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WORLD MARITIME UNIVERSITY

Dalian, China

**STUDY ON LEGAL ISSUES OF
NON-FOREIGN-RELATED MARITIME
INVESTIGATION IN CHINA**

By

FAN JUN

The People's Republic of China

A research paper submitted to the World Maritime University in partial
Fulfillment of the requirements for the award of the degree of

MASTER OF SCIENCE

(MARITIME SAFETY AND ENVIRONMENTAL MANAGEMENT)

2015

DECLARATION

I certify that all the material in this research paper that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this research paper reflect my own personal views, and are not necessarily endorsed by the University.

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(Date):June 29, 2015.....

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ACKNOWLEDGEMENTS

This paper is part of my study at WMU and DMU. On the completion of the studies, I appreciate those who have supported and helped me with either the whole study processes or the completion of this paper.

First and foremost, I am grateful to the senior staff of Maoming MSA and Guangdong MSA, in particular, Mr. Liang Jianwei, Mr. Li Shaoxian and Mr. Shao Guo who nominated me to attend the MSc programme on MSEM for broadening the horizon of my vision and the scope of knowledge.

I am also most grateful to my supervisor, Professor Guo Ping, whose useful suggestions, incisive comments and constructive criticism have contributed greatly to the completion of this paper. She devotes a considerable portion of her time to reading my manuscripts and making suggestions for further revisions. Her tremendous assistance in developing the framework for analysis and in having gone through the draft versions of this thesis several times deserve more thanks than I can find words to express. The sincere gratitude must also go to Professor Zeng Sizheng of DMU, from whom I had my draft paper checked and corrected on editorial purpose.

I am also greatly indebted to all my teachers who have helped me directly and indirectly in my studies in MSEM. Any progress that I have made is the result of their profound concern and selfless devotion. Among them the following require mentioning: Professor Ma Shuo, Professor P.K. Mukherjee, Professor Du Dachang, and Ms Wang Yanhua, and Mr. Zhao Jian of IMCRC.

I should finally like to express my gratitude to my beloved wife, Liu Danbao, and my dear parents who have always been helping me out of difficulties and supporting without a word of complaint.

ABSTRACT

Title of Research Paper: **Study on legal issues of non-foreign-related maritime investigation in China**

Degree: **Msc**

China is one of International Maritime Organization (IMO) member states, who should take responsibilities to fulfill its obligations under international convention by domestic legislation, formulating rules and regulations and other measures. Therefore, from January 1, 2010 when the Adoption on the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code) (hereinafter referred to CIC) took effect, as a contracting state, the Chinese government has tried to bring the CIC into the legal framework of maritime investigation in China and the Maritime Safety Administration of China (hereinafter referred to China MSA) has performs fulfilling the requirements of CIC by all their hard work, some insufficient work have been discussed in this paper. In author's view, the current situation is that China MSA divides the maritime investigation into the foreign-related maritime investigation and non-foreign-related maritime investigation in accordance with the nationality and routes of ships involved, and the former works methodically in accordance with the requirements of the Administrative Regulation for a Safety Investigation into a Foreign-Related Marine Casualty or Marine Incident (hereinafter called the Administrative Regulation for Investigation) (ARI) and has met the requirements of CIC basically in form and achieved the desired effect. But the performance of the non-foreign-related maritime investigation basically stays on the traditional maritime investigation, where there are still more or less problems. In this paper, it started to identify the root cause of those problems from a legal point of view, with the limited space of this paper, this article will pick up the insufficient independence, inadequate

protection of crew rights, and vague legal status of Maritime Investigation Evidence (MIE) of non-foreign-related maritime investigation to discuss the law issues of non-foreign-related maritime investigation in China, including clarifying the legal relations, drawing maritime investigation lessons from the advanced practice of Europe and the United States, and then it had put forward some proposals in favor of mortification of the relevant laws respecting non-foreign-related maritime investigation, so that the mechanism of non-foreign-related maritime investigation of China got improved. To strive for the early realization of maritime investigation in China, we need to work fully in line with international standards and provide the better service for shipping from aspect of maritime investigation, to ensure shipping is more secure, ocean is much cleaner, and sovereignty is more complete consequently .

KEYWORDS: Maritime Investigation; Non-foreign-related Maritime Investigation; Independence; Crew Rights; Maritime Investigation Evidence

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LIST OF ABBREVIATIONS

| | |
|-------|--|
| ARI | Administrative Regulation for Investigation |
| APL | Administrative Penalties Law of the People's Public of China |
| AIS | Automatic Identification System |
| AI | Accident Investigation |
| CIC | Casualty Investigation Code |
| CIMCI | Code for The Investigation of Marine Casualties and Incidents |
| CSRB | China Shipping Registering Bureau |
| DE | Documentary Evidence |
| ECDIS | Electronic Chart Display and Information System |
| EC | Expert Conclusion |
| FTSG | Guidelines for Fair Treatment of Seafarers after a Maritime Accident |
| FPS | Frontier Public Security |
| GFTS | IMO Guidelines for Fair Treatment of Seafarers after a Maritime Accident |
| HSA | Harbor Superintendence Administration |

| | |
|--------|---|
| IMO | International Maritime Organization |
| IMCIC | International Maritime Casualty Investigation Code |
| IHR | Investigation and Handling Regulation |
| IMR | Investigation Management Regulation |
| ICCPR | International Covenant on Civil and Political Right |
| IHG | Guidelines for Investigation and Handling of Maritime Traffic Accident |
| MSA | Maritime Safety Administration |
| MSC | Maritime Safety Committee |
| MTSM | Maritime Traffic Safety Management |
| MARPOL | The International Convention for the Prevention of Pollution from Ships 73/78 |
| MTSL | Maritime Traffic Law of the People's Republic of China Maritime Traffic Safety Law |
| MIR | Marine Investigation Report |
| MIE | Maritime investigation evidence |
| MPPCR | Marine Pollution Prevention and Control Regulation MTAR Maritime Traffic Accident Report |
| MPIHR | 1. Marine Pollution Incident Handling Regulation of the People's Republic of China |
| MSIMM | Maritime Safety Investigator Management Measures |

| | |
|--------|--|
| MAIB | Maritime Accident Investigation Branch |
| MOT | Ministry of Transportation |
| NPC | National People's Congress |
| NTSB | National Transportation Safety Board |
| NOS | National Ocean Service |
| POS | Privilege of Silence |
| PE | Physical Evidence |
| SI | Safety Investigation |
| SOLAS | International Convention on Safety of Life at Sea, 1974 |
| STCW | International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978 |
| UNCLOS | United Nations Convention on the Law of the Sea |
| VDR | Voyage Data Recorder |

CHAPTER 1

INTRODUCTION

1.1 Background of research

According to statistics, the number of the serious traffic accidents of operational vessels that happened in Chinese territorial water was 270, 262 and 260 in 2012, 2013 and 2014 respectively, causing 277, 265 and 247 deaths respectively and the number of sinking vessels was 165, 142 and 165 respectively (MOT, 2015). China is a Class A member of IMO, the implementation work is done well theoretically speaking, but the rate of operating shipping accidents is still high, what causes are behind that situation and why maritime accident investigation did not find those causes resulting in accidents, or the accident investigation is not perfect enough? It is not hard to find that there are some differences between China and developed countries like Britain, the United States and Canada and other developed countries, including maritime investigators, organizational structure, and technical in maritime investigation. IMO also realized these problems. On the one hand, IMO has urged countries to establish efficient investigation system, so that a timely, comprehensive, in-depth investigation can be carried out after the accident to find out the cause of the accident and put forward the safety recommendations of corresponding measures to prevent similar accidents happening in the future. On the other hand, in order to standardize the procedures of maritime investigation, IMO successively improved the demands of maritime investigation by promulgating the International Maritime

Casualty Investigation Code,1997 (IMCIC) and the IMO Guidelines for Fair Treatment of Seafarers after a Maritime Accident, 2005 (GFTS). However, both of them are not mandatory to all countries, so in terms of maritime investigation, different countries and regions still conduct investigation in their own way in accordance with their existing manner, and there are great differences in the ways of investigation, which is not conducive to the investigation within the scope of international unity. Just based on situation above, Maritime Safety Committee (MSC) passed the CIC in May 2008, and brought it into the International Convention on Safety of Life at Sea, 1974 (SOLAS) and the Code took effect on January 1, 2010 as the enforcement of new article XI - 1/6 of convention (MSC 84/24/Add.1 ANNEX 3 Page 2). Based on the basic national conditions, China has established the foreign-related maritime investigation mechanism above the previous maritime investigation and the foreign-related maritime investigation basically meet the requirements of CIC and complete the task of performances of Convention according to the relevant domestic rules, and some achievements have been made at the same time. For instance, the maritime investigation into a collision accident happened between a Chinese ship named “Yao Hai” and a Ukrainian tender named “NEFTEGAZ-67” was carried by Chinese maritime investigators according to CIC, and after 5 years’ endeavor, the outcome of the investigation has been affirmed by the supreme court of Hong Kong that the captain of “Yao hai” and the chief and associate PILOT of Hong Kong have been acquitted in February 22,2013, which was a great victory of Chinese maritime investigation and showed the capability of implementation of convention to other contracting members (SDJT, 2013).

