

SOME REFLECTIONS OVER THE BRUSSELS CONVENTION OF 1952 RELATING TO ARREST OF SEA-GOING VESSELS AND ITS AMENDING PROCESS

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I. HISTORICAL BACKGROUND

The Brussels Convention of 1952 Relating to Arrest of Sea-Going Vessels (Arrest Convention)¹ has become a popular international legal instrument in the second part of the present century, but to some such amount of popularity was unpredictable at the time the Convention was adopted. It is more than apparent that there is a wide gap between the practical performance of the Convention and the expectations that were raised at the time it was made. Surprisingly enough, the Convention has proved to be successful, reaching a number of some 65 contracting States up to date. The Arrest Convention has particularly shown that an international instrument providing for the detention of ships in ports before they may leave such ports, is a very useful legal weapon in the hands of actual and potential claimants. Thence, since the vessel is a moving target, the Convention has proved to be fruitful to those claimants. The popularity of the Arrest Convention was bound to arrive for that reason alone.

However, the making of the Arrest Convention took a very long time, running from the CMI Conference of Antwerp in August 1930 through World War II and up to the Brussels diplomatic Conference of May 1952. The suggestion for an international frame for arrest of ships came from three

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¹ See Appendix.

national associations (the French, the German, and the Italian), although the first two considered only the matter of arrest in connection with jurisdiction in case of collision. The proposal to take up the arrest of vessels was supported by the Swedish and the Japanese associations. At that very initial stage, however, a first concern for the question of liability for wrongful arrest was raised by Professor Francesco Berlingieri, Sr., from the Italian association. The first draft of the Convention was submitted at a meeting in London on the 16th of May 1933, and shortly afterwards an amended draft was put before the CMI Conference in Oslo (August 1933). Rather interestingly, the main principles in that early draft provided that the claimant should have a claim against the owner of the vessel in order to be entitled to arrest her, that security for damages should be required by the Court, and that the arresting claimant might be held liable in damages for wrongful arrest.

The proposals somewhat failed in the Oslo Conference and there the delegations of Norway, Sweden and Germany objected to the provision relating to damages for wrongful arrest. The International Subcommittee of the CMI reviewed the draft at a meeting held in Paris on June 2, 1936, and produced a new draft that kept without alteration the right to damages for wrongful arrest. The new draft was not welcomed by the national associations, and a little later at the Paris Conference of May 1937, some compromise was attempted by including the suggestion of leaving to the law of the Court by which the arrest was granted the question of damages for wrongful arrest.

After the war the CMI resumed its work at the Antwerp Conference in 1947, where it was decided to consider the draft of the Arrest Convention completed in 1937. However, the Paris draft was set aside as the British and Dutch Maritime Law associations objected to it and appointed two of their members (Mr. Jan Asser and Mr. Cyril Miller) to prepare a new draft based on all of the information received from the national associations. In Amsterdam (1949) Mr. Asser and Mr. Miller presented a summary of their work, but omitted the problem of liability for wrongful arrest. The Amsterdam Conference, on the suggestion of the French Maritime Law Association, adopted a compromise proposal limiting the right of arrest to maritime claims but allowing the arrest of any ship in the same ownership (a combination of the systems prevailing in Scotland and the United States). This compromise was taken into the body of a new draft prepared by the CMI, which was approved at the Naples Conference in 1951. The question of liability for wrongful arrest was dropped and any attempt to provide uniform rules in that respect was discarded.

One year later, the Naples draft was submitted to the Diplomatic Conference called by the Belgian government in Brussels (May 1952). No significant changes were made to this draft, and in that way, an Arrest Convention was approved with thirteen in favor, none against and six abstentions. The very important issues of liability for wrongful arrest and the security for granting the arrest were largely discussed at the Conference. However, the Convention was passed without a single vote against, although the soft majority obtained by the Naples draft may be understood if we realize that the principles contained in the first London draft of 1933 had been completely removed. At the same time the Arrest Convention saw the light, the gate to abuse of the right to arrest ships was opened.

II. THE EXPERIENCE THROUGH THE APPLICATION OF THE ARREST CONVENTION OVER 40 YEARS (1956-1996)

The Convention entered into international force in February 1956, so we have already collected forty-one years of experience with it in the jurisdictions of the states that have adopted its provisions.

