



## STUDY RELATING TO LIABILITY FOR WRONGFUL ARREST

*Reply by Israel MLA*

### I. INTERNATIONAL CONVENTIONS

(a) Please advise which, if any, of the following Conventions your jurisdiction us a party to and has given effect to in its legislation:

- (i) Arrest Convention 1952
- (ii) Arrest Convention 1999
- (iii) Maritime Liens and Mortgages Convention 1926
- (iv) Maritime Liens and Mortgages Convention 1993

**Israel:** The State of Israel is not a party to any of the above mentioned Conventions.

(b) If none of the above is made part of your national law, or in any event, what are the grounds on which a vessel can be arrested in your country?

**Israel:** A warrant of arrest to a vessel can be granted only by the Maritime Court, which is situated at the Haifa District Court in its capacity as Admiralty Court. The Maritime Court of Israel draws its authority from the Maritime Court Law 1952, in which article 2 states that the Maritime Court's authority shall be drawn from the authority of the Supreme Court in its capacity as Admiralty Court.

The Supreme Court in its capacity as Admiralty Court's authority is drawn from the British Colonial Court of Admiralty Act 1890 (Israel being a British Colony until May 1948). Article 2(2) of this act stipulates that the authority of Admiralty Courts in the British Colonies shall be the same as the authority of the High Court of England.

After the State of Israel was formed, in May 1948, the Israeli Supreme Court (Hon Judge Zusmann in C.R. 422/49) decided that Israel cannot "enjoy" any amendments to the British law after 1890. This basically means that the Israeli Maritime Court's authority today, including that of arrest of vessels, is derived from the British Admiralty Court Act 1861, Vice Admiralty Rules 1883 and the Israel Maritime Court Law 1952.

### II. QUESTIONS RELATING TO WRONGFUL ARREST

1. To what extent is a claimant required under your national law to provide security in order to obtain an order for arrest or, subsequently, to maintain an arrest?

**Israel:** A claimant is usually not required to provide with any security to obtain such an order.

2. Under your national law, if the claim for which a vessel has been arrested has subsequently been rejected by the court hearing the case on its merits, would the arrestor be liable in damages by reason of:



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(a) The mere rejection of the claim?

**Israel:** No.

(b) Or would proof be required about the arrestor's:

(i) awareness/knowledge that his claim had no foundation, or

**Israel:** No.

(ii) negligence in bringing such a claim, or

**Israel:** Possibly.

(iii) bad faith or gross negligence or, otherwise, malicious bringing of such a claim?

**Israel:** Yes.

**Israel:** The British Admiralty Court Act 1861, Vice Admiralty Rules 1883 and the Israel Maritime Court Law 1952, which apply in Israel, do not contain provisions for damages in the event of wrongful arrest. Naschitz, Brandes, Amir & Co. were involved many years ago in a claim (M.C. 15/67 **M/V Enotria through its registered owners v. Fireman's Fund Insurance Company**) but this claim was rejected by the Admiralty Court on the grounds that the arrest was in the nature of an "Act of State" and the damage which was caused to the passengers of the passenger ship, which was arrested shortly before sailing due to a minor cargo damage, was caused by the decision of the Court and not by the arrestor. We doubt whether this would have been the result if this claim would have been brought today, as at present the principle of good faith dominates the entire Civil Law in Israel, so that if bad faith or *mala fides* can be shown to have motivated the claim, the claimant would reasonably be condemned to pay damages.

3. Under your national law, if a vessel is arrested pursuant to a decision by a court of first instance, but the arrest is subsequently repealed by an appeal court (without deciding on the merits of the claim):

(a) Would the arrestor be liable in damages for the consequences of the arrest and, if Yes, in what circumstances?

**Israel:** Not usually, although an arrestor might have to provide a guarantee for future damages.

(b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrestor be required?

**Israel:** Yes, but very seldom.

4. If the arrest claim was not against the owner of the ship and could not be enforced against that ship under the law of the state where the vessel was arrested:

(a) Would, under your national law, the arrestor be liable in damages?

**Israel:** Not usually.

(b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrestor be required?

**Israel:** Yes, on the basis of bad faith.



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5. If the amount of the arrest claim was grossly exaggerated:
- (a) Would, under your national law, the arrestor be liable in damages to the owner of the ship for any of the following losses caused by reason of the grossly exaggerated claim:
- (i) for the extra cost of the security required,
- (ii) for losses incurred by the owner of the ship by reason of the delay caused by the greater time required to procure the security, or
- (iii) for losses incurred as a result of the owner being unable to provide the excessive security?
- Israel:** Theoretically, yes.
- (b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrestor be required?
- Israel:** Yes.
6. If the person allegedly liable for the arrest claim is largely solvent and it is possible to enforce judgments or arbitration awards against him, e.g. he owns many ships (not under separate corporate veils), which call regularly at ports where enforcement can take place:
- (a) Can the arrest be considered wrongful as a result, so as to attribute liability to him under your national law?
- Israel:** Yes.
- (b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrestor be required?
- Israel:** Yes.
7. Are there other circumstances in which, under your national law, an arrestor can be held liable in damages for the arrest of a ship?
- Israel:** In rare cases, an arrestor might have to provide a guarantee for damages.
8. Does your national law provide for a penalty or other sanction to be levied upon the arrestor, separate and distinct from any damages, if he is held liable for the arrest?
- Israel:** No.
9. Would a court in your country, seized with a claim for damages for the arrest of a ship in another country, apply the law of the country of arrest (*lex forum arresti*) in that regard, or would it apply its own substantive national law (*lex fori*), or would it apply the substantive law applicable pursuant to the general international private law rules of its country?
- Israel:** *lex fori* would apply.

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