

LIABILITY FOR WRONGFUL ARREST OF SHIPS

SUMMARY OF ANSWERS OF 38 COUNTRIES TO THE MAIN
CMI QUESTIONS

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Applicable Conventions

The 1952 Arrest Convention

- **17 out of the 38** countries apply it

(Belgium, Croatia, Finland, France, Germany, Greece, Hong Kong, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Romania, Russia, Senegal, Ukraine, and United Kingdom)

Applicable Conventions

The 1999 Arrest Convention

2 out of the 38 countries apply it

(Spain and Norway)

Conventions and national law

Domestic Legislation Additional to Conventions

10 out of the 38 countries

(Brazil, Croatia, Finland, France, Germany, Greece, Poland, Romania, Russia, Spain and Turkey)

Domestic Legislation

17 out of the 38 countries apply just their domestic legislation

(Australia, Canada, Chile, Colombia, DPRK, Ecuador, Japan, Israel, Korea, Malta, Mexico, New Zealand, Nigeria, Panama, Peru, South Africa, and US)

Counter security

11 out of the 38 countries require the arrestor to provide counter security

(Croatia, Finland, Japan, Korea, Mexico, Netherlands, Romania, Russia, Senegal, Spain and Turkey)

No security requirement

13 out of the 38 countries do not require security

(Australia, Brazil, Canada, Ecuador, France, Greece, Hong Kong, Ireland, Israel, New Zealand, Panama, United Kingdom and US)

Discretion of the court

In 13 out of the 38 countries, counter security depends on the discretion of the Court.

(Belgium, Chile, Colombia, Germany, Italy, Malta, Nigeria, Norway, Peru, Poland, Portugal, South Africa, and Ukraine).

Test for liability for wrongful arrest

Strict liability

9 out of the 38 countries apply strict liability

(Croatia, Finland, Germany, Mexico, Netherlands, Norway, Poland, Russia, Spain)

Test for liability for wrongful arrest

Proof of negligence

10 out of the 38 countries generally apply tort rules

(Belgium, Brazil, Chile, DPRK, Japan, Korea, Panama, Portugal, Senegal, Ukraine)

Test for liability for wrongful arrest

Proof of gross negligence, bad faith, or malice

14 out of the 38 countries apply this test

(Canada, Chile (negligence whether gross or not!), Colombia, HK, Ireland, Israel, Korea, Malta, NZ, Panama, Senegal, South Africa, UK, US).

Other phrases used for arrest to be wrongful

- 'Illicit or unjustified'
(Ecuador and Turkey)
- 'unreasonable or without good cause'
(Australia and Nigeria)
- 'without reasonable and probable cause'
(South Africa)
- 'frivolous or vexatious' (Malta)

Other phrases used – but what is the legal test?

- Arrest is an ‘Abuse of rights’ (Romania and France)
- Arrest is ‘without ordinary prudence’ (Italy)
- Arrest amounts to a ‘wrongful behavior’ (Ukraine)
- Arrest is ‘wrongful or unjustified’ (DPRK - North Korea)

Conclusion

What does this brief resume tell us?

Could the laws be unified?

Past experience in obtaining consensus