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“ARREST OF VESSELS UNDER SPANISH LAW”

by

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***“RECENT DEVELOPMENTS IN SHIPPING LAW & ARREST
PROCEDURES: FOREIGN PERSPECTIVES”.***

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ARREST OF VESSELS UNDER SPANISH LAW

The principal legal body governing the arrest of vessels to secure a maritime claim in Spain is the International Convention relating to the Arrest of Sea-Going Ships of 10th March 1952.

A vessel may be arrested also in Spain under the ordinary domestic rules governing the preventive “embargo” of the debtors’ assets as security for a claim but this is not frequently used.

The 1952 International Convention was a compromise between the common and civil law systems. As such it contains deficiencies but it has become a useful and relevant legal tool adopted by many countries.

IMO and UNCTAD decided to place on their working programme the revision, among others, of the 1952 Arrest Convention and the CMI prepared a draft for a new Arrest Convention which was approved in Libon in 1985. In March 1999, at a Diplomatic Conference held in Geneva, the final text of a new Arrest Convention was adopted.

This has not yet come into international force and history tells us that the implementation of new conventions which are designed to replace earlier instruments is a slow process.

Texts of the 1952 and 1999 Conventions are enclosed to this paper.

After this introduction, let’s see how the system of the arrest of vessels works out in practical terms in Spain.

WHAT DOES ARREST MEAN?.

Pursuant to article 1,2 of the Convention, arrest means the detention of a ship by judicial process to secure a maritime claim but does not include the seizure of a ship in execution or satisfaction of a judgment.

In this connection, reference can be made to the definition of judgment in the Council Regulation (EC) nº 44/2001: *Any judgment given by a court or tribunal, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.*

Summary judgments, injunctions or similar orders issued in summary proceedings or decisions with provisional character are included in the motion of “judgment” for the purpose of art. 1,2 of the Arrest Convention.

IS THE MERE ALLEGATION BY THE CLAIMANT SUFFICIENT?.

Pursuant to the Act 2/1967, enacted in Spain in order to accommodate the relevant Spanish general rules of procedure on attachment of assets in a way as to facilitate the application and use of the 1952 Arrest Convention, the mere allegation of the claim is sufficient without the need of providing prima facie evidence or any other proof of the claim.

ARE THERE ANY OTHER REQUIREMENTS IN ORDER TO OBTAIN AN ARREST ORDER?.

Claimant must in principle provide the court with a power of attorney in favour of local procurators and lawyers who are those who lodge the arrest application in the name and on behalf of the claimant. Some courts admit photocopies of a power of attorney, which original must be submitted as soon as possible.

On the other hand, claimant is required to provide security for damages in case of wrongful arrest as a condition for the arrest order being effective. The usual form is a bank guarantee but cash deposits are accepted.

The amount of this security for wrongful arrest is left to the discretion of the particular court. Usually, our courts apply a percentage of the claim in order to fix the security which will serve to satisfy the damages to which the arresting claimant might be condemned in case of wrongful arrest.

This may happen:

1. When the debtor opposes the arrest on the grounds that it is contrary to the law because the legal conditions for the arrest do not exist.

In principle, under the 1952 Convention and the Act 2/1967 the opposition should be limited to argue that the claim is not a maritime claim defined in article 1 of the Convention or the vessel is not arrestable under article 3. Reference is made, among others, to the judgment of the Court of Appeal of Huelva dated 28 December 2006.

2. If proceedings on the merits are not commenced in order to validate the arrest.
3. The claim is rejected in the proceedings on the merits.

There is only a judgment in Spain, rendered by the Court of Appeal of Baleares on 1999, stating that the owner of the vessel could only claim as damages for wrongful arrest the cost of the security to be provided by vessel's interests to release the vessel from arrest on the grounds that he could / should always release the vessel from arrest by providing adequate security.

WHAT ARE THE CLAIMS IN RESPECT OF SHIP A SHIP MAY BE ARRESTED?.

Article 1 of the Arrest Convention contains a closed list of claims:

- (a) damage caused by any ship either in collision or otherwise;*
- (b) loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship;*
- (c) salvage;*
- (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;*
- (e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;*
- (f) loss of or damage to goods including baggage carried in any ship;*
- (g) general average;*
- (h) bottomry;*
- (i) towage;*
- (j) pilotage;*
- (k) goods or materials wherever supplied to a ship for her operation or maintenance;*
- (l) construction, repair or equipment of any ship or dock charges and dues;*
- (m) wages of Masters, Officers, or crew;*
- (n) Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;*
- (o) disputes as to the title to or ownership of any ship;*
- (p) disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship;*
- (q) the mortgage or hypothecation of any ship."*

In said list not all liens recognized at that time as maritime liens by the 1926 Convention on Maritime Liens and Mortgages were included.

On the other hand, the list omits some claims undoubtedly of a maritime nature in view of their connection with the operation of a ship, such as insurance premiums, commission and disbursements of insurance brokers, contracts for the sale of a ship etc.

