



COMITÉ MARITIME INTERNATIONAL

PRESIDENT

18 June 2020

MLA Presidents
Titulary Members
Consultative Members

Re: *Liability for Wrongful Arrest of Ships*

Dear Presidents, Titulary Members and Consultative Members,

I write at the request of the Chair of the International Working Group on Liability for Wrongful Arrest, Dr. Aleka Sheppard.

As you may be aware, after the analysis of the responses to the first questionnaire, and the lively debate at the IWG open meeting in London, in November 2018, the decision was taken, at the request of those present, to circulate a further, more refined questionnaire, with a view to capturing individual experiences and perceptions of wrongful arrest, and the treatment of same in the legal system of States.

Both the first questionnaire, the letter setting out the reasons for the study, and the second questionnaire, can be found on the CMI website, along with other documents which may be of interest.

The IWG Chair informs me that while the responses received to date have been remarkably interesting, offering useful insights into the treatment of liability for wrongful arrest in various legal systems, unfortunately only a limited number of responses have been received.

The IWG members have analysed the responses, but prior to publishing the results, would like to see if any further responses can be garnered.

Given the utility of the responses already received, and without wishing to trespass unnecessarily on your Association's time, the IWG would be very much

obliged if you could re-circulate the attached questionnaire, together with this letter, and communicate the following to interested lawyers within your Association:

- (a) The thanks of the IWG to those who have already replied to the second questionnaire who are obviously not being asked to resubmit their replies.
- (b) Asking Associations, Titulary Members and Consultative Members who have had experience of wrongful arrest situations, or have views to express in respect of the same, to consider submitting a response to the second questionnaire to the Co-Rapporteurs of the IWG, bearing in mind the new DEADLINE of 31st August, 2020.

I am also asked to bring to your attention the fact that new documentation will be uploaded to the CMI website, which may prove of interest to your Association's members.

Of particular interest, in this regard, is the judgment of the English Court of Appeal in *Stallion Eight Shipping Co. S.A. v Natwest Markets PLC* (the *MV Alkyon*).

The judgment analyses the status quo under English law relating to liability for wrongful arrest of ships and makes specific reference to the work of the CMI in this project, highlighting its practical relevance and expressing a hope the CMI will make further progress in this regard.

You will note, in particular, the observations of the Court at paragraphs 70 – 76 of the judgment, an excerpt of which is set out below (the relevant pages of the decision have also been uploaded on the CMI website).

Extracts from the Alkyon CA decision

quote

70. The Comité Maritime International (CMI) is a not-for-profit international organisation established in Antwerp in 1897; its concern lies with the unification of maritime law and related activities. By a coincidence of timing, the CMI was due to meet on 9 November 2018 to discuss Liability for Wrongful Arrest. The upshot was, with respect, a most helpful survey ("the survey") of the applicable laws and legal tests in this area internationally, conducted by Dr Aleka Sheppard, Chairman of the International Working Group ("IWG") of the CMI (and also the Founder/Chairman of the London Shipping Law Centre).

71. The survey posed three broad questions:

- "A. What is the applicable law by the various States in respect of ship arrest and liability for wrongful arrest at national level;
- B. Whether counter-security is required to be provided by the arrestor when the application for the ship arrest is made, or thereafter, in the event of a potential wrongful arrest;
- C. What is the legal test and the standard of proof for a defendant-arrestee to succeed in a wrongful ship arrest claim."

72. Detailed answers were obtained from 38 National Maritime Law Associations.


unquote

In light of the Court of Appeal's observations, the Chair and members of the IWG on Liability for Wrongful Arrest do hope that Associations, Titulary Members and Consultative Members will assist the progress of this worthwhile project by answering the questions of this second questionnaire which will be used as a guide by the IWG in determining what further steps should be taken to advance the project.

For your information, I am informed that the Co-Rapporteurs of the IWG also anticipate publishing details of this time extension via the CMI page on LinkedIn.

Please note that responses should be emailed to the Co-Rapporteurs of the IWG: Edmund Sweetman esweetman@icasf.net and Prof. George Theocharidis gt@wmu.se with a copy to the CMI Administrative Assistant: Evelien Peeters admin-antwerp@comitemaritime.org.ccc

Faithfully yours,

A handwritten signature in black ink, appearing to read "Chris O. Davis", with a stylized flourish at the end.

Christopher O. Davis

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Follow-up Questionnaire

Please complete this document and send it to the Rapporteurs of this project: Edmund Sweetman (esweetman@icasf.net) and Professor George Theodoridis (gt@wmu.se), who will collate and analyse the answers.

PLEASE NOTE THAT YOUR REPLIES WILL BE DEALT WITH DISCREETELY, AND ONLY THE GENERAL CIRCUMSTANCES OF ANY CASE WILL BE REFERRED TO, WITHOUT IDENTIFICATION OF THE PERSON WHO HAS COMMUNICATED THE SAME.

Your Name	(1.1) Jurisdiction
(1.2) How many years have you been practising?	
(1.3) How many arrests of ships take place annually, more or less, in your jurisdiction?	
(2) Have you or your colleagues dealt with a wrongful arrest case, or one that was considered to be close to wrongful?	
(3) Did it take place within your jurisdiction – or in another- and which?	

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(4) If yes, provide details of the case.	
(5) Was there a procedural mistake or defect?	
(6) Were any tactics used by the arrestor to put pressure on the shipowner?	
(7) Was the arrest aiming to challenge: 7.1) the inherent jurisdiction of another state; or	
7.2) the jurisdiction agreed by the parties to the dispute in an arbitration agreement; or	
7.3) was the arrest made for the sole purpose of obtaining security for the claim?	

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<p>(8) Was security for the claim readily available?</p>	
<p>(9) What was the outcome in your example?</p>	
<p>(10) Do you want CMI to make proposals for some degree of uniformity in the law on wrongful arrest of ships, or not?</p>	<p style="text-align: right;"><i>848 416</i></p>
<p>(11) Instead of unification, would you support the provision of: 11.1) counter security (i.e. a requirement to lodge funds or equivalent security in Court); or</p>	
<p>11.2) cross undertaking to be provided as a condition of the arrest?</p>	
<p>(12) What exemptions should there be in such a provision and for whose protection?</p>	

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<p>(13) What should the test for wrongful arrest be (i.e. negligence, gross negligence or other)?</p>	
<p>(14) In the event of a finding of wrongful arrest, what remedy do you consider would be appropriate/fair? 14.1) an award of the legal costs incurred by the S/O to bring the W/A claim?; or</p>	
<p>14.2) damages for all losses suffered by the S/O, if he proves that they were caused solely by reason of the wrongful arrest?</p>	
<p>(15.1) Would you opt for an alternative remedy to damages?</p>	
<p>15.2) if yes, what would you suggest?</p>	

Please provide any further comments or observations which you believe would assist CMI in the furtherance of this project.

Thank you.

Dr Aleka Sheppard - IWG Chairman