领区建设发展要求相适应的海事司法服务供给机制。

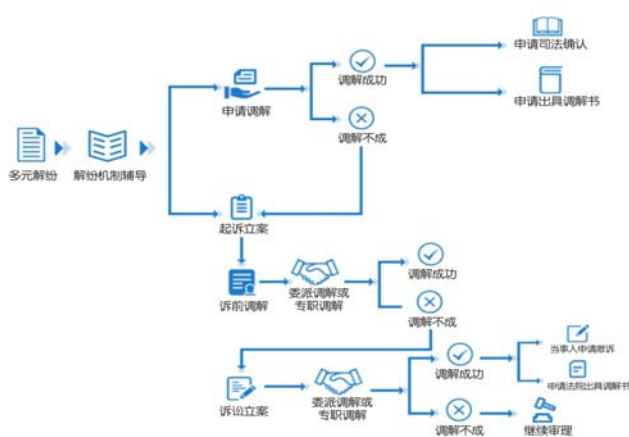
(五) 制定《上海海事法院服务保障上海国际航运中心建设的工作意见》,全面助力上海国际航运中心软实力建设

2018年,上海海事法院为深入推进服务保障国际航运中心建设新举措,立足海事审判职能,制定了《上海海事法院服务保障上海国际航运中心建设的工作意见》,从海事审判工作定位、职能作用、工作机制、服务保障功能、审判体系和能力现代化五个方面作出部署,全面提升海事审判服务保障能力,助力国际航运中心软实力建设。经过“十三五”时期的发展,上海已经基本建成航运资源要素集聚、航运服务功能完善、航运市场环境优良、航运物流服务高效的国际航运中心,初步具备全球航运资源配置能力。“十四五”时期,上海海事法院将继续全面助力上海建设便捷高效、功能完备、开放融合、绿色智慧、保障有力的世界一流国际航运中心。

二、创新海事审判工作机制,提供高质量涉外海事司法服务

(一) 深化“一站式”涉外海事纠纷多元化解机制建设

上海海事法院持续完善海事诉讼与调解、仲裁有机衔接的“一站式”涉外海事纠纷多元化解机制,将三种争议解决方式紧密对接,制定了《上海海事法院关于涉外海事纠纷诉讼、调解、仲裁



多元化解决一站式工作规则(试行)》,极大便利涉外海事纠纷高效解决,为高水平对外开放提供专业化的司法服务与保障。

1. 优化委托仲裁调解机制

海事案件委托仲裁调解机制是由上海海事法院与中国海事仲裁委员会共同创设的融合诉讼、调解、仲裁各自特点的海事纠纷多元化解决机制,充分



发挥海事仲裁机构与海事法院各自的专业优势。双方在2021北外滩国际航运论坛“司法与仲裁”专题论坛,共同发布了《中国海事仲裁委员会与上海海事法院海事案件委托调解白皮书(2011-2021)》。十年内,上海海事法院委托中国海事仲裁委员会上海总部处理纠纷200余件,案件数量逐年稳步上升。这些案件涉及42个国家和地区,标的总额超过5亿元。纠纷化解成功率接近半数,近五年委托成功率达到62%。在海洋环境污染、海上人身损害、船舶碰撞等专业性较强的案件中,纠纷化解成功率达到85%以上。

2. 建立委托特邀调解机制

2017年,上海海事法院与上海经贸商事调解中心共同签署了《上海海事法院——上海经贸商事调解中心关于建立海事海商纠纷特邀调解工作机制协作纪要》。该委托特邀调解机制是健全涉外海事纠纷多元化解决机制的重要举措,是畅通诉讼与委托调解有效衔接,实现委托调解流程清晰、公开透明的重要保障,也是上海海事法院“平台建设、诉调

对接、特邀调解、在线解纷”一体化纠纷解决的具体实践。

3. 创新引入外籍调解员化解涉外海事纠纷

2020年,上海海事法院首次委托上海经贸商事调解中心并建议引入外籍调解员调解涉外海事案件。在涉外海事纠纷中,与涉外当事人具有相同国籍的外籍调解员可以迅速消除地域文化差异。上海海事法院充分利用外籍调解员的这一优势,在特邀外籍调解员人才储备中首次委托精通中、英、日三国语言的外籍调解员,成功调处标的额达人民币420多万元的跨境海事纠纷,切实展现了上海海事法院“一站式”涉外海事纠纷多元化解决机制的成效。

(二) 推进国际海事司法上海基地建设配套机制建设

1. 优化涉外海事审判资源配置

上海海事法院针对精品案件,专门组建了扁平化、专业化、精品化的涉外要案审判团队作为机动办案团队,汇集优质资源,由院庭长担任审判长,合议庭成员从全院审判经验丰富、业务能力突出的法官中择优选任,为公正高效审理具有国际规则示范意义的精品案件奠定了制度基础。进一步完善自由贸易试验区法庭专业化审判机制,推动形成自贸区航运法治化发展格局。成立长兴岛派出法庭,服务保障崇明世界级生态岛、长兴岛国家级船舶产业基地建设。设立北外滩审判工作站,打造服务高端航运业发展的特色品牌,助力上海国际一流航运法治化营商环境建设。



2. 推广中英文版“海事海商纠纷诉讼管辖协议示范条款”

为努力打造国际海事纠纷解决优选地,服务保障上海国际航运中

心新一轮建设,上海海事法院制定推出中英文版《上海海事法院海事海商纠纷诉讼管辖协议示范条款》(以下简称《示范条款》)及相配套文本,帮助当事人更加清晰便捷地约定海事争议解决方式和地点。中英文版《示范条款》及配套内容的推出,是上海海事法院促进诉讼管辖协议约定内容的规范性、有效性和公平性,帮助当事人有效避免因管辖问题而遭受程序延滞、提高纠纷解决效率的积极举措,也是上海海事法院在推进国际海事司法中心建设、提高诉讼服务水平方面的创新之举。2021年10月,上海海事法院组织召开了“高端航运服务与企业发展座谈会”,向各行业协会、航运企业等多家单位解读并推介了《示范条款》,获得市人大代表、各港航企业、协会的广泛好评。

3. 强化涉外海事诉讼与仲裁对接机制

仲裁在解决国际海事纠纷中所发挥的作用显著,上海海事法院高度关注国际海事仲裁的发展趋势,积极吸收和借鉴国际规则和先进经验,充分发挥司法职能作用,不断加强仲裁的司法审查和承认执行工作。全面落实法定职责,加强诉讼与仲裁对接机制:一是对请求确认仲裁协议效力、请求承认与执行仲裁裁决的案件,成立专业化仲裁司法审查团队,快速审核当事人的诉请主张,符合条件的及时登记立案;二是由专业化仲裁司法审查团队对仲裁前和仲裁程序中申请财产保全以及证据保全的案件,及时裁定并移交执行;三是加强与仲裁机构的沟通联系,在北外滩审判工作站定期举办“海事司法与仲裁协同发展焦点法律问题交流会”,促进诉讼与仲裁对接机制的良性发展。

(三) 提升涉外海事审判便利化机制

1. 推广海事诉讼代理概括性授权司法认可机制

上海海事法院高度重视当事人的诉讼便利程度,建立并推广海事诉讼代理概括性授权司法认可机制。世界知名航运公司在我国涉诉的情形时有发生,办理授权委托材料公证认证的时间一般较长,大大增加

了涉外案件审判周期。为提高纠纷解决效率,上海海事法院持续推广诉讼代理的概括性授权,认可境外当事人授权我国境内的律师事务所、律师或者其在我国境内的分支机构或者关联企业对一定时期、一定

上海海事法院概括性授权汇总

委托人	国家/地区	受托人	有效期限
上海通海船务有限公司(SHANGHAI TONGHAI GROUP LIMITED)	中国	上海通海船务有限公司	2020-07-04
长海航运(中国)有限公司	中国	长海航运(中国)有限公司上海分公司	2021-11-19
长海航运(中国)有限公司	中国	长海航运(中国)有限公司上海分公司	2021-09-30
长海航运(中国)有限公司	中国	长海航运(中国)有限公司上海分公司	2021-10-21
长海航运(中国)有限公司	中国	长海航运(中国)有限公司上海分公司	2021-10-10
CMA CGM S.A.	法国	CMA CGM (CHINA) SHIPMANAGEMENT CO., LTD.	2021-09-22
中远海运(中国)有限公司 (COSCO SHIPPING GROUP LIMITED)	中国	上海通海船务有限公司	2020-07-04
意大利海运(中国)有限公司 (ITALIA MARITTIMA S.p.A.)	意大利	长海航运(中国)有限公司上海分公司	2021-10-28
东方海外集装箱有限公司 (ORIENT OVERSEAS CONTAINER LINE LIMITED)	中国	上海通海船务有限公司 卢俊、邵建峰	2020-03-26
A.P.穆勒-马士基有限公司	丹麦	上海通海船务有限公司 卢俊、邵建峰	2020-05-27
马士基(中国)有限公司	丹麦	上海通海船务有限公司 卢俊、邵建峰	2020-05-27
皇家加勒比游轮有限公司 (RCL Cruises Ltd.)	美国	上海通海船务有限公司 卢俊、邵建峰	2020-03-26
达飞海运(中国)有限公司 (CMA CGM CHINA SHIPPING CO., LTD.)	法国	上海通海船务有限公司 卢俊、邵建峰	2020-07-28
新加坡海峡航运有限公司(SINGAPORE STRAIT SHIPPING COMPANY LIMITED)	新加坡	上海通海船务有限公司	2021-09-18

数据来源：上海海事法院

范围内的诉讼案件进行代理。自该机制创设以来,法国达飞轮船有限公司、马士基航运有限公司、皇家加勒比 RCL 游轮公司、韩进海运(中国)有限公司等多家国际知名公司已经先后向上海海事法院提交了概括性授权委托文件,在数百件案件中成功适用,并已形成了可检索查询的授权备案数据库。

2. 推广“合同约定送达地址示范条款”

上海海事法院高度重视域外当事人的送达瓶颈问题,推出了中英文双语版的“合同约定送达地址示范条款”。合同各方可以在签订合同时以附件或者条款的形式,约定对司法文书送达地址进行确认。上海市高级人民法院在临港新片区法律服务中心设立上海法院诉讼服务窗口,上海海事法院与上海市第三中级人民法院、上海金融法院、浦东新区人民法院等 11 家单位共同签署了临港新片区一站式争议解决中心共建合作协议,在临港新片区的市场主体中积极推介上述条款。上海海事法院与上海市国际货运代理行业协会发布关于国际货运代理企业提交司法送达地址确认文书的共同倡议,多家国际货运代理物流企业在倡议发布现场交存了司法送达地址确认书。

3. 完善诉讼服务多功能布局

上海海事法院持续完善诉讼服务多功能布局,大幅降低了当事人的诉讼成本。根据海事案件管辖的特点,上海海事法院依托中国移动

微法院跨域立案平台,设立跨域立案专窗,大力鼓励引导域外当事人在线立案或通过当地法院跨域立案,减少当事人诉累。同时,还打造“智链湾”和“慧讼港”两



大品牌平台。当事人通过“智链湾”平台,可以自助查询鉴定评估、船舶看管、特邀调解等海事特色诉讼服务项目以及业务办理进度;“慧讼港”平台则为当事人办理自助立案、下载文书模板等提供便捷服务。上海海事法院推出中英文双语海事诉讼指南汇编、《上海海事法院线上诉讼服务指南》等配套文本,帮助当事人更加快速掌握网上诉讼操作流程和步骤,体验全流程在线诉讼服务。

(四) 完善域外法律查明和适用机制

1. 上线全国海事审判领域首个外国法查明平台

为适应涉外海事审判服务高水平对外开放的需求,破解外国法查明难题,上海海事法院与华东政法大学、上海海事大学等高校签署《外国法查明专项合作协议》,正式上线全国海事审判领域首个外国法查明平台。协议明确了海事法院委托研究中心查明外国法的总体要求、详细流程以及研究中心出具《外国法查明专家意见书》的具体标准等,标志着上海海事法院外国法查明工作机制在原有基础上更加深化和规范。近年来,



上海海事法院先后成功查明墨西哥、希腊、巴西、英国、新加坡等国家法律,通过该平台为解决外国法查明和适用难题积累了新的经验。

2. 制定外国法查明统一委托工作规则

为严格规范外国法查明委托流程,确保外国法查明工作的准确和真实高效,全面落实两个“一站式”中心建设要求,上海海事法院制定《上海海事法院关于涉外海事审判中外国法律查明工作的指导意见(试行)》《上海海事法院关于外国法查明统一委托工作规则(试行)》等规章制度。这些规则明确了外国法的查明对象(包括但不限于成文法、判例法、习惯法、法学学说、立法准备资料等),严格规定了查明时限,建立了集约化外国法查明办理机构、外国法查明机构名录等,在解决外国法查明与适用中的涉外海事审判难点问题作出了有益的尝试。

3. 组建青年翻译员团队自主开展法律检索与翻译

上海海事法院积极搭建青年法官发展平台,组建青年翻译员团队,协助法官自主开展外国法检索与翻译工作,成为外国法查明的有力支撑。近年来,翻译员团队精心编译我院案例并被 i-Law 等国际知名法律数据库收录,在《中国审判》上发表了多篇作品,翻译了《劳氏法律报告》中的经典案例,汇编出版了《上海海事法院精品案例选(中英文对照本)》(法律出版社 2019 年 11 月版)。

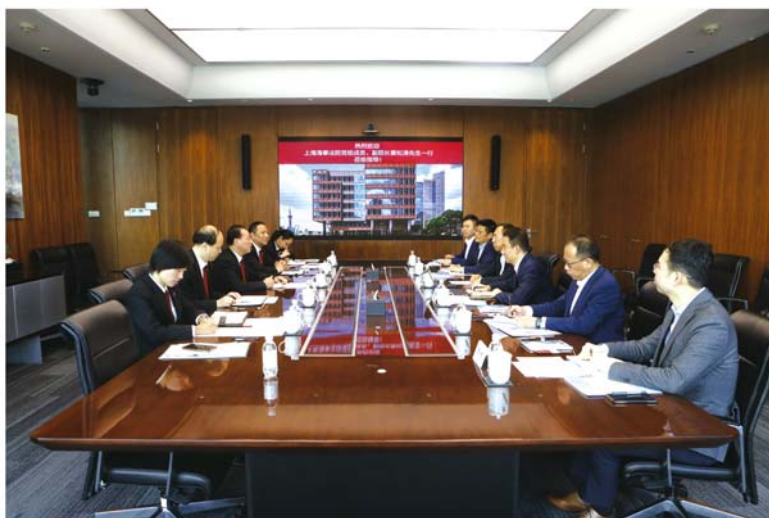


(五) 探索与完善涉外船舶扣押与拍卖机制

1. 探索建立船舶扣押预担保机制

为形成高效便利的船舶扣押机制,尽可能保障各方当事人的合法权益,2020 年 10 月,上海海事法院和中国船东互保协会共同签署了《合作备忘录》,针对航运业发展的现实迫切需求,在全国范围内首推“船舶

扣押预担保”新举措。这一做法既高效维护了申请人的合法权益,又降低了被申请人因船舶扣押后产生的维持成本,探索解决当前全球疫情尚未有效控制情况下的船舶扣



押难题,并节约了大量司法成本。2021年5月,上海海事法院成功适用该机制,实现了对被扣押船舶的“即扣即放”,得到了中外当事人与中国船东互保协会的一致认可与赞同,是国内海事法院首次适用解除船舶扣押预担保机制,也是上海海事法院服务保障高水平对外开放的新举措,彰显了上海海事法院涉外海事审判水平的专业化优势。

2. 完善外籍船舶司法拍卖机制

涉外海事审判中,外籍船舶的司法拍卖工作对实现中外当事人胜诉权益至关重要。船舶有别于其他动产,维持费用昂贵,长时间的扣押还存在自然灾害、设备故障等风险。上海海事法院高度重视对胜诉当事人权益的及时兑现,完善外籍船舶司法拍卖机制,疫情期间妥善处理了涉巴哈马籍邮轮“辉煌(Glory Sea)”轮系列案件,果断综合运用线上和线下拍卖方式,及时启动线下变卖程序,最大程度实现船舶价值,最终充分足额保障了中国、印度尼西亚、缅甸、尼泊尔、白俄罗斯、塞尔维亚、哈萨克斯坦、洪都拉斯、孟加拉国



等 9 国 196 名中外船员的胜诉权益,为疫情期间外籍船舶司法处置工作积累了宝贵经验。

3. 开启疫情期间被扣船舶船员权益保障绿色通道

疫情期间,船舶被司法扣押后,船员下船困难,各地港口防疫政策变动以及航班机票的供不应求,导致船员权益的及时有效保障愈显重要。对此,上海海事法院认真落实“六稳”“六保”的政策方针,依法及时全面地为中外船员群体提供司法保护,开启“快立、快保、快审、快执”的绿色通道,积极开展司法援助,平等保护了中外数百名船员的诉讼权益,体现了中国海事司法的担当与温度。疫情期间,上海海事法院专业审判团队数次登上巴哈马籍邮轮“辉煌(Glory Sea)”轮,为近百名外籍船员提供中英文诉讼服务,及时保障了 196 名中外船员的诉讼权利,《上海法治报》专版报道了上海海事法院的成功经验。该系列案也入选了 2020 年最高人民法院关于船员权益保护典型案例。

(六) 打造智慧海事法院审判信息化“样板间”

上海海事法院始终坚持“互联网+海事审判”信息化发展模式,创新实践最高人民法院和上海市高级人民法院“智慧法院”“数据法院”建设发展要求,努力打造智慧海事法院“样板间”,取得多项重要成果。近年来,上海海事法院自行研发了在线智能海事诉讼系统、船货港数据一体化智能辅助系统、海事案件智能办案辅助系统等多项应用平台,研究制定了《上海海事法院深化智慧海事法院建设规划(2020-2022)》,上海海事法院发布的《依托“人工智能+”工作模式构建智慧海事法院》专题报告在中国社会科学院法学研究所、社会科学文献出版社联合发布的法治蓝皮书《中国法院信息化发展报告 No. 2 (2018)》全文刊载。

