

China Maritime Law Association's Response

to the CMI Questionnaire on Vessels Nomenclature¹

Q.1 Is there a statutory, regulatory or other definition in your legal system which conveys a meaning similar to the above definition of either "Vessel" or "Ship"? If so, which is (are) the terms and their corresponding definitions? Please provide details of all qualifiers to such definitions, such as minimum length, tonnage, registry, design, intended trade or usage, etc.

In China, quite a few statutes and regulations governing matters relating to ships or vessels provide definitions of vessels or ships for their respective purposes. Some definitions exclude vessels that are below a certain tonnage or length; others focus on the intended usage in which the vessels are engaged. It is generally accepted that the term “vessel” bears a wider connotation than “ship”. In statutes and rules of a private law character, the term “ship” is used which focuses on the function of carriage of goods and passengers. In administrative regulations, the term “vessel” is used where the scope of application is intended to extend beyond the meaning attributed to “ship” in private law legislation.²

Details are as follows:

1) The Maritime Code of the People's Republic of China, 1993 (CMC)

Article 3 of the CMC has the following definition:

“Ship” as referred to in this Code means sea-going ships and other mobile units, but does not include ships or craft to be used for military or public service purposes, nor small ships of less than 20 tons gross tonnage.

¹ The content of this response letter has been approved in the group discussion of faculty members from Dalian Maritime University Law School. The author shall thank Professor Si Yuzhuo and Professor Proshanto K. Mukherjee for their valuable comments on the revision of this letter.

² Professor Si Yuzhuo takes this view.

The term ‘ship’ as referred to in the preceding paragraph shall also include ship’s apparel.

Note:

It is generally accepted in China that the CMC mainly governs the relationship between ships and relationships arising from sea carriage. These relationships governed by the CMC are mainly between parties in equal positions. Thus, the CMC basically possesses a private law character and belongs to the civil and commercial law branches in terms of the Chinese legal system.

It can be seen from the above definition that the CMC looks at the following three elements and excludes certain ships from its application: A. Usage. The ships used for a military purpose and/or a public-service purpose are excluded from the definition of “ship” under the CMC, unless otherwise provided for in particular chapters. B. Tonnage. The CMC does not govern any ships below 20 gross tonnage, unless otherwise provided for in particular chapters. C. Navigation. The CMC generally governs only sea-going ships. Those that do not operate at sea are not subject to the CMC.³

Outside the framework set by article 3, there are some exceptions when it comes to the scope of ships falling under the application of the CMC. Firstly, in the area of ship mortgages, vessels under construction, which have not been completed and therefore are not real article 3 vessels, will also be considered a ship for the purposes of the CMC (see article 14). Secondly, with regard to salvage and collision, inland-water vessels and small vessels less than 20 gross tonnage, which normally should be excluded by article 3, will come within the scope of the CMC, if they are involved in salvage relating to, or collision with, an “article 3” ship (see articles 165 and 172 of the CMC).

2) The Special Maritime Procedure Law of the People’s Republic of China, 2000

³ The word “navigation” in this response letter does not distinguish between self-propelled and non-self-propelled movements. Though some have argued that a ship for the purposes of the CMC are limited to self-propelled ships, others have taken a broad view and believe that non-self-propelled vessels are also governed by the CMC.

(“SMPL”)

Article 6The territorial jurisdiction of the maritime actions listed hereunder shall be determined as follows:

.....

(3) an action arising from a charter-party dispute of a seagoing ship shall be under the jurisdiction of the maritime court of ...;

...

(5) an action arising from a dispute over the service contract of the crew of a sea-going ship shall be under the jurisdiction of the maritime court of ...;

...

(7) an action arising from a dispute over the ownership, possession, employment and maritime lien of a sea-going ship shall be under the jurisdiction of the maritime court of

Note:

The maritime courts in China accept actions brought in respect of disputes relating to maritime torts and contracts and other maritime disputes such as those in relation to possession and employment of ships and property rights therein (article 4 of the SMPL). In hearing and determining maritime cases, the maritime courts, the higher people’s courts of the places where such maritime courts are located and the Supreme People’s Court must apply the SMPL (article 5 of the SMPL).

In determining the territorial jurisdiction of a maritime court in relation to disputes involving ships, article 6 of the SMPL uses the description “sea-going ship” as a qualifier to limit the scope of the disputes that fall under this article. But the SMPL does not provide a definition of “sea-going ship”. It is in the *Interpretation of the Supreme People’s Court on Certain Issues Concerning the Application of the “Special Maritime Procedure Law of the People’s Republic of China”* (Fa Shi [2003] No. 3), that the Supreme People’s Court has defined the term “sea-going ship” as used in the SMPL. Article 3 of the Fa Shi [2003] No. 3 states that “sea-going ship” referred to in article 6 of the SMPL means a ship that is suitable for navigation at sea or navigable waters adjacent to the sea. Thus, navigability of a ship, is the key element used to distinguish disputes falling under the SMPL from disputes pertaining to other

legislation.⁴

3) The Maritime Traffic Safety Law of the People's Republic of China, 1984 (referred to as "MTSL")

Article 2

This Law shall apply to all vessels, installations and personnel and to the owners and managers of such vessels and installations that navigate, berth or operate in the coastal waters of the People's Republic of China.

Article 50

For the purpose of this Law, the definitions of the following terms are:

...

"Vessels" means all types of displacement or non-displacement ships, crafts, seaplanes, submersibles and mobile platforms.

"Installations" means all types of surface and underwater structures or installations, whether fixed or floating, and fixed platforms.

...

