

The Theoretical Reflection and System Construction on the Application of Law for Foreign-related Personal Injury to Passengers on Cruise Ships

Yan Lingcheng*

Abstract : the *Yang* case heard by Shanghai Maritime Court in 2018 not only fully exposed the inadaptability of traditional conflict rules theory to the application of the foreign-related personal injury to passengers on cruise ships, but also exerted great divergences in the academia and practical circle. In addition, the international public health crisis of cruise ship caused by the global epidemic will further complicate the application of law for foreign-related personal injury to passengers on cruise ships. Therefore, In order to better safeguard the life, health and safety of cruise passengers and the sustainable development of international cruise tourism, this paper attempts to choose the theoretical reflection and system construction on application of law for foreign-related personal injury to passengers on cruise ships as the theme to research on the application of law for liability disputes of personal injury to passengers caused by the cruise companies and their servants or agents fail to fulfill their security obligations during cruise on the sea or in navigable waters connected to the sea. This paper is divided into four parts for analysis. From starting with *Yang* case, the first part puts forward the dilemma of application of law for foreign-related personal injury to passengers on cruise ships; the second part reflects theoretically on dilemma of application of law for foreign-related personal injury to passengers on cruise ships; the third part provides the system construction of the application of law for foreign-related personal injury to passengers on cruise ships. Lastly, the conclusion is that China should strive to become a leader rather than a watcher.

Key Words: International Cruise Tourism; Personal Injury to Passengers; Application of Law; Athens Convention

* Master of Maritime Law, School of Law in Dalian Maritime University; E-mail:lingchengy@126.com.

I. INTRODUCTION: START WITH THE *YANG* CASE

At present, the sustainable development of international cruise tourism has become a key policy of building the 21 Century Maritime Silk Road and promoting the Belt and Road Initiative as a China's maritime power.¹ However, due to the lack of national legislation on cruise tourism alone and the special cruise ticket sales model², it can be said that the legal relationship of cruise tourism contract in China is in a dilemma of continuous progress and chaos.³ This directly forced the Chinese plaintiff Yang Moumou 1 to give up the contract lawsuit and choose the tort lawsuit to Sue the Shanghai Maritime Court in the *Yang Moumou 1 v Carnival Corporation & plc* (the 'Yang').⁴ Up to now, Chinese academic and practical circles still have great differences on the determination of applicable law in *Yang* case.⁵

On 5 August 2015, a Chinese passenger named Yang Moumou 1 accidentally drowned while playing in the swimming pool of the Sapphire Princess, a British cruise ship, while cruising on the high seas. After all-out rescue efforts, the passenger was identified as a level 1 disability, requiring lifelong care. After the incident, the passenger's mother Yang Moumou 2 as the plaintiff of the cruise operator Carnival

1 See National Development and Reform Commission Ministry of Foreign Affairs and Ministry of Commerce, 'Vision and Actions on Jointly Building the Silk Road Economic Belt and the 21st Century Maritime Silk Road', <http://www.gov.cn/xinwen/2015-03/28/content_2839723.htm> accessed 18 May 2022.

2 According to Article 23 of the regulations of the People's Republic of China on Travel Services 2009, foreign-invested travel services are not allowed to operate outbound tourism business for mainland Chinese residents. Therefore, foreign cruise companies cannot sell cruise tickets directly to Chinese passengers, but the Chinese travel services are responsible for the sales of cruise tickets. The sale mode of cruise tickets is called as 'Cruise ship ticket underwriting model'. However, many countries permit cruise companies to sell directly cruise tickets to passengers. Cruise ticket underwriting is still the mainstream model of China's cruise market in the future. In fact, the Cruise ship ticket underwriting model is a compromise product between the theoretical and practical circles of in china, which has not yet formed a complete cruise economic industry chain and the cruise tourism industry which is in great demand. See Fang Yuan Lv, *Research on Legal Issues of Cruise Ship from the Perspective of Transportation*, Doctoral dissertation of Dalian Maritime University, 2015, p.136.

3 See Guo Ping, 'A Study On the Legal Application of Cruise Contract: Also On the Revision of the Contract for the Carriage of Passengers by Sea in China's Maritime Law' (2018) 6 LSM 39; Sun Siqi and others, 'Legislative Paradigm and Theoretical Dialectics of Cruise Tourism Legal Relations' (2017) 3 CJML 28; Chen Qi, 'Cracking the Divergence of Legal Positioning of Cruise Tour Operators: From the Perspective of Institutional Conflicts Between Tourism Law and Maritime Law' (2020) 6 LSJ 463.

4 See [2016] H72MC No.2336.

5 See Sun Siqi and others, 'Four Questions in the Dispute of Personal Injury Liability of Cruise Passengers: Comment on the First Case of Personal Infringement on High Seas by Chinese Cruise Passengers' (2020) 2 JDMU (Social Science Edition) 18; Xie Zhenxian and Guo chan, 'Legal Application of Disputes over Personal Injury Liability of Foreign Cruises' (2019) 5 JPJC; Chen Qi, 'Consideration and Reconstruction of the Applicable Rules of Cruise Tourism Law from the Perspective of Maritime Private International Law: Taking the Revision of Maritime Law as an Opportunity' (2019) 2 JDMU (Social Science Edition) 18; Xie Chen, 'Research on the Application of Law for Foreign-related Tort Disputes on Cruises in China' (2018) 3 JSPC 159; Erxiu Zeng, 'The Protection of Cruise Passengers and the Athens Convention' (2018) 9 BEIJING L. REV. 709.

company to the Chinese court. After two jurisdictional objections, the case was finally transferred to Shanghai Maritime Court for special trial. The main focus of dispute is the determination of applicable law. According to the traditional international maritime practice, the law of flag state should be applied to infringement of ship on the high seas.⁶ However, after defining the case as a foreign-related maritime personal injury dispute, the court held that the Article 44⁷ of People's Republic of China on Application of Law for Foreign-related Civil Relationships 2011 (the Application of Law) had fallen through, and then the court determined the applicable law as Chinese law according to Article 2 (2)⁸ of Application of Law. In addition, the indirect application of the Athens Convention⁹ by the court in the *Yang* case has aroused many disputes in the maritime circles at home and abroad.¹⁰ Although the *Yang* case reflects the dilemma in the application of the current traditional conflict rules theory in the foreign-related personal injury to passengers on cruise ships, the Maritime Law of the People's Republic of China (the Maritime Law) has no clear provisions on this. In addition, the international public health crisis of cruise ship caused by the global epidemic will further complicate the application of law for foreign-related personal injury to passengers on cruise ships.

In my opinion, the purpose of case study is not to solve the case itself, but to go out of the case study, expand the dimension of case study, analyze the micro problems based on macro phenomena, and reflect the realistic dilemma of macro problems

6 See William Tetley, Liu Xingli (trs), *International Conflict Law: Common Law, Civil Law and Maritime Law* (Law press, Beijing 2003) 678.

