

October 2015

The Conservatory Arrest of Ships – A Study of Emirati Maritime Code

A Hassan M

Professor Commercial and Maritime Law - Faculty of Law- UAEU, a.hassan@uaeu.ac.ae

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Recommended Citation

M, A Hassan (2015) "The Conservatory Arrest of Ships – A Study of Emirati Maritime Code," *Journal Sharia and Law*: Vol. 2015 : No. 64 , Article 10.

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The Conservatory Arrest of Ships – A Study of Emirati Maritime Code

Cover Page Footnote

Dr. Abdulla Hassan Associate Professor Commercial and Maritime Law - Faculty of Law- UAEU
A.Hassan@uaeu.ac.ae

**The Conservatory Arrest of
Ships – A Study of Emirati
Maritime Code-**

Dr. Abdulla Hassan

Associate Professor Commercial and
Maritime Law - Faculty of Law- UAEU

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I. ABSTRACT

Since a ship is movable and at the same time a very high-priced asset, a ship owner in debt may be very tempted to move it outside a creditor's reach. Fortunately, for the creditor there exist a legal mechanism that hinders this, it is referred to as “arrest of ship”. The purpose of this paper is to outline the current legal position in UAE regarding conservative ships arrest and to discuss the specific problems faced within this topic.

II. INTRODUCTION

Arrest of ships is an issue of considerable importance to the international shipping and trading community. While the interests of owners of ships and cargo lie in ensuring that legitimate trading is not interrupted by the unjustified arrest of a ship, the interest of claimants lies in being able to obtain security for their claims.

The need to arrest comes from the fact that vessels are highly mobile and can travel with relative ease from country to country, and in and out of the jurisdiction of their courts. Perils of the sea may affect or diminish the value of the ship and ownership of the vessel may change easily without prior notice. In addition to these, flags of convenience mean that a ship can easily change identity between ports. All this indicates that trying to enforce a claim without having the opportunity to take the ship into custody, for all practical purposes, is impossible. In many cases, after judgment on the merits is obtained, the execution will prove impossible by reason that the res (the ship) against which the judgment is given could not be located or have sailed away to an unknown jurisdiction. A solution to this is to obtain some sort of security from the debtor before or during the legal proceedings and arrest of the ship is the most usual way to obtain such security.¹

¹ Arrest of ships is a pre-trial remedy unique to maritime law and has become a vitally important remedy for the maritime claimant. In *The Cella*, (1888) 13 P.D. 82, Fry L.J. stated at p. 88: “The arrest enables the court to keep the property as security to answer the judgment, and unaffected by

Various jurisdictions have developed different systems and rules governing the right to arrest a ship. In common law countries whose maritime law is primarily derived from the admiralty law of England, the arrest of ships in an action *in rem* is the basic procedure on which maritime creditors rely for the security of their claim.² A vessel could only be arrested in the limited number of cases where claimants are entitled to enforce their claims in a proceeding *in rem* and in addition, only the ship against which the claim is asserted can be arrested.³

In civil law countries, the action *in rem* does not exist. In such countries, an *in personam*⁴ action can be combined with the *saisie conservatoire* (conservatory attachment) to effect arrest. This permits any property of the defendant (including ships) to be seized and detained under judicial authority pending judgment. The subsequent judgment if favourable to the plaintiff may be enforced against the attached property or security replacing it.⁵

Arrest of ships has long been the subject of international debate. International bodies, such as the United Nations Conference on Trade and Development (UNCTAD), the International maritime Organization (IMO) and the *Comite Maritime Internationale* (CMI) have spent so much time and effort

chance events which may happen between the arrest and the judgment". In the same vein, Lopes L.J. observed at p. 89: "...that from the moment of the arrest, the ship is held by the court to abide the result in the action, and the rights of the parties must be determined by the state of things at the time of the institution of the action, and cannot be altered by anything which takes place subsequently"

² Tetley, W., "Arrest, Attachment and Related Maritime Law Procedures" (1999) 73 *Tulane Law Review*, 1895–1985 at 1898.

The fundamental legal nature of an action *in rem* is that it is a proceedings against the *res*. Thus, when a ship represents such a *res*, as is frequently the case, the action *in rem* is an action against the ship itself. In *The City of Mecca* (1881) 5 P.D. 106, Jessel M.R. described at p. 112 the process *in rem* as follows:

"You may in England and in most countries proceed against the ship. The writ may be issued against the owner, and the owner may never appear and you get your judgment against the ship without a single person being named from the beginning to end. This is an action *in rem*, and it is perfectly well understood that the judgment is against the ship."

³ Francesco Berlingier, *Berlingieri on Arrest of Ships: A commentary on the 1952 and 1999 Arrest Conventions*, 3th ed. 2000 at p.4 [hereinafter cited as Berlingieri].

⁴ The distinction between an action *in rem* and an action *in personam* is a matter of substance and not mere form (see Thomas, D.R., *Maritime Liens*, 1980 at p.39). The two forms of action are totally different in character. They cannot be interchanged because the parties involved are quite different. For example, where ship X is sued in an action *in rem*, its owners A and B Ltd. may decide not to appear as parties to the action at all. If A and B Ltd. is sued *in personam*, restrictions placed upon its person are not construed as proceedings against the ship. Furthermore, a release entered in favour of A and B Ltd. will not necessarily extend to releasing the ship from proceedings *in rem*. In *The Rena* (1979) Q.B. 377, Brandon J. stated at p. 405 the position of the law in the following words:

"An action *in rem* may be filed alongside an action *in personam*. For so long and to the extent that a judgment *in personam* remains unsatisfied, it is open to the claimant to bring an alternative action *in rem*, and the reason for this is because an action *in rem* is of a different character altogether from a cause of action *in personam*."

⁵ Tetley, *supra* note 2 at 1898

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trying to simplify and standardize the procedures for ship arrest. Such attempts at uniformity have produced two conventions on arrest of ships, namely, the *International Convention For the Unification of Certain Rules Relating to the Arrest of Seagoing Ships, 1952*⁶ (hereinafter 1952 Arrest Convention) that came into force on 24 February 1956 and *International Convention on Arrest of Ships of 1999*⁷ (hereinafter 1992 Arrest Convention) that came into force on 14 September 2011.

United Arab Emirates (hereinafter UAE) is not a party to the 1952 and the 1999 Arrest Conventions. However, the Emirati Maritime Code 1981 (hereinafter **EMC 1981**) contains section on arrest of ships (i.e. Section 3 of Chapter II) which is clearly based to a substantial degree on the 1952 Arrest Convention.

The **EMC 1981** deals with the arrest under two headings- firstly pre-trial arrest, which is described in the **EMC 1981** as "conservatory arrest",⁸ and secondly post-judgment arrest and judicial sale, described as "executory arrest".⁹

Ship arrest as a "conservatory measure" is a security measure which is requested before the claim is heard on the merits. It is the temporary immobilization of a ship by a claimant (presumed creditor) following a court order to that effect until judgment on the merits is obtained. While a ship arrest as an "executory measure" is the seizer of the ship in satisfaction of a judgment already rendered by the court.

This paper will only be limited to a discussion of arrest on ship as a "conservatory measure" within the letter and spirit of the 1952 Arrest Convention which provides in its Art. 1 (2) that "'Arrest" means the detention of a ship by judicial process to secure a maritime claim, but does not include

⁶ The aim of the 1952 Arrest Convention was to harmonise, by the introduction of uniform rules the arrest procedures which prevailed among the common and civil law countries. Before the coming into force of the 1952 Arrest Convention, a vessel could be arrested in the civil law countries for any claim, whether or not of a maritime nature, but in common law countries, a vessel could only be arrested in the limited cases where claimants are entitled to enforce their claim in a proceeding *in rem* (Thomas, D.R., *Maritime Liens*, 1980 at p.45).

⁷ The purpose of the 1999 Arrest Convention was to bring the practice of arrest of ships up to date and in line with the changes that have taken place in maritime operations since the 1952 Convention. According to the preamble, the convention was borne out of the:

“...necessity for a legal instrument establishing international uniformity in the field of arrest of ships which takes account of recent developments in related fields.”

In large, the 1999 Arrest Convention covers the same subjects as the 1952 Arrest Convention. The most practical change in the 1999 Arrest Convention is that it increases the number of maritime claims subject to arrest in relation to the 1952 Convention, and in a way that certain maritime claims that were previously considered claims for purely business relationship, for which creditors had not been able to enjoy the protection relating to arrest of the ship, are deemed to be maritime claims. Changes were also made to the right of re-arrest and multiple arrest of the ship.

⁸ **EMC 1981**, Arts. 115-122.

⁹ **EMC 1981**, Arts. 123-134.

the seizure of a ship in execution or satisfaction of a judgment".¹⁰ Therefore an "executory arrest" or arrest connected to other UAE Codes will not be dealt with.

The purpose of this paper is to outline the current legal position in UAE regarding conservatory arrest of ships and to discuss the specific problems faced within this topic. The international efforts to regulate this area are also examined (but briefly and when **appropriate**) by using the applicable international instruments available on this area, such as the 1952 and 1999 Arrest Conventions.

