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Ship collision in Chinese Maritime Law: Legislation and Judicial Practice

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Abstract : *A report released by the Chinese Maritime Court found that the natural environment and other objective factors have greatly reduced the risk of ship collision accidents with the advancement of technologies. However, collisions between merchant ships and fishing boats occur frequently along the coast during fishing seasons, which should be highly valued. International conventions and domestic legislation in China comprise detailed laws with respect to ship collisions, but the theory of ship collision infringement needs to be improved, enriched, and developed. Meanwhile, the development of the tort liability law provides theoretical support for ship collision infringement. As far as China's ship tort legal system is concerned, the research on ship collision tort damage compensation is relatively extensive, and the constitutive elements and causality of ship collision tort liability have also been studied in depth. The purpose of this paper is to explore the domestic legislation applicable to disputes related to ship collisions in China. As these laws are unclear on the resolution of disputes resulting from ship collisions, significant attention has been focused on the final judgments by the Supreme Court of China (SPC), as well as the judicial judgments set by the Maritime Court of China.*

Key words : *ship collision, Chinese legislation, liability proportion, damage compensation, fault ratio*

1. Introduction

In May 2019, the Shanghai Maritime Court issued the white paper 'Notification of Ship Collision Case Trial and Navigation Safety Status'(Shanghai Maritime Court, 2019), which introduced the Shanghai Maritime Court's trial of ship collision cases over the past four years and made targeted recommendations on ship navigation safety issues. It indicated that the annual number of ships entering and leaving the Shanghai Port is more than 1.5 million. In the past four years, the Court has handled 203 disputes of various types caused by ship collisions. Undoubtedly, navigation has been a dangerous activity since ancient times, as, due to the special environments and conditions at sea, natural disasters and accidents often occur, causing ships, cargoes and passengers to be damaged. These accidents may result in maritime disputes among ships involving the sharing of liability. Such maritime activities and incidents have a huge impact on the national interests of the states involved, particularly when different countries are connected to maritime affairs, which affects the formulation of legislation and policies for foreign-related maritime protection and the promotion of shipping business. Ship collisions can lead to enormous damages, such as personal injury and pollution of the marine environment. Moreover, ship wrecks that have sunk under the water, either due to collision accidents or deliberate disposal at sea, may also threaten the safety of ships' navigation and the marine environment(Herbert. J, 2013).

The rules governing ship collisions at sea have developed from ancient shipping practices and the customs of seafarers, which have formed a part of maritime law and helped lay the foundation of the rules today. In 1840, Trinity House first set out the existing practice and custom in the form of regulations, which was a landmark development (Sheppard. A. M, 2013). Later, the Steam Navigation Act (SNA) 1846 enacted the Trinity House rules for steamships, giving these regulations a statutory force and imposing penalties on shipmasters who breached them(Sheppard. A. M, 2013). With continuous developments of technology affecting ships and moveable crafts, sequential amendments were made to collision regulations. The International Regulations for Preventing Collisions at Sea 1972 (COLREG, 1972), adopted under the auspices of IMO, revised the 1960 Collision Regulations. Since 1980, the 1972 Regulations have had the force of law in China. Korea also ratified the 1972 COLREG, incorporated almost all provisions of the COLREG into a domestic law known as the Korea Marine Traffic

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Safety Act (KTSA).(Kim, I.H, 2012)

There are international conventions on ship collision, they pursue an balance of interests of the state involved, and their ultimate purpose is the unification of global ship collision laws. South Korea and have also played a role in promoting the unification of maritime international law by referring to international conventions. In China, domestic legislations have developed detailed legal provisions for ship collision, but the theory of infringement on ship collision needs to be improved and enriched. The purpose of this paper is to explore Chinese legislation and judicial practice on ship collision, especially the law application of to the ship collision, the liability rule for ship collision and the law on damage compensation.

2. Applicable laws on ship collisions in China

To prevent ship collisions and regulate damages related to collision accidents, the Chinese government has enacted several statutes and regulations, along with the international conventions that have come into force. These include the Conventions for the Unification of Certain Rules with respect to Collision between Vessels 1910(Collision Convention,1910) and the 1972 COLREG. The Maritime Code of the People's Republic of China 1992 (CMC,1992) was enacted to regulate the rights and obligations of the parties concerned in the carriage of goods by sea; inland water transport was excluded from the application of the 1992 CMC (CMC, 1992, art.4). Chapter VIII of the 1992 CMC includes the rules associated with ship collisions, which are applicable to all ships sailing at sea and all other navigable waters adjacent to the sea, including any offshore mobile units in sailing(Si.Y.Z,1998). However, military and governmental ships are not subject to the 1992 CMC(Si.Y.Z,1998). Besides, the Chinese Supreme Court has released several judicial interpretations to clarify and specify the application of the relevant laws. This paper aims to explore and review the current legislations and judicial practice of China related to ship collisions. It includes the applicable Chinese laws on ship collisions, the collision liability proportion regime in China, compensation for damages and losses, and issues arising from ship collisions under the Chinese law.

