# The 1952 Arrest Convention

### ****Arrest in respect of claims other than maritime claims (Art. 8.2)****

**Greece**

Single Member First Instance Court of Piraeus 864/1979 (Maritime Law Review, Vol. 9 (1985), p.6)

The claimants applied for arrest of a vessel in order to secure claims for amounts due to them arising out of their services as maritime agents of the vessel. The defendant argued that that was not a maritime claim under the 1952 Convention.

Held by the Single Member First Instance Court of Piraeus, that:

(1) The arrest within the jurisdiction of Contracting States of a ship not flying the flag of a Contracting State is permitted for any claim as this is allowed under Greek law (Art. 8(2) of the Convention). \*

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**Italy**

Court of Appeal of Genoa 12 February 2000, Morsviazsputnik Satellite Communications and Navigational Electronic Aids v. Azov Shipping Company-The “Yuriy Dvuzhilny” (2001 Dir. Mar. 1113).

          Morsviazsputnik Satellite Communications and Navigational Electronic Aids applied to the Court of Appeal of Genoa for the arrest of the m/v Yuriy Dvuzhilny of Ukrainian flag as security for a claim against Azov Shipping Company. One of the issues submitted to the Court was whether the Arrest Convention applied to a ship flying the flag of a non-Contracting State and in respect of what claims the arrest was permissible.

          Held, by the Court of Appeal of Genoa, that:

          (1) A ship flying the flag of a non-Contracting State may be arrested also in respect of a claim other than a maritime claim if a prima facie evidence (fumus boni iuris) of the claim is provided and proof is given of the danger that assets of the debtor may in the future be unavailable for the enforcement of a judgment (periculum in mora).

### ****Arrest of a sister ship (Art. 3.4)****

**England**

Aluflet S.A. v. Vinave Empresa de Navegaçao Maritima Limitada–The “Faial” (Queen’s Bench Division (Admiralty Court) 27-28 January 2000, [2000] 1 Lloyd’s Rep. 473)

          By a bareboat charter dated 27 February 1999 on Barecon 89 form Vinave Empresa de Navegaçao Maritima Lda chartered for a period of three years the m/v Xove owned by Aluflet S.A. The vessel was delivered on 6 March 1999 and capsized and sank alongside her berth at Aveiro, just five days later. The harbour authorities required the wreck to be removed. Aluflet S.A. paid the removal expenses and arrested the m/v Faial owned by Vinave on the basis of a claim for an indemnity of US$ 1,139,345 pursuant to cl. 18 of the bareboat charterparty which reads as follows:
“In the event of the Vessel becoming a wreck or obstruction to navigation the Charterers shall indemnify the Owners against any sums whatsoever which the Owners shall become liable to pay and shall pay in consequence of the Vessel becoming a wreck or obstruction in navigation.”
The claimant claimed Admiralty jurisdiction under the Supreme Court Act, 1981 relying on s. 20(2)(h). Vinave applied for the warrant of arrest to be set aside. They submitted that the claimant’s assertion of jurisdiction within the 1981 Act failed on two grounds, one being that at the time when the cause of action arose Vinave was not the owner or charterer of or in possession or control of the Xove within the meaning of s. 21(4)(b) of the Act. In fact, under the terms of cl. 18 no cause of action arose until the liability of the claimant was ascertained and established and payment had been made, while neither of these conditions precedent had been fulfilled at the time Vinave was the charterer of the Xove.

          Held, by the Queen’s Bench Division (Admiralty Court), that:

          (1) Pursuant to section 21(4) of the Supreme Court Act 1981 the arrest of a ship owned by the demise charterer of a ship as security for a claim of the owner of such latter ship against the demise charterer is not permitted when the person liable was not the bareboat charterer at the time the claim arose.

### ****Arrest of a ship not owned by the person liable (art. 3.4)****

**England**

The “Tychi” – Court of Appeal 31 March 1991 ([1999] 2 Lloyd’s Rep. 11).

          By a slot charter agreement dated 27 May 1993 MSC Mediterranean Shipping Company agreed to place at the disposal of Polish Ocean Line (POL) 450 TEUs per sailing in each direction on a “whether used or not” basis at an agreed price per TEU, to be reviewed periodically.
On 12 August 1998 an agreement was made between MSC and POL Atlantic for the payment of the outstanding amount owed by POL but since the arrears were not cleared and the arrears outstanding instead increased, POL and POL Atlantic undertook to sell the m/v Tychi and to pay to MSC the proceeds of its sale. On 17 March 1999 MSC issued a writ in rem and arrested the Tychi. POL issued a motion seeking inter alia an order that the warrant of arrest be discharged and the Tychi be released from arrest.
MSC’s case was that it was entitled to arrest the Tychi under section 21(4) of the Supreme Court Act 1981 since POL was the charterer and the Tychi was “any other ship” within the meaning of s. 21(4)(iii).
The application to release the Tychi was refused by Mr. Peter Gross, Q.C. POL appealed.

          Held, by the Court of Appeal, that:

          (1) The expression “charterer” in s. 21(4) of the Supreme Court Act 1981 is not confined to a demise charterer and includes a time charterer and a voyage charterer as well as the charterer of part of a ship and there is nothing in the 1952 Arrest Convention which would support the exclusion of the time and voyage charterers.

**France**

Cour d'Appel of Montpellier 1 December 2003, SA DK Lines v. Petredec Ltd. - The "Sargasso" (2004 DMF 435).

Petredec Ltd. of Bermuda brought a claim against the bareboat charterer of the Sargasso, Tokumaru, for damages to goods carried by Tokumaru on board the Sargasso and commenced arbitration proceedings against Tokumaru in London. After having obtained an award for US$ 1,010,289 Petredec applied to the Tribunal de Commerce of Aix-en-Provence for the arrest of the Sargasso. The arrest was granted on 8 March 1996, whereupon the owners of the ship, DK Line, having obtained the release of the ship against a security, commenced proceedings against Petredec in the Cour d'Appel of Aix-en-Provence in order to obtain the annulment of the warrant of arrest. By judgment of 25 September 1997 the Cour d'Appel of Aix-en-Provence found that since Panama, whose flag the ship was flying, was not a party to the 1952 Arrest Convention, French domestic law applied and the arrest was not justified because the claimant had not proved that the ship was owned by Tokumaru.
The judgment of the Cour d'Appel was quashed by the Cour de Cassation with judgment 30 October 2000 (2000 DMF 1012) on the ground that the Convention applied, pursuant to its article 8(2), also in respect of ship flying the flag of non contracting States since France had not availed itself of the right to exclude such application and the case was remitted to the Cour d'Appel of Montpellier.

Held, by the Cour d'Appel of Montpellier, that:

(1) Pursuant to article 3(4) of the 1952 Arrest Convention a bareboat chartered vessel may be arrested as security for a claim against the bareboat charterer.

Cour d’Appel of Aix-en-Provence 24 May 2002, Grand Seaways Limited v. Total Fina Elf – The “Renai I” and “Renai II” (2002 DMF 772)

Pursuant to an order of the Tribunal de Commerce of Marseilles dated 11 January 2002 S.A. Total Raffinage Distribution, subsequently named Total Fina Elf, arrested the ships Renaissance Seven and Renaissance Eight, renamed Renai I and Renai II, at the port of Marseille as security for a claim arising out of the supply of bunker. Grand Seaways Limited, a Liberian company, requested the release of the vessels stating it had purchased them in a judicial sale at Gibraltar. The Tribunal de Commerce of Marseilles rejected the request of release, whereupon Grand Seaways Ltd. appealed to the Cour d’Appel of Aix-en-Provence.

Held, by the Court d’Appel of Aix-en-Provence, that:

(1) Pursuant to articles 3(1) and 9 of the 1952 Arrest Convention arrest of a ship not owned by the debtor on the basis of the sole allegation of a maritime claim relating to that ship is not permissible.

**Italy**

Tribunal of Genoa 13 January 2003, Nortoil and Shipping LLC v. TR.I.S. Traghetti Isole Sarde S.r.l. [2004] Dir. Mar. 1482

Nortoil and Shipping LLC supplied gasoil to the m/v Incat 045 owned by Incat Chartering Pty Ltd. and bareboat chartered to TR.I.S. Traghetti Isole Sarde S.r.l. Since TR.I.S. failed to make payment for the gasoil, Nortoil and Shipping obtained an order of arrest of the vessel from the Tribunal of Genoa. Incat Chartering obtained the release of the vessel against a bank guarantee and appealed against the order of arrest of the vessel on the ground that the vessel was not owned by the company against whom the claim had arisen and that, since the claim was not secured by a maritime lien, it could not be enforced on the vessel through its force sale.

Held, by the Tribunal of Genoa, that:

(1) Under the 1952 Arrest Convention a vessel may be arrested in respect of a claim against the bareboat charterer nor is the fact that such claim cannot subsequently be enforced on the vessel a ground for excluding the right of arrest.

### ****Associated ships (Art. 3.2)****

**France**

Cour de Cassation (Ch. com.) 15 October 2002, Latvian Shipping Co. v. Stocznia Gdanska - The "Taganroga" and The "Razna" (2003 DMF 756).

