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“AN ACT TO AMEND TITLE 21 OF THE LIBERIAN CODE OF LAWS 1956 AS AMENDED IN 2009 TO CREATE CHAPTER 12 TO INCORPORATE THE INTERNATIONAL CONVENTION ON THE ARREST OF SHIPS, 1999. (ARREST OF SHIPS ACT, 2012).”

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

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EXPLANATORY NOTE

1. Introduction

Approximately ninety percent of global commodity trade is transported, at some stage at least, via sea borne routes.¹ Consequently, the maritime industry plays a vital role in the economies of a good number of States, especially those with vested maritime interests. Over the years, there has been an apparent need to create uniformity in the rules regulating the maritime industry because of its importance to international trade. International conventions have been used by States to negotiate and to achieve uniformity in several areas of the maritime industry. Some of the important areas covered by these international conventions include safety of life at sea, marine pollution, training and certification of seafarers, maritime security, preservation of the marine environment, salvage and arrest of ships. States, however, have an obligation after becoming parties to these international conventions to carry out the necessary formalities, as prescribed by their respective national laws (such as Constitution), to give legal effect to the rules adopted by the international convention under their relevant domestic laws.

Liberia acceded to the International Convention on Arrest of Ships, 1999 (1999 Arrest Convention)² on 16 September 2005.³ However, Liberia has not incorporated the 1999 Arrest Convention, by a legislative enactment, into its domestic law to give efficacy to the provisions of the Convention. In fulfillment of its obligation, Liberia intends to domesticate the 1999 Arrest Convention into the Liberian Maritime Law (Title 21).

The 1999 Arrest Convention is the most recent international convention which deals with the issue of arrest of ships. Arrest of ship refers to the detention of or prevention from sailing of a ship by a State, under the authority of a court of competent jurisdiction, for the purpose of

¹ MARISEC, Shipping and World Trade – Overview, <<http://www.marisec.org/shippingfacts//worldtrade/index.php?SID=84bc705289738b31c92d86494d63e7ce>>. All websites referenced in this explanatory note are accurate as of 1 April 2012.

² See Appendix I.

³ International Convention on Arrest of Ships, 1999, United Nations Treaty Collection, Parties, <http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XII-8&chapter=12&lang=en>.

obtaining a pre-judgment security for a maritime claim. It is a procedural remedy which has evolved in distinctive forms in different jurisdictions over the years.

This explanatory note will provide a terse historical overview of what prompted the need to establish an international convention for the harmonization of the rules and procedures of arrest of ships. Thereafter, a brief summary of the first successful international convention, 1952 Arrest Convention will be provided as part of the bases for the discussion to be held on the issues of arrest of ships. Subsequently, a detailed discussion will be provided of the pertinent articles of the 1999 Arrest Convention, which is the subject of this explanatory note. It is hoped that this approach will give the Liberian Legislators a reasoned and comprehensive foundation of the relevant issues covered by the 1999 Arrest Convention. A fair appreciation of the Convention by the Liberian Legislators will serve as the basis for their vote on the Draft Act.

Thereafter, this explanatory note will thoroughly examine the existing basis of Liberia's Admiralty jurisdiction with respect to arrest of ships and provide the legal rationale for enactment of this legislation. It will also outline the practical needs of Liberia, which necessitate the incorporation of the 1999 Arrest Convention into its domestic maritime laws.

This explanatory note will then elaborate the procedure of incorporating the international conventions into the Liberian Statute Law. Finally, having taken into consideration this procedure, this explanatory note will discuss the legislative process of enacting the law titled **“An Act to Amend Title 21 of the Liberia Code of Laws 1956 as Amended in 2009 to Create Chapter 12 to Incorporate the 1999 International Convention on the Arrest of Ships.” (Arrest of Ships Act, 2012).**

2. Historical Overview of the Procedure of Arrest of Ships

Before examining the current procedure of arrest of ships, it is only practical to discuss, briefly, the jurisdiction under which these arrests were made, the Admiralty jurisdiction.⁴ In the Middle Ages, the monarchs of both France and England appointed “Admirals”, who eventually came to administer maritime justice under royal authority.⁵ By the 14th Century, the Admiralty Courts had appeared in England, the emergence of which grew from the gap created by the common law courts’ failure to provide redress to foreign merchants who had suffered losses due to piracy and other mishaps.⁶ By the 15th Century, the process permitted by the Admiralty jurisdiction had developed into the actions “*in rem*” and “*in personam*”. The action *in rem* refers to an action against the *res* or property, thereby personifying the ship itself. Originally, the right to enforce these types of claims was restricted to a ship by which the damage was caused or which was directly involved in the creation of the loss or damage. Its scope was later broadened by statutes to include maritime claims regardless of whether these claims gave rise directly to the alleged loss or damage.

On the other hand, the action *in personam* was brought directly against the person, usually the owner of the ship involved in the maritime claim. By compelling the appearance of the owner of the ship, the courts could also attach⁷ his property as a prejudgment security for the claim and a remedy could be provided to the claimant. Over the years, the common law courts strenuously opposed the arrest of persons in this respect and thwarted this procedure by the common law writs of prohibition.⁸ This caused the process to grow obsolete in England.

⁴ For a comprehensive historical review of the Admiralty jurisdiction, see Wiswall, F. L. (Jr.); *The Development of Admiralty Jurisdiction and Practice since 1800*, Cambridge University Press, London, 1970.

⁵ Tetley, William; *International Maritime and Admiralty Law*, 3rd Edition; International Shipping Publications, Québec, 2002, p. 404.

⁶ *Ibid.*

⁷ ‘Attachment’ is the legal process of seizing a defendant’s property [located in the territorial jurisdiction of the court] under a writ or judicial order for the purpose of securing satisfaction of a judgment yet to be rendered. In the past, the main objective of attachment was to coerce the defendant debtor to appear in court by the [seizure] of his property. Today the writ of attachment is used primarily to seize the debtor’s property in order to secure the debt or claim of the creditor in the event that a judgment is rendered; Black’s Law Dictionary, Abridged 6th Edition, Centennial Edition (1891-1991), West Publishing Group, Minnesota, 1991.

⁸ Mandaraka-Sheppard, Aleka; *Modern Maritime Law*, 2nd Edition, Routledge-Cavendish, London, 2007, p. 5.

