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## US Seizure of MT SKIPPER: How Lawful Was It? by George Chalos, Chalos & Co., P.C. (USA)

On December 10, 2025, U.S. Coast Guard and FBI personnel boarded and seized the oil tanker MT SKIPPER in waters off the coast of Venezuela, marking one of the most significant maritime enforcement actions against "shadow fleet" vessels in recent years. The vessel was originally designated by OFAC under the name ADISA in November 2022, and is alleged to be part of an evasive oil trade that funneled revenue to the Islamic Revolutionary Guard Corps-Qods Force and Hezbollah. At the time of seizure, SKIPPER had loaded approximately 1.8 million barrels of Venezuelan heavy crude and was digitally manipulating its tracking signals to falsely indicate it was sailing off the coast of Guyana while also falsely flying the Guyana flag. The seizure raises fundamental questions about the scope of U.S. maritime authority and the legal basis for seizing vessels and cargo on the high seas.

### Can the U.S. Board a Non-U.S. Vessel Outside of Its Territorial Seas?

It was legally essential that the boarding of SKIPPER was led by a U.S. Coast Guard Maritime Security Response Team (MSRT). The Coast Guard's boarding authority statute, 14 U.S.C. § 522, is unique in U.S. law. It authorizes the Coast Guard to "make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters

over which the United States has jurisdiction, for the prevention, detection, and suppression of violations of laws of the United States." As a result of the high-seas language, the authority extends well beyond the twelve-nautical-mile territorial sea, reaching into international waters.

The statute grants Coast Guard boarding officers the power to board any vessel "subject to the jurisdiction, or to the operation of any law, of the United States" and to use "all necessary force to compel compliance." Unlike land-based law enforcement officers who generally require a warrant, Coast Guard personnel can board and inspect vessels without warrant or suspicion.

The scope of this authority is not unlimited, however. Under international law, particularly the UN Convention on the Law of the Sea (UNCLOS), vessels on the high seas are generally subject to the exclusive jurisdiction of their flag state—the country where they are registered. As a result states generally cannot unilaterally board and enforce domestic law against foreign-flagged vessel outside their own coastal waters unless UNCLOS provides an exception for doing so.

**Stateless Vessels**

The key to the legal framework for the SKIPPER boarding lies in the vessel's registration status. According to maritime intelligence reports and international ship registries, the SKIPPER was falsely flying the Guyana flag and was therefore a stateless vessel. Guyana had notified the International Maritime Organization that it de-listed the ship following advocacy group listings and American sanctions. This designation as "stateless" proved crucial to the legal justification for the seizure.

Under UNCLOS and customary international law, vessels "without nationality" are treated as stateless vessels and, therefore, outside the protection of any country. When a vessel falsely claims registry under a flag it does not legitimately hold, or refuses to show any flag at all, states have the "right of visit," allowing their officials to stop and inspect the ship on the high seas. This right of visit permits warships to verify a vessel's nationality, and if doubts remain after checking its documents, engage in a more extensive boarding.

Multiple sources confirmed that this was the international law rationale supporting the boarding. A senior Trump administration official described it as a "judicial enforcement action on a stateless vessel." The deliberate misrepresentation of flag state—something believed to be a common tactic among "shadow fleet" operators to evade sanctions—effectively stripped the SKIPPER of the legal protections normally afforded to vessels on the high seas.

**What Authority Does the U.S. Have to Seize a Ship and Its Cargo?**

While boarding authority establishes one element of lawfulness, the ability to seize a vessel and its cargo requires further authority. The seizure of SKIPPER was authorized in a warrant issued pursuant to 18 U.S.C. §§ 981, 982, 2332b(g)(5), and 2339B(a)(1), which authorize the seizure of "all assets, foreign or domestic, of any individual, entity, or organization engaged in planning or perpetrating any Federal crime of terrorism against the United States, citizens or residents of the United States, or their property."

These statutes, found in U.S. counterterrorism laws, provide the government with powerful tools to act against terrorist financing networks. The warrant specifically cited the vessel's identification by the Treasury Department's Office of Foreign Assets Control as being used in an oil shipping network supporting Hezbollah and the Islamic Revolutionary Guard Corps-Qods Force, both State Department-designated foreign terrorist organizations. According to the Justice Department, the IRGC uses proceeds from petroleum distribution to fund its terrorist networks.

