

**AN ACT TO PROVIDE FOR THE EFFECTIVE INCORPORATION AND
IMPLEMENTATION OF THE ARREST CONVENTION 1999 INTO THE LAWS OF
TANZANIA ZANZIBAR IMO**

INTERNATIONAL MARITIME LAW INSTITUTE

Established under the auspices of the International Maritime Organization

A specialized agency of the United Nations

**AN ACT TO PROVIDE FOR THE EFFECTIVE INCORPORATION AND
IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON ARREST OF
SHIPS 1999 AND OTHER MATTERS**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Law (LL.M) in
International Maritime Legislation at the IMO International Maritime Law
Institute**

Submitted By: Rashid Juma Mohammed, United Republic of Tanzania

Supervisor: Norman R. Martinez Gutierrez

Academic Year 2019-2020

Table of Contents

Acknowledgements	ii
Abbreviation	iii
EXPLANATORY NOTE	1
1.0 Introduction	1
2.0 The anatomy of the arrest convention 1999	1
2.1 Scope of application	1
2.2 Jurisdiction on the merits	2
2.3 Liability for wrongful arrest	3
2.4 Jurisdiction for the arrest	3
2.5 Arrest of sister ship	3
2.6 Prohibition of re-arrests and multiple arrest	4
2.7 Law governing the procedure relating to the arrest	4
2.8 Maritime claims recognised under the Convention	4
2.9 Release of the Ship from Arrest and release of security	9
3.0 Reasons for incorporating Arrest Convention 1999 into the laws of Tanzania Zanzibar	11
3.1 Zanzibar and the shipping industry	11
3.2 Existing legislation regulating arrest of ships	11
3.3 Advantage of incorporating Arrest Convention 1999	12
4.3 Procedures for incorporating and implementation of the Arrest Convention 1999 in the United Republic of Tanzania	12
4.1 Incorporation and Implementation	12
4.2 Contents and Structure of the Act	13
Annex 1	15
Annex 2	16

Acknowledgements

I acknowledge the contributions of many people who on one way or another rendered their support to the completion of this legislative drafting project. My special thanks go to Professor Norman A. Martinez Gutierrez for his wonderful supervision and technical support rendered to me throughout the period of conducting research and drafting.

I am indebted by Professor David Joseph Attard, IMLI Director for his scholarly lectures and morale support especially during the time of pandemic Covid-19, surely without his morale support and encouragement it would be extremely difficult to accomplish the drafting project in due time.

I also wish to acknowledge the support of IMLI academic staff, to name them, Ms Elda Belji, Ms. Jalloh Ramatullah, Dr. Angeles Jimenez Garcia, Dr. Sanjeet Ruhel and Mr. Murat Sumer without forgetting the courtesy of IMLI administrative staff in particular librarian Ms. Verica Cole.

I am very thankful to the Revolutionary Government of Zanzibar for granting me study leave together with all benefit as employee. I extend my special thanks to Nippon Foundation, my sponsor, for financing all cost of my study and stay in Malta.

Finally, I wish to express my deepest appreciation to my parents for their inspirational upbringing and opening the doors of impossibilities, to my wife for her lovely support and taking care of my young children during my absence and to my lovely little children for their involuntary scarifice of missing their lovely father care during the whole period of my stay in Malta.

Abbreviation

CMI	Comite Maritime International
JIGE	Joint Intergovernmental Group of Experts
IMO	International Maritime Organization
UNCTAD	United Nations Conference on Trade and Development
ITC	Interministerial Technical Committee

EXPLANATORY NOTE

1.0 Introduction

The International Convention on the Arrest of Ships was adopted in Geneva on 12 March 1999 (Arrest Convention 1999) and it came into force on 11 September 2011. The drafting of the Convention was made possible by the 15 years of tireless effort of the Comité Maritime International (CMI), Joint Intergovernmental Group of Experts (JIGE) formed by the International Maritime Organization (IMO) and the United Nations Conference on Trade and Development (UNCTAD).¹

The initial objective of the mission was to review and update² the provisions of the International Convention Relating to the Arrest of Sea-Going Ships, 1952³ (1952 Convention) so as to harmonize it with the provisions and requirements of other Conventions such as the International Convention on Maritime Liens and Mortgages, 1993.⁴ Considering the number of amendments that substantially modify the 1952 Convention, the decision was taken to make revision by a means of preparation a new Convention instead of protocol.⁵

2.0 The anatomy of the arrest convention 1999

The Arrest Convention 1999 is composed of seventeen (17) articles that deal with a number of issues which will be discussed hereunder:

2.1 Scope of application

Article 8(1) of the Arrest Convention 1999 provides the general rule of its application. It provides the Convention to apply “to any ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party.” Firstly, it is argued that the reference to the phrase “any ship” signifies that the Convention applies to all ships and the State should not, in its

¹ Norman A. Martinez Gutierrez and Mitja Grbec, *The Arrest Convention Enters into Force (Shipping & Transport International Volume 8 No. 4)* 22.

² Ibid, Francesco Berlingieri, *Arrest of Ships: A Commentary on the 1952 and 1999 Arrest Conventions (5th edn, Informa, 2011)* 8.