The Convention stated, in the preamble, the purpose of "determining by agreement certain uniform rules of law relating to the arrest of seagoing ships," though in fact the result achieved in Brussels 1952 was limited to the adoption of a few uniform rules of law *for obtaining the arrest of seagoing ships*; by not tackling a number of fundamental questions, the approved draft of the Convention came to regulate over a practical mechanism for arresting ships, which then appeared universally to be far better and more expeditious than the methods provided by domestic legislations at the time.

Throughout the last four decades we have seen that the number of ships arrested around the world has increased continuously and often the arrests were unjustified or otherwise avoidable. Many have wondered whether the practice of shiparrest is truly commensurating with the objectives of financial security sought by shipping traders.

I shall attempt to summarize the experience with the Convention by making reference to the fundamental provisions that have led to a qualified application of the Convention in the domestic jurisdictions, as follows:

Article 1: The list of "maritime claims" was conceived to be a closed one, that is to say, a restrictive number of claims in respect of which a vessel could be arrested using the Convention. However, the list did not include 17 claims but a similar number of types or

classes of claims, in some cases drafted in a very wide fashion. Thence, the interested claimants have very frequently sought to apply the Convention by way of analogy or otherwise by extension of the items included in the list; often their applications have been upheld by the domestic Courts, although the spirit of the Convention was to construe the list in a restricted manner. Again, since the list does not extend to other claims that are common to the shipping business, the claimants have successfully pursued the arrest under the domestic legislations, and to that effect the uniformity purpose of the Convention has been frustrated. As a result, in some jurisdictions great confusion is created among the local Judges whenever a particular claim does not entirely fit into the list provided by the Convention but is nonetheless assimilable to one of those.

Article 3: The Convention enacted a method for arresting either the particular ship in respect of which the maritime claim arose or any other ship owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship. This is the so-called "sister ship arrest." The Convention defines, for the purpose of the above choice, that ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons. Thus, whenever the shares in the ownership of one vessel are not, all of them, in the same hands as owned the other vessel, the sister ship cannot be arrested; such requirement was soon after 1952 counter-effected by an international trick consisting of the formation of owning companies in respect of each and every vessel within the same fleet, later called "single ship companies." That was the response of the shipowning community to this particular provision relating to arrest of sister ships.

At sub-para 3 of this article, the Convention attempted to prevent the re-arrest of vessels in respect to the same maritime claim by the same claimant; however, the drafting was so poor that, again, it led to confusion among the local Courts in respect of some expressions like "or that there is good cause for maintaining that arrest," whereby the uniformity was partly lost and ground was left to the domestic Courts for holding whether such good cause was present and the re-arrest of the vessel should be granted.

Yet, under sub-para 4, I have found one of the most notable sources of conflict in the Convention. The purpose of this provision

was to care for the cases where the ship is bareboat chartered and the charterer is liable for the maritime claim, but this situation could not equate to the other cases involving time charterers and voyage charterers. Clearly enough, where the vessel is on time charter and the time charterer, but not the registered owner, is liable in respect of the maritime claim, then the owner of the ship should not suffer the consequences of an arrest because he is completely absent and alien to such a claim against the time charterer. In some jurisdictions, many vessels have been arrested for claims concerning time charterers only (the typical case is the claim relating to supply of bunkers and provisions), while Article 9 of the same Arrest Convention prohibits the creation of new maritime liens which do not exist under domestic law or under the Convention on Maritime Mortgages and Liens. Again, where the charterer does not have possession of the ship (as is the case for time charterers and voyage charterers), the provision of Article 3 (4) is dangerous and unjustified. Yet, as the Law now stands the described arrest is possible and perfectly lawful.

Article 5: The Convention here, by omission, gave raise to certain effects that entailed considerable injustice. Primarily, the provision of Article 5 does not require the arresting claimant to provide security in order to obtain the warrant of arrest. Also the Convention does not limit the amount of security to be put up in order to release the ship from arrest, so as it frequently happens the owners are expected to provide security for the total amount of claim, which can be very substantial and in excess of the ship value. It appears to many that where the arrest order is granted without proving the claim, and no matter the quantity of such a claim, the owners are exposed to undue legal hardship to an extent which at times amounts to blackmail.

Article 6: Under this provision the Convention failed completely to set up uniform rules providing for liability for wrongful arrest. The Convention adopted the simple compromise of leaving the matter to the rules of procedure prevailing in the *lex fori*, and by doing so a sharp distinction has since been made between countries which require security for wrongful arrest and countries which do not, thus creating a real chart for forum shopping.

