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Maritime Arrest

Legal Reflections on the International Arrest Conventions and on Domestic Law in Germany and Sweden

Thesis

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CONTENTS

ABBREVIATIONS

AG	Ger.: Amtsgericht (local court)
B/L - Bs/L	Bill of Lading - Bills of Lading
Baltime	Uniform Time-Charter (BIMCO)
BayObLG	Ger.: Bayerisches Oberstes Landesgericht (Higher Regional Court of Bavaria in Munich)
BB	Ger.: Betriebsberater (law journal)
BFH	Ger.: Bundesfinanzhof (Federal Fiscal Court)
BGB	Ger.: Bürgerliches Gesetzbuch (German Civil Code)
BGBl.	Ger.: Bundesgesetzblatt (Federal Law Gazette)
BGH	Ger.: Bundesgerichtshof (Federal High Court of Justice)
BIMCO	Baltic and International Maritime Conference
BT-Drucksache	Ger.: Bundestagsdrucksache (Printed Matter of the Federal Parliament)
cf.	Confer
ch.	chapter
CMI	Fr.: Comité Maritime International (International Maritime Committée)
CPO	Ger.: Civilprozeßordnung (Code of Civil Procedure of the German Reich)
DB	Ger.: Der Betrieb (law journal)
Deutzeit	Deutscher Zeit-Frachtvertrag 1912 (time charter party)
Dfl.	Dutch Florin
Diss.	Ger.: Dissertation (doctoral thesis)
DM	Ger.: Deutsche Mark (deutschemark)
Doc.	Document
DRiZ	Ger.: Deutsche Richterzeitung (law journal)
Ds Ju	Sw.: Departementsserien (Official Report Series published by the Ministry of Justice)

e.g.	Lat.: exempli gratia (for example)
ECJ	European Court of Justice
ed.	editor
edn.	Edition
EEC	European Economic Community
et al.	Lat.: et alii (and others)
et seq. - et seqq.	Lat.: et sequens (and the following) - et sequentes (and those following)
ETR	Ger.: Europäisches Transportrecht (law journal)
FOC	flag of convenience
Fr.	French
FRL	Sw.: Förmånsrättslagen (Right of Priority Act)
Gencon	Uniform General Charter of the BIMCO
Ger.	German
GVGA	Ger.: Geschäftsanweisung für Gerichtsvollzieher (bailiff office instructions)
Hansa	Ger.: Zentralorgan für Schiffahrt, Schiffbau, Häfen (technics and law journal)
HGB	Ger.: Handelsgesetzbuch (German Commercial Code)
HGZ	Ger.: Hanseatische Gerichtszeitung (Hanseatic Court Gazette)
HOLG	Ger.: Hanseatisches Oberlandesgericht (Hanseatic Higher Regional Court) in Bremen or Hamburg
i.a.	Lat.: inter alia (among other things)
i.e.	Lat.: id est (that is to say)
ibid.	Lat.: ib idem (in the same page)
ICS	International Chamber of Shipping
IMO	International Maritime Organisation (former Inter-Governmental Maritime

(IMCO)	Consultative Organisation)
IPRax	Ger.: Praxis des Internationalen Privat- und Verfahrensrechts (law journal)
ISSA	International Ship Suppliers Association
JD	Sw.: Justitiedepartementet (Ministry of Justice)
JIGE	Joint Intergovernmental Group of Experts (IMO/UNCTAD)
JURIS	legal database (German)
JW	Ger.: Juristische Wochenschrift (law journal)
KG	Ger.: Kammergericht (Higher Regional Court of Berlin)
Kryss	Sw.: Kryss & Till Rors (maritime journal)
L/C	Letter of Credit
Lat.	Latin
LG	Ger.: Landgericht (Regional Court)
LL.M.	Lat.: legum magister (Master of Laws)
M.S.	Motor ship
MC	Swedish Maritime Code
MDR	Ger.: Monatsschrift für Deutsches Recht (law journal)
MLM	International Convention on Maritime Liens and Mortgages
NdsRpfl	Ger.: Niedersächsische Rechtspflege (law journal)
NJA I, II	Sw.: Nytt juridiskt arkiv Avd. I, II (law report of the Swedish Supreme Court)
NJW	Ger.: Neue Juristische Wochenschrift (law journal)
No.	Number
O.J.	Official Journal of the European Communities
OLG	Ger.: Oberlandesgericht (Higher Regional Court)
op. cit	Lat.: opere citato (in the work quoted)
p./pp.	page/pages

RB	Sw.: Rättegångsbalk (Swedish Code of Judicial Procedure)
resp.	respectively
RG	Ger.: Reichsgericht (Supreme Court of the German Reich)
RGBl.	Ger.: Reichsgesetzblatt (Reich Law Gazette, 1871-1945)
RGZ	Ger.: Reichsgericht in Zivilsachen (Reports of the RG in civil matters)
RIW	Ger.: Recht der Internationalen Wirtschaft (law journal)
RT	Ger.: Reichstag (Parliament of the German Reich)
RVO	Ger.: Reichsversicherungsordnung (German Reich Insurance Code)
sc.	Lat.: scilicet (namely)
SchiffRG	Ger.: Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken (German Law on Rights in Registered Ships and Ships under Construction)
sec. - secs.	section – sections
SjöL	Sw.: Sjölagen (SMC)
SOU	Sw.: Statens Offentliga Utredningar (the Official Report Series of Legislative and Investigations Commissions)
SvJt	Sw.: Svensk Juristtidning (law journal)
Sw.	Swedish
TR	Sw.: Tingsrätt (Regional Court)
TranspR	Ger.: Transportrecht und Speditionsrecht (law journal)
UB	Sw.: Utsökningsbalk (Swedish Code of Enforcement)
UF	Sw.: Utsökningsförordningen (Swedish enforcement regulation)
UNCTAD	United Nations Conference on Trade and Development
UP	Sw.: Lagen om införande av UB (Introductory Law of the UB)
US	United States of America
USD	US dollar

v.s.	Lat.: vide supra (see above)
VersR	Ger.: Versicherungsrecht (law journal)
vid.	Lat.: vide (see)
Vol.	Volume
vs.	Lat.: versus (against)
WLR	Weekly Law Report
ZPO	Ger.: Zivilprozeßordnung (German Code of Civil Procedure)
ZVG	Ger.: Zwangsversteigerungsgesetz (Law on Compulsory Sale of Ships and Sequestration)
ZZP	Ger.: Zeitschrift für Zivilprozeß (law journal)

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Introduction

The following thesis gives an insight into the recent developments in international law on the arrest of ships as well as the practical implication of maritime arrest procedures in domestic law in Germany and Sweden.

In practice only a short time is available for inquiries concerning the prospect of success of a creditor's application for arrest or the debtor's possible defences. The legal procedures arising from an arrest may last for years and raise important questions of high economic value for both parties. Often the maritime arrest is the last hope for the creditors to receive money from a debtor, and for the debtor such a procedure means a major irritation for his business, often with heavy financial consequences, e.g. regarding demurrage or loss of a time charter.

In a foreign port the vessel usually represents the debtor's only asset reachable to the creditors. Ships as being movables are easily withdrawn from judicial execution. Perils of the sea and rights could also depreciate the value of a vessel. In many legal systems, finally, the liability *in personam* is distinguished from the liability *in rem*, i.e. that the creditor with a claim might have to enforce it against a particular vessel. Consequently, he is dependant on immobilising the vessel by a quick arrest.

Such an act causes a lot of inconvenience and is regularly not good for mutual business. But it might be the ultimate means of receiving security for claims, and is therefore sometimes unavoidable. Nevertheless, arrest should be considered as the last resort. Therefore, it is all the more important that the arrest procedures are clearly defined and well understood by those who have recourse to it.

The problems of maritime arrest are of great practical and academic significance not only in the light of the new 1999 Arrest Convention, but also of developments in domestic law.[1]

[1] Sweden received a new Maritime Code from 1st October 1994 (in force in Sweden since 1st October 1993 (1994:1009)).

I. The Arrest Conventions

A. The 1952 Arrest Convention

After more than twenty years of preparation[2] a diplomatic conference in Brussels (Belgium) in May 1952 resulted in the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships[3] (1952 Arrest Convention) for the approximation of domestic laws to the advantage of international shipping. Only four of the nine European Economic Community (EEC) countries at that time ratified this Convention, namely Belgium, France, Germany and the United Kingdom.[4] The purpose of the Convention was to restrict the possibilities to arrest ships in foreign ports among the contracting States through such an approximation.[5] The Convention, however, is to be seen as a compromise between Common Law (Anglo-American legal system) on the one hand and Civil Law (Continental European legal system) on the other hand.[6]

The 1952 Arrest Convention falls into two parts. Articles 2 to 6 regulate the conditions for arresting a ship and for its release, while Article 7 is concerned with jurisdiction based on arrest made in accordance with the previous Articles.

The compromise character of the Convention is conspicuous especially with regard to the requirement of an arrest claim to be maritime. Civil Law considers a vessel as an asset, which may be arrested no matter whether the claim to be secured is of maritime or non-maritime nature. On the other hand, Common Law allows an arrest in ships only for maritime

[2] Started with the Conference of the Comité Maritime International in Antwerp in August 1930 (Conférence d'Anvers, 1930, CMI Bulletin No.91, pp. 76 and 105).

[3] UNTS vol. 439, p. 193.

[4] Philip, *Maritime jurisdiction in the EEC* in: Nordisk Tidskrift för International Ret, Vol. 46 (1977), p. 115.

[5] Cf. Bundestag-Drucksachen VI 2224, p. 37.

[6] Kerameus, *Subjektive Anwendungsgrenzen des Brüsseler Übereinkommens vom 10. Mai 1952 über den Arrest in Seeschiffe - Beiträge zum Internationalen Verfahrensrecht und zur Schiedsgerichtsbarkeit* in: Festschrift zum 75. Geburtstag von Heinrich Nagel (Cologne 1987), p. 132; Swedish *Departementsserien* 1991:70, p. 11.

claims, but just as long as they arose from the operation of the particular vessel.[7] These two legal approaches have been taken into account in Article 2 and 3 of the 1952 Arrest Convention.

An arrest is allowed according to Article 2 only in respect of maritime claims specified in the catalogue of Article 1 of the 1952 Arrest Convention[8]. These are the majority of claims which could arise with regard to the operation of a ship:[9]

a) damage caused by any ship either in collision or otherwise;
b) loss of life or personal injury caused by any ship or occurring in connection with the operating of any ship;
c) salvage;
d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;
e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
f) loss or damage to goods including baggage carried in any ship;
g) general average;
h) bottomry;
i) towage;
j) pilotage;
k) goods or materials wherever supplied to a ship for her operation or maintenance;
l) construction, repair or equipment of any ship or dock charges and dues;
m) wages of Masters, Officers, or crew;
n) Masters' disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
o) disputes as to t he title to or ownership of any ship;

[7] Kerameus, note 6, p. 133.

[8] Germany reserved the right not to apply the Convention to the arrest of a vessel for any of the claims enumerated in paragraphs *o* and *p* of Article 1, but to apply its domestic laws to such claims, as well as the right not to apply the first paragraph of Article 3 to the arrest of a vessel, within the jurisdiction, for claims set out in Article 1, paragraph *q*, according to Article 10 *a* resp. *b*, because in these cases the claim is not only directed to a money claim and could therefore be secured by a temporary injunction according to Section 935 ZPO.

[9] Cf. Supreme Court of Judicature (Judicature Act 1925, p. 1).

p) disputes between co-owners of any ship as to the ownership, possession employment or earnings of that ship;
q) the mortgage or hypothecation of any ship.

The claims under letter o) to q) are of a special nature, since they do not always pertain to money.[10] Claims of insurers for overdue premium as well as of social security institutions for contribution are not mentioned.

An important exception, however, from the applicability of the Convention has been made concerning the protection of claims under public law. According to this exception, the provisions of the 1952 Arrest Convention shall be of no effect with regard to rights and powers of public and port authorities of a state, to arrest or otherwise to prevent the departure of a ship according to its domestic law. Hence, despite the 1952 Arrest Convention the authorities have the right to take action against a vessel to secure claims under public law.[11] A private claim of an authority, however, is not covered by this exception.

According to Article 3 (1) of the 1952 Arrest Convention the "claimant may arrest either the particular vessel in respect of which the maritime claim arose, or any other vessel which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular vessel in respect of which the claim arose, even though the vessel arrested be ready to sail", if permitted by the law of procedure.[12]

As an exception from the prohibition of arrest according to Article 2 of the 1952 Arrest Convention the creditor has also the possibility to obtain security even in another ship of the same operator (sistership) as long as either the owner is liable or the sistership is liable for the maritime claim.[13] According to subsection (2) this is also applicable if any other owns all shares in the vessel. This provision is a quite concise and therefore hard to interpret. It might be better understood with respect to the following examples by Berlingieri:[14]

"Within these examples, **A** shall be the vessel in respect of which the claim arose and **B** shall be another vessel.

[10] Cf. Article 3 (1), Article 5 (1) 2nd sentence and Article 10 of the 1952 Arrest Convention.

[11] Berlingieri, *The 1952 Brussels Convention on Arrest* in: Essays on Maritime Liens and Mortgages and on Arrest of Ships (1984), pp. 116 and 122.

[12] Cf. Section 482 HGB.

[13] Cf. Article 9 (1) of the 1952 Arrest Convention.

[14] Berlingieri, note 11, pp. 129 *et seqq.*

If vessel **A** is fully owned by **X** and vessel **B** by **X** and **Y**, vessel **B** cannot be arrested because of a maritime claim.

if vessel **A** is owned by **X** and **Y**, however, and vessel **B** is fully owned by **X**, vessel **B** can be arrested because of a maritime claim.

If vessel **A** is owned half by **X** and each a quarter by **Y** and **Z** and vessel **B** is owned to equal shares by **X**, **Y** and **Z**, vessel **B** can be arrested because of a maritime claim.

If the vessel **A** and vessel **B** owned by two joint stock companies and all stocks are held by **X**, vessel **B** cannot be arrested because of a maritime claim because the companies are considered as being two independent legal persons."

Hence, the creditor may arrest because of a maritime claim only one ship, i.e. either the ship in respect of which the claim arose or a sistership. Generally the sistership has to be owned by the person who owned the ship in respect of which and at the time when the claim arose.

For certain maritime claims it is forbidden to arrest a sistership, namely for claims connected to property rights of a ship, or for certain claims between part owners of a ship as well as claims based on an agreement connected to a maritime lien of a ship.

According to Section 3 (3) of the 1952 Arrest Convention, however, a vessel shall not be arrested, nor shall bail or other security be given more than once if a vessel belonging to the operator has already been arrested, or bail or other security has been given in the jurisdiction of any contracting State, in respect of the same maritime claim by the same claimant. Hence, ships flying the flag of a contracting State[15] cannot be arrested in another Convention State for other than maritime claims in terms of the Convention and not more than once. The arrest is equalised in this connection with a previously provided security to avoid or remove a warrant of arrest. If the creditors, however, succeed to obtain an arrest for the same claim, this warrant of arrest shall be removed and the ship be released. Moreover, it is to protect the operator from creation of several places of jurisdiction, which the creditor

[15] Cf. International Transport Treaties, Survey of Conventions no. 22a, 23.

would be able to choose in the case of multiple arrest. However this could be achieved even by giving up his present security, but this will usually not be done only to change the place of jurisdiction.

The prohibition of reiteration of security measures is not absolute. There are no hindrances for a new arrest for the same claim, if the security provided in the former arrest matter has been released. A more general exception is applicable if the creditor can furnish *prima facie* evidence that a special reason to arrest exists. This exception rule can be applicable if the initial security due to the particular circumstances of the case has become insufficient or defective, e.g. if the creditor cannot realise the security because the proceeds of sale would not be transferable.

If an arrest is granted because of the creditor's claim, this creditor cannot evade the prohibition not to reiterate an arrest for the same claim by assigning it. The identity between the original creditor and the purchaser of the claim follows from the provision, directed at circumstances other than a renewed arrest. But it has to be seen as having general applicability.[16]

The Convention permits an arrest of a ship because of any maritime claim no matter if the claim is connected to a maritime lien or a lien because of a maritime mortgage. The liability of the ship concerning maritime claims is not affected by change of ownership. Even a *bona fide* purchaser not aware of debts attaching to the ship through acts of the transferor, e.g. through contract of carriage, risks the arrest of the ship because of these debts.[17]

According to Article 5 of the 1952 Arrest Convention, an arrest of a ship has to be lifted by the court or another judicial authority if security is provided for the maritime claim. The security has to be given by the debtor or through any other accepted security, e.g. bank guarantee. If the parties cannot agree on the security to be provided, the court or another authority has to determine the nature and amount of the security.

In the case of claims under letter o) or p), the court or another authority may limit the right to operate the ship, e.g. through a restriction to leave territorial waters or to carry certain goods or through a decision that the possessor has to deposit an indemnity for the operation of the ship with an authority.

[16] Berlingieri, note 11, pp.131 *et seqq.*

[17] This order however, contradicts the Swedish institute of arrest. It is to secure a future execution of the property in question. If property has been transferred, the transferors' creditors cannot avail themselves of a right because of a claim as long as a *bona fide* purchaser has won a protection of his right *in rem* and the claim is not connected to a security interest in that property.

Moreover, the contracting States could not agree on a common provision on damages to be paid by the creditor in case of the vessels' release. Hence, it will be determined by domestic rules if he is liable for damages only in case of fault or if he bears strict liability. According to Article 6 (1) of the 1952 Arrest Convention, the liability of the creditor for the damage through a wrongful arrest is determined by the domestic law where the warrant of arrest was granted, e.g. strict liability in Germany and Sweden. Hence, there is no problem in respect of the procedure in international private law concerning the strict limitation of the possibility of the other party to receive damages between Germany and Sweden.[18]

Beside the basic provisions, unfortunately, no consensus could be reached towards a unification with regard to the law of maritime arrest. The arrest proceedings are ruled by the *lex fori* according to Article 6 (2) in connection with Article 9 of the 1952 Arrest Convention. It does not give any indication if a reason to arrest is required and refers consequently to the domestic substantive law with the procedural prerequisites.[19]

Article 7 of the 1952 Arrest Convention sets out conditions under which the same court also has jurisdiction to determine the case on its merits. The question of the possibility of bringing the main action at the place of arrest is important for practice. If an arrest gives rise to a forum, the creditor is often able by choosing the place of arrest to determine the applicable law. Hence, the so-called 'forum shopping' could not be eliminated. Article 7 of the 1952 Arrest Convention does not limit the places of arrest, e.g. by a closed list. This could have been achieved through a real connection between the legal dispute and the State of arrest or establishing an international unified substantive law which could exclude at least theoretically the advantages of the forum. A substantive claim is always admissible at the place of arrest if it is allowed by the *lex fori*. This is usually the case in most laws, e.g. section 23 of the German Code of Civil Procedure (*Zivilprozeßordnung*, ZPO).[20] If an action can only be brought in a State other than the State of arrest, the arrest can only be lifted according to Article 5 (1) of the 1952 Arrest Convention if the security is provided in such a manner that it can be realised on the basis of a judgement of another State (Article 7 (2) 1st sentence of the 1952 Arrest Convention).