Latreefers Inc., a Liberian Corporation, entered into a contract with a Polish shipbuilding company, Stocznia Gdanska, for the construction of six reefer ships. Following the failure by Latreefers to pay certain instalments of the purchase price, Stocznia Gdanska commenced proceedings in London against Latreefers and having obtained a judgment in its favour, arrested in France two vessels, the Taganroga and the Razna, the registered owners of which were respectively Taganroga Shipping Corp. and Razna Shipping Corp. The claimants alleged that there existed a community of interests between the two owning companies and Latreefers. By judgment of 8 June 1999 the Court of Appeal upheld the arrest. The owners of the vessels appealed to the Cour de Cassation.

Held, by the Cour de Cassation, that:

[1] The fact that the owners of two vessels arrested as security for a claim against the company who had sold the vessels to the present owners and chartered them back are daughter companies fully owned by the seller and that no evidence is provided of the payment of the purchase price does not entail that they are a sham and does not justify their arrest.

Cour d’Appel of Rouen 14 September 2000, Rederiet M.H. Simonsen APS v. Magnifica Navigation Corp. – The “Oradana” (2001 DMF 1028)

By charter parties dated 12 and 29 May 1998 Mofel Shipping Corp. and Magnifica Navigation Corp. chartered respectively the m/v Chem Fortune and Chem Pioneer to Svendborg Tankers A/S. Since at the end of the charter period the two owners could not obtain payment of the outstanding freight balance, they applied to the Tribunal de Commerce of Le Havre for the arrest of the m/v Oradana, owned by Rederiet M.H. Simonsen APS on the ground that Svendborg Tankers A/S was merely a fictitious entity.
By orders of 2 May 2000 the juge de référés of the Tribunal de Commerce of Le Havre authorized the arrest and by subsequent order of 20 May 2000 if held that Rederiet M.H. Simonsen and Svendborg Tankers were not fictitious entities but affirmed the order of arrest on the ground that evidence had been provided that the two companies were under the same management and there existed between them a “communauté d’intérêts”. Rederiet M.H. Simonsen appealed.

Held, by the Cour d’Appel of Rouen, that:

(1) A ship must be deemed to be associated to that in respect of which the claim has arisen and may, therefore, be arrested as security for that claim when the companies owning the two ships are managed as a sole entity and have no financial and commercial autonomy

Spain

Audiencia Provincial of Barcelona 24 May 2002, Mediterranean Shipping España Barcelona v. Tatjana Usova [2004] Dir. Mar. 283

Tatjana Usova applied to the Juzgado de Primera Instancia of Barcelona for the arrest of the m/v MSC Ilaria, owned by Ulmus International Corp. as security for a claim arising our of the death of her father on board the m/v Egoli owing to a fire that had developed on board.
The arrest of the MSC Ilaria was applied for on the ground that at the time of the accident she was owned by Shoreline Shipping SA, a company associated with Ulmus International as it appeared from the fact that both companies had the same shareholders and the same directors and were managed by the same company. The application was granted by the Court and the subsequent opposition of Ulmus International was rejected. Ulmus International then appealed to the Audiencia Provincial of Barcelona.

Held, by the Audiencia Provincial of Barcelona, that:

(1) The arrest of a vessel owned at the time when the maritime claim under the 1952 Arrest Convention has arisen by an associated company and subsequently sold is permissible if the claim is secured by a maritime lien under the 1926 Convention on Maritime Liens and Mortgages of which Spain is a party.

### ****Claim against the time charterer (Art. 3.4)****

**Italy**

Tribunal of Genoa 28 October 2005, ABG v Onur Denizcilik Ve Petrol Ürünleri Sanay Ve Ticaret A.S. - The "Hande Ozgul" (not yet reported)

By decree dated 3 October 2005 the Tribunal of Genoa authorised the arrest of the MV "Hande Ozgul" as security for a claim of ABG against the owner of the ship in respect of the supply of fuel oil. The ship was then arrested in Ravenna and the owners after having paid into court the amount of the claim applied to the Tribunal of Genoa, competent for the merits of the claim or the release of the ship. The claimant stated that competent for the release of the ship was the Tribunal of Ravenna, where the ship had been arrested. The Owners appealed against the order of arrest on the ground, inter alia, that the claim of the arrestor was against the time charterer and was not secured by a maritime lien.

Held, by the Tribunal of Genoa, that:

[1] Pursuant to article 3(4) of the Convention on Arrest of Ships 1952, a ship may be arrest as security for a claim against the time charterer even if the claim is not secured by a maritime lien.

### ****Claims in respect of which a ship may be arrested (Art. 2)****

**France**

Cour de Cassation (Ch. Com.) 3 February 1998, Stardust Marine v. Scorpio Maritime Ltd. ([1998] DMF 260)

          By contract dated 4 February 1993 Stardust Marine (Stardust) and Scorpion Maritime Ltd. (Scorpio) agreed that Scorpio would superintend the conversion work of the sailing ship Vendredi 13 into a luxury cruise ship to be named Friday Star. Having failed to receive the full payment of its services, Scorpio obtained a warrant of arrest of the vessel, subsequently affirmed by the Cour d’Appel of Aix-en-Provence. Stardust appealed to the Cour de Cassation on the ground that under the 1952 Convention an arrest was not permissible in respect of claims that are not maritime claims.

>          Held, by the Cour de Cassation, that:

          (1) When a claim in respect of which the arrest of a ship is applied for has only in part the nature of a maritime claim, arrest can be granted for the full amount of such claim.

**Italy**

Tribunal of Naples 28 March 2006, Sete Yacht Management S.A. v. Lady Haya Ltd. - The "Lady Haya" (not yet reported)

After its purchase by Lady Haya Limited a yacht, previously owned by the Saudi Royal Family and renamed Lady Haya, was arrested in Naples on 25 January 2006 by order of the Tribunal of Naples, on application of Sete Yacht Management S.A., who alleged to have a claim against the Saudi Royal Family in respect of the management of their assets and that the liabilities of the Saudi Royal Family thereunder had been transferred to Lady Haya Ltd. concurrently with the transfer of title to the yacht. The arrestor alleged that the claim consisted of several items, several of which were maritime claims under the 1952 Arrest Convention. Lady Haya Ltd. denied its liability but furnished a bail in the amount of the claim in order to obtain the release from arrest of the yacht. It then applied to the Tribunal of Naples for the release of the bail on the ground that the arrest had been wrongful because the alleged transfer of liabilities had never taken place and that it had acquired title to the yacht prior to the arrest, nor were the claims of the arrestor secured by a maritime lien.

Held, by the Tribunal of Naples, that:

[1] If the global amount claimed consists of items only a part of which has the nature of a maritime claim and it is not possible to separate the maritime claims from the other claims, the arrest of the ship may be granted for the global amount.

### ****Claims in respect of which a ship may not be arrested (Art. 2)****

**Greece**

Single Member First Instance Court of Piraeus 849/1989 (Maritime Law Review, Vol. 18 (1989), p. 130)

The claimant applied for arrest of a Greek flag vessel within the Greek jurisdiction in order to secure a claim arising out of a loan agreement. The defendant objected that the 1952 Convention prohibits such an arrest.

Held by the Single Member First Instance Court of Piraeus, that:

(1) Article 2 of the 1952 Brussels Convention on Arrest of Ships, prohibiting the arrest of ships flying the flag of a Contracting State in respect of claims other than those listed in Article 1.1, refers to the arrest within the jurisdiction of another Contracting State and not to the arrest within the State whose the flag the ship flies because for the application of this provision the existence of a foreign element in the dispute is required.Note: This is correct under Article 8(4) as long as the claimant has his residence in the same country. This is assumed in this decision but not expressly state. \*

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Multi Member First Instance Court of Piraeus 2511/1977 (Maritime Law Review, Vol. 6 (1978), p. 42)

A vessel under Greek flag was arrested at Piraeus pursuant to a decision of the Single Member First Instance Court in respect of calls owed to a Mutual Insurance Association based in Bermuda. The owners applied to the Multi Member First Instance Court of Piraeus to vacate the arrest on the grounds that the insurance calls are not a maritime claim listed in the article 1 of the 1952 Convention and in accordance with Article 2 of the Convention “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”.

Held by the Multi Member First Instance Court of Piraeus, that:

(1) The prohibition of Article 2 of the Convention refers to arrest effected within the jurisdiction of another Contracting State and not of the State whose flag the ship flies and did not vacate the arrest.Note: This seems to be correct only where the claimant has its habitual residence or main place of business in the flag State \*

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Single Member First Instance Court of Korinthos 23/1977 (Commercial Law Review, Vol. 28 (1977), p.95)

The claimant had a claim based on a bill of exchange against a shipowning company and applied for arrest of the vessel as security. Alternatively, the claimant applied for the sequestration of the vessel as security for a first priority maritime mortgage securing the claim evidenced by a bill of exchange

Held by the Single Member First Instance Court of Korinthos, that:

(1) Claims evidenced by bills of exchange do not constitute maritime claims as defined in Article 1(1) of the 1952 Brussels Convention on Arrest of Ships. However the maritime mortgage securing the bill of exchange is a maritime claim for which arrest may be granted. On the other hand sequestration has the same effects as an arrest and it should be deemed as falling within the meaning of “arrest” as defined in the Convention. **\***

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Single Member First Instance Court of Thessaloniki 3456/1980 (Commercial Law Review, Vol. 31 (1980), p.651)

The Seller had a claim against the Buyer (and present owner) of a vessel for the balance of the purchase price and applied to the court for the arrest of the vessel. The Buyer objected on the grounds that the claim did not fall within the scope of the 1952 Brussels Convention on Arrest of Ships, which was applicable because the vessel was flying the flag of Spain. The claimant argued that under the Greek Code of Civil Procedure arrest is permitted not only for maritime claims, but for any claim.

