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Jurisdictional Conflicts between Maritime Courts and Local People's Courts in China

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Background & Aim of Research

Background: Judicial System

- ◆ According to the Organic Law of the People's Courts of the PRC, the judicial authority is exercised by people's court, which include
 - ◆ the Supreme People's Court (SPC)
 - ◆ the Local People's Courts
 - ◆ Special People's Courts
- ◆ The local people's courts are divided into
 - ◆ Primary People's Courts
 - ◆ Intermediate People's Courts
 - ◆ High People's Courts.
- ◆ The basic authority of the people's courts is to try legal cases, while cases of certain types may be heard by the special people's courts, which include **maritime courts**, military courts, railway transport courts, intellectual property courts, internet courts and a very recently established financial court.

Background: Maritime Courts

- ◆ Before 1984, maritime cases in China were heard by the local people's courts located in coastal cities.
- ◆ The Water Transportation Courts (“WTC”) were considered as being the early model for today's maritime courts.
- ◆ Despite WTCs being subject to both the SPC and the local High People's Court, they actually failed to inspire confidence in parties appearing before them during their short existence.
- ◆ Following the abolition of the very short-lived WTCs in Shanghai, Tianjin and Wuhan, the local people's courts regained hearing maritime cases.

Background: Maritime Courts

- ◆ As the necessity to establish specialized courts to hear maritime cases manifested itself, maritime courts have gradually been established since 1984.
- ◆ Each maritime court consists of an Admiralty Tribunal and a Maritime Commerce Tribunal.
- ◆ The maritime courts have original jurisdiction over “admiralty cases and cases of maritime commerce”, but not over other civil and criminal matters.
- ◆ The level of maritime court is the same as the local intermediate people’s court, and thus its level is higher than the primary people’s court.
- ◆ Appeals from the maritime courts can be heard by the local high people’s courts.
- ◆ The Communication and Transportation Tribunal of the SPC, set up in 1987, can supervise the judicial work of the maritime courts.

Maritime Courts: Territorial Jurisdiction

- ◆ Now there are **ten** maritime courts in total: Haikou, Guangzhou, Beihai, Xiamen, Ningbo, Wuhan, Shanghai, Qingdao, Tianjin and Dalian maritime courts;
- ◆ With the increased number of maritime courts, a series of legal documents or legislations have been promulgated to adjust and clarify the **territorial jurisdiction** of the maritime courts;
- ◆ Territorial jurisdiction means the authority that a court has over cases within its geographical territory;
- ◆ The jurisdiction of people's courts are based on the administrative divisions designated by the Constitution Law of the PRC.
- ◆ The establishment of maritime courts actually breaks through administrative divisions and areas where the people's courts should have exercised jurisdiction.



Maritime Courts Distribution

Maritime Courts: Territorial Jurisdiction

- ◆ **Guangzhou Maritime Court** has jurisdiction over several major ports in the southern portion of the PRC, including Guangzhou, Huangpu, Shantou, and Zhanjiang;
- ◆ **Shanghai Maritime Court** has jurisdiction over several major ports in the southeastern PRC, including Shanghai. The area below Liuhekou is still under the jurisdiction of the Shanghai Maritime Court after the establishment of Wuhan maritime court.
- ◆ **Qingdao Maritime Court**'s jurisdiction covers four major ports in the eastern PRC, including Qingdao, Weihai, Rizhao and Yantai.
- ◆ **Tianjin Maritime Court** exercises jurisdiction over cases from the two major ports of Tianjin and Qinhuangdao and the southern part of Bohai, a large gulf in the eastern PRC.
- ◆ The jurisdiction of the **Dalian Maritime Court** reaches to the boundary of Liaoning Province and Hebei Province in the south: in the east, it reaches to the extended sea area at the estuary of Yalu River and the water area of Yalu River, including a part of the Yellow Sea and a part of the Bohai Sea and some islands on the sea, the Songhua River, Tumen River and other navigable water areas and ports connecting the sea within Jilin Province, as well as the Heilongjiang River, Songhua River, Wusuli River and other navigable water areas and ports connecting the sea within Heilongjiang Province.

