

# OPENNESS AND INCLUSIVENESS: NATURE OF CHINESE MARITIME LAW AND LEGAL PRACTICES

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## 1 Introduction

The concept of “Chinese maritime law” in this article does not refer to a particular law or act. Instead, it refers to the legal system consisting of all specific Chinese laws and regulations with a maritime and admiralty flavor, which include administrative regulations, administrative rules and international treaties joined or acceded to by China.

Chinese maritime law is well known for being international and advanced, as compared with other branches of Chinese law. These extraordinary characteristics are borne in its nature of openness and inclusiveness. In a broad sense there is no clear distinction between the “openness” and “inclusiveness” referred to in this article. In this context both words jointly refer to being open to and inclusive of international ideas and precedents. For example, the use of the *1989 Salvage Convention* and the *1994 York-Antwerp Rules* as the basis for Chapters 9 and 10 of China’s Maritime Code, and, sometimes, when adjudicating a case, the court’s being open to international ideas and precedents.

However, in a narrow sense, this international openness provides Chinese maritime law with a wide range of sources of law and a variety of mature legal models for selection. Inclusiveness helps Chinese maritime law to embrace various legal institutions and incorporate legal ideas of a diverse nature in an amicable way. Inclusiveness is premised on openness, which can be seen from the provisions of Chinese maritime law and aspects of maritime litigation. Openness is grounded on inclusiveness which allows legal institutions “shipped” from overseas to root and sprout in the soil of Chinese laws, and to mellow their fruit in the admiralty litigation of China.

The main purpose of this article is to provide some insights into the nature of Chinese maritime law and give a general picture of maritime legal practices in China for the benefit of international scholars and experts who are interested in Chinese maritime law and legal practices.

## 2 Overview of Chinese Maritime Law

### 2.1 Connotation/Intension of Chinese Maritime Law

In the Chinese language, “maritime law” refers to all of the legal norms which regulate the specific social relations arising from maritime transport and those pertaining to ships.<sup>1</sup> Similar to the situation in English where the word of “maritime” has various different meanings, Chinese maritime law covers both maritime law in a broad sense and maritime law in a narrow sense.<sup>2</sup> Maritime law in a narrow sense refers to the Maritime Commercial Law, being a kind of commercial law whose regulatory object is maritime commerce.<sup>3</sup> The Chinese Maritime Code, which came into force as from 1 July 1993 (hereinafter referred to as ‘CMC’), is maritime law in this narrow sense, and governs the civil relations in maritime transport and those pertaining to ships as a special civil law.<sup>4</sup> Maritime law in a broad sense governs maritime administrative relations and maritime criminal relations between unequal subjects as well as maritime commercial relations between equal subjects. Maritime law in a broad sense involves port laws, ship inspection laws, crew laws and maritime environmental protection laws, etc.<sup>5</sup> No matter how wide the scope of maritime law in the broad sense extends, however, the social relations arising from maritime transport and those pertaining to ships are the central relations which it governs.<sup>6</sup>

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<sup>1</sup> Si Yuzhuo, *Maritime Law* (Law Press China, 3<sup>rd</sup> ed, 2012) 2; Guan Xiaorong, Si Yuzuo and Wu Qi (eds), *Dictionary of International Economic Law* (Dalian Marine College Press, 1993) 873.

<sup>2</sup> Si Yuzhuo, *Maritime Law* (Law Press China, 3<sup>rd</sup> ed, 2012) 5; Guo Yu, *A Course on Maritime Law* (Peking University Press, 2<sup>nd</sup> ed, 2012) 6; Li Tiansheng, ‘A Discussion on the Concept, Regulative Object and Nature of Maritime Law’ (2012) 11(6) *Journal of Dalian Maritime University* (Social Science Edition) 48, 52.

<sup>3</sup> Zheng Yubo, *Maritime Law* (San Min Book Co, Lin Qunbi revised 13<sup>th</sup> ed, 2013) 3.