In continental Europe, the Admiralty jurisdiction of civilian countries was exercised only by the action *in personam*. The civil law system has never had the action *in rem*, largely because, historically, countries like France never experienced the conflict between royal courts and other courts, as experienced in England.⁹ The civil law system, however, allowed a claimant in an action *in personam* to attach the property of the defendant, regardless of whether the property was the subject of the claim, so as to compel the defendant's appearance and to obtain a pre-judgment security for the claimant. The predominant approach of the civil law countries, by means of the *in personam* action, was to allow three distinct procedural rules, namely: (i) rules for provisional pretrial remedies, such as conservatory measures to obtain security for a claim, called, in French, "*saisie conservatoire*"; (ii) rules relating to the establishment of jurisdiction on the merits, which are based on a substantive link between the claim and the particular jurisdiction; and (iii) rules relating to the status of some claims as preferred claims over unsecured creditors.¹⁰

The variant approach in common law, is the action *in rem* against the ship, which upon its arrest, results into the obtaining of a security; establishing jurisdiction on the merits (even if there is no substantive link between the claim and the jurisdiction, other than the presence of the arrested ship in the territorial jurisdiction of the arresting State); and securing the position of preferred creditors over unsecured ones by the issue of the proceeding *in rem*.¹¹

It is important, however, for one not to confuse the two. The key distinction being that the action *in rem* is an action against the *res* or ship itself, thereby aborting the need for the claimant to identify the proprietary interest of the true owner of a ship because the ship is personified as the actual defendant. On the other hand, the action *in personam* requires the identification of the person(s) with proprietary interest(s) in the ship before the court would be able to attach his property, the ship, as a means of ensuring redress for the claimant.

⁹Tetley, William; *International Maritime and Admiralty Law*, p. 406.

¹⁰ Mandaraka-Sheppard, Aleka; p. 10.

¹¹ Ibid.

The underlining rationale for the arrest of ships is for a claimant in a maritime matter to obtain a preliminary or pre-judgment security for a liability, allegedly caused by or in connection with a ship, but does not include the seizure of a ship in execution of a final judgment. This also ensures that the owner would submit himself to the jurisdiction of the court issuing the warrant of arrest. The jurisdiction to proceed against the relevant ship comes out of the fact that the ship is in the territorial jurisdiction of the arresting State. Hence over the years, different States with different systems of law, civil law and common law, have employed the two different procedures, the actions *in personam* and *in rem*, respectively, to achieve this desired goal.

The variations between these two approaches meant that a claimant, in a civil law jurisdiction, could, for example, obtain an arrest of a ship for a non-maritime claim, which created uncertainty in the global shipping industry. Pursuant to these variations and in an attempt to create a uniform approach internationally, which guaranteed a level of certainty in the industry, the international community commenced the process of establishing a framework for the unification of rules governing the procedure of arrest of ships, under the auspices of the Comité Maritime International (CMI).

This was initiated by the holding of a conference of the CMI in 1930, which examined the possible scope of a unified approach to the issues of arrest of ships. The following issues were taken into consideration:¹²

- Who is entitled to arrest a ship?
- Which ships may be arrested?
- Where can the arrest be made?
- What nature of claims would entitle a claimant to an arrest?
- How can a ship be released from arrest?

¹² Berlingieri, Francesco; *Arrest of Ships, A Commentary on the 1952 and 1999 Arrest Conventions*, 4th Edition, Imforma, London, 2006, p. 1.

To these ends, negotiations by States for an International Convention on Arrest of Ships went on for over 20 years.¹³ Some of the contentious issues during the many years of negotiations were: whether the list of claims applicable should be a closed list of maritime claims or not; the liability for wrongful arrests by a claimant; whether the procedure of arrest and release upon the provision of security should be governed by the *lex fori* or otherwise; and if another ship under the same ownership may be arrested, i.e. a sister ship arrest. A compromise was finally reached on 10 May 1952 at the Brussels Diplomatic Conference, which adopted the International Convention Relating to the Arrest of Sea-Going Ships, 1952 (The 1952 Arrest Convention).

¹³ Partly, the longevity of which was caused by the outbreak of war in the world (World War II, 1939-1945).

3. The 1952 Arrest Convention

The 1952 Arrest Convention entered into force on 24 February 1956 and currently has some seventy States Parties.¹⁴ This Convention was the first successful attempt to unify certain rules relating to arrest of seagoing ships, which had had variant forms in different States. The resultant rules established, *inter alia*, a closed list of seventeen claims of a maritime nature for which an arrest of ship could be effected.

The 1952 Arrest Convention provides the power of arrest of ships flying the flag of one of the contracting States in the jurisdiction of any of the contracting States in respect of any of the named maritime claims. This power, however, does not prohibit any State from the powers vested by its national laws to arrest or prevent from sailing any ship in its jurisdiction.¹⁵ This exception to the power of arrest under the 1952 Arrest Convention means that in effect ships could still be arrested for claims which did not arise from maritime related transactions. The 1952 Arrest Convention, notwithstanding, provides that ships of non-contracting States may be arrested in respect of the enumerated maritime claims or any other claims as the laws of the contracting State may provide, if the relevant ship is within its jurisdiction.¹⁶

The arrest of a sister ship owned by a person liable for the specific maritime claims enumerated in the 1952 Arrest Convention is allowed, provided however, that at the time of the commencement of the action the person shall be the owner of said sister ship(s). This is also applicable for a ship under a demise charter, with similar provision that at the time of the commencement of the proceedings against the demise charterer, the sister ship(s) must be owned by said demise charterer. There is a notable exception to this rule which concerns three specific claims:¹⁷ disputes as to the title to or ownership of any vessel; disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship; and the mortgage or hypothecation of any ship. However, the 1952 Arrest Convention allows for reservation of

¹⁴CMI Yearbook 2009, Status of Ratification to Maritime Conventions, p. 462.

<<http://comitemaritime.org/Uploads/pdf/CMI-SRMC.pdf>>.

¹⁵ Article 2 of the Arrest 1952 Convention.

¹⁶ Article 8 (2) of the Arrest 1952 Convention.

¹⁷ Article 1(o-q) of the Arrest 1952 Convention.

claims of mortgage or hypothecation by Contracting States.¹⁸ One notable consequence of the arrest of sister ship under the 1952 Arrest Convention is the proliferation of single ship owning companies in an endeavor to circumvent arrest.

The 1952 Arrest Convention prohibits the arrest of the same ship for the same maritime claim by the same claimant more than once in any one or more jurisdictions of any of the contracting States. Any such re-arrest in this respect, where a valid bail or other security has been provided, shall be set aside. The exception to this rule may apply if the claimant in the second arrest can provide *prima facie* evidence that the existing security has been released.

The 1952 Arrest Convention further provides that the arresting court has jurisdiction in the following instances: if the claimant has his habitual residence or principal place of business in the country in which the arrest is made; if the claim arose in the country in which the arrest is made; if the claim concerns the voyage during which the arrest is made; if the claim arose out of a collision; if the claim is for salvage; and if the claim is for a mortgage or hypothecation of the ship arrested.¹⁹

The final point under review, deals with the fact that the 1952 Arrest Convention provides that where the arresting court does not have jurisdiction to decide on the merits of the case, the security provided to procure the release of the ship shall be sufficient to satisfy any subsequent judgment which may be rendered by a court of competent jurisdiction. Corollary to this point, the 1952 Arrest Convention also obliges the arresting court to respect the choice of the parties to submit jurisdiction of the matter to another court, save a time limitation within which a claimant may bring said subsequent proceeding.

¹⁸ Article 10 (b) of the Arrest 1952 Convention.

¹⁹ Article 7 of the 1952 Arrest Convention.