Held by the Single Member First Instance Court of Thessaloniki, that:

(1) When the Brussels Convention is applicable, its provisions prevail over the provisions of the Greek Code of Civil Procedure, which is an internal law. The claim arising out of sale or transfer of a ship does not constitute a maritime claim falling within the scope of the Convention and consequently arrest should not be granted. \*

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Single Member First Instance Court of Piraeus 2956/1981 (Piraiki Nomologia, Vol. 3 (1981), p.364)

Under a contract of hire of containers between owner of containers and charterers of a vessel, the charterers were indebted to the owners in respect of unpaid hire of the containers. The owners of the containers filed a petition against the owners of the vessel and the charterers for the arrest of the vessel as security for their claim.

Held by the Single Member First Instance Court of Piraeus, that:

(1) A claim for the payment of hire of containers under the contract of hire of containers between the charterer and the owner of the containers is not a maritime claim listed in the Article 1(1) of the 1952 Brussels Convention on Arrest of Ships\*

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Single Member First Instance Court of Piraeus 3522/1984 (Maritime Law Review, Vol. 13 (1985), p. 327)

The owners of a vessel had agreed with the Port Authority of a French port to exploit a particular tourist itinerary and the Port Authority had undertaken to cover any shortfall up to a specific amount. Due to a default of the owners, the Port Authority claimed damages and applied for the arrest of the ship at Piraeus.

Held by the Single Member First Instance Court of Piraeus, that:

(1) The claim of the Port Authority arising out of a contract with a shipowner under which the owner undertook to call at that port does not constitute a maritime claim within the meaning of the 1952 Brussels Convention on Arrest of Ships. The Port Authority did not have a claim in respect of the use of the ship but in respect of expected profits from the tax and duties imposed on the passengers and cars moving in the area of the port.\*

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Single Member First Instance Court of Piraeus 1057/1985 (Maritime Law Review, Vol. 14 (1985), p. 205)

The claimant applied for arrest of the vessel as security for a claim arising out of the acknowledgment of a debt. Under the agreement the debt was admitted independently of its original underlying cause.

Held by the Single Member First Instance Court of Piraeus, that:

(1) A claim arising out of the acknowledgment of a debt (independent from the underlying claim) does not constitute a maritime claim falling within the scope of the 1952 Brussels Convention on Arrest of Ships. This type of acknowledgment creates a new cause of action for the claim.\*

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### ****Corporate veil****

**Belgium**

King Navigation Ltd. v Bulknedlloyd Holding B.V. The "Alpha Sun", Court of Appeal of Antwerp 1 February 1994 \*

Bulknedlloyd Holding B.V. chartered from Lone Eagle Shipping the m/v "Alpha Star" for the carriage of a full cargo of iron ore. Following the total loss of the ship Bulknelloyd applied to the Juge des saisies of Antwerp for the arrest of the m/v "Alpha Sun" , owned by King Navigation Ltd. and the arrest was granted by an order dated 26 January 1994. King Navigation appealed against the order whereby the arrest had been affirmed stating that it was an entity wholly distinct from Lone Eagle Shipping and that consequently the arrest of its ship was not justified. The claimants maintained that the two companies were controlled by the same entity and had a fictitious character.

Held, by the Court of Appeal of Antwerp, that:

[1] The corporate veil can be pierced when it is established that the company owning the ship in respect of which the claim has arisen and the company owning the ship that has been arrested are controlled by the same entity who appears as the assured of both and as the purchaser of the ships and that both companies are registered at the same address and are managed by the same persons.

\* By the courtesy of Mr. Wim Fransen, Antwerp, wimfransen@fransenadvocaten.com

**France**

Cour de Cassation (Ch. Com) 23 November 1999, Planmarine A.G. v. Capt. Stanislav Severov, Maddock Trading and Republic of Ukraine – The “Karelija” (2000 DMF 719).

          Planmarine A.G. arrested in the port of Noumea the m/v Karelija, owned by Maddock Trading as security for a claim against Black Sea Shipping-BLASCO on the ground that Maddock Trading was fully owned by BLASCO. The vessel was ordered released by the Cour d’Appel of Noumea and Planmarine appealed to the Cour de Cassation.

          Held, by the Cour de Cassation, that:

          (1) The allegation that a State (the Republic of Ukraine) has formed the company owning the vessel in respect of which the claim has arisen and the company owning the vessel the arrest of which is applied for as security for such claim with the purpose of limiting the security of the claimants does not prove the fictitious character of such companies if they have property which is their own.

**Italy**

Tribunal of Bari 19 July 2002, Morfimare S.r.l. v. Poseidon Lines Shipping and Bellatrix Shipping Co. - The "Sea Serenade", 2004 Dir. Mar.,1424

Morfimare S.r.l. of Bari applied to the Tribunal of Bari for the arrest of the Sea Serenade, of Cypriot flag, owned by Bellatrix Shipping Co. as security for its claim in respect of fees earned as general agent of Poseidon Lines Shipping on the ground that the 1952 Arrest Convention applied, pursuant to its article 8(2), even if Cyprus was not a contracting State and that the two companies were controlled by the same persons.

Held, by the Tribunal of Bari, that:

[1] The deeming provision of article 3(2) of the 1952 Arrest Convention is applicable in respect of a ship owned by a company other than that who own the ships in respect of which the maritime claim has arisen if the two companies are managed and their shares are owned by the same persons.

**Spain**

Audiencia Provincial of Barcelona 11 February 2002, Maya Maritime S.A. v. Medbridge Shipping Company [2004] Dir. Mar. 280.\*

On 17 October 1995 a collision occurred between the m/v Orion Progress owned by Maya Maritime S.A. and the m/v Medlink, owned by Marinav Ltd. and managed by Dealmar Shipping Management.
Maya Maritime applied to the Juzcado de Primera Instancia of Barcelona for the arrest of the m/v Medbridge, owned by Medbridge Shipping Company stating that the corporate veil could be lifted because also the Medlink was managed by Dealmar Shipping.
Following the opposition of Medbridge Shipping the arrest was lifted by the Court, and Maya Maritime appealed to the Audiencia Provincial (Court of Appeal) of Barcelona.

Held, by the Audiencia Provincial of Barcelona, that:

(1) A ship owned by a company other than that in respect of which a maritime claim has arisen may not be arrested under the provision of Article 3(1) of the 1952 Arrest Convention merely because it is under the same management.

Audiencia Provincial of Barcelona 16 May 2002, Mediterranean Shipping España Barcelona v. Tatjana Usova 2004 Dir. Mar. 283 \*

MSC Ilaria, owned by Ulmus International Corp. as security for a claim arising our of the death of her father on board the m/v Egoli owing to a fire that had developed on board.
The arrest of the MSC Ilaria was applied for on the ground that at the time of the accident she was owned by Shoreline Shipping SA, a company associated with Ulmus International as it appeared from the fact that both companies had the same shareholders and the same directors and were managed by the same company. The application was granted by the Court and the subsequent opposition of Ulmus International was rejected. Ulmus International then appealed to the Audiencia Provincial of Barcelona.

Held, by the Audiencia Provincial of Barcelona, that:

(1) The corporate veil of a company may be pierced where the company owning the vessel in respect of which the claim has arisen and that owning the arrested vessel have the same shareholders and the same directors and are both managed by the same manager, since such circumstances constitute evidence of a sham.

\* Copy of these judgments has been kindly made available by Adv. Philip Carney, Entenza 127, 4-2, 08015 Barcelona, e-mail: carneypjn@yahoo.com.

### ****Damages for wrongful arrest (Art. 6)****

**Spain**

Juzgado de lo Mercantil of Malaga, 25 February 2005

An application was made to the Court for the arrest of a Swedish ship as security for a claim in respect of commissions.

Held, by the Juzgado de lo Mercantil of Malaga, that:

[1] Arrest of a vessel is permitted, under the 1952 Arrest Convention, when the claim is related to the operation of the vessel in respect of which the claim has arisen, or of another vessel in the same ownership, but the claimant must provide sufficient security to cover the damages that the arrest may entail.

### ****Definition of "Arrest" (Art. 1.2)****

**Greece**

Single Member First Instance Court of Korinthos 23/1977 (Commercial Law Review, Vol. 28 (1977), p.95)

The claimant had a claim arising out of a bill of exchange against a shipowning company and applied for arrest of the vessel as security. Alternatively, the claimant applied for the sequestration of the vessel as security for a first priority maritime mortgage securing the claim out of Bill of Exchange.

Held by the Single Member First Instance Court of Korinthos, that:

(1) Sequestration has the same effects as an arrest and it should be deemed as falling within the meaning of “arrest” as defined in the Convention. \*

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### ****Definition of “Claimant” (Art. 1.4)****

**Belgium**

Cour d’Appel of Antwerp 14 February 2000, The "Liman" (2000 Jurisprudence du Port d’Anvers 267).

          Following the arrest of the Liman by a claimant, the owners, after having obtained the release of the vessel by providing a bank guarantee, challenged the right to arrest and applied to the Juge des Saisies in order to obtain the release of the guarantee. The application was granted on the ground that the requisite of the urgency required in order that an arrest be justified did not exist. The owners appealed.

