

Introduction:

A right is worthless if it can't be exercised. In case the ship-owner does not have any belongings, the creditor's chances to be reimbursed are extremely limited. His right would then be useless. Therefore, claimants have recourse in the maritime field to the conservatory arrest of ships. This procedure allows the claimant to seize the ship until the case is decided on its merits, or the ship-owner or other competent person provides for a security. Belgians even talk about "mise à la chaîne" or chaining the ship.

The frequency of the use of the conservatory arrest on ships must be acknowledged: it is sometimes systematically done for example in case of collision. This trait shows very well the spirit of maritime law: suspicious, where several laws are inspired by the feelings that it would be safer to keep hold of an asset rather than run after it; concrete, where the action "in rem" is favoured, the direct link between the creditor and the ship which constitutes his security; finally, a right inspired by British Law, constantly preoccupied by procedural matters ("remedies precede right"), where the arrest of a ship is a prerequisite condition for the exercise of any action against the ship, granting jurisdiction to the courts.

The arrest, or "saisie conservatoire" should be distinguished from the attachment or "saisie exécution". The first, object of the present draft, has for unique role to avoid the disappearance of a security. Rapidity is a condition of its efficiency. On a second stage, when the claim is studied on its merits, the parties will be able to present fully their arguments. It is not the case for the "saisie exécution" where the finality of such action is the public sale of the ship, depriving the ship-owner from his proprietary right.

It is a wonder why the Lebanese legislation consecrates a luxury of dispositions to the "saisie exécution" of ships in 73 articles in Chapter III of Title II of the Merchant Shipping Law, whereas no reference is made to the conservatory arrest.

Facing this legislative blankness, the uncertain interpreter hesitates to resort for the application of a conservatory arrest to the provisions of the "saisie execution" which,

although are quite detailed, still correspond to antonymous preoccupations compared to the arrest. On the other hand, the application of the provisions of the Civil Code of Procedure do not seem suitable considering the particularities of the ships, and of the rights and obligations that follow.

To these difficulties in the interpretation of the internal law, is added the need to harmonise national and international laws.

The Brussels International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going ships, of the 10th of May 1952 tries to regulate the matter on an international level.

However, the 1952 Convention has its flaws. Therefore, the decision to consider its revision was taken by the Comité Maritime International following resolution 405 (x) of IMO at its 10th session, and UNCTAD to place on their working programme the revision of the 1926 and 1967 Maritime Liens and Mortgages Conventions and of the 1952 Arrest Convention.

We shall briefly pinpoint the advantages that Lebanon would have by implementing the new set of rules provided for in the 1999 Convention, compared to those of the 1952 Convention.

1- The Brussels Convention of 1952 leaves to the national law the discretion of establishing the rules on arrest of a ship flying the flag of a contracting party by a claimant residing or having his principal place of business in that state. Therefore, only Lebanese law is competent in cases of arrest from claimants residing in Lebanon on a Lebanese ship. Then with an original disposition, the Convention also authorises the arrest of a ship flying the flag of a non contracting State, subject to the discretion of the competent Court.

In that case, the guaranties offered to the defendant by the Convention may be refused, and the national law will only apply. In both texts, the judge has an option.

On the other hand, in the 1999 Arrest Convention, article 8 provides that the Convention applies to any ship within the jurisdiction of any State party, whether or not that ship flies

the flag of a State party. Therefore, the scope of application of the new Convention is definitely wider than the first one.

2- According to both conventions, for a claim to entail an arrest of a ship, it should, and it is enough for that claim to be comprised in the list of “maritime claims” in article 1. The list is so wide that it seems to be exhaustive. The 1999 Convention clarifies several points which were doubtful in the precedent Convention, such as for example whether special compensation related to salvage operations is protected by the right of arrest or not.

The old text gave rise to several discussions in the doctrine and in the jurisprudence. That issue was solved by the new Convention which added new cases to the list of maritime claims, and widened their scope.

3- Another new concept was brought by the 1999 Convention widening its scope which is that a ship in connection with which a claim has arisen may be arrested if at the time when the action is brought it is either beneficially owned or demise chartered by the person liable, whereas according to the provisions of the 1952 Convention it must be owned by the responsible person, and not demised.