The study will cover the following issues:

- 1- **Ground of arrest**
- 2- **Ships subject to arrest**
- 3- **Jurisdiction for arrest**
- 4- **Release from arrest**
- 5- **Provision of counter-security**

1. GROUND OF ARREST

1.1. EMC 1981

The **EMC 1981** mainly follows the line as set in 1952 Arrest Convention for this particular subject. It provides that a ship may be arrested by an order of the appropriate court but only in respect of securing "maritime debts".¹¹ The **EMC 1981** explicitly lists in Art. 115/2 which debts are considered maritime debts. It emphasizes that maritime debts are considered those ones arising out of one of the following causes:

- (a) damage caused by a ship either in collision or otherwise;¹²

¹⁰ See also 1999 Arrest Convention, Art. 1(2):

"Arrest means any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument".

The purpose of the definition is to exclude from the scope of the convention all enforcement proceedings, irrespective as to whether the seizure of a ship is effected on the basis of a judgment or any other order issued by the court (see Berlingieri, *supra* note 3 at p. 63)

¹¹ Conservatory arrest of the ship is solely related to maritime debts/claims and can only be pronounced by the court. This does not affect any rights or powers vested in the UAE Government, that is any public authority, or in any dock or harbor authority, under any international convention or under any domestic laws or regulations, to detain or otherwise prevent from sailing any ship within their jurisdiction.

¹² A number of different types of damage may follow from a collision, e.g. environmental damage from leaking oil (carried as cargo or as fuel for the ship's engines). It is submitted that even without a collision such environmental damage- e.g. caused by tank washing being pumped over board- comes within the letter (a).

The words "or otherwise" cover the situation where damage is caused by one ship to another without physical contact such as by backwash of the propeller or by creating a situation of danger through a negligent or hazardous manoeuvre causing damage (see Berlingieri, *supra* note 3 at p. 79)

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- (b) loss of lives or personal injury caused by a ship or occurring in connection with the operation of a ship;¹³
- (c) assistance and salvage;¹⁴
- (d) contracts relating to the use or hire of a ship whether by charter party or otherwise;¹⁵
- (e) contracts relating to the carriage of goods whether by a charterparty, bill of lading or otherwise;¹⁶
- (f) loss of or damage to goods or baggage carried in a ship;
- (g) general average;
- (h) towage or pilotage;¹⁷
- (i) supply of goods or materials necessary for the operation or maintenance of a ship wherever such supply is made.¹⁸
- (j) construction, repair or equipping of a ship and dry-docking charges;¹⁹

¹³ The first sentence may cover events occurring on board when the ship is the actual instrument by which the damage was done, e.g. a block falling and killing a passenger. The second part of the sentence widens the scope of this particular maritime debt to situations where the ship is not the instrument of the occurrence, such as when a passenger is injured falling on a slippery deck, or when a passenger falls overboard due to the lack of an adequate rail (see Berlingieri, *supra* note 3 at p. 80).

¹⁴ According to this provision, the claimants could be both salvors for salvage reward and owners of the salvaged vessel on account of damage or delay due to the negligence of salvors (see Berlingieri, *supra* note 3 at p. 80).

¹⁵ The scope of this provision is closely connected with carriage of goods and loss or damage to goods, including baggage. The terms "use" or "hire" are contextually synonymous and entail placing a thing at the disposal of the person. In shipping "hire" is more frequent; however, "use" is applied in some cases, such as salvage agreements or carriage of goods without reward or management agreements for use of the ship. The other term "carriage" means providing a service (see Berlingieri, *supra* note 3 at p. 82).

¹⁶ The words "contract relating to the carriage of goods...whether by charterparty or otherwise" seem to cover all contracts of affreightment with the exclusion of the bareboat charter, viz. time charterparties, trip charters, single and consecutive voyage charterparties, slot charters, tonnage agreements and contracts of carriage under bills of lading or non-negotiable documents, such as waybills, usually in the liner trade (see Berlingieri, *supra* note at p. 83)

¹⁷ Any type of towage, whether deep-sea or port towage, is covered as well as claims such as damage done by the tug to the tow or vice versa, breach of contract, etc. It must be noted that sometimes reference is made to the nature of the event or to the type of service, as in this instance, and at other times to the type of contract under which the claim may arise. In view of the fact that here reference is made to the type of service, it may be doubted whether claims in respect of a towage contract which has not been executed are covered by this subparagraph (see Berlingieri, *supra* note 3 at p. 87).

¹⁸ The word "supply" does not necessarily refer to a sale, but may also include supply by way of hire and, therefore, may include the lease of containers, provided the containers are intended for a particular ship and not for use by the shipowner on any ship owned or operated by him. The word "wherever" seems to indicate that the supply can also be made at the home port, so there is no requirement here that the supplies should be made for the preservation of the vessel or the continuation of the voyage, as in Art. 84(e) of the **EMC 1981**. "Operation" is a much wider concept than "continuation of the voyage": thus bunker supplies under a contract made by the owner come within this concept. In turn, "maintenance" is wider than "preservation", for maintenance includes work in excess of that strictly required for preservation. Even so, insurance premiums, which an insurance broker is legally liable to pay to the underwriter, whether or not his client has first paid him, are not costs of "operation or maintenance" (see Berlingieri, *supra* note 3 at pp. 89-91).

¹⁹ The first group of claims relates to works, as opposed to supplies, and clearly aims at covering all kinds of work done on a ship, from her construction, to any work done thereafter. Here there is no express limitation on the purpose, although repairs are done when something is damaged or not operational, and

- (k) master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;²⁰
- (l) wages of the master, officers and crew, and other persons working on board the ship under a contract of maritime employment;²¹
- (m) dispute as to ownership of the ship;
- (n) disputes between co-ownership of a ship as to the ownership, possession employment or earnings of that ship;²² and
- (o) maritime mortgages

It is generally acknowledged, that under **EMC 1981** and the 1952 Convention, an ordinary allegation of having a maritime debt/claim is sufficient²³ and there is no need for establishing personal liability or that the ship is likely to leave UAE waters if it not arrested.²⁴ The requirements of Art. 252 of the Code of Civil Procedure²⁵ are not applicable in case of an application for a court order to arrest a vessel.

thus the purpose is to ensure the maintenance of the ship. The word "equipment" is used in the sense of work done on board with a view to providing the ship with the equipment required for her operation, rather than in the sense of providing the ship with supplies (see Berlingieri, *supra* note 3 at p. 91).

²⁰ According to the wording of the sub-paragraph disbursements made on behalf of the bareboat charterer or voyage charterer do not qualify as maritime claims unless they are made in respect of the ship and not on behalf of the owner. Agency fees and fees of the manager of a ship are not disbursements and are not considered as maritime claims (see Berlingieri, *supra* note 3 at p. 93). The final words of this subparagraph, although specifically referring to the disbursements made by shippers, charterers and agents, may also be utilised to establish the type of master's disbursements covered herein. Therefore, the disbursements made on behalf of a person other than the owner of the ship, such as the bareboat charterer or the time or voyage charterer, do not qualify as maritime claims unless made on behalf of the ship.

²¹ The problem that may arise in this connection is whether other emoluments and sums payable by the employer, such as taxes, social security and pension contributions, indemnities due to seamen in the event of the total loss of the vessel, etc., may be deemed to be included under this heading. The problem was examined in England in a number of cases, and it was held that the wages concept included emoluments such as victualling allowances and bonuses, both the employer's and the employee's national insurance contributions, social benefit contributions and insurance and pensions contributions (see Berlingieri, *supra* note 3 at p. 92).

²² The disputes covered by this subparagraph must be between co-owners and not between partners or shareholders of a company. If, therefore, the operation of a ship is entrusted by the co-owners to a company formed between them for that purpose the dispute is not between co-owners (see Berlingieri, *supra* note 3 at p. 94).

²³ 'Claim' is not used in the sense of an established right to obtain certain sum of money or title to or possession of a ship. It follows that when considering an application for the arrest of a ship, the court should not determine the merits of the claim or establish whether or not the claim exists, but should merely make a preliminary investigation in order to find out whether the contention that certain claim exists is reasonable (see Berlingieri, *supra* note at p.95)

²⁴ This concept was changed in the 1999 Arrest Convention which requires the shipowner to be personally liable for the maritime claim and to be also the owner at the time of the arrest. It means that according to Art. 3(4), the right of arrest can be exercised only on the ship owned by the personal debtor, unless the claim is secured by a maritime lien (see Berlingieri, *supra* note 3 at p.213).

²⁵ Art. 252 of the Civil Procedures Code the main provision granting conservatory attachment rights and it sets the test that must be fulfilled for the application for and granting of the attachment:

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1.2. 1952 Arrest Convention

In Art. 1(1) of the 1952 Convention, a list of maritime claims for which the right of arrest may be granted is enumerated. It starts with the phrase “Maritime claim” means a claim arising out of one or more of the following: and it goes further to list the categories of maritime claims in sub-paragraphs (a) – (q).²⁶ This list of claims in effect represents a closed list of maritime claims

Whilst previously a ship could be arrested as a security for any claim, whether maritime or not, under the convention, the arrest of a ship for a non-maritime claim has become impossible. Art. 2 provides:

“A ship flying the flag of one of the contracting states may be arrested in the jurisdiction of any contracting state in respect of any maritime claim, but in respect of no other claim...”