<sup>4</sup> Si Yuzhuo (ed), *Maritime Law Dictionary* (China Communications Press, 1998) 117.

<sup>5</sup> Si Yuzhuo, *Maritime Law Monograph* (Law Press China, 3<sup>rd</sup> ed, 2015) 2; Guan Zhengyi, *Maritime Legal System From the Perspective of Civil Law* (Law Press China, 2015) 18.

<sup>6</sup> Guo Yu, *A Course on Maritime Law* (Peking University Press, 2<sup>nd</sup> ed, 2012) 6.

## 2.2 Sources of Chinese Maritime Law

As maritime transport businesses are the core relations which maritime law governs, the social relations pertaining to ships should be at the centre of the social relations regulated by maritime law.<sup>7</sup> This ship-centred feature is an important one which distinguishes maritime law from other sea-related laws such as marine environmental protection laws. The current Chinese maritime law consists of the provisions of the CMC as its key contents and other laws, regulations and rules including the important international maritime conventions joined or acceded to by China such as the *1992 International Convention on Civil Liability for Oil Pollution Damage* (hereinafter referred to as ‘CLC-92’) and the *2001 International Convention on Civil Liability for Bunker Oil Pollution Damage* (hereinafter referred to as the ‘Bunker Convention’), among others.

### 2.2.1 Laws Governing Contractual Relations in connection with Maritime Transport and the Hire of Ships

Contractual relations in connection with maritime transport and the hire of ships are mainly subject to the relevant provisions of the CMC, i.e., Chapter 4 on contracts of carriage of goods by sea, Chapter 5 on contracts of carriage of passengers by sea, Chapter 6 on charterparties, Chapter 7 on contracts of sea towage, Chapter 9 on contracts of maritime salvage and Chapter 12 on contracts of marine insurance. For issues in respect of which there is no provision in the CMC, notably general principles of contract law, the relevant provisions of China’s Contract Law may kick in and govern those issues.

### 2.2.2 Laws Governing Maritime Torts

Chapter 8 of the CMC contains the provisions for tortious liabilities for ship collisions. Meanwhile, damage caused by vessel-source marine pollution is governed by laws, regulations and departmental rules in a total of 13 pieces of legislation, such as China’s Marine Environment Protection Law, and the Regulation on the Prevention and Control of Vessel-Source Pollution to the Marine Environment. Damage for loss or injury of human life at sea is governed by the relevant provisions of the General Principles of Civil Law and the Law of Tortious Liability. In addition, a number of judicial interpretations issued by the Supreme People’s Court of China, such as the detailed provisions in relation to the trial of cases regarding foreign-related loss or injury of human life at sea (now repealed) and the provisions in relation to certain issues in the trial of cases regarding vessel-source oil pollution damages, can be applied as helpful supplements to the current legislation. Subject to certain conditions, the relevant provisions of CLC-92 and the Bunker Convention may also be applied.

### 2.2.3 Laws Governing the Social Relations resulting from Special Maritime Risks

The laws governing special maritime risks include those pertaining to general average and limitation of liability for maritime claims. Chapter 10 and Chapter 11 of the CMC contain corresponding provisions for these two regimes. The rules in respect of the amount of limitation applicable to ships under 300 gross tonnage and ships engaged in coastal transport, and the rules in respect of the amount of limitation applicable to damages for the carriage of passengers by sea between ports in China, are supplementary provisions made in accordance with authorisations conferred by paragraph 2 of Article 210 and paragraph 2 of Article 211 of the CMC.