1. 中英文双语在线智能海事诉讼系统

中英文双语在线智能海事诉讼系统以服务当事人和律师为目标导

向,具有集约化诉讼服务、双语版跨境远程诉讼等特点,集同步语音翻译、远程证人出庭、远程专家辅助人出庭等诉讼服务功能。通过将互联网信息技术与海事审判特点深



度融合,切实满足中外当事人参与诉讼的现实需要。

2. 船货港数据一体化智能辅助系统

该系统通过整屏一体化呈现的方式,清晰明了地将数据内容以最清晰易懂的图形方式展现出来,同时,通过简易操作可将数据从宏观整体到微观细节逐层展现,实现关联数据间实时联动,为决策和高效管理提供最有效的数据辅助。法官可以通过该系统即时实现船舶登记资料检索、船舶实时定位分析、船舶所在海域气象水文信息分析、扣船地点推荐、历史航迹查询和海上船舶碰撞动态模拟分析等功能。在一起船舶碰撞损害责任纠纷中,合议庭在庭审直播中运用该系统精确再现了碰撞事故的区域、航道和两船轨迹,为案件的公正高效处理查明了事实。在一起船舶修理合同纠纷中,合议庭利用该系统当庭查询船舶的航行动态及船舶所有权转让信息,通过船舶历史位置和停靠时间,分析还原事实概貌,得到当事人一致确认,促成该案当庭调解。

3. 海事案件智能办案辅助系统

海事案件智能办案辅助系统包含无单放货、船舶碰撞、货损货差、海上保险、货运代理合同及其他海事案件等模块,所涉案件类型覆盖了上海海事法院约70%的审理案件,由12名法官全程参与研发,系全国海事法院首个智能辅助办案系统,开拓了海事审判专业化、智能化发展的重要路径。该系统自动对接现有的审判系统、庭审系统等,实时跟进

案件审理进程,以法官的办案逻辑为导向,对电子卷宗材料进行实质性分析,提示争议焦点,推送类案及相应的法律法规,实质性地减少法官在办案过程中的重复性、事务性工作,提高了法官办案效率。



三、深入实施海事审判精品战略,提升国际海事司法公信力

(一) 依法审结一批具有影响力的涉外海事案件

上海海事法院紧紧围绕党和国家工作大局,着力服务保障高水平对外开放的国家战略,依托“最高人民法院民四庭国际海事司法上海基地”和“智慧海事法院基地”建设,提出海事审判精品战略,牢固树立精品意识,弘扬“工匠精神”,审结了一批具有影响力的涉外海事案件,全面提升高水平对外开放司法服务水平。

1. 司法服务保障海洋强国战略成效显著

由上海市第三人民检察院第三分院检察长作为公益诉讼起诉人,上海海事法院院长担任审判长公开审理的东海违法捕捞渔业资源案件,是上海海事法院受理生态环境保护民事公益诉讼案件以来,首次由法检“两长”同时出庭。该案件的审理深入践行了习近平生态文明思想,用法治力量维护沿海经济带海洋资源的合理开发与利用,服务保障海洋强国战略效果显著。在另一起由上海市第三人民检察院第三分院提起的申请确认检察公益磋商协议效力案件中,上海海事法院依法确立了检察公益磋商协议的审查原则、审查内容和审查程序,为海洋生态环境保护提供司法服务保障。该案件是贯彻《中华人民共和国民法典》

生态环境损害赔偿制度和民事生态环境修复制度精神,落实《上海市人民代表大会常务委员会关于加强检察公益诉讼工作的决定》的上海市首例民事检察公益诉讼诉前和解案,充分展现出上海海事法院紧紧围绕海洋强国战略,持续开展司法服务效果显著。

2. 涉“一带一路”建设典型案例获广泛好评

在一起涉哈萨克斯坦企业申请海事强制令案中,上海海事法院通过海事诉讼特别程序,发布海事强制令,快速妥处多式联运运输纠纷,为“一带一路”建设提供了公正高效的海事司法服务保障。哈萨克斯坦驻华大使馆致函称:由于涉案货物是保障该国西哈州居民持续供电的贵重物资,社会价值重大,上海海事法院做出裁定同意海事强制令申请,使哈方的权益得到保护。为此,向法院表示崇高的敬意。该案入选了最高人民法院 2017 年全国海事审判典型案例。在另一起上海捷喜国际货物运输代理有限公司与重庆市公路工程(集团)股份有限公司海上货运代理合同纠纷案中,上海海事法院准确划分合同当事人在“一带一路”沿线国局势变化时的责任界限和风险负担,对依法保障企业海外投资利益,鼓励和促进企业参与“一带一路”建设具有现实意义。该案入选了最高人民法院第三批涉“一带一路”建设典型案例。

3. 查明并适用外国法裁判助推上海自贸区高水平对外开放

在一起三井住友海上火灾保险株式会社与中远海运集装箱运输有限公司国际多式联运合同纠纷中,上海海事法院坚持当事人意思自治原则,充分尊重域外当事人与涉自贸区市场主体的协议选择,在铁路运输区段适用希腊法律做出裁判,获得当事人双方对裁判结果一致认可。该案入选了最高人民法院 2018 年全国海事审判典型案例。在一起胜船海事公司(Winship Maritime Inc.)诉中海工业有限公司、扬州中远海运重工有限公司船舶建造佣金合同纠纷中,上海海事法院充分尊重自贸区市场主体与域外当事人的准据法适用协议,依法适用英国判例法进

行审理,明确船舶佣金合同纠纷的裁判规则,裁判结果获各方当事人高度赞扬。该案入选了最高人民法院 2020 年全国海事审判典型案例,并被出版刊载《劳氏法律报告》的英国出版社 Informa UK plc 编译收录进其电子数据库。上海海事法院准确查明并适用外国法律进行裁判,平等保护中外当事人的合法权益,鼓励域外当事人来华投资经营,树立了上海自贸区高水平开放的司法形象。

4. 服务保障国际航运中心软实力持续升级

在一起邮轮旅游海上人身损害责任纠纷中,上海海事法院依法准确适用《1974 年海上旅客及其行李运输雅典公约》作出裁判,明确了邮轮承运人存在打破《1974 年海上旅客及其行李运输雅典公约》规定的赔偿责任限额的法定情形,规范了上海港国际邮轮行业的健康发展,为上海国际航运中心软实力建设持续升级提供了司法指引。外籍邮轮公司在判决后不仅按规定履行了赔偿义务,还针对判决书的认定采取了积极的改进措施,保障邮轮旅客的人身安全。该案入选了第二届全国“百篇优秀裁判文书”,并被新加坡国立大学海商法数据库收录。在另一起葡萄牙忠诚保险有限公司与史带财产保险股份有限公司海上保险合同纠纷中,上海海事法院就《中华人民共和国海商法》中“重复保险分摊”的概括性规定进一步阐明了裁判方法,细化了裁判规则,为航运金融业界提供了“重复保险分摊”规则适用的司法指引。该案在 2018 年全国优秀案例分析评比活动中获得二等奖,入选了首届全国法院“百篇优秀裁判文书”。

(二) 国际航运中心法治化营商环境持续优化完善

上海海事法院立足涉外审判本职工作,密切关注国际国内宏观政策对投资、贸易、航运、金融领域的影响,积极延伸海事司法服务,为优化营商环境服务高水平对外开放发挥司法护航作用。

1. 贴近一线就地开展诉讼服务

上海海事法院成立长兴岛派出法庭、设立北外滩审判工作站,为崇明世界级生态岛建设、海洋生态环境保护、高端船舶制造业及北外滩高端航运业发展提供更有



针对性的司法服务。长兴岛派出法庭进一步加强与完善涉外船舶纠纷审理机制建设,切实保障海洋强国战略的实施。北外滩审判工作站主要针对虹口区高端航运业集聚区提供全方位的诉讼服务,《航运交易公报》对此进行了专题报道。工作站成立一年里,建立北外滩审判工作站特色合作平台,举办“海事司法与仲裁协同发展焦点法律问题交流会”“船舶油污损害赔偿法律实务研讨会”开展海事法律热点问题的讨论。

2. 发布首份中英双语司法建议书

上海海事法院在审理一起碰撞事故引发的相关纠纷中发现,“长锦海洋”轮在事故应急处置能力方面存在不足。为维护水上交通秩序,保障海上人命和财产安全,督促外籍航运主体依法依规参与国际航运活动,上海海事法院于2021年12月向外籍船公司发出了中英双语的司法建议书,指出其作为在中华人民共和国内经营船舶的航运主体,应当确保熟悉《中华人民共和国海上交通安全法》《长江口深水航道通航安全管理办法》等水上交通安全规范并严格遵照执行,建议认真分析本次事故的形成原因,加强安全责任培训,切实提高事故应急处置能力。外籍船公司收到司法建议书后回函,表示将积极整改,加强船员安全知识培训、船员应急操作培训、对船舶关键设备的日常检查,努力确保船上安

全标准维持在最高水准。上海海事法院首次以中英文双语形式向外籍当事人发送司法建议书,充分体现了针对航运领域重大风险,积极延伸诉讼服务,贯彻维护海洋经济活动安全的使命。

3. 积极应对疫情风险开展航运法律系列讲座

自疫情发生以来,国际经济、贸易、航运受到严重冲击,航运领域面临纠纷频发的严峻态势,为帮助航运业界妥善解决矛盾纠纷、有效管控市场风险、合理规避潜在损失、依法合规开展经营,上海海事法院



为航运业界开展了航运法律服务系列讲座。在第三届上海商事调解宣传周系列活动中,围绕“后疫情时代航运纠纷解决”开展专题法治宣传讲座。在北外滩审判工作站成立一周年之际,上海海事法院召开“高端航运服务与企业发展座谈会暨北外滩审判工作站成立一周年情况通报会”,针对航运业界关注的热点问题开展了针对性的诉讼服务指导,开展航运保险专题讲座。

(三) 积极打造国际海事纠纷解决优选地

1. 国际海事司法透明度连续四年第一

上海海事法院通过中英文门户网站、微信微博及各种媒体、全国性司法公开平台,持续公开法院审执工作情况,海事司法透明度、司法公信力和影响力不断提升。在中国社会科学院法学研究所、社会科学文献出版社联合公布的“中国海事司法透明度指数报告”中,上海海事法院自2016至2019年度连续四年排名第一,自中国海事司法透明度评估启动以来处于第一梯队。

2. 多项工作成果受到国际业界好评和关注

上海海事法院审理的多起案件被美国杜兰大学海商法研究中心、新加坡国立大学海商法数据库、著名保赔协会挪威 GARD 保赔协会、航运界权威法律期刊《法国海商法杂志》收录。上海海事法院定期向波罗的海国际航运公会亚太中心 (BIMCO 上海) 推介海事审判典型案例, 开展法律交流。上海海事法院妥善处理的“AMBA BHAKTI”轮船员工资欠薪案获得印度驻上海总领事馆盛赞。全球海事与航运新闻网站 (Global Maritime and Shipping News) 评论称, “上海海事法院对滞留船员案件作出了具有里程碑意义的裁定”, 高度评价了上海海事法院对外籍滞留船员所展现出的跨越国界的人文关怀。

3. 主动对标国际航运中心建设规划

上海海事法院主动对标《上海国际航运中心建设“十四五”规划》的指导意见, 对接《新华·波罗的海国际航运中心发展指数报告》, 为长三角航运经济发展提供司法服务保障, 搭建长三角海事司法合作交流平台, 以海事法律服务标杆示范作用吸引具有国际影响力的航运企业、国际组织和功能性机构来沪解决争议。向新华社中国经济信息社主动反馈上海海事法律服务的最新动态, 助力提升上海港海事法律服务软实力的认可度。

上海海事法院服务保障高水平对外开放涉外海事

审判情况通报(2017-2021)

第三部分

涉外海事审判服务保障高水平 对外开放典型案例

一、服务保障“一带一路”建设典型案例

案例一 上海捷喜国际货物运输代理有限公司与重庆市公路工程(集团)股份有限公司海上货运代理合同纠纷案(入选最高人民法院第三批涉“一带一路”建设典型案例)

【基本案情】

2014年11月12日,捷喜货代公司与重庆公路公司签订运输协议,约定由捷喜货代公司代重庆公路公司办理161台车辆设备的出运事宜,装货港为中国上海港,卸货港为也门荷台达港(HODEIDAH)。货物运抵目的港顺利交货后,重庆公路公司未能按约向捷喜货代公司支付运输协议下的应付费用。2015年2月4日,重庆公路公司向捷喜货代公司出具付款承诺书,称由于当地局势不稳定,其无法在约定时间内从沙特项目基金收到工程预付款,故而拖欠捷喜货代公司费用,并承诺将于2015年3月2日前付清所有拖欠费用,但此后并未支付。庭审中,重庆公路公司以目的港所在国也门发生战乱为由,主张援引不可抗力免责。经查,涉案货物原本将用于重庆公路公司在也门承接的阿姆兰—亚丁高速公路项目建设,该项目团队人员在2015年3月的也门撤侨事件中已撤回国内,项目因此搁置。

上海海事法院审理认为,目的港所在国发生战乱,影响的是公路建设项目,重庆公路公司的偿付能力因此受到波及,但其不能因为无法收到公路建设项目下的合同款项而免除向捷喜货代公司承担的付款义务。故判决重庆公路公司支付所拖欠的费用。二审维持原判。

【典型意义解读】

“一带一路”沿线国家众多,政治、经济、民族、宗教、法律、文化、地理状况复杂各异。在“走出去”参与投资、合作、建设过程中,遭遇政局动荡、战乱、罢工、自然灾害等不可抗力事件或者其他不可预测的情势变更都在所难免,本案即是由此引发纠纷的一个典型事例。本案海上

货物运输合同目的地也门是“一带一路”沿线国家之一,所运送的货物系用于国内企业通过海外竞标承接的重大基础设施建设项目。纠纷的产生与也门局势突变存在关联,因此准确划分合同当事人在类似事件下的责任界限和风险负担,对依法保障企业海外投资利益,鼓励和促进企业参与“一带一路”建设具有现实意义。本案判决明确了海上货运代理合同的委托人不能因其投资项目无法履行,而免除其在海上货运代理合同下对受托人应承担的合同义务,避免海外投资建设领域的意外风险向为之提供物流保障服务的航运产业链不当转嫁。该原则也同样适用于海上货物运输合同以及为海外投资项目提供诸如物资、融资等的其他相关合同的履行场合,可供今后处理类似涉“一带一路”案件以作借鉴。

二、优化上海自贸区法治化营商环境典型案例

案例二 胜船海事公司诉中海工业有限公司、扬州中远海运重工有限公司船舶建造佣金合同纠纷案（入选2020年全国海事审判典型案例）

【基本案情】

被告中海工业有限公司、扬州中远海运重工有限公司经原告胜船海事公司中介,与案外人TTI公司签订《造船合同》。两被告与原告为此也签署了对应的《佣金协议》。《佣金协议》中约定,如果《造船合同》出于任何原因未生效,或被买方/卖方在船舶建造期间取消和/或解除,两被告将免除支付未付佣金分期款的义务。各方还约定,该协议受英国法律约束并须依英国法律予以解释。后TTI公司在美国法院进入破产重整,经美国破产法院做出“资产出售令”,TTI公司将《造船合同》下的权利义务出售给新的买方。两被告最终从新买方处获得全额船款支付,原告因此请求判令两被告支付相应佣金及利息。

法院经审理认为,本案争议的法律关系为涉外民事法律关系,各方当事人在《佣金协议》中约定适用英国法,法院予以尊重。在英国法下,经纪人获得佣金应当首先以佣金合同所约定的条件达成为前提。本案约定原告获得佣金的条件是促成《造船合同》订立且两被告收到买方支付的船款。此处的买方应当限于 TTI 公司(或代表 TTI 公司)。若《造船合同》后续部分并非由原告找来的 TTI 公司付款,而是由其他人找来的新买方付款,这与原告作为原经纪人已经无关。同时,在英国法下,委托人可以自由地做出恰当的业务决定,无需优先考虑经纪人的佣金支付问题。所以《造船合同》转让后,原告获得佣金的条件无法达成,两被告并无过错,不必对原告的损失承担责任。据此,一审判决对原告的诉请请求不予支持。各方当事人均未提出上诉。

【典型意义解读】

本案是一起自贸区航运主体与外籍当事人约定适用英国法审理的船舶建造佣金合同纠纷,为涉外商事海事审判中外国判例法的查明提供了实践样本。根据我国《涉外民事关系法律适用法》的规定,当事人选择适用外国法的,应当提供该国法律。所以本案应由当事人向法院提供英国法相关判例。庭审中经法院释明,采取当事人各自提供、声明检索穷尽和共同确认的方式,框定可能需要适用于本案的相关判例数十件,再由法院根据判例的位阶和时间效力以及与本案的匹配度,归纳出英国法下可用于解决本案纠纷的裁判规则。这些规则涉及英国法(普通法)下合同解释、缔约自由、诚实信用等原则以及佣金合同的具体处理,准确回应了当事人在选择法律适用时对纠纷解决结果的合理预期。本案虽然标的额上千万、诉辩争议较多,经一审判决后,双方当事人均未上诉,实现了准确查明、适用外国判例法并定分止争的良好效果。

三、外国当事人协议选择上海海事法院管辖典型案例

案例三 朝鲜豆满江船舶会社与韩国 C. S. 海运株式会社船舶碰撞损害责任纠纷案(2021 年最高人民法院工作报告中的典型案例、入选 2019 年全国海事审判典型案例)

