

Chinese Shipping Industry Should Strengthen the Legal Regulation and Management: The Enlightenment of “Oriental Star” Ship Capsized Events

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Abstract

The painful “Oriental Star” shipwreck gave a heavy blow to China’s shipping industry and maritime safety supervision. Chinese government must strictly execute the laws and regulations of the shipping industry, rationalize the relevant institutional mechanisms, to avoid the occurrence of vicious traffic accidents. We should put forward perfect suggestions and reform steps with a definite object in view and eliminate safety hazards to make the public and the market to regain confidence in the Chinese shipbuilding, shipping and tourism industry.

Key words: Shipping industry; Legal regulation; Oriental star; Ship capsized events

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INTRODUCTION

It is the largest number of victims of the shipwreck since the founding of new China that “Oriental Star” Ship Capsized Events causing heavy casualties and property losses. When the whole nation was in grief, the accident exposed many ills in the Chinese ship design, construction, modification, maintenance, inspection, transportation, management and other aspects at the same time, which must be comprehensive, systematic, without omissions cleaned up and rectified. Regarding this event as a milestone, we should seriously examine and reflect the drawbacks that our system is not perfect, the implementation is not strict and the supervision is not in place of the institutional mechanisms in industrial manufacturing, quality inspection, daily management, safety production and other fields. We should put forward perfect suggestions and reform steps with a definite object in view and eliminate safety hazards to make the public and the market to regain confidence in the Chinese shipbuilding, shipping and tourism industry. More important is to inject vitality and build brand for the development and prosperity of the Yangtze golden waterway, so that the country can promote the construction of the Yangtze River Economic Belt strategic planning to implement.

1. AMENDING THE CRIMINAL LAW TO INCORPORATE THE CRIME OF MAJOR ACCIDENTS, FORCED THE DANGEROUS CRIME OF ILLEGAL CHARGES IN ARTICLE 115TH OF THE CRIMINAL LAW

China’s current Criminal Law only provides that, setting fire, water, explosion, poisoning, radiation, infectious diseases and other substances or other dangerous methods causing serious injury, death or serious loss of public or private property should sentence ten years imprisonment, life imprisonment or death. And to intentional crime such as great flight accident crime, safe operation of the railway accident, traffic accident crime, crime of negligently causing a serious accident, compel illegal dangerous operations crime, major labor safety accident crime, crime of major safety accidents in large-scale mass activities, dangerous goods accident crime, engineering major safety accident crime, education facilities major safety accident crime, crime of fire accidents, do not or false report safety accident crime, even if especially serious consequences are caused, the criminals are only sentenced three years but not more than seven years shall be sentenced to fixed-term imprisonment. The harmful consequences which caused by these crimes are no less than the criminal charges of article 115 of the light, but the execution standard is much lower. This is significant loss of fair rules, and it’s not enough to deter illegal offenders.

In order to save 50,000 yuan port costs, “Oriental Star” passenger ship’s captain ignored the provisions of the relevant safety management and compelled illegal adventure homework by knowing the warning of extreme weather. When encountered a storm, he didn’t promptly break down, but forced full left rudder which led the ship to capsize, and he also not timely helped the passengers to evacuate, resulting in the irreparable tragedy. According to the navigation rules, this turn is very dangerous. When the ship turns in a large angle, the ship itself will have a four or five degree tilt, and if this time it is struck from the side by the wind, the ship may suddenly turn over. So, when encountered strong winds, ships can not easily turn. It can be seen that, the captain, chief engineer and other major personnel are responsible for the accident and the responsibility can not be shirked. Therefore, it is recommended to expand the application of the criminal law of the 115th charges, and includes this crime in it to intensify the fight against this kind of intentional crime which caused especially. Only in this way can be the captain, the aircraft commander, the conductor, the driver and other people who are responsible for people’s life and property safety to attach great importance to safety issues.

At present, the issue of the charges of criminal responsibility of “Oriental Star” passenger ship’s captain and chief engineer should not be prosecuted with the crime of “major liability accident, forcing the illegal adventure homework crime”. It shall contrast the past cases of intentionally drunken driving caused heavy casualties and should be convicted and sentenced with the crime of endangering public safety in a dangerous method rather than traffic accident crime. In the South Korean SEWOL shipwreck, the South Korean prosecutors have not chosen the lighter charges, but sued captain Lee, the first-class Marine division, the second-class Marine divisions and the chief engineer 4 people with manslaughter, sailing for the remaining 11 crew abandoned to death, abandoned by the injury and other serious crimes prosecution. Eventually, the captain jailed for 36 years, the chief engineer jailed for 30 years, the first-class and second-class Marine division jailed for 20 years and 15 years, and the rest of the crew of the sentence in 5 to 10 years.