Therefore, the approach adopted by the 1952 Arrest Convention as far as the claims in respect of which an arrest is permissible leaves much to be desired.

CAN BE A VESSEL ARRESTED BY CLAIMS OTHER THAN THOSE LISTED IN ARTICLE 1 OF THE CONVENTION?

Besides the powers of Authorities other than courts to arrest ships as security in cases of public debts or to detain vessels in cases of non-fulfilment of safety and related requirements, those who have claims which are not included in article 1 may in principle arrest a vessel, as security for the enforcement of an eventual condemning judgment against a debtor, following domestic ordinary rules governing the arrest in general.

These are more onerous than the Convention placing the claimant with the burden of proving the claim rather than alleging it. The arresting party under the ordinary rules must also argue and prove the need for the precautionary measure (the so-called periculum in mora).

It is doubtful that these ordinary rules can apply in respect of the arrest of ships flying the flag by a contracting State as this would be contrary to article 2 of the Convention.

WHAT ARE THE ARRESTABLE VESSELS?

A claimant may arrest either the particular ship in respect of which the maritime arose or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship.

IS IT POSSIBLE TO ARREST THE VESSEL IN RESPECT OF WHICH THE CLAIM AROSE WHEN HER OWNER IS NOT THE PERSON LIABLE FOR THE CLAIM AND THIS CLAIM IS NOT SECURED BY A MARITIME LIEN?

In principle it would be possible for the claimants to arrest the vessel but later on they would not be able to enforce a judgment against the vessel if the judgment declares liable for the claim other than the owner of the vessel.

WHAT HAPPENS IF THE SHIP IN RESPECT OF WHICH THE CLAIM AROSE HAS BEEN PURCHASED BY A BONA FIDE BUYER?.

If the maritime claim is secured by a maritime lien the vessel may be arrested even after her purchase.

When the maritime claim is not a lien then the claimant will not have the right to arrest the ship in hands of a bona fide purchaser. Otherwise the maritime claim would acquire one of the features of the maritime liens, namely the so called droit de suite.

Reference is made, among others to the judgment of 27 July 2006 issued by the Court of Appeal of Las Palmas.

Such a possibility is forbidden in article 9 of the Convention: *Nothing in this Convention shall be construed as creating any maritime lien which does not exist under the Convention on maritime mortgages and liens.*

Spain is party to the 1993 Convention on maritime mortgages and liens since 2002.

ARE THE SHIPS OWNED BY A CHARTERER BY DEMISE OR OTHERWISE ARRESTABLE?.

When other person than the registered owner of a ship is liable in respect of a maritime claim relating to that ship the Convention expressly states that the claimant may arrest other ship in the ownership of the charterer.

CAN THE CLAIMANT PIERCE THE CORPORATE VEIL FOR ARREST PURPOSES?.

This would be a difficult task for claimants but it is possible bearing in mind the trend of Spanish Courts to increasingly apply the doctrine of the piercing of the corporate veil in order to impose liability upon the interests behind a company.

Usually, our courts deem relevant in order to allow the piercing of the corporate veil the following circumstances.

- There should be enough evidence that there is a coincidence of interests and action between the companies.
- The circumstances should suggest that the structure should have been created with the intention of damaging creditors.

The court of Appeal of Barcelona held in judgment of 16 May 2002 that the corporate veil of a company may be pierced where the company owning the vessel in respect of which the maritime claim has arisen and that owing the arrested vessel have the same shareholders and the same directors and are both managed by the same manager.

DO THE CONVENTION APPLIES ALSO IN RESPECT OF SHIPS FLYING THE FLAG OF NON-CONTRACTING STATES?.

The Act 2/1967, following article 8.2 of the Convention extends, its scope of application to vessels from non-contracting states.

Said Act, published to adapt the Spanish General procedural rules for the purposes of facilitating the arrest of foreign vessels under the Convention, has supposed some debate as to whether or not a Spanish vessels may be arrested under the provisions of the Convention. There are some courts' decisions rejecting such a possibility.

HOW IS A VESSEL UNDER ARREST RELEASED?.

The vessel is released once a sufficient and valid security has been furnished.

The common form of security is the bank guarantee or similar securities, though some times a payment into court is effected.

The security must meet with some requirements under Spanish law. For instance, it must be joint and several and must contain a waiver of the right to request the claimant to proceed firstly against the debtor.

P&I Club letters of undertaking would need the acceptance of the arresting party.

In Spain, it is usual that the courts provide said arresting party any security furnished in order to ponder its wording and submit his opinion as to the sufficiency of the security. This could delay things.

The provision of a security for the release of the vessel cannot be construed as an acknowledgment of liability or as a waiver of the benefit of the legal limitations of liability of the owner of the ship.

CAN A CLAIMANT REARREST?

A vessel may not be arrested more than once in respect of the same maritime claim when a security had been given.