Maritime Courts: Territorial Jurisdiction

- ◆ **Wuhan Maritime Court** mainly has jurisdiction over the water areas of the main line and branches of the Yangtze River, which starts from Hejiangmen in Yibin City, Sichuan Province to the estuary of Liuhe River in Jiangsu Province, including main ports such as Yibin, Luzhou, Chongqing, Fuling, Wanzhou, Yichang, Jingzhou, Chenglingji, Wuhan, Jiujiang, Anqing, Wuhu, Ma'anshan, Nanjing, Yangzhou, Zhenjiang, Jiangyin, Zhangjiagang, and Nantong.
- ◆ **Haikou Maritime Court** has the jurisdiction over ports in Hainan Province and some islands including Xisha, Zhongsha, Nansha and Huangyan Island.
- ◆ **Xiamen Maritime court** has the territorial jurisdiction between Fujian Province and Guangdong Province and the junction of Fujian Province and Zhejiang Province in the north, including the southern part of the East China Sea, Taiwan Province, the sea islands and the port of Fujian Province.
- ◆ **Ningbo Maritime Court** exercise jurisdiction over the ports and waters of Zhejiang Province.
- ◆ **Beihai Maritime Court** governs the first-instance maritime cases in the ports and waters of the Guangxi Zhuang Autonomous Region and the Beibu Gulf including its islands and waters. Wuji Island, Weizhou Island and Xieyang Island are also under the jurisdiction of the Beihai Maritime Court. It also has jurisdiction over the navigable water area connecting the sea, starting from the Lancang River to the Meigong River in Yunnan Province.

Research Aim

- ❖ In general, except for those cases that will have a major impact nationwide or which the SPC deems shall be tried by itself, a civil claim may firstly be heard by either a special court or a local people's court;
- ❖ However, since the jurisdiction boundary of a special court and a local people's court is not entirely clear, this may from time to time result in jurisdiction conflict.

This article aims to examine **the jurisdictional conflicts between the maritime courts and the local people's courts in China.**

Maritime Cases to be Heard by Maritime Courts

Maritime Legal System

- ◆ The Maritime Code of PRC (‘MC’), a series of maritime judicial interpretations, together with the Maritime Procedural Law (MPL) and others, form an independent and systematic framework for maritime disputes and claims. The most important ones are as follows:
 - ◆ MC, which came into effect in 1993, includes 15 chapters and 278 articles;
 - ◆ The MPL, which comprehensively covers procedural issues of maritime litigation both internationally and domestically, is relevant when deciding jurisdictional issues arising from maritime claims. The MPL is classified as a special law compared to the Chinese Civil Procedure Law(‘CPL’), and therefore has priority over the CPL in the matters of maritime litigation.
 - ◆ The Provisions of the SPC on the Scope of cases to be Accepted by Maritime Courts 2016 (“2016 Provisions”) contains 114 articles in total, with 108 articles focusing on the types of cases that shall be accepted by maritime courts.

Expanded Jurisdiction of Maritime Courts

- ◆ Subject matter jurisdiction is the authority of a court to adjudicate cases of a particular type of controversy involved in an action.
- ◆ Maritime courts are established to hear and determine maritime claims or cases. However, the term “**maritime claim**” are not specifically defined.
- ◆ Instead, maritime cases are classified into the following categories:
 - 1) maritime tortious disputes; 2) contracts of maritime trade; 3) cases relating to disputes over development and utilization of oceans and water areas leading to the sea and environmental protection; 4) other cases concerning disputes over maritime affairs; 5) maritime administrative cases; and 6) cases concerning special maritime procedures.

Expanded Jurisdiction of Maritime Courts

- ◆ **The jurisdiction of maritime courts is expanding:**
 - ◆ Under the “1984 Decision of The Standing Committee of The National People’s Congress on The Establishment of Maritime Courts In Coastal Port Cities”, maritime courts had subject matter jurisdiction over 18 types of cases;
 - ◆ In 1989, the SPC issued its “*Rules Governing Scope of Cases Subject to Jurisdiction of Maritime Courts*”. These Rules have empowered maritime courts to take jurisdiction over 42 types of cases;
 - ◆ In 2001, the SPC published “*Several Regulations on the Scope for Cases Accepted by Maritime Courts*”; it spelt out 4 categories and 63 types of cases falling within the jurisdiction of maritime courts.
 - ◆ In the 2016 Provisions, the types of maritime cases are further expanded, so that now 6 categories and 108 types of cases in total can be heard by maritime courts.

In principle, if a case falls within the scope provided by the 2016 Provisions, it shall be judged by a maritime court; and parties in such disputes are not allowed to bring an action to a local people’s court by a jurisdiction agreement.

Maritime Courts vs. Local People's Courts

Terminology

- ◆ Under Chinese law, several different terminologies are used to illustrate jurisdictions of a different nature.
- ◆ **Ordinary jurisdiction**, otherwise known as general jurisdiction, means the jurisdiction entertained by the local people's court over all cases except those that shall be taken by higher courts as otherwise stipulated by Chinese law.
- ◆ **Specialized jurisdiction** refers to the power of special courts to hear designated types of cases, a typical example being the jurisdiction of the maritime courts. The scope of accepting disputes have particular directionality and specialization.
- ◆ **Exclusive jurisdiction** is mandatory and exclusive, and it is associated with mandatory stipulations that certain types of cases can only be heard by a specific court; the parties are not allowed to change jurisdiction by agreements, and other courts have no jurisdiction. Exclusive jurisdictions are exclusive and mandatory compared to other statutory jurisdictions.

