Lebanese University

Faculty of Law and Political and Administrative Science

Arrest of Ships in Lebanon and England: A Comparative Study

A Dissertation submitted in partial fulfillment of the requirements for the Master degree in Business Law

By

Nancy Abbass Khalife

Examination committee

Dr. Mona Al- Achkar Jabbour	Supervisor	President
Dr. Kamal Hamaad	Professor	Member
Dr. Hasan Saleh	professor	Member

2019

Lebanese University

Faculty of Law and Political and Administrative Science

Arrest of Ships in Lebanon and England: A Comparative Study

A Dissertation submitted in partial fulfillment of the requirements for the Master degree in Business Law

By

Nancy Abbass Khalife

Examination committee

Dr. Mona Al- Achkar Jabbour	Supervisor	President
Dr. Kamal Hamaad	Professor	Member
Dr. Hasan Saleh	professor	Member

2019

Declaration

I certify that the contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the Lebanese University.

Dedication

It is our genuine gratefulness and warmest regard that we dedicate this work to my sweet and loving parents, husband and sisters whom affection, love, encouragement and prayers helped me complete this work.

Acknowledgments

Foremost, I would like to express my sincere gratitude to my advisor Dr. Mona Al- Achkar Jabbour for the continuous support of my research, for her motivation, enthusiasm, and immense knowledge. Her guidance helped me in all the time of research and writing of this dissertation. I could not have imagined having a better advisor and mentor for my dissertation.

Moreover, I would like to thank my parents, husband and family, for their never ending love and support and for believing in me and encouraging me in every step of the way, through good times and bad. Thank you for all the unconditional love, guidance, and support that u have always given me.

Last but not least, I would like to express my deepest appreciation to my boss Mr. Abdel Ghani Hamdan for his excellent mentoring and for all the knowledge and skills that he imparted to me which was of a great help during this journey.

Introduction:

Background:

Prior to analyzing the laws of ship arrest, it is important to define the ship which is the basis of any legal relationship of maritime law.

Article 1 of the Lebanese maritime law defines a ship as follows: “For the purpose of the present law, all sea craft of any type and tonnage capable of undertaking maritime navigation whether or not the navigation is undertaken for profit-making purposes, shall be considered as ships.

All accessory equipment requested for the operation of the ship is considered part of the ship itself.

Ships are movable properties governed by provisions of common law, except as provided by the present law.”[1]

As for the English law, the statutory definition of a “ship” for the purposes of the Merchant Shipping Act 1995 is provided in section 313(1):- “ship includes every description of vessel used in navigation”.

This definition has been illustrated by the court in the case of Steadman v Scofield [1992] 2 Lloyds Rep 163, a decision of Sheen J. in the Queen’s Bench Division Admiralty Court.[2]

In the mentioned decision, Sheen J defined a vessel as follows:

“A vessel is usually a hollow receptacle for carrying goods or people. In common parlance 'vessel' is a word used to refer to craft larger than rowing boats and it

---

[1] المادة 1 من قانون التجارة البحرية:
السفينة في عرف هذا القانون هي كل مركب صالح للملاحة ايا كان محموله وتسميته سواء اكانت هذه الملاحة تستهدف الربح ام لم تكن.
تعتبر جزءا من السفينة جميع التفرعات الضرورية لاستثمارها.
السفن اموال منقولة تخضع للقواعد الحقوقية العامة مع الاحتفاظ بالقواعد الخاصة المنصوص عليها فيما يلي.

[2] See the article What is a Ship: R.v. Goodwin in the Court of Appeal, by Bruce Grant , New Castle Law School 2006, available at: http://webjcli.ncl.ac.uk/2006/issue2/grant2.html

includes every description of watercraft used or capable of being used as a means of transportation on water."[3]

It is obvious from the above definitions that a ship under the Lebanese and the English law is a watercraft structured to work in water and used for navigation. However, the Lebanese law have provided a more detailed definition which includes the nature of the ship (movable asset) and its scope (accessory equipment being part of the ship).

Having looked at the different definitions of the ship under the Lebanese law and the English law, we can move forward in our topic on ship arrest.

Arrest of ships may be defined as the detention of the ship by a court order to secure a maritime claim. It is an ancient method, which goes back to eras preceding the Roman times. Its rationale is to provide a useful device to secure maritime claimants and to overcome the difficulty of enforcing judgements abroad, which has always been an important and challenging issue in the field of international maritime commerce. Even though there are various enforcement methods used in the field of maritime commerce, ship arrest have proved over the years to be the most effective, useful and efficient method.

Arrest of ships has been adopted by a lot of countries through inserting special rules and procedures for the implementation of this method in their national legislations. Various practices and procedures were developed by different jurisdictions over the years; and different approaches to the concept of arrest of ships in civil law countries can be noticed as compared to common law countries. Such differences have created complications in the shipping industry since maritime disputes are always associated with a foreign nature and thus cannot be restricted to the boundaries of one country.

Therefore, the international bodies, such as the United Nations Conference on Trade and Development (UNCTAD) and the International Maritime Organization (IMO), have worked on unifying the rules and procedures of ship arrest. Such efforts have resulted in producing two international conventions which simplify and standardize the procedures of ship arrest. The first convention is the International Convention on the Arrest of Seagoing Ships which was produced in

[3] See the article What is a Ship: R.v. Goodwin in the Court of Appeal, by Bruce Grant , New Castle Law School 2006, available at: http://webjcli.ncl.ac.uk/2006/issue2/grant2.html

Belgium in 1952. This convention was highly accepted by the international community and is currently enforced in 77 countries (including England which has given effect to the convention through reproducing some of its provisions in their internal law)[4]. The second convention is the International Convention on the Arrest of Ships 1999 and which did not come into force until September 14, 2011. This convention did not attract countries as expected and currently it is ratified and adopted only by 11 countries[5].

In Lebanon, the legislator have adopted the Lebanese maritime law on February 18, 1947, which governs different aspects of maritime commerce taking into consideration the special nature of the ship and its important role in the international maritime commerce. In addition to that, Lebanon has ratified numerous international conventions which govern various matters in the field of international commerce such as the International convention for the unification of certain rules of law relating to maritime liens and mortgages of 1926.

However, even though ship arrest is applicable in Lebanon, the Lebanese legislator did not ratify any of the international conventions nor did he include in the national law special rules which regulate the implementation of this method in Lebanon keeping the matter to the general rules of arrest of movable assets, and thus disregarding the special nature of the ship.

Importance of this Research:

In the modern global economy, maritime commerce plays an important role in facilitating international trade. It gained its popularity through providing a low-cost and efficient method for goods shipping specially in a world where no country is totally self-sufficient and where import and export is a must. Maritime shipping has even been described by the "United Nations" in 2016 as the backbone of global trade and global economy.

[4] United Nations treaty convention found on:

https://treaties.un.org/pages/showDetails.aspx?objid=08000002801338ba

[5] United Nations treaty convention found on:
https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XII-8&chapter=12&clang=_en

Due to the wide spread of the maritime commerce and the various claims and disputes which appeared in this field, it was necessary to find an effective mechanism for the enforcement of maritime claims taking into consideration the movable nature of the ship where they spend most of their economical life moving between different jurisdictions. In this context, arrest of ships is considered the key weapon for the enforcement of maritime claims.

Purpose of the Research:

The purpose of this dissertation is to examine and provide better understanding for the matter of ship arrest in Lebanon. The focus in this dissertation will be on analyzing the Lebanese laws and comparing it with the English law and the international conventions (when necessary), summarizing the advantages and disadvantages of arrest of ships in each of the mentioned jurisdictions. In addition to that, the associated object is to assess the rules and laws applied on ship arrest in Lebanon and provide necessary improvements.

Research Question:

The main research question here is whether the current Lebanese laws applied on the matter of ship arrest take into consideration the special nature of ships and its vital role in international trade or amendments are required thereto. In addition, how could Lebanon benefit from the experiments already dealt with by the English law in this field?

Methodology:

The methodological approach taken in this dissertation is primarily the comparative analysis approach. In the context of this dissertation, the English law, Lebanese law and the two arrest conventions of 1952 and 1999 are comparatively analyzed, looking at the similarities and differences and the respective pros and cons of each law, and eventually proposing improvements to the Lebanese law in the matter of ship arrest. However, in this dissertation two other approaches are employed: one is the historical approach, which looks at the evolutionary process involved in the law of ship arrest; and the third methodological approach employed is the analytical research .

Research Challenges:

Lack of resources has been the main difficulty faced while writing this dissertation in relation to the Lebanese law, English law and the international convention. On the national level, the issue of arrest of ships was not a matter of importance for researchers as they only devoted few pages in their books on maritime law for this matter. On the other hand, this issue was widely tackled by English and foreign scholars, however, such books were not available in the libraries in Lebanon (whether in the Lebanese university or other universities) where they focus mainly on providing books related to Lebanese, French, and other Arab countries Laws. Accordingly, I had to rely mainly on online resources and e-books to gather information on the issue of ship arrest in the English law and international conventions.

Research Structure:

The matter will be examined in two consecutive parts as follows:

Part 1: The Theoretical Basis of Ship Arrest

Chapter 1: Introduction to Ship Arrest:

A- Overview on Ship Arrest:

B – Legal Framework

Chapter 2: Scope of Application:

A- Ships that may be arrested:

B- Ships excluded from the arrest:

C- Debts upon which the arrest may be placed:

Part 2: Arrest of Ships Practices, Procedures and Impacts:

Chapter 1: Practicalities of ship arrest:

A- Exercise of the right to arrest:

B- Post-arrest procedures

Chapter 2: Impact of Ship Arrest:

A- Consequences:

B- Evaluation of the current rules applied on the arrest in Lebanon:

Part 1:

The Theoretical Basis of Ship Arrest

Chapter 1: Introduction to Ship Arrest

A- Overview on ship arrest:

To understand the topic of ship arrest, it is necessary to state the definition of this concept, its importance as well as indicating its legal basis. Those matters will be addressed in the following sections.

1-Definition and importance of the concept

a- Definition:

Even-though ship arrest is practiced in Lebanon, the Lebanese legislator did not define this concept; therefore, we shall refer to the English law and the international conventions in this regards.

The Anglo-Norman term "arrest" is similar to the French word "arrêt", which means "stop".

Both the 1952 and 1999 arrest conventions defined in their first article the term Arrest of Ships.

Article 1 section (2) of the 1952 convention defines "Arrest of Ships" as follows: "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." [6]

The definition of arrest stated in the draft of the 1952 convention approved by CMI conference in Naples was as follows: "Arrest shall mean an arrest made to secure a claim."[7] However, this definition was criticized and thus amended to what is stated above for the purpose of providing a clearer definition that excludes from the scope of the convention other types of attachment of the ship which are available after a

[6] International convention relating to the arrest of seagoing ships – Brussels May 10, 1952.

7 Berlingieri, Francesco, **Berlingieri on Arrest of Ships**, 5th Edition, Lloyd's Shipping Law Library, Informa, United Kingdom, 2011

judgement is obtained. Thus, the new definition excluded from the scope of the convention all enforcement proceedings and limited it to the arrest of a ship as a provisional measure practiced prior to the issuance of a judgement on the merits of the case.

The arrest as regulated by the 1952 convention is a judicial remedy. Articles 1(2) and 4 of the convention refer to the fact that ship arrest is a judicial process and that the ship may only be arrested under the authority of a court or an appropriate judicial authority. Accordingly, a ship may not be arrested by an order of an administrative authority (however, some exceptions are specified in article 2 of the convention).

It is remarkable that the phrase "or of the appropriate judicial authority" was added to the definition of arrest of ships to include all judicial authorities that may not qualify as "courts". However, the words used are not entirely correct, as the more appropriate term to be used is "competent" instead of "appropriate" similar to what is used in the French version of the convention ("toute autre autorite judiciaire compétente")

A new modern definition of ship arrest can be seen in Article 1 section (2) of the 1999 Ship Arrest convention, although it is not so different from the old definition stated in the 1952 Arrest Convention but it is a clearer and more comprehensive definition.

According to the 1999 convention, "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."[8]

The 1999 arrest definition has widened the description of the actions that are included in the scope of the arrest by adding to the word "detention" the phrase "restriction on removal". Though this term is not the most appropriate term to be used, however, it has cleared the scope of the arrest of ships. Restriction on removal is a judicial measure pursuant to which the ship must be placed under the control of the court ordering the arrest.

[8] International Convention on Arrest of Ships, 1999 – Geneva, 19 March 1999

Moreover, the new convention has also replaced the word "judicial process" used in the 1952 convention with "order of a court" due to the fact that "judicial process" may have different meanings in different jurisdictions.

It is important here to distinguish ship arrest, which is a civil procedure for the enforcement of a maritime claim, from detention, which is a sanction imposed administratively or judicially for a violation of public or regulatory law. However, the word "detention" is used in the definitions of Ship Arrest in both conventions only in the literal or ordinary sense of the term and not in its legal sense[9].

As for the English law, it did not provide a legal definition for the Arrest of Ships. The fact that arrest means the detention of a ship by judicial process is derived from the rule number 6.4 (3) of the Practice Direction – Admiralty that states:

"Property under arrest may not be moved without an order of the Admiralty court and the property may be immobilized or otherwise prevented from sailing in such a manner as the Marshall or his substitute may decide is appropriate."[10]

Ship arrest, however, was defined by the English scholars as follow:

"Maritime arrest is a legal action to seize a vessel, cargo, container or other maritime property as security for a claim or to enforce a maritime lien. The claim may be brought "in rem", namely against the arrested property itself and not necessarily against the property's owner (which may be unknown). Arrest differs from "attachment" in that the property itself is not the named party in the action and the defendant must own the property for it to be subject to the attachment. Arrest is literally just that- the vessel will be prevented from moving or trading pending to the resolution of the outstanding claim." [11]

Accordingly, since arrest of ships as practiced in Lebanon serves the same functions as that of the English law and the international convention. Therefore, it may be defined as a remedy in the judicial scope that aims to secure claims, the

---

[9] Isikova, Nadiya, **The Ship Arrest Conventions of the 1952 and 1999:International and Ukrainian perspectives**, World Maritime University, Malmo, Sweden, 2012

[10] Berlingieri, Francesco, **Berlingieri on Arrest of Ships**, 5th Edition, Lloyd's Shipping Law Library, Informa, United Kingdom, 2011

[11] United Kingdom: Maritime arrest under English law, an article written by Leila Wollam in May 2010. Available at: http://www.mondaq.com/article.asp?articleid=97606

detention of the ship and the process of authorizing the seizure all done by the judicial authority, where the ship itself will be under the observance and control of the court.

b- Importance:

Maritime transport is considered nowadays as the backbone of global trade and economy. The importance of shipping in international commerce and the movable nature of ships made it necessary to find suitable devices to face the problem of extensive debts incurred in the course of shipping.

In this regards, arrest of ships has become the main and most powerful method of protection and security in maritime litigation. It is effective since:

(i) it gives the claimant the chance to create a right in security over the ship upon arrest, the ship or res is put under the judicial detention until the adjudication of the claim,

(ii) it secures the claimants position as a preferred creditor over unsecured ones in the case of the forced sale of the ship.

(iii) it grants the claimant who has the possibility to arrest because of the nature of his claim a strong bargaining power. The threat of a ship being paralyzed due to its arrest is considerable in the commercial shipping industry, since the arrest of a ship may generate significant losses for all those involved in the business[12] (the ship owner will continue to incur expenses on the arrested ship but without generating any profit). Therefore, once the ship is arrested the defendant tends to offer the claimant other adequate security to secure his claim and release the ship;

(iv) it has the consequence of preventing the ship from leaving the jurisdiction and thus enabling the creditor to execute his judgement on the merit through the forced sale of the arrested ship;

[12] Abou-Nigm, Veronica Ruiz, **The Arrest of Ships in Private International Law**, 2011, Oxford University Press Inc., New York, United States

(v) Conflicts of law and jurisdiction are likely to arise in international shipping litigation. In this context, arrest of ships has played, since ancient times, an important role in dealing with such conflict through granting a real and substantial link between the state's forum and the international dispute, and thus facilitating the process of choosing the competent court to look into the merits of the case[13]. The arrest of ships will establish jurisdiction on the merits even if there is no substantive link between the claimant and the jurisdiction other than the presence of the arrested ship in the jurisdiction.

2- Different Approaches of Arrest of Ships in Common and Civil Law Systems:

Since Lebanon and England apply two different legal systems, it is necessary, prior to proceeding with our discussion related to the rules for applying ship arrest in Lebanon and comparing them to those of the English law, to go through the fundamental differences between the common law and the civil law systems.

Therefore, in the below paragraphs, we will deal with the various distinctive features of the civil law and common law systems and then examine those differences in relation to ship arrest.

a- Features of the Civil Law and Common Law System:

The common law and civil law systems are the result of two primarily different approaches to the legal process.

Civil law system originated in the Corpus Iuris Civilis of Justinian of the Roman law and was then adopted by Continental Europe countries and many other parts of the world. The main feature of this legal system is the adoption of civil codes, which contains general rules and principles that regulate all cases that may occur in practice. Those codes contain logically connected concepts and rules starting with general principles and moving on to more specific rules. Most of the European countries adopted their civil codes in the 19th and 20th century, for example French

[13] Abou-Nigm, Veronica Ruiz, **The Arrest of Ships in Private International Law**, 2011, Oxford University Press Inc., New York, United States

Code Civil of 1804, Italian Codice Civile of 1942… [14]Even though the civil codes of different countries are not identical, there are general features that are contained in all these codes that brings them together and distinguishes them from other legal systems.

Thus, the civil codes are the preliminary source of law for the civil law systems where the courts' main task is to apply and interpret the rules contained in these codes. Jurisprudence and case laws constitute only a secondary source of law. Accordingly, case laws in civil law systems have no binding effect neither on lower courts nor on the same court in subsequent cases and the interpretation of the same legislation by a higher court is not binding to lower courts. However, in practice it is common for the courts to be influenced by the interpretation and the decisions of higher courts and thus adopt similar decisions to those made by the higher court.

Another important feature of the civil law systems is the adoption of the theory of separation of powers, where the legislator's role is to legislate laws, while the court's role is limited to applying the mentioned rules and laws.

As for Common law systems, they have developed in the 11th century in England and then adopted by other countries of the British Commonwealth in addition to USA, Canada, Australia and New Zealand[15].

Unlike the civil law systems, common law systems are not based on codified rules, but rather based on case laws where decisions made by higher courts in a certain case will be later followed by other courts for similar cases and thus case laws and jurisprudence are the preliminary source of law.

The binding force of precedents is one of the characteristics of common law systems. In the common law, the courts role is not limited to resolving disputes

[14] Pejovic, Caslav, Civil Law and Common Law: Two Different Paths Leading to the Same Goal, November 27, 2000, Article found on: https://www.researchgate.net/publication/265244573_Civil_law_and_common_law_Two_different_paths_leading_to_the_same_goal

[15] Pejovic, Caslav, Civil Law and Common Law: Two Different Paths Leading to the Same Goal, November 27, 2000, Article found on: https://www.researchgate.net/publication/265244573_Civil_law_and_common_law_Two_different_paths_leading_to_the_same_goal

between parties but also to provide guidance as to how similar disputes should be settled in the future. Decisions made and interpreting a legislation given by the court in a specific case are binding on lower courts. Accordingly, it may be said that the role of the court in a common law system also includes the creation of the law.

b- Comparison between Common and Civil Law systems in the field of Ship Arrest:

There are different approaches to the arrest of ships in common law countries (eg. England and USA) as compared with civil law countries (such as French, Italy and Lebanon).

In common law jurisdictions, the notion of ship arrest is a component of the action in rem, which means an action "against the thing". The action in rem is not a procedural device for obtaining personal jurisdiction over the owners of the ship but a unique proceeding against the ship itself.

On the other hand, civil law jurisdictions adopted the principle of action in personam, which is the procedure where the plaintiff has the right to bring an action against an individual or a legal entity. Ship arrest is considered as a security measure used by the claimant to maintain the debtors' assets until a decision on the merits is reached and then the enforcement following the judgment will be through the forced sale of the ship in a public auction. It should be noted that, in civil law jurisdiction the laws relating to arrest and release procedures are usually set out in the code of civil procedures[16].

Another fundamental difference between common law and civil law systems is that a ship may be arrested in relation to any claim (whether maritime or not) in civil law system, while the common law system has limited the possibility to arrest the ship in relation to maritime claims only.

[16] Isikova, Nadiya, **The Ship Arrest Conventions of the 1952 and 1999:International and Ukrainian perspectives**, World Maritime University, Malmo, Sweden, 2012

In addition to that, arrest of ships is enough itself to give jurisdiction on the merits of the case to the court where the arrest was made in the common law systems; such jurisdictional link did not exist in civil law countries[17].

As indicated, compromises were made between the civil law and common law views on the matter of ship arrest while drafting the 1952 and the 1999 arrest conventions to unify the law in this field. However, since Lebanon, as we will see in the below paragraphs, is not a member of any of the conventions above, the civil law system view for ship arrest is still applied.

B-Legal Framework:

The legal framework of the arrest of ships consist of international conventions, national laws and legal principle which we will discuss consecutively in the below sections.

1- International conventions:

Since the international trade and commerce is more likely to thrive when it develops under a system of law which is predictable, one of the "dominant legal leitmotifs" of the late nineteenth, twentieth, and early part of the twenty first centuries has been the desire to achieve international uniformity. This idea has always been particularly important to maritime law, an area that is ruled by its international character.

In the ship arrest field, the interest in international harmonization arose in 1930s in the Comite Maritime International[18]. The associations of the Italian, German and the French were invited by the CMI to come up with new topics and they selected the matter of ship arrest since:

(i) there was no autonomous concept of arrest of ships in the international conventions; and

[17] Niklasson, Anna Karin, **A comparison between the jurisdictional rules in the EU and the US in the light of the Arrest Convention and the possibility to shop for forum**, School of Economics and Commercial Law, Goteborg University.

