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# Unification and Coordination of Maritime Jurisdiction: Providing a Judicial Guarantee for International Trade and Marine Transport

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Maritime jurisdiction plays an important role in international trade and marine transport. It involves special kinds of rules that vary among different countries and legal systems. Thus, in international maritime jurisdiction, the coordination and settlements of jurisdictional conflicts are vital for the uniformity of international maritime law. This study provides a comparative analysis of maritime jurisdiction in international trade and marine transport. First, it introduces the concept, category, and legal characteristics of maritime jurisdiction based on historical sources. Then, we conduct a comparative analysis of the civil law system, common law system, international conventions, and Chinese maritime jurisdiction provisions, focusing on their differences and the existing legal problems. Among other suggestions for the improvement of the rules of maritime jurisdiction, this study proposes the unification and coordination of maritime jurisdiction, which could impact international trade and marine transport.

**Keywords: international trade, marine transport, maritime jurisdiction, unification and coordination, legal proposals**

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## INTRODUCTION

In international trade and marine transport, many disputes require resolution through maritime litigation. Jurisdiction is the basis upon which a court accepts a case; it is a precondition for judicial power and assures the resolution of the dispute (Ford, 1999, 897–906). The procedural rules for judicial proceedings are determined by civil jurisdiction, in accordance with the principle of the connecting factors of the case (Yuan, 2017, 109). Although maritime jurisdiction falls under the general category of civil litigation, it has certain specialized underpinning features.

Generally, the special characteristics of maritime courts are incompatible with those of local courts (Zhang, 2013, 17). Countries with special jurisdiction for maritime cases may lose the objective of setting up separate courts to consider maritime cases if they do not clearly stipulate the scope of acceptance. However, some countries do not have separate maritime courts but establish domestic courts with certain exclusive characteristics related to maritime jurisdiction (Dickinson, 1926, 22–25). Jurisdiction at the Maritime Frontier. Harvard Law Review 40, no. 1: 1–26. Nevertheless, there are instances where the rules of general jurisdiction apply to maritime disputes and allow parties to conclude valid agreements with maritime courts or special courts. These courts have the right to refer cases to other courts in exceptional circumstances (Cao and Chu, 2018, 86).

For countries that conduct maritime litigation and general civil litigation separately, the special jurisdiction of the designated maritime court needs to be confirmed first. Domestic maritime jurisdiction refers to the division and limitation of the authority of maritime cases of first instance by maritime courts at different or the same levels in a country (Si and Li, 2017, 89–92).

In the international maritime field, efforts have been made to unify maritime regulations; however, it remains difficult to coordinate conflicts concerning maritime jurisdiction involving foreign players. Disputes concerning maritime jurisdiction among countries are real and pressing problems (Derrington and Turner, 2007, 30). Compared with domestic maritime jurisdiction, maritime jurisdiction involving foreign players is almost unregulated. To solve problems that arise in maritime jurisdiction involving foreign players, the appropriate first step is to focus on the law of procedure of a country with jurisdiction to establish which of its courts has the right to exercise jurisdiction (Xu F., 2017, 45–49). Therefore, maritime jurisdiction involving foreign players is exercised based on domestic maritime jurisdiction.

The legitimacy of jurisdiction is a prerequisite for the courts of various countries to exercise jurisdiction. If the relevant maritime award documents cannot prove that they follow the internationally accepted jurisdictional rules, they will not be respected, recognized, and executed by other countries (Nigel and John, 2011). This study focuses on the unification and coordination of maritime jurisdiction. Research methods include empirical approach, case analysis, and comparative research. By summarizing the civil law system, common law system, international conventions, and Chinese maritime jurisdiction and judicial practice, the legal problems in the operation of maritime jurisdiction are identified to determine an efficient system of maritime jurisdiction. This is done to provide better judicial protection for international trade and marine transport.

## REVIEW OF MARITIME JURISDICTION SYSTEM

### Maritime Jurisdiction System of Civil Law Countries

In the civil law system, nationality plays an important role in personal jurisdiction. For example, Articles 14 and 15 of the Code of Civil Procedure of France provide that French courts have jurisdiction over disputes involving their citizens (deVries and Lowenfeld, 1959, 316). French courts have jurisdiction as long as one of the litigants is French. This provision makes it possible for the parties to come under the jurisdiction of French courts even when the dispute in the case is unrelated to France. Other civil law countries pay more attention to "domicile" as the connecting factor of jurisdiction than "nationality." For example, in Germany, the court generally exercises jurisdiction based on the residence of the accused party (Robert, 2013).

With the development of the equity theory, the single application of nationality or residence as a connecting factor for jurisdiction has been gradually eliminated. New rules are being developed to establish specific jurisdiction connection points, such as the place where the contract was performed, the place where the tort was committed, and the place where parties agreed to submit their disputes (Xu G., 2017, 107–110). The basis for the exercise of maritime jurisdiction in the civil law system mainly includes the defendant's residence or principal business office; the ship's registration place, birthplace, or flag state; place of signing the contract; the place of the performance of contract; the place of loading or unloading; the place of infringement; and the place of ship arrest. Additionally, civil law countries generally recognize the jurisdiction agreement signed by the parties. The court has no discretion to decide whether to apply the jurisdiction agreement of the parties; therefore, it must be determined strictly following the legal provisions of the agreement. For example, according to the Code of Civil Procedure of France, the validity of a jurisdiction agreement is as follows: firstly, the jurisdiction clause must be in writing and must be clear and easy to read; secondly, the jurisdiction clause must conform to the principle of full consent of the parties; thirdly, the jurisdiction clause must clearly select the court; fourthly, the jurisdiction clause must not be contrary to public order or manifestly unfair. If the jurisdiction clause meets these formal requirements, the court will simply review its content to ensure that it does not violate the most basic principles of fairness (Mawani, 2018).

