



Clarifying Maritime Criminal Cases Jurisdiction and its International Implications—Current Legal Developments in China

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Abstract

On 20 February 2020, the Supreme People’s Court, the Supreme People’s Procuratorate and the China Coast Guard jointly issued the *Notice on Issues concerning Jurisdiction of Maritime Criminal Cases* (hereinafter the “*Notice*”). The *Notice* aims to ensure the effective performance of maritime right-safeguarding and law enforcement functions by the coast guard agencies, punishing maritime crimes by the law and protecting the State’s sovereignty, security, maritime rights and interests, as well as maritime order. Maritime criminal cases have strong international implications and their jurisdiction is subject to this short discussion. It is observed that by clarifying maritime criminal cases jurisdiction may to some extent reduce potential disputes in the context of law enforcement activities.

Introduction

For purposes of implementing the relevant decisions and arrangements of the Communist Party of China (CPC) Central Committee and the Standing Committee of the National People’s Congress (NPC), ensuring the effective performance of maritime right-safeguarding and law enforcement functions by the coast guard agencies, punishing maritime crimes by the law and protecting the State’s sovereignty, security, maritime rights and interests, as well as maritime border, the China Coast Guard, the Supreme People’s Court (SPC) and the Supreme People’s Procuratorate (SPP), have formulated the *Notice on Issues concerning Jurisdiction of Maritime Criminal Cases* (hereinafter *Notice*).¹ The *Notice* consists of 6 articles, on basis

¹ The Supreme People’s Court, the Supreme People’s Procuratorate and the China Coast Guard jointly issued the *Notice on Issues concerning Jurisdiction of Maritime Criminal Cases*, (Hai Jing [2020] No. 1), 28 February 2020.

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of the practical needs of maritime law enforcement and adjudication and in-depth researches on key issues concerning maritime criminal cases, such as adjudicatory jurisdiction over maritime criminal cases, the coast guard agency's request for approval of arrest and transfer for prosecution in handling maritime criminal cases and the procuratorate's supervision of the coast guard agency over the latter's handling of maritime criminal cases (Jarvis, 1992). Intervention in an investigation by the procuratorate's designated officer is consistent with the demands put forward by the reform of the trial-centred criminal procedure system and will facilitate the procuratorate's leading role in criminal procedures, so that the investigative agency may be guided to promptly and comprehensively collect and fixate evidence in a regulated matter, following the evidence requirements and standards prescribed by the law (Dutton, 2012). Such action will also realise the procurator's early familiarity with the case, enhance efficiency in the examination of, arrest and prosecution, reduce the chances of supplementary investigation during the phase of examination and prosecution, and improve the quality, efficiency and efficacy of pre-trial procedures (Bing, 2007).

This short communication aims to clarify maritime criminal cases jurisdiction under the background of Chinese laws, amount which, the attention is focused on the boundary between China Coast Guard and procuratorate's investigatory powers. In addition, maritime criminal cases have very strong international implications, therefore, there is a need to discuss crimes committed on board a Chinese ship outside China's territory, crimes committed by a Chinese citizen on sea areas beyond China's territorial sea, crimes committed by a foreigner on sea areas beyond China's territorial sea and crimes subject to universal jurisdiction.

Background and Formulation of the Notice

For purposes of implementing the spirit of the 19th CPC National Congress and the Third Plenary Session of the 19th CPC Central Committee and effectively safeguarding China's maritime rights and interests, by the decision and deployment of the *Plan for Deepening the Institutional Reform of the Party and the State*,² as approved by the CPC Central Committee, in 2018, the coast guard teams were incorporated into the Chinese People's Armed Police Force for leadership and command, in an overall manner. The coast guard corps of the Chinese People's Armed Police Force was, accordingly, formed after necessary adjustments hereafter indicated. The 'China Coast Guard', the coast guard corps would perform the duties of marine right safeguarding and law enforcement in a unified manner and exercise the corresponding law enforcement powers of the public security agency and other relevant administrative agencies. With the incorporation of the coast guard teams, major changes in terms of leadership, command, functioning and cooperation were expected (Chang & Li, 2019). To ensure the success of the plan for institutional reform, the Standing

² Chinese Communist Party Central Committee, *The Deepening Reform Program for Party and State Institutions*, Third plenary meeting of the 19th Central Committee, 28 February 2018. (in Chinese)

Committee of the Thirteenth NPC adopted, at its third session held on 22 June 2018, the *Decision of the Standing Committee of the National People's Congress on the Exercising of the Maritime Right Safeguarding and Law Enforcement Functions and Powers by the China Coast Guard*,³ expressly providing for the China Coast Guard's duties of combating illegal and criminal maritime activities and maintaining and safeguarding maritime security and the exercise of the corresponding law enforcement powers of the public security agency, as prescribed in law. On 26 October 2018, the *Decision of the Standing Committee of the National People's Congress on Amending the Criminal Procedure Law of the People's Republic of China*,⁴ adopted at the 6th Session of the Standing Committee of the Thirteenth NPC, amended the provisions to add that, 'the China Coast Guard shall perform the maritime right protection and law enforcement functions and exercise the authority to investigate criminal cases that occur at sea' and 'the handling of criminal cases by the China Coast Guard shall be governed by the relevant provisions of the Criminal Procedure Law'. Following these provisions, the China Coast Guard's investigatory power is of the same nature as that of the public security agency's power to investigate criminal cases. The investigatory functions of the two agencies are essentially equivalent.