          Held, by the Cour d’Appel of Antwerp, that:

          (1) Although urgency is not a condition expressly required by the 1952 Arrest Convention, it is generally accepted that it is actually required. However in maritime transactions urgency is presumed and therefore the burden lies on the owner of the vessel to prove that urgency did not exist. Urgency however does exist when the debtor is a foreigner, the vessel is not employed on a regular line and the owner does not apparently own other vessels.

France

Cour d'Appel of Montpellier 1 December 2003, SA DK Lines v. Petredec Ltd. - The "Sargasso" (2004 DMF 435).

(The summary of facts may be found in the section "Arrest of a ship not owned by the person liable")

Held, by the Cour d'Appel of Montpellier, that:

(1) In order to arrest a vessel it is sufficient that the claimant may invoke a claim listed in article 1(1) of the Convention that has arisen in respect of that vessel.

**Spain**

Juzgado de lo Mercantil of Malaga, 25 February 2005

An application was made to the Court for the arrest of a Swedish ship as security for a claim in respect of commissions.

Held, by the Juzgado de lo Mercantil of Malaga, that:

[1] Under the 1952 Arrest Convention the allegation by the claimant of a maritime claim is sufficient and no documentary evidence of such claim is required.

### ****Droit de suite (Art. 9)****

**Belgium**

Court of Appeal of Gand 24 February 2004, Orca Navigation and Bloomfield Shipping Company, Ltd. v. Galehead Inc. N.E. \*

Crescent Towing & Salvage Co.Inc, rendered in August 1999 towage services in the port of Savannah to the M/V "Inanc" and issued an invoice for such services to STFA Maritime Industry of Istambul but was not paid. It then assigned its claim to Galehead Inc. After the towage services were rendered the ship changed its name to "Aeolus" and its owner appeared to be Orca Navigation Co. On 12 December 2001 Galehead arrested the ship (who had meanwhile changed again its name to "Jupiter" upon its being sold to Bloomfield Shipping Navigation Co.) in Gand pursuant to an order of the Juge des saisies of Gand. After the release of the ship against security, Orca Navigation and Bloomfield Shipping appealed to the Court of Appeal of Gand against the judgment of the Juge de Saisies which had affirmed the order of arrest.

Held, by the Court of Appeal of Gand, that:

[1] Pursuant to article 9 of the 1952 Arrest Convention where title to the ship in respect of which the claim has arisen has been transferred by the person liable for the claim to a third party, that ship may be arrested only if such claim is secured by a hypothec or a maritime lien .[2] Where the sale of a ship is evidenced by a Memorandum of Agreement between the seller and the buyer and the agreement on the price is evidenced by correspondence of a bank the fact that there has not been a change in the managing company is not a sufficient element to imply the fictitious character of the sale

\* By the courtesy of Mr. Wim Fransen, Antwerp, wimfransen@fransenadvocaten.com

Hof van Cassatie van Belge 27 March 2003, A/S Condor v. Galehead Inc. - The "Sokna"

Galehead Inc. applied for the arrest of the m/v Sokna as security for a claim against the previous owner of the vessel. The right of the claimant to follow the ship in the hands of a bona fide purchaser was upheld by the Cour d'Appel of Brussels. The new owners of the ship, Galehead Inc., appealed to the Cour de Cassation.

Held, by the Cour de Cassation, that:

(1) Pursuant to article 9 of the 1952 Arrest Convention the claimant may not arrest the ship in respect of which the maritime claim has arisen after the sale of the ship to a bona fide purchaser, unless the claim is secured by a maritime lien.

**France**

Cour d’Appel of Aix-en-Provence 24 May 2002, Grand Seaways Limited v. Total Fina Elf – The “Renai I” and “Renai II”. 2002, DMF 722
The summary of facts is pubblished in the section "Droit de suite"

Pursuant to an order of the Tribunal de Commerce of Marseilles dated 11 January 2002 S.A. Total Raffinage Distribution, subsequently named Total Fina Elf, arrested the ships Renaissance Seven and Renaissance Eight, renamed Renai I and Renai II, at the port of Marseille as security for a claim arising out of the supply of bunker. Grand Seaways Limited, a Liberian company, requested the release of the vessels stating it had purchased them in a judicial sale at Gibraltar. The Tribunal de Commerce of Marseilles rejected the request of release, whereupon Grand Seaways Ltd. appealed to the Cour d’Appel of Aix-en-Provence.

Held, by the Court d’Appel of Aix-en-Provence, that:

(1) Pursuant to article 9 of the 1952 Arrest Convention the arrest of a ship that is not owned anymore by the person liable (droit de suite) is only permissible if the claim is secured by a maritime lien.

### ****Financial conditions of the person liable (Art. 2)****

**Italy**

Tribunal of Genoa 28 October 2005, ABG v Onur Denizcilik Ve Petrol Ürünleri Sanay Ve Ticaret A.S. - The "Hande Ozgul" (not yet reported)

By decree dated 3 October 2005 the Tribunal of Genoa authorised the arrest of the MV "Hande Ozgul" as security for a claim of ABG against the owner of the ship in respect of the supply of fuel oil. The ship was then arrested in Ravenna and the owners after having paid into court the amount of the claim applied to the Tribunal of Genoa, competent for the merits of the claim or the release of the ship. The claimant stated that competent for the release of the ship was the Tribunal of Ravenna, where the ship had been arrested. The Owners appealed against the order of arrest on the ground, inter alia, that the requisite of the periculum in mora was lacking.

Held, by the Tribunal of Genoa, that:

[1] The requisite of the periculum in mora may be related to the nature of the res the arrest of which is applied for (a ship) and of its imminent departure from the port in which it is laying.

Tribunal of Genoa 4 October 2002, Nortoil and Shipping LLC (2004 Dir. Mar. 1463)

Nortoil and Shipping LLC supplied gasoil to the m/v Incat 045 of which at that time TR.I.S. Traghetti Isole Sarde S.r.l. was the operator. Since TR.I.S. did not pay the cost of the gasoil, Nortoil and Shipping applied to the Tribunal of Genoa for the arrest the vessel as security for its claim.

Held, by the Tribunale of Genoa, that:

(1) Pursuant to the 1952 Arrest Convention the danger of the claimant being unable to enforce its claim is not a prerequisite for the right of arrest.

### ****Forced sale (Art. 9)****

**France**

Cour d’Appel of Aix-en-Provence 24 May 2002, Grand Seaways Limited v. Total Fina Elf – The “Renai I” and “Renai II”. 2002, DMF 722 The summary of facts is pubblished in the section "Droit de suite"

Held, by the Court d’Appel of Aix-en-Provence, that:

(1) Arrest is not permissible after the forced sale of the ship, the forced sale entailing the extinction of the maritime lien.

### ****Jurisdiction (art. 5)****

**Italy**

Tribunal of Genoa 28 October 2005, ABG v Onur Denizcilik Ve Petrol Ürünleri Sanay Ve Ticaret A.S. - The "Hande Ozgul" (not yet reported)

By decree dated 3 October 2005 the Tribunal of Genoa authorised the arrest of the MV "Hande Ozgul" as security for a claim of ABG against the owner of the ship in respect of the supply of fuel oil. The ship was then arrested in Ravenna and the owners after having paid into court the amount of the claim applied to the Tribunal of Genoa, competent for the merits of the claim or the release of the ship. The claimant stated that competent for the release of the ship was the Tribunal of Ravenna, where the ship had been arrested.

Held, by the Tribunal of Genoa, that:

[1] Pursuant to article 5 of the Convention on Arrest of Ships, 1952, the court competent for the release of the ship from arrest is only the court of the place where the ship has been arrested even if the order of arrest was issued by a different court which under Italian law was competent to order the arrest as the court competent for the merits.

### ****Jurisdiction for the arrest (Art. 4)****

**Italy**

Tribunal of Genoa 24 April 2004, Gie Vision Bail v. Piraeus Bank A.E. - The "European Vision" (2006 Dir. Mar. 524)

The European Vision was arrested in Bridgetown, Barbados, by Crédit Agricole Indosuez who held a first rank hypothèque on the ship as security of a loan granted to GIE Vision Bail.
On 7th April 2004 Piraeus Bank A.E. acting in subrogation of Festival Crociere S.p.A. of Genoa, Italy, applied to the Tribunal of Genoa for the arrest of the European Vision on the ground that Festival Crociere, who was in default in respect of its obligations under a loan agreement with Piraeus Bank, had a very substantial claim for damages against GIE Vision Bail, the owners of European Vision caused by the faulty termination of the bareboat charter party stipulated by GIE Vision Bail with Festival Crociere. Piraeus Bank stated that it was entitled to take action in lieu of Festival Crociere since Festival Crociere had omitted to act and that the claim of Festival Crociere was a maritime claim under art. 1(d) of the 1952 Arrest Convention. It also stated that it had commenced proceedings on the merits against GIE Vision Bail in the Tribunal de Commerce of Paris.
An order of arrest was issued on 7 April 2004 by the Tribunal of Genoa who held that it had jurisdiction pursuant to art. 10 of law 31 May 1995, No. 218 pursuant to which the court of the place where the arrest is made and the court competent for the merits have both jurisdiction for the arrest.
GIE Vision Bail appealed. The claimants maintained that the Tribunal of Genoa was a court of competent jurisdiction since the arrest should be deemed to have been made in Genoa, since Genoa was the place of its endorsement on the ships register.

