

China contributing more to solving global sea transport disputes

LAW STUDIES

By ZHANG WENGUANG

Before this year's Two Sessions [the annual sessions of the country's national legislature and political advisory body that are usually convened in early March to decide on important state affairs], Xu Lirong, a deputy of the National People's Congress (NPC), proposed that more "Chinese elements" should be applied to solving disputes revolving around international maritime transportation and trade. To upgrade itself from a major country to a powerhouse in sea transportation and maritime affairs, China must enhance its discourse power in the international sea transportation and maritime rulemaking process and its influence in how relevant commercial affairs are addressed.

Shipping center moving eastward

China is a powerhouse of shipping and shipbuilding. About 95% of China's goods sold overseas in 2020 were transported by sea. The country's sea transport capacity ranks second in the world. China is home to eight top-ten ports with the world's largest cargo throughput and seven top-ten ports with the largest container throughput.

According to the *2021 Xinhua-Baltic International Shipping Center Development Index Report*, Singapore, London, Shanghai, Hong Kong Special Administration Region (SAR), Dubai, Rotterdam, Hamburg, Athens/Piraeus, New York/New Jersey, and Ningbo are the top ten global shipping hubs of the year, further evidence that the international shipping center is moving eastward. The landscape of international sea transportation that was traditionally dominated by the West is now changing, and Asian countries find themselves closer to the center of international rule-making.

However, more transactions also mean more conflicts. Considering the cost, efficiency, and cultural backgrounds, the most ideal place to settle disputes is where the transaction takes place. This means China is presented with a historical opportunity in the field of resolving sea transportation disputes.

Three 90% phenomena

The process of addressing international commercial disputes mainly involves applying, reiterating, interpreting, implementing, and adjusting the rules of international economics and trade. As the international shipping transportation center moves to the East and as China enhances its composite national strength, a consensus in the international community is that China should shoulder more responsibility in settling disputes involving international sea transportation.

Ranking	2021	2020	2019	2018	2017
1	Singapore	Singapore	Singapore	Singapore	Singapore
2	London	London	Hong-Kong	Hong-Kong	London
3	Shanghai	Shanghai	London	London	Hong-Kong
4	Hong-Kong	Hong-Kong	Shanghai	Shanghai	Hamburg
5	Dubai	Dubai	Dubai	Dubai	Shanghai
6	Rotterdam	Rotterdam	Rotterdam	Rotterdam	Dubai
7	Hamburg	Hamburg	Hamburg	Hamburg	New-York
8	Athens/Piraeus	Athens/Piraeus	New-York/ New-Jersey	New-York/ New-Jersey	Rotterdam
9	New-York/ New-Jersey	New-York/ New-Jersey	Houston	Tokyo	Tokyo
10	Ningbo	Tokyo	Athens/Piraeus	Busan	Athens/Piraeus

The top 10 international shipping centers listed in *Xinhua-Baltic International Shipping Center Development from 2017 to 2021*. Photo: XINHUA SILK ROAD INFORMATION SERVICE

Legal Daily pointed out that three phenomena stand out in the settlement of disputes concerning Chinese enterprises and foreign parties: over 90% of the Chinese enterprises' contractual disputes involving foreign commercial affairs opted for international commerce arbitration; 90% of the clauses for settling international commerce arbitration opted for non-Chinese arbitration institutions; when two parties have a dispute, over 90% of the Chinese enterprises lost the international commerce arbitration. This means China's judicial credibility and arbitration credibility need to be improved, and China-invested companies are still in a weaker position for negotiations, and that they have not yet mastered the rules of international commercial affairs.

Therefore, Philip Yang, a member of the Expert Committee of China International Commercial Court of the Supreme People's Court of China, and honorable chairman of the Hong Kong International Arbitration Centre, called on enterprises in the Chinese mainland to fully understand international commercial rules, when he said in a speech: "A complete set of rules for the game have been established in the international commercial society over the past hundreds of years, and it is somewhat different from the rules in the Chinese mainland. Any company that fails to play by the rules due to lack of knowledge will be punished, or even pay a heavy price."

Maritime dispute resolution center

The *2021 International Arbitration Survey* reveals that 90% of respondents believed that international arbitration is the preferred method of resolving cross-border disputes.

For enterprises, it is essential that a dispute settlement mechanism should be convenient, predictable, and fair. That is why London deals with the most arbitration cases in the world –over 80% of the entire maritime arbitration market

worldwide. The secrets to London's success include an adequate legislative guarantee, flexible resolution procedures, neutrality, confidentiality, party autonomy in the choice of working language and law, professionalism of law practitioners when dealing with important and complex cases, judicial safeguards, and satisfactory sites and services.

