



**IMO**  
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**SET OF LEGISLATION FOR THE  
IMPLEMENTATION OF THE  
INTERNATIONAL CONVENTION ON  
ARREST OF SHIPS, 1999 INTO THE  
CROATIAN LEGAL SYSTEM**

**A Legislation Drafting Project submitted in partial fulfillment of the  
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## Abbreviations

1952 Convention	International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952
1999 Convention	International Convention on Arrest of Ships, 1999
Art.	Article
e.g.	Exempli Gratia (for example)
i.e.	Id est (that is)
No.	Number
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## **Table of international instruments**

### **1952**

International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952

### **1999**

International Convention on Arrest of Ships, 1999

### **2000**

Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; Official Journal L 012 , 16/01/2001 P. 0001 – 0023

### **2009**

Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents; Official Journal of the European Union 28.5.2009

### **2012**

Treaty on the Functioning of the European Union, Official Journal of the European Union C 326/01, 26/10/2012

## **Table of Statutes**

Maritime Code of the Republic of Croatia (Official Gazette “Narodne Novine” No 181/04, 76/07, 146/08, 61/11)

Enforcement Act (Official Gazette “Narodne novine” No 112/12)

Conflict of Laws Act (Official Gazette “Narodne novine” No 53/91, 88/01)

Skorupan Wolff, Vesna and Padovan, Adriana Vincenca; Preliminary Draft of the Amendment of the Maritime Code in respect of Wreck Removal, 2012

## **Introduction**

Croatia is currently a State Party to the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952 (hereinafter referred to as: 1952 Convention). As provided in Art. 8, the Croatian courts will apply this Convention only to the ship flying the flag of another Contracting State. In case of arrest of the ship flying the flag of Non-Contracting State (as well as in the case when the ship is flying a flag of Contracting State but certain issue is not covered by the 1952 Convention) the Croatian courts will apply domestic law, namely the Maritime Code. The Maritime Code, however, differs from the 1952 Convention to a certain extent and reflects partially the 1952 Convention and partially the International Convention on Arrest of Ships adopted in 1999 which entered into force on 14<sup>th</sup> September 2011 (hereinafter referred to as: 1999 Convention). For the purpose of uniformity and legal certainty the author is of the opinion that Croatia should accede to the 1999 Convention and amend its Maritime Code accordingly. In this respect the author has prepared the following Explanatory Note and the Draft Legislation for the implementation of the 1999 Convention into the Croatian legal system.

## **Explanatory Note**

More than a half of century has passed since the 1952 Convention entered into force on the international level. Its main goal was to create international rules in order to achieve uniformity in the field of the arrest of ships bearing in mind the necessity of ensuring a fair balance between the interests of maritime claimants (securing and enforcing maritime claims) and shipowners (freedom of trade without undue interference).<sup>1</sup> However, striking a balance between diametrically opposite interests is always closely connected with and dependent on the latest developments and consequential needs in the area concerned. When it comes to the arrest of the ships area recent developments proved that the maritime claimants should enjoy greater protection than the one provided by the 1952 Convention. In that respect a fair balance had to be achieved and the 1952 Convention became ready to be changed.<sup>2</sup> As a result, the 1999 Convention was adopted.

Changes incorporated in the 1999 Convention relate to the following issues:

- (i) scope of application;
- (ii) list of maritime claims in respect of which a claimant is entitled to arrest a ship;
- (iii) exercise of the right of arrest;
- (iv) release from arrest;
- (v) re-arrest and multiple arrest;
- (vi) liability for wrongful arrest;
- (vii) jurisdiction on the merits.

For the purpose of examining whether Croatia needs to adopt the 1999 Convention the following method is adopted:

- consideration of the 1952 Convention;
- consideration of the 1999 Convention;

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<sup>1</sup> Islam, Rizwanul; *The Arrest of Ship Conventions 1952 and 1999, Disappointment for Maritime Claimants*, *Journal of Maritime Law and Commerce*, Vol. 38., No. 1. (2007), p. 75.

<sup>2</sup> Gaskell, Nicholas and Shaw, Richard; "The Arrest Convention 1999", *Lloyd's Maritime and Commercial Law Quarterly*, 1999, pp. 470-471.

- comparison between the 1952 Convention and the 1999 Convention with particular focus on the improvements of the 1999 Convention;
- consideration of the relevant provisions of the Maritime Code [*Pomorski zakonik*] and Enforcement Act<sup>3</sup> [*Ovrsni zakon*];
- determination of Croatian interests with regards to the regulation of the arrest of ships internationally.

Each of the issues mentioned above (i)-(vii) has been considered separately.

### **(i) Scope of application**

When it comes to the scope of application there are two main issues regulated under the 1952 Convention and the 1999 Convention in a different manner. The first issue is whether the arrest of the ship refers to sea-going ship only and the second one is whether the flag of the ship is a relevant factor for the application of the Convention.

With regards to the first issue, it should be pointed out that the 1952 Convention in its title refers to “*sea-going ships*”; however there is no reference to such term in the textual part of the Convention. Therefore, it is not clear whether its application should be restricted only to sea-going ships or not.<sup>4</sup> This problem of interpretation is remedied under the 1999 Convention which expressly provides that it applies to any kind of ships (in other words, irrespective of whether she is sea-going or not).<sup>5</sup>

As for the second issue, the 1952 Convention makes distinction between the ship flying a flag of the Contracting State and the ship flying a flag of the Non-Contracting State. Art. 8 provides that “[t]he provisions of the Convention shall apply to any vessel flying the flag of a Contracting State in the jurisdiction of any Contracting State” while “the ship flying the flag of Non-Contracting State may be arrested in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated [in the Convention itself] or of any other claim for which the law of the Contracting State permits arrest.” The effect of this provision is quite unclear and it has caused great

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<sup>3</sup> As may be seen from the official web site of the Constitutional Court of the Republic of Croatia ([www.usud.hr](http://www.usud.hr)) “*Ovrsni zakon*” is officially translated from Croatian to English as “*Enforcement Act*”. The author follows the same translation. For the reader to be properly informed, the Enforcement Act of Croatia deals with the interim measures of security of the claims and governs the procedure of enforcement of the claims in civil and commercial matters.