[18] About the question if such limitations violate *ordre public*, cf. Berlingieri, note 11, p.134.

[19] HOLG Hamburg in: Versicherungsrecht (1987), p. 256 (***Clydefirth***).

[20] Herber *Zur Modernisierung des deutschen Seehandelsrechts - Bemerkungen zu drei Gesetzen* in: Hansa (1972) p. 508.

These rules according to Article 8 (1) of the 1952 Arrest Convention are applicable to ships[21] flying the flag of a contracting State.[22] Problems might arise if a ship is owned by a company flying a flag of convenience but managed by a company domiciled in a contracting State.[23] According to subsection (3) a non-contracting State may be fully or partly excluded from the advantages of the Convention if the ship is not flying a flag of a contracting State.

Any claim involving a state-owned vessel is not covered by the Convention. A limitation of reasons to arrest would not be of greater interest, because a state-owned vessel cannot be arrested.

B. The 1999 Arrest Convention

After prolonged discussions about a possible review of the 1952 Arrest Convention which were initiated by the Comité Maritime International (CMI) at its Conference in 1985 (Lisbon),[24] reflecting the terminology of the International Convention on Maritime Liens and Mortgages,[25] the International Maritime Organization (IMO) and the United Nations Conference on Trade and Development (UNCTAD) established a 'Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects' (JIGE) in December 1986 to work also on a possible review of the 1952 Arrest Conventions. The objective of the Group's work was to produce a legal framework which would protect the interests of cargo owners and ships by securing the free movement of ships and by prohibiting arrest for unjustifiable claims not related to the operation of ship.

The JIGE presented a report[26] on the Seventh Session from 5th to 9th December 1994 held in Geneva.[27] At its Eighth Session from 9th to 10th October 1995 in London at IMO

[21] The headline limits the applicability of the Convention to sea-going ships, despite the negative vote of the English delegation wanting to include ships on large inland waters (CMI-Report, Bulletin No.105, p.44).

[22] All ships owned by Germans domiciled in the Federal Republic of Germany or not domiciled in the Republic have to fly the flag of the Federal Republic according to Section 1 (1) respectively Section 2 (1) FlaggRG.

[23] Cf. also LG Hamburg in: Transportrecht (1996), p. 439 (***River Adada***).

[24] 33rd International Conference of the CMI from 19th to 25th May 1985; Cf. Lloyd's List from 28th May 1985;Transportrecht (1985), pp. 364 *et seqq.*

[25] Cf. International Maritime Law (1995), Vol. 10, p. 285.

[26] UNCTAD Doc. TD/B/CN.4/GE.2/3 from 21st December 1994.

Headquarters, on the basis of a draft dated 15th June 1995 (1995 Draft)[28] worked out by the Secretariats of IMO and UNCTAD, progress was slow.[29] This 'Consideration of a Possible Review' raised within the Session the question if such a review was necessary, taking in consideration the slight changes in the 1995 Draft.[30] The delegations which raised that question supported their idea especially by criticising the legal uncertainty which would be caused by the open list of Article 1 of the 1995 Draft and that Article 6 fails to deal with the requirements of the creditor paying damages for unjustified holding up. The vast majority of delegations, however, demanded such a review, which they said would achieve a greater flexibility.[31] In their opinion the considerations in connection with the possible updating of the 1952 Arrest Convention in the light of the 1993 Convention on Maritime Liens and Mortgages provided an excellent opportunity to undertake a general review of the 1952 Arrest Convention, without deviating from the basic principles established by it.[32]

Consequently, a submission[33] by the observer delegation of the International Chamber of Shipping (ICS) to delete the words 'such as' in Article 1, in order to return to a closed list of maritime claims as in the 1952 Arrest Convention was only supported by a minority of the JIGE.[34] Arrest was to be kept as an exceptional measure to be used only as a last resort to secure a maritime claim and to provide certainty as to the exercise of right of arrest. A further suggestion of ICS[35] to prohibit an arrest of a ship which is sailing (*en route*), as in Article 2 (3) of the 1995 Draft, also found e.g. in Section 482 of the German Commercial Code (*Handelsgesetzbuch*, HGB), failed because of opposition from States[36] which referred to their domestic legal practice and international law, specifically the United Nations Convention on the Law of the Sea (UNCLOS), which enables States to arrest a ship with regard to civil law cases, as long as the ship is in their jurisdiction, and includes the right of hot pursuit.[37]

[27] Cf. CMI-News Letter, No.4/1994.

[28] UNCTAD Doc. TD/B/CN.4/GE.2/5 from 15th June 1995.

[29] Cf. CMI-News Letter, No.3/1995.

[30] Raised by the German delegation supported by Greece, Poland and the International Ship Suppliers Association (ISSA).

[31] Sc., *inter alia* the United States of America, Russia, China, France, Norway, Sweden and Finland.

[32] UNCTAD Doc. TD/B/CN.4/GE.2/10 from 5th December 1995 (notation 11 to 13, p.6).

[33] UNCTAD Doc. TD/B/CN.4/GE.2/7 from 21st September 1995.

[34] Sc., *inter alia* France, Germany, Poland and Greece.

[35] Supported by the United Kingdom, Canada, Australia, the United States of America, Italy and Poland.

[36] Sc., *inter alia* especially, Brazil, Ecuador, Venezuela, Argentina, Panama and Mexico.

[37] UNCTAD Doc. TD/B/CN.4/GE.2/10 from 5th December 1995 (notation 34 and 35, p. 10).

Concerning Article 2 (5) of the 1995 Draft, the observer delegation of the International Association of Ports and Harbours (IAPH) stated that since an effective arrest of a ship could only take place in a port, the implications to ports of the proposed arrest rules should be clearly addressed. Port authorities would be unable to exploit the space of a berth in which an arrested ship is moored for month at a time. They would also be compelled to take measures to ensure safety and the protection of the marine environment.[38] Most delegations stated their opposition to the proposed new section. In their views reasons of expediency in the pursuance of maritime claims made impractical the involvement of port authorities in arrest procedures. The deposit of a guarantee with the port authorities to cover costs incurred by them would mean a financial burden for the claimant in addition to any advance payment required in some jurisdictions as a precondition for the enforcement of the arrest.[39]

The JIGE held its Ninth Session from 2nd to 6th December 1996 in Geneva. The consideration of the JIGE (IX) was based on the "Consideration of the Review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952 - note by the secretariats of UNCTAD and IMO"[40] and on the "Compilation of comments and proposals by Governments on the draft articles for a Convention on arrest of ships - note by the secretariat of UNCTAD".[41]

The Intergovernmental Group of Experts decided that a document containing revised draft articles for a Convention on arrest of sea-going ships should be prepared by the secretariats of UNCTAD and IMO, in consultation with the Chairman of the JIGE, on the basis of the decisions by the JIGE. The document would serve as the basis for the work of a possible diplomatic conference convened by the General Assembly of the United Nations.[42] Finally the JIGE adopted a draft recommendation on the convening of a diplomatic conference.[43]

The document containing the revised articles had been prepared by the secretariats of UNCTAD and IMO in consultation with the Chairman of the JIGE, in response to the above request. It had been presented in April 1997 to serve as the basis for the work of a possible

[38] Cf. UNCTAD Doc. TD/B/CN.4/GE.2/6 from 21st August 1995.

[39] UNCTAD Doc. TD/B/CN.4/GE.2/10 from 5th December 1995 (notation 42, p. 11).

[40] JIGE (IX) Doc. 2-TD/B/IGE.1/2-LEG/MLM/39.

[41] JIGE (IX) Doc. 3-TD/B/IGE.1/3-LEG/MLM/40.

[42] JIGE (IX) Doc. 5-TD/B/IGE.1/5-LEG/MLM/42.

[43] UNCTAD Doc. TD/B/IGE.1/L.3;
UNCTAD Doc. TD/B/44/3 Annex I from 6th February 1997.

diplomatic conference.[44] Moreover, it seemed much greater progress has been reached than before when the JIGE recommended to UNCTAD and IMO that a diplomatic conference should be convened to adopt a new Convention. The arrangements for such a diplomatic conference were estimated to take at least one year. In the meantime governments, intergovernmental (IGO) and non-governmental organisations (NGO) were invited to make comments and proposals on the Draft Articles for a Convention on Arrest of Ships (1998 Draft Articles).[45]

The major issue, however, remained the same, viz. whether Article 1 (1) of the 1998 Draft Articles should adopt a similar approach to that of the 1952 Arrest Convention and should provide a closed list of maritime claims, or whether it should adopt a more flexible approach by retaining an open-ended list, as recommended by the 1995 Draft. A broad definition of 'maritime claims' along with the indicative list of particular claims might certainly give greater flexibility, but perhaps at the expense of legal certainty.

The question of whether the list should be open-ended or closed, as in the existing 1952 Arrest Convention, has been left to a diplomatic conference.[46]

The recommendation to convene a diplomatic conference was endorsed by the Seventy-eighth Session of the IMO Council and by the Fifteenth Executive Session of the UNCTAD Trade and Development Board. The General Assembly of the United Nations endorsed the convening of the conference within the budget for the biennium 1998-1999, but did not specify the arrangements for the conference.[47] Finally the conference was scheduled to be held in Geneva for a period of two weeks from 1st to 12th March 1999.

It was essential that any new instrument should succeed in striking a balance between the interests of cargo owners and operator in securing the free movement of ships and the right of claimants to obtain security for their claims.

Finally, on 11th March 1999 a Draft International Convention on Arrest of Ships[48] was presented, and about a week thereafter the International Convention on Arrest of Ships.[49]

[44] UNCTAD Doc. TD/B/IGE.1/5 from 14th April 1997.

[45] Cf. UN Doc. A/CONF.188/3 from 25th November 1998; Add.1 from 11th January 1999; Add.2 and Add.3 from 23rd February 1999 and Add.1/Corr.1 from 1st March 1999.

[46] Cf. Report of the Joint Group at its ninth session (JIGE(IX)/4, TD/B/IGE.1/4, LEG/MLM/41), Annex II, paragraphs 2-3.

[47] UN Doc. A/RES/52/182 from 11th March 1998.

[48] UN Doc. A/CONF.188/L.2 from 11th March 1999.

[49] UN Doc. A/CONF.188/6 from 19th March 1999.

The final text presented a number of compromises between those States traditionally representing interests of the operator and those aiming to make it significantly easier to enforce legitimate maritime claims without creating any undue impediment to trade.

A notable addition since the 1952 Arrest Convention is Article 1 (1) (d) referring to environmental damage, not a major issue in 1952, and which in the 1999 Convention is phrased to include claims of a similar nature. Attempts to add a paragraph (w) to the list to extend the range of all the listed claims of a similar nature was rejected.

Other significant additions to the list of maritime claims as it appeared in the 1952 Arrest Convention are those relating to wreck removal (e), ship management services (l), insurance premiums and mutual insurance calls (q), commissions and brokerages (r) and ship sale contracts (v).[50]

Article 1 (2) defining 'arrest' is based on the 1952 Arrest Convention but is extended to include "Mareva" type injunctions. It also emphasises that arrest for criminal or administrative purposes is not covered by the 1999 Arrest Convention.[51] References were made in the debates to article 28 UNCLOS, which deals with the geographical scope of civil arrests, but attempts by some delegations to refer to UNCLOS in the text of the 1999 Arrest Convention, or in its Preamble, were rejected.[52]

Article 2 (3) of the 1998 Draft Articles with regard to a ship ready to sail which was taken from Article 3 (1) of the 1952 Arrest Convention and the out-dated French principle to prohibit an arrest in ships ready to sail (*prêt a faire voile*) or is sailing was not included.[53] A possible discussion on the arrest during the ship's voyage through territorial waters with regard to Article 28 UNCLOS was avoided.

Another article subject to extensive discussions was Article 3 – Exercise of right of arrest.[54]

[50] Cf. report of the Informal Working Group (annex III of the report of the JIGE) and the report on the work of the Sessional Group (annex II, paras. 2-14).

[51] Cf. report of the JIGE at its ninth session, annex II, paras. 16-22.

[52] For reference to the interrelationship between the maritime arrest and UNCLOS, cf. Lagoni, *The prompt release of vessels and crews before the International Tribunal for the Law of the Sea: A preparatory report* in: International Journal of Marine and Coastal Law, Vol. 11 (1996), #2, pp. 147 *et seqq*.

[53] Cf. Report of the JIGE at its ninth session, annex II, paras. 32-38.

[54] Cf. Report of the JIGE at its ninth session, annex II, paras. 50-65.

The JIGE was concerned about the extent to which a ship according to its paragraph (1) could be arrested if she was not owned by the party liable for the claim (principle debtor). Moreover, the effect of claims secured by maritime liens was of particular concern.

Favoured by the common law States, the word 'registered' was deleted from paragraph (1) (c). It was argued that a reference only to registered mortgages in this paragraph as well as in Article 1 (1) (u) would prevent the holder of an equitable mortgage from enforcing his security by arrest, e.g. with regard to container leasing and some yacht financing agreements.

Some clarity has been added with the provision in Article 4 (5) that the total amount of the security provided shall not exceed: (a) the claim for which the ship has been arrested or (b) the value of the ship, whichever is lower.[55]

The 1999 Arrest Convention extends in its Article 5 the right of arrest to other ships if: (a) the security provided is inadequate, presumably as to amount, or (b) if the guarantor is unlikely to fulfil its obligations, or (c) if the ship was released in circumstances effectively outside the claimant's control.

A mandatory requirement for providing security for wrongful arrest in every application for arrest of a ship according to Article 6 was not achieved. The issue is, similar to Article 6 of the 1952 Arrest Convention, left to the domestic law of the State where the arrest was applied for.

According to Article 8, the 1999 Arrest Convention applies to any ship whether sea-going or not.[56]

After all, the international rules on maritime arrest, however, are solely of procedural nature and need the enforcement by the domestic laws. This paper explains the practical implication of main aspects in Swedish and German law.

[55] Cf. Article 5 of the 1952 Arrest Convention.

[56] States are provided with the right in Article 10 to make a reservation excluding its application to ships which are not sea-going (like in the 1952 Arrest Convention).

II. Germany

A. Introduction

The arrest in German law is standardised in Section 916 to 934 and in Sections 943 to 945 of the German Code of Civil Procedure (*Zivilprozeßordnung*, ZPO) and in Section 482 of the German Commercial Code (*Handelsgesetzbuch*, HGB) as well as in the 1952 Arrest Convention.[57]

The proceedings of an arrest according to Sections 916 *et seqq.* ZPO are summary procedures to secure execution (*Zwangsvollstreckung*) levied upon the debtor's movables or immovables property. The matter in dispute is not the cause of action itself, but rather the admissibility of compelling security for it.[58] The result of an application in such proceedings therefore do not lead to a pending suit (*lis pendens*) of the cause of action, and the decision reached does not become final (*res judicata*) in the proceedings of the main action.[59] This is demonstrated by the dispensability of an oral hearing and of a full tendering of evidence. The latter is replaced by a lesser burden of proof which is according to Section 920 (2) ZPO satisfied by furnishing *prima facie* evidence, i.e. the applicant needs only to show the probability of an existing claim.[60]

[57] Bundesgesetzblatt (1972) Vol. II, pp. 653 and 655; (1973), Vol. II, p. 172; (1980), Vol. II, p. 721.

[58] OLG Stuttgart in: Neue Juristische Wochenschrift (1969), p. 1721.

[59] Thomas/Putzo, *Zivilprozeßordnung*, 19th edn. (Munich 1995), *Vorbemerkungen* Section 916 ZPO (notation 1).

[60] Baumbach, i.a., *Zivilprozeßordnung*, 53rd edn. (Munich 1995), essentials of Section 916 ZPO (notation 3 A).

B. Maritime Arrest

1. Requirements of Arrest

In German law of procedure there are two basic requirements needed for granting a warrant of arrest, admissibility (*Zulässigkeit*) and justified action (*gerechtfertigte Klage*).[61]

Admissibility is divided into the general prerequisites, which will not be dealt with in this paper, and the special prerequisites of Sections 916 *et seqq*. ZPO, namely the claim of arrest and the reason to arrest in respect of the restriction of Section 482 HGB.

The creditor has to prove *prima facie* evidence in the sense of Section 294 (1) ZPO of the existence of these prerequisites[62] and the court has to verify *ex officio* under assessment of all circumstances if they are sufficiently established and if they are, the court shall grant the warrant of arrest.[63]

a) Claim of Arrest

A claim of arrest (*Arrestanspruch*) is, according to Section 916 (1) ZPO, to secure execution levied upon the debtor's movable or immovable property because of a money claim or a claim which may become a money claim.

> "**§ 916. [*Arrestanspruch*]** (1) *Der Arrest findet zur Sicherung der Zwangsvollstreckung in das bewegliche oder unbewegliche Vermögen wegen einer Geldforderung oder wegen eines Anspruchs statt, der in eine Geldforderung übergehen kann*."

[61] Blomeyer, *Die Unterscheidung von Zulässigkeit und Begründetheit bei der Klage und beim Antrag auf Anordnung eines Arrestes oder einer einstweiligen Verfügung* in: Zeitschrift für Zivilprozeß, Vol. 81 (1968), p. 37.

[62] Teplitzky, *Streitfragen beim Arrest und bei der einstweiligen Verfügung* in: Deutsche Richterzeitung (1982) p. 41.

[63] HOLG Hamburg in: Monatsschrift für Deutsches Recht (1967), p. 677.

(1) Money Claim

Section 916 (1) ZPO mentions beside a money claim, a claim which may become a money claim, e.g. in cases of non-performance or defective performance and of Sections 887 and 893 ZPO.[64]

An action is covered by the above examples if a money replacement claim is alternatively secured, e.g. a claim to issue a correct bill of lading (B/L), however, not with a certain contents.[65]

In the case of the "**M.S. T.**" the plaintiff chartered for the defendant a vessel under a Gencon-Charter-Party dated 16th August 1971 for shipment of wheat flour from Bremen and Hamburg to Saudi Arabia and Yemen. A clean B/L was made out in Bremen by the master over the first part shipment according to a draft of the plaintiff. On 8th September 1971, before loading the second part shipment in Hamburg, an infestation of beetles was recognised in the first part, and it was gassed from 8th to 10th September 1971. According to an expertise no beetles could be found alive afterwards.