Held, by the Tribunal of Genoa, that:

[1] The requirement of endorsement of the arrest of a ship in the register in which that ship is registered does entail that the arrest must be deemed to be made in that place if the ship is outside the Italian jurisdiction.

[2] Italian courts have no jurisdiction for the arrest of an Italian ship if they have no jurisdiction on the merits and the ship is outside the Italian jurisdiction.

### ****Jurisdiction on the merits (Art. 7.1)****

**France**

Cour de Cassation 18 July 2000, Akyelken and Others v. Shipping & Trading Co. and Others–The "Obo Basak" (2000 DMF 725)

          The crew members of the m/v Obo Basak flying the Turkish flag arrested the vessel in the port of Dunkerque as security for their claims for wages and commenced proceedings for the merits. French jurisdiction was held not to exist by the Cour d’Appel of Douai. The claimants appealed to the Cour de Cassation.

          Held, by the Cour de Cassation, that:

          (1) Pursuant to Art. 7(1)(c) of the 1952 Arrest Convention the Courts of the State in which the arrest is made are competent to decide on the merits of the dispute when the claim has arisen during the voyage in the course of which the arrest is made.

### ****Maritime claims** - **Brokerage Commissions (Art. 1.1(d))****

**France**

Tribunal de Commerce of Aiaccio 19 October 1999, Cruise Holding Ltd. and Others v. Southern Cross Cruises S.A. – The “Islandbreeze” (2000 DMF 32)

Southern Cross Cruises arrested the m/v Islandbreeze in the port of Aiaccio as security for a claim in respect of brokerage fees. The owners applied for the revocation of the arrest.

Held, by the Tribunal de Commerce of Aiaccio, that:

(1) The claim for brokerage commissions in respect of charter party is a maritime claim covered by Art. 1(1)(d) of the 1952 Arrest Convention.

### ****Maritime claims** - **Claims of maritime agents (Art. 1.1(n))****

**Greece**

Single Member First Instance Court of Piraeus 864/1979 (Maritime Law Review, Vol. 9 (1985), p.6)

The claimants applied for arrest of a vessel in order to secure claims for amounts due to them arising out of their services as maritime agents of the vessel. The defendant argued that that was not a maritime claim under the 1952 Convention.

Held by the Single Member First Instance Court of Piraeus, that:

(1) A claim arising out of services as maritime agents of a vessel is a maritime claim.\*

\* Reported by D.K. Voltis, LLM, of Gr. J. Timagenis Law Office, 57, Notara Street, fax +30 210 4221388, E-mail: timagenis-law-office@ath.forthnet.gr, Piraeus, Greece

**Italy**

Tribunal of Bari 19 July 2002, Morfimare S.r.l. v. Poseidon Shipping Lines and Bellatrix Shipping Company (2004 Dir. Mar. 1424)

Morfimare S.r.l. of Bari applied to the Tribunal of Bari in order to obtain an order of arrest of the Sea Serenade, owned by Bellatrix Shipping Co. as security for claims against Poseidon Shipping Lines, the operators of the ship, arising out of an agency agreement consisting mainly in the severance indemnity. Bellatrix Shipping Co. requested that the ship be released from the arrest on the ground, inter alia, that the claim was not a maritime claim under the 1952 Arrest Convention.

Held, by the Tribunal of Bari, that:

[1] The claim of a maritime agent is a maritime claim covered by article 1(1)(n) of the Arrest Convention even if it is mainly related to matters not directly related to the call of ships at the port where the agent operates.

**Maritime claims – Mortgage or hypothecation (Art. 1. 1(q))**

**Greece**

Single Member First Instance Court of Korinthos 23/1977 (Commercial Law Review, Vol. 28 (1977), p.95)

The claimant had a claim arising out of a bill of exchange against a shipowning company and applied for arrest of the vessel as security. Alternatively, the claimant applied for the sequestration of the vessel as security for a first priority maritime mortgage securing the claim out of bill of exchange.

Held by the Single Member First Instance Court of Korinthos, that:

(1) A maritime mortgage securing a bill of exchange is a maritime claim for which arrest may be granted.\*

\* Reported by D.K. Voltis, LLM, of Gr. J. Timagenis Law Office, 57, Notara Street, fax +30 210 4221388, E-mail: timagenis-law-office@ath.forthnet.gr, Piraeus, Greece

**Maritime claims – Notions of claimant (Art. 1(3) and (4))**

**France**

Cour d’Appel of Aix-en-Provence 12 June 2008, The Master of the ship “Ocean Breeze” and Sudeley Ltd. v. Republic of Iraq (2009 DMF 150).

          By order dated 31 January 2005 the President of the Tribunal de Commerce of Nice authorised the Republic of Iraq to arrest the Ocean Breeze, flying the flag of Cayman Islands and moored in the port of Nice, as security for a claim of 24 million Euro based on Art. 1 (1) (o) of the 1952 Arrest Convention, on the ground that the Republic of Irak was the actual owner of the vessel. The vessel had been built  by the Danish shipyard Helsingor Vaerft for the account of the then President of Irak and had been delivered to the Republic of Iraq in June 1981 when for security reasons on account of the war with Iran, it was dry-docked in the port of Jeddah. Her name was then changed from Qadissiyat Saddam to Al Yamamah and was registered in the ships register of Saudi Arabia in the name of the late King of Saudi Arabia. In October 2007 she was registered in the ship register of the Cayman Islands in the name of the Cayman Islands company Sudely Ltd.  The master of the vessel and Sudely Ltd. applied to the President of the Tribunal de Commerce of Nice for the release of the vessel from the arrest and by order of 5th March 2008 the application was rejected on the ground that the State of Iran had a maritime claim pursuant to article 1(1) (o) of the 1952 Arrest Convention. The master and Sudely Ltd. appealed to the Court of Appeal of Aix-en-Provence.

          Held, by the Cour d’Appel of Aix-en-Provence, that

          [1]    A dispute as to the title to a ship is a maritime claim under the 1952 Arrest Convention and entitles the claimant to arrest the ship.

          [2]    A statement of the Authority responsible for the ships register that title to the ship had actually been transferred to a new owner does not constitute evidence of the transfer if it is not accompanied by a declaration to that effect of the previous owner.

**Maritime claims - Notion of goods (art.1(f))**

**Singapore**

The "Mezen", Singapore High Court

The Charterers of the "Mezen" who had chartered the ship for sub sea seismic survey work, had put on board equipment for that purpose. They subsequently sold such equipment to the claimant who, while the ship was under arrest by charterers, obtained the leave of the Court to unload the equipment and, in view of a part of such equipment having not been off-loaded, applied for, and obtained a warrant of arrest against the ship. The owners challenged the action and applied to set aside the warrant of arrest.

Held, by the Singapore High Court, that:

[1] The claim of the owners of the equipment placed on board the ship for the purpose of the employment of the ship by the charterers does nit fall within the ambit of s.3 (1) (g) of the Singapore High Court (Admiralty Jurisdiction) Act wherein reference is made to "any claim for loss of or damage to goods carried on a ship".

**Maritime claims - Salvage (Art. 1.1 (c))**

**Greece**

Court of Appeal of Nafplion 196/1972. (Commercial Law Review, Vol. 2(1972) p.548)

In a case where salvage services were rendered to a vessel under Turkish flag, the salvor applied for the arrest of the vessel as security.

Held by the Court of Appeal of Nafplion, that:

(1) A vessel flying the flag of a non Contracting State may be arrested within the jurisdiction of any Contracting State in respect of a claim arising out of salvage, which is a maritime claim under the 1952 Brussels Convention on Arrest of Ships\*

\* Reported by D.K. Voltis, LLM, of Gr. J. Timagenis Law Office, 57, Notara Street, fax +30 210 4221388, E-mail: timagenis-law-office@ath.forthnet.gr, Piraeus, Greece

**Maritime claims - Supplies (Art. 1 (1) (k))**

**Spain**

Audiencia Provincial de Almeria, section 2, Judgment of 19 March 2001, Navigatie Maritime S.A. v. The Liverpool and London Steamship Protection and Indemnity Association (El Derecho 2001/3708).

Liverpool and London obtained an order from Juzgado de Primera Instancia of Almeria for the arrest of Navigatie Maritime S.A.’s vessel to guarantee a claim for unpaid protection and indemnity insurance premiums, alleging that this claim fell within article 1(1)(k) of the 1952 Arrest Convention. Navigatie Maritime S.A. formulated opposition to the arrest, alleging that a claim for unpaid insurance premiums was not a maritime claim as defined by article 1 of the 1952 Convention. At first instance, the opposition was dismissed, and the arrest upheld. Navigatie Maritime S.A. appealed.

Held, by the Audiencia Provincial de Almeria, that:

(1) A claim for unpaid insurance premiums does not fall within article 1(1)(k) of the 1952 Convention.

Audiencia Provincial de Huelva, section 2, Judgment of 14 December 2000, Mariscos Rodriguez S.A. v. Ocean Marine Mutual Insurance Association “The Quinto Centenario”(Anuario de Derecho Marítimo, Vol. XIX, p.690).