<sup>4</sup> Martinez Gutierrez, Norman and Grbec, Mitja; The 1999 Arrest Convention Enters into Force, *Shipping and Transport International*, Vol. 8., No. 4. (2011), p. 23.

<sup>5</sup> *Ibid.*



difficulties and subsequent conflicts with regards to its interpretation.<sup>6</sup> Namely, as Berlingieri points out, *“the question arises whether the effect of this provision is merely to integrate the lex fori in so far as the claims in respect of which arrest is permitted or to integrate the provisions of the Convention with the relevant provisions of the lex fori relating to the claims in respect of which the arrest is permitted.”*<sup>7</sup>

The 1999 Convention brought more certainty by providing that it *“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.”*<sup>8</sup> Therefore, the 1999 Convention shall apply irrespective of the flag of the ship. Nevertheless, as will be elaborated under the next heading – *Reservations*, a State Party is allowed to *“reserve the right to exclude the application of this Convention to [...] ships not flying the flag of a State Party.”*<sup>9</sup> It seems that the right to opt-out for the ships not flying the flag of the State Party is included as recognition of a possibility of giving a particular advantage to ships flying a flag of the Non-State Party as compared to ships flying a flag of the State Party.<sup>10</sup>

In light of the foregoing, the 1999 Convention ensures more certainty and uniformity and as such should be adopted by the Croatian Legislator.

#### ➤ **Reservations**

Art. 10 (1) of the 1999 Convention reads as follows:

*“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) [any dispute as to ownership or possession of the ship].”*

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<sup>6</sup> Berlingieri, Francesco; Berlingieri on Arrest of Ships, 5<sup>th</sup> Edition, Informa, London, 2011, p. 457.

<sup>7</sup> Ibid.

<sup>8</sup> Art. 8 (1) of the 1999 Convention.

<sup>9</sup> Art. 10 (1) of the 1999 Convention.

<sup>10</sup> Berlingieri, Francesco; op.cit., p. 459.

The author is of the opinion that Croatian Legislator should not opt for the reservation to which reference is made in subparagraph a. and b. based on the following arguments:

- (i) it will ensure uniformity and legal certainty and
- (ii) it will be more convenient for Croatian judges.

As for the reservation to which reference is made in subparagraph c. (any dispute as to ownership or possession of the ship), bearing in mind the inviolability of ownership as one of the highest values of the constitutional order of Croatia<sup>11</sup> and noting that Croatia made the same reservation in relation to the application of the 1952 Convention, the author believes that it would be in the interest of Croatia to follow the same approach as earlier and opt for this reservation in relation to the application of the 1999 Convention.

**(ii) List of maritime claims in respect of which a claimant is entitled to arrest a ship**

The 1952 Convention provides a closed list of maritime claims in respect of which the claimant is entitled to request the arrest of the ship.<sup>12</sup> The same principle of “closed list” is adopted under the 1999 Convention;<sup>13</sup> however, with one exception: the claims related to the protection of the environment (a newly recognized head of claims) is open-ended.<sup>14</sup> The 1999 Convention extended the number of claims in respect of which the arrest of the ship may be requested by recognizing the following claims:

- environmental damage (open-ended);
- wreck removal;
- carriage of passengers by sea;
- port, canal, dock, harbour and other waterways dues and charges;
- insurance premium;

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<sup>11</sup> Art. 3 of the Constitution of the Republic of Croatia.

<sup>12</sup> Art. 1 (1) of the 1952 Convention.

<sup>13</sup> Art. 1 (1) of the 1999 Convention.

<sup>14</sup> Martinez Gutierrez, Norman and Grbec, Mitja; op.cit., p. 24.

- commissions, brokerages and agency fees; and
- contract for the sale of the ship.

Although Croatia is still a State Party to the 1952 Convention, the Maritime Code regulates for the arrest of ships in respect of claims related to waterways dues and charges as well as commissions, brokerages and agency fees.<sup>15</sup> Therefore, the Croatian Legislator already recognized that maritime claimants deserve much more protection than they are granted under the 1952 Convention. Now it should go further and expand the list and bring it in line with the 1999 Convention. There are several reasons in support of this argument.

First, when it comes to the maritime claims in respect of the environmental damage and wreck removal, it shall be emphasized that a new amendment of the Maritime Code will soon enter into force.<sup>16</sup> Unlike the Maritime Code currently in force that governs both legal institutes of salvage and wreck removal under the same provisions on salvage which may lead to the confusion between salvage and wreck removal claims, the new amendments will clearly make a distinction by providing separate provisions on wreck removal.<sup>17</sup> It will impose an obligation on the shipowner to take all the necessary steps that the Harbour Master Authority requires in respect of wreck removal for the purpose of preventing any damage to the environment.<sup>18</sup> In that respect it is important to protect potential claims on the part of the Harbour Master Authority as much as possible. What is more important, insurance coverage for the costs that are caused by wreck removal operations is compulsory<sup>19</sup> which means that there is also a need to include maritime claims in respect of the insurance in the list extended.

Second, Croatia will become part of the European Union in July 2013 thereby becoming automatically bound by the EU Regulation No 392/2009 on the liability of carriers of passengers by sea in the event of accidents (Regulation drafted in favour of

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<sup>15</sup> Art. 953 (1) and (2) of the Maritime Code of the Republic of Croatia (Official Gazette “Narodne Novine” No 181/04, 76/07, 146/08, 61/11).

<sup>16</sup> Skorupan Wolff, Vesna and Padovan, Adriana Vincenca; Preliminary Draft of the Amendment of the Maritime Code in respect of Wreck Removal, 2012.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Art. 823.b of the Maritime Code of the Republic of Croatia (Official Gazette “Narodne Novine” No 181/04, 76/07, 146/08, 61/11).

passengers).<sup>20</sup> Given that the 1999 Convention recognizes the right to arrest the ship in respect of any claim arising out of the agreement relating to the carriage of passengers on board the ship it perfectly fits with the purpose of EU Regulation and therefore stands as a better approach for Croatia.