There are a series of laws in China governing ships' operation at sea and in ports. These include the international conventions, domestic maritime legislations, basic civil laws, administrative laws and several judicial interpretations released by the Supreme Court. In choosing which of these rules to apply in disputes arising from ship collisions, the 1992 CMC stipulated the following: 'If any international treaty concluded or acceded to by the People's Republic of China (PRC) 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 PRC has announced reservations.'(CMC,1992, art268.1) Similar provisions can be found in the Law of the PRC on Application of Laws to Foreign-Related Civil Relations. Article 142 stipulated that international treaties shall prevail unless China has announced a reservation.(Law of Application, 2010) Different from PRC, S. Korea has not special maritime law, instead the Commercial Code shall applies to ship's collision and property damage occurred thereafter, Article 740 and 741 set specific requirements on 'ship collision'. The Korean Open Port Ordinance Act (KOPOA) is applicable to navigation within the scope of open ports in Korea. The collision rules in the KOPOA prevail over those in the KTSA. These collision rules play important roles in the apportionment of liability in a collision case. (Kim, I.H, 2012)

The application of maritime conventions in China is consistent with the application of other international conventions adopted by China. For example, the 1982 Trademark Law of PRC(Trademark Law, 1982) and the 1984 Patent Law of China(Patent Law, 1984) set the same provisions in adopting relevant international conventions. Due to such provisions, the international treaties to which China has ratified or acceded have direct domestic effects. Meanwhile, the provisions of international treaties are to be applied first if they are different from those of domestic laws. However, since these regulations are limited to individual laws, it cannot be said that the rules have been completely established in the Chinese legal system. Nevertheless, the existence of such provisions in the laws mentioned above illustrates the clear tendency of China's legislative policies. Thus, it is possible that 'international treaties are superior to domestic laws' will become a universal rule.

Insofar as the provisions of the 1910 Collision Convention differ from the terms of domestic laws, the provisions of the 1910 Convention shall apply. However, in the field of collision regulation, Chapter VIII of the 1992 CMC acts as a special law governing

maritime affairs for the adjustment of disputes resulting from ship collisions. Consequently, the Chinese court will apply Chapter VIII of the 1992 CMC to regulate disputes involving ship collisions at sea, even though these disputes may fall within the scope of the 1910 Collision Convention. Therefore, the international convention will play as a supplementary role in China in the event that domestic laws contain no detailed rules on collision issues.

In addition to the 1992 CMC and the 1910 Collision Convention, the general tort law shall apply to disputes over ship collisions in China, particularly when determining the liability of the tortfeasor. China has also adopted the 1972 COLREG to regulate the manoeuvring of ships and assess the liability of the parties involved. The 1972 COLREG applies internationally and constitutes the authoritative measurement of conduct for ships manoeuvring at sea and in ports, subject to variations by local rules(The Esso Brussels,1972). Accordingly, vessels entering different countries should familiarise themselves with the local navigational rules, in addition to the 1972 COLREG. All ships, as defined under the 1992 CMC, shall comply with these rules; failing to obey is strong evidence of negligence. However, they do not create civil liability. These rules play an essential role in assessing the amount of fault in practice. Application of Law in Civil Relations Concerning Foreign Affairs and Chapter XIV of the 1992 CMC shall be considered by the Chinese court when determining the applicable laws related to foreign affairs. The law of the place where the infringement occurred shall govern the claim of collision damages; if an infringement occurred on the high sea, the law of the place where the court is hearing the case shall apply(CMC, 1992, art.273). Furthermore, the regulations of Preventing Collisions on Inland Waters 1991 shall apply to liability distribution in an accident which occurred over the inland waters. The China Maritime Traffic Safety Law (1983) provides a guideline on specific issues including navigation, safety, investigation and legal liability.

3. Ship collisions in the 1992 CMC

Articles 1 and 13 of the 1910 Collision Convention define the scope of ship collision and damage, but they fail to define 'ship collision' directly(Collision Convention, 1910, art1, art3). Article 165 of the 1992 CMC provides that 'collision of ships means an accident arising from the touching of ships at sea or in other navigable waters adjacent thereto'. Article 170 further stipulates that the provisions of this chapter shall apply to other ships, persons and goods on board that have suffered property losses due to improper operation of the ship or non-compliance with navigation regulations, even when there is no actual collision with another ship. In accordance with the 1992 CMC, 'collisions of ships' are required to satisfy four elements. (a). The collision occurs between ships, but not between military or public vessels; a cargo ship used for a public purpose is thus excluded from the term 'ship'. (b). One of the ships involved in the collision must fall within Article 3 of the 1992 CMC, in which 'ships' mean sea-going ships and other mobile units; small ships of less than 20 tons gross tonnage are excluded under this article. (c). The collision occurs at sea or in other navigable water adjacent to the sea, rather than in the inland waters of China. (d). The collision results from physical contact between ships, which caused damage. S. Korea puts similar definition on 'ship collision', such as the collision accident occurred within inland water is excluded from the application of the Commercial Code(Article 876). Military or public service ship is not a party of the 'ship collision'.(Kim I.H, 2011). However, physical contact of the ships is no longer a requirement for 'ship collision' after the revision of Commercial Code. (Kim. I.H, 2011b)

