

DOCUMENT No. 355

November 23, 1951.

THE MARITIME LAW ASSOCIATION  
OF THE UNITED STATES

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**ARREST OF SHIPS**

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Pursuant to Document No. 350, the President called a Special Meeting of the Association to be held on November 15th, 1951 to consider the Proposed International Convention on the Arrest of Seagoing Vessels contained in Document No. 351 and circulated therewith. Although a quorum was not present and no formal action could be taken at the meeting, the President reviewed the background of the proposed convention and read a number of letters which he had received in response to his request for comments. The meeting was then thrown open for general discussion at which time various objections and suggestions were advanced. All these comments were put before the Executive Committee the following day, November 16th, 1951. After consideration of the Proposed Convention in the light of all the comments received, the Executive Committee unanimously adopted the following Resolution:

**RESOLVED**, That The Maritime Law Association of the United States approves in principle the proposed International Convention on the Arrest of Seagoing Vessels prepared at the Naples Conference, subject, however, to the following objections and suggestions:

(1) In Article 1, the list of maritime claims requires further consideration. For example, consideration should be given to including agreements relating to the carriage of passengers, claims in respect of marine insurance or the premiums thereon, stevedoring, wharfage, piloting, drydocking, use of marine railways, agency agreements, surveyors' fees and the charges of classification societies. Subdivision "o" might be extended to other claims than wages. On the

other hand, item (p), masters' disbursements and some other items, may perhaps be too broadly stated.

(2) In Article 1 (a) it is important for American purposes that the word "done" should be changed to "caused". The present wording could be construed to limit the term to such damage as was physically accomplished by the vessel herself and to exclude crowding cases or passive cases, such as damage due to unseaworthiness. See *Canadian Aviator, Ltd. v. United States*, 324 U. S. 215.

(3) Article 2 should perhaps contain a definition of the word "arrest" for American purposes, because in this country an arrest ordinarily means the seizure of a vessel in an action *in rem* arising on a maritime lien, whereas the Convention is intended to apply to writs of foreign attachment and to all other arrests against vessels.

(4) Article 3 (II) would seem to require clarification as to whether "shares" includes shares of stock of a corporation owning a ship or is limited to the 64 shares in the ship herself.

(5) Articles 5, 6, 7 and 8 may require some further clarification, including an explanation of what rights the claimants may have in the event that bail is not supplied, what title a purchaser would obtain if the ship is sold by the arresting court, how effect is to be given to the limitation of liability acts applicable to the particular claim or arrest, and clarification of the question whether it is intended that a ship may be arrested even though the owner may reside within the jurisdiction of the arresting court and be available for the service of judicial process.

(6) The Association is firmly opposed to the last paragraph of Article 8 which gives validity to agreements to limit disputes arising from bills of lading, charter parties, crew's articles, etc., to the jurisdiction of a particular court other than that within whose jurisdiction the ship may be arrested. Such agreements are unenforceable in the United States and this Association would not be prepared to endorse the change proposed by the Convention.

(7) In Article 9 the word "forfeiture" should be inserted before the words "or penalties".

(8) The final phrase of Article 12 should be amended to read "arrest of war ships and State owned, operated or chartered vessels" in order to make the reservation as broad as the present law.

(9) This Association wishes to point out that there may be some difficulties in fitting the provisions of the Convention in its present form and extent into our judicial system, in view of our distinction between Admiralty and other suits, our dual system of State and Federal Courts and our extensive doctrine of actions *in rem*.

(10) This Association also wishes to point out that the practice in the United States is to treat matters of this kind as proper subjects for the passage of an Act of Congress as, for example, in the case of the Carriage of Goods by Sea Act, and thereafter, if desired, to ratify the Convention as such. The Association is of the opinion that this procedure should be followed in the present case, in any event.

In accordance with the resolution adopted at the Naples Conference and set forth at page 3506 of Association Document No. 351 the foregoing resolution is being sent to the Rapporteurs who will draw up a résumé setting out the reservations of the various National Associations and forward such résumé to the Permanent Bureau of the International Maritime Committee in Antwerp. The Permanent Bureau has been instructed to forward the Draft Convention on the Arrest of Ships together with such résumé to the Belgian Government for submission to the Diplomatic Conference to be held in 1952.

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