Finally, unlike the 1952 Convention, the 1999 Convention does not recognize bottomry as a claim in respect of which arrest is allowed. Neither the Maritime Code recognizes this claim. In this respect, the domestic law of Croatia is already harmonized with the 1999 Convention.

### **(iii) Exercise of the right to arrest a ship**

With regards to the exercise of the right to arrest a ship, the 1952 Convention brings a lot of ambiguity and uncertainty. The 1999 Convention made significant clarifications on the following issues each of which will be further elaborated on:

- Relation between person liable and the ship;
- Claims against the owner;
- Claims against the charterer by demise;
- Claims against other persons liable;
- Claims based upon mortgage, hypothèque or charge of the same nature.

#### **➤ Relation between person liable and the ship**

There is a general rule that the arrest of a ship is permissible only when the owner of the ship is **liable**<sup>21</sup> in respect of a maritime claim relating to that ship.<sup>22</sup> However, no such a rule is expressly stipulated in the 1952 Convention but should be deduced from Art. 3 when read as a whole. In order to avoid uncertainty, the 1999 Convention expressly clarifies that the *“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*

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<sup>20</sup> Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents; Official Journal of the European Union 28.5.2009.

<sup>21</sup> Emphasis added.

<sup>22</sup> Berlingieri, Francesco, op.cit., p. 211.

*maritime claim arose is **liable**<sup>23</sup> for the claim [...].*<sup>24</sup> This however does not require that the issue of liability is already decided at the time of the arrest but rather requires “alleged liability”.<sup>25</sup> The latter may be deduced from Art. 1 (4) which defines claimant as a “*person **asserting**<sup>26</sup> a maritime claim.*”

The Maritime Code provides that the arrest of the ship is permissible only in respect of the claim against the person who is liable for that claim.<sup>27</sup> Therefore, the Maritime Code is in this regard already harmonized with the 1999 Convention.

➤ **Claims against the owner**

With regards to the claims against the owner the 1952 Convention does not expressly state whether the ownership link is required even at the time the arrest is effected.<sup>28</sup> The omission has been remedied under the 1999 Convention. Namely, Art. 3 (1) of the 1999 Convention clearly stipulates that the “*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***”.<sup>29</sup>

According to the Maritime Code the arrest of the ship is permissible in respect of the claim against owner, demise charterer, time charterer or voyage charterer if that person is owner of the ship **at the time the request was filed**.<sup>30</sup> Therefore, the Maritime Code does require the ownership link at the later stage (other than the stage when the claim arose) which requirement is in line with the 1999 Convention. However, the relevant time for such a link is different than the one provided in the 1999 Convention. While the Maritime Code refers to the “*time when the request was filed*”, the 1999 Convention refers to the “*time when the arrest is effected*”. The reason why the 1999

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<sup>23</sup> Emphasis added.

<sup>24</sup> Art. 3 (1) a. of the 1999 Convention. Emphasis added.

<sup>25</sup> Berlingieri, Francesco, op.cit., p. 247.

<sup>26</sup> Emphasis added.

<sup>27</sup> Art. 954 of the Maritime Code of the Republic of Croatia (Official Gazette “Narodne Novine” No 181/04, 76/07, 146/08, 61/11).

<sup>28</sup> Berlingieri, Francesco, op.cit., p. 226.

<sup>29</sup> Emphasis added.

<sup>30</sup> Art. 954 of the Maritime Code of the Republic of Croatia (Official Gazette “Narodne Novine” No 181/04, 76/07, 146/08, 61/11).

Convention does not use the expression of “*time when the request is filed*” is because of the protection of the *bona fide* purchaser who is unaware of the time when the request is filed.<sup>31</sup> Given that the Croatian legislation, in general, protects a *bona fide* purchaser it would be advisable to adopt the approach of the 1999 Convention in respect of the relevant time.

➤ **Claims against the charterer by demise**

According to Art. 3(4) of the 1952 Convention in case the charterer by demise is liable for the maritime claim relating to the ship “*the claimant may arrest such ship*”. The question here arises: What if a claimant has the claim against the person who was, at the time the claim arose, charterer by demise, but ceased to be charterer by demise when claimant decided to request the arrest of the ship? Is claimant still allowed to request the arrest of the ship? The 1952 Convention provides no answer to this question. This has been remedied under the 1999 Convention that expressly provides that the arrest is permissible of any ship in respect of which a maritime claim is asserted if, *inter alia*, “*the demise charterer of the ship at the time maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected [...]*”.<sup>32</sup>

The position under the Maritime Code is already explained under the previous chapter – claims against the owner. Except with regards to the relevant time, the Maritime Code is already harmonized with the 1999 Convention.

➤ **Claims against other persons liable**

In respect of the claims against other persons liable the 1952 Convention is drafted in a quite ambiguous way. Namely, Art. 3. (4) stipulates:

*“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 claims.*

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<sup>31</sup> Berlingieri, Francesco, op.cit., p. 227.

<sup>32</sup> Art. 3 (1) b. of the 1999 Convention.

*The provisions of this paragraph shall apply to any case in which a **person other**<sup>33</sup> than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.”*

It is not clear from the wording of Art. 3 (4) 2 who are those “other” persons and what exactly is it related to.<sup>34</sup> The issue was clarified in 1999 Convention; under Art. 3 (2) of the 1999 Convention “*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 [...] demise charterer, **time charterer or voyage charterer***<sup>35</sup> of that ship.”

Once again, except with regards to the relevant time, the Maritime Code is in conformity with the provisions of the 1999 Convention.