4. The 1999 Arrest Convention

In an attempt to clarify some ambiguities and fill in the gaps of the 1952 Arrest Convention, the International Maritime Organization (IMO) Assembly resolved in its 10th Session to begin a review of the 1952 Arrest Convention in 1984.²⁰ After fifteen years of work by various international organizations,²¹ several discussions and drafts cumulated into a convention which was adopted in Geneva on 12 March 1999, known as the International Convention on Arrest of Ships, 1999 (the 1999 Arrest Convention). On 14 March 2011, Albania became the 10th State to accede to the 1999 Arrest Convention, triggering the entry into force of the Convention on 14 September 2011.²²

For the purpose of furnishing the Liberian Legislator with a summary of the nature and relevant articles of the 1999 Arrest Convention, which may prove crucial in the decision-making process of incorporating the Convention into Liberia's Maritime Law, kindly consider the following discussions:

A. Objective of the 1999 Arrest Convention

The 1999 Arrest Convention provides further unification of the rules of arrest of ships, taking into account recent changes in the international maritime industry. These changes include, *inter alia*, the addition of five other claims for which an arrest of a ship may be effected. The primary objective of the 1999 Arrest Convention is to provide a unified set of rules which govern arrest of ships. This will promote and facilitate the harmonious and orderly development of the international maritime trade.

B. Scope of Application

The 1999 Arrest Convention provides that the rules it establishes shall apply to any ship within the territorial jurisdiction of a contracting State. The rules, however, shall not apply to any

²⁰ Res. A. 405 (x) of the Assembly of the IMO.

²¹ IMO; CMI; United Nations Conference on Trade and Development (UNCTD); and the Joint Intergovernmental Group of Experts.

²² UNCTD; <<http://www.unctad.org/templates/Page.asp?intItemID=5894&lang=1>>.

warship or other ships owned or operated by any State for non-commercial use. Notwithstanding the scope of the 1999 Arrest Convention, the government of a contracting State through its courts and departments retain the right and power to detain or otherwise prevent any ship, within its jurisdiction, from sailing in respect of any other violations of any applicable laws and regulations of a contracting State. Finally, the 1999 Arrest Convention shall not affect the power of the courts of contracting States to make orders affecting the totality of a debtor's assets.²³

C. Definitions under the 1999 Arrest Convention

The 1999 Arrest Convention clarifies the meaning of several salient terms,²⁴ the applications of which are required for its effective execution. The 1999 Arrest Convention begins with a list of definitions enumerating a “closed list” of “maritime claims” for which an arrest may be executed. It is important at this stage not to confuse “maritime claims” with “maritime liens”. Some “maritime claims” are secured by a “maritime lien”, and others are not. It is up to national laws and international conventions (governing maritime liens and mortgages) to define whether specific types of “maritime claims” are secured by “maritime liens”, which follow the ship and rank before ship mortgages.²⁵

Article 1.1 of the 1999 Arrest Convention lists twenty-two claims as “Maritime Claims” for which a claimant may be granted an arrest of a ship under the application of the Convention. The claims incorporated thereunder include damage caused by a ship, salvage operations, ports and harbor charges, environmental damage, insurance premiums as well as claims with regard to goods and provisions supplied and services rendered to a ship for its operations. Some of the claims included in this closed list of “maritime claims” are discussed below:

- i. loss or damage caused by the operation of the ship:²⁶

This presents a wide scope for a maritime claim to be asserted in respect of loss or damage caused by the operation of the ship. The use of the phrase “operation of the ship” widens the scope, from the traditional scope of damage caused by the ship itself to include the scope of the

²³ Article 8 of the 1999 Arrest Convention.

²⁴ Article 1 of the 1999 Arrest Convention.

²⁵ Article 9 of the 1999 Arrest Convention. Tetley, William; Arrest, Attachment and Related Maritime Law Procedures, Tulane Law Review, Vol. 73: p.1895 at p. 1965.

²⁶ Article 1(1)(a) of the 1999 Arrest Convention.

activities performed by the ship. “Operation” includes, *inter alia*, the maintenance, the navigation, the commercial employment of the ship, whether in a liner service, or by time or voyage charterparty or otherwise. A careful examination of the scope of this claim reveals overlaps with some other listed claims in the 1999 Arrest Convention.²⁷

- ii. loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship:²⁸

The wording of this sub-paragraph is fairly obvious in its coverage, loss of life and personal injury. It was included in the closed list of “maritime claims” covered by the 1999 Arrest Convention, notwithstanding the wide scope of sub-paragraph 1(1)(a) for the sake of clarity in its application with respect to other international conventions, like the 1993 Maritime Liens and Mortgages Convention (1993 MLM Convention).²⁹

- iii. 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:³⁰

The use of the phrase “salvage operations” instead of salvage is to bring the 1999 Arrest Convention in sync with the International Convention on Salvage, 1989. It defines “salvage operations” to mean any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever. The wording of this sub-paragraph further clarifies that the types of claims which may be considered salvage claims as those arising out of a “salvage agreement”. This additional scope is important because in some cases such agreements may give rise to claims which are not based on salvage operations actually performed.³¹ It also provides clarification of special compensation in respect of environmental damage as claims for which an arrest could be sought and made.

²⁷ Berlingieri, Francesco; p. 58.

²⁸ Article 1(1)(b) of the 1999 Arrest Convention.

²⁹ Berlingieri, Francesco; p. 59.

³⁰ Article 1(1)(c) of the 1999 Arrest Convention.

³¹ Berlingieri, Francesco; p. 61.

- iv. 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).³²

In an attempt to cover new types of claims that may occur in the future, as it relates to environmental damage and its prevention, this sub-paragraph provides an open ended approach. This sub-paragraph creates, for the first time, a maritime claim for which an arrest may be effected, in respect of “damage or treat of damage by the ship to the environment”. In this day and age of enhanced environmental awareness, this sub-paragraph gives shipowners more incentives to be environmentally friendly, knowing that an arrest could be made against their ships for a maritime claim in this respect.

- v. 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:³³

This sub-paragraph enables claimants for the first time, to effect an arrest against a ship for claims of wreck removal. The claims cover costs of the removal of wrecks which causes navigational hazards or risks, and for the protection of the marine environment.

- vi. towage:³⁴

This sub-paragraph provides a claim for any type of towage, whether deep-sea or port towage, as well as damage done by the tug to the tug or vice versa, breach of contract, etc. In cases of breach of contract, reference must be made to the type of service.³⁵

³² Article 1(1)(d) of the 1999 Arrest Convention.

³³ Article 1(1)(e) of the 1999 Arrest Convention.

³⁴ Article 1(1)(j) of the 1999 Arrest Convention.