The prohibition of a second arrest and the consequent release of a ship from a second arrest does not operate when the original security had been finally released before the subsequent arrest. Also, when there is a good cause for maintaining the subsequent arrest.

The Court of Appeal of Barcelona held on 11 February 2002 that pursuant to article 3 (3) of the 1952 Arrest Convention re-arrest of a ship is permitted when

the security provided for the release of the ship has become unenforceable owing to the bankruptcy of the guarantor.

WHEN THE SPANISH COURTS HAVE JURISDICTION ON THE MERITS ONCE THE VESSEL HAS BEEN ARRESTED?.

Spanish courts would not have jurisdictions on the merits in respect of any claim for which a vessel has been arrested.

Said courts would have jurisdiction on the merits when it so results pursuant to the relevant jurisdiction rules contained in the judicial Power Act or when there is a jurisdiction clause to submit the dispute to the jurisdiction of Spanish Courts.

Spanish courts will also have jurisdiction on the merits in the cases mentioned in article 7.1 a) to f).

- If the claimant has his residence or principle place of business in Spain.
- If the claim arose in Spain.
- If the claim concerns the voyage of the ship during which the arrest was made.
- If the claim arose out of a collision.
- If the claim is for salvage.
- If the claim is upon a mortgage or hypothecation of the ship arrested.

IS THERE A TIME LIMIT WITHIN WHICH PROCEEDINGS ON THE MERITS MUST BE COMMENCED?.

The domestic rule is that proceedings on the merits must be brought to validate the arrest within the 20 days from the arrest.

In cases where the main proceedings are to be commenced in a foreign country it is usually asked by claimant to court to fix a longer period of time making use of article 7.2. of the Convention.

Spanish courts usually fix in such case a longer period for the commencement of main proceedings on the merits before foreign tribunals.

Claimant must show to arresting court within said period the commencement of main proceedings before the foreign court or arbitral tribunal.

The usual way to show said commencement is via an affidavit from two lawyers of the country in which the main proceedings have been commenced issued before a Notary Public and with the legalization or the “apostille”, as it may be appropriate.

If main proceedings are not commenced within the period of time to bring the action or are not properly evidenced to the arresting court, the arrest becomes null and void and the claimant will be liable for damages arising out of the arrest.

As mentioned at the beginning, pending approval in Spain is the Bill for the General Law on Maritime Navigation, containing several provisions of law in connection with the arrest of vessels.

I do hope I'll have the opportunity in the future to see you again and explain the relevant aspects of such new provisions of law on arrest of vessels.

Luis de San Simón
SAN SIMÓN, DUCH & CO.
31st October 2007.

***TEXT OF THE
1952 CONVENTION***

International Convention Relating to the Arrest of Sea-Going Ships

(Brussels, May 10, 1952)

[Preamble Omitted]

ARTICLE 1

In this Convention the following words shall have the meanings hereby assigned to them:

- (1) "Maritime Claim" means a claim arising out of one or more of the following:
- (a) damage caused by any ship either in collision or otherwise;
 - (b) loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship;
 - (c) salvage;
 - (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;
 - (e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
 - (f) loss of or damage to goods including baggage carried in any ship;
 - (g) general average;
 - (h) bottomry;
 - (i) towage;
 - (J) pilotage;
 - (k) goods or materials wherever supplied to a ship for her operation or maintenance;
 - (l) construction, repair or equipment of any ship or dock charges and dues;
 - (m) wages of Masters, Officers, or crew;
 - (n) Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;
 - (o) disputes as to the title to or ownership of any ship;

(p) disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship;

(q) the mortgage or hypothecation of any ship.

(2) "Arrest" means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment.

(3) "Person" includes individuals, partnerships and bodies corpo-rate, Governments, their Departments, and Public Authorities.

(4) "Claimant" means a person who alleges that a maritime claim exists in his favour.

ARTICLE 2

A ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any maritime claim, but in respect of no other claim; but nothing in this Convention shall be deemed to extend or restrict any right or powers vested in any governments or their departments, public authorities, or dock or harbour authorities under their existing domestic laws or regulations to arrest, detain or otherwise prevent the sailing of vessels within their jurisdiction.

ARTICLE 3

(1) Subject to the provisions of para. (4) of this article and of article 10, a claimant may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship, even though the ship arrested be ready to sail; but no ship, other than the particular ship in respect of which the claim arose, may be arrested in respect of any of the maritime claims enumerated in article 1, (o), (p) or (q).

(2) Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.

(3) A ship shall not be arrested, nor shall bail or other security be given more than once in any one or more of the jurisdictions of any of the Contracting States in respect of the same maritime claim by the same claimant: and, if a ship has been arrested in any of such jurisdictions, or bail or other security has been given in such jurisdiction either to release the ship or to avoid a threatened arrest, any subsequent arrest of the ship or of any ship in the same ownership by the same claimant for the maritime claim shall be set aside, and the ship released by the Court or other appropriate judicial authority of that State, unless the claimant can satisfy the Court or other appropriate judicial authority that the bail or other security had been finally released before the subsequent arrest or that there is other good cause for maintaining that arrest.

