

# THE ARREST

## news

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## Arrest of Maritime Autonomous Surface Ships (MASS) Under the 1952 and 1999 Arrest Conventions: Legal Challenges and Emerging Considerations

by Alberto Batini, BTG Legal

### Introduction

The advancement of Maritime Autonomous Surface Ships (MASS) has posed unprecedented challenges to traditional maritime law. Among the legal areas significantly impacted is the arrest of ships—a well-established remedy available to maritime claimants. The 1952 International Convention Relating to the Arrest of Sea-Going Ships and its successor, the 1999 International Convention on the Arrest of Ships, provide the legal framework for the arrest of vessels. However, these instruments were drafted in an era that presumed human presence aboard ships,

including a master and crew. This essay explores the application of these conventions to MASS, focusing on procedural and substantive issues arising from the absence of onboard personnel and the reliance on shore-based Remote Operations Centres (ROCs).

### 1. Traditional Framework for Ship Arrest

Both the 1952 and 1999 Arrest Conventions allow a claimant to seek the arrest of a ship to secure a maritime claim. The conventions define maritime claims and outline the procedural steps for arrest,

including service of process, judicial authorization, and enforcement mechanisms.

The arrest procedure often involves:

- Filing an application before a competent court.
- Serving the arrest order and legal documents upon the ship's master or agent.
- Taking custody of the vessel through port or maritime authorities.

This procedure relies heavily on the presence of a person (typically the master) on board the ship who can be served and who can respond or appear on behalf of the ship.

## **2. MASS and the Breakdown of Traditional Assumptions**

MASS may operate at varying degrees of autonomy—from ships with reduced crews to fully autonomous vessels without any human presence on board. Fully autonomous MASS, in particular, break with key assumptions under the Arrest Conventions, raising critical questions such as:

- Who is to be served when there is no master or crew on board?
- How can a ship be physically seized when it may lack clear command pathways?
- What role, if any, can a shore-based Remote Operations Centre (ROC) play in the arrest process?

These questions signal a fundamental mismatch between the current legal architecture and emerging technological realities.

## **3. Service of Process in the Absence of a Master**

Under both the 1952 and 1999 Conventions, service is typically effected upon the master or the ship's agent. In the case of a fully autonomous MASS, there is no master onboard to receive service. This creates a procedural vacuum.

One potential solution is to interpret the conventions in a purposive manner that allows service upon the ROC or the entity in operational control of the vessel. The ROC, which oversees navigation, operations, and communications, could be considered the de facto "master" for procedural purposes. However, this would likely require judicial interpretation or statutory amendments to domestic legislation implementing the conventions.

In jurisdictions where court rules permit alternative service methods, such as electronic service or service upon a company representative, service upon the ROC or the vessel's owning entity may be permissible. Nonetheless, consistency across jurisdictions remains a concern.

## **4. Enforcement Challenges in Autonomous Contexts**

Arresting a traditional ship usually involves port authorities detaining the vessel while under human command. With autonomous vessels, the enforcement process may be more complex:

- There may be no crew to cooperate with arresting officers.
- The vessel's control systems may be locked or encrypted.
- The ROC may be located in another jurisdiction, complicating real-time coordination.

Port state control mechanisms may need to evolve to include protocols for disabling or detaining autonomous vessels, possibly through digital override systems or standardized control interfaces accessible to authorities.

## **5. Ownership and Flag State Issues**

Another challenge concerns the identification of the person or entity responsible for the MASS. The conventions presume a clear link between the ship and its owner. However, MASS may be operated by complex corporate structures involving technology

providers, software engineers, and ROC personnel, blurring the lines of accountability.

In cases where ownership and operational control are separated, arresting the vessel to secure a claim against the “operator” may not be straightforward unless domestic law provides a mechanism to pierce the corporate veil or recognize beneficial ownership.

## 6. The Role of the ROC in Arrest Procedures

- Given the absence of onboard personnel, ROCs could be formally integrated into arrest procedures:
- ROCs could be notified of the arrest and instructed to cease operations or reroute the vessel.
- Domestic regulations may require operators to program vessels to comply automatically with arrest commands.
- Legal liability for noncompliance could extend to ROC personnel or controllers.

However, this raises issues of extraterritorial jurisdiction where the ROC is located in a different country from the vessel’s port of arrest.

## 7. Reform Proposals and the Way Forward

To accommodate MASS, several reforms may be necessary:

- Clarification of definitions: Future conventions or amendments should define MASS and designate appropriate procedural substitutes for the master.
- Standardized ROC responsibilities: International regulations (e.g., under IMO auspices) could mandate that ROCs act as formal legal representatives for MASS.
- Digital arrest protocols: Innovations such as electronic arrest orders and digital compliance locks may need to be developed.