³⁵ Berlingieri, Francesco; p. 72.

vii. pilotage:³⁶

This sub-paragraph provides that claims arising out of a pilotage service are covered under the 1999 Arrest Convention, and an arrest can be made in respect of such a claim. Reference, in this case, is made to the type of service giving rise to the claims, rather than to the claims themselves.

viii. port, canal, dock, harbor and other waterway dues and charges:³⁷

This sub-paragraph clarifies that claims in respect of port, canal, dock, harbor and other waterway dues and charges create a maritime claim for which a ship may be arrested. This brings it in line with the 1993 MLM Convention.

ix. insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer:³⁸

This sub-paragraph makes claims for insurance premiums a maritime claim for which an arrest may be effected. When one considers this type of claim, two questions arise: first, what kind of insurance may give rise to claims for premium covered by this sub-paragraph; second, against whom must the claim arise. In response to these questions, firstly, the nature of the premium is very wide, since it includes mutual insurance. However, the premium must be related to the ship against which the arrest is requested. This includes insurance connected to the operations of the ship. Secondly, the claim must arise against the person who operates the ship, be it the owner of the ship or the charterer by demise.³⁹

x. any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer:⁴⁰

The wording of this sub-paragraph “in respect of the ship” must clearly be interpreted generally as the operations of the ship. This means therefore that commissions and brokerages fees may be due to insurance contracts, contracts for use or hire of a ship, contracts of carriage of cargo or passengers, towage contracts, pilotage contracts, salvage contracts, shipbuilding and ship repair

³⁶ Article 1(1)(k) of the 1999 Arrest Convention.

³⁷ Article 1(1)(n) of the 1999 Arrest Convention.

³⁸ Article 1(1)(q) of the 1999 Arrest Convention.

³⁹ Berlingieri, Francesco; p. 81.

⁴⁰ Article 1(1)(r) of the 1999 Arrest Convention.

contracts, contracts for supply of materials, provisions, bunkers, equipment, services, etc. The agency fees include agents at ports for services rendered in connection with the arrival and departure of ship.⁴¹

D. Powers of Arrest⁴²

The 1999 Arrest Convention provides that a ship may be arrested only under the authority of a court of a State Party in which the arrest is effected. In other words, an arrest can be made only when applied for and granted by a court of competent jurisdiction of a contracting State. The reasons for which a ship may be arrested under the power of the court are restricted to the enumerated list of “maritime claims” provided in Article 1(1) of the 1999 Arrest Convention. The primary objective of the court exercising its power of arrest of a ship is to obtain a prejudgment security for the claim asserted. The 1999 Arrest Convention further provides that the procedure for a claimant to obtaining an arrest under the power of the court is to be determined by the laws of the State in which the arrest is made, i.e. Liberian Courts.

E. Exercise of Right of Arrest⁴³

The 1999 Arrest Convention allows courts to exercise the power of arrest for maritime claims on any ship, if the claimant can assert that: the person owned the ship when the maritime claim(s) arose and is the owner when the arrest was effected; that the charterer, who had demise chartered the ship when the maritime claim arose is liable for the claim and is the demise charterer or owner of the ship when the arrest is effected; that the claim is based upon a mortgage of the ship; that the claim relates to the ownership or possession of the ship; and, that the claim is against the owner, demise charterer, manager or operator of the ship and is a maritime lien which is cognizable under the law of the State where the arrest is applied for.

The 1999 Arrest Convention further grants the right of arrest to ships, other than the relevant ship, which are owned by the person against whom a maritime claim is alleged, if the person was owner of the ship or had chartered the ship⁴⁴ from which the maritime claim arose. There are,

⁴¹ Berlingieri, Francesco; p. 82.

⁴² Article 2 of the 1999 Arrest Convention.

⁴³ Article 3 of the 1999 Arrest Convention.

⁴⁴ Demise, Time or Voyage charters are all applicable for this provision.

however, exceptions to this provision for the arrest of the so-called sister ship(s), which are, maritime claims dealing with ownership or possession of the ship.

The 1999 Arrest Convention also provides that, notwithstanding the two provisions for the exercise of the arrest of ships, the execution of a judgment in respect of claims enforceable against a ship by judicial or force sale of that ship shall be permitted.

F. Grounds for Release from Arrest⁴⁵

Generally, the 1999 Arrest Convention provides that a ship under arrest shall be released when sufficient security has been provided in a satisfactory form, with the exception of claims relating to disputes over ownership or possession and disputes between co-owners as to the employment or earnings of the ship. In regard to these exceptions, the court may allow the possessor of the ship to continue trading the ship, if he can provide a security which sufficiency is agreed to by the parties to the disputes. In the absence of such agreement between the parties as to the sufficiency and form of the security, the court shall set the nature and amount of the security, which shall not exceed the value of the arrested ship.

The 1999 Arrest Convention further provides that any request for release by the ship, which has been arrested, upon a security being provided shall not be construed or interpreted as an acknowledgment of any liability, nor as waiver of any defense or any right to limit liability. The provision of the security for release is simply a means for the court to ensure that the purported claim would be satisfied if the defendant were to be found liable. The release granted in respect of the provision of the security also ensures that the ship continues trading until the merits of the claim are adjudicated upon.

The 1999 Arrest Convention also provides that the security provided for the release of the ship arrested may, upon an application to the court by the party providing the security, have that security reduced, modified or cancelled.

⁴⁵ Article 4 of the 1999 Arrest Convention.

G. Re-Arrest and Multiple Arrests

The 1999 Arrest Convention provides that a ship, which has already been arrested and released, shall not be re-arrested in respect of the same maritime claim. The Convention, however, provides three exceptions to this general rule prohibiting re-arrest:

- when the security provided is inadequate in its nature and amount. This applies even if the amount of the claim has not increased since the time of the first arrest but also in cases where at that time the security was provided it was accepted knowingly as being less than the claim;
- when the person who provided the security (the indemnifier) is not able to or likely to be able to fulfill some part or all of the defendant's obligations. This includes financial capacity or foreign currency restrictions; and
- when the ship arrested or security previously provided was released upon the application or with the consent of the claimant on reasonable grounds to do so or if the claimant was not able to take reasonable steps to prevent the ship's release.

The 1999 Arrest Convention further provides a similar general prohibition for the arrest of multiple ships as it does with the re-arrests of a ship once security has been provided, either after arrest or to prevent the arrest of the relevant ship. Similarly, the 1999 Arrest Convention also provides exceptions to the general rule prohibiting the arrest of multiple ships, as with re-arrest of ships, only that the first point which deals with the amount of the security is different. In the case of multiple arrests, it only provides arrest of another ship if the nature and amount of the security is inadequate.⁴⁶

H. Protection of Owners and Demise Charterers of Arrested Ships⁴⁷

The 1999 Arrest Convention provides that the court of the arresting State has the discretion to impose the prerequisite of a security to be provided by the claimant, as a condition for the arrest of ship or the maintenance of an arrest already effected against any loss or damage suffered by the defendant, which was caused by the claim for arrest being wrongful or unjustified, or the

⁴⁶ Article 5 of the 1999 Arrest Convention.

⁴⁷ Article 6 of the 1999 Arrest Convention.

demand of excessive security from the defendant. The court is also vested with the responsibility to determine the kind, amount and terms of such security.

The 1999 Arrest Convention also vests the court with the power to determine the extent of the liability of the claimant to the arrested ship for loss or damage caused by, but not limited to, wrongful or unjustified arrest and the demand of excessive security by the claimant. The liability is to be determined by the court under the laws of the State where the arrest is effected.

