



## QUESTIONNAIRE

### STUDY RELATING TO LIABILITY FOR WRONGFUL ARREST

#### *Introduction*

The CMI Executive Council has decided to set up an International Working Group to study certain areas of the law concerning the arrest of ships with particular emphasis on the law in relation to wrongful arrest.

The possibility and extent of greater uniformity in this area of maritime law may be worthy of consideration.

The issues which the study intends to investigate are covered by the following questions:

#### I. INTERNATIONAL CONVENTIONS:

(a) Please advise which, if any, of the following Conventions your jurisdiction is 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,

**Answer: Norway is a party to (i), and it has become effective under Norwegian law. Norway is also a party to (ii) and (iv), but they have not become effective. Norway is not a party to (iii).**

(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?

**Answer: Arrest of a vessel can only be allowed in respect of "maritime claims", see the Norwegian Maritime Code sect. 92. The expression «maritime claim» is defined in sect. 92 letters a to q (as per the definition of "maritime claim" in the Arrest Convention 1952):**

- "a) damage caused by a ship in a collision or otherwise,**
- b) loss of life or personal injury caused by a ship or occurring in connection with the operation of a ship,**
- c) salvage and the removal of wrecks,**
- d) a charterparty or other agreement for the use or hire of a ship,**
- e) a charterparty or other agreement for the carriage of goods by ship,**
- f) loss of or damage to goods, including luggage, carried by ship,**
- g) general average,**

- h) bottomry,
- i) towage,
- j) pilotage,
- k) goods or materials delivered anywhere to a ship for use in its operation and maintenance,
- l) the building, repair or fitting out of a ship and costs and fees payable for docking,
- m) wages and other remuneration due to the master and other employees on board in respect of their service on the ship,
- n) a master's disbursements, including disbursements by shippers, charterers or agents on behalf of the ship or its owner,
- o) a dispute as to the ownership of a ship,
- p) a dispute between co-owners of a ship concerning its ownership, possession or use or the revenues from it,
- q) any mortgage on or security in a ship, except for a maritime lien."

According to sect. 93, arrest can only be affected against the ship to which the claim relates or to sister ships if the owner is personally liable for the claim.

The debtor of the claim has to be the owner of the ship that is to be arrested, see the Norwegian Maritime Code sect. 93 (4) and the Norwegian Enforcement of Claims Act sect. 11-4 and 7.1

According to the Norwegian Dispute Act sect. 33-2 (1), it is a requirement for arrest that the debtor's conduct gives grounds to fear that enforcement of the claim would otherwise be evaded or considerably impeded or would have to take place outside the realm. However, according to sect. 33-2 (3), certain ships and can be arrested without a special basis for security if the petitioner holds a lien in the ship that has fallen due for payment.

## 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?

Answer: According to the Norwegian Maritime Code sect. 97 (1), the claimant has to provide security for port fees for two weeks. The court may decide that such security is not necessary when the government is the claimant. It is not necessary to provide security. Staff onboard a ship does not have to provide security for claims that are secured with a lien.

The court can also decide that the claimant has to provide security for potential liability claims, see the Norwegian Maritime Code sect. 33-3.

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:
  - (a) The mere rejection of the claim?
  - (b) Or would proof be required about the arrestor's:
    - (i) awareness/knowledge that his claim had no foundation, or
    - (ii) negligence in bringing such a claim, or
    - (iii) bad faith or gross negligence or, otherwise, malicious bringing of such

a claim?

Answer: According to the Norwegian Dispute Act sect. 32-11, the claimant has a strict liability for the defendants economic loss if the he does not have a maritime claim. Such strict liability is only imposed if the claimant does not have a maritime claim at all.

However, the arrestor would also be liable in damages if it was negligent to bring such a claim, see the Norwegian Dispute Act sect. 32-11.

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

Answer: See under 2.

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?

Answer: In such a case, the arrest would normally not be granted under Norwegian law, see the Maritime Code section 93 (4). Arrest of sister ships is granted if owned by the same debtor, see Maritime Code section 93 (1). However, if such arrest had been granted nevertheless, and the arrestor had mislead the court that the claim was against the owners and enforceable, he could potentially be held liable under regular Norwegian tort law. This would depend much on the particular circumstances of the case.

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

Answer: Yes, negligence would be required, and the burden of proof would rest on the owner.

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

Answer: Yes, potentially

- (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,

**Answer: Yes, potentially, but this would be difficult for owner to prove, or**

- (iii) for losses incurred as a result of the owner being unable to provide the excessive security?

**Answer: Yes, but probably only in rare cases if the owner can prove that the losses were directly caused by the demand for security being grossly exaggerated.**

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

**Answer: Yes, negligence would be required, and the burden of proof would rest on the owner**

6. If the person allegedly liable for the arrest claim is largely solvent and it is possible to enforce judgements 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?

**Answer: No. However in such cases an arrest would not be granted as the arrestor will fail to substantiate the grounds for arrest according to the Norwegian Dispute Act section 33-2 (1).**

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

**Answer: See (a) above.**

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?

**Answer: Not if the arrest is granted and lawful.**

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?

**Answer: Nothing that specifically addresses wrongful arrests. In rare cases the arrestor may potentially be subject to penalty under the Criminal Code.**

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?

**Answer: The *lex fori* will always be applied for procedural issues. The *lex***

forum arrestii will normally apply for the substantive issue of damages according to Norwegian international private law, as the law of the place where the damages occur.