Note:

The MTSL was enacted for the purpose of strengthening the control of maritime traffic; ensuring the safety of vessels, installations, human life and property; and safeguarding the rights and interests of the state (see article 1 of the MTSL). The MTSL is administrative law (regulatory law in common law jurisdictions and international convention law) and applies to all vessels, installations and personnel as well as owners and managers of such vessels and installations that navigate, berth or operate in the coastal waters of the People's Republic of China (see article 2 of the MTSL). The main difference between "vessel" and "installation", both governed by the MTSL, is whether the object in question is navigable or moveable. Thus, by definition, a mobile platform is a vessel but a fixed platform or a fixed underwater structure is an "installation" even if it is able to float.⁵

⁴ The Supreme People's Court of China prefers to look at the navigation area approved in the survey certificate of the ship to determine whether a ship is suitable for navigation at sea.

⁵ The 1984 MTSL is currently under revision. According to the latest version of the draft amendment, it has been advised that the phrase "any mobile unit" should be inserted into the definition of vessels. This has made it even more clear that the definition of "vessel" in the MTSL focuses on the element of movability.

In addition to the element of navigability, for the purposes of it governing maritime traffic and safety, the MTSL provides a definition of “vessel” that subsumes a craft within the scope of its application whether it is of a “displacement or a non-displacement” variety. Thus, any vessel capable of navigating in the coastal waters of China, regardless of whether it is a displacement or non-displacement craft and regardless of the purpose of its usage, and its tonnage, is subject to the MTSL. In this sense, military vessels, public service vessels, fishing vessels, as well as small tonnage vessels, all fall within the definition of “vessel” under the MTSL (see article 48 and 49 of the MTSL).

- 4) Regulations of the People’s Republic of China on Administration of Traffic Safety in Inland Waters, 2002, revised in 2011, issued by the State Council (referred to as the “IWTSR”)

Article 91

For the purposes of these Regulations:

.....

(2) vessels mean displacement or non-displacement ships, boats, crafts, waterborne flying objects, submersible machinery, mobile platforms and other waterborne mobile installations;

(3) floating facilities mean constructions and installations floating or submerging in the water which are moored with cables, anchor chains or other non-rigid fixations;

.....

Note:

Compared with the MTSL which governs maritime traffic and safety in coastal waters, the IWTSR is aimed at maintaining traffic and safety in navigable inland waters. The IWTSR applies both to vessels and to floating facilities. The main difference between the two kinds of objects, such as those mentioned above in 2), is whether the object is capable of moving/navigating. Also, like the MTSL, the IWTSR uses the term “displacement or non-displacement” to include all kinds of vessels and mobile installations that can navigate in inland waters, regardless of their usage and tonnage.

- 5) Regulations of China Governing the Registration of Ships, effective on January 1, 1995, issued by the State Council (referred to as “Ships Registration Regulations” or “SRR”)

Article 2

The following ships shall be registered in accordance with the provisions of these Regulations:

(1) Ships owned by citizens of the People’s Republic of China whose residences or principal places of business are located within the territory thereof;

(2) Ships owned by enterprises with legal person status established under the laws of the People’s Republic of China and whose principal places of business are located within the territory thereof, provided that, where foreign investment is involved, the proportion of registered capital contributed by Chinese investors shall not be less than 50 per cent;

(3) Service ships of the government of the People’s Republic of China and ships owned by institutions with legal person status; and

(4) Other ships whose registration is considered necessary by the competent authority of harbor superintendency of the People’s Republic of China.

The registration of military ships, fishery ships and sports craft shall be handled in compliance with the provisions of the relevant laws and regulations.

Article 56

For the purpose of these Regulations:

(1) “Ship” means any self-propelled or non-self-propelled vessel and any other mobile unit on water with the exception of life boats and life rafts equipped on board ships and boats or rafts of less than 5 meters in length;

(2) “Fishery ship” means any vessel engaged in fishing or any vessel belonging to the fishing industry and serving the purpose of fishery;

(3) “Service ship” means any vessel serving the administrative purposes of the government.⁶

Note

The Ships Registration Regulations applies to all ships that meet the registration conditions provided for in it. In four aspects, the SRR narrows its application to

⁶ The Ship Registration Regulations is of administrative law nature in terms of the Chinese legal system, and because of that, the term “vessel” should be used. However, it is noted from article 56 that “ship” is used and defined by reference to “vessel” in the SRR. The “ship”, “fishery ship” or “service ship” in the SRR refers to a particular kind of vessel and undoubtedly the ship in the SRR is wider than the ship for the purposes of the CMC.

particular kinds of ships. A. Usage: military ships, fishery ships⁷ and sports craft are excluded from the application of the SRR. But government ships (public-service ships) are included. B. Navigation: all ships that can navigate, regardless of their self-propelled or non-self-propelled character, are subject to the SRR. Ships that are not movable or navigable are excluded.⁸ C. Length: boats or rafts of less than 5 meters in length are excluded. Life boats and life rafts that are part of a ship's equipment are also excluded. D. Ownership: ships not owned by citizens or enterprises of China are excluded.

The Maritime Safety Administration of the Transport Department of China, as the authority higher than the registrar of vessels, has recently issued "Measures Governing the Registration of Ships" (Ships Registration Measures), effective February 10, 2017, to regulate ship registration practice. According to this new instrument, vessels requiring registration has now include: 1) vessels less than 5 meters in length;⁹ 2) dummy barges, floating docks, owned by Chinese enterprises whose proportion of registered capital contributed by foreign investors is more than 50 per cent, where such vessels are used for private purpose but not engaged in domestic water transport operation;¹⁰ 3) vessels owned or demise chartered by Chinese citizens or enterprises or public service unit or other social organizations; 4) vessels owned or demise chartered by enterprises with legal personality established in the Pilot Free Trade Zone.¹¹

6) Regulations of the People's Republic of China Governing Survey of Ships and

⁷ In China, registration of fishing ships is subject to regulations other than the SRR and is administered by a different registration authority.