Article 7: In the provision at sub-paragraph 1, the Convention gives jurisdiction to the domestic Courts (the country in which the arrest is made) in a number of cases, totalling an important range of possibilities flowing from six areas of circumstances. In all of those cases, provided that the classified condition is met, the local Court should have exclusive jurisdiction to determine the case upon the merits. Therefore, no agreement over jurisdiction or arbitration will survive in front of this jurisdictional choice. The provision is inconsistent with sub-paragraph 3, where it is contemplated that the parties may have agreed to submit the case to a Court different than that within whose jurisdiction the arrest was made, or indeed, to arbitration.

Another problem under sub-paragraph 2 is more openly spread in the arbitration environment, namely, that the Arrest Convention does not include any rules providing for the enforcement of the foreign award against the security placed for releasing the ship from arrest in the jurisdiction of the arrest. As a result, since the 1958 New York Convention relating to recognition and enforcement of foreign arbitral awards does not go further than setting out the reasons where the recognition and enforcement may be denied, then there are many cases in which a foreign award issued in the course of the main proceedings relating to the claim, in respect of which the arrest was granted, would not be enforceable and payable out of the security. The Bank guarantee of any other form of security constituted in the jurisdiction of the arrest will have to be returned eventually because of the fact that the Judgment of the arbitration Award would not receive recognition, through the *exequatur* proceedings, in the country where the security is placed.

Article 8: A logical construction of the various provisions included in this article has caused to strike the application of the Convention rules out of those cases where the arresting claimant, the vessel, and the jurisdiction all relate to the same country. Indeed, under sub-paragraph 4, the Convention rules do not extend to domestic situations, the result having been that while the benefit of the Convention has been largely and widely obtained by foreign claimants or by foreign vessels, the nationals of the contracting State in which the arrest is made have not been able to obtain a similar benefit. Therefore, the Convention rules may have accomplished a

purpose of "unification" but not of "uniformity," because the rules of the Convention should have been made applicable in contracting States without restrictions.

Article 9: The prohibition as to the creation of new maritime liens was very necessary, but received some inconsistency in relation to the extension of the arrest provided for chartered vessels under article 3 (4).

The above is by no means an exhaustive enumeration of problems developed through the experience with the Convention, as others do also exist. However, it will suffice to explain how the need for a reform of the Convention was widely felt. It was particularly desired by the Tribunals and Courts in many jurisdictions, if we are to bear in mind that those Courts had never before come across with applications for attachment of assets, such as ships, without receiving either proof of the claim or evidence that the debtor was likely to avoid his commitments. The simple idea that a vessel calling at various ports during her trade is in no way comparable to a case where the defaulting party attempts to remove its access from the jurisdiction. The Arrest Convention has not been an easy instrument for the local Courts to handle the growing number of applications for arrest that have cropped up since 1956.

III. THE PROCESS OF REFORM

The Brussels Convention relating to arrest of ships went on successfully for nearly 30 years increasing the number of contracting States without receiving any amendments or alterations. It was only in 1984 when both IMO and UNCTAD resolved to include in their work programme for international shipping legislation the subject of arrest of vessels, together with and in reference of the matter of maritime liens and mortgages. These U.N. Organizations, in fact, intended a revision of the Conventions of 1926 and 1967 on maritime liens and mortgages and also, jointly, the 1952 Arrest Convention.

A. The CMI Revision

The CMI, on its part, decided to study amendments to the Arrest Convention throughout its International Subcommittee. The CMI was

conscious, very fortunately, that the Conventions needed not only a few amendments, which would have been dealt with by way of a Protocol, but rather a more substantial revision, that would call for a new Convention entirely. A draft of a new Convention was then prepared and discussed at the CMI Conference of Lisbon in 1985. The CMI draft was approved in Lisbon (again, by ample majority) and submitted to IMO and UNCTAD for their consideration.

The Lisbon draft concluded by the CMI stands as an important source of changes to the Brussels Convention, and its contribution to the process of reform is remarkable.

The CMI draft addressed correctly several issues that were under heavy criticism. Thus, some new claims were added to the list of "maritime claims" (art. 1.1), such as insurance premiums, commissions, brokerages or agency fees, disputes under a contract of sale of a ship, etc. expanding the list from 17 to 22 items. The CMI adopted the view that the list of maritime claims should be an open-ended one; also it resolved very rightly, in my view, the major question under Article 3 in respect of claims unrelated to the vessel's owners by making the arrest permissible only in respect of claims secured by maritime liens or in respect of claims against the vessel's owners or the bareboat charter *in personam*. In other words, the arrest of the vessel should only be granted where the person who owned the ship at the time when the maritime claim arose is *personally* liable for the claim and is owner of the ship when the arrest is effected (by distinguishing the time of the claim from the time of the arrest, the draft furnished a solution to the problem of time and voyage charterers, to the effect that the arrest should be allowed if the time charterer or the voyage charterer became the owner of the vessel at the time the arrest is effected).