As the definition of 'ship' in the 1992 CMC excludes ships used for military or public service, as well as small ships of less than 20 tons gross tonnage, the 1992 CMC does not apply to collisions between military vessels or official vessels(Min min xia No.71, 2017). Therefore, the term 'ship collision' in Chapter VIII of the 1992 CMC excludes not only collisions between military vessels but also collisions between military vessels and merchant vessels(Si Y. Z, 2012). By contrast, the 1972 COLREG applies to all vessels on the high seas and in all waters connected to the high seas and navigable by seagoing vessels.

The 1992 CMC requires physical contact for collisions of ships, but special attention is drawn to collisions without physical contact between two ships. However, an actual collision is not a compulsory requirement for the victim to claim the damages which he has suffered due to the execution or non-execution of a manoeuvre, or due to the non-observance of navigation regulations by another ship(CMC,1992), as Article 170 extends the application of the 1992 CMC to collision incidents even if no collision has actually

occurred. In MV Jia Yang 6(Yue Min Te No. 50, 2018), the Wuhan Maritime Court held that, although there was no direct collision between MV Jia Yang 6 and MV Shunjiang 2827, manoeuvring operations undertaken by the ships to avoid direct collision led to subsequent damages and a collision among other vessels passing through the channel waters; thus, an indirect collision accident occurred between the two ships, and both of them bore tort liability based on their fault in the collision accident(Yue Min Te No. 50, 2018).

4. Proportion of collision liability

Maritime judges are confused when it comes to dividing the proportion of ship collision liability as the legal provisions are simple, but the collision cases are complicated, particularly in their technical aspects. Due to the lack of governing rules for the proportion of liability for ship collisions, many cases are arbitrary. The basis for fault classification for ship collisions is the 1972 COLREG, along with domestic navigational rules that are effective at the place of collision. As the British judge Wright observed in the 'MacGregor' case, the proportion of liability for ship collisions is a matter of degree of process(The McGregor, 1943). It relies on well-trained and knowledgeable judges to comprehensively consider the navigational environments at and before the time of collision.

4.1 Liability under general Tort Law

Under Chinese Tort Liability Law, there are three types of liability for infringement, including fault-based liability, fault presumption liability and no-fault liability(Civil Code,2020). In the system of multiple imputation principles, fault-based liability is a general principle that is widely applicable to various torts. Where laws and regulations do not provide for the application of presumption of fault liability and no-fault liability, in principle fault-based liability should be applied. The principle of presumption of fault and the principle of no-fault liability are special imputation principles. The provisions on presumption of fault and no-fault liability all use the term 'legal provisions'(Civil Code, 2020). From the perspective of literal interpretation, the legal provisions mainly refer to the provisions of the Tort Liability Law; that is, the imputation principle is only applicable to the provisions of the Tort Liability Law. In the absence of special provisions in the law, the imputation principle cannot be applied.

(a). Fault-based liability refers to the tort liability that the actor should bear for infringing on the civil rights of others due to their fault(Civil Code, 2020). The principle of fault liability refers to the principle of liability that takes fault as the basis for imputation and uses fault as the basis for establishing responsibility and the scope of liability.

(b). The presumption of fault liability means that, once the offender has committed a certain offending act, the law presumes that the offender is at fault, but the offender can be exempted from liability if they can prove that they are not at fault(Civil Code, 2020). Its purpose is to change the disadvantaged position of the victim's proof in fault liability and implement the inversion rule of the burden of proof.

(c). No-fault liability refers to the fact that the perpetrator's fault is not a requirement, as long as their activities or those of a person under their management damage the civil rights of others and cause losses to others, regardless of whether they are subjectively at fault(Civil Code, 2020). Its significance is to protect the interests of victims, who are in the position of the weak, and to provide relief to victims in a timely manner, making it easier to realise the right to claim damages.

In the legislative process of tort liability, the special national conditions and legal traditions are involved and considered, and the various complex interest patterns during the transition period are fully considered; moreover, the coordination measures for conflicts of interest have been improved. Therefore, this law has provided a basis for China's judicial practice, laid a solid foundation for the construction of the rule of law and constituted China's own contribution to the development of the world's civil legal culture.