I. Jurisdiction on the Merits of the Case⁴⁸

The 1999 Arrest Convention provides as a general rule that courts in the State where an arrest is made or where a security has been obtained, shall have jurisdiction to determine the merits of the case. It provides, however, three main exceptions to the jurisdiction on the merits, namely:

- where the disputing parties validly agree or have validly agreed to submit the dispute to the court of another State, which accepts jurisdiction;⁴⁹
- where the court of the State in which the arrest has been effected or security obtained refuses jurisdiction as per its laws and another State accepts jurisdiction; and
- where the claims brought in support of the arrest is time barred, the limits of which time bar is to be determined by the court.

⁴⁸ Article 7 of the 1999 Arrest Convention.

⁴⁹ This exception also applies to agreements of the disputing parties to Arbitration.

5. Legal Rationale for the Incorporation of the 1999 Arrest Convention into Liberian Domestic Law

To understand the Liberian Admiralty jurisdiction, it is necessary to mention an important historical development which has played a significant role in structuring said jurisdiction. Liberia has a common law jurisdiction which it inherited from the United Kingdom via the United States of America (USA). This is relevant because the USA acquired its independence from the United Kingdom in 1783, before the reforms to the actions *in rem* and *in personam* in the Admiralty jurisdiction were made clear in the English common law.⁵⁰ Consequently, Liberia, though a common law jurisdiction still has the practice of claimants suing *in personam* and attaching the property of the debtor. This procedure is known as the “Action by Attachment”.⁵¹ This practice still applies in the Liberia’s Admiralty jurisdiction. This means that a claimant in a non-maritime related civil action still has the option of attaching a ship which is the property of a defendant. Considering Liberia’s desire to modernize its Admiralty jurisdiction and the status of Liberia as a flag State in global shipping industry, it is unacceptable to continue the application of the “Action by Attachment”.

Title 21 of the Liberian Code of Laws of 1956 as amended in 2009⁵² provides the maritime laws of Liberia, which regulate the maritime affairs of Liberia. Title 21 serves as the legal basis for the exercise of the Admiralty jurisdiction under the laws of Liberia. Title 21, however, does not establish a separate and exclusive Admiralty Court for the exercise of Admiralty jurisdiction in Liberia. In accordance with Title 21, jurisdiction for the exercise of all maritime actions arising out of the application of the maritime laws of Liberia shall be vested in the Circuit Courts of Liberia, sitting in Admiralty.⁵³ This grant of jurisdiction by Title 21 was however, amended in 2010 with the establishment of the Commercial Court. The Constituent Act of the new

⁵⁰ Section 2 of this Explanatory Note.

⁵¹ Chapter 7(A & B) of the Civil Procedure Law, Title 1 Liberian Code of Laws Revised, 1976; <<http://www.liberlii.org/lr/legis/codes/cplt1colr470/>>.

⁵² Liberian Maritime Law Title 21 of the Liberian Code of Laws 1956, as amended in 2002; <<http://www.liberlii.org/lr/legis/codes/mlt21colr404/>>. The Amendments of 2009 added Chapter 11 (Marine Vessels, Registration and Control) to Title 21; <<http://www.liberlii.org/lr/legis/acts/mvrac22517/>>.

⁵³ Section 33 of the Liberian Maritime Law Title 21 of the Liberian Code of Laws 1956, as amended in 2009; <<http://www.liberlii.org/lr/legis/codes/mlt21colr404/>>.

Commercial Court removes the Admiralty jurisdiction from Circuit Courts and vests in the Commercial Court the jurisdiction of all Admiralty cases in Liberia.⁵⁴

However, the change of the Admiralty jurisdiction from the Circuit Court to the Commercial Court has brought little change to the exercise of the Admiralty jurisdiction in the application of the maritime laws of Liberia. This is in large part due to the fact that in the exercise of the Admiralty jurisdiction, the Commercial Court still applies the general Civil Procedural Law of Liberia, which the Circuit Court also applied. Hence, the problem of an action *in personam* and the subsequent attachment of the defendant's property (example defendant's ship) for a non-maritime related matter still exist in Liberia.

Under Title 21, the maritime laws of Liberia cover, *inter alia*:

- the requirements and procedures of vessel registration under the Liberian flag;
- bareboat registration requirements and procedures;
- maritime liens and mortgages;
- carriage of goods and passengers by sea;
- limitation of liability for maritime claims;
- salvage; and
- wreck removal.

However, several other fields of maritime law, which are governed by international conventions to which Liberia is a State Party have not yet been incorporated into Title 21. The 1999 Arrest of Ships Convention is one of such conventions.

The lacuna caused by Liberia's failure to enact proper domestic legislation to restrict the arrest of ships only to cases arising out of maritime disputes, has created a serious hindrance to Liberia in maintaining a proper and effective Admiralty jurisdiction, which is in tune with the current developments in the international maritime field. This Draft Act proposed will fill in this gap and provide a legal basis for the arrest of ships in the Liberian jurisdiction only for claims which arise out of a maritime related transaction. The enactment of the Arrest of Ships Act, 2012 will serve as the first step in the much needed reform process of the Liberian Admiralty jurisdiction.

⁵⁴ Article II (1) of the Commercial Court Act, Title 17 of the Liberian Code of Laws 1956, as amended in 2010.

The advantages to Liberia by incorporating the 1999 Arrest Convention are as follows:

1. Ships will be arrested in Liberia only in respect of a maritime claim;
2. A claimant in a maritime action will only succeed in the arrest of a ship on the basis of a specified list of maritime claims, provided the owner of the relevant ship is liable and that he is the owner or demise charterer of that ship at the time of the arrest;
3. A claimant would obtain a pre-judgment security by the court effecting the arrest of ship;
4. A ship can be promptly released from arrest upon the provision of a satisfactory bail/security by the defendant/shipowner, while the claim(s) is being decided on its merits;
5. For the protection of the defendant/shipowner, the claimant may be required where necessary to provide indemnity for his liabilities in the case of wrongful arrest of a ship;
6. A ship may be arrested, notwithstanding the existence of a jurisdiction clause in the contract between the parties which grants jurisdiction to the jurisdiction of another State;
7. A claimant may commence proceedings for an arrest in Liberia where the relevant ship is expected to enter Liberia's jurisdiction even if the claim asserted arose in another State; and
8. An arrest warrant issued by a competent court of another State can be enforced on the relevant ship in the jurisdiction of Liberia if that ship is physically within the territory of Liberia.

These enumerated advantages are in addition to the fact that Liberia has acceded to the 1999 Arrest Convention and that the said Convention has recently entered into force. All of the above give the enactment of the Arrest of Ships Act, 2012 into the Liberian Maritime Laws solid legal justification in respect of furthering Liberia's goal of maintaining an effective Admiralty jurisdiction. It also ensures that Liberia fulfills its international legal obligations of unification by the domestication of international conventions to which Liberia is a State Party.