【基本案情】2015 年 9 月 21 日起,朝鲜籍船舶“秃鲁峰 3”(“TU RU BONG 3”)轮根据与案外人先锋事业所之间的租船合同,作为捕捞作业渔船的辅助船,在朝鲜半岛东部海域从事捕鱼加工作业。2015 年 10 月 1 日,“秃鲁峰 3”轮在作业中与韩国籍货船“海霓”轮相撞。其后,原告与被告就涉案纠纷协商不成,于 2017 年 3 月 20 日达成管辖权协议,约定就涉案船舶碰撞事故所产生的或与该碰撞事故有关的一切纠纷交由上海海事法院管辖。

上海海事法院一审认为,原、被告均系外国法人,本案具有涉外因素。双方当事人诉前签订管辖权协议,合意选择本院行使涉案纠纷管辖权,本院予以确认。庭审中,双方当事人均选择适用中华人民共和国法律处理本案纠纷,本院予以确认。同时,法院依法适用《1972 年国际海上避碰规则》的规定确定涉案双方船舶应当遵守的航行规则。根据事发当时情况和双方的过错程度,法院最终认定“海霓”轮应承担本起事故 80% 的责任,“秃鲁峰 3”轮应承担 20% 的责任。上海市高级人民法院经审理认为,一审判决事实查明清楚,适用法律正确,应予维持,判决驳回上诉,维持原判。

【典型意义解读】

本案涉及两艘外籍船舶在海上发生碰撞后,双方协议选择我国法院管辖并适用我国法律,充分体现了我国法院对当事人意思自治的尊重,更彰显了我国海事司法的国际影响力。本案的典型意义有两个方面:关于管辖问题,本案当事人均为外国企业、碰撞事故发生地并非位于我国管辖海域,其他与纠纷有实际联系的地点均不在我国境内,但双

方当事人在诉前签订管辖权协议,合意选择上海海事法院行使涉案纠纷管辖权,符合海事诉讼特别程序法的规定。关于法律适用问题,本案当事人在我国法院诉讼过程中均选择适用中华人民共和国法律处理本案纠纷。根据当事人意思自治原则,允许当事人在海事侵权纠纷中协议选择法律适用,无论是从行为的民事侵权性质、法律效果以及国际私法的发展趋势来讲,都具有较为充分的理论和实践依据。

四、“一站式”涉外海事纠纷多元化解决机制典型案例

案例四 ITN 强固公司与中远海运集装箱运输有限公司海上货物运输合同纠纷

【基本案情】

2018年3月,原告ITN强固公司委托被告中远海运集装箱运输有限公司将2237箱红酒从美国运往日本。运输过程中冷藏集装箱的温度被设置为零下14度,红酒到达日本开箱后发现由于长时间冷冻,红酒失去了食用价值,最终被推定为全损。原告向收货人及其货物保险人赔偿了货物损失后起诉至法院,要求被告赔偿损失。被告认为,冷藏箱温度的设置“-14°C”系按照原告的订舱指示,其对货损没有责任。而原告认为,“-”系破折号而非负号,且红酒存储温度为运输常识,被告作为承运人应对货损负责。

法院经审理认为,本案原告ITN强固公司系注册在美国的公司,且案件事实涉及美国与日本两地,具有涉外因素,故在法院建议下,双方同意先行至上海经贸商事调解中心,由外籍调解员PETER CORNE先生主持调解。调解员在帮助双方当事人理清货损原因的基础上,阐明分析各自的利益点,提示双方从商业利益角度看待案件解决。最终,通过不断的沟通协调,双方当事人达成了和解方案,并在主审法官的见证下在上海经贸商事调解中心签署了调解协议。

【典型意义解读】

本案系首次委托外籍调解员进行调解并最终调解成功的涉外纠纷案件,不仅在具体案件中公正高效地化解了纠纷、维护了中外双方当事人的合法权益,而且该案的成功处理,具有多方面意义。第一,引入外籍调解员调解涉外纠纷案件。引入外籍调解员可以消除语言障碍,与外国当事人构筑有效的交流模式。同时外籍调解员的语言优势和多国法律背景,能够充分了解外国当事人的诉求,更容易给出符合外国当事人特点的解决方案,从而有效化解矛盾。第二,加强法院对委托调解的主导与指导。在本案整个委托调解过程中,法院充分发挥了主导与指导作用,包括根据案件的涉外性和专业性特点选任外籍调解员,协助拟定调解方案等,既充分发挥了委托调解的优势,又依托法院的审判职能解决相关法律问题,有效提升了委托调解的规范性,亦彰显了诉调对接的合力效果。该案的成功不仅是在个案中取得了良好法律效果和社会效果,也为上海海事法院探索创新涉外海事海商领域多元化纠纷解决机制提供了宝贵经验。

五、外国法查明与适用典型案例

案例五 三井住友海上火灾保险株式会社与中远海运集装箱运输有限公司多式联运合同纠纷案(入选2018年全国海事审判典型案例)

【基本案情】

2015年3月,被告中远海运集装箱运输有限公司承运一批液晶显示面板先经海运自马来西亚巴生港至希腊比雷埃夫斯,再经铁路至斯洛伐克尼特拉。货物在位于希腊境内的铁路运输区段因火车脱轨而遭受货损。原告三井住友海上火灾保险株式会社作为涉案货物保险人,在保险理赔后取得代位求偿权,向被告提出追偿。被告抗辩称,火车脱轨的原因是事故时段当地持续暴雨,引起地质塌陷,属不可抗力,承运

人可以免责;即使不能免责,其也依法可以享受承运人的单位赔偿责任限制。

法院经审理认为,原告成立注册于日本、运输目的地为斯洛伐克、事故发生地位于希腊,案件争议属于涉外民事法律关系下的纠纷,当事人可以选择解决纠纷适用的法律。庭审中,双方当事人达成一致,对于涉案货物铁路运输区段的责任认定、责任承担方式等选择适用希腊法律,其余争议问题选择适用中华人民共和国法律,法院对此选择予以尊重。希腊是《国际铁路运输公约》的成员国。根据公约若货物的灭失、损坏或迟延交付是由于承运人无法避免并且无法阻止其发生的原因所造成的,承运人无须承担赔偿责任。本案事故系地质作用引起地层塌陷的结果,其发生非人力所能预见和控制,被告得以援引公约规定,对货损不负赔偿责任。遂判决对原告的诉讼请求不予支持。二审期间,原告自行撤回上诉。

【典型意义解读】

本案审理中,法院充分尊重双方当事人对于准据法的约定,对于涉案货物铁路运输区段的责任认定、责任承担方式等适用希腊法律,其余争议问题适用中华人民共和国法律。本案头程海运始于马来西亚,中途经希腊转铁路,目的地斯洛伐克,所涉三国均系“一带一路”沿线国家,是一条典型的通过“21 世纪海上丝绸之路”,经由地中海转铁路将货物运送至中欧内陆国家的海铁联运航路。随着“一带一路”国家和地区间贸易往来的日益密切,对多式联运的需求也呈现增长趋势。本案区分了“网状责任制”下多式联运合同准据法和调整区段运输有关法律的关系,较好阐明了对此类问题的适法原则。

六、涉外船员权益保护典型案例

案例六 196 名中外籍船员诉钻石国际邮轮公司船员劳务合同纠纷系列案（入选 2020 年最高人民法院关于船员权益保护典型案例）

【基本案情】

来自中国、印度尼西亚、缅甸、尼泊尔、白俄罗斯、塞尔维亚、哈萨克斯坦、洪都拉斯、孟加拉国等 9 国的 196 名船员于 2017 年至 2019 年在被告所属的巴哈马籍“辉煌（GLORY SEA）”轮担任水手、轮机员、服务员、厨工等职务。在此期间，被告欠付船员工资约人民币 1200 万元。在上海海事法院的诉讼指导下，船员请求对“辉煌”轮采取司法扣押拍卖措施，上海海事法院裁定予以准许。2019 年 3 月 7 日，上海海事法院依法将涉案船舶扣押在上海港吴淞口锚地，并及时启动司法拍卖程序，于 2020 年 4 月 17 日成功变卖船舶。

法院经审理认为，196 名中外籍船员与船东代理公司签订《船员雇佣协议书》，在“辉煌”轮任职，与被告建立了船员劳务合同关系，应依约支付劳动报酬，并依法承担支付遣返费用等责任。故判令被告钻石国际邮轮公司支付船员工资人民币 1200 万元及其利息损失，并依法确认船员的请求享有船舶优先权。

【典型意义解读】

近年来，中国邮轮产业市场随着中国对外开放的深入而得到快速发展，邮轮船员权益保护的迫切性日益凸显。邮轮不同于货轮，涉及船员人数众多。本案的 196 名船员中，三分之二为外籍船员。船东拖欠船员工资达人民币 1200 万元，并在船舶被扣押后弃船。为此，法院开启船员权益保护的“绿色通道”，立案、审判、执行整体协调推进。第一时间要求船员劳务派遣公司与船东互保协会遣返滞留在船的外籍船员，安排船舶看管公司进行管理，并在台风期间采取措施全天候保障邮轮安全。同时，加快案件审理节奏，在诉讼过程中及时启动船舶拍卖程序，

妥善处理案外人对船舶拍卖的异议行为,积极克服疫情对邮轮处置的不利影响,两次拍卖之后成功变卖船舶。法院一系列举措既确保了司法程序依法规范有序,又避免了扣押成本和风险的进一步扩大,有效维护了196名船员的合法权益,充分体现了海事司法对船员权益保护的重视,为今后处理此类案件提供了经验和借鉴。

七、涉外邮轮纠纷典型案例

案例七 羊某与英国嘉年华邮轮有限公司海上人身损害责任纠纷

(入选第二届全国“百篇优秀裁判文书”)

【基本案情】

2015年8月,原告(7岁,未成年)和其母购买了“蓝宝石公主”号邮轮“上海-济州-福冈-上海”四晚五日的旅游产品。邮轮航行至公海海域时,原告在邮轮泳池溺水致伤。原告之母遂向法院提起诉讼,请求判令被告公开向原告及其法定代理人赔礼道歉,并赔偿原告人身和精神损失费等约人民币402万元。

本案为涉外海上人身损害责任纠纷。法院经审理认为,原告与第三人签订出境旅游合同,被告是涉案邮轮营运的经营者,应当负有对游客的人身安全保障义务。原告母亲作为法定监护人对未成年原告的人身安全亦负有保护义务。最终法院认定被告应承担80%的责任比例。

【典型意义解读】

本案为一起典型的发生于外籍邮轮上的人身损害赔偿责任纠纷案件,案件各方对于准据法确定、法律适用、责任比例等一系列问题分歧明显。本案审理结果对于外籍邮轮在华运营规范和相关法律问题均有重要的价值。

本案判决针对被告提出的赔偿责任限制抗辩,结合案情和相关法律规定,确立了如下的规则:在外籍邮轮公共场所中发生的旅客人身损

害责任纠纷案件中,若邮轮承运人明知存在发生该种损害的可能性,而违反邮轮母港或船籍国法律规定或相关的行业(操作)规范,未采取相应的防范应对措施,从而导致损害发生的情况下,即构成明知可能造成此种损害而轻率地作为或不为,不应享受《1974年海上旅客及其行李运输雅典公约》规定的赔偿责任限额的权益。该规则的确立为以后类似案件的审查提供了相应的参照,同时也为邮轮相关行业的健康发展提出了一定的指引。

被告在判决后不仅按规定履行了赔偿义务,还针对判决书的认定采取了积极的改进措施。于两个月内,马上在其所属的母港为上海的所有邮轮上配备了泳池救生人员,并计划今后在全球范围内所属邮轮上均配备泳池救生人员,以大幅提高船上泳池的安全系数,保障邮轮旅客的人身安全。

八、依法平等保护中外企业权益典型案例

案例八 葡萄牙忠诚保险有限公司与史带财产保险股份有限公司海上保险合同纠纷案(入选首届全国法院“百篇优秀裁判文书”)

【基本案情】

原告忠诚保险公司承保了涉案焊管从中国新港港运往安哥拉罗安达港的运输风险,阿萨伊公司为被保险人。同期,被告史带保险公司也承保了该批货物的运输风险,被保险人、保险标的和保险金额与原告签发的保险凭证记载一致。原、被告各自的保险合同中均无“禁止他保条款”、“无分摊条款”或“按比例条款”,也未对违反重复保险通知义务的后果进行约定。涉案货物在目的港卸载时发现受损,货方于当日向船东提出索赔,及时向原、被告告知了货物出险情况。原告委托的公估公司检验后认为货损原因为积载不当,原告遂根据公估结果支付了检验费用和保险赔偿金。次年,被告向被保险人催要租船合同以及被保险

人出具的允许被告代理人处理向承运人追偿事宜的授权书,催要未果后,被告通知被保险人拒赔。此后,原告通知被告涉案货物存在重复保险,要求被告分摊 50% 的保险赔偿金和检验费用,被告未予支付。原告遂诉至法院。

法院经审理认为,原、被告之间存在法定的重复保险法律关系。原告向被保险人已经做出的赔付是合理和谨慎的、被告在其保险合同项下对被保险人也负有赔偿责任且原告向被保险人做出的赔付解除了被告的赔偿责任。因此,原告的分摊请求权成立。综上,法院判决被告向原告支付保险赔偿金及利息。一审判决做出后,被告自觉履行了判决确定的支付义务。本案判决现已生效。

【典型意义解读】

商事审判应当充分尊重市场的规则并审视裁判结果对市场的影响。如果对第一赔付保险人行使分摊请求权时设置过高的法律门槛,以致《海商法》所规定的重复保险分摊请求权形同虚设,将在实践中导致重复保险中的各个保险人权利义务的分配面临难题,这一司法导向不利于航运保险市场的健康发展,也使保险公司与同行开展业务合作时存在障碍。本案的裁判结果明确了该类案件的裁判思路,厘清了重复保险分摊的标准和审查要点,对《海商法》第 225 条“重复保险分摊”的概括规定阐明了裁判方法,对于重复保险分摊之诉的审查范围应界定合理的边界,对今后同类案件的处理和保险行业内部纠纷的解决提供了参考。法院在查明事实的基础上,准确适用法律,判决支持了外国保险公司的诉讼请求,判令被告保险公司依法进行分摊,体现了中国海事司法对中外当事人的平等保护。

九、海洋生态环境保护典型案例

案例九 上海市人民检察院第三分院与现代商船(中国)有限公司 申请确认检察公益磋商协议效力案

【基本案情】

2019年5月6日,“HYUNDAI NEW YORK”轮(以下称“现代纽约”轮)在我国船舶大气污染物排放控制区使用硫含量为2.67% m/m的船舶燃料油,违反了《中华人民共和国大气污染防治法》和中华人民共和国交通运输部《船舶大气污染物排放控制区实施方案》的相关规定,被浦东海事局查获并处以行政罚款。就上述违法行为造成的环境公益损害,上海市人民检察院第三分院(以下简称市检三分院)依法履行公告程序,督促有关机关和社会组织在法定期限内提起民事公益诉讼。后,其委托相关组织评估认定“现代纽约”轮造成的环境公益损害金额约为人民币42929.58元。

现代商船(中国)有限公司为“现代纽约”轮的船舶经营人韩国现代商船有限公司(HYUNDAI MERCHANT MARINE CO., LTD.)的全资子公司,经其与市检三分院磋商,双方于2020年9月21日达成公益损害赔偿协议,并于2020年10月12日共同向上海海事法院申请确认该协议效力。

经审查认为,本案为申请确认检察公益磋商协议效力案。依据《上海市人民代表大会常务委员会关于加强检察公益诉讼工作的决定》的相关规定,侵权行为人自行纠正违法行为,采取补救措施,或者承诺整改的,检察机关可以就民事责任的承担与侵权行为人进行磋商。经磋商达成协议的,可以向审判机关申请司法确认。案涉协议符合司法确认协议效力的法定条件,裁定公益损害赔偿协议有效。

【典型意义解读】

本案系船舶污染大气环境、由检察机关提起的公益磋商协议司法

确认案,是贯彻《中华人民共和国民法典》生态环境损害赔偿制度和民事生态环境修复制度精神,落实《上海市人民代表大会常务委员会关于加强检察公益诉讼工作的决定》的上海市首例民事检察公益诉前和解案。公益磋商协议属于民事性质的协议,但与经人民调解组织调解达成的人民调解协议不同,人民调解协议是平等主体在不损害国家利益、社会公共利益及集体和他人合法利益的前提下,相对自由地处分自己的权利。公益磋商协议则是赔偿权利人以维护社会公共利益为目的,代表国家、社会公众与侵权人进行磋商、主张权益,人民法院对公益磋商协议的审查,在审查原则、审查内容和审查程序方面应有所不同。该案依法创设性地确立了检察公益磋商协议的审查原则、审查内容和审查程序,以司法监督为生态环境保护和公益诉讼保护保驾护航。

十、承认与执行外国仲裁裁决典型案例

案例十 东盛航运有限公司与商行荣耀国际航运有限公司申请承认和执行外国仲裁裁决案(入选 2021 年全国海事审判典型案例)

【基本案情】

2018 年 9 月 21 日,申请人与被申请人签订了一份定期租船合同,约定被申请人租用申请人的“东珍”轮(m. v. “ORIENTAL PEARL”)用于货物运输。合同约定纠纷提交伦敦仲裁,适用英国法及伦敦海事仲裁员协会(LMAA)规则。上述租船合同履行发生争议后,申请人依约提起仲裁。2019 年 10 月 10 日,仲裁庭根据纠纷双方提交的意见及证据,认为其对案件的意见一致并做出最终裁决:被申请人应当承担申请人的损失约 90790.28 美元及利息。裁决书送达后,被申请人未履行裁决确定的支付义务。申请人遂向本院申请承认与执行该仲裁裁决。