Types of conflict

- ◆ Three possible types of jurisdictional conflicts:
 - ◆ The conflict between **general jurisdiction of the local people's court and specialized jurisdiction of the maritime court;**
 - ◆ The conflict between **exclusive jurisdiction of the local people's court and specialized jurisdiction of the maritime court;** and
 - ◆ The conflict between **exclusive jurisdictions of the local people's court and the maritime court.**

1. The conflict between general jurisdiction of the local people's court and specialized jurisdiction of the maritime court

The CPL lays down several rules to deal with jurisdiction conflicts:

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

In order to protect its legal rights, a party to the dispute can challenge the jurisdiction; but this party can only raise such a challenge during the period allowed.

LIN Yibin v. XIE Jun & Shenzhen Zhongzheng International Freight Forwarding Co. Ltd, Shanghai Branch (Zhongzheng Company)

During the period allowed, Zhongzheng Company raised a jurisdiction challenge and said that the company and the plaintiff did not sign a carriage of goods by sea contract, there was no freight forwarding relationship between the two parties, and the consignee had not entrusted the plaintiff to charge for the freight. Therefore, they claimed that the case should be under the jurisdiction of the local people's court.

After a careful examination of the plaintiff's complaint, the attached evidence and parties' statements, Shanghai Maritime Court considered that the dispute in this case was an ordinary civil dispute and should not be within the specialized jurisdiction of a maritime court. The case should therefore be under the jurisdiction of the people's court of the defendant's domicile, and the courts of the two defendants' residences.

If a defendant does not submit its answer in the specified period and appears in court, it is then possible for the local people's court to exercise its jurisdiction over a maritime dispute.

China Minsheng Banking Co. Ltd, Suzhou Branch v. Jingjiang Longwei Grain and Oil Industry Co. Ltd

The dispute concerned “Changjiang Shoreline Terminal Resource” in a mortgage contract. According to the 2016 Provisions that would be applicable in this case, the claim would have fallen within the scope of the specialized jurisdiction of a maritime court. However, the defendant in the First Instance, Jingjiang Longwei, did not file a jurisdictional objection during the allowed period and appeared in court. According to the second paragraph of Article 127 of the CPL, the court deemed that the defendant, Jingjiang Longwei, waived its jurisdictional objection and recognized the jurisdiction of the court of first instance in this case.

Further, the Court of Appeal held that Suzhou Intermediate People's Court had jurisdiction because:

- (1) Article 33 of the CPL 2017 lists three kinds of cases over which a people's court can enjoy exclusive jurisdiction.
- (2) Article 2, paragraph 2, of the “Interpretation of MPL” clearly states that maritime cases are subject to specialized jurisdiction of a maritime court, which is however not an “exclusive jurisdiction” by nature.
- (3) Article 127 of the CPL further stipulates that if a party has not filed a jurisdictional objection and responds to the defense, the people's court of the lawsuit will have jurisdiction, except in the event of violation of the level jurisdiction and exclusive jurisdiction.

- ◆ Both substantive and procedural laws involved in maritime trials are different from those in general civil cases.
- ◆ Another way for protecting procedural justice is **the retrial procedure** under Chinese law.
 - ◆ Article 198 of CPL recognizes that “[W]here the president of a people’s court at any level discovers any error in any effective judgment, ruling or consent judgment of the court and deems a retrial necessary, the president shall submit it to the judicial committee for deliberation and decision; where the SPC discovers any error in any effective judgment, ruling or consent judgment of a local people’s court at any level or a people’s court at a higher level discovers any error in any effective judgment, ruling or consent judgment of a people’s court at a lower level, the SPC or the court at a higher level shall have the power to directly retry the case or specify a people’s court at a lower level to retry the case.”
 - ◆ In addition, the 2016 Provisions stipulates that where a legally effective ruling violates the specialized jurisdiction over a maritime case and needs correction, the people’s court may retry the case according to the provision of Article 198 of the CPL.
- ◆ Accordingly, the above said two legal provisions may ensure the possibility of retrying a maritime case due to a mistake made in jurisdiction.