6. Procedure for Incorporating the 1999 Arrest Convention

International Treaties signed and ratified by Liberia do not in themselves confer the rights and obligations which they proffer on the domestic sphere of Liberian Law.⁵⁵ Article 34 of the Constitution of Liberia (1984), which is the Organic Law of Liberia, confers the power on the Legislature to promulgate Laws of the Republic.⁵⁶ Liberia has promulgated in its Statute a specific legislation dealing with all maritime matters, **Title 21 of the Liberian Code of Laws 1956, Liberian Maritime Law, as Amended in 2009.**⁵⁷ Hence, this Draft Act will amend this existing law and thereby make the necessary repeals to the potential conflict areas, therein. The following step-by-step procedure will be carried out:

A. Preparation of the Draft Act

The Liberia Maritime Authority,⁵⁸ pursuant to its statutory duty as the designated agency of the Liberian Government for maritime affairs, shall prepare the Draft Act which will incorporate the 1999 Arrest Convention into the Liberian Maritime Law (Title 21). Thereafter, the Draft Act prepared will be circulated to the relevant stakeholders; the agents of Liberia's registry, Liberia International Ship and Corporate Registry (LISCR), and members of the domestic industry for their inputs, comments, and support.

B. Submission of the Draft Act to the Office of the President

When the inputs of the various stakeholders are taken into consideration and the Draft Act is finalized by the Liberia Maritime Authority, it is sent to the Office of the President of the Republic of Liberia for approval. At this stage, the President again seeks advice from the Cabinet, including the Attorney-General, the shipping industry and experts on the matter. After approval is granted by the President, the Draft Act is submitted by the Office of the President to the National Legislature for enactment into the Laws of Liberia.

⁵⁵ Except for self-executing treaties.

⁵⁶ Constitution of the Republic of Liberia, 1984; <<http://www.liberlii.org/lr/legis/const/col1984235/>>.

⁵⁷ See note 48.

⁵⁸ Liberia Maritime Authority Act of 2010; <<http://www.liberlii.org/lr/legis/acts/maa229/>>.

C. Passage of the Act into Law by the National Legislature

At this stage, the Draft Act is submitted to the Sub-Committee for Maritime Affairs in the House of Representatives, which holds public hearings on the Draft Act, in which the views of all stakeholders are again sought and taken into consideration. The necessary amendments are made to the Draft Act as a result of the public hearings and it is placed before the Plenary of the House of Representatives. The Draft Act is then voted on and passed by the House of Representatives. Thereafter, the same process is repeated by the House of Senate. Once both Houses of the Legislature grant passage, the Act is submitted to the President, in accordance with the Constitution, for approval and signature.⁵⁹

D. Approval, Signature, Publication

With the President's approval and signature of the Act, the Act is then sent by the Office of the President to the Ministry of Foreign Affairs for publication into "Hand Bill". With this publication, the Act becomes Law cognizable by Liberian Courts.⁶⁰

⁵⁹ Article 35 of Constitution of the Republic of Liberia, 1984;

⁶⁰ Section 61 "*Statues not to be enforced until published*", Legislative Law, Title 19, Liberian Code of Laws; <<http://www.liberlii.org/lr/legis/codes/llt19lcolr434/>>

7. Scheme of the Draft Act

The Draft Act is an amending legislation which adds a new chapter, Chapter 12, to **Title 21 of the Liberian Code of Laws 1956, Liberian Maritime Law, as Amended in 2009.** The Draft Act begins with a Preamble and has five (5) articles. The Preamble provides a list of recitals which states the reasons of the enactment of the Draft Act. Article 1 provides the short title of the Draft Act, for ease of reference. Article 2 states the purpose of enacting the Draft Act and the purpose of Chapter 12. Thereafter, Article 3 amends the existing law to include Chapter 12.

The provisions of Chapter 12 are then enumerated in eight parts. It must be noted that Chapter 11, the final chapter of the existing law, ends at Section 386. Hence, Chapter 12 begins from Section 387 and ends at Section 415. The eight parts of Chapter 12 are summarized in light of the provisions each contains. They are:

Part I, titled “Preliminary”, provides a list of the definitions of the important terms used in the Chapter, which include the enumeration of the list of applicable “maritime claims”. This Part also provides the scope of application of the provisions provided by the Chapter.

Part II, titled “Powers of Arrests”, provides who may order the arrest of a ship and the reason(s) for which the arrest may be effected. It also provides the objective of the arrest and the applicable law which governs the procedure of arrest.

Part III, titled “Exercise of Right of Arrest”, provides which ships may be arrested.

Part IV, titled “Release from Arrest”, deals with, *inter alia*, the requirement of agreement between the parties involved as to the sufficiency of a security, which will ensure the release of a ship pending the adjudication of the asserted claim. It clarifies issues concerning waiver and the right to modify or cancel a security which has already been provided.

Part V, titled “Re-arrest and Multiple Arrests”, provides what circumstance(s) would constitute the right for re-arrest of a ship and multiple arrests of ships. It also provides the applicable meaning of ‘release’ for the purpose of this Part.

Part VI, titled “Protection of Owners and Demise Characters of Arrested Ships”, provides the condition for which a security for wrongful arrest may be required to be provided by the claimant and vests the court with the authority to determine the extent of the liability, if any in such cases.

Part VII, titled “Jurisdiction on the Merits of the Case”, provides, *inter alia*, for the instances in which the court will have jurisdiction on the merits of the case, grounds for refusal of jurisdiction, the limitation period, and the enforcement of the court’s decisions.

Part VIII, titled “Non-Creation of Maritime Liens”, provides the final section of Chapter 12 which clarifies the non-creation of maritime liens the provisions of the Chapter.

Thereafter the final two articles of the Draft Act are enumerated. Article 4 provides the effective date of the Act and Article 5 the provisions of repeals. It is noteworthy to state that in Article 5, the phrase “ANY LAW TO THE CONTRARY NOTWITHSTANDING” is used by Liberian Legislative Enactments as a catch-all repeal clause.



“AN ACT TO AMEND TITLE 21 OF THE LIBERIAN CODE OF LAWS 1956 AS AMENDED IN 2009 TO CREATE CHAPTER 12 TO INCORPORATE THE INTERNATIONAL CONVENTION ON THE ARREST OF SHIPS, 1999. (ARREST OF SHIPS ACT, 2012).”

-DRAFT ACT-

ARRANGEMENT OF SECTIONS

PREAMBLE

- Article 1. Short Title
- Article 2. Purpose of the Act
- Article 3. Amending Article

CHAPTER 12: ARREST OF SHIPS

PART I PRELIMINARY

- Section 387. Definitions
- Section 388. Application of the Act

PART II POWERS OF ARREST

- Section 389. Who May Order an Arrest
- Section 390. Reason for Arrest
- Section 391. Objective of Arrest
- Section 392. Procedure of Arrest

PART III EXERCISE OF RIGHT OF ARREST

- Section 393. Ships Against Which Arrest is Permitted
- Section 394. Sistership Arrest
- Section 395. Arrest for Judicial or Forced Sale

PART IV RELEASE FROM ARREST

- Section 396. Receipt of Sufficient Security
- Section 397. Absence of Agreement
- Section 398. Waiver and Non-Acknowledgement of Liability
- Section 399. Arrest in a Non-Party State
- Section 400. Securing Satisfactory Security
- Section 401. Owner's Application to Modify or Cancel Security