1.3. 1999 Arrest Convention

The 1999 Convention is drafted in a much more precise way. The main change is that the concept of personal liability of the shipowner whose vessel is arrested is introduced, leaving only a very limited category of claims (including

‘Without prejudice to the provisions of any other law, the creditor may request that the court hearing the case or the judge of the summary proceedings, as the case may be, to place the interlocutory garnishment against the movables of the debtor in the following cases:

1. Any case in which he fears the loss of the guarantee of his right, as for example:

- a) If the debtor has no permanent residence in the state.
- b) If the creditor fears that the debtor will flee, or will smuggle out or conceal his properties.
- c) If the securities of the debt are under threat of loss.

2. The lease holder who is engaged in a suit against the sub-lessee over movables, fruits and crops in the leasehold as a surety for the right of lien due to him by the law may invoke interlocutory attachment. He may do so also if

²⁶ Art. 1(1) of the 1952 Arrest Convention provides that:

"Maritime Claim" means a claim arising out of one or more of the following:

- (a) damage caused by any ship either in collision or otherwise;
- (b) loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship;
- (c) salvage;
- (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;
- (e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
- (f) loss of or damage to goods including baggage carried in any ship;
- (g) general average;
- (h) bottomry;
- (i) towage;
- (j) pilotage;
- (k) goods or materials wherever supplied to a ship for her operation or maintenance;
- (l) construction, repair or equipment of any ship or dock charges and dues;
- (m) wages of masters, officers, or crew;
- (n) Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of a ship or her owner;
- (o) disputes as to the title to or ownership of any ship;
- (p) disputes between co-owners of any ship as to the ownership, possession, employment, or earnings of that ship;
- (q) the mortgage or hypothecation of any ship".

maritime liens), where an arrest is possible, even if the shipowner is not personally liable.

The list of maritime claims is considerably wider than that in both the 1952 Arrest Convention and **EMC 1981**, so that, even though the list is effectively closed, it will significantly increase the number of arrestable claims. Thus, Art. 1 (a) refers to claims for "loss or damage caused by the operation of the ship". This is a very wide provision indeed and would include economic loss claims. Art. 1 (b) includes loss of life claims, whether on land or sea, provided that they arise in direct connection with the operation of the ship. Art. 1 (c) goes beyond mere "salvage" claims as in the Arrest Convention 1952, by including claims arising from any salvage agreement (e.g., the LOF) and for special compensation (e.g., under Art. 14 of the 1989 Salvage Convention).

Art. 1 (d) for the first time specifically includes damage to the environment as a ground for arrest. Previously, it was necessary to fit in environmental claims under other heads, although, in the face of an obvious need, courts do not seem to have had any difficulty in doing so. The definition of damage to the environment includes elements of definitions from the Law of the Sea (LOS) Convention 1982 and the International Convention on Civil Liability for Oil Pollution Damage 1992 (CLC). This would have been a rather restrictive definition, but, as has already been noted, claims "of a similar nature" are also included. This will allow for any future developments in environmental claims. The definition includes "threat" of environmental damage and this may be particularly significant. Art. 1(e) includes for the first time wreck removal and cargo recovery as arrestable maritime claims. It might be thought that arrest by definition, **is** unlikely in respect of such claims. but it should be noted that sister ship arrest might be relevant.

Some items in the Arrest Convention 1952 list have been slightly extended. Thus, Art. 1 (g) now covers agreements relating to the carriage of passengers and this may be highly relevant given the massive increase in the cruise ship sector. Art. 1 (I) extends goods and materials claims to cover "provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance". This extension will be of particular benefit to ship managers and others who supply services. Art. 1 (n), dealing with shipyard claims, is extended to refer to "construction, reconstruction, repair, converting or equipping of the ship". Similarly, Art. 1 (o) deals with port dues rather more extensively by referring to "port, canal, dock, harbour and other waterway dues and charges". The wages item. Art. 1 (o) has also been realistically extended to cover "costs of repatriation and social insurance contributions payable on their behalf". Art. 1 (p) on disbursements has been simplified.

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Completely new items are found in Art. 1 (q) (insurance premiums, including mutual insurance calls), Art. 1(r) (commissions, brokerages or agency fees) and Art. 1(v) (disputes arising out of ship sales). The only major deletion from the Art. 1 list is "bottomry".

One of the most controversial issues concerned Art. 1(u). It has already been noted that it now simply refers to "a mortgage or a 'hypothèque' or a charge of the same nature on the ship" and there is no mention of registered or registrable, as appeared in earlier drafts. The effect is that there can now be arrest of a ship in respect of a variety of forms of debt obligations, including the many forms of charge used in the container leasing industry, where loans are made to shipping companies to buy containers, but charges are taken over ships in the fleet.

1.4. Maritime Debts, Liens and Mortgages

The phrase "maritime debts" is used in the **EMC 1981** as a general label describing all the debts in relation to which a ship may be arrested under the **EMC 1981**. The Code begins with a list of "maritime debts", it is important of course not to confuse "maritime debts" with "maritime liens". Maritime liens constitute one category of maritime debts; debts arising from ship mortgage are also maritime debts that may be brought against a ship. So also are other debts that are enumerated in Art. 115 of the **EMC 1981**. Some maritime debts are maritime liens while some are not. Whether specific types of maritime debts constitute maritime liens which follow the ship and rank before ship mortgages or merely statutory rights which do not follow the ship and rank after the mortgage, depend on other Arts. in the **EMC 1981** governing maritime liens²⁷ and mortgages.²⁸ The various types or classes of maritime debts will now be considered.

1.4.1. Types or Classes of Maritime Debts

1.4.1.1. Maritime Liens.

Because of the large amount of money involved, the maritime field has created a lien that gives the claimant some legal rights over the ship in question without a decision from a legal court or by registration, the so called maritime lien. Consequently, a maritime lien can come into force without anyone asking for it and it does not require any registration. Therefore a maritime lien could arise even if none of the parties knows about it.²⁹ It is therefore important to

²⁷ **EMC 1981**, Art. 84.

²⁸ **EMC 1981**, Art. 105.

²⁹ The classic definition of maritime liens was given by Sir John Jervis in *The Bold Buccleuch* [1852] 7 Moo PC 267 :

'Having its origin in the rule of the civil law, a maritime lien is well defined by Lord Tenterden, to mean a claim or privilege upon a thing to be carried into effect by legal process.... This claim or privilege travels with the thing into whosever's possession it may come. It is inchoate from the moment the claim or privilege attaches, and, when

differentiate between maritime liens and maritime claims. As a general rule, the term “maritime claim” could be described as a claim which gives a claimant a right to arrest a ship while the term “maritime lien” arises in respect of a more limited group of claims. This limited group of claim is distinctive by the fact that they arise at the time of the contract or tort (e.g. tort liens as in ship collision). They do not require registration or notice³⁰ and do not expire when the ship is transferred or sold conventionally. They terminate by judicial sale.³¹

In accordance with Art. 84 of the EMC 1981, the term “maritime liens” applies only to a select group of maritime debts:

- "a) legal and judicial costs in maintaining and selling the ship; port, pilotage, etc., charges of various kinds; compensation for damage to port facilities; wreck removal costs, etc.;
- b) master and crews' wages;
- c) claims for salvager rewards and the ship's share in general average.
- d) damages for collisions, bodily injury to passengers and crew and loss or damage to goods;
- e) debts arising from contact made by the master within the scope of his authority for the supply of necessities to the ship whilst the ship was away from her home port;

carried into effect by legal process by a proceeding *in rem*, relates back to the period when it first attached.’

³⁰ See EMC 1981, Art. 85:

(Rough translation)

"(Maritime liens) shall not be subject to any formality or any condition with respect to substantiation except in the circumstances where the law specifies that special measures shall be taken or certain procedures for substantiation shall be undertaken.

³¹ See EMC 1981, Art. 92:

(Rough translation)

"(Maritime liens) over a vessel should terminate:

(a) When the vessel is sold legally.

(b) When the vessel is sold voluntarily if the purchaser before payment thereof has carried out the following procedures:

(1) Entry of the purchase contract in the Shipping Register.

(2) Publication on the notice board at the registration office of the vessel, such publication containing

a statement of the occurrence of the sale and price together with the name and domicile of the purchaser.

(3) Publication of a summary of the purchase order stating therein the price and the name and domicile of the purchaser. Such publication shall be made twice at an interval of eight days in a local daily newspaper with a wide circulation.

(Maritime liens) shall be transferred to the price if, within thirty days of the date of the last publication in the press, the privileged creditors notify both the former and new owners of their objection to payment of the price. However, the priority of creditors shall remain over the price unless it has been paid or distributed".

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- f) breakdown and damage claims giving rise to a right to compensation in favour of charterers of the ship; and
- g) claims for premiums for hull and machinery insurances for the previous voyage of the ship or the previous year of the policy".

1.4.1.2. Ship Mortgage.

A ship mortgage is a form of security for a loan created by deed³² that confers interest in a ship and is discharged upon repayment of the loan. Unlike a traditional mortgage, it does not involve a transfer or conveyance of the ship to the mortgagee but simply a security created by or under a contract (deed) that confers an interest in the property subject to it, it is annulled upon the performance of some agreed obligation, usually the payment of the debt³³

1.4.1.3. Other Maritime Debts.

General maritime debts such as ship construction, disbursements made by shippers, charterers or agents on behalf of a ship do not give rise to maritime liens. They are simply rights which are granted by statute to arrest a ship for a maritime debt. They do not travel with the ship (i.e. they are expunged if the vessel is sold in a conventional sale before the action against the ship is commenced on the debt concerned), and they rank after, rather than before, the ship mortgage in the distribution of the proceeds from the ship's judicial sale.