³ International Convention Relating to the Arrest of Sea-Going Ships (Brussels, 10th May,1952 entered into force 24th February,1956) UNTS 6330 Vol. 439 .

⁴ International Convention on Maritime Liens and Mortgages (Geneva, 6th May, 1993 entered into force 5th September,2004) UNTS 40538 Vol.2276.

⁵ Gutierrez and Grbec (no.1).

application, distinguish between sea-going and non-seagoing ships.⁶ Secondly, Martinez and Grbec argue that the phrase “whether or not ship is flying the flag of a State Party signifies that the competent court in State Parties to the 1999 Convention will no longer have to determine whether or not the ship in respect of which arrest is sought, flies the flag of a State Party in order to apply the provisions of the Convention.”

The Convention provides certain exceptions to the general rule of application in the form of mandatory and optional exceptions.⁷ Article 8(2) lays down mandatory exception provides that the Convention “shall not apply to warship, naval auxiliary, or other ships owned or operated by a State and used, for the time being, only on government non-commercial services.” However, an optional or voluntary exception is provided under article 10(1) in the form of a reservation. The article provides the freedom to the State party to exclude the application of the Convention with regard to non-seagoing ship, ships flying the flag of non-State party and claim relating to the dispute any dispute as to ownership or possession of the ship.

2.2 Jurisdiction on the merits

The Convention confers the Court, which deals with arrest of ship, with the powers to determine on merits of the case. Article 7(1) provides that:

“the Court of the State in which an arrest has been effected or security provided to obtain the release of the ship shall have the jurisdiction to determine the case upon its merits.”

However, the last sentence of article 7(1) provides an exceptional circumstance whereby the Court dealing with the arrest shall not have the jurisdiction to determine the merits of the case. It provides the Court shall not have jurisdiction to determine the merits of the case where “the parties validly agree or have agreed to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.”

⁶ Gutierrez and Grbec (No.1), Berlingeri (No.2) 471

⁷ Ibid

2.3 Liability for wrongful arrest

Article 6(1) of the Convention gives the court the powers to order the claimant to provide security covering the liability for loss suffered by defendant as a result of the wrongful or unjustifiable arrest of a ship. Martinez and Grbec⁸ argued that, although article 6(3) leaves any liability for wrongful arrest to be determined by the law of the State in which the arrest is effected, article 6(2) “expressly recognises that the Court of the State in which the arrest has been effected **“shall have jurisdiction”** to determine the extent of such liability” (emphasis added).

2.4 Jurisdiction for the arrest

Article 2(3) of Convention secures the jurisdiction of the Court of the Party State to arrest a ship “for the purpose of obtaining security” irrespective of the jurisdiction on the merits.⁹ However, article 2(2) strictly prohibits the Court arrest of ship for non-maritime claims. Article 2(1) specifically identifies that, “the court having jurisdiction for the arrest is a court of the State where the arrest is made” which means that an arrest order can not be exercised outside the jurisdiction of that State.

2.5 Arrest of sister ship

The Convention laid down the general principle that allows the arrest of sister ship as a security for a maritime claim on the condition that at the time when claim arose and when the arrest is effected the ship must be owned by the person liable. Article 3(2) provides that arrest is also permissible of any other ship or ships which when the arrest is effected, “is or owned by the person who is liable for the maritime claim and who was, when the claim arose” owner, demise charter, time charter or voyage charter of the ship in respect of which the maritime claim arose.

However, article 3(3) gives an exception to the general rule by permitting the court to order an arrest of “a ship not owned by the person liable” when the law of that State so allows.

⁸ Gutierrez and Grbec (no.1)

⁹ Berlingeri (no.2) 331.

2.6 Prohibition of re-arrests and multiple arrest

The Convention under article 5(1) strictly prohibits the re-arrest of a ship “in respect of the same maritime claim” when either, it has been arrested and released or security in respect of that ship has been provided to secure a maritime claim in any State.

The prohibition under article 5(1) is not absolute, the Convention prescribes exceptional circumstances where re-arrested may be permitted if the security provided to secure the claim is inadequate, reasonable ground that the person provided security is unable to provide the security fund.

2.7 Law governing the procedure relating to the arrest

The Convention does not prescribe the procedures for an arrest of a ship but reserves the matter to be governed by the law of the State which exercised the power of arrest. The article 2(4) provides that the State procedural law is “subject to the provisions of the Convention.”

2.8 Maritime claims recognised under the Convention

The 1999 Convention recognised 22 maritime claims of different classification or categories such as personal claims, property claims, environmental claims, contractual claims and insurance claims. Article 1 (1) prescribes these claims from (a) to (v).

(a) Loss or damage caused by the operation of the ship

The word “operation of the ship” covers any claim for loss or damage resulted by the operation of the ship. It shifts the scope of claims from the ship itself to the activity performed by ship.¹⁰ Berlingieri¹¹ argued that “the word operation of the ships includes among others, the maintenance, the navigation, the commercial employment of the ship whether in a liner service, or by a time or voyage charter party or otherwise. Therefore this maritime claim overlaps several other maritime claims such as those under (c), (d) and (h).”

(b) Loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship

¹⁰ Ibid 56.

¹¹ Ibid.