The warrant was issued by a federal magistrate judge in the District of Columbia on November 26, 2025—

more than two weeks before the actual seizure. The U.S. Attorney's Office for the District of Columbia obtained an order unsealing the seizure warrant, and the Coast Guard executed the warrant after boarding the vessel as it traveled on the high seas after departing Venezuela.

The statutory authorities cited in the warrant represent a convergence of asset forfeiture laws and counterterrorism statutes. Section 2339B prohibits providing material support to designated foreign terrorist organizations, while sections 981 and 982 authorize civil and criminal forfeiture of property involved in illegal activities. By framing the vessel and its cargo as assets supporting terrorism, the government established a legal basis for forfeiture under federal law.

**Can the U.S. Seize Any Sanctioned Vessel?**

Following the SKIPPER seizure maritime operators are prone to ask, does every vessel on OFAC's sanctions list face potential boarding and confiscation? The answer comes from the underlying legal authority for nearly all sanctions enforcement, particularly the International Emergency Economic Powers Act (IEEPA). While IEEPA does authorize blocking transactions, freezing bank accounts, and prohibiting U.S. persons from dealing with sanctioned entities, it does not contain a generally applicable seizure and forfeiture provision like those under which the SKIPPER warrant was issued. While these are impactful measures, they do not transfer title in property.

The absence of a seizure and forfeiture provision actually distinguishes IEEPA from its predecessor, the Trading with the Enemy Act (TWEA), which did include "vesting" authority for permanent seizure during wartime. Congress deliberately omitted these powers from IEEPA when enacting it in 1977 because IEEPA was designed for peacetime emergencies. With no seizure or "vesting" authority, sanctioned vessels are not subject to the type of seizure carried out on SKIPPER.

However, IEEPA operates through blocking and freezing mechanisms, not seizure authority. The statute does not contain a provision authorizing the government to physically seize and confiscate property. Blocking freezes property in place and prohibits transactions, while seizure involves taking physical custody and control. This distinction is crucial: violations of IEEPA sanctions programs alone cannot give rise to seizure like that of the SKIPPER. A vessel that violates sanctions by carrying prohibited cargo or conducting transactions with sanctioned entities may be subject to penalties, fines, and blocking designations, but IEEPA itself provides no mechanism for the government to board and seize the vessel on the high seas.

The seizure of MT SKIPPER underscores how our understanding of what the law allows can be shaped by ordinary practice rather than the law itself. It is a compelling reminder that legal authorities exercised day in and day out by maritime states can be applied more creatively to accomplish what at first blush appears to be outside law's reach. The U.S. leveraged three key legal elements: the Coast Guard's broad boarding authority under 14 U.S.C. § 522, the vessel's stateless status under international maritime law, and terrorism-related asset forfeiture statutes that reach beyond typical IEEPA sanctions enforcement and act against the threat perceived in the "shadow fleet."

While the operation demonstrates sophisticated use of existing legal authorities, it also highlights unresolved tensions in international maritime law. The step from establishing statelessness and boarding rights to full seizure and confiscation occurs in what scholars describe as a "jurisdictional grey zone"—an area where domestic law claims authority but international law principles remain unsettled. The precedent set by the SKIPPER seizure suggests that shadow fleet vessels operating with falsified registrations face not merely financial penalties but physical interdiction and asset forfeiture, fundamentally altering the risk calculus for sanctions evasion. Yet this enforcement model depends critically on the combination of statelessness, terrorism connections, and domestic

judicial process—a formula that may not apply uniformly to all sanctioned vessels.

For more information concerning the U.S. authority to board and/or seize vessels, please contact us at:

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## Agency Representation and Actions by Attribution in the Arrest of Vessels Owned by Foreign Companies by Sevval Kirgin, Mare Legal (Türkiye)

### Introduction

The phrase "*izafeten dava açmak"* (filing a lawsuit relatively) is a distinctive concept in Turkish legal practice. Literally, it refers to suing one person "in relation to" another—typically a principal or beneficial owner. Under Turkish law, certain statutes allow a plaintiff to file a claim against an agent or ship's captain on behalf of (or relative to) the real party in interest. Although the agent or captain is named as the defendant, the legal substance of the claim is directed at the principal, who is often a foreign trader or shipowner. This procedural device has become particularly significant in areas like international trade and maritime law, where foreign companies conduct business through Turkish representatives. The Turkish Commercial Code (TCC) specifically allows an agent to file suit in the name of the principal and, conversely, permits third parties to bring claims "müvekkiline izafeten" (to the agent relative to the principal).