4.2 Principle of liability proportion

In terms of proportion of collision liability, the general principles in the 1992 CMC are consistent with the rules stipulated in the 1910 Collision Convention. Liability of collision damages is based on fault. First, if the collision is caused wholly by the fault of one ship, the ship in fault shall be liable(CMC, 1992, art.168). Second, if the colliding ships are all in fault, each ship shall be liable in proportion to the extent of its fault. Third, if the faults of all ships are equal in proportion, or if it is impossible to determine the extent of the proportion of their respective faults, the liability of the colliding ships shall be apportioned equally. The ships

in fault shall be liable for the damage to any ship, goods and other property on board pursuant to the proportions prescribed in above. Where damage is caused to the property of a third party, the liability for compensation of any of the colliding ships shall not exceed the proportion it shall bear. If the ships in fault have caused loss of life or personal injury to a third party, they shall be jointly and severally liable therefore(CMC, 1992, art.169). If a ship has paid an amount of compensation in excess of the proportion prescribed in paragraph 1 of Article 169, it shall have the right of recourse against the other ships in fault.

In Xinhua Company v Xinda Company (Guang Hai Fa Chu Zi No.139, 2002), the vessels were involved in a collision accident due to failure to maintain proper lookout in accordance with the 1972 COLREG. The Guangzhou Maritime Court decided the liability of the parties in accordance with the percentage of violation of obligation. The M/V Fudong was held to be responsible for 40% of the collision liability since the other vessel had violated the 1972 COLREG more and was therefore deemed responsible for 60% of the collision liability.

In Orient Overseas Container Line Limited v BeiHai Honghai Shipping(The Orient Overseas Europe, 2012), the Supreme Court held that, in a crossing situation, the M/V Orient Overseas Europe as a direct vessel should maintain its course and speed in accordance with Article 17 Item 1 (1) of the 1972 COLREG, whereas the give-way ship M/V Xinghai 668 failed to take appropriate actions to fulfil its obligation to give way in accordance with Article 17 Item 1 (2) of the 1972 COLREG. Compared with direct sailing ships, give-way ships have a greater obligation to avoid collisions. If the give-way ship fails to fulfil the obligation to give way as soon as possible, this may lead to the occurrence of an urgent situation, and the give-way ship shall bear the main responsibility for the collision accident. Therefore, the Orient Overseas Europe can independently take manoeuvring actions to avoid collision, but the ship on the port side should not turn to the left in any circumstance(CORELG, 1972, art17). Thus, in a final retrial the SPC held that, according to the first paragraph of Article 169 of the Maritime Law of the PRC, the two ships in the collision were at fault, and each ship was liable for compensation in proportion to the degree of fault, with the Xinghai 668 bearing 60% of the responsibility and the Orient Overseas Europe bearing 40% of the responsibility(The Orient Overseas Europe, 2012).

4.3 Non-attributable cause and force majeure in collision accidents

As for ships collision due to force majeure or other causes not attributable to either party, Article 167 of the 1992 CMC provides that neither of the parties shall be liable to the other(CMC,1992, art.167). Article 1167 of the Civil Code stipulates that a party who has negligently impaired another party's civil rights and interests shall bear the tortious liability(Civil Code, 2020); a person who has been presumed to be negligent by law and failed to rebut such a presumption shall also bear the tortious liability. Where the third party (victim) is able to prove that their loss was caused by the negligence of any of those parties involved in the collision arising from the three reasons mentioned above, the negligent party shall be liable for the loss of the third party. Nevertheless, if the parties involved in the collision can prove that the loss of the third party was due to force majeure or the victim's own fault, the liability will be exempted.

In the Contract Law 1999, which was replaced with the Civil Code of the PRC (BOOK Three), force majeure means that the objective situations cannot be foreseen, avoided or overcome(Civil Code, 2020). In judicial practice, the courts assess the collision disputes involving force majeure using the same principle. Article 118 of the Contract Law stipulates that the obligator should notify the counterparty in a timely manner to mitigate the loss that occurs to the counterparty(Contract Law, 1999). The obligator should provide evidence to prove that they are unable to perform the contractual obligation within a reasonable period. Once a party successfully establishes the argument of force majeure, the principle of fairness shall be used to determine whether liability should be exempted wholly or partially and how the two parties should share the costs incurred, provided that the contract is silent on these matters. The legal consequences of a force majeure event in PRC include termination of contract and exemption from contractual liability.

In Hudong shipbuilding v Dongfang Dredging(Hu Gao Jing Zhong Zi. No 423, 1999), the claimant Dongfang Dredging suffered loss on its anchoring ship when it collided with the defendant ship, which was drifting on the Huangpu River due to a gale force 10 wind that broke the cables for anchoring the ship. The claimant reasoned that the defendant had failed to properly manage its vessel, as a gale force 10 wind is foreseeable. However, the defendant responded that

they had made sufficient cables to overcome the disaster, and the meteorological department did not forecast the disaster in advance; therefore they had made efforts to ensure the safety of the ship during the wind. The Shanghai High Court admitted that the wind was not foreseen and held that the defendant was not liable for the collision.