Ocean Marine obtained an order from Juzgado de Primera Instancia of Huelva for the arrest of the Quinto Centenario, to guarantee a claim for unpaid protection and indemnity insurance premiums, alleging that this claim fell within article 1(1)(k) of the 1952 Arrest Convention. Mariscos Rodriguez S.A. formulated opposition to the arrest, alleging, inter alia, that a claim for unpaid insurance premiums was not a maritime claim as defined by article 1 of the 1952 Convention. At first instance, the opposition was dismissed, and the arrest upheld. Mariscos Rodriguez S.A. appealed.

Held, by the Audiencia Provincial de Huelva, that:

(1) A claim for unpaid insurance premium falls within article 1(1)(k) of the 1952 Convention.

**Multiple Arrest (Art. 3.3)**

**France**

Cour d’Appel of Rouen 19 May 2000, Export Development Corporation and Montreal Tankers Repairs, Inc. v. Stone Maritime Inc. – The “Dunlin” (2001 DMF 379)

          In May 2000 Montreal Tankers Repairs and its insurers, Export Development Corporation applied to the President of the Tribunal de Commerce of Le Havre for the arrest of the m/v Dunlin owned by Stone Maritime Inc. stating that they had a claim against the previous owners of that vessel, Naviera Poseidon, on account of repairs carried out to it and that the vessel of Naviera Poseidon they had previously arrested – the Aiana – was not a sufficient security for their claim. The arrest was granted on 11 May 2000 but was subsequently revoked on application of the owners of the Dunlin on the ground that pursuant to Art. 22 of law 9 July 1991 measures aiming at ensuring a security for a claim cannot exceed what is necessary for that purpose. The claimants appealed stating that pursuant to the French version of Article 3(3) of the 1952 Arrest Convention the arrest of another ship is prohibited only if security has been given, while in the present case no security had been given after the arrest of the Aiana.

          Held, by the Cour d’Appel of Rouen, that:

          (1) In the French version of Article 3(3) of the 1952 Arrest Convention to the conjunction “et” in the sentence “si un navire est saisi dans une desdites juridictions et une caution ou garantie a été donnée” must be given the meaning of “et si” (and if) so to ensure to the phrase the same meaning of that phrase in the English version which reads “if a ship has been arrested in any one of such jurisdictions or bail or other security has been given”.

          (2) The fact that the 1952 Arrest Convention by instituting the maritime claims permits the arrest of a ship that is not owned any more by the debtor, entails the restrictive character of the security measure and, therefore, the prohibition of a second arrest for the same claim, when an arrest has been made or a security has been offered following such arrest.

          (3) The burden of proving the insufficient value of the ship that has been arrested, and thereby the existence of a good cause for maintaining the arrest of another ship, rests on the claimant.

**Notion of owner (Art.3(1))**

**Australia**

Tisand (Pty) Ltd. v The Owners of the Ship MV "Cape Moreton" (ex "Freya"), Federal Court of Australia 29 April 2005 [2005] FCAFC 68

On 8 June 2004 the MV "Cape Moreton" was arrested on the application of Tisand (Pty) Ltd. in support of a claim for damage to a cargo of zircon sand said to have occurred on a voyage from Richards Bay in South Africa to China. As at the date when the cause of action underlying the claim arose the ship, was recorded as registered under the Liberian flag and Freya Navigation Shipholding Ltd. was the registered owner of the ship. That company was still the registered owner as at the date when the in rem proceedings against the ship were commenced. On 10 June 2004 a notice of motion was brought by Alico Marine Ltd. in which Alico sought an order that the writ in rem under which the ship was arrested be set aside on the ground that as at that date it was the actual owner of the ship of which it had taken unconditional delivery from Freya after having paid in full the purchase price and having obtained a bill of sale. The substantial point of debate between the parties was the meaning of the phrase "the owner" in s. 17(b) of the Australian Admiralty Act 1988 which so provides:
"Where, in relation to a general maritime claim concerning a ship or other property, a relevant person:
(a) was, when the cause of action arose, the owner or charterer of, or in possession or control of, the ship or property; and
(b) is, when the proceeding is commenced, the owner of the ship or property;
a proceeding on the claim may be commenced as an action in rem against the ship or property."

Held, by the Federal Court of Australia, that:

[1] The meaning of the phrase "the owner" in ss 17, 18 and 19 of the Admiralty Act does not necessarily encompass the party entered on any international register of ships. The question is one as to whether the relevant person answers the description of "the owner" in a proprietary sense, in all the circumstances.[2] Where a ship is sold by its owner and delivered to the purchaser who has paid in full the purchase price against delivery of a properly executed bill of sale the buyer must be deemed to be "the owner" of the ship for the purposes of s.17(b) of the Admiralty Act even if the ship is still registered in the name of the seller.[3] Under Article 3(1) of the 1952 Arrest Convention a right of arrest exists only if the ship, at the time of arrest ,is still owned by the person liable on the claim and who owned her when the claim arose.

**Notion of ship – Offshore Drilling Unit (Art. 2)**

**Scotland**

Global Marine Drilling Company v. Triton Holdings Limited (Outer House, Court of Session, Edinburgh, 23 November 1999, unreported)\*

          The semi-submersible drilling rig “Sovereign Explorer” was arrested at Invergordon, Scotland in security of claims in a London arbitration.  One of the issues argued before the Scottish Courts was whether a mobile offshore drilling unit fell within the definition of “ship” in the national legislation implementing the 1952 Arrest Convention.  If offshore platforms are not to be regarded as ships, the arrestment would be incompetent and invalid.
The word “ship” is not defined in the 1952 Convention.  In Scotland the definition of “ship” for the purposes of arrest is stated to “include any description of vessel used in navigation not propelled by oars”.  Counsel for the Defender, seeking recall of the arrest, submitted that there was no authority world-wide that was directly in point.  Counsel for the opposition agreed that there was a dearth of applicable law in relation to this field anywhere in the world.
The Scottish statute refers only to navigation, and not to self-propulsion.  The Court considered and approved a decision of the Irish Supreme Court that held propulsion was not a necessary requisite of a “ship”.

          Held, by the Court of Session (Outer House), that:

          (1) The preponderance of authority in relation to the definition of a ship is against the view that either self-propulsion or ability to steer is regarded as essential to the concept of a vessel used in navigation.

          (2) The mobile offshore drilling unit was a ship in terms of the national legislation implementing the 1952 Arrest Convention, and accordingly the arrest of the “Sovereign Explorer” in terms of this Convention was valid.

\* The synopsis of this decision has been kindly prepared by Ed Watt, LLB (Hons) LLM, Solicitor, Henderson Boyd Jackson W.S., 19 Ainslie Place, Edinburgh EH3 6AU, UK. Fax +44 131 225.2086 – E-mail: e.watt@HBJ.co.uk – Internet: www.shippinglawyer.com

**Re-arrest (Art. 3.3)**

**France**

Tribunal de Commerce of Aiaccio 19 October 1999, Cruise Holding Ltd. and Others v. Southern Cross Cruises S.A. – The “Islandbreeze” (2000 DMF 32)

          Southern Cross Cruises obtained a warrant of arrest of the m/v Islandbreeze from the Tribunal de Commerce of Aiaccio as security for a claim against its owners, Cruise Holding Ltd. The owners applied for the revocation of the arrest under Art. 3(2) of the 1952 Arrest Convention on the ground that the claimants had already arrested the vessel in the United States in respect of the same claim.

          Held, by the Tribunal de Commerce of Aiaccio, that:

          (1) The rule of Art. 3(3) of the 1952 Arrest Convention prohibiting re-arrest of a ship in respect of the same maritime claim does not apply when the first arrest has been executed in a State which is not party to the Convention.

Spain

Audiencia Provincial of Barcelona 11 February 2002, Maya Maritime S.A. v. Medbridge Shipping Company (2004 Dir. Mar. 280).

On 17 October 1995 a collision occurred between the m/v Orion Progress owned by Maya Maritime S.A. and the m/v Medlink, owned by Marinav Ltd. and managed by Dealmar Shipping Management.
Maya Maritime applied to the Juzcado de Primera Instancia of Barcelona for the arrest of the m/v Medbridge, owned by Medbridge Shipping Company stating that the corporate veil could be lifted because also the Medlink was managed by Dealmar Shipping.
Following the opposition of Medbridge Shipping the arrest was lifted by the Court, and Maya Maritime appealed to the Audiencia Provincial (Court of Appeal) of Barcelona.

Held, by the Audiencia Provincial of Barcelona, that:

(1) Pursuant to article 3(3) of the 1952 Arrest Convention re-arrest of a ship is permitted when the security provided for the release of the ship has become unenforceable owing to the bankruptcy of the guarantor.

**Release from arrest (Art. 5)**

**Italy**

Tribunal of Ravenna 15 June 2004, Goldfish Shipping S.A. v. Odin Denizcilik Anonim Sirketi - The "Pacific Trust" ex "Ahmet Bay" (2005 Dir. Mar. 1423).

(The summary of facts may be found in the section "Re-arrest")

Held, by the Tribunal of Ravenna, that:

(1) When a ship has been released from arrest upon security having been furnished by the owner in the amount established by the Court that ordered the arrest, the claimant cannot apply to the Court of another State for an increase of the security.