1.4.1.4. Priorities or Ranking.

It will frequently be the case that the fund in the custody of the court after a judicial sale will be the subject of several liens and debts. When the fund is sufficient to satisfy all, the plurality of their existence will offer no difficulty. However, when the fund is insufficient, so that the various liens and debts stand in rivalry, then the relative priority between the various liens and debts will assume a crucial importance since the success or failure of a particular debt will depend on its degree of elevation or post-ponement.

The established ranking in the **EMC 1981** of priorities is as follows:

- (i) Maritime liens enumerated in Art. 84/2 (a,b,c,d,e,)
- (iii) Registered Mortgages (earlier date mortgage with priority)
- (iii) Maritime Liens enumerated in Art. 84/2 (f and g)
- (iv) Statutory debts such debts in respect of ship construction, disbursements made by shippers, charterers or agents on behalf of a ship (ranks *pari passu*).

³² See **EMC 1981**, Art. 99:

"The mortgaging of a ship shall be carried out by official document, otherwise it shall be null and void."

³³ See **EMC 1981**, Art. 106.

2. SHIPS SUBJECT TO ARREST

2.1. Notion of the Ship

The definition of the ship can be found in Art. 11 of the **EMC 1981** which defines the vessel as “(Rough translation) any structure which is normally working or prepared to be working in maritime navigation irrespective of its power, tonnage or the purposes for its navigation.”³⁴

The term “ship” as referred to in Art. 11 shall also include all the appurtenances of the ship necessary for the operation thereof. The inclusion of ship’s appurtenances (e.g. ship's apparel) is for the purpose of dealing with collision cases, any contact between the ships’ apparel or between one ship and another ship’s apparel shall be deemed as the collision between the ships.

Structures which are not a vessel according to Art. 11 of the **EMC 1981**, are presumed to be moveable property and can only be arrested according to the rules and procedure governing the conservatory arrest for ordinary moveable property.

The appurtenances can not be attached separately on the basis of a maritime debt. Hereon, the rules and procedures governing the conservatory arrest of ordinary moveable property are applicable.

2.2. EMC 1981 and 1952 Arrest Convention

Art. 116/1 of the **EMC 1981** provides that:

‘Any person seeking to recover the debts referred to in the preceding Art. May arrest the vessel to which the debt relates, or any other vessel owned by the debtor if such other vessel was owned by him at the time the debt arose even if the vessel is ready to sail.’

And Art. 3 (1) of the 1952 Arrest Convention provides that:

(1) Subject to the provisions of para. (4) of this Art. and of Art. 10, a claimant may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the

³⁴ In the Arrest Conventions, reference to seagoing ships is made in the title, but nowhere else. nor is there a definition of ship.

The English Merchant Shipping Act (MSA) 1995 provides that “ship includes every description of vessel used in navigation.” In **R v Goodwin** [2006] 1 Lloyd's Rep 432 (CA), the English Court of Appeal said that:

“A ‘vessel used in navigation’was confined to a vessel which was used to make ordered progression over the water from one place to another, although it was not a necessary requirement that it should be used in transporting persons or property by water to an intended destination. Craft that were simply used for having fun on the water without the object of going anywhere, such as jet skis, were not "used in navigation" and were accordingly excluded from the definition of ship or vessel”.

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maritime claim arose, the owner of the particular ship, even though the ship arrested be ready to sail; but no ship, other than the particular ship in respect of which the claim arose, may be arrested in respect of any of the maritime claims enumerated in Art. 1, (o), (p) or (q).

The implication of the Arts. in the first limb is that the debt must relate to a particular ship. Debts against a shipowner, for example, that relates to the maintenance or operation of his ships, but are not related to a particular ship, cannot be secured by means of arrest of one of the ships owned by him.³⁵ The ship's responsibility for its maritime debt is not affected by changes in ownership of the ship. Even if the ship was obtained in good faith and the ship owner was not aware of the debt that **was associated** along with the ship.

In the second limb of the Arts., the right of arrest is extended to other ships in the same ownership.³⁶ This is the so-called 'sister ship' provision.³⁷

However, pursuant to Art. 116/2 of the **EMC 1981** and Art. 3(1) of the 1952 Arrest Convention no ship, other than the particular ship in respect of which the debt arose, may be arrested in respect of any of the maritime debts enumerated in **EMC 1981** Art. 115/2 (o, p, and q,) and 1952 Arrest of Convention, Art. 3(1) (o, p, and q,) namely, disputes as to title to ownership of any ship, disputes between co-owners of any ship as to the ownership, possession and employment of that ship and, the mortgage and hypothecation of any ship). The reason being that these maritime debts have a relationship

³⁵ Berlingieri, *supra* note 3 at 97. Lord Diplock in *The Eschersheim*, (1976) 2 Lloyd's Rep. 1 at p.7. said:

"It is clear that to be liable to arrest a ship must not only be the property of the defendant to the action but must also be identifiable as the ship in connection with which the claim made in the action arose (or a sister ship of that ship). The nature of the "connection" between the ship and the claim must have been intended to be the same as is expressed in the corresponding phrase in the convention "the particular ship in respect of which the maritime claim arose". One must, therefore, look at the description of each of the maritime claims included in the list in order to identify the particular ship in respect of which a claim of that description could arise."

³⁶ Where A is the owner of ship No. 1 and personally liable for a claim connected with this ship. Here it is permissible to arrest other ships which A owned at the time the claim arose, but not ships acquired thereafter. It is irrelevant what kind of ship No. 2 is (type, size, building year, value, etc. are immaterial); the decisive factor is ownership. At the time of petitioning for arrest it may happen that B has become the owner of ship No. 2; it follows that ship No. 2 now is immune against an arrest request from A's creditor. The rules on maritime lien do not help, as a maritime lien attaches to ship NO. 1 only.

³⁷ In *The Eschersheim*, (1976) 1 W.L.R. 430, 436, Lord Diplock noted that the sister-ship arrest provision in the 1952 Convention:

"...represented a compromise between the wide powers of arrest in some civil law countries...and the limited powers of arrest in England and other common law countries..."

Sister-ship arrest relates to a situation where legal action is taken against any vessel in a fleet of vessels belonging to the same owner as the vessel that actually caused the loss or damage. This is so because the responsible vessel is out of reach of legal action and the claimant may take action against the sister-ship.

with the ship to some extent different from that of all other maritime claims. They are debts of proprietary interests in a ship or a claim for possession of the ship.

Under **EMC 1981**, it must be established that the ships were owned by the same debtor at the time the debt arose in order to arrest a sister ship. For the purpose of determining whether a ship is owned by the debtor the relevant test is that provided for in the 1952 Arrest Convention, namely whether all the shares in the ship are owned by the same debtor.³⁸ The implication of this principle is that the sister ship rule does not apply where the other ship is not fully owned by the same person or persons owning the ship in respect of which the maritime debt arose. Thus, whenever the shares in the ownership of one vessel are not all in the same hands as owned the other vessel, the sister ship cannot be arrested. Where several ships are owned by the same person or entity, beneficially though not legally (as in the case of tramp operators where each ship is registered as owned by a separate company), it is unlikely that the courts in the UAE would pierce the corporate veil to examine the true ownership of the ships.³⁹

EMC 1981, Art. 117⁴⁰ and 1952, Art. 3(4)⁴¹ both provide that in cases where a claim lies against a defendant who is the demise charterer of a ship, the ship may be arrested only in respect of a claim against the ship concerned. A demise chartered ship may not be arrested in respect of claim arising from other ships owned or operated by the demise charterer or in respect of claims arising from non-maritime activities of the demise charterers. The provision of this paragraph

³⁸ Art. 3 of the 1952 Arrest Convention provides that:

“Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons”

³⁹ C. Chakradaran , Arrest of Ships in the United Arab Emirates, 1986, at p.15

⁴⁰ **EMC 1981**, Article 117:

(Rough translation)

"(1) if a ship is chartered to a charterer and he is granted navigational control over it ('a bare board charter'), and is alone responsible for a marine debt relating to the vessel, the creditor may confiscate such vessel or any other vessel owned by the said charterer. However, it is not permitted to confiscate as a result of such debt any other vessel of the owner or charterer.

(2) The provisions of the above subparagraph shall be applied in all cases where a person other than the shipowner is liable for a marine debt".

⁴¹ 1952 Arrest Convention, Art. 3(4)

When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim. The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

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shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime debt relating to the ship. However, except in the exceptional cases where the claim has give rise to a maritime lien over the ship, it is not permissible to arrest a time chartered or voyage chartered ship in respect of a claim against the time or voyage charterer.

As a conclusion, the claimant, under **EMC 1981** and 1952 Arrest Convention, can obtain arrest for the same claim for only one ship, either in the ship that the claim is attached to or in a sister ship to this ship. The sister ship must be owned by the person at the time when the claim arose also owned the ship that the claim is attached to. Does the ownership of the sister ship transfer to someone else, the “liability” in respect of the maritime debt ceases.