### 2.2.4 Laws Governing the Specific Social Relations peculiar to Ships

The specific social relations pertaining to ships generally cover such matters as the legal status of ships, property rights in ships, safety of ships, ship management, and so on. The legislation regarding property rights in ships includes the relevant provisions of the China Property Law and China Security Law in addition to the provisions of Chapter 2 of the CMC. The law governing the relations of ship management falls into the category of administrative law. There are, for example, Regulations on Ship Registration and Rules on Administration of Ship Distinctive Numbers governing ship registration, and some 18 other pieces of legislation governing maritime traffic safety, such as the China Maritime Traffic Safety Law, Regulations on the Investigation and Handling of Maritime Traffic Accidents, Rules of Administration of Ship Pilotage, Rules of Navigation in Foggy Weather at Sea, Regulations on Inspection of Ships and Offshore Facilities, Rules of Ship Safety Inspection, and Rules of Administration of Ship Visas governing ship inspection. There are a further 13 pieces of legislation governing

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<sup>7</sup> Tanaka Seiji, *A Discussion on Maritime Law* (Keiso Shobo, 1985) 2.

crew-member administration, such as Regulations on Seamen, Rules of Examination and Certification of Qualified Crewmembers of Sea-going Ships, and Rules of Crewmember Service Administration.

### 2.2.5 Laws Governing the Special or Peculiar Contractual Relations arising from Maritime Production and Operation

Special or peculiar contractual relations related to shipping include various maritime commercial contracts, such as shipbuilding contracts, ship sales contracts, ship finance leasing contracts, ship-related loan contracts, ship operation and management contracts and ship agency contracts. For these contractual relations, there are no equivalent provisions in the CMC, so the provisions of the General Principles of Civil Law of China, the China Contract Law, China Property law and China Security Law will in principle be applied. Additionally, the relevant provisions in the Law of Foreign Trade of China, Regulations on International Maritime Transport and Rules of Administration on International Ship Agency as special rules will govern the ship agency relations.

### 2.2.6 Laws Governing Conflict of Laws in relation to Foreign-Related Maritime Matters and Limitation Periods

Chapter 13 of the CMC provides for the limitation periods applicable to various maritime claims, and Chapter 14 of the CMC provides for the application of law in relation to foreign-related matters. These provisions, together with the provisions in the General Principles of Civil Law of China and Law of Application of Law in relation to Foreign-related Civil Relations of China, constitute the legal regimes regarding limitation of time and application of law in relation to foreign-related maritime matters in Chinese maritime law.

### 2.2.7 Laws Governing Maritime Litigation Procedure

In China, the maritime litigation procedures are subject to special procedures as provided in the Special Maritime Procedure Law (hereinafter referred to as the 'SMPL'). The SMPL contains special provisions regarding jurisdiction over maritime litigation, preservation of maritime claims, maritime injunctions, maritime evidence preservation, maritime security, service of legal documents and trial procedures, procedures for the constitution of limitation funds for maritime claims, procedures for the registration and satisfaction of maritime claims, and procedures relating to maritime liens. Where there are no equivalent provisions in the SMPL for certain procedures, the relevant provisions of the Civil Procedure Law of China will be applied. The competent courts exercising jurisdiction over maritime and admiralty cases are China's specialized maritime courts. To date, there are 10 maritime courts all over the country entertaining disputes arising from or in connection with maritime torts, maritime contracts, resource exploitation and production in the ocean and navigable waters, marine environmental protection, maritime administration and maritime special procedures: the total categories of which number more than 110.<sup>8</sup> Notably, in 2015, more than 18,000 maritime cases were heard by the 10 maritime courts.

## 3 Openness and Inclusiveness Demonstrated by the Current Chinese Maritime Law Provisions

### 3.1 Provisions of Chinese Maritime Law in line with International Standards

The CMC is the core of the current provisions of Chinese maritime law. The drafting work of the CMC took over 40 years of development, which ended up with a statute of 15 chapters and 278 articles covering every aspect of the traditional maritime law in details including property rights in ships, contracts of carriage of goods by sea, contracts of carriage of passengers by sea, charterparties, towage contracts by sea, ship collisions, salvage, general average, limitation of liability for maritime claims, and marine insurance contracts. The CMC keeps in line with international shipping practices, and reflects the latest developments of international codification in the field of maritime law.<sup>9</sup> The nature of openness and inclusiveness has been manifested in Chinese maritime law through the legislative techniques used in codifying the content of provisions with an international reference-point.