7 As per the Article 44 of Application of Law provides that *lex loci delicti* shall apply to liabilities for tort, but if the parties have a mutual habitual residence, the laws at the mutual habitual residence shall apply. If the parties choose the applicable laws by agreement after any tort takes place, the agreement shall prevail.

8 The Article 2(2) of Application of Law provides that if there are no provisions in this Law or other laws on the application of any laws concerning foreign-related civil relations, the laws which have the closest relation with this foreign-related civil relation shall apply.

9 The so-called 'indirect application of Athens Convention' means that the court does not apply the Convention in the part of applicable law, but applies and interprets the Convention in the part of whether the defendant cruise company can enjoy limitation of liability. The Athens Convention and its protocols currently in force include: Convention on the Carriage of Passengers and their Baggage by Sea, 1974 (the Athens Convention entered into force 28 April 1987); The 1976 Protocol to Amend the Athens Convention on the Carriage of Passengers and their Baggage by Sea, 1974 (the Protocol 1976 entered into force 30 April 1989); the 2002 Protocol to Amend the Athens Convention on the Carriage of Passengers and their Baggage by Sea, 1974 (the Protocol 2002 entered into force 23 April 2014). Among them, China has acceded to the Athens Convention and the 1976 Protocol.

10 Through empirical analysis, this paper finds that the *Yang* case created three firsts, namely, the first case in which Chinese courts applied the Athens Convention; the first case in which Chinese cruise passengers on the high seas were subjected to personal injury; and the first case in which the traditional conflict rules of tort were applied to determine the applicable law for foreign-related personal injury to passengers on cruise ships in the world.

through the study of micro problems, and show the function of theoretical reflection and system construction everywhere in practice.¹¹ Therefore, In order to better safeguard the life, health and safety of cruise passengers and the sustainable development of international cruise tourism, this paper attempts to choose ‘the theoretical reflection and system construction on application of law for foreign-related personal injury to passengers on cruise ships’¹² as the theme to research on the application of law for liability disputes of personal injury to passengers caused by the cruise companies and their servants or agents fail to fulfill their security obligations during cruise on the sea or in navigable waters connected to the sea. ¹³ This paper is divided into four parts for analysis. From starting with *Yang* case, the first part puts forward the dilemma of application of law for foreign-related personal injury to passengers on cruise ships; the second part reflects theoretically on dilemma of application of law for foreign-related personal injury to passengers on cruise ships; the third part provides the system construction of the application of law for foreign-related personal injury to passengers on cruise ships. Lastly, the conclusion is that China should strive to become a leader rather than a watcher.

11 See Lu Huilin and Li Xue, ‘How to Get out of Case Study: From Case Study to Extended Case Study’ (2007) 1 CSSJ.

12 In private international Law, ‘Application of Law’ is also called ‘Choice of Law’ and ‘Applicable Law’. Its basic meaning means that, in order to solve the legal conflicts caused by the legal differences in different countries or regions, it is necessary to follow the guidance of certain conflict rules to determine the rights and obligations of the relevant parties in foreign-related civil and commercial relations. See Han Depei (Ed.), *Private International Law* (3rd edition, Higher Education Press 2014) 91. The use of ‘application of law’ in this article is intended to be consistent with the expression of ‘Application of Law in Foreign-related Relations’ in Chapter 14 of the Maritime Law and the Application of Law. Therefore, unless otherwise specified, the meaning of ‘application of law’ mentioned in this paper is basically the same as that of ‘choice of law’ and ‘applicable law’.

13 The following is a description of the research scope of this paper. First of all, this paper only studies that the foreign-related personal injury to passengers on cruise ship is essentially a ‘foreign-related tort dispute’ rather than a “foreign-related contract dispute”. Because of the complexity of the legal relationship between the cruise travel contract and the cruise ticket underwriting model in china, the cruise parties have been seriously confused about the application of law for cruise contract. Therefore, under the influence of the *Yang* case, from the perspective of legal psychology and legal economics, as a rational cruise consumer, it is the most cost saving, most efficient and most compensation relief way to file a tort lawsuit against the cruise company with strong economy. Secondly, the research scope of this paper does not include the liability disputes of personal injury to cruise passengers during shore sightseeing, but only studies the accidents of personal injury to passenger on cruise ships. Because the dispute of personal injury to passenger that happens on shore and the dispute of general personal injury do not have too big distinction. Thirdly, the subject scope of this paper mainly includes the infringing cruise company, its employees, agents and the infringed passengers. Finally, this paper selects the infringement behavior of cruise companies as failure to fulfill security obligations. Although cruise tourism has the dual attributes of maritime transport and tourism consumption, the purpose of cruise is ‘travel’ rather than ‘transport’. Therefore, the current domestic and foreign maritime judicial practice and maritime law legislation has fully demonstrated that cruise companies should have reasonable security obligations for passengers. For the construction of cruise companies' security obligations, see Xie Chen, *Research on Legal Relations in Cruise Tourism in China*, Doctoral Dissertation of Dalian Maritime University, 2020, p.137.

II. THE THEORETICAL REFLECTION ON APPLICATION OF LAW FOR FOREIGN-RELATED PERSONAL INJURY TO PASSENGERS ON CRUISE SHIPS

It can be seen that due to the legislative absence of the Maritime Law on the application of law for foreign-related personal injury at sea and the inadaptability of the Application of Law, As a result, the Athens Convention, the principle of party autonomy, the law at common habitual residence, the law of flag state, *lex loci delicti* have caused dilemma in the application of foreign-related personal injury to passengers on cruise ships, and thus forced the Shanghai Maritime Court to determine the applicable law according to the closest connection principle in the *Yang* case. Therefore, it is necessary to critically and theoretically reflect on the dilemma of the application of Athens Convention, party autonomy principle, the law at common habitual residence, and the law of flag state, *lex loci delicti*, and the closest connection principle in the foreign-related personal injury to passengers on cruise ships.

A. ATHENS CONVENTIONS: ONE CLEAR AND ONE FOLLOWED

Although the Maritime Law has specified the principle of prior application of treaties,¹⁴ there is only one case in which the Athens Convention is applied in China. At present, the application of Athens Convention on the foreign-related personal injury to passengers on cruise ships in China can be divided into two aspects: explicit dilemma and implicit dilemma: the former refers to the absence of cruise ticket system in China due to the sale mode of Chinese cruise tickets; the latter refers to whether cruise companies and passengers have established contract of carriage of passenger by sea. It can be considered that the superimposition of the above two practical dilemmas directly leads to the dispute between the applicability of Athens Convention and the applicability of the limitation of liability of cruise companies. Therefore, in the *Yang* case, the defendant Carnival cruise company asserted the application of the Athens Convention in the applicable law part, while the court applied the Athens Convention only in the substantive part of whether the cruise company could enjoy the limitation of liability. As a matter of fact, the indirect

¹⁴ See Article 268(1) of the Maritime Law.

application of Athens Convention is caused by the disputes over the definition of the legal status of cruise companies and the absence of legislation of international treaties in China's Constitution.