Until such reforms are adopted, courts and maritime authorities will likely rely on analogies, purposive

interpretations, and flexible application of existing rules to arrest MASS vessels.

## Conclusion

The arrest of MASS vessels under the 1952 and 1999 Arrest Conventions highlights the growing disconnect between traditional maritime legal frameworks and the realities of autonomous navigation. Critical issues such as service upon a master, physical enforcement without a crew, and the role of shore-based ROCs must be addressed to maintain the efficacy of ship arrest as a maritime remedy. As the use of MASS increases, international legal harmonization and procedural innovation will be essential to uphold the rule of law in autonomous maritime operations.



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## The Crystal Cruises Saga – Supreme Court Reaffirms VAT Not Chargeable on Judicial Sale of Vessels by Richard J. W. Horton, Alexiou, Knowles & Co.

The 2022 arrest and sale of two Crystal Cruises in The Bahamas marked only the beginning of a complex and high-stakes legal saga. Our firm, Alexiou Knowles & Co., acted for and continues to represent the Bank as lender and First Priority Registered Mortgagee over the two Crystal Cruises motor vessels known as the M/V “Crystal Symphony” and M/V “Crystal Serenity” (the “Vessels”).

We secured the arrest of the Vessels in Bahamian waters in February 2022 and facilitated their eventual sale, on a pendente lite basis, in June 2022 for the



combined sum of \$128 million. In August 2022, we obtained default judgment for the Bank, and in December 2022, we secured an order for payment of the majority of those sums (i.e. the undisputed amounts) to the Bank despite opposition from several other creditors.

However, what has followed has been a protracted, multi-year dispute involving the Bank, various creditors, and the Bahamian government. Central to the conflict was an unprecedented attempt by the Bahamian government to impose Value Added Tax (VAT) on the judicial sale proceeds.

Approximately four (4) months after the sale of the Vessels had been finalised, the Office of the Attorney General together with the Department of Inland Revenue and Comptroller of VAT served notice on the Admiralty Marshal for the assessment of Value Added Tax on the sale of the Vessels in the sum of \$11.6 million.

The government's novel position came as a surprise to many in the maritime and legal communities. If upheld, it would have marked one of the largest single VAT assessments in Bahamian history and set a potentially damaging precedent for the jurisdiction's ship financing market.

The core of the government's argument was that because the sales took place within The Bahamas and involved Bahamian-domiciled parties, VAT should apply. This stance runs counter to well-established Admiralty principles (both in The Bahamas and across common law jurisdictions) where judicial sales of vessels are not, and have never been, treated as taxable transactions, particularly not as commercial sales attracting VAT.

Our firm challenged the VAT assessment on behalf of the Bank and, in a landmark decision delivered in February 2024, the Supreme Court of The Bahamas reaffirmed that the expenses of the Admiralty Marshal which related to the court-ordered sale of the Vessels did not include VAT.

The Court held:

*"The Court accepts and approves of Counsel's analysis of Admiralty law and practice with respect to recoverable Marshal's expenses from the sale proceeds of a judicial sale. The authorities cited support the analysis, and I have found no instance under Bahamian law, or international practice, which The Bahamas follows in maritime law, establishing that VAT is a Marshal's expense or that judicial sales are, or have been, subject to VAT."*

The Court was also moved to release the total claimed sum of \$11.6 million to our client, which was being held in a Joint Account pending the determination of the government's tax appeal, stating:

*"The DIR has dragged its feet before the Tax Appeal Tribunal to answer the Objection by the Claimant and the other Lenders. The DIR has again dragged its feet in filing its claim in the Supreme Court for the VAT. I would not be acting in the interest of justice to withhold these sums from the Judgment Holder until the appeal is heard by the Tribunal or the new action is determined by the Supreme Court, and in the face of the overwhelming arguments and authorities that VAT is not a Marshal's expense nor is it chargeable on Judicial Sales".*

As of today, the claims of all unsecured creditors have been settled, and we at Alexiou Knowles & Co. believe that an ultimate resolution for the Bank is finally within reach.

The Bahamas remains a leading jurisdiction in the realm of Admiralty and ship arrest. At Alexiou Knowles, we are proud to have played a primary role in establishing a new precedent that brings further clarity to the existing legal framework of Maritime law.