(4) When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim. The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

ARTICLE 4

A ship may only be arrested under the authority of a Court or of the appropriate judicial authority of the contracting State in which the arrest is made.

ARTICLE 5

The Court or other appropriate judicial authority within whose jurisdiction the ship has been arrested shall permit the release of the ship upon sufficient bail or other security being furnished, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in article 1, (o) and (p). In such cases the Court or other appropriate judicial authority may permit the person in possession of the ship to continue trading the ship, upon such person furnishing sufficient bail or other security, or may otherwise deal with the operation of the ship during the period of the arrest. In default of agreement between the parties as to the sufficiency of the bail or other security, the Court or other appropriate judicial authority shall determine the nature and amount thereof. The request to release the ship against such security shall not be construed as an acknowledgment of liability or as a waiver of the benefit of the legal limitations of liability of the owner of the ship.

ARTICLE 6

All questions whether in any case the claimant is liable in damages for the arrest of a ship or for the costs of the bail or other security furnished to release or prevent the arrest of a ship, shall be determined by the law of the Contracting State in whose jurisdiction the arrest was made or applied for.

The rules of procedure relating to the arrest of a ship, to the application for obtaining the authority referred to in Article 4, and to all matters of procedure which the arrest may entail, shall be governed by the law of the Contracting State in which the arrest was made or applied for.

ARTICLE 7

(1) The Courts of the country in which the arrest was made shall have jurisdiction to determine the case upon its merits if the domestic law of the country in which the arrest is made gives jurisdiction to such Courts, or in any of the following cases namely:

(a) if the claimant has his habitual residence or principal place of business in the country in which the arrest was made;

(b) if the claim arose in the country in which the arrest was made;

(c) if the claim concerns the voyage of the ship during which the arrest was made;

(d) if the claim arose out of a collision or in circumstances covered by article 13 of the International Convention for the unification of certain rules of law with respect to collisions between vessels, signed at Brussels on 23rd September 1910;

(e) if the claim is for salvage;

(f) if the claim is upon a mortgage or hypothecation of the ship arrested.

(2) If the Court within whose jurisdiction the ship was arrested has not jurisdiction to decide upon the merits, the bail or other security given in accordance with article 5 to procure the release of the ship shall specifically provide that it is given as security for the satisfaction of any judgment which may eventually be pronounced by a Court having jurisdiction so to decide; and the Court or other appropriate judicial authority of the country in which the claimant shall bring an action before a Court having such jurisdiction.

(3) If the parties have agreed to submit the dispute to the jurisdiction of a particular Court other than that within whose jurisdiction the arrest was made or to arbitration, the Court or other appropriate judicial authority within whose jurisdiction the arrest was made may fix the time within which the claimant shall bring proceedings.

(4) If, in any of the cases mentioned in the two preceding paragraphs, the action or proceeding is not brought within the time so fixed, the defendant may apply for the release of the ship or of the bail or other security.

(5) This article shall not apply in cases covered by the provisions of the revised Rhine Navigation Convention of 17 October 1868.

ARTICLE 8

(1) The provisions of this Convention shall apply to any vessel flying the flag of a Contracting State in the jurisdiction of any Contracting State.

(2) A ship flying the flag of a non-Contracting State may be arrested in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in article 1 or of any other claim for which the law of the Contracting State permits arrest.

(3) Nevertheless any Contracting State shall be entitled wholly or partly to exclude from the benefits of this convention any government of a non-Contracting State or

any person who has not, at the time of the arrest, his habitual residence or principal place of business in one of the Contracting States.

(4) Nothing in this Convention shall modify or affect the rules of law in force in the respective Contracting States relating to the arrest of any ship within the jurisdiction of the State of her flag by a person who has his habitual residence or principal place of business in that State.

(5) When a maritime claim is asserted by a third party other than the original claimant, whether by subrogation, assignment or other-wise, such third party shall, for the purpose of this Convention, be deemed to have the same habitual residence or principal place of business as the original claimant.

ARTICLE 9

Nothing in this Convention shall be construed as creating a right of action, which, apart from the provisions of this Convention, would not arise under the law applied by the Court which was seized of the case, nor as creating any maritime liens which do not exist under such law or under the Convention on maritime mortgages and liens, if the latter is applicable.

ARTICLE 10

The High Contracting Parties may at the time of signature, deposit or ratification or accession, reserve:

(a) the right not to apply this Convention to the arrest of a ship for any of the claims enumerated in paragraphs (o) and (p) of article 1, but to apply their domestic laws to such claims;

(b) the right not to apply the first paragraph of article 3 to the arrest of a ship within their jurisdiction for claims set out in article 1 paragraph (q).