The term direct used under the paragraph (b) qualifies that loss of life or personal injury must not only have occurred in connection with the operation of the ship but that connection must be direct. The claimant must prove that there was a close and direct connection between the occurrence of death or personal injury, as the case may be, and the operation of the ship. As noted by Berlingier that “a close connection between the event and the operation of the ship was considered necessary”.¹²

(c) Salvage operation or any salvage agreement, including, if applicable, special compensation relating to salvage operation in respect of a ship which by itself or its cargo threatened damage to the environment

This provision is too broad and it covers not only claims based on actual salvage operation but also those based on salvage agreement irrespective of the actual operation itself.¹³ The special compensation is intended to encourage ship owner to engage in salvage operation especially where there is threat of damage to environment.

(d) Damage or threat of damage caused by the ship to the environment, coastline or related interest; measures taken to prevent, minimize or remove such damage; compensation for such damage; cost 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, cost, or loss of a similar nature to those identified in this sub paragraph (d)

The claim established under paragraph (d) is relating to the protection of the marine environment against the pollution caused by shipping operation. As noted by Martinez and Grbec¹⁴, however, the claim is open-ended as it makes reference to a loss of a similar nature. In fact, it is very broad and covers both contractual and tortious claims arising out of “damage or threat of damage caused by the ship to the environment, coastline or related interest.”

(e) Cost or expenses relating to the raising, removal, recovery, destruction or rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything

¹² Berliengeri (no.2) 61

¹³ Martinez and Grbec (no.1)

¹⁴ Ibid.

that is or has been on board such ship, and cost or expenses relating to the preservation of the abandoned ship and maintenance of its crew

This provision helps to protect and preserve environment against the damage caused by wrecked, stranded or abandoned ship and where the ship is abandoned within a port area or within territorial sea and pose danger to navigation, the authority may take necessary action to remove the danger and then arrest the abandoned ship to recover the cost.¹⁵

(f) Any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise

The scope of the paragraph covers any agreement relating to the use of a ship the purpose of which is not the carriage of goods. Berlingier argues the paragraph “is probably meant to include agreements which do not provide for a payment in respect of the use of a ship.”¹⁶

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

The claim under paragraph (g) is intended to address the issues arising out of the agreement of the carriage of goods and passengers. As noted by Berlingieri “the claims covered by the paragraph (g) are in respect of breach of contract, however, does not include claims for loss of or damage to cargo or luggage.”¹⁷ Therefore the claimant is entitled to arrest a ship to secure his claims arising out of the breach of the contract.

(h) Loss of or damage to or in connection with goods (including luggage) carried on board the ship

The scope of this paragraph is broad as it includes not only physical loss but also economic loss or damage caused by delay.¹⁸

(i) General average

The paragraph intends to secure the maritime claims relating to the general average by conferring the claimant with the right to arrest a ship.

¹⁵ Ibid.

¹⁶ Berlingieri (no.2) 75.

¹⁷ Ibid 84.

¹⁸ Ibid 88.

(j) Towage

The term towage covers both deep-sea towage and port towage services, and therefore the claimant is entitled to arrest a ship for the claims associated with towage whether arising out of contractual relation or tortious.¹⁹

(k) Pilotage

The intention of the paragraph (k) is to protect the interest of pilot with regard service rendered to the ship.²⁰

(l) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance

The scope of this paragraph is broad and includes all kind of supplies and certain services. The services includes are those relating to operation, management, preservation or maintenance of a ship but not services relating to salvage operation, services relating to wreck, towage, pilotage and other relating to repair and construction of ship.²¹ Under this paragraph the claimant will be entitled to arrest a ship to secure his maritime claim relating to supply of supplies or rendering of services to a ship.

(m) Construction, reconstruction, repair, converting or equipping of the ship

This paragraph protects the maritime claims of shipyard and dry dock by allowing the claimant to arrest a ship in order to secure his claim arising out of construction, reconstruction works and repair, conversion or equipping services.²²

(n) Port, canal, dock, harbour and other waterway dues and charges

The paragraph confers right to the claimant to arrest a ship in relation to claims for “port, canal, dock, harbour and other waterways dues and charges”²³

¹⁹ Ibid 94.

²⁰ Ibid 97.

²¹ Ibid 105.

²² Ibid 109.

²³ Martinez and Grbec (no.1).

(o) Wages and other sum due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including cost of repatriation and social insurance contributions payable on their behalf

The intention of the paragraph is the protection seafarers to secure their claims with regard to employment aboard. These claims include unpaid wages, allowance, cost of repatriation and other social security contribution.

(p) Disbursement incurred on behalf of the ship or its owner

The paragraph cover the claim for disbursement made for the benefit of the ship or on behalf of the ship-owner for the benefit of the ship made by any person.

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

The provision is very important to marine insurer hull and or P&I as it secure their claim for unpaid premium. Martinez and Grbec²⁴ said that “though the term “insurance premium” is quite broad, in order to qualify as a maritime claim under the Convention, the premium in question must be paid in respect of the ship by the shipowner or demise charterer. Therefore premium paid by the time or voyage charterer, even if they are paid on behalf of the ship, do not provide a proper legal ground for an arrest under the 1999 Convention.”²⁵

(r) Any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer

This provision protects the claim of agent who has render services in respect of ship when calling at any port, such agent services including requesting for berth, contracting contract for towage, pilotage, mooring and filling of document with the custom authority.²⁶

(s) Any dispute as to ownership or possession of the ship

The paragraph covers all disputes relation to the ownership or possession of the ship and entitled the claimant to arrest the ship pending the final determination of the dispute.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Berlingeiri (no.2) 124.