#### ➤ **Claims based upon mortgage, hypothèque or charge of the same nature**

Claims based upon mortgage or hypothèque are only mentioned in Art. 1 of the 1952 Convention that enumerates the maritime claims. The only way how to permit the arrest of the mortgaged ship if the claim secured by the mortgage is not against the owner of the ship is to apply by analogy the principles relating to claims secured by maritime liens. On the other hand, the 1999 Convention expressly stipulates that the arrest is permissible if the claim is based upon a mortgage, hypothèque or charge of the same nature.<sup>36</sup>

The Maritime Code adopts the same approach as the 1999 Convention which confirms that the 1999 Convention stands as a better option than the 1952 Convention.

#### **(iv) Release from arrest**

Both the 1952 and the 1999 Conventions prescribe that the ship is to be released upon sufficient security being provided. However, the 1999 Convention is drafted more clearly.

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<sup>33</sup> Emphasis added.

<sup>34</sup> Martinez Gutierrez, Norman and Grbec, Mitja, op.cit., p. 25.

<sup>35</sup> Emphasis added.

<sup>36</sup> Art. 3 (1) c. of the 1999 Convention.

First, unlike the 1952 Convention that does not have the provision with regards to the maximum amount of the security, the 1999 Convention prescribes that the security amount must not exceed the value of the arrested ship.<sup>37</sup> In this respect the 1999 Convention gives more certainty.

Second, while it seems that the 1952 Convention recognizes all kinds of security and leaves it to the court to determine only the amount which is to be sufficient for the purpose of security,<sup>38</sup> the 1999 Convention provides that in the absence of any agreement between parties as to the sufficiency **and the form**<sup>39</sup> of security the court shall determine its nature and the amount thereof.<sup>40</sup> In other words, the court is empowered to reject certain form of the security if deems it inappropriate.<sup>41</sup> This pattern is precisely the one followed by the Croatian courts. Although the Maritime Code refers to a number of security forms such as monetary deposit, bank guarantee and P&I letter of undertaking, the court is still reluctant in accepting certain forms of security. Namely, while monetary deposits and bank guarantees are always accepted as an appropriate security, P&I Club letter of undertaking is accepted on a case by case basis.<sup>42</sup> Thus, court practice supports the approach recognized under the 1999 Convention which stands as an argument for the Maritime Code to be modified accordingly.

Lastly, the 1999 Convention makes certain clarifications in respect of situations where the security for release of the ship is provided in one State and arrest of the ship is effected in another State. It seems that the purpose of this clarification is to avoid duplicity for the security of the same claim. The Maritime Code follows the same purpose as the 1999 Convention however, certain clarifications are advisable. Those clarifications are elaborated in the paragraph below which deals with re-arrest and multiple arrest of the ship.

#### **(v) Re-arrest and multiple arrest**

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<sup>37</sup> Art. 4 (2) of the 1999 Convention.

<sup>38</sup> Art. 5 of the 1952 Convention.

<sup>39</sup> Emphasis added.

<sup>40</sup> Art. 4 (2) of the 1999 Convention.

<sup>41</sup> Gaskell, Nicholas and Shaw, Richard; "The Arrest Convention 1999"; Lloyd's Maritime and Commercial Law Quarterly, 1999, p. 480.

<sup>42</sup> Macesic, Mirosljub; Ship Arrest in Croatia, Ship Arrest in Practice, 6<sup>th</sup> Edition, 2011/2012, [www.shiparrested.com](http://www.shiparrested.com).



There is a general rule that re-arrest of the ship in respect of the same maritime claim is not permissible.<sup>43</sup> There are also certain exceptions to that rule. In respect of those exceptions focus will be given to a different approach under the 1952 Convention and 1999 Convention.

According to Art. 3 (3) of the 1952 Convention “[a] *ship shall not be arrested, nor shall bail or other security be given more than once [...] in respect of the same maritime claim by the same claimant and, if a ship has been arrested [...] or bail or other security has been given [...] either to release the ship or to avoid a threatened arrest, any subsequent arrest of the ship or of any ship in the same ownership by the same claimant for the same maritime claim shall be set aside, and the ship released by the Court or other appropriate judicial authority of that State, unless the claimant can satisfy the Court or other appropriate judicial authority that the bail or other security has been finally released before the subsequent arrest or that there is **good cause***<sup>44</sup> for maintaining that arrest.”

Two main issues call for clarifications. First, under the 1952 Convention it is not clear whether it would still be “the same maritime claim” if the amount of the claim increases by the time (which is in fact very much likely to occur)?<sup>45</sup> Also, what if the period of the security is not long enough to enable the enforcement of the judgement or award?<sup>46</sup> Second, it is not clear what is meant by the “good cause” for maintaining the arrest.

Clarifications are brought under the 1999 Convention. Namely, exceptions to the general rule are now specifically set out in Art. 5 which is also divided into two parts: (i) right of re-arrest and (ii) multiple arrest (additional arrest of the ship – one or more additional ships). As for the right of re-arrest, three exceptions are provided:<sup>47</sup> (i) inadequacy of the **nature** or **amount**<sup>48</sup> of the security already obtained, (ii) inability of the person who has given the security to fulfil his obligations or (iii) release of the arrested ship or the security previously given. The same exceptions are provided for the multiple arrest save for the amount of the security. Namely, the rule that the amount of

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<sup>43</sup> Berlingieri, Francesco, op.cit., p. 312.

<sup>44</sup> Emphasis added.

<sup>45</sup> Berlingieri, Francesco; Berlingieri on Arrest of Ships, 5<sup>th</sup> Edition, Informa, London, 2011, p. 303.

<sup>46</sup> Ibid.

<sup>47</sup> Berlingieri, Francesco; op.cit., p. 313.

<sup>48</sup> Emphasis added.

the security must be lower than the value of the ship does not apply in the case of a multiple arrest.

In conclusion, bearing in mind the very purpose of the re-arrest and the multiple arrest of the ship (enforcement or security of certain claim ensuring the full amount to be covered), the 1999 Convention brings significant clarifications and as such should be seen as a better option for the Croatian Legislator.