ARTICLE 11

The High Contracting Parties undertake to submit to arbitration any disputes between States arising out of the interpretation or application of this Convention, but this shall be without prejudice to the obligations of those High Contracting Parties who have agreed to submit their disputes to the International Court of Justice.

ARTICLE 12

This Convention shall be open for signature by the States represented at the Ninth Diplomatic Conference on Maritime Law. The protocol of signature shall be drawn up through the good offices of the Belgian Ministry of Foreign Affairs.

ARTICLE 13

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Ministry of Foreign Affairs which shall notify all signatory and acceding States of the deposit of any such instruments.

ARTICLE 14

(a) This Convention shall come into force between the two States which first ratify it, six months after the date of the deposit of the second instrument of ratification.

(b) This Convention shall come into force in respect of each signatory State which ratifies it after the deposit of the second instrument of ratification six months after the date of the deposit of the instrument of ratification of that State.

ARTICLE 15

Any State not represented at the Ninth Diplomatic Conference on Maritime Law may accede to this Convention.

The accession of any State shall be notified to the Belgian Ministry of Foreign Affairs which shall inform through diplomatic channels all signatory and acceding States of such notification.

The Convention shall come into force in respect of the acceding State six months after the date of the receipt of such notification but not before the Convention has come into force in accordance with the provisions of Article 14(a).

ARTICLE 16

Any High Contracting Party may three years after coming into force of this Convention in respect of such High Contracting Party or at any time thereafter request that a conference be convened in order to consider amendments to the Convention.

Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which shall convene the conference within six months thereafter.

ARTICLE 17

Any High Contracting Party shall have the right to denounce this Convention at any time after the coming into force thereof in respect of such High Contracting Party. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government which shall inform through diplomatic channels all the other High Contracting Parties of such notification.

ARTICLE 18

(a) Any High Contracting Party may at the time of its ratification of or accession to this Convention or at any time thereafter declare by written notification to the

Belgian Ministry of Foreign Affairs that the Convention shall extend to any of the territories for whose international relations it is responsible. The Convention shall six months after the date of the receipt of such notification by the Belgian Ministry of Foreign Affairs extend to the territories named therein, but not before the date of the coming into force of the Convention in respect of such High Contracting Party.

(b) A High Contracting Party which has made a declaration under paragraph (a) of this Article extending the Convention to any territory for whose international relations it is responsible may at any time thereafter declare by notification given to the Belgian Ministry of Foreign Affairs that the Convention shall cease to extend to such territory and the Convention shall one year after the receipt of the notification by the Belgian Ministry of Foreign Affairs cease to extend thereto.

(c) The Belgian Ministry of Foreign Affairs shall inform through diplomatic channels all signatory and acceding States of any notification received by it under this Article.

DONE in Brussels, on May 10, 1952, in the French and English languages, the two texts being equally authentic

***TEXT OF THE
1999 CONVENTION***

United Nations/International Maritime Organization



Diplomatic Conference on Arrest of Ships

Distr.
GENERAL



A/CONF.188/6
19 March 1999

UNITED NATIONS/INTERNATIONAL MARITIME ORGANIZATION
DIPLOMATIC CONFERENCE ON ARREST OF SHIPS

Held at the Palais des Nations, Geneva,
from 1 to 12 March 1999

FINAL ACT

and

INTERNATIONAL CONVENTION ON ARREST OF SHIPS, 1999

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**FINAL ACT OF THE UNITED NATIONS/INTERNATIONAL MARITIME
ORGANIZATION DIPLOMATIC CONFERENCE ON ARREST OF SHIPS**

1. The General Assembly of the United Nations, by resolution 52/182 of 18 December 1997, endorsed the convening of a Diplomatic Conference in order to consider and adopt a convention on arrest of ships.
2. The United Nations/International Maritime Organization Diplomatic Conference on Arrest of Ships was convened at Geneva from 1 to 12 March 1999.
3. Representatives from the following States participated in the Conference: Algeria, Angola, Argentina, Australia, Belarus, Belgium, Benin, Brazil, Bulgaria, Burundi, Cameroon, Canada, Chile, China, Colombia, Côte d'Ivoire, Croatia, Cuba, Cyprus, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guinea, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Japan, Kenya, Latvia, Lebanon, Liberia, Lithuania, Madagascar, Malta, Marshall Islands, Mauritania, Mexico, Monaco, Morocco, Mozambique, Netherlands, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Senegal, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Viet Nam, and Yemen.
4. Hong Kong Special Administrative Region of China and Macao, associate members of the International Maritime Organization, were represented by observers.
5. The following intergovernmental organizations were represented by an observer: Arab Labour Organization, Organization of African Unity, Organization of American States, Organization of the Islamic Conference, Intergovernmental Organization for International Carriage by Rail.
6. The following non-governmental organizations were represented by an observer: general category: International Chamber of Commerce, International Confederation of Free Trade Unions, World Federation of United Nations Associations; special category: International Ship Suppliers Association, International Association of Ports and Harbours, Latin American Association of Navigational Law and Law of the Sea, International Chamber of Shipping, Comité Maritime International, Institute of International Container Lessors, Ibero-

American Institute of Maritime Law, International Group of P&I Clubs,
International Union for Conservation of Nature and Natural Resources.