1. Clarify the dual legal status of cruise company: Actual carrier and tour operator

The dual nature of cruise tourism determines that cruise companies must have dual legal status, that is, cruise companies should have the dual status of actual carrier and tour operator.¹⁵ Accordingly, to the dispute of personal injury of passenger of foreign-related cruise ship, many countries has admitted that Cruise Company has the identity of sea carrier, and then gives priority to the application of legal system of carriage of passenger by sea and Athens convention.¹⁶

2. Follow good faith in international treaty law: Applicable law rather than Limitation

The principle of good faith or Bona fide plays an important role in international law.¹⁷ However, international law does not provide clear legal definition and constitutive elements for the principle of good faith, but depends on international treaty law and international judicial practice to classify it.¹⁸ The principle of good faith should be said that the principle of good faith has different value orientation and judgment criteria in different areas of international law. From the perspective of international treaty law, the principle of good faith, as the basic principle of international treaty interpretation, is essentially the principle of validity, that is, the interpretation of convention provisions should follow the principle of rather make them effective than lose their meaning.¹⁹ From the perspective of the application of private international

15 See Chen Qi, 'The solution of the differences in the legal orientation of Cruise Tourism operators: from the perspective of the institutional conflict between Tourism Law and Maritime Law' (2020) 6 LJ 463.

16 Carriage by sea system and package system to solve the applicable law of conflict, the European parliament in 'Athens Regulation' was enacted in 2009, the Regulation is designed to solve the 2002 protocol and the package directive 2015 of conflict of laws problem, namely the 2002 Protocol gives priority to claims for Personal Injury or Death of Passengers on Cruise ship during cruising. See Yvonne Baatz, *Maritime Law*, fifth edition, Rutledge, 2021, pp.241-242; Dr Olena Bokareva, 'Claims for personal injuries by cruise ship passengers under international and EU regimes', in Justyna Nawrot and other (eds), *Codification of maritime law: Challenges, possibilities and experience* (Routledge, London 2020)211.

17 See Steven Reinhold, 'Good Faith in international law' (2013) 2 *UCL Journal of Law and Jurisprudence* 40; Robert Kolb, *Good Faith in International Law*, (Hart Publishing, Oxford 2017).

18 See Zhen Bin, Han Xiuli and Cai Congyan (trs), *International Court of Justice and General Legal Principles applicable to Tribunals* (Law press, Beijing 2011) 105.

19 See Zhu Wenqi and Li Qiang, *International Treaty Law*, (Chinese Renmin University Press, Beijing 2008)239-241.

law, the principle of good faith in international treaty law refers to that, as states parties to the Convention, the courts of each country should faithfully, in good faith, rigorously and seriously examine whether the case disputes fall within the scope of application of the Convention. Some scholar thinks that from the perspective of private international law, international commercial articles take legal effect in a country by means of transformation and incorporation. In the way of transformation, international commercial substantive treaties appear in the form of domestic law and are applied under the guidance of private international law mode. In turn, chapter V Contract of Carriage of Passengers by Sea of the Maritime Law is basically transformed from the Athens Convention and China made no reservations when it acceded to the Convention.²⁰ Therefore, the Athens Convention should be applied in accordance with the model of private international law rather than in the limitation of liability part.²¹ In other words, The Athens Convention is applicable to cruise passengers, it shall have direct effect and supremacy in Chinese court, and China should accede to the Protocol 2002 for better protection of the cruise passengers.²²

B. PARTY AUTONOMY: LIMITATION RATHER THAN EXPANSION

From the perspective of private international law, the unilateral incorporation of the clause of choice of law into the cruise ticket contract by the cruise company in advance does not accord with party autonomy and damages the legitimate rights and interests of cruise consumers.²³ This paper holds that the clause of choice of law in

20 See Si Yuzhuo, *Monographies on Maritime Law* (4th edn, Chinese Renmin University Press, Beijing 2018) 221-220.

21 According to Article 18 and 20 of The Meeting Minutes of National Courts' Symposium on Foreign-related Commercial and Maritime Adjudication work in 2021 (the 'Minutes 2021'), on the one hand, if the specific disputes in foreign-related civil and commercial cases are not stipulated in the international treaties concluded or participated by China, or the specific disputes in the cases involve reserved matters, The people's court shall determine the laws to be applied in accordance with the provisions of the law on the application of laws concerning foreign-related civil relations. On the other hand, if there are two or more reasonable interpretations of the provisions of Chinese laws and administrative regulations applied by the people's court in trying commercial cases involving foreign elements, the people's court shall choose the interpretation consistent with the international treaties concluded or acceded to by China, except for the provisions on which China has declared reservations.

22 Erxiu Zeng, 'The Protection of Cruise Passengers and the Athens Convention' (2018) 9 BEIJING L. REV. 709.

23 The so-called 'unilateral' of the clause of choice of law in cruise ticket contract refers to that cruise companies generally incorporate the clause of choice of law into the cruise ticket contract unilaterally in the practice of cruise tourism. In fact, such clauses have the nature of standard clauses. These clauses are essentially dictated by the cruise line in the dominant economic position unilaterally in advance of the cruise ticket contract without consultation or communication with cruise passengers. Therefore, the 'unilateral' of the clause of choice of law conflict with the 'multilateral' of the principle of party autonomy.

cruise ticket contract is not absolutely invalid, but the party autonomy principle has different value orientation in foreign-related tort and contract disputes. In view of the particularity of the foreign-related personal injury to passengers on cruise ships, this paper holds that the party autonomy principle of will should not be expanded infinitely in the legislation and judicatory application of law for foreign-related personal injury to passengers on cruise ships, but should be properly restricted by the principle of protecting the interests of the weak in private international law.

1. Distinguish the application of the principle of party autonomy in contract and tort

This paper considers the different value orientation of the principle of party autonomy in tort and contract. The application of the principle of party autonomy to the applicable law of non-contractual debt actually violates the equal basis of the parties' choice of law.²⁴ At present, the principle of party autonomy is restricted by law in the field of foreign-related tort disputes: the limitation of time is that the parties can choose their applicable law after the event; The scope is limited to choosing only the law of the court or the law of the place where the damage results; the law of party autonomy shall not impair the lawful rights and interests of a third party.²⁵ At present, the clauses of choice of law in cruise ticket contract unilaterally formulated by cruise companies are not the expression of the law of party autonomy, but the unilateral compulsory action of cruise companies which are the dominant subject in essence. The principle of party autonomy should not be completely 'empty' but should be 'limited' in foreign-related personal injury to passengers on cruise ships. The most reasonable limitation is to integrate the principle of protecting weak interests in private international law into the interpretation of the validity of the clauses of choice of law in cruise ticket contract.