The loading of the second part shipment in Hamburg began on 13th September, and beetles were found again. A second gassing of the cargo space was recommended and carried out with a positive result. Certificates were issued by the German Service for Plant Protection (*Amtliche Pflanzenbeschau*), by a surveyor for maritime damages, Master D., and by the graduate chemist K. assuring that no damage to the cargo occurred and that the pesticide was usually used in Germany and was in accordance with German law relating to food and drugs.

The plaintiff requested a clean B/L with reference to the certificates. The defendant, however, was not willing to make out such a B/L as long as the plaintiff would not issue a letter of indemnity for all possible claims and costs with regard to the beetle infestation regardless of their kind and origin. Furthermore the defendant claimed that the plaintiff has to bare all the costs of the gassing, incidental e*xpenses and demurrage charges.*

Finally the plaintiff obtained a temporary injunction on 20th September 1971. The defendant made an objection against this temporary injunction. The Regional Court of Hamburg (*Landgericht*, LG) cancelled the temporary injunction, and the appeal was dismissed as inadmissible. The Hanseatic Higher Regional Court of Hamburg (*Hanseatisches Oberlandesgericht*, HOLG) stated *inter alia* that the plaintiff did have a claim in terms of

[64] Liability *in personam* of the operator according to Section 775 HGB.

[65] HOLG Hamburg in: Monatsschrift für Deutsches Recht (1973), p. 242.

Section 916 (1) ZPO. The Court explained that the claim for making out a clean B/L according to Section 642 (2) HGB would change in case of non-performance into a money claim, i.e. into a claim for damages. This would also justify a warrant of arrest by analogy to Section 482 (2) HGB.[66] This is valid the way documents are handled today already if a clean B/L is rejected, because the buyer - and specially the banks who are opening letters of credit (Ls/C) - do not usually accept unclean Bs/L.[67]

(2) Debtor

If there exists a personal claim against an operator all his assets may be arrested in the same way as other of his personal effects. In this context it is not important whether the claim was made with regard to the use of the ship to be arrested.

Difficulties might arise where the creditor wants to arrests a ship with regard to a maritime lien. This becomes of practical importance if the debtor and the operator (*Reeder*) subject to a lien are different persons.

An arrest is only allowed into assets of the debtor. The judgement debtor in German law can be a natural person, e.g. a private operator, or a legal person, a shipping company. Both are considered an operator in terms of Section 484 HGB, i.e. a person operating a ship in maritime transport for profit-making purposes. An association of several co-owners in a shipping partnership in terms of Section 489 *et seqq.* HGB is equal to a operator with regard to liability.[68] Hence, an action must be brought not against every co-owner *pro rata* but against the shipping partnership *per se*.[69]

It does not matter whether the claim is related to the operation of the particular vessel to be arrested or not[70]; claims related to the vessel and its present voyage and to former voyages as well as private claims against the operator are covered.[71]

[66] RG in: RGZ 32, 56; Schaps/Abraham, *Das deutsche Seerecht in der Bundesrepublik Deutschland: Erster Teil - Seehandelsrecht*, 4th edn. (Berlin 1978), Section 642 HGB (notation 2).

[67] HOLG Hamburg in: Versicherungsrecht (1973), p. 561.

[68] Prüßmann/Rabe, *Seehandelsrecht*, 3rd edn. (Munich 1992), Section 489 HGB; about the legal character of the shipping partnership in general, vid. Schmidt, *Die Partenreederei als Handelsgesellschaft* (Hamburg 1989).

[69] Prüßmann/Rabe, note 68, Section 757 HGB.

[70] Cf. Article 1 of the 1952 Arrest Convention.

[71] Albrecht, note 64, p. 1142.

An exception to this rule is the liability of the demise charterer towards a third party and cases where neither the operator himself nor the demise charterer use the vessel for maritime shipping, because the vessel is on time charter to a third person. The purpose of this exception is to secure legal certainty for the protection of a third party in good faith. The decisive test is the appearance vis-à-vis third parties.

(a) Demise Charterer

According to Section 510 (1) HGB the demise charterer is defined as a person not owning a ship but using it for profit-making purposes for his own account[72] and operating it either on his own or entrusting a master with the operation. In relation to third parties a demise charterer is treated like an operator with all rights and duties, but someone else's vessel. According to Section 760 (2) HGB claims of creditors may be enforced against the demise charterer or the operator during a demise charter. A judgement against the demise charterer or the master is binding also upon the operator. According to Section 771 ZPO the operator may not as under Section 510 (2) intervene in an arrest procedure as long as there is a justified maritime lien for the claim.[73] After the end of the demise charter relationship, the action must be brought against the new demise charterer or the operator.

Hence, where an operator would be liable with his own vessel, the demise charterer is liable for his own fault, though the claim is secured by the operator's vessel.[74]

If the operator leaves a ship to a charterer having full power of disposal, as a bareboat charterer according to Section 510 HGB, the charterer is treated as an operator (*Reeder*), provided all bareboat charter requirements in Section 510 HGB are met.[75] This also applies in cases of hiring out of a manned ship when there is a complete transition of the seamen's articles of agreement to the charterer.[76]

The operator is not liable, however, if he can furnish proof of two things with regard to the creditor. First he has to demonstrate an unlawful use of the ship by the demise charterer. Exceeding his contractual right, e.g. by crossing the Atlantic Ocean though the ship was hired

[72] Cf. HOLG Hamburg in: Versicherungsrecht (1978), p. 560 (***Merweborg vs. Finnrose***).

[73] RG in: RGZ 62, p. 373.

[74] Albrecht, note 64, p. 1142.

[75] HOLG Hamburg in: Versicherungsrecht (1978), p. 918 (***Goliat 2***); RG in: RGZ 103, p. 280.

[76] HOLG in: Hanseatische Gerichtszeitung 08, p. 177.

out for the Baltic Sea, the otherwise legitimate demise charterer loses the power to charge the operator in this way.[77]

Secondly the operator has to demonstrate a lack of good faith on the part of the creditor. This is only applicable in cases where according to Section 932 (2) of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB) in analogy the creditor knew or with gross negligence failed to know, that the use was unlawful. This does not apply, however, with regard to a maritime lien resulting from a tortuous act of the crew or demise charterer (Section 754 (1) no. 3 HGB).

(b) Time Charterer

With regard to time charter including an employment clause, e.g. Baltime-Charter, the operator leaves the ship to the charterer and transfers to the charterer a certain authority to instruct the master.[78] This authority does not create any power of the charterer's to limit the master's statutory power of representation according to Sections 526 to 538 HGB.[79] The master and crew stay in employment relationship to the operator, and hence the master reserves the final control of the ship. Time charterer acting as an operator or a demise charterer will be treated with regard to his liability according to the principle of faith of declaration like an operator or a demise charterer respectively.[80] Such an operator by

[77] Prüßmann/Rabe, note 68, Section 510 HGB (notation G 2 a).

[78] Cf. Clause 9 of the Baltime-Charter:

> "9. The Master to prosecute all voyages with the utmost despatch and to render customary assistance with the Vessel's Crew. The Master to be under the orders of the Charterers as regards employment, agency, or other arrangements. The Charterers to indemnify the Owners against all consequences or liabilities arising from the Master, Officers or Agents signing Bills of Lading or other documents or otherwise complying with such orders, as well as from any irregularity in the Vessel's papers or for overcarrying goods. The Owners not to be responsible for shortage, mixture, marks, nor for number of pieces or packages, nor for damage to or claims on cargo caused by bad stowage or otherwise.
>
> If the Charterers have reason to be dissatisfied with the conduct of Master, Officers, or Engineers, the Owners, on receiving particulars of the complaint, promptly to investigate the matter, and, if necessary and practicable, to make a change in the appointments".

[79] BGH in: BGHZ 22, p. 197.

[80] LG Bremen in: Hansa (1958), p. 2329; HOLG Bremen in: Hansa (1956), p. 469.

appearance does not, however, like the demise charterer, exercise full control of the vessel in every respect.[81] But usually the liability shifts from the operator to the time charterer with regard to performance of the contract of carriage, e.g. Section 559 HGB, and with regard to cargo damage in terms of Section 606 HGB.[82]

Article 4 (1) in connection with Article 6 of the International Convention on Maritime Liens and Mortgages from 6th May 1993 (1993 MLM Convention), however, offers a statutory possibility to burden the operator's vessel with a maritime lien according to Section 754 (1) HGB without the owner being the contracting carrier and hence not being the debtor of the claim.[83]

b) Reason to Arrest

Section 917 (1) ZPO requires an apprehension that without the arrest the execution of the judgement would be frustrated or substantially impeded.[84]

> "**§ 917. [*Arrestgrund bei dinglichem Arrest*]** (1) *Der dingliche Arrest findet statt, wenn zu besorgen ist, daß ohne dessen Verhängung die Vollstreckung des Urteils vereitelt oder wesentlich erschwert werden würde.*"

The creditor has to give evidence that there is a definite risk and as to why he cannot wait for a judgement in ordinary civil proceedings before the competent court. The evaluation has to be based on objective criteria and not on the creditor's evaluation.[85]

The wording of Section 917 (1) ZPO does mention the frustration or impediment of the execution as being imminent, i.e. not yet occurred.[86]

A fact of the past is merely relevant if particularly this very fact gives cause for the above mentioned apprehension.[87] An imminent risk, e.g. of deterioration of assets or of

[81] Liesecke, *Schiffsgläubigerrecht und Arrest* in: Monatsschrift für Deutsches Recht (1967), p. 625.

[82] Cf. the exception of Section 644 HGB.

[83] Willner, *Die Zeitcharter* in: Übersee-Studien-Hefte, Vol. 22 (Hamburg 1953).

[84] OLG Munich in: Neue Juristische Wochenschrift (1983), p. 2578.

[85] BFH in: Der Betriebs-Berater (1978), p. 1203.

[86] Stein/Jonas/Grunsky, *Zivilprozeßordnung*, 20th edn. (1981), Section 917 ZPO (notation I 2 a).

[87] BGH in: Versicherungsrecht (1975), p. 764.

bankruptcy[88], does not necessarily constitute a sufficient apprehension in the sense of Section 917 (1) ZPO. The enforcement measures of other creditors, however, are considered as constituting such an apprehension.[89]

In an arrest procedure against a one vessel company the reason to arrest according to Section 917 (1) ZPO is always present, taking into consideration the objective complication of the execution.[90]

The burden of proof of subsection (1) is obviously difficult, taking into consideration that the creditor has usually no facts out of the sphere of the opponent.

This burden is eased by a statutory presumption of Section 917 (2) ZPO in favour of the creditor. Section 917 (2) ZPO implies, that a possible enforcement of a judgement abroad is to be considered as a sufficient reason to arrest, excluding discretion of the court.[91]

> "**§ 917. [*Arrestgrund bei dinglichem Arrest*]** (2) *Als ein zureichender Arrestgrund ist es anzusehen, wenn das Urteil im Ausland vollstreckt werden müßte*."

How to interpret the terms 'judgement' and 'abroad' has become rather difficult since the German Code of Civil Procedure first became adopted, especially since Germany's adherence to the European Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters (1968 EEC Convention) from 27th September 1968[92] and its

[88] Cf. Versicherungsrecht (1972) p. 1115; HOLG Hamburg in: Versicherungsrecht (1987) p. 356 (***Clydefirth***); Az. 6 U 154/76 (21st Dec. 1978); Az. 6 U 98/80 (18th Sept. 1980); HOLG Hamburg in: Hanseatische Gerichtszeitung (1909) p. 107 (***Pennoil***); Zöller/Vollkommer, *Zivilprozeßordnung*, 19th edn. (Cologne 1995), Section 917 ZPO (notation 9).

[89] Cf. BGH in: Versicherungsrecht (1975) p. 763; RG in: RGZ 3, 416; HOLG Hamburg in: Hanseatische Gerichtszeitung (1903) p. 216 (***Clara I***); Thomas-Putzo, note 59, Section 917 ZPO (notation 1); Zöller/Vollkommer, note 114, Section 917 ZPO (notation 9).

[90] HOLG Hamburg in: Transportrecht (1990), p. 112 (***Mavro Vetranic***); Rabe, *Nochmals: Die Arrestierung eines ausländischen Seeschiffes* in: Transportrecht (1990), #5, p. 185; Looks, *Die Arrestierung eines ausländischen Seeschiffes* in: Transportrecht (1989), #10, p. 345.

[91] Hahn, *Die gesamten Materialien zu den Reichs-Justizgesetzen, Vol.2, Die gesamten Materialien zur Civilprozeßordnung*, (Berlin 1880)p. 471.

[92] In force since 1st February 1973 (Bundesgesetzblatt (1972), Vol. II, p. 773; (1973), Vol. II, p. 60).

supplementing Convention (1988 Lugano Convention) from 16th September 1988,[93] extending the scope of the former Convention.[94] The intention of the Conventions were to abolish the uncertainty of the enforcement of judgements through free movement of titles between the contracting States according to Articles 25 *et seqq.* of the 1968 EEC Convention.

The majority of judicial decisions[95] and literature[96] interpreted the term 'judgement' in the sense of Section 917 (2) ZPO as a domestic, hence German judgement. A foreign judgement though declared enforceable by a judgement for enforcement (*Vollstreckungsurteil*) according to Section 722 ZPO is not sufficient.

A special interest to take legal actions may be absent, but the legitimate interest of obtaining security is rather important, i.e. whether a reason to arrest exists or not.

A legitimate interest in obtaining security does not exist in principle if the creditor has already sufficient security, e.g. through a retention of title or through a maritime lien.[97] A maritime lien as such, however, does not provide any real security since the enforcement of this right might be endangered or a superior maritime lien might occur, if the ship leaves the port.[98]

[93] In force since 1st March 1995 (Bundesgesetzblatt (1994), Vol. II, pp. 2658 and 3772; (1995), Vol. II, p. 221).

[94] Grunsky, *Zum Arrestgrund des § 917 Abs. 2 ZPO bei der Vollstreckung ausländischer Urteile* in: Praxis des Internationalen Privat- und Verfahrensrechts (1983), #5, pp. 210 *et seqq.*

[95] OLG Frankfurt/M. in: Praxis des Internationalen Privat- und Verfahrensrechts (1983), p. 227; OLG Koblenz in: Neue Juristische Wochenschrift (1976), p. 2081; HOLG Hamburg in: Versicherungsrecht (1972), p. 1115; HOLG Hamburg in: Transportrecht (1990), p. 112; BayObLG Munich in: Monatsschrift für Deutsches Recht (1960), p. 146; OLG Frankfurt/M. in: Neue Juristische Wochenschrift (1959), p. 1088; OLG Stuttgart in: Neue Juristische Wochenschrift (1952), p. 831; OLG Danzig in: Juristische Wochenschrift (1936), p. 887; RG in: RGZ 67, p. 26; BayObLG Munich in: Neue Juristische Wochenschrift-RR (1988), p. 1023; cf. Grunsky, note 132, pp. 210 *et seqq.*

[96] Rabe, note 116, p. 185; Dittmar, *Der Arrestgrund der Auslandsvollstreckung* in: Neue Juristische Wochenschrift (1978), p. 1722; Ehricke, *Zur teleologischen Reduktion des § 917 II ZPO* in: Neue Juristische Wochenschrift (1991), p. 2192; Zöller-Vollkommer, note 114, Section 917 ZPO (notation 15).

[97] HOLG Hamburg in: Monatsschrift für Deutsches Recht (1967), pp. 50 and 677; Hamburg in: Monatsschrift für Deutsches Recht (1958) p. 613; Schwerdtner, *Zur Dogmatik des Arrestprozesses* in: Neue Juristsiche Wochenschrift (1975), p. 2350.

[98] Prüßmann/Rabe, note 68, Section 482 HGB (notation D 1 b).

In the case of the "**M.S. River Adada**" a Nigerian operator was sued by her Maltese operator. The ship was privately sold by the bailiff in charge because of a claim of the Authority for Trade and Industry (*Industrie- und Handelskammer*) of the Hanseatic City of Hamburg on 1st April 1996. The plaintiff obtained a warrant of arrest through the decision of the Local Court (*Amtsgericht*) of Hamburg from 3rd April 1996 and attached the defendant's claim against the bailiff on distribution of the profits. Meanwhile, the plaintiff instituted proceedings on order of enforcement of the English judgement. The Regional Court of Hamburg in its decision from 31st May 1996 declared the judgement to be enforceable.

The Local Court of Hamburg set aside the arrest because the reason to arrest according to Section 917 (2) ZPO was not present, because the plaintiff was domiciled outside the European Economic Communities. The plaintiff, however, claimed his place of business was in Athens (Greece) despite the vessel being registered in Malta.

Having obtained a foreign judgement, i.e. being in the position to bring about a judgement for enforcement (*Vollstreckungsurteil*) according to Section 723 ZPO, does not already exclude a reason to arrest.[99] If the judgement which obliges a party to perform or refrain from a certain act is passed during the arrest procedure, the cause of arrest could be determined according to Section 927 ZPO.[100]

But the order of the High Court in London, being declared to be provisionally enforceable in the enforcement proceedings according to the 1968 EEC Convention, because of the part execution clause, may not exceed the measures necessary to obtain security. The enforcement on the basis of a provisionally enforceable title (*vollstreckbarer Titel*) is not allowed. The legitimate interest in security is not excluded if judgements are provisionally enforceable against the provision of security, i.e. which allows just preventive enforcement.[101] Decisive for the plaintiff is to protect the rank of the enforcement of the arrest, granted by the Local Court of Hamburg. The maritime lien on the basis of the arrest generally keeps its rank even for a judicial execution on the basis of the title of the main action.[102] The Local Court of Hamburg set aside the arrest with the appealed judgement, i.e. the effect of the arrest was cancelled. Hence, a legitimate interest in obtaining security was present.

[99] KG in: Juristische Wochenschrift (1922), p.1134; cf. Zöller/Vollkommer, note 114, Section 917 ZPO (notation 12 *et seq.*).

[100] Zöller/Vollkommer, note 114, Section 927 ZPO (notation 6).

[101] Stein/Jonas/Grunsky, note 112, Section 917 ZPO (notation 24).

[102] Zöller/Vollkommer, note 114, Section 927 (notation 8).

Moreover, a reason to arrest could be excluded if the creditor is in possession of a document in the sense of Section 794 (1) No. 5 ZPO, in which the debtor submits to immediate judicial execution.