1.2 Purpose

The main purpose of this paper is that analyzing the current status quo and defects of non-foreign-related maritime investigation in China, and put forward recommendations to solve these deficiencies from the view of legislation. In order to make this article more specific and credible, this article selects the independence, seafarers' rights and obligations, MIE of non-foreign-related maritime investigation in China to study legal issues of non-foreign-related maritime investigation in China.

1.3 Methodology

The relevant literature was widely reviewed beforehand, including relevant IMO documents and circulars, international conventions, articles from contemporary journals, books and information from websites. Opinions were exchanged and advice was taken by visiting senior attorney and knowledgeable professor. Furthermore, some official statistics and clauses have been referred to make this paper more specific and authentic, and which are also important to express some viewpoints within this paper.

1.4 Structure of paper

This paper consists of six chapters. Chapter two elaborates the status quo and identifies types and their differences of Chinese maritime investigation by listing its referenced international conventions and domestic laws. Chapter 3 analyzes the enlightenment of CIC to China after its implementation firstly, and then introduces the model of maritime investigation from Europe and the United States so as to put

forward some recommendations to solve the insufficient independence of non-foreign-related maritime investigation in China. Chapter 4 explains the Privilege Of Silence (POS) of seafarers firstly, and then expounds the current status quo of seafarers' crew rights under the current investigation system of China and other states' protection of seafarers' rights and obligations, and then analyzes the challenge of implementing POS, as well as proposals some suggestions to solve those challenges. Finally it comes to crew's obligations involved in maritime investigation after implementing POS. Chapter 5 refers to the legal position of the MIE. In this chapter, firstly, the definition and classification of MIE are explained, and then the qualification of MIE is expounded within the maritime litigation evidence problem, and finally some problems of MIE existing in the legal practice are analyzed, and some related suggestions are proposed according to the analysis.

CHAPTER 2

CURRENT STATUS QUO OF MARITIME INVESTIGATION IN CHINA

In this chapter, firstly some international conventions and domestic laws and regulations that maritime investigation in China acts pursuant to will be studied roughly, then the practical action of maritime investigation in China will be elaborated including its definition, classification, and some special characteristics. The important part of this chapter is for the sake of eliciting the non-foreign-related maritime investigation in China.

2.1 Relevant international conventions and domestic laws and regulations on maritime investigation in China

As one of Class A members of IMO, China has taken part in the establishment and modification of relevant Conventions on maritime investigation actively, and performed Conventions objectively by domestic legislation. Now, some international conventions that China has accessed and domestic laws and regulations will be introduced roughly as follows.

2.1.1 Relevant international conventions on Chinese maritime investigation

(1) United Nations Convention on the Law of the Sea (UNCLOS)

UNCLOS is known as the "constitution of ocean", and was legislated on the last conference of the third UN conference about the sea-law held on December 10, 1982 in Montego Bay, Jamaica, and got into effect in 1994. Two years later, China approved this Convention on May 15, 1996. In aspect of maritime investigation, the article 9 stipulates the obligations of flag state, which requires that each country should effectively implement aspects of administrative, technical and social jurisdiction to ships that fly its flag, and stressed that in order to ensure safety at sea, the flag state shall strengthen the management of the construction and seaworthiness of ships, the quality and quantity of manning, the outfit of chart and navigation equipment; If flag ship involves in maritime accidents or accidents happening on the high seas, and the ship has caused death or serious injury of other countries' people, or serious damage of other ships or facility, or serious damage of the marine environment, the country should appoint the competent and qualified personnel for the accident investigation. If the investigation is conducted by other countries, the flag state should cooperate with other countries.

(2) International Convention for Safety of Life at Sea, 1974 (SOLAS, 1974)

The SOLAS, 1974 was signed by the delegates from all contracting states at the international conference on safety of life at sea on October 10. The Convention got into effect on May 25, 1980. The main purpose of the Convention is to set up a corresponding rule and security minimum standards of ship construction, equipment and operation. The flag state shall be responsible for ensuring that ships that fly its flag meet this standard, and are equipped with certificate for proof of up to standard. But it needs to pay attention that within its paragraph 21.1, the Conventions

proscribes that *Each Administration undertakes to conduct an investigation of any casualty occurring to any of its ships subject to the provisions of the present Convention when it judges that such an investigation may assist in determining what changes in the present Regulations might be desirable.*"(SOLAS, 1974/1980 Convention/ Chapter/ Reg.21 Part C CAUSALTIES).

(3) International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, 1978 (STCW, 1978)

IMO set and passed SOLAS, 1978 at the diplomatic conference held in London on June 14 to July 7, 1978. The paragraph 2 of article 1 in the 1/4 (Monitor Procedure) of the Convention prescribes that if a ship is in some contracting state's port or is going to enter that port, while the following events happen : (1) Collision, grounding or stranding; (2) Discharge of pollutants in violation of the international convention while sailing or anchoring in some port; (3) A qualified and authorized supervisor has the right to decide whether the crew have the ability of standard on duty required by the Convention when the crew manipulate a fault or unsafe ship, or don't obey the route rules or traffic separation scheme.

(4) The International Convention for the Prevention of Pollution from Ships 73/78 (MARPOL 73/78)

MARPOL 73/78 was signed on February 17, 1973 and got into effect on October 2, 1983. The Convention aims to protect the marine environment by reducing the discharge of pollution caused by oil and other harmful substances into the sea, which has a total of six annexes regulating different types of marine pollution caused by vessels: Annex I *Regulations for the Prevention of Pollution by Oil*; Annex II *Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk*; Annex III *Prevention of Pollution by Harmful Substances Carried by Sea in*

Packaged Form; Annex IV Prevention of Pollution by Sewage from Ships; Annex V Prevention of Pollution by Garbage from Ships; Annex VI Prevention of Air Pollution from Ships.(MAPROL , 1973/1978/1980)

Article 12 of this Convention (ship accidents) regulates: “(1) *Each Administration undertakes to conduct an investigation of any casualty occurring to any of its ships subject to the provisions of the regulations if such casualty has produced a major deleterious effect upon the marine environment.*(2) *Each Party to the Convention undertakes to supply the Organization with information concerning the findings of such investigation, when it judges that such information may assist in determining what changes in the present Convention might be desirable.*” (MARPOL 73/78)

(5) Code for the Investigation of Marine Casualties and Incidents (CIMCI)

IMO regulates maritime investigation issues systematically in CIMCI for the first time, which was signed in Resolution 849 of the 20th annual meeting. Article 5 of the Code stipulates that in order to find out the causes of the accident, the factors and conditions should be considered in maritime investigation, and other relevant interests-countries should be invited as representatives attending a comprehensive investigation, who have the equal status, right and criteria of using the materials as other members attending the investigation. In addition, Article 5 also stipulate that the country, who takes responsibilities for accident investigation should get down to investigating after accident happened as soon as possible to avoid unreasonable delay.

Article 6 of the Code demands that each flag state should undertakes to conduct an investigation of any accident involving in its flag ship within its territorial sea, and for maritime accident happened on the high seas, the flag state should also undertakes to conduct an investigation, and the investigation should be started as

soon as possible after the accident. In addition, it also provides that the leading countries in the maritime investigation should write the related investigation report after investigation with safety recommendations to this accident, which will be published and delivered to IMO.

(6) Code of International Standards and Recommended Practices for A Safety Investigation into A Marine Casualty or Marine Incident (Casualty Investigation Code) (CIC)

The CIC became mandatory on January 1, 2010; the Code requires that each state should conduct maritime investigation, identify causes and put forward preventive recommendations about these kinds of casualties in accordance with the requirements of the Convention and Code to improve maritime safety.