24 See Sagi Peari, *The Foundation of Choice of Law, Choice and Equality* (Oxford University Press, New York 2018) 190.

25 See Du Xinli, *Research on methods of Legal Choice* (Chinese University of Political Science and Law, doctoral dissertation, 2004) 64-63.

2. The validity of the clauses of choice of law in cruise ticket contract should be limited by the principle of protecting the interests of the weak

The principle of protecting the interests of the weak in modern private international law is not only embodied in mandatory norms, advantageous principles, public order reservation and other principles and systems, but also embodied in specific rules of application of law.²⁶ In this paper, the principle of protecting the interests of the weak in private international law refers to a kind of principle of law of application in private international law, which makes necessary restrictions on the application of law by virtue of the idea of protecting the interests of the weak, and achieves a reasonable balance between conflict justice and substantive justice through special conflict rules. In order to pursue the maximization of their own economic interests, cruise companies often incorporate the most favorable clause of applicable law into cruise ticket contracts in advance. Therefore, the principle of protecting the interests of the weak in the international private law should be integrated into the validity determination of the provisions of applicable law in cruise ticket contracts. In other words, if the cruise company unilaterally formulates the provisions of applicable law in cruise ticket contracts without sufficient explanation or warning to passengers, then the provisions cannot have legal effect on cruise passengers.²⁷

C. THE LAW AT THE COMMON HABITUAL RESIDENCE: NORMALIZATION OF FAILURE OF APPLICATION

At present, the foreign-related personal injury to passengers on cruise ships in China generally involve three legal subjects: cruise companies, travel agencies and passengers. Therefore, it is necessary to clarify whether there is the law at common habitual residence among the three.²⁸ On the one hand, the law at common habitual

26 The protecting weak interests under private international law is more reflected in the legal application of foreign-related contracts and special types of tort disputes, such as foreign-related consumer contracts, foreign-related labor and employment contracts and foreign-related product liability infringement. It can be considered that the protection of the interests of the weak is an important driving force for the realization of substantive justice in the application of contemporary private international law. See Yuan Faqiang, 'Reflection and Reconstruction of the Weak Protection System in China's Private International Law' (2014) 6 SLB.

27 In a recent case of novel Coronavirus infection involving a passenger on cruise ship, the Australian Courts rejected the provisions of choice of law and jurisdiction in cruise ticket contract on the ground that these collective exemption provisions harmed the legitimate rights and interests of Australian passengers. See *KARPIK V CARNIVAL PLC*, [2021] FCA 1082.

28 Article 15 of The Supreme People's Court's Interpretation on Several Issues concerning the Application of the Law of the People's Republic of China on Foreign-related Civil Relations (I) ('Judicial Interpretation of the Application of Law') clearly defines the habitual residence of natural persons from the perspective of time and space. That is, the time element refers to the continuous residence of the place for more than one year from the time when the foreign-related civil relationship comes into being, changes or terminates; the spatial element

residence of tourists and travel agencies is generally Chinese law. At present, due to the special policies of China's cruise tourism, the travel agencies operating international cruise tourism business in China are basically Chinese enterprises, so the law at common habitual residence of Chinese travel agencies and Chinese passengers is generally the Chinese law. On the other hand, there is usually not the law at common habitual residence between Chinese passengers and cruise companies. Currently, the Chinese cruise market is basically monopolized by foreign cruise companies, but the offices set up by cruise companies in Chinese ports do not belong to their habitual residence places or main business places of legal persons. Therefore, there is no the law at common habitual residence between foreign cruise companies and Chinese passengers. Namely, it will become normal to fail to apply the law at common habitual residence to foreign-related personal injury to passengers on cruise ships.

It should be pointed out that in Yang case, the parties had great differences on the determination of law at the common habitual residence of the parties in Article 44 of the Application of Law, but the court did not fully explain this issue. Therefore, it is necessary to clarify the connotation and extension of 'parties' and 'common habitual residence' in Article 44 of the Application of Law. On the one hand, in principle, the parties only include the plaintiff and the defendant. However, if the third party has the right of independent claim or has been liable by the judgment of first instance, it also belongs to the category of the parties.²⁹ On the other hand, the offices set up by cruise companies in Chinese ports (such as shipping agencies, cruise agencies, branches, etc.) do not belong to their habitual residence places. The habitual residence places of cruise companies should adopt the standard of main business places of legal persons.

D. THE LAW OF FLAG STATE: WAIVE RATHER THAN ABIDE

At present, the application of the law of flag state to the personal injury of cruise passengers on high sea does not belong to the modern international maritime practice. Since most of the flag states hung by cruise ships are flag of convenience countries with imperfect legal supervision, the judicial practice of disputes over personal injury to cruise passengers in many countries will abandon the application of the law of flag

refers to the place as the center of its life. In addition, according to article 14 (2) of the Application of Law, the habitual residence of a legal person is its main business place.

²⁹ See Tan Bing, *Civil Procedure Law* (Law press, Beijing 1997) 148.

state and apply *lex fori* in order to protect the interests of its cruise consumers and *ordre public*. Therefore, the application of the law of flag state should be abandoned in the legislation and judicatory of the application of law for foreign-related personal injury to passengers on cruise ship in the future.

1. The application of law of flag state does not belong to modern international maritime practice

At present, the theoretical and practical circles in China differ greatly on the constitutive elements and applicable scope of international maritime practice. Because the Maritime Law does not point out the specific meaning of international maritime practice and its constituent elements, and does not explain the conflict and coordination between international practice and Chinese law when making different provisions, but adopts the expression ‘can’.³⁰ Therefore, it is within the discretion of the court to resolve the conflict between maritime international practice and general civil law.³¹ In fact, international practice can be divided into private international law practice and public international law practice, and their applicable conditions are different.³² Whether the practice of public international law can be applied depends on the will and practice of a certain country. However, most international maritime practices belong to private law, so their applicable conditions should follow the principle of autonomy of parties.³³ The law of ship flag state mainly originates from the exclusive jurisdiction of criminal, administrative, disciplinary and other public law affairs caused by ship collision on the high seas, which belongs to the category of public international law in essence.³⁴ Therefore, Chinese courts cannot simply consider ‘cruise ship’ as the place of infringement based on the theory of floating territory of ships and thus apply the law of flag state to disputes over personal injury to cruise passengers on the high seas.