(t) Any dispute between co-owner of the ship as to the employment or earning of the ship

The scope of this paragraph is narrow as it involves only to the dispute between co-owners of a ship and not between partners or shareholders of the company which owns the ship.²⁷

(u) A mortgage or a “hypothèque” or a charge of the same nature on the ship

Though the holder of the security may enforce its claims by means of seizure and forced sale of the ship, arrest of ship is a provisional measures available to prevent the ship from fleeing.²⁸

(v) Any dispute arising out of a contract for the sale of the ship

All claims arising out of sale of ship are maritime claims. Therefore the paragraph confers the seller or the buyer, as the case may be, to arrest a ship to secure his claims arising out of the sale transaction.²⁹

2.9 Release of the Ship from Arrest and release of security

The issue of release of the arrested ship is also well covered under the Convention. Article 4 of the Convention set up conditions and requirements for the release of ship from arrest as follows:

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 defense or any right to limit liability.

²⁷ Ibid 130.

²⁸ Ibid 137.

²⁹ Ibid 139.

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.

The Convention provides two situations where release of ship from arrest may be affected. These are: (a) release upon furnishing of sufficient security as per Article 4 (1) and (b) release when proceedings for the merits have not been commenced within the time fixed by the court as per Article 7(4). The Convention does not identify the responsible for releasing the ship. Berlingeri argued that the convention is silent on that matter because the obligation to release the arrested ship does not only lie on the court but also the claimant who applied for the arrest on the first place.³⁰

The Convention confers the Court with the power to determine the amount and nature of the security when the parties fail to agree on the terms, however, it provide the maximum limit that the security not to exceed the value of the arrested ship.

The Convention also covers the issue of release of security in three scenarios. These are: (a) Article 4(4) provided that when a ship is arrested in a non-Party State and not released upon the

³⁰ Ibid.

furnishing on security in a State Party, in such situation the security shall be release in State Party; (b) Article 4(5) provided that when a ship is arrested in a non- Party State and released upon security being furnished in a State Party and non- State Party. In that situation the security provided in State Party shall be release on condition that the security provided in non- State Party is sufficient.

3.0 Reasons for incorporating Arrest Convention 1999 into the laws of Tanzania Zanzibar

3.1 Zanzibar and the shipping industry

Zanzibar is a territorial unit of the United Republic of Tanzania. It enjoys exclusive jurisdiction in a number of matters including maritime affairs. It has long tradition of maritime activities and once was the centre of business and hub port for the whole region of East and Central Africa.³¹ Since before colonial period, Zanzibar depends heavily on maritime activities for her social-economic development which resulted on 1st February, 1892 to be declared a free port.³²

Now Zanzibar Port has lost its hegemony as a result of opening up of bigger and better equipped ports along the coast of East Africa such as Dar es Salaam port in mainland Tanzania and Mombasa port in Kenya. However, still maintains a share whereby international shipping liners keep calling at Zanzibar Port on daily basis.

As a strategy of expanding its maritime activities, the Government of Zanzibar decided to build a big transshipment port capable of serving very big cargo ships. In this regard, the need for establishing robust maritime legislation for regulating the shipping activities, including of ship arrest, is inevitable.

3.2 Existing legislation regulating arrest of ships

In Zanzibar currently, there is no specific legislation regulating arrest of ships for securing maritime claims. However, under the Civil Procedure Decree Cap. 8 of the Laws of Zanzibar the claimant may, as an interim measure pending final determination of the suit, request the court to issue injunction order prohibiting ship to sail irrespective whether or not the claim is of maritime nature.

³¹ Robert Nunez Lyne, *Zanzibar in the contemporary times* (Gallery Publisher,2006) 166.

³² J. Scott-Keltie, *Statesman's Year-book* (41st edn, Springer,2016) 213.

The challenge of the existing legislation is that, the ship may be arrested even for non-maritime claims. Furthermore, the existing legislation neither protect the ship-owner against unlawful arrest nor provide the arrangement for securing release of arrested ship by providing an alternative pending final determination of the suit.

3.3 Advantage of incorporating Arrest Convention 1999

Incorporation and implementation of the Arrest Convention 1999 will bring about positive changes in the maritime industry and benefit to Zanzibar. These benefits include:

1. Encourage ships flying different flags whether or not Party States to Convention to call at Zanzibar port as because of protection against arrest for non-maritime claims.
2. Protect ports facilities and aids to navigation by allowing arrest of ship for claim of damage caused by ship operation.
3. Protect the ship owners against re-arrest and multiple arrests which is not protected under the existing legal system.
4. Protect the maritime claims by allowing arrest of sister ship under charter party to secure the maritime claims. This system is not recognised under the existing legal system whereby only property owned by the defendant can be attached.
5. Protect the ship owner against the unlawful arrest of the ship by requiring a claimant to provide security for damage caused by unlawful arrest. The existing legal system does not have those requirements.

