



COMITE MARITIME INTERNATIONAL

27 May 2015

Presidents of MLAs

Dear President

Study relating to Liability for Wrongful Arrest

Further to my letter dated 25 May I inadvertently sent you an earlier version of the Questionnaire. I am happy to report that there is a more concise and focussed questionnaire which the International Working Group prepared.

I **attach** the correct version of the Questionnaire and would be grateful if you would destroy the earlier version to avoid future confusion.

I do apologise for any inconvenience which this causes.

Kind regards

Stuart Hetherington

QUESTIONNAIRE

STUDY RELATING TO LIABILITY FOR WRONGFUL ARREST

Introduction

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

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

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

I. INTERNATIONAL CONVENTIONS:

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

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

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

II. QUESTIONS RELATING TO WRONGFUL ARREST

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

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

(a) The mere rejection of the claim?

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

- (i) awareness/knowledge that his claim had no foundation, or
- (ii) negligence in bringing such a claim, or
- (iii) bad faith or gross negligence or, otherwise, malicious bringing of such a claim?

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law, if a vessel is arrested pursuant to a decision by a court of first instance, but the arrest is subsequently repealed by an appeal court (without deciding on the merits of the claim):

- (a) Would the arrestor be liable in damages for the consequences of the arrest, and, if Yes, in what circumstances?
 - (b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrestor be required?
4. If the arrest claim was not against the owner of the ship and could not be enforced against that ship under the law of the state where the vessel was arrested:
- (a) Would, under your national law, the arrestor be liable in damages?
 - (b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrestor be required?
5. If the amount of the arrest claim was grossly exaggerated:
- (a) Would, under your national law, the arrestor be liable in damages to the owner of the ship for any of the following losses caused by reason of the grossly exaggerated claim:
 - (i) for the extra cost of the security required,
 - (ii) for losses incurred by the owner of the ship by reason of the delay caused by the greater time required to procure the security, or
 - (iii) for losses incurred as a result of the owner being unable to provide the excessive security?
 - (b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrestor be required?
6. If the person allegedly liable for the arrest claim is largely solvent and it is possible to enforce judgements or arbitration awards against him, e.g. he owns many ships (not under separate corporate veils), which call regularly at ports where enforcement can take place:
- (a) Can the arrest be considered wrongful as a result, so as to attribute liability to him under your national law?
 - (b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrestor be required?
7. Are there other circumstances in which, under your national law, an arrestor can be held liable in damages for the arrest of a ship?
8. Does your national law provide for a penalty or other sanction to be levied upon the arrestor, separate and distinct from any damages, if he is held liable for the arrest?
9. Would a court in your country, seized with a claim for damages for the arrest of a ship in another country, apply the law of the country of arrest (*lex forum arresti*) in that regard, or would it apply its own substantive national law (*lex fori*), or would it apply the substantive law applicable pursuant to the general international private law rules of its country?