4.4 The quantification of liability proportion

The proportion of liability for collisions has long been recognized as a thorny issue as the court must make a fair judgement on the liability proportion of each party involved, which is calculated based on the fault ratio of each party. Regrettably, PRC has not acceded to any unified quantitative standard to determine the fault ratio in collision accidents. Thus, maritime judges assign the proportion case by case based on the parties' claims. Meanwhile, it is noteworthy that neither judicial practice nor theoretical research has yet created a specific standard that is universally recognised and provides guidance for maritime judges to calculate the proportion of liability in various situations(Zhang L.Y, 2019). The accurate calculation of the collision liability ratio requires not only good legal knowledge, but also proficiency in navigation technologies. Related navigational rules can be international rules or other collision-avoidance rules that are valid locally at the place of the incident(Hu Hai Fa Shang Chu Zi No.24, 2010).

From this perspective, the Korea Marine Safety Tribunal (KMST) sets a good example for PRC. Although the fault ratio determined by the KMST is separate and distinctive from judgments in the civil court, parties involved in collisions tend to rely heavily on it, and most of the decisions rendered by the KMST using the fault ratio are accepted. The guidelines set out by KMST from 2007 on collision cases are successful and help the local tribunals to apply a uniform proportion of fault ratio(Kim I.H, 2011a). It is submitted that the special maritime court with professional knowledges on shipping issue in China and the United Kingdom, offset the weakness of the judg es in dealing with proportion of the liability. Wherea s S. Korea has no maritime court, the judges are he avily relies on the report provided by the KMST. (Kim.I.H, 2011b). In 2018, the establishment of the Seoul Maritime Arbitration Association attract many cases of ship collision occurred in Korea, it is expe cted to provide a good solution to maritime disputes among Korea, China and Japan. (Kim, I.H, 2019)

The existing quantification of ship collision fault focuses on using complex mathematical models to quantify the fault ratio. However, due to the complexity of the mathematical calculations, it lacks operability in judicial practice in PRC(Zhang.H.K, 2019). The evaluation of collision fault should be based on certain standards, such as collision avoidance rules or other route rules. In addition, it should be affected by multiple factors and investigated in the specific collision environment. Fortunately, scholars from both South Korea(Kim I.H, 2011a) and PRC(Zhang.H.K, 2019)have begun to call for the development of quantitative measures to unify the standards for assessing the fault ratio, particularly among the East Asian countries whose vessels frequently meet in the Yellow Sea and the East China Sea. A uniform collision avoidance rule and a uniform apportionment of liability regime will enhance the safe navigation of vessels in this region.

5. Compensation for damages

5.1 Property damage

Damages for loss of property consist of damages for the physical loss of the vessel and property, the expenses incurred and the environmental damages(Compensation Provision, 1995). The claimant (victim) involved in the dispute of collision may claim the following: (a) the damage of property resulting from the collision; (b) the consequent loss and expenses resulting from the collision; (c) the reasonable expenses or loss incurred with the intent to avoid or mitigate the damage; and (d) the loss of the anticipated profit. The principle of damages is to restore the property to its original condition or to reimburse its estimated price if it cannot be restored to its original condition(Compensation Provision, 1995). No compensation shall be made for loss caused by the fault of the claimant, particularly for the increased damages.

In the case of total damage of a ship, the compensation includes loss of ship value as well as loss of fuel oil, materials, spare parts, supplies on board the vessel that are not included in the value of the vessel (e.g., fishing gear and equipment on board the fishing vessel), crew's wages, repatriation fees and other reasonable expenses are also compensable. In The Orient Overseas Europe, the SPC held that the fuel oil loss from the leakage was not caused immediately at the time of the collision but caused by the continuous

leakage after the collision. If the OOCL Europe can check the hull, monitor the instrument, find the fuel oil leak and take effective measures after the collision accident, it can effectively prevent the loss from happening. However, the OOCL Europe has long been aware of the possibility of a collision but has not been cautious enough to prevent the expansion of its losses. Instead, the fuel oil leak was not discovered until 24 hours later. Therefore, its fuel losses could not be compensated(The Orient Overseas Europe, 2012).