This mechanism has particular significance in maritime law, especially in the arrest of vessels owned by foreign companies. Because foreign shipowners often lack a service address or legal presence in Turkey, creditors must frequently rely on "izafeten" procedures to establish jurisdiction, secure service of process, and obtain urgent arrest orders against the vessel. Thus, the attribution mechanism is not only a commercial agency tool but also a key procedural foundation that enables ship arrest applications to proceed effectively under Turkish law.

***TCC Article 105 – Authorities of the Commercial Agent***

1. *The agent is authorized to make and receive any declarations aimed at protecting rights—such as notices, warnings, or protests—on behalf of the principal, in relation to the contracts he has brokered or concluded.*

2. *The agent may file a lawsuit on behalf of the principal in disputes arising from these contracts, and conversely, may be sued in the same capacity. Any contractual provisions to the contrary in agreements involving agents acting for foreign merchants are deemed null and void.*

3. *Judgments rendered in lawsuits filed in Turkey against persons on whose behalf agents act shall not be enforced against the agents themselves.*

Finally, it is emphasized that this article centers on the interpretation of TCC Article 105 and the interconnected statutory provisions that shape the legal status, authority and procedural standing of commercial agents. The following sections examine this attribution mechanism under Turkish law and explain how it functions in the context of ship arrest applications involving foreign-owned vessels.

### The Legal Status of Agents and the Action by Attribution Mechanism under the Turkish Commercial Code

Article 102 of the Turkish Commercial Code defines an agent as "*a person who, without holding a dependent legal status such as a commercial representative, commercial proxy, sales agent, or*

*employee of the enterprise, professionally intermediates or executes contracts on behalf of a trader within a specific area or region on a continuous basis."* Accordingly, an agent is an independent intermediary acting on behalf of a trader or commercial enterprise under the Turkish Commercial Code. The main characteristic of an agent is that they operate continuously within a defined area or region based on commercial contracts, without being legally bound to the enterprise, that is, without being its employee, proxy, or representative. Within this framework, an agent may facilitate the conclusion of contracts on behalf of the trader or, in some cases, directly execute such contracts in the name of the trader.

Building on this, Article 105/2 of the Turkish Commercial Code provides that an action may be brought against a person acting as an agent by attribution to their principal. Under this provision, in disputes arising from contracts intermediated or concluded by an agent on behalf of a domestic or foreign trader, a lawsuit may be filed against the agent on behalf of the trader. Similarly, in disputes arising from contracts intermediated or concluded by an agent on behalf of a domestic or foreign trader, the agent is authorized to file a lawsuit on behalf of the trader.

If foreign-resident parties have an authorized representative or agent who can provide an address in Turkey, the relevant person in Turkey may be designated as the defendant, both for procedural efficiency and equitable access to the courts. Recently, the Turkish Supreme Court (Yargıtay) has interpreted this provision as establishing an "exclusive jurisdiction rule," invalidating pre-agreed foreign court or arbitration clauses in contracts concluded or payments made through an agent. Accordingly, even if the parties have agreed on a foreign court or arbitration clause, when a claim is to be brought in Turkey on behalf of the principal, Turkish courts are deemed exclusively competent under Article 105/2 of the Turkish Commercial Code.

In shipping law, similar provisions exist. TCC Article 1104/2 gives the ship's captain the power to sue *for* the owner (donatan) when the ship is outside its home port, limited to claims arising from his duties. TCC Article 1104/3 further permits suits against the captain *relative to the ship's owner, manager, or charterer* (e.g. crew wages or cargo damage claims). This means a creditor can sue the captain in the captain's hometown court as if suing the owner. One authority notes that under Art.1104(3) not only may a suit or enforcement be brought against the captain on behalf of the owner or charterer, but *even service of process on the captain counts as service "to the owner"*. In practical effect, Turkish law treats a notification to the master as notification to the owner, just as many maritime conventions do.