4- Finally, Lebanon should adhere to the 1999 Convention, and apply its provisions both on the international and national level. Lebanese courts are applying the rules of the Civil Code of Procedure to arrest of ships for both internal and international law. The Executive Bureau is competent for the proceedings on the arrest per se, and the claim on the merits is then brought before the Commercial Court. Considering the specificity of such procedure, it is highly recommended to have explicit rules, which regulate only the arrest of ships. On the other hand, in order to access uniformity in the regulations, there should be one set of rules for both national and international claims.

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LEBANON

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LEGISLATIVE DRAFT

Law amending the Lebanese Merchant Shipping Law of February 18th 1947 for the purpose of incorporating therein the International Convention on Arrest of ships 1999.

Law Number X of 16/2/2001

The President of the Republic,

As empowered by the Constitution,

Further to the proposal of the Ministry of Transport,

Further to the adoption by the Chamber of Deputies of the proposal,

Whereas, Lebanon's domestic maritime legislation is embodied in a special Maritime Code referred to as the Merchant Shipping Law of February 18th 1947,

Whereas, It is a full legislative Code, including separate additional laws and conventions to which the Government adhered,

Whereas, Chapter III of Title II of the Maritime Code only regulates the seizure of ships as an executory measure, without encompassing the arrest as a measure of securing the debt,

Whereas, for such a measure, the Courts are compelled to apply the rules of the Civil Code of Procedure related to the conservatory arrest, to the arrest of ships,

Whereas, due to the particular nature of the ship, and to the rights and obligations she gives rise to, special regulations are necessary,

Considering the desirability to harmonize internal as well as international law on this issue,

THEREFORE, the President of the Republic decided to promulgate the present law and requests its publications in the official gazette.

Article 1:

1- The provisions of this chapter shall apply to any ship within the jurisdiction of Lebanon, whether or not that ship is flying its flag.

2- The provisions of this chapter 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- The provisions of this chapter do not affect any rights or powers vested in the Government or its departments, or in any public authority, or in any dock or harbor 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- The provisions of this chapter shall not affect the powers of any competent Court to make orders affecting the totality of a debtor's assets.

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

Article 2:

For the purposes of this Law:

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;
- 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, harbor 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, including the Executive Bureau for the proceedings of arrest, and the Commercial Court for the claim on the merits.

Article 3:

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 time or voyage charterer of the ship at the time when the maritime claim arose is liable for the claim and is time or voyage charterer when the arrest is effected.
- d) the claim is based upon a mortgage or a "hypothèque" or a charge of the same nature on the ship; or
- e) the claim relates to the ownership or possession of the ship; or
- f) the claim is against the owner, demise charterer, time or voyage charterer, manager or operator of the ship and is secured by a maritime lien or privilege which is granted or arises under the laws of Lebanon.

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.

Article 4:

1- A ship may be arrested or released from arrest only under the authority of the competent Executive Bureau.

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 in Lebanon, or is to be arbitrated, or is to be adjudicated subject to the law of another State.

Article 5:

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 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- 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 6:

1- A ship shall not be arrested or rearrested in Lebanon in respect of a maritime claim if she has already been arrested and released or security in respect of that ship has already been provided to secure the same maritime claim, in Lebanon or in any other State 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 fulfill 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 7:

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 Court in which the arrest have 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- If a Court or an arbitral tribunal in Lebanon or in another State, 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 the present article may be stayed pending that decision.

4- 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 8:

1- The Commercial Court of the place where the arrest was effected 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- Proceedings on the merits of the case shall be brought before the Commercial Court of the place where the arrest was effected within 5 days starting from the date of the judgment of arrest, according to article 870 of the Civil Code of Procedure.

3- If proceedings are not brought within the period of time mentioned above, or if no claim on the merits of the case is brought before the arrest decision is given, then the ship arrested or the security provided shall upon request, be ordered to be released.

Article 9:

The procedure relating to the arrest of a ship or its release in the territory of Lebanon shall be governed by articles 866 to 876 of the Civil Code of Procedure. However, in case of any conflict, whether procedural or substantive, between the provisions of the Civil Code of Procedure and the present law, the latter will prevail.

Article 10:

The present law comes in force from the day of its publication in the official gazette.