2. From law of flag state to *lex fori*: A perspective of *ordre public*

Recently, the practice of private international maritime law in various countries shows that in order to protect the national public order or public interest, the tendency of the

30 See Article 268 of Maritime Law.

31 For the application of maritime international practice under Chinese law, see Yaqin Chen, *On the Status of Maritime International Practice in Chinese Law*, Doctoral dissertation, Fudan University, 2008.

32 See Che Peizhao, *outline of international Economic Law* (Tsinghua University press, Beijing 2003) 26.

33 See Tingzhong Fu, ‘Reflections on the Application of International Maritime Practices’ (2020) 5 SSJ.

34 Moreover, the ‘floating territory theory’, which is the basis of the application of flag state for ship infringement on the high seas, has not been recognized in modern international law and China's current legislation. See Zhou Gengsheng, *International Law* (vol. 2, Wuhan University Press, Wuhan 2007) 429-218.

application of *lex fori* has become a very obvious practice. This trend is particularly evident in the field of application of law of foreign-related cruise tourism.³⁵ At present, British and American courts generally do not take the initiative to apply the law of flag state, but choose to apply the Athens Convention or the corresponding domestic general maritime law in the case of foreign-related personal injury to passengers on cruise ships.³⁶ Because, the application of *lex fori* is obviously superior to the law of the law of flag state, both in terms of the convenience of the procedure and the protection of the legitimate rights and interests of weak cruise passengers. It can be said that the traditional international maritime practices require the application of the law of flag state to the infringement of ships on the high seas based on the predictability of the application of law. However, the particularity of the foreign-related personal injury to passengers on cruise ships has been transferred from the law of flag state doctrine to *lex fori* doctrine.

E. THE *LEX LOXI DELICTI*: VICTIM SELECTION

Currently, the prevalence of cruise ships on the high seas leads to the dilemma of identification of *lex loci delicti* (the law at place of tort). For example, in the *Yang* case, according to Article 187 of Notice of the Supreme People's Court on Issuing the Opinions on Several Issues concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China (the 'Opinions of the General Principles of the Civil Law')³⁷, the court interpreted *lex loci delicti* as the law of the place where the tort was committed and the law of the place where damage results occur, and believed that the latter could include the law of place where indirectly damage results occur. In cruise transportation, the place where the tort is committed is considered to be the ship or the sea area where the ship is located at that time; and the place where the tort result occurs may also involve multiple places such as the ship or

35 See Xie Chen, 'Research on the Application of Law for Foreign-related Tort Disputes on Cruises in China' (2018) 3 JSPC 159.

36 See *Jennings v TUI UK Ltd*, 2021 1 Lloyd's Rep 61; *Lawrence v. NCL (Bahamas) Ltd*, [2018]1 Lloyd's Rep. 607; *Dawkins v Carnival Plc*, 2012 1 Lloyd's Rep 1; *Tesoriero v. Carnival Corp.*, 965 F.3d 1170 (11th Cir. 2020); *Goodloe v. Royal Caribbean Cruises, Ltd.*, 418 F. Supp. 3d 1112(U.S. Dist. 2019); *Marla MARTINS, et al. v. ROYAL CARIBBEAN CRUISES LTD.*, 174 F. Supp. 3d 1345 (S.D. Fla. 2016); *Cox v. Princess Cruise Lines, Ltd.*, 2013 WL 3233461 (C.D. Cal. 2013).

37 Law Article 187 of Opinions of the General Principles of the Civil refer to the *lex loci delicti* shall include the law of the place where a tort is committed and the law of the place where the result of a tort took place. If the two laws are inconsistent with each other, the people's court may choose to apply either of them. Now, it should be noted that this judicial interpretation has been abolished by the Civil Code of the People's Republic of China (the 'Civil Law'). Therefore, it is doubtful whether the Chinese court can apply the judicial interpretation in the future.

the sea area where the ship is located at that time or the medical and nursing place of the infringed person. Therefore, in these circumstances, the law at place of tort has lost its clear and foreseeable advantages: simple application can only increase the instability of the applicable law, which does not conform to the intention of the relevant legislation. And then the court also believes that, in determining the applicable law, “the place of tort” is usually understood as a geographical location directly related to a country or a particular jurisdiction, while cruise ships are special vehicles used for maritime sightseeing, which are usually in the dynamic process of maritime navigation, and do not fall within the scope of a particular geographical location. So, such special tort disputes occurring on cruise ships should generally not identify the ship itself as a place of tort, and the law of the ship flag state should not be equated with the law at the place of tort. It shows that the *Yang* case has fully exposed the dilemma of the application of the law at the place of tort to foreign-related personal injury to passengers on cruise ships.

In my opinion, whether it is the law of the place where the tort is committed or the law of the place where the damage results, it is not for the judge to choose the applicable law but for the victim cruise passengers to choose the law that is beneficial to them according to their own situation. That is in line with the principle of protecting the interests of the weak in private international law.³⁸ on the one hand, Article 44 of the Application of Law adopts the unconditional choice of the law of the place where torts are carried out or the law of the place where damage results occur, which not only increases the burden of the court to determine the applicable law and objectively provides the conditions for judges to judge favoritism,³⁹ but also would conflict with the principle of predictability of application of law. On the other hand, the law applicable law article 44 choose unified the law at place of tort in accordance with the principles of predictability of application of law, but in the field of special torts (such as product liability tort disputes, consumer infringement, cruise tourism infringement disputes, etc.) for application of law not only concerns the principle of predictability of application of law, it is necessary to integrate the principle of

³⁸ It is more reasonable for the victim to choose the law of the place where the tort is committed or the result of the damage occurs, because the law chosen by the judge may not conform to the will of the victim. See Du Tao, *Comments on the Application of Laws in Foreign-related Civil Relations* (Law Press, Beijing 2011) 348; Song Xiao, *the entity Orientation of contemporary Private international Law* (Wuhan University press, Wuhan 2004) 185.

³⁹ See Jin Pengnian and Jiang Fen, *Application of Law in Foreign-related Civil Disputes and Judicial Practice in China* (Zhejiang University Press, Hangzhou 2017) 181-180.

protecting the interests of the weak in private international law into the determination of the law at place of tort.

F. THE CLOSET CONNECTION PRINCIPLE: SUPPLEMENT RATHER THAN ELEVATION

At present, there is a great controversy in the academic circles over the court's application of the closest connection principle in the *Yang* case to determine the applicable law. Many scholars believe that this principle should be promoted as the basic rule of application of law for foreign-related cruise ship tort in the revision of Maritime Law. However, this legislative model will conflict with the predictability of law application. Although the *Yang* case created an opportunity for the principle of the closest connection to come to the foreground from the background, but there are still great differences in the legal nature of the principle in academic and practical circles in China. In fact, this principle has different value orientation in the legislation and judicial application of private international law. However, the flexibility of the principle of the closest connection is out of control so that it cannot be elevated to the basic rule or exception rule of application of law.