From a procedural standpoint, usual rules of *representative lawsuits* and *capacity* apply, overlaid by the above substantive provisions. Key points are:

(1) the claimant must show that an agency relationship existed (e.g. under TCC 105/2) and that he is suing on behalf of the principal;

(2) the agent himself lacks substantive liability for the debt; the court must explicitly note that the real party in interest is the principal. If a suit is erroneously filed directly against the agent without the "izafeten" qualifier, the court will view it as a plain suit against the wrong party, and normally must dismiss it for lack of proper defendant.

**Formally, the agent need not produce a separate power of attorney**; the statutory representation is deemed sufficient. However, in practice a plaintiff will often submit the agency agreement or a letter from the principal confirming the agency, to establish the link. Similarly, if suing a captain on behalf of the owner, one must prove the captain's status and the ship's port of registry, etc., as required by TCC 1104.

**Maritime Sector: Agents, Captains, Ship Ownership and Arrests**

In maritime practice, “relatively” arises most often in cases involving foreign interests. Typical scenarios include:

- **Foreign Merchant via Turkish Agent**: A foreign trading company has a Turkish agent under the TCC. A dispute arises (e.g. breach of sale contract, shipping of goods, liability insurance). The Turkish party usually cannot sue the foreign principal abroad conveniently, and may not find jurisdiction in Turkey unless this rule exists. Under TCC 105(2), the Turkish merchant may sue the agent “relatively” in Turkey. In essence the claim is treated as against the foreign principal. Turkish courts (and commentators) emphasize that this exception was enacted to protect domestic traders: it allows lawsuits against foreign merchants via their local agent in Turkey.

- **Ship Captain vs. Shipowner/Charterer:** Under TCC 1104, certain claims (crew wages, salvage, damage to cargo, etc.) may be pursued against a shipowner by suing the captain. For example, a seaman’s wage claim against a foreign shipowner can be filed in the captain’s hometown court by naming the captain as defendant with reference to the owner. Similarly, if someone has a maritime lien (e.g. for ship repair or bunkers) on a foreign-flagged vessel, Turkish law (and international arrest rules) permit arresting the ship and pursuing the owner *via* the captain. The captain then appears as defendant *izafeten* to the owner. Importantly, Turkish law limits this to ships outside Turkish port; if the ship is docked at a Turkish port, the captain cannot sue the owner (TTK 1104/2).

- **Mortgage Enforcement and Ship Arrests:** In the enforcement of ship mortgages and maritime liens, the procedural mechanism of **“izafeten dava açmak”** plays a significant role, particularly when the vessel or the beneficial owner is foreign. Turkish courts commonly allow claimants to file a lawsuit **against the ship’s local representative, agent, port agent, or even the master “izafeten” (i.e., in relation to and on behalf of the foreign owner)** in order to establish jurisdiction or to initiate urgent protective measures such as arrest. This practice is especially relevant when the shipowner does not have a registered place of business or a directly reachable legal representative in Turkey. In ship arrest practice, the “izafeten” mechanism has an even more pronounced function. Because ship arrest is an in rem-like proceeding under Turkish law, the court must be able to (i) establish jurisdiction over the foreign owner and (ii) issue interim measures without delay. When the shipowner is foreign and has no registered address or representative in Turkey, the claimant often cannot serve the owner swiftly enough to secure an arrest before the vessel departs. In such situations, Turkish law allows the claimant to file the arrest request and the underlying action “müvekkiline izafeten” against the local agent, the port agent, or even the master—thus procedurally anchoring the foreign owner inside the Turkish jurisdiction. Notification to the master or agent is deemed notification to the owner (TTK 1104/3), enabling the court to issue an arrest order immediately. The intermediary bears no substantive liability; it acts solely as a procedural stand-in so that the arrest can proceed and the vessel can be immobilized before leaving Turkish territorial waters. This mechanism preserves the effectiveness of Turkish ship arrest law and aligns with the structure of the 1999 Arrest Convention and TCC Article 1352 on maritime claims.

