



Asociación Peruana de Derecho Marítimo

afiliada al comité maritime international

Lima, 4th Abril 2016

Mr.

Giorgio Berlingieri

Chairman International Working Group on the Liability for Wrongful Arrest

CMI

Italy

Reference: Questionnaire on the Liability for Wrongful Arrest

My dear friend,

First accept my apologies for my late reply.....your messages went to my junk box until my secretary alert me of your latest message.

Hereunder our response to the questionnaire:

I.- INTERNATIONAL CONVENTIONS

a) Peru is not party to the International Convention Relating to the Arrest of Seagoing ships 1952, nor the International Convention on the Arrest of Ships of 1999. Peru applies Decision 487 of the Andean Community of December 2000, which regulates the arrest of ships and maritime liens and ship's mortgages. The Decision 487 is based partly on the text of the Arrest Convention of 1999. There is a Decision 532, which amended the definition of ship comprising any naval construction apt to navigate not taking into account the class or type.

b) Grounds to arrest a vessel: A Vessels can be arrested whenever there is a 'maritime credit' on the ship. The concept of 'maritime credit' is specifically dealt with in article 1 of Decision 487, and includes any credit related to any damage or loss arising out of the exploitation of the ship, death or injury arising out of the exploitation of the ship, salvage, damage to the environment, any contract for the carriage of goods by the ship or any mortgage over the ship, inter alia.

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II. Questioning relating to wrongful arrest:

Counter-security.

a) Article 50 of Decision 487 indicates that the person requesting the arrest could be requested by the Judge to provide security of the type and amount that the Judge decides, in order to provide the arrest order, or once this has been provided, to keep it in force.

Judges therefore are entitled to request countersecurity, in any of the forms allowed by the Peruvian Civil Procedure Code, this includes Bank Guarantee. Judges are allowed to accept sworn affidavit/bail, but not very frequently used and only seen for Peruvian companies.

Types of claims for which a ship arrest can be made. Vessels can be arrested whenever there is a 'maritime credit' on the ship. The concept of 'maritime credit' is specifically dealt with in article 1 of Decision 487, and includes any credit related to any damage or loss arising out of the exploitation of the ship, death or injury arising out of the exploitation of the ship, salvage, damage to the environment, any contract for the carriage of goods by the ship or any mortgage over the ship, inter alia.

b) Jurisdiction: Arrest petitions shall be filed before a First Instance Civil Judge where the ship is located, or where the shipowner or ship's agent is domiciled.

First Instance Civil judges are the only ones with competence to issue embargo order and they should notify the National Port Authority not to grant permission to sail from an specific port or all Peruvian ports.

The National Port Authority is not entitled to issue arrest orders: their role is not to grant the permission to sail in compliance with the judge order.

c) Procedure for defending an arrest:

- Setting aside the arrest

The arrest order can be contested in the form of an Opposition before the same judge who issued the order.

If the judge confirms the arrest order, then it can be appealed before the Civil Superior Court.

- Providing security.

Security can be provided to release the vessel. The amount of the security is established by the judge (most likely in the same claimed amount).

The form of the security can be agreed between the claimant and the shipowner. If there is no agreement, then the form of security is decided by the judge who ordered the arrest.

Cash deposits in a Court's account, Bank's or Insurance companies letter of guarantee are accepted by Judges

A P&I Club's Letter of Undertaking may be accepted if agreed with the claimant.

Vessel's release can be obtained either by challenging the arrest order or by providing security (e.g. Bank Guarantee or P&I Club letter of Undertaking); or paying the debt.

If payment is made or security accepted, the release may take 2 to 4 working days as there are coordination to be made with the Judge and the National Port Authority. Claimant can be ordered to pay the damages caused by the arrest and counter-security can be made effective.

The Decision 487 is applicable in the Andean Community Countries: Peru, Colombia, Venezuela and Bolivia,

Just to confirm that in case a Peruvian Judge must apply Peruvian Law in case an arrest has to be executed in Peru, that is to say Lex Fori.

Hope this information would be useful for your Working Group but let me know if you would need any additional clarification.

Yours faithfully,



Katerina Vuskovic
President
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