[18] Comite Maritime International is an international organization founded in Antwerp in 1897 that is dedicated exclusively for the unification of private maritime law on a global scale.

(ii) the arrest of ships as an institution used in civil and commercial matters did not have an exact equivalent in legal systems at the national level[19].

Therefore, the international uniformity in this field was a necessity.

The first output of the harmonization efforts was the "Convention Relating to the Arrest of Sea Going Ships" adopted in Brussels on 10 May 1952, which came into force on 4 February 1956[20].

However, due to the various changes that took place in the maritime field since the adoption of the 1952, the Comite Maritime International adopted the International Convention on the Arrest of Ships in the aim of achieving further unification in this field[21].

In the sections below we will be discussing the adoption and implementation of both the 1952 and 1999 Arrest Conventions.

a- The International Convention Relating to the Arrest of Seagoing Ships:

History of the Convention:

As indicated above, this convention was the starting point for the harmonization and unification of the rules of ship arrest. The roots of the 1952 Arrest Convention go back to the 1930s when countries were invited to come with suggestions about what to be discussed at the annual conference of the Comite Maritime International in Antwerp[22]. Certainly, the reasoning behind choosing the Ship Arrest issue to

---

[19] Abou-Nigm, Veronica Ruiz, **The Arrest of Ships in Private International Law**, 2011, Oxford University Press Inc., New York, United States

[20] United Nations treaty convention found on:

https://treaties.un.org/pages/showDetails.aspx?objid=08000002801338ba

[21] United Nations treaty convention found on:

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XII-8&chapter=12&clang=_en

[22] Faraj, Omar Mohammad, **The Arrest of Ships: Comprehensive View on the English Law**, Faculty of Law Lund University, Sweden, 2012

discuss at the convention at that time and the attempt to harmonize the law in this field was not to achieve uniformity for the sake of commercial prosperity, but rather to protect ship-owners from the indiscriminate use of arrest of ships as an interim measure of protection, purportedly as an indirect way to protect International Trade[23].

At the first CMI conference in 1930, the following questions were raised for discussion:

(1) Which ship can be arrested, (2) who is entitled to arrest a ship, (3) where can the arrest be made, and (4) How can a ship be released?

In addition to the above questions, some other questions were raised later regarding the right to arrest and the sale of the ship.

During the discussions, the differences between civil law countries and common law countries were acknowledged; thus, the purpose of the conference was to strike a compromise between the two law systems in respect to ship arrest.

In 1932, a request was made by the International Sub-Committee to start a first draft preparation. The prepared draft was delivered to the International Sub-Committee meeting in London in 1933 and it was then presented to the associations for their consideration during the 1933 Oslo conference[24].The draft was then reviewed at the Paris Conference in 1937.

During the CMI conference in 1947 in Antwerp, the draft of the 1937 Paris Conference was submitted to the Diplomatic Conference to be reviewed by the associations. It was highly criticized and described as restrictive and lacked the unifying body[25].

Further discussions were made during the Amsterdam Conference in 1949, in addition to a summary of all the previous work made by the Committee.

---

[23] Abou-Nigm, Veronica Ruiz, **The Arrest of Ships in Private International Law**, 2011, Oxford University Press Inc., New York, United States

[24] Berlingieri, Francesco, **Berlingieri on Arrest of Ships**, 4th Edition, Lloyd's Shipping Law Library, Informa, United Kingdom, 2006

[25]Berlingieri, Francesco, **Berlingieri on Arrest of Ships**, 4th Edition, Lloyd's Shipping Law Library, Informa, United Kingdom, 2006

The Ship Arrest Convention was finally approved at the Diplomatic Conference in Brussels in 1952 with 13 votes favoring the convention (including England, France, Belgium, Italy, Germany…), none against and 6 absent members.

The 1952 Arrest Convention became widely accepted for a number of reasons. First of all, the rules of the Convention were the result of a compromise between the common law and civil law systems. The compromise character of the convention could be seen from various situations such as:

(1) the right to arrest a ship for a fix and limited list of maritime claims only (which was inspired by common law systems),

(2) allowing the arrest of sister ships in the same ownership as the particular ship in respect of which the original claim arose (the result here was recognizably a civilian approach); and

(3) the ability of the action in rem to enable the arresting court to have jurisdiction on the merits of the claim through the mechanism of arrest.

Secondly, the 1952 Arrest Convention has unified the rules and procedures of the arrest.

Finally, the convention prohibited in article 3 of the repeated and additional arrest of the same ship in respect of the same claim by the same claimant in a contracting state after a previous arrest was affected in the same state or another member state, which guarantees an additional protection for the ship-owner[26].

However, regardless of the fact that the convention have unified the rules of the ship arrest and thus contributing in achieving commercial prosperity, the convention is still far from being perfect and was criticized for several reasons. First, the closed list of claims provided by the convention does not reflect the reality of shipping. Second, the wording used in some provisions are not clear and linguistic nuances which created different interpretations by national courts (for example the interpretation of article 3(4) of the convention: civil law jurisdictions would allow a ship to be arrested for the debts of a time charterer while common law jurisdictions would allow only the arrest for debts of the ship-owner or demise-charterer). In addition to the matters that were left to the national courts to be

[26] Okoli, Stanley Onyebuchi, **Arrest of Ships: Impact of Law on Maritime Claimant**, Lund University, Sweden, 2010

determined which created differences between the ways in which civil and common law jurisdictions deal with the subject matter[27]. Therefore, a new convention was needed to amend and modify this convention.

Implementation of the Convention:

Experience reveals that in order to achieve international uniformity in the regulations of a certain field of law, reaching an agreement on certain provisions to be included in a particular international convention is only a first step towards accomplishing such goal. The more difficult thing is to attain in practice the necessary uniformity of application / implementation of such provisions in the different state parties to the convention[28].

One of the most significant drawback to uniformity of the 1952 Arrest Convention is that it has been implemented differently in the states parties to the convention.

In some countries it has been given force of law directly as a consequence of its ratification (such as France, Poland, Germany, Netherlands…), this is the ideal way of implementing the convention.

However, in most countries some sort of implementing legislation was required such as incorporating all or part of the conventions provisions in their domestic laws (example: Sweden, Nigeria, Denmark, …).

These different methods of implementation have affected the uniform interpretation of the convention, since when the provisions of the convention are enacted into national law the danger arises that they are interpreted on the basis of the national rules rather than on the basis of the convention from which they originate, and thus creating a stumbling block to uniformity.

b- The International Convention on the Arrest of Ships 1999:

History of the Convention:

By the 1980s it was recognized that the international shipping has undergone numerous dramatic changes in the maritime industry. Thus, a new convention was needed to bring the practice of arrest of ships up to date and in line with the

[27] Isikova, Nadiya, **The Ship Arrest Conventions of the 1952 and 1999:International and Ukrainian perspectives**, World Maritime University, Malmo, Sweden, 2012

[28] Abou-Nigm, Veronica Ruiz, **The Arrest of Ships in Private International Law**, 2011, Oxford University Press Inc., New York, United States

changes that took place in the maritime operations and in the methods by which the shipping business is conducted since the 1952 Arrest Convention. Therefore, the "International Convention on the Arrest of Ships 1999" was drafted, which according to its preamble, was borne out 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"[29].

The decision to consider the revision of the 1952 Arrest Convention was taken by the Comite International Maritime (CMI) following the decision of the International Maritime Organization (IMO) and the United Nations Conference on Trade and Development (UNCTAD) to place on their working program the revision of the 1926 and 1967 Maritime Liens and Mortgages Conventions and the 1952 Arrest Convention.

The CMI International Sub-Committee appointed to review the 1952 Arrest Convention has considered among other things, the following matters: (i) the additions that should be made to the list of maritime claims, (ii) the problem of whether a ship can be arrested in respect of claims against persons other than the owner of the ship, and (iii) whether the arrest should in all circumstances grant jurisdiction. In view of the quality and quantity of the changes that were being discussed, the International Sub-Committee prepared the draft of a new convention to be considered by the upcoming CMI Lisbon Conference in 1985. The draft was considered and amended by the conference and was approved with 23 votes in favor, 3 against and 7 abstentions. The mentioned draft was then submitted by the president of the CMI to the IMO and UNCTAD for their consideration, in addition to the draft of the revised 1967 Maritime Liens and Mortgages Convention[30].

Pursuant to the recommendation of the Legal Committee of the IMO and the Trade and Development Board of UNCTAD, a Joint Intergovernmental Group of Experts (JIGE) was established to examine the subject of the Maritime Liens and Mortgages, including the possible consideration of the following:

(1) The review of the Maritime Liens and Mortgages Convention and related enforcement procedures, such as arrest;

---

[29] The preamble of the 1999 convention.

[3030] Berlingieri, Francesco, **Berlingieri on Arrest of Ships Volume II: A Commentary on the 1999 Arrest Convention**, 6th Edition, Lloyd's Shipping Law Library, Informa, United Kingdom, 2017

(2) The preparation of model laws or guidelines on maritime liens, mortgages and related enforcement procedures such as the arrest;
(3) The feasibility of an international registry of maritime liens and mortgages.

After the approval of the draft articles for a convention on Maritime liens and mortgages in 1989, the JIGE adopted the following recommendation:

With regard to arrest, the Joint Group recommends that any further work should be postponed until after the adoption of the final text of the convention on Maritime Liens and Mortgages by a diplomatic conference. Due to the close connection between the two subjects (maritime liens and mortgages are within the list of maritime claims upon which a ship may be arrested under the arrest convention)

In May 1993, after the adoption of the new Convention on Maritime Liens and Mortgages, the UN / IMO Conference recommended to reconvenes the JIGE to examine the possible review of the International Convention for the unification of certain rules relating to the arrest of seagoing ships 1952.

The JIGE have dealt with the matter of the arrest of ships for the first time at its Seventh session held in Geneva from 5 to 9 December 1994. The JIGE decided to base its work on the draft of the new convention approved by the CMI Lisbon Conference. During the discussions particular attention was paid to article 1 (Definitions), 3 (Exercise of right of arrest) and 5 (right of re-arrest and multiple arrest). The outcome of the discussions was a "Draft articles for a convention on arrest of ships" prepared by the IMO and UNCTAD secretariats, that the JIGE is to consider in its 8th session that would take place in London on 7 and 9 October 1995.

During the 8th session, a debate was held between the delegates during which some delegations questioned the need for a new convention and the adoption of an open-ended list of maritime claims. After some discussions, the Joint Group decided the following:

(i) Using the first Draft Articles as a basis for its deliberations and
(ii) (ii) the outcome of the work would be embodied in a new convention not a protocol.

The Nineth and last session of the JIGE was held in Geneva from 2 to 6 December 1996, during which the JIGE completed its consideration of the first draft articles for a new convention on arrest of ships and requested that the secretaries of the

IMO and UNCTAD prepare a revised set of draft articles on the basis of the decisions taken by the JIGE[31].

The above-mentioned draft articles were issued in April 1997 and were distributed to the governments, intergovernmental organization and non-governmental organizations for their comments. These draft articles served as the basis of work for the Diplomatic Conference held in Geneva in March 1999 and were considered by the Main Committee established by the conference[32].

On 12 March 1999, the text of the convention was adopted by the conference, and pursuant to articles 1.2 (1) of the convention, it was open for signature at the United Nations Headquarters in New York from 1 September 1999 until 31 August 2000. The convention was drafted in English, Arabic, Chinese, French, Russian and Spanish and all original texts are held as authentic.

Undoubtedly, the 1999 International Arrest Convention represents advancement over the 1952 Arrest Convention in various ways such as: (i) expanding the list of claims upon which a ship can be arrested to include environmental damages, wreck removal, port, harbor and canal dues, vessel sale and purchase contract disputes and Protection and indemnity insurance claims, (ii) removing the clause allowing the arrest of ready to sail vessels, and (iii) introducing the concept of unjustified arrest. We will be discussing those amendments further in the upcoming chapters.

It is important to note finally that the change in the title between the 1952 convention and the 1999 convention (where the 1999 convention have removed the word “seagoing” from the title) is of no importance since the scope of both conventions are the same.

Implementation of the Convention:

The importance of the new convention may be noticed by the number of delegates that attended the conference in March 1999. There were delegates from ninety-three states, as well as observers from many others.

---

[31] Lynn, Robert W, **A Comment on the New International Convention on Arrest of Ships 1999**, University of Miami Law School, Miami, 2001

[32] Lynn, Robert W, **A Comment on the New International Convention on Arrest of Ships 1999**, University of Miami Law School, Miami, 2001

Even though the majority of these delegates signed the final act at the conference, this does not constitute an expression of consent to be bound under the actual convention according to article 12 of the convention; however, this indicates an initial desire to facilitate the harmonious and orderly development of the laws that governs world seaborne trade.

In order for a state to be bound by the convention, it must sign the New Convention when it was deposited with the Secretary - General of the United Nations in New York from September 1999 through August 2000; thereafter, the new convention will remain open for accession.

Since the majority of the delegates who attended the conference signed the final act, it seemed at that time that the New Convention would attract at least the minimum ten signatures required to enter into force before the closing in August 2000. However, the new arrest convention did not enter into force until 14 September 2011, six months following the consent of the tenth state to be bound by the convention which was deposited by Albania on 14 March 2011.

As of 17 October 2018 the states parties to the 1999 Arrest Convention are: Albania, Algeria, Benin, Bulgaria, Congo, Ecuador, Estonia, Latvia, Liberia, Spain and Syrian Arab Republic. Six of such states Algeria, Benin, Congo, Latvia, Spain and Syrian Arab Republic were also parties to the 1952 Convention[33].

Regarding the required actions to implement the 1999 Convention we shall differentiate between the actions required by the states parties to the 1952 Convention and the actions required by all states, whether parties to the 1952 Convention or not.

The state parties to the 1952 Convention must denounce it before implementing the 1999 Convention for the purpose of avoiding a conflict between their obligations under that convention and the 1999 Convention.

As indicated above six of the states parties to the 1999 Convention are also parties to the 1952 Convention and thus they should have denounced the 1952 Convention before the 1999 Convention entered into force. However, it appears that only Spain has actually denounced the 1952 Convention on 28 March 2011 and consequently

[33] United Nations treaty convention found on: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XII-8&chapter=12&clang=_en (Website checked on October 17, 2018)

that convention ceased to be binding on Spain as of18 March 2012, pursuant to article 17 of the 1952 Convention which states that the denunciation of the 1952 Convention takes effect one year after the date on which notification thereof has been received by the Belgian government.

As for the other states that are parties to both conventions and did not yet denounce from the 1952 Convention, a conflict is conceivable between the two conventions in these states specially in relation to the following matters:

(i) The maritime claims upon which a ship may be arrested (since the list of claims was expanded in the 1999 convention);
(ii) The situations in which the right of arrest may be exercised; and
(iii) The protection of owners and demise charters of the arrested ships.

It is remarkable that Latvia, that is a party to both conventions, has adopted a practical solution so that it will not have to denounce from the 1952 convention in order to avoid the danger that the 1852 convention would not be applied on the arrest of the Latvian ships in any of the neighboring states that are members of the 1952 convention[34]. Thus, Latvia has connected the application of either the 1952 convention or the 1999 convention with the flag the arrested ship flying according to the following:

(i) If it flies the flag of a state member of the 1999 conventions, this convention would be applied,
(ii) If it flies the flag of a state member of the 1952 convention, this convention would be applied, and
(iii) If it flies the flag of a state which is neither a member to the 1952 convention nor to the 1999 convention the Latvian Maritime Code would apply (the provisions of the 1999 convention have been incorporated to this code).

As for the actions required by all the states parties to the 1999 convention, whether they are parties to the 1952 convention or not, they ought to check whether the relevant national rules of procedure are drafted in a way that ensures the actual

[34] Berlingieri, Francesco, **Berlingieri on Arrest of Ships Volume II: A Commentary on the 1999 Arrest Convention**, 6th Edition, Lloyd's Shipping Law Library, Informa, United Kingdom, 2017

operation of the new uniform rules. In this regards, two situations may be envisaged: (i) there may be national laws/rules that are in conflict with the rules of the convention (this situation would become relevant only if under the national rules the uniform rules do not prevail over the national rules), and (ii) there may be the need for additional rules in order to implement the provisions of the convention since the 1999 convention have referred to the national laws in different articles such as article 2(4), article 3(3), article 4(1)…..

A distinction must be made here between the different methods to implement / give force to the 1999 convention. States parties to the convention may give it force either by giving the convention the force of law (this method was used by Albania, Ecuador and Spain to implement the obligation arising out of their accession to the convention), or through enacting in whole or in part the provisions of the convention in their domestic legislation; in this case the state ought to ensure that the provisions of their national rules are not in conflict with those of the 1999 convention, and if they are they should amend them accordingly[35].

It is important to note that there are several states that have adopted the provisions of the 1999 convention without being parties to the convention such as: Comunidad Andina, China, Russian Federation and Venezuela. Thus, such reaction will affirm the importance of this convention in the maritime world in general and the arrest of ships field in particular.

Finally, it should be noted that Lebanon have signed the 1952 convention on May 25, 1954[36] but did not ratify it, as for the 1999 convention Lebanon did not sign or ratify it, even though the matter of ship arrest was completely absent from the Lebanese law. On the other hand, the United Kingdom is a party to the 1952 Convention on the Arrest of Seagoing Ships.

---

[35] Berlingieri, Francesco, **Berlingieri on Arrest of Ships Volume II: A Commentary on the 1999 Arrest Convention**, 6th Edition, Lloyd's Shipping Law Library, Informa, United Kingdom, 2017

[36] United Nations treaty convention found on:

https://treaties.un.org/pages/showDetails.aspx?objid=08000002801338ba (Website checked on October 17, 2018)

2- National Laws:

As indicated above, Lebanon is not party neither to the 1952 convention nor to the 1999 convention. Nor did the national maritime law (ie. Lebanese Maritime law) adopt special rules that govern arrest of ships.

In reference to the Lebanese maritime law, articles 73 to 92 of the mentioned law have regulated the issue of seizure of a ship in execution or satisfaction of a judgment or other enforceable instruments; however, this law did not refer to the possibility of placing a conservatory seizure executed to secure a claim (i.e. arrest of a ship to secure a claim).

In view of the fact that the rules of arrest were not regulated by the Lebanese maritime law, the general rules and laws governing this matter shall be reviewed to determine the possibility of arresting a ship to secure a claim in Lebanon.

a- The Lebanese Code of Civil Procedures:

The Code of Civil Procedures sets forth Title II of the Third Book (articles 866 to 876) for the conservatory seizure matter. However, those articles only specify the mechanism of application of arrest such as stipulating the competent authority, affecting the arrest, conditions, consequences of the arrest, methods of appeal, release, in addition to other enforcement mechanisms[37]. The conservatory seizure in Lebanon is based on the principle of seizure of the debtor's assets that we will address later.

It should be noted that article 866 of the code of civil procedures states unequivocally the assets that may not be seized without referring to ships and thus ships may be subject to conservatory seizure in Lebanon.

b- Senior Court Act 1981

As stated previously, England have ratified the 1952 Arrest Convention without giving it force of law, but have enacted part of its provisions in the Administration of Justice Act 1956 first and subsequently in the Supreme Court Act 1981 which

[37] موسي، الياس، **المبسط في أصول التنفيذ**، الكتاب الثاني، الطبعة الأولى 2011، صادر، بيروت، ص. 51: اما قانون أصول المحاكمات المدنية فقد حدد تفاصيل آلية التطبيق من تحديد المرجع المختص لتقرير الحجز، الى شروط تقريره، الى مفاعيله، ظرق الطعن بالقرار، الى رفعه لقاء كفالة، الى حصره، فضلاً عن امور ومتممات أخرى للأدلة التطبيقية.

was renamed later by the Constitutional Reform Act in 2005 to Senior Court Act 1981.

Even though the mentioned Acts were enacted with the aim of giving effect to the 1952 Arrest Convention in the English Law, some differences between the 1952 Convention and the English Acts can be found.

Ship arrest in England is available only in the context of an action in rem; section 20 of the SCA 1981 sets out the types of claims for which the ship may be arrested. In order to bring an action in rem against the ship in connection with which the claim arises, it is necessary to issue an in rem claim and to effect service thereof in one of the ways prescribed in rule 3.6 of the Admiralty Claims Practice Direction and to this effect the ship must be within the jurisdiction of the High Court. According to section 20(7) of the SCA, Admiralty jurisdiction is exercisable in relation to all ships, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be[38].

In addition to the Senior Court Act 1981, other procedural rules were required to fully implement the 1952 Arrest Convention such as the Civil Procedure Rule. Even though those rules were not specifically designed to implement the 1952 Arrest convention, they are directly relevant to arrest actions by setting out the appropriate procedures for the arrest of ships in England[39].

3- Legal Principles:

a-The principle of Seizure of the debtor's assets:

In most civil law legislations, the creditor is entitled to arrest all of his debtor's assets to secure his claim and guarantee the settlement of his debt; the legal framework of this arrest is the principle of comprehensive pledge of the assets of the debtor.

[38] Berlingieri, Francesco, **Berlingieri on Arrest of Ships**, 5th Edition, Lloyd's Shipping Law Library, Informa, United Kingdom, 2011

[39] Gaskell, Nicholas, Christodoulou Dimitrios**, Implementation of the 1952 Arrest Convention Questionnaire,** September 1999**.**

This principle had been adopted by the Lebanese legislator in the code of obligations and contracts article 268 which states:

"The creditor has a right of comprehensive pledge, not only on his debtor's chattels, taken separately, but on this debtor's very patrimony, taken in its entirety.

This right, which makes the creditor his debtor's unqualified rightful claimant does not, by itself, confer on him either the right to sue or the right of preference: all unsecured creditors are, in principle, placed on an equal footing without distinction due to the date of creation of their rights, reservation being made to the legitimate causes of preference, proceeding from the law or the covenant."[40]

According to the above article, the total assets of the debtor shall be considered as a guarantee towards the creditor for the settlement of his obligations.