**Release of the ship upon provision of bail (Art. 5)**

**Italy**

Tribunal of Naples 28 March 2006, Sete Yacht Management S.A. v. Lady HayaLtd - The "Lady Haya" (not yet reported)

(The summary of facts may be found in the section "Claims in respect of which a ship may be arrested")

Held, by the Tribunal of Naples, that:

[1] The vacation of an order of arrest following the provision of bail by the owner of the ship does not entail, pursuant to art. 5 of the 1952 Arrest Convention, an acknowledgment of liability and the owner is, therefore, entitled to request the release of the bond by proving that the arrest was wrongful.

**Rules of procedure (Art. 6)**

**Greece**

Single Member Court of First Instance of Thessaloniki 2 March 2001, Groupama Navigation et Transport and Others v. Interaxis Maritime, Inc. - m/v "Ntina Katerina" \*

The m/v Maria Nadia, with on board a cargo of 4.390,734 metric tons of fertilizer, sank on 14 December 1998 and the cargo was lost. The insurers of the cargo, after having paid the insurance indemnity to the owners of the cargo commenced an action in the Tribunal de Commerce of Saint Malo, France, against the owners of the Maria Nadia, Vegirma Maritime Inc., Vayamar Shipping, Inc. and Interaxis Maritime Inc. claiming 13 million French francs for the total loss of the cargo. By judgment no. 142/99 the Tribunal de Commerce found the defendants jointly and severally liable on the ground that they all belonged to the same group of companies. The defendants appealed.
Prior to the decision of the Cour d'Appel of Rouen the claimants applied to the Single Court of First Instance of Thessaloniki for the arrest of the m/v Ntina Katerina, owned by Interaxis Maritime, Inc.

Held, by the Single Court of First Instance of Thessaloniki, that:

[1] Pursuant to article 6(2) of the 1952 Arrest Convention the rules of procedure are governed by the law of the State where the arrest is applied for and, therefore, the court competent to grant the arrest must be identified pursuant to the rules of the Greek code of civil procedure.

[2] Pursuant to the 1952 Arrest Convention the claimant who applies for the arrest of a ship must provide a prima facie evidence of its claim and of the need for a security measure.

[3] The arrest of a ship other than that in respect of which the claim has arisen must be granted when the owner of the ship the arrest of which is applied for has been held to be jointly liable with the owner of the ship in respect of which the claim has arisen by a judgment provisionally enforceable issued by a court of a country member of the European Union.

[4] In case the judgment of the court on the basis of which the arrest is granted is subject to review, the claimant must be ordered to provide security.

\* By the courtesy of. Prof. Anthony Antapassis G. Albouras Law Office, antalblaw@ath.forthnet.gr

**Spain**

Juzgado de lo Mercantil of Malaga, 25 February 2005

An application was made to the Court for the arrest of a Swedish ship as security for a claim in respect of commissions.

Held, by the Juzgado de lo Mercantil of Malaga, that:

[1] Although security measures require, as a general rule, a hearing, article 733 permits exceptionally a decision on an application ex parte and from the 1952 Arrest Convention it appears that the arrest of a ship has an urgent character.[2] Under the 1952 Arrest Convention proof of the periculum in mora is not required.

**Scope of application (Art. 8.2)**

**France**

Cour d'Appel of Montpellier 1 December 2003, SA DK Lines v. Petredec Ltd. - The "Sargasso" (2004 DMF 435).

(The summary of facts may be found in the section "Arrest of a ship not owned by the person liable")

Held, by the Cour d'Appel of Montpellier, that:

(1) Since France has not excluded from the benefits of the 1952 Arrest Convention any non-Contracting State, pursuant to article 8(2) the provisions of the Convention apply to a vessel flying the Panamanian flag.

Cour de Cassation 30 October 2000, Petredec Ltd. v. DK Line – The “Stargas” (2000 DMF 1012)

          Petredec Ltd. applied for the arrest of the Stargas, of Panamanian flag, owned by DK Line, as security for a claim against a company named Tokumaru. The order of arrest was subsequently revoked by the Cour d’Appel of Aix-en-Provence on the ground that Panama not being a party to the 1952 Arrest Convention, French domestic law applied. Petredec Ltd. appealed to the Cour de Cassation against that order.

          Held, by the Cour de Cassation, that:

          (1) The Court of Appeal that applied French domestic law in respect of the arrest of a vessel flying the flag of a State not party to the 1952 Arrest Convention has breached the provisions of the Convention.

**Greece**

Court of Appeal of Nafplion 196/1972. (Commercial Law Review, Vol. 2(1972) p.548)

In a case where salvage services were rendered to a vessel under Turkish flag, the salvor applied for the arrest of the vessel as security.

Held by the Court of Appeal of Nafplion, that:

(1) A vessel flying the flag of a non Contracting State may be arrested within the jurisdiction of any Contracting State in respect of a claim arising out of salvage which is a maritime claim under the 1952 Brussels Convention on Arrest of Ship.\*

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**Italy**

Tribunal of Trieste 14 August 2008, Ramazan Gunduz v. UN RO-RO Isletmeleri A.S. and Cemsan Gemi Söküm Demir Çelik San. Ve Ticaret Ltd. – m/v “Und Adriyatik” (unreported)

          On 6 February 2008 a serious fire developed on board the m/v “Und Adriyatik”, of Turkish flag, owned by UN RO-RO Isletmeleri A.S., during the voyage from Turkey to Trieste. The driver of one of the vehicles carried on board was severely injured when the fire developed and on arrival of the vessel to Trieste, where she was towed by the salvors, applied to the Tribunal of Trieste for the arrest of the vessel that had meanwhile been sold by her owners to another Turkish company, Cemsan Gemi Söküm Demir Çelik San. Ve Ticaret Ltd. The previous Owners and the Buyers applied for the release of the vessel from arrest on the ground that the vessel should be considered a wreck and that no maritime lien could be enforced on a wreck since the 1926 Convention on Maritime Liens and Mortgages was not applicable on wrecks and for a declaration that Italian Courts had no jurisdiction on the merits of the claim since art. 7 of the 1952 Arrest Convention was not applicable to vessels flying the flag of a non contracting State parties and the claimant’s claims was not secured by a maritime lien since the 1926 Brussels Convention was not applicable.

          [1]    Article 7 of the 1952 Arrest Convention is not applicable in respect of a vessel flying the flag of a non contracting State

Court of Appeal> of Genoa 12 February 2000, Morsviazsputnik Satellite Communications and Navigational Electronics Aids v. Azov Shipping Co. - The “Yuriy Dvuzhilny” (2001 Dir. Mar. 1113)

          Morsviazsputnik Satellite Communications and Navigational Electronic Aids applied to the Court of Appeal of Genoa for the arrest of the m/v Yuriy Dvuzhilny of Ukrainian flag as security for a claim against Azov Shipping Company. One of the issues submitted to the Court was whether the Arrest Convention applied to a ship flying the flag of a non-Contracting State and in respect of what claims the arrest was permissible.

          Held, by the Court of Appeal of Genoa, that:

          (1) The 1952 Arrest Convention applies in respect of the arrest of a vessel flying the flag of a non contracting State, the arrest of which is permitted also in respect of claims other than those enumerated in Art. 1(1) for which arrest is permitted by Italian law.

Tribunal of Genoa 28 October 2005, ABG v Onur Denizcilik Ve Petrol Ürünleri Sanay Ve Ticaret A.S. - The "Hande Ozgul" (not yet reported)

By decree dated 3 October 2005 the Tribunal of Genoa authorised the arrest of the MV "Hande Ozgul" as security for a claim of ABG against the owner of the ship in respect of the supply of fuel oil. The ship was then arrested in Ravenna and the owners after having paid into court the amount of the claim applied to the Tribunal of Genoa, competent for the merits of the claim or the release of the ship. The claimant stated that competent for the release of the ship was the Tribunal of Ravenna, where the ship had been arrested. The Owners appealed against the order of arrest on the ground, inter alia, that the Convention on Arrest of Ships, 1952 was not applicable in respect of a ship flying the flag of a non-contracting State

Held, by the Tribunal of Genoa, that:

[1] The Convention on Arrest of Ships 1952 is applicable, pursuant to its article 8(2), to a ship flying the flag of a non-contracting State.

**Spain**

Juzgado de lo Mercantil of Malaga, 25 February 2005

An application was made to the Court for the arrest of a Swedish ship as security for a claim in respect of commissions.

Held, by the Juzgado de lo Mercantil of Malaga, that:

[1] The 1952 Arrest Convention is applicable to vessels flying the flag of foreign States parties to the Convention and to vessels flying the flag of foreign States that are not parties to the Convention in respect of which, however, arrest is also permitted under the provisions of Spanish national law; the nationality or domicile of the claimant is irrelevant except where the arrest of a Spanish vessel is applied for by a claimant domiciled in Spain.

**Scope of application (Art. 8.3)**

**Italy**

Tribunal of Naples 8 July 2003, Rocco Giuseppe & Figli S.p.A. v. Blue Ocean Navigation Ltd. - The "Alexos N. Agondimos" (2004 Dir. Mar. 1500)

On 30 June 2003 Rocco Giuseppe & Figli S.p.A. applied to the Tribunal of Naples for the arrest of the m/v Alexos N. Agondimos as security for a claim against the owners of that vessel in respect of which they had already obtained a final judgment.

Held, by the Tribunal of Naples, that:

[1] When in respect of a maritime claim a final judgment has been issued, pursuant to article 1(2) of the 1952 Arrest Convention an arrest of the vessel in respect of which the claim has arisen is not permissible any more.