The ship value is determined by the market price of similar ships at the time of the collision. If there is no market price for similar ships at the place of collision, the market price of similar ships at the port of registry of the ship or the average price of similar ships in other regions shall be used to determine the market price. If there is no market price, the original ship's construction or purchase price shall be used to deduct depreciation(Compensation Provision,1995). In The Orient Overseas Europe, the OOCL UK advocated reassessment of the purchase and modification prices of the ship Xinghai 668 based on the investigation and inquiry records of the competent authority. However, the evidence submitted by the Beihai Shipping Company is significantly more probative than the transcript of investigation and inquiry. Thus, the SPC calculated the value of the ship as purchase price, deducting the depreciation by 8% per year.

The calculation of time loss is limited to the reasonable period required to find a replacement ship, but the maximum time shall not exceed two months. The loss of hire is generally based on the average net profit of the two voyages before and after the collision. If there is no voyage before and after, it is calculated by the average net profit of other corresponding voyages(Compensation Provision,1995)

Compensation for partial damage of the ship includes reasonable temporary repair costs, permanent repair costs, auxiliary costs and maintenance costs. However, the following conditions should be met. (a). The ship should be repaired nearby, unless the requester can prove that repairing it elsewhere can reduce losses and save costs, or there are other reasonable reasons. If the ship can continue to operate after temporary repairs, the requester is responsible for the temporary repairs. (b). The compensation is limited to the cost of repairing the part of the ship damaged in the collision, and loss due to other accidents or routine maintenance is excluded from the compensation(Compensation Provision,1995, art3). Ship damage compensation also includes the following: reasonable salvage fees and costs for the survey, salvage and wreck removal, as well as costs for setting up wreck signs; the costs of towage, rent or freight loss for this voyage, general average apportionment, reasonable shipping schedule loss, and other reasonable expenses shall also be compensated(Compensation Provision,1995). Compensation for the time loss resulting from the partial damage of the ship shall be limited to the reasonable period required for actual repair, including the reasonable time required for docking, ship inspection, etc(Compensation Provision,1995, art10).

Compensation shall be made if a ship collides or touches and causes a third party's property loss(Minutes of the Second national Working Conference, 2005, art.131). In addition to the principal, interest losses should also be compensated. If the ship has residual value after being salvaged, the residual value of the ship shall be deducted(Compensation Provision,1995, art.6).

5.2 Goods damage

The actual value of the goods shall be calculated based on the value of the goods at the time of shipment. In the case of goods lost, freight and the insurance premium paid by the claimant can also be included in the compensation, and the saved expenses shall be deducted(Jin Gao Min Si Zhong Zi No.369, 2019). By contrast, when the goods are damaged, the amount of compensation shall be calculated as the cost of repairing them, or the salvage value and the saved costs shall be deducted from the actual value of the goods. If the ship collision delays delivery, the losses are calculated by adding the actual value of the goods to the difference between the expected profit and the market price at the time of arrival. However, the expected profit shall not exceed 10% of the actual value of the goods(Compensation Provision,1995, art.9).

5.3 Freight loss

If the collision causes off-hire of a time charter, or the charterer refuses to pay the hire due to the ship collision, the amount of off-hire or non-payment of the hire shall be calculated as the amount of the hire loss, deducting the saved expenses resulting from the off-hire or non-payment(Compensation Provision,1995, art.11). In the case of freight lost due to the loss or damage of the goods, the amount of freight that has not been collected shall be calculated as the amount of the hire loss, deducting the saved expenses(Compensation

Provision,1995, art.11).

5.4 Personal injury

According to the Interpretation on Compensation for Personal Injury 2003, the permissible claims for personal injury include the expenses for medical cure and the loss of income due to the absence from work(Compensation Interpretation, 2003, art.17). More specifically, medical expenses, loss of income due to the loss of working time, nursing care expenses, transportation and accommodation expenses, and food allowance and necessary nutrition expenses shall be paid by the liable party. In the event of compensation for disability injury, the amount of compensation shall be determined by the degree of the victim's incapacity, according to the per capita income of the residents in the place of the court; the compensation will be 20 years from the date of disability(Compensation Interpretation, 2003, art.25). In the case of death due to ship collision, the compensation shall include the funeral expenses, death compensation, etc(Compensation Interpretation, 2003, art.17). Mental distress claims are allowed for the victim or relatives of the deceased. The claim for mental distress compensation shall be determined according to the Interpretation on Compensation for Mental Distress 2001(Compensation Interpretation, 2001, art.8). The claimant must prove that the mental distress is serious, and the claim may not be considered if the claimant fails to prove the seriousness of mental distress. The families of the deceased are allowed to file an action claiming mental distress compensation, and the amount of compensation shall be determined based on the degree of whose fault, the economic ability of the infringer, the results of the infringement, etc(Compensation Interpretation, 2001, art.10).