The court has to verify to what extent a particular security provides at least the same security as an arrest.[103] A foreign security, e.g. a maritime mortgage, has to fit basically into a security arrest.[104]

A legitimate interest is not present, if the creditor possesses a provisional or enforceable title without a provision of security, in which case it gives him the same security.[105]

A judgement which is enforceable only against a provision of security by the creditor, does not prevent a warrant of arrest without a provision of security, even if the creditor is not able to provide such a security.[106]

In the case of the "**M.S. Pennoil**" the risk of enforcement was determined through the money claim and not through a maritime lien.[107] The court verified if the provided security at least had the same protection as an arrest. A foreign security, e.g. a mortgage, has to match fundamentally its enforcement of a security arrest.[108]

The Hanseatic Higher Regional Court of Hamburg in the case of the "**M.S. M.**"[109] questioned the previously mentioned decisions.

The plaintiff, a salvage company, claimed a compensation for its assistance of the defendant's vessel in distress to the amount of Dfl. 150.000. The vessel ran aground west of Florida 30th October 1989. The defendant being the charterer of the vessel had requested the plaintiff for help. The master of the M.S. M. signed a salvage agreement (Lloyds Open Form, LOF) choosing English law and submitting the assessment of the amount payable as salvage to London Arbitration.

[103] HOLG Hamburg in: Hanseatische Gerichtszeitung (1909), p. 107 (***Pennoil***).

[104] BGH in: Neue Juristische Wochenschrift (1972), p. 1044.

[105] HOLG Hamburg in: Neue Juristische Wochenschrift (1958), p.1145; OLG Celle in: Niedersächsische Rechtspflege (1958), p.93; HOLG Hamburg in: Monatsschrift für Deutsches Recht (1958), p. 612.

[106] BGH in: Das Nachschlagewerk des BGH, Section 917 ZPO, No. 14; OLG Celle in: Monatsschrift für Deutsches Recht (1964), p. 333.

[107] HOLG Hamburg in: Hanseatische Gerichtszeitung (1909), p. 107.

[108] BGH in: Neue Juristische Wochenschrift (1972), p. 1044.

[109] HOLG Hamburg in: Versicherungsrecht (1987), p. 356.

The plaintiff applied for a warrant of arrest against the defendant and the arrest of present and future claims against several third party debtors in Hamburg. The Regional Court of Hamburg rejected the application, and the appeal remained unsuccessful.

The Court denied the applicability of Section 917 (2) ZPO with regard to the requirement of the norm that a judgement has to be enforced abroad as being sufficient reason to arrest.[110] Moreover, in the present case the parties agreed to London Arbitration for their contractual relationship which excluded a German jurisdiction on this matter. The court explained further as to the case of interpreting the term 'judgement' as being judgements of contracting States to the 1968 EEC Convention it would not be of any effect because, according to Article 1 (2) No. 4 of the 1968 EEC Convention,[111] it is not applicable in cases of arbitration.

The decision of the European Court of Justice (ECJ) in the case of "**Mund & Fester vs. Hatrex International Transport**" also has to be interpreted against the view prevailing until then.[112]

Other courts applied Section 917 (2) ZPO even in cases where a foreign judgement of a contracting State of the 1968 EEC Convention had to be enforced abroad.[113] Some of the judicial literature followed this but required an enforcement in a so-called third country, trying to take the generally more difficult situation into account.[114]

[110] HOLG Hamburg in: Versicherungsrecht (1987), p. 356.

[111] Refers to Article 1 (2) No. 4 of the 1988 Lugano Convention.

[112] Gieseke, *Neue Entwicklungen zum Arrestgrund der Auslandsvollstreckung im Europarecht* in: Europäisches Wirtschafts- und Steuerrecht, Vol. 5 (1994), #5, p. 413; Thode, *Zivilprozeßordnung*, Section 917 ZPO, p. 1009; cf. for the facts of the case: ECJ in: Europäische Zeitschrift für Wirtschaftsrecht (1994), #8, pp. 216 *et seq.*

[113] OLG Frankfurt in: Recht der Internationalen Wirtschaft (1983), p. 289; OLG Düsseldorf in: ZIP (1982), p. 1341; cf. Grunsky, note 132, pp. 210 *et seqq.*

[114] Kropholler, *Europäisches Zivilprozeßrecht*, 4th edn., (Heidelberg 1993), Article 24 (notation 13-15); Puttfarken, *Anmerkungen zum Fremdenarrest und Europäische Gemeinschaft: Fragen des einstweiligen Rechtsschutzes nach dem EWG-Gerichtsstands- und Vollstreckungsübereinkommen* in: Recht der Internationalen Wirtschaft, Vol. 23 (1977), #6, p. 360.

Hence, judgements have to be interpreted as including domestic as well as judgements from the intra-Convention States.[115]

The statement of Section 917 (2) ZPO to define the enforcement of a judgement abroad as a sufficient reason to arrest should not be applicable as long as there is legal assistance abroad vested by a State Treaty.[116] It has not become legal practice, neither in judicial decisions[117] nor in literature.[118] Such an interpretation would infringe the meaning and purpose of the norm.[119] An enforcement outside Germany, still remains more difficult, even though it is eased to the State Treaty.[120]

In the case of "**Mund & Fester vs. Hatrex International Transport**" the Hanseatic Higher Regional Court of Hamburg decided contrary to the mentioned consolidated legal practice in Germany.[121]

The defendant carried hazelnuts from Carsamba (Turkey) to Hamburg. The goods were damaged due to the transporting trailer not being water tight. On 23rd June 1992 the plaintiff claimed damages and applied to the Regional Court of Hamburg to secure the

[115] Including states member to the Lugano Convention and states with bilateral agreements (Thümmel, *Der Arrestgrund der Auslandsvollstreckung im Fadenkreuz des Europäischen Rechts* in: Europäische Zeitschrift für Wirtschaftsrecht (1994), #8, p. 243).

[116] Cf. Civilprozeßordnung-Motive, p.579; Reichstag-Protokoll, p. 425.

[117] AG Hamburg in: Die deutsche Rechtsprechung auf dem Gebiete des Internationalen Privatsrechts (1975), No. 188; LG Bremen in: Recht der Internationalen Wirtschaft (1980), p. 366; OLG München in: Neue Juristische Wochenschrift (1983), p. 2778.

[118] Geiger, *Der Arrestgrund der Auslandsvollstreckung (§ 917 Abs. 2 ZPO) und das gemeinschaftsrechtliche Diskriminierungsverbot (Article 6 EG-Vertrag)* in: Praxis des Internationalen Privat- und Verfahrensrechts, Vol. 14 (1994), #6, pp. 415 *et seqq.*; Grunsky, *EWG-Übereinkommen über die gerichtliche Zuständigkeit und die Vollstreckung gerichtlicher Entscheidungen in Zivil- und Handelssachen im deutsch-italienischen Rechtsverkehr* in: Recht der Internationalen Wirtschaft, Vol. 23 (1977), #1, p. 8; Hanisch, *Internationale Arrestzuständigkeit und EuGVÜ* in: Praxis des Internationalen Privat- und Verfahrensrechts, Vol. 11 (1991), #4, pp. 217 *et seqq.*; Baumbach-Lauterbach-Hartmann, note 60, Section 917 ZPO (notation 10); Stein-Jonas-Grunsky, note 112, Section 917 ZPO (notation 15); Zöller-Vollkommer, note 114, Section 917 ZPO (notation 15).

[119] Petersen, *Civilprozeßordnung*, 5th edn. (1906), Section 917 (notation 3); Gaupp-Stein, *Zivilprozeßordnung*, 8th/9th edn. (1908), Section 917 (notation II).

[120] OLG Düsseldorf in: Neue Juristische Wochenschrift (1983), p. 2778; LG Berlin in: ZIP (1983), p. 223; LG Bremen in: Recht der Internationalen Wirtschaft (1980), p. 366; OLG Frankfurt in: OLGZ (1973), p. 58; Stein-Jonas-Grunsky, note 112, Section 917 ZPO (notation 15).

[121] ECJ in: Europäische Zeitschrift für Wirtschaftsrecht (1994), pp. 216 *et seqq*.

collection of the claims through the arrest according to Section 917 (2) ZPO of the trailer, which was still in Germany.

The court rejected the application with a court order stating that Section 917 (2) ZPO is not applicable with regard to Member States to the 1968 EEC Convention. The plaintiff appealed against this court order with the allegation that the applicability of the norm was not touched by the 1968 EEC Convention. The Hanseatic Higher Regional Court of Hamburg suspended the proceedings and asked the ECJ according to Article 177 of the EC Convention on 16th November 1992 to give its opinion on the interpretation of Article 7 (1) of the EEC Treaty[122] in connection with Article 220 of the EEC Treaty with regard to the 1968 EEC Convention.

The European Court of Justice stated that Article 220, dash 4 of the EEC Treaty does not bind the parties but presents a framework for debate on this matter.[123] On this very basis the member States agreed on the 1968 EEC Convention, i.e. on the applicability of the national procedural norms of its member States.

Article 7 and Article 76 of the EEC Treaty, however, is to prevent from open as well as hidden discrimination.[124] The ECJ saw such a hidden discrimination in Section 917 (2) ZPO as long as its presumption would not be objectively justified.[125] In cases of third countries, i.e. non-contracting States to the 1968 EEC Convention, the ECJ considered the presumption of Section 917 (2) ZPO as objectively justified.[126]

According to the ECJ risks of enforcement among the member States to the 1968 EEC Convention, however, are all the same.[127] Hence, a domestic enforcement is equal to an enforcement of every other member State.[128]

This decision of the ECJ is legally binding for Germany, because European law as supranational law, overrides national law.[129] Hence, it puts an end to the uncertainty

[122] Former Article 6 of the EC-Convention.

[123] ECJ in: Slg (1985), p. 2681, notation 11 (***Mutsch***).

[124] ECJ in : Slg (1980), p. 3427, notation 9 (***Boussac***).

[125] E. Grabitz, *Kommentar zum EWG-Vertrag*, Vol. 1, (Munich 1992), Article 7 (notation 11).

[126] Official Journal of the European Communities (1979), no. C 59, p. 1 (cf. p. 13).

[127] Cf. Gieseke, note 138, p. 152.

[128] Cf. Jayme/Kohler, *Europäisches Kollisionsrecht 1994: Quellenpluralismus und offene Kontraste* in: Praxis des Internationalen Privat- und Verfahrensrechts, Vol. 14 (1994), #6, p. 414.

[129] Gieseke, note 138, p. 414.

concerning the applicability of Section 917 (2) ZPO with regard to the Member States to the 1968 EEC Convention.

In the already mentioned case of the "**M.S. River Adada**" the High Court in London granted the claim of USD 250.076,16 by the plaintiff against the defendant. The defendant had its place of business in Nigeria and the judgement had thus to be enforced outside the scope of the 1968 EEC Convention. There is no exception from this rule, in fact the defendant has neither provided security, nor has he sufficient assets in a contracting State, which would allow the enforcement from the title of the main action.[130] In conformity with the above mentioned decision of the ECJ concerning the interpretation of Section 917 (2) ZPO, the court considered a judgement of a contracting State of the 1968 EEC Convention as a domestic judgement. The declaration of the judgement to be enforceable does not constitute a domestic judgement but provides just the requirements, without examining its correctness, for an enforcement of the foreign judgement domestically. The court stated that Section 917 (2) ZPO is applicable at least with regard to judgements of the main action, which are already issued or have to be issued within the scope of the 1968 EEC Convention and have to be enforced in a third country. This is valid at least for the judgement of the contracting State if it can be declared as enforceable according to the simplified procedure of Sections 31 *et seqq.* of the 1968 EEC Convention. The simplification according to Section 917 (2) ZPO to establish a reason to arrest is not only for the benefit of the creditors, who are citizens of or located in a contracting State, but also for creditors of third countries.[131]

This statement does not, however, solely result out of the prohibition of discrimination according to Article 6 (1) of the EC Treaty, which gears to the nationality, i.e. it is only applicable if a citizen of a EC State would not obtain an arrest from a German court which a German citizen would obtain. The ECJ saw a hidden discrimination as long as the enforcement in a contracting State would be directed against a non-German EC citizen and at the time there would not exist any justifying reason to require the special prerequisites of Section 917 (1) ZPO at the expense of the citizens of other contracting States. Hence, only citizens of contracting States may not be discriminated compared to German creditors, if they apply for an arrest in German courts. The ECJ saw such a hidden discrimination, if citizens of

[130] Baumbach, note 60, Section 917 (notation 11); Geimer, Zivilprozeßordnung, 21st edn. (Cologne 1999), notation 1213.

[131] ECJ in: Neue Juristische Wochenschrift (1994), p. 1271; Gieseke, note 138, p. 413.

a contracting State would not receive the opportunity to proceed against a debtor in a third country because of a EC judgement, while German citizens would receive such an opportunity because of a domestic judgement.

The applicability of Section 917 (2) ZPO, however, does not depend on the nationality of the creditor.[132] Even citizen of non-contracting States may invoke Section 917 (2) ZPO if an EC judgement would have to be enforced in a third country. This is supported by the principle of recognition of foreign judgements of the contracting States and of prevention of discrimination of judgements of other EC members by a court of a contracting State, which were guaranteed in the 1968 EEC Convention and mentioned in the decision of the ECJ.[133] The territories of the EC member states, which are all members to the 1968 EEC Convention, may be seen as one entity.[134]

If Section 917 (2) ZPO is interpreted restrictively, i.e. that the norm is not applicable in EC States because of the need for equal treatment of EC States, the judgements of the contracting States to the 1968 EEC Convention in its other meaning have to be treated equally. According to the ratio of the norm one should establish an effective legal protection in front of domestic courts. There is no cause to deny legal protection with regard to the 1968 EEC Convention, because another contracting State has jurisdiction over the main action, which does not interfere with the arrest jurisdiction according to Article 24 of the 1952 Arrest Convention.

If a Contracting State to the 1968 EEC Convention is also member of another Convention on a special field of law, which contains rules on the pending suit (*lis pendens*)[135], the 1968 EEC Convention would be subsidiary, according to Article 57 of the EEC Convention being *lex specialis*.[136] The purpose of this restriction is to apply the special rules, as they were made for certain specialities of fields of law.[137]

[132] Zöller/Vollkommer, note 114, Section 917 (notation 15).

[133] Geimer, note 155, notation 1214.

[134] Cf. ECJ in: Neue Juristische Wochenschrift (1994), p. 1271; Gieseke, note 138, p. 413; Ehricke, note 133, p. 2089.

[135] Neither international maritime law nor the 1952 Arrest Convention have such special provisions about *lis pendence*.

[136] Herber, *Anmerkungen zur 'Auslegung der Article 21, 22, 57 EuGVÜ (EuGH)'* in: Transportrecht (1996), p.196; Philip, *Maritime jurisdiction in the EEC* in: Nordisk Tidskrift för International Ret Vol. 46 (1977, p.115.

[137] Cf. Judgement of the ECJ in case C-406/92 (***The owners of the cargo lately laden on board the ship Tatry vs. The owners of the ship Maciej Rataj***); ECJ in: JURIS (Doc. No. 16829); ECJ in: Europäisches Transportrecht (1995), p. 27; ECJ in: Praxis des Internationalen Privat- und Verfahrensrechts (1996), p. 108.

The enforcement of a judgement in a Contracting State to the 1952 Arrest Convention has to be regarded as an enforcement abroad, as this is due to its nature and the lack of any legal unification concerning the enforcement of judgements of the main action. It serves only to abolish the uncertainty of a possible arrest in foreign ports.[138]

The lesser burden of proof, mentioned above, is limited to cases where the debtor has no sufficient domestic assets to satisfy the creditor. Nagel's opinion, requiring domestic assets of a foreigner as sufficient connection to the judgement State and the warrant of arrest pressing for execution is out-dated.[139] The opponent does not necessarily have to be a foreigner. Even a German could have all his assets abroad, e.g. in cases of flags of convenience. Only the securing of the enforcement of the judgement is important.[140] The definite value of the assets will, however, not to be determined before the actual arrest.[141]

Today's courts will dismiss an application despite the rule of Section 917 (2) ZPO if the operator runs a regular scheduled service calling at German ports.[142] Judicial decisions sustained 'regular scheduled' as a frequency of about one vessel every or every second month calling at German ports.[143]

In the case of the "**Ethiopian State Shipping Line**" the Hanseatic Higher Regional Court of Hamburg rejected the applicability of Section 917 (2) ZPO because it was not discernible that the judicial enforcement would have to be outside Germany. They saw the claim of the plaintiff to be secured by sufficient assets of the defendant in Germany, through distributing arrived cargo to its agent in Hamburg according to Sections 675 and 667 BGB.[144] Nearly every month a vessel of the defendant calls at the port of Hamburg with proceeds paid

[138] Uncertainty remains because of the referring of Article 6 of the 1952 Arrest Convention to the *lex fori*.

[139] Nagel, *Auf dem Wege zu einem europäischen Prozeßrecht*, (Baden-Baden 1963), p.33 *et seqq*.

[140] HOLG Hamburg in: Versicherungsrecht (1972), p. 1115.

[141] OLG Celle in: Neue Juristische Wochenschrift (1969), p. 1541.

[142] HOLG Hamburg in: Versicherungsrecht (1982), p. 341(***Ethiopian State Shipping Line***); HOLG Hamburg in: Hansa (1966), p. 1261; HOLG Bremen in: Hansa (1956), p. 906.

[143] HOLG Hamburg, Versicherungsrecht (1982) p. 341; HOLG Hamburg in: Versicherungsrecht (1971), p. 124 (***Indonesian State Shipping Line***).

[144] Cf. Boye, *Arrest gegen ausländische Linienreeder* in: Hansa (1965), p. 2174.

to the agent of about USD 125.000 each. An execution against the defendant's assets would be possible for the plaintiff in order to satisfy its claim within a relatively short time.

A discontinuance of the traffic from Ethiopia to Bremen and Hamburg was not to be feared with regard to the action for the recovery of DM 90.000, neither was to be feared that the defendant would change its contracts of carriage to freight payable at the place of discharge, i.e. in Ethiopian currency instead of the needed US Dollars.