⁸ In this sense, oil rigs that are capable of moving are accepted and registered as vessels by the Maritime Safety Administration which is responsible for registration of vessels according to the SRR. By contrast, fixed oil rigs cannot be registered as ships and activities concerning them are under the supervision of the State Oceanic Administration of China.

⁹ However, it is not compulsory for vessels less than 5 meters in length to be registered. The MSA may use the Ships Registration Measures for reference when owners of such vessels apply for registration. See article 75 of the Ships Registration Measures.

¹⁰ Such groups of dummy barges and floating docks are excluded from the Ships Registration Regulations 1995. However, confirmation is required from the owners as to whether the insurance requirements can be satisfied without prior registration. Therefore, the Ships Registration Measures extends to cover these groups of vessels.

¹¹ The Chinese Government started the practice of Pilot Free Trade Zone (FTZ) since 2015. Due to the special status of the FTZ, the Ships Registration Regulations cannot apply to vessels owned by enterprises established in the FTZ. The Ships Registration Measures provide for specific rules in respect of registration of FTZ vessels.

Offshore Installations, 1993, issued by the State Council (referred to as the “SOIS Regulations”)

Article 2

These Regulations shall apply to:

- (1) ships registered or to be registered in the People’s Republic of China;
- (2) foreign flag ships applying for survey according to these regulations or other relevant provisions issued by the State;
- (3) offshore installations located or to be located in coastal waters of the People’s Republic of China; and
- (4) sea-borne cargo containers owned by an enterprise as legal person registered in the Peoples Republic of China.

Article 29

For the purposes of these Regulations:

- (1) “ship” means any displacement or non-displacement ships and craft, hydroplanes, submersibles and diving systems, and mobile drilling units;¹²
- (2) “offshore installations” means any fixed or mobile structures and devices of various kinds above or under water, and fixed platforms;

Note

The SOIS Regulations aims to ensure that ships, offshore installations and sea-borne cargo containers meet the technical requirements for safe navigation and operation. In furtherance of this purpose, the SOIS Regulations will safeguard the safety of human life and property and prevent pollution of the marine environment. (Article 1) For its primary purpose - rendering the survey service, the SOIS Regulations apply to all Chinese flag vessels, foreign flag vessels (upon request), offshore installations located in coastal waters of China, and sea-borne cargo containers owned by Chinese enterprises. In terms of the difference between “vessels” and “offshore installations” falling within the scope of the SOIS Regulations, the criterion of navigability is used. Regardless of whether the craft in question is of a displacement or non-displacement type, objects that are not capable of navigation will not be considered as vessels falling under the SOIS Regulations.

In addition to the element of navigation, the SOIS Regulations actually does not provide for any other specific requirements with respect to the definition of vessels.

¹² Professor Si Yuzhuo and Professor Proshanto K. Mukherjee both take the view that “vessel”, not “ship”, should be used in the SOIS.

However, according to the Regulations on Administration of Survey of Ships (referred to as the “Regulations”), 2016, issued by the Ministry of Transport, military ships, sports crafts and fishery ships are excluded from the Regulations. The Regulations are aimed at facilitating the implementation of the SOIS Regulations. It is clear that the SOIS Regulations also uses the criterion of usage to narrow the scope of vessels which will come within its scope of application. Thus, vessels used for military, sports and fishery purposes are excluded from the SOIS Regulations.

7) Law of the People’s Republic of China on Vehicle and Vessel Tax, 2012 (referred to as “Vehicle and Vessel Tax Law”)

Article 3

The following types of motor vehicles and vessels are exempt from motor vehicle and vessel tax:

(1) Fishing boats and aquaculture boats;

(2) Vehicles and vessels used by the army and armed police;

(3) Vehicles and vessels for police purposes; and

(4) Vehicles and vessels of embassies, consulates, and representative offices of international organizations in China that are tax exempt under relevant laws, and of their relevant staff.

Article 4

Motor vehicles and vessels that are energy conservative or use alternative energy are entitled to tax break or tax exemption.

Note:

The Vehicle and Vessel Tax Law applies to all motor vehicles and vessels within the territory of the People’s Republic of China with some exemptions. Owners and operators of motor vehicles and vessels specified in the *Table of Items and Amounts of the Motor Vehicle and Vessel Taxes* attached to this Law, are the tax payers, and the local tax authorities are responsible for the collection of vehicle and vessel tax.

As provided in articles 3 and 4, vessels used for the purpose of fishing,

aquaculture, army, police, foreign affairs, and vessels that are energy savers, are exempted from the application of the Vehicle and Vessel Tax Law. It is noted that tax exemption is based on the criterion of usage and pro-environment features of vessels. Apart from these two elements, the Vehicle and Vessel Tax Law does not give any description of motor vessels that are subject to the Law, except that in the *Table of Items and Amounts of the Motor Vehicle and Vessel Taxes* attached to the Law, yachts, tugboats and non-motorized barges are all treated as taxable vessels.