3. Clarification of Jurisdiction over Maritime Criminal Cases

According to Article 4 of the *Notice on the Relevant Issues concerning the Handling of Cases of Legal Violations and Crimes Occurring at Sea*,⁵ jointly issued by the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security in 2007, 'where it is necessary to request an approval of arrest or transfer a case for prosecution in the handling of criminal cases, a branch of coast guard agency shall make such a request or transfer to the people's procuratorate at the place where it is located and the people's procuratorate shall legally examine such and make a decision.' Moreover, a maritime criminal case that is prosecuted by the people's procuratorate shall be tried by the people's court at the same level. Thus, the procuratorate where the investigating agency is located is responsible for approval of arrest and prosecution, while the court where the investigating agency is located, is responsible for adjudication. These provisions are, however, inconsistent with the relevant judicial interpretations. For instance, *Interpretations of the Supreme People's Court on Application of the Criminal Procedure Law of the People's Republic of China*,⁶ adopted in 2012 (hereinafter the *Interpretations on the*

³ NPC, *Decision of the Standing Committee of the National People's Congress on the Exercising of the Maritime Right Safeguarding and Law Enforcement Functions and Powers by the China Coast Guard*, available at: http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-06/22/content_2056585.htm, Accessed January 24 2021. (in Chinese)

⁴ *The Decision of the Standing Committee of the National People's Congress on Amending the Criminal Procedure Law of the People's Republic of China*, available at: http://www.gov.cn/xinwen/2018-10/26/content_5334890.htm, Accessed January 24 2021. (in Chinese)

⁵ *Notice on the Relevant Issues concerning the Handling of Cases of Legal Violations and Crimes Occurring at Sea*, (Gong Tong Zi [2007] No. 60), 17 September 2007. (in Chinese)

⁶ *Interpretations of the Supreme People's Court on Application of the Criminal Procedure Law of the People's Republic of China*, Adopted at the 1559th meeting of the Judicial Committee of the Supreme People's Court, 5 November 2012. (in Chinese)

Criminal Procedure Law) provides, in Article 4, that, ‘Over crimes committed on Chinese ships outside of Chinese territory, the people’s court at the Chinese port where that ship is first berthed shall have jurisdiction’.

Article 1 of the *Notice* differentiates, on basis of Article 25 of the *Criminal Procedure Law*,⁷ and Articles 4, 8, 9 and 10 of the *Interpretations on the Criminal Procedure Law*, 5 different situations, namely crimes committed on internal waters or the territorial sea, crimes committed on board a Chinese ship outside China’s territory, crimes committed by a Chinese citizen on sea areas beyond China’s territorial sea, crimes committed by a foreigner on sea areas beyond China’s territorial sea and crimes subject to universal jurisdiction. Principles for allocating adjudicative jurisdiction over maritime criminal cases are clarified. First, over a crime committed on internal waters or the territorial sea of China, the people’s court at the location of the crime or the place where the defendant enters China’s land territory, shall have jurisdiction. If it is more appropriate for the people’s court where the defendant resides to adjudicate the case, the people’s court there may exercise jurisdiction. Internal waters and the territorial sea are a part of the territory of China. Following the principles of territorial jurisdiction, the court where the crime was committed shall have jurisdiction. The location of the crime includes where the criminal conduct has occurred and where consequences of the crime have occurred (Salazar, 1996). Drawing references from Article 15, paragraph 2 of the *Provisions on the Procedures for Handling Criminal Cases by Public Security Agencies*,⁸ ‘the place where the criminal conduct has occurred includes the place where the criminal activity is performed, as well as places of preparation, starting points, transit locations, ending points and other locations relevant to the criminal conduct. For serial, sustained or continuous criminal offences, the places where the criminal conduct is repeated, sustained or continuously carried out are all locations where the criminal conduct occurred, is what is relevant. The place where the consequences of the criminal conduct have occurred include the place where the victim of the crime is offended, as well as places where the gains from the crime were acquired, concealed, transferred, utilised or sold’. According to Article 17 of the *Interpretations on the Criminal Procedure Law*, ‘in cases where two or more people’s courts at the same level have jurisdiction, the case shall be adjudicated by the first court that has accepted the case. When necessary, the case may be transferred for adjudication to the people’s court at the place of defendant’s principal crime’. Given that the delimitation of maritime boundaries has not been finalised in certain coastal provinces or certain coastal counties, a situation could arise where the court with jurisdiction remains unclear, even after the place of the crime has been determined (Chang, 2019). Moreover, the defendant may reside in an inland area, therefore, the *Notice* also provides for the

⁷ *Criminal Procedure Law*, The third amendment of the Decision on Amending the Criminal Procedure Law of the People’s Republic of China at the sixth meeting of the Standing Committee of the 13th National People’s Congress on 26 October 2018.