1. The dual legal nature of the principle of closest connection: The basic principles of legislation and the complementary role of the judiciary

At present, there are still differences on the legal nature of the principle the closest connection. The first view is that, based on the principle of legal predictability, the principle should still be applied as a cushion clause or supplementary rule.⁴⁰ The second view is that the principle not only conforms to the basic characteristics of the basic principles of private international law, but also takes it as the basic principle of formulating specific rules of application of law in the Application of Law.⁴¹ The above views are reasonable to some extent, but the two views actually confuse the different value orientations reflected by the principle of closest connection in legislation and judicature. In essence, the principle of the closest connection should have a different value orientation in legislation and judicature, and the latest

40 See Liu Renshan, *Private International Law and the Construction of a Community with a Shared Future for Mankind: Based on the Implementation of the Law of Application of Law for Foreign-related Civil Relations* (Law press, Beijing 2019) 177; Huang Jin, 'The Formulation and Improvement of the Application of Law for Foreign-related Civil Relations in China' (2011) 3 FPL 29.

41 See Wan Erxiang (Ed.), *Understanding and Application of provisions of the People's Republic of China on Application of law for Foreign-related Civil Relationships* (China Legal System Press, Beijing 2011) 22; Qi Xiangquan, 'On the Legislative Characteristics of the Application of Law for Foreign-related Civil Relations' (2011) 2 JNU 41.

development trend of contemporary conflict law shows that the principle of the closest connection has the dual status of basic principle and bottom rule.⁴² In other words, from the perspective of legislation, the principle of closest connection is the basic principles of legislation and the complementary role of the judiciary for the application of modern and contemporary private international law. From the judicial perspective, the application of the principle of closest connection should be defined as the supplementary function of specific applicable rules of law.

2. The out-of-control flexibility of the closet connection principle makes it hard to push higher

In the *Yang* case, after denying Article 44 of the Application of Law, the court turned to the principle of the closest Connection to determine the applicable law as Chinese law.⁴³ This bold approach has triggered many Chinese scholars to reflect on the application of the principle in foreign-related personal injury to passengers on cruise ships in China. Some scholars believe that the applicable rules of tort law on foreign-related cruise ships in China should focus on the legislative policy pursued by the principle of the closest connection and the legitimate expectation of the parties concerned.⁴⁴ Some people also argue that the applicable law should be determined by the principle of the closest connection rather than simply applying the tort law to the foreign-related personal injury to passengers on cruise ships.⁴⁵ Some scholars even propose that the principle of the closest connection should be taken as the basic applicable rule of law in the revision of the Maritime Law.⁴⁶ It is true that the particularity of the foreign-related personal injury to passengers on cruise ships has led to the evolution of China's judicial practice from adhering to the traditional theory of tort conflict rules to choosing a more flexible legal selection method. However, as a country with statute law system, China should first pursue the certainty and stability of law. Therefore, China is very cautious about the legislative choice and judicial application of the principle of the closest connection. In other words, the judge can

42 See Liu Xiangshu, 'On the Judicial Principle of the Closest Connection' (2012) 3 ML 34.

43 It should be pointed out that when determining the applicable law according to the principle of closest connection, the Court of Shanghai Maritime Court intentionally omitted the connecting factors related to English law and focused on the connecting factors related to Chinese law. This practice actually has the tendency to abuse the discretion to apply the law of the court.

44 See Xie Chen, 'Research on the Application of Law for Foreign-related Tort Disputes on Cruises in China' (2018) 3 JSPC 159.

45 See Xie Zhenxian and Guo chan, 'Legal Application of Disputes over Personal Injury Liability of Foreign Cruises' (2019) 5 PJC.

46 See Chen Qi, 'Consideration and Reconstruction of the Applicable Rules of Cruise Tourism Law from the Perspective of Maritime Private International Law: Taking the Revision of Maritime Law as an Opportunity' (2019) 2 JDMU (Social Science Edition) 18.

guarantee the fair result of the case through the flexibility advantage of the closest connection principle. However, the specific application of this principle depends on the discretion of judges.⁴⁷ Therefore, the flexibility of the principle of closest connection often conflicts negatively with the predictability of the application of law pursued by statute law system.⁴⁸

In my opinion, the essence of the closest connection principle in contemporary conflict law lies in the balance between the certainty and flexibility of choice of law. As a special law, the Maritime Law did not take into account the particularity of the application of law for foreign-related personal injury to passengers on cruise ships when it was formulated. However, the *Yang* case fully revealed that article 44 of the Application of Law is in a situation of failure, which directly forced the Shanghai Maritime Court to choose the principle of the closest connection to determine the applicable law of the case. However, it is difficult to elevate the principle to the basic applicable rule or exception rule of application of law for foreign-related maritime torts in the international private code compilation, the revision of Maritime Law and the legislation of cruise tourism only by the *Yang* case. But, with the great influence of *Yang* case, the law of party autonomy, the law at common habitual residence of parties, the law of place where the act of tort, the law of flag state in disputes of foreign-related personal injury to passengers on cruise ships exposed serious not adaptability, the principle of the closest connection in judicial utility ratio will be increased. Therefore, what we need to solve most at present is the judicial application of the principle of the closest connection in the disputes of foreign-related personal injury to passengers on cruise ships.

47 See Xiao Yongping, 'the application of the principle of the closest connection in the law of Conflict in China' (1992) 3 CSS.

48 Some scholars concluded through empirical analysis that there are few cases in our judicial practice to determine the applicable law of tort liability according to the principle of the closest connection. Moreover, due to the identification and application of foreign laws, and the fact that Chinese judges are familiar with Chinese law, most of the applicable laws of foreign-related torts or contract disputes in China are directed to Chinese law. See Liu Renshan, *Private International Law and the Construction of a Community with a Shared Future for Mankind: Based on the Implementation of the Law of Application of Law for Foreign-related Civil Relations* (Law Press, Beijing 2019) 177.

III. THE SYSTEM CONSTRUCTION OF APPLICATION OF LAW FOR FOREIGN-RELATED PERSONAL INJURY TO PASSENGERS ON CRUISE SHIPS

After conducting in-depth theoretical reflection on the application of law for foreign-related personal injury to passengers on cruise ships, this part tries to propose the Chinese characteristics' system construction of the application of law for foreign-related personal injury to passengers on cruise ships.