2.1.2 Relevant domestic laws and regulations on maritime investigation in China

(1) Maritime Traffic Safety Law of the People's Republic of China (MTSL)

The second conference of the sixth session of Standing Committee of the National People's Congress of the People's Republic of China (NPCSC, China) passed the Law on September 2, 1983, which came into force on January 1, 1984. MTSL is the basic law in the field of maritime traffic in China, including Chapter 9 for maritime investigation. Article 42 of Chapter 9 is: "Vessels, offshore facilities which have traffic accident should submit report and relevant information of the accident to the competent authority and accept the investigation and handling. The parties and

relevant personnel of accident must provide site conditions and plot related to the accident to the competent authority in accepting the investigation." Article 43 stipulates: "when vessels and offshore installations have the traffic accident, the competent authority should take responsibility for identifying root cause and ascertaining liability."

(2) Regulation on the Investigation and Handling of Maritime Traffic Accidents (hereinafter called Investigation and Handling Regulation) (IHR)

The regulation was approved on January 11, 1990 by the state council of PRC and was released for the No. 14 order of the Ministry of Transport on March 3, 1990, and came into effect from that date. Chapter 3 of IHR makes specialized provisions for specific issues of maritime investigation and its article 10 stipulates that HSA conduct maritime investigation of any casualty happening in harbor; China MSA can delegate the local MSA to investigate in necessity; MSA may also request relevant departments and social organizations to take part in the investigation of the accidents in necessity. Article 15 regulates that MSA must conduct investigation of the maritime traffic accidents and then makes the Report on Investigation for Communications Accident on Sea (hereinafter referred to Maritime Investigation Report) (MIR) including identifying root cause of accident and ascertaining liability of parties. Article 34 regulates that MSA has the right to conduct investigation and settlement of some operations against rules which evolve into accident but of significant hidden danger to safety.

(3) Regulation for the Prevention and Control of Pollution from ships to Marine Environment (hereinafter called Marine Pollution Prevention and Control Regulation) (MPPCR)

MPPCR was signed at the 79th executive meeting of the state council on September 2, 2009, and came into effect from March 1, 2010. The enforcement of the Regulation is for the sake of prevention and control of marine pollution to marine environment by ship and its related activities, and specification of the investigation and handling of ship pollution to marine environmental accident, implementing the principle of precaution first and combination of prevention and control. Article 44 of Chapter 6 of the Regulation stipulates the investigation agency of vessel pollution accident, which is mainly Maritime Administration. Article 45 provides the provisions that the institutions of accident investigation and handling or Maritime Administration should timely, objectively and fairly carry out accident investigation, inquire the scene of the accident, check the relevant ships, ask relevant personnel and collect evidence to find out the cause of the accident. Article 49 regulates that the organization of accident investigation and handling or the Maritime Administration should make Maritime Traffic Accident Report (MTAR) within 20 working days since the end of the accident investigation, which should be delivered to the parties concerned. MTAR should specify basic situation, root cause of the accident and liability of the accident.

(4) Regulation on management of foreign-related maritime casualty or incident safety investigation (hereinafter referred to Investigation Management Regulation) (IMR)

China MSA established the IMR by the official document, namely Maritime Safety [2011] no. 91 on February 21, 2011. IMR is the only domestic legislation of implementation of CIC; many clauses of IMR directly refer to the Chinese versions of CIC. The Article 2 of Chapter 1 of IMR stipulate: "*The Regulation should apply to*

the foreign-related maritime casualty or incident safety investigation" (IMR, 2011), namely the investigation for the foreign-related maritime accident or incident is maritime safety investigation, which is in accord with the nature of maritime investigation advocated by CIC. Article 4 of Chapter 1 names the investigators of foreign-related maritime casualty or incident as "maritime safety investigator", and empowers the maritime safety investigator to work independently and without interference while engaging in foreign-related casualty or incident investigation. In addition, the notification, agreement, and maritime safety investigation report of maritime investigation also obtain detailed stipulations in other parties of IMR, which meet the requirements of CIC as far as possible.

2.2 Definition and purpose of maritime investigation in China

There is no specific definition of maritime investigation within above domestic laws and regulations, and only the MSTL stipulates in Article 43, "*when vessels and offshore installations have the traffic accident, the competent authority should take responsibility for identifying root cause and ascertaining liability*", and Article 15 of IHR regulates that MSA must undertake to conduct investigation of the maritime traffic accidents and then make the MIR including identifying root cause of accident and ascertaining liability of parties. Thus it can be seen that the traditional definition of maritime investigation in China is just referred to that of Investigation and Handling of Communications Traffic Accident on Sea, whose purpose is "identifying causes and ascertaining liabilities". But according to CIC and IMR above, the definition of MSI is "*an investigation or inquiry (however referred to by a State), into a marine casualty or marine incident, conducted with the objective of preventing*

marine casualties and marine incidents in the future. The investigation includes the collection of, and analysis of, evidence, the identification of causal factors and the making of safety recommendations as necessary” (CIC, page 8). Therefore, from IMR on, a new definition of maritime investigation has been added to the traditional maritime investigation in China, which refers to “identification of remote causes and putting forward recommendations as necessary” rather than “confirmation of liabilities”.

2.3 Classification and nature

According to its main purposes, maritime investigation in China can be roughly divided into two types, namely accident investigation (AI) and safety investigation (SI). After CIC took effect on January 1, 2010, China has enacted relevant domestic legislation on the base of basic national situation above the primary maritime investigation mechanism to add foreign-related maritime investigation system. Therefore, from the author’s view, maritime investigation in China can also be divided into foreign-related and non-foreign-related maritime investigation according to ships’ nationality and routes involving marine casualty or marine incident.

2.3.1 Accident investigation and safety investigation

2.3.1.1 Accident investigation

The traditional maritime investigation in China means the Investigation and handling of communications accidents on water, namely AI, which is a kind of investigation of portion of liabilities on base of identifying causes (MTSL, 1984). IHR regulates in its Articles 15 and 16 that China MSA should undertake to conduct maritime investigation after communication accident happened on sea and make MIR including identifying causes and ascertaining liabilities of parties according to the investigation. According to Articles 17, 18, and 19 of IHR respectively, the China MSA can apply administrative punishment, transformation to local procuratorial organs, and immobilize, routes-change operation-stop and other necessary compulsory administrative measures to seafarers, owners, and operators of ships and offshore devices respectively. It follows from above that AI is one kind of maritime investigation of administration mainly.

2.3.1.2 Safety investigation

IMO passed CIC on May, 2005, which is basic and procedural code to SI and took effect on January 1, 2010 as the enforcement of new article XI - 1/6 of SOLAS, 1974. CIC stipulates in its articles that SI should be independent from other investigation, and SI is not to determine liability and partition blame. Therefore, the MIE obtained from SI cannot be adopted into civil lawsuit, criminal lawsuit, and administrative lawsuit which will ensure liabilities of parties. SI is just for the sake of identifying problems and deficiencies of ships or offshore devices and trespasses and omissions of seafarers purely. For instance, the investigation of vessel “Su She 18” involving in collision and submerge is one kind of SI. “Su She 18” grounded and submerged at She Yang port, Jiang Su Province at 21:30 of January 6, 2001, with 12 people on

board falling into water. Only 1 persons got rescued and 9 people lost their lives, 2 people's present whereabouts is unknown. The investigation after the accident indicates that the life-raft is one kind of simple fishing life-raft, which is not up to standard of China Shipping Registering Bureau (CSRB) and has serious defect resulting in air leakage when the crew climbed on it, which led to 11 people sinking and losing their lives. The investigation of identifying the quality hazard of life-raft is a technical investigation obviously rather than other aspects of investigation (Cai & Liu, 2008) .

2.3.2 Foreign-related maritime investigation and non-foreign-related maritime investigation

2.3.2.1 Foreign-related maritime investigation

In order to conduct timely and effective marine casualty and marine incident SI, and perform responsibilities delegated by laws, regulations, and international conventions, China MSA enacted IMR according to CIC, which apply to foreign-related marine casualty and marine incident investigation. According to article 10 of IMR, the scope of SI of foreign-related marine casualty and marine incident shall cover the following:

(1) SI must be conducted into Chinese vessels engaging in international voyages and involved in serious marine accidents in any waters;

(2) Besides the vessels involved in serious marine accidents, SI should also be conducted into Chinese vessels engaging in international voyages and involved in marine casualties and marine incidents which could provide wide lessons to shipping ;

(3) SI should be conducted into the marine casualty and marine incident that happened on foreign vessels involved in Chinese crew members lose their lives or disappear on board, or Chinese seafarers are parties of the accident;

(4) SI should be conducted into the marine casualty and marine incident of foreign-relate vessels happening in territory waters of China or its land waters;

(5) SI should be conducted into the marine casualty and marine incident of happening between foreign vessels and Chinese vessels not engaging in international voyages in territory waters or land waters.