The right to arrest is an effective method used by the creditor to overcome the debtor's abstention from carrying out his obligations. However, this right may only be exercised by the creditor when he has fulfilled all his obligations towards the debtor, despite that, the debtor has refrained from executing his obligation in kind.

For the implementation of this right, the law did not differentiate between creditors; all creditors are equally granted this right regardless of the source of the debtor's obligation (i.e. there is no difference between creditors whose debts arose out of agreements or omissions or quasi-delicts). Moreover, the creditor who have secured his debt with a mortgage or lien may also exercise the right to arrest as an additional security for his debt.

In reference to article 269 of the code of obligations and contracts[41], one of the most important features of the comprehensive pledge is granting the creditor a fundamental right, which is the right of force sale of the debtor's assets, in addition

[40] المادة 268 من قانون الموجبات والعقود:" للدائن حق ارتهان عام على ملوك المديون بمجموعه لا على افراد ممتلكاته. وهذا الحق الذي يكسب الدائن صفة المخلف العام للمديون, لا يمنحه حق التتبع ولا حق الافضلية, فالدائنون العاديون هم في الاساس متساوون لا تمييز بينهم بسبب التواريخ التي نشأت فيها حقوقهم الا اذا كان هناك اسباب افضلية مشروعة ناشئة من القانون او عن الاتفاق."

[41] المادة 269 من قانون الموجبات والعقود:" لحق ارتهان الدائن خصائص كل منها وسيلة موضوعة رهن تصرفه ليتمكن بها من الحصول على ما يحق له. وبعض تلك الوسائل احتياطي محض وبعضها يرمي مباشرة الى التنفيذ الاجباري. وهناك فئة ثالثة من الوسائل متوسطة بين الفئتين السابقتين وضعت لتمهيد سبل التنفيذ الاجباري واعداد اسبابه."

to secondary measures used by the creditor to reserve his rights (ie. Conservatory and intermediary measures).

The conservatory seizure is one of the secondary measures that article 269 referred to and which the creditor may plead to reserve his rights and secure his claim prior to the issuance of the final judgment. The creditor may, through this measure, preserve the debtor's assets from being decreased or lost due to the debtor's fraud, collusion or negligence and thus enabling him to pursue execution on such assets when a judgment is issued.

Accordingly, the conservatory seizure is a method upon which the creditor exercises his right to comprehensive pledge; this was also assured by the jurisprudence[42].

It should be noted that the following rights shall be excluded from the scope of the comprehensive pledge of the debtor's assets:

1- Personal rights that have no monetary value (eg. Right of reputation, honor and dignity, political rights, liberty, freedom of thought…)

2- Rights that have a financial value but are attached to the personality of its owner (eg. Intellectual property rights, family souvenirs provided that their financial value does not by far exceed their sentimental value…).

3- Assets excluded from the arrest by the Law especially those listed in articles 866 of the code of civil procedures.

Whereas ships do not fall within any of the categories stated above, this indicates that ships are included in the scope of comprehensive pledge and may be seized by the creditor (whether conservatory or executional seizure). This may also be confirmed by the Lebanese maritime law which regulates the seizure of a ship in execution of a judgment.

Finally, it is remarkable to state that unlike the English law, the Lebanese law follows the Civil Law system in which there is no such concept of action in rem.

---

[42] :" إن إلقاء الحجز ما هو إلا ممارسة الدائن لحق الارتهان العام الذي يتمتع به." (محكمة استئناف بيروت المدنية الغرفة الثالثة، قرار رقم 130, تاريخ 6 شباط 1997. دعوى كسرواني ضد بنك بيروت الرياض، الرئيس زيادة والمستشارين الحجار وعواد. النشرة القضائية لعام 1997 - العدد الثالث - ص. 231) .

All claims, including ship arrest should be brought in personam (i.e. the action is based on personal liability of the defendant). The distinction between the action in rem and the action in personam will be discussed in the following section.

b- Principle of Action in rem:

i- Development of the concept of the action in rem:

The word "action in rem" is originally taken from the Latin word "in rem" which means "against the thing".

The roots of the English Admiralty in rem actions are derived, according to the opinion of many legal scholars, from the *"processus contra contumacem"* of the Roman law which is a process of arresting the property to compel the appearance of the defendant before the court where there is a claim to be settled against him.

The action in rem developed in England and became a dominant procedure in Admiralty court in the 19th century due to the jurisdictional conflict between the common law courts and the High Courts of Admiralty. The principle of action in rem was the escape root for the Admiralty court to avoid the writs of prohibition issued by the common law courts to limit the jurisdiction of the Admiralty court.

The jurisdiction of in rem action of Admiralty courts kept on developing and today rights in rem are governed by the Senior Court Act 1981 as indicated above.

According to sections 20-24 of the Senior Court Act 1981, the in rem claims are divided into two categories: claims that are truly in rem and non-truly in rem claims. Claims that are truly in rem can be brought against the ship in connection with which the claim in question arises without consideration of who is the beneficial owner of the ship at the time when the claim form is issued, or who would be liable in personam when the action arose. The claims that are truly in rem are listed in sections 21(2), 21(3), 20(2)(a), (b), (c) and (s); (for example: any claim to the possession or ownership of a ship or to the ownership of any share therein;any question arising between the co-owners of a ship as to possession, employment or earning of the ship, any claim in respect of a mortgage of or charge on a ship or any share therein…). On the other hand, showing the in personam link is essential when a non-truly in rem claim is brought against the ship according to

section 21(4) of SCA 1981. The claims that are non-truly in rem are listed under SCA 1981 sections 20(2) (e) to (r)[43]; (for example: any claim arising out of bottomry; any claim for loss of or damage to goods carried in a ship; any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship…).

ii- Nature of the action in rem:

Two theoretical approaches were adopted in the context of the nature of action in rem, the personification and the procedural theories.

The personification theory considers the action in rem as an action against the res with the res being the defendant in the claim. Accordingly, the action in rem will be independent from any action against the owner of the res. This theory was adopted by the United States during the 19th and 20th century. However, the United States is virtually alone in its retention of the personification theory while other nations have repudiated it[44].

According to the procedural theory, the purpose of the action in rem is to compel the debtor to appear before the court and the seizure of his assets was considered as a powerful weapon to guarantee his appearance. The procedural theory was widely accepted in the English Admiralty courts and was adopted for over 40 years[45]. However, the traditional English view for the nature of the action in rem was abandoned because of a case of critical importance "*The Bold Buccleugh [1852] Moo PC 267".* In this case, the English jurisdiction confirmed that the action in rem was not a procedural device for obtaining personal jurisdiction over the owners of the ship but rather a proceeding directly against the res.

Accordingly, the action in rem is considered today as a proceeding against the res where the res may be arrested and then sold by the court to meet the plaintiff's claim and thus satisfying the claimant's demands out of the res. It is important to

[43] Haifeng, Lin, **A Comparative Study on the Legal System of Arrest of Ships in China,** World Maritime University, Dalian, China, 2005-2006

[44] Okoli, Stanley Onyebuchi, **Arrest of Ships: Impact of Law on Maritime Claimant**, Lund University, Sweden, 2010

[45] IBID

note that the ship is not the only res upon which an action in rem could be taken; in some cases the action in rem could be against the cargo and the freight also.

iii- Distinction between action in rem and action in personam:

An action in personam is an action based on personal liability that can lead to a judgement against the defendant. Such action is similar to actions in contracts or in tort where it is necessary to identify the liability of the person who was personally liable at the time when the action arose. All actions requiring a person to take or refrain from taking an action are considered actions in rem.

On the other hand, an action in rem is a proceeding against the res. The action in rem is initiated through the arrest of the ship proceeded against, followed by forced sale of the ship when necessary. Thus, the claimant's demands would be satisfied out of the proceeds of the sale.

iv- Advantages of action in rem:

The action in rem has gained popularity among maritime claimants for being a more easy and convenient proceeding. Not only does the action in rem help in avoiding many difficulties and disadvantages inherited in an action in personam, but also it can bring effective results which cannot be obtained in an action in personam. The action in rem has proved since its issuing in the English court of Admiralty strong effectiveness and sufficiency in securing the needs of the claimant and helping him to settle his dispute.

The action in rem has three main advantages: First, the action in personam depends completely on the ability of the plaintiff to serve properly and effectively a claim form on the defendant. If both the plaintiff and the defendant are in the same jurisdiction, this will unlikely cause a problem, but may create obstacles when they are in different jurisdictions. Ships, on the other hand, continuously sail between different jurisdictions which allows the defendant to sue the ship in rem in different jurisdictions. Second, the action in rem represents a way of finding jurisdiction whether the res / ship-owner was available or not. Finally, the action in rem provides the claimant with a pre-judgment security[46].

[46] Okoli, Stanley Onyebuchi, **Arrest of Ships: Impact of Law on Maritime Claimant**, Lund University, Sweden, 2010

Chapter 2: Scope of Application:

In general, all ships owned by the debtor may be arrested to secure any of his claims regardless of the ship's destination or the loaded cargo, provided that the claim is prima facie proven to be serious and grounded. However, the law have excluded a group of ships from the scope of the arrest due to their special nature.

In the below paragraphs we will be discussing the ships that may be arrested, ships excluded from the arrest and the debts upon which the ship may be arrested.

A- Ships that may be arrested:

1- Arrest of the Guilty or Responsible Ship:

In Principle, the arrest is enforceable by the claimant on the particular ship in respect of which the claim arose. The arrest in this case shall include anything belonging to the owner which is on board of the ship for the accomplishment of the voyage on which it is engaged in.

In this context, Sheen J stated in "The Silia" that "in the context of an action in rem the word ship includes all property on board of the ship other than which is owned by someone other than the owner of the ship".[47]

2- Sister Ship Arrest:

The term "Sister Ship" is used to refer to a ship built to the same technical specifications as another ship. However, in the legal context, the terms refer to two or more ships which are or deemed to be, in common registered ownership, as

[47] Berlingieri, Francesco, **Berlingieri on Arrest of Ships**, 5th Edition, Lloyd's Shipping Law Library, Informa, United Kingdom, 2011

distinct from ownership in separate special purpose vehicle ("SPV") companies with a common parent or ultimate beneficial owner[48].

Sister-Ship Arrest relates to a situation where legal action is taken against any ship in a fleet of vessels belonging to the same owner as the vessel that actually caused the loss or damage. This is so because, for a lawful arrest to be effected, the vessel has to be within the jurisdictional competence of the arresting state and since ships are transient objects the responsible ship might be out of reach before the arrest is perfected; thus, the claimant may take action against the sister-ship.

Under the Lebanese law, the application of arrest should be directed against the person or party responsible for the debt since as indicated above, (i) claims in Lebanon should be brought in personam, and (ii) the arrest is based on the principle of seizure of the debtor's assets adopted by the Code of Obligations and Contracts and the Code of Civil Procedures.

The practical translation of this principle is granting the creditor the right to request the conservatory seizure of any or all his debtor's assets including all movable and immovable properties except for the assets that the law have prohibited their arrest.

Therefore, the arrest of a sister ship is generally possible provided that both ships are owned by the same person (i.e. the debtor of the arresting party).

As for the English law, the sister-ship provisions are found in section 21 (4) which is very similar to article 3(4) of the 1952 Arrest Convention[49].

---

[48] Watson, Farley & Williams Law Firm, Maritime Briefing, **Sister Ship Arrest**, April 2013, found on http://www.wfw.com/wp-content/uploads/2015/01/WFW-SisterShipArrest.pdf

[49] Article 3 of the **International Convention Relating to the Arrest of Sea-Going Ships** (Brussels, May 10, 1952):

(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).

Section 21(4) of the SCA 1981 provides as follow:

Section 21(4)

"…. An action in rem may (whether or not the claim gives rise to maritime lien on that ship) be brought in the High Court against:

(i) That ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respect all the shares in it or the charterer of it under a charter by demise; or

(ii) Any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it."

It is remarkable to see the section 21 (4) (ii)of the SCA 1981, that permits the arrest of other ships (sister-ships), did not fully comply with the 1952 convention in covering all claims while the SCA 1981 used the word relevant person which is an indication to the liable person on a claim in personam.

It is noticeable also that the SCA 1981has enacted the 1952 Arrest Convention so as to make "the time at which the action is brought " (i.e. the time of issuance of the claim form) the significant moment for the purpose of ascertaining whether the sister-ship is owned by the guilty owner. This means that a right of arrest will not be defeated by a change of ownership after the claim form has been issued but before the arrest of the guilty or sister-ship[50].

Therefore, and based on the above provisions, the arrest of sister- ships is permitted by the Lebanese law and the English law. However, according to both laws ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person.

---

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

[50] Watson, Farley & Williams Law Firm, Maritime Briefing, **Sister Ship Arrest**, April 2013, found on http://www.wfw.com/wp-content/uploads/2015/01/WFW-SisterShipArrest.pdf

The above provision limits the sister-ship arrest only to ships in the same legal ownership as the guilty ship rather than extending the right of arrest to all sister-ships legally or beneficially owned at the time of the arrest by the owner of the guilty ship.

As a result of the above, ship owners devised a new tactic to circumvent the sister-ship concept. The trick/tactic consists of the formation of owning companies in respect of each and every single vessel within the same fleet; this strategy is called "single-ship companies". Today, many fleets of ships operate within large ship owning groups owned and controlled by the same parent corporation or holding company, but with each ship in the fleet or group owned by / registered in the name of a separate single ship company. This strategy makes it impossible for a claimant to arrest any of these ships under the sister-ship arrest provisions because they are owned by different corporate entity, even though they all have the same beneficial owner which is the parent corporation or the holding company[51].

However, to broaden the scope of sister-ship arrest and remedy the above mentioned problem, it is possible in certain circumstances under the English Law to arrest sister-ships by piercing the corporate veil or disregarding sham sale if there has been a sham transfer of the ship in order to avoid liability. The word "sham" was defined by Lord Diplock in "The Snock vs. London and West Riding Investment Ltd. (1967) 1A11ER518 as follows:

"…. It means acts done or documents executed by the parties to the "Sham" which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create. However, for the acts or documents to be a "sham", all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating.

- Examples for piercing the corporate veil by the High Court of Admiralty: In the case of the Saudi Prince (1982) 2 Lloyd's Law Report 255, the cargo claimants arrested the vessel "Saudi Prince" which was deemed to be the sister-ship of the ship carrying the cargo suffering damage to enforce their

51 Okoli, Stanley Onyebuchi, **Arrest of Ships: Impact of law on Maritime Claimant**, Lund University, 2010

claims. Mr. Orri, the owner of the carrying vessel sought to set aside the arrest as he alleged that before the writ was issued the "Saudi Prince" had been transferred to another new company. Evidence showed that the new ship owning company had not properly been incorporated, as the shareholders had not paid the money of shares under the circumstances that the ship is transferred for value. So, the corporate veil was pierced and Mr. Orri was the true beneficial owner. Nevertheless, the one ship company structure used by the ship owners to limit liability are fully legitimate as held in the case of the Maritime Trader (1981) 2 Lloyd's Rep. 153 and such a structure shall not be deemed as a fraud to justify the lifting of corporate veil. So, it is not always the case that if there is a transfer of the ship in order to corporate different registered owning companies, the court shall go to lift the corporate veil. The court shall lift the corporate veil if evidence shows that the transfer is a sham one, and thus the previous owner will be liable[52].

Similar practices are applied in Lebanon; however, judges tend not to allow piercing of corporate veil except in rare circumstances where the arresting party was able to prove the fictitious character of the company[53].

Finally, it is important to refer to the arrest of the associated ships, which is remedy introduced by South Africa in the Admiralty Jurisdiction regulation Act No. 105 of 1983, to combat the proliferation of single-ship companies and reinforce the provisions of sister-ship arrest that have been defeated, since the conclusion of the 1952 conventions, by the single-ship companies strategy.

Section 3(6) of the AJRA provides as follows:

"… an action in rem in respect of a maritime claim may be brought by the arrest of an associated ship instead of the ship in respect of which the maritime claim arose…"

[52] Haifeng, Lin, **A Comparative Study on the Legal System of Arrest of Ships in China,** World Maritime University, Dalian, China, 2005-2006

[53] Baroudi, Jean, **Ship Arrest in Practice**, ShipArrested.com, Ship Arrest in Lebanon, eleventh edition, 2018.

Section 3(7) provides that for the purpose of subsection (6) an associated ship means a ship, other than a ship in respect of which the maritime claim arose:

(i) owned, at the time when the action is commenced, by the person who was the ownr of the ship concerned at the time when the maritime claim arose; or
(ii) owned, at the time when the action is commenced, bu a person who controlled the company who owned the ship concerned when the maritime claim arose; or
(iii) owned, at the time when the action is commenced , by a company which is controlled by a person who owned the ship concerned, or controlled the company which owned the ship concerned, when the maritime claim arose.

A person shall be deemed to control a company if he has power, directly or indirectly, to control the company."[54]

It would seem from the above provisions that adopting rules that allow the arrest of associated ships is more effective than lifting the corporate veil to inforce the sister-ship arrest.

In this regards, it is notable that the arrest of associated ships in Lebanon may succeed (although chances of success are minimal) only if it is possible to prove the close link between the two companies/entities, though if the arrest was applied the judge might release the ship if a challenge by the actual registered owner of the arrested ship was submitted[55].

3- Chartered ships:

In Lebanon, neither the law nor the doctrine and jurisprudence have addressed the possibility of having the ship arrested by the charterer's creditor. However,

[54] Okoli, Stanley Onyebuchi, **Arrest of Ships: Impact of law on Maritime Claimant**, Lund University, 2010

[55] Baroudi, Jean, **Ship Arrest in Practice**, ShipArrested.com, Ship Arrest in Lebanon, eleventh edition, 2018.

whereas the arrest in Lebanon is based on the principle of seizure of the debtor's assets which limits the creditor's right of arrest to the debtor's assets and may not be extended to any other assets. Therefore, it is practically not possible to arrest the chartered ship by the charterer's creditor since the ship in this case is not owned by the debtor but rather is a part of the owner's patrimony and thus it may not be included in the arrest of the debtor's assets.

As for the English law, the possibility of arresting a chartered ship are addressed in section 21 (4) which is similar to article 3(4) of the 1952 Arrest Convention[56]. Section 21(4) states: "in the case of any such claim as mentioned in section 20(2)(e) to (r) where

(a) the claim arose in connection with the ship, and

(b) the person who would be liable on the claim in an action in personam (the relevant person) was, when the cause of action arose, the owner or charterer of, or in possession or in control of the ship,

an action in rem may be brought in the high court against:

(a) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respect all the shares in it or the charterer of it under a charter by demise; or
(b) any other ship of which at the time when the action is brought, the relevant person is the beneficial owner as respect all the shares in it."[57]

---

[56] Article 3 (4) of the **International Convention Relating to the Arrest of Sea-Going Ships** (Brussels, May 10, 1952):

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.

[57] Gaskell, Nicholas, Christodoulou Dimitrios**, Implementation of the 1952 Arrest Convention Questionnaire,** September 1999**.**

Accordingly, a bareboat-chartered ship may be arrested under the provisions of the above-mentioned article for a claim for which the bareboat charter is contractually liable.

In contrast to the position of the bareboat charterer, a claimant with a maritime claim against the time or voyage charterer cannot arrest the guilty ship that belongs to an innocent operator. However, the claimant may arrest other ships which are in the registered ownership of the time or voyage charterer.

The different positions adopted for the arrest of a bareboat-chartered ship and time or voyage chartered ships is due to the different nature of each agreement.

A time chartered agreement is an agreement upon which the charterers agree to hire from the ship owner a named vessel, of specified technical characteristics, for an agreed period of time, for the charterer's purposes subject to agreed restrictions. During the charter period, the ship owner will operate the ship technically and thus will be responsible for the ship's running expenses i.e. manning, repairs and maintenance, stores, master's and crew's wages, hull and machinery insurance, etc… While the charterer's responsibility is limited to the commercial operation of the ship.

On the other hand, a bareboat charter agreement is an agreement upon which the ship owner puts the ship at the complete disposal of the charterer where he will have commercial and technical responsibility for the ship including the settlement of all costs and expenses. In addition to that, a bareboat charter agreement will mostly be hinged to a purchase option after expiry of the charter or during the hire period. (Hire payments may include instalments of the purchase price, and transfer of ownership may follow the final instalment). Thus, the charterer in such agreements will be replacing the owner.

4- Ready-to-sail Ships:

The ship is considered "ready-to-sail" when the captain obtains all required documentation for the sail in addition to having sufficient bunker supply to cover its trip and the ship is situated at the port's dock ready to proceed with its sail

Article 860 section 19 of the code of civil procedures[58], prior to its amendment, used to permit the arrest of ready to sail ships only for debts related to the voyage

[58] المادة 860 فقرة 19 قبل التعديل:"لا يجوز القاء الحجز على الاموال التي منع القانون حجزها وعلى الاموال الآتية: ...
19-السفن المتأهبة للسفر الا اذا كان الدين متعلقا بالسفرة المزمع القيام بها."

to be carried out by the mentioned ship. Arrest of ready to sail ships for a debt that was not related to that specific voyage was prohibited.

However, this provision was repealed by the Legislative Decree No. 20/1985; accordingly, after this amendment, the arrest of ready to sale ships have become permitted regardless of the nature of the debt and whether related to the voyage to be carried out or not[59].

As for the English law, even though article 3(1) of the 1952 convention have explicitly allowed the arrest of ready to sail ships, section 21(4) of the SCA 1981 which resembles article 3(1) of the convention did not mention if a ship could be arrested even though it is ready-to-sail.