8) Implementation Regulations for the Law of the People’s Republic of China on Vehicle and Vessel Tax, 2012, issued by the State Council (referred to as “Implementation Regulations”)

Article 2

“Vehicles and vessels” mentioned in Article 1 of the Vehicle and Vessel Tax Law shall mean:

(1) Motor vehicles and vessels that are required to be registered with the vehicle and vessel registration authorities according to law; and

(2) Motor vehicles and vessels that drive or operate within the premises of an entity and are not required by law to be registered with the vehicle and vessel registration authorities.

Article 26

For purposes of the *Table of Items and Amounts of the Motor Vehicle and Vessel Taxes* attached to the Vehicle and Vessel Tax Law, vehicles and vessels shall mean:

Vessels shall mean various motor vessels, non-motorized vessels and other mobile marine devices, other than life rafts and life boats as part of vessels, and boats and rafts with a length of less than five meters. Motor vessels mean vessels propelled by machine. Tugboats mean specialized vessels used for towing or propelling transport vessels. Non-motorized barges mean non-motorized vessels registered as barges with vessel registration authorities. Yachts mean vessels with built-in mechanical propulsion devices, with a length of less than 90 meters, primarily intended for use in sightseeing tour, entertainment, aquatic sports or other activities, and having vessel inspection certificates and certificates of seaworthiness.

Note:

The Implementation Regulations is promulgated for facilitating the implementation of the Vehicle and Vessel Tax Law. In articles 2 and 26 of the Implementation Regulations, more specific descriptions of vessels subject to the Vehicle and Vessel Tax Law are provided.

According to the Implementation Regulations, vessels subject to the Vehicle and Vessel Tax Law are described firstly, in terms of navigability as to whether a vessel is motor-driven or non-motor-driven; its movability is an important criterion used in the Law to distinguish taxable vessels from others. Second is the criterion of length. Boats and rafts of length less than five meters are excluded. Life rafts and life boats as parts of a vessel are also excluded. The third criterion is propulsion method. Non-motorized vessels meaning vessels not propelled by machinery, are not taxable vessels with the exception that non-motorized barges are taxable under the Law.

Thus, the Vehicle and Vessels Tax Law uses five elements to prescribe the varieties of vessels that fall within its application. These are: usage, pro-environment feature, navigability, length and propulsion method.

9) Interim Regulations of the People’s Republic of China on Vessel Tonnage Tax, 2012, issued by the State Council. (referred to as “Vessel Tonnage Tax Regulations”)

Article 9

The following vessels shall be exempted from tonnage tax:

- (1) Vessels with a tax amount payable of below RMB 50;
- (2) Unloaded vessels the ownership of which is obtained through purchase, donation or inheritance outside the People’s Republic of China and that enter a domestic port for the first time;
- (3) Vessel that do not embark or disembark passengers or cargos within 24 hours after the expiration of their tonnage licenses;

- (4) Non-motorized vessels (excluding non-motorized barges);
- (5) Fishing boats for fishery or aquaculture;
- (6) Vessels that take asylum, are isolated for epidemic prevention or under repair, stop operation or are disassembled, and do not embark or disembark passengers or cargos;
- (7) Vessels that are exclusively used or requisitioned by the army or armed police forces;
- (8) Vessels of embassies or consulates of foreign countries or representative offices of international organizations in China or staff members thereof, which are exempted from tax in accordance with the relevant laws; and
- (9) Other vessels as prescribed by the State Council.

Article 20

For the purposes of these Regulations, the following terms shall have the meanings indicated below:

...

Non-motorized vessels refer to vessels without a power unit and driven by an external force.

Non-motorized barges refer to non-motorized vessels registered as barges with vessel administration authorities.

...

Note:

Vessels entering domestic ports of the People's Republic of China from foreign ports are regarded as taxable vessels under the Vessel Tonnage Tax Regulations. Unlike the vehicle and vessel tax which must be paid to the local tax authorities, it is the customs that is responsible for collection of tonnage tax. According to the Vessel Tonnage Tax Regulations, certain types of vessels are given tax exemption based on the following criteria: A. Tax amount. Vessels with a payable tax amount below RMB 50 are exempted. B. Unloaded vessels. Unloaded vessels where ownership is acquired through purchase, donation or inheritance outside the People's Republic of China and which enter a domestic port for the first time, are exempted. Vessels that do not embark or disembark passengers or cargo within 24 hours after the expiration of their

tonnage licenses are exempted. C. Propulsion method. Non-motorized vessels (excluding non-motorized barges) are exempted. D. Usage. Vessels which are not used for embarking or disembarking passengers or cargo are exempted. Vessels used for fishery or aquaculture, requisitioned by the army or armed police forces, are also exempted. E. Special immunity. Vessels of foreign embassies or consulates or representative offices of international organizations in China or their staff members, are exempted.

10) Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution, 2016 (referred to as "PCAP Law")

Article 51

Motor vehicles and vessels, non-road mobile machinery shall not exceed the emission standards for atmospheric pollutants.

The State prohibits the production, import or sale of motor vehicles and vessels, non-road mobile machinery of which the emissions of atmospheric pollutants exceed the stipulated standards.

Article 63

Inland waterway vessels and river-sea vessels should use qualified ordinary diesel, and ocean-going vessels should use the marine fuel oil that satisfy the requirements for emission control of atmospheric pollutants.

Note:

The PCAP Law is formulated to protect and preserve the environment, prevent and control atmospheric pollution, safeguard public health, ensure ecological soundness in construction activities and promote sustainable economic and social development. The PCAP Law does not provide a description of the vessels that will come within its scope of application. From the aspect of environmental protection relating to vessels, it mainly concerns objects that emit pollutants. Its provisions, such as article 51 and 63, indicate that the PCAP Law applies to motor vessels only, regardless of their areas of operation, whether in inland waters, rivers, seas or oceans. Thus, the PCAP Law focuses on the element of propulsion method in prescribing

which types of vessels are subject to it.