In addition, under Article 4 the Lisbon draft remarked that any security given to release the vessel from arrest should not exceed her value; as regards Article 7 and the problem of jurisdiction on the merits, the Lisbon draft provided a very reasonable solution, namely, that the Court of the State in which arrest is effected should have jurisdiction to determine the case upon the merits unless the parties have agreed to submit the dispute to another Court or to arbitration, then enhancing the value of the jurisdiction clauses validly executed. Furthermore, at sub-paragraph 5 the CMI introduced an adequate formula for helping the enforcement of final judgments or awards foreign to the *forum arresti* against the arrested ship or the security, but not sufficiently to achieve a direct enforcement: ". . . then unless such proceedings do not satisfy general requirements in respect of due

process of law, any final decision resulting therefrom shall be recognized and given effect”

However, the CMI did not overcome, although it meant to do so, the serious problem of liability for wrongful arrest, because under Article 6 it merely gave the local Court the power to require security from the claimant as a condition to the arrest of the ship (through the expression “the Court may”), therefore unfortunately submitting the question of security for wrongful arrest to the discretion of the national Courts, with the same effect as contemplated by the Brussels Convention; the CMI draft did not either solve the application of the Convention to domestic cases (where the place of arrest, the flag and the claimant all belong to the same State), which was once more left to the national law. In relation to the matter of re-arrest and multiple arrest under Article 5, the Lisbon draft improved the contents of the similar provision in the Brussels Convention, but did not completely secure the position for the sake of legal certainty because it expressly permitted that the ship could be re-arrested in the event that the ship or the security had been released “because the claimant could not by taking reasonable steps prevent the release,” which would leave ground to interpretation before the local Court in the jurisdiction where the re-arrest is sought.

The conclusions held in Lisbon by the CMI Conference were, indeed, very positive and, undoubtedly, set a working pattern for the revision intended by IMO and UNCTAD.

B. The Work at IMO-UNCTAD

Following the respective recommendations and resolutions from IMO (Legal Committee) and UNCTAD (Working Group on International Shipping Legislation), a joint intergovernmental group of experts on maritime liens and mortgages and unrelated subjects was formed and has since been known by the short initials JIGE. The IMO-UNCTAD Group of Experts received a reference of study addressed to the review of Maritime Liens and Mortgages Conventions and related enforcement procedures such as arrest, so the examination of the arrest procedures was taken up in close regard to the review of the Maritime Liens and Mortgages Conventions. The JIGE adopted, in 1989, the recommendation of postponing any work in the matter of arrest until the adoption of the final text of the Convention on Maritime Liens and Mortgages by diplomatic conference, which took place later, in May of 1993. The JIGE agreed that it might be necessary to amend the Arrest Convention of May 1952 in light of the decisions taken in respect of

the draft Maritime Liens and Mortgages Convention, and that view qualified all of the further work. The Geneva Conference of May 1993, after having adopted the new Convention on Maritime Liens and Mortgages, issued a resolution recommending that the JIGE examine the possible review of the Arrest Convention of 1952, in consultation with relevant non-governmental organizations such as the CMI. From that point onwards, the UNCTAD and IMO Secretariats acted in consultation with the CMI in order to take up the revision work, the scope of which was designed to focus on the changes to the Arrest Convention which might be necessary as a result of the adoption of the International Convention on Maritime Liens and Mortgages 1993.

The possible modifications suggested by the JIGE can be outlined as follows:

Article 1: With regard to the claims in respect of which a vessel may be arrested, a general wording within the list of maritime claims should be necessary by effect of the new Article 6 of the Maritime Liens and Mortgages (MLM) Convention 1993. Effectively, since the contracting States to the MLM Convention 1993 may under national law grant any maritime liens on a vessel to secure claims other than those provided for in the Convention, it is possible that some of the maritime liens granted by the domestic law could not be included as "maritime claims" under the Arrest Convention, so it will be a matter of necessity to coordinate both Conventions to the effect that the list of maritime claims becomes an open one. In the draft presented to the VIII Sessional Period of the JIGE in London, October 1995, the definitions of "maritime claims" were framed into Article 1 by starting with a general clause followed, through the expression "such as," by the full list of 22 items enumerated in the CMI Lisbon draft. At the latest IX Sessional Period, held in Geneva from 2 to 6 December 1996, there was no consensus, however, as to whether an exhaustive list of maritime claims in the fashion of the 1952 Convention or an open list should be retained, so this crucial matter was left for decision, possibly, by the Diplomatic Conference.