B-Ships excluded from the arrest:

The law have excluded the following ships from the scope of the arrest for special considerations related to the public order, public interest and the provision of public facilities:

1- Government ships and warships:

Government ships, whether warships or ships dedicated for providing public facilities are excluded from the scope of the arrest based on section 1 of article 860 of the code of civil procedures, which states:

“No seizure may be executed on the assets that the law have prohibited it’s seizure as well as the following assets:

1-Assets owned by the state and other public sectors.” [60]

---

[59] جبران، ايلي، **الحجز على السفن**، مجلة العدل، 2010، ص.518 الى 547: إن القانون اللبناني بمقتضى المادة الأولى من المرسوم الاشتراعي رقم 85/20 ألغى نص الفقرة التاسعة عشر من المادة 860 أ.م.م. اللتي كانت تسمح أصلاً بإمكانية الحجز على السفينة المتأهبة للسفر شرط أن يكون الدين المسند إليه الحجز متعلقاً بالسفرة المزمع القيام بها. و بالتالي بعد التعديل الجديد أصبح بإمكان الدائن الحجز على السفينة بغض النظر عن طبيعة دينه، أي سواء أكان متعلقاً بالسفرة أم لا.

[60] مادة 860: "لا يجوز القاء الحجز على الاموال التي منع القانون حجزها وعلى الاموال الآتي:

The reason for this prohibition lies in the fact that the State and other public authorities provide public facilities that can not be paralyzed by the arrest. In addition to that, those entities are solvent at all times, which means that the fear from insolvency should not exist and thus the creditor does not need to secure his claim for such debts[61].

Moreover, the state and other public authorities are not subject to the general execution procedures stated in the code of civil procedures but rather to special rules regulated by the law of general accounting[62]. The application of those special rules is a must and any agreement to the contrary shall be deemed as violation to the public order; thus no exception shall be acceptable in this regards.

It is notable that the Lebanese legislator does not distinguish between government ships used to serve a public facility and commercial ships owned by the government, where the latter are also excluded from the scope of the arrest based on the rules stated above[63] (i.e. the general execution rules shall not apply to the state).

Similarly, the English law have excluded warships and government ships from the scope of the arrest. Even though the 1952 Arrest Convention did not exclude in any of its articles from the scope of the convention the arrest of warships and government ships, reservations were made by the United Kingdom when ratifying the 1952 arrest convention so that not to apply the provisions of the convention to warships or vessels owned by or in the service of the state.

1- اموال الدولة وسائر الاشخاص المعنويين ذوي الصفة العامة"

[61] أبو عيد، الياس، **أصول المحاكمات المدنية بين النص والاجتهاد والفقه دراسة مقارنة**، الطبعة الثانية، منشورات الحلبي الحقوقية، 2011، ص 265،266: والعلة من وراء هذا الحظر تكمن في ان الدولة وسائر الاشخاص المعنويين ذوي الصفة العامة يؤمنون مرافق عامة ، وعلى هذا الاساس لا يجوز شلل هذه المرافق العامة من خلال إجازة الحجز عليها، وخاصة ان هذه الاشخاص تعتبر، مبدئياً، ميسورة وذات ملاءة دائمة، فلا يخشى عليها تمنعها عن الدفع. لذا يمتنع الحجز عليها.

[62] أبو عيد، الياس، **أصول المحاكمات المدنية بين النص والاجتهاد والفقه دراسة مقارنة**، الطبعة الثانية، منشورات الحلبي الحقوقية،2011، ص 265،266: فالدولة لا تخضع لقواعد التنفيذ العادية، بل لقواعد خاصة نظمتها قوانين النحلسبة العمومية التي لا يجوز الخروج عنها.

[63] طه، مصطفى، **أساسيات القانون البحري**، منشورات الحلبي الحقوقية، ص 89: كذلك لا يجوز الحجز على السفن التجارية المملوكة للدولة ، لان هذه السفن ولو انها مملوكة للدولة ملكاً خاصاً الا ان الدولة لا تخضع لطرق التنفيذ العادية المقررة في القواعد العامة للدائن ضد مدينه.

"… subject to the following reservations:

(1) The government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said convention to warships or to vessels owned by or in the service of a state.
(2) The government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said convention to any of the territories of whose international relations they are responsible to make such extension subject to the reservations provided for in Article X of the said convention."[64]

However, in contrast to the Lebanese law, commercial ships and other government ships used for business and owned by the government are included in the scope of the arrest. In this regards, sections 29 & 38 of the Crown Immunity Act 1947 prevents any proceedings in rem towards ships belonging to the English Crown and the cargo or goods on the board of such ships if they are not of a commercial type or used for business. This protection was also confirmed by section 24(2) of the SCA 1981.[65]

This distinction is due to the different roles of commercial and non-commercial government ships. While non-commercial government ships' role is to provide public facilities and serve the public interest, commercial government ships role is limited to trading and undergoing business activities (which is similar to the role of private ships). Therefore, the government in such a case is ought to submit to the same legal actions and claims as any other ship owner and shall not enjoy judicial immunity or protection other than those granted to private commercial ships.

Accordingly, for the above-mentioned reasons, Lebanon should have distinguished between commercial and non- commercial ships as they did for foreign government ships as we will see in the following section.

[64] https://www.i-law.com/ilaw/doc/view.htm?id=131572

[65] Faraj, Omar Mohammad, **The Arrest of Ships: Comprehensive View on the English Law**, Faculty of Law Lund University, Sweden, 2012

It should be noted finally that the English law's view in this regard is similar to what is adopted by the 1999 convention, which excluded explicitly in article 8(2) from its scope the arrest of warships and government ships. Article 8(2) of the 1999 convention states "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 services".

2- Ships owned by Foreign Governments:

Similar to the case of Lebanese governmental ships, ships owned by foreign states are excluded from the scope of arrest provided that those ships belong to a sovereign state, as stated in section 2 of article 860 of the code of civil procedures[66].

However, according to the above-mentioned article, the arrest of ships owned by foreign states is allowed when the transaction made is governed by private law. Accordingly, commercial ships belonging to a foreign State may be arrested based on the above exception.

In this regards, similar approach was made by the English law under the State Immunity Act 1978 section 10(1)(2)(3) which prevents any proceedings in rem towards ships belonging to foreign governments if they are not of a commercial type or used for business. Action in personam will be permissible in claims when the cargo carried out by the state ship is used for commercial reasons as stated in section 10(4)(b).[67]

Paragraph 6.2(7) of the Admiralty Practice Direction 49F provides that no warrant of arrest will be issued against a ship owned by a state where, by any convention or treaty, the United Kingdom has undertaken to minimize the possibility to arrest the ship of that state until notice has been served on a consular officer at the consular

[66] المادة 860 من قانون أصول محاكمات مدنية: "لا يجوز القاء الحجز على الاموال التي منع القانون حجزها وعلى الاموال الآتية: ...
2- اموال الدول الاجنبية باستثناء ما كان منها موضوع تعامل خاضع لقواعد القانون الخاص. "

[67] Faraj, Omar Mohammad, **The Arrest of Ships: Comprehensive View on the English Law**, Faculty of Law Lund University, Sweden, 2012

office at the state in London or the port at which it is intended to cause the ship to be arrested and a copy of the notice is exhibited to the declaration filed.[68]

3- Fishing Boats:

According to article 860, section 11 of the code of civil procedures, the debtor's tools and books required for his profession may not be subject to conservatory seizure when their value does not exceed two million Lebanese pounds and in this regards, the debtor is entitled to choose the tools and books he wishes to reserve[69]. Thus, fishing boats, being part of the debtor's tools required for his profession, shall be excluded from the arrest when the value of the mentioned boat does not exceed two million Lebanese pounds; however, if the value of such boats/ships exceeds two millions Lebanese pounds the creditor may demand its arrest.

It is noticeable that neither the English law nor the international conventions have set similar rules in relation to fishing boats. The reason behind this exclusion might be due to the fact that the main concern of the English law and the conventions are commercial ships that carry on international trade rather than small fishing boats used within the borders of one jurisdiction.

4- Mail ships:

Mail ships are excluded from the scope of arrest through international conventions that Lebanon has ratified. The reason behind excluding such ships from the arrest is that even though mail ships are owned by private sector companies, they provide a public facility and thus in this regards they shall be treated as government ships and other public assets[70].

Although the role of mail ships in providing public facilities could not be argued, no similar provisions are found in the English law.

---

[68] Gaskell, Nicholas, Christodoulou Dimitrios**, Implementation of the 1952 Arrest Convention Questionnaire,** September 1999**.**

[69] المادة 860 فقرة 11 من قانون أصول محاكمات مدنية:" 11- ادوات الشغل المختصة بالمدين والكتب اللازمة لمهنته, بما لا تتجاوز قيمة مليوني ليرة لبنانية, ويترك للمحجوز عليه حق خيار ما يحتفظ به."

[70] سرياني، كبريال، غانم، غالب، **قوانين التنفيذ في لبنان مشروحة حسب تسلسل المواد**، الجزء الثالث، دار المنشورات الحقوقية، مطبعة صادر، ص 156.: تستثنى من الحجز: ... سفن البريد، لأنها تؤمن مرفقاً عاماً بالرغم من أنها داخلة في إطار الملكية الفردية. و قد منع حجز هذه السفن بموجب اتفاقيات عالمية انضم لبنان إليها.

C- Debts upon which the arrest may be placed:

1- Nature of the Debt:

Similar to the view that was adopted by the civil law countries before the arrest conventions came into force, a ship in Lebanon could be arrested as security for any claim whether maritime or not.

According to article 866 of the code of civil procedures[71], a creditor is entitled to place a conservatory seizure on his debtor's assets regardless of the nature of the debt or claim. This principle also applies in relation to Arrest of ships.

In contrast, the arrest of ships in England is purely maritime* where the arrest is available only whenever an action in rem against the ship or res is available, i.e. ships could be arrested in respect of maritime claims only.

The phrase "maritime claim" is used in the 1952 and 1999 arrest conventions as the general label describing all the claims in relation to which a ship may be arrested under the Convention. *In English law, the phrase has no technical definition but in this frame, it is used to describe those claims which are within the Admiralty jurisdiction of the High Court.

Article 20(2) of the SCA 1981 listed 19 types of maritime claims in respect of which a ship may be arrested. The claims listed in the mentioned article are almost

[71] مادة 866 من قانون أصول محاكمات مدنية: "للدائن ان يطلب من رئيس دائرة التنفيذ الترخيص بإلقاء الحجز الاحتياطي على أموال مدينه تأمينا لدينه."

the same as the list of maritime claims stated in article 1(1) of the 1952 convention[72], though the wording is not identical[73].

The claims listed in section 20(2) SCA include claims related to the possession or ownership of the ship, mortgage on the ship, claims for damages done by or to a ship, claims for loss of life or personal injury due to a defect in a ship, claims for loss or damage to goods carried on a ship, other claims relating to the carriage of goods on a ship, claims relating to the use or hire of a ship, claims for salvage, towage and pilotage, claims for goods and materials supplied to a ship, claims in respect of the construction or repair of a ship, claims by the master or crew for wages, claims arising out of a general average act and claims arising out of bottomry and collisions. The English law excludes from this list claims for

---

[72] Article 1(1) of the **International Convention Relating to the Arrest of Sea-Going Ships** (Brussels, May 10, 1952):

"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 connection with the operation of any ship;
(c) salvage;
(d) agreement relating to the use or hire of any ship whether by charter-party or otherwise;
(e) agreement relating to the carriage of goods in any ship whether by charter-party 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;
(1) 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."

[73] Gaskell, Nicholas, Christodoulou Dimitrios**, Implementation of the 1952 Arrest Convention Questionnaire,** September 1999

insurance premiums and legal costs, where the arrest is not available for such claims.[74]

It is notable that contrary to the 1952 arrest convention that distinguishes between ships flying the flag of one of the contracting states and ships flying the flag of a non-contracting state, the English law treats both English and foreign ships equally.

Article 8(2) of the 1952 arrest convention establishes that 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. As for the English law, a ship in England may be arrested for maritime claims only whether the arrested ships flies the English flag or a foreign flag.

It is important to refer here to the view of the 1999 convention in this regards. The 1999 convention has updated the list of maritime claims taking into consideration the numerous dramatic changes that the international shipping has undergone. It has increased the list of maritime claims to include 22 claims instead of 17. The 1999 convention have omitted the claim of bottomry and added the following claims: claims for indemnification or other compensations in connection with elimination of perils or preventive actions and claims in connection with polluting the marine environment or similar actions regardless of whether they arose in relation to international convention or any other regulations or agreements.

In addition to that the 1999 convention in articles 2(2)[75] and 8(1)[76] have erased the double standards adopted by the 1952 convention and thus achieving more uniformity in the field of arrest of ships.

2-Maritime Liens:

[74] Moore, Lewis, **Ship Arrest in Practice**, ShipArrested.com, Ship Arrest in England & Wales, eleventh edition, 2018.

[75] Article 2(2) of **the International convention on the Arrest of Ships Geneva 1999**: "A ship may be arrested in respect of a maritime claim but in respect of no other claim".

[76] Article 2(2) of **the International convention on the Arrest of Ships Geneva 1999**: "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".

Both the Lebanese law and the English law have adopted similar rules in relation to maritime liens and granted the debtor the right to arrest a ship in relation to a maritime lien.

Maritime liens are a category of maritime claims. Maritime liens were defined by Professor Tetley as follow: "A traditional maritime lien is a secured right peculiar to maritime law (the lex maritima). It's a privilege against a property (a ship) which attaches and gains priority without any court action or any deed or any registration. It passes with the ship when the ship is sold to another owner, who may not know of the existence of the lien.[77]

According to the above definition, a maritime lien is a privileged claim upon maritime property for services rendered to it or damaged by it. It arises from the moment the event out of which the cause of action occurs i.e. the time of the contract or tort. The maritime lien applies only to a group of maritime claims such as seamen's wages, master's wages, master's disbursements, salvage, damage, collision and other maritime torts. A maritime lien is a right that arises automatically without any formalities as long as it is connected to the ship or res. Therefore, the maritime liens cannot be destroyed or eliminated even if the ownership of the ship was transferred to another party; this means that the ship can be arrested for the enforcement of a maritime lien even when the ship is sold. Moreover, no registration or notice is required for maritime liens; thus, they were known as secret or hidden rights.[78]

Lebanon is party to the international Convention for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages; some of the rules stated in this convention were enacted in the Lebanese Maritime law.

Maritime liens are recognized in the Lebanese Maritime law (articles 48-61).

[77] Faraj, Omar Mohammad, **The Arrest of Ships: Comprehensive View on the English Law**, Faculty of Law Lund University, Sweden, 2012

[78] Okoli, Stanley Onyebuchi, **Arrest of Ships: Impact of law on Maritime Claimant**, Lund University, 2010

Article 48[79] of the mentioned law defines maritime liens as being a claim for:

1. Legal costs and expenses incurred in the common interest of the creditors; port duties and taxes due on the ship;
2. Claims arising out of the contract of engagement of the master, crew and other persons hired on board;
3. Remuneration for assistance and salvage and the vessel's contribution to general average;
4. Indemnities for collision or other accident of navigation; indemnities for personal injury to passengers and crew; indemnities for loss of or damage to cargo or baggage;

---

[79] **المادة 48 من قانون التجارة البحرية اللبناني (1947/2/18):**

الديون التالية وحدها ممتازة ودرجة امتيازها تحدد بحسب ورودها:

(1الرسوم القضائية والمصاريف المدفوعة في المحافظة على الثمن لمصلحة الدائنين العامة

-الرسوم عن محمول السفينة ورسوم المنارة والمرفأ وغيرها من الرسوم والتكاليف العامة التي هي من النوع نفسه

-رسوم الدلالة ونفقات الحراسة والصيانة منذ دخول السفينة في آخر مرفأ.

(2الديون الناشئة عن عقد استخدام الربان والبحارة وسائر مستخدمي السفينة.

(3الجعل المستوجب للانقاذ والمساعدة ولمساهمة السفينة في غرامة الخسائر البحرية المشتركة.

(4التعويض عن التصادم وعن غيره من طوارىء الملاحة وعن الاضرار المسببة للمرافيء والاحواض وسبل الملاحة والتعويض عن جرح الركاب والبحارة وعن هلاك الحمولة والحوائج او تعيبها.

(5الديون الناتجة عن عقود منشأة او عمليات اجراها الربان خارجا عن مربط السفينة بموجب صلاحياته القانونية لحاجة حقيقية تقتضيها صيانة السفينة او اكمال السفر سواء أكان الربان صاحب السفينة ام لم يكن وسواء اكان الدين له ام للموانين او للمرممين ام للمقرضين ام لغيرهم من المتعاقدين.

(6العطل والضرر المستوجبان لمستأجري السفينة.

(7مجموع اقساط الضمان المعقود على جرم السفينة واجهزتها واعتدتها المستوجبة عن آخر سفرة مضمونة فيما لو كان الضمان معقودا للسفرة او لآخر مدة مضمونة فيما لو كان الضمان معقودا لاجل معين على ان لا يجاوز هذا المجموع في الحالتين اقساط سنة واحدة.

5. Claims resulting from contracts entered into or acts done by the master outside the port of registry by virtue of his legal powers for the actual maintenance of the vessel or the continuance of the voyage;
6. Damages due to charterers; and
7. Insurance premiums for policies covering the hull, fittings and gear of a vessel due for the last voyage or the last insured period and up to a maximum period of one year.

It is noticeable that the claims 1 till 5 are identical to those listed in article 2 of the International convention related to maritime liens.

As for the English law, section 21(3) of the SCA 1981 constituted the jurisdiction of the in rem action in order to enforce maritime liens. The English law limits maritime liens to the following claims: seamen's and master's wages, bottomry, salvage, damage, master's disbursements and the respondentia. Maritime liens have a priority in ranking over ship mortgages when it comes to judicial procedures regarding the sale of the res.

3- Requirements of the debt:

In general, a ship may be arrested in Lebanon for any claim which a creditor has against the ship-owner, provided that the claim is prima facie proven to be serious and grounded. In other words, in order to arrest a ship, the ship-owner must be responsible for the claimed debt.

Accordingly, in the below section we will address the requirements that the debt must satisfy to arrest a ship in Lebanon.

It should be noted that the arrest under the English law is not subject to similar requirement.

a-Serious and Grounded Debt:

Whereas the objective of the conservatory seizure is limited to securing the creditor's claim through safeguarding the debtor's assets from any loss, abuse or fraud by the debtor until a final judgment is issued and this arrest will not lead to the force sale of the arrested assets. Therefore, the legislator does not require the existence of a deed or document valid for enforcement to place the arrest, but

rather it is sufficient for the claim, upon which the arrest will be based, to be proven prima facie to be serious and grounded.

This principle was reflected in article 866 paragraph 2 of the code of civil procedures which indicates that: if the debt was not proven by a deed valid for enforcement, the head of the executional bureau may order the conservatory arrest when evidences that prove the probable availability of the debt exist[80].

The head of the executional bureau dealing with conservatory arrest will normally consider the application for the arrest of the ship on a prima facie basis and the arrest will be rendered if the creditor submitted evidences that prove the possible availability of the debt[81].

In this regards, jurisprudence and doctrine have unanimously agreed that the head of the executional bureau has full and absolute discretionary powers to determine the existence of the debt and thus ordering the arrest; his decision in this regards is not reviewed by the Supreme court[82] (Cassation court) unless there was an intentional sabotage of the facts, documents and evidences upon which the judge has based his decision[83].

However, the assessment of the debt and presupposition of its existence cannot be established on the temperamental state of the judge, but rather he shall base his decision on the law and on serious, grounded and reliable evidences. For example, the judge of the executional bureau may base his order to arrest on the bill of lading duly drafted held by the creditor[84] (as issued by a decision for the head of the executional bureau in Beirut on 27/10/1979) or a letter of credit existing

[80] المادة 866 فقرة الثانية من قانون أصول محاكمات مدنية: "إذا لم يكن الدين ثابتاً بسند، فلرئيس دائرة التنفيذ أن يقرر إلقاء الحجز الاحتياطي متى توافرت لديه أدلة ترجح وجود هذا الدين"

[81] Baroudi, Jean, **Ship Arrest in Practice**, ShipArrested.com, Ship Arrest in Lebanon, eleventh edition, 2018

[82] تمييز مدني، قرار تاريخ 24 حزيران 1997. النشرة القضائية لعام 1997 صفحة 781

[83] تمييز مدني، قرار تاريخ 25 شباط 1988, النشرة القضائية لعام 1988, صفحة 176

[84] رئيس دائرة تنفيذ بيروت، قرار رقم 139، تاريخ 1979/10/27، العدل 1980، ص 206.

between the parties[85]. For instance, the Head of the executional bureau in Saida have ruled in a decision issued on 8/2/1994 under the number 5/1994, the arrest of a ship based on a letter of credit between the parties whereas there was no disagreement between them on the existence of this letter and thus the debt was considered by the court as serious and grounded. In this regards, the judge shall take into consideration the rules of evidences stated in the code of civil procedures.

It should be noted finally that, even though the law did not require the existence of a deed valid for enforcement to place a conservatory arrest, the creditor holder of such deeds may seek placing a conservatory seizure on his debtor's assets prior to requesting the enforcement of his deed and the force sale of the ship if he believes that such an action will be in his best interest[86].

b-Mature Debt*:*

Article 866 paragraph 1 of the code of civil procedures[87] indicates that the conservatory arrest may not be placed for an immature debt or for a debt pending on a condition that has not been yet fulfilled, except in the cases specified in article 111 of the code of obligations and contracts. Accordingly, the debt upon which the arrest will be placed must be a matured and unconditional debt.