Pursuant to Art. 956. of the Maritime Code a ship which has been arrested shall be released if the defendant proves that sufficient security for the same claim has been already provided in another State, save for the reciprocity requirement. Therefore, the purpose of the re-arrest of the ship (“top up the security for the claim”)<sup>49</sup> is recognized under both the 1999 Convention and the Maritime Code; nevertheless the 1999 Convention gives more certainty and clarity. Hence, it would be advisable for the Croatian Legislator to follow the same wording as contained in the 1999 Convention.

#### **(vi) Liability for wrongful arrest**

The 1952 Convention does not provide specific rules on liability for wrongful arrest but merely refers this issue to *lex fori*. This is because the consensus on international level in respect of this particular issue could not be reached due to the opposite interest of the civil law and common law countries.<sup>50</sup> While civil law countries wanted to have a provision on the right of the owner of the ship to damages for wrongful arrest included in the Convention, the common law countries were against this idea.<sup>51</sup>

The 1999 Convention still refers the issue of liability for wrongful arrest to be regulated under the *lex fori* (as far as its substantive aspect is concerned). However, in Art. 6 (1) it stipulates that “[t]he 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 [...]”. The Court is not obliged to impose upon the claimant a duty to provide security but “may” do so. Nevertheless, if the Court decides to impose such a duty upon the claimant, then Art. 6 of the 1999 Convention provides certain rules to be followed. The court must bear in mind that the security imposed upon the claimant must be such as to cover “any loss which may be incurred by the defendant”. The 1999 Convention also

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<sup>49</sup> Gaskell, Nicholas and Shaw, Richard; “The Arrest Convention 1999”; Lloyd’s Maritime and Commercial Law Quarterly, 1999, p. 470.

<sup>50</sup> Berlingieri, Francesco, op.cit., p. 377.

<sup>51</sup> Ibid.

gives an example of the loss such as (i) the arrest having been wrongful or unjustified or (ii) excessive security having been demanded and provided. However, the court is not restricted to this kind of loss only.

The Maritime Code as “*lex specialis*” does not have any provisions on the wrongful arrest. However, the Enforcement Act as a “*lex generalis*” provides the same solution as the 1999 Convention.<sup>52</sup> Therefore, there is one argument more to accede to the 1999 Convention.

#### **(vii) Jurisdiction on merits**

Pursuant to Art. 7 of the 1952 Convention, the court of the State where the arrest was effected has the jurisdiction on the merits only in case such jurisdiction is recognized under domestic law<sup>53</sup> or in few cases recognized by the Convention itself, e.g. if the claimant has his habitual residence or place of business in the country in which the arrest was made. On the other hand, the 1999 Convention automatically gives the court jurisdiction to decide upon the merits of the case. However, the court 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.*”<sup>54</sup>

It seems that the 1999 Convention intends to recognize *forum arresti* as a special basis of jurisdiction on merits as a general trend in international procedural maritime law.<sup>55</sup> One of the arguments for the latter may be the fact that the enforcement of judgement is only achievable in the forum of defendant’s asset (and usually defendant’s asset comprises only of the ship arrested).<sup>56</sup> Nevertheless, when it comes to the general basis of jurisdiction, the 1999 Convention still leaves this issue to be governed under domestic law.<sup>57</sup> This does not come as a surprise since the jurisdiction issue affects public interests primarily.

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<sup>52</sup> Art. 349 of the Law on Enforcement Official Gazette “Narodne Novine” No 112/12.

<sup>53</sup> It is in fact recognized under Croatian domestic law - Art. 54 of Conflict of Laws Act, Official Gazette “Narodne novine” No 53/91, 88/01; Macesic, Miroljub, Ship Arrest in Croatia, Ship Arrest in Practice, 6<sup>th</sup> Edition, 2011/2012, [www.shiparrested.com](http://www.shiparrested.com); Ivkovic, Dorjce, Arrest of Vessels, Maritime Law Handbook, Kluwer, Suppl. 26 (January 2006).

<sup>54</sup> Art.7(2) of the 1999 Convention.

<sup>55</sup> Abou-Nigm, Veronica Ruiz; The Arrest of Ships in Private International Law, Oxford, 2011, p. 209.

<sup>56</sup> Ibid.

<sup>57</sup> Abou-Nigm, Veronica Ruiz, op.cit., p. 210.

Bearing in mind that this chapter deals with the jurisdiction on merits and that Croatia will soon join the European Union thereby automatically being bound by the European Union Council's Regulations<sup>58</sup> in the following few paragraphs the author will focus on the effect of the Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters of 22 December 2000<sup>59</sup> (hereinafter referred to as: Regulation 44/2001).

Art. 71 (1) of the Regulation 44/2001 reads as follows:

*“[t]his Regulation shall not affect any conventions to which the Member States **are**<sup>60</sup> parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcements of judgements.”*

Therefore, Regulation No 44/2001 does not affect the application of the 1999 Convention (including Art. 7 which deals with the jurisdiction upon merits) provided that, however, at the moment of joining the European Union, Croatia is already a Party to this Convention. Should it not be the case, i.e. should Croatia join the European Union before acceding to this Convention it needs to have an authorization from the European Union in order to accede to it afterwards.<sup>61</sup>

Thus, for the purpose of acceding to the 1999 Convention without violating the European Union competence Croatia has two options (each of which will be discussed separately), namely:

- to accede to the 1999 Convention before joining the European Union; or
- to seek for an authorization from the European Union to accede to the 1999 Convention.

➤ ***Accession to the 1999 Convention before joining the European Union***

As already pointed out, should Croatia opt to accede to the 1999 Convention before joining the European Union, Regulation 44/2001 will not affect this Convention.

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<sup>58</sup> According to Art. 288 (2) of the 2012 consolidated version of the Treaty on the Functioning of the European Union “*regulation shall have general application [and] shall be binding in its entirety and directly applicable in all Member States.*”

<sup>59</sup> Entered into force on 1 March 2002.

<sup>60</sup> Emphasis added.