⁸ *Provisions on the Procedures for Handling Criminal Cases by Public Security Agencies*, on 13 December 2012, the Ministry of Public Security Order No. 127 was revised and issued by the Ministry of Public Security Order No. 159 on 20 July 2020, The Ministry of Public Security Decision on Amending the Regulations on the Procedures for Handling Criminal Cases by Public Security Organs. (in Chinese)

jurisdiction of the place where the defendant enters China's land territory. It should be noted, however, that this provision applies only to maritime criminal cases occurring on internal waters or the territorial sea but not on sea areas beyond China's territory (including the contiguous zone, the exclusive economic zone, the continental shelf within China's jurisdiction). Sea areas beyond China's territory are not a part of Chinese territory, thus, the relevant territorial jurisdiction may not be determined by China's administrative division. Second, concerning a crime committed on board a Chinese ship outside the territory of the People's Republic of China, the people's court at the place of the Chinese port where the ship is first berthed or the place where the defendant lands on or enters the territory of China, shall have jurisdiction. Article 4 of the *Interpretations on the Criminal Procedure Law*, only provides for the jurisdiction of the 'the people's court at the Chinese port where the ship is first berthed'. In practice, the defendant may not disembark the ship at the first berth or may be captured at a place other than the first berth, therefore, the *Notice* further provides for the jurisdiction of the court at the place of landing or entry, to be applicable. Third, as regards a crime committed by a Chinese citizen on sea areas beyond China's territorial sea, the people's court at the place of landing on or entry into the territory of China or at the place of pre-exit residence or current residence of the defendant, shall have jurisdiction. Where the victim is a Chinese citizen, the people's court at the place of pre-exit residence or current residence of the victim may also exercise jurisdiction. In addition to those under Article 8 of the *Interpretations on the Criminal Procedure Law*, the *Notice* further provides for jurisdiction based on the defendant's landing and current residence and the victim's current residence. Fourth, when considering a crime committed by a foreigner on sea areas beyond China's territorial sea but against the People's Republic of China or a Chinese citizen, that is punishable under the *Criminal Law*,⁹ the people's court at the place of landing or entry into the territory of China, or the place of pre-exit residence or post-entry residence of such foreigner, shall have jurisdiction. Jurisdiction may also be exercised by the people's court at the place of pre-exit residence or current residence of the victim. In addition to those provided for under Article 9 of the *Interpretations on the Criminal Procedure Law*, the *Notice* further provides for jurisdiction on basis of the defendant's landing and the victim's current residence. Fifth, when considering a crime provided for in an international treaty the People's Republic of China has concluded or acceded to, over which China exercises criminal jurisdiction within the scope of treaty obligations assumed thereunder, the people's court at the place where the defendant is arrested or lands on or enters the territory of China, shall have jurisdiction. In addition to the provisions under Article 10 of the *Interpretations on the Criminal Procedure Law*, the *Notice* further provides for jurisdiction based on the defendant's landing and entry. It is worth noting that, the place of landing and the place of entry are two different concepts, with the latter including places of entry into China's land territory and territorial sea and an aircraft's landing on Chinese territory.

⁹ *Criminal Law*, President's Order No. 30, 1 November 2017. (in Chinese)

To further streamline the different phases of criminal procedure, Article 2 of the *Notice* stipulates that ‘the docketing and criminal investigation of maritime criminal cases shall be conducted by the coast guard agency, following the principle of the court’s adjudicative jurisdiction. Where there is no coast guard agency at the place of the court having jurisdiction as determined by the principle of adjudicative jurisdiction, the jurisdiction shall be designated by the relevant coast guard, upon consultation with the people’s procuratorate and the people’s court at the same level.’ Article 5 provides that, ‘for a maritime criminal case of which public prosecution has been initiated by the people’s procuratorate, where the people’s court holds, upon examination, that the public prosecution complies with the *Criminal Procedure Law*, the judicial interpretations, and the relevant provisions of this *Notice*, it shall accept such criminal case according to the law’. These provisions could, at the examination and prosecution phase, reduce the instances of jurisdiction consultation or designation caused by unclear jurisdiction or jurisdictional disputes. These provisions could, thus, be beneficial in terms of saving juridical costs and enhancing the efficiency of the proceedings.