**The Importance of Ship Arrest and Its Function Under Turkish Law**

Ship arrest remains one of the most powerful and indispensable tools in international maritime law, functioning as the primary mechanism for creditors to secure and enforce their maritime claims against foreign-owned vessels. Its significance lies in the unique mobility of ships: a vessel can leave a jurisdiction within hours, taking with it the only asset that may satisfy the claimant's debt. For this reason, the Turkish legal system—aligned with the 1999 Arrest Convention—allows creditors to immobilise the

vessel swiftly, even before initiating proceedings on the merits. An arrest order serves multiple purposes: it establishes Turkish jurisdiction over foreign shipowners, preserves the creditor's security by preventing the vessel's departure, incentivises prompt settlement, and ensures that the underlying claim can be effectively pursued. In many cases, the ship is the creditor's sole enforceable security.

The practical difficulty, however, is that foreign shipowners often lack a service address, local representative, or corporate presence in Turkey. This is precisely where "izafeten dava" becomes essential. By allowing creditors to file the arrest application and the underlying action via the master, port agent, or commercial agent, Turkish law ensures that claims against foreign-owned vessels can proceed without delay. Service on the agent or master is deemed service on the owner, allowing courts to issue urgent arrest orders in real time. In effect, ship arrest under Turkish law represents a carefully balanced mechanism that protects commercial expectations, secures creditor rights, and ensures that maritime commerce remains both efficient and accountable.

For example, in the case of "Geroi Shypki" Decision, a clear illustration of the interaction between lawsuits by attribution and ship arrest can be found in the decision of the 11th Civil Chamber of the Turkish Supreme Court dated 7 October 2020 (E. 2019/914, K. 2020/3918). In this case, a bunker supplier sought payment for fuel delivered to the Ukrainian-flagged vessel "Geroi Shypki" in İstanbul waters. The claimant obtained an arrest order over the vessel on the basis that the unpaid bunkers constituted a maritime claim under TCC Article 1352 and a ship claim under Article 1320. The action was brought against the foreign shipowner, Ukrferry Shipping Co PJSC, and "izafeten" against its Turkish agent, Batı Vagon Deniz Taşımacılığı A.Ş., in its capacity as the vessel's local agent. The Supreme Court upheld the lower court's approach, expressly finding that there was no procedural irregularity in directing the claim and notifications to the Turkish agent "by attribution" to the foreign owner. In doing so, the Court confirmed that, in the context of ship arrest, the attribution mechanism can be used to establish jurisdiction and effect service on a foreign shipowner through its Turkish agent, while substantive liability continues to rest with the owner itself. This decision therefore demonstrates in practice how TCC Article 105, together with the maritime claim regime in Article 1352, enables effective arrest of foreign-owned vessels via lawsuits and enforcement proceedings conducted "izafeten" through local representatives.

**Conclusion**

In sum, the institution of lawsuits by attribution plays a central role in maintaining the functionality and effectiveness of Turkish ship arrest procedures. While Article 105 and the related provisions define the agency relationship in commercial law, their practical value becomes most evident in maritime disputes involving foreign shipowners. The attribution mechanism bridges the procedural gap created by the absence of a domestic service address or representative, enabling Turkish courts to establish jurisdiction, order arrest, and protect creditors without undermining the mobility of maritime trade. By permitting filing and service through agents, port agents, or the vessel's master, Turkish law ensures that substantive liability rests with the true principal, while procedural efficiency is preserved. Ultimately, this framework strengthens the predictability and enforceability of maritime claims in Türkiye, supports the integrity of the ship arrest regime, and provides an essential safeguard for parties engaged in international maritime commerce.

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# Procedural Defenses as Means to Release an Arrest / Flag Arrest Under the Panamanian Maritime Jurisdiction by Jorge Loaiza III, Arias Fabrega & Fabrega (Panama)

Under Law 8 of 1982 on Maritime Procedure ("Law 8"), the arrest of a vessel can be obtained for purposes of a) obtaining security for the outcome of the proceedings, b) giving the court jurisdiction in respect to a claim against the owner, even if other parties may be involved, and c) enforcement of maritime liens (Article 166 of Law 8).

On the other hand, Law 8 also contemplates what is commonly known as a flag arrest or administrative injunction. This legal tool prevents a vessel of Panamanian registry from processing applications before the Panama Maritime Authority, such as a transfer of ownership, recordable encumbrances including mortgages or deletion from the registry, to be obtained on in-personam proceedings against the owner, be it as a sole or one of a number of defendants, in case that the vessel may not be physically found within Panamanian jurisdictional waters.