In addition, the IMR mentions in its Article 17 that SI should be conducted into the marine escape cases in territory waters and land waters of China, or the marine escape cases of Chinese operational vessels in other waters after the AI has ensured the escape parties.

2.3.2.2 Non-foreign-related maritime investigation

Non-foreign-related maritime investigation refers to marine casualty and marine incident investigation except foreign-related maritime investigation in China.

The laws and regulations that non-foreign-related maritime investigation adopts have been mentioned above. Here the author draws a conclusion that the

non-foreign-related maritime investigation is one kind of maritime investigation of AI-oriented and SI-supplemented.

2.4 Specific nature of non-foreign-related maritime investigation in China

2.4.1 Specific administrative nature

The non-foreign-related maritime investigation in China is one kind of AI-oriented and SI-supplemented maritime investigation, which has not only obvious administrative qualities but also special administrative qualities. It mainly includes: (1) Maritime investigation is a kind of administrative behavior with a subsidiary nature, which means maritime investigation itself is not independent but an administrative decision depending on investigation, which is a process of collecting evidence and identifying the facts. (2) Maritime investigation is procedural in nature. According to the provisions of IHR, maritime investigation must follow the steps of report, investigation and handling, and the deadline of each step and the required documents are made concrete and detailed. In case of some violation to the legal procedures, the authenticity of the results of the investigation will be questioned and easy to be overturned. (3) Maritime investigation in China has the nature of discretion. IHR stipulates in article 10 that China MSA may request relevant departments and social organizations to take part in the investigation if necessary, which entrusts China MSA with decision on how to implement the power of maritime investigation, including the understanding and mastery of "if necessary" based on the discretion. Also, Article 11 of IHR provides provisions that China MSA

can use the recording, photography, video and other equipment in the investigation, and can take other means of investigation permitted by law. This is the regulation that China MSA shall have the right to decide in what way to implement investigation or choose the most appropriate means of investigation freely in order to maximize the restoration of the truth and improve the accuracy of the accident investigation conclusion (Cai & Liu, 2008/Li & Liu, 2013) .

2.4.2 Specific way of winding up cases

The AI-oriented non-foreign-related maritime investigation of China certainly has the characteristics of AI namely the integration of investigation and handling. Therefore, the end of the non-foreign-related maritime investigation is not the accomplishment of MIR but the administrative handling of parties according to the confirmation of liabilities (Li & Liu, 2013). The main causes behind the specific feature identified are that there is no specialized MI authority as well as specialized MI investigators in China currently. That mean the non-foreign-related MI is totally integrated into the administrative responsibility of China MSA, which has to work according to the laws and regulations. For example, Article 15 of Chapter 4 of IHR regulates that the investigators have right to notify the casualty to local procuratorial organs if the casualty constitutes a major accident; Article 17 stipulates that China MSA has power authorized by law to give warning, fines or withholding and revoking job certificate to Chinese seafarers, pilot, and staff working on offshore installations, and to give warning, fine, or report the negligence to the competent authority of their own countries and crew members belonging to other countries according to the nature of liability and degree of accident. And Article 19 rules that

the owners or operators of vessels and offshore installations should strengthen the safety management of vessels and offshore installations and rectify the safety defects within a limited time. Otherwise, MSA may order the immobilization, routes-change, operation-stop, and other necessary compulsory administrative measures. Only after handling the parties, can the investigation be declared to close.

2.5 Deficiencies of non-foreign-related maritime investigation in China

2.5.1 Insufficient support.

Looking from the current maritime investigation department, the level of technology and equipment is generally low and the necessary tools and equipment are insufficient, the support for investigation cannot get the benefit of the logistics. The primary cause leading to those defects is that non-foreign-related maritime investigation is only an administrative function of maritime administrative department, whose annual budget is restricted leading to insufficient capital investment for investigators do better investigation so as to that the quality of maritime investigation is affected to be worse. At present, the laboratory for evidence identification and cause analysis is in serious shortage. As a result the collected evidence cannot obtain timely and authoritative analysis and appraisal, which results in accident investigation, lead to the finding of the deeper reasons. (MP, 2015)

2.5.2 Poor independence.

As stated above, non-foreign-related maritime investigation in China is not independent but an administrative decision of accountability depending on the outcome of the investigation, which means the investigation is integrated with handling of accident, resulting in some bias emerged in the investigation. From another aspect, the discretion of non-foreign-related maritime investigation in China damages the independence of maritime investigation, because the investigator may be affected by the relationships all round too much to make correct decision about the investigation. To ensure the justice and equity, and play a more important role of non-foreign-related maritime investigation in China, the independence of which must obtain sufficient guarantee.

CHAPTER 3

INDEPENDENCE AND NON-FOREIGN-RELATED

MARITIME INVESTIGATION IN CHINA

This chapter will deliver the independence of non-foreign-related maritime investigation in China by introducing its staffing, organization, and deficiencies of this mechanism, then some advanced western maritime investigation mechanism will be introduced which will be referred within recommendations to solve this problem of maritime investigation in China.

3.1 Investigators and competent authority of non-foreign-related maritime investigation in China

3.1.1 Investigator

The "Regulation on maritime investigator" (trial) promulgated by China MSA took effect on July 1, 2006. From that date, "Maritime Investigator" was named officially by the Regulation, which was previously known as "water traffic accident investigators". "Maritime Investigator" is the state civil servant who is specific to undertake investigation and handling of water traffic accident. According to the Regulation, the maritime investigators will be divided into advanced maritime investigator, intermediate maritime investigators, and assistant maritime investigators.

Intermediate and advanced maritime investigators are once again divided into foreign-related maritime investigators and the non-foreign-related maritime investigators. Since July 1, 2006, in accordance with the Regulation, the maritime investigators mechanism has been implemented all over China, the civil servants engaging in maritime investigation from every maritime authorities ought to be on-duty-with-the-certificate. Related personnel must pass the strict "Maritime Investigator" procedure of training step by step and evaluation to obtain a formal and professional qualification certificate for "Maritime Investigator", those people who don't have the accredited certificate cannot preside over maritime investigation and handling.

From the perspective of the composition of original personnel engaged in maritime investigation, most of them are civil servants who have professional knowledge of related shipping, or legal and administrative management. And the competent department of maritime investigation is local MSA and its subordinate maritime department or department engaging in maritime traffic safety management etc. (Xu, 2007)

3.1.2 Competent authority

The IHR mentioned above in this paper stipulates that the maritime investigation within the jurisdiction of China should implement the principle of maritime authorities of prior territorial jurisdiction and complementary designated jurisdiction.

(1) The investigation of marine traffic accidents happening in harbor district is conducted by the port maritime authority;

(2) The investigation of marine traffic accidents happening out of harbor district is conducted by the nearest port maritime authority or the maritime authority of the port that the ship arrived at the first time;

(3) The investigation of maritime traffic accidents waters happening outside the jurisdiction of China is conducted by maritime authority designated by China MSA;

(4) The investigation of maritime traffic accidents happening in some unknown jurisdiction waters is conducted by maritime authority designated by the common superior authority (Zhang, 2007) .

In addition, the Marine Pollution Incident Handling Regulation (MPIHR) was released on November 14, 2011 by Ministry Of Transportation (MOT) and took into effect on February 1, 2012, which made provisions in Article 10 of Chapter 3 for incident handling as follows: the investigation of marine pollution happening in some unknown site is conducted by the maritime authority whose jurisdictional waters is the site where the pollution was found. The investigation of marine pollution occurring in some disputable waters where may be happening place, discovery site or across jurisdictions is conducted by maritime authority designated by the common superior maritime authority.

The investigation and handling authority will be designated by China MSA when the marine pollution happening outside of the jurisdiction of the People's Republic of China causing pollution to waters within the jurisdiction of the People's Republic of China.

The investigation of serious or more serious marine pollution happening outside of the jurisdiction of the People's Republic of China causing or possibly causing serious influence is conducted by officials sent by China MSA (MPIHR, 2012).