2. THE SUBJECT AND THE REGULATORY AUTHORITIES OF THE SHIPPING SAFETY SHALL BE SUBJECT TO THE RESPONSIBILITY

The major accident can get a brief conclusion: “30% of natural disasters, seventy percent of man-made disasters.” In addition to the sailing personnel such as the captain, chief engineer is directly responsible for the accident; other shipping safety related subjects and regulatory authorities are also to blame. Whether there is a problem of illegal on ship transformation of Chongqing eastern shipping company

who owned “Oriental Star” passenger ship needs to be verified. From the current information, the ship was lengthened and aggravated, completely changed the design of the prototype when launching that year, leading to the increase of the amount of water in the ship, resulting in “the upper weight, the lower light” which made the top heavy and the center of gravity be unsteady. And the past open outboard corridor was closed. Each room originally has two doors, respectively against the outboard and the middle of the corridor opened. But after transformation, they were turned to the middle of the corridor. The guest room had no fixed bed, and the bed side also blocked outward window. After the ship tilted, the bed in the room tilted to the direction of sliding against a door to prevent the passengers to escape, and would accelerate the ship capsized. It can be seen that “Oriental Star” is not conducive to escape after transformation, and there is a clear security flaw.

And according to the older workers of shipping company, “Oriental Star” has a thousand or two passengers during the Spring Festival. This shows that for the sake of one-sided pursuit of profit, the company ignored transportation safety regulation. This behavior is a recidivist. Therefore, it is necessary to conduct a thorough review of the company’s production and operation status to find out whether there is an existence of illegal modification of the ship, embezzlement of public funds led to the maintenance of the ship is not timely and safety personnel are not well-equipped, training is not enough and other issues. We should consider suing the company’s responsible personnel for the crime of major liability accident, compelling violates regulations to take risk work and some other crimes.

In addition, there is evidence showing that the “Oriental Star” has had many illegal, hidden troubles since the day of design and construction. The data of Eastern Shipping Company’s shipyard who built the ship that year shows that the shipyard is of class B qualification, and it can only undertake external 368 kW tug, barge of 300-500 tons of class, and steel pontoon construction and repair 60 meters below. However, when the new “Oriental Star” was built, its length is 66 meters, which at 880 two kilowatts of engine, and the total tonnage is 2,200 tons or more. Eastern Shipping Company clearly didn’t have the qualification of the production of similar cruise ship like the “Oriental Star”. Eastern shipping company let other shipyards to build the main structure in the form of “outsourcing and self-built”, and the interior decoration, the welding parts are completed by the company’s shipyard. By this non productive method, the company completed the construction of 6 ships within 4 years. And after these 6 “Oriental” series of cruise ship launched, frequent accidents happened on them in 1997, 2000, 2001 and 2008. This suggests that the construction, transformation and operation of the ships have the defects of long-term which were unable to overcome. But they have been “management” in spite of illness, until caused a big mistake. This further causes us to reflect on the absence of long-term supervision and dereliction of duty of various types of regulatory agencies of various types at all levels. Before 2003, Chongqing Wanzhou ship repairing

company and Eastern Shipping Company were belonging to the same department of transportation for a long time.

From the construction to the transformation of “Oriental Star”, and then to the ship inspection, are all in Wanzhou, Chongqing traffic system. The party secretary, general manager and other senior of Eastern Shipping Company, was all appointed by Wanzhou district traffic bureau. A few years ago, some of the company’s management has been cross served in the traffic department under the multiple departments (including the ship inspection department). This has resulted in the bad mechanism of enterprises and administrative organs “as both the referee, and when the athletes”. And the struggles of interest will inevitably lead to the regulatory mechanism useless. Chongqing and ship related departments have Chinese CCS Chongqing branch, Chongqing Ship Inspection Bureau and Chongqing maritime bureau (divided into directly under Maritime Bureau and the local maritime bureau), but three brands a set of people. Specific to the Wanzhou District, it is split into Chongqing city Wanzhou District of port shipping administration, the local maritime bureau of Chongqing Wanzhou and Wanzhou Ship Inspection Bureau of Chongqing city. In fact, three units are not belonging to the same competent department but in different systems, ship’s inspection and maritime system. The system and mechanism need to be straightened out. Especially the administrative departments related to ships are very much; the implementation of the program will be very confusing.

As for local, there is China Classification Society, Provincial Bureau of local ship inspection and Local Ship Inspection Bureau managed by Provincial Communications Department, etc.. Departments responsible for the inspection of the Department are not the same and specific execution standards are also different. The weight and strength of “Oriental Star” need to be re-checked after modifying and lengthening the hull, and lengthening hull can also cause changes in other indicators. But how to test this, three sectors don’t have a clear standard. “Oriental Star” has high security frequency before the crash. So far, the security has been checked 45 times, including 39 times of preliminary investigation and 6 times reviews. Nearly 10 inspection shows that the passenger ship has a routine screening every two months or so and the security agencies are the Wushan maritime department and Wanzhou maritime department. Last time is this year on April 10th, by the Wushan maritime security. Security check results show that the total number of defects of the crashed ship is 287. Whether they have checked out the defects before the crash and whether they have been corrected is yet to be verified. Once found out that it is forced shipping without correction, the person in charge of the ship inspection department should bear the legal responsibility of dereliction of duty.