The court further explained that the regular scheduled service of the defendant was unimportant anyway, because the plaintiff might satisfy its claims through the agent in Hamburg.[145]

The motive for this limitation was, that a shipping company with ships constantly calling at German ports gives sufficient opportunity for ordinary execution,[146] just as long as there is no risk of dissipation of the assets[147] or discontinuance of the traffic.[148] According to the prevailing view, there is no such risk if the debtor has permanent domestic assets or it is secured that he keeps on transferring assets in order to cover his obligations to Germany.[149] On the other hand, the mere fact that it is a liner company is not sufficient.[150]

In the case of the "**Indonesian State Shipping Line**"[151] the plaintiff, a Panamanian operator, applied with regard to a claim of DM 290.000 and a lump sum of DM 58.000 for a warrant of arrest into the domestic assets of the Indonesian State Shipping Line. Further the claim of arrest arose from the carriage of goods to the amount of DM 338.000 of the defendant against the company T., domiciled in Hamburg, which was the third party debtor.

The Regional Court of Hamburg issued a warrant of arrest and affirmed the order with a judgement. The appeal at the Hanseatic Higher Regional Court of Hamburg was successful and lifted the warrant of arrest and changed the judgement.

[145] HOLG Hamburg in: Versicherungsrecht (1982), p. 341.

[146] Prüßmann/Rabe, note 68, Section 482 HGB (notation D 2 b).

[147] HOLG Hamburg in: Die deutsche Rechtsprechung auf dem Gebiete des Internationalen Privatsrechts (1971), No. 153; RGZ 67, p. 22.

[148] AG Hamburg in: Versicherungsrecht (1987), p. 1236.

[149] OLG Düsseldorf in: Neue Juristische Wochenschrift (1977), p. 2034; HOLG Bremen in: Versicherungsrecht (1972), p. 250 (***Paracas***).

[150] BGH in: Neue Juristische Wochenschrift (1972), p. 1044; HOLG Bremen in: Versicherungsrecht (1972), p. 250.

[151] OLG Hamburg in: Az. 6 U 115/69 (2nd Oct. 1969).

The statutory declaration according to Section 294 (1) ZPO of the holder of a special statutory authority,[152] Mr. R., confirmed the existence of a branch for Europe in Hamburg, a regular scheduled traffic of two ships per month minimum calling the port of Hamburg and the existence of an account at the domestic bank B., with an average fluctuation of an amount of about DM 1.5 Million from charter hire and freights.

The court considered this statutory declaration as a substantiating reason in favour of the Indonesian operator.[153] The court followed previous decisions, when it denied the applicability of Section 917 (2) ZPO because of a regular scheduled liner service.[154]

In the case of the Liberian Tanker "**M.S. Afran Zenith**", the vessel ran aground at the port of Hamburg on the 25th July 1981. From the leakage about 300 to 400 tonnes of crude oil spoiled the water of the river and its banks. The authorities had to order private companies to undertake preventive measures. The costs went beyond the amount of DM 1 million on the 3rd August 1981. In order to secure costs for this damage a warrant of arrest was finally issued into the assets of the operator and into the vessel itself. The place of business, both of the operator, a Liberian company, and of the P&I Club,[155] located in England, constituted the requirements of Section 917 (2) ZPO.

In the meantime a liner service with the M.S. Afran Zenith, a tanker, has been doubted. A security of return of the tanker could not be guaranteed and with regard to the claim of reimbursement of costs, it is uncertain if the tanker would come back for judicial execution.[156]

In the case of the "**M.S. Paracas**",[157] the defendant operator of the vessel had been sued for damages in the total amount of DM 62.918,13 plus a lump sum amount of DM 3.400,00. Two lots of the carried fish meal from Peru to Hamburg in March 1970 had been

[152] According to secs. 48-53 HGB.

[153] HOLG Hamburg in: Versicherungsrecht (1971), p. 124.

[154] HOLG Hamburg in: Hansa (1966), p. 1261; HOLG Hamburg in: Monatsschrift für Deutsches Recht (1955), p. 749.

[155] The limited liability of the insurance according to Article 7 (8) in connection with Article 7 (1) and Article 5 (1) as well as Article 10 of the 1984 International Convention on Civil Liability for Oil Pollution Damage are considered as "imminent risk" in terms of Section 917 (1) ZPO.

[156] Kusch, *Der rechtliche Hintergrund zum Arrestfall „Afran Zenith"* in: Hansa (1981), p. 1292.

[157] HOLG Bremen in: Az. 2 U 59/71 (23rd Sept. 1971).

damaged and finally compensated by the plaintiff cargo insurer. The Regional Court of Hamburg issued a warrant of arrest on 10th March 1971.

The defendant lodged an objection and claimed a lack of a reason of arrest. At the same time he claimed that in case of a compliant judgement, judicial execution would not be necessary abroad. He explained further that he runs a liner traffic with two ships, namely M.S. Paracas and M.S. Alisios, constantly calling at European ports, *inter alia* at the ports of Bremen and Hamburg. The plaintiff claimed, however, that the defendant did not run a liner traffic, but that he only irregularly called at German ports.

The Regional Court of Hamburg on 29th March 1971 confirmed its judgement, and the Hanseatic Higher Regional Court of Bremen on the 23rd September 1971 refused appeal. The court followed its previous decision,[158] which considered the risking of a future domestic execution of a personal money claim against the defendant as decisive.

The defendant could not prove the security of such a future execution as he has no assets in Germany. Furthermore, the age of the shipping fleet of the defendant, with an average of 30 years, could be seen according to the courts opinion as excessive. This was seen as an indicator that the ships might be suspended from traffic in a near future, e.g. because of profitability calculations, which would exclude their return to German ports. According to the court, it was beyond the scope for judgement evaluation, if there existed capacity and even the wish to replace the ships by modern ones.[159] The court also mentioned the political situation of the home port (Callao/Peru) - the transfer from private to state ownership in the years from 1968 to 1971 had been recognised as a factor of uncertainty.

Acts and preparations of war are considered as an influencing factor for the frequency of maritime traffic and as an indicator for a possible discontinuance of ships from the place of war, hence as a reason to arrest.[160]

The situation of a third party debtor living abroad does not constitute a case of Section 917 (2) ZPO.[161] For a German judicial execution abroad, it is insignificant if judicial assistance is guaranteed, i.e. that an application for an arrest is not automatically rejected, even if the execution would take place in countries with a bilateral agreement on this matters.[162]

[158] HOLG Bremen in: Monatsschrift für Deutsches Recht (1955), p. 749.

[159] HOLG Bremen in: Versicherungsrecht (1972), p. 250 (***Paracas***).

[160] AG Hamburg in: Versicherungsrecht (1987), p. 1236.

[161] Frankfurt/Main in: Monatsschrift für Deutsches Recht (1976), p. 321.

[162] Zeitschrift für Zivilprozeß 49, p. 257; Cf. Baumbach, note 60, Section 917, appendix.

c) Jurisdiction of a German Court

According to Section 919 ZPO the competent court for granting a warrant of arrest is the court of the main action[163], where the trial of the substantive claim is pending or can be prosecuted, or alternatively the local court in whose district the vessel is present. The local jurisdiction of a German court implies in principle an international jurisdiction.[164] For arrest, these courts have exclusive jurisdiction in terms of Section 802 ZPO, regardless of the claimed amount or a possible arbitration[165] or choice of jurisdiction clause.[166]

The jurisdiction of a court for an arrest of a vessel belonging to a foreign operator will mostly be based on Section 23 ZPO, i.e. on the fact that assets are located in its district.

The creditor, according to Section 35 ZPO, has a choice between the two mentioned courts. Consequently he may apply for an arrest at a competent local court even if the main action is pending at another. This rule is applicable also in an arbitration situation, i.e. a claim to obtain an arrest is undeniable.[167] A choice of jurisdiction clause stipulating jurisdiction outside Germany for the main action does not hinder the domestic local courts from issuing a warrant of arrest despite the principle of the *lex rei sitae*.[168]

For the applicability of Section 919 and 23 ZPO, however, a genuine link of the claim to Germany is needed and is not sufficiently established merely through domestic assets in Germany.[169] A German court would lack competence if, for example, the parties have agreed on London arbitration and only one party has its place of business in Germany, because the agreement is *lex specialis.*

[163] In terms of Section 943 (1) ZPO.

[164] BGH in: Neue Juristische Wochenschrift (1965), p. 1665; BGH in: Neue Juristische Wochenschrift (1979), p. 1104.

[165] Since only courts may issue a warrant of arrest, even if some arbitration agreements pretend to empower the arbitrators to do so.

[166] RG in: RGZ 31, p. 374; Stahl *Sicherung von Ansprüchen gegen ausländische Reeder im Inland* in: Der Betrieb (1959), p. 589; Albrecht *Die Arrestbeschlagnahme von Seeschiffen - nach Deutschem Recht und nach dem Internationalen Übereinkommen über den Arrest von Seeschiffen, Brüssel, Mai 1952* in: Hansa (1954), p. 1142.

[167] RG in: RGZ 31, p. 374.

[168] Stahl, note 64, p. 589; Albrecht, note 64, p. 1142.

[169] BGH 2nd June 1991; cf. BGH in: Neue Juristische Wochenschrift (1981), p. 2642.

d) Assets to be Arrested

Differing from the Anglo-American rule that only ships belonging to the debtor can be arrested, German law adds that generally all his personal property may be attached with certain exceptions.

For certain obligations arising from the operation of ships the German Commercial Code provides no personal liability for the operator but rather a liability limited to the vessel and cargo[170] as long as no personal liability arises under Section 774 HGB.[171]

Other ships belonging to the operator (sisterships) may be arrested if the owner is the debtor of the claim and is personal liable. An arrest of other ships belonging to the operator is excluded in cases where the operator is not the debtor but becomes burdened with a maritime lien while his ship was under charter or when the ship was demise chartered. Arresting other ships, however, belonging to the time charterer or the demise charterer under the same conditions as mentioned above is allowed.

According to Article 1 of the Brussels Convention concerning the Immunity of State-Owned Ships from 10th April 1926,[172] state-owned vessels are treated like private vessels if they serve commercial purposes.

2. Execution of Arrest

There are special rules applicable for the execution of an arrest in ships in German law. According to Section 931 ZPO a special writ of execution from the court of arrest, which is also the court of execution, is required. This shall guarantee that at the same time according to Section 931 (3) 2nd sentence ZPO a priority notice will be entered into the shipping register or the register for ships under construction, in order to secure the maritime lien.[173] Further, the bailiff has first to take the ship in his possession (*Besitz*) according to Section 808 ZPO and secondly to take the arrested vessel or vessel under construction into his custody (*Bewachung und Verwahrung*) according to Section 931 (4) ZPO.[174] Afterwards the bailiff has to inform

[170] Cf. secs. 486 (1), 726, 739 (2) and 753 HGB.

[171] Albrecht, note 64, p. 1142.

[172] Reichsgesetzblatt (1927), Vol. II, p. 484; in force again since 24th February 1954 (Bundesgesetzblatt (1954), Vol. II, p. 467).

[173] Wolff, *Grundrisse des Sachenrechts bei Schiffen und Schiffsbauwerken* (Hamburg 1949), p. 93.

[174] Cf. 134 of the *Geschäftsanweisung für Gerichtsvollzieher* (GVGA).

the port authorities in order to prevent the departure of the ship. If, however, the debtor pays a deposit as security, the arrest will be suspended or the debts may apply for setting aside the arrest according to Section 923 ZPO.

Whereas a vessel without entry in the German Ships' Register may be arrested even without a writ of execution according to Section 931 (3) ZPO. Nevertheless such a writ of execution is mostly required in practice[175] and it could also be difficult to convince the competent bailiff to arrest a foreign vessel without such a writ.[176]

In the case of the "**M.S. Ventuari**", the Hanseatic Higher Regional Court of Bremen denied the applicability of Section 931 ZPO. The arrest should rather be made according to the principles of arrest of movables of Section 930 ZPO.[177] The court decided further, that there are no obstacles against this decision in Section 870a ZPO or in Section 171 of the Law on Compulsory Sale of Real Property (or Ships (*Zwangsversteigerungsgesetz*, ZVG).

The operator's main interest after the execution of the arrest is to lift the arrest in order to operate the vessel freely again. This can be obtained according to Section 923 ZPO through the suspension (*Hemmung*) of the execution against a certain amount of money as security. After the suspension the debtor may apply to release the ship. Generally, the amount of the security is the amount claimed plus costs. When the security is provided, the ship will be released according to Section 934 ZPO.

The court having jurisdiction over the enforcement may on application cancel the execution (*Aufhebung*) of the arrest according to Section 934 (1) ZPO, however, not the warrant of arrest as such. The court may even lift the arrest according to Section 934 (2) ZPO, if the plaintiff does not advance the amount of money required to cover the expenses, e.g. for shifting a vessel in the port.

3. Arrest of a Foreign Ship

As mentioned in chapter II, the purpose of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships (1952 Arrest Convention) is to

[175] LG Hamburg in: Monatsschrift für Deutsches Recht (1978), p. 764; Baumbach, note 60, Section 931 ZPO (notation 1).

[176] Strube, *Arrestpfändung ausländischer Seeschiffe* in: Hansa (1981), p. 1294.

[177] HOLG Bremen in: Hansa (1981), p. 1294 (***Ventuari***); LG Hamburg in: Monatsschrift für Deutsches Recht (1978), p. 764.

restrict the possibility of arresting ships in foreign ports.[178] Consequently, it would be false with regard to the subject matter to apply the 1952 Arrest Convention to purely domestic matters. Hence, it, according to Article 8 (4) of the 1952 Arrest Convention, does not "affect the rules of law in force in the respective Contracting States relating to the arrest of any vessel within the jurisdiction of the State of her flag by a person who has his habitual residence or principle place of business in one of the Contracting States". It would otherwise mean an unwanted interference with the law of the contracting States.[179]

Even though the parties are foreigners or according to international private law foreign substantive law is applicable to the claim itself, German courts would apply German law to the arrest.[180] The validity of the *lex fori* for proceedings is justified by the public legal character of the procedural norms.[181] This should guarantee an unobjectionable course of procedure, which could be endangered by the application of foreign procedural law.

But even in the cases where the Convention is applicable, the actual course of the procedure, according to Article 6 of the 1952 Arrest Convention, is determined by the domestic law of the arresting state.

Important to mention again an arrest of a ship registered in a foreign ships' register requires no writ of execution (*Pfändungsanordnung*) according to Section 931 (3) ZPO. The execution of arrest of a ship not registered in the German Ships' Register is made without the restrictions of Section 931 ZPO (*Vollziehung in eingetragenes Schiff*) but rather according to Section 930 ZPO on the attachment of movables (*Vollziehung in bewegliches Vermögen und Forderungen*).[182]

C. Inadmissible Arrest

Section 482 HGB prohibits arresting a vessel which is *en route* and not berthed in a port.

[178] Bundestag-Drucksachen VI 2224, p. 37.

[179] CMI-Report, Bulletin no. 105, p. 6.

[180] Rosenberg/Schwab, *Lehrbuch des Deutschen Zivilprozeßrechts*, 11th edn. (Munich 1974), § 6 notation II 1; (Cf. section 171 of the Law on Compulsory Sale of Real Property and Sequestration).

[181] Zitelmann, *Internationales Privatrecht*, *Vol. 1* (Leipzig 1897), p. 224; Riezler, *Internationales Zivilprozeßrecht und prozessuales Fremdenrecht*, (Berlin 1949), p. 91.

[182] Prüßmann/Rabe, note 68, Section 482 HGB (notation D 3, 4).

> "**§ 482. [*Zwangsvollstreckung in Schiffe*]** *Die Anordnung der Zwangsversteigerung eines Schiffes im Wege der Zwangsvollstreckung sowie die Vollziehung des Arrests in das Schiff ist nicht zulässig, wenn sich das Schiff auf der Reise befindet und nicht in einem Hafen liegt*."

This period of time for the arrest has been expanded through the changes of Section 482 HGB by Article 1 No. 3 of the First Amendment of the German Maritime Law.[183]

Hence, the arrest is inadmissible if the ship has already departed from the port. Consequently, an arrest is still possible if the vessel, with regard to the will of the operator or the master respectively, is ready to sail no matter of legal and actual hindrances.[184] Hence, The vessel is *en route* at the moment of the actual starting to cast off,[185] i.e. the voyage starts when the vessel is unmoored from the berth, e.g. weighing anchor in order to leave the harbour, so that she is not to be arrested any longer.[186] As long as the vessel is moored at the quay, however, an arrest is admissible, despite all preparations to start the voyage, e.g. if she is taken in tow inside the harbour but still connected to the quay.

During the voyage a vessel can only be arrested if it is berthed in a port.[187] Mere interruptions of voyage, however, are not excluded from the prohibition of arrest, e.g. waiting time before and after passing such passages as the Kiel channel, even if the ship is today in bunkers or takes up food. Voyage means travelling from one port to another. Therefore, the interruption of a voyage in an intermediate port is excluded.[188]

The corresponding criteria as for the beginning of a voyage are also used for the end. As long as the vessel is yet unmoored at the quay, she is not berthed in the port. Waiting for a berth in the stream or in a roadstead does not mean ending its voyage.[189] Such a criterion is necessary to a delimitation for the enforcement authorities.[190] The bailiff, who has to arrest a

[183] Cf. Seerechtsänderungsgesetz (Bundesgesetzblatt (1972), Vol. I, p. 966).

[184] Albrecht, note 64, p. 1145.

[185] Prüßmann/Rabe, note 68, Section 482 HGB (notation B 1).

[186] Prüßmann/Rabe, note 68, Section 482 HGB (notation B 1).

[187] Herber, note 20, p. 510.

[188] Bundestag-Drucksachen VI/2225 p. 414.

[189] Prüßmann/Rabe, note 68, Section 482 HGB (notation B 2 b).

[190] Prüßmann/Rabe, note 68, Section 482 HGB (notation B 2 b).

ship, has to verify under the actual circumstances without any problems if the arrest may be enforced or not.

If a ship is arrested, whether still or already *en route*, the operator or the master as his representative, respectively, may according to Section 766 ZPO lodge a special appeal at the court which has jurisdiction over the enforcement. The creditor is not obliged in his application at the court or in his order to the bailiff to mention whether the ship is *en route* or not. The court and the bailiff, however, have to reject the arrest, if they have knowledge, that the ship is *en route.* A prohibition against arrest is also possible because of an agreement between the operator and the creditor, e.g. extension of payment terms.

If the enforcement of an arrest is unjustified from the beginning because of lack of a cause of arrest, the operator may sue for damages according to Section 945 ZPO, e.g. for lost time charter fees during the arrest.[191]

[191] HOLG Hamburg in: Versicherungsrecht (1987), p. 356 (***Clydefirth***).