11) The Marine Environment Protection Law of the People's Republic of China (revised in 2016, referred to as "MEPL")

Chapter VI Prevention and Control of Pollution Damage to the Marine Environment by Marine Construction Projects

...

Article 51

Oily waste water and oily mixtures from offshore oil rigs, drilling platforms and oil extraction platforms must be properly treated and reach discharge standards before their discharge into the sea. Residual and waste oil must be recovered and may not be discharged into the sea. In discharging any recovered residual or waste oil that has undergone treatment, the oil content thereof may not exceed the standards laid down by the State.

Article 52 Offshore oil rigs, drilling platforms, oil extraction platforms and their ancillary installations on the sea shall not dispose oil-containing industrial garbage in the sea. The disposal of other industrial garbage must not cause pollution to the marine environment.

...

Chapter VIII Prevention and Control of Pollution Damage to the Marine Environment Caused by Vessels and Their Related Operations

...

Note:

The MEPL is enacted to protect and preserve the marine environment, conserve marine resources, prevent pollution damage, maintain ecological balance, safeguard human health and promote sustainable economic and social development. All enterprises, units and individuals engaged in navigation, exploration, exploitation, production, tourism, scientific research or other operations which might cause

pollution to the sea areas under the jurisdiction of China must comply with this Law. The MEPL covers five kinds of activities that might have an impact on marine environment protection, among which, chapter six deals with “Prevention and Control of Pollution Damage to the Marine Environment by Marine Construction Projects”, and chapter eight governs “Prevention and Control of Pollution Damage to the Marine Environment Caused by Vessels and Their Related Operations”. Marine construction projects in chapter six refer to offshore petroleum exploration and exploitation activities. Articles 51 and 52 list most of the installations that might be involved in exploration and exploitation activities, which obviously include offshore oil rigs, drilling platforms and others. By contrast, chapter eight provides no definitions or specifications of the vessels falling within its scope.

There has been long time debate over whether vessels under chapter eight of the MEPL should include mobile offshore oil rigs. The Maritime Safety Administration (MSA) as the body authorized to administer vessel registration in the Chinese ship registry and regulate pollution from vessels, insists that the vessels under chapter eight of the MEPL should be in compliance with the Ship Registration Regulations. Thus, mobile oil rigs registered as vessels under the Ships Registration Regulations fall under the scope of chapter eight. Accordingly, matters arising from pollution caused by mobile oil rigs should come under the supervision of the MSA. However, the State Oceanic Administration (“SOA”) of China, the body authorized to administer pollution matters according to chapter six of the MEPL, holds the view that all oil rigs falling under chapter eight of the MEPL are under the supervisory ambit of the SOA, regardless of their mobile or non-mobile feature.

12) Administrative Regulations on the Prevention of Marine Pollution Caused by Vessels, 2010, revised in 2016, issued by the State Council (referred to as “Administrative Regulations”)

Note:

The Administrative Regulations are formulated pursuant to the MEPL with the purpose of preventing and administering marine pollution caused by vessels and the operational activities thereof (see article 1). According to article 2 of the Administrative Regulations, it is applicable to the prevention and administration of marine pollution caused by vessels and their operational activities within waters under

the jurisdiction of China. Although there is no definition of “vessel” in these Regulations, it can be gleaned from the purpose of the Regulations and various provisions that any vessel likely to cause marine pollution, including military vessels and fishing vessels are subject to these Regulations (see article 4 and 76).

13) Regulations of the People’s Republic of China on Seafarers, 2007, revised in 2014, issued by the State Council (referred to as “Seafarers Regulations”)

Note:

The Seafarers Regulations apply to the registration, qualification, training and occupational security of seafarers as well as the provision of seafarer services within the territory of the People’s Republic of China. There are no prescriptions of vessels as such but it is evident from article 71 that seafarers serving on naval vessels and fishing vessels are not covered by these Regulations. Thus, the element of usage, can be taken as an implied criterion in to prescribe the types of vessels subject to the Regulations.

Apart from the Seafarers Regulations, there are some other regulations in China concerning examination, certification and watchkeeping of seafarers which provide for different descriptions of vessels that come within the respective scope of each of them. For example, the Regulations on Watchkeeping for Seafarers on Seagoing Ships of the People’s Republic of China, 2013, issued by the Transport Department of China, looks at the elements of tonnage, purpose and navigation areas to prescribe which vessels fall under its application.¹³ The Regulations on Competency, Examination and Certification for Seafarers on Seagoing Ships of the People’s Republic of China, 2013 has similar prescriptions for vessels (article 59).

¹³Article 2 provides: “[T]hese Provisions shall apply to seafarers serving on board Chinese seagoing ships of 100 gross tonnage and above, excluding the following ships:

1. ships of war;
2. fishing vessels;
3. pleasure yachts not engaged in trade; and
4. wooden ships of primitive build.”

14) Implementation Measures on Compulsory Insurance of Vessels Oil Pollution Damages Civil Liability, 2010, issued by the Transport Department of China (referred to as the “Measures”)

Note:

These Measures have been formulated pursuant to the MEPL, the CMC, the Administrative Regulations on the Prevention of Marine Pollution Caused by Vessels, and other statutes, administrative rules, including international treaties that have been accepted by China. Their purpose is to have the risk of oil pollution damage arising from certain kinds of vessels covered by insurance or financial security. Article 2 of the Measures requires the owner of a vessel operating in waters under the jurisdiction of China, to maintain insurance or appropriate financial security to cover its liability for oil pollution damage, if that vessel carries oil as cargo or it is over 1000 gross tonnage even if not carrying oil as cargo. Notably, it is evident from Article 2 that the Measures provide for three elements to prescribe what kinds of vessels fall under its compulsory scope of application. These are navigational area of the vessel, the substance carried on board and the tonnage of the vessel. It is presumed that these are the three elements which in combination produce the most serious risk of oil pollution damage to attract the compulsory insurance regime.