A. CONSTRUCTION PRINCIPLE

This paper holds that the following two principles should be followed to construct the application of law for foreign-related personal injury to passengers on cruise ships:

1. Follow the principle of protecting the interests of the weak in private

international law: Value superiority

In this paper, the principle of protecting the interests of the weak in private international law refers to a principle of application of law that restricts the parties' autonomy by virtue of the concept of protecting the weak interests of cruise consumers, and realizes a reasonable balance between conflict justice and substantive justice through special conflict rules. With the rapid development of China's international cruise industry, the value choice of China's cruise industry should be people-oriented and pay attention to the right to life and health, whether it should be reflected in legislative amendments or judicial practice, in order to benefit the sustainable and healthy development of China's international cruise industry.⁴⁹ The core idea of private international law lies in its significance to human beings, and the principle of protecting the interests of the weak is the full embodiment of this idea.⁵⁰ It can be seen that adhering to the principle of protecting the interests of the weak in private international law is a reflection of China's cruise industry's adherence to people-oriented. Therefore, this paper argues that the principle of protecting the interests of the weak should be integrated into the construction of the application of law for foreign-related personal injury to passengers on cruise ships in China.

49 See Guo Ping, 'Revision of the Contract of Carriage of Passengers by Sea of the Maritime Law: Practical Confusion and Value Choice' (2020) 3 LLR 5.

50 See Qu Bo, *Protection of the Interests of the Weak under private International Law* (Law press, Beijing 2008) 68.

2. Pursue the principle of the certainty and flexibility of law of application:

Flexible exception certainty model

The value orientation of application of law in contemporary international private law can be typified as the connection standard of pursuing legal stability and the justice standard of pursuing individual justice.⁵¹ The certainty and flexibility of the application of law in private international law just match the conflict justice and substantive justice of private international law.⁵² At present, the legislation of private international law in many countries is seeking for the harmonization of the certainty and flexibility of application of law in order to realize the dual value orientation of individual justice and consistent judgment. In fact, the restatement of the Law of three Conflicts in the United States fully shows that the application of private international law always bounces back and forth between the certainty of rules and the flexibility of methods.⁵³ Therefore, application of law for foreign-related personal injury to passengers on cruise ships in china should not only adhere to become the basic principles of statue law pursue legal predictability, and to introduce some flexible choice of law method to implement case impartiality, reasonable balance the referee consistency and individual case impartiality for dual value orientation of international private law. This paper argues that the current and future application of law for foreign-related personal injury to passengers on cruise ships in China should adopt a ‘flexible exception certainty model’, that is, the certainty of application of law is the general rule, and the flexibility of application of law is the exception rule. In other words, it is necessary to clarify the legal relationship of foreign-related personal injury to passengers on cruise ships and its dual properties of tourism and transportation, so as to take into account the legal application rules of foreign-related general tort liability disputes and the particularity of the application of law for foreign-related personal injury to passengers on cruise ships.

51 See Yuan Faqiang, ‘The multidimensional Nature of Legal Selection Criteria and its Value Extension’, LS (2020) 4 LS.

52 See Song Xiao, entity *Orientation of Contemporary Private International Law* (Wuhan University press, Wuhan 2004) 11.

53 See Symeon C. Symeonides, ‘The Third Conflicts Restatement’s First Draft on Tort Conflicts’ (2017) 92 TLR.

B. CONSTRUCTION PATH: LEGISLATION AND JUDICATURE

1. Set up the provisions of the application of law for foreign-related personal injury to passengers on cruise ships when formulating the cruise tourism law

Due to the particularity and complexity of the application of law for foreign-related personal injury to passengers on cruise ships, it is not feasible to revise the Maritime Law and compile the Chinese international private code.⁵⁴

Therefore, this paper suggests that the following provisions of application of law for foreign-related personal injury to passengers on cruise ships be added to the special enactment of the Chinese cruise tourism law in the future: The personal injury liability of passengers shall be governed by the laws at the habitual residence of passengers. If the passenger chooses to apply the laws of the main business place of the cruise company or the place of the home port of the cruise ship, the laws of the passenger's choice shall apply. Where passengers are liable for mass personal damage due to a shipping accident such as sinking, collision, stranding, explosion or fire of a cruise ship or an unexpected public health event such as the outbreak of COVID-19 on the cruise ship, *lex fori* shall apply. Explanation of application of this Article:

First of all, if there is a group personal injury liability dispute among passengers due to the sinking, collision, stranding, explosion, fire and other navigation accidents of the cruise ship or the outbreak of COVID-19 and other unexpected public health events on the cruise ship, *lex fori* shall be applied. Secondly, if the passenger's personal injury falls under the general liability for personal injury not caused by a shipping accident or maritime public health events, then the passenger has the right to choose the applicable law of the cruise company's main place of business or the law of the cruise ship's home port. Finally, if neither of the above circumstances applies,

⁵⁴ Because, on the one hand, professor Guo Ping, who is responsible for the revision of chapter 5 of the Maritime Law, pointed out that due to the complexity and particularity of the legal system of international cruise tourism, it is difficult to regulate all legal issues of cruise ships in the revision of the Maritime Law 1992, but it should be legislated separately for the legal system of cruise ships. See China Maritime Law Association, 'the second Maritime Law Seminar 2020' <<https://mp.weixin.qq.com/s/yfxhjN2c6LwSDMhNXz-9tg>> accessed 18 May 2022. On the other hand, the Chinese Society of Private International Law once held a seminar on the private international law of the *Yang* case, but the recent conference held by the Chinese Society of Private International Law did not involve any application of law for foreign-related cruise tourism. See the official website of International Law School of Northwest University of Political Science and Law, 'The conference on compiling the Code of Private International Law of China was successfully held in Xi 'an' <<https://nwsil.nwupl.edu.cn/hyxw/hydt/80339.htm>> accessed 28 June 2021.

then the laws at the habitual residence of the passenger shall apply. The following are the specific reasons for adding this article:

(1) The laws at the habitual residence of passengers shall be used as the general rule of application of law

This paper argues that passengers have the identity of consumers in cruise tourism, and are in a weak position compared with cruise companies. Therefore, according to the principle of protecting the interests of the weak, the rights and interests of passengers should be given priority.⁵⁵

(2) Passengers should be allowed to unilaterally choose the applicable law of the main business place of cruise companies and the law of home port of cruise ships as exceptions

On the one hand, the passenger's unilateral choice of applicable law reflects the superiority of the principle of protecting the interests of the weak. On the other hand, restricting passengers' unilateral choice to apply the law of cruise companies' main business place and the law of cruise companies' home port is to reasonably balance the foreseeable interests of application of law for passengers and cruise companies, and to pursue the principle of the unity of opposites of flexibility and stability in the application of law.

(3) An exception to the rule of exceptions to which the *lex fori* is used

If a cruise ship sinking, collision, stranding, explosion, fire and other navigation accidents or maritime public health events occur in the cruising process of cruise ship, which causes the passengers' collective personal damage compensation liability, it not only involves public order and the interests of third parties(such as port state, ship flag state, coastal state) other than the cruise ship, but also the large number of cruise passengers lead to the law at common habitual residence of parties failed. At this point, it is difficult for cruise passengers to unilaterally reach a consensus to choose the application of law, so in this case, *lex fori* is justified, practical and reasonable.