<sup>8</sup> See, Provisions of the Supreme People's Court of China on the Scope of Acceptance and Hearing a Case of Maritime Court [Fa Shi (2016) No. 2], coming into force as of March 1, 2016.

<sup>9</sup> Zhu Zengjie, 'Review on the Maritime Code After Implementation of 10 years: in Memory of 10th Anniversary of the Implementation of Chinese Maritime Code' (2003) (7) *China Shipping Bulletin* 15.

China's CMC drafting committee was initially founded in the early 1950s, but drafting work was suspended. In the 1980s, drafting work resumed and three principles for drafting the CMC emerged, i.e., 'being independent and autonomous', 'based on equality and mutual benefit', and 'referring to international customs', which was an approach unique to maritime law at that time. The drafting committee abided by these principles during the drafting work. In order to make the CMC more international, the drafting research group consulted widely with industry representatives who had advanced experience at the international level. The reference even reached the president of the Comité Maritime International (CMI), and international organizations such as the International Maritime Organisation (IMO) and the IOPC Fund, along with well-known firms in the field of maritime and admiralty law. Five American maritime law experts were invited to China to consult on the drafting work. This principle of 'referring to international customs' acted upon throughout the drafting process best illustrates the openness underlying the CMC.<sup>10</sup>

The drafting of the CMC was based to a significant extent on international conventions, with the rules which reflect international customs being absorbed, widely-used standard contracts being referred to, and developments in the codification of international maritime law being considered. Specifically, the provisions on ship mortgages under the CMC referred to the *1967 International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages*, (hereinafter referred to as 'Maritime Liens and Mortgages Convention'). The provisions on maritime liens were designed in accordance with international custom and the Maritime Liens and Mortgages Convention. The provisions on contracts of carriage of goods by sea observed the criteria recognized by the international shipping industry, and combined the core of the Hague Rules and the Visby Rules with a few provisions from the Hamburg Rules, which reflected a tendency towards international codification.<sup>11</sup> The provisions on contracts of carriage of passengers by sea were in line with the *1974 Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea*. The provisions on charterparties followed widely-used standard contracts. The provisions on towage contracts by sea considered models from foreign legislation as well as standard contracts. The provisions on ship collision kept up with the tone set by the *1910 Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels*. The provisions on salvage came from the *1989 International Convention on Salvage*. The provisions on general average were built on the basis of the *1974 York-Antwerp Rules*. The provisions on limitation of liability for maritime claims adhered to the *1976 Convention on Limitation of Liability for Maritime Claims*. The provisions on marine insurance contracts respected the international commercial customs of the marine insurance market. The provisions on limitation periods and the application of law in relation to foreign-related matters were both taken from relevant international conventions.<sup>12</sup>

The drafting process of the CMC demonstrates that the codification of Chinese maritime law is not a systematic and continuous transplantation of western legislation. Instead it is, under the command of the General Principles of Civil Law of China, a well-directed reference to and re-arrangement of the traditional maritime law based on models and ideas that are internationally accepted. On one hand, chapter 4 of the CMC on Contracts of Carriage of Goods by Sea was drafted on the blueprint of the Hague Rules and the Visby rules based on which a limited liability regime for carriers has been adopted.<sup>13</sup> In addition, the concepts of the carrier and the actual carrier, and their respective responsibilities, together with the provisions in relation to deck cargo and the issuance of the bill of lading, which originated from the Hamburg Rules, have also been adopted in the CMC. On the other hand, rules unique to maritime law, such as maritime liens, salvage, general average, limitation of liability for maritime claims, were all rooted in the soil of Chinese law through legal transplants. It is generally accepted that regulations regarding ship mortgages, maritime liens, *in rem* actions, Mareva injunctions, and no-cure-no-pay all arise out of contributions from Anglo-American maritime law,<sup>14</sup> and which otherwise had no equivalent in Chinese law before the drafting of the CMC. With the openness and inclusiveness of the CMC, rules unique to maritime law that have no proper root in the civil law theories have actually left great impacts on the codification of the civil law. An example can be seen from article 9 of the CMC regarding the requirements of the transference of vessel ownership which has evidently cast a shadow in article 24 of the China Property Law.<sup>15</sup>

<sup>10</sup>Feng Jinru, 'Legislative History And Achievements of Maritime Code' (1999) 11 *Pearl River Water Transport* 21.