Brexit was considered by some countries as a golden opportunity to develop their international maritime arbitration. Nevertheless, many years have gone by and London remains the champion. Take 2020 for example, members of London Maritime Arbitrators Association received 3,010 arbitrator appointments, more than in any year since 2015.

Si Yuzhuo, former president of the Dalian Maritime University, once said that an international arbitration center cannot be built; it takes shape gradually when everything is right. Si said that software is every bit as important as hardware for an international arbitration center. His remarks were widely agreed within the legal community.

The Arbitration Survey revealed that the three most preferred seats for arbitration are London, Singapore, and Hong Kong SAR, indicating that international arbitration centers in Asia have become more warmly received. Singapore gained an upper hand thanks to its great geographic position, enabling business environment, an arbitration legal framework that has kept pace with the world and the times, a professional and supportive judiciary, preferential treatment to arbitrators, and first-class legal infrastructure. Singapore also spares no effort in supporting its arbitration industry, such as by putting in place preferential measures for visas, taxes, and rent to attract overseas agencies.

According to the "SJ's blog" on the website of Hong Kong SAR's Department of Justice, the city became an international legal hub for its stable business environment, free capital flow, low tax rate, simple tax system,

and in particular, a stable legal system. The Hong Kong SAR government has also allocated certain areas of the city for over 20 local, regional, or international legal organizations. These areas have become legal hubs for the city's commercial centers. All the examples above show that policy guidance and support are key to accelerating development and even overtaking in the race.

"Chinese elements"

One of the objectives of injecting more Chinese elements into global maritime dispute resolution is to seek a greater say in the field of rule-making. China should turn its hard power into greater influence and power of discourse in order to make international maritime rules fairer and more reasonable.

First, we should exercise jurisdiction in accordance with the law and actively promote the development of international shipping rules. The formulation of international rules is the result of international strategic interactions and a reflection of each country's political, economic, and diplomatic strength. China should play an active role in international rule-making in order to defend China's interests. With rules already taking shape or taking effect, it is never easy, and it might not be in China's interest, to overthrow the rules and start all over. As the country that hosts the largest number of maritime judicial bodies and handles the most maritime cases, China can have a say on the interpretation and application of international agreements through the adjudication of cases, promote the formation and development of international customs and the basic principles of international law, and even fill the gaps in the area of international law.

Second, we should enhance the domestic legal system and promote its application in foreign-related cases. The revision of the *Maritime Code* and the *Arbitration Law* has been placed on the legislative agenda of the Standing Committee of the 13th NPC. When amending

the law, China should adhere to international standards, respond to development in practices in order to strengthen the attractiveness of Chinese law, and promote the application of Chinese law in the resolution of foreign-related disputes.

Specifically, China should consider applying Chinese law more frequently in the area of liner shipping where China faces the problem of weak negotiation capability. In the area of ship chartering which emphasizes contractual freedom, companies, associations, and chambers of commerce should be encouraged to adopt a standard contract that is compatible with Chinese law, litigation, or arbitration. In addition, given the unique role of temporary arbitration in settling disputes in shipping and other industries, the Arbitration Law should be amended in order to create greater freedom.

Third, we should step up the opening-up effort and strive to enhance the credibility of China's judiciary and arbitration. Credibility is the lifeline of a judiciary and arbitration, and it is the key to attracting foreign parties to turn to China for dispute settlement.

China should always attach importance to building credibility and pay attention to the results of parties' voting with their feet. In the judiciary field, there is a broad consensus that credibility is based on justice which will be strengthened through openness. In the field of arbitration, in addition to aligning with international standards, arbitration institutions should also strengthen the transparency of arbitration, strictly implement the mechanisms of arbitrator information disclosure and arbitrator recusal, and establish standardized and transparent rules for the appointment of arbitrators to ensure fairness and impartiality.

Fourth, we should give full play to the synergy effect and build a shared community for maritime legal professionals. As a major shipping, shipbuilding, port, and trading country, China has huge potential in the maritime dispute resolution market.

Given market patterns and its talent, London will remain the center of international maritime dispute resolution for a long period of time. A great deal of litigations will be conducted in the UK and most contracts will remain subject to London arbitration and English law. This is the reality we have to recognize. For Chinese arbitration institutions, the immediate goal should be to bring Chinese companies back to China for foreign-related disputes, while the longer-term goal is to attract more international maritime disputes to China.

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