2. Clarify for the judicial application of foreign-related personal injury to passengers on cruise ships to Article 44 and Article 2 of the Application of Law

Due to the complexity and time consuming of legislation, the application of traditional conflict rules theory to foreign-related personal injury to passengers on

⁵⁵ In recent years, foreign countries' laws and legislation of choice of law on foreign-related product infringement and foreign-related consumer contract have highlighted the practice of protecting the interests of consumers and infringed. See Symeon C. Symeonides, *Choice of law* (Oxford University Press, New York 2016) 409-273.

cruise ships will continue the dilemma of *Yang* case. This paper holds that, on the one hand, China's judicial practice should adhere to the predictability of the application of law pursued by traditional tort conflict rules such as the law of the place of tort, and interpret the specific application of Article 44 of the Application of Law to foreign-related personal injury to passengers on cruise ships. On the other hand, in view of article 44 of the Application of Law may be a total failure of the law application risk, and then the judge is forced to realize the individual case justice according to the principle of the closest connection in article 2 (2) of the Application of Law. Therefore, it is necessary to regularize the application of the principle of the closest connection to the personal injury of passengers on foreign-related cruise ships so as to prevent judges from excessively abusing their discretion in applying *lex fori*.

(1) Interpretation of Article 44 of the Application of Law

According to the applicable relationship between the general law and the special law, the civil legal rules of the general law can be applied when there is no clear stipulation in the Maritime Law as the special law.⁵⁶ Foreign-related personal injury to passengers on cruise ships is a foreign-related maritime personal injury dispute. However, there are no provisions on the application of law of other foreign-related maritime tort except ship collision in the Maritime Law, so the court can only apply the general rules on the application of law for foreign-related tort liability laws in Article 44 of the Application of Law.

According to article 44 of the Application of Law, there are three steps for the general law on the application of foreign-related tort liability, namely, the law of party autonomy -- the law at the common habitual residence -- *lex loci delicti*. At present, due to the serious inadaptability of these three steps in the determination of the applicable law or foreign-related personal injury to passengers on cruise ships, special explanations are needed: First, the law of the parties' autonomy is the law of the parties' consensual choice after the occurrence of torts. Arbitration shall specify the optional method should be after the occurrence of infringement to the first-instance court before the end of the debate, not directly to cruise company announced on its website before the infringement occurred choice of law clause in cruise ticket contract to determine the applicable law, unless the passenger and cruise lines within the statutory time clause expressly agreed to choose the applicable law. Second, the common habitual residence of the parties in this article refers to the common habitual residence of the plaintiff and defendant (generally Chinese passengers and foreign cruise companies), and cannot include a third party without independent claim (such as A Chinese travel agency). Moreover, the office or agency established by the cruise company in the home port of cruise ship in China cannot be regarded as its company's

⁵⁶ However, the old Maritime Law often comes into conflict with the new general civil law in china. See Cao Xingguo and Chu Beiping, 'The Revision of maritime Law as a Special Law: Institutional System, Timing and Normative Design' (2018) 1 RPSCI.

main business place. Thirdly, based on the principle of protecting the interests of the weak, the place of tort in this article can be interpreted as the place where the tort is committed and the place where the damage result occurs. In case of conflict between the two, the victim shall choose the law in his favor.

(2) The judicial complementary role of the closest connection principle : A mirror view of the *Lauritzen* case

This paper argues that the applicable law can be determined according to the closest connection principle of Article 2 (2) of the Application of Law only when article 44 of the Application of Law does fail and no other law is applicable. In the judicial application of the principle of closest connection, it mainly reflects the process of legal argumentation in order to realize the justice of individual cases. Therefore, there should be different methods and ideas of legal argumentation in different cases.⁵⁷ This paper suggests that we can learn from the practice of the Supreme Court of the United States in *Lauritzen*⁵⁸ and apply the principle of the closest connection to the judicial practice of application of law for foreign-related personal injury to passengers on cruise ship.

In order to prevent judges from tending to apply *lex fori*, the paper suggests learn from the practice of the US Supreme Court in *Lauritzen*, The Judicial interpretation issued by the Supreme People's Court stipulates that the following factors should be taken into consideration when applying the closest connection principle to determine the applicable law for foreign-related personal injury to passengers on cruise ships: (1) the place where the infringement is committed; (2) the place where the damage result occurs; (3) the nationality of the passenger and its habitual residence; (4) the nationality of the cruise company and its main business place; (5) the location of the cruise ship home port; (6) the place where the cruise ship ticket contract is signed; (7) the inconvenient foreign court and other factors. First of all, the application of the closest connection principle should be considered logically. The connection between the applicable law and this case should refer to the closest legal connection rather than the general legal connection. Secondly, it is necessary to constantly analyze, compare and select different connection points to seek a law that is most relevant and closely related to the interests of the case from a variety of connections. At last, we should not

57 See Weng Jie, 'Judicial Application of the Principle of the Closest Connection: Centering on Article 2 of the Law on the Application of Laws for Foreign-related Civil Relations' (2017) 6 LS.

58 In *Lauritzen v. Larsen*, the Supreme Court of the United States for the first time applied the principle of the closest connection to the choice of law concerning foreign-related maritime torts. In this case, the Supreme Court of the United States held that the applicable law for maritime torts should be based on the following eight factors to determine the law of the country or region most closely related to the case: (1) the place of the wrongful act; (2) the law of the ship's flag; (3) the domicile of the injured party; (4) the domicile of the shipowner; (5) the place of the contract; (6) the inaccessibility of the foreign forum; (7) the law of the forum; and (8) the shipowner's base of operations..See *Lauritzen v. Larsen*, 345 U.S. 571, 582-93, 73 S. Ct. 921, 97 L. Ed. 1254 (1953).

only fully examine the quantity and closeness of the link points, but also fully consider the quality of the link points and whether the outcome of the case is fair. Because this principle not only focuses on the conflict justice of law application, but also takes into account the substantive justice of law application.

IV. CONCLUSION: LEADER RATHER THAN WATCHER

The 2018 *Yang* case has exposed the crisis of the application of traditional conflict rules theory to foreign-related personal injury to passengers on cruise ships in China, and the impact of international cruise public health events, which will aggravate the dilemma of the application of law to the personal injury of foreign-related cruise passengers in China in the future. It can be said that a reasonable solution to these practical difficulties will provide favorable rules of law guarantee for the booming China international cruise industry, enrich the theoretical system of China's private international maritime law, and help the sustainable and healthy development of China's international cruise tourism. Therefore, with the continuous promotion of the Belt and Road initiative and the construction of the Maritime Silk Road and other maritime power strategies, China should strive to become a leader rather than a Watcher in the construction of the system of the application of law for foreign-related personal injury to passengers on cruise ships.