

REPLY BY THE SENEGALESE MARITIME LAW ASSOCIATION TO THE CMI  
QUESTIONNAIRE OF 27 MAY 2015 ON THE STUDY RELATING TO LIABILITY  
FOR WRONGFUL ARREST

**I. International Conventions**

On 23 April 1958, France has ratified the 1952 Arrest Convention on behalf of Senegal which was then its overseas colony.

All requests for ship arrest in Senegal are based on this Convention.

Further the main provisions of the Convention are also reflected in the national Merchant Marine Code.

Senegal is not Party to the 1999 Arrest Convention.

Senegal is Party to neither the 1926 nor the 1993 Convention on Maritime Liens & Mortgages.

However, the national Merchant Marine Code has heavily borrowed its provisions on maritime liens & mortgages from the 1993 Convention.

**II. Questions relating to wrongful arrest**

1. The only case where a claimant is required to provide security to obtain or maintain an arrest is (i) when the vessel in question flies Senegalese flag and (ii) if the claimant is a foreign national. The Code of civil procedure provides that the claimant of foreign nationality may be required to provide a security called caution ad *judicatum solvi*.

2. Under Senegalese law, the arrestor would be liable if the other party can submit evidence of (i) or (ii) or (iii). The mere fact the claim has been rejected does not trigger the arrestor's liability.

3.

(a) The arrestor would be held liable if the opponent party could establish the proof that the arrest has caused him a damage the consequences of which require reparation.

(b) Yes, any of these grounds could form the basis for a claim for liability of the arrestor.

4. YES, the arrestor could be held liable if the affected party provides evidence of any damage he has suffered due to negligence, bad faith, or gross negligence of arrestor.

5.

(a) YES, the arrestor could be held liable in damages provided that enough evidence is submitted to, the court showing the cause & effect relationship between the grossly exaggerated amount and the alleged damage.

(b) Yes, these grounds could also be the basis for a claim for damage .

6.

(a) No matter whether the arrestor is solvent or not, the test here is based on the fact that the arrest has caused a damage to the legitimate affected party.

(b) yes, negligence, bad faith and/ or gross negligence could support a claim for wrongful arrest.

7. NO

8. NO

9. The Senegalese Court would apply the *lex fori*, i.e. its own substantive law.