---

[85] رئيس دائرة تنفيذ صيدا، قرار رقم 5، تاريخ 1994/2/8، منشور في مؤلف عفيف شمس الدين، المصنف في قضايا التنفيذ، ص 231، رقم 30: "وحيث أنه لا خلاف بين الطرفين حول وجود كتاب عقد فتح الاعتماد، انما الخلاف ثار بينهما حول ترتيب الدين واستحقاقه، مع ما رافق ذلك من خلاف أيضاً حول إقفال الحساب وتوقيع الكشوفات من قبل المعترضين.
وحيث أنه بالنظر إلى وجود كتاب عقد فتح الاعتماد، ولما أدلى به كل من الطرفين حول ثبوت الدين الناتج عن هذا الكتاب وحول استحقاقه، خاصة ما جاء في الاعتراض من أن المعترضين كانا قد سددا أكثر من مئتين وواحد وسبعين ألف دولار من أصل الدين المزعوم....
وحيث أنه في ضوء ما تقدم، واستنادا إلى الفقرة الثانية من المادة 866 أصول محاكمات مدنية فإن قرار الحجز الاحتياطي على الباخرة (محموداً) الصادر عن هذه الدائرة بتاريخ 1993/7/5 قد جاء في موقعه القانوني".

[86] الحجار، حلمي، الحجار، هالة، **أصول التنفيذ الجبري دراسة مقارنة**، منشورات زين الحقوقية، ص 403: و يبقى أن نشير أخيراً إلى أنه إذا كان الدائن يحمل سنداً تنفيذياً فلا شيء يحول دون أن يسلك هذا الدائن طريق الحجز الاحتياطي بالاستناد الى السند التنفيذي متى وجد هذا الدائن أن من مصلحته أن يلقي الحجز الاحتياطي على أموال مدينه قبل المباشرة بالحجز التنفيذي.

[87] مادة 866 أصول محاكمات مدنية:
للدائن ان يطلب من رئيس دائرة التنفيذ الترخيص بإلقاء الحجز الاحتياطي على اموال مدينه تأمينا لدينه. على ان هذا الحجز لا يجوز تأمينا لدين غير مستحق الاداء او معلق على شرط لم يتحقق بعد الا في الحالات المعينة بالمادة 111 من قانون الموجبات والعقود.

It should be noted that article 866 of the code of civil procedures have excluded from the scope of the arrest conditional debts referred to in article 93[88] of the code of obligation and contracts, since the enforcement of such debts is not accepted until the fulfilment of the condition. On the other hand, a creditor may base his request to arrest on a debt with suspensive condition (i.e. conditions referred to in article 97 of the code of obligation and contracts[89]), since this condition does not stop the execution of the debt but rather the creditor will be obliged to refund the debtor in case the condition is met[90].

As stated above, article 866 provided an exception where the creditor may request placing a conservatory seizure for an immature debt in the case stated in article 111 of the code of obligation and contracts, which indicates:

The creditor for an immature debt may, even before the maturity date, to plead all conservatory measures to maintain his right and request a security or other guarantee, or to place a conservatory seizure on his debtor's assets when there are serious reasons to fear the insolvency, bankruptcy or abscond of the debtor[91].

---

[88] المادة 93 من قانون الموجبات والعقود:
ان الموجب المعقود على شرط التعليق لا يقبل التنفيذ الاجباري ولا التنفيذ الاختياري ولا يمر عليه الزمان ما دام الشرط معلقا على ان الدائن يمكنه ان يقوم بأعمال احتياطية اخصها قيد الرهن المؤمن به دينه عند الاقتضاء وطلب تطبيق الخط ووضع الاختام وانشاء المحاضر والجداول.

[89] **المادة 97 من قانون الموجبات والعقود: ان شرط الالغاء لا يوقف تنفيذ الموجب بل يقتصر على إلزام الدائن برد ما اخذه عند تحقق الشرط واذا لم يتمكن من رده لسبب هو مسؤول عنه لزمه العطل والضرر، غير انه لا يلزمه رد المنتجات والزيادات وكل نص يقضي عليه برد المنتجات يعد كأنه لم يكن.**

[90] أبو عيد، الياس، **أصول المحاكمات المدنية بين النص والاجتهاد والفقه دراسة مقارنة**، منشورات الحلبي الحقوقية، الطبعة الثانية، 2011، ص 401: والملاحظ من الفاظ المادة 866، موضوع هذا الشرح انها تحدثت فقط عن شرط التعليق المنصوص عليه في متن المادة 93 فقرتها الثانية من قانون الموجبات والعقود، دون الاشارة الى شرط الالغاء المنصوص عليه في المادة 97 من القانون السالف الذكر. واذا كان شرط التعليق لا يقبل التنفيذ الجبري ولا الاختياري ما دام ان الشرط معلق، فإن شرط الالغاء على خلاف ذلك، لا يوقف تنفيذ الموجبعملاً بالمادة 97 من قانون الموجبات والعقود، بل يقتصر على الزام الدائن برد ما أخذه عند تحقق الشرط. لذا فإن الدائن تحت شرط الالغاء يمكنه القاء الحجز الاحتياطي اذا تحققت شروطه، تأميناً لدينه.

[91] المادة 111 من قانون الموجبات والعقود:
"إن الدائن إلى أجل يمكنه، حتى قبل الاستحقاق أن يتوسل بكل الوسائل الاحتياطية لصيانة حقوقه وأن يطلب كفالة أو غيرها من وجوه التأمين، أو أن يعتمد إلى الحجز الاحتياطي حين يجد من الأسباب الصحيحة ما يحمله على الخوض من عدم ملاءة المديون أو إفلاسه أو من هربه".

Accordingly, if the creditor was suspicious of the financial status of the debtor or he fears his abscond, a conservatory seizure may be placed on the debtor's assets prior to the maturity of the debt if the creditor proves that his suspicions are based on serious grounds. The assessment of the debtor's status shall be established by the head of the executional bureau.

c-Debt with a Specified amount or an amount which may be estimated:
It is generally accepted that the conservatory seizure may only be placed for a debt with a specified amount. However, an exception to this principle was stated in article 876 paragraph 2 of the code of civil procedures which granted the head of the executional bureau the authority to estimate the amount of the debt upon which the arrest will be made if the claimant had not specified such amount.

Article 867 paragraph 2 of the code of civil procedures[92] indicates that: in case the amount of the debt is not specified, the head of the executional bureau shall temporarily estimate the amount of the debt, his estimation shall include the principle debt in addition to the due interests and the interests for additional year plus any expected expenses.

The authority granted to the head of the executional bureau in this regards is an exceptional authority that he may exercise only in the case of the absence of the specification of the debt amount by the creditor requesting the arrest[93]. This principle was confirmed by the jurisprudence in different decisions[94], for example: the decision issued by the court of Appeal number 966 dated October 19, 1995.

---

[92] المادة 867 فقرة 2 من قانون أصول محاكمات مدنية: "إذا كان الدين غير معين المقدار فعلى رئيس دائرة التنفيذ تقديره مؤقتاً على أن يضم إلى أصل الدين الفوائد المستحقة وفائدة سنة لم تستحق والرسوم والنفقات المتوقعة"

[93] أبو عيد، الياس، **أصول المحاكمات المدنية بين النص والاجتهاد والفقه دراسة مقارنة**، منشورات الحلبي الحقوقية، الطبعة الثانية، 2011، ص 412 : والملاحظ من الفاظ هذه الفقرة الثانية للمادة 867 ان رئيس دائرة التنفيذ يمارس صلاحيته الخاصة والاستثنائية بصورة مؤقتة وبشرط محدد بالذات يكمن في غياب هذا التقدير والتعيين من قبل الدائن طالب الحجز.

[94] محكمة إستئناف بيروت المدنية، الغرفة التاسعة، قرار رقم 966, تاريخ 19 تشرين الأول 1995, دعوى عور ضد البنك اللبناني للتجارة، الرئيس وائل طبارة والمستشاران برنار الشويري وواصل العجلاني، النشرة القضائية لعام 1995 العدد العاشر صفحة 1018: حيث ان المحكمة تلاحظ ان المشترع اولى رئيس دائرة التنفيذ حق تقدير الدين غير المعين المقدار وذلك بصورة مؤقتة اي حتى بدون سند، اذا رأى مقتضى له في الاوراق المقدمة اليه.

In addition to that, the jurisprudence has stated that the head of executional bureau is entitled to amend the amount specified by the creditor since the law has granted him the right to refuse placing the seizure[95].

It should be noted that the reason behind granting the head of the executional bureau the authority to estimate the amount of the debt is a necessity in the case of transferring the conservatory seizure to an executional seizure and in case of the force sale of the ship in relation to another case, to enable the court to reserve the amount of the debt that must be kept outside the distribution process pending the issuance of the judgment on the merits.

d-Cash Debt:

Article 866 of the code of civil procedures did not expressly state that the debt upon which the arrest is made must be a cash debt. Nevertheless, the jurisprudence and doctrine agree that the conservatory seizure must only be made in relation to a cash debt or a debt that may be estimated by a cash amount for example in the case of a penalty clause or compensation for non-performance. This is justified by the fact that the creditor might either choose to seek the performance in kind or the compensation for non-performance but cannot seek the implementation of both procedures[96].

It should be noted finally that the conservatory seizure may only be placed in relation to a debt which resulted from a legal obligation based on the principle that no one may benefit from fraud, breach of law, morality or public order[97]. Moreover, the conservatory seizure may not be placed in relation to a natural debt since the natural debt has no legal basis and hence does not give a right of action to enforce its performance[98].

---

[95] محكمة استئناف بيروت المدنية، قرار تاريخ 20 ايار 1944, النشرة القضائية لعام 1945 صفحة 103

[96] موسي، الياس، **المبسط في أصول التنفيذ**، الكتاب الثاني، الطبعة الأولى 2011، صادر، بيروت، ص. 133: على الرغم من ذلك استقر الفقه والاجتهاد على عدم جواز تقرير الحجز الاحتياطي الا ضمانة لدين نقدي او مقدر بدين نقدي اذا كان متفقاً عليه سواء في بند جزائي لعدم تنفيذ موجب غير نقدي او في بند تعويضي لعدم تنفيذ موجب او ناتج عن فعل يرتب مسؤولية. .

[97] موسي، الياس، **المبسط في أصول التنفيذ**، الكتاب الثاني، الطبعة الأولى 2011، صادر، بيروت، ص. 127: من غير المنازع فيه انه لا يجوز تقرير الحجز الاحتياطي الا اذا كان الدين ناشئاً عن سبب مشروع، انطلاقاً من مبدأ انه لا يجوز للمرء ان يستفيد من غشه او من مخالفته للقانون او لمبادئ الاخلاق.

[98] موسي، الياس، **المبسط في أصول التنفيذ**، الكتاب الثاني، الطبعة الأولى 2011، صادر، بيروت، ص. 131: لا يجوز تقرير الحجز الاحتياطي استناداً الى موجب طبيعي طالما انه لا يمكن التنفيذ به.

Part 2

Arrest of Ships

Practices, Procedures and Impacts

Chapter 1: Practicalities of ship arrest:

After discussing the conditions requested by the law to arrest a ship in part 1, we will analyze in this part the procedures undergone to arrest a ship and the post arrest procedures (which includes the release of the ship, cancelation of the arrest order, forced sale of the ship and the right of re-arrest and multiple arrest).

A- Exercise of the right to arrest:

1- Arrest Procedures:

In Lebanon, there are no special procedures for the arrest of ships; the procedures undergone to request the arrest of a ship is similar to filing any other claim before the executional bureau (i.e. through submitting a plea to the court). On the other hand, the English law requests for effecting an arrest in England filling numerous forms to the Admiralty court.

Accordingly, the arrest procedures in Lebanon and England will be discussed consecutively.

a- In Lebanon:

The Lebanese legislator did not specify special procedures for the arrest of the ship. The below procedures are based on what is practiced in courts.

The arrest procedure in Lebanon is relatively quick and direct. An application by the claimant, through his attorney, shall be submitted to the execution bureau (clerk's office) that the ship to be arrested falls within its jurisdiction. The arrest application shall include the following information:

- Name of the executional bureau to which the application is submitted;
- Name of the applicant requesting the arrest and name of the debtor;

- Name of the ship to be arrested with specifying its flag, IMO registration number, ownership, and port of registration;
- Name of the port where the ship is anchored;
- Name of the claimant's attorney;
- Statement of the facts, which proves prima facie the existence of the debt; and
- Date of submission of the application/writ.

The claimant must attach to his application all documents that support his claim (eg. Bill of lading, freight agreement, cheques, promissory notes, etc...). Moreover, all documents submitted in a foreign language must be translated to Arabic (the official language of the Lebanese courts) by a sworn translator.

In addition to that, the power of attorney (POA) appointing the attorney must be submitted with the application. The POA must be notarized and legalized by the Lebanese embassy abroad, the Ministry of Foreign Affairs abroad and the Ministry of Foreign Affairs in Beirut, if the POA was to be signed abroad.

Upon submitting the application, the file will be transferred to the head of the execution bureau who will directly study the file and issue his order either in the same day or as soon as possible thereafter. The head of the execution bureau will either accept the arrest, reject the application, or issue an order of arrest conditioned on the provision of the counter-security by the applicant / claimant (the head of the execution bureau is granted discretionary powers in this regards).

After the issuance of the arrest order and settlement of the arrest fees (0.4% of the claimed amount in addition to the fees of the execution officer), the order must be notified to the head of the port authority to prevent the ship from sailing.

If the head of the execution bureau have rejected the arrest application, the claimant may challenge his decision in this regards before the court of appeal within 8 days from the notification date as indicated in article 868[99] paragraph 2 of the code of civil procedures.

---

[99] المادة 868 من قانون أصول محاكمات مدنية (عدلت بموجب 20 /1985):

يصدر رئيس دائرة التنفيذ قرارا بالحجز او برفضه او بتقييده بكفالة او بالتقدير المؤقت للدين دون توجيه انذار سابق للمدين.

In addition to the above, article 868 paragraph 2 have granted the debtor the right to challenge the arrest order within 5 days from its notification date before the judge of the execution bureau who issued the arrest order.

b- In England:

The procedure for the arrest of a ship in England is fairly straight forward. As mentioned earlier, in England a ship can be arrested only in the context of the action in rem. Thus, after issuing the claim form in an in rem claim the claimant may submit to the Admiralty Marshall[100] an application for an arrest warrant on paper either before or after judgment (the electronic filing of the documents is not available yet), and evidence must be filed showing that the claim falls within the court's Admiralty jurisdiction. The same position is applicable for a defendant who wishes to arrest the ship to satisfy a counter claim since the defendant is in demand for issuing the claim form in rem for himself to be eligible to make an application for an arrest warrant according to part 61.5(1) of CPR (Civil Procedure Rules)[101].

To execute an arrest, it is necessary to prepare the following court documents:

i- Claim form in rem (ADM1 – annexed): The claim form is a form that gives details as to the nature of the claim. The in rem claim form serves only for one ship; if more than one ship are listed in the claim form, the form will serve only for the first ship listed while the others will not be considered. The claim form must mention full details about the claim,

يكون القرار القاضي برفض طلب الحجز قابلا للاستئناف في المهلة ووفق الاصول المختصة بالأوامر على العرائض. اما القرار القاضي بإلقاء الحجز وبالتقدير المؤقت للدين فانه يقبل الطعن امام القاضي الذي اصدره في مهلة خمسة ايام من تاريخ تبليغه وينظر في هذا الطعن وفق الاصول المتبعة في القضايا المستعجلة.

[100] The Admiralty Marshall is a court officer who presides over the administrative aspects of arresting ships. (i.e. he/she will be in charge of the procedure of arrest, sale of the ship and appraisal of the property in Admiralty proceedings.

[101] Faraj, Omar Mohammad, **The Arrest of Ships: Comprehensive View on the English Law**, Faculty of Law Lund University, Sweden, 2012

however, if the necessary information were not mentioned in the submitted form the plaintiff will have 75 days to submit the missing information related to the claim. Moreover, the claim form must mention the following information: details of the ship, name of the claimant, name of the defendant, port where the ship is anchored, and particulars of the claim. The importance of the claim form appears in case of any changes in the ownership of the ship, the claim form will guarantee for the claimant that his claim will not be defeated in case of the change of ownership. The validity of the claim form is 12 months and could be extended for additional 12 months.[102]

ii- Warrant of Arrest (ADM 9 – annexed): The warrant of arrest is the request to the Admiralty Marshall to effect the arrest of the named ship.

iii- Undertaking to the Admiralty Marshall: An undertaking is necessary to ensure that the fees of the Admiralty Marshall and all expenses incurred by him in relation to (1) the procedure of the arrest, (2) for keeping the ship under arrest (i.e. maintenance and custody of the ship) and (3) the release of the ship are all covered.

iv- Declaration in Support of the Application for the Warrant of Arrest (ADM5 – annexed): This document is required to confirm the nature of the claim and details of the ship to be arrested. It will contain accurate and declared facts about the claim, specify details about the ship and its ownership, and the amount for which the security is sought for. It is essential to verify this declaration by a statement of truth affirming that the facts stated in the declaration are true.

The above mentioned documents are prepared by a Lawyer, certified by a Notary and sent to the Court office exercising Admiralty jurisdiction.

Before an arrest is affected, the Admiralty Marshall must search the caveat register to see if there are any cautions against arrest in force regarding the ship to be arrested. A caution against arrest is an official notice, filed with the Admiralty and Commercial Registry, undertaking to provide security for any claim against the ship in consideration for the

[102] Faraj, Omar Mohammad, **The Arrest of Ships: Comprehensive View on the English Law**, Faculty of Law Lund University, Sweden, 2012

ship not being arrested. If a caution against arrest was lodged the caveator (the person who lodged the caution) must provide the amount stated in the caution as security within 3 days of notice that the action has begun. Even if a caution is in place, the ship can still be arrested if the claimant provides adequate reasons for the arrest[103].
After issuing the warrant of Arrest, the Admiralty Marshall contacts the relevant officer of H.M. Customs and Excise and instructs him to arrest the ship. The arrest is achieved by serving the arrest warrant on the ship under arrest, the warrant can be fixed outside the property or by giving notice to the ship Master that the warrant has been issued on the ship. Once arrested, the ship will be in the custody of the Admiralty Marshall and the movement of the ship is restricted. Any attempt to move the arrested ship by any person is considered as violation to the court's order and can lead to imprisonment or payment of a fine.

It is important to note finally that filling a request for arrest does not include hearings.

2- Jurisdiction on the Merits:

Ship-related businessmen have always been particularly affected by jurisdictional issues since shipping by its nature involves contact with various countries, their laws and their adjudicatory powers. Some of the most fiercely contested conflicts of jurisdiction take place in shipping litigation and much effort and resources are devoted to solve the jurisdictional dispute which in many cases become much more important than the subject matter itself[104]. (This can be seen in different judgments in England such as "Spiliada Maritime Corp v Consulex Ltd (The Spiliada) [1987] AC 460 (ML), and Golden Ocean Assurance and World Mariner Shipping SA v Martin (The Golden Mariner) [1989] 2 Lloyds Rep 390 (QBD (comm))[105]

---

[103] Yates, Scott, **Ship Arrest in England and Wales**, England

[104] Abou-Nigm, Veronica Ruiz, **The Arrest of Ships in Private International Law**, 2011, Oxford University Press Inc., New York, United States

[105] In Spilianda Maritime Corp v Cansulex Ltd (The Spiliada) [1987] AC 460 (HL) it was made clear by Staughton J (as he then was) at first instance that the decision as for the appropriate forum will put one party or the other into a stronger negotiating position. The same reasoning

However, the arrest of ships have played an important role that clears up this conflict of jurisdiction through establishing jurisdictional basis under the international conventions and some of the national laws upon which the jurisdiction on the merits is based on the arrest of the ship within the jurisdiction. Accordingly, we will display in the below paragraphs the role played by the Arrest of ships in granting jurisdiction on the merits in the Lebanese law and in the English law.

a- Jurisdiction on the merits in Lebanon:

Even though the creditor is granted the right to arrest any ship owned by the debtor that is anchored in the Lebanese port irrespective of its flag pursuant to article 78 section 3 of the Code of Civil Procedures[106]; however, this does not mean that the Lebanese courts will necessarily be competent to deal with the merits of the claim. The substantive claim on the merit should be brought before the Lebanese courts only when the requirements stated in article 74 et seq[107]. of the Code of Civil Procedure are satisfied (International Jurisdiction).

---

was followed in Golden Ocean Assurance and World Mariner Shipping SA v Martin (The Goldean Mariner) [1989] 2 Lloyd's Rep 390 (QBD (Comm)). Moreover, the jurisdictional issue has become a prime concern within the European judicial area due to the 'court first seized' rule (Art 27) of Council Regulation (EC) No 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Engorcement of Judgements in Civil and Commercial Matters (Crussels I Reg) [2001] OJL/12/3; see Jonathan Harris, 'Understanding the English Response to the Europeanisation of Private International Law' (2008) 4 Journal of Private International Law 347 at 371.

[106] المادة 78من قانون أصول محاكمات مدنية:
علاوة على الحالات المنصوص عليها في المواد السابقة ومع مراعاة احكام المرسوم الاشتراعي رقم 34 تاريخ 5 اب 1967 تختص المحاكم اللبنانية بالنظر في الدعاوى المقامة ضد اي شخص لبناني او اجنبي ليس له محل اقامة حقيقي او مختار او سكن في لبنان في الاحوال الآتية:
1- اذا تعلقت الدعوى بمال واقع في لبنان عند تبليغ الادعاء او بعقد ابرم في لبنان او شرط تنفيذ احد الالتزامات الرئيسية الناشئة عنه في لبنان.
2- اذا كان موضوع الطلب تدبيرا مؤقتا او احتياطيا يتم في لبنان.

[107] المادة 74 من قانون أصول محاكمات مدنية:

يخضع الاختصاص الدولي للمحاكم اللبنانية مبدئيا للاحكام المتعلقة بالاختصاص الداخلي دون تمييز بين لبناني واجنبي.