South Korea’s monitoring hospital found out in the investigation of the SEWOL shipwreck that the shipwreck could be avoided altogether. The process of buying the boat, running the boat, dealing with the accident and rescue exposed the existence of

fraud, illegal, dereliction of duty and corruption phenomenon in the South Korean government agencies. Ferry operators in collusion with cargo companies and port inspectors often overload. The owner of the ship blindly pursued commercial interests, and the corporate actual controller transferred the profits illegally, resulting in the company can not have sufficient funds to strengthen security and personnel training. Finally, the owner was convicted of manslaughter and embezzlement. He was sentenced to fixed-term imprisonment of 10 years, and a fine of 2,000,000 won. Company actual controller was sentenced to embezzlement of public funds, 3 years in prison. The other 6 company employees and 1 port inspector were sentenced to 2 to 6 years in prison.

3. STRICTLY EXECUTE THE LAWS AND REGULATIONS OF THE SHIPPING INDUSTRY, RATIONALIZE THE RELEVANT INSTITUTIONAL MECHANISMS, TO AVOID THE OCCURRENCE OF VICIOUS TRAFFIC ACCIDENTS

For quality standard test in ship design, construction, reconstruction, maintenance and all aspects, when checking the quality, put an end to illegal subcontracting at the same time, but also conducting serious approval and record of ship transformation and maintenance, and conduct quality tracking. With immediate effect, we should do a comprehensive clean-up and rectification to the enterprise and public institution which involved in inland and ocean ship design, construction, renovation, maintenance in the country, and will have the inappropriate qualifications or illegal operators to clear out the market. All kinds of shipping enterprises ask for self-examination and self correction of security risks, it is necessary to immediately launch a ship safety management system's establishment, implementation and operation of investigation at the same time, to strengthen the safety knowledge training and evaluation of the inspection crew, crew and enterprise management personnel. Especially like Chongqing Eastern Shipping Company this kind of enterprise which caused shipping accidents frequently, should be more thoroughly suspended rectification. Don't contact the security risks and not correct the paralysis thought of only concentrate on economic interest and regardless of shipping safety, it shouldn't be allowed to resume service resolutely.

In the shipwreck accident, the Yangtze River maritime sector only did the warning broadcast on the extreme weather conditions of part of the basin, rather than directly sending patrol boats to the relevant channel of passing ships for counseling and placement, or directly stops the ship from not receiving prohibited information or having blind confidence into dangerous waters. This is one of the reasons for the tragedy. The maritime sector should be strictly in accordance with the *Provisions of the High-Speed Passenger Ship Safety Management Rules*, and

resolutely stop shipping in harsh weather conditions, and instructed ships to focus on the use of anchoring and docking, the beach measures, giving priority to prevention, to avoid, and as far as possible to avoid risks. Ministry of transport should have law enforcement inspection from top to bottom of the *Waterway Passenger Transport Rules*, *Inland River Traffic Safety Management Regulations*, the *Ship’s Minimum Safe Manning Rule*, *The Vessel Traffic Management System of Safety Supervision and Management Regulations*, the *Ship in Distress Emergency Communication Management Rules*, the *River Traffic Accident Investigation and Handling Regulations* and other administrative rules and regulations’ implementation. We should improve the relevant laws and regulations, rise “the captain should rescue crews, help passengers escape, and finally evacuate in time to abandon the ship at the time of the accident” from the professional ethics of statutory duties.

In addition, we should learn from the provisions of the maritime traffic safety that not only installing automatic identification system (AIS system) on all inland vessels, but also the ship navigation data recorder (VDR), which is the “black box”, as well as the ship distress automatic distress system. After the SEWOL shipwreck, the South Korean government made corresponding punishment and measures of whether South Korean coastguard rescued effectively, whether the relevant departments of the government did regulations in place and some other respects. They reorganized the national disaster system, dissolved the maritime police agency, and established new “security control tower” — the national security office. Therefore, the Standing Committee of the National People’s Congress, the Commission for Discipline Inspection of the Central Committee of the CPC, the Supreme People’s Procuratorate, the Supervision Department and some other legal supervision organs should conduct a thorough investigation into all aspects of illegal crime, dereliction of duty behavior in this accident based on the combined authority. They should also seriously investigate the relevant responsible person’s Party and government responsibility and legal responsibility. We can consider to integrate CCS’s ship identification, inspection and other functions with the Ministry of industry, General Administration of quality supervision, Safety Supervision Bureau and other administrative organs’ relevant functions effectively, so that we can put an end to the drawbacks of making the monitoring a mere formality. We can also consider integrating the disaster relief function of the Ministry of transport and maritime bureau, Salvage Bureau, the Yangtze River Waterway Bureau, Ministry of public security, Ministry of civil affairs and other administrative organs in response to a major disaster and casualty accident.

CONCLUSION

The painful “Oriental Star” shipwreck gave a heavy blow to China’s shipping industry and maritime safety supervision. It used hundreds of lives to warn us that

we should learn from the advantages of foreign laws and regulations, strengthen and improve the supervision of the shipping industry from all aspects of the ship management as soon as possible, seriously and strictly investigate and affix the responsibility, and regulate and protect people's interests from the law, so that we can avoid this kind of accidents to happen again. Only in this way, can people regain the confidence of our country's shipping safety, and it can also help our country to promote the modernization of our country's legal system and the economic modernization.

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