Clarification of the Coast Guard’s Request for Approval of Arrest and Transfer for Prosecution

According to Article 87 of the *Criminal Procedure Law*, a public security authority shall submit a request for approval of arrest of a criminal suspect to the people’s procuratorate at the same level, for examination and approval. As the coast guard agencies, at various levels, have been separated from local governments and incorporated into the armed police force, they follow the instructions applicable to the armed forces. Unlike the local public security agencies, this structure lacks a corresponding relationship with procurators at the same level. As a result, Article 3 of the *Notice* lays down the rules for determining the procuratorate responsible for handling the coast guard agency’s requests for approval of arrest and transfer for prosecution. It is clarified that, where, in the handling of a criminal case, a coast guard bureau of a coastal province, autonomous region or municipality directly responsible to the Central Government needs to make a request for approval of arrest or transfer the case for prosecution, such request or transfer shall be made to the local people’s procuratorate at the provincial level, by the law. Where, in the handling of a criminal case, a subordinate office of the coast guard, under the coast guard bureau of a coastal province, autonomous region or municipality directly responsible to the Central Government or a branch or a directly subordinate office of the China Coast Guard needs to make a request for approval of arrest or transfer the case for prosecution, such request or transfer shall be made to the local people’s procuratorate at the level of a prefecture-level city, by the law. Where, in the handling of a criminal case, a coast guard station needs to make a request for approval of arrest or transfer the case for prosecution, such request or transfer shall be made to the local basic-level people’s procuratorate, by the law.

Article 4 of the *Notice* stipulates that ‘where, after examining the maritime criminal case transferred by the coast guard agency for prosecution under the

Criminal Procedure Law, the judicial interpretations, and the relevant provisions of this *Notice*, the people's procuratorate holds that prosecutions shall be initiated by another people's procuratorate, the case shall be transferred to the people's procuratorate having jurisdiction. Where it is necessary to designate adjudicative jurisdiction under the *Criminal Procedure Law*, the judicial interpretations and the relevant provisions of this *Notice*, the coast guard agency shall, before the transfer for prosecution, notify the people's procuratorate and the people's procuratorate shall consult with the people's court at the same level, in dealing with matters concerning the designation of jurisdiction.'

Improvement of Procuratorate-Police Cooperation Mechanism for Strengthening of Procuratorial Support and Supervision of the Coast Guard Agency's Investigation

Article 6 of the *Notice* provides that, 'in the handling of a criminal case, the coast guard agency shall voluntarily accept the supervision of the procuratorate, establish an information-sharing platform with the procuratorate and regularly notify the procuratorate of such information relevant to both administrative enforcement and criminal justice, docketing and solution of the criminal case and adoption of compulsory measures. The people's procuratorate at the place where the coast guard agency is located shall supervise the docketing of criminal cases and criminal investigation activities of the coast guard agency. In the handling of a major, difficult, and complex criminal case, the coast guard agency may request the people's procuratorate to intervene in the criminal investigation and seek opinions and suggestions from the people's procuratorate. Where the people's procuratorate deems necessary, it may designate an officer to intervene in a coast guard agency's criminal investigation, raise opinions on evidence collection the application of law and decide whether the criminal investigation complies with the law. The coast guard agency shall cooperate.' This provision is designed for better implementation of the principle of division of functions and responsibilities, coordination and checks and balances in criminal procedures, to reinforce procuratorial supervision and procuratorate-police cooperation and to ensure quality and efficiency in the handling of cases.

Conclusion

In practice, the procuratorate-police cooperation mechanism in the form of the procuratorate's intervention in criminal investigation has accumulated relatively mature experience. The procuratorate's intervention in criminal investigation is consistent with the reform of the trial-centered criminal procedure system and will facilitate the procuratorate's leading role in criminal procedures, so that the investigative agency may be guided to promptly and comprehensively collect and collate evidence in a regulated matter and following the evidence requirements and standards as prescribed by the law. Such actions will also facilitate the procurator's early familiarity with the case, enhance efficiency in the examination of arrest and

prosecution, reduce the chances of supplementary investigation during the phase of examination and prosecution and improve the quality, efficiency and efficacy of pre-trial procedures (Chang, 2021). Furthermore, intervention by the procuratorate will also enhance legal supervision of criminal investigation, ensure the legality of evidence collected during the investigation and protect the suspect's lawful rights and interests, by the law. The procuratorate's intervention and participation in the discussions of major cases will also unify the investigatory and procuratorial agencies in their positions on the application of the law and use of evidence, summarise experiences in case handling, improve case-handling capabilities and better achieve the unification of political, social and legal results (Gao, 2021).

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