Q2. In your system, does the definition of “vessel” (or equivalent term) vary depending on the subject of a particular law? For example, does the definition differ for purposes of documentation, registry, flagging and mortgaging or when applied to seagoing labor, environmental, casualty, insurance or taxation law?

It is not always the case that the word “vessel” or “ship” is conclusively defined. In several instances, the legislation describes or prescribes types of vessels to which the legislation is applicable. That is not exactly “definition” in the precise sense of that term. However, as indicated in the response to the first question, definitions, as well as descriptions and prescriptions of vessels vary in different Laws and Regulations relating to vessels.

Q3. Does your legal system provide for a unique process of seizure, foreclosure,

forced sale or ranking and priority of claims against vessels that is different from such processes for other types of property? If so, please explain.

1) Seizure & forced sale of vessels

Yes. In the Chinese legal system, most disputes (except those of a criminal nature) involving vessels fall within the jurisdiction of the maritime courts, instead of the ordinary people's courts. According to the newly promulgated *Provisions of the Supreme People's Court on the Case Acceptance Scope of Maritime Courts* (effective as of March 1, 2016), 108 kinds of cases are listed within the case acceptance scope of the maritime courts. Cases regarding seizure and forced sale of vessels are both on the list. In other words, the ordinary people's courts have no jurisdiction over cases regarding seizure and forced sale of vessels.¹⁴ In this sense, the process of seizure and forced sale of vessels is different from the process involving ordinary properties.

The uniqueness of the process comes from, not only the division of the jurisdiction between maritime courts and ordinary people's courts, but also the different procedural rules applied by the two court systems. Since vessels are properties with special characteristics, the maritime courts have to apply the Special Maritime Procedure Law of the People's Republic of China, 2000 ("SMPL") when dealing with maritime cases involving vessels. The SMPL, in many aspects, has provided for rules different from the Civil Procedural Law of the People's Republic of China, which is used by ordinary people's courts when dealing with disputes concerning properties other than vessels. The process for seizure and forced sale of vessels is indeed a unique one.

2) Foreclosure of vessel

There are no rules of foreclosure, for any kind of property, under Chinese law.

3) Ranking and priority of claims against vessels

Yes. The ranking and priority of claims against vessels are determined according to the relevant provisions of the Maritime Code of China (CMC). Generally, claims secured by maritime liens enjoy the highest priority. Next are claims secured by

¹⁴However, the ordinary people's courts can assert jurisdiction over vessels that navigate only within inland waters which are not adjacent to the sea.

possessory liens on vessels, such as a ship builder or ship repairer's claims for ship building or repairing. Claims secured by a mortgage come third in ranking. Ordinary claims without security do not have any priority (see article 25 of the CMC).¹⁵ Since maritime liens are recognized as a special property right which can only subsist in respect of vessels, and not any other kinds of property, it is apparent that the above-mentioned ranking rules are unique to vessels.

Q4. Has the 1993 Convention on Maritime Liens and Mortgages (“MLM-93”) been adopted or followed in your jurisdiction?

So far, China has not acceded to the MLM-93. But the Maritime Code of China (CMC) has indeed followed some rules set by that convention. For example, the five types of claims that can be secured by maritime liens in the MLM-93 (article 4) are also recognized in the CMC (article 22). However, the priorities of the five claims that can be secured by maritime liens in the CMC (article 23) differ from the priority scheme in the MLM-93 (article 5).

Q5. In your jurisdiction is the acceptance by a registrar or other governmental body of property as a “ship” or “vessel” or equivalent term dispositive of its status under your law?

Generally speaking, as shown in the responses to the first question, each Law or Regulation has its own definition, description or prescription of vessels for different purposes. The registrar of vessels has to follow certain rules to decide whether a particular object can be accepted as a vessel. Acceptance by the registrar only matters where issues in relation to the registry are concerned. Outside the ambit of the Registration Regulations, whether the vessel has been accepted by the registrar will not have a dispositive role in determining the status of the vessel.

¹⁵According to article 118 of the Special Maritime Procedure Law of China, where creditors with different rankings of claims against the same vessel are seeking distribution of the proceeds from auction of the vessel or the limitation fund for maritime claims, negotiation regarding the amount and ranking of repayment is allowed. If the creditors fail to reach an agreement after negotiation, the maritime court shall, according to the ranking of claims provided in the CMC and other related laws, decide on the plan for distribution.

To be more specific, almost all vessels owned or demised chartered by Chinese citizens or Chinese enterprises are subject to registration according to the Ships Registration Regulation and the newly issued Ships Registration Measures.¹⁶ The registration will accord both a public law as well as a private law function on vessels. From the aspect of public law, a vessel without entry into the registry is not permitted to fly the Chinese flag would not be allowed to engage in certain activities. In this sense, a vessel without registration will also be subject to penal sanctions in the same manner as a legally registered vessel when it is in violation of public law. From the aspect of private law, certain property rights on vessels cannot have complete effect if it is not registered.¹⁷ If a vessel is not accepted by the registrar which means that the vessel is not recognized under public law, it will not be possible for the holder of certain property rights on that vessel to have its rights being fully recognized under private law either. Thus, in this sense the acceptance of a vessel for registration by the registrar will have a decisive effect on the determination of its status under private law.¹⁸

Q6. If property is categorized as a “vessel” in another jurisdiction and is so registered and flagged, but would not be a vessel under the definition in your jurisdiction, would the courts or relevant authorities in your jurisdiction treat that property as a vessel for all purposes, including arrest and foreclosure? Or would the Courts in such a circumstance decline to enforce an asserted claim or mortgage if the subject is not a vessel under your jurisdiction?