المادة 75 من قانون أصول محاكمات مدنية:
تختص المحاكم اللبنانية بالنظر في مسائل الاحوال الشخصية اذا كان اصحاب العلاقة من اللبنانيين.
المادة 76 من قانون أصول محاكمات مدنية:

In practice, however, we see that the Lebanese courts are always competent to determine the case upon its merits when the ship is arrested in Lebanon based on article 78 section 1 of the Code of Civil Procedures. The mentioned article granted the Lebanese courts jurisdiction to deal with the merits of a claim filed against a Lebanese or foreign defendant who does not have a real or chosen domicile in Lebanon when the case is related to a movable or immovable asset situated in Lebanon[108]. Whereas the arrested ship will be situated in Lebanon, the Lebanese courts will have jurisdiction on the merits of the case.

b- Jurisdiction on the merits in the English law:

As indicated above, the claimant may not submit an application for the arrest in England unless a claim form in an in rem claim was issued by the English Admiralty Court. Therefore, the link between the arrest and action in rem does not make the arrest a jurisdictional basis but instead the basis for the arrest is serving an in rem claim.

In this regard, it is noticeable that the English law view contradicts the view of the 1952 convention.

Article 7(1) of the 1952 convention states:

تختص المحاكم اللبنانية بالنظر في اية قضية تتعلق بأحد اللبنانيين او بمصالح كائنة في لبنان اذا كان لم يكن هناك محاكم اخرى مختصة.

المادة 77 من قانون أصول محاكمات مدنية:

الدعوى المتعلقة بصحة أو بمخالفة امتياز ممنوع أو معترف به من قبل الدولة اللبنانية تقام لدى المحاكم اللبنانية, وذلك مع مراعاة أحكام المادتين 762 الجديدة فقرتها الثالثة و809 فقرتها الثانية.

[108] جبران، ايلي، **الحجز على السفن**، مجلة العدل، 2010، ص.518 الى 547: غير انه من الناحية العملية نرى ان القضاء اللبناني دائماً مختص للنظر بدعوى الدين. فلا خلاف انه يعود للمحاكم اللبنانية القاء الحجز الاحتياطي على سفينة راسية في المرافئ اللبنانية، وما ذلك الا تطبيقاً لنص المادة 78 فقرة ثانية ا.م.م. التي اشارت الى اختصاص المحاكم اللبنانية إذا كان موضوع الطلب تدبيراً مؤقتاً أو احتياطياً يتم في لبنان. في حين أن السؤال يبقى قائماً بالنسبة لدعوى الأساس. إن اختصاص المحاكم اللبنانية للنظر بدعوى الأساس يكمن أيضاً بالمادة 78 من أ.م.م. التي أعطت اختصاص النظر بالدعاوى المقامة ضد أي شخص لبناني أو أجنبي ليس له محل إقامة حقيقي أو مختار أو سكن في لبنان أو سكن في لبنان إذا تعلقت الدعوى بمال واقع في لبنان عند تبليغ الادعاء (فقرة أولى)، وبالتالي نظراً لوجود السفينة الأجنبية في لبنان، تكون دعوى الاختصاص من اختصاص المحاكم اللبنانية سواء كان المدعي لبنانياً أم أجنبياً.

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 any of the following cases namely:

(a) If the claimant has his habitual residence or principle 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 collision between vessels, signed at Brussels on 23rd September 1910;
(e) If the claim is for salvage;

If the claim is upon a mortgage or hypothecation of the ship arrest."

In reference to the above article, it is noticeable that the 1952 convention did not unify the rules of the jurisdiction of the merits, since common law countries retained their systems (i.e. recognizing arrest of ships as a mean of obtaining jurisdiction in all cases), while civil law countries could only benefit from the arrest as a ground for obtaining jurisdiction in relation to limited number of cases (i.e. situations stated in article 7(1) of the convention).

It is important here to point out the modifications introduced by the 1999 convention which helped to move forward in promoting jurisdictional uniformity and thus helping to consolidate a well balanced jurisdictional scheme for maritime claims.

Article 7 (1) of the 1999 convention states:

"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.".

It is clear from article 7 of the new convention that the court where an arrest has been effected or security provided to obtain release has jurisdiction to determine the case on its merits; accordingly, the new convention have recognized the jurisdictional powers of the "forum arresti", without any conditions, and not

subject to its recognition by national laws. However, according to aticle 7(2), the court of the state in which an arrest has been affected, 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. Thus, the new convention included discretionary powers in the exercise of jurisdiction by the courts if such discretion is recognized by the forum arresti.

Another novelty of the new convention is the recognition of part autonomy as the main jurisdictional basis taking priority over the jurisdiction of the forum arresti (i.e. the choice of forum agreements or arbitration agreements)[109]. This priority was granted by article 7(1) of the 1999 convention that says that a state in which an arrest has been made or security for the claim has been provided shall have jurisdiction only if the parties have not stipulated a jurisdiction forum clause in their contract, according to which the parties agree to submit the dispute to arbitration or to the courts of another country, which accepts jurisdiction.

It is also noticeable that the new convention have dealt with the issue of recognition of foreign judgments in sections (5) and (6) of article 7 of the new convention. The importance of dealing with the issue of recognizing foreign judgments lies in the fact that article 7(1) of the convention allows the merits of the claim to be heard in a jurisdiction other than where the arrest has been effected. In this case, the court where the arrest procedures took place will act as a bailiff in holding the arrested ship or the provided security while the merits are being heard elsewhere and then it shall recognize any final decision issued by the competent court or arbitral tribunal under the condition that:

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

B- Post-arrest procedures:

After the ship is arrested, the following procedures may be undertaken:

- The arrested ship may be released at the request of the arresting party;
- The ship owner may request the release of the ship after providing security;

[109] Article 7(1) of the 1999 Arrest Convention

- The arrest order may be cancelled if an action on the merits was not submitted within the timeframe specified by the court; or
- Forced sale of the ship

1- Releasing the arrested ship

a- Releasing the arrested ship at the request of the arresting party:
In Lebanon, the legislator have devised, in article 874[110] of the new code of civil procedures, an updated text whereby the arresting party is entitled to request the release of the debtor's ship arrested in his favor and as a security for his claim.

Releasing the arrested ship at the request of the creditor results in the demise of the effects of the arrest order; however, it does not indicate a waiver to the creditor's right to the alleged debt upon which the arrest was based, but only a waiver to the conservatory measure granted by law to the creditor to reserve and secure his debt[111].

According to the above, and whereas the release in this case is limited to a waiver of a measure/procedure, the request for release of the arrested ship is submitted through a petition to the executional court without notifying the ship-owner and with no hearings.

However, an exception to the above principle was made in relation to the case where the claimant has provided a counter security to the court when seeking the arrest. In this case, a hearing is required as the defendant's approval is essential on refunding the claimant the counter security deposited at the court when the arrest

[110] مادة 874 من قانون أصول محاكمات مدنية يمكن رفع الحجز بناء على طلب الحاجز بدون حاجة لإبلاغ ودعوة المحجوز عليه.

[111] أبو عيد، الياس، **أصول المحاكمات المدنية بين النص والاجتهاد والفقه دراسة مقارنة**، منشورات الحلبي الحقوقية، الطبعة الثانية، 2011، ص 546: والجدير بالذكر ان طلب رفع الحجز الاحتياطي، بناءاً على طلب الحاجز، لا يشكل تنازلاً عن حق الحاجز بالدين الذي كان سبب الحجز، بل تنازلاً عن تدبير منحه اياه المشترع، هو الاجراء المتجسد بعملية الترخيص بإلقاء الحجز على اموال المدين.

was made. If the defendant has granted his approval, the ship will be released and the security will be returned to the claimant. On the other hand, if the defendant objected refunding the claimant, in this case the judge will order the release of the ship only, while the security will be kept at the court until a judgment on the merits of the case is issued[112].

It is important to note that defendant's approval is required in the above case since the security was made in his favor. This means that if the claimant have lost the case on its merits, the ship-owner will be awarded damages that he may collect from the security provided by the claimant to the court when the arrest was placed.

Similarly, after a ship has been arrested under the English law, it may be released if the arresting party consents to its release.

b- Releasing the arrested ship when an adequate security has been submitted by the ship-owner:

In Lebanon:

One of the considerations that the legislator had taken into account in establishing the execution rules was to establish a balance between the interest of the creditor and that of the debtor[113].

Therefore, and in consideration of the debtor's interest whose ship was arrested, article 873 of the Lebanese code of civil procedure[114] granted the debtor the right

---

[112] أبو عيد، الياس، **أصول المحاكمات المدنية بين النص والاجتهاد والفقه دراسة مقارنة**، منشورات الحلبي الحقوقية، الطبعة الثانية، 2011، ص 549: اذا كان الاصل جواز رجوع الحاجز عن قرار الحجز الصادر لمصلحته، وحقه بطلب رفعه بدون حاجة لابلاغ ودعوة المحجوز عليه، فإن هذه القاعدة تجد لها استثناءات.

ومن قبيل هذه الاستثناءات الحالة التي يكون فيها قرار الحجز الاحتياطي قد صدر مشروطاً، كأن يكون رئيس دائرة التنفيذ قد قرره لقاء كفالة....

ففي مثل هذه الحالة يتعين استحضار،وبالتالي دعوة المحجوز عليه، اذا كان الحاجز لا يسعه استرداد الكفالة بدون موافقة المحجوز عليه، وذلك على اعتبار ان قرار الحجز الاحتياطي صدر مشروطاً بتقديم هذه الكفالة وتعلق حق الغير يها.

[113] الحجار، حلمي، الحجار، هالة، **أصول التنفيذ الجبري دراسة مقارنة**، منشورات زين الحقوقية، ص 449 : إن أحد الاعتبارات التي راعاها المشترع عند وضعه القواعد المتعلقة بأصول التنفيذ كان إقامة نوع من التوازن بين مصلحة الدائن و بين مصلحة المدين.

[114] المادة 873 من قانون أصول محاكمات مدنية:

"للمحجوز عليه ان يطلب من رئيس دائرة التنفيذ في مواجهة الحاجز رفع الحجز اذا قدم كفالة متضامنة تضمن حق الدائن بما يوازي قيمة الدين سبب الحجز وملحقاته. يقدر رئيس دائرة التنفيذ ماهية هذه الكفالة ومقدارها".

to request the release of the arrested ship when an adequate/sufficient security is provided by him to the court[115].

It is notable that this article did not specify the nature of the security, keeping such matters to be determined by the court. The most common security form used in Lebanon is a bank guarantee issued by a local bank.

As for the security amount, it will be calculated by the court on the basis of an amount to cover the debt's amount plus any incurred interests and costs.

Upon providing the security the ship will be released from arrest and the security will be considered to be the "arrested ship" in relation to the claim for which the ship was arrested for. Thus, the final judgment given by the court for the benefit of the claimant will be issued against the alternative security in the same way as against the ship under arrest.

Release procedure:

The ship-owner will submit a request for the release of the ship to the court which issued the arrest order. The court will notify the claimant and a hearing will be held upon which the parties will discuss and agree on the nature and the amount of the security to be provided for the release of the ship.

Upon agreeing on the security, the judge will issue a release order within 2 days from the day of providing the mentioned security[116].

In England:

Similarly to the case in Lebanon, the court will order the release of the arrested ship when an adequate security has been submitted by the ship-owner. The security may take one of the following forms:

- Bank guarantee from a bank acceptable to the court (1st class London Bank).

---

[115] الحجار، حلمي، الحجار، هالة، **أصول التنفيذ الجبري دراسة مقارنة**، منشورات زين الحقوقية، ص 449: وبالمقابل و مراعاة لمصلحة المدين المحجوز عليه أجاز القانون لهذا الأخير طلب رفع الحجز الاحتياطي لقاء كفالة تضمن إيفاء دين الدائن الذي من أجله تقرر الحجز، و بالفعل نصت المادة 873 أ.م.م. على ما يلي: "للمحجوز عليه ان يطلب من رئيس دائرة التنفيذ في مواجهة الحاجز رفع الحجز اذا قدم كفالة متضامنة تضمن حق الدائن بما يوازي قيمة الدين سبب الحجز وملحقاته."

[116] Baroudi, Jean, **Ship Arrest in Practice**, ShipArrested.com, Ship Arrest in Lebanon, eleventh edition, 2018.

- Payment of funds to the court.
- A letter of undertaking from the ship-owner's Protection and Indemnity club
- A Bail Bond

The court will decide the security amount that will be calculated on the basis of an amount to cover the claimant's best arguable case plus any incurred interests and costs; however, the amount of the security cannot be more that the real value of the arrested ship[117]. Disputes regarding the amount or form of security to be provided are referred to Admiralty registrar for determination. Upon providing the security the ship will be released from arrest and the security will be considered to be the "arrested ship" in relation to the claim for which the ship was arrested for. Thus, the final judgment given by the court for the benefit of the claimant will be issued against the alternative security in the same way as against the ship under arrest.

Release Procedure:

Upon submission of the security, the ship will usually be released from arrest. An application for release must be filed with the court (Form ADM12 - annexed) along with the consent of the arresting party.

Third parties claiming rights in rem against the arrested ship may submit a request for caution against release; the ship will not be released without their knowledge and consent. Therefore, a search will be made by the Admiralty Marshall's office to ensure that no cautions against release are submitted[118].

If the arresting party or cautioner against arrest does not consent to the ship being released then an application will have to be made to the court for the ship to be released.

It is important to note that the release of the arrested ship against security is beneficial for both the debtor and the arresting party, in the following ways[119]:

- For the arresting party (creditor), once the judgment against the debtor has been obtained, the arresting party may directly collect his debt from

[117] Yates, Scott, **Ship Arrest in England and Wales**, England

[118] Yates, Scott, **Ship Arrest in England and Wales**, England

[119] Abaeian Sharareh, **The Arrest of Ships in England and Iran: A Comparative Study**, Journal of Applied Environmental and Biological Sciences, Text Road Publications, 2015

the security provided to the court for the release of the ship, (i) without going through the force sale of the ship, and (ii) without worrying about other debts that take priority over his own such as port dues and wages.

- As for the debtor, by releasing the ship he will ensure that the ship will continue it's trading activities.

C-Cancellation of the Arrest Order:

Whereas the conservatory seizure is only an interim measure that aims to protecting the creditor's right prior to the issuance of a judgment valid for enforcement, it would be irrational for such measure to last for an indefinite period especially that it paralyzes the activity of the ship and incurs losses for the debtor, as we will see later.

Therefore, the legislator in article 870 of the code of civil procedures[120], have set a 5 days period from the date of the issuance of the arrest order during which the claimant must file an action on the merits of the case, otherwise the arrest order will be cancelled.

According to the above mentioned article, the arresting party who does not have a deed or document which is directly enforceable, must file before the competent court an action on the merits of the case to prove the debt upon which the ship was arrested. The purpose of such claim is obtaining a final and enforceable judgment that the claimant will rely on for the force sale of the ship.

Whilst if the claimant have placed the conservatory seizure on his debtor's ship based on a deed or bond that may be directly enforceable, the claimant is required within the 5 days period stated above, to submit a request to the executional bureau to transfer his conservatory seizure into an executional seizure, otherwise the arrest order will be cancelled.

---

[120] المادة 870 من قانون أصول محاكمات مدنية:

يسقط الحجز اذا لم يتقدم الحاجز بطلب تنفيذ سنده التنفيذي او بادعاء لدى المحكمة المختصة للحكم له بدينه سبب الحجز، في مهلة خمسة ايام من تاريخ قرار الحجز، ما لم يكن قد تقدم بهذا الطلب او الادعاء سابقا وعلى الحاجز ان يثبت قيامه بذلك في خلال مهلة خمسة ايام من تاريخ تبلغه كتابا بهذا الشأن من دائرة التنفيذ والا يعلن رئيس دائرة التنفيذ تلقائيا سقوط الحجز.
غير انه يصح تقديم طلب تنفيذ سند دين غير مستحق منعا لسقوط الحجز على ان لا يباشر بإجراءات التنفيذ قبل الاستحقاق.
وتبلغ نسخة عن طلب تنفيذ السند او عن الادعاء المنصوص عليهما في الفقرة الاولى الى جميع الدوائر التي ابلغ اليها قرار الحجز. ويجري التبليغ بناء على طلب الحاجز بواسطة دائرة التنفيذ او قلم المحكمة بحسب الاموال.
تبلغ دائرة التنفيذ بقرار بسقوط الحجز الى جميع الدوائر التي ابلغ اليها قرار الحجز لشطب اشارته.

The arrest order will be cancelled through an administrative decision issued by the judge of the executional bureau without notifying the claimant. The cancellation of the arrest order will lead to the demise of all of its effects and thus the release of the arrested ship. However, the cancellation of the arrest order for not filing the claim on the merits or requesting the execution of the deed does not prevent the claimant from applying for a new arrest after its cancelation.

It should be noted finally that the 5 days period shall be extended for distance if the competent court to deal with the merits is a foreign court or an arbitration panel located abroad[121]. The extensions vary from 30 to 60 days depending on the location of the competent court, bearing in mind that the judge of the executive bureau may reduce the extended period for the ease of transportation or urgency conditions[122].

In contrast, and as indicated previously, the claimant may not submit an application for the arrest in England unless a claim form in an in rem claim was issued by the English Admiralty Court. Therefore, no similar rules are found in the English law.

2- Right of re-arrest and multiple arrest:

In Lebanon the law does not prohibit the re-arrest of a ship after being released for the same claim. Multiple arrest of different ships is also permissible for the provision of additional security based on the principle of seizure of the debtor's assets.

It is noticeable that the view of the Lebanese law in this regards is quite similar to the view of the 1999 convention. Article 5 of the 1999 arrest convention provided conditional re-arrest for the claimant where the re-arrest and multiple arrest are

---

[121] أبو عيد، الياس، **أصول المحاكمات المدنية بين النص والاجتهاد والفقه دراسة مقارنة**، منشورات الحلبي الحقوقية، الطبعة الثانية، 2011، ص 476

[122] المادة 420 من قانون أصول محاكمات مدنية: اذا كان الشخص الموجه اليه الاجراء مقيما خارج لبنان فيزاد على المهلة الاصلية:
1- ثلاثون يوما اذا كان مقيما في احدى الدول العربية او في تركيا او قبرص.
2- ستون يوما اذا كان مقيما في البلاد الاخرى. يجوز بأمر من القاضي او المحكمة انقاض هذه المهل تبعا لسهولة المواصلات وظروف الاستعجال. لا يستفيد من مهل المسافة كل من وجد موقتا في لبنان وابلغ شخصيا.

acceptable under some special situations[123]. Article 5 of the convention provides that the claimant may re-arrest a ship after it has been released if the amount of security is found inadequate. Multiple arrest of different vessels is also permissible for the provision of additional security.

As for the English law, the SCA 1981 has clearly prohibited in article 21 section 8 the re-arrest of a ship or sister-ship for the claims stated in article 20(2) (e)-(r). As for the other claims stated in article 20(2) (ie. Sections (a) – (d) and (s), the court may the re-arrest the ship if such procedure is needed to fulfill the justice[124]. The SCA did not state the situations where the ship may be re-arrested; the matter differs according to each case. In this regard, the SCA 1981 have adopted different rules than those stated in the 1952 convention where the re-arrest of a ship for the same maritime claim is completely prohibited (Article 3(3) of the convention).

3- Forced Sale of the Ship:

As indicated previously, the arrest of a ship is a temporary and conservatory measure that the creditor undergoes to conserve and secure his claim until a judgment valid for enforcement is issued. Therefore, the ordinary practice is for the creditor to move on from the conservatory measure to the executional measure (i.e. force sale of the ship) as soon as the judgment on the merits of the case is issued.

The transitional process from the conservatory measure to the executional measure was reflected in article 871 of the code of civil procedures which indicates that: the conservatory seizure shall be transferred to an executional seizure upon the issuance of an enforceable judgment proving the creditor's right in the debt. If the seizure was based on deed or document directly enforceable, the seizure shall not be transferred to an executional seizure until the expiration of the notification period without the submission of any objection on the execution[125].

---

[123] Isikova, Nadiya, **The Ship Arrest Conventions of the 1952 and 1999:International and Ukrainian perspectives**, World Maritime University, Malmo, Sweden, 2012

[124] Faraj, Omar Mohammad, **The Arrest of Ships: Comprehensive View on the English Law**, Faculty of Law Lund University, Sweden, 2012

[125] المادة 871 من قانون أصول محاكمات مدنية :

"يتحول الحجز الاحتياطي الى حجز تنفيذي لدى صدور حكم قابل للتنفيذ باثبات حق الدائن، وإذا بني الحجز على سند او ورقة قابلة للتنفيذ مباشرة فلا يتم تحوله الا بعد انقضاء مهلة الانذار بدون تقديم اعتراض على التنفيذ."

Accordingly, if the arresting party have filed an action on the merits of the case before the competent court and a judgment in his favor was issued by the mentioned court, the claimant is entitled to request from the judge of the executional bureau to transfer his conservatory seizure into an executional seizure as soon as the judgment is final. Except for the judgments with expedited enforcement where the judgment may be immediately enforceable upon its issuance, a judgment is considered final and thus may be enforced when the challenge or appeal period is expired without any objections submitted[126].

On the other hand, if the claimant has a deed, bond or a document (whether official or private) that may be directly enforced before the executional bureau, the claimant may request the transfer of the conservatory seizure to executional seizure and thus proceed with the force sale of the ship when the notification period is expired without the submission of any objection on the execution. Waiting for the expiry of the notification period prior to proceeding with the execution process is necessary since the objection when submitted within the legal time frame will result in suspending the execution[127].

It is notable finally that the executional seizure and forced sale rules are found in article 73 to 92 of the Lebanese Maritime law.

In contrast, under the English law, when the debtor has been served the arrest warrant, the creditor can rely on two different procedures on the basis of which an admiralty sale will be requested depending on whether a final decision is available or not.