3.2 Advantages and disadvantages of non-foreign-related maritime investigation in China

3.2.1 Advantages

(1) Enforcement cost saving. The remarkable advantage of non-foreign-related maritime investigation is saving the cost of enforcement. The definition of “maritime casualty” and “maritime incident” in Chapter 2 of CIC has the same sentence “*does not include a deliberate act or omission, with the intention to cause harm to the safety of a ship, an individual or the environment.*” (CIC, 2010), which means that SI advocated by CIC does not include investigating maritime casualties and incidents caused by human intentional motive, which will be dealt with by AI. However, it is hard to determine what are the reasons for maritime casualties or incidents at the early stage of investigation. Therefore, the common practice is that AI goes first, followed by SI from the beginning (Cai & Liu, 2009). Fortunately, as mentioned above, the non-foreign-related maritime investigation of China includes two investigations, namely SI and AI, both of which are conducted by the same competent authority, namely China MSA, which has comprehensive function of carrying on both SI and AI from the beginning of investigation. The investigators are the same members all over the process of the investigation, who don’t need to repeat the job for different purposes. In so doing, it would save cost of enforcement compared to the single SI (Cai & Liu, 2007).

(2) High efficiency. The non-foreign-related maritime investigation of China is AI-oriented maritime investigation, which is a combination of investigation and handling of cases. And the competent authority and members of investigation and

handling are the same. So, the process of treating cases has high degree of coherence, and the competent authority is always China MSA, whose AI has obvious administrative quality. The enforcement of safety recommendations can be thorough by the official documents. Therefore, compared with other investigation from other states, it would have high efficiency.

3.2.2 Disadvantages

(1) Limited scope of investigation. At present, based on the specific regulations, IHR and MPPCR, the non-foreign-related maritime investigation works dealing with only maritime traffic accidents and pollution accidents induced by vessels, nevertheless, some injuries and deaths caused by mal-operation on board don't deserve the investigation because IHR and MPPCR don't have specific clauses to investigate that kind of accidents. For instance, some crew member may get hurt when he is doing some hanging cylinder repair maintenance on board, or some crew member may lose his life because of sliding accident of lifeboat within abandon-drill. Neither of the casualties would be investigated by China MSA at last. But the SI initiated by CIC will get down to dealing with those casualties, which is the mandatory work included in CIC. Just depended on this deeply maritime safety investigation, the relevant convention like SOLAS has been revised all the time, so the safety standards continue to improve (Na & Shi, 2010).

(2) Hasty closing cases. "No condemn" is one of the basic principles of SI advocated by CIC, whose fundamental purpose is to protect parties and encourage parties to provide real situation about the casualties for finding out crux reasons of the casualties, and then take appropriate measures to avoid similar accidents from

happening again. Maritime investigators should pay more attention to the SI in the process of investigating accident, from a deeper inside of the casualties, for the sake of putting forward some valuable safety recommendations. Non-foreign-related maritime investigation in China gives priority to punish the parties instead of finding out deeper causes of the casualties and making some recommendations. Due to various and unified cognition of maritime investigation from different levels of MSA, some maritime investigations are declared to be closed after identifying reasons and discriminate liability about some cases rather than summing up the investigation well and making safety suggestions. Or even worse, some other reasons for the accident are not clear as to start to punish parties, which are a serious deviation from the core purpose of investigation (Cai & Liu, 2009).

(3) Faulty impartiality. As demonstrated above, the non-foreign-related maritime investigation in China has mixed investigation and handling of cases together, which could result in biased cognition of treating cases. For example, some investigators may focus on tracing accountability rather than seek for extensive causes and put forward safety recommendations (Cai & Liu, 2007). The members for investigations from every level of MSA form a temporary competent investigation team. Thus it can be seen that the investigators are not independent, who may be too much distracted by other factors like relationships or administrative orders too much to concentrate on finding out deeper causes or making rational judgment. What's worse, some investigators may be corrupt because of discretion within investigation, which seriously damages the prestige of non-foreign-related maritime investigation China (Zhang, 2007).

3.3 Introduction of some systems of western maritime investigation.

Given SI of China started late, the relevant legislative work advances slowly, and the system of safety investigation is imperfect. There will be a general introduction of western maritime investigation systems below, with the hope that it can provide some suggestions for legislation, thereby strengthening the independence of non-foreign-related maritime investigation in China.

3.3.1 British maritime investigation system

According to the British Merchant Shipping Law, 1988, British established the Maritime Accident Investigation Branch (MAIB) in Southampton in 1989, which is responsible for maritime investigation. MAIB is an independent agency of Transportation Division rather than a part of the Coast Guard. The chief maritime investigation report directly goes to the secretary of state. MABI now conduct maritime investigation according to the Merchant Shipping (Maritime Investigation) Regulations, 2012, whose Article 5 stipulates the purpose of maritime safety investigation, which is restricted to prevent accidents happening in the future through the investigation into the reason and the objective environment. Unless necessary, to achieve this purpose of determine the accident liability is not the task of maritime safety investigation. MAIB undertakes to conduct investigation of accidents happening in any waters involving British ships and foreign ships within accidents happening in UK waters; meanwhile, MAIB also has the duty to cooperate with other countries' investigators in joint investigation. Maritime and Coastguard Agency (MCA), a maritime investigation authority existing in parallel with MAIB, undertakes to safeguard maritime navigation safety and protect marine environment.

At the same time, MCA also investigates ships in violation of Regulations, but the investigation is just an administrative investigation. The two organizations, MAIB and MAC are not affiliated to each other, which means that safety investigation is completely separate from administrative investigation.

3.3.2 American maritime investigation system

American MI adopts a distinctive double-track system. The United States Coast Guard (USCG) belongs to the Department of Homeland Security, which is a comprehensive law-enforcement agency at sea, whose function covers profession work equivalent to maritime businesses of China's navy, the Frontier Public Security (FPS), China MSA, National Ocean Service (NOS), Fishery Administration, General Administration of Customs and environmental protection departments. The headquarters of USCG is located in Washington having maritime investigation headquarters within it. According to volumes 14 and 46 of the United States code, USCG is responsible for all maritime investigations, in addition to investigation of the cause the accident, its main purpose is to investigate the implementation of existing laws and regulations and standards, make the administrative punishment of illegal acts, or hand over the violations to the Justice. At the same time, the National Transportation Safety Board (hereinafter referred to NTSB) conducts maritime investigation in accordance with CIC, which just gives conclusion including trespasses without distinguishing any liability. All the evidence materials and investigation report are open to all on its website (www.NTSB.gov). What deserves to be mentioned is that NTSB supervises USCG in aspects of law enforcement (Shang & Liu, 2012).

3.3.3 Canada maritime investigation system

The Canadian Transportation Accident Investigation and Safety Board Act came into force on March 29, 1990, which set up The Transportation Safety Board of Canada (TSB). TSB directly report to Congress and is completely independent of Transportation Department, Coast Guard and other government departments. The commission's task is to conduct independent investigations or hold public hearings of four kinds of transport accidents, i.e. maritime, pipelines, railways and aviation. Maritime investigation is not graded, but in practice, the investigation is discriminated according to the situation of the accident. Investigation report includes the results of investigation, safety defects and safety recommendations. Before a formal report is finished, no one can use the report draft, but after the completion the formal report will be published (Tong & Hao, 2004).

3.4 Recommendations of strengthening independence of non-foreign-related maritime investigation in China

The non-foreign-related maritime investigation in China integrates SI with AI, and AI is the mainstream. There will be many factors interfering SI which may result in neglecting SI. For example, the relevant parties may not provide the truth about the accident, or they may provide some important but forged and doctored evidence to investigators to impede the investigation, because they are afraid that they will suffer from punishment. Maritime investigators may also suffer stresses from all aspects

like human relationships, which compel investigators not to strictly observe the laws and regulations and professional technical requirements for justice investigation. Consequently, the conclusion of investigation may not reflect the real situation of the accident. In addition, if the responsibility judgment is involved in the process of administrative law enforcement, there will be some space for power rent-seeking and the person who has the public right will grasp power to get its own interests. The consequences of power capitalization is the breeding and spreading of public power corruption, which generates a strange phenomenon that those who have really responsibilities will get benefits from mitigating punishment, even will be exempted from responsibility. So from the above analysis, the interference from relevant stakeholders will affect the impartiality and credibility of the results of MSI depending on the degree of independence. And relevant parties or people will also produce controversy about the result of investigation. Therefore, for the sake of impartiality and credibility of the results of SI, it is necessary to strengthen independence of SI of non-foreign-related maritime investigation in China, and make sure SI is independent from other investigations and the whole process is not involved in benefits and liabilities.