Generally speaking, an arrest can be challenged pursuant to a motion of wrongful arrest, which as provided for in Law 8 would involve an arrest carried out in bad faith, and where there is a mistake in the asset to be attached or ownership thereof, the absence or inexistence of an alleged maritime lien causing the arrest or in breach of a previous agreement not to arrest.

On the other hand, Law 8 contemplates certain procedural defenses (excepciones), which provide a legal means of defending a claim before going to trial and trying the same on the merits.

The concept of defense or exception (excepción) is usually conceived as facts that modify or extinguish the obligation (Article 75 of Law 8); which in essence would be legal object of the claim within the proceedings.

The special procedural defenses (incidentes y excepciones de previo y especial pronunciamiento) have their legal basis on certain elements that could affect the procedural position of the defendant or a third party defendant in respect to the plaintiff's claim in a way that the same can be resolved as motions, before going into the merits and through the main proceedings and trial or hearing for such purposes.

These special defenses are detailed mostly under Articles 82 and 83 of Law 8, which translates as follows:

"**Article 82.** The exceptions of prior and special determination and the pleas for nullity, rejection of jurisdiction and determination of the substantial applicable law to the motion in lawsuit may be alleged in one same pleading, and shall be tried in one single hearing and shall be decided in one single order, upon satisfaction of the proceedings as per Article 110 of this Law. An appeal to this order shall have suspension effects.

**Article 83.** The exceptions of res judicata, time bar, lapse procedure, lack of active or passive legal standing, settlement or abandonment of the complaint, when such abandonment shall as a consequence cause the extinguishment of the action, shall be resolved as exception of prior and special determination. The same treatment shall be given to other motions to which the parties so agree."

In the proceedings initiated by BERTLING TRANSGAS TANKERS S.A.C. ("BTT") and GARD MARINE & ENERGY INSURANCE (EUROPE) AS against MARINE ENGINEERS CORPORATION (PANAMA) INC. ("MEC"). Plaintiffs had claimed damages for over US$3,000,000.00 due to alleged MEC's defective works in the push up of the propeller during a drydock. Simultaneously with such works, LLOYD´S REGISTER GROUP LIMITED ("LRGL")

was carrying out a class survey at the request of BTT through a regional subsidiary.

MEC joined LRGL, our client, and the insurance company MAPFRE PANAMÁ, S.A. as third party defendants, on the basis that if MEC would be held liable to BTT, then LRGL should take their place and indemnify BTT. MEC alleged that LRGL had a duty as classification society to ensure that the propeller was properly reinstalled.

LRGL's defense argued that MEC had no standing to sue LRGL (falta de legitimación activa), since LRLG's contractual duty was towards BTT and, in addition, LRGL rules did not provide for their surveyor to supervise, authorize or report on the push up of the propeller as part of and for the type of survey being carried out.

The Maritime Court of Appeals ("MCA") reversed the First Maritime Court's ruling (22/2/21), whereby the trial Judge denied the defense, and ruled (8/3/22) that also in accordance with Panamanian law (Law 57 of 2008 of the Merchant Marine) the classification society could only respond for a claim made by the owners or contracting party for their services. The MCA also recognized that LRGL's rules were relevant to determine the scope of any potential liability. Thus, LRGL was dismissed from the proceedings on grounds of MEC's lack of standing to sue LRGL.

On another matter, BETA SHIPPING LTD. ("Beta") sued HUATONG CO., LTD, CHINA CHENGTONG INTERNATIONAL CO., LTD and WUCHAN ZHONDA METALS AND MATERIALS GROUP SHANGHAI CO., LTD ("Wuchan") for damages for over USD $6,000,000.00.

Beta's allegations were based on an interpretation from their local counsel that a wrongful arrest motion, on separate proceedings filed by Wuchan in respect to Cargo arrested by another party-plaintiff, could be considered as a "claim against the carrier" to surrender the cargo and, as such, it had taken the position of the shipper and could be held liable for demurrage and related damages allegedly caused to Beta, pursuant to UK COGSA (section 3), which at the time was the bareboat charterer of the relevant vessel.

