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Ship Arrest and Decarbonization

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Agenda

- Introduction to Ship Arrest and Decarbonization Decarbonization Clause
Legal Remedy Jurisdictional and Legal Considerations Practical Implications

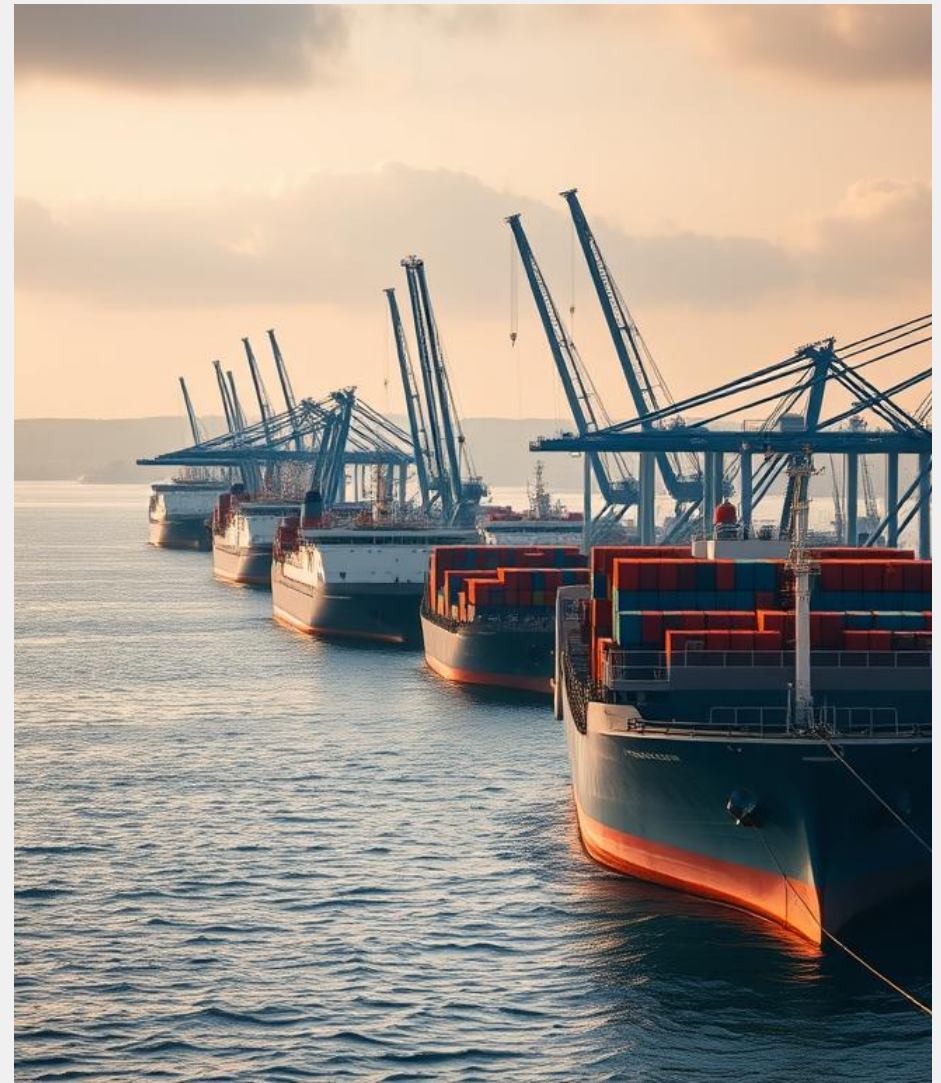


Overview

Introduction to Ship Arrest and Decarbonization

Shipowners and Decarbonization Breaches

- Shipowners breaching decarbonization clauses in charterparties is becoming an increasingly significant concern within the maritime industry. This issue arises due to rising environmental regulations aimed at reducing carbon emissions and a growing emphasis on sustainability within the global shipping industry. As global efforts to mitigate climate change intensify, the implications of these breaches are drawing attention, especially regarding ship arrest as a potential remedy.