Some European countries that follow the civil law system are part of the European Union, whose laws are regarded as a special mixture of international and domestic law (Michael, 2014, 352). The maritime jurisdiction of the European Union has obvious characteristics of international jurisdiction and is different from the individual domestic maritime jurisdiction; the maritime jurisdiction of the European Union is a broad civil and commercial jurisdiction (Koopmans, 1991, 495–496).

European Union law should not be called international law but supranational law because in their opinion, the European Union has become a supranational organization beyond its member states and the policy principles of its member states do not enjoy the status of the general legal principles of European Union law (Michael, 2014, 353). The Court of Justice of the European Union, as a judicial organ, has certain inherent rights arising from its role. In international law, the function of the Court is to state the law. Courts are playing an increasingly central role in the system of international law. The European Union assigns responsibility for establishing and developing a new legal order to the Court of Justice, whose case law is of paramount importance to the European Union law itself (Koopmans, 1991, 495–496).

### Maritime Jurisdiction System of Common Law Countries

The common law system, also known as the case law system, originated in the United Kingdom. In the United Kingdom, an action *in personam* and action *in rem* are two basic ways of exercising maritime jurisdiction. The effect of action *in personam* between the parties is limited to both parties (Martin W., 2009, 71). Maritime action *in personam* may be expressed as any action other than maritime action *in rem*, probate action, or administrative action (Morris, 1998, 269). Any maritime

claim under the jurisdiction of maritime litigation can be realized through action *in personam*. In the history of the United Kingdom, the maritime court established the maritime action *in rem* to compete with the ordinary court for jurisdiction, forming a special jurisdiction system in the field of maritime litigation. Maritime action *in rem* is a suit brought directly against a ship or specific property related to the ship (Cheshire and North, 2008, 213). As maritime legal relations are often characterized by involvement, complexity, and uncertainty, it is often difficult to determine the specific responsible person in maritime litigation.

The British maritime court began to implement actions *in rem* in 1840, before which all litigation could only be actions *in personam* (Wu, 2002, 4). After the commencement of the action *in rem* proceedings, a party may apply to the court for an order to arrest the ship or other property until the ship or other property is lawfully released or sold according to the court's order. Due to the mobility of ships and the international nature of marine transport, the parties often agreed on the court for dispute resolution by entering into special agreements or articles. If the parties agreed to submit to the jurisdiction of a foreign court, the court could decide on the validity of the jurisdiction agreement (Morris, 1998, 376).

In the maritime legislation and practice of the United States, there is also a distinction between actions *in personam* and actions *in rem*. However, compared with the British legal system, the American maritime jurisdiction also includes action quasi *in rem*. The constitution of the United States grants federal courts jurisdiction over all maritime cases. Regarding actions *in personam*, when a plaintiff brings an action *in personam*, he or she has the following choices: to bring an action *in personam* in a federal court based on maritime jurisdiction or to obtain common law relief by bringing a general civil action in a state or a federal court for issues not related to maritime jurisdiction (Brian, 2011). The traditional doctrine of personal jurisdiction in maritime litigation in the United States, as in the United Kingdom, is that the defendant may be subject to jurisdiction so long as he or she has some minimal connection with the court. In the United States, an action *in rem* may be used to enforce maritime liens (Martin D., 2009). Regarding actions *in personam*, the Supreme Court of the United States has made it clear that jurisdiction over a person cannot be acquired simply because his or her property is within the jurisdiction of a United States court (Thomas, 2004). In the United States, there have been major changes in the courts' basic position on the validity of the provisions of jurisdictional agreements. The most influential cases are *the Bremen v. Zapata Off-Shore Co*[1] and *the Vimar Seguros Y Reaseguros, S.A. v. M/V Sky Reefer*[2], where the courts held that a foreign court's jurisdiction clause is enforceable unless the parties can fully demonstrate that the jurisdiction clause is unfair, unreasonable, is a fraud, or if it is substantially contrary to the public policy of the state (Zhang, 1999, 90).

## Maritime Jurisdiction System of International Conventions

Shipping activities have a strong international character, and their related customs, practices, and behaviors permeate each other, making it necessary and possible to sign relevant international maritime conventions (Fan, 2019, 9).

The international community has been actively promoting the unification of maritime jurisdiction; however, the number of relevant international conventions on maritime jurisdiction is still limited at present. They include the International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of Collisions, 1952; International Convention for the Unification of certain Rules Relating to the Arrest of Sea-going Ships, 1952; Convention on the Liability of Operators of Nuclear Ships, 1962; International Convention on Civil Liability for Oil Pollution Damage, 1969; Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, 1974; International Convention for the Unification of Certain Rules Concerning Civil Jurisdiction, Choice of Law, Recognition, and Enforcement of Judgments in Matters of Collision, 1977; United Nations Convention on the Carriage of Goods by Sea, 1978; International Convention on Arrest of Ships, 1999; and United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2008. These international maritime conventions only address jurisdictional issues in individual fields; so far, there has not been a comprehensive convention on the jurisdiction of global maritime proceedings (Wang, 2014, 38–40).