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## Maritime Lien Cannot Lie Against the Judicial Sale Proceeds of an Auctioned Defendant Vessel by Ashwin Shanker, Chambers of George A. Rebello & Co. (India)

1. An alleged Maritime Lien holder filed a Commercial Admiralty Suit for a decree against the sale proceeds of the auctioned Defendant Vessel. The maritime lien holder was neither a party to the arrest proceedings before the Admiralty Court nor did it arrest Defendant Vessel prior to its judicial sale. The maritime lien holder, despite having an alleged maritime lien (inchoate), neither arrested Defendant Vessel nor intervened prior to its judicial sale. Consequently, since the alleged maritime lien was not perfected by way of an arrest or 'formal attachment' of Defendant Vessel, prior to its judicial sale, the maritime lien (if any) stood extinguished upon judicial sale of the Vessel. The maritime lien holder against the Defendant Vessel at best can qualify as a maritime claim [lower in priority] and not a maritime lien.

2. Smith's Dock Co. Ltd. v The St. Merriel (Owners) [1963] 1 All ER 537 "A maritime lien is inchoate until the ship is arrested and brought before the court. A maritime lien is (a) conceived when a cause of action arises; (b) BORN WHEN THE ARREST OF the ship takes place; (c) gives a right of recovery against the res leading to its sale; (d) attaches to the res and cannot be defeated by change of ownership of the res but only by loss of the res before arrest."

3. SPV Sam Dragon Inc v GE Transportation Finance (Ireland) Ltd [2012] IEHC 240 "A sale by order of a court of competent jurisdiction in proceedings in rem OPERATES TO EXTINGUISH ALL LIENS ATTACHING TO THE RES and to convey a valid title to the purchaser which is free of all encumbrances and good against the whole world. An American commentator has viewed the effect of a judicial sale as like the dry docking process in which the hull is scraped clean of her encumbrances. The resultant fund in the hands of the court, being the proceeds of sale, thereafter

*represents the res AND ALL LIENS WHICH FORMALLY ATTACH TO THE RES are transferred to the fund . . ."*

4. Section 9(2) of the Indian Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017: *The maritime lien specified in sub-section (1) shall continue to exist on the vessel notwithstanding any change of ownership or of registration or of flag and shall be extinguished after expiry of a period of one year UNLESS, PRIOR TO THE EXPIRY OF SUCH PERIOD, THE VESSEL HAS BEEN ARRESTED OR SEIZED AND SUCH ARREST OR SEIZURE HAS LED TO A FORCED SALE BY THE HIGH COURT: Provided that for a claim under clause (a) of sub-section (1), the period shall be two years from the date on which the wage, sum, cost of repatriation or social insurance contribution, falls due or becomes payable.* As per Section 9(2) of the Admiralty Act, 2017 a maritime lien continues to subsist either (a) until one year from the date the lien arises or (b) until the vessel is arrested and the arrest leads to a forced sale by the High Court, whichever occurs earlier.

5. In *Raj Shipping v Barge Madhwa* Admiralty Suit No. 6 of 2015, the Hon'ble Bombay High Court held- '12.4 Although maritime liens attach to the vessel the moment the event giving rise to the claim arises and thereby a charge or encumbrance is created on the res, THESE ARE PERFECTED ONLY BY AN ARREST of the vessel. All maritime claims against the vessel are only crystallized and perfected in the event they are enforced by an action in rem by arrest of the vessel. Thus, for both types of claims, ARREST OF THE VESSEL IS THE ONLY MEANS OF PERFECTING THE LIEN or claim which may have arisen.'



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## Admiralty Law Application in Trinidad and Tobago: Seafarer's rights upheld by

Cherie Gopie, Hamel-Smith & Co.

The upholding of rights belonging to seafarers are important for several key reasons, all of which contribute to the safety, well-being, and fair treatment of seafarers. These persons form an integral part of and contribute to the smooth operation of the global shipping and maritime industry.

In a resounding affirmation of maritime worker protections, the High Court of Trinidad and Tobago delivered a decisive ruling in favour of unpaid crew members in the case CV 2021-02970 – Officers and Crew of the M/V BTMAX 1 v Owners/Interested Parties.

The case involved claims for unpaid wages by the officers and crew of the BTMAX 1, a Bolivian-flagged cargo vessel. When the vessel's owners failed to respond to the admiralty action in rem, a default judgment was entered as against the owners. The owners later sought to have the judgment set aside, however, the Court dismissed their attempt. Two hurdles which must be crossed in order for the Court to exercise its discretion in setting aside a default judgment is that (i) the defaulting party must give a reasonable explanation for the failure to file an appearance or a defence (in that case) within the time limited to do so and (ii) the defaulting party must show that there is an issue on the merits which ought to go to trial, more recently referred to as reasonable prospects of success.

### What Happened: A Crew Abandoned, a Vessel Arrested

The crew of the BTMAX 1 claimed months of unpaid wages. After the ship was arrested in Trinidadian territorial waters, proceedings were properly served on the owners who took no action within the procedural timeframe mandated by legal rules. Despite later arguments that they had viable

defences, including disputes over the authority of the individual who hired the crew, the Court found no merit in their arguments.