<sup>11</sup> Personally, under the historical background in early 1990s, the authors support the practice of taking aspects from different conventions without ratifying a convention at the international level. Now, with the strong economy and international trade of China, it is reasonable for China to aim for international uniformity.

<sup>12</sup> The National People's Congress of the People's Republic of China, 'Explanation on Maritime Code of The People's Republic Of China' (1992), <[http://www.npc.gov.cn/wxzl/gongbao/1992-06/23/content\\_1479244.htm](http://www.npc.gov.cn/wxzl/gongbao/1992-06/23/content_1479244.htm)> accessed 12 Jan 2016.

<sup>13</sup> Wu Huanning (ed), *Interpretation on Three International Conventions on the Carriage of Goods by Sea* (China Commerce and Trade Press, 2007) 95.

<sup>14</sup> Guo Yu, *The Spirit of Maritime Law: the Practice and Theory in China* (Peking University Press, 2005) 71.

<sup>15</sup> Maritime Code Art 9: 'The acquisition, transference or extinction of the ownership of a ship shall be registered at the ship registration authorities; no acquisition, transference or extinction of the ship's ownership shall act against a third party unless registered.' Property Law Art.24: 'The creation, change, transfer or elimination of the real right of any vessel, aircraft or motor vehicle, etc, if it is not registered, may not challenge any bona fide third party.'

### 3.2 Provisions of the Chinese Maritime Law Covering a Broad Range

In addition to the CMC, under the Chinese maritime law system there are nearly 140 other laws, administrative rules and administrative regulations. Examples can be seen from the administrative rules and regulations in relation to ship registration and safety management such as the Maritime Traffic Safety Law, Regulation on the Prevention and Control of Vessel-Source Pollution to the Marine Environment, Regulations Governing the Registration of Ships; the regulations in relation to the competency requirements and the administration of seamen such as the Regulation on Seamen; and other regulations such as the Code for safe operation of ships, Rules for Administration of Endorsement of Vessels, and Procedures for the Administration of Salvaging Sunken Vessels. All these rules and regulations keep pace with international practices in terms of standards and liabilities.

The provisions of Chinese maritime law deal not only with traditional maritime law rules, but also with the latest developments of the codification which are outside the traditional maritime law field. With the regulations governing the legal relationship between non-equal-position parties and the supplementary rules regarding the special area beyond the coverage of the CMC, the Chinese maritime law system is under continuous improvement.

The way that Chinese maritime law has learned and borrowed from international conventions and different countries' legislation constitutes a picture of its openness and inclusiveness. Its unique design has, on one hand, made Chinese maritime law able to compete with others in the same tone of legal language. On the other hand, through judicial practice, it has produced great impacts on the development of maritime law theory and the path towards the codification of other civil laws.

## 4 Openness and Inclusiveness Demonstrated by the Maritime Judicial Practices

Chinese maritime law has been continuously subject to judicial construction when being applied in litigation, which in turn has gradually localized the CMC. Being localized on the basis of openness and inclusiveness,<sup>16</sup> Chinese maritime law has been nourished by local legal developments as well as China's active role on the international stage.

### 4.1 Openness and Inclusiveness Demonstrated by the Application of CMC

The codification of Chinese maritime law started earlier than the codification of the country's ordinary civil laws. The CMC has shown its openness and inclusiveness when being applied together with the China Contract Law, China Property Law, China Tort Liability Law and other laws which were promulgated after the CMC.