5.5 Legal Liability

Under Article 4 of the Provision on Vessel Collision 2008, the owner of the ship shall bear the liability for compensation arising from a ship collision, and the bareboat charterer shall be the liable person during the period of bareboat charter subject to the bareboat charter is registered. Either the owner or the bareboat charterer of the ship is requested to register the ship in accordance with the Regulations on the Registration of Ships 2014. A ship without registration is not allowed to obtain Chinese nationality and therefore not allowed to fly the flag of PRC(Regulations on Ship Registration, 2014, art.4). PRC has the right to board and inspect any ship that is suspected of being without a flag of a state or of having two or more nationalities(QI.J.C,2021). These ships shall be subject to punitive measures, including payment of a fine, revocation of the certificate of nationality and confiscation(Regulations on Ship Registration, 2014, art.50).

In PRC, the acquisition, transfer and extinction of shipowner and bareboat charter must be registered; otherwise, it cannot act against bona fide third parties(Regulations on Ship Registration, 2014). The purpose of this requirement regarding the registration of ship property rights is to implement the principle of property rights publicity and protect the interests of bona fide third parties. If the property rights of the ship change, but the original shipowner fails to update the registration, this would hinder the identification of the liable person in an infringement; thus, the registered shipowner should be liable. These rules embody the punishment of fault, which is mainly based on the inclination of the injured party in consideration of the severity of the burden of proof. The underlying theory is that it is unfair to require the victim to bear the responsibility of distinguishing between the registered shipowner and other related persons who actually control the ship (Si.Y.Z, 2009). Another reason that the registered shipowner should be liable is that the registered shipowner should be the interested party in the ship's operation: if the ship's property rights change, or the ship is bareboat chartered, but it is not registered, this means that the registered shipowner has a close relationship with the new owner or bareboat charterer in terms of economic interests. According to the concepts of equity and fairness, those who benefit from the operation of the property should bear the liability for its property infringement(Si.Y.Z, 2009).

The charterer of the bareboat is requested to register their rights at the registration authority, including the establishment, transfer and extinction of the bareboat charter right(Regulations on Ship Registration, 2014, art.6). There is no legal effect against a third party for the unregistered ship under bareboat chartering(Regulations on Ship Registration, 2014, art.6). The charterer is not a liable person for the collision accident, and the owner of the bareboat chartered ship shall bear the risk of compensation for the collision liability. Therefore, the owner of the ship should be careful to ensure that the ship is registered under the name of the charterer in bareboat chartering. However, it is possible to claim that the unregistered bareboat charterer bears joint and several liability with the shipowner(Hu Gao Min Si Zhong Zi No.74, 2010). In

The Orient Overseas Europe, the Beihai Shipping Company filed a lawsuit at the Guangzhou Maritime Court claiming that OOCL was the ship's operator, OOCL UK was the bareboat charterer, and Swan was the registered shipowner; all three parties should be jointly and severally liable for the ship's collision liability. The court decided that the responsibility for the collision should be borne by the bareboat charterer OOCL UK, and OOCL and Swan should not be liable(The Orient Overseas Europe, 2012).

The manager and operator, who have authority from the shipowner to deal with a ship collision, may be held jointly liable with the shipowner or the bareboat charterer if the ship operator or manager was proved at fault in the ship collision(Minutes of the Second National Working Conference, 2005, art 130). Due to the diversity of the ship operators in modern shipping, it is difficult to unify the concepts of ship operators and managers in legislation. Therefore, it is suggested that ship operators or managers should not be regarded as one of the types of ship collision liability party in relevant laws.

5.6 Special issue of indirect collisions

The insured collision liability shall be legally compensated by the insurer who underwrites the collision liability. PICC 86 hull clauses incorporate the collision liability arising from the insured ship. While Article 165 (2) of the 1992 CMC stipulates that a ship collision refers to a direct collision between two ships, Article 170 extends the application of Chapter VIII (CMC,1992), to indirect collisions that involve no physical contact. The problem is that whether the collision liability clause includes 'indirect collision' is very controversial in PRC, and the court decisions are different. Therefore, it is critical to examine the definition and scope of 'collision' under hull insurance. If indirect collision is included in the definition of 'collision' under hull insurance, undoubtedly the hull insurer shall pay for the indirect collision damages. However, the definition of indirect contact is vague, and different opinions can be found in different authorities.

On the one hand, ITC 1983 intends to exclude collision liability without psychical contact. Furthermore, the 1992 CMC explicitly separate a circumstance distinguishing indirect contact collision from direct contact collision. This has led the industry to treat indirect collisions separately from 'collisions'. Prof. Philip Yang also holds the opinion that the term 'collision' does not include indirect contact between ships, and that the hull insurer shall not compensate losses resulting from collisions without direct contact (Yang. L.Y, 2009).