<sup>61</sup> Berlingieri, Giorgio; Investigations into Maritime Casualties and Jurisdiction Clauses in International Maritime Conventions, p. 7. <[http://www.dpps-mlas.si/wp-content/uploads/2012/09/Jurisdictional-Clauses-in-International-Conventions\\_An-issue-for-the-EU-and-Member-States-Dr.pdf](http://www.dpps-mlas.si/wp-content/uploads/2012/09/Jurisdictional-Clauses-in-International-Conventions_An-issue-for-the-EU-and-Member-States-Dr.pdf)> visited on 13<sup>th</sup> January 2013.

Nevertheless, there is one implication that the Croatian Legislator must bear in mind - the possibility of overlapping between the 1952 and 1999 Conventions. This is because the time period prescribed for the denunciation of the 1952 Convention to take effect is longer than the time prescribed for the 1999 Convention to enter into force.

Namely, with regard to the denunciation of the 1952 Convention Art. 17 provides that:

*“denunciation shall take effect **one year** <sup>62</sup>after the date on which notification thereof has been received by the Belgian government”, while*

with regard to the accession to the 1999 Convention Art. 14 provides that:

*“[f]or a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met [already entered into force], such consent shall take effect **three months** <sup>63</sup>after the date of expression of such consent.”*

Therefore, should Croatia denounce the 1952 Convention at the same time when the consent to be bound by the 1999 Convention will be expressed, the minimum period of overlapping will be nine months. Even so, the author is of the opinion that no adverse consequences may occur as a result of this overlapping. Namely, should the ship fly a flag of the State Party to the 1952 Convention while arrested within the Croatian jurisdiction, Croatian courts will apply the 1952 Convention. In all other cases Croatian courts will apply the 1999 Convention. The same reasoning will be followed in case the ship flying Croatian flag is arrested abroad.

Notwithstanding the fact that no adverse consequences may occur, for the purpose of avoiding a dual regime and inconveniency for the Croatian courts, Croatia is advised to express its consent to be bound by this Convention nine months after denunciation of the 1952 Convention. This, however, will mean that Croatia will already be a European Union Member State. Therefore, Croatia will need a particular authorization from the European Union in order to become a State Party to the 1999 Convention. The author is of the opinion that such authorization should not be withheld for the reasons stated in the paragraphs below.

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<sup>62</sup> Emphasis added.

<sup>63</sup> Emphasis added.

➤ ***Accession to the 1999 Convention after joining the European Union***

There are several reasons in support of the argument that the authorization from the European Union to accede to the 1999 Convention should not be withheld, namely:

- The 1999 Convention reflects the main European Union principle on jurisdiction that disputes should be decided by an appropriate court;
- The 1999 Convention recognizes *forum arresti* as a special basis for the jurisdiction on merits thereby reflecting principles of legal certainty and sound administration of justice; and
- The 1999 Convention stand as a perfect *modus operandi* for the environmental protection as one of the main aims of the European Union by recognizing the arrest of the ships for the claims related to the environmental damages.

**The 1999 Convention reflects the main European Union principle on jurisdiction that disputes should be decided by an appropriate court**

In respect of the general basis for the jurisdiction on merits, although both the 1952 and the 1999 Convention refer to *lex fori* the 1999 Convention follows a better approach. Namely, while the 1952 Convention principally refers to the domestic law, the 1999 Convention principally recognizes jurisdiction of the *forum arresti* on the merits and then refers to the domestic law by giving the Court the right to refuse the jurisdiction on merits if such a refusal is in accordance with the domestic law. So far both Conventions enable the Regulation 44/2001 to play its role through the domestic law. Nevertheless, since the 1999 Convention avoids the situation of having no jurisdiction thereby reflecting the principle that disputes should be decided by an appropriate court it is more in line with the Regulation 44/2001 than the 1952 Convention.<sup>64</sup>

**The 1999 Convention recognizes *forum arresti* as a special basis for the jurisdiction on merits thereby reflecting principle of legal certainty and sound administration of justice**

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<sup>64</sup> This principle is one of the main European Union principles on jurisdiction, as stated in Pontier, Jannet A. and Burg, Edwige; EU Principles on Jurisdiction and Recognition and Enforcement of Judgements in Civil and Commercial Matters according to the case law of the European Court of Justice, TMC Asser Press, The Hague, 2004, p. 17.

The author is of the opinion that the 1999 Convention is more in line with the Regulation 44/2001 than the 1952 Convention on the basis that the 1999 Convention follows the underlying principles of the Regulation 44/2001 such as legal certainty and predictability and the sound administration of justice. These principles are elaborated as follows.

In terms of legal predictability the court which decides upon the arrest of the ship has practical advantage of first-hand knowledge of the facts and ease of taking evidence. Therefore, it is reasonable and in line with the sound administration of justice to give that court the power to decide the case upon merits. Also, it is reasonable for the defendant to foresee that the court in which jurisdiction the ship was arrested will continue to decide on merits. Hence, legal certainty and predictability are in that respect assured as much as possible.

In respect of legal certainty one must bear in mind that it also implies avoidance of alternative or different courts having jurisdiction as regards one and the same legal relationship.<sup>65</sup> As already pointed out, in respect of the jurisdiction on merits, Art. 7 of the 1952 Convention refer to the domestic law (in this case Regulation 44/2001) providing also some additional factors such as claimant's habitual residence or place of business. By expressly recognizing jurisdiction on merit if "*claimant*"<sup>66</sup> *has his habitual residence or principle place of business in the country in which the arrest was made*" the 1952 Convention contradicts to the general rule under the Regulation 44/2001 that the merits of the case shall be decided by the court where "*defendant*" is domiciled. Therefore, in the EU Member State Party to the 1952 Convention for the same legal relationship jurisdiction is related to two opposite factors – claimant's and defendant's habitual residence/domicile. The 1999 Convention avoids this uncertainty by referring to domestic law without providing additional connecting factors.

**The 1999 Convention stand as a perfect *modus operandi* for the environmental protection as one of the main aims of the European Union by recognizing the arrest of the ships for the claims related to the environmental damages**

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<sup>65</sup> Pontier, Jannet A. and Burg, Edwige; EU Principles on Jurisdiction and Recognition and Enforcement of Judgements in Civil and Commercial Matters according to the case law of the European Court of Justice, TMC Asser Press, The Hague, 2004, p. 112.