3.4.1 Separation between investigation and handling.

In the process of collecting evidence, investigators are responsible for collecting evidence, examining the authenticity of evidence and the probative value problems, and identifying remote factors of marine casualty and marine incidents. Then the investigators will transfer the materials of investigations to the staff members responsible for responsibility determination. In the case of principle, the staff

members responsible for responsibility determination do not directly contact the party inquiring about the evidence. In so doing t, the investigators will not avoid a full investigation into the cause of the accident, because the concern about the result of investigation could affect the partition of negligence and liability. At the same time, the impartiality of the maritime investigation also helps to set up the prestige of the maritime investigation (Hu, Zhou & Tu, 2006).

3.4.2 Draw lessons from foreign-related maritime investigation

Firstly, non-foreign-related maritime investigation in China needs to set up a specialized, normalized, and international maritime investigation team like Port State Control Officer (PSCO), and provide them with training, evaluation, inspiration and supervision. By revising IMR, some relevant provisions can be added in the IMR, especially the supervision of investigation. Secondly, it can introduce the third sector organizations like Experts groups which consist of experienced, talent, and professional experts from maritime colleges and universities, identification test center, and trade associations. These experts are specialized in maritime professional technology, safety management, harbor engineering, and psychology. They can provide the corresponding theoretical support to make up the inadequacy of personnel and professional technology of MSI (Xiao, 2012). Thirdly, it needs to establish an authoritative lab like Shanghai Maritime Investigation Research Center for investigation, which can provide a timely and authoritative report on the analysis of the evidence collected in investigation basically, or the Lab can be set up to

provide simulating research or technique study to support the investigation (MP, 2015) .

3.4.3 Establishment of a new investigation authority

Article 14 of IMR stipulates that SI parallelly coexists with AI in the aspects of foreign-related maritime investigation. As stated above, the subject, process and ascertaining liability of investigation of SI and AI are all the same, so the SI of foreign-related maritime investigation is not essentially independent of AI. To ensure the complete independence of SI in China, the only way is to solve this problem thoroughly by legislation for a new law or to revise the MTSL to construct a new maritime investigation authority of China like MAIB in UK. The new investigation authority takes overall responsibilities for SI of both non-foreign-related and foreign-related maritime investigation. And the current AI is still kept the same. The new investigation authority and China MSA are not subordinate to each other, and each plays its role according to its relevant laws and regulations. At the same time, the classification of accident investigation from the United States also should be imitated to invest limited resources in meaningful accident investigations to compose high quality report so as to promote the authority of MSA (Shang, 2012).

CHAPTER 4

PRIVILEGE OF SILENCE OF SEAFARERS AND NON-FOREIGN-RELATED MARITIME INVESTIGATION IN CHINA

IMR stipulates in Article 15 of Chapter 3, “Before investigating, the investigators should notify parties that the nature and principle kept of foreign-related maritime investigation and the rights and obligations of parties”. Therein, the nature is referred in particular to investigation just for collecting and analyzing evidences, ascertaining root causes and putting forward necessary safety recommendations; the principle is that SI is not going to proportioning defects or ascertaining liability; the rights here are referred in particular to Privilege of Silence (POS) in Chapter 12 of CIC. Nevertheless, MTSL and IHR are two pillars of law in maritime investigation, which delegates China MSA to identify causes and ascertain liability of maritime casualty or incident. Especially, blame culture is the mainstream culture in the domain of maritime investigation in China, so whether the parties have the legal rights and what rights they enjoy under the current mechanism of non-foreign-related maritime investigation in China will be analyzed in the next part (Schröder, 2015).

4.1 POS

4.1.1 Legal analysis

As mentioned in CIC, POS is the right to refuse to answer the interrogation of police or prosecutors, which is enjoyed by the accused or suspected crimes in criminal lawsuit. That means seafarers have the POS right within SI. POS originated in the west, and the background is the Renaissance of the 16th century in European. In 1688, POS took root in UK, whose establishment used to be regarded as "One of the most important milestones in the struggle to human civilization " (Xie, 2007)

For the details of POS, the current legal science has pointed out that there are the "general POS" and the "special POS" existing in China, which are respectively expounded as follows. The "general POS" has six basic rules: First, anyone has the right to refuse to answer questions from others, and others cannot take compulsory measures on anyone who refuse to answer questions by imposing penalties to anyone. Second, anyone has the right to refuse to answer questions which may make them caught in a sin, and others cannot impose penalties to anyone who refuse to answer question for enforcement. Third, any criminal suspect has the right to refuse to answer any questions asked by the relevant personnel, and others cannot compel penalize to anyone who refuses to answer question. Fourth, any criminal defendant cannot be forced to testify or to answer questions from the defendant seat in the trial. Fifth, anyone who faces criminal charges cannot be questioned about the accused crime. Sixth, the defendant should not get the negative evaluation just because he fails to answer questions in the pre-trial or to testify in the trial. The understanding of POS in UK takes this view as above.

The "special POS" points in particular to the specific criminal suspects and criminal defendants who have rights to refuse to respond to the official questions or to remain completely silent in the criminal litigation process remaining silent and refusing to answer specific problems cannot be used as evidence against the suspect and the defendant in principle; the statements obtained by such methods as infringing on the

rights by the spirit force or physical force cannot be used as guilty evidence. (Sun, 2000)

4.1.2 Application of POS in China

China had approved the International Covenant on Civil and Political Rights (ICCPR) on October 5, 1998, Article 14 of ICCPR stipulates that anyone who has the criminal prosecution shall not be compelled to make testimony against him-self or compelled to confess a crime. As a contracting state, China has obligations to fulfill the POS (Sun, 2000). Until May 14, 2012, China revised the Criminal Procedure Law of the People's Republic of China (hereinafter called Criminal Procedure Law) (CPL) roundly and significantly based on the current practice of Chinese criminal judicial field and the trend of development of the international community. After the revision, CPL 2012 clearly states the need to "respect and safeguard human rights" for the first time, meanwhile, it also requires not to compel anybody to confess a crime by his testimony. In addition, a series of rules of the "illegal evidence exclusion" have been added in that revision, which provide the guarantee to implement "no self-admission of guilt". Chapter 5 of CPL has also points out that the process of collecting evidence should be in accordance with the procedures and anyone can't be compelled to prove that he is guilty. It should exclude the illegal evidence, which may not be used as the evidence for prosecution and judgment (CPL, 2012).

4.2 Current status quo of POS of seafarers in non-foreign-related maritime investigation in China

The current non-foreign-related maritime investigation in China is AI-oriented, which is one of administrative behaviors of China MSA. The administrative behaviors can't be equipped with enforcement effect unless they comply with relevant laws and regulations (Li & Liu, 2013). So, what rights seafarers enjoy within non-foreign-related maritime investigation of China can be seen from the laws and regulations.

(1) Administrative Penalties Law of the People's Public of China (APL)

APL took effect on October 1, 1996, whose Article 37 rules that the law enforcement personnel shall not be less than two people when the administrative authority conduct the investigation or inspection and shall show the certificates to the parties or relevant persons. The parties or relevant persons should truthfully answer questions, and assist in the investigation or inspection, rather than obstruct questioning or inspection for making record.

(2) Maritime Traffic Safety Law (MTSL)

MTSL came into force on January 1, 1984, and Article 42 stipulates that vessels and offshore facilities involved in traffic accidents should submit the accident report and related materials to the competent authority and accept the investigation and handling. The parties and relevant personnel of the accident must report the field conditions and the plot related to the accident to the competent authority in the investigation.

(3) Maritime Traffic Accident Investigation and Handling Rules (IHR)

IHR took effect on May 3, 1990, which stipulates in Article 12 that the persons being investigated must honestly state the relevant circumstances of the accident and provide authentic papers and materials. Item 6 of Article 29 rules that the competent

authority has rights to punish those who deliberately concealing facts or provide false evidences in the investigation. If the case constitutes a crime, the judicial authorities will give criminal sanctions in accordance with the law (Song & Gao, 2007).

By conclusion of the above laws and regulations, no clauses about POS in maritime investigation can be found in current China.

4.3 Rights of seafarer under international conventions

(1) Guidelines for Fair Treatment of Seafarers after a Maritime Accident (FTSG)

In order to preferably protect rights of crew members, IMO enacted the FTSG in its 91st law committee's meeting. The FTSG protects basic human rights and economic rights in the process of MI, and stipulates that the basic living of crew members like accommodation and food must be satisfied. The seafarers, who are detained out of the necessity of investigation should be safe from intimidation and be guaranteed not to suffer attack and retaliation after cooperation with investigation. Article 13.2 of Part 7 stipulates that the competent authority of investigation should notify seafarers adequately of the rights of no self-admission guilt or POS. Article 13.3 provides provisions to seafarers that they can enjoy legal consulting before stating to investigators from port state, costal state, and flag state.