7. The Conference elected the following officers:

President: Mr. Zhu Zengjie (China)

Vice-Presidents: Mrs. Ida Barinova (Russian Federation)
Mr. Marc Gauthier (Canada)
Mr. Mykola Maimeskul (Ukraine)
Mr. Mahmoud Bahey Eldin Ibrahim Nasrah (Egypt)
Mr. Eladio Peñaloza (Panama)
Mr. Luigi Rovelli (Italy)
Mr. Lalchand K. Sheri (Singapore)

Rapporteur-General: Mr. Walter de Sa'Leitao (Brazil)

8. The Conference established a Main Committee, a Drafting Committee and a Credentials Committee.

Main Committee

Chairman: Mr. K.J. Gombrii (Norway)

Members: open-ended

Drafting Committee

Chairman: Mr. Malcolm J. Williams, Jr. (United States of America)

Core members: Algeria, Argentina, Belgium, China, Côte d'Ivoire, Croatia, Denmark, Egypt, France, Gambia, Germany, Ghana, Lithuania, Mexico, Russian Federation, Spain, Sri Lanka, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, and United States of America.

Credentials Committee

Chairman: Ms. Sama Payman (Australia)

Members: Australia, Benin, Brazil, China, Haiti, Mozambique, Philippines, Russian Federation, United States of America.

9. The secretariat of the Conference included the following officers: Secretary-General of UNCTAD, Mr. Rubens Ricupero; Executive Secretary, Mr. Jean Gurunlian, Director, Division for Services Infrastructure for Development and Trade Efficiency, UNCTAD; Deputy Executive Secretary, Mrs. Rosalie Balkin, Director, Legal Affairs and External Relations Division, IMO; Mrs. Monica N. Mbanefo, Senior Deputy Director, IMO; Mr. Agustín Blanco-Bazán, Senior Legal Officer, IMO; Ms. Mahin Faghfour, Head, Legal Unit, SITE, UNCTAD; Mr. Carlos Moreno, Legal Officer, SITE, UNCTAD; Mr. Erik Chrispeels, Senior Legal Officer, UNCTAD; Mr. Awni Behnam, Secretary of the Conference, UNCTAD; Mr. Karma Tenzing, Deputy Secretary of the Conference, UNCTAD.

10. The Conference had before it, as a basis for its work, the draft articles for a convention on arrest of ships¹, prepared by the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, and the compilation of comments and proposals by Governments, and by intergovernmental and non-governmental organizations, on the draft convention on arrest of ships². The Conference adopted its rules of procedure³ and its agenda.⁴

11. On the basis of its deliberations as recorded in its report,⁵ the Conference established the text of the INTERNATIONAL CONVENTION ON ARREST OF SHIPS, 1999.

12. The text of the Convention was adopted by the Conference on 12 March 1999. The Convention will be open for signature at United Nations Headquarters, New York, from 1 September 1999 to and including 31 August 2000.

¹ TD/B/IGE.1/5.

² A/CONF.188/3 and Add.1-3.

³ A/CONF.188/2.

⁴ A/CONF.188/1.

⁵ A/CONF.188/5.

Done in Geneva, on this twelfth day of March, one thousand nine hundred and ninety-nine, in one original in the Arabic, Chinese, English, French, Russian and Spanish languages, all texts being equally authentic. The original of the Final Act shall be deposited in the archives of the United Nations Secretariat.

Zhu Zengjie
President of the Conference

R. Ricupero
Secretary-General of UNCTAD

J. Gurunlian
Executive Secretary of the Conference

R. Balkin
Deputy Executive Secretary of the Conference

M. Faghfour
Head, Legal Unit, SITE

E. Chrispeels
Senior Legal Officer

A. Behnam
Secretary of the Conference

IN WITNESS WHEREOF the undersigned representatives have signed this Final Act.

The States whose representatives signed the Final Act are: Algeria, Argentina, Australia, Belgium, Benin, Brazil, Cameroon, Canada, China, Colombia, Côte d'Ivoire, Croatia, Cuba, Denmark, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Guinea, Haiti, Honduras, Indonesia, Iran (Islamic Republic of), Italy, Japan, Latvia, Liberia, Lithuania, Madagascar, Malta, Marshall Islands, Mexico, Monaco, Mozambique, Netherlands, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Republic of Korea, Romania, Russian Federation, Singapore, Slovenia, Spain, Sri Lanka, Sudan, Syrian Arab Republic, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, and Viet Nam.