First of all, from the perspective of civil law, those rules which appear to be independent and unrelated under different chapters of the CMC are indeed connected with relevant theories of civil law. Property rights over vessels, for example, is a special form of general property rights, which necessitates particular and specific property rules in the field of maritime law. Among the contracts of carriage of goods by sea, the contracts of carriage of passengers by sea, charterparties, towage contracts, marine insurance contracts and the contracts that might occur in the context of salvage and general average, none is listed or classified contract under the China Contract Law. However, connections do exist between these maritime contracts and the relevant listed contracts under the general contract law, and basic rules and principles of the civil law and contract law can be applied to each of them. As a special law within the civil law, the maritime law of China has a close connection with the basic principles and rules of the general civil law in terms of the construction of the system as well as the source of theory.

Secondly, as a special law within the civil law, maritime law rules have priority over civil law rules in maritime matters, and civil law rules as general law will apply where maritime law has no specific provisions. There are mainly two kinds of circumstances where the civil law rules can be applied directly in maritime cases. One is to the non-maritime matters arising under a maritime case. Another is to the issues where maritime law has made it clear that civil law rules can be applied directly. The maritime law *per se* is an integrated system, not a combination of fragmented special rules or a special reflection of the general civil law rules. The openness and inclusiveness of maritime law provides the opportunity and prerequisite for the application of fundamental principles of civil law, which also makes contribution to the flexible resolution of particular issues in judicial practice.

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<sup>16</sup> An Fu, 'The Struggle of Chinese Maritime Law: A Discussion on Globalization and Localization of Maritime Law' (2013) 9 *Judicial Idea And Development of Maritime Law* 187, 190; Guo Yu, *The Spirit of Maritime Law: Practice and Theory in China* (Peking University Press, 2005) 51, 63.

In addition, in the matter of the application of international conventions, the CMC has shown its openness and inclusiveness to the international conventions and international practices. For an example, article 268 of the CMC provides that:

if any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those contained in this Code, the provisions of the relevant international treaty shall apply, unless the provisions are those on which the People's Republic of China has announced reservations. International practice may be applied to matters for which neither the relevant laws of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China contain any relevant provisions.

Chinese maritime law has shown its strong openness and inclusiveness in the matters of applicable law, limitation periods, and the validity of arbitration agreements where foreign elements are involved. For an example, under the current rule, the China's maritime courts have no right to assert the invalidity of a foreign-related arbitration agreement without referring the case to the Supreme People's Court. The reason the Supreme People's Court established this rule was to unify the national criteria necessary to invalidate a foreign-related arbitration agreement, and most likely respect the principle of party autonomy, which also reflects a form of international custom. Also, as in the above-mentioned circumstances, parties' autonomy is respected in determining applicable domestic laws, foreign laws or international conventions. Article 268 makes it clear that the international conventions and international practices can be applied as a matter of priority in foreign-related matters.<sup>17</sup> Such a provision came in 20 years earlier than the provisions of the Law of the Application of Law for Foreign-Related Civil Relations which serves as the conflict rules for determining the application of law. Therefore, Openness and inclusiveness of the CMC in terms of the application of law where foreign elements are involved could be easily inferred from the article.

#### 4.2 Inclusiveness Demonstrated by the Application of Chinese Maritime Law in the Judicial Interpretations and Guidance Cases

Over the years, a quantity of judicial interpretations has been promulgated by the Supreme People's Court of China pursuant to Chinese maritime law. Such interpretations have remedied defects or filled in gaps in the provisions of maritime law, which has also shown the openness and inclusiveness of Chinese maritime law to judicial guidance, providing the scientific construction of provisions, and aiding the "bedding down" of maritime law rules transplanted from foreign jurisdictions. Openness and inclusiveness of Chinese maritime law is also demonstrated by the system of "guidance cases" established by the Supreme People's Court of China. The guidance cases issued by the Supreme People's Court of China have been used to instruct the lower courts to deal with the same or similar cases in a uniform manner. Notably, in no event could a guidance case be invoked as the law in adjudicating a similar case.<sup>18</sup> The guidance cases shall be taken as a reference by courts of all levels when adjudicating a similar case.<sup>19</sup>

