

Netherlands shows the way on ship arrest jurisdictional issues

While the United States is not a party to the 1952 International Convention Relating to the Arrest of Seagoing Ships (the “Convention”), it plays a critical role for U.S. companies plying their trade around the world and U.S. lawyers who advise those companies on options in which to obtain security for claims. The right to arrest a vessel or attach the assets of another party remain contentious issues in the international shipping industry. The Convention is intriguing to U.S. practitioners as it provides jurisdiction for the court granting leave for arrest to hear also the substantive claim at the centre of the dispute – a concept quite different than the U.S. arrests which focus on security in many respects. However, debate continues about the jurisdictional rights under the Convention.

Background

One of the motivating factors behind the drafting of the Convention, designed to promote unhindered shipping, was to limit the type of claims for which seagoing ships could be arrested. Moreover, the reference in Article 8 to ships flying only the flags of contracting states was actually intended to serve as an incentive to states to ratify the Convention, and thereby gain protection for their fleets against arrest for non-maritime claims.

Despite this, over the years, interpretation of the jurisdiction rules under the Convention has varied from country to country. The most frequently encountered issue revolves around the question of whether or not Article 7 of the Convention applies not only to vessels flying the flags of signatory countries, but also to those flying the flags of countries which are not signatories to the Convention.

Recent decisions from the courts in the Kingdom of the Netherlands (which comprises the Netherlands itself as well as Aruba, Curacao and Sint Maarten), have however established clear guidelines on the issue, and served to reaffirm that the application of Article 7 (*Forum Arresti*) is not limited to vessels flying the flags of contracting states.

The 1952 Arrest Convention

Article 7 of the 1952 Arrest Convention provides that the courts of the country in which an arrest is made must also be competent to determine claims upon their merits in various situations, and if the domestic law of the country so provides.



**Haco van der Houven
van Oordt**
AKD NV

Haco van der Houven van Oordt is an active litigator in the shipping and offshore industries at AKD NV in Rotterdam (Netherlands).

*Contact details:
T +31 88 25 35 392
M +31 65 20 48 334
E hvanoordt@akd.nl
W www.akd.nl*

Article 8, meanwhile, stipulates that the provisions of the Convention apply to any vessel flying the flag of a contracting state. Hence, it has been argued by some that jurisdiction cannot be based on Article 7 where the vessel does not fly the flag of a signatory to the Convention.

Netherlands court decisions

Such arguments have not found support in the Dutch courts, however. In 2012, the Rotterdam Court was the first to hold that it did have jurisdiction to hear a claim brought by the owners of a fishing vessel which suffered severe damage after a collision with the Malta-flag bulk carrier *Kaliakra* following the arrest of the bulk carrier in Rotterdam. The Maltese owners of the *Kaliakra* argued that the Rotterdam Court did not have jurisdiction because the vessel was flying the flag of a state which had not contracted to the Convention and referred to the limited scope of the Convention set out in Article 8. But the court said that ships flying the flags of non-contracting states should not be treated more beneficially than ships flying the flags of contracting states. The court subsequently concluded that Article 7 (1) (d) of the Convention equally applied to vessels not flying the flag of a contracting state, and that the substantive claim could therefore also be brought in Rotterdam where the *Kaliakra* had been arrested.

In 2013, meanwhile, the Den Haag Appeal Court ruled in the *Hero* that Article 7 of the 1952 Arrest Convention applies to all vessels, irrespective of flag and owner. The case involved a dispute over repayment of a loan secured by a mortgage, and the court decided that jurisdiction for the Rotterdam Court was created simply by the arrest of the vessel by the mortgage bank in Rotterdam, regardless of the flag and nationality of the owner, pursuant to Article 7 (1) (f).

Earlier this year, in the *Oste* case, the Curacao Court confirmed these jurisdictional principles, adding that if the arrest of a ship is made in the course of a voyage during which a claim arises, those seeking to arrest a vessel will likewise be able to establish jurisdiction under Article 7 (1) (c) of the 1952 Arrest Convention.

Conclusion

These decisions mean that those interests seeking to arrest ships in the Kingdom of the Netherlands can expect the courts to accept jurisdiction for substantive claims on the basis of Article 7 of the 1952 Arrest Convention. This adds a welcome level of improved certainty and consistency to the sometimes ambiguous distinctions associated with *forum arresti*. This, moreover, is in keeping with what one may reasonably suppose to have been the intention of the drafters of the 1952 Arrest Convention. 