III. Sweden

A. Introduction

There are no special rules for the arrest of ships in Swedish law,[192] except as we shall see later in international arrests to which the 1952 Arrest Convention is applicable. In general, the ordinary provisions for arrest are applicable also to ships. Moreover, it is possible to arrest a ship to provide security not only because of claims connected with the particular ship or its operation but also because of other rights.

The arrest is a security measure designed to enforce a claim not yet recognised by a court.[193] It is also intended to keep access to certain property open for judicial execution until an executory title has been obtained.[194]

The arrest is a temporary enforcement measure issued by the court to secure civil claims or better rights to certain property. Hence, the arrest which interrupts the operation of and limits the legal power of disposal over the debtor's ship, is an effective means to put pressure on the operator who refuses payment.[195]

In general no coercive measures may be taken until the competent court has issued its judgement. A court, however, may issue a warrant of arrest according to Chapter 15 of the Swedish Code of Judicial Procedure (*Rättegångsbalken* 1942:740, RB) both before and during the ordinary process of law, e.g. in summary proceedings according to Sections 62 and 63 of the Act on Summary Civil Procedure (*Lag om betalningsföreläggande och handräckning* 1990:746).

A court may issue according to Chapter 15, Section 1 and 2 RB a warrant of arrest to secure a money claim or a better right to personal or real property in the possession of the debtor. It may also be issued because of administrative fines and a couple of other claims according to the Act concerning Assurance of Payments (*Lag om betalningssäkring för skatter, tullar och avgifter* 1978:880), e.g. taxes, custom duties and charges. The basic

[192] Olivecrona, *Utsökning*, 9th edn. (Lund 1978), p. 194.

[193] Dillén, *Några anmärkningar om kvarstad och skingringsförbud* in: Svensk Juristtidning (1946), p. 321.

[194] Rune, *Rätt till skepp* in: Sjörättsföreningen i Göteborg skrifter 68, 2nd edn. (Gothenburg), p. 175.

[195] Olivecrona, note 207, p. 194.

provisions for the execution of arrest is Chapter 16, Sections 13-16 of the Swedish Enforcement Code (*Utsökningsbalken* 1981:774, UB) and the provisions of the Enforcement Regulation (*Utsökningsförordningen* 1981:981, UF).

B. Maritime Arrest

1. Requirements of Arrest

According to the domestic provisions there is no restriction to maritime claims, i.e. an arrest can be granted for any claim against the operator. A warrant of arrest may be obtained in order to enforce a maritime lien. There are two types of warrants of arrest in Swedish law:

- a warrant of arrest with regard to the debtor's assets corresponding to the claim (abstract arrest) and
- a warrant of arrest with regard to a particular vessel (concrete arrest).[196]

The first alternative is the more usual one, which gives flexibility to attach property of the debtor in order to secure the creditor's claim. The latter is applicable in cases of maritime liens, i.e. the creditor has to secure the particular ship to preserve his priority.[197] The concrete arrest is not unusual in practice with regard to the arrest of ships, even though it is not expressly mentioned in legal texts.[198]

a) Claim of Arrest

The arrest in order to secure a private claim according to Chapter 15, Section 1 RB requires *prima facie* evidence furnished by the creditor for the existence of such a claim. Moreover, the creditor has to prove an urgent risk that the debtor will evade his creditors, suppress or otherwise dispose of the property in question or otherwise avoid paying his debts. If these

[196] Olivecrona, note 207, p. 193.

[197] Romlöv, *Sweden - Arrest of Vessels*, 7th edn. (1993) in: Albrecht, Maritime Law Handbook, p. 5.

[198] UB Kom., p. 660 *et seq.*

requirements are fulfilled, the court may issue a warrant of arrest regarding the debtor's property, to an amount corresponding to the creditor's claim.[199]

> **1 §.** *"Om någon visar sannolika skäl för att han har en fordran, som är eller kan antas bli föremål för rättegång eller prövning i annan liknande ordning, och det skäligen kan befaras att motparten genom att avvika, skaffa undan egendom eller förfara på annat sätt undandrar sig att betala skulden, får domstol förordna om kvarstad på så mycket av motpartens egendom att fordringen kan antas bli täckt vid utmätning."*

As already mentioned, a warrant of arrest may be issued, according to Chapter 15, Section 1 RB, if at first the creditor furnishes *prima facie* evidence for the existence of a claim, which is or will be the subject matter of an action. An interlocutory decree may be obtained more easily than a final one. Preferably, such particulars should be supported by some kind of documentary evidence, e.g. a B/L, an extract from the log, and documents, which for example show employment on board the ship. The court may, however, exercise its discretion with regard to the probability.

The evidence should be presented in such a way that the court can easily understand the substance of the claim and the reason to arresting the ship. A properly presented description of the evidence will increase the possibility of obtaining an arrest without an oral hearing and will also increase the possibility for a quick decision. For these reasons all relevant documentation should be enclosed with the application. The court may always demand that foreign language documents should be translated into Swedish. However, the court will usually accept documents in English.

If a creditor cannot present such documentary evidence, he may still obtain a warrant of arrest. Under general rules of procedure, however, no affidavit or other sworn statement in writing, either from the parties or from a witness, is admissible evidence in court.

If an arrest is granted without an oral hearing, the operator and other parties involved in the arrest, e.g. a time charterer, have a right to demand that such a hearing be scheduled as soon as possible.

[199] Nilsson-Sternquist, *Om handräckningsutslag*, (Lund 1946), p. 174; Ekelöf, *Rättegång III*, (Stockholm 1985), p. 17; Nytt Juridiskt Arkiv, avd. II (1943), p. 182.

Of the approximately 65 countries party to the 1952 Arrest Convention, Sweden is one of the few that requires the claimant in domestic law to prove, in addition to showing *prima facie* evidence, that the debtor's conduct gives reason to fear that, unless an arrest is obtained, the enforcement of the claim will be either impeded or substantially more difficult to effect. Or he has to prove that it will have to be effected abroad.

According to Chapter 15, Section 1 RB the creditor has to prove an urgent risk that the debtor will evade his creditors, by suppressing, otherwise disposing of the property, or evading the payment of his liabilities or rendering the enforcement of the creditor's claim more difficult.

However, neither a declining shipping market nor the fact that the debtor is under substantial pressure from his creditors, nor that the operator is domiciled abroad, by itself provides a legitimate reason to arrest.

b) Reason to Arrest

According to Chapter 15, Section 2 RB a warrant of arrest can be issued because of a better right to certain property.

> **2 §.** *"Om någon visar sannolika skäl för att han har bättre rätt till viss egendom, som är eller kan antas bli föremål för rättegång eller prövning i annan liknande ordning, och det skäligen kan befaras att motparten skaffar undan, väsentligt försämrar eller på annat sätt förfogar över egendomen till skada för sökanden, får domstol förordna om kvarstad på egendomen."*

According to Chapter 15, Section 6 RB, the court will require security to be furnished by the claimant, in an amount determined by the court, before an arrest will be granted.

> **6 §.** *"(1) En åtgärd som avses i 1, 2 eller 3 § får beviljas endast om sökanden hos rätten ställer säkerhet för skada som kan tillfogas motparten. Förmår sökanden ej ställa säkerhet och har han visat synnerliga skäl för sitt anspråk, får rätten befria honom därifrån. Staten, kommuner, landstingskommuner och kommunalförbund behöver ej ställa säkerhet.*
>
> *(2) I fråga om beskaffenheten av säkerhet gäller 2 kap. 25 § utsökningsbalken. Säkerheten skall prövas av rätten, om den ej har godkänts av motparten."*

The security required from the creditor is such as sufficiently covers possible losses of the defendant in case the claim, with regard to which the warrant of arrest was granted will finally be rejected.[200] This is to be provided by cash deposit or an unconditional guarantee from a Swedish or well-known bank according to Chapter 15, Section 6 (2) RB in connection with Chapter 2, Section 25 UB. It also may be provided through a guarantee by an insurance company or other companies or persons, whose solvency is evident or proven to the court. It is not acceptable in Sweden to furnish a bond. The amount of the security has to be calculated in order to cover all expenses, i.e. costs and damages of the debtor in case of an unjustified arrest. The amount is determined by the court, unless the debtor accepts the security. Moreover, the provided security has to be enforceable in Sweden.

If in exceptional cases the creditor is not able to provide the required security or at least not the full amount but can furnish good evidence of his claim, the court may, according to Chapter 15, Section 6, 2nd sentence RB, issue a warrant of arrest without such security. The limit is often discussed informally between the court and the creditor before the warrant of arrest is granted.

According to Chapter 2, Section 25 UB the security has to be in form of a maritime mortgage (*pantbrev*) or contract of guarantee (*borgen*). The contract of guarantee has to be furnished either as an own or joint debt (*egen eller solidarisk skuld*).

The Swedish Government and certain governmental bodies are not according to Chapter 2, Section 27 UB obliged to provide security.

c) Jurisdiction of a Swedish Court

There are no particular rules concerning the limitation of Swedish jurisdiction with regard to legal claims. In order to determine the jurisdiction, one has to interpret the general rules by analogy with the domestic rules on jurisdiction according to Chapter 10 RB, i.e. the provisions ruling the competence of courts in Sweden. If a court has jurisdiction over the case

[200] Cf. ch. 15 secs. 1 to 3 and Section 6 RB.

according to these provisions, it has such a connection factor to Sweden that jurisdiction is normally given.

Generally, the place of jurisdiction is the place where the defendant has his actual residence according to Chapter 10, Section 1 RB. Hence, if the defendant has his actual residence in Sweden, a Swedish court is competent.

But also a large percentage of pecuniary claims with international connections are covered by Swedish jurisdiction. A person not resident in Sweden, Swedish citizen or not, may under certain circumstances apply to a Swedish court. This applies according to Chapter 10, Section 3 RB to claims of payment, if the defendant has domestic property and claims of movables located in Sweden.

According to Chapter 10, Section 4 RB a person may apply for an arrest at the place where he entered into the contract or into an engagement respectively. Moreover, an action concerning a damaging act may be brought according to Chapter 10, Section 8 RB in a Swedish court if the act is performed in Sweden or the damage occurred in Sweden.

If the claim of the main action is before a Swedish court, the application for the arrest shall be made to the same court. Otherwise, the competent court is the nearest regional court (*tingsrätt*) or the nearest maritime regional court respectively.[201]

In cases of a defendant resident in another contracting State of the 1988 Lugano Convention, there are other provisions applicable. The mere fact that persons from these states have assets in Sweden or that the pertinent contract was entered in Sweden is not sufficient to establish Swedish jurisdiction.

In cases where the 1952 Arrest Convention applies, the competence of Swedish courts to grant arrests is limited to maritime claims and is determined by the provisions of the Swedish Maritime Code. A Swedish court will decline competence in cases of:

- arbitration clause, no matter if it refers the dispute to arbitration in Sweden or outside;
- jurisdiction clause referring to another jurisdiction as long as the clause does not violate mandatory rules of forum;
- an already pending action before another jurisdiction.

[201] *Sc.* of Gothenburg, Kalmar, Karlstad, Luleå, Malmö, Sundsvall and Stockholm.

d) Assets to be Arrested

As mentioned above, Sweden has no special domestic rules with regard to the arrest of ships. The basic rules described above will also apply if the object of the attachment is fuel oil on board the ship, freight, cargo, bank accounts, etc.

Concerning the attachment of cargo, it can sometimes be difficult to establish not only the ownership but also when ownership is transferred in stages from one person to another. Change of ownership does not automatically come at the same time, as the risk and liability is transferred from the seller to the buyer.

Every claim against an operator may be secured by an arrest of his whole property, i.e. it need not necessarily be of a maritime nature.[202] Only property owned by the debtor can be arrested.[203] If, however, the ship with regard to which the claim arose is owned by an operator who is not personally liable, the ship can be arrested even in cases where it was operated by a demise charterer or a time charterer, as mentioned earlier.

The most common type of arrest is the one with regard to certain amount of the debtor's property. The creditor may then apply for arrest of any ship including a sistership, owned by the debtor, i.e. whether it has a connection with the substantive claim or not.

With regard to the concrete arrest, however, e.g. based on a maritime lien, the warrant of arrest is only granted against a specific ship and may thus not be enforced against a sistership even if it is owned by the same debtor.

For international cases, according to Chapter 4, Section 4 MC, an arrest may be laid upon a ship with regard to which the maritime claim arose and every sistership in so-called maritime claims according to Chapter 4, Section 3 no. 1 to 14 MC. In cases relating to ownership, dispute between co-owners, or mortgage according to Chapter 4, Section 3 no. 15 to 17 MC, an arrest against a sistership is prohibited.

A ship may not, according to Chapter 4, Section 6 MC, be arrested more than once in respect of the same maritime claim.

According to the Act with Certain Provisions concerning Foreign State Vessels etc. (*Lagen med vissa bestämmelser om främmande statsfartyg m.m.* 1938:470), warships and other ships

[202] *Departementsserien* Ju 1991:70, p. 28.

[203] Olivecrona, note 207, p. 194.

used for sovereign purposes are immune from arrest.[204] State-owned ships used for civil purposes, however, are not protected by immunity. If a State-owned ship is arrested, the foreign State may claim immunity through an official certificate of the diplomatic representation of the foreign State in Sweden and shall be accepted and followed, according to the Royal Announcement (1959:540) in connection with Section 5 of the Act (1938:470), as long as the State is member to the 1926 Convention.

According to Chapter 4, Section 1 MC in connection with Section 1 of the Act (1938:470) a ship owned or exclusively used by the Swedish State may not be arrested.

2. Execution of Arrest

The creditor may apply for an arrest in the pending action at the court but should apply to the court having jurisdiction over the enforcement. The competent court is the court of the district in which the ship is present or the debtor is domiciled.[205] The court should give the debtor the opportunity to be heard. In urgent cases it may grant a provisional warrant of arrest, if requested. After the access or the non-appearance within a certain time limit of the answer, the court will issue a writ of execution.

This writ may cover, as already mentioned, a particular ship or as much of the debtor's assets as necessary to satisfy the creditor's claim. According to Section 66 UL, parts of the ship may not be attached other than through the arrest of the whole ship.

The writ of execution shall be given to the creditor who may immediately apply to the local bailiff (*kronofogdemyndigheten*) for execution. The debtor has a possibility to appeal to the Higher Regional Court (*hovrätt*).[206] In case the court notifies the bailiff, it is recommended for the claimant to request the court to effect the notification of the bailiff by facsimile in order to save time.

[204] Implementation of the Convention on State-Owned Vessels from 10th April 1926 and its protocol from 24th May 1934.

[205] Vinge, *Om kvarstad i civila mål*, in: Handelshögskolans i Göteborg skriftserie (Gothenburg 1951), p. 14.

[206] Svea hovrätt (Stockholm), Göta Hovrätt (Jönköping), hovrätten över Skåne och Blekinge (Malmö), hovrätten för Västra Sverige (Gothenburg), hovrätten för Nedre Norrland (Sundsvall), hovrätten för Övre Norrland (Umeå).

According to Chapter 16, Section 14 UB the arrest in principle prohibits the use of the particular property and the transfer of ownership or other disposition of this property according to Chapter 16, Section 14 UB to the prejudice of the creditor, as long as the creditor or the bailiff does not approve according to Chapter 16, Section 16 UB such disposition. This prohibition applies from the moment when the bailiff arrests the ship. If, however, the court mentions certain property in its warrant of arrest, the prohibition applies already from the moment of the decision-making (Chapter 16, Section 14 UB in connection with Chapter 4, Section 29 UB).[207]

In the case of arrest the bailiff has to immediately notify the Ships' Register Authority or the foreign equivalent immediately. With regard to Swedish ships or ships under construction which are not yet registered, the bailiff also has to notify the Ships' Register Authority (Chapter 15, Section 4 UF). If a Swedish ship is arrested by a foreign authority, the master shall immediately notify the nearest Swedish foreign mission in the foreign State or the Ships' Register Authority immediately.[208]

Inscriptions are invalidated if applied for after the application of the arrest was taken up. The Ship Register Authority has to be informed at once via telephone notification.[209] In case a Swedish ship is arrested abroad, the master of the ship in question has to notify the Ship Register Authority.[210]

A maritime mortgage which is granted despite the above mentioned prohibition prevails the enforcement of a maritime lien which would be of no effect. The transfer of ownership, regardless of restraint on alienation, is not valid with regard to the plaintiff to the arrest procedure or other creditors. A *bona fide* ownership as well as maritime lien is, however, still possible, but just as long as the arrest is not entered into the register.[211]

[207] Cf. UB Kom., p. 564.

[208] Chapter 6 Section 13 MC.

[209] Cf. Section 4 of the regulation on the courts duty to announce certain decisions of executive importance (*Förordningen om skyldighet för domstol att lämna underrättelser om vissa beslut av exekutiv betydelse* 1981:967) and ch. 15 Section 4 UF.

[210] Rune, note 209, p. 178.

[211] Section 269 MC; cf. Nytt Juridiskt Arkiv, avd. II, (1975), p. 431.

Contrariwise, an arrest does not hinder the enforcement of a maritime lien on the basis of a maritime mortgage, which was granted before the warrant of arrest due to another creditor's claim.[212]. Moreover, it cannot even hinder that a maritime lien, e.g. one for wage claims, is created in the property during the arrest. The property also can be arrested because of other claims.[213] If there is other property accessible, however, this shall first be arrested, as long as the claim is not connected to a privilege on certain property. The arrest does not *per se* accord a privilege. But if property is attached because of another claim, the property shall be regarded as simultaneously attached for the claim of the arresting creditor. According to Chapter 16, Section 15 UB, the debtor may have the arrest lifted.

As mentioned above, the arrest reserves access to the arrested property to the creditor. Due to the arrest the property is available, not only for the claim of the creditor who arrested the property, but also for claims of other creditors.[214] The arresting creditor has a better right due to the arrest of a ship, in relation to other creditors. As a special legal consequence of an arrest, the enforced measure through arrest and forced sale of property overrides the timebar of the maritime lien according to Chapter 3, Section 40 MC.

Arrest does not prevent another creditor from arresting the same object (successive arrest). Nor does an arrest prevent the arrested object from being distrained. The creation of a maritime lien is possible even during or after the arrest, i.e. wages of the crew, port dues, etc. will obtain priority before a claim which is not secured by an equivalent maritime lien. Consequently, an arrest over a longer period of time will be of limited value, unless it leads to a bank guarantee or similar not competing with other securities, because of a constant decrease of the security in case the operator fails to pay the crew or port dues. Maritime liens according to Chapter 3, Section 36 MC are:

> **Section 36**: "A maritime lien upon a vessel shall secure any claim against the vessel owner or operator concerning
>
> 1. wages and other sums due to the master or other person employed on board on account of his employment on the vessel,
> 2. port, canal and other waterway dues and pilotage dues,
> 3. compensation for personal injury which has occurred in direct connection with the operation of the vessel,
> 4. compensation for property damage which has occurred in direct connection with the operation of the vessel, provided the claim is not capable of being based on contract,
> 5. salvage remuneration, compensation for removal of wreck and contribution in general average.
>
> Items 3 and 4 of the preceding paragraph shall not apply to claims for compensation for nuclear damage.
>
> A maritime lien shall apply even if the debtor is a non-operating vessel owner or a charterer or other person who manages the vessel for her owner."