Defense was filed for lack of object of the proceedings on grounds that Panamanian counsel was not qualified as an English lawyer to determine if the wrongful arrest petition amounted to a claim for the return of the cargo and that, in any event, there had to be a causation of the petition and the damages. Our view was that the link of liability under UK COGSA was not properly established as lacking legal grounds due to the inadequate adaptation by a Panamanian lawyer of the UK COGSA liability test. On the other hand, we provided our English counsel with guidance on the facts of the matter, which were the nature of the wrongful arrest petition, the purposes of which to release the cargo, not to the petitioner but to continue the voyage for which it was intended, and the same is intended to have the arresting party in the other proceedings, which was not Beta, to be held liable for damages. Our English counsel concluded that such a petition did not constitute a claim for an early return of the cargo and in any event could not be connected to the delays which could not be linked to the time at which the wrongful arrest petition was filed by Wuchan.

The MCA held that the facts and allegation of UK Law made and corresponded to the defense of lack of object could be considered and recategorized as lack of stating of Wuchan to be sued by BETA; Wuchan was therefore dismissed from the proceedings.

In more recent proceedings, ZHESHANG ZHONGTUO (BEIJING) INTERNATIONAL ("ZHESHANG") filed in personam proceedings against HAIJINJIANG (HONG KONG) COMPANY LIMITED ("HAIJINJIANG") bareboat charterers of the vessel HAI JIN JIANG SH (the "Vessel") and TAURUS SHIPPING PTE LTD. ("TAURUS"), registered owners of the vessel.

The claim, in excess of US$8,000.000.00 was made for damages on alleged misrepresentations and omissions in respect to certain events, including arrest, and repairs that had resulted in the misleading issuance of the Bill of Lading covering the cargo and delays in carrying out the voyage and delivery of the cargo to ZHESHANG.

In supporting its claim against the "interests" of the Vessel, ZHESHANG's Panamanian lawyers had not clearly defined the involvement of TAURUS in the alleged misrepresentations and omissions but based on their allegations and in the absence of a physical arrest of the vessel, they sought a flag arrest on the Vessel, which was granted.

As part of TAURUS' defenses it was alleged that by having bareboat chartered the Vessel, Taurus disengaged itself from the operation of the Vessel and could not be legally bound in terms of liability for the alleged facts that supposedly caused the delay and damages to ZHESHANG by not having the cargo delivered to them.

In our view, such disengagement and in the absence of any additional proof of any intervention of TAURUS related to the commercial operation of the Vessel prevented it from being sued by ZHESHANG, i.e. lack of standing to be sued (falta de legitimación pasiva).

As a consequence of such situation, the flag arrest could not stand either as the injunction on the vessel would be connected to any potential liability of the owners, i.e. TAURUS.

The trial court ruled in TAURUS' favor (12/5/25) and, after ZHESHANG appealed, the MCA confirmed the judgment on 7/10/25.

The release of the flag arrest also assisted in that a petition for special registration under bareboat charter party had been suspended awaiting the outcome of the maritime proceedings.

With the above rulings, we have taken an important role in this type of defenses, setting important precedents and for lawyers to more carefully design their complaints, including third party complaints, as the same must be sufficiently supported on facts and law, rather than an insinuation or even plain, even if logical, connection of facts.

*ARIAS, FABREGA & FABREGA represented LRGL, Wuchan and TAURUS in the respective proceedings*

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## "Forest Park" (I + II) – The OW Bunker Saga Continues: *About the Casablanca court over the Rotterdam court, Interpretation of Articles 4, 5 and 6 of the Brussels Arrest Convention 1952 on jurisdiction* by Peter van der Velden, Conway Litigation & Arbitration (Netherlands)

Thanks to the OWB disaster, again we are richer in new case law. The Dutch Supreme Court rendered an important decision on 3 October 2025, in follow up of another important decision of this court on 17 July 2020. It concerns jurisdiction issues under the 1952 Brussels Arrest Convention. V Marine, a (physical) bunker supplier, loads bunker fuels into M/V *"Forest Park"* in the port of Rotterdam upon instruction of OWB. V Marine remains unpaid by OWB and arrests the ship in the Moroccan port of Safi. The arrest is lifted by depositing funds as alternative security at the court of Casablanca. This court however does not set a term (as prescribed in article 7(2) Brussels Arrest Convention: *"..shall fix the time within which the claimant shall bring proceedings"*).