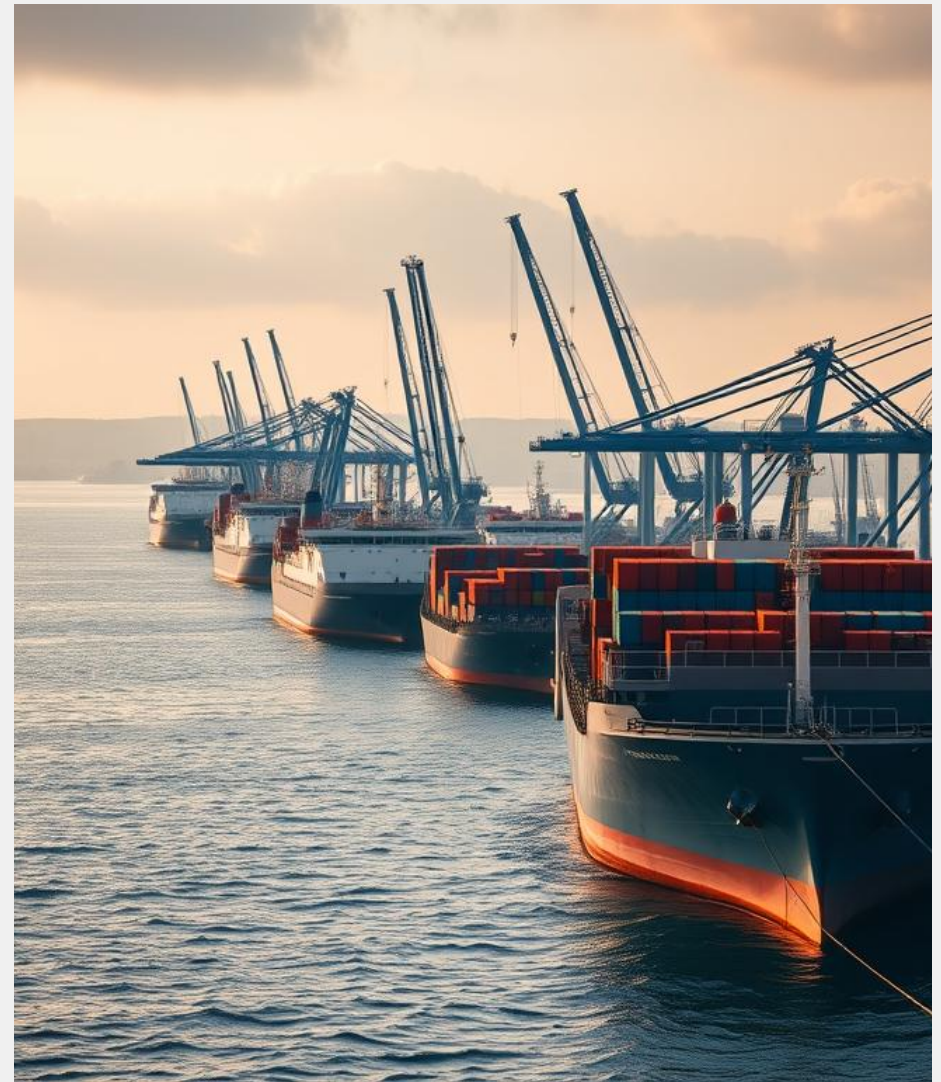
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Overview

Introduction to Ship Arrest and Decarbonization

Enforcement under Environmental Regulations

- The European Union's Emissions Trading System (ETS) has introduced penalties for shipping companies failing to surrender allowances for carbon emissions. Non-compliance can lead to financial liabilities and subsequent vessel detention or arrest as a means of securing payment for penalties
- Although specific cases directly citing decarbonization clause breaches leading to ship arrest are sparse, the growing emphasis on sustainability and compliance has resulted in disputes over technical modifications required by regulations like EEXI (Energy Efficiency Existing Ship Index). These disputes could escalate into arrests if shipowners fail to meet their obligations under charterparty agreement