4.3 Procedures for incorporating and implementation of the Arrest Convention 1999 in the United Republic of Tanzania

4.1 Incorporation and Implementation

As the United Republic of Tanzania is not a party to the Arrest Convention 1999, the starting point is to accede the Convention in accordance with its article 12. The accession instrument is appended as appendix 1. The Instrument of accession will declare that the Convention shall apply both to Mainland Tanzania and Tanzania Zanzibar. Tanzania shall not exclude the application of the Convention to non-seagoing ship, ships of non-Party State and claim relating to any dispute as to ownership or possession of the ship.

Zanzibar on its part will implement the Convention by enacting Arrest of Ships Act. The Ministry Responsible for Transport will initiate the process by submitting a proposed draft bill to Interministerial Technical Committee (ITC) composed of Principals Secretaries of all ministries. The ITC will forward the refined draft proposed bill to the Cabinet, whereby subsequently the Cabinet will submit the bill to the House of Representatives of Zanzibar. The High Court shall be vested with jurisdiction to arrest and release a ship irrespective of the value of claim. However, jurisdiction to determine the merits of a case may be exercised by both High Court and Subordinate courts depending on the value of the claim.

4.2 Contents and Structure of the Act

The Act is divided into five parts and composed of twenty two sections. The detail structure is explained here below and the bill is attached as appendix 2.

Part One Preliminary Provision. The part is consisting of three sections. Section 1 Short title and commencement, section 2 scope of application and section 3 interpretation.

Part Two Admiralty Jurisdiction. This part consists of three sections. Section 4 vesting of admiralty jurisdiction on High Court, section 5 empowers High Court exercise jurisdiction *in rem*, section 6 empower the High Court to exercise jurisdiction *in personam*.

Part Three Arrest and Re-arrest of ships. The part contains 5 sections. Section 7 lays down the conditions for arrest or re-arrest of a ship, section 8 deals with arrest of a sister ship, section 9 provides the procedure for serving the writ, section 10 deals with the issue of stay of proceeding and section 11 impose the limitation of personal liability.

Part Four Release of a ship from arrest. The part contains 6 sections. Section 12 explain the issue of release of ship from arrest, section 13 list down the orders of settlement whereby the Court may issue on maritime claim between co-owners of a ship, section 14 deals with the liability for demanding excessive security, section 15 deals with the power to detain a ship, section 16 deals with the liability of charterer, manager, operator or master of ship and section 17 deals with the power of Court in monetary claim.

Part Five General Provisions. The part consists of the 5 sections. Section 18 deals with the time limit for initiating maritime claim proceeding, section 19 confers the High Court with exclusive

jurisdiction on admiralty proceeding, section 20 deals with the illegality of exclusion of admiralty jurisdiction by agreement, section 21 empowers Chief Justice to make procedural rules and section 22 deals with the filing of maritime claims.

Annex 1.

INSTRUMENT OF ACCESSION

WHEREAS the International Convention on Arrest of Ships was adopted at Geneva on 12 March, 1999 by the Diplomatic Conference

AND WHEREAS the United Republic of Tanzania, being a State entitled to become a party to the said Convention by virtue of Article 12 thereof,

NOW THEREFORE the Government of the United Republic of Tanzania having considered and approved the said Convention, hereby formally declares its accession to the International Convention on Arrest of Ships[,as amended].

IN WITNESS WHEREOF I, Dr. John Pombe Joseph Magufuli, President of the United Republic of Tanzania have signed this Instrument of Accession and affixed the official seal.

DONE at Dodoma, this 1st day of August two thousand and twenty.

(Seal) (Signature)

[President]

Annex 2.

**AN ACT TO PROVIDE FOR THE EFFECTIVE INCORPORATION AND
IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON ARREST OF
SHIPS 1999 AND OTHER MATTERS**

ARRANGEMENT OF SECTIONS

SECTIONS

TITTLE

**PART I
PRELIMINARY PROVISIONS**

1. Short title and commencement.
2. Application.
3. Interpretation.

**PART TWO
ADMIRALTY JURISDICTION**

4. Power to arrest a ship.
5. Jurisdiction in rem.
6. Jurisdiction in action in personam.

**PART THREE
ARREST AND RE-ARREST OF SHIP**

7. Conditions of arrest or re-arrest of ships.
8. Arrest of a sister ship.
9. Serving of writ.
10. Stay of the proceeding.
11. Limitation of personal liability.

**PART FOUR
RELEASE OF SHIP FROM ARREST**

12. Release of a ship from arrest.
13. Order of settlement
14. Liability for excessive security.
15. Power to detain a ship.
16. Liability of charterer, manager, operator or master of ship.
17. Powers of the Court in monetary claim.