(2) United Nations Convention on the Law of the Sea (UNCLOS)

UNCLOS is an international document of constitution, which stipulates penalties and respects to recognize right in its Article 230. Article 230 points out that the right of the informant should be respected when vessels involved in violation get penalties. Article 292 also stipulates that the vessel and its crew members should be released as

soon as possible, and in a certain condition, the application could be sent to court, which cannot delay to handling it.

(3) Maritime Labor Convention, 2006 (MLC)

In order to provide crew members with decent work and living, the International Labor Conference passed MLC, 2006 to regulate bottom salary, working and rest time, paid leave, medical care, and daily diet of crew members. MLC which came into force on August 20, 2013 considered to be the “bill of rights” and “the forth” pillar of international maritime convention system.

(4) Code of International Standards and Recommended Practices for A Safety Investigation into A Marine Casualty or Marine Incident (Casualty Investigation Code) (CIC)

The CIC shall conduct a comprehensive and systematic regulation on MSI. Some regulations related to fair treatment of seafarers and protection of rights and interests of seafarers concentrate mainly on collecting evidence in MSI, which draw lessons from FTSG. Chapter 12 rules some details need to be paid attention TO while obtaining evidence from seafarers. Article 1 of Chapter 12 stipulates that if seafarers need to provide evidence to MSI, the process should start as soon as possible, so that the seafarers could get approved to return to their ships or be repatriated as soon as they can. Article 12.2 stipulates that: *“All seafarers from whom evidence is sought shall be informed of the nature and basis of the marine safety investigation. Further, a seafarer from whom evidence is sought shall be informed, and allowed access to legal advice, regarding:*

.1 any potential risk that they may incriminate themselves in any proceedings subsequent to the marine safety investigation;

.2 any right not to self-incriminate or to remain silent;

.3 any protections afforded to the seafarer to prevent the evidence being used against them if they provide the evidence to the marine safety investigation.” (CIC, 2010)

By conclusion, the POS of seafarers has been defined clearly in the international laws and regulations of maritime investigation above. As a contracting country, China needs to implement POS for seafarers gradually in the days to come.

4.4 Challenges and proposals of POS in China

4.4.1 Challenges

At present, some advanced technical devices and technological means have been applied to maritime investigation, but due to maritime casualties and incidents that happened in some special sites and periods, the field evidence can't always be collected successfully at the first time. So, the inquiry of parties is still the dominate way to conduct maritime investigation. For example, more and more collision accidents happen between merchant ships and fishers in coastal waters. Compared with merchant ships, the fishers have limited communicational devices, making it difficult to report the accident on time. What's worse, the merchant ships always escape for some reasons after an accident happens. Therefore, the maritime authority just ensures the suspected ships primarily by AIS or VIS, then the investigation enter into the critical stage of inquiring parties. If parties refuse to cooperation, the maritime investigation will progress slowly or even stop (Sun, 2000).

4.4.2 Proposals

First, the subject of maritime investigation should improve investigation skills and tools, without depending on inquiry of parties too much. As the trend of large-scale and intellectualization of vessel emerges, most intelligent electronic devices such as AIS, ECDIS, and VDR have been widely used on board, which provides convenience for maritime investigation. Therefore, it is necessary to establish a national maritime investigation database center or evidence analysis center, to speed up the exploitation of electronic device like VDR Read software; those are methods to improve the authority and scientificity of maritime investigation (Shang & Liu, 2012). Second, the maritime authority should enact some regulations to supervise POS. On the one hand, these regulations can give the responsibility party a heavy psychological pressure, so that in the process of investigation, the parties often reconsider the price of POS as a result of this kind of situation. On the other hand, these regulations have no effect on the actual parties without responsibilities, who can completely enjoy their own POS where they do not have trouble back at home. Thus the POS gives full play of the function of human rights safeguard. By conclusion, the regulation of “aggravating conditions” maintains the fairness and justice of seafarers preferably just by the positive and negative effect mechanism (Jin & Ding, 2010).

4.5 Obligations of seafarers in maritime investigation

Article 13.4 of FTSG stipulates the obligations of seafarers that in considering the no self-admission guilt, seafarers shall truthfully provide as much relevant information as possible to port states, coastal states, and the flag states for cooperation with investigation. Therefore, to have a deep understanding of seafarers' POS, it cannot rigidly think of that in the maritime investigation. The seafarers enjoy absolute and unlimited POS; in other words, the seafarers ought to enjoy POS as well as exercise the obligation of cooperation with the investigation. But if seafarers refuse to receive any investigation, and to make any statement related to investigation, the POS will be abused, whose function of protecting the right of seafarers would detract accordingly (Wu, 2014).

CHAPTER 5

LEGAL EFFECT OF MARITIME INVESTIGATION EVIDENCE AND NON-FOREIGN-RELATED MARITIME INVESTIGATION IN CHINA

Through the above analysis, SI of China will fully conform to the requirements of CIC. The ideal approach is just like the following. Firstly, to timely enact a domestic law or regulation in accordance with CIC and construct a complete set of systematic procedures of supporting the effective implementation of that laws or regulations. Secondly, the corresponding requirements of CIC will be adopted into the current laws and regulations by making appropriate modifications, but the two methods will take a long time to fully achieve their goals because of involving wide stakeholders and difficult modification (Li, 2011). Therefore, the current work we can do, on the one hand, is constantly improving foreign-related maritime investigation by trying our best to realize the transition from administrative rules to the national laws and regulations cited by SI (already discussed above). On the other hand, the job is constantly straightening out AI related legal relations in China, including the legal effect of Maritime Investigation Evidence (MIE).

5.1 MIE

5.1.1 Definition and classification

5.1.1.1 Definition

After reviewing the relevant laws and regulations, there is no clear definition of MIE within the laws and regulations such as MTSL and IHR. Up to November 28, 2001, China MSA issued the Guidelines for Investigation and Handling of Maritime Traffic Accident (IHG). Section 2.0 of IHG defines the MIE as the materials of maritime traffic investigation, which are all facts to prove the true conditions of maritime traffic accident. IHG also gives the declaration of the nature of MIE in section 2.1, which is that the evidence collected in maritime traffic investigation is the evidence requested by the Administrative Procedure Law (APL).

5.1.1.2 Classifications

As mentioned above, MIE has the same classification as the evidence requested by APL, which will be introduced as follows:

(1) Documentary Evidence (DE)

DE is the objective data expressed as the content of the text, symbol, design, etc. to prove the fact that need certificate, which is also the writing material whose content proves the fact.

According to whether the state administrative authorities exercise their functions and powers or not, the DE can be divided into the official DE and the non-official DE.

The official DE refers to the document that the administrative authorities exercise their functions and powers within the scope of jurisdiction. In maritime investigation, the documentary evidence generally concludes the Seaworthiness Certificate and Vessel Survey Certificate Book issued by the ship survey authorities, the Minimum

Safety Manning Certificate and Port State Control Report issued by Maritime Administrative Authorities, and Oil Book approved by Maritime Administrative Authorities. Non-official documentary evidence refers to any other documents except official documentary evidence, for instance, navigation log, charter party, mate's receipt, bill of lading, and loading documents are all non-official documentary evidence related to the accident voyage.

(2) Physical Evidence (PE)

PE refers to the materials and the traces of material with the characteristics, which can prove the real situation in the lawsuit; PE is a kind of independent form of evidence.

IHG stipulates that the physical evidence collected in the investigation usually includes: The scene photos, the photos of any machinery, equipment, tools, fastening devices related to the accident; Damaged parts photos; machinery, equipment, tools, and the photos of damage or broken parts of chain, wire rope, the rope or fastening device related to the accident; the sample pictures and scratch photos of the relevant vessels or installations or touch objects on strip damage or scratch the surface of the paint material in a collision or contact damage in the accident; the photos of any samples of the goods which endanger to the safety of ship and human because of a mobile or other reasons.

(3) Audio-visual materials

Audio-visual materials refer to the materials of information recorded and stored by audio, video, computer or other electromagnetic means.

The specific forms of audio-visual materials in maritime investigation are various in content and range, such as voyage data from Vessel Traffic Service (VTS), Voyage

Data Recorder (VDR) on board, audio of Very High Frequency (VHF), the marine ID record of Automatic Identification System (AIS), etc. As the development of technology, the kinds of audio-visual materials on board will be more and more.