Current maritime conventions mainly cover ship collision damage compensation disputes, international maritime cargo transport disputes, maritime passenger and baggage transport disputes, international oil pollution damage compensation disputes, and nuclear pollution damage compensation disputes among others. International maritime conventions take different positions on the exercise of actions *in rem*. The conventions that take a positive position on actions *in rem* include the International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of Collisions, 1952, International Convention for the Unification of certain Rules Relating to the Arrest of Sea-going Ships, 1952, and International Convention on Arrest of Ships, 1999 (Brown, 2005, 195). In the above three conventions, the place where the ship is arrested is considered to have jurisdiction. However, the rules of the exercise of actions *in rem* in common law countries have been modified to varying degrees, reflecting the compromise and integration of the civil law and common law. Unlike the traditional practice of effective service of summons in common law countries, international maritime conventions have stipulated substantive jurisdictional bases similar to those in civil law countries, such as place of defendant's domicile, place of contract signing, place

[1] 407 U.S. 1, 1972 AMC 1407(1972). In this case, the Supreme Court of the United States for the first time set aside the traditional rule of not recognizing an agreement to select the jurisdiction of a foreign court, and established the general principle of a *prima facie* presumption of the validity of a foreign court jurisdiction clause.

[2] 515 U.S. 528, 1995 AMC 1817 (1995). This case completely overturns the traditional rules and applies the principle of preliminary presumption of validity of the jurisdiction clause established in The Bremen case as a general principle, even though the clause is recorded in the bill of lading issued by the ship unilaterally.

of performance, place of loading or unloading, and place of infringement (He, 2006, 22).

There are substantial differences in the way jurisdiction is exercised in maritime litigation between the two law systems. The civil law system strictly adheres to the principle of action *in personam*, whereas in the common law system, maritime jurisdiction is primarily exercised *via* actions *in rem* (Martin, 2000, 341) and also actions *in personam* (Robert, 2013, 201).

In the civil law system, the defendant's place of domicile is the primary basis for exercising general jurisdiction, whereas in the common law system, the defendant's existence in the country of venue and effective service of summons are still the primary grounds of jurisdiction. In the common law system, the most remarkable way of exercising maritime jurisdiction is its action *in rem* (Martin, 2000, 341). Although civil law systems do not recognize actions *in rem*, quite a number of countries have established the rule of exercising jurisdiction by arresting ships. The international maritime convention, to a certain extent, reflects the compromise between the two legal systems on maritime jurisdiction (William, 1998, 962–963).

## Maritime Jurisdiction System of the People's Republic of China

Legislation on maritime jurisdiction in the People's Republic of China is mainly captured in the Special Maritime Procedure Law and the Civil Procedure Law. These legislations are interpreted by the Supreme People's Court. When dealing with maritime jurisdiction issues, Chinese courts first apply the Special Maritime Procedure Law, then the Civil Procedure Law, and the laws are finally interpreted by the Supreme People's Court (Li, 2021, 54–56). The Civil Procedure Law of the People's Republic of China stipulates that the civil subject shall be a natural person, legal person, or other organization, and the litigation shall be suspended or terminated in the event of the death of the party concerned. The Special Maritime Procedure Law of the People's Republic of China also avoids actions *in rem*. All maritime claims can only be filed against persons (Xiao, 2001, 47–49).

The maritime jurisdiction of the People's Republic of China includes territorial jurisdiction, exclusive jurisdiction, jurisdiction by agreement, and jurisdiction in response to suit (Cao, 2016, 148–152). The connecting points of maritime jurisdiction include the defendant's place of domicile, the place where the contract is performed or signed, and the place where the ship is located or the place of its arrival (Hou, 2019, 37).

Exclusive maritime jurisdiction includes three kinds of disputes. First, disputes arising from coastal port operations shall be under the jurisdiction of the maritime court where the port is located. Second, disputes over pollution damage to the sea caused by a ship's discharge; leakage or dumping of oil or other harmful substances; or by maritime production, operations, or ship dismantling or repairing operations shall be under the jurisdiction of the maritime court at the place where the pollution or the result of the damage occurred or where pollution prevention measures were taken. Third, the dispute over contracts for marine exploration and development performed in Chinese territory and in waters over which the contracts have jurisdiction shall be under the jurisdiction of the maritime court in the place where the contracts were performed (Gao, 2018, 114–121).

The jurisdiction of maritime preservation refers to the claimant's claim for maritime claim preservation, maritime injunction, or maritime evidence preservation; the relevant dispute based on the litigation or arbitration proceedings; the parties to the maritime claim to take or make the maritime claim preservation, maritime injunction, or maritime evidence preservation of the maritime court (Chen, 2016, 31) Among these, the stipulation of obtaining jurisdiction by arresting a ship for the execution of maritime claim preservation refers to the system of action *in rem* under the common law system, which runs contrary to the civil law system where the execution of ship detention measures must be carried out by the competent court and where the court exercising maritime claim preservation is granted jurisdiction over the substantive issues of the case. However, the situation is different from an action *in rem* where the court takes preservation measures and the substantive jurisdiction of the court is uncertain. Here, the plaintiff can also institute a lawsuit in other courts that have jurisdiction (Xiao, 2001, 48–49).

Maritime agreement jurisdiction refers to a situation where the parties mutually decide on the court that would exercise jurisdiction in case of a dispute. This supplements regional jurisdiction and does not require the actual connection between the Chinese court chosen by the parties and the maritime dispute. Maritime jurisdiction in response to litigation means that if the parties do not raise an objection to jurisdiction and respond to litigation, the court concerned shall be deemed to have jurisdiction, except if there is a violation of the provisions of hierarchical jurisdiction and exclusive jurisdiction (Li, 2021, 57–60).