<sup>66</sup> Emphasis added.

The Treaty on the European Union in its Preamble and later on in Art. 3 emphasizes that the environmental protection is one of the main aims of the European Union. The 1952 Convention does not recognize environmental protection claims while 1999 does. Therefore, the 1999 Convention is more in line with the EU policy than 1952 Convention.

In light of all these arguments it may be concluded that the 1999 Convention stands more in line with the Regulation 44/2001 and its principles than the 1952 Convention. Therefore, authorization of the European Union for its Member States to accede to the 1999 Convention should not be withheld.

For the sake of clarity, two additional points need to be emphasised, namely: (i) Regulation 44/2001 does not affect the jurisdiction on arrest of the ship as a provisional measure<sup>67</sup> and (ii) Regulation 44/2001 does not affect the parties' freedom to agree that the **jurisdiction on merits**<sup>68</sup> shall be given to a particular court or arbitration.

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<sup>67</sup> Art. 31 of the Regulation 44/2001 reads as follows:

*“Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.”*

<sup>68</sup> Emphasis added.



Having in mind all the aforementioned arguments,  
Being of the opinion that it would be more convenient for Croatia to adopt the 1999 Convention and denounce the 1952 Convention,  
Considering the procedural rules provided under the 1952 Convention with regard to the denunciation and 1999 Convention with regard to the accession and reservations,  
Being of the opinion that avoidance of the overlapping between the 1952 Convention and the 1999 Convention is more convenient for Croatian judges,  
Taking into account the European Union law and relevant provisions of the Constitution of the Republic of Croatia and The Law on Conclusion and Enforcement of International Treaties,<sup>69</sup>

The author has prepared the following Legislation Draft:

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<sup>69</sup> The reader who is not familiar with the procedure of the accession to the international treaty as regulated under the domestic rules of the Republic of Croatia may wish to know the following:

In respect of the accession to the international treaty, according to the Constitution of the Republic of Croatia and the Law on Conclusion and Enforcement of International Treaties the first step which must be taken is passing of the Law of Accession by the Croatian Parliament which is then promulgated by the President of the Republic of Croatia by means of the Decision of Promulgation of the Law of Accession. Both instruments are then published in the Official Gazette of the Republic of Croatia "*Narodne Novine*" in a way that the Decision of Promulgation of the Law of Accession is immediately followed by the Law of Accession.

The next step is the Publication made by the Minister of Foreign and European Affairs in the Official Gazette of the Republic of Croatia "*Narodne Novine*" whereby is published the date on which the International Treaty enters into force.

In respect of the denunciation of the international treaty, according to the Constitution of the Republic of Croatia and the Law on Conclusion and Enforcement of International Treaties the President of the Republic of Croatia, or the Government of the Republic of Croatia if authorized by the President of the Republic of Croatia, issues the Decision of Denunciation of the International Treaty which is then published in the Official Gazette of the Republic of Croatia "*Narodne Novine*". The Minister of Foreign and European Affairs publishes the date on which the Decision of Denunciation of the International Treaty enters into force. The publication must also be made in the Official Gazette of the Republic of Croatia "*Narodne Novine*".

In respect of the amendments of the domestic Law/Code, if only part of the Law/Code is to be amended, this is to be done by the Law on the Amendments of that particular Law/Code. Once the Law on the Amendments of the particular Law/Code has been passed by the Croatian Parliament, the President of the Republic of Croatia promulgates such Law by means of the Decision to Promulgate the Law on the Amendments of the particular Law/Code. Both instruments are then published in the Official Gazette of the Republic of Croatia "*Narodne Novine*" in a way that the Decision of Promulgation of the Law on the Amendments of the particular Law/Code is immediately followed by the Law on the Amendments of that particular Law/Code.

- (i) The Law of Accession to the International Convention on Arrest of Ships, 1999;
  - Decision of Promulgation of the Law of Accession to the International Convention on Arrest of Ships, 1999;
  - Law of Accession to the International Convention on Arrest of Ships, 1999;
- (ii) Publication of entering into force of the International Convention on Arrest of Ships, 1999;
- (iii) Decision of Denunciation of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952;
- (iv) Publication of entering into force of the Decision of Denunciation of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952;

As for the domestic law, the Maritime Code of Croatia already contains some provisions of 1999 Convention. However, in order to have a legal system that reflects uniformity, consistency and thereby legal certainty the author is of the opinion that the Maritime Code should be amended. In this respect first, the list of maritime claims in respect of which a claimant is entitled to arrest a ship has to be extended and second, certain amendments have to be done in respect of: a. the exercise of the right of arrest, b. the release from arrest and c. the re-arrest. In the light of the aforementioned the author has also prepared a draft of:

- (v) The Law on the Amendments of the Maritime Code;
  - Decision of Promulgation of the Law on the Amendments of the Maritime Code;
  - Law on the Amendments of the Maritime Code.

**i. Law of Accession to the International Convention on Arrest of Ships, 1999**

**CROATIAN PARLIAMENT**

In accordance with Article 89 of the Constitution of the Republic of Croatia, I make the following

**DECISION**

**OF PROMULGATION OF THE LAW OF ACCESSION TO THE  
INTERNATIONAL CONVENTION ON ARREST OF SHIPS, 1999**

I promulgate the Law of Accession to the International Convention on Arrest of Ships, 1999 passed by the Croatian Parliament on the session of \_\_\_\_\_, 2013.

Class: \_\_\_\_\_

No. \_\_\_\_\_

Zagreb, \_\_\_\_\_ 2013.

President  
of the Republic of Croatia  
Ivo Josipovic

**LAW**

**OF ACCESSION TO THE INTERNATIONAL CONVENTION ON ARREST OF  
SHIPS, 1999**

**Article I**

The International Convention on Arrest of Ships, signed in Geneva on 12 March 1999 in original in Arabic, Chinese, English, French, Russian and Spanish language, is hereby acceded and forms part of the Croatian legislation.