PART V RE-ARREST AND MULTIPLE ARRESTS

- Section 402. Right of Re-arrest
- Section 403. Right of Multiple Arrest
- Section 404. Release

PART VI PROTECTION OF OWNERS AND DEMISE CHARTERERS OF
ARRESTED SHIPS

- Section 405. Security for Wrongful Arrest
- Section 406. Determining the Extent of Liability
- Section 407. Applicable Provisions
- Section 408. Staying of Decision

PART VII JURISDICTION ON THE MERITS OF THE CASE

- Section 409. Jurisdiction of Court
- Section 410. Inappropriate Forum
- Section 411. Refusal of Jurisdiction
- Section 412. Limitation Period
- Section 413. Enforcement of Decision of Court
- Section 414. Effect of Foreign Decisions

PART VIII NON-CREATION OF MARITIME LIENS

- Section 415. Maritime Liens

- Article 4. Effective Date
- Article 5. Repealers

“AN ACT TO AMEND TITLE 21 OF THE LIBERIAN CODE OF LAWS 1956 AS AMENDED IN 2009 TO CREATE CHAPTER 12 TO INCORPORATE THE INTERNATIONAL CONVENTION ON THE ARREST OF SHIPS, 1999. (ARREST OF SHIPS ACT, 2012).”

PREAMBLE

Recalling that Liberia acceded to the International Convention on Arrest of Ships, 1999, on 16 September 2005;

Recognizing the need for Liberia to fulfill its international obligations to incorporate the International Convention on Arrest of Ships, 1999 into its Law;

Cognizant that the provisions of this Convention, when incorporated, will ensure Liberia’s participation in facilitating the harmonious and orderly development of world trade;

Convinced that it is necessary to enact a law that governs the arrest of ships in Liberia;

NOW THEREFORE;

IT IS ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF LIBERIA, IN LEGISLATURE ASSEMBLED.

Article 1

Short Title

This Act may be cited as the Arrest of Ships Act, 2012.

Article 2

Purpose of the Act

The purpose of this Act is to add Chapter 12 to Title 21 of the Liberian Code of Laws of 1956 as amended in 2009. Chapter 12 shall provide for the arrest of all ships as regulated by the International Convention on Arrest of Ships, 1999, create a legal basis for the arrest of ship to be effected in Liberia and stipulate the methods and procedures for such arrests to be lawfully enforced.

Article 3

Amending Article

Title 21 of the Liberian Code of Laws of 1956, as amended in 2009, is hereby further amended to include Chapter 12: Arrest of Ships and shall read as follows:

CHAPTER 12 ARREST OF SHIPS

PART I PRELIMINARY

§ 387. Definitions

In this Chapter:

1. "Arrest" means any detention or restriction on removal of a ship by order of the 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.

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

- (j) towage;
- (k) pilotage;
- (l) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;
- (m) construction, reconstruction, repair, converting or equipping of the ship;
- (n) port, canal, dock, harbor and other waterway dues and charges;

- (o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;
- (p) disbursements incurred on behalf of the ship or its owners;
- (q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;
- (r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;
- (s) any dispute as to ownership or possession of the ship;
- (t) any dispute between co-owners of the ship as to the employment or earnings of the ship;
- (u) a mortgage or a "hypothèque" or a charge of the same nature on the ship;
- (v) any dispute arising out of a contract for the sale of the ship.

5. "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.

6. "Non-State Party" means any State which has not expressed its consent to be bound by the International Convention on Arrest of Ships, 1999.

§ 388. Application of this Chapter

- (1) This Chapter shall apply to any ship within the jurisdiction of Liberia, whether or not that ship is flying the Liberian Flag.
- (2) This Chapter shall not apply to any warship, naval auxiliary ships nor other ships owned or operated by any government for non-commercial use.
- (3) This Chapter shall not affect:
 - (a) the rights and powers of the Government of Liberia or its departments, or any public authority, or any dock or harbor authority, under the laws and regulations of Liberia, to detain or otherwise prevent from sailing any ship within the jurisdiction of Liberia;
 - (b) the power of the Government of Liberia or its Courts to make orders affecting the totality of a debtor's assets;
 - (c) any law applicable in Liberia giving effect to international conventions which provide for the limitation of liability;
 - (d) or modify the law applicable to the arrest of the ship if, the ship is physically within the jurisdiction of the Court provided the arrest is applied for by a person whose habitual residence or principal place of business is within the jurisdiction of the Court, or by any other person who has acquired a claim from such person by subrogation, assignment or otherwise.

PART II POWERS OF ARREST

§ 389. Who May Order Arrest

A ship may be arrested or released from arrest only under the authority of the Court.

§ 390. Reason for Arrest

A ship may only be arrested in respect of a maritime claim but in respect of no other claim.

§ 391. Objective of Arrest

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

§ 392. Procedure of Arrest

Subject to the provisions of this Chapter, the procedure relating to the arrest of a ship or its release shall be governed by the laws of Liberia.

PART III EXERCISE OF RIGHT OF ARREST

§ 393. Ships Against Which Arrest is Permitted

An 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 on a mortgage 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 under the laws of Liberia.

§ 394. Sistership Arrest

An arrest is also permissible of any ship or ships other than the relevant ship which, when the arrest is effected, is 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;

Provided, that this section does not apply to claims in respect of ownership or possession of a ship.

§ 395. Arrest for Judicial or Forced Sale

Notwithstanding the provisions of Sections 393 and 394, the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, the arrest is applied for in the execution of a judgment in respect of that claim enforceable against that ship by judicial or forced sale of that ship.

PART IV RELEASE FROM ARREST

§ 396. Receipt of Sufficient Security

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 Section 387(4) (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.

§ 397. Absence of Agreement

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.

§ 398. Waiver and Non Acknowledgement of Liability

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

§ 399. Arrest in a Non-Party State

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 Liberia, in respect of the same claim, that security shall be ordered to be released on application to the Court.

§ 400. Securing Satisfactory Security

If in a non-party State the ship is released upon satisfactory security in respect of that ship being provided, any security provided in the Court in respect of the same claim shall be ordered to be released to the extent that the total amount of security so provided 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 other State will actually be available to the claimant and will be freely transferable.

§ 401. Owner Application to Modify or Cancel Security

Where, pursuant to Section 396, 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.

PART V RE-ARREST AND MULTIPLE ARRESTS

§ 402. Right of Re-arrest

If a ship has already been arrested and released subject to security in respect of that ship having been provided to secure a maritime claim, that ship shall not be re-arrested 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 fulfill some or all of that person's obligations; or
- (c) the ship arrested or the security previously provided was released either:
 - (i) upon the application or with the consent of the claimant acting on reasonable grounds, or
 - (ii) because the claimant could not by taking reasonable steps prevent the release.

§ 403. Right of Multiple Arrest

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 provision of Section 402 (b) and (c) are applicable.

§ 404. Release

For the purpose of Part V of this Chapter, release shall not include any unlawful release or escape from arrest.

**PART VI PROTECTION OF OWNERS AND DEMISE CHARTERERS OF
ARRESTED SHIPS**

§ 405. Security for Wrongful Arrest

The Court may as a condition for the arrest of a ship, or for 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 the 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.