## Characteristics of International Maritime Jurisdiction

In today's world, maritime jurisdiction presents the following characteristics:

### The Legal Theories of the Two Legal Systems Are Different

A legal system refers to the basic division of law according to the external characteristics of law, such as structure, form, historical tradition, as well as the characteristics of legal practice, legal consciousness, and the status of law in social life (Elden, 2017, 196). It is a general term used to describe laws with common traditions in several countries and regions. Civil law countries adhere to the principle of legislative centralism. Judges, in interpreting the law, should also explore the legislative intention of legislators. In terms of legal form, civil law countries generally do not have case law. They have formulated codes for important departmental laws, supplemented by separate statutes, which constitute a complete statutory law system (Benton, 2010).

The common law system is different from the civil law system in its adherence to the principle that justice is central. Case law is created by the judge in maritime proceedings and is also the main source of law. Common law countries follow precedents and the

basic principles of justice (Gilbert, 2018, 1–12). Although a large number of statutes have been enacted by parliament in modern times, they are interpreted by judges before they can be applied to specific cases.

### The Litigation Modes of the Two Legal Systems Are Different

In the civil law system, maritime jurisdiction can only be exercised by the way of action *in personam*. The civil law system does not recognize actions *in rem*, mainly because civil law countries have not experienced competition for jurisdiction between maritime courts and other courts (William, 1998, 962–963). The whole civil litigation activity is carried out around the "person."

Common law countries treat ships as legal subjects so that they can be regarded as defendants to establish the court's jurisdiction (Steven, 2018). In the United States, the view of ship personification was established by the decisions in three cases—*the Little Charles*[3], *the Palmyra*[4], and *the Brig Malek Adhel*[5]. An action *in rem* does not mean that the ship itself is the lawbreaker; however, it is regarded as a tool for the lawbreaker to carry out an illegal act; therefore, the court forces the lawbreaker to appear in court to answer the lawsuit using this tool so that the lawsuit becomes the lawsuit against the person (Christopher, 1989, 92).

### The Two Legal Systems Are Moving Toward Compromise and Integration

Although there are fundamental differences between the maritime jurisdiction systems of civil law and common law countries, with the increasing internationalization of maritime litigation, all countries in the world are constantly adjusting their legislations related to maritime jurisdiction. Civil law countries have begun to adopt many legal principles of the common law system, and common law countries have also adopted principles of the civil law system (Martin, 2000). With the integration of the civil law system and the common law system, some countries have combined the characteristics of the two legal systems and established hybrid legal systems.

The maritime jurisdiction system of the People's Republic of China reflects the integration of the civil law system and the common law system (Zhang, 2019, 99). On the one hand, the Civil Procedure Law of the People's Republic of China, similar to the civil law countries, adheres to the principle of action *in personam* and clearly defines the legislative basis of jurisdiction in personal action. On the other hand, the Special Maritime Procedure Law of the People's Republic of China has assimilated the characteristics of action *in rem* of the common law system and stipulated the jurisdiction of maritime preservation (Christopher, 1989, 91). Therefore, the legal provisions and principles of the People's Republic of China are consistent with the widely accepted system and prevailing practice of the international community today. Chinese legal provisions not only embody the principle of state sovereignty but also respect the jurisdiction by agreement of the parties concerned.

[3]26 Fed. Cas.979,Case No. 15, 612 C. C. D. Va, 1819.

[4]25 U.S. 12 Wheat.1, 1827.

[5]43 U.S. 2 How.210, 1844.

## CONFLICT OF INTERNATIONAL MARITIME JURISDICTION

### The Social Background of Conflict of International Maritime Jurisdiction

International trade and marine transport have changed and developed over time. With its continuing reform and development, maritime litigation has become a specific and important component of national justice (Hildebrand and Schröder-Hinrichs, 2014, 175). With the growth of the shipping industry over recent decades amid frequent maritime trade, the incidence of maritime disputes is rapidly increasing, putting great pressure on the maritime judicial system. As judicial resources are limited in a society, it is important to increase litigation efficiency and to standardize the combined goals of justice and efficiency for maritime cases (Xiang, 2008, 59).

The international mobility and transnational activities of ships produce complicated international legal relations in the maritime sector. The fact that maritime laws are not unified strengthens the need for a uniform approach (Burke, 1977). Although a country's lawmakers might adopt specific stipulations of maritime jurisdiction in procedural law, these are not uniform and are formulated based on the economic and political interests of the country. In the field of international maritime jurisdiction, domestic laws have little effect and, like the precedents of maritime jurisdiction, apply only within the legal territory of the country (Michael, 2004). At the international level, international conventions are mostly international treaties with substantive stipulations for legal issues of a certain field that focus on substantive rules. In maritime law, international conventions are the most common form of regulation and they cover a wide range of issues. However, most of these conventions are accessory provisions for maritime jurisdiction made at the time of concluding substantive international conventions for a specific problem (Cremean, 2008, 1–3). International conventions usually do not apply directly to state parties; however, they can be integrated into existing domestic laws or form the basis for new ones. Moreover, they may be applied after first being confirmed by a domestic law and some articles may be excluded.

### The Legal Cause of Conflict of International Maritime Jurisdiction

As jurisdiction refers to the judicial sovereignty of a country, conflicts of jurisdiction are not resolved by uniform characteristics of international laws (Wiswall, 1970, 155). In maritime jurisdiction involving foreign players, the establishment of international laws becomes more difficult than that in general jurisdiction due to the connatural risk of the sea and movability of ships.