---

[126] لحجار، حلمي، الحجار، هالة، **أصول التنفيذ الجبري دراسة مقارنة**، منشورات زين الحقوقية، ص 442 : اذا كان الدائن القى الحجز الاحتياطي على أموال مدينه واستحصل بعد ذلك على حكم قابل للتنفيذ فمن الطبيعي ان ينتقل الدائن الحاجز من مرحلة الحجز الاحتياطي الى مرحلة الحجز التنفيذي. فإذا كان الدائن الحاجز تقدم امام محكمة الأساس المختصة بدعوى للمطالبة بالدين الذي ارتكز عليه الحجز الاحتياطي، فإن صدور حكم محكمة الأساس بإثبات حق الدائن يعني ان الدائن الحاجز استحصل على حكم بصحة هذا الدين، ويعتبر هذا الحكم سنداً تنفيذياً يجوز تنفيذه مباشرةً بواسطة دائرة التنفيذ متى اكتسب القوة التنفيذية، ومن ثم فإن الحجز الاحتياطي لا يتحول الى حجز تنفيذي الا بعد اكتساب الحكم، المثبت لحق الدائن الحاجز، والقوة التنفيذية.

[127] ا لحجار، حلمي، الحجار، هالة، **أصول التنفيذ الجبري دراسة مقارنة**، منشورات زين الحقوقية، ص 444: يمكن ان يكون بيد الدائن الحاجز سند رسمي او عادي او ورقة قابلة للتنفيذ مباشرة امام دائرة التنفيذ كما لو كان بيد الدائن الحاجز سند دين موقع من مدينه، وفي مثل هذه الحالة المتقدمة أجاز له القانون ان يتقدم من دائرة التنفيذ مباشرة بطلب تنفيذ هذا السند وعندها يكون سلك طريق الحجز التنفيذي.

An application for the sale of the ship may be filed either pendente lite (pending judgment) or after judgment. The after judgment sale is similar to the one applied in Lebanon (submitted after a final judgment is issued); accordingly we will only expand on the matter of pendente lite sale.

In general, pendente lite is a Latin term which means "awaiting the litigation" or "pending the litigation"; it refers to an order which is in effect awaiting the litigation[128].

In the arrest of ships field, pendente lite refers to the procedure of filing an order to arrest prior to the issuance of a final judgment on the merits of the case. It is an advantage granted by the common law systems to the maritime claimant. Under article 61.10 of the English Civil procedures rules, an application to the sale of a ship in a claim in rem may be made at any stage. The application will be made by filing an application notice and supporting evidence with the court[129].

In this regards, the admiralty judge will order the sale if there is good reason to do so. The fact that the costs of maintaining the arrest may exceed the value of the claim and therefore diminish or extinguish the value of the claimant's security may be deemed to be sufficient grounds for a sale pendente lite[130].

It should be noted that in case the claimant loses the case of the merits after a pendente lite sale, he will be responsible for compensating the ship owner for his losses[131].

Chapter 2: Impact of Ship Arrest:

[128] Pendente Lite Law and Legal Definition, found on: https://definitions.uslegal.com/p/pendente-lite/

[129] Procedure for judicial sale of vessels before maritime courts, article by **Ince Gordon Dadds LLP, found on:** https://practiceguides.chambers.com/practice-guides/shipping-2019/uk/3-procedure-for-judicial-sale-of-vessels-before-maritime-courts

[130] Kelly, Russell, **Ship Arrest in England and Wales**, found on: https://shiparrested.com/ship-arrest-in-england-wales/

[131] **Bleyen, Lief,** Judicial Sales of Ships: A Comparative Study, **Springer, Germany**

A- Consequences:

In the below sections, we will address the different consequences arising from the arrest of the ship, in addition to the liability for wrongful arrest and for the damages occurred for the arrested ship.

1- Effects of Ships Arrest:

Where a ship is arrested, the following consequences arise:

(1) The ship will be under the custody of the court; thus, it may not be moved without the court's permission and will be prevented from sailing[132]. In Lebanon, regardless of the fact that preventing a ship from sailing is a violation to article 875 from the code of civil procedures[133] which granted the debtor the right to use and enjoyment of the arrested assets, it is agreed on by Lebanese jurisprudence[134] and doctrine to prevent an arrested ship from sailing especially if the latter is a foreign ship. The aim of placing the ship under the court's custody and preventing it from sailing is granting the creditor a financial security that he will be able to execute on through force

---

[132] Article 1(2) of the 1952 Arrest Convention, Article 1(2) of the 1999 Arrest Convention, Civil Procedure rules 1998 Pt 61, R61.5(9):" Property under Arrest, (a) may not be moved unless the court orders otherwise; and (b) may be immobilized or prevented from sailing in such manner as the Marshall may consider appropriate.

[133] المادة 875 اصول محاكمات مدنية ألغيت بالقانون رقم 96/529 واستبدلت بالآتي: "حجز الاحتياطي على منقول يمنع المحجوز عليه من التصرف بالمال تصرفا ناقلا للملكية او من ترتيب اية حقوق عليه.
اذا كان المال المحجوز عقارا او منقولا تحفظ قيوده وتوثق المعاملات الجارية بشأنه في الدوائر الرسمية. فيمكن للمحجوز عليه التصرف به او ترتيب اية حقوق عليه وتجزئته على ان يتحمل المالك الجديد او مكتسب الحق نتائج هذا الحجز ونتائج دعوى الاساس المتعلقة بالدين سبب الحجز.
وفي جميع الاحوال يبقى استغلال المال المحجوز والانتفاعبريعه للمحجوز عليه ما لم يعين رئيس دائرة التنفيذ حارسا قضائيا على هذا المال."

[134] محكمة التمييز – الغرفة الثالثة – قرار رقم 114 تاريخ 9 كانون الاول 1964، النشرة القضائية 1965 ، ص 305:
"حيث أن رئيس الأجراء يبرر رجوعه عن قرار منع السفر ببقاء الحجز الإحتياطي على السفينة التي أصبحت جارية على ملكية لبناني وبكفاية هذا التدبير لضمان حقوق الشركة الدائنة التي تستطيع أن تنفذ على السفينة.
وحيث أن سفر السفينة إلى الخارج قد يؤدي إلى تجريد الحجز من فائدته العملية فيما لو لم تعد إلى لبنان ليصار إلى التنفيذ عليها.
وحيث أن قرار الرجوع عن منع سفر السفينة ما دام لم يربط بكفالة يقدمها صاحب السفينة يكون غير مرتكز على مبررات لأن من شأنه أن يزيل عملياً ضمان الشركة الدائنة.
وحيث أن المحكمة ترى فسخ هذا القرار ورد طلب الرجوع عن قرار منع سفر السفينة (نعمة الله)"

sale when the judgment against the ship-owner is issued; such security will be eliminated if the ship have sailed.

(2) The ship will become the financial security for the claimant. This means that when the court's judgment against the ship-owner is issued, the ship will be sold (force sale through an auction) and the claimant will be paid out of the proceeds of the sale; unless the ship-owner provides a sufficient security, in this case the claimant will be paid out of the furnished security[135].

(3) The arrest of the ship determines the jurisdiction on the merits; as the English Law, 1999 convention and the 1952 convention grants the courts of the state in which an arrest has been effected jurisdiction to determine the case upon its merits (with some exceptions in relation to the 1952 convention). This arises from the practical need to be able to satisfy a claimant at the jurisdiction where he obtained the security, otherwise the obtained security will be ineffective[136]. This is also practiced in Lebanon even though it is not stated explicitly in the law.

(4) The arrest constitutes the ship or other property as security in the hands of the court for the claim and this security cannot be defeated by the subsequent insolvency of the owner of the arrested property. In the Cella case, Fry L.J. stated that: "The arrest enables the court to keep the property as security to answer the judgment, and unaffected by chance events which may happen between the arrest and the judgment". In the same vein, Lopes L.J. states: "… that from the moment of the arrest, the ship is held by the court to abide the result in the action, and the rights of the parties must be determined by the state of things at the time of the institution of the action, and cannot be altered by anything which takes place subsequently[137].

[135] Article 5 of the 1952 Arrest Convention and Article 4 of the 1999 Arrest Convention

[136] Article 7 of the 1952 Arrest Convention and Article 7 of the 1999 Arrest Convention

[137] Okoli, Stanley Onyebuchi, **Arrest of Ships: Impact of law on Maritime Claimant**, Lund University, 2010

(5) Interruption of the period of prescription: In reference to article 357 of the code of obligation and contacts, the period of prescription on the debt shall be interrupted by the issuance of an arrest order. Article 357 states[138]:

"Prescription period is interrupted:

1- By any judicial or extra judicial petition, duly registered, which serves notice on the debtor that he is to perform his obligation, even if such petition has been put forward before an incompetent judge or the deed is void for vitiation of form;

2- By petition requesting the admission of a claim into the debtor's bankruptcy;

3- By any conservation deed undertaken on the debtor's estate, or by any request for permission to proceed with action of this nature. "

Accordingly, the mere submission of the arrest request shall interrupt the period of prescription on the debt, even if such request was for any reason rejected or canceled by the court.

2- Liabilities:

a- Liability for wrongful Arrest:

The arrest of a ship is a very powerful weapon granted by law to the creditor to secure his claim. However, the result of an arrest will usually has very serious financial consequence on the ship-owner due to the immediate stop of the ship's activity and placing the ship under the court's custody. Therefore, the arresting party may proceed with placing the arrest only when having real and serious grounds for such action, otherwise the arrest will be abusive. In case of abusive

---

[138] المادة 357 من قانون الموجبات والعقود:" ينقطع حكم مرور الزمن:
1- -بكل مطالبة قضائية او غير قضائية ذات تاريخ صحيح من شأنها ان تجعل المديون في حالة التأخر عن تنفيذ الموجب ولو قدمت لمحكمة لا صلاحية لها او حكم بفسادها شكلا.
2- بطلب قبول دين الدائن في تفليسه المديون.
3- بعمل احتياطي يتناول املاك المديون او بعريضة ترمي الى نيل الاذن في اجراء عمل من هذا النوع."

arrest, under article 844 of the code of civil procedures[139], the debtor is entitled to claim damages for the losses suffered as a result of the arrest.

The claim for wrongful arrest would succeed if the ship-owner have proved the bad faith of the arresting party and the losses he incurred due to the arrest. The damages awarded to the ship-owner would cover all direct losses incurred by the ship-owner as a result of the arrest (e.g. port dues, crew wages, etc…) and possible indirect losses which includes profit loss[140].

Similarly, the English law requires to test for wrongful arrest a proof by the owner of the arrested ship of mala fides (bad faith) or crassa negligentia (gross negligence) on the port of the arresting party. If proven, damages for wrongful arrest can be awarded.

Mala fides or bad faith must be taken to exist in those cases where the arresting party has no honest belief in his entitlement to arrest the ship. As for crassa negligentia or gross negligence it covers those situations where objectively there is so little basis for the arrest that it may be inferred that the arrestor did not believe in his entitlement to arrest the ship or acted without any serious regard to whether there were adequate grounds for the arrest of the ship.

Thus, it is very difficult for the ship-owner to obtain a remedy, unless he/she shows the narrow category of wrongful arrest described above.

In this regards, it is important to point out modern development to compensate the defendant in case of wrongful arrest introduced by the 1999 Arrest convention in article 6 which establishes the right of the court of the local jurisdiction to order a claimant seeking to arrest a ship to provide counter security to the court[141]. The fund so created would be paid to the ship-owner in the case of an arrest being wrongful or unjustified. However, article 6 of the 1999 arrest convention has raised the stakes for claimants contemplating a ship arrest by the use of the term

---

[139] مادة 844 من قانون أصول محاكمات مدنية: "تطبق احكام المادتين 10 و11 من هذا القانون بحق طالب التنفيذ والمعترض على هذا التنفيذ اذا كان متعسفا في طلبه او اعتراضه"

[140] Baroudi, Jean, **Ship Arrest in Practice**, ShipArrested.com, Ship Arrest in Lebanon, eleventh edition, 2018.

[141] Faraj, Omar Mohammad, **The Arrest of Ships: Comprehensive View on the English Law**, Faculty of Law Lund University, Sweden, 2012

"unjustified arrest". By this provision, the claimants have been placed in a very precarious position where before proceeding with their in rem action, they are bound to pre-judge the merits of their own claims as the ship-owner will be awarded damages if the claimant lost the case on the merits[142].

Similar rules are found in the Lebanese law. As indicated above, the Lebanese legislator have granted the head of the execution bureau will the right to issue an order of arrest conditioned on the provision of the counter-security by the claimant and the head of the execution bureau is granted discretionary powers in this regards.

b- Liability for the damages occurred to the arrested Ship:

The arrest of a ship is not to be considered as a force majeure upon which the ship-owner is exempted from liability for the damages caused by the ship, especially that the ship-owner may release the arrested ship at anytime after providing a sufficient security. Accordingly, even though the arrested ship will be placed under the court's custody, the ship owner will remain liable for damages caused to the arrested ship in addition to the damages occurred to third parties by the mentioned ship during the arrest period[143].

B- Evaluation of the current rules applied on the arrest in Lebanon:

After going through the rules applied on the arrest of ships in England and Lebanon, it is important to point out the advantages and disadvantages of the current rules applied on the arrest in Lebanon in comparison to the English law and the International conventions; and finally, suggesting recommendations and amendments for the Lebanese law benefitting from others experiences in this field.

---

[142] Okoli, Stanley Onyebuchi, **Arrest of Ships: Impact of law on Maritime Claimant**, Lund University, 2010

[143] جبران، ايلي، **الحجز على السفن**، مجلة العدل، 2010، ص.518 الى 547 :تجدر الإشارة الى انه نتيجة منع السفينة من مغادرة المرفأ اللبناني يكون مجهز السفينة مسؤولا عن جميع الاضرار التي تصيب البضاعة المشحونة، او في حال وصولها الى مرفأ الوصول بشكل متأخر. في الواقع ان القاء الحجز الاحتياطي على السفينة لا يمكن اعتباره بمثابة القوة القاهرة لرفع المسؤولية، ذلك ان مالك السفينة يستطيع في أي وقت رفع الحجز لقاء كفالة وهو بكل الحالات مسؤول عن عدم دفع الدين المترتب عليه.

1- The advantages and disadvantages of the current rules

a- Advantages of the current rules:

Even though the Lebanese law did not provide special rules for the arrest of ships in Lebanon and thus applying the general rules for the arrest of movable assets in this regards, those rules have the following advantages:

(i) As indicated above, the Lebanese legislator have excluded from the scope of the arrest mail ships even though such ships are privately owned. In this regard, the protection of the public interest is highly respected;

(ii) The Lebanese law have granted the head of the executional bureau discretionary power to issue the arrest order conditioned on the provision of counter security. In this regards, the law have taken into consideration the interest of the ship-owner by providing him with a guarantee that he may rely on in case of wrongful arrest. It is noticeable here that Lebanon had an advanced view in this regard that was not adopted in the international conventions until the year 1999 (the Lebanese Code of Civil Procedures was adopted in the year 1983);

(iii) Similar to what is adopted by the English law and the international conventions, the Lebanese law have permitted the release of the arrested ship if an adequate security was provided;

(iv) The Lebanese legislator in article 870 of the Code of Civil Procedures have set for the claimant a five days timeframe upon which he must file a claim on the merits. In this regards, the legislator is protecting the interest of the ship-owner through minimizing the losses that he may incur due to the arrest of his ship in case the arrest was unlawful; and

(v) According to article 844 of the Code of Civil Procedures, the debtor is entitled to compensation in case of wrongful arrest. This is also similar to the view of the 1999 convention as indicated above.

b- Disadvantages of the current rules:

It is no doubt that every legal system has its limitations, and since the objective of this dissertation is to improve the current rules applied in Lebanon, it is important first to identify the disadvantages of such rules:

(i) As indicated above, the Lebanese legislator did not specify special rules related to the ship arrest but rather the general rules of the seizure of movable assets are applied. In this regards, it is necessary to mention the special nature of the ship which requires the adoption of special rules in any matter related to the ship including: being a high value asset, it is the main tool for maritime commerce, the continuous navigation of the ship and the fast movement from jurisdiction to another, … As indicated previously, the Lebanese law took into consideration this special nature in relation to several matters in the Lebanese law such as maritime liens and the executional arrest of ships.

(ii) A ship in Lebanon may be arrested for any claim whether maritime or not. In this regards, the legislator does not balance between the interest of the claimant and the interest of the ship-owner as he protects the claimant only.

(iii) Chartered ships: the Lebanese law does not permit the arrest of a bareboat chartered ship by the bareboat charterer's claimants and thus ignoring the fact that the bareboat charter agreement usually hinges a sale of the ship to the charterer.

(iv) The Lebanese law does not allow the arrest of associated ships. This deficiency is not limited to the Lebanese law, but also to the English law and the international conventions though it is known that ship owners have reverted to different tactics to paralyze the rules of sister ship arrest.

2- Recommendations for Lebanon:

As discussed in the paragraphs above, there are some disadvantages in the current rules applied on ship arrest in Lebanon which are mainly due to not being party to any of the two arrest conventions, nor adopting special rules that govern the ship arrest.

Accordingly, amendments are necessary to improve and develop the current situation.

Since the shipping market is global, it is preferable to adopt unified rules provided by either the 1952 convention or the 1999 convention rather than special national rules in the Lebanese maritime law to govern the issue of ship arrest.

In this regard, the adoption of the 1999 convention is recommended for the following reasons:

(1) The 1999 convention has widened the scope of ship arrest through expanding the list of claims which can give rise to a right of arrest. Whilst the list of the 1952 convention contains 17 categories upon which the arrest is possible, the 1999 list contains 22 categories. The 1999 convention included significant additions to the list such as claims relating to wreck removal, ship management services, insurance premiums and mutual insurance calls, commissions and brokerages and ship sale contracts[144].

(2) Unless reservations were made by the ratifying state, the 1999 convention allows a claimant to arrest a vessel whether or not it is flying the flag of a convention state. Thus, even though the convention is only applied in limited jurisdictions, ships flying the flag of a State which has not ratified the 1999 convention will be subject to the convention when in the waters of a State which have ratified it.

(3) The 1999 allowed, under article 5 of the convention, the re-arrest and multiple arrest of the ship and thus granting the claimant multiple opportunities to secure their claims. Accordingly, a claimant can re-arrest a

[144] Article by Blackmore, Claire found on:
https://www.steamshipmutual.com/publications/Articles/99ArrestConvention0911.htm

ship after it has been released, and has the option of arresting multiple ships, in order to top up the security for his claim.

(4) The 1999 convention provides additional security to the owner of the arrested ship in relation to the wrongful arrest where the court is empowered to oblige the claimant to provide a counter security for the losses that may be incurred by the ship owner in case of wrongful arrest.

(5) The new convention have provided unified rules related to the jurisdiction on the merits as discussed above.

Even though the best way to create uniformity when adopting an international convention is through giving the convention force of law directly, we recommend to follow the routes of the English law and reproduce the provisions of the convention through a special national law. The reason for this recommendation is to conserve the advantages found in the current rules applied in Lebanon and which in some times have superseded the 1999 convention .

Accordingly, though the 1999 convention was not widely accepted by the international maritime community (for reasons that are not at all related to the rules adopted by the conventions but rather to the power of the countries in the maritime industry which have adopted the 1952 convention) and is currently applied to limited number of jurisdictions, the provisions of the1999 convention are more updated and address the identified deficiencies of the 1952 convention. In addition to that, the 1999 convention strikes a fairer balance between the interests of the ship owner and claimant.

Conclusion:

Ship arrest is a powerful weapon granted to the claimant to secure his debt prior to the issuance of a judgement on the merits of the claim. It is a unique commercial procedure which grabbed the attention of the international community specially due to the vital role of ships in international maritime commerce which led to the creation of two international conventions that aimed to unify the rules, conditions and procedures of the arrest of ships around the world.

The first convention is the International Convention relating to the Arrest of Sea Going Ships 1952, Brussels, which is in the view of many scholars an outstanding and successful convention due to the huge amount of ratifications that exceeded 70 countries. The main features of this convention are the compromise between the common law and civil law views on the matter of ship arrest, the adoption of a closed list of maritime claims upon which the arrest can be made, the permission to apply sister ship arrest and the ability to seek damages in the case of wrongful arrest.

England is a party to the 1952 convention, it has reproduced some of the convention provisions in its domestic law known as the Senior Court Act 1981.

The second convention is the International Convention on Arrest of Ships 1999, Geneva, which modified and came up with new developments to the 1952 convention. This convention have increased the list of claims upon which the ship may be arrested, introduced the ability for the claimant to re-arrest a released ship and the ability of multiple arrests for additional security and provided a remedy for the ship owner in case of wrongful arrest where the convention granted the court the right to demand the claimant to submit a security prior to arresting the ship. The scope of applying the 1999 convention is wider than that of the 1952 convention where it is applicable to all ships within the contracting state without considering the flag of the ship to be arrested. This convention was not highly accepted by the international community and was only ratified by 11 countries.

This dissertation aimed to examine the matter of ship arrest in the Lebanese law and to assess the laws applied on this issue in Lebanon in comparison with the

English law, the 1952 Arrest Convention and the 1999 Arrest Convention. Finally, suggesting if any amendments are needed to the Lebanese law.

Upon analyzing the relevant provisions in the preceding chapters, it seems that even though Lebanon is not a party to any of the arrest conventions nor does it apply special rules on the arrest of ships, it has been viewed as a ship arrest friendly jurisdiction for the following reasons:

(i) Due to the easy and flexible procedures and conditions applied on the arrest in Lebanon.
(ii) The advanced rules which Lebanon applies on some situations and which we have tackled above such as requesting counter security to arrest a ship, permitting the release of a ship for adequate security, and granting compensation for wrongful arrest.