INTERNATIONAL CONVENTION ON ARREST OF SHIPS, 1999

The States Parties to this Convention,

Recognizing the desirability of facilitating the harmonious and orderly development of world seaborne trade,

Convinced of the necessity for a legal instrument establishing international uniformity in the field of arrest of ships which takes account of recent developments in related fields,

Have agreed as follows:

Article 1
Definitions

For the purposes of this Convention:

1. "Maritime Claim" means a claim arising out of one or more of the following:
 - (a) loss or damage caused by the operation of the ship;
 - (b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
 - (c) salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;
 - (d) damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph (d);
 - (e) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;

- (f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;
- (g) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;
- (h) loss of or damage to or in connection with goods (including luggage) carried on board the ship;
- (i) general average;
- (j) towage;
- (k) pilotage;
- (l) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;
- (m) construction, reconstruction, repair, converting or equipping of the ship;
- (n) port, canal, dock, harbour and other waterway dues and charges;
- (o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;
- (p) disbursements incurred on behalf of the ship or its owners;
- (q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;
- (r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;
- (s) any dispute as to ownership or possession of the ship;
- (t) any dispute between co-owners of the ship as to the employment or earnings of the ship;

- (u) a mortgage or a "hypothèque" or a charge of the same nature on the ship;
 - (v) any dispute arising out of a contract for the sale of the ship.
2. "Arrest" means any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument.
 3. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
 4. "Claimant" means any person asserting a maritime claim.
 5. "Court" means any competent judicial authority of a State.

Article 2
Powers of arrest

1. A ship may be arrested or released from arrest only under the authority of a Court of the State Party in which the arrest is effected.
2. A ship may only be arrested in respect of a maritime claim but in respect of no other claim.
3. A ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is effected is to be adjudicated in a State other than the State where the arrest is effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.
4. Subject to the provisions of this Convention, the procedure relating to the arrest of a ship or its release shall be governed by the law of the State in which the arrest was effected or applied for.

Article 4
Release from arrest

1. A ship which has been arrested shall be released when sufficient security has been provided in a satisfactory form, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in article 1, paragraphs 1 (s) and (t). In such cases, the Court may permit the person in possession of the ship to continue trading the ship, upon such person providing sufficient security, or may otherwise deal with the operation of the ship during the period of the arrest.

2. In the absence of agreement between the parties as to the sufficiency and form of the security, the Court shall determine its nature and the amount thereof, not exceeding the value of the arrested ship.

3. Any request for the ship to be released upon security being provided shall not be construed as an acknowledgement of liability nor as a waiver of any defence or any right to limit liability.

4. If a ship has been arrested in a non-party State and is not released although security in respect of that ship has been provided in a State Party in respect of the same claim, that security shall be ordered to be released on application to the Court in the State Party.

5. If in a non-party State the ship is released upon satisfactory security in respect of that ship being provided, any security provided in a State Party in respect of the same claim shall be ordered to be released to the extent that the total amount of security provided in the two States exceeds:

(a) the claim for which the ship has been arrested, or

(b) the value of the ship,

whichever is the lower. Such release shall, however, not be ordered unless the security provided in the non-party State will actually be available to the claimant and will be freely transferable.

6. Where, pursuant to paragraph 1 of this article, security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified, or cancelled.

Article 5

Right of rearrest and multiple arrest

1. Where in any State a ship has already been arrested and released or security in respect of that ship has already been provided to secure a maritime claim, that ship shall not thereafter be rearrested or arrested in respect of the same maritime claim unless:

- (a) the nature or amount of the security in respect of that ship already provided in respect of the same claim is inadequate, on condition that the aggregate amount of security may not exceed the value of the ship; or
- (b) the person who has already provided the security is not, or is unlikely to be, able to fulfil some or all of that person's obligations; or
- (c) the ship arrested or the security previously provided was released either:
 - (i) upon the application or with the consent of the claimant acting on reasonable grounds, or
 - (ii) because the claimant could not by taking reasonable steps prevent the release.

2. Any other ship which would otherwise be subject to arrest in respect of the same maritime claim shall not be arrested unless:

- (a) the nature or amount of the security already provided in respect of the same claim is inadequate; or
- (b) the provisions of paragraph 1 (b) or (c) of this article are applicable.

3. "Release" for the purpose of this article shall not include any unlawful release or escape from arrest.

Article 6

Protection of owners and demise charterers of arrested ships

1. The Court may as a condition of the arrest of a ship, or of permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the ship the obligation to provide

security of a kind and for an amount, and upon such terms, as may be determined by that Court for any loss which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to such loss or damage as may be incurred by that defendant in consequence of:

- (a) the arrest having been wrongful or unjustified; or
- (b) excessive security having been demanded and provided.

2. The Courts of the State in which an arrest has been effected shall have jurisdiction to determine the extent of the liability, if any, of the claimant for loss or damage caused by the arrest of a ship, including but not restricted to such loss or damage as may be caused in consequence of:

- (a) the arrest having been wrongful or unjustified, or
- (b) excessive security having been demanded and provided.