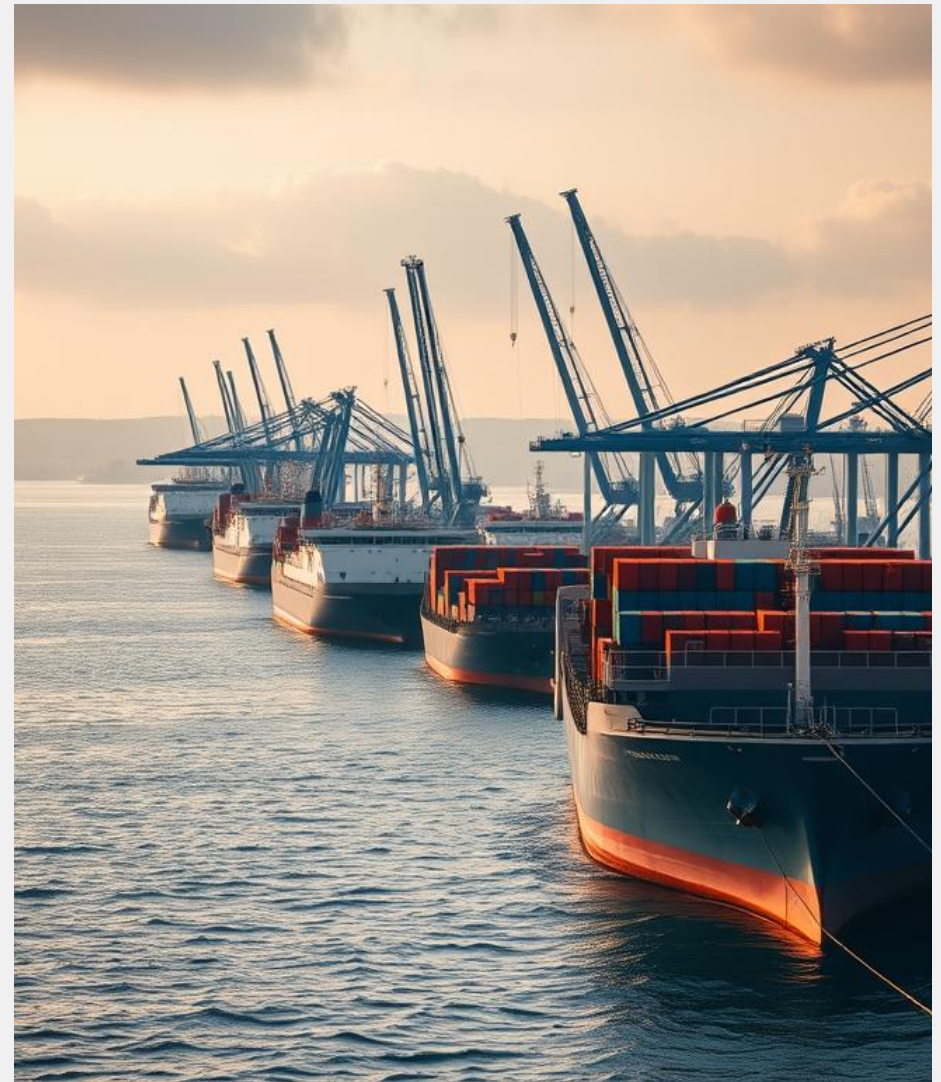


Overview

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Enforcement under Environmental Regulations

- Recent amendments to EU directives on ship-source pollution have increased enforcement against illegal discharges of polluting substances such as sewage, garbage, and residues from exhaust gas cleaning systems (scrubbers). Reports indicate that illegal discharges often result in penalties or ship arrests when traced back to polluters, although enforcement varies across member states
- In March 2025, British authorities initiated a criminal investigation following a collision between the Portugal-registered container ship Solong and the U.S.-flagged tanker MV Stena Immaculate. The incident resulted in jet fuel spilling into the North Sea and raised concerns about ecological damage near sensitive fishing areas and seabird habitats. While this case involved broader environmental damage rather than



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Decarbonization Clauses in Charterparties

Incorporation in Charterparties

In recent years, more decarbonization clauses have been incorporated into charterparties (particularly time charter parties) as part of global efforts to mitigate climate change.

Compliance with Regulations

Decarbonization clauses typically require shipowners to ensure compliance with the latest international emission standards, such as the IMO's 2020 sulphur cap, which mandates fuels with a sulphur content of no more than 0.5%.

Use of Cleaner Fuels and Technologies

Clauses may require shipowners to utilize low-emission fuels like LNG or biofuels, or adopt technologies such as exhaust gas cleaning systems (scrubbers) to reduce the vessel's carbon footprint.

Operational Requirements

Certain clauses may impose operational changes, requiring cleaner fuels during specific voyages or encouraging energy efficiency measures like slow steaming.

Decarbonization Clauses in Charterparties

BIMCO's FuelEU Maritime Clause for Time Charter Parties 2024

Purpose: This clause was developed to help shipowners and charterers comply with the EU's FuelEU Maritime Regulation, which mandates reductions in greenhouse gas (GHG) intensity of fuels starting January 2025.

Key Features:

Allows charterers flexibility in compliance strategies, including pooling, banking, or borrowing compliance units.

Includes mechanisms for

Emission Trading Scheme (ETS) Clauses

Overview: BIMCO has introduced ETS clauses for time charter parties and voyage charter parties to address costs arising from emissions allowances under the EU ETS.