There are few international conventions on maritime jurisdiction involving foreign players, and many maritime disputes involving jurisdiction cannot be settled by relevant jurisdictional principles (Hofmeyr, 2006, 51). Additionally, there are more objective connecting factors in maritime legal relations than in civil legal relations. This shows that jurisdictional issues in maritime private international law are pressing and important

issues. Conflicts of jurisdiction may arise in different ways based on the varying views of different countries, resulting in parties choosing among several courts that have connecting factors of jurisdiction or excluding those whose jurisdiction is disadvantageous to the protection of national interests (Tanya, 2014). The following paragraphs discuss legal reasons for conflicts in international maritime jurisdiction.

### Different Judicial Ideology on Maritime Action in Rem

Action *in rem* is an action against the subject matter itself; therefore, any judgment is limited to the value thereof or to the value substituted for the *res* to obtain its release[6]. In a maritime proceeding *in rem*, a party is not identified as a defendant, but a vessel is seized and treated as a defendant, and a ruling is sought against the *res* rather than its owner. A judgment in action *in rem* is considered to be good "against all the world"[7]. In the United States, an action *in rem* based on a maritime claim may be brought only in a federal court and is brought by "arresting" the property. The property must be subject to the jurisdiction of the court (Robert, 2013, 201). Further, in *Rainbow Line, Inc. v. M/V Tequila*, the Second Circuit held that an *in rem* action applied only to the enforcement of a maritime lien or otherwise as permitted by statute[8].

The basic principle of action *in rem* is the doctrine of personification. The doctrine of personification can be traced back to the practice of English maritime courts in the 16th century. However, English courts themselves abandoned it in the late 19th century in favor of what is known as "the procedural theory." According to "the procedural theory," an action *in rem* is only a means to force the owner of the vessel to appear in court in person, rather than a real lawsuit against the vessel itself (Martin, 2000, 341). American courts adopted the theory of true personification, holding that the claim was about the fault of the vessel rather than the fault of the vessel's owner. The Supreme Court of the United States interpreted the fiction of "anthropomorphism" in the *in rem* proceeding of *the Madruga v. Superior Court of State of CAL*[9]. The vessel was deemed as having legal personality and, therefore, was itself regarded as a lawbreaker and was directly sued for the torts it committed and for the contracts it breached[10]. However, American courts have varying degrees of rigor about personalization (Bradley, 2012, 255).

On the issue of an action *in rem*, although countries that apply the civil law system believe that it is possible to take legal measures, such as arresting the ship, in the actual prosecution, the person who has a legal connection with the property is the defendant. Different legal ideologies and modes of operation lead to conflicts in judicial practice (Thomas, 2004).

### Too Many Connecting Points on Maritime Jurisdiction

Maritime legal relations are centered on ships. As a means of marine transport, ships sail in navigable waters all over the world and have various property rights, creditors' rights, or other legal relations with related parties in the navigable areas, which create many connecting points for relevant courts to exercise jurisdiction (Martin D., 2009).

Therefore, behind every maritime dispute, there may be more than two courts with jurisdiction. On the one hand, the plaintiff in the active position often chooses a relatively favorable court to file a lawsuit among many courts of jurisdiction; on the other hand, based on judicial sovereignty, other courts will often accept a corresponding lawsuit based on the same dispute involving the other party, resulting in international conflicts of maritime jurisdiction (Robert, 2013, 201).

### Maritime Preservation Jurisdiction Is Independent

Unlike ordinary civil preservation procedures, which must be subordinate to the litigation procedure of a case, in maritime disputes, the location of the court with substantive jurisdiction may be separate from the location of the debtor's property and evidence. Since property preservation, evidence preservation, or maritime injunction should be under the jurisdiction of the court in the place where the object to be preserved is located or where the act to be enforced is carried out, the maritime preservation procedure and the relevant substantive trial procedure should be carried out in courts of different regions or countries (He, 2006, 22).

The separation and contradiction between the jurisdiction of preservation and the jurisdiction of the substantive trial have caused difficulties in the connection of and cooperation between the procedures of litigation, which need to be coordinated by the courts of different countries.

### Maritime Preservation May Form Entity Jurisdiction

According to the jurisdictional rules of ordinary civil action, the court under substantive jurisdiction should exercise the preservation jurisdiction; however, it cannot be applied in reverse. In the field of maritime litigation, there is often a separation between maritime preservation procedure and substantive trial procedure. It is objective and reasonable to take preservation measures as one of the connecting points for establishing substantive jurisdiction (Martin, 2000, 341). International and domestic legislation on maritime jurisdiction generally reflects this objective requirement. For example, Article 7 (1) of the International Convention for the Unification of certain Rules Relating to the Arrest of Sea-going Ships, 1952 and Article 7 (1) of the International Convention on Arrest of Ships, 1999 affirm the jurisdiction of the courts of the state in which an arrest has been effected over relevant substantive disputes[11]. Articles 19, 61, and 72 of the Special Maritime Procedure Law of the People's Republic of China, 1999 also confirm that the maritime court that adopts measures for preservation, the maritime court granting the maritime injunction, and the

[6]Cent. Hudson Gas and Elec. Corp. v. Empresa Naviera Santa S.A., 56 F.3d 359, 364, 1996 AMC 163, 166-67 (2d Cir. 1995).

[7]See 2 Am. Jur. 2d Admiralty §26; see also C.J. Hendry Co. v. Moore, 318 U.S. 133, 136, 1943 AMC 156, 158 (1943); Rounds v. Cloverport Foundry and Mach. Co., 237 U.S. 303, 306 (1915).