法院经审查认为,被申请人系注册在马绍尔群岛的离岸公司,但涉案租船确认书、仲裁裁决均记载其经营地在中国上海;涉案业务往来邮

件称被申请人与其关联公司混同,而关联公司确在上海办公。综合上述证据可以证明中国上海的地址系被申请人的经营办公场所,故本院具有管辖权。同时,该案仲裁裁决不存在《承认与执行外国仲裁裁决公约》(以下简称《纽约公约》)规定的拒绝承认和执行仲裁裁决的情形,申请人的申请也符合我国相关法律的规定,故裁定承认和执行仲裁裁决。被申请人随即主动履行了裁决确定的义务。

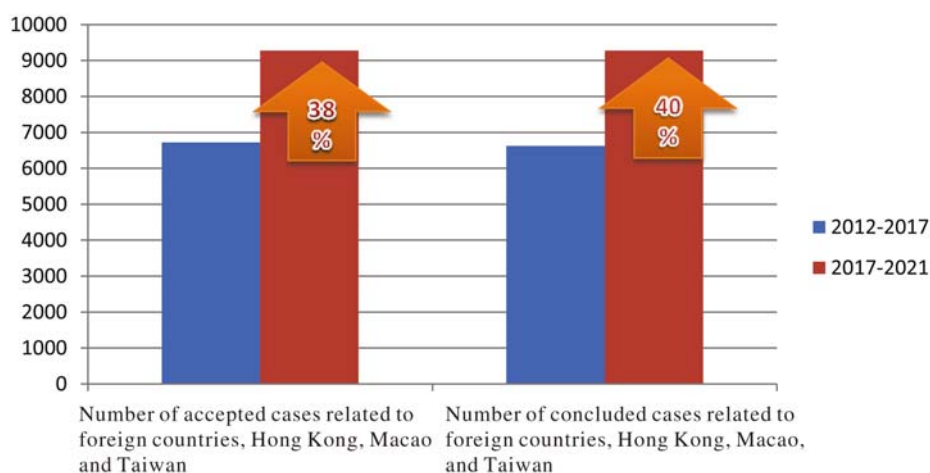
【典型意义解读】

本案当事人均为注册在境外的离岸公司,双方之间的租船合同纠纷在英国仲裁后,申请人以上海海事法院为被申请人住所地海事法院为由,申请承认和执行仲裁裁决。我国与英国均为《纽约公约》的缔约国,本案应依照《纽约公约》进行审查。依据我国法律规定,当公司注册地、登记地与主要办事机构所在地不一致时,应以主要办事机构所在地作为住所地。法院在本案审查中秉持公约“有利于裁决执行”的精神,通过对被申请人办事机构所在地的认定,积极行使对该类案件的管辖权,并依据公约规定裁定承认和执行仲裁裁决,促使被申请人主动履行裁决确定的义务,较好地履行了《纽约公约》缔约国的义务。

Part One :

**Overview of Maritime Trials for Serving and
Guaranteeing the High-level Opening Up**

From 2017 to 2021, the Court accepted a total of 9,277 foreign-related (including the subject of action, subject matter and legal facts) and Hong Kong, Macao, and Taiwan-related cases, a year-on-year growth of 38%, including 1,187 Hong Kong, Macao, and Taiwan-related cases; and concluded 9,279 cases, a year-on-year growth of 40%, including 1,193 Hong Kong, Macao, and Taiwan-related cases. The total value of the subject matter involved in these cases reached RMB 10.43 billion, a year-on-year growth of 153.59%, accounting for 40.2% of the total value of the subject matter involved in all cases handled over the same period. The above data show that cases related to foreign countries, Hong Kong, Macao and Taiwan have gradually become a major part of cases accepted by the Court in recent years. In addition, the influence of foreign-related maritime trials has deepened.



I. Stable Improvement of the Quality and Efficiency of Foreign-related Maritime Trials

Regarding the trial time of foreign-related cases, the average trial days of these cases concluded by the Court prior to the outbreak of COVID-19 (from 2017 to 2020) showed an overall trend of decrease, and the quality of foreign-related maritime trial services was steadily increased. The average trial days in 2020 were reduced by 179 days compared to those in 2017 (307 days), dropping by 41%. The increase in the average trial days after 2020 was mainly attributable to the following three objective factors: (1) Affected by the COVID-19, foreign parties involved in many foreign-related maritime cases cannot complete the notarization or certification procedure for the relevant subject qualification certificate and authorization letter in time, seriously affecting the

normal trial progress of cases; (2) The outbreak of COVID-19 increased the difficulty in facts finding of foreign-related maritime cases, as many international ports once suspended operations, rendering it impossible to identify relevant facts; and (3) With the frequent small-scale outbreaks of COVID-19 in certain regions of China, the time when the parties were able to participate in the action was objectively and inevitably affected.

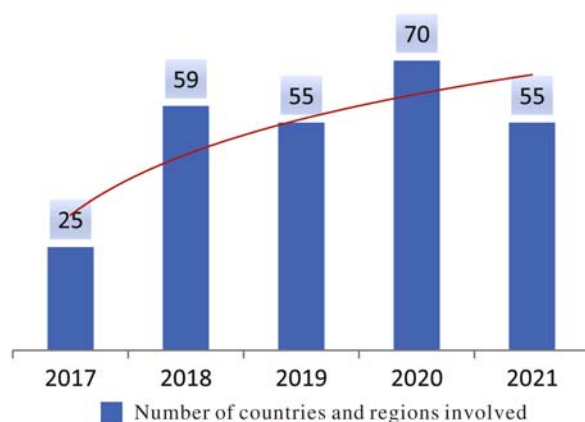
Regarding the equal protection of the legitimate rights and interests of Chinese and foreign parties, the Court has always strictly protected the legitimate rights and interests of all parties and spared no effort to guarantee the sound development of the shipping market in accordance with the law to improve the soft power of the business environment. In foreign-related maritime cases, the rate of submitting to judgement in the first instance was 96.31% and the rate of revision and retrial in the second instance was low, reflecting a high satisfaction of the Chinese and foreign parties with the foreign-related maritime judicial services and the significant results of equal protection of Chinese and foreign operators in accordance with the law.

Regarding the enforcement and recognition of foreign legal instruments, the Court has always insisted on the application of international conventions including the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* in accordance with the law and actively fulfilled its international juridical assistance obligations, to protect the legitimate rights and interests of the foreign parties. From 2017 to 2021, the Court accepted a total of 17 cases concerning the application for recognition and enforcement of foreign arbitral awards and concluded 15 cases, of which 7 cases were withdrawn by the applicants and the Court ruled to recognize and enforce the foreign arbitral awards in the remaining 8 cases.

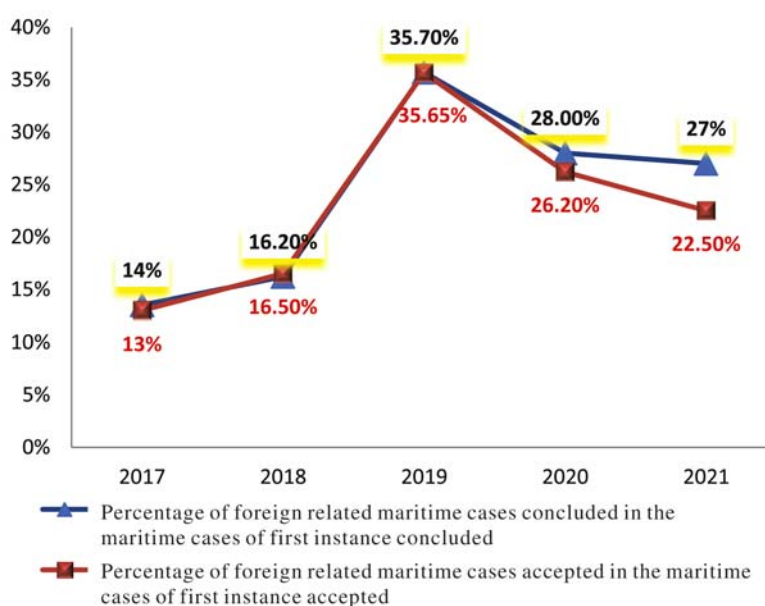
II. Continuous Expansion of the Coverage of Foreign-related Maritime Cases

In terms of geographical distribution, the foreign-related maritime cases covered more than 90 countries and regions in Asia, Europe, South America, North America, Africa and Oceania. The foreign-related maritime cases tried by the Court in each of the past five years involved 53 countries and regions on average. The number of countries and regions in the foreign-related maritime cases tried by the Court shows an obvious

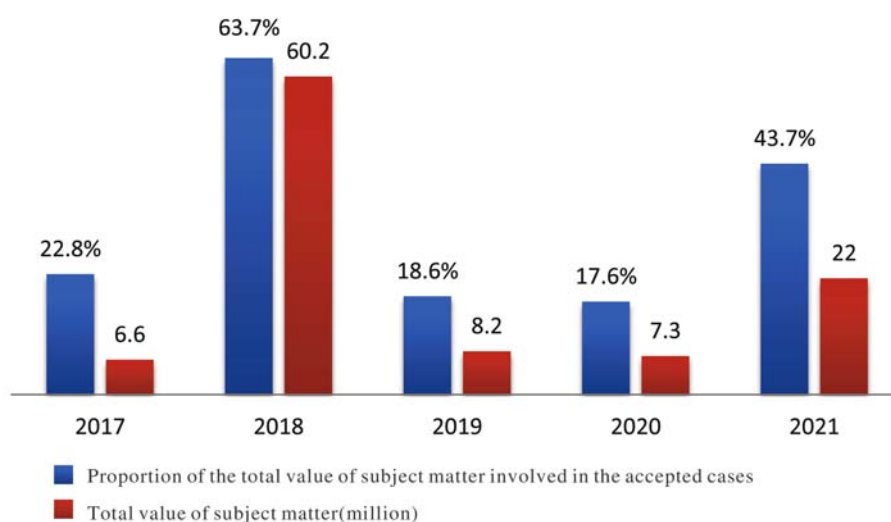
upward trend since 2017, demonstrating the increasing influence of China's judicial system.



In terms of quantity, the foreign-related maritime cases of first instance have accounted for a high proportion of the total cases for long, showing an increasing trend. Over the past five years, the Court have on average accepted 1,855 foreign-related maritime cases of first instance and concluded 1,856 cases annually. In the maritime cases of first instance in 2021, the foreign-related maritime cases of first instance accepted by the Court accounted for 22.5% of the total cases of first instances accepted and the foreign-related maritime cases of the first instance concluded by the Court accounted for 27% of the total cases of first instances concluded. The percentage of foreign-related maritime cases tried by the Court in the total maritime cases has been on the rise since 2017.



The total value of subject matter involved in foreign-related maritime cases has shown a fluctuating trend in recent years due to volatility in the international shipping market. The total value of subject matter involved in foreign-related maritime cases in 2018 rose to RMB 6.02 billion, showing a significant increase compared to 2017; and that in 2021 reached RMB 2.2 billion, increasing by about 200% compared to 2020. On a short view, in the post-pandemic era, there are many variables in export trade disputes, the value of subject matter involved in the disputes fluctuated greatly, the shipping market is affected to some extent, and related disputes are likely to continue to increase.



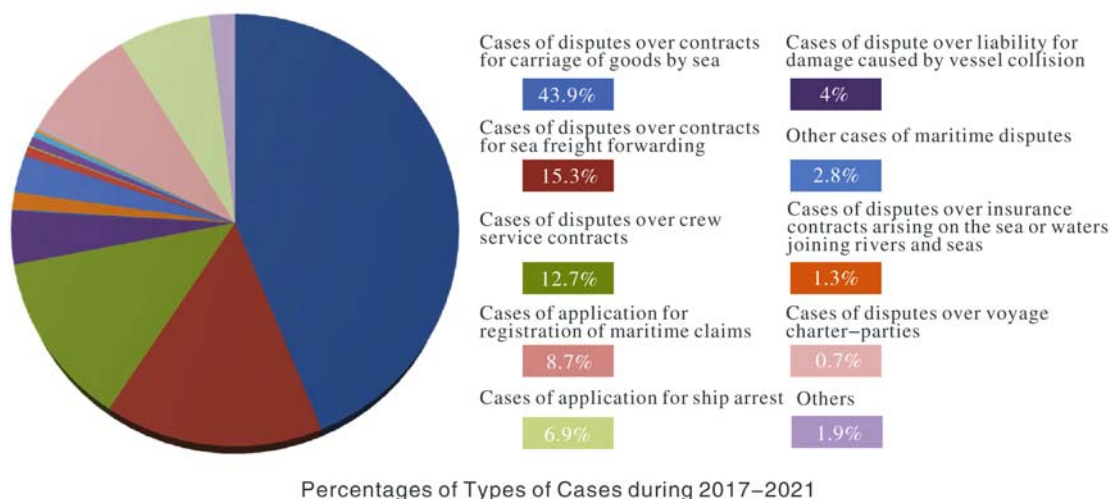
The total value of subject matter and its proportion of the total value of subject matter involved in the cases accepted during 2017–2021

III. New Emerging Situations of Foreign-related Maritime Cases

Foreign-related maritime cases tried in recent years have basically covered all types of cases accepted by the Court. The four main types of cases accepted by the Court between 2017 and 2021 were disputes over contracts for the carriage of goods by sea (43.9%), disputes over contracts for sea freight forwarding (15.3%), disputes over contracts for crew service (12.7%) and cases of disputes over liability for damage caused by vessel collision (4%). Although most of the cases are still two traditional types, i. e., disputes over contracts for the carriage of goods by sea and disputes over contracts for sea freight forwarding, there are some new characteristic changes. One of the most noticeable changes is the rapid increase in multi-modal transport contracts disputes, especially the increasing popularity of the sea-railway combined transport mode

in the Yangtze River Delta region. Disputes over the multi-modal transport are often more contentious due to the following reasons: difficulties in proving the sector in which the goods were damaged; difficulties in determining the loss or residual value of the goods because they contain intellectual property rights or new high-tech or are used for special purposes; and the serious lack of evidence for subrogation after payment of a claim by an insurance company.

Notably, upon the outbreak of COVID-19, cases of disputes over crew service contracts once rose sharply from 18.67% in 2019 to 26.07% in 2020, which was mainly attributable to the increasing wage arrears of foreign cruise crew due to the impact of COVID-19 on the development of the global cruise industry.



IV. Significant Improvement of the Application of Foreign Laws

With the increase in the quantity of foreign-related maritime cases in recent years, international conventions and foreign laws have been more frequently applied in the trial of cases. The Court established a Foreign Law Ascertainment Platform, with which it legally ascertained and accurately applied foreign laws or international conventions to resolve difficult foreign-related disputes, which was repeatedly praised by parties. The Court heard a number of foreign-related maritime cases by legally applying multiple foreign laws or international conventions, including the English law, Singaporean law, Greek law, Mexican law, Brazilian law, *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, *Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea*, 1974, *Convention on the International Regulations for Preventing Collisions at Sea*, 1972, *Convention concerning International Carriage by Rail* and

Uniform Rules concerning the Contract of International Carriage of Goods by Rail , which demonstrates the level of foreign-related maritime justice and further shows the results of serving and guaranteeing the high-level opening up.

Part Two :

**Work Initiatives Taken in Foreign-related
Maritime Trials to Serve and Guarantee
the High-level Opening Up**

I . Scientifically planned foreign-related maritime judicial work , to provide judicial services and guarantees for the implementation of national strategies and the construction of the Shanghai International Shipping Center

The Court always aligns its foreign-related maritime trials with national development strategies and the construction of the Shanghai International Shipping Center , giving full play to the function of maritime trials , and implementing new work initiatives to provide judicial services and guarantees.

(I) **Actively exercised the maritime jurisdiction in the coastal economic zone to actively align with the maritime power strategy**

Building China into a maritime power is an important part of the cause of socialism with Chinese characteristics. Pursuing coordinated development of land and marine , developing maritime economy and building China into a maritime power are important strategic deployments made by the Central Committee of the CPC with General Secretary Xi Jinping at its core. Under the correct leadership of the CPC Shanghai Municipal Committee and the powerful guidance of the Supreme People's Court and Shanghai High People's Court , the Court vigorously strengthened maritime trials , providing powerful judicial services and guarantees for the construction of a maritime power. The Court entered into a memorandum with the Third Branch of the Shanghai People's Procuratorate , according to which , the parties would conduct three-dimensional cooperation on comprehensively deepening the protection of maritime resources , the marine environmental protection and the connection with public interest litigation. In cases of civil public interest litigation concerning ecological environmental protection , 94.7% of the cases were tried by the president of the Court or chief judges of the divisions. In a case of illegal fishing in the East China Sea publicly tried by



the Court where the chief procurator of the Third Branch of the Shanghai People's Procuratorate acted as the public interest litigation plaintiff and the president of the Court served as the presiding judge, deputies to the Shanghai Municipal People's Congress, members of the CPPCC Shanghai Committee and representatives of fishery organizations and certain news media people showed up as bystanders during the court session of the case and the trial of this case has been widely praised by the public. The appearance of both the chief procurator and the court president in a case fully demonstrates the resolve of Shanghai's judicial authorities to actively exercise the maritime judicial power, regulate and guide market entities in marine exploration and actively align with the maritime power strategy. In a case of dispute over liability for damage caused by vessel collision between Korea Tumangang Shipping Company and C. S. MARINE CO., LTD, the North and South Korean parties agreed to choose the jurisdiction of the Shanghai Maritime Court, which fully demonstrates the international credibility and influence of China's maritime justice.