Tribunal of Bari 19 July 2002, Morfimare S.r.l. v. Poseidon Lines Shipping and Bellatrix Shipping Co. - The "Sea Serenade", Dir. Mar., 2004, 1424

Morfimare S.r.l. of Bari applied to the Tribunal of Bari for the arrest of the Sea Serenade, of Cypriot flag, owned by Bellatrix Shipping Co. as security for its claim in respect of fees earned as general agent of Poseidon Lines Shipping on the ground that the 1952 Arrest Convention applied, pursuant to its article 8(2), even if Cyprus was not a contracting State and that the two companies were controlled by the same persons.

Held, by the Tribunal of Bari, that:

[1] The 1952 Arrest Convention applies also to ships flying the flag of a non-Contracting State.

Court of Appeal of Genoa 12 February 2000, Morsviazsputnik Satellite Communications and Navigational Electronics Aids v. Azov Shipping Co. - The “Yuriy Dvuzhilny” (2001 Dir. Mar. 1113)

          Morsviazsputnik Satellite Communications and Navigational Electronic Aids applied to the Court of Appeal of Genoa for the arrest of the m/v Yuriy Dvuzhilny of Ukrainian flag as security for a claim against Azov Shipping Company. One of the issues submitted to the Court was whether the Arrest Convention applied to a ship flying the flag of a non-Contracting State and in respect of what claims the arrest was permissible.

          Held, by the Court of Appeal of Genoa, that:

          (1) The 1952 Arrest Convention applies in respect of the arrest requested by a foreign company that does not have its principal place of business in Italy since Italy has not exercised the option granted by Art. 8(3).

**Scope of application (Art. 8.4)**

**Italy**

Tribunal of La Spezia 10 February 2004, Tarros S.p.A. Compagnia di Navigazione v. Cantieri Navali San Marco S.r.l. - The "Vento di Maestrale" (not yet reported)

After the completion of maintenance works of the main engine of the m/v Vento di Maestrale, owned by Tarros S.p.A. Compagnia di Navigazione, by Cantieri San Marco S.r.l., the engine suffered twice of malfunctions. The second occurrence caused the complete stop of the engine and the master had to request the services of a salvage tug. Tarros refused to pay the balance of the cost of the maintenance works, which was lower than the cost of the repairs and of the salvage reward.
Cantieri San Marco applied to the Tribunal of La Spezia for the arrest of the Vento di Maestrale and the arrest was granted but the ship could not be arrested since at that time she was sailing.
Tarros provided security, whereupon the arrest was lifted. Then Tarros requested the release of the security on the ground that the conditions for an arrest had not materialized.

Held, by the Tribunal of La Spezia, that:

[1] The 1952 Arrest Convention is not applicable, pursuant to its article 8(4), in case the person applying for the arrest has its principal place of business in the country where the arrest is applied for and the ship flies the flag of that country.

**Ships that may be arrested (art. 4.3)**

**France**

Cour d'Appel of Rouen 22 May 2003, Wilmington Trust and Others v. La Trinitaine and Others - m/v "Skaufast" (2003 DMF 737)

Bominflot arrested the m/v Skaufast, owned by Skaufast, as security for a claim against the bareboat charterers of the vessel, Alandia Tanker, for the supply of bunker and Skaufast paid into Court the amount of the claim in order to obtain the release of the vessel from arrest. Bominflot then commenced proceedings against Alandia Tanker in the High Court of Justice in London and after having obtained a judgment that found Alandia Tanker liable to pay the cost of the bunker, applied to the Tribunal de Commerce of Le Havre, by which the arrest had be granted, in order to obtain the release in its favour of the funds paid by Skaufast for the release of the vessel. The judgment of the Tribunal de Commerce allowing the release of the funds was appealed by Skaufast.

Held, by the Cour d'Appel of Rouen, that:

[1] Neither article 3(4) nor any other provision of the 1952 Arrest Convention has the effect of making the owner of a ship that has been arrested as security for a claim against the bareboat charterer personally liable for the settlement of such claim.

Cour de Cassation 4 October 2005, Coopérative de Lamanage des Ports de Marseille v. Cruise Invest One - The "Renaissance One" (2006 DMF 47)

On 11 January 2002 the Coopérative de Lamanage des Ports de Marseille et du Golfe de Fos applied for and obtained from the President of the Tribunal de Commerce of Marseilles an order of arrest, pursuant to the 1952 Arrest Convention, of the ship Renaissance One.
On 5 February 2002 Cruise Invest One, a company registered in the Marshall Islands, requested the release of the ship from arrest on the ground that it had purchased the ship on 5 December 2001 following its judicial sale ordered by the Supreme Court of Gibraltar.

Held, by the Cour de Cassation, that:

[1] Pursuant to articles 3 and 9 of the 1952 Arrest Convention the claimant may not arrest a ship that, prior to the arrest, had been purchased by a third party in a judicial sale, pursuant to which the maritime lien securing the claim of the claimant was extinguished.

**Spain**

Juzgado de lo Mercantil of Malaga, 25 February 2005

An application was made to the Court for the arrest of a Swedish ship as security for a claim in respect of commissions.

Held, by the Juzgado de lo Mercantil of Malaga, that:

[1] The arrest of a vessel is permitted, under the 1952 Arrest Convention, when the claim is related to the operation of the vessel in respect of which the claim has arisen, or of another vessel in the same ownership, but the claimant must provide sufficient security to cover the damages that the arrest may entail.

### ****Ship not owned by the person liable (Art.3(4))****

**Italy**

Tribunal of Naples 28 March 2006, Sete Yacht Management S.A. v. Lady HayaLtd - The "Lady Haya" (not yet reported)

(The summary of facts may be found in the section "Claims in respect of which a ship may be arrested")

Held, by the Tribunal of Naples, that:

[1] Pursuant to the second sentence of article 3(4) of the 1952 Arrest Convention a ship may be arrested in any case in which any person other than the owner of that ship is liable in respect of a maritime claim relating to that ship.[2] Articles 2 and 9 of the 1952 Arrest Convention do not entail any limit to the application of article 3(4) but rather indicate that only the rights created by the Convention may be recognised by Contracting States.

### ****Sister ships (Art. 3.2)****

**France**

Cour de Cassation (Ch. Com.) 23 November 1999, Planmarine A.G. v. Capt. Stanislav Severov, Maddock Trading and Republic of Ukraine – The “Karelija” ([2000] DMF 719)

          Planmarine A.G. arrested in the port of Noumea the m/v Karelija, owned by Maddock Trading as security for a claim against Black Sea Shipping-BLASCO on the ground that Maddock Trading was fully owned by BLASCO. The vessel was ordered released by the Cour d’Appel of Noumea and Planmarine appealed to the Cour de Cassation.

          Held, by the Cour de Cassation, that:

          (1) Art. 3(2) of the 1952 Arrest Convention, pursuant to which ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons, does not apply where the same person (the Republic of Ukraine) holds the whole of the capital of the companies owning the ships.The contention that a State (the Republic of Ukraine) has formed the company owning the ship the arrest of which is demanded as security for such claim in order to limit the security of the claimants does not prove the fictitious character of such companies if they are financially independent.

**South Africa**

Bulkship Union S.A. v. Qannas Shipping Company and Dry Bulk Maritime Ltd. – The “Cape Courage”, The Supreme Court of Appeal, 1 June 2009 (339/08 [2009] ZASCA 74)\*

          The m/v Cape Courage was arrested on 15 June 2006 in terms of s 5(3) of the Admiralty Jurisdiction Regulation Act 105 of 1983 as amended, for the purpose of providing security for claims brought by the Bulkship Union SA, against Dry Bulk Maritime Limited, in arbitration proceedings in London. The claims which were the subject of the arbitration were in respect of alleged breaches of a memorandum of agreement for the sale and purchase of another vessel, m/v Pearl of Fujairah, and for misrepresentations relating to the condition of that vessel.

          The m/v Cape Courage was arrested as an “associated ship” pursuant to s 3(6) and (7) of the Act on the basis that Dry Bulk Maritime owned the m/v Pearl of Fujairah when the claims arose, and the same person or persons controlled Dry Bulk Maritime time when the claims arose and Qannas Shipping Company Limited (the owner of the m/v Cape Courage at the time of the arrest). Security was established by the provision of a guarantee and the m/v Cape Courage was released but she remained deemed to be under arrest in terms of s 3(10) of the Act. On 23 August 2006 Dry Bulk Maritime and Qannas Shipping Company Limited brought an application for an order setting aside the deemed arrest and the return of the guarantee. By order of the Durban High Court, on 4 March 2008 the deemed arrest of the the m/v Cape Courage was set aside.

          Bulkship Union SA appealed against that judgment.

          Held, by the Supreme Court of Appeal, that:

[1]      The phrase “when the maritime claim arose” in section 3(7)(iii) of the Admiralty Jurisdiction Regulation Act 105 of 1983, which was taken over from article 3(1) of the Arrest Convention of 1952, indicates the time of the breach of the contract and, as regards claims in tort, the time when the tort was committed even if actual damage was only suffered thereafter.

(\*) By the courtesy of Mr. Michael Marks Cohen, Nicoletti Hornig & Sweeney (mcohen@nicolettihornig.com)