



BTG LEGAL

Arrest of Ship in a Double Security Scenario: is it really forbidden?

Alberto Batini, LLMC, PHD
BTG LEGAL
Italy

Art. 3 (3) - 1952 Brussels Convention

(3) A ship shall not be arrested, nor shall bail or other security be given more than once in any one or more of the jurisdictions of any of the Contracting States in respect of the same maritime claim by the same claimant: and, if a ship has been arrested in any of such jurisdictions, or bail or other security has been given in such jurisdiction either to release the ship or to avoid a threatened arrest, any subsequent arrest of the ship or of any ship in the same ownership by the same claimant for the maritime claim shall be set aside, and the ship released by the Court or other appropriate judicial authority of that State, unless the claimant can satisfy the Court or other appropriate judicial authority that the bail or other security had been finally released before the subsequent arrest or that there is other good cause for maintaining that arrest.

Article 5 - 1999 Arrest Convention
Right of rearrest and multiple arrest

1. Where in any State a ship has already been arrested and released or security in respect of that ship has already been provided to secure a maritime claim, that ship shall not thereafter be rearrested or arrested in respect of the same maritime claim unless:
 - (a) the nature or amount of the security in respect of that ship already provided in respect of the same claim is inadequate, on condition that the aggregate amount of security may not exceed the value of the ship; or
 - (b) the person who has already provided the security is not, or is unlikely to be, able to fulfil some or all of that person's obligations; or
 - (c) the ship arrested or the security previously provided was released either: (i) upon the application or with the consent of the claimant acting on reasonable grounds, or (ii) because the claimant could not, by taking reasonable steps, prevent the release.
2. Any other ship which would otherwise be subject to arrest in respect of the same maritime claim shall not be arrested unless: (a) the nature or amount of the security already provided in respect of the same claim is inadequate; or (b) the provisions of paragraph 1 (b) or (c) of this article are applicable.
3. "Release" for the purpose of this article shall not include any unlawful release or escape from arrest.

“unless the claimant can satisfy the Court that the bail or other security had been finally released before the subsequent arrest”

"or that there is good cause for maintaining that arrest"

Issues:

- “Finally released” - Meaning and case law
- Partial loss of uniformity
- Domestic Courts of different jurisdictions to decide whether such *good cause* was present and the re-arrest of the vessel should (therefore) be granted.

The MV “CN” case

- Vessel arrested in 2020 in Beirut seeking security for an unpaid bunker supply in 2019
- Security posted by a “cheque” by Owners drawn on a Lebanese Bank and arrest lifted
- Vessel sailed pending claimant’s challenge against the Court Order releasing the Vessel
- Lebanese Court ultimately upholding in April 2022 the complaint and revoking the order to release the vessel (which meanwhile sailed), recognizing the inadequacy of the security posted. Security however never formally released in Lebanon.
- Vessel re-arrested before the Court of Venice (Italy) in May 2022 seeking a fresh security, which Owners posted in cash through a bank’s book.
- Owners arguing in Italy that arrest should be set aside under 3(3) 1952 Brussels Convention
- Matter still pending in Court.

The “or” mistake in Art. 3(3) of the Arrest Convention

- English and French version
- Travaux Préparatoires
- Consequences on the interpretation of the clause: when can the ship then be (re)arrested in the same or different jurisdiction ?
 - (i) Security granted by the Owner on the basis of a simple threat to arrest his ship
 - (ii) Voluntary release of the vessel by Claimant to avoid higher damages to the Owner
 - (iii) Ship sailing in violation of the Court's orders
- An Arrest Order does not constitute “Res Judicata”

The “objective” conditions of Art. 3(3) of the Arrest Convention

- Same “maritime claim” - What about an owner’s claim and a charter’s claim arising out of the same collision against the colliding vessel’s owner (respectively for damage to the vessel and for loss of freight) ?
- Same “ship” - What about a sister-ship arrest for the same claim ? Or arrest of a vessel for a claim voluntarily secured before by a simple threat to arrest ?
- Same “claimant” - What about a parent company acting for the same claim ?
- See Art. 5 - 1999 Arrest Convention

Food for thought

- Is the (officially ascertained) inadequacy of the security sufficient *per se* or a formal release order of the security is required to allow the re-arrest ? Can the situation in the MV “CN” case be regarded as a “good cause” for maintaining the (new) arrest ?
- What about a first arrest (and security) in a State which is not a party of the 1952 Convention (Non member State) and a second arrest in a member State ? Does Article 3 (3) of the Convention apply ?

BTG LEGAL

Alberto Batini
M. +39 348 7902191
a.batini@btglegal.it
www.btglegal.it