

# THE ARREST

## news

Issued by the industry network devoted to ship arrests, [www.shiparrested.com](http://www.shiparrested.com)

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**MEMBERS AT THE 18TH ANNUAL MEMBERS' CONFERENCE IN OSLO THIS PAST 15 SEPTEMBER**

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## Annual Members' Conference Summary

ShipArrested.com Members enjoyed reuniting once again this past 14-16 September, this time in Oslo Norway. Organized in cooperation by Norwegian members: Kvale, Økland, Raeder, Selmer, and Simonsen Vogt Wiig, the three day event kicked off Thursday evening at the Grand Hotel Oslo with a welcome reception sponsored by Singapore member, LSR Services.

The following morning participants gathered again to listen and discuss the topics of the working agenda, including ship arrest in Norway and the P&I Club perspective, as is fitting to the city's reputation as a hub for maritime shipping insurance. The day continued with further networking opportunities and discussion from member speakers on worldwide and regional issues.

To end the workday, attending members voted for next year's conference venue with several candidates to choose from: Southampton, New Delhi, Houston, Cairo, and Hong Kong, from which Cairo came out on top. Closing the conference activities, delegates dined at Ekeberg Restaurant with views overlooking the Oslo skyline. Last but not least, those who were able to stay Saturday enjoyed a special look at Oslo and its fjord on a rigid inflatable boat (RIB) tour with tidbits of history and a taste of the local cuisine at nearby town, Nesoddtangen.



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## English Law & E-Documents by Richard Faint, Charter Wise Ltd. (UK)

During the recent 18th Members' Conference in Oslo, attendees were advised that "E-Bills of Lading" were coming.

For the sake of good order, Members should be aware that "E-Bills of Lading" are, as of 20 September 2023, now permitted under the "Electronic Trade Documents Act 2023".

This statute now gives legal recognition to documents used by Traders involved in The International Sale of Goods Carried by Sea.

This will cover "trade documents" and Members are well aware of the importance of Bills of Lading (Bs/L) which are central to the question of passing Property & Title under English Law contracts.

Presentation of Shipping documents will no doubt speed up, and Members seeking to arrest cargo (or a ship for whatever reason) should be aware of this Act.

For those instructed by unpaid Sellers please refer to §19 of the Sale of Goods Act. In brief - as mentioned in Jordan - it implies that an unpaid Seller will retain property & title to his goods.

Members should also note the formation and launch of The Future International Trade Alliance (FIT Alliance), put together by ICC, DCSA, BIMCO, FIATA and SWIFT, who have now signed a memorandum of understanding seeking to standardise the digitalisation of international trade. They hope to work towards the collaboration of and adoption of relevant standards which will facilitate the E-Bs/L.

That Members may now have to deal with E-Bs/L has been a long time coming.

Trading goods (buying & selling) has until now relied heavily on paper versions of shipping documents, including the B/L, but it does have drawbacks. Banks complain that a high proportion of shipping documents presented for payment contain serious errors, causing time to be lost.

Goods arrive at discharge before the shipping documents causing delays (demurrage-possible detention) and failure to release the goods.

Problems can then arise over releasing goods against a Letter of Undertaken (LOU or LOI) when further issues will/could arise.

Digitalisation, at least in theory, could significantly reduce fraud, BUT the Trade (including Members) will be relying on technology for the safe & secure transfer of E-Bs/L and other E-Documents).

The Norwegian Shipowners Association drew our attention to the need to combat the increased sophistication of cybersecurity threats, which is something all Members should keep in mind.

Failure to carry out due diligence checks could be costly.

You have been warned.

To see the text of this new Act go to:

<https://www.legislation.gov.uk/ukpga/2023/38/contents/enacted>

For further reading go to:

<https://www.lawcom.gov.uk/law-commission-recommendations-to-allow-for-electronic-trade-documents-implemented-in-electronic-trade-documents-act-2023/>



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## Sister Ship Arrest in India

by Rohan Janardhanan, Rex Legalis (India)

### Introduction

India's extensive maritime history dates back to 3rd millennium BCE. During the 19th century, governed by British laws pre-independence, Acts like The Casting Vessel Act (1838), Colonial Court and Admiralty Act, 1890 read with Colonial Courts of Admiralty (India) Act, 1891 and The Control of Shipping Act (1947) regulated marine affairs. Post-independence, India consolidated its maritime laws under The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (*hereinafter referred to as, "The Admiralty Act"*) came into effect on 1st April 2018 and includes principles from the Brussels Arrest Convention of 1952 and the Geneva Arrest Convention of 1999. This law replaced earlier legislation, unifying rules on maritime claims, jurisdiction, and vessel arrest. Furthermore, Admiralty law now oversees private maritime activities and open water crimes, creating a cohesive legal framework for India's marine interactions and challenges.

In Admiralty law, the arrest of a vessel is a legal provision that allows creditors to secure their claims against a ship. In recent times, the concept of arresting a sister ship has gained prominence in the legal arena. This article aims to shed light on the arrest of sister ships under the Indian Admiralty Act, explaining the key concepts and legal provisions involved.