**Article II**

The text of the International Convention on Arrest of Ships, 1999 in English language and its translation into Croatian language is herewith attached and reads as follows:

International Convention on the Arrest of Ships

(Geneva, March 12, 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;

(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 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 rearrest 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.

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 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.

#### **Article III**

The Republic of Croatia, in accordance with article 10, paragraph 1 (c), excludes the application of this Convention in the case of claims under article 1, paragraph 1 (s) – claims in respect of any dispute as to the ownership or possession of the ship.

#### **Article IV**

This Law shall enter into force on 1<sup>st</sup> May 2014.

Class: \_\_\_\_\_

Zagreb, \_\_\_\_\_, 2013.

CROATIAN PARLIAMENT

President  
of the Parliament  
Josip Leko



**ii. Publication of entering into force of the International  
Convention on Arrest of Ships, 1999**

**MINISTRY OF FOREIGN AND EUROPEAN  
AFFAIRS**

In accordance with Articles 26 and 30 paragraph 3 of the Law on Conclusion and Enforcement of International Treaties (“Narodne Novine” No. 22/96), the Ministry of Foreign and European Affairs of the Republic of Croatia

**PUBLISHES**

that the International Convention on Arrest of Ships, 1999 published in “Narodne Novine – International Treaties” No. \_\_\_\_\_ has entered into force for the Republic of Croatia on 1<sup>st</sup> May 2014.

Class: \_\_\_\_\_

No \_\_\_\_\_

Zagreb, \_\_\_\_\_ 2014.

Minister  
of Ministry of Foreign and European  
Affairs  
Vesna Pusic

**iii. Decision of Denunciation of the International Convention  
for the Unification of Certain Rules Relating to the Arrest  
of Sea-Going Ships, 1952**

In accordance with Article 5 paragraph 2 and Article 41 of the Law on Conclusion and Enforcement of International Treaties (Narodne Novine No. 22/96), I make the following

**DECISION**  
**OF DENUNCIATION OF THE INTERNATIONAL CONVENTION FOR THE**  
**UNIFICATION FOR CERTAIN RULES RELATING TO THE ARREST OF SEA-**  
**GOING SHIPS, 1952**

**Article 1.**

The Republic of Croatia denounces the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, done in Brussels on 10 May 1952 to which the Republic of Croatia became a party by accession on 8 October 1991 and which entered into force for the Republic of Croatia on 14 November 1992.

**Article 2.**

This Decision shall enter into force on 1<sup>st</sup> May 2013.

Class: \_\_\_\_\_

No. \_\_\_\_\_

Zagreb, \_\_\_\_\_ 2013.

President  
of the Republic of Croatia  
Ivo Josipovic

- iv. Publication of entering into force Decision on Denunciation  
of the International Convention for the Unification of  
Certain Rules Relating to the Arrest of Sea-Going Ships,  
1952**

**MINISTRY OF FOREIGN AND EUROPEAN**  
**AFFAIRS**

In accordance with Articles 26 and 30 paragraph 3 of the Law on Conclusion and Enforcement of International Treaties ("Narodne Novine" No. 22/96), the Ministry of Foreign and European Affairs of the Republic of Croatia

**PUBLISHES**

that the Decision on Denunciation of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952 published in "Narodne Novine – International Treaties" No. \_\_\_\_\_, has entered into force for the Republic of Croatia on 1<sup>st</sup> May 2013.

Class: \_\_\_\_\_

No. \_\_\_\_\_

Zagreb, \_\_\_\_\_ 2013.

Minister  
of Ministry of Foreign and European  
Affairs  
Vesna Pusic

**v. The Law on the Amendments of the Maritime Code**

**CROATIAN PARLIAMENT**

In accordance with Article 89 of the Constitution of the Republic of Croatia, I make the following

**DECISION**

**OF PROMULGATION OF THE LAW ON THE AMENDMENTS OF THE  
MARITIME CODE**

I promulgate the Law on the Amendments of the Maritime Code that was adopted by the Croatian Parliament on its session of \_\_\_\_\_.

Class: \_\_\_\_\_

No. \_\_\_\_\_

Zagreb, \_\_\_\_\_ 2013.

President  
of the Republic of Croatia  
Ivo Josipovic

## **LAW ON THE AMENDMENTS OF THE MARITIME CODE**

### **Article 1.**

In Article 953 paragraph 1 of the Maritime Code ("Narodne Novine" No. 181/04, 76/07, 146/08, 61/11) the following text is added in the list of maritime claims:

13) 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,

14) 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,

15) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise,

16) loss of or damage to or in connection with goods (including luggage) carried on board the ship,

17) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer.

### **Article 2.**

Article 954 paragraph 1 and paragraph 2 are replaced by the following text:

(1) Arrest is permissible of any ship in respect of which a maritime claim enumerated in Article 953 paragraph 1 of this Code 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.

(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.

### **Article 3.**

Article 955 paragraph 1 and paragraph 2 are replaced by the following text:

(1) Where the arrest of the ship is requested for the purpose of the security of a pecuniary claim, a ship which has been arrested shall be released when sufficient security has been provided in a satisfactory form.

(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.

### **Article 4.**

Article 956 is replaced by the following text:

(1) Subject to the reciprocity requirement, 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:

- 1) 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
  - 2) 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
  - 3) the ship arrested or the security previously provided was released either:
    - a. upon the application or with the consent of the claimant acting on reasonable grounds, or
    - b. 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:
- 1) the nature or amount of the security already provided in respect of the same claim is inadequate; or
  - 2) the provisions of paragraph 1 subparagraph 2 or 3 of this article are applicable.
- (3) "Release" for the purpose of this article shall not include any unlawful release or escape from arrest.

## **Article 5.**

This Law shall enter into force the eighth day from its publication in "Narodne Novine".

Class: \_\_\_\_\_

Zagreb, \_\_\_\_\_, 2013

CROATIAN PARLIAMENT

President  
of the Parliament  
Josip Leko

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