The International Convention on the Arrest of Ships 1999

The International Convention on the Arrest of Ships 1999, the successor to the 1952 International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, came into force on 14 September 2011. So far only 10 states have chosen to ratify this convention and these are Albania, Algeria, Benin, Bulgaria, Ecuador, Estonia, Latvia, Liberia, Spain and the Syrian Arab Republic. However, Denmark and Norway have signed up to the new Arrest Convention and so may choose to ratify it in the future.

The new Convention will only take effect within the jurisdictions of those 10 States and will apply to any ship within the jurisdiction of a signatory State. Therefore, ships flying the flag of a State which has not ratified the 1999 Convention will be subject to the Convention when in the waters of a State which has. Although Spain had reserved the right not to apply the rules of the 1999 Convention to ships which do not fly the flag of another 1999 Convention State, in late August 2011, Spain clarified that the 1999 Convention will apply irrespective of whether the vessel to be arrested flies the flag of a Convention State.

The 1999 Arrest Convention was designed to update and address the identified deficiencies of the 1952 Arrest Convention and aims to strike a fairer balance between the interests of the ship owner and claimant. The new Arrest Convention provides further unification as it clarifies some issues which are currently left to local law in the 1952 Arrest Convention. These amendments have resulted in the 1999 Arrest Convention differing significantly from the 1952 Arrest Convention in several important ways. It is therefore important to understand the implications of the application of the 1999 Arrest Convention and its diverse approach to enforcing maritime claims.

Definitions and Categories of Maritime claims

Whilst the list of all maritime claims in the 1952 Convention is closed, the list in the 1999 Convention contains one potentially open category of claim: Article 1(d) - environmental damage. This subparagraph lists examples of the type of damage which it envisages and concludes "...and damage, costs, or loss of a similar nature...".

Under the 1952 Convention there are 17 categories of maritime claim that can give rise to a right of arrest. Under the 1999 Convention there are 22 categories. Six new heads of arrest have been added and one (bottomry) removed. Some of the most significant new maritime claims to be included are: damage or threat of damage to the environment, clean-up costs and reasonable steps taken to avoid environmental damage, wreck removal, port, canal and pilotage dues, vessel sale and purchase contract disputes, insurance premiums including mutual insurance calls payable on behalf of ship owners or demise charterers, commissions, brokages, agency fees payable in respect of the ship; disputes arising from a contract for sale of the ship.

Powers and exercise of right of arrest

Article 2 of the 1999 Arrest Convention clarifies that a ship may be arrested for the purpose of obtaining security even when a jurisdiction or arbitration clause in the applicable contract relates to a different state to the one in which arrest is imposed. The new convention also makes it clear that arrest can be executed so as to satisfy a judgment or arbitration award.

Importantly, the new Arrest Convention allows a claimant to arrest a vessel whether or not it is flying the flag of a convention state, unlike the 1952 Arrest Convention which states that the arrest of a vessel is only permitted if it is flying the flag of a state which is party to the convention (but see above in relation to Spain). In practice though, local law will often have a bearing on the ability of a claimant to arrest.

In terms of jurisdiction to determine the merits of the claim, the 1999 Arrest Convention makes a clear statement that the court where an arrest has been effected, or security provided to obtain the release of a vessel from arrest, has jurisdiction to determine the case on its merits, unless the parties “validly agree or have agreed to submit the dispute to” another court or arbitration.

The new Arrest Convention has also amended the rules on the exercise of the right to arrest a vessel involving a maritime lien. The new Arrest Convention now only permits arrest for a maritime lien which is “granted or arises” under the law of the State where the arrest is applied for, rather than for any maritime lien “recognised” under that law.

Liability for wrongful or unjustified arrest or excessive security

Article 6 of the 1999 Convention provides additional protection for the owners and demise charterers of arrested ships with regards to wrongful arrest of a ship. Although the 1952 Arrest Convention does contain a wrongful arrest provision so as to prevent arrests brought about due to bad faith etc., the 1999 Arrest Convention goes further by allowing damages to be assessed and countersecurity to be imposed in respect of “unjustified” (erroneous) arrest.

Under Article 6 (1) of the new Arrest Convention, the arresting court is empowered to impose on the claimant the obligation to give countersecurity for losses that may be incurred by the ship owner as a result of the arrest if the claimant is found liable. In contrast, countersecurity is not specifically covered in the 1952 Arrest Convention and it is left to local law to determine whether this is necessary. The new Arrest Convention does, however, allow the owner, as well as the provider of security to apply at any time to the local court to have the security “reduced, modified or cancelled”. The 1952 Arrest Convention provides that a review of the amount of security will only be possible if local law provides for it.

Conclusion

The 1999 Arrest Convention has sought to establish a more encompassing approach to arrest and has broadened the scope for arrest by adding to the number of maritime claims. It remains to be seen if the new Arrest Convention will be widely applied. Further though, and perhaps more significantly, since each country adopting the 1999 Convention will do so individually there may be differences in the application of the convention.

To the extent that this proves to be the reality this will not be a welcome development.