2.2. 1999 Arrest Convention

In the 1999 Arrest Convention, personal liability is the main criterion to indicate whether a ship can be arrested or not. The 1952 Arrest Convention’s concept of “particular ship” has been modified. The 1999 convention provides that arrest is permissible of any ship in respect of which a maritime claim is asserted if the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected.¹⁶⁸

Arrest is also permitted of any ship in respect of which a maritime claim is asserted if the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien that is granted or arises under the law of the state where the arrest is applied for.¹⁶⁹ Arrest is also permitted when the claim is based upon a mortgage or charge of the same nature and where a claim relates to the ownership or possession of the ship.¹⁷⁰

The 1999 Arrest convention like its predecessor provides for the “sister ship” arrest, but in doing so, cured the controversy generated by the rather ambiguous provision of the last sentence of Art. 3 (4) of the 1952 Arrest Convention. The phrase “a person other than the registered owner of a ship”

in the 1952 Convention generated a lot of controversy in interpretation but was remedied by the 1999 Convention by identifying the persons as the demise charterer, time charterer or voyage charterer.¹⁷¹ It went further to provide that the sister ship rule does not apply to claims in respect of ownership or possession of the ship.¹⁷²

2.3. Priority of Sister-Ship Claim.

The sister ship arrest does not mean that the maritime lien against the offending ship becomes enforceable against the sister ship. For example, a claimant who may have a maritime lien for collision damage against the offending ship, does not obtain an equal maritime lien against the sister ship.

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- (a) Collisions at sea or other incidents of navigation;
- (b) Services connected with assistance, salvage and general average;
- (c) Repairs effected, supplies made and other contracts entered into in connection with the vessel;
- (d) Cargo owned by the State or public agencies and carried on the vessel

2.4.2. 1952 and 1999 Arrest Conventions

During the *Comite Maritime International*, 1951 Naples Conference, a proposal was made to include in the 1952 Arrest Convention a rule excluding from the scope of the Convention State-owned ships used on Government non-commercial service. Some delegations, however, strongly opposed thereto. The reason for such opposition was that at that time the 1926 Brussels Convention on Immunity of State-owned Ships had not yet been ratified by several maritime countries, including the United Kingdom. Subsequently, the principle that private maritime law conventions should not apply to State-owned ships used on Government non-commercial service was generally accepted, while all proposals for a wider exemption in respect of State-owned ships were rejected.⁴⁴

A provision on immunity of State-owned ships has thus been inserted in Art. 8(2) of the 1999 Convention as follows:

This Convention shall not apply to any warship, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.

3. JURISDICTION FOR ARREST

3.1. EMC 1981

It is permissible to arrest a ship in the UAE to obtain security for a claim irrespective of whether that claim will be heard in the UAE or abroad and irrespective of whether the claim will be determined by court proceedings or by

"With the exception of the preceding Article, the State or any of its public organisations or bodies which own, use or manage a vessel shall not plead the principle of a vessel's immunity, if the parties concerned make claims to the competent courts in the State in any of the following cases:

- (a) Claims arising from collisions at sea and other navigational accidents.
- (b) Claims arising from aid and rescue operations and from joint losses at sea.
- (c) Claims arising from repairs, supplies and other special contracts concluded for matters concerning a vessel.
- (d) All claims connected with cargos owned by the State or any of its public organisations or bodies and which are transported on the said vessel".

⁴⁴ Berlingieri, *supra* note 3 at pp. 296-297.

arbitration.⁴⁵ An arrest may be effected even if the proceedings to determine the merits of the claim have already been commenced either in the UAE or abroad.

However, the mere arrest of the ship in UAE waters is not in itself a ground of jurisdiction under the **EMC 1981**. Art. 122 of the **EMC 1981**⁴⁶ provides that the courts shall have jurisdiction to determine the case upon its merits, even where the ship does not have UAE nationality, in five specified circumstances which are, however, not exhaustive but which are in addition to any other grounds of jurisdiction specified in the Code of Civil Procedure. The five specified grounds of jurisdiction are:

- (a) if the claimant have his habitual residence or principal place of business in the UAE;
- (b) if the "maritime debt" arose in the UAE;
- (c) if the "maritime debt" arose on the voyage during which the arrest was made;
- (d) if the "maritime debt" arose out of a collision or salvage over which the Court has jurisdiction; and
- (e) if the debt is upon a mortgage or hypothecation of the ship arrested.

Art. 325 of the **EMC 1981** sets out further special provisions relating to the jurisdiction of a court in the event of a collision and provides that a claim arising out of a marine collision may be raised before any of the following courts.⁴⁷ The Art. provides that

- 1- A claimant may raise a claim arising out of marine collision before any of the following courts:

⁴⁵ If there is an arbitration agreement in force between the parties, then arbitration proceedings must be commenced in order to maintain the arrest. In the case of arbitration, it is sufficient to nominate an arbitrator, or take any other appropriate step which has the effect of commencing the proceedings.

⁴⁶ See Art. 7(1) of the 1952 Arrest Convention which provides that:

"The Courts of the country in which the arrest was made shall have jurisdiction to determine the case upon its merits if the domestic law of the country in which the arrest is made gives jurisdiction to such Courts, or in any of the following cases namely:

- (a) if the claimant has his habitual residence or principal place of business in the country in which the arrest was made;
- (b) if the claim arose in the country in which the arrest was made;
- (c) if the claim concerns the voyage of the ship during which the arrest was made;
- (d) if the claim arose out of a collision or in circumstances covered by Art. 13 of the International Convention for the unification of certain rules of law with respect to collisions between vessels, signed at Brussels on 23rd September 1910;
- (e) if the claim is for salvage;
- (f) if the claim is upon a mortgage or hypothecation of the ship arrested.

⁴⁷ C. Chakradaran, *supra* note 39 at p. 13.

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(a) The court within the jurisdiction of which the defendant has his residence;

(b) The court within the jurisdiction of which the defendant's ship is registered;

(c) The court within the jurisdiction of which the arrest of the defendant's vessel which has caused the damage, or of another vessel owned by the same person took place, if the arrest of such vessel is permissible: or the court within the jurisdiction of which the arrest could have been made and where the defendant has provided a guarantee or other security;

(d) The court within the jurisdiction of which the collision took place, if it took place within a port, or harbour or other areas of internal waters.

2- If the claimant elects to institute proceedings in one of the Courts mentioned in the foregoing sub-sections, it shall not be permissible for him to raise a new claim based upon the same facts before any other court unless he abandons the original claim.

3- Litigants may agree to submit the claim to a court other than that set out above or agree to refer the matter to arbitration.

4- The defendant may present his counterclaims arising from the collision to the court which considered the original claim.

5- If there are several claimants and one of them has made a claim to any of the courts, the others may make a claim out of the same collision before that court against the same defendant.

3.2. 1999 Arrest convention

The 1999 Convention makes it clear that the court where an arrest has been effected or security provided to obtain release has jurisdiction to determine the case on its merits unless there is a valid jurisdiction or arbitration agreement.⁴⁸ However, that court may refuse to exercise jurisdiction if such refusal is permitted by the law of that state, and a court of another state accepts jurisdiction.⁴⁹ It also provided that where the court of the state where an arrest has been effected does not have jurisdiction or has refused to exercise jurisdiction, the court may order a period of time within which the claimant

⁴⁸ Art. 7 (1).

⁴⁹ Art. 7 (2).

has to bring proceedings before a competent court or arbitration tribunal, or the ship arrested or security provided will be released. Art. 7 (5) and (6) deals with the issue of recognition of foreign judgment. Paragraph (1) of this article establishes the rule whereby the local court can act as a jurisdiction for the arrest procedure and then as bailiff in holding the security while the merits of the case are heard elsewhere. It allows the substantive aspects of a claim to be heard in a jurisdiction other than where the arrest has been effected, while recognising the judgment of the jurisdiction where the merits were heard.

4. RELEASE FROM ARREST

4.1. EMC 1981

The primary purpose of arresting a vessel is to obtain security before judgment for the claim. While the ship is under arrest, it cannot be moved. This means that the owner will not be able to fulfil the contracts which enable him to make profits, but at the same time he will continue to incur expenses. To break out of this vicious circle the owner can put up bail for the ship.

Under **EMC 1981** the arrested ship will be permitted to sail upon sufficient bail⁵⁰ or other security⁵¹ being furnished, except when a ship has been arrested in respect of claims arising out of any dispute as to ownership or possession of the ship and of any dispute between co-owners of the ship as to the employment or earnings of the ship. Because in such cases the ship is not arrested for the purpose of obtaining security, but for the purpose of preventing its future employment by the persons in possession of the ship. In those two cases the court may determine the use of the ship in question by limiting the right of the person that has the possession of the ship.⁵² These limitations could for

⁵⁰ Bail is a payment into court or in the manner directed by the court of a sum of money.

⁵¹ Security may consist of a guarantee by a bank or other guarantor such as a P & I Club.

⁵² Art. 118/2 of the **EMC 1981** provides that:

(Rough translation)

"The competent civil court shall order that the confiscation be lifted if a security or other surety is offered which is sufficient to pay the debt. However, no order lifting the confiscation shall be given if it has been made as a result of the marine debts listed in subparagraph 2 (m) and (n) of Article 115. In such case, the court may give permission for the person who has possession of the vessel to use it if he offers sufficient security and it may also empower a person to manage the vessel during the period of confiscation in such manner as it decides".