1) The first question raises an issue of procedural law. Procedures such as the arrest of ships are provided for in the SMPL (Special Maritime Procedure Law of China) which govern all maritime procedures in China. The Chinese maritime courts will definitely have jurisdiction over a case involving a foreign vessel, where the case is within the scope of the Provisions of the Supreme People’s Court on the Case Acceptance Scope of Maritime Courts, regardless of whether the foreign vessel

¹⁶ See article 2 & 56 of the Ships Registration Regulations. See also article 3 of the Ships Registration Measures.

¹⁷ Such as the ownership and mortgage on vessels. According to article 9 & 13 of the CMC, the ship’s ownership and mortgage shall not act against a third party unless it is registered.

¹⁸ See also the cases cited in the response to question 7: *Yu Linrong v. Cai Rongrong & Xie Xiaobin*, (2014) Zhe Hai Zhong Zi No. 106; *China Shipping Industry Co., Ltd. v. China Pacific Property Insurance Co.*, (2011) Hu Hai Fa Shang Chu Zi No. 1308.

can be recognized as a “vessel” under Chinese law. Once the jurisdiction is established, the Chinese maritime courts can apply the SMPL, which includes the rules relating to the arrest of ships, to adjudicate on the case. Therefore, the question whether a foreign vessel is recognized as a vessel under Chinese law will not affect the application of procedural rules by Chinese maritime courts.¹⁹

- 2) The second question is more related to substantive law or how to find the applicable substantive law. If the subject, is a vessel for the purpose of the CMC, the Chinese court will apply provisions in chapter fourteen of the CMC and look at, e.g. the law of the flag state of the vessel where the mortgage is concerned, to determine whether such claim could be enforced.²⁰ If the subject is not a vessel for the purposes of the CMC, but is an ordinary property under Chinese law, the court will apply the *Law of the People’s Republic of China on Application of Laws to Foreign-Related Civil Relations* to find the appropriate applicable law, and then decide whether the asserted claims can be enforced.

Q7. Are there any reported decisions in your jurisdiction which address the legal classification of any of the following property:

1. non-self-propelled barges
2. self-propelled barges
3. accommodation barges
4. Mobile Offshore Drilling Units
5. wind turbine towers (floating or permanently fixed)
6. jack up drill rigs
7. construction barges
8. submarines

¹⁹The SMPL as procedural law is intended to govern all sea-going vessels. According to article 3 of the *Interpretations of the Supreme People’s Court on Several Issues concerning the Application of the SMPL* (Fa Shi (2003) No. 3), sea-going vessels in article 6 of the SMPL shall be referred to as any vessels that can navigate at sea or in waters adjacent to the sea. Thus, where the foreign vessel is able to navigate at sea, the condition to apply the SMPL can be easily satisfied.

²⁰ See article 271 of the CMC, which is under chapter fourteen with the title “application of law in relation to foreign-related matters”.

9. seaplanes;
10. hydroplanes (air cushion)
11. Vessels under construction
12. unmanned vessels
13. Vessels devoted temporarily or permanently to storage of bulk
14. Vessels in "cold layup"
15. Derelict Vessels or "Dead Ships"

16. Vessels under Conversion or Renovation. If there are any reported decisions on the foregoing, please attach copies. If there are numerous decisions, please attach the most recent or most indicative of your national court's views.

1. Non-self-propelled barges & 3. Accommodation barges
 - *Yu Linrong v. Cai Rongrong & Xie Xiaobin*
 - (2014) Zhe Hai Zhong Zi No. 106
 - Disputes arising under vessel lease contracts

The vessel involved in this case was a dummy barge co-owned by Ms. Cai Rongrong and Mr. Xie Xiaobin. When the co-owners chartered the barge to Mr. Yu Linrong who intended to use the barge as business premises, the barge had not completed its outfitting yet and therefore neither the ship survey²¹ nor the ship registration²² could be done. After delivery of the barge according to the lease contract, the charterer fitted the barge with necessary equipment and decorations, which made the barge able to pass the compulsory survey and obtain its "survey certificate for inland-water ship". The survey certificate specified the type of the barge as "dummy barge for recreational purpose (cinema), no propeller". With the survey certificate, the co-owners finished the registration of ownership. The barge was indeed partly used as a cinema and partly as a restaurant.

In dealing with the disputes between the co-owners and charterers in relation to the payment of hire and the condition of the barge at the time of redelivery, the courts

²¹ Subject to the *Regulations of the People's Republic of China Governing Survey of Ships and Offshore Installations, 1993* (the SOIS Regulations). Introduction of the SOIS Regulations is provided in 6) of the response to Question 1.

²² Subject to the *Regulations of China Governing the Registration of Ships 1995* (the Ships Registration Regulations" or "SRR"). Introduction of the Ships Regulations is provided in 5) of the response to Question 1.

hearing this case considered the issue of jurisdiction and the application of law, which was connected with the legal status of the dummy barge.