PART FIVE
GENERAL PROVISIONS

- 18. Time limit.
- 19. Exclusive jurisdiction in admiralty proceeding.
- 20. Illegality of exclusion of jurisdiction of the Court.
- 21. Rules.
- 22. Filing of maritime claim

**AN ACT TO PROVIDE FOR THE EFFECTIVE INCORPORATION AND
IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON ARREST OF
SHIPS 1999 AND OTHER MATTERS**

ENACTED by the House of Representatives of Zanzibar

PART ONE

PRELIMINARY PROVISIONS

Short title and commencement.	1. This Act may be cited as the Arrest of Ships Act, 2020, and shall come into operation upon being assented to by the President-
Application.	<p>2. -(1) Unless otherwise expressly provided, this Act shall apply to any ship while within the jurisdiction of Zanzibar whether or not that ship is flying the flag of a State Party.</p> <p style="padding-left: 40px;">(2) This Act shall not apply to:-</p> <p style="padding-left: 80px;">(a) any warship and naval auxiliary; and</p> <p style="padding-left: 80px;">(b) any other ships owned or operated by a Government and used, for the time being, only on government non-commercial service.</p> <p>(3) This Act binds the Government in all its capacities, except:</p> <p style="padding-left: 20px;">(a) a proceeding to be commenced as an action in rem against a Government ship used for non-commercial purposes or Government property; or</p> <p style="padding-left: 20px;">(b) the arrest, detention or sale of a Government ship used for non-commercial purposes or Government property.</p> <p>(4) Where a proceeding has been commenced as an action in rem against a Government ship used for non-commercial purposes or Government property, the Court may, if it is satisfied that the proceeding was so commenced on the reasonable belief that the ship was not a Government ship used for non-commercial purposes or the property was not Government property-</p>

	<p>(a) order that the proceeding be treated as though it were a proceed it commenced as an action in personam on the claim against the person specified as defendant in the order ; and</p> <p>(b) make such consequential orders as are necessary.</p>
Interpretation.	<p>3. In this Act, unless the context otherwise requires-</p> <p>“admiralty jurisdiction” means the jurisdiction exercisable by a High Court under section 4 of this Act in respect of maritime claims specified under this Act;</p> <p>“admiralty proceeding” means any proceeding before a High Court, exercising admiralty jurisdiction;</p> <p>“arrest” means any detention or restriction on removal of a ship by order of a Court to secure a maritime claims, but does not include the seizure of a ship in execution or satisfaction of a judgement or other enforceable;</p> <p>“goods” means any property including live animals, containers, pallets or such other articles of transport or packaging or luggage irrespective of the fact whether such property is carried, on or under the deck of a ship;</p> <p>“Government” means the Revolutionary Government of Zanzibar; or the government of any state.</p> <p>“High Court” means High Court of Zanzibar.</p> <p>“maritime claims” means a claim referred to in section 4(2);</p> <p>“President” means the president of Zanzibar and chairman of the Revolutionary Council;</p> <p>“State Party” means a state that has expressed its consent to be bound by the Arrest Convention 1999 and is already enforced on it.</p>
PART TWO ADMIRALTY JURISDICTION	
Power to arrest a ship.	<p>4.-(1) The power to arrest a ship shall be vested on the High Court.</p> <p>(2) The High Court may exercise jurisdiction to hear and determine any question on a maritime claims, against any ship, arising out of any:-</p> <p style="padding-left: 40px;">(a) loss or damage caused by the operation of the ship;</p>

	<ul style="list-style-type: none"> (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 operation or any salvage agreement, including, if applicable, special compensation relating to salvage operation in respect of a ship which by itself or its cargo threatens 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, minimise, or remove such damage; compensation for such damage; costs of reasonable measures for the restoration of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; or any other damage, costs, or loss of a similar nature to those identified in this paragraph; (e) costs or expenses relating to 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 or damage to or in connection with any goods (including luggage) carried on board the ship; (i) general average; (j) towage; (k) pilotage
--	---

	<p>(l) goods, materials, perishable or non-perishable provisions, bunkers, equipment (including containers), supplied or services rendered to the ship for its operation, management, preservation or maintenance;</p> <p>(m) construction, reconstruction, repair, converting or equipping of the ship;</p> <p>(n) port, canal, dock, harbor and other waterway dues and charges;</p> <p>(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> <p>(p) disbursements incurred on behalf of the ship or its owners;</p> <p>(q) insurance premium (including mutual insurance calls) in respect of the ship, payable by or on behalf of the ship-owner or demise charterer;</p> <p>(r) any commission, brokerage or agency fees payable in respect of the ship by or on behalf of the ship-owner or demise charterer;</p> <p>(s) any dispute as to ownership or possession of a ship;</p> <p>(t) any dispute between the co-owners of a ship as to the employment or earnings of the ship;</p> <p>(u) mortgage or a "hypothèque" or a charge of the same nature on a ship;</p> <p>(v) any dispute arising out of a contract for the sale of the ship</p> <p>(3) Any ship ordered to be arrested or any proceeds of a ship on sale under this Act shall be held as security for a maritime claim pending the final outcome of the admiralty proceeding.</p>
Jurisdiction in rem.	<p>5.-(1) The High Court may order arrest of any ship which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where the court has reason</p>

	<p>to believe that-</p> <ul style="list-style-type: none"> (a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is the owner of the ship when the arrest is effected; (b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the ship when the arrest is effected; (c) the claim is based on a mortgage or a charge of the similar nature on the ship; (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. <p>(2) The High Court may also order the arrest of any other ship for the purpose of providing security against a maritime claim, in lieu of the ship against which a maritime claim has been made under this Act, subject to the provisions of sub-section (1):</p> <p>(3) Notwithstanding subsection (2), no ship shall be arrested under this sub-section in respect of a maritime claim under paragraph (s) of sub-section (2) of section 4.</p>
Jurisdiction in action in personam.	6. The High Court may exercise admiralty jurisdiction by action in personam in respect of any maritime claim referred to under subsection 4(2) of this Act.
PART THREE ARREST AND RE-ARREST OF SHIP	
Conditions of arrest or re-arrest of ships.	7.-(1) The High Court shall not order the arrest or re-arrest of the ship or any other ship which would otherwise be subject to arrest in respect of the same maritime claim, where in any State that ship has already been arrested and released or security in respect of that ship has already been provided to secure the maritime ship.