Historically, the Supreme People's Court started to draft judicial interpretations from its early days. The interpretations covering the jurisdiction of foreign-related litigation, the pre-litigation arrest of ships, and the auction of arrested ships opened a new era in the application of maritime law. More interpretations have since been released and their coverage has been extended to personal injury and death at sea, marine insurance, ship collision, freight forwarding, release of cargo without the original bill of lading, limitation of liability for maritime claims, vessel-source oil pollution, and the application of laws in relation to the arrest and auction of ships. Being drafted in accordance with Civil Procedure Law, CMC, and Special Maritime Procedure Law, these interpretations have covered almost every corner of maritime cases from procedure matters to substantive aspects of law, and have provided important instructions for adjudicating troublesome cases and the application of law. The judicial interpretations which came out of the practice of maritime litigation bring about another good illustration of the openness and inclusiveness of the Chinese maritime law. On one hand, the judicial interpretations embraced different source of maritime law which have reflected its nature of openness and inclusiveness. On the other hand,

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<sup>17</sup> See also, Regulation on the Prevention and Control of Vessel-Source Pollution to the Environment (2014) Article 52: 'The compensation limit for a vessel-source pollution accident shall be governed by the provisions on the limitation of liability for maritime claims in the Maritime Code of the People's Republic of China. However, if the persistent oil substances in bulker carried by a vessel cause pollution to the seas areas of the People's Republic of China, the compensation limit shall be governed by the provisions of the relevant international treaties concluded or acceded to by the People's Republic of China. The term "persistent oil substances" as mentioned in the preceding paragraph shall refer to all persistent hydrocarbon mineral oil.'

<sup>18</sup> Compared with a common law court, the Supreme People's Court does not make law. The purpose of a guidance case is just to fill in gaps.

<sup>19</sup> See: Provisions of Supreme People's Court on Case Guidance [fa fa (2010) No. 51] article 7.

the co-existence of different scientific rules under the embrace of the judicial interpretation has also shown its nature of openness and inclusiveness.

The Supreme People's Court also released the guidance cases to make sure that the deciding of maritime cases can achieve unification in terms of its effect on law as well as its effect on the society. To date, the Supreme People's Court has issued 56 guidance cases. Three of them are maritime cases. Specifically, Case No. 16 concerns the petition of China Shipping Development Co. Ltd. to establish a limitation fund for maritime claims, the decision of which has clarified what the notion of 'vessels in transport services between the ports of the People's Republic of China' under article 210(2) of the CMC means. Case No. 31 is in relation to damages arising from ship collision and the decision of this case has confirmed that the rules under the Convention on the International Regulations for Preventing Collisions at Sea, 1972 shall be taken as the determinative test for asserting collision liability. Case No. 52 covers the disputes arising from the marine cargo insurance contract and it has pointed out that in the absence of the willfulness and negligence of the insured, where risks other than those listed in the exclusion clause have caused the damage to the insured cargo, such risks shall be taken as "external causes" and the insurer shall cover all losses arising from such external causes. These three guidance cases have demonstrated that the flexible application of maritime law in litigation can make good defects or fill gaps in the provisions of maritime law and enrich the provisions with more specific explanations.

## 5 Concluding Words

In summary, openness and inclusiveness are the nature of Chinese maritime law, as evidenced by both the provisions of maritime law and the litigation practices discussed above.

The Chinese economy and society have gone through huge changes over the 20 years since the CMC was promulgated. Being examined in light of China's current circumstances, Chinese maritime law arguably contains a number of defects or gaps, such as for example the obsolete rules falling behind the development of the economy, the absence of rules on offshore platform-source oil pollution, and the uncoordinated status of the maritime law system under the Chinese general legal system.

In order to better serve the needs of maritime dispute resolution and the fast growing marine economy of China, Chinese maritime law and legal practices should hold fast to its nature of openness and inclusiveness. With improvements made in light of such an approach, the authors believe that Chinese maritime law and legal practice can be vastly improved in the near future.