Art. 5 of the 1952 Arrest Convention provides that:

The Court or other appropriate judicial authority within whose jurisdiction the ship has been arrested shall permit the release of the ship upon sufficient bail or other security being furnished, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in Art. 1, (o) and (p). In such cases the Court or other appropriate judicial authority may permit the person in possession of the ship to continue trading the ship, upon such person furnishing

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example be that the ship is not allowed to leave the territorial water or is not allowed to carry certain goods.

If the parties cannot agree upon the amount or nature of the security the court or other judicial authority shall determine this matter for them.⁵³

A security will usually be put up by a reputable bank⁵⁴ guaranteeing payment of any amount up to the determined limit, awarded in principal, interest and costs, by any final judgment of a competent court, arbitration award or settlement on the merits in favour of the claimant regardless which party, namely shipowner, charterer or any other third party, will be held liable.

The last part of the Art. 118 states that the request to release the ship against a security shall not be interpreted as a recognition of responsibility in relation to maritime debt for which the ship has been arrested or a waiver of the benefit of the legal limitations of liability of the shipowner.⁵⁵

4.2. 1999 Arrest Convention

The 1999 Arrest Convention, Art. 4(1) makes the release from arrest mandatory when “sufficient security has been provided in a satisfactory form”:

A ship which has been arrested shall be released when sufficient security has been provided in a satisfactory form, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in Art. 1, paragraphs 1 (s) and (t). In such cases, the Court may permit the person in possession of the ship to continue trading the ship, upon such person providing sufficient security, or may otherwise deal with the operation of the ship during the period of the arrest.

As in the **EMC 1981**, the court must determine the nature and amount of the security in the absence of agreement between the parties.⁵⁶ However, the

sufficient bail or other security, or may otherwise deal with the operation of the ship during the period of the arrest.

The 1952 Arrest Convention, Art. 3(3) and Art. 7(4) provide further two situations where the courts must release the ship, namely:

- i) where the ship had already been arrested in respect of the same maritime claim .
- ii) where the claimant has not commenced proceedings for the merits within the time limit fixed by the court.

⁵³ Art. 5, paragraph 2 of the 1952 Arrest Convention states that

In default of agreement between the parties as to the sufficiency of the bail or other security, the Court or other appropriate judicial authority shall determine the nature and amount thereof.

⁵⁴ The UAE court will not accept a letter of guarantee from a P&I Club. The guarantee has to be provided by a bank in the UAE. No other forms of guarantee are generally accepted by the UAE courts.

⁵⁵ See Art. 118/2. The attachment court is not competent to decide upon the merits, namely whether or not the shipowner can limit his liability. Due to the fact that there is at the time of the ex parte procedure before the attachment court only prima facie evidence available for supporting the opinion that there are no grounds for the limitation of the shipowner's liability.

⁵⁶ 1999 Arrest Convention, Art. 4(2):

amount of security, if determined by the court, is not, to exceed the amount of the claim or the value of the ship, whichever is the lower. The value of the ship is, of course, the maximum which can be realized if the arrested ship is sold by the court. The amount of the claim will include an appropriate amount for interest and recoverable costs if these are allowed in the jurisdiction where the arrest has taken place.⁵⁷ Art. 4 is subject to Art. 5, which inter alia regulates the ability to rearrest a ship.

Art. 4(3) states that the "request for the ship to be released upon security being provided shall not be construed as an acknowledgement of liability nor as a waiver of any defence or any right to limit liability".

Art. 7(4) provides further situations where the courts must release the ship:

i) where the proceedings are not brought by the claimants for the merits within the period ordered by the court in accordance with the preceding paragraph (3).⁵⁸

ii) where the ship has been rearrested or arrested in breach of Art. 5.

4.3. Re-arrest

4.3.1. EMC 1981 and 1952 Arrest Convention

Under **EMC 1981** and 1952 Arrest Convention the right of the second arrest or re-arrest of the same ship by the same claimant cannot be granted for the same maritime debt.⁵⁹ Article 3(3) of the 1952 Arrest Convention provides that:

In the absence of agreement between the parties as to the sufficiency and form of the security, the Court shall determine its nature and the amount thereof, not exceeding the value of the arrested ship.

⁵⁷ Berlingieri, *supra* note 3 at p. 335

⁵⁸ 1999 Arrest Convention, Art. 7(4):

If proceedings are not brought within the period of time ordered in accordance with paragraph 3 of this Art. then the ship arrested or the security provided shall, upon request, be ordered to be released

⁵⁹ 1952 Arrest Convention expressly prohibits re-arrest stating:

"A ship shall not be arrested, nor shall bail or other security given more than once in any one or more of the jurisdictions of any of the Contracting States in respect of the same maritime claim by the same claimant". The exceptions to this rule are where alternative security posted in order to secure release of the vessel has also been released leaving the claimant without security or the rather vague "other good cause for maintaining that arrest".

The 1999 convention follows the principle of the 1952 convention on rearrest, i.e. when a ship has been arrested and released or security has been given to secure a maritime claim, that ship will not be rearrested or arrested in respect of the same maritime claim. However, there are some changes in the provisions of the 1952 convention in relation to situations where there is a subsequent arrest. Instead of setting out what has to be done in case of rearrest, the 1999 Convention provides situations where rearrest or multiple arrests can be made, for example, where the nature or amount of security provided is inadequate, where the person who provided the security is not, or is unlikely to be able to fulfil the obligation, and so forth. (Art. 5 (1)).

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“A ship shall not be arrested, nor shall bail or other security be given more than once in any one or more of the jurisdictions of any of the Contracting States in respect of the same maritime claim by the same claimant;...unless the claimant can satisfy the Court or other appropriate judicial authority that the bail or other security had been finally released before the subsequent arrest or that there is other good cause for maintaining that arrest.”

Thus, on the one hand a ship shall not be arrested, nor shall bail or other security be given more than once in respect for the same maritime claim by the same claimant, and on the other hand if a ship has already been arrested, or bail or other security has been given either to release the ship or to avoid a threatened arrest, any application for a subsequent arrest of the ship or any ship in the same ownership by the same claimant for the same maritime claim shall be rejected and the arrested ship will be released by the attachment judge.

Subsequent arrests of the same ship are clearly prohibited unless the claimant can prove that the first arrest is ineffective or invalid, or has already been lifted. It is however, also allowed when no security has been given in order to lift the arrest or to avoid a threatened arrest. When the writ of attachment for the first arrest had a formal defect, then a second arrest would be allowed. Subsequent arrests are indeed possible when the security has been released before the subsequent arrest, or in case there is a valid cause for a subsequent arrest or for maintaining such arrest.

4.3.2. 1999 Arrest Convention

The 1999 Arrest Convention follows the principle of the 1952 Arrest Convention on rearrest, i.e. when a ship has been arrested and released or security has been given to secure a maritime claim, that ship will not be rearrested or arrested in respect of the same maritime claim. However, there are some changes in the provisions of the 1952 convention in relation to situations where there is a subsequent arrest. Instead of setting out what has to be done in case of rearrest, the 1999 Convention provides situations where rearrest or multiple arrests can be made, for example, where the nature or amount of security provided is inadequate, where the person who provided the security is not, or is unlikely to be able to fulfil the obligation, and so forth.

5. PROVISION OF COUNTER-SECURITY

The amounts of money involved in operating a ship are normally quite large. A ship has running daily expenses for crew salary, mortgages, harbour and costs. Also, a loss of profit will normally be incurred if the ship cannot be put to commercial use and this can amount to substantial loss. It may therefore seem adequate to protect the shipowner against illegitimate, frivolous and erroneous arrest by discouraging the applicants

and to provide the shipowner with a recovery possibility in case of sustained damages.

5.1. EMC 1981

There are no provisions in the **EMC 1981** setting out the arresting party's obligation to provide counter-security⁶⁰ and this is dealt with at the discretion of the court.

In UAE, the court holds discretion to order the arrestor to put up security for potential damages to the defendant. The purpose of holding the arrestor liable for unjustified arrest or demand for excessive security is twofold: Firstly, the potential liability will presumably have a preventive effect against maritime claimants abusing the right to arrest. Secondly, it seems equitable that the person who is has initiated the detention bears the risk for the wrongfulness of his pursuit. This raises the question of *when* the arrestor is liable for losses the arrestee has incurred as a result of the arrest.

UAE courts are prepared to grant damages for the wrongful seizure of ships, where it appears to have been motivated by the malice or gross negligence.⁶¹ Where the attachment is merely unfounded in law (in other words, erroneous, as opposed to malicious), the seizing creditor may be held liable to compensated the shipowner for the expenses of maintaining the ship during its period of attachment.⁶²

⁶⁰ The concept of providing for counter-security before bringing the claim to court, which is widely used in civil law jurisdictions, was not reflected in the 1952 Arrest Convention. However, there is a provision (i.e. article 6(1)) that protects the rights of shipowners. Article 6 (1) of the Convention states that:

“All questions whether in any case the claimant is liable in damages for the arrest of a ship...., shall be determined by the law of the Contracting State in whose jurisdiction the arrest was made or applied for.”

The 1999 Arrest convention authorises the arresting court to impose on the claimant the obligation to provide counter security for losses that may be incurred by the defendant as a result of the arrest and for which the claimant may be found liable. (Art. 6(1) The court is also empowered to award damages for “wrongful” or “unjustified” arrest, or for “excessive security” having been demanded and provided. (Art. 2 (a) & (b) Whether there is in fact any liability for loss resulting from arrest is, under Art. 6 (3) to be determined by the law of the place of arrest, and under Art. 6 (2), the court of arrest has the jurisdiction to determine the liability in any.