	<p>(2) Notwithstanding the requirements of subsection (1) of this section, the Court may order the arrest or re-arrest of the ship in respect of same maritime claim when:</p> <ul style="list-style-type: none"> (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 release either: <ul style="list-style-type: none"> (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. <p>(3) An order issued under subsection (2) of this section may be made subject to such condition as the Court deems just in the circumstance.</p>
Arrest of a sister ship.	<p>8.-(1) Notwithstanding the provisions of any other law, the arrest of sister ships is permitted where:</p> <ul style="list-style-type: none"> a. the claim arises in connection with a ship; and b. the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, <p>an action in rem may, whether or not the claim gives rise to a maritime lien on that ship be brought in the High Court against:</p> <ul style="list-style-type: none"> i. that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or

	<p>ii. any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.</p> <p>(2) For the purpose of this section, a sister ship means any other ship owned by the person who is liable for the maritime claim and who was, when the claim arose:</p> <p>(a) owner of the ship in respect of which the maritime claim arose; or</p> <p>(b) demise charterer, time charterer or voyage charterer of the ship.</p>
Serving of writ.	<p>9.-(1) A writ in a proceeding commenced as an action <i>in rem</i> in the Court may be served on a ship or other property.</p> <p>(2) A ship or other property may, in any proceeding under subsection (1) of this section, be arrested at any place within the jurisdiction of Zanzibar.</p>
Stay of the proceeding.	<p>10.- (1) Without prejudice the requirement of this Act-</p> <p>(a) where it appears to the Court in the proceeding commenced under this Act is pending that the proceeding should be stayed or dismissed on the ground that the claim concerned should be determined by arbitration, whether in Zanzibar or elsewhere, or by a court of a another state; and</p> <p>(b) where a ship or other property is under arrest in the proceeding, the Court may order that the proceeding be stayed on condition that the arrest and detention of the ship or property shall stay or satisfactory security for their release be given as security for the satisfaction of any award or judgement that maybe made in the arbitration or in a proceeding in the court of the foreign state.</p> <p>(2) The power of the Court to stay or dismiss a proceeding commenced under this Act includes power to impose any conditions as is just and reasonable in the circumstances, including a condition:</p> <p>(a) with respect to the institution or prosecution of the arbitration or proceeding in the court of a foreign state; and</p> <p>(b) that equivalent security be provided for the satisfaction of any award or judgement that maybe made in the arbitration or in the</p>

	<p>proceeding in the court of a foreign state.</p> <p>(3) Where the Court has made an order under subsection (1) or (2) of this section, the Court may make such interim or supplementary orders as are appropriate in relation to the ship or other property for the purpose of preserving:</p> <ul style="list-style-type: none"> (a) the ship or other property; or (b) the rights of a party or of a person interested in the ship or other property. <p>(4) Where a ship or other property is under arrest in a proceeding an award or judgement as mentioned in subsection (1) of this section has been made in favour of a party; and apart from this section, the award or judgement is enforceable in Zanzibar, then, in addition to any other proceeding that may be taken by the party to enforce the award or judgement, the party may apply to the Court in the stayed proceeding for an appropriate order in relation to the ship or property to give effect to the award or judgement.</p>
Limitation of personal liability.	<p>11. Where judgement is given for the plaintiff in any proceeding on a maritime claim commenced as an action <i>in rem</i> against a ship or other property, the extent to which a defendant in the proceeding, who has entered an appearance and is a relevant person in relation to the claim, is personally liable to the judgement shall not be limited by the value of the ship or other property.</p>
<p>PART FOUR</p> <p>RELEASE OF SHIP FROM ARREST</p>	
Release of a ship from arrest.	<p>12.-(1) A ship shall be released from arrest upon:-</p> <ul style="list-style-type: none"> (a) payment into court of the amount claimed or of an amount equal to the value of the ship, whichever is the less. (b) delivery of a bail bond or any other form of security accepted by the Court of sufficient amount. <p>(2) The Court shall not authorise release where the ship has been arrested as security for a claim for salvage remuneration unless the value of the salvaged ship has been agreed between the parties or has been determined by</p>