2. The conflict between exclusive jurisdiction of local people's courts and specialized jurisdiction of the maritime court

- ◆ Chinese law respects parties' autonomy; it is thus possible for the parties to a dispute over a contract or any other right or interest in property to choose a people's court among a number of options to have jurisdiction over the dispute.
- ◆ Nevertheless, it is also emphasized that **the provisions in the CPL regarding level jurisdiction and exclusive jurisdiction shall not be violated**. This means that if the parties' jurisdiction agreement violates the provisions on "exclusive jurisdiction", the court that has accepted the case cannot be deemed as being competent even if no party raises any objection.
- ◆ Articles 33, 34 and 127 of the CPL are relevant to the exclusive jurisdiction of the general people's court. **Article 33**, in particular, provides for the exclusive jurisdiction of a local people's court over the three kinds of cases. Among them, two kinds may be relevant: (1) Where a dispute is about an immovable property or real estate, the court for the place where the immovable property or real estate is located shall have jurisdiction; and (2) where a dispute is arising out of harbor operation, the court for the place where the harbor is located shall have jurisdiction.

Comparing and Contrasting

Guangzhou Hehai Dredging Engineering Co. Ltd v. Huizhou Huicheng District Baoma Building Materials Business Department, China Communications Guangzhou Waterway Bureau Co. Ltd, Huizhou Daya Bay Huaying Petrochemical Co. Ltd

The appellant thought that the construction project in the case involved a land formation project and distribution terminal project, which was an important method of marine development and utilization. In addition, the project location was Mangzhou Island, and was surrounded by the waters of Daya Bay. It should thus be within the range of the specialized jurisdiction of the maritime court according to the 2001 Regulations. Accordingly, the case should be heard by Guangzhou Maritime Court.

However, Huizhou Intermediate People's Court, as the Court of Appeal, determined that the case was a construction contract by nature, and hence was a real estate dispute which should thus be exclusively heard by the people's court at the place where the real estate was located, according to Article 33 of the CPL.

Jiangsu Haolong Construction Engineering Co. Ltd v. Zhuhai Hongrun Construction Engineering Co. Ltd

The Court of First Instance in Zhuhai, based upon the provisions of Article 33 of the CPL, held that, since the case arising from the construction project contract was a real estate dispute, the people's court was a competent court to hear the case.

The Court of Appeal, i.e. Zhuhai Intermediate People's Court, however, believed that the project involved in this case was a dredging project, which was a typical construction project in the ocean and sea navigational waters. Therefore, according to article 55 of the 2016 Provisions, the construction of marine and navigable waters is subject to the scope of the specialized jurisdiction of the maritime court.

- ◆ Clearly, an exclusive jurisdiction refers to a mandatory stipulation that certain types of cases can only be decided by a specific court, so the parties are not allowed to agree to a jurisdiction change.
- ◆ However, there are no rules clarifying the priority if the jurisdictional conflict occurs between the specialized jurisdiction of a maritime court and the exclusive jurisdiction of a local people's court.

3. The conflict between exclusive jurisdictions between the local people's court and the maritime court

- ◆ Both the MPL and CPL contain specific provisions relating to exclusive jurisdiction.
- ◆ Article 7 of the MPL lists three types of lawsuits that shall be under the exclusive jurisdiction of maritime courts, which involves: (1) A lawsuit brought on a dispute over port operations shall be under the jurisdiction of the maritime court of the place where the port is located; (2) a lawsuit brought on a dispute over pollution damage for a ship's discharge, omission or dumping of oil or other harmful substances, or maritime production, operations, ship scrapping, or repair operations shall be under the jurisdiction of the maritime court of the place where oil pollution occurred, where injury occurred, or where preventive measures were taken; and (3) a lawsuit brought on a dispute over the performance of a maritime exploration and development contract within the territory of the People's Republic of China and the sea areas under its jurisdiction shall be under the jurisdiction of the maritime court of the place where the contract is performed.
- ◆ It is clear that a lawsuit brought on a dispute over port operations shall be under the jurisdiction of the maritime court of the place where the port is located. However, Article 33 of the CPL provides that a local people's court shall have jurisdiction over a dispute that is about an immovable property or a real estate, even if it arises out of harbor operation

*Ningbo Zhenhai Ningyuan Chemical Storage Co. Ltd, v. Zhejiang Industrial Equipment Installation Group Co. Ltd,
Zhejiang Zhean Construction Labor Service Co. Ltd*

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

Interestingly, the High People's Court did not accept the allegations from the appellant, and stated that the case was a property damage dispute caused by the construction of related projects in the chemical operation area in a port area. **The operation activity of this project was in the port of Ningbo, so therefore this case was a port operation dispute.** According to the provisions in Article 7 of the MPL, **the case should be exclusively heard by the maritime court**; therefore, Ningbo Maritime Court was the competent court.

Conclusions

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

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Thank you!
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