### What is Arrest of a Vessel

Arrest of a vessel entails sequestration of a vessel until the questions at hand are decided upon. A vessel may be arrested for enforcement in maritime claims or maritime liens or seized in execution or satisfaction of a decision in legal proceedings deriving from collision, salvage, loss of life or bodily injury, loss of property damage, and similar causes however if the creditor believes that the debtor will not pay his obligations and does not wish to incur any losses, the creditor can request that a court with Admiralty Jurisdiction issue an order for arrest of the debtor's vessel at any time to

crystallize the creditor's maritime claims. Crucially, action *in rem* targets the ship, not the owner. Ships are legal entities, liable to be sued independently of their owners. This means the vessel, being distinct from the owners, is responsible to pay claims for any wrong doing or damages caused. In the landmark judgment by the Supreme Court of India in *MV Elisabeth and Ors v/ s. Harwan Investment and Trading Pvt. Ltd.*<sup>1</sup> it was underscored that a ship is to be treated as "A separate juridical personality, an almost corporate capacity, having not only rights but liabilities (sometimes distinct from the owner)".

### Sister Ship and Her Arrest

A ship other than the offending vessel under the same ownership or owned by the same class of owner is considered as a "Sister Ship". In the context of Admiralty law, sister ships share a close legal connection due to their common ownership, making them susceptible to arrest if a claim arises against offending ship. Such an arrest ensures that ship owners cannot evade their financial obligations towards the claimants.

The Hon'ble High Court of Bombay while deciding the case of *M.V. Sea Success I vs Liverpool and London Steamship Protection and Indemnity Association Ltd.*<sup>2</sup>, wherein the issue involved arrest of a sister ship, the Hon'ble High Court presented the following view,

*"In maritime law worldwide ownership of a ship denoted by the concept of the owner of the shares in a ship. ... Fundamentally each company incorporated in law is a distinct legal entity and mere incorporation of 100% subsidiary company by its parent company cannot lead to the conclusion that the assets of the former belong to and are owned by parent company. ...Admittedly the defendant No. 1 vessel "Sea Success I" is not the offending vessel or in other words claim of unpaid insurance premium is not towards the defendant No. 1 vessel. The action in rem under admiralty jurisdiction has been initiated by the plaintiffs against the defendant No. 1 vessel Sea Success-I on the basis of allegations of it being a sistership i.e., a ship in the same beneficial ownership*

<sup>1</sup> 1993 AIR 1014, 1992 SCR (1)1003

<sup>2</sup> 2002 (2) BomCR 537



as the ships "Sea Glory" and "Sea Ranger" in regard to which the claim arose."

In 2021, our team at Rex Legalis successfully represented the Plaintiff in the case of *Tabassum Husain & Ors v. MV Shubhapradha & Anr*, 2021. Wherein the "Offending Vessel," AHT Varapradha, capsized amidst the cyclone 'Tauktae', leading to the loss of lives among her crew. The following cause of action gave rise to a maritime lien over the Vessel. To secure the maritime lien the Plaintiff moved the Hon'ble Bombay High Court to obtain an Order of Arrest of the Vessel MV Shubhapradha (IMO No. 9377626). The Hon'ble Court, wherein, considering the averments of the Advocates for the Plaintiff was convinced that a *prima facie* case for arrest of the Defendant Vessel is made out and that the Defendant Vessel and AHT Varapradha are beneficially owned by the same Company/Organization thus making the Defendant Vessel a sister ship of AHT Varapradha.

### Conclusion

To conclude, the arrest of a sister ship comes with its own challenges of convincing the Court that the sister ship is under the same beneficial ownership as the offending vessel thereby giving the claimant a legal position to arrest the sister by way of exercising the Admiralty Jurisdiction of the High Court to satisfy its claim. This provision under the Indian Admiralty Act ensures fairness and accountability and by comprehending the nuances of arresting sister ships, stakeholders in the maritime industry can navigate legal challenges effectively while upholding the principles of justice and fairness. It stands as a pivotal measure, upholding the integrity of maritime interactions and ensuring equitable resolution within a concise legal framework.



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## Remembering John Harris

The ShipArrested.com Network has sadly lost long time member, John Harris, who passed away on 15th February 2023. Advocate John Harris was a graduate of the law faculty of the University of Cape-Town, 1963. In the year 1970 he moved to Israel, and in 1977, Harris established the legal firm of J. Harris & Co. Through his legal work and unique perspective of legal issues, his dedication to the matters he handled, and the advocacy he practiced, John became one of the founders of the Israeli Shipping and Maritime Law.

Harris was very pleased to be approached by the group of graduates of Southampton faculty of law and join what would become the ShipArrested.com Network. John first attended the conference in Turkey in the year 2007 accompanied by his wife Lola, and would continue to take part in the annual members' conference with his attendance and lectures. He also regularly contributed articles to the newsletter as well as the Israel chapter of the guidebook *Ship Arrests in Practice*. But what he enjoyed the most (as well as Lola) was meeting other members and the friendships he formed with them year after year.

Advocate John Harris died at the age of 82 surrounded by family. He is remembered by his peers and loved ones as a kind soul, always carrying himself with dignity. In the past months, his son Yoav and family have received condolences, sympathy and support which fill their hearts with warmth, to which Yoav is grateful and asks to send his appreciation and thanks to the dear friends and community of ShipArrested.com.



August 30, 1940 - February 15, 2023



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