(4) Witnesses Testimony (WT)

WT is the statement of the witness in accident investigation on their perception of a case to the competent authority of the accident investigation. Compared with the testimony of witnesses of general litigation, the testimony of witnesses in accident investigation is unilateral; that is to say, the witnesses who give testimony in most cases are the crew members and the captain of the ship.

(5) Expert Conclusion (EC)

Identification refers to the case analysis, identification and judgment conducted by the identifier based on scientific knowledge or expertise.

In maritime accident investigation, the expert conclusions are divided into the following kinds:

1 The EC of identification directly determine the case the relevant people or things. For example, the paint debris of collision is determined as the relic of colliding escaped vessels after a collision.

2 The EC to determine the existence of the facts having or not: to determine whether there is a fact according to the phenomenon reflected by the appraisal material like the identification of altered and damaged log book. It indicates the fact of the content which has been altered or damaged, which will restore the facts reflected by the files before being altered or damaged.

3 The EC to determine the extent of the facts: to determine the extent of the facts according to certain standard, such as the damage identification of the goods and the ability appraisal of crew's practical operation.

4 The EC to determine the cause and effect of the facts: the conclusion of analysis and judgment to make some kind of truth or to cause some kinds of facts happening like the simulation research conclusion of vessels' collision.

(6) Litigant's statement

The litigant's statement refers to the statement made by the accident parties who provide some information about the case acquainted by themselves to investigators in accident investigations like the detailed statement of the process of the accident in MTAR.

(7) Check record, scene record, field notes, etc. like the Table of Field Check on Maritime traffic Accident.

5.1.2 Competence of evidence of MIE in maritime litigation

In the national work conference on water traffic accident investigation, the former vice president of China MSA, Mr. Liu Gongchen stated that the maritime investigation has great particularity, with not only a simple sense of the accident investigation but also one kind of investigation depended by the subsequent civil and criminal investigation (INTERNET, 2009). While the maritime investigation evidence may involve three kinds of lawsuit:

(1) The administrative lawsuit proposed by refusing to accept the specific administrative actions such as executive confirmed, administrative penalty, and administrative arbitrariness; (2) The criminal procedure of traffic accident crimes caused by maritime traffic accidents; (3) The civil action of maritime traffic accident (Yang, 2007).

However, most cases caused by maritime traffic accident are civil action, so the next part will just explain whether the MIE has the qualification of collecting evidence in civil action or not:

(1) The MIE is subject to the form civil action evidence like the Inquiry recorder of maritime traffic accident investigation is one kind of official documentary evidence request in civil action.

(2) The purpose of the “identify causes” of maritime investigation is in accord with the “ facts identifying” of maritime litigation, what’s more, the MIE is product by the maritime administrative authority which follow the strict laws and regulations and the rational and scientific procedure. The advantage of knowledge and technology in the professional domain of maritime investigation also guarantees the higher credibility of maritime investigation evidence.

(3) The Instruction of Specification of the Maritime Traffic Accident Investigation and Maritime Trial Work is enacted by China MSA and the fourth chamber of supreme people’s court civil trial of the People's Republic of China stipulates that the maritime investigation evidence signed by the maritime traffic accident parties in maritime investigation can be adopted by the maritime court as the admissibility of evidence, unless there are some contrary evidence and reasons; MIR and its conclusions and opinions can be used as litigation evidence, unless there are sufficient evidences and reasons to overthrow those maritime investigation evidences.

However, it should be noted that the MIR is not the only evidence to finalize the accident.

Therefore, the MIE has the qualification of evidence of civil action from the essence as well as the form.

What's more, as the separation of SI from the AI and the separation of handling from the investigation of accidents in AI come true, the process of collecting evidence in MI will be perfected continuously, so that the legal effect of MIE will be promoted constantly.

5.2 The legal issues of MIE from the practice of non-foreign-related maritime investigation in China

5.2.1 Instability

No regulations in the MTSL and IHR or the regulations of MTSL and IHR are too simple to cooperate with practical operation. MTSL just only stipulates that the competent authorities undertake to conduct investigation of maritime traffic accidents involving vessels and offshore facilities, while many regulations in IHR are too simple and outdated to correspond to reality. So based on both conditions above, the level of legal basis of maritime investigation and handling is too low to influence the stability of MIE.

5.2.2 Hysteresis quality

The legitimacy of new generational electronica product has not been defined in relevant laws and regulations. According to the provision of Article 12 of the Provisions of Supreme People's Court on Several Issues in Administrative Litigation Evidence, computer data, audio and video all belong to the audio-visual evidence stipulated by Item 3 of Article 31 of the Administrative Procedural Law of China. So how to position the common electronic evidence in the process of maritime investigation such as AIS ship motion trajectory, VDR store information and GPS trajectory depends on its content forms and the probative means. As for the VDR evidence, although it is a kind of material evidence from its form, all kinds of information of record and navigation data recorded by the recording equipment of VDR is the form of electronic data stored in a dedicated memory, which is analyzed only through the special equipment to play the role of its proof. Thus, VDR equipment will be regarded as a special material electronic evidence which can be converted into audio-visual material under certain conditions (Yu, 2013).

5.2.3 Ambiguous validity of expertise

The legal status of conclusions of expert and simulation experiment in maritime investigation has not been determined. The conclusion of expert is some individual opinions and views to special issues put forward by some experts who have corresponding theoretical and practical experience in some fields. This kind of opinions and the views are the revelation of the inevitability of the law of

development and causal relationship of things under the specific circumstances and some conditions; simulation experiment is not a kind of demonstration aiming at the fact but one kind of analysis method to reveal the inevitability of the accident and help the accident investigators by collecting some materials related to the accident.

5.3 Recommendations to the modifications of relevant laws and regulations of non-foreign-related maritime investigation in China

5.3.1 Modifications of relevant laws and regulations

(1) Add the definition of maritime investigation evidence to MTSL. Firstly, it could define the maritime investigation evidence as the truth to prove the facts of accidents. Secondly, it could take open-ended rules for the form of evidence.

(2) Add specific provisions to determine the legal statues of the simulation experiment and the conclusion of expert into MTSL.

5.3.2 Improvement of procedure of collection of MIE of non-foreign-related maritime investigation in China

(1) The separation between collection and judgment adopted in maritime investigation. In the process of collecting evidence, accident investigators are

responsible for collecting evidence, examining the authenticity of evidence and the probative value problems, and then will transfer the materials of evidences to the staff members responsible for cause identification and responsibility determination.

(2) The strengthening of supervisions and sanctions for the actions of rejecting proof and fabricating evidence and obligatory administrative responsibilities for rejecting proof and fabricating evidence in MTSL.

(3) Add the provisions for limited public invocation of MIE in MTSL. The essence of maritime investigation is maritime traffic safety management; the scope of maritime investigation is wider than that of maritime court. There may be some issues involving parties' business secrets, maritime administrative management and foreign affairs which are inappropriate for publication. Therefore, it shall add the provisions for limited public invocation of those materials in MTSL, just like the Freedom of Information Act of 2000 of UK, which stipulates that the publication of maritime evidence can't affect any commercial profits of any body. The purpose of doing that is to protect the parties' benefits so that the parties can throw away the scrupulosity to best cooperate with investigation.

(4) Add clauses for publication, transparency, and publishing and execution of MIR in IHR. In 2002, China MSA provided provisions for publication and transparency of MIR. For the sake of publishing and execution of parties of safety recommendations of MIR, some clauses can be added in IHR to stipulate that the recommendations can be published in appreciate forms, and maritime administrative authority should supervise the implementation of safety recommendations and relevant shipping departments should cooperate with the inspection to perfect their safety management (Hu, Zhou & Tu, 2006).

CHAPTER 6

CONCLUSION

After the implementation of CIC, China has made some improvements and attempts in maritime investigation. The most remarkable change is establishing the foreign-related maritime investigation added to the traditional maritime investigation, just on the basis of the concept of “foreign-related maritime investigation”, the author has put forward the concept of “non-foreign-related maritime investigation” and discussed some relevant legal issues of non-foreign-related maritime investigation, such as independence, MIE, and seafarers’ rights and obligations, and also has given some recommendations to solve those legal issues in this paper, such as establishing laboratory, expert group, and a new investigation authority. The basic purpose of the paper is to find the solution from the perspective of laws and regulation to ensure the independence, seafarers’ rights and obligations, and legality of MIE of non-foreign-related maritime investigation in China. At the same time, through the analysis of other mature mechanism of maritime investigation in some developed shipping countries, we propose that the maritime investigation in China should draw lessons, so as to realize the goal of the integration with international conventions as soon as possible.

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