However, since international maritime commerce is a cross-border industry which includes high risks, and due to the disadvantages of the current rules applied on ship arrest in Lebanon, it is important to adopt unified and harmonized rules that help predict the consequences of any action or dispute which might occur in this field. Therefore, we have recommended the adoption of the 1999 convention being an updated and more developed convention, which have created a better balance between the commercial interest of the ship owner and the claimants; in addition to following the routes of the English law and reproducing the provisions of the 1999 convention through a special national law to conserve the advantages found in the current rules applied in Lebanon.

Finally, the following question arises: if indeed reaching unification in any field of law is very hard due to the wide differences between common law and civil law systems, would it be more practical, sufficient and easier to try to reach homogenization instead of unification at the level of maritime rules where the rules will not be exactly the same but at least they serve the same objective?

List of Annexes:

- Supplement A: International convention relating to the Arrest of Sea Going Ships Brussels May 10, 1952.

- Supplement B: International convention on the Arrest of Ships Geneva March 12, 1999.

- Supplement C: The Senior Court Act 1981 (sections 20 to 24).

- Supplement D: P&I Letter of undertaking.

- Supplement E: ADM1

- Supplement F: ADM 5

- Supplement G: ADM9

- Supplement H: ADM12

Annexes

Supplement A:

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;

(1) 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 habour 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.

Supplement B:

International Convention on the Arrest of Ships

Geneva March 12 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 3

Exercise of right of arrest

1. Arrest is permissible of any ship in respect of which a maritime claim is asserted if:

(a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or

(b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or

(c) the claim is based upon a mortgage or a "hypothèque" or a charge of the same nature on the ship; or

(d) the claim relates to the ownership or possession of the ship; or

(e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.

2. Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime

claim and who was, when the claim arose:

(a) owner of the ship in respect of which the maritime claim arose; or

(b) demise charterer, time charterer or voyage charterer of that ship.

This provision does not apply to claims in respect of ownership or possession of a ship.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the law of the State where the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial

or forced sale of that ship.

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 andninety-nine.

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

Supplement C:

The Senior Court Act 1981 (Sections 20 to 24)

Admiralty jurisdiction

20 Admiralty jurisdiction of High Court.

(1)The Admiralty jurisdiction of the High Court shall be as follows, that is to say—

(a)jurisdiction to hear and determine any of the questions and claims mentioned in subsection (2);

(b)jurisdiction in relation to any of the proceedings mentioned in subsection (3);

(c)any other Admiralty jurisdiction which it had immediately before the commencement of this Act; and

(d)any jurisdiction connected with ships or aircraft which is vested in the High Court apart from this section and is for the time being by rules of court made or coming into force after the commencement of this Act assigned to the Queen's Bench Division and directed by the rules to be exercised by the Admiralty Court.

(2)The questions and claims referred to in subsection (1)(a) are—

(a)any claim to the possession or ownership of a ship or to the ownership of any share therein;

(b)any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;

(c)any claim in respect of a mortgage of or charge on a ship or any share therein;

(d)any claim for damage received by a ship;

(e)any claim for damage done by a ship;

(f)any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of—

(i)the owners, charterers or persons in possession or control of a ship; or

(ii)the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible,

being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship;

(g)any claim for loss of or damage to goods carried in a ship;

(h)any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;

(j)any claim—

(i)under the Salvage Convention 1989;

(ii)under any contract for or in relation to salvage services; or

(iii)in the nature of salvage not falling within (i) or (ii) above;

or any corresponding claim in connection with an aircraft;

(k)any claim in the nature of towage in respect of a ship or an aircraft;

(l)any claim in the nature of pilotage in respect of a ship or an aircraft;

(m)any claim in respect of goods or materials supplied to a ship for her operation or maintenance;

(n)any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues;

(o)any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);

(p)any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;

(q)any claim arising out of an act which is or is claimed to be a general average act;

(r)any claim arising out of bottomry;

(s)any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty.

(3)The proceedings referred to in subsection (1)(b) are—

(a)any application to the High Court under the Merchant Shipping Acts 1894 to 1979 other than an application under the Merchant Shipping Act 1995;

(b)any action to enforce a claim for damage, loss of life or personal injury arising out of—

(i)a collision between ships; or

(ii)the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships; or

(iii)non-compliance, on the part of one or more of two or more ships, with the collision regulations;

(c)any action by shipowners or other persons under the Merchant Shipping Act 1995 for the limitation of the amount of their liability in connection with a ship or other property.

(4)The jurisdiction of the High Court under subsection (2)(b) includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such other order as the court thinks fit.

(5)Subsection (2)(e) extends to—

(a)any claim in respect of a liability incurred under the Chapter III of Part VI of the Merchant Shipping Act 1995; and

(b)any claim in respect of a liability falling on the International Oil Pollution Compensation Fund, or on the International Oil Compensation Fund 1984, under Chapter IV of Part VI of the Merchant Shipping Act 1995, or on the International Oil Pollution Compensation Supplementary Fund 2003.

(6)In subsection (2)(j)—

(a)the "Salvage Convention 1989" means the International Convention on Salvage, 1989 as it has effect under section 224 of the Merchant Shipping Act 1995;

(b)the reference to salvage services includes services rendered in saving life from a ship and the reference to any claim under any contract for or in relation to salvage services includes any claim arising out of such a contract whether or not arising during the provision of the services;

(c)the reference to a corresponding claim in connection with an aircraft is a reference to any claim corresponding to any claim mentioned in sub-paragraph (i) or (ii) of paragraph (j) which is available under section 87 of the Civil Aviation Act 1982.

(7)The preceding provisions of this section apply—

(a)in relation to all ships or aircraft, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be;

(b)in relation to all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and

(c)so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law:

Provided that nothing in this subsection shall be construed as extending the cases in which money or property is recoverable under any of the provisions of the Merchant Shipping Act 1995.

21 Mode of exercise of Admiralty jurisdiction.

(1)Subject to section 22, an action in personam may be brought in the High Court in all cases within the Admiralty jurisdiction of that court.

(2)In the case of any such claim as is mentioned in section 20(2)(a), (c) or (s) or any such question as is mentioned in section 20(2)(b), an action in rem may be brought in the High Court against the ship or property in connection with which the claim or question arises.

(3)In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, an action in rem may be brought in the High Court against that ship, aircraft or property.

(4)In the case of any such claim as is mentioned in section 20(2)(e) to (r), where—

(a)the claim arises in connection with a ship; and

(b)the person who would be liable on the claim in an action in personam ("the relevant person") was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship,

an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the High Court against—

(i)that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or

(ii)any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

(5)In the case of a claim in the nature of towage or pilotage in respect of an aircraft, an action in rem may be brought in the High Court against that aircraft if, at the time when the action is brought, it is beneficially owned by the person who would be liable on the claim in an action in personam.

(6)Where, in the exercise of its Admiralty jurisdiction, the High Court orders any ship, aircraft or other property to be sold, the court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale.

(7)In determining for the purposes of subsections (4) and (5) whether a person would be liable on a claim in an action in personam it shall be assumed that he has his habitual residence or a place of business within England or Wales.

(8)Where, as regards any such claim as is mentioned in section 20(2)(e) to (r), a ship has been served with a writ or arrested in an action in rem brought to enforce that claim, no other ship may be served with a writ or arrested in that or any other action in rem brought to enforce that claim; but this subsection does not prevent the issue, in respect of any one such claim, of a writ naming more than one ship or of two or more writs each naming a different ship.

22 Restrictions on entertainment of actions in personam in collision and other similar cases.

(1)This section applies to any claim for damage, loss of life or personal injury arising out of—

(a)a collision between ships; or

(b)the carrying out of, or omission to carry out, a manoeuvre in the case of one or more of two or more ships; or

(c)non-compliance, on the part of one or more of two or more ships, with the collision regulations.

(2)The High Court shall not entertain any action in personam to enforce a claim to which this section applies unless—

(a)the defendant has his habitual residence or a place of business within England or Wales; or

(b)the cause of action arose within inland waters of England or Wales or within the limits of a port of England or Wales; or

(c)an action arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court.

In this subsection—

- "inland waters" includes any part of the sea adjacent to the coast of the United Kingdom certified by the Secretary of State to be waters falling by international law to be treated as within the territorial sovereignty of Her Majesty apart from the operation of that law in relation to territorial waters;
- "port" means any port, harbour, river, estuary, haven, dock, canal or other place so long as a person or body of persons is empowered by or under an Act to make charges in respect of ships entering it or using the facilities therein, and "limits of a port" means the limits thereof as fixed by or under the Act in question or, as the case may be, by the relevant charter or custom;
- "charges" means any charges with the exception of light dues, local light dues and any other charges in respect of lighthouses, buoys or beacons and of charges in respect of pilotage.

(3)The High Court shall not entertain any action in personam to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside England and Wales against the same defendant in respect of

the same incident or series of incidents have been discontinued or otherwise come to an end.

(4)Subsections (2) and (3) shall apply to counterclaims (except counterclaims in proceedings arising out of the same incident or series of incidents) as they apply to actions, the references to the plaintiff and the defendant being for this purpose read as references to the plaintiff on the counterclaim and the defendant to the counterclaim respectively.

(5)Subsections (2) and (3) shall not apply to any action or counterclaim if the defendant thereto submits or has agreed to submit to the jurisdiction of the court.

(6)Subject to the provisions of subsection (3), the High Court shall have jurisdiction to entertain an action in personam to enforce a claim to which this section applies whenever any of the conditions specified in subsection (2)(a) to (c) is satisfied, and the rules of court relating to the service of process outside the jurisdiction shall make such provision as may appear to the rule-making authority to be appropriate having regard to the provisions of this subsection.

(7)Nothing in this section shall prevent an action which is brought in accordance with the provisions of this section in the High Court being transferred, in accordance with the enactments in that behalf, to some other court.

(8)For the avoidance of doubt it is hereby declared that this section applies in relation to the jurisdiction of the High Court not being Admiralty jurisdiction, as well as in relation to its Admiralty jurisdiction.

23 High Court not to have jurisdiction in cases within Rhine Convention.

The High Court shall not have jurisdiction to determine any claim or question certified by the Secretary of State to be a claim or question which, under the Rhine Navigation Convention, falls to be determined in accordance with the provisions of that Convention; and any proceedings to enforce such a claim which are commenced in the High Court shall be set aside.

24 Supplementary provisions as to Admiralty jurisdiction.

(1)In sections 20 to 23 and this section, unless the context otherwise requires—

- “collision regulations” means safety regulations under section 85 of the Merchant Shipping Act 1995;
- “goods” includes baggage;
- “master” has the same meaning as in the Merchant Shipping Act 1995, and accordingly includes every person (except a pilot) having command or charge of a ship;
- “the Rhine Navigation Convention” means the Convention of the 7th October 1868 as revised by any subsequent Convention;
- “ship” includes any description of vessel used in navigation and (except in the definition of “port” in section 22(2) and in subsection (2)(c) of this section) includes, subject to section 2(3) of the Hovercraft Act 1968, a hovercraft;
- “towage” and “pilotage”, in relation to an aircraft, mean towage and pilotage while the aircraft is water-borne.

(2)Nothing in sections 20 to 23 shall—

(a)be construed as limiting the jurisdiction of the High Court to refuse to entertain an action for wages by the master or a member of the crew of a ship, not being a British ship;

(b)affect the provisions of section 226 of the Merchant Shipping Act 1995 (power of a receiver of wreck to detain a ship in respect of a salvage claim); or

(c)authorise proceedings in rem in respect of any claim against the Crown, or the arrest, detention or sale of any of Her Majesty’s ships or Her Majesty’s aircraft, or, subject to section 2(3) of the Hovercraft Act 1968, Her Majesty’s hovercraft, or of any cargo or other property belonging to the Crown.

(3)In this section—

- “Her Majesty’s ships” and “Her Majesty’s aircraft” have the meanings given by section 38(2) of the Crown Proceedings Act 1947;
- “Her Majesty’s hovercraft” means hovercraft belonging to the Crown in right of Her Majesty’s Government in the United Kingdom or Her Majesty’s Government in Northern Ireland.

Supplement D: P&I Letter of Undertaking

Letter of Undertaking

The United Kingdom
Mutual Steam Ship Assurance
Association (Europe) Limited
90 Fenchurch Street
London
EC3M 4ST

Attention: Underwriting Department.

From:

Date of this Agreement:

Dear Sirs,

Vessel name(s):	Applicable Conventions/regimes
Vessel “One”	[A] [B] [C] [D]
Vessel “Two”	
Etc.	

In consideration of the Club, upon our request and prior to entry in the Club of the above Vessels being concluded for the policy year starting from noon on 20th February 2019, providing Blue Cards so as to satisfy the certification requirements applicable to such Vessels pursuant to any or all of the following Conventions and to ensure that such Vessels are able to trade without delay and without the risk of penalties or fines for failing to satisfy such certification requirements [*please indicate which blue cards are needed by specifying A, B, C, D, as appropriate, after the name of each vessel listed above*]:

A Articles VII of the International Convention on Civil Liability for Oil Pollution Damage 1969 and 1992 (CLC)

B Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunkers Convention)

C Article 4bis of the Athens Convention, 2002 relating to the Carriage of Passengers and their Luggage by Sea, 2002 (non-war only) or Regulation 392/2009/EC of the European Parliament and of the Council of 23 April 2009 on the Liability of Carriers of Passengers by Sea in the Event of Accidents (PLR non-war only)

D Article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007

We hereby agree that:-

1) we warrant that it is our intention to enter the above Vessels in the Club, or in another club in the International Group of P&I Associations [for the policy year starting from noon on 20th February 2019] [*other date as appropriate*], and;

2) if we do not effect such entry we will indemnify the Club and hold it harmless in respect of any and all liabilities, losses, damages, risks, costs or expenses which it may suffer or incur under the terms of the Blue Cards or as a direct or indirect consequence of issuing the Blue Cards including any liability the Club may incur under any applicable international compensation regime or implementing domestic legislation;

3) this letter of undertaking shall be governed by and construed in accordance with English law and any claim, dispute, legal action or proceeding arising out of or in connection with this letter of undertaking shall be subject to the exclusive jurisdiction of the High Court of Justice in London;

4) when called upon to do so, we will instruct solicitors in London to accept, on behalf of the Owners of any of the above Vessels, service of proceedings issued on behalf of the Club in connection with this letter of undertaking.

5) In the event that Blue Cards are provided by the Club and Convention certificates are obtained in accordance with any of the above mentioned Conventions, we warrant that we will return such Convention certificates to the issuing State as soon as reasonably possible in the event that the entry of any of the vessels named on the certificates is terminated during the course of the policy period, and advise the Club when they have been so returned.

In consideration of the Club agreeing to issue a "Blue Card", whether or not prior to entry in the Club of the above vessel being concluded, at the request of the Owner or their agent, in support of a Bunker Convention, Wreck Removal Convention and/or CLC certificates, we hereby agree that, where any payment by the Association under any such certificate is in respect of war risks, we will indemnify the Club to the extent that such payment is recoverable under the Owner's P&I war risks policy, or would have been recoverable if the Owner had maintained and complied with the terms and conditions of a standard P&I war risks insurance policy, and, further, we agree to assign to the Club all the rights of the Owner under such insurance and against any third party.

Yours faithfully,

Signed: [insert name of Owner]

For and on behalf of and as authorised by the Owners of the above Vessels.

Supplement E: ADM1

Supplement F: ADM5

Supplement G: ADM9

Supplement H: ADM12

Bibliography

Books:

- Abou-Nigm, Veronica Ruiz, **The Arrest of Ships in Private International Law**, 2011, Oxford University Press Inc., New York, United States
- La Tabula de Amalfa (1095), Article 6, T Twiss (ed), The Black Book of The Admiralty, Vol. 4, London, Longman, 1871
- Berlingieri, Francesco, **Berlingieri on Arrest of Ships**, 4th Edition, Lloyd's Shipping Law Library, Informa, United Kingdom, 2006
- Berlingieri, Francesco, **Berlingieri on Arrest of Ships**, 5th Edition, Lloyd's Shipping Law Library, Informa, United Kingdom, 2011
- Berlingieri, Francesco, **International maritime convention: Volume 2 - Navigation, Securities, Limitation of liability and jurisdiction** – Informa law from Routledge
- Berlingieri, Francesco, **Berlingieri on Arrest of Ships Volume II: A Commentary on the 1999 Arrest Convention**, 6th Edition, Lloyd's Shipping Law Library, Informa, United Kingdom, 2017
- Moore, Lewis, **Ship Arrest in Practice**, ShipArrested.com, Ship Arrest in England & Wales, eleventh edition, 2018
- Baroudi, Jean, **Ship Arrest in Practice**, ShipArrested.com, Ship Arrest in Lebanon, eleventh edition, 2018

Articles and Online resources:

- Tetley, William, **Arrest, Attachment, and Related Maritime Law Procedures,** p.1901, could be found on: https://www.scribd.com/document/46316749/Arrest
- United Kingdom: Maritime arrest under English law, an article written by Leila Wollam in May 2010. Available at: http://www.mondaq.com/article.asp?articleid=97606
- United Nations treaty convention found on: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XII-8&chapter=12&clang=_en
- Gaskell, Nicholas, Christodoulou Dimitrios**, Implementation of the 1952 Arrest Convention Questionnaire,** September 1999
- Watson, Farley & Williams Law Firm, Maritime Briefing, **Sister Ship Arrest**, April 2013, found on http://www.wfw.com/wp-content/uploads/2015/01/WFW-SisterShipArrest.pdf
- Yates, Scott, **Ship Arrest in England and Wales**, England
- Abaeian Sharareh, **The Arrest of Ships in England and Iran: A Comparative Study**, Journal of Applied Environmental and Biological Sciences, Text Road Publications, 2015
- Pejovic, Caslav, Civil Law and Common Law: Two Different Paths Leading to the Same Goal, November 27, 2000, Article found on: https://www.researchgate.net/publication/265244573_Civil_law_and_common_law_Two_different_paths_leading_to_the_same_goal

- Yiannopoulos. A. N, “The Unification of Private Maritime Law by International Conventions” found on:
- https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3060&context=lcp
- Stephan, Paul, “The Futility of Unification and Harmonization in International Commercial Law” found on: http://www.jus.unitn.it/dsg/ricerche/dottorati/allegati/1999_stephan.pdf
- Article by Blackmore, Claire found on: https://www.steamshipmutual.com/publications/Articles/99ArrestConvention0911.htm

Master Thesis:

- Okoli, Stanley Onyebuchi, **Arrest of Ships: Impact of Law on Maritime Claimant**, Lund University, Sweden, 2010
- Haifeng, Lin, **A Comparative Study on the Legal System of Arrest of Ships in China,** World Maritime University, Dalian, China, 2005-2006
- Faraj, Omar Mohammad, **The Arrest of Ships: Comprehensive View on the English Law**, Faculty of Law Lund University, Sweden, 2012
- Isikova, Nadiya, **The Ship Arrest Conventions of the 1952 and 1999:International and Ukrainian perspectives**, World Maritime University, Malmo, Sweden, 2012
- Lynn, Robert W, **A Comment on the New International Convention on Arrest of Ships 1999**, University of Miami Law School, Miami, 2001
- Niklasson, Anna Karin, **A comparison between the jurisdictional rules in the EU and the US in the light of the Arrest Convention and the**

possibility to shop for forum, School of Economics and Commercial Law, Goteborg University

Laws and Conventions:

- International convention relating to the arrest of seagoing ships – Brussels May 10, 1952
- International Convention on Arrest of Ships, 1999 – Geneva, 19 March 1999
- Senior Court Act 1981

المؤلفات في اللغة العربية:

- موسي، الياس، **المبسط في أصول التنفيذ**، الكتاب الثاني، الطبعة الأولى ، صادر، بيروت،2011
- جبران، ايلي، **الحجز على السفن**، مجلة العدل، 2010
- أبو عيد، الياس، **أصول المحاكمات المدنية بين النص والاجتهاد والفقه دراسة مقارنة**، الطبعة الثانية، منشورات الحلبي الحقوقية، 2011
- طه، مصطفى، **أساسيات القانون البحري**، منشورات الحلبي الحقوقية
- سرياني، كبريال، غانم، غالب، **قوانين التنفيذ في لبنان مشروحة حسب تسلسل المواد**، الجزء الثالث، دار المنشورات الحقوقية، مطبعة صادر
- الحجار، حلمي، الحجار، هالة، **أصول التنفيذ الجبري دراسة مقارنة**، منشورات زين الحقوقية
- المستقبل الاقتصادي، " طبارة يتسلم مذكرة من "غرفة الملاحة" تطلب تسهيل إجراءات حجز السفن"، الأربعاء 4 حزيران 2003 - العدد 1312 - صفحة 9

الأحكام و القرارات القضائية:

- تمييز مدني، قرار تاريخ 24 حزيران 1997. النشرة القضائية لعام 1997 صفحة 781

- تمييز مدني، قرار تاريخ 25 شباط 1988, النشرة القضائية لعام 1988, صفحة 176
- رئيس دائرة تنفيذ بيروت، قرار رقم 139، تاريخ 1979/10/27، العدل 1980، ص 206.
- رئيس دائرة تنفيذ صيدا، قرار رقم 5، تاريخ 1994/2/8، منشور في مؤلف عفيف شمس الدين، المصنف في قضايا التنفيذ، ص 231، رقم 30
- محكمة إستئناف بيروت المدنية، الغرفة التاسعة، قرار رقم 966, تاريخ 19 تشرين الأول 1995, دعوى عور ضد البنك اللبناني للتجارة، الرئيس وائل طبارة والمستشاران برنار الشويري وواصل العجلاني، النشرة القضائية لعام 1995 العدد العاشر صفحة 1018
- محكمة استئناف بيروت المدنية، قرار تاريخ 20 ايار 1944, النشرة القضائية لعام 1945 صفحة 103
- محكمة التمييز – الغرفة الثالثة – قرار رقم 114 تاريخ 9 كانون الاول 1964، النشرة القضائية 1965 ، ص 305