The debtor may, according to Chapter 15, Section 8 RB have the arrest lifted by paying his debt or posting security for the claim.

3. Arrest of a Foreign Ship

Sweden has become a member of the 1952 Arrest Convention by now. Sweden participated in the 1952 diplomatic conference in Brussels but did not sign the Convention until 1993. During a remission of the 1952 Arrest Convention in Sweden in 1955, most of the instances rejected a possible accession. They considered the Convention in many respects as intricate and unclear, especially the forum rules. The main criticism was that the contracting States neglected certain fields and established own domestic rules, which prevented a legal unification.

The 1958 Swedish Maritime Law Commission shared this opinion that there were important disadvantages connected with a Swedish accession to the Convention.[215] The Commission left it open, however, to accede the Convention.

The situation in Sweden has hardly changed since then. There is still severe criticism, but an accession has become unavoidable because of the 1988 Lugano Convention.[216] Many

[212] Cf. ch.16 Section14 (2) and ch.4 Section29 (2) UB; The arrest provides security for all creditors of the debtor through keeping the access to the property for an execution. If the creditor who obtained the arrest would drop the arrest for any reason, creditors other the mentioned one would have no possibility to satisfy their claims by the firstly arrested property. Consequently, it seems to be right to allow even other creditors to apply for an arrest in the already arrested property (cf. ch.16 Section15 UB).

[213] Chapter 16 Section 14 (2) UB in connection with ch. 4 Section 29 (2) UB.

[214] Rune, note 209, p. 178.

[215] Cf. Statens Offentliga Utredningar, 1965:18, p. 94.

of the important shipping nations and all EC coastal states are members to the 1952 Arrest Convention.

The jurisdiction of Swedish courts in maritime cases with international connection is usually established by the ship located in Sweden, which has been the object of arrest or other security measure on which the claim is based. The 1988 Lugano Convention does not allow the applicability of extensive rules on jurisdiction concerning cases where the defendant is domiciled in a contracting State. Whereas solely an accession to the 1988 Lugano Convention would limit the competence of Swedish courts substantially, to decide over maritime claims, Sweden preserves jurisdiction of its courts to decide on the existence of a maritime claim during the arrest through its adherence to the 1952 Arrest Convention.

A controversial opinion criticises mainly that for the ships affected by the 1952 Arrest Convention, arrest is an exclusive remedy available only for certain maritime claims mentioned in the list of Article 1 of the 1952 Arrest Convention and the ordinary arrest of other property is excluded. Contrary to Germany and Sweden, many member States of the 1952 Arrest Convention do not require security, and in addition countries like England do not penalise a creditor for unjustified arrest unless he has been grossly negligent. The 1952 Arrest Convention does not require security to be lodged by the creditor. Therefore it becomes to easy for member States to arrest Swedish ships, and it does not help that Sweden reserves these requirements against foreign ships. Hence, Sweden lost a valuable possibility of obtaining security for claims not covered by the above mentioned list.[217]

The provisions of the 1952 Arrest Convention have been implemented into Chapter 4 of the new Swedish Maritime Code from 1st October 1994.

Reference has already been made to Articles 1 and 2 of the 1952 Arrest Convention, implemented into Chapter 4, Section 3 MC.[218] Before Sweden became a party to the 1952 Arrest Convention, any ship could be arrested in connection with any money claim of the creditor against the operator. Since Sweden's membership, however, an arrest of a foreign

[216] A ratification of the 1952 Arrest Convention was practically a condition for the Lugano Convention and was also needed because the Lugano Convention would otherwise deprive Sweden of the right to attach foreign vessels ("exorbitant for a"). Hultman, *Opinion: On diplomatic conference "on arrest of ships" mm* in: Ju 98, pp. 2470 *et seqq.*

[217] Hultman, note 221, p. 2470.

[218] Cf. 1993 Act on Arrest of Ships in International Relations.

ship is permissible only in connection with maritime claims, which are based on any of the following circumstances:

1. damage caused by any vessel either in collision or otherwise (*skada som har orsakats av ett fartyg genom sammanstötning eller på något annat sätt*),
2. loss of life or personal injury caused by any vessel or occurring in connection with the operation of any vessel (*dödsfall eller personskada som har orsakats av ett fartyg eller som har inträffat I samband med driften av ett fartyg*),
3. salvage (*bärgning*),
4. demise charter agreement (*skeppslegoavtal*),
5. agreement concerning the carriage of goods on board a vessel on account of a charterparty, bill of lading or any such document (*avtal som rör befrodran av gods med ett fartyg på grundval av certeparti, konossement eller liknande*),
6. loss of or damage to goods including luggage carried in any vessel (*förlust av eller skada på gods inklusive regods under befordran med fartyg*),
7. general average (*gemensamt haveri*),
8. bottomry (*bodmeri*),
9. towage (*bogsering*),
10. pilotage (*lotsning*),
11. delivery of goods or materials for a vessel's operation or maintenance (*leverans av varor eller materiel för ett fartygs drift eller underhåll*),
12. shipbuilding, repair or equipment of a vessel or dock charges (*byggande, reparation eller utrustande av ett fartyg eller kostnader för dockning*),
13. wages of the master or any other crew member on account of his employment on board the vessel (*lön eller annan gottgörelse till befälhavaren eller annan ombordanställd på grund av dennes anställning på fartyg*),
14. master's disbursements and disbursements made by a sender, charterer or shipper or agents on behalf of the vessel or her owner (*befälhavares utlägg samt utlägg som gjorts av avsändare, befraktare eller avlastere eller agenter för fartygets eller dess ägares räkning*),

15. any dispute as to the ownership of a vessel (*tvist om äganderätten till ett fartyg*),
16. any dispute between co-owners of any vessel as to the ownership or possession of the vessel or the operation of or earnings from the vessel (*tvist mellan delägare till ett fartyg om äganderätten eller besittningen till fartyget eller driften av eller intäkterna från detta*), and
17. any mortgage or other contractual hypothecation of the vessel (*panträtt på grund av inteckning eller annan på avtal grundad panträtt I fartyg*).

The 1952 Arrest Convention prevents arrest with regard to unpaid taxes and other public charges, e.g. port and waterway dues. An arrest is not possible for:

- fee claims from agents, stevedores, ship brokers, insurance brokers or other middlemen,
- unpaid premiums with respect to hull insurance or P&I coverage, or
- claims that arise out of the sale of a ship.

The *Svea* Court of Appeal remarked 1st October 1999 in the "**Russ no. 1 case**" that under Chapter 4, Section 3 MC international arrest is available only for claims according to a list which could, but did not as yet, include port dues; that a reservation for state and municipal claims in Chapter 4, Section 1 MC (Article 2 1952 Arrest Convention) does not extend to private claims such as harbour dues.[219]

[219] Stockholm DC IV 23 Sept. 1999, Svea AC V 1 October 1999 matter Ö 6976-99 (**Russ no. 1**).

IV. Conclusion

The arrest is of a great significance to the people involved in maritime shipping, even though it is not as important as 'life itself' any longer, as stated by Ritter in 1911.[220] To arrest a ship is not a question of unfairness, but often it is the only way to receive security for a claim. This is recognised by international law, and consequently there is an international framework limiting the arrest for commercial purposes.

Nevertheless, the 1952 Arrest Convention is interpreted differently by different European courts.

At present, most arrests in Germany are enforced against foreign ships, which increase the importance of international norms.

While the 1952 Arrest Convention has endeavoured to limit the possibilities to arrest ships in international relations, the 1999 Arrest Convention, once in force will provide an open-ended list, which will ease the access to arrest.

Characteristic for today's arrest is that it is used mostly in an international context. The development of unification of law connected to maritime arrest, however, is not only insufficiently established, but rather unwanted by most States. The preparatory works of both the 1952 and the 1999 Arrest Convention show that most States are not willing to sacrifice their legal practice to the benefit of a common legal practice. Hence, according to Article 6 of the 1952 and the 1999 Arrest Convention the *lex fori* is still applicable.

If the applicable law does not, for example, permit enforcement of a claim against a ship owned by a person who is not liable, the mere fact that an arrest under the Convention is permissible does not automatically mean that the arrest has to be made or that, if the arrest is made, the judgement against the person may be enforced against the ship or against any security which has been lodged by the operator.

The 1999 Arrest Convention has established a set of principles which are widely regarded as reasonably balanced, between the interests of legitimate claimants and those with ship-owning interests. Only slight changes, however, have been established by the 1999 Arrest Convention, but the 1952 Arrest Convention has achieved a widespread degree of acceptance and major changes might have risked its well-tried principles. Due to the

[220] Ritter in: Das Recht (1911), p. 399.

objections of the common law jurisdiction an exhaustive list had to be retained. Nevertheless, it was possible to extent the right of arrest to further claims, e.g. for environmental damage, wreck removal and insurance premiums.

Time will show if States, in particular their legislatures and maritime administrations, will accept and incorporate the provisions of this new Convention and thus advance the cause of the harmonisation of international maritime law. This would be to the benefit of the operators, cargo owners and masters, facing fewer uncertainties.

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ANNEX I

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO THE ARREST OF SEA-GOING SHIPS

10th May 1952

...

Having recognized the desirability of determining by agreement certain uniform rules of law relating to the arrest of sea-going ships,

...

Art. 1. In this Convention the following words shall have the meanings hereby assigned to them:

(1) 'Maritime Claim' means a claim arising out of one or more of the following:

a) damage caused by any ship either in collision or otherwise;
b) loss of life or personal injury caused by any ship or occurring in connection with the operating of any ship;
c) salvage;
d) agreement relating to the use or hire of any ship whether by charterparty or otherwise;
e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
f) loss or damage to goods including baggage carried in any ship;
g) general average;
h) bottomry;
i) towage;
j) pilotage;
k) goods or materials wherever supplied to a ship for her operation or maintenance;
l) construction, repair or equipment of any ship or dock charges and dues;
m) wages of Masters, Officers, or crew;
n) Master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
o) disputes as to the title to or ownership of any ship;

p) disputes between co-owners of any ship as to the ownership, possession employment or earnings of that ship;
q) the mortgage or hypothecation of any ship.

(2) 'Arrest' means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgement.

(3) 'Person' includes individuals, partnerships and bodies corporate, Governments, their Departments, and Public Authorities.

(4) 'Claimant' means a person who alleges that a maritime claim exists in his favour.

Art. 2. A ship flying the flag of one of the contracting states may be arrested in the jurisdiction of any of the contracting states in respect of any maritime claim, but in respect of no other claim; but nothing in this Convention shall be deemed to extend or restrict any right or Powers vested in any Governments or Departments, Public Authorities, or Dock of Harbour Authorities under their existing domestic laws or regulations to arrest, detain or otherwise prevent the sailing of vessels within their jurisdiction.

Art. 3. (1) Subject to the provisions of § 4 of this Article and of Article 10, a claimant may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship, even though the ship arrested be ready to sail; but no ship, other then the particular ship in respect of which the claim arose, maybe arrested in respect of any of the maritime claims enumerated in Article 1 (1) o), p) or q).

(2) Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.

(3) A ship shall not be arrested, nor shall bail or other security be given more than once in any one or more of the jurisdiction of any of the Contracting States in respect of the same maritime claim by the same claimant; and, if a ship has been arrested in any one of such jurisdiction, or bail or other security has been given in such jurisdiction either to release the ship or to avoid a threatened arrest, any subsequent arrest of the ship or of any ship in the

same ownership by the same claimant for the same maritime claim shall be set aside, and the ship released by the Court or other appropriate judicial authority of that State, unless the claimant can satisfy the Court or other appropriate judicial authority that the bail or other security had been finally released before the subsequent arrest or that there is other good cause for maintaining that arrest.

(4) When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrested such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claims.

Art. 4. A ship may only be arrested under the authority of Court or of the appropriate judicial authority of the Contracting State in which the arrest is made.

Art. 5. The Court or other appropriate judicial authority within whose jurisdiction the ship has been arrested shall permit the release of the ship upon sufficient bail or other security being furnished, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in Article 1 (1) o) and p). In such cases the Court or other appropriate judicial authority may 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.

In default of agreement between the Parties as to the sufficiency of the bail or other security, the Court or other appropriate judicial authority shall determine the nature and amount thereof.

The request to release the ship against such security shall not be construed as an acknowledgement of liability or as a waiver of the benefit of a legal limitation of liability of the owner of a ship.

Art. 6. All questions whether in any case the claimant is liable in damages for the arrest of a ship or for the costs of the bail or other security furnished to release or prevent the arrest of a ship, shall be determined by the law of the Contracting State in whose jurisdiction the arrest was made or applied for.

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 law of the Contracting State in which the arrest was made or applied for.

Art. 7. (1) The Courts of the country in which the arrest was made shall have jurisdiction to determine the case upon its merits if the domestic law of the country in which the arrest is made gives jurisdiction to such Courts; or in any of the following cases namely:

a) if the claimant has his habitual residence or principal place of business in the country in which the arrest was made;
b) if the claim arose in the country in which the arrest was made;
c) if the claim concerns the voyage of the ship during which the arrest was made;
d) if the claim arose out of a collision or in circumstances covered by Article 13 of the International Convention for unification of certain rules of law with respect to collisions between vessels, signed at Brussels on September 23, 1910;
e) if the claim is for salvage;
f) if the claim is upon a mortgage or hypothecation of a ship arrested.

(2) If the Court within whose jurisdiction the ship was arrested has not jurisdiction to decide upon the merits, the bail or other security given in accordance with Article 5 to procure the release of the ship shall specifically provide that it is given as security for the satisfaction of any judgement which may eventually be pronounced by a Court having jurisdiction so to decide; and the Court or other appropriate judicial authority of the country in which the arrest is made shall fix the time within which the claimant shall bring an action before a Court having such jurisdiction.

(3) If the parties have agreed to submit the dispute to the jurisdiction of a particular Court other than that within whose jurisdiction the arrest was made or to arbitration, the Court or other appropriate judicial authority within whose jurisdiction the arrest was made may fix the time within which the claimant shall bring proceedings.

(4) If, in any of the cases mentioned in the two preceding paragraphs, the action or proceedings are not brought within the time so fixed, the defendant may apply for the release of the ship or of the bail or other security.

(5) This Article shall not apply in cases covered by the provisions of the revised Rhine Navigation Convention of October 17, 1868.

Art.8 (1) The provisions of this Convention shall apply to any vessel flying the flag of a Contracting State in the jurisdiction of any Contracting State.

(2) A ship flying the flag of a none-Contracting State maybe arrested in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in Article 1 or of any other claim for which the law of the Contracting State permits arrest.

(3) Nevertheless any Contracting State shall be entitled wholly or partly to exclude from the benefits of this Convention any Government of a none-Contracting State or any person who has not, at the time of the arrest, his habitual residence or principal place of business in one of the Contracting States.

(4) Nothing in this Convention shall modify or affect the roles of law in force in the respective Contracting State relating to the arrest of any ship within the jurisdiction of the State of her flag by a person who has his habitual residence or principal place of business in that State.

(5) When a maritime claim is asserted by a third party other then the original claimant, whether by subrogation, assignment or otherwise, such third party shall, for the purpose of this Convention, be deemed to have the same habitual residence or principal place of business as the original claimant.

Art.9 Nothing in this Convention shall be construed as creating a ride of action, which, a part from the provisions of this Convention, would not arise under the law applied by the Court which had seisin of the case, nor as creating any maritime lines which do not exist under such law or under the Convention on Maritime Mortgages and Liens, if the letter is applicable.

Art.10 The High Contracting Parties may at the time of signature, deposit of ratification or accession, reserve

a)the right not to apply this Convention to the arrest of a ship for any of the claims enumerated in paragraphs o and p of Article 1, but to apply their domestic laws to such claims;

b)the right not to apply the first paragraph of Article 3 to the arrest of a ship, within their jurisdiction, for claims set out in Article 1, paragraph q.

Art.11 The High Contracting Parties undertake to submit to arbitration any disputes between States arising out of the interpretation or application of this Convention, but this shall be without prejudice to the obligations of those High Contracting Parties who have agreed to submit their disputes to the International Court of Justice.

Art. 12 This Convention shall be open for signature by the States represented at the Ninth Diplomatic Conference on Maritime Law. The protocol of signature shall be drawn up through the good offices of the Belgian Ministry of Foreign Affairs.

Art. 13 This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Ministry of Foreign Affairs which not shall notify all signatory and acceding States of the deposit of any such instruments.

Art. 14

a)This Convention shall come into force between the two States which first ratify it, six months after the date of the deposit of the second instrumentof ratification.

b)This Convention shall come into force in respect of each signatory State which ratifies it after the deposit of the second instrument of ratification six months after the date of the deposit of the instrument of ratification of that State.

Art. 15 Any State not represented at the Ninth Diplomatic Conference on Maritime Law may accede to this Convention.

The accession of any State shall be notified to the Belgian Ministry of Foreign Affairs which shall inform through diplomatic channels all signatory and acceding States of such notification.

The Convention shall come into force in respect of the acceding State six months after the date of the receipt of such notification but not before the Convention has come into force in accordance with the provisions of Article 14 a).

Art. 16 Any High Contracting Party may three years after the coming into force of this Convention in respect of such High Contracting Party or at any time thereafter request that a conference be convened in order to consider amendments to the Convention. Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which shall convene the conference within six months thereafter.

Art. 17 Any High Contracting Party shall have the right to denounce this Convention at any time after the coming into force thereof in respect of such High Contracting Party. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government which shall inform through diplomatic channels all the other High Contracting Parties of such notification.

Art. 18

a)Any High Contracting Party may at the time of its ratification of or accession to this Convention or at any time thereafter declare by written notification to the Belgian Ministry of Foreign Affairs that the Convention shall extend to any of the territories for whose international relations it is responsible. The Convention shall six months after the date of the receipt of such notification by the Belgian Ministry of Foreign Affairs extend to the territories named therein, but not before the date of the coming into force of the Convention in respect of such High Contracting Party.

b)A High Contracting Party which has made a declaration under a of this Article extending the Convention to any territory for whose international relations it is responsible may at any time thereafter declare by notification given to the Belgian Ministry of Foreign Affairs that the Convention shall cease to extend to such territory and the Convention shall one year after the receipt of the notification by the Belgian Ministry of Foreign Affairs cease to extend thereto.

c)The Belgian Ministry of Foreign Affairs shall inform through diplomatic channels all signatory and acceding States of any notification received by it under this Article.