[8]Rainbow Line, Inc. v. M/V Tequila, 480 F.2d 1024, 1028, 1973 AMC 1431, 1436 (2d Cir. 1973).

[9]Madruga v. Superior Court of State of Cal. in and for San Diego County, 346 U.S. 556, 1954 AMC 405 (1954).

[10]Id., at 560, 1954 AMC at 409; see Force, supra note 25, at 31.

[11]See article 7 (1) of International Convention for the Unification of certain Rules Relating to the Arrest of Sea-going Ships, 1952.

maritime court that adopts measures for the preservation of the evidence have jurisdiction over relevant substantive disputes[12]. The substantive jurisdiction formed by maritime preservation is in parallel with other legal jurisdictions; therefore, it is easy to have contradictions and conflicts with other jurisdictions.

## Forms of Conflict of International Maritime Jurisdiction

Conflict in international maritime jurisdiction takes the following two forms: positive conflict and negative conflict (Derrington and Turner, 2007, 30). Positive conflicts can be divided into exclusive jurisdiction conflicts and competitive jurisdiction conflicts, which will be discussed separately in the following paragraphs.

### Conflict of Exclusive Jurisdiction

When a country decides which kind of legal relations to include under its jurisdiction, it considers mainly the actual interests in legal relations. Each country has important legal relations concerning politics and the economy under its exclusive jurisdiction and unconditionally refuses to accept jurisdiction over maritime cases involving foreign players and foreign courts (Yan, 2018, 57).

The same applies to exclusive jurisdiction in maritime cases. Under monopolization and exclusion of maritime exclusive jurisdiction, conflict of jurisdiction arises when one party or both parties bring litigation involving the same maritime case to the courts of more than two countries or regions and they all claim jurisdiction.

### Conflict of Competitive Jurisdiction

When a country exercises jurisdiction over a case, it should not repudiate the jurisdiction of other countries (Nigel and John, 2011). The plaintiff has the right to choose a court to institute proceedings among those with jurisdiction in accordance with the law.

During maritime litigation involving foreign players, except for several kinds of cases that involve exclusive jurisdiction, a plaintiff may institute a matter in a court for almost all cases among several courts with the same jurisdiction (Zheng, 2017, 112). Conflicts may where jurisdictional rules are different in each country and where the claimant is given a choice regarding non-exclusive jurisdiction. When the flexibility and extension of maritime jurisdiction involving foreign players result in common jurisdiction over the same case in the courts of several countries, conflict of maritime jurisdiction, more severe than that of general jurisdiction, may occur.

### Negative Conflict of Jurisdiction

A country excludes jurisdiction over legal relations that have little relationship with national interests. This may lead to a negative conflict of jurisdiction; however, this is rare in maritime jurisdiction (Chen and Shi, 2018, 99).

When the jurisdiction excluded by a country is the jurisdiction that another country is seeking, there will not be a negative conflict of jurisdiction (Xiang, 2008, 60). Therefore, the excluded jurisdiction is completely excluded. Jurisdiction excluded by only one country cannot produce a negative conflict of jurisdiction.

[12]See articles 19, 61 and 72 of Special Maritime Procedure Law of the People's Republic of China, 1999.

# LEGAL PROPOSALS FOR THE UNIFICATION AND COORDINATION OF MARITIME JURISDICTION

By comparing maritime jurisdictional conflicts involving foreign players, we find that the fundamental reason for such conflicts is that each country tries its best to enlarge the scope of its domestic jurisdiction in line with the principle of national sovereignty (Thomas, 2004). The importance of jurisdiction in private international law demonstrates its strong connection to the protection of sovereignty. Although the exercise of jurisdiction affects the rights and interests of individuals, there is no link between judicial jurisdiction and the application of law (Robert, 2013, 201). It is not necessary for the court that has jurisdiction to apply the substantive law of the place where the court is located when handling the case.

The settlement of the objective conflict of maritime jurisdiction involving foreign players emphasizes the renovation of the theory and practice of jurisdiction in each country. Countries around the world can overcome maritime jurisdiction conflicts by adopting reasonable jurisdictional rules and practicing international comity in accordance with the principle of national sovereignty (Cao, 2016, 149).

## Legislative Proposals

In maritime litigation, certain jurisdictional principles have been followed for a long time and have gradually developed into customs, such as choosing a court to institute a case, arrest of ships, and substantive jurisdiction (Hofmeyr, 2006, 51). Countries should improve domestic legislation by drawing lessons from their experience of applying international rules (Hu and Zhao, 2020, 130).

Global legislation should regulate the jurisdiction concerning maritime matters involving foreign players. First, maritime litigation should be restricted by jurisdictional agreements or arbitration agreements; the agreements between parties on jurisdiction should also be respected and captured in the form of legislation. Second, the exercise of the maritime jurisdiction should be conditional on the judgment being accepted and performed by other countries. Third, exclusive jurisdiction should be restricted to a very narrow scope, whereas the scope of choice of jurisdiction should be enlarged (Zhang, 2017, 67–68).

### Formulation and Clarification of the Legal System of Maritime Jurisdiction

In the unification of maritime jurisdiction, all countries should constantly improve their legal rules on maritime jurisdiction and ensure their consistency with international conventions and practices. States should emphasize the principle of domicile of the accused and ignore the decisive influence of nationality on jurisdiction (Tanya, 2014). The plaintiff may choose the defendant's principal place of business, the place of signing the contract, the port of loading, the port of discharge, or any

other place specified in the contract as the place for litigation concerning the carriage of goods by sea.