	the court.
Order of settlement.	<p>13. In a proceeding on a maritime claim between co-owners of a ship relating to possession, ownership, operations or earnings of the ship, the orders that the Court may make shall include:</p> <ul style="list-style-type: none"> (a) an order for the settlement of accounts outstanding and unsettled; (b) an order directing that the ship or a share in the ship be sold; and (c) an order relating to entries in and deletions from the Registry of Ships.
Liability for excessive security.	<p>14.-(1) Where, in relation to a proceeding commenced under this Act-</p> <ul style="list-style-type: none"> (a) a party unreasonably and without good cause – <ul style="list-style-type: none"> (i) demands excessive security in relation to the proceeding; or (ii) obtains the arrest of a ship or other property under this Act; or (b) a party or other person unreasonably and without good cause fails to give a consent required under this Act for a ship or other property, <p>the party or person shall be liable in damages to a party to the proceeding being a party or person who has suffered loss or damage as a direct result.</p> <p>(2) The jurisdiction of the Court shall extend to determining summarily, in relation to the proceeding, a claim arising under subsection (1) of this section.</p>
Power to detain a ship.	<p>15.-(1) Where a law, other than this Act, confers on a person a power to detain a ship-</p> <ul style="list-style-type: none"> (a) if the ship is under arrest under this Act, the power to detain the ship shall not be exercised; (b) the exercise of the power to detain the ship shall not prevent the arrest of the ship under this Act. <p>(2) If a ship that has been detained under such a power, as is mentioned in subsection (1) of this section, is arrested under this Act, then, by force of this subsection the detention shall be suspended for as long as the ship is under arrest.</p>

	<p>(3) If a ship that has been detained pursuant to a civil claim or would, but for paragraph (a) of subsection (1) of this section, be liable to be detained under such a power, is arrested and sold under this Act, then, the civil claim shall, unless the Court otherwise directs, be payable in priority to any claim against the ship other than the claim of the Admiralty Marshal for expenses.</p>
<p>Liability of charterer, manager, operator or master of ship.</p>	<p>16.-(1) The charterer, manager, operator or master of any ship in a Zanzibar port or territorial waterways who authorises an agent to act for the ship, in relation to any purpose for which the ship is in Zanzibar, shall be liable for any act, declaration, default, omission or commission of his agent in carrying out his agency.</p> <p>(2) If the owner, charterer, manager, operator or master of any ship entering or coming into Zanzibar requests the services of an agent in Zanzibar, such request shall be notified in writing to the ports authorities before or on the arrival of the ship, and the authorisation shall only cease if no suit is brought against the ship within the limitation period.</p> <p>(3) A person who acts as an agent of the owner, charterer, manager or operator of a ship may be personally liable irrespective of the liability of his principal for the act, default, omission or commission of the ship in respect of any thing done or failed to be done in Zanzibar.</p> <p>(4) A person who does anything or carries out any duty under the provisions of this Act or under the provisions of any law in force in Zanzibar in respect of any ship in the territorial waters of Zanzibar shall by doing that thing or carrying out that duty constitute himself the agent of the ship.</p>
<p>Powers of the Court in monetary claim.</p>	<p>17.-(1) The Court shall have the power to give judgement in any monetary currency (accepted as legal tender by the laws of any other state) in which any of the parties has suffered loss or damage if-</p> <ul style="list-style-type: none"> (a) the goods or consignment are paid for or are to be paid for in that foreign currency; or (b) the goods are insured in that currency and part of the amount so claimed is confined to that portion in foreign currency; or (c) the consideration or loss is derived from, accruing in, brought into

	<p>or received, as the case may be, in the foreign currency or for the benefit of the party making a claim before the Court.</p> <p>(2) A judgement awarded by the Court in any foreign currency shall be recoverable as if it were a judgement of the Court awarded in the currency of Zanzibar.</p>
PART FIVE GENERAL PROVISIONS	
Time limit.	<p>18.-(1) A proceeding may be brought under this Act on a maritime claim or on a claim on a maritime lien or other charge, at any time before the end of –</p> <p>(a) the limitation period that would have been applicable to the claim if a proceeding on the claim had been brought otherwise than under this Act; or</p> <p>(b) if no proceeding on the claim could have been so brought, a period of three years after the cause of action arose.</p> <p>(2) The provisions of subsection (1) of this section shall not apply if a limitation period is fixed in relation to the claim by any enactment or law.</p>
Exclusive jurisdiction in admiralty proceeding.	<p>19. Notwithstanding the provisions of any other enactment or law, the Court shall, as from the commencement of this Act, exercise exclusive jurisdiction in admiralty causes or matters.</p>
Illegality of exclusion of jurisdiction of the Court.	<p>20. Any agreement by any person or party to any cause, matter or action which seeks to oust the jurisdiction of the Court shall be null and void, if it relates to any admiralty matter falling under this Act and if-</p> <p>(a) the place of performance, execution, delivery, act or default is or takes place in Zanzibar ; or</p> <p>(b) any of the party resides or has resided in Zanzibar ; or</p> <p>(c) the payment under the agreement (implied or express) is made or is to be made in Zanzibar; or</p> <p>(d) in any admiralty action or in the case of a maritime lien, the plaintiff submits to the jurisdiction of the Court and makes a</p>

	<p>declaration to that effect or the rem is within Zanzibar jurisdiction ; or</p> <p>(e) in the opinion of the Court, the cause, matter or action adjudicated upon in Zanzibar.</p>
Rules.	21. The Chief Justice may make rules of practice and procedures for carrying into effect the objects of this Act.
Filing of maritime claim.	22. Any proceeding, which may be brought pursuant to this Act, may be filed in the High Court.

Passed in the House of Representatives on..... Day of..... 2020

.....

**CLERK OF THE HOUSE OF REPRESENTATIVES
OF ZANZIBAR**