⁶¹ Under English law the arrestor is normally not liable for wrongful arrest. For an arrestor to be held liable in damages he has to have acted in, at least, in a sort of gross negligence or in bad faith. Gross negligence implies that the arrestor acts, on the basis of the facts known to him, without regard to whether he has adequate grounds for arrest. The courts are quite unenthusiastic in making such findings when it comes to arrest. In *The Kommunar (No.3)* [1997] 1 Lloyd's Rep. 22. The owners of the arrested ship had not been considered owners, charterers or party in possession of the ship at the time when cause of action arose. Therefore, the arrestees claimed damages due to wrongful arrest, based on gross negligence or bad faith, since they claimed that the arrestors were aware of the fact that a different legal entity was in possession of the ship when the claim arose. The court, however, found no evidence to suggest that the defendants had any knowledge of the change in possession of the ship at the time they applied for arrest. Therefore the court had to assume that they had acted in good faith when seeking to secure their claim. On these grounds, no damages were awarded.

⁶² Under English law ,when arrest is applied for, the arrestee may not argue that the arrest is wrongful or

5.2. 1999 Arrest Convention

Article 6 (1) of the 1999 Arrest Convention empowers a court to impose on the claimant the obligation to give counter-security for losses that may be incurred by the defendant as a result of the arrest and for which the claimant may be found liable. This provision should serve to reduce the number of cases of arrest motivated by bad faith, malice or gross negligence on the part of the claimant (known in the common law jurisdictions as "wrongful" arrest). The 1999 Arrest Convention also took a position prevalent in civil law jurisdictions relating to damages and imposition of counter-security in cases of "unjustified" arrest, or arrest effected erroneously, that is without proper legal foundation, but not motivated by bad faith or gross negligence.⁶³

6. CONCLUSION

UAE is an important strategic hub for shipping in the Arabian Gulf. From time to time, it may become necessary to arrest vessels trading to and from, and located in the UAE. For this purpose we find **EMC 1981** contains a section (i.e. Section 3 of Chapter II) dealing with ships arrest. The **EMC 1981** aims at striking a balance between the diametrically opposite interests of maritime claimants and shipowners. From a claimant's perspective, the right to arrest a ship is the single most valuable tool in enforcing his maritime claims and recovering debts against shipowners. On the other hand, from the viewpoint of shipowners as well as mortgagees, it is equally essential that a wrongful arrest, attachment, or injunction against a ship does not interrupt the legitimate trading of that ship.

unjustified due to the fact that he has good defence against the maritime claim. This was shown in *The Gina* [1980] 1 Lloyd's Rep. 398, where it was found that whether a claim would be upheld on its merits or not did not interfere with the claimant's right to use arrest to secure his claim. After all, the arrested party only has to provide alternative security to have his ship released awaiting judgement.

⁶³ 1999 Arrest Convention, Article 6 provides that:

"Protection of owners and demise charterers of arrested ships

1. The Court may as a condition of the arrest of a ship, or of permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the ship the obligation to provide security of a kind and for an amount, and upon such terms, as may be determined by that Court for any loss which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to such loss or damage as may be incurred by that defendant in consequence of:

- (a) the arrest having been wrongful or unjustified; or
- (b) excessive security having been demanded and provided.

2. The Courts of the State in which an arrest has been effected shall have jurisdiction to determine the extent of the liability, if any, of the claimant for loss or damage caused by the arrest of a ship, including but not restricted to such loss or damage as may be caused in consequence of:

- (a) the arrest having been wrongful or unjustified, or

The **EMC 1981** has produced a set of principles which are generally regarded as reasonably balanced between the interests both of legitimate claimants and of shipping organizations seeking to ensure freedom of world trade without undue interference. However, the closed list of maritime debts provided by the **EMC 1981** implies that any debt not specifically listed in the provisions, whether of a maritime nature or not, will not be recognised as giving rise to the right to arrest a ship.

In a dynamic industry such as shipping, a closed list of maritime debts/claims will be counter productive; this is because so many debts/claims of a maritime nature might arise which may not be specifically listed in the provisions. In such circumstances, the claimant cannot effect an arrest because his debt will not fall within the definition of maritime debt of the **EMC 1981**.

As a result of technological advances, the shipping industry has seen significant changes over the years. These changes require that the laws governing shipping evolve to keep pace. It is submitted that an open list of maritime debts will make the wording of the provisions flexible so that it can adopt to any future changes that may occur in the maritime industry. This could be achieved by inserting into the definition of maritime debts in Art. 115/2 of the **EMC 1981**, immediately before the list of debts, the words, “including but not restricted to”. The consequence of this words would be that any debt falling within the general definition will be deemed to be a maritime debt/claim, whether included in the list or not.

The limitation of the sister ship arrest provisions of the **EMC 1981** to ships in the same legal ownership may well prove to have a “fatal flaw”, however, in that it restricts sister ship arrest to ships in the same legal ownership as the offending ship, rather than extending the right of arrest to all sister ships legally or beneficially owned at the time of the arrest by the owner of the offending ship who is personally liable on the maritime debt/claim concerned.⁶⁴

The shipowners subverted and defeated the sister-ship rule through the instrumentality of single ship companies. A shipowner who has two or more ships could by arranging for his ships to be separately owned by individual companies, ensure that one ship would not be arrested in respect of a claim against another ship. Because of the separate legal personalities of such companies, the claimant could only proceed against the guilty ship. These types of ships are notoriously elusive and even when one is arrested, it is not unusual for the amount of the claim to exceed the value of the ship.⁶⁵

⁶⁴ Tetly, W., “Arrest, Attachment and Related Maritime Law Procedures” (1999) 73 *Tulane Law Review*, 1895–1985 at 1969-1970.

⁶⁵ Staniland, H., “The Arrest of Associated Ships in South Africa: Lifting the Corporate Veil Too High?” 9 *U.S.F. Mar. L. J.* 405 (1996-1997) at 410.

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In a bid to counter this unholy practice, the UK delegation at the Lisbon Conference suggested the following text to replace paragraph (2) of Art. 3 of the 1999 Arrest Convention:

3(2) (a) Arrest is also permissible of any other ship which, when the arrest is effected, is:

(i) owned by the same person who, when the maritime claim arose, was liable for the claim as owner of the ship in respect of which the claim arose,

(ii) owned by the same person who, when the maritime claim arose, was liable for that claim as the demise charterer, time charterer or voyage charterer of the ship in respect of which the claim arose, or

(iii) effectively controlled by a person as if that person owned the arrested ship, provided that at the time the maritime claim arose such person controlled the person who is liable for that claim.

(b) In determining whether a ship is effectively controlled by a person, a Court may take into account all relevant factors including, but not restricted to, whether that person is able to:

(i) make decisions in respect of that ship,

(ii) influence the implementation of those decisions, and

(iii) direct the distribution of profits from the operations of that ship.

(c) If the ship is not owned by the person who is liable for

the maritime claim, the question whether there is a connection between the person owning the ship and the person liable for the maritime claim such as to justify the arrest shall be decided in accordance with the law of the State in which the arrest is applied for.

(d) This paragraph (2) shall not apply to claims in respect of ownership or possession of a ship.⁶⁶

⁶⁶ See Berlingieri, *supra* note 3 at p. 323.

APPENDIX
International Convention on the Arrest of Ships 1999

The States Parties to this Convention, Recognizing the desirability of facilitating the harmonious and orderly development of world seaborne trade, Convinced of the necessity for a legal instrument establishing international uniformity in the field of arrest of ships which takes account of recent developments in related fields,

Have agreed as follows:

Article 1
Definitions

For the purposes of this Convention:

1. "Maritime Claim" means a claim arising out of one or more of the following:

- (a) loss or damage caused by the operation of the ship;
- (b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- (c) salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;
- (d) damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph (d);
- (e) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;
- (f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;
- (g) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;
- (h) loss of or damage to or in connection with goods (including luggage) carried on board the ship;
- (i) general average;

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- (j) towage;
 - (k) pilotage;
 - (l) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;
 - (m) construction, reconstruction, repair, converting or equipping of the ship;
 - (n) port, canal, dock, harbour and other waterway dues and charges;
 - (o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;
 - (p) disbursements incurred on behalf of the ship or its owners;
 - (q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;
 - (r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;
 - (s) any dispute as to ownership or possession of the ship;
 - (t) any dispute between co-owners of the ship as to the employment or earnings of the ship;
 - (u) a mortgage or a "hypothèque" or a charge of the same nature on the ship;
 - (v) any dispute arising out of a contract for the sale of the ship.
2. "Arrest" means any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument.
 3. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
 4. "Claimant" means any person asserting a maritime claim.
 5. "Court" means any competent judicial authority of a State.

Article 2

Powers of arrest

1. A ship may be arrested or released from arrest only under the authority of a Court of the State Party in which the arrest is effected.
2. A ship may only be arrested in respect of a maritime claim but in respect of no other claim.
3. A ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is effected is to be adjudicated in a State other than the State where the

arrest is effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.

4. Subject to the provisions of this Convention, the procedure relating to the arrest of a ship or its release shall be governed by the law of the State in which the arrest was effected or applied for.