(II) Issued the first white paper on maritime trials involving the Belt and Road Initiative in Chinese and English, giving full play to the functional role of maritime trials

The Belt and Road Initiative is a major strategic decision made by the Central Committee of the CPC with General Secretary Xi Jinping at its core to actively cope with the profound changes in the global situation and take into account both the domestic and international situation is an important move to implement the new round of the high-level opening up. To actively respond to judicial concerns and judicial requirements of Chinese and foreign market entities in the construction of the Belt and Road Initiative and voluntarily serve and get integrated into the construction of the Belt and Road Initiative, the Court, in accordance with the *Several Opinions of the Supreme People's Court Regarding Further*



Providing Judicial Services and Guarantees by the People's Courts for the Belt and Road Initiative and the *Implementation Opinions of Shanghai High People's Court on Providing Judicial Services and Guarantees for the Belt and Road Initiative* and based on the actual situation of maritime trials, issued the first white paper on maritime trials involving the Belt and Road Initiative in both Chinese and English, which was published by multiple media including the *People's Court Daily*, *Legal Daily*, *Xin Hua News Agency*, *China News Service*, and *Jiefang Daily*. The issuance of this white paper further improves the international credibility and influence of the Court in foreign-related maritime trials for providing judicial services and guarantees for the Belt and Road Initiative. In addition, the Court signed a cooperation agreement on judicial services and guarantees for the Road and Belt Initiative respectively with the Lianyungang Intermediate People's Court and Nantong Intermediate People's Court, to jointly optimize the business environment in the coastal economic zone and unswervingly promote the high-quality development of the Belt and Road Initiative.

(III) Formulated the *Implementation Opinions of Shanghai Maritime Court on Services and Guarantees for the Construction of the Lin-gang Special Area of the China (Shanghai) Pilot Free Trade Zone*, to actively align with the new maritime judicial requirements in the Lin-gang Special Area of the China (Shanghai) Pilot Free Trade Zone (FTZ)

As a major strategic deployment of the Central Committee of the CPC with General Secretary Xi Jinping at its core for further expanding opening up by providing overall leadership and making scientific decisions, the establishment of Lin-gang Special Area of the FTZ is an important move to demonstrate China's clear-cut stand to adhere to all-around opening up and actively lead the sound development of economic globalization. As early as the establishment of the FTZ, the Court formulated the *Several Opinions of Shanghai Maritime Court on Services and Guarantees for the Construction of the China (Shanghai) Pilot Free Trade Zone*. To deeply implement the guiding opinions of the Supreme People's Court and Shanghai High People's Court on the Lin-gang Special Area of the FTZ, the Court formulated the *Implementation Opinions of Shanghai Maritime Court on Services and Guarantees for the Construction of the Lin-gang Special Area of the China (Shanghai) Pilot Free Trade Zone* in 2020, which is the version 2.0 of the

implementation opinions on the maritime judicial services and guarantees for the construction of the FTZ. Based on the accurate understanding of the maritime judicial requirements of the Lin-gang Special Area of the FTZ, the Court upgraded and improved the maritime judicial service and guarantee supply mechanism, strongly supported the construction of the free investment and trade system of the FTZ, gave full play to the role of coordinated supervision of the judicial system, and comprehensively optimized the law-based maritime business environment.



(IV) Formulated the *Implementation Opinions of Shanghai Maritime Court on Supporting and Guaranteeing the High-level Reform and Opening-up of Pudong New Area to Build It into a Pioneer Area for Socialist Modernization* , to greatly support the Pudong New Area in building itself into a pioneer area for socialist modernization

Supporting the high-level reform and opening-up of Pudong New Area to build it into a pioneer area for socialist modernization is a strategic decision and major initiative made by the Central Committee of the CPC and the State Council based on the characteristics of the times and practical requirements, which aims to facilitate the construction of a socialist modern country in an all-round way, accelerate the construction of a new development pattern, serve the whole country and drive the integrated development of the Yangtze River Delta region. In 2022, the Court comprehensively implemented the *Opinions of the Supreme People’s Court on the People’s Courts’ Supporting and Guaranteeing the High-level Reform and Opening-up of Pudong New Area to Build It into a Pioneer Area for Socialist Modernization* and the *Implementation Plan of Shanghai High People’s Court for Supporting and Guaranteeing the High-level Reform and Opening-up of Pudong New Area to Build It into a Pioneer Area for Socialist Modernization* and formulated the *Implementation Opinions of Shanghai Maritime Court on Supporting and Guaranteeing the High-level Reform and Opening-up of Pudong New Area to Build It into a Pioneer Area for Socialist Modernization*. With a high sense of political responsibility and a sense of historical mission, the Opinions requires

that maritime trials should be carried out in a comprehensive and coordinated manner through systematic planning and accurate implementation of policies, taking into account the overall work of supporting the Pudong New Area in building it into a pioneer area for socialist modernization, to accelerate the forming of a maritime judicial service supply mechanism that is commensurate with the requirements for building the Pudong New Area into a pioneer area for socialist modernization.

(V) Formulated the *Work Opinions of Shanghai Maritime Court on Services and Guarantees for the Construction of the Shanghai International Shipping Center*, to comprehensively facilitate the construction of the soft power of the Shanghai International Shipping Center

To deeply promote the new initiatives for serving and guaranteeing the construction of the international shipping center, the Court, based on its maritime trial functions, formulated the *Work Opinions of Shanghai Maritime Court on Services and Guarantees for the Construction of the Shanghai International Shipping Center* in 2018, which makes deployments from five aspects including the positioning of trials, functional roles, working mechanism, service and guarantee functions and modernization of the trial system and capability, to comprehensively improve the Court's service and guarantee capability through maritime trials and facilitate the construction of the soft power of the international shipping center. Through the development in the 13th Five-Year Plan period, Shanghai has basically built it into an international shipping center featuring the agglomeration of shipping resources, complete shipping service functions, good shipping market environment and efficient shipping logistics services and has preliminarily possessed the global shipping resource allocation capability. During the 14th Five-Year Plan period, the Court will continue to comprehensively facilitate Shanghai to build it into a world-class convenient, efficient, open, integrated, green and smart international shipping center with complete functions and powerful guarantee.

II . Innovated working mechanisms for maritime trials to provide high-quality foreign-related maritime judicial services

(I) Deepened the construction of the “one-stop” diversified resolution mechanisms for foreign-related maritime disputes

The Court kept improving its “one-stop” diversified resolution mechanisms for

foreign-related maritime disputes where three dispute resolutions, i.e., maritime litigation, mediation and arbitration, are closely connected and formulated the *One-Stop Work Rules of Shanghai Maritime Court for the Diversified Resolution of Foreign-Related Maritime Disputes through Litigation, Mediation and Arbitration (for Trial Implementation)*, which greatly facilitates the efficient resolution of foreign-related maritime disputes and provides professional judicial services and guarantees for the high-level opening up.

1. Optimized the entrusted arbitration and mediation mechanism

The entrusted arbitration and mediation mechanism for maritime cases is a diversified dispute resolution mechanism integrating the characteristics of litigation, mediation and arbitration that is created jointly by the Court and the China Maritime Arbitration Commission, which gives full



play to the respective professional advantages of the Court and the China Maritime Arbitration Commission. In the 2021 North Bund Forum - Judiciary and Arbitration Thematic Form, both parties jointly issued the *White Paper of Shanghai Maritime Court and the China Maritime Arbitration Commission on the Entrusted Mediation of Maritime Cases (2011-2021)*. In the past ten years, the Court entrusted the Shanghai Headquarters of the China Maritime Arbitration Commission to resolve more than 200 disputes and the number of cases resolved steadily increased year by year. These cases involved 42 countries and regions and the total value of the subject matter involved in these cases exceeded RMB 500 million. The success rate of dispute resolution was around 50% and the success rate in the past five years reached 62%. The success rate of dispute resolution in highly specialized cases concerning marine environmental pollution, maritime personal injury, vessel collision, etc. reached more than 85%.

2. Established an entrusted specially-invited mediation mechanism

In 2017, the Court and the Shanghai Commercial Mediation Center signed the *Minutes of Cooperation between Shanghai Maritime Court and Shanghai Commercial Mediation Center on the Establishment of a Specially-Invited Mediation Mechanism for Maritime Disputes*. As an important initiative to improve the diversified resolution mechanisms for foreign-related maritime disputes, the entrusted specially-invited mediation mechanism effectively connects the litigation and entrusted mediation and provides an important guarantee for keeping the entrusted mediation process clear, open and transparent. It is also a practice of the Court in the integrated dispute resolution through “platform construction, litigation-mediation connection, specially-invited mediation, and online dispute resolution.”

3. Innovatively introduced foreign mediators to resolve foreign-related maritime disputes

In 2020, the Court entrusted the Shanghai Commercial Mediation Center to mediate foreign-related maritime disputes by foreign mediators for the first time. In foreign-related maritime disputes, foreign mediators who have the same nationality as the foreign parties can rapidly eliminate the regional cultural difference. By making full use of this advantage of foreign mediators, the Court entrusted for the first time a foreign mediator who is proficient in Chinese, English and Japanese and was selected from the specially-invited foreign mediator pool, to successfully resolve the cross-border maritime dispute with the value of the subject matter reaching RMB 4.2 million, effectively demonstrating the effect of the Court’s “one-stop” diversified resolution mechanisms for foreign-related maritime disputes.

(II) Promoted the construction of supporting mechanisms for the construction of the international maritime judicial Shanghai base

1. Optimized the allocation of foreign-related maritime trial resources

The Court specially set up a flat, professional, excellent and flexible trial team to gather high-quality resources for significant foreign-related cases, with the president of the Court or chief judges of the divisions serving as the presiding judge and members of the collegial panel being selected from judges with rich experience and outstanding professional proficiency, which lays an institutional basis for the impartial and efficient trial of significant cases with demonstration significance of international rules. The Court

further improved the professional trial mechanism for the FTZ Division, facilitating the law-based development of the shipping industry in the FTZ. The Court established the Changxing Island Dispatched Division, to serve and guarantee the construction of the Chongming World-Class Ecological Island and Changxing Island Shipbuilding



Base. The Court established the North Bund Trial Workstation, to build a characteristic brand that serves the development of the high-end shipping industry and facilitates the construction of the international first-class law-based maritime business environment in Shanghai.

2. Popularized the “Model Clauses of the Litigation Jurisdiction Agreement on Maritime Disputes” in Chinese and English

To strive to make the Court the preferred forum for resolving international maritime disputes and serve and guarantee the new round construction of the Shanghai International Shipping Center, the Court developed and issued the *Model Clauses of the Litigation Jurisdiction Agreement on Maritime Disputes* (hereinafter referred to as “*Model Clauses*”) in Chinese and English and the supporting text, to help the parties more clearly and conveniently specify the maritime dispute resolution method and venue. The issuance of the *Model Clauses* in Chinese and English and the supporting content is an active initiative taken by the Court to promote the standardization, effectiveness and fairness of the content of a litigation jurisdiction agreement, help the parties effectively avoid the procedural delay due to jurisdiction issue and improve the dispute resolution efficiency. It is also an innovative move taken by the Court to facilitate the construction of the international maritime justice center and improve the litigation service level. In October 2021, the Court organized a High-end Shipping Service and Enterprise Development Forum, during which the Court interpreted and recommended *Model Clauses* to many enterprises including industry associations and shipping enterprises, which was widely recognized by deputies to the Shanghai Municipal People’s Congress

and the port and shipping enterprises and associations.

3. Strengthened the connection mechanism between foreign-related maritime litigation and arbitration

Arbitration plays a significant role in resolving international maritime disputes. The Court attached great importance to the development trend of the international maritime arbitration, actively absorbed and learned from international rules and advanced experience, gave full play to judicial functions and continuously strengthened the judicial review, recognition and enforcement of arbitral awards. The Court fully implemented statutory duties, and strengthened the litigation-arbitration connection mechanism in the following aspects: (1) for cases concerning the claim for confirmation of arbitration agreements or recognition and enforcement of arbitral awards, the Court established a professional arbitration judicial review team, to rapidly review claims of the parties and promptly file those cases meeting the conditions; (2) the professional arbitration judicial review team promptly made rulings for cases concerning the claim for property preservation and evidence preservation in the pre-arbitration or arbitration proceedings and handed over the cases for enforcement; and (3) the Court strengthened the communication and contacts with arbitration organizations, and regularly held the “Exchange Conference for Focal Legal Issues in the Coordinated Development of Maritime Justice and Arbitration” in the North Bund Trial Workstation, to promote the sound development of the litigation-arbitration connection mechanism.

(III) Improved the foreign-related maritime trial facilitation mechanism

1. Popularized the mechanism for judicial recognition of the general authorization for maritime litigation agency

The Court attached great importance to the litigation facilitation of the parties, and established and promoted a mechanism for judicial recognition of the general authorization for maritime litigation agency. Certain world-famous shipping companies may be involved in litigation in China sometimes. It generally takes a long time for them to complete the notarization and certification procedure for the relevant authorization documents, thus greatly increasing the trial period of foreign-related maritime cases. To improve the dispute resolution efficiency, the Court continuously promoted the mechanism for general authorization for litigation agency, under which the authorization

granted by foreign parties to domestic legal firms, lawyers or their branches or affiliates in China to represent them in litigation cases in certain period within a certain scope was recognized by the Court. Since the establishment of the mechanism, multiple international famous shipping companies,

委托人	国家/地区	受托人	有效期限
太古集团(中国)有限公司(TATUNG GROUP LIMITED)	香港	上海太古洋行有限公司	2020-07-04
长荣海运(中国)有限公司	台湾	长荣海运(中国)代理有限公司上海分公司	2021-11-19
招商局轮船有限公司	中国大陆	招商局轮船(中国)代理有限公司上海分公司	2021-09-30
招商局轮船有限公司	台湾	招商局轮船(中国)代理有限公司上海分公司	2021-10-21
招商局轮船有限公司	香港	招商局轮船(中国)代理有限公司上海分公司	2021-10-10
CMA CGM S.A.	法国	CMA CGM (CHINA) SHIPPING CO. LTD.	2022-09-27
中远海运(中国)有限公司 (COSCO SHIPPING GROUP LIMITED)	中国	上海中远海运(中国)有限公司	2021-11-16
意大利马士基有限公司 (ITALIA MAERSK S.p.A.)	意大利	招商局轮船(中国)代理有限公司上海分公司	2021-10-28
东方海外(中国)有限公司 (ORIENT OVERSEAS CONTAINER LINE LIMITED)	香港	上海东方海外(中国)代理有限公司	2021-09-15
A.P.穆勒-马士基有限公司	丹麦	上海中远海运(中国)代理有限公司	2020-09-27
马士基(中国)有限公司	丹麦	上海中远海运(中国)代理有限公司	2020-09-27
皇家加勒比游轮有限公司 (RCL Cruises Ltd.)	美国	上海皇家加勒比游轮有限公司	2021-09-16
招商局(香港)有限公司 (招商局(香港)有限公司)	香港	上海招商局(中国)代理有限公司	2020-07-18
招商局(中国)有限公司 (招商局(中国)有限公司)	香港	上海招商局(中国)代理有限公司	2021-09-16

including the CMA CGM S. A. , Maersk Line A/S, RCL Cruises Ltd. , and Hanjin Shipping Co. , Ltd. , have successively submitted general authorization documents to the Court. The mechanism has been successfully applied in hundreds of cases and a retrievable authorization filing database has been established.

2. Popularized the “Model Clause on Agreed-upon Service Address under the Contract”

The Court attached great importance to the bottleneck problem in the service of documents to foreign parties, and issued the “Model Clause on Agreed-upon Service Address under the Contract” in Chinese and English. The parties to a contract may specify the confirmation of the address for service of judicial documents in the form of an appendix or a clause when signing the contract. Shanghai High People’s Court set up the Shanghai court litigation service window in the Lin-gang Special Area Legal Service Center. 11 institutions including the Shanghai Maritime Court, Shanghai No. 3 Intermediate People’s Court, Shanghai Financial Court, and Pudong New Area People’s Court jointly signed a cooperation agreement on the construction of the one-stop dispute resolution center of Lin-gang Special Area, and the Court actively recommended the aforesaid clause among market entities in the Lin-gang Special Area. The Court and the Shanghai International Freight Forwarders Association issued a joint initiative on the submission by international freight forwarding companies of a confirmation document for the address for service of judicial documents and many international freight forwarding logistics enterprises submitted a written confirmation of the address for service of judicial documents at the site where the initiative was issued.

3. Improved the multi-functional layout of litigation services

The Court continuously improved the multi-functional layout of litigation services, thus greatly reducing the litigation costs of the parties. According to the characteristics of jurisdiction for maritime cases, the Court entrusted the micro-court cross-regional case filing platform of China Mobile to establish a cross-regional case filing window, and greatly encouraged and guided the parties in other regions in filing actions online or through the local courts, to reduce the litigation burden of the parties. In addition, the Court built two brand platforms “Zhilianwan” and “Huisonggang.” The parties can query characteristic maritime litigation services such as appraisal reports, ship watch and specially-invited mediation and business processing progress on the “Zhilianwan” platform; and the “Huisonggang” platform provides convenient services for the parties to file actions and download document templates. The Court issued supporting documents in Chinese and English, including the *Collection of Maritime Litigation Guidelines* and the *Service Guidelines of Shanghai Maritime Court on Online Litigation*, to help the parties more quickly master the online litigation operation process and steps and experience the whole-process online litigation services.



(IV) Improved the mechanism for the ascertainment and application of foreign laws

1. Launched the first foreign law ascertainment platform in the area of China’s maritime trials

To meet the requirements for serving the high-level opening up through foreign-related maritime trials and solve difficult problems in the ascertainment of foreign laws, the Court signed a *Special Cooperation Agreement on the Ascertainment of Foreign Laws* respectively with universities including the East China University of Political Science and Law and the Shanghai Maritime University and formally launched the first foreign law ascertainment platform in the area of China’s maritime trials. The agreement specifies the general

requirements and detailed processes for the Court entrusting the research center to provide the foreign law ascertainment services and the specific criteria for the *Expert Opinion on the Ascertainment of Foreign Laws* issued by the research center, marking that the



Court's working mechanism for the ascertainment of foreign laws has been further deepened and regulated. In recent years, the Court has successively ascertained laws of countries including Mexico, Greece, Brazil, UK and Singapore, accumulating new experience for solving difficult problems in the ascertainment and application of foreign laws through the platform.