Countries should provide, in their legislation, that the parties can freely choose the court situated in the place where the infringement occurred or where the effect of the infringement occurs (Bai and Wang, 2017, 132–135). For example, the jurisdiction of a ship collision case is usually determined by the place of collision, the place where the ship accused of fault is arrested, or the place where security is provided. To eliminate the conflict of international maritime jurisdiction, the principles of jurisdiction and *forum non-conveniens* should be established through legislation (Martin D., 2009).

### Centralized Jurisdiction Shall Be Exercised Over Maritime Cases

Due to the specialized nature of maritime cases, special legal norms should be formulated to clarify that special courts should try maritime cases. The laws applicable in these courts should be unified and should also be targeted at judicial efficiency (Cheng, 2019, 175–192). China has set up 11 maritime courts to exercise jurisdiction as courts of first instance over maritime commercial cases, maritime administrative cases, and maritime special procedure cases. The effect of judicial practice shows that this is very conducive to the settlement of maritime disputes and can constantly sum up maritime judicial experience to provide judicial advice for international trade and maritime transport.

Maritime special jurisdiction system has outstanding advantages compared with general jurisdiction system (Li, 2021, 57). Countries should actively adjust their own maritime jurisdiction systems by providing for the special exercise of maritime jurisdiction and unified application of international conventions and practices, which can greatly improve the quality and efficiency of maritime adjudication.

### Specify the Statutory Elements of Jurisdiction

Maritime agreement jurisdiction refers to a system of dispute settlement determined by the parties through consultation, which reflects the autonomy of the parties. In their legislation, countries should try to clearly define the statutory elements of jurisdiction, focusing on the full respect of the parties' right to choose and the respect for state sovereignty (Hu and Sun, 2016, 29).

Many countries agreed on the effectiveness of the specification of jurisdictional clauses. In addition to the effective rules–agreed jurisdictional requirements, the principle of respect of the autonomy of the parties, and rules relating to the respect of national sovereignty, a unified judicial scale should be clearly captured in the legislation (Christopher, 1989, 91).

## Judicial Proposals

In maritime judicial practice, the courts chosen by the different parties to exercise jurisdiction in accordance with different connecting factors may conflict or there may be situations where a party may institute proceedings over the same issue in courts of different countries (Qiao and Shen, 2019, 107). Therefore, it is still necessary to apply jurisdictional principles flexibly.

Current maritime jurisdiction does not have a completely consistent format. At the time of determining maritime jurisdiction involving foreign players, problems of jurisdictional conflicts can be settled only by domestic courts through the application of procedural conflict rules of the place where the court is located (Mei and Yin, 2018, 91–97). Thus, the unification of maritime jurisdiction means that the maritime court of a country, before deciding to accept such disputes, would apply the same rules of jurisdictional conflict that apply to member states equally in the same kind of maritime disputes. To promote a role for maritime litigation in foreign trade transport, it is necessary to establish jurisdictional principles consistent with international conventions and customs concerning international maritime jurisdiction.

### Priority for the Principle of Autonomy of Will

The principle of autonomy of will, one of the basic civil law principles, applies to both parties in determining their rights and obligations. They also apply in resolving civil disputes; therefore, jurisdiction agreements should be respected by all sides, to eliminate the exercise of jurisdiction by the courts of other countries that may be involved in a case (Michael, 2004).

According to the "Independence of Dispute Resolution Clause" rule, the jurisdictional clause is relatively independent of the other provisions of the contract and does not automatically lose its validity due to the termination, unenforceability, or invalidity of the contract. On the contrary, it only works because of the aforementioned obstruction to the normal performance of the contract. In maritime activities, the corresponding standard contract often contains jurisdiction clauses or the parties sign a separate jurisdiction agreement.

The Principle of Autonomy of Will requires the courts of other legal jurisdictions to recognize the priority of jurisdiction by agreement. It is also important to note the following exceptions to the application of the Principle of Autonomy of Will: the recognition of the jurisdiction agreement should not violate the basic legal principles of the country or damage its public order and good customs. Other exceptions include situations where there may be defects in the concluding procedure of the jurisdiction agreement, wherein there is unreasonable content in the agreement, which may lead to the invalidity of the corresponding jurisdiction agreement (Cremean, 2008, 2).

### Avoid Unnecessary Duplication of Litigation

#### *Accurately Applying the Doctrine of the Most Significant Relationship*

The doctrine of the most significant relationship is an important principle for judges to establish applicable law in foreign-related trials; however, it can also be used to resolve international jurisdictional conflicts in foreign-related cases[13].

In the absence of an agreement by the parties and of a clear court of jurisdiction with respect to international and domestic legislation and in the event of duplication, the relevant court may,

[13]Convention on Third Party Liability in the Field of Nuclear Energy (1960). As article 13 of Convention on Third Party Liability in the Field of Nuclear Energy, provides that jurisdiction belongs to the court of the Contracting State most closely connected with the case, the 2004 Amendment protocol to the Convention further adds that jurisdiction belongs to the court of the Contracting State most closely connected with the case and affected by the consequences of the event.

as required by the doctrine of the most significant relationship, take into account all the facts related to the dispute, such as the nationality of the parties concerned, the nationality of the ship, the place of business of the parties, the place where the contract is signed, the place where the contract is performed, the place where the infringement occurs or results occur, and the place of the subject matter. Based on these criteria, the court shall determine whether the dispute should be under its jurisdiction (Burke, 1977).