Article 3: The important issue of which vessels may be arrested has been carefully examined by the JIGE and a number of alternatives have been put in place. The latest draft (IX Session) provides a pattern, including the words "claims against the owner, demise charterer, manager or operator of the vessel" (taken from Art. 4 of

the MLM 1993 Convention), which follows very closely the solution given by the Lisbon draft as to claims protected by maritime liens and claims in respect of which the vessel's owner is personally liable, although it has been considerably improved by the addition of a paragraph to the effect that the arrest can only be lawfully made if under the applicable law the claim may be enforced against that vessel through a public sale or a Court sale. This is a restrictive interpretation of Article 3(4), which provides legal certainty and reinforces the new principle that no vessel could be arrested in a contracting State where the underlying claim cannot be enforced against that vessel in that State. It is noteworthy that the claims against the time charterer and voyage charterer are not secured by maritime liens under the MLM Convention 1993, but such claims could give rise to a right of arrest provided that the vessel is owned by that charterer at the time at which the arrest is effected. Therefore, the CMI draft has been taken up and improved further (although it is disputed by the International Institute for Container Lessors that time charter should be excluded).

Article 4: In regard to the lifting of the arrest, the JIGE approach follows so far without change the proposal of the CMI draft to the effect that the security required for releasing the ship from arrest cannot exceed the value of the ship. (The UK delegation to the IX Sessional Period proposed to delete any reference to the value of the ship).

Article 5 (new): Right of re-arrest is a problem which the JIGE is considering within the pattern of providing for the possibilities of re-arrest and multiple arrest under certain conditions. The conditions laid down by the CMI draft stand at the moment as the example to follow (as option one). The IX Sessional Period has also considered providing for the cases where the first arrest is lifted by or with the consent of the claimant acting reasonably or where he could not otherwise have prevented the arrest from being lifted through taking reasonable measures. Hopefully, this addition will not stand at the Diplomatic Conference since it would add more confusion by introducing personal circumstances of the claimant; the Courts would be able to evaluate these circumstances easily or at least within the time the vessel, the re-arrest of which is desired, is in the port.

Article 6: The JIGE work has adopted the principle of liability for wrongful arrest. The JIGE draft has included provisions requiring the domestic Courts to make arrest conditional upon security by the claimant, possibly with some exceptions—for example, in cases of (1) arrest by seamen in preserving the maritime lien for wages, and (2) where there are express provisions on liability for loss or damages caused by wrongful and unjustified arrest. However, the drafting is not totally satisfactory in the latest wording because Article 6(1) still retains the expression of the Lisbon draft: “the Court may,” as I believe that the security for wrongful arrest should not be left to the discretion of the Court but it must be made a requirement in the very Convention itself. Indeed, the discussion between the expressions “may” and “shall” nearly split the delegations present at the IX Sessional Period, but the majority opted—wrongly, in my view—for giving discretion to the local Courts by retaining the latest draft (that would certainly favor forum shopping). Another source of concern is that at the IX Sessional Period doubts were cast on the expression “unjustified arrest” as against “wrongful arrest,” the implications being that with the exception of wrongful arrest a claimant should not be penalized for having arrested a ship even if the action subsequently failed on its merits (proposal of the U.K. delegation). The point is subtle but extremely important for the sake of owners’ interests. The matter should be put to the Diplomatic Conference, although the issue is one to be determined by the local Courts (i.e., whether or not the arrest was “unjustified” in the prevailing circumstances), to which the majority of delegations appear to be willing to grant a discretionary power.

Article 7: With regard to jurisdiction on the merits of the case, the JIGE approach appears inclined to follow the CMI recommendations, that is, that it would be more appropriate to grant general jurisdiction to the Court of the country where the ship is arrested to determine the case upon its merits, subject to a jurisdiction or arbitration clause. In the matter of the enforcement of a foreign judgment or arbitration award against the security placed in a different State, the JIGE’s view contained in the draft submitted to the VIII Sessional Period, retained later in Geneva, does not differ much from the CMI Lisbon draft. It is positive, however, that the enforcement of a judgment or an award should be granted always unless the proceed-

ings on the merits violated principles of due process. It remains to be seen whether this solution will be sufficient (in reference of the provisions of the New York Convention 1958 relating to recognition and enforcement of foreign arbitral awards). Perhaps more precise terms could be achieved later on, e.g., by subjecting the recognition and enforcement to "public policy" only or "to the rules of due process dictated by the law of the country in which the proceedings on the merits and the judicial resolution or arbitral award were dictated."