3. The liability, if any, of the claimant in accordance with paragraph 2 of this article shall be determined by application of the law of the State where the arrest was effected.

4. If a Court in another State or an arbitral tribunal is to determine the merits of the case in accordance with the provisions of article 7, then proceedings relating to the liability of the claimant in accordance with paragraph 2 of this article may be stayed pending that decision.

5. Where pursuant to paragraph 1 of this article security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified or cancelled.

Article 7

Jurisdiction on the merits of the case

1. The Courts of the State in which an arrest has been effected or security provided to obtain the release of the ship shall have jurisdiction to determine the case upon its merits, unless the parties validly agree or have validly agreed to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.

2. Notwithstanding the provisions of paragraph 1 of this article, the Courts of the State in which an arrest has been effected, or security provided to obtain the release of the ship, may refuse to exercise that jurisdiction where that

refusal is permitted by the law of that State and a Court of another State accepts jurisdiction.

3. In cases where a Court of the State where an arrest has been effected or security provided to obtain the release of the ship:

- (a) does not have jurisdiction to determine the case upon its merits; or
- (b) has refused to exercise jurisdiction in accordance with the provisions of paragraph 2 of this article,

such Court may, and upon request shall, order a period of time within which the claimant shall bring proceedings before a competent Court or arbitral tribunal.

4. If proceedings are not brought within the period of time ordered in accordance with paragraph 3 of this article then the ship arrested or the security provided shall, upon request, be ordered to be released.

5. If proceedings are brought within the period of time ordered in accordance with paragraph 3 of this article, or if proceedings before a competent Court or arbitral tribunal in another State are brought in the absence of such order, any final decision resulting therefrom shall be recognized and given effect with respect to the arrested ship or to the security provided in order to obtain its release, on condition that:

- (a) the defendant has been given reasonable notice of such proceedings and a reasonable opportunity to present the case for the defence; and
- (b) such recognition is not against public policy (*ordre public*).

6. Nothing contained in the provisions of paragraph 5 of this article shall restrict any further effect given to a foreign judgment or arbitral award under the law of the State where the arrest of the ship was effected or security provided to obtain its release.

Article 8
Application

1. This Convention shall apply to any ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party.

2. This Convention shall not apply to any warship, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.

3. This Convention does not affect any rights or powers vested in any Government or its departments, or in any public authority, or in any dock or harbour authority, under any international convention or under any domestic law or regulation, to detain or otherwise prevent from sailing any ship within their jurisdiction.

4. This Convention shall not affect the power of any State or Court to make orders affecting the totality of a debtor's assets.

5. Nothing in this Convention shall affect the application of international conventions providing for limitation of liability, or domestic law giving effect thereto, in the State where an arrest is effected.

6. Nothing in this Convention shall modify or affect the rules of law in force in the States Parties relating to the arrest of any ship physically within the jurisdiction of the State of its flag procured by a person whose habitual residence or principal place of business is in that State, or by any other person who has acquired a claim from such person by subrogation, assignment or otherwise.

Article 9

Non-creation of maritime liens

Nothing in this Convention shall be construed as creating a maritime lien.

Article 10

Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval, or accession, or at any time thereafter, reserve the right to exclude the application of this Convention to any or all of the following :

- (a) ships which are not seagoing;
- (b) ships not flying the flag of a State Party;
- (c) claims under article 1, paragraph 1 (s).

2. A State may, when it is also a State Party to a specified treaty on navigation on inland waterways, declare when signing, ratifying, accepting, approving or acceding to this Convention, that rules on jurisdiction, recognition

and execution of court decisions provided for in such treaties shall prevail over the rules contained in article 7 of this Convention.

Article 11

Depositary

This Convention shall be deposited with the Secretary-General of the United Nations.

Article 12

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature by any State at the Headquarters of the United Nations, New York, from 1 September 1999 to 31 August 2000 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- (c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the depositary.

Article 13

States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has two or more systems of law with regard to arrest of ships applicable in different territorial units, references

in this Convention to the Court of a State and the law of a State shall be respectively construed as referring to the Court of the relevant territorial unit within that State and the law of the relevant territorial unit of that State.

Article 14
Entry into force

1. This Convention shall enter into force six months following the date on which 10 States have expressed their consent to be bound by it.
2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect three months after the date of expression of such consent.

Article 15
Revision and amendment

1. A conference of States Parties for the purpose of revising or amending this Convention shall be convened by the Secretary-General of the United Nations at the request of one-third of the States Parties.
2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to the Convention, as amended.

Article 16
Denunciation

1. This Convention may be denounced by any State Party at any time after the date on which this Convention enters into force for that State.
2. Denunciation shall be effected by deposit of an instrument of denunciation with the depositary.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the depositary.

Article 17
Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT Geneva this twelfth day of March, one thousand nine hundred and ninety-nine.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.