2. Formulated the Work Rules on the Unified Entrustment of the Ascertainment of Foreign Laws

To strictly regulate the entrustment process for the ascertainment of foreign laws, ensure the accuracy, authenticity and efficiency of the ascertainment of foreign laws and comprehensively implement the requirements for the construction of the two “one-stop” centers, the Court formulated the *Guiding Opinions of Shanghai Maritime Court on the Ascertainment of Foreign Laws in Foreign-Related Maritime Trials (for Trial Implementation)*, the *Work Rules of Shanghai Maritime Court on the Unified Entrustment of the Ascertainment of Foreign Laws (for Trial Implementation)* and other relevant rules and regulations. The rules specify the objects of ascertainment of foreign laws (including but not limited to statute laws, case laws, common laws, legal doctrines and legislation preparations), strictly specify the time limit for ascertainment and provide intensive lists of foreign law ascertainment agencies and foreign law ascertainment institutions, which makes a beneficial attempt in solving difficult problems in the ascertainment and application of foreign laws involved in foreign-related maritime trials.

3. Set up a young translator team to independently carry out legal research and

translation

The Court actively established a development platform for young judges and set up a young translator team to assist judges in independently carrying out the research and translation of foreign laws, which became a powerful support for ascertainment of foreign laws. In recent



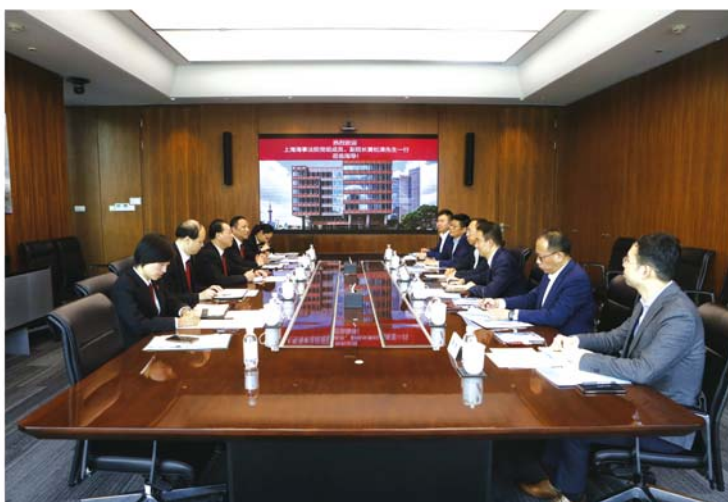
years, the translator team has compiled and translated several cases of the Court which were included in internationally famous legal databases such as the i-Law, published many articles on *China Trial*, translated typical cases in the *Lloyd's Law Reports*, compiled and published *the Selected Excellent Cases of Shanghai Maritime Court* in Chinese and English.

(V) Explored and improved mechanisms for the arrest and auction of foreign-related ships

1. Explored the establishment of a pre-guarantee mechanism for ship arrest

To develop an efficient and convenient ship arrest mechanism, protect the legitimate rights and interests of the parties as far as possible, the Court and the China Shipowners Mutual Assurance Association signed a Memorandum of Understanding in October 2020. To meet the practical and urgent needs of the shipping industry, they launched a new initiative called “pre-guarantee for ship arrest” firstly in China according to the MoU. The initiative not only effectively protects the legitimate rights and

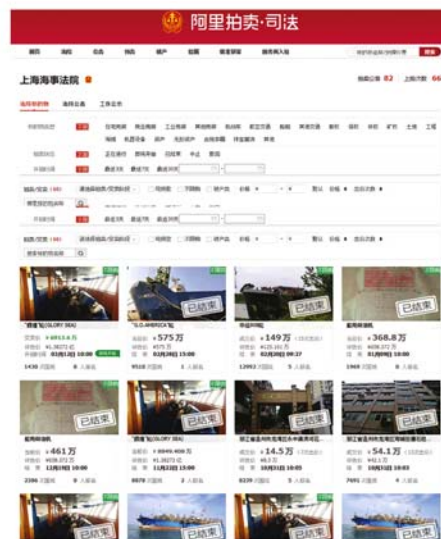
interests of the parties, but also helps respondents reduce the maintenance costs incurred due to the arrest of ships. It also explores the solution to difficult problems in the arrest of ships since the COVID-19 has not been



effectively controlled globally and saves a large amount of judicial costs. In May 2021, the Court successfully built a fast-track for the arrest and release of ships by applying this mechanism, which received the unanimous acceptance and approval of the Chinese and foreign parties and the China Shipowners Mutual Assurance Association. This is the first time for domestic maritime courts to apply the pre-guarantee mechanism for the ship arrest, demonstrating the professional advantages of the Court in foreign-related maritime trials. And it is also a new initiative taken by the Court to serve and support the high-level opening-up.

2. Improved the judicial auction mechanism of foreign ships

In foreign-related maritime trials, the judicial auction of foreign ships is crucial for realizing the rights and interests of the Chinese and foreign prevailing parties. Different from the other movable property, ship maintenance costs a lot. In the long-term arrest, ships may be under the risks of natural disasters, equipment failures, etc. The Court attached great importance to the prompt realization of the rights and interests of the prevailing parties and improved the judicial auction mechanism of foreign ships. Amid the COVID-19 pandemic, the Court properly handled a series of cases related with the Bahamian-registered cruise “Glory Sea”. It decisively used online and offline auction methods, started the offline sale process in a timely manner to maximize the value of the ship and finally fully guaranteed the rights and interests of 196 Chinese and foreign crew members from 9 countries including China, Indonesia, Myanmar, Nepal, Belarus, Republic of Serbia, Kazakhstan, Honduras and Bangladesh who won the case. The case accumulated precious experience for the judicial disposal of foreign ships during the COVID-19 epidemic.



3. Opened a green channel for the protection of rights and interests of crew members of arrested ships during the COVID-19 epidemic

During the COVID-19 epidemic, it was difficult for crew members to disembark from a judicial arrested ship due to the changes of epidemic prevention policies of the

ports and the shortage of air tickets, which made it more important to effectively protect the rights and interests of crew members. For this reason, the Court fully implemented the policy of ensuring stability on the six fronts (employment, the financial sector, foreign trade, foreign and domestic investments and expectations) and security in the six areas (employment, basic living needs, operations of market entities, food and energy security, stable industrial and supply chains and the normal functioning of primary-level governments). The Court provided comprehensive judicial protection for Chinese and foreign crew members in time according to law, opened a green channel to ensure “fast case filing, fast preservation, fast trial and fast enforcement” and actively carried out judicial assistance, thus equally protecting the litigation rights and interests of hundreds of Chinese and foreign crew members and demonstrating the responsibility of China’s maritime justice. During the COVID-19 epidemic, the professional trial team of the Court boarded the Bahamas-registered cruise “Glory Sea” for several times to provide litigation services in Chinese and English for 196 Chinese and foreign crew members, thus protecting their litigation rights in time. The successful experience of the Court was reported by *Shanghai Law Journal* with details. These series of cases were also included in the Typical Cases of the Supreme People’s Court Concerning the Protection of Legitimate Rights and Interests of Crew Members in 2020.

(VI) **Built a model for information-based smart maritime courts**

The Court has always insisted on the information-based development model of “Internet + maritime trial”, innovatively implemented the requirements of the Supreme People’s Court and Shanghai High People’s Court on the construction and development of



“smart courts” and “data courts”, made efforts to build a model for smart maritime courts and achieved many important results. In recent years, the Court has independently developed several application platforms, including the online intelligent

maritime litigation system, the vessel, cargo and port data-integrated intelligent assistance system and the intelligent maritime case handling assistance system and formulated the *Planning of the Shanghai Maritime Court for Deepening the Construction of Smart Maritime Court (2020-2022)*. The Special Report, *the Construction of Smart Maritime Courts based on the “Artificial Intelligence + ” Work Model* released by the Court was full-text published in the Blue Book of Rule of Law: *Annual Report on the Informatization of Chinese Courts No. 2 (2018)* which was jointly issued by the Institute of Law, Chinese Academy of Social Sciences and the Social Sciences Academic Press.

1. Online intelligent maritime litigation system in Chinese and English

The online intelligent maritime litigation system in Chinese and English is designed to provide services for the parties and lawyers. It is characterized by intensive litigation services and bilingual cross-border remote litigation and has the litigation service functions such as synchronous voice translation, remote attendance of witnesses and expert assistants. By deeply integrating the Internet information technology with maritime trial characteristics, the system effectively meets the practical needs of Chinese and foreign parties in the participation in litigation.

2. Vessel, cargo and port data-integrated intelligent assistance system

Through the integrated presentation in the full screen, the system clearly displays data in an understandable graphical way, and the data can be displayed layer by layer from macro to micro dimensions through simple operations, realizing the real-time linkage of associated data and providing the most effective data assistance for decision-making and efficient management. This system provides judges with functions including retrieval of ship registration data, analysis of real-time positioning of ships, analysis of meteorological and hydrological information of the sea area where ships are located, recommendation of places to arrest ships, query of historical tracks and dynamic simulation analysis of ship collisions at sea. In a case of dispute over liability for damage caused by vessel collision, the collegial panel used this system to accurately reconstruct the collision accident area, waterway and the trajectory of the two ships in the live broadcast of the trial and ascertained the facts for the fair and efficient handling of the case. In a case of dispute over ship repair contract, the collegial panel used this system to query the sailing information of the ship and the information on the ownership transfer

of the ship in court and analyzed and restored the general facts based on the historical positions and docking time of the ship, which was unanimously confirmed by the parties and facilitated the mediation of the case in court.

3. Intelligent maritime case handling assistance system

The intelligent maritime case handling assistance system includes modules such as delivery of goods without original bill of lading, ship collision, cargo damage and shortage, maritime insurance, freight forwarding contract and other maritime cases. The types of cases involved in the system cover about 70% of the cases tried by the Court and 12 judges participated in the whole development process of the system. As the first intelligent case handling assistance system for China's maritime courts, the system provides an important channel for the professional and intelligent development of maritime trials. The system automatically connected to the existing systems of the Court including the trial system and court hearing system.

The system follows up the trial progress of cases in real time, performs substantial analysis of electronic case files based on the case handling logic of judges, gives prompts on disputed issues and



provides similar cases and applicable laws and regulations, thus substantially reducing the repeated and routine work of judges in the case handling process and improving the case handling efficiency of judges.

Ⅲ. Deepened the implementation of the strategy of high-quality maritime justice to improve the international credibility of China's maritime justice

(I) Concluded a batch of foreign-related maritime cases with international influence according to the law

Keeping in mind the overall work of the Party and the country, focusing on serving

and guaranteeing the national strategy of high-level opening-up and based on the construction of “The Supreme People’s Court International Maritime Judicial Shanghai Base” and the “Smart Maritime Court Practice Base”, the Court proposed the strategy of high-quality maritime justice, established quality consciousness, concluded a batch of foreign related maritime cases with international influence and comprehensively improve the judicial services for the high-level opening-up.

1. Achieved remarkable results in providing judicial services and guarantees for the maritime power strategy

The case of illegal fishing in the East China Sea was publicly tried by the Court. At the trial, the chief procurator of the Third Branch of the Shanghai People’s Procuratorate acted as the public interest litigation plaintiff and the president of the Court served as the presiding judge. It is the first case where the chief procurator and the court president attend the court at the same time since the Court accepted civil public interest litigation cases concerning eco-environmental protection. The trial of the case deeply practiced Xi Jinping’s Thoughts on Ecological Civilization, which protected the reasonable development and utilization of marine resources in the coastal economic zone with the power of the law, and yielded remarkable results in serving and guaranteeing the maritime power strategy. In another case concerning the application for confirmation of the public interest consultation agreement filed by the Third Branch of the Shanghai People’s Procuratorate, the Court established the review principles, content and procedures for the public interest consultation agreement in accordance with the law, providing judicial services and guarantees for the marine eco-environment protection. This is the first pre-litigation settlement case in Shanghai, implementing the spirit of the compensation system for ecological and environmental damage and the civil ecological environment restoration system specified in the *Civil Code of the People’s Republic of China*, and practicing the provisions of the *Decisions of the Standing Committee of Shanghai Municipal People’s Congress on Strengthening the Procuratorial Public Interest Litigation*. The case fully demonstrated the remarkable results achieved by the Court in providing judicial services based on the maritime power strategy.

2. Received wide praise for typical cases involving the Belt and Road Initiative

In a case concerning a Kazakhstan enterprise’s application for a maritime

injunction, the Court issued a maritime injunction through the special maritime litigation procedure and resolved this dispute over multimodal transport rapidly and properly, thus providing impartial and efficient maritime judicial services and guarantees for the Belt and Road Initiative. A letter from the Kazakhstan Embassy in China to the Court stated: as the goods involved were precious materials for guaranteeing the continuous power supply to residents in West Kazakhstan, with great social value, the Court's ruling on approving the application for the maritime injunction protected the rights and interests of the applicant. Therefore, they expressed great respect to the Court. The case was included in the Typical Maritime Cases in 2017 issued by the Supreme People's Court. In another case of dispute over a contract for shipping agency between Shanghai Jiexi International Cargo Transportation Agency Co., Ltd. and Chongqing Road Engineering Group Co., Ltd., the Court accurately divided the responsibilities and risks of the parties when situation of the countries along the Belt and Road changes, which has practical significance to protect the legitimate interests of enterprises in overseas investments, thus encouraging and promoting the enterprises to participate in the building of the Belt and Road. The case was included in the Third Group of Model Cases Involving Building of the Belt and Road issued by the Supreme People's Court.

3. Made judgments through the proof and application of foreign laws to facilitate the high-level opening-up of the FTZ

In a case of dispute over an international multimodal transport contract between Mitsui Sumitomo Insurance Co., Ltd. and COSCO Shipping Lines Co., Ltd., the Court, based on the principle of autonomy of will, fully respected the choice by agreement of the foreign party and the market entity in the FTZ and made a judgment according to the Greek law in the railway section. The result of the judgment was unanimously recognized by the parties. The case was included in the Typical Maritime Cases in 2018 issued by the Supreme People's Court. In a case of dispute over a shipbuilding commission contract between the plaintiff Winship Maritime Inc. and the defendant China Shipping Industry Co., Ltd., COSCO Shipping Heavy Industry (Yangzhou) Co., Ltd., the Court fully respected the agreement between the market entities in the FTZ and the foreign party on the governing law, tried the case in accordance with the English case law, and clarified the adjudication rules for disputes

over ship commission contracts. The result of the judgment was highly praised by the parties. The case was included in the Typical Maritime Cases in 2020 issued by the Supreme People’s Court, compiled and included in the electronic database of Informa UK plc. which published the *Lloyd’s Law Reports*. The Court made judgments through accurate proof and application of foreign laws, which equally protected the legitimate rights and interests of Chinese and foreign parties, encouraged foreign parties to invest and operate in China and established a judicial image of the FTZ featuring high-level opening-up.

4. Served and guaranteed the continuous upgrade of the soft power of the international shipping center

In a case of dispute over the liability for maritime personal injury in a cruise, the Court made a judgment according to the *Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, 1974*, clarifying that the cruise carrier did not enjoy the limit of liability specified in the *Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea*, regulating the sound development of the intentional cruise industry at the Port of Shanghai and providing judicial guidance for the continuous upgrade of the soft power of the international shipping center. The foreign cruise company not only fulfilled the obligation of compensation specified in the judgment, but also took active improvement measures based on the problems identified in the judgment, thus guaranteeing the personal safety of cruise passengers. The case was included in the Second “100 Outstanding Judgments” of Chinese Courts, and also included in the maritime law database of the National University of Singapore. In another case of dispute over a maritime insurance contract between Fidelidade-Companhia de Seguros, S. A. and Starr P&C Insurance (China) Co., Ltd., the Court further clarified the adjudication method and refined the adjudication rules with respect to the general provisions in the Maritime Code of the People’s Republic of China, providing judicial guidance to apply “double insurance and contribution” rule for the shipping finance industry. The case was awarded the second prize in the National Outstanding Case Analysis Competition in 2018 and included in the First “100 Outstanding Judgments” of Chinese Courts.

(II) Kept optimizing and improving the legal environment of business of the

international shipping center

The Court, based on foreign-related maritime trials, paid close attention to the impact of the international and domestic macro policies on investment, trade, shipping, and finance and actively extended the maritime judicial services, giving full play to the role of judicial services in optimizing the business environment and serving the high-level opening-up.

1. Carried out litigation services at the front line

The Court established the Changxing Island Dispatched Division and the North Bund Trial Workstation, to provide more targeted judicial services for the construction of the Chongming World-Class Ecological Island, the marine eco-environment protection, and the development of the high-end shipbuilding industry and the high-end shipping industry in the North Bund.

The Changxing Island Dispatched Division further strengthened and improved the construction of the trial mechanism for foreign-related ship disputes, effectively serving and guaranteeing the implementation of the maritime power strategy. The North



Bund Trial Workstation mainly provided comprehensive litigation services for the high-end shipping industry cluster in Hongkou District, which was specially reported by the *Shanghai Shipping Exchange Bulletin*. In the past year since its establishment, the North Bund Trial Workstation established a characteristic cooperation platform and held the “Exchange Conference for Focal Legal Issues in the Coordinated Development of Maritime Justice and Arbitration” and the “Seminar on Legal Practice of Compensation for Vessel-induced Oil Pollution Damage”, where hot legal issues on maritime affairs were discussed.