Article 3

Exercise of right of arrest

1. Arrest is permissible of any ship in respect of which a maritime claim is asserted if:

(a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or

(b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or

(c) the claim is based upon a mortgage or a "hypothèque" or a charge of the same nature on the ship; or

(d) the claim relates to the ownership or possession of the ship; or

(e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.

2. Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose:

(a) owner of the ship in respect of which the maritime claim arose; or

(b) demise charterer, time charterer or voyage charterer of that ship.

This provision does not apply to claims in respect of ownership or possession of a ship.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the law of the State where the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.

Article 4

Release from arrest

1. A ship which has been arrested shall be released when sufficient security has been provided in a satisfactory form, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in article 1, paragraphs 1 (s) and (t). In such cases, the Court may permit the person in

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possession of the ship to continue trading the ship, upon such person providing sufficient security, or may otherwise deal with the operation of the ship during the period of the arrest.

2. In the absence of agreement between the parties as to the sufficiency and form of the security, the Court shall determine its nature and the amount thereof, not exceeding the value of the arrested ship.

3. Any request for the ship to be released upon security being provided shall not be construed as an acknowledgement of liability nor as a waiver of any defence or any right to limit liability.

4. If a ship has been arrested in a non-party State and is not released although security in respect of that ship has been provided in a State Party in respect of the same claim, that security shall be ordered to be released on application to the Court in the State Party.

5. If in a non-party State the ship is released upon satisfactory security in respect of that ship being provided, any security provided in a State Party in respect of the same claim shall be ordered to be released to the extent that the total amount of security provided in the two States exceeds:

(a) the claim for which the ship has been arrested, or

(b) the value of the ship, whichever is the lower. Such release shall, however, not be ordered unless the security provided in the non-party State will actually be available to the claimant and will be freely transferable.

6. Where, pursuant to paragraph 1 of this article, security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified, or cancelled.

Article 5

Right of re-arrest and multiple arrest

1. Where in any State a ship has already been arrested and released or security in respect of that ship has already been provided to secure a maritime claim, that ship shall not thereafter be rearrested or arrested in respect of the same maritime claim unless:

(a) the nature or amount of the security in respect of that ship already provided in respect of the same claim is inadequate, on condition that the aggregate amount of security may not exceed the value of the ship; or

(b) the person who has already provided the security is not, or is unlikely to be, able to fulfil some or all of that person's obligations; or

(c) the ship arrested or the security previously provided was released either:

(i) upon the application or with the consent of the claimant acting on reasonable grounds, or

(ii) because the claimant could not by taking reasonable steps prevent the release.

2. Any other ship which would otherwise be subject to arrest in respect of the same maritime claim shall not be arrested unless:

(a) the nature or amount of the security already provided in respect of the same claim is inadequate; or

(b) the provisions of paragraph 1 (b) or (c) of this article are applicable.

3. "Release" for the purpose of this article shall not include any unlawful release or escape from arrest.

Article 6

Protection of owners and demise charterers of arrested ships

1. The Court may as a condition of the arrest of a ship, or of permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the ship the obligation to provide security of a kind and for an amount, and upon such terms, as may be determined

by that Court for any loss which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to such loss or damage as may be incurred by that defendant in consequence of:

(a) the arrest having been wrongful or unjustified; or

(b) excessive security having been demanded and provided.

2. The Courts of the State in which an arrest has been effected shall have jurisdiction to determine the extent of the liability, if any, of the claimant for loss or damage caused by the arrest of a ship, including but not restricted to such loss or damage as may be caused in consequence of:

(a) the arrest having been wrongful or unjustified, or

(b) excessive security having been demanded and provided.

3. The liability, if any, of the claimant in accordance with paragraph 2 of this article shall be determined by application of the law of the State where the arrest was effected.

4. If a Court in another State or an arbitral tribunal is to determine the merits of the case in accordance with the provisions of article 7, then proceedings relating to the liability of the claimant in accordance with paragraph 2 of this article may be stayed pending that decision.

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5. Where pursuant to paragraph 1 of this article security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified or cancelled.

Article 7

Jurisdiction on the merits of the case

1. The Courts of the State in which an arrest has been effected or security provided to obtain the release of the ship shall have jurisdiction to determine the case upon its merits, unless the parties validly agree or have validly agreed to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.

2. Notwithstanding the provisions of paragraph 1 of this article, the Courts of the State in which an arrest has been effected, or security provided to obtain the release of the ship, may refuse to exercise that jurisdiction where that refusal is permitted by the law of that State and a Court of another State accepts jurisdiction.

3. In cases where a Court of the State where an arrest has been effected or security provided to obtain the release of the ship:

(a) does not have jurisdiction to determine the case upon its merits; or

(b) has refused to exercise jurisdiction in accordance with the provisions of paragraph 2 of this article, such Court may, and upon request shall, order a period of time within which the claimant shall bring proceedings before a competent Court or arbitral tribunal.

4. If proceedings are not brought within the period of time ordered in accordance with paragraph 3 of this article then the ship arrested or the security provided shall, upon request, be ordered to be released.

5. If proceedings are brought within the period of time ordered in accordance with paragraph 3 of this article, or if proceedings before a competent Court or arbitral tribunal in another State are brought in the absence of such order, any final decision resulting therefrom shall be recognized and given effect with respect to the arrested ship or to the security provided in order to obtain its release, on condition that:

(a) the defendant has been given reasonable notice of such proceedings and a reasonable opportunity to present the case for the defence; and

(b) such recognition is not against public policy (*ordre public*).

6. Nothing contained in the provisions of paragraph 5 of this article shall restrict any further effect given to a foreign judgment or arbitral award under the law of the State where the arrest of the ship was effected or security provided to obtain its release.

Article 8 Application

1. This Convention shall apply to any ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party.

2. This Convention shall not apply to any warship, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.

3. This Convention does not affect any rights or powers vested in any Government or its departments, or in any public authority, or in any dock or harbour authority, under any international convention or under any domestic law or regulation, to detain or otherwise prevent from sailing any ship within their jurisdiction.

4. This Convention shall not affect the power of any State or Court to make orders affecting the totality of a debtor's assets.

5. Nothing in this Convention shall affect the application of international conventions providing for limitation of liability, or domestic law giving effect thereto, in the State where an arrest is effected.

6. Nothing in this Convention shall modify or affect the rules of law in force in the States Parties relating to the arrest of any ship physically within the jurisdiction of the State of its flag procured by a person whose habitual residence or principal place of business is in that State, or by any other person who has acquired a claim from such person by subrogation, assignment or otherwise.

Article 9 Non-creation of maritime liens

Nothing in this Convention shall be construed as creating a maritime lien.

Article 10 Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval, or accession, or at any time thereafter, reserve the right to exclude the application of this Convention to any or all of the following :

- (a) ships which are not seagoing;
- (b) ships not flying the flag of a State Party;
- (c) claims under article 1, paragraph 1 (s).

2. A State may, when it is also a State Party to a specified treaty on navigation on inland waterways, declare when signing, ratifying, accepting, approving or acceding to this Convention, that rules on jurisdiction, recognition

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and execution of court decisions provided for in such treaties shall prevail over the rules contained in article 7 of this Convention.

Article 11

Depositary

This Convention shall be deposited with the Secretary-General of the United Nations.

Article 12

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature by any State at the Headquarters of the United Nations, New York, from 1 September 1999 to 31 August 2000 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- (c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the depositary.

Article 13

States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has two or more systems of law with regard to arrest of ships applicable in different territorial units, references in this Convention to the Court of a State and the law of a State shall be respectively construed as referring to the Court of the relevant territorial unit within that State and the law of the relevant territorial unit of that State.

Article 14

Entry into force

1. This Convention shall enter into force six months following the date on which 10 States have expressed their consent to be bound by it.

2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect three months after the date of expression of such consent.

Article 15
Revision and amendment

1. A conference of States Parties for the purpose of revising or amending this Convention shall be convened by the Secretary-General of the United Nations at the request of one-third of the States Parties.

2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to the Convention, as amended.

Article 16
Denunciation

1. This Convention may be denounced by any State Party at any time after the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by deposit of an instrument of denunciation with the depositary.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the depositary.

Article 17
Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT Geneva this twelfth day of March, one thousand nine hundred and ninety-nine.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

الحجز التحفظي على السفن - دراسة في القانون الإماراتي

الدكتور/ عبد الله حسن محمد

أستاذ القانون التجاري والبحري المشارك

كلية القانون - جامعة الإمارات العربية المتحدة

لما كانت السفينة عبارة عن منقول سهل الحركة وفي الوقت نفسه لها قيمة كبيرة، وتعد عنصراً من عناصر الذمة المالية لمالكها، وبالتالي هي جزء من الضمان العام للدائنين، فإن مالكها العاجز عن الوفاء بديونه قد يحاول إبعادها عن متناول يد دائنيه فيما لو أرادوا التنفيذ عليها وفاءً للديون التي عليه. ولكن لحسن الحظ أوجد القانون وسيلة للدائنين تمكّنهم من منع مالك السفينة من محاولة تهريب سفينته. هذه الوسيلة القانونية هي إيقاع الحجز التحفظي على السفينة، ومنعها بالتالي من السفر.

الغرض من هذا البحث هو إلقاء الضوء على الوضع القانوني للحجز التحفظي في دولة الإمارات العربية المتحدة، وبيان المشاكل القانونية التي يثيرها هذا الموضوع.