The co-owners started their claims against the charterer at a local people's court, which is a court with general jurisdiction. When the case was appealed to the higher people's court, it was held by the appellate court that the trial court had no jurisdiction on this case since the lease contract between the co-owners and the charterer involving the use of the dummy barge was indeed a bareboat charterparty for the purpose of article 144 of the CMC. Any disputes arising under such a charterparty shall fall under the exclusive jurisdiction of maritime courts, not within the jurisdiction of general people's courts. The appellate court thus ordered to vacate the judgment rendered by the trial court and remand the case to the trial court for reconsideration.²³ The trial court upon receipt of the order issued by the appellate court, transferred this case to the Ningbo Maritime Court for a new trial. It was held by the Ningbo Maritime Court in the new trial that the vessel in this case was an inland - water - recreation - dummy barge, which was not a ship for the purposes of article 3 of the CMC, and therefore, the governing law of the case was not the CMC, but the Contract Law of China.²⁴ On appeal, part of the judgment rendered by the Ningbo Maritime Court was amended by the Higher People's Court of Zhejiang Province ((2014) Zhe Hai Zhong Zi No. 106), but the decision of the Ningbo Maritime Court regarding the legal status of the barge and the governing law was untouched.

Obviously, it is noted that the maritime court and its higher court in this case looked at the survey certificate and registration certificate to determine the legal status of the non-self-propelled barge.

11. Vessels under construction

- *China Shipping Industry Co., Ltd. v. China Pacific Property Insurance Co.*
- (2011) Hu Hai Fa Shang Chu Zi No. 1308
- Disputes arising under marine insurance contracts

In this case, M/V *An Minshan*, a vessel under its trial navigation, collided with another vessel, and then collided with the quay and shore equipment. The Shanghai Maritime Court was asked to consider whether the owner or the shipbuilder of M/V

²³See the order of the Wenzhou Intermediate People's Court of Zhejiang Province, (2014) Zhe Wen Shang Zhong Zi No. 346. The dummy barge was regarded as a sea-going ship in the order, which called for the jurisdiction of maritime courts according to article 1 of the *Interpretation of the Supreme People's Court on Certain Issues Concerning the Application of the "Special Maritime Procedure Law of the People's Republic of China"* (Fa Shi [2003] No. 3) and the *Provisions of the Supreme People's Court on the Case Acceptance Scope of Maritime Courts*.

²⁴See the judgment of the Ningbo Maritime Court, (2014) Yong Hai Fa Wen Shang Chu Zi No.15.

An Minshan was entitled to limit its liability for damage arising from the collisions. It was held by the Court that M/V *An Minshan* was a vessel under construction, which had not been recognized as a vessel by the ship registrar since the conditions for ship registration had not been satisfied. Thus, the vessel was not within the scope of article 3 of the CMC, and its owner or shipbuilder was not the shipowner or ship operator for the purposes of chapter 11 of the CMC.²⁵ The Court declined the petition of M/V *An Minshan* for limitation of liability, *inter alia*, because the damage caused in this case was not related to the operation of the vessel, that is, the M/V *An Minshan* was under trials which was not for the purpose of operation. Finally, since the vessel in this case had not completed the registration formalities and was only a vessel under construction, the owner of such an incomplete vessel was not entitled to the right of limitation given by the CMC. Legal rights vested in a “vessel” by a substantive law might not be recognized unless the vessel has completed its registration.

Q8. We attach a most excellent summary by Professor BillentSozer of Istanbul regarding the variations in definitions, usages and limitations on application of terms in many international conventions. Please identify any of the Convention usages and limitations which are at variance with equivalent terms in your national system and explain the variations.

- 1) For conventions that regulate traditional/ordinary areas of maritime law, particularly carriage of goods and passengers:

Among the conventions mentioned in this area, the Athens Convention 1974 and its protocol 1976 is the only one that has been accepted by China. Thus, within the scope of application of the Athens Convention, the notion of vessels under Chinese law is understood to be in line with the convention. As to the Hague Rules, 1924 and the LLMC Convention, 1976, part, if not most, of their provisions have been absorbed by the CMC, and the common definition of “vessels” under different chapters of the CMC, as shown in the response to the first question, is “sea-going vessels” which focuses on the element of the capability to navigate. Although, the definition of vessels in the Ships Registration Regulations is different from that in UN Convention on Conditions

²⁵ Chapter 11 of the CMC, which was drafted on the basis of the 1976 LLMC Convention, has provided that shipowners and ship operators are parties who are entitled to limit their liability.

for Registration of Ships, Geneva, 1986, the common denominator of the two definitions of “vessel”, namely, navigational capability, can be found either expressly or by implication.

2) For conventions that regulate a particular area, especially pollution:

In the field of oil pollution, China is a party to the *International Convention on Civil Liability for Oil Pollution Damage, 1992*, which gives great importance to oil as a pollutant. According to the *Implementation Measures on Compulsory Insurance of Vessels Oil Pollution Damages Civil Liability of China, 2010*, definition of “vessel” under the Measures also centers on oil as the substance carried on board.

3) For conventions that regulate specific objective/single purpose conventions:

China has accepted both the Salvage Convention, 1989 and the COLREGS, 1972. In the area of salvage and collision, the definition of “vessel” under Chinese law is in line with the two conventions.

Q9. Are there any instances involving your jurisdiction in which inconsistent or conflicting definitions of "vessels", "ships" or equivalent terms have impacted results in any legal proceeding of which you are aware? If so, please provide details.

No.

Note to responders: If you find that these questions do not invite easy or straightforward answers in the context of your legal system, please explain why and provide what information and descriptions you may believe useful to the IWG in its effort to determine the scope of the definitional issues.