§ 406. Determining Extent of Liability

The Court 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.

§ 407. Applicable Provisions

The liability, if any, of the claimant in accordance with Section 406 shall be determined in accordance with the laws of Liberia.

§ 408. Staying of Decision

If a court in another State or an arbitral tribunal is to determine the merits of the case in accordance with the provisions of Part VII of this Chapter, then proceedings relating to the liability of the claimant, in accordance with Section 406, may be stayed pending that decision.

PART VII JURISDICTION ON THE MERITS OF THE CASE

§ 409. Jurisdiction of Court

The Court 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.

§ 410. Inappropriate Forum

Notwithstanding the provisions of Section 409, the Court may refuse to exercise that jurisdiction where that refusal is permitted by any law of Liberia and a court of another State accepts jurisdiction.

§ 411. Refusal of Jurisdiction

If an arrest has been effected or security provided to obtain the release of the ship and the Court:

- (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 Section 410,
- the 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.

§ 412. Limitation Period

If proceedings are not brought within the period of time ordered in accordance with Section 411, then the ship arrested or the security provided shall, upon request, be ordered to be released.

§ 413. Enforcement of Decision of Court

If proceedings are brought within the period of time ordered in accordance with Section 411, or if proceedings before a competent court or arbitral tribunal in another State are brought in the absence 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.

§ 414. Effect of Foreign Decisions

Nothing contained in the provision of Section 413 shall restrict any further effect given to a foreign judgment or arbitral award if, the arrest of the ship was effected or security provided to obtain its release was under the order of the Court.

PART VIII NON-CREATION OF MARITIME LIENS

§ 415. Maritime Liens

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

Article 4

Effective Date

This Act shall take effect immediately upon publication into Handbills.

Article 5

Repealers

ANY LAW TO THE CONTRARY NOTWITHSTANDING.

2012

**_____ SESSION OF THE FIFTY-THIRD
LEGISLATURE OF THE REPUBLIC OF LIBERIA**

HOUSE'S ENGROSSED BILL NO. _____ ENTITLED:

**“AN ACT TO AMEND TITLE 21 OF THE
LIBERIAN CODE OF LAWS 1956 AS AMENDED IN
2009 TO CREATE CHAPTER 12 TO
INCORPORATE THE INTERNATIONAL
CONVENTION ON THE ARREST OF SHIPS, 1999.
(ARREST OF SHIPS ACT, 2012).”**

On motion, Bill read. On motion, the Bill was adopted on its first reading and sent to Committee Room on (day), (month) (date), (year) at (time).

On motion, the Bill was taken from Committee Room for its second reading. On motion, under the suspension of the rule, the second reading of the Bill constituted its third and final reading and the Bill was adopted, passed into full force of law, and ordered engrossed today, (day), (month) (date), (year) at (time).

CHIEF CLERK, HOUSE OF REPRESENTATIVE, R.L.

2012

**_____ SESSION OF THE FIFTY-THIRD
LEGISLATURE OF THE REPUBLIC OF LIBERIA**

SENATE ENDORSEMENT TO HOUSE'S ENGROSSED
BILL NO. _____ ENTITLED:

**“AN ACT TO AMEND TITLE 21 OF THE
LIBERIAN CODE OF LAWS 1956 AS AMENDED IN
2009 TO CREATE CHAPTER 12 TO
INCORPORATE THE INTERNATIONAL
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(ARREST OF SHIPS ACT, 2012).”**

On motion, Bill read. On motion, the Bill was adopted on its first reading and sent to Committee Room on (day), (month) (date), (year) at (time).

On motion, the Bill was taken from Committee Room for its second reading. On motion, under the suspension of the rule, the second reading of the Bill constituted its third and final reading and the Bill was adopted, passed into full force of law, and ordered engrossed today, (day), (month) (date), (year) at (time).

SECRETARY, LIBERIAN SENATE, R.L.

2012

ATTESTATION TO:

“AN ACT TO AMEND TITLE 21 OF THE LIBERIAN CODE OF LAWS 1956 AS AMENDED IN 2009 TO CREATE CHAPTER 12 TO INCORPORATE THE INTERNATIONAL CONVENTION ON THE ARREST OF SHIPS, 1999. (ARREST OF SHIPS ACT, 2012).”

VICE PRESIDENT OF THE REPUBLIC OF LIBERIA/PRESIDENT OF THE SENATE

SECRETARY, HOUSE OF SENATE, R.L.

SPEAKER, HOUSE OF REPRESENTATIVES, R.L.

CHIEF CLERK, HOUSE OF REPRESENTATIVES, R.L.



REPUBLIC OF LIBERIA
THE HONORABLE HOUSE OF REPRESENTATIVES
Capitol Building
P.O. Box 9005
Monrovia, Liberia

2012

_____ SESSION OF THE FIFTY-THIRD LEGISLATURE OF THE
REPUBLIC OF LIBERIA.

SCHEDULE OF THE HOUSE'S ENROLLED BILL NO. ___ ENTITLED:

**“AN ACT TO AMEND TITLE 21 OF THE LIBERIAN CODE OF LAWS
1956 AS AMENDED IN 2009 TO CREATE CHAPTER 12 TO
INCORPORATE THE INTERNATIONAL CONVENTION ON THE
ARREST OF SHIPS, 1999. (ARREST OF SHIPS ACT, 2012).”**

PRESENTED TO THE PRESIDENT OF THE REPUBLIC OF LIBERIA FOR
EXECUTIVE APPROVAL.

APPROVED THIS _____ DAY OF _____ A.D. 2012

AT THE HOUR OF _____

THE PRESIDENT OF THE REPUBLIC OF LIBERIA

APPENDIX 1

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 1 SEP

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 ^[11]_[SEP] 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 ^[11]_[SEP]

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 ^{[[[]]]}_{SEP}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 ^{[[[]]]}_{SEP}form of the security, the Court shall determine its nature and the amount ^{[[[]]]}_{SEP}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 ^{[[[]]]}_{SEP}that security reduced, modified, or cancelled.

Article 5

^{[[[]]]}_{SEP}Right of Re-arrest and Multiple arrest

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

- (a) the nature or amount of the security in respect of that ship already provided in respect of the same claim is inadequate, on condition that the aggregate amount of security may not exceed the value of the ship; or
- (b) the person who has already provided the security is not, or is unlikely to be, able to fulfill some or all of that person's ^{[[[]]]}_{SEP}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 ^[1]_[SEP]

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 ^[1]_[SEP]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 ^[1]_[SEP]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 ^[1]_[SEP]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 ^[1]_[SEP]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 ^[11]_{SEP}

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 ^[11]_{SEP}

Non-creation of Maritime Liens

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

Article 10 ^[11]_{SEP}

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 ^[1]_[SEP]

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

Article 12 ^[1]_[SEP]

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 ^[1]_[SEP]

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 ^[1]_[SEP] 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 ^[1]_{SEP}

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 ^[1]_{SEP}

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 ^[1]_{SEP}

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 ^[1]_{SEP}

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.

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