2. Issued the first judicial recommendation in Chinese and English

The Court found that a vessel called “Oceana” had inadequate emergency response

capabilities in a dispute arising from a collision accident. To maintain the maritime traffic order, protect the safety of life and property at sea and supervise foreign shipping entities to participate in international shipping activities in accordance with laws and regulations, the Court issued a judicial recommendation in Chinese and English to foreign shipping companies in December 2021, indicating that the foreign shipping companies, as the shipping entities engaging in the operations of ships within the People's Republic of China, shall be familiar with and strictly comply with the maritime traffic safety laws and regulations including the *Maritime Traffic Safety Law of the People's Republic of China* and the *Measures for the Safety Administration of Navigation of the Yangtze Estuary Deepwater Channel* and suggesting that these companies carefully analyze the reasons for this accident and strengthen the safety responsibility training, to effectively improve their emergency response capabilities. After receiving the judicial recommendation, these foreign ship companies replied that they would actively take corrective actions, strengthen the training on safety knowledge and emergency response for crew members and the routine inspection of key ship equipment and strive to maintain the safety standards on board at the highest level. The judicial recommendation issued in Chinese and English by the Court to foreign parties for the first time fully demonstrates the Court's efforts to actively extend litigation services based on major risks in the shipping industry and implement the mission of maintaining the safety of maritime economic activities.

3. Actively gave a series of lectures on shipping laws to actively respond to the risk of COVID-19

Since the outbreak of COVID-19, the international economy, trade and shipping suffered severe impact and disputes frequently arose in the shipping area. To help the shipping industry properly resolve conflicts and disputes, effectively control market risks, reasonably avoid potential losses and operate in compliance with laws and regulations, the Court



gave a series of lectures on legal services for the shipping industry. In the series activities of the 3rd Shanghai Commercial Mediation Publicity Week, the Court gave a special lecture on legal publicity based on “how to resolve shipping disputes in the post-pandemic era.” On the first anniversary of the establishment of the North Bund Trial Workstation, the Court held the “High-end Shipping Service and Enterprise Development Symposium and the Briefing on the First Anniversary of the Establishment of the North Bund Trial Workstation”, where it provided targeted guidance on litigation services with respect to hot issues in the shipping industry and gave a special lecture on shipping insurance.

(III) Actively made the Court the preferred forum for resolving international maritime disputes

1. Ranked No. 1 in international maritime judicial transparency for four consecutive years

The Court has continuously published its trial and enforcement work through its official website in Chinese and English, WeChat official account, Weibo and other various media to improved its maritime judicial transparency, judicial credibility and influence. In the China Maritime Judicial Transparency Index Report jointly issued by the Institute of Law, Chinese Academy of Social Sciences and the Social Sciences Academic Press, the Court ranked No. 1 in four consecutive years from 2016 to 2019 and was in the first tier since the launch of China’s maritime judicial transparency assessment.

2. Multiple work outcomes get praise and attention from international shipping industry

Multiple cases tried by the Court were included in the database of the Maritime Law Center of Tulane University, the maritime law database of the National University of Singapore, the database of the GARD P&I in Norway and the *French Maritime Law Journal*, an authoritative legal journal in the shipping industry. To promote professional communicaiton, the Court submitted typical maritime cases to the Asia Pacific Center of the Baltic and International Maritime Council (BIMCO Shanghai) on a regular basis. The case concerning unpaid wages of crew members of the vessel “AMBA BHAKTI” tried by the Court properly was highly praised by the Consulate General of India in

Shanghai. The website Global Maritime and Shipping News commented that “ Shanghai Maritime Court has made a landmark ruling on the case concerning the stranded crew members,” which spoke highly of the transnational humane care given by the Court to foreign stranded crew members.

3. Actively benchmarked against the International Shipping Center Development Index

The Court actively benchmarked against the guiding opinions of the 14th Five-Year Plan on the Construction of Shanghai’s International Shipping Center, aligned with the Xinhua-Baltic International Shipping Center Development Index Report, provided judicial services to support the development of the shipping economy in the Yangtze River Delta region, established a platform for maritime judicial cooperation and communication of the Yangtze River Delta region and attracted the shipping enterprises, the international organizations and the functional organizations with global influence to choose Shanghai as the place for dispute resolution by its benchmarking image in maritime legal services. The Court voluntarily reported the latest news of Shanghai maritime legal services to the China Economic Information Service of Xinhua News Agency, to help improve the recognition of the soft power of the Port of Shanghai in the aspect of maritime legal services.

Part Three :

**Typical Cases of Foreign-related Maritime
Trials for Serving and Guaranteeing the
High-level Opening Up**

Typical Case for Serving and Guaranteeing the Belt and Road Initiative

Case 1 Shanghai Jiexi International Freight Transportation Agency Co. , Ltd. v. Chongqing Road Engineering Group Co. , Ltd. : case of Dispute over a Contract for Maritime Freight Forwarding (Selected into the 3rd Batch of Typical Cases Involving the Belt and Road Initiative issued by the Supreme People's Court)

[Case Description]

On November 12, 2014, Shanghai Jiexi International Freight Transportation Agency Co. , Ltd. (hereinafter referred to as “Shanghai Jiexi”) and Chongqing Road Engineering Group Co. , Ltd. (hereinafter referred to as “Chongqing Road”) entered into a transportation agreement, according to which, Shanghai Jiexi would handle the shipment of 161 sets of vehicles on behalf of Chongqing Road, with the port of loading being the Port of Shanghai, China and the port of discharge being the Port of Hodeidah, Yemen. After the goods were shipped to the port of destination and delivered to the consignee successfully, Chongqing Road failed to pay fees due under the transportation agreement to Shanghai Jiexi. On February 4, 2015, Chongqing Road issued a letter of commitment to Shanghai Jiexi, stating that its delayed payment to Shanghai Jiexi was attributable to its failure to receive the advance payment from the Saudi Project Fund within the agreed time due to the unstable local situation, And promising to pay all outstanding fees owed to Shanghai Jiexi prior to March 2, 2015. However, it has not been paid since. During the trial, Chongqing Road claimed to invoke the force majeure exemption on the ground of the war occurring in Yemen, the country where the port of destination is located. Through investigation, the goods involved in this case would have been used for the construction of Amran Aden expressway project undertaken by Chongqing highway company in Yemen. Members of the project team were withdrawn from Yemen during the Yemen evacuation of Chinese nationals in March 2015 and the project was therefore put on hold.

Upon trial, the Court held that the war occurring in the country where the port of destination is located affected the highway construction project and thus affected the solvency of Chongqing Road, but Chongqing Road should not be exempted from the obligation to make payment to Shanghai Jiexi due to its failure to receive the contract price under the highway construction project. Therefore, the Court ordered Chongqing

Road to pay the fees owed to Shanghai Jiexi. This judgement was affirmed by the second instance.

[Interpretation of Typical Significance]

There are many countries along the Belt and Road, where political, economic, ethnic, religious, legal, cultural and geographical conditions are complex and varied. In the process of “going out” to participate in the investment, cooperation and construction, force majeure such as political turmoil, war, strike, natural disaster or other unforeseeable changes in circumstances are inevitable. This is a typical case where disputes arising therefrom. The destination of the contract for carriage of goods by sea is Yemen, one of the countries along the Belt and Road and the goods shipped were to be used for a major infrastructure construction project undertaken by the domestic enterprise through overseas bidding. The dispute was related to the sudden changes of the situation in Yemen. Therefore, the accurate division and assumption of responsibilities and risks under similar events is of practical significance to protecting the interests of enterprises in overseas investments and encouraging and promoting the enterprises to participate in the construction of the Belt and Road Initiative. The judgment of this case clarifies that the principal to a contract for sea freight forwarding cannot be exempted from its contractual obligations to the freight forwarder due to failure to fulfill its investment project, thus avoiding the improper shifting of unexpected risks in the overseas investment and construction area to the logistics service provider in the shipping industry. This principle also applies to contracts for carriage of goods by sea and other contracts concerning the provision of materials, financing, etc. for overseas investment projects, which can be used as a reference for the handling similar cases involving the Belt and Road Initiative in the future.

Typical Case of the Optimization of the Law-based Business Environment in the FTZ

Case 2 Winship Maritime Inc. v. China Shipping Industry Co. , Ltd. and COSCO Shipping Heavy Industry (Yangzhou) Co. , Ltd. : Case of Dispute over a Shipbuilding Commission Contract (Selected in the Typical Maritime Cases of Chinese Courts in 2020)

[Case Description]

The defendants, China Shipping Industry Co. , Ltd. (hereinafter referred to as “CIC”) and COSCO Shipping Heavy Industry (Yangzhou) Co. , Ltd. (hereinafter referred to as “COSCO Yangzhou”), entered into a Shipbuilding Contract with TTI, a party not involved in the case, through the intermediary of the plaintiff, Winship Maritime Inc. The two defendants and the plaintiff entered into a Commission Agreement accordingly, specifying that, if the Shipbuilding Contract did not take effect for any reason whatsoever, or was canceled and/or rescinded by the buyer or seller during the shipbuilding period, the two defendants shall be exempted from the obligation to pay the remaining installments of the commission. The parties also specified that the agreement shall be governed by and construed in accordance with the English law. Later, TTI underwent a bankruptcy reorganization in the US court. According to the “asset selling order” issued by the United States Bankruptcy Court, TTI sold its rights and obligations under the Shipbuilding Contract to a new buyer. The two defendants finally received the full payment from the new buyer. Therefore, the plaintiff requested the Court to order the two defendants to pay the corresponding commission and the interest thereon.

Upon trial, the Court held that the legal relation in dispute in this case was a foreign-related civil legal relation and the Court respected the parties’ choice of English law as the governing law of the Commission Agreement. Under English law, a broker’s receipt of a commission shall be conditioned upon the fulfillment of the conditions specified in the commission contract. In this case, the conditions precedent to the plaintiff’s receipt of the commission were that the plaintiff facilitated the conclusion of the Shipbuilding Contract and the two defendants received the payment from the buyer. The “buyer” mentioned here shall be limited to TTI (or representative of TTI). If the subsequent payments under the Shipbuilding Contract were not made by TTI sought by the plaintiff, but a new buyer sought by others, such payments should be irrelevant to the plaintiff as the original broker. In addition, under English law, the principal may make appropriate business decisions in its sole discretion, without giving priority to the payment of commission to the broker. After the assignment of the Shipbuilding Contract, the conditions precedent to the plaintiff’s receipt of commission cannot be fulfilled, so the two defendants had no fault and should not be liable for the loss incurred by the

plaintiff. Hence, the first-instance judgment did not support the plaintiff's claims. The parties did not file an appeal after the judgment was rendered.

[Interpretation of Typical Significance]

This case concerns disputes over a shipbuilding commission contract where the shipping entity in the FTZ and the foreign party chose the English law as the governing law of their contract, which provides a practice reference for the ascertainment of foreign case law in the foreign-related commercial and maritime trials. In accordance with Law of the Application of Law for Foreign-related Civil Relations in China, if the parties choose a foreign law as the governing law, they shall provide the laws of this country. Therefore, the parties involved in this case shall submit the relevant cases under the English law to the Court. During the trial, as explained by the Court, dozens of relevant cases that may be applicable to this case were determined upon confirmation by the parties and their respective statements on exhaustive search, and then the Court summarized the adjudication rules under the English law that can be used to resolve the disputes in this case according to the case hierarchy, validity of time and their matching degree with this case. These rules involve contract interpretation, freedom of contract, good faith and other principles under the English law (common law), as well as the specific handling of commission contracts. These rules accurately respond to the parties' reasonable expectations for the outcome of dispute resolution when choosing the governing law. Though this case involves many disputes, with the value of subject matter being more than RMB 10 million, the parties did not file an appeal after the first-instance judgment was made, thus achieving a good effect in the accurate ascertainment and application of foreign case law and resolution of disputes.

Typical Case of the Foreign Parties' Agreement on Choosing Jurisdiction of Shanghai Maritime Court

Case 3 Korea Tumangang Shipping Company v. C. S. MARINE CO., LTD: Case of Dispute over Liability for Damage Caused by Vessel Collision (a typical case in the Work Report of the Supreme People's Court in 2021 and selected into the Typical Maritime Cases of Chinese Courts in 2019)

[Case Description]

From September 21, 2015, according to the charter-party between the North Korean ship “TU RU BONG 3” and a party not involved in the case, Pioneer Institute, “TU RU BONG 3” served as an auxiliary vessel to a fishing boat, and engaged in fishing and processing operations in the eastern sea areas of the Korean Peninsula. On October 1, 2015, “TU RU BONG 3” collided with a South Korean cargo ship “HAI NI” during its operations. Afterwards, the plaintiff and the defendant failed to reach an agreement on the dispute through negotiation. On March 20, 2017, they reached an agreement on jurisdiction, and agreed that the disputes arising from the collision accident of the ships involved and all relevant disputes should be under the jurisdiction of Shanghai Maritime Court.

The Court of first instance held that the plaintiff and defendant were foreign legal persons, and this case involved foreign elements. The parties signed a jurisdiction agreement before litigation, specifying that the disputes should be under the jurisdiction of the Court and the Court confirmed such agreement. During the trial, the parties chose the law of the People’s Republic of China as the governing law and the Court confirmed such choice. In addition, the Court determined the navigation rules that should be followed by the ships involved shall be in accordance with the Convention on the International Regulations for Preventing Collisions at Sea, 1972. According to the circumstances of the accident and the extent of the faults of both parties, the Court finally determined that the “HAI NI” shall bear 80% of the liability for the accident, while “TU RU BONG 3” shall bear 20% of the liability. Upon trial, Shanghai High People’s Court held that the first-instance judgment was clear in the findings of facts and correct in the application of the laws, and thus shall be upheld, and ruled that the appeal shall be dismissed and the original judgment shall be upheld.

[Interpretation of Typical Significance]

This case concerns the parties’ choice of jurisdiction of a Chinese court by agreement and their choice of the Chinese law as the governing law upon occurrence of a collision between two foreign ships, which fully shows the Chinese court’s respect for the party autonomy and demonstrates the international influence of China’s maritime justice. This case is of typical significance in the following two aspects. Regarding the jurisdiction of court, the parties to this case are foreign enterprises, the collision

accident occurred in a sea area not under the jurisdiction of China and other places that were actually connected to the disputes were outside China. However, the parties entered into a jurisdiction agreement before litigation and agreed that Shanghai Maritime Court should have jurisdiction over the disputes involved, which complies with the provisions of the Special Maritime Procedure Law of the People’s Republic of China. Regarding the governing law, the parties to this case chose the applicable law of the People’s Republic of China as the governing law during the litigation by the Chinese courts. According to the party autonomy principle, allowing parties to choose the governing law by agreement in maritime infringement disputes has sufficient theoretical and practical basis no matter from the perspective of nature of civil tort, the legal effect or the development trend of private international law.

Typical Case of the “One-Stop” Diversified Resolution Mechanism for Foreign-Related Maritime Disputes

Case 4 ITN v. COSCO SHIPPING Lines Co. , Ltd. : Case of Dispute over a Contract for Carriage of Goods by Sea

[Case Description]

In March 2018, the plaintiff ITN entrusted the defendant COSCO SHIPPING Lines Co. , Ltd. to transport 2,237 boxes of red wine from the US to Japan. During transportation, the temperature of the refrigerated container was set at -14℃. After the red wine arrived in Japan, it was found to have lost its edible value due to the long-term freezing and was finally considered a constructive total loss. After compensating the consignee and the insurer for the loss of goods, the plaintiff filed an action with the Court, requesting the defendant to compensate for its loss. The defendant believed that the temperate “-14℃” of the refrigerated container was set according to the plaintiff’s booking instructions and it should not be liable for the damage of goods. However, the plaintiff believed that “-” was a dash but not a negative sign and the storage temperature of red wine was common knowledge of transportation, so the defendant, as the carrier, should be liable for the damage of goods.

Upon trial, the Court held that the plaintiff ITN is a company incorporated in the US and the facts of the case involved the US and Japan. So, following the suggestion of

the Court, the parties agreed to first submit dispute to the Shanghai Commercial Mediation Center for mediation and the foreign mediator Mr. PETER CORNE presided over the mediation. After helping the parties identify the reasons for the damage of goods, the mediator clarified and analyzed the respective interests of the parties, and reminded both parties to view the settlement of the case from the perspective of commercial interests. Finally, through continuous communication and coordination, the parties reached a settlement plan and signed a mediation agreement at the Shanghai Commercial Mediation Center, witnessed by the presiding judge.

[Interpretation of Typical Significance]

This is a case of foreign-related disputes where a foreign mediator was entrusted for the first time to conduct mediation and the disputes were finally resolved through mediation. The impartial and efficient resolution of disputes in this case not only protects the legitimate rights and interests of the Chinese and foreign parties, but also of significance in several aspects. Firstly, a foreign mediator was introduced to mediate the foreign-related disputes. The introduction of foreign mediators can help eliminate the language barrier and establish an effective communication mode with the foreign parties. In addition, the language advantages and multi-national legal backgrounds of the foreign mediators can enable them to fully understand the appeals of the foreign parties and make it easier for them to provide solutions that meet the characteristics of the foreign parties, thus effectively resolving the disputes. Secondly, the Court strengthened its leading and guidance on the entrusted mediation. The Court gave full play to its leading and guiding role in the whole entrusted mediation process, including suggesting the appointment of a foreign mediator based on the foreign-related elements and high specialty of the case, and assisting in developing mediation solutions. Therefore, in this case, not only were the advantages of entrusted mediation fully exerted, but also relevant legal issues were resolved by virtue of the trial functions of the Court, thus further regulating the entrusted mediation and demonstrating the effect of the litigation-mediation connection. This case not only brings good legal and social effects, but it also provides precious experience for the Court in exploring and innovating the diversified dispute resolution mechanisms in the foreign-related maritime and commercial areas.