Done at Brussels, on May 10, 1952, in the French and English languages, the two texts being equally authentic.

ANNEX II

INTERNATIONAL CONVENTION ON ARREST OF SHIPS

March 12, 1999

The States Parties to this Convention,

Recognizing the desirability of facilitating the harmonious and orderly development of world seaborne trade,

Convinced of the necessity for a legal instrument establishing international uniformity in the field of arrest of ships which takes account of recent developments in related fields,

Have agreed as follows:

Article 1 [Definitions]

For the purposes of this Convention:

(1) "Maritime Claim" means a claim arising out of one or more of the following:

(a) loss or damage caused by the operation of the ship;

(b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;

(c) salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;

(d) damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph (d);

(e) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;

(f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;

(g) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;

(h) loss of or damage to or in connection with goods (including luggage) carried on board the ship;

(i) general average;

(j) towage;

(k) pilotage;

(l) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;

(m) construction, reconstruction, repair, converting or equipping of the ship;

(n) port, canal, dock, harbour and other waterway dues and charges;

(o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;

(p) disbursements incurred on behalf of the ship or its owners;

(q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;

(r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;

(s) any dispute as to ownership or possession of the ship;

(t) any dispute between co-owners of the ship as to the employment or earnings of the ship;

(u) a mortgage or a "hypothèque" or a charge of the same nature on the ship;

(v) any dispute arising out of a contract for the sale of the ship.

(2) "Arrest" means any detention or restriction on removal of a ship by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instrument.

(3) "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

(4) "Claimant" means any person asserting a maritime claim.

(5) "Court" means any competent judicial authority of a State.

Article 2 [Powers of arrest]

(1) A ship may be arrested or released from arrest only under the authority of a Court of the State Party in which the arrest is effected.

(2) A ship may only be arrested in respect of a maritime claim but in respect of no other claim.

(3) A ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is effected is to be adjudicated in a State other than the State where the arrest is effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.

(4) Subject to the provisions of this Convention, the procedure relating to the arrest of a ship or its release shall be governed by the law of the State in which the arrest was effected or applied for.

Article 3 [Exercise of right of arrest]

(1) Arrest is permissible of any ship in respect of which a maritime claim is asserted if:

(a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or

(b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or
(c) the claim is based upon a mortgage or a "hypothèque" or a charge of the same nature on the ship; or
(d) the claim relates to the ownership or possession of the ship; or
(e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.

(2) Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose:

(a) owner of the ship in respect of which the maritime claim arose; or
(b) demise charterer, time charterer or voyage charterer of that ship.

This provision does not apply to claims in respect of ownership or possession of a ship.

(3) Notwithstanding the provisions of paragraphs 1 and 2 of this article, the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the law of the State where the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.

Article 4 [Release from arrest]

(1) A ship which has been arrested shall be released when sufficient security has been provided in a satisfactory form, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in article 1, paragraphs 1 (s) and (t). In such cases, the Court may permit the person in possession of the ship to continue trading the ship, upon such person providing sufficient security, or may otherwise deal with the operation of the ship during the period of the arrest.

(2) In the absence of agreement between the parties as to the sufficiency and form of the security, the Court shall determine its nature and the amount thereof, not exceeding the value of the arrested ship.

(3) Any request for the ship to be released upon security being provided shall not be construed as an acknowledgement of liability nor as a waiver of any defence or any right to limit liability.

(4) If a ship has been arrested in a non-party State and is not released although security in respect of that ship has been provided in a State Party in respect of the same claim, that security shall be ordered to be released on application to the Court in the State Party.

(5) If in a non-party State the ship is released upon satisfactory security in respect of that ship being provided, any security provided in a State Party in respect of the same claim shall be ordered to be released to the extent that the total amount of security provided in the two States exceeds:

(a) the claim for which the ship has been arrested, or
(b) the value of the ship,

whichever is the lower. Such release shall, however, not be ordered unless the security provided in the non-party State will actually be available to the claimant and will be freely transferable.

(6) Where, pursuant to paragraph 1 of this article, security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified, or cancelled.

Article 5 [Right of rearrest and multiple arrest]

(1) Where in any State a ship has already been arrested and released or security in respect of that ship has already been provided to secure a maritime claim, that ship shall not thereafter be rearrested or arrested in respect of the same maritime claim unless:

(a) the nature or amount of the security in respect of that ship already provided in respect of the same claim is inadequate, on condition that the aggregate amount of security may not exceed the value of the ship; or

(b) the person who has already provided the security is not, or is unlikely to be, able to fulfil some or all of that person's obligations; or
(c) the ship arrested or the security previously provided was released either:

(i) upon the application or with the consent of the claimant acting on reasonable grounds, or
(ii) because the claimant could not by taking reasonable steps prevent the release.

(2) Any other ship which would otherwise be subject to arrest in respect of the same maritime claim shall not be arrested unless:

(a) the nature or amount of the security already provided in respect of the same claim is inadequate; or
(b) the provisions of paragraph 1 (b) or (c) of this article are applicable.

(3) "Release" for the purpose of this article shall not include any unlawful release or escape from arrest.

Article 6 [Protection of owners and demise charterers of arrested ships]

(1) The Court may as a condition of the arrest of a ship, or of permitting an arrest already effected to be maintained, impose upon the claimant who seeks to arrest or who has procured the arrest of the ship the obligation to provide security of a kind and for an amount, and upon such terms, as may be determined by that Court for any loss which may be incurred by the defendant as a result of the arrest, and for which the claimant may be found liable, including but not restricted to such loss or damage as may be incurred by that defendant in consequence of:

(a) the arrest having been wrongful or unjustified; or
(b) excessive security having been demanded and provided.

(2) The Courts of the State in which an arrest has been effected shall have jurisdiction to determine the extent of the liability, if any, of the claimant for loss or damage caused by the

arrest of a ship, including but not restricted to such loss or damage as may be caused in consequence of:

(a) the arrest having been wrongful or unjustified, or
(b) excessive security having been demanded and provided.

(3) The liability, if any, of the claimant in accordance with paragraph 2 of this article shall be determined by application of the law of the State where the arrest was effected.

(4) If a Court in another State or an arbitral tribunal is to determine the merits of the case in accordance with the provisions of article 7, then proceedings relating to the liability of the claimant in accordance with paragraph 2 of this article may be stayed pending that decision.

(5) Where pursuant to paragraph 1 of this article security has been provided, the person providing such security may at any time apply to the Court to have that security reduced, modified or cancelled.

Article 7 [Jurisdiction on the merits of the case]

(1) The Courts of the State in which an arrest has been effected or security provided to obtain the release of the ship shall have jurisdiction to determine the case upon its merits, unless the parties validly agree or have validly agreed to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.

(2) Notwithstanding the provisions of paragraph 1 of this article, the Courts of the State in which an arrest has been effected, or security provided to obtain the release of the ship, may refuse to exercise that jurisdiction where that refusal is permitted by the law of that State and a Court of another State accepts jurisdiction.

(3) In cases where a Court of the State where an arrest has been effected or security provided to obtain the release of the ship:

(a) does not have jurisdiction to determine the case upon its merits; or
(b) has refused to exercise jurisdiction in accordance with the provisions of paragraph 2 of this article, such Court may, and upon request shall, order a period of time within

which the claimant shall bring proceedings before a competent Court or arbitral tribunal.

(4) If proceedings are not brought within the period of time ordered in accordance with paragraph 3 of this article then the ship arrested or the security provided shall, upon request, be ordered to be released.

(5) If proceedings are brought within the period of time ordered in accordance with paragraph 3 of this article, or if proceedings before a competent Court or arbitral tribunal in another State are brought in the absence of such order, any final decision resulting there from shall be recognized and given effect with respect to the arrested ship or to the security provided in order to obtain its release, on condition that:

(a) the defendant has been given reasonable notice of such proceedings and a reasonable opportunity to present the case for the defence; and
(b) such recognition is not against public policy *(ordre public)*.

(6) Nothing contained in the provisions of paragraph 5 of this article shall restrict any further effect given to a foreign judgment or arbitral award under the law of the State where the arrest of the ship was effected or security provided to obtain its release.

Article 8 [Application]

(1) This Convention shall apply to any ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party.

(2) This Convention shall not apply to any warship, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.

(3) This Convention does not affect any rights or powers vested in any Government or its departments, or in any public authority, or in any dock or harbour authority, under any international convention or under any domestic law or regulation, to detain or otherwise prevent from sailing any ship within their jurisdiction.

(4) This Convention shall not affect the power of any State or Court to make orders affecting the totality of a debtor's assets.

(5) Nothing in this Convention shall affect the application of international conventions providing for limitation of liability, or domestic law giving effect thereto, in the State where an arrest is effected.

(6) Nothing in this Convention shall modify or affect the rules of law in force in the States Parties relating to the arrest of any ship physically within the jurisdiction of the State of its flag procured by a person whose habitual residence or principal place of business is in that State, or by any other person who has acquired a claim from such person by subrogation, assignment or otherwise.

Article 9 [Non-creation of maritime liens]

Nothing in this Convention shall be construed as creating a maritime lien.

Article 10 [Reservations]

(1) Any State may, at the time of signature, ratification, acceptance, approval, or accession, or at any time thereafter, reserve the right to exclude the application of this Convention to any or all of the following :

(a) ships which are not seagoing;
(b) ships not flying the flag of a State Party;
(c) claims under article 1, paragraph 1 (s).

(2) A State may, when it is also a State Party to a specified treaty on navigation on inland waterways, declare when signing, ratifying, accepting, approving or acceding to this Convention, that rules on jurisdiction, recognition and execution of court decisions provided for in such treaties shall prevail over the rules contained in article 7 of this Convention.

Article 11 [Depositary]

This Convention shall be deposited with the Secretary-General of the United Nations.

Article 12 [Signature, ratification, acceptance, approval and accession]

(1) This Convention shall be open for signature by any State at the Headquarters of the United Nations, New York, from 1 September 1999 to 31 August 2000 and shall thereafter remain open for accession.

(2) States may express their consent to be bound by this Convention by:

(a) signature without reservation as to ratification, acceptance or approval; or
(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
(c) accession.

(3) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the depositary.

Article 13 [States with more than one system of law]

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

(3) In relation to a State Party which has two or more systems of law with regard to arrest of ships applicable in different territorial units, references in this Convention to the Court of a State and the law of a State shall be respectively construed as referring to the Court of the relevant territorial unit within that State and the law of the relevant territorial unit of that State.

Article 14 [Entry into force]

(1) This Convention shall enter into force six months following the date on which 10 States have expressed their consent to be bound by it.

(2) For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect three months after the date of expression of such consent.

Article 15 [Revision and amendment]

(1) A conference of States Parties for the purpose of revising or amending this Convention shall be convened by the Secretary-General of the United Nations at the request of one-third of the States Parties.

(2) Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to the Convention, as amended.

Article 16 [Denunciation]

(1) This Convention may be denounced by any State Party at any time after the date on which this Convention enters into force for that State.

(2) Denunciation shall be effected by deposit of an instrument of denunciation with the depositary.

(3) A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the depositary.

Article 17 [Languages]

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT Geneva this twelfth day of March, one thousand nine hundred and ninety-nine.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

ANNEX III

EEC Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters

September 27, 1968

Preamble

THE HIGH CONTRACTING PARTIES to the Treaty establishing the European Economic Community,

DESIRING to implement the provisions of Article 220 of that Treaty by virtue of which they undertook to secure the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals;

ANXIOUS to strengthen in the Community the legal protection of persons therein established;

CONSIDERING that it is necessary for this purpose to determine the international jurisdiction of their courts, to facilitate recognition and to introduce an expeditious procedure for securing the enforcement of judgments, authentic instruments and court settlements;

HAVE DECIDED to conclude this Convention and to this end have designated as their Plenipotentiaries:

[…]

WHO, meeting within the Council, having exchanged their Full Powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

Title I
[Scope]

Art. 1 This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

This Convention shall not apply to:

1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;

2. bankruptcy, proceedings relating to the windingup of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
3. social security;
4. arbitration.

Title II
[Jurisdiction]

Section 1
[General provisions]

Art. 2 Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State. Persons who are not nationals of the State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.

Art. 3 Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of this Title.

In particular the following provisions shall not be applicable as against them:

- in Belgium: Article 15 of the civil code (Code civil Burgerlijk Wetboek) and Article 638 of the judicial code (Code judiciaire Gerechtelijk Wetboek),
- in Denmark: Article 248 (2) of the law on civil procedure (Lov om rettenspleje) and Chapter 3. Article 3 of the Greenland law on civil procedure (Lov for Gr›nland om rettens pleje),
- in the Federal Republic of Germany: Article 23 of the code of civil procedure (Zivilprozessordnung),
- in France: Articles 14 and 15 of the civil code (Code civil),

- in Ireland: the rules which enable jurisdiction to be founded on the document instituting the proceedings having been served on the defendant during his temporary presence in Ireland,
- in Italy: Articles 2 and 4, Nos 1 and 2 of the code of civil procedure (Codice di procedura civile),
- in Luxembourg: Articles 14 and 15 of the civil code (Code civil),
- in the Netherlands: Articles 126 (3) and 127 of the code of civil procedure (Wetboek van Burgerlijke Rechtsvordering),
- in the United Kingdom: the rules which enable jurisdiction to be founded on:

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(a) the document instituting the proceedings having been served on the defendant during his temporary presence in the United Kingdom; or
(b) the presence within the United Kingdom of property belonging to the defendant; or
(c) the seizure by the plaintiff of property situated in the United Kingdom.

Article 4 If the defendant is not domiciled in a Contracting State, the jurisdiction of the courts of each Contracting State shall, subject to the provisions of Article 16, be determined by the law of that State.

As against such a defendant, any person domiciled in a Contracting State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in the second paragraph of Article 3, in the same way as the nationals of that State.

Section 2

[Special jurisdiction]

Art. 5 A person domiciled in a Contracting State may, in another Contracting State, be sued:

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question;
2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;
3. in matters relating to tort, delict or quasidelict, in the courts for the place where the harmful event occurred;
4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;
6. as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Contracting State in which the trust is domiciled;

7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:

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has been arrested to secure such payment, or could have been so arrested, but bail or other security has been given; provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage;

Art. 6 A person domiciled in a Contracting State may also be sued:

where he is one of a number of defendants, in the courts for the place where any one of them is domiciled;

1. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;

2. on a counterclaim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending.

Art. 6a Where by virtue of this Convention a court of a Contracting State has jurisdiction in actions relating to liability arising from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that State, shall also have jurisdiction over claims for limitation of such liability.

Section 3

[Jurisdiction in matters relating to insurance]

Art. 7 In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5 (5).

Art. 8 An insurer domiciled in a Contracting State may be sued:

in the courts of the State where he is domiciled, or in another Contracting State, in the courts for the place where the policyholder is domiciled, or

if he is a coinsurer, in the courts of a Contracting State in which proceedings are brought against the leading insurer.

An insurer who is not domiciled in a Contracting State. but has a branch, agency or other establishment in one of the Contracting States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

Art. 9 In respect of liability insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Art. 10 In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured. The provisions of Articles 7, 8 and 9 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted. If the law governing such direct

actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

Art. 11 Without prejudice to the provisions of the third paragraph of Article 10, an insurer may bring proceedings only in the courts of the Contracting State in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary. The provisions of this Section shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.

Art. 12 The provisions of this Section may be departed from only by an agreement on jurisdiction:

which is entered into after the dispute has arisen, or

which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section, or

which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State, or

which is concluded with a policyholder who is not domiciled in a Contracting State, except in so far as the insurance is compulsory or relates to immovable property in a Contracting State, or

which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 12a.

Art. 12a The following are the risks referred to in Article 12 (5):

Any loss of or damage to (a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes, (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft;

Any liability, other than for bodily injury to passengers or loss of or damage to their baggage, (a) arising out of the use or operation of ships, installations or aircraft as referred to in (1) (a) above in so far as the law of the Contracting State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks, (b) for loss or damage caused by goods in transit as described in (1) (b) above;

Any financial loss connected with the use or operation of ships, installations or aircraft as referred to in (1) (a) above, in particular loss of freight or charterhire;

Any risk or interest connected with any of those referred to in (1) to (3) above.

Section 4

[Jurisdiction over consumer contract]

Art. 13 In proceedings concerning a contract concluded by a person for a purpose which can be regarded as being outside his trade or profession, hereinafter called „the consumer", jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5 (5), if it is:

a contract for the sale of goods on instalment credit terms, or

a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods, or

any other contract for the supply of goods or a contract for the supply of services, and (a) in the State of the consumer's domicile the conclusion of the contract was preceded by a specific

invitation addressed to him or by advertising, and (b) the consumer took in that State the steps necessary for the conclusion of the contract.

Where the consumer enters into a contract with a party who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

This Section shall not apply to contracts of transport.

Art. 14 A consumer may bring proceedings against the other party to a contract either in the courts of the Contracting State in which that party is domiciled or in the courts of the Contracting State in which he is himself domiciled.

Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Contracting State in which the consumer is domiciled.

These provisions shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.

Art. 15 The provisions of this Section may be departed from only by an agreement:

which is entered into after the dispute has arisen, or

which allows the consumer to bring proceedings in courts other than those indicated in this Section, or

which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which confers jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State.

Section 5

[Exclusive jurisdiction]

Art. 16 The following courts shall have exclusive jurisdiction, regardless of domicile:

in proceedings which have as their object rights in rem in, or tenancies of, immovable property, the courts of the Contracting State in which the property is situated;

in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the decisions of their organs, the courts of the Contracting State in which the company, legal person or association has its seat;

in proceedings which have as their object the validity of entries in public registers, the courts of the Contracting State in which the register is kept;

in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, the courts of the Contracting State in which the deposit or registration has been applied for, has taken place or is under the terms of an international convention deemed to have taken place;

in proceedings concerned with the enforcement of judgments, the courts of the Contracting States in which the judgment has been or is to be enforced.

Section 6

[Prorogation of jurisdiction]

Art. 17 If the parties, one or more of whom is domiciled in a Contracting State, have agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have exclusive jurisdiction. Such an agreement conferring

jurisdiction shall be either in writing or evidenced in writing or, in international trade or commerce, in a form which accords with practice in that trade or commerce of which the parties are or ought