The IMO-UNCTAD work continues, as a number of issues are still open. The Sessional Period VIII held in London was only able to complete the examination of four articles of the new Convention, and the remaining points were covered at the IX Period held in Geneva in December, 1996. Some problems are still pending—for example, the absence in Article 3 of a right of arrest in favor of claims from suppliers and shipchangers, bearing in mind that the suppliers no longer have a maritime lien under the new MLM 1993 Convention. It will thus appear a little hard for the supply industry to live with two Conventions that do not protect their claims (in most cases the bunkers supply are ordered by time charterers, who may default payment later while the suppliers could only arrest the ship if she is owned by the same time charterers), as printed out by the representative of the ISSA at the IX Sessional Period. Also outstanding is the problem of the damages caused by the arrest to the Port Authorities, which brings about a number of actual and modern questions flowing from very realistic conflicts (e.g., ships abandoned in port, port dues being unpaid, etc.). Indeed, the delegation of the IAPH explained in London and Geneva (supported by a proposal from France) very openly that the Port Authorities could well suffer considerable economic loss arising out of immobilization of an arrested ship when the owner, bareboat charterer or arresting claimant went into liquidation, as this situation could seriously affect other port users. Certainly, I think that these problems taking place in the port of arrest should be addressed and resolved satisfactorily in the new Convention.

The JIGE work is now framed and defined. It will take still some time before the Diplomatic Conference is held in which a new Arrest Convention is adopted. The initiative is, however, heading on the right direction.

A new Arrest Convention is forthcoming, possibly in 1998 or 1999. I really hope that the new Convention will cure the dissatisfaction caused to shipowners by the Brussels Convention of 1952. The trend through which

the process of reform is conducted by IMO-UNCTAD seems to be most reasonable, albeit I believe that some points should be clarified further in the Diplomatic Conference. Hopefully, we shall then have a new Arrest Convention which can be used no more as a maritime lien itself but, instead, as an international instrument of good law regulating the matter of arrest on the basis of personal liability of the debtor, as a general framework, except for those cases where the claims are protected by maritime liens, thus definitely updating to modern times and closing the page of the old days in which the ship was responsible *in rem* for the claims arising in the maritime trade. We shall see whether, as an UNCTAD spokesman put it, delays, financial losses and disruption of international trade, as some of the consequences of the unjustifiable arrest of ships, can be overcome in future.

APPENDIX

No. 6330

International Convention Relating to the
ARREST OF SEA-GOING SHIPS, 1952

439 UNTS 193

*Brussels, May 10, 1952**

The High Contracting Parties,

Having recognised the desirability of determining by agreement certain uniform rules of law relating to the arrest of seagoing ships, have decided to conclude a convention, for this purpose and thereto have agreed as follows:

ARTICLE I

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 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;

* Entered into force on February 24, 1956.

(k) goods or materials wherever supplied to a ship for her operation or maintenance;

(l) construction, repair or equipment of any ship or dock charges and dues;

(m) wages of Masters, Officers, or crew;

(n) Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;

(o) disputes as to the title to or ownership of any ship;

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

(q) the mortgage or hypothecation of any ship.

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

(3) "Person" includes individuals, partnerships and bodies corporate, 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 of powers vested in any Governments or to their Departments, Public Authorities, or Dock or Harbour Authorities under their existing domestic laws or regulations to arrest, detain or otherwise prevent the sailing of vessels within their jurisdiction.

ARTICLE 3

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

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

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

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

ARTICLE 4

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

ARTICLE 5

The Court or other appropriate judicial authority within whose jurisdiction the ship has been arrested shall permit the release of the ship upon sufficient bail or other security being furnished, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in Article 1, (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 limitation 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 arrest is made shall fix the time within 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 proceedings are 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 otherwise, 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 has seisin 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.

[Articles 12-18 on ratification and withdrawal have been omitted]

Signatories: Belgium, Brazil, Denmark, Egypt, France, Germany, Federal Republic of Greece, Italy, Lebanon, Monaco, Netherlands, Nicaragua, Poland, Portugal, Spain, United Kingdom, Vatican City, Yugoslavia.