Importantly, the Court reaffirmed that seafarers' wages are protected irrespective of formal contracts or the financial state of the owners.

### Local Legal Protections for Seafarers

The High Court of Trinidad and Tobago clarified that its admiralty jurisdiction, particularly **for seafarers' wage claim**, derives from **Section 22(1)(a)(viii)** of the Supreme Court of Judicature (Consolidation) Act, 1925 (which is the English precursor Act, adopted by Trinidad and Tobago). Rule 74 of the Civil Proceedings Rules governs admiralty actions in rem (against vessels), and Rule 74.22(10) permits the court to set aside default judgments only where just, placing the burden on vessel owners to show they acted reasonably.

The Court interpreted the term **"wages"** broadly to include remuneration, **allowances, victualling, repatriation costs**, and **wages up to repatriation** if the crew is discharged abroad. The Court held that even if employment terms were negotiated by an agent, the maritime lien **still arises once services are rendered**, regardless of formal authority. Applying *Cryne v. Barclays Bank and The Saudi Eagle*, the Court assessed whether the defendants had a reasonable explanation for not filing a defence and whether they had a **realistic prospect of success**. The Court held that the defendants **failed** to act promptly or provide adequate explanation, **had no viable defence** since wages were unpaid and a lien had arisen. The Court went on to state in its judgment that In determining the Defendants' application to set aside, the Court had regard to the protective and benevolent attitude towards seafarers which citing the source, Admiralty Jurisdiction and Practice, 5th Edition at para 2.11 which states "The court has always adopted a benevolent and protective attitude towards seamen to avoid overreaching by shipowner."

The Court's ruling also aligns with several key international maritime instruments including the Maritime Labour Convention, 2006 (MLC, 2006) and United Nations Convention on the Law of the Sea (UNCLOS). In this regard, the BTMAX 1 ruling carries important implications for all maritime stakeholders:

Seafarers do not need formal contracts to enforce their right to wages. If they served aboard, the lien exists.

1. The country's Admiralty Court has jurisdiction and will uphold in rem claims, ensuring crew members can secure payment via the vessel itself.
2. The Court found that even with attorneys retained, the owners failed to act reasonably or promptly, which weakened their credibility.
3. The Court also made a point of contrasting the wealth and sophistication of the shipowners with the hardship and dependency of crew members.

The case stands as a significant affirmation of the rights of seafarers and the robustness of Trinidad and Tobago's admiralty legal framework. It sends a clear warning that courts will not tolerate inaction or disregard by shipowners when it comes to the welfare of crew members. Just as importantly, the judgment highlights the critical need for shipowners and their agents to act swiftly and to seek informed legal advice the moment a vessel is arrested. Failure to promptly understand and comply with legal obligations can severely compromise a party's ability to defend claims and may result in judgment against that party. In this respect, the case underscores that ignorance or delay in navigating admiralty proceedings is risky and potentially fatal to a defence.



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## 2025 ShipArrested 19th Annual Members' Conference in Cairo, Egypt hosted by Al Tamimi & Company

Persuaded by poetry, ShipArrested.com Members elected to gather again for the 19th Annual Members' Conference in the ancient city of Cairo this past April 22-24, 2025. The event took place along the waters of the Nile at the luxurious Ritz-Carlton hotel with networking opportunities aplenty.

Following the usual format, the Welcome Reception kicked off the conference Tuesday evening with drinks and hors d'oeuvres poolside. A hot, spring night tempted many members to take a dip. Wednesday, delegates engaged in a full day of discussion of the latest ongoings in ship arrest and release practice and recent cases around the world with networking breaks and lunch on site. To close the conference, delegates were treated to a special dining experience while setting sail on the Nile. The night was a perfect combination of picturesque backdrop, great weather, food, and company.

To wrap up, Thursday's optional leisure activities gave participants a full immersion into Cairo's rich culture. A guided tour of the Pyramids of Giza, the Sphinx and the Valley Temple, lunch at the 9 Pyramids Lounge overlooking the Giza plateau followed by a visit to explore the Grand Egyptian Museum kept delegates captivated all day long. So much to see in so little time, it is worth visiting again and again!

Last but not least, attending members voted on the host venue for the 2026 Annual Members' Conference. After a spirited contest between several worthy candidates, **Hong Kong** emerged as winner, promising another memorable gathering next year!

A big thank you to our gracious host, Al Tamimi & Company Egypt, for their warm hospitality and thoughtful preparation in organizing another successful edition of the ShipArrested.com Members' Conference.



Conference papers and photos are available on the [event page](#) for members' viewing.

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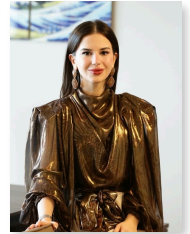
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