Typical Case of the Proof and Application of Foreign Laws

Case 5 Mitsui Sumitomo Insurance Company Limited v. COSCO SHIPPING Lines Co. , Ltd. : Case of Dispute over an International Multi-Modal Transport Contract (included in the Typical Maritime Cases of Chinese Courts in 2018)

[Case Description]

In March 2015 , the defendant COSCO Shipping Lines Co. , Ltd. was entrusted to transport a batch of LCD display panels from Port Kelang (Malaysia) to Piraeus Port (Greece) by sea and to Nitra (Slovakia) by railway. The goods were damaged due to train derailment in the railway section within the territory of Greece. After the plaintiff Mitsui Sumitomo Insurance Company Limited settled the claim and obtained the right of subrogation as the insurer of the goods involved , it raised a claim for recovery to the defendant. The defendant argued that the geological collapse caused by continuous heavy rainfall in that area at the time leads to train derailment , and the carrier may be exempted from liability ; even if the carrier could not claim exemption , it may claim limitation of compensatory liability for a carrier entity in accordance with the law.

Upon trial , the Court held that the plaintiff was incorporated in Japan , the shipping destination was Slovakia , the accident occurred in Greece and the disputes involved were under the foreign-related civil legal relations , so the parties can choose the governing law for dispute resolution. During the trial , the parties agreed that the determination and assumption of responsibility in the railway segment should be governed by Greek law and other disputes should be governed by the law of the People’s Republic of China , and the Court respected their choices. Greece is a member state of the Convention concerning International Carriage by Rail (hereinafter referred to as the “ Convention ”) . In accordance with the Convention , if the loss , damage or delayed delivery of goods is led by cause that cannot be avoided or prevented by the carrier , the carrier shall not be liable for damage. The accident in this case was caused by collapse due to geological processes , which cannot be foreseen or controlled , so the defendant may not be liable for damage of goods in accordance with the Convention. So the Court ruled that the plaintiff’s claims shall be dismissed. During the second instance , the plaintiff withdrew its appeal.

[Interpretation of Typical Significance]

In the trial of this case, the Court fully respected the parties' choice of governing law, which is, the determination and assumption of responsibility in the railway section should be governed by Greek law, and other disputes should be governed by the law of the People's Republic of China. In this case, the goods were first transported from Malaysia to Greece by sea and then to Slovakia by railway, and the three countries involved are countries along the Belt and Road. The transportation routes of the goods are typical sea-railway combined transportation routes on the 21st Century Maritime Silk Road, where the goods were transported to a landlocked country in Central Europe by railway via the Mediterranean. With the increasingly close trade contacts between countries and regions along the Belt and Road, the demand for multi-modal transport is also showing an increasing trend. This case distinguishes the relations between the governing law of the multi-modal transport contract under the network liability system and the law governing a specific section of the multi-modal transport, and better clarifies the principles of applicable laws to such issues.

Typical Case of the Protection of Rights and Interests of Foreign Crew Members

Case 6 196 Chinese and foreign crew members v. DIAMOND CRUISE INTERNATIONAL CO. , LIMITED: Cases of Disputes over Crew Service Contracts (included in the Model Cases of the Supreme People's Court regarding the Protection of Rights and Interests of Crew Members in 2020)

[Case Description]

During 2017 and 2019, 196 Chinese and foreign crew members from 9 countries including China, Indonesia, Myanmar, Nepal, Belarus, Republic of Serbia, Kazakhstan, Honduras and Bangladesh served as sailors, marine engineers, waiters, cooks and other positions in the Bahamas-registered cruise "GLORY SEA" owned by the defendant. During this period, the defendant owed the crew members' wages of about RMB 12 million. Under the litigation guidance by the Court, the crew members requested the Court to take judicial arrest and auction against the cruise "GLORY SEA" and the Court ruled to approve the request. On March 7, 2019, the Court legally arrested the ship involved in the Wusongkou anchorage in Shanghai and promptly started

the judicial auction procedure. The ship was successfully sold on April 17, 2020.

Upon trial, the Court held that these 196 Chinese and foreign crew members signed a Crew Employment Agreement with the shipowner’s agency, and during their service in the cruise “GLORY SEA”, they established a service contract relationship with the defendant. As a result, the defendant shall pay them remuneration as agreed and assume the liability for repatriation expenses, among others, according to the law. Therefore, the Court ordered the defendant DIAMOND CRUISE INTERNATIONAL CO. , LIMITED to pay the crew members the wages of RMB 12 million and the interest thereon, and legally confirmed that the crew members’ claim enjoyed the maritime lien.

[Interpretation of Typical Significance]

In recent years, China’s cruise industry has seen a rapid development with the deepening of China’s opening up, and the protection of rights and interests of crew members has become increasingly urgent. Different from cargo ships, a cruise involves a large number of crew members. In the 196 crew members involved, two-thirds of them are foreigners. The shipowner owed the crew members’ wages of RMB 12 million and abandoned the cruise after it was arrested. For this purpose, the Court opened a “green channel” for the protection of the rights and interests of crew members, and promoted the case filing, trial and enforcement in a coordinated manner. The Court required that the crew member labor dispatching company and the shipowner’s mutual assurance association should repatriate foreign crew members stranded on board in the first place, arrange a vessel watch company to conduct management and take measures round the clock to guarantee the cruise safety during the typhoon period. In the meantime, the Court accelerated the case trial, initiated the cruise auction procedure in a timely manner in the course of litigation, properly handled objections raised by parties not involved to the cruise auction, positively overcame adverse impacts of the COVID-19 outbreak on the disposal of the cruise involved and smoothly sold the cruise after two auctions. The series of measures taken by the Court have not only guaranteed the legal, standardized and orderly judicial procedure, but also avoided further expansion of costs and risks of arrest. This effectively safeguarded the legitimate rights and interests of 196 crew members, fully demonstrated importance attached by maritime justice to the protection of crew members’ rights and interests, and provided experience and reference

for the handling of similar cases in the future.

Typical Case of Foreign-Related Cruise Disputes

Case 7 Yang XX v. CARNIVAL PLC: Case of Dispute over the Liability for Maritime Personal Injury (included in the 2nd “100 Excellent Judgments” of the Chinese Courts)

[Case Description]

In August 2015, the plaintiff (7 years old, minor) and her mother bought the “Shanghai-Jeju-Fukuoka-Shanghai” 4 nights 5 days tour package of the cruise “Sapphire Princess.” While the cruise was sailing on the high seas, the plaintiff suffered a near-drowning incident while in the swimming pool and was crippled by the incident. The plaintiff’s mother thus filed an action with the Court, requesting the Court to order the defendant to publicly apologize to the plaintiff and her legal representative, and compensate the plaintiff for personal and mental damages of approximately RMB 4.02 million.

This case involves a dispute over the liability for maritime personal injury. Upon trial, the Court held that the plaintiff signed an outbound tourism contract with a third party and the defendant, as the operator of the cruise involved, should have the obligation to ensure the personal safety of tourists. The plaintiff’s mother, as the legal guardian, should also have the obligation to protect the personal safety of the plaintiff as a minor. Finally, the Court determined that the defendant shall assume 80% of the liability.

[Interpretation of Typical Significance]

This is a typical case of dispute over the liability for maritime personal injury occurring in a foreign cruise. The parties to the case had obvious differences on a series of issues, such as the determination of the governing law, the application of the law and the proportion of liability. The trial result of this case is of great value to regulating the operation of foreign cruises in China and solving the relevant legal issues.

Regarding the defendant’s claim that it was entitled to limit its liability for personal injury, the Court, based on the details of this case and the relevant laws, determined the following rules: In cases of disputes over the liability for personal injury to passengers

occurring in public places of foreign cruises, if the cruise carrier knows the possibility of such a damage but fails to take preventive measures in violation of the laws or the relevant industry (operation) standards of the cruise home port or country of registry, thus causing damage, it shall constitute a reckless act or omission of the carrier done with knowledge that such damage would probably result. As a result, the carrier shall not enjoy the limit of liability specified in the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, 1974. The determination of the rules provides a reference for the trial of similar cases in the future and also provides certain guidelines for the sound development of the cruise-related industries.

The defendant not only fulfilled the obligation of compensation specified in the judgment but also took active improvement measures based on the problems identified in the judgment. Within two months, the defendant equipped lifeguards for swimming pools on all of its cruises whose home port is Shanghai, and it planned to equip lifeguards for swimming pools on its cruises around the world in the future, so as to greatly improve the safety factor of onboard swimming pools and ensure the personal safety of cruise passengers.

Typical Case of the Legal and Equal Protection of Rights and Interests of Chinese and Foreign Enterprises

Case 8 FIDELIDADE-COMPANHIA DE SEGUROS, S. A. v. STARR P&C INSURANCE (CHINA) COMPANY LIMITED: Case of Dispute over a Maritime Insurance Contract (included in the 1st “100 Excellent Judgments” of Chinese Courts)

[Case Description]

The plaintiff Portugal’s FIDELIDADE-COMPANHIA DE SEGUROS, S. A. insured the welded pipes involved against the risk of transportation from Xingang Port (China) to Luanda Port (Angola) and ACAIL INDUSTRIA E COMERCIO DE FERRO E A OS S. A was the insured. The defendant STARR P&C INSURANCE (CHINA) COMPANY LIMITED also insured this batch of goods against the risk of transportation in the same period, and the insured, subject-matter insured and the sum insured were consistent with those specified in the insurance policy issued by the plaintiff. The insurance

contracts of both the plaintiff and defendant did not contain the “prohibition of double insurance clause,” “non-contribution clause,” nor “pro rata clause,” nor specified the consequences arising from the violation of the obligation of notification of double insurance. The goods involved were found to be damaged when unloaded at the port of destination and the insured filed a claim against the shipowner on the same day, and promptly informed the plaintiff and the defendant of the insured accident of the goods. The insurance adjustment company, entrusted by the plaintiff, believed upon inspection that the goods were damaged due to improper stowage. So the plaintiff paid the inspection fees and claims according to the adjustment results. In the following year, after the insured failed to provide a charter party and an authorization letter issued by the insured allowing the defendant’s agent to handle the claim for compensation against the carrier, as required by the defendant, the defendant notified the insured of its rejection of the claims. Later, the plaintiff notified the defendant of the double insurance for the goods involved, and required the defendant to share 50% of the claims and inspection fees, but the defendant did not pay as required. So the plaintiff filed an action with the Court.

Upon trial, the Court held that there was a legal double insurance relationship between the plaintiff and the defendant. The claims paid by the plaintiff to the insured were reasonable and prudent, and the defendant should also bear the liability for indemnity to the insured under the insurance contract and the payment by the plaintiff of the claims to the insured exempted the defendant from the liability for indemnity. Therefore, the plaintiff’s right of contribution shall be established. In view of the above, the Court ruled that the defendant shall pay the plaintiff the claims and interest. After the first-instance judgment was made, the defendant consciously fulfilled the payment obligations determined in the judgment. The judgment of this case has taken effect.

[Interpretation of Typical Significance]

Commercial trials should fully respect the market rules and review the impact of judgment results on the market. If a high legal threshold is set for the first insurer to exercise the right of contribution, making the right of contribution related to double insurance specified in the Maritime Code exist in name only, it will make it difficult for the insurers to share the rights and obligations under the double insurance in practice. In

addition, this judicial orientation will not be conducive to the healthy development of the shipping insurance market and will make it difficult for insurance companies to conduct business cooperation agreements with their peers. The results of judgment of this case clarifies the adjudication thoughts for similar cases, defines the standards for double-insurance-related contribution and the key review points, specifies the adjudication method with respect to the general provisions of the Maritime Code on “double-insurance-related contribution,” determines a reasonable scope of review for the action of double-insurance-related contribution, and provides a reference for the handling of similar cases and the resolution of internal disputes in the insurance industry in the future. Based on the facts ascertained, the Court accurately applied the law, supported the claims of the foreign insurance company, and ordered the defendant to contribute to the claims according to the law, demonstrating the equal protection of the Chinese and foreign parties by China’s maritime justice.

Typical Case of the Marine Eco-Environment Protection

Case 9 Third Branch of Shanghai People’s Procuratorate v. Hyundai Merchant Marine (China) Co., Ltd. : Case of Application for Confirmation of the Public Interest Negotiation Agreement

[Case Description]

On May 6, 2019, the vessel “HYUNDAI NEW YORK” used bunker oil with a sulfur content of 2.67% m/m in China’s emission control areas for atmospheric pollution from vessels, which violated the Atmospheric Pollution Prevention and Control Law of the People’s Republic of China and the Implementation Scheme of the Domestic Emission Control Areas for Atmospheric Pollution from Vessels issued by the Ministry of Transport of the People’s Republic of China. It was discovered and imposed an administrative penalty by the Pudong Maritime Safety Administration. With respect to the environmental public interest damage caused by the aforesaid violation, Third Branch of Shanghai People’s Procuratorate (hereinafter referred to as the “Third Branch”) fulfilled the publication procedure in accordance with the law, and supervised the relevant authority and social organization to initiate civil public interest litigation within the statutory time limit. Later, the Third Branch entrusted a qualified organization to

appraise the environmental public interest damage caused by the vessel “HYUNDAI NEW YORK” and the appraised amount of damage was RMB 42,929.58.

Hyundai Merchant Marine (China) Co., Ltd., which is a wholly-owned subsidiary of HYUNDAI MERCHANT MARINE CO., LTD., the operator of the vessel “HYUNDAI NEW YORK,” conducted consultation with the Third Branch and the parties reached an agreement on compensation for public interest damage on September 21, 2020, and they jointly applied to the Court for confirmation of the agreement on October 12, 2020.

Upon review, the Court held that the case involved the application for confirmation of the public interest negotiation agreement. In accordance with the Decisions of the Standing Committee of Shanghai Municipal People’s Congress on Strengthening the Procuratorial Public Interest Litigation, where the infringers correct the illegal acts on their own, take remedial measures or promise to rectify, the procuratorial organs may consult with the infringers on the assumption of civil liability. Where agreements are reached through consultation, the procuratorial organs may apply to the judicial organs for judicial confirmation. The agreement involved in the case complied with the legal conditions for judicial confirmation of the agreement, so the Court ruled that the agreement on the compensation for public interest damage shall be valid.

[Interpretation of Typical Significance]

This case involves the application for confirmation of the public interest consultation agreement filed by a procuratorial organ due to atmospheric environmental pollution caused by a vessel, and it is the first case of settlement before civil procuratorial public interest litigation in Shanghai that implemented the spirit of the compensation system for ecological and environmental damage and the civil ecological environment restoration system specified in the Civil Code of the People’s Republic of China as well as the provisions of the Decisions of the Standing Committee of Shanghai Municipal People’s Congress on Strengthening the Procuratorial Public Interest Litigation. A public interest negotiation agreement is a civil agreement, but it is different from a people’s mediation agreement reached upon the mediation of the people’s mediation organization. A people’s mediation agreement is the result when the equal subjects dispose of their rights with relative freedom, without prejudice to the national interests, public interests, collective

interests or the legitimate rights of others. A public interest negotiation agreement is the result when a compensation rights holder consults with the infringer, claims rights and interests against the infringer on behalf of the state and the public for the purpose of safeguarding public interests. The review by the people’s court of a public interest negotiation agreement shall be different from the review of a people’s mediation agreement in terms of the review principles, contents and procedures. This case innovatively determined the review principles, contents and procedures for the public interest consultation agreement in accordance with the law, providing support for the marine eco-environment protection and public interest litigation protection through judicial supervision.

Typical Case of Recognition and Enforcement of Foreign Arbitral Awards

Case 10 ORIENTAL PRIME SHIPPING CO. , LTD v. HONG GLORY INTERNATIONAL SHIPPING COMPANY LIMITED: Case of Application for Recognition and Enforcement of Foreign Arbitral Awards (included in the Typical Maritime Cases of Chinese Courts in 2021)

[Case Description]

On September 21, 2018, the applicant and the respondent entered into a time charter party, specifying that the respondent would charter the applicant’s vessel “m. v. ORIENTAL PEARL” for the carriage of goods; and any disputes between the parties would be resolved by the London Maritime Arbitrators Association (LMAA) through arbitration in accordance with British law and the LMAA rules. A dispute subsequently arose between the parties regarding the execution of the charter party and the applicant applied to the LMAA for arbitration in accordance with the clauses of the charter party. On October 10, 2019, the arbitral tribunal, based on the opinion and evidence submitted by the parties, held that the members had a consensus on the case and made the final arbitral award, ordering the respondent to assume the applicant’s loss of about USD 90,790.28 and the interest thereon. As the respondent did not fulfill the payment obligation determined in the arbitral award upon service of the arbitral award, the applicant applied to the Court for recognition and enforcement of the arbitral award.

Upon review, the Court held that the respondent is an offshore company registered

in the Marshall Islands while the written charter confirmation and the arbitral award stated that the business premises of the respondent was in Shanghai, China; and the emails between the parties stated that the respondent and its affiliate were mixed and its affiliate indeed operated in Shanghai. The above evidence can prove that the respondent's address in Shanghai, China was the business address of the respondent, so the Court had jurisdiction over the application. In addition, the arbitral award did not fall under the circumstances of refusal to recognize and enforce arbitral awards specified in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention") and the applicant's application also complied with the relevant Chinese laws. So the Court ruled to recognize and enforce the arbitral award. Later, the respondent voluntarily fulfilled the obligation determined in the arbitral award.

[Interpretation of Typical Significance]

The parties to this case are offshore companies incorporated outside China. After the dispute between the parties over the charter party was resolved by arbitration in the UK, the applicant applied for recognition and enforcement of the arbitral award on the ground that Shanghai Maritime Court is a maritime court in the place where the applicant is domiciled. Since both China and the UK are parties to the New York Convention, this case should be reviewed in accordance with the New York Convention. According to the provisions of the Chinese law, if a company's place of incorporation is inconsistent with its principal place of business, the domicile of the company shall be the place where its principal place of business is located. During the review of this case, the Court adhered to the Convention's spirit of facilitating the enforcement of arbitral awards, actively exercised its jurisdiction over the case by determining the location of the respondent's principal place of business, and ruled to recognize and enforce the arbitral award in accordance with the New York Convention. As a result, the respondent voluntarily fulfilled the obligation determined by the arbitral award and the Court better fulfilled the obligations of the contracting parties to the New York Convention.