On the other hand, Prof. Chu and Dr. Wang from Dalian Maritime University hold the view that the 1992 CMC had included indirect contact as a circumstance of collision in Article 170; accordingly, marine insurance should be consistent with the Maritime Code, which has a top priority on the application(Wang.P.N, 2004). In addition, the insurance cover should be understood to be more friendly to the insured than the insurer when wording on the insurance cover is vague. This is because it is the insurer's obligation to declare the exclusion of indirect collision clearly on the cover at the beginning if they intend to exclude such risks; failure to do so shall mean waiver of the insurer's rights(Wang.P.N, 2004). Moreover, permitting exclusion from the insurance cover might damage the market as the insured may pursue direct collision after experiencing indirect collision in order to be compensated under the hull insurance cover(Wu.H.P, 2006). The writer supports the latter opinion as the hull insurer (either the PICC or another insurer which has been insured through PICC) has tended to compensate the damages in the aforementioned situations in practice.

5.7 Burden of proof

Liability due to fault in ship collisions is determined based on facts and evidence. The legal presumption of fault in liability for collision has been abolished in PRC in accordance with the provision of Article 5 of the 1910 Collision Convention. The relevant authorities shall find the facts and investigate the collision accident. The facts, confirmed by the parties, shall be adopted as evidence in the court for judicial purposes unless they can be overturned by sufficient evidence to the contrary; the party disagreeing with the facts has the burden of proof to provide sufficient evidence.

In The Orient Overseas Europe, the OOCL UK submitted to the court a notarised 'Maritime Investigation Report' made by the Hong Kong Maritime Department during the retrial. It was used to prove that the Xinghai 668 vessel was seriously unseaworthy at the time of the accident. The court concluded that the Hong Kong Maritime Investigation Report submitted by the OOCL UK had been notarised and was a document publicly published on the website for inspection, and its

authenticity could be confirmed. However, the report stated that the crew situation was based on the investigation of the crew by the PRC Maritime Safety Administration. There was no corresponding crew survey data in the report. Therefore, the report could not prove that the crew of the Xinghai 668 was unfit for duty. OOCL UK submitted an application to this court to obtain relevant accident investigation materials from the Guangdong Maritime Safety Administration to prove that the Xinghai 668 was seriously unseaworthy. The SPC entrusted the Guangzhou Maritime Court with obtaining relevant accident investigation materials preserved by the competent authority, including ship certificate data, crew certificate data and interview transcripts. However, the multiple accident investigation inquiry transcripts contained in the investigation materials belonged to witness testimony, and they were not confirmed by the Beihai Shipping Company. The crew members and related personnel under investigation did not appear in court as witnesses to testify and address the inquiries of the parties. The competent authority did not issue an accident investigation report on the accident, nor did it determine the unfitness of the crew. Therefore, the investigation materials did not belong to evidence for determining the facts of the case in accordance with Article 11 of the Provisions on Vessel Collision 2008. Consequently, the SPC did not recognize the facts with which OOCL UK intended to prove that the Xinghai 668 was unseaworthy (The Orient Overseas Europe, 2012).

6. Conclusion

The formulation and implementation of the Tort Liability Law is the foundation of existing Chinese civil and commercial legislation to adjust the property and personal relationships between equal subjects. It also makes the overall framework of the Civil Code clearly visible and ready to implement. It is a crucial step in the process of codification for Chinese civil legislation. The modern market economic order is constituted and guaranteed by various legal systems, and a comprehensive legal order is a sign of the maturity of the contemporary market economy. Codification refers to the unified regulation of legal norms in a certain social field in the form of a code, which represents the advanced stage of the development of statutory laws in that state.

The aim of the collision liability ratio system in Chinese collision law is the same as the aim of the exemption and liability limitation system in the 1992 CMC: both aim to protect the shipping industry through legislation. Although the Supreme Court has issued relevant judicial interpretations regarding the principle of liability for ship collision and the determination of the scope of damage compensation, it still looks forward to the further improvement of PRC's tort liability legislation.

Fortunately, many Chinese academics have realised t he shortcomings of the current law and believe that it is necessary to compile a maritime code, learning from rea sonable and advanced legislation to protect and promote shipping trade and the maritime economy. In fact, resear ch on the revision of the Maritime Law has been formall y put on the agenda, and PRC has already begun prepara tions. The revision work has the following aims: to make the Maritime Law more systematic and manoeuvrable; t o better adjust maritime transport relations and safeguar d the legitimate rights and interests of related parties; a nd to better regulate, guide and protect the social develo pment of the shipping economy and related fields. This work is expected to be completed in 2023. However, for ships collision occurred offshore the coast of Korea and China, even each country has their own domestic regula tions, the compensation of the ship collision ends in a sin gle suit with one final judgement. Therefore, the internat ional cooperation is essential for the settlement of disput es, including the exchanging the opinions of the calculati on of fault ratio and unifying the arbitration rules.(Kim. I.H,2011b) Although the unification between S. Korea an d China is time consuming, it is encouraging as it shall pr ovide predictability and promote commerce.(Kim, I.H, 2 015)

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