Details:

Costs for emission allowances are included as part of freight payments.

Owners can recover additional costs resulting from charterers' breaches of the charterparty.

These clauses provide

EEXI Transition Clause

Context: This clause addresses compliance with the Energy Efficiency Existing Ship Index (EEXI), which sets technical efficiency standards for existing ships under IMO regulations.

Provisions:

Outlines obligations for retrofitting or operational adjustments to meet EEXI requirements.

Includes cost-sharing mechanisms for retrofitting between owners and charterers

Sea Cargo Charter (SCC) Clause

Objective: Supports alignment with the Sea Cargo Charter framework, which promotes transparency in GHG emissions reporting.

Details:

Requires owners to provide emissions data within seven days of voyage completion.

Designed to be generic and adaptable across different charterparty forms.

Relevance: Facilitates data-driven decision making and

Breach of Decarbonization Clauses

Failure to Use Required Fuels or Technologies

A breach occurs if the shipowner does not use the specified fuel or fails to install required technologies, like scrubbers. For instance, using higher-sulphur fuel despite a clause requiring compliance with the IMO 2020 sulphur cap is a breach.

Non-Compliance with Carbon Credit Obligations

If the shipowner fails to buy or retire necessary carbon credits to offset emissions, they breach the charterparty. These carbon offset requirements are often negotiated at the charter's outset.

Operational Failures

Operational shortcomings, such as failing to implement fuel efficiency measures or disregarding emission restrictions, also constitute a breach. This includes operating at higher speeds than allowed.

Ship Arrest as a Legal Remedy



Non-Performance of Critical Terms

Serious breaches, like failure to implement carbon-reducing technologies, may lead the charterer to view this as a material breach. Ship arrest can compel compliance or secure damages.



Unpaid Penalties or Damages

If breaches result in penalties, such as fines from authorities, the charterer may arrest the vessel to secure payment. Non-compliance with payment obligations makes ship arrest an option.



Security for Potential Claims

Even without immediate financial loss, the charterer may arrest the vessel as security for future claims. This prevents the shipowner from avoiding payment or ensures accountability.



Legal Framework for Ship Arrest

The 1952 Brussels Convention allows arrest in 'dispute arising out of a breach of a charterparty'. This framework is crucial for enforcing compliance with decarbonization clauses.



Jurisdictional and Legal Considerations

01

International Conventions

International conventions, such as the International Convention on Arrest of Ships (1952 & 1999), govern the arrest of ships for specific claims. Breaches of environmental standards or decarbonization clauses may not always be considered maritime claims under international law.

02

Maritime Claims

In some countries, ship arrest is only allowed for specific maritime claims, such as unpaid freight, crew wages, or collision damage. Breach of decarbonization clauses might not always be viewed as a 'maritime claim' under national laws.

03

Enforcement Across Jurisdictions

If the ship arrest occurs in one jurisdiction, enforcing the arrest in other jurisdictions might be complicated if the shipowner disputes the breach or challenges the arrest in court.

04

Legal System Variations

The specific legal systems and terms of the charterparty will determine whether the breach qualifies for arrest. The complexity of international law and differing national standards affect how swiftly a ship arrest may be executed.

Practical Implications for the Shipping Industry

Financial Impact

The financial impact of a ship arrest can be substantial. Aside from the direct costs related to legal proceedings and the loss of revenue from being unable to operate, a shipowner's reputation may be damaged, leading to potential future losses.

Legal and Commercial Risks

Breaching decarbonization clauses not only exposes shipowners to legal action, including ship arrest, but also increases their commercial risks. Charterers may become less willing to engage with shipowners who fail to meet environmental standards.

Operational Responsibilities

As the shipping industry faces tighter environmental regulations, shipowners must ensure compliance with decarbonization standards. Failure to do so could result in significant penalties and operational changes.



Conclusion and Future Outlook

- Decarbonization clauses in charterparties are essential tools for ensuring compliance with international regulations aimed at reducing carbon emissions in the shipping industry. A breach of these clauses can lead to serious legal consequences, including ship arrest, especially when non-compliance results in significant financial penalties or reputational harm. Both shipowners and charterers must be aware of their obligations and the potential legal remedies available, including the possibility of ship arrest, when negotiating and enforcing decarbonization clauses. As the global maritime industry continues to focus on sustainability, staying informed about evolving regulations and enforcement mechanisms is crucial for legal practitioners and industry stakeholders.