Some years later, proceedings are initiated before the court of Rotterdam. The claim for payment is partially

awarded, appealed before the court of The Hague and execution suspended. *Now it comes!* During the appeal, shipowners of M/V "Forest Park" demand their money back, i.e. requests the appeal court to order the conversion of the money deposit held by Casablanca court into a P&I Club guarantee (which would under Dutch law be easily granted), whereupon these funds can be released to shipowners. The appeal court indeed granted the request, but V Marine filed for cassation and thereby challenged the jurisdiction of the The Hague Court, arguing such request is only for the Casablanca court to decide as follows from article 5 Brussels Arrest Convention.

The Supreme Court ruled in favour of the bunker supplier: the Casablanca court has exclusive jurisdiction for decisions to be made regarding whether or not to 'permit the person in possession of the ship to continue trading the ship, upon such person furnishing sufficient bail or other security, or may otherwise deal with the operation of the ship during the period of the arrest'.

According to the Supreme Court, this follows from the text of article 5 seen in the context of article 4 ('A ship may only be arrested under the authority of a Court (..) of the Contracting State in which the arrest is made') and 6 ('The rules of procedure relating to the arrest of a ship, to the application for obtaining the authority referred to in article 4, and all matters of procedure which the arrest may entail, shall be governed by the law of the Contracting State in which the arrest was made or applied for'). The Supreme Court also brings in the criteria in the articles 31-33 of the Vienna Treaty Convention (1969), as being the "codification of the applicable international law".

Whereas the Supreme Court thus interprets article 5 in a restrictive way on the jurisdiction element, it however gives a wide interpretation to the *scope of article 5*: various requests can be brought under it as far as they are in "narrow connection with the topics mentioned in article 5, such as for release, re- or deduction or other amendments of the alternative security (like here: conversion of a money deposit into a guarantee). But, this is subject to the exclusive jurisdiction of the court in whose jurisdiction the ship was arrested.

V Marine's demand for conversion before a Dutch court was therefore denied. They should go to Casablanca. This ruling (in 2020) met criticism from a Dutch law professor. In his published comments to this ruling, he points out that the ruling is (only) in line with the French Court de Cassation decision of 5 June 1999, nr. 93-19.688 in the *"Gure Maiden"*, whereas Berlingieri expressed an opposite opinion in his "Arrest of Ships, Vol. I, 6th edition, 2016, nrs. 7.12 and 16.05-16.07". Yet, this is now the prevailing interpretation of the Dutch Supreme Court on article 5 Brussels Arrest Convention 1952.

It seems the Supreme Court was not deaf to the criticism and very recently (October 2025) came with another ruling on article 5. Ship owners had meanwhile paid ING Bank (to whom OWB's claim for payment was assigned) and claims damages for wrongful arrest before the Rotterdam court. The matter goes up to the Supreme Court again. The end result is that article 5 does not give exclusive jurisdiction for damage claims for wrongful arrest.

The Supreme Court thereby points out that article 6 of the Brussels Arrest Convention does not provide for any jurisdiction regarding tort claims as it merely provides for conflict rules, not jurisdiction. Interesting as well is the Supreme Court's reference to "later practice in the application of the treaty, prevailing case law and literature in other contracting states" for its interpretation. And furthermore, the court's observation that the Brussels Arrest Convention is not exhaustive given its title *"certain rules relating to the arrest of sea-going ships"*.

Yet, in the earlier decision article 6 was used for creating exclusive jurisdiction of the court where the ship was arrested (Casablanca), so this could be seen as an inconsistency. The October 2025 ruling is not yet commented on in legal literature, but my take is that in both Supreme Court rulings, article 6

functioned in different contexts/questions of law: (a) does the Casablanca court have exclusive jurisdiction (over the Rotterdam court) as per article 5 (yes) and (b) does this exclusive jurisdiction also include damage claims for wrongful arrest (no)?

So, the Morocco – Netherlands match is a tie!

I especially look forward to the comments of our good friends in Morocco.

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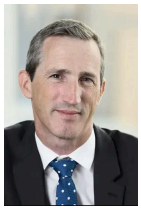

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