***Actively Applying the Doctrine of Court Received First***

In case of conflict of jurisdiction, the court that received the case first shall exercise jurisdiction. If the same suit has already been brought in a foreign court, the domestic court shall not accept it. If the case has been accepted, the lawsuit shall be suspended or terminated (Robert, 2013, 201).

The doctrine of court received first may effectively eliminate various jurisdictional conflicts. This principle has been affirmed in the domestic laws of some countries and international conventions, such as the 1968 Brussels Convention, the 1971 Convention on the Recognition and Enforcement of Foreign Civil and Commercial Judgments, and the 1988 Lugano Convention.

***Appropriately Applying the Doctrine of Res Judicata***

All countries recognize the doctrine of *res judicata* as a civil procedure principle. It means that where a judicial organ or arbitral tribunal has already issued a judgment on a specific case, the parties to the dispute cannot request the court or the arbitration tribunal to issue a new judgment on the same case (Bradley, 2012, 253).

The doctrine of *res judicata* originated from Roman law, and its theoretical basis is mainly "litigation right consumption" theory and "judgment power consumption" theory. According to these theories, after a judgment has been issued, the litigant's right of action for the same dispute has been exhausted, and the judicial power of the judicial organ has also been exhausted. Countries should appropriately apply the doctrine of *res judicata* to prevent international conflicts of maritime jurisdiction (Qiao and Shen, 2019, 106).

### Implement the Principle of International Comity of Jurisdiction

Maritime jurisdiction is an important part of national judicial sovereignty and the principle of judicial sovereignty requires the court to exercise its maritime jurisdiction effectively (He, 2006, 22). Therefore, as long as the laws of various countries stipulate that maritime judicial organs have jurisdiction over cases, they should not give up jurisdiction in principle. However, safeguarding judicial sovereignty is not equal to unprincipled competition for jurisdiction.

To avoid useless international jurisdictional conflicts, reduce the inconvenience of the court or parties concerned, or pursue a high level of international judicial justice and efficiency, *forum non-conveniens* can be applied timely (Cremean, 2008, 3). This is essentially a way of exercising judicial sovereignty. *Forum non-conveniens* involves a process where the home court, according to its domestic law or the provisions of the relevant international conventions, considers that it is not convenient or that it is unfair to exercise jurisdiction over a foreign-related civil/commercial dispute and there are other more convenient forums where the case can be heard; therefore, the court may refuse to exercise jurisdiction.

The application of *forum non-conveniens* may improve judicial justice and efficiency, prevent international conflicts of jurisdiction, and inhibit the parties' motivation of forum shop, which is considered as the symbol of a civilized judicial system by scholars (Xiang, 2008, 59).

At present, the courts of many countries, such as the United Kingdom, the United States, Canada, New Zealand, and Australia have recognized *forum non-conveniens*. This principle is not only based on the court's refusal to exercise jurisdiction by suspending or terminating the litigation on its own but also can be applied in reverse, i.e., the court can decide to exercise jurisdiction to prevent the parties from carrying out inconvenient litigation in foreign countries (William and Zhang, 1993, 617). When deciding whether to adopt this principle, the court should consider both the private interests of litigants as well as public interests.

## CONCLUSION

The oceans separate the nations of the world, but ships unite them. The interests of the ship, cargo party, port, crew, ship material supplier, salvage party, ship infringement victim, and so on, are widely involved in the international navigation of the ship and the courts of various countries along its route have created corresponding jurisdictional links (Michael, 2004). As there are many jurisdictional connection points in maritime legal relations and countries often allow the separation of courts of procedural jurisdiction from courts of substantive jurisdiction and adopt some expansive jurisdiction policies, the problem of jurisdictional conflict in maritime litigation is quite serious (He, 2006, 22). To resolve international conflicts on maritime jurisdiction, it is important to strengthen international coordination of jurisdiction by participating in or concluding relevant international conventions and improving adherence to the basic international principles of resolving international conflicts of jurisdiction and taking corresponding coordination measures (Yang, 2019, 7).

In maritime litigation procedures, most countries list several connecting factors to enlarge the jurisdiction of their domestic courts over maritime disputes. This is considered as the addition of norms of maritime jurisdiction (Brian, 2011). To a certain extent, conflicts of jurisdiction at present create difficulties in the international harmonization of maritime jurisdiction.

Most international conventions concerning maritime issues are stipulations involving substantial content (Thomas, 2004). Problems concerning procedures are mostly regulated by domestic laws of contracting states; however, some international conventions and bilateral treaties concerning procedures also require contracting states to have specific procedural stipulations of maritime litigation. The different approaches to jurisdiction inevitably lead to the random application of laws (Ma, 2019, 29).

However, as jurisdiction refers to the principle of national sovereignty and the exercise of jurisdiction usually reflects the sovereignty of each country, countries are unwilling to give up jurisdiction over civil and commercial cases involving foreign players. Therefore, international jurisdictional conflicts related to civil and commercial matters are rife and problems concerning maritime jurisdiction that are closely related to the settlement of disputes of international trade ensue.

Although there are no unified laws on international maritime laws and there are only a few international conventions concerning maritime jurisdiction, maritime jurisdiction involves far more international economic and trade disputes than general civil and commercial cases do, which means creative ideas are required for better and more unified regulations on maritime jurisdiction. Every country should maintain consistency in improving maritime jurisdiction to contribute toward foreign trade transport (Ma, 2017, 26).

## DATA AVAILABILITY STATEMENT

The original contributions presented in the study are included in the article/supplementary material, further inquiries can be directed to the corresponding author/s.

## AUTHOR CONTRIBUTIONS

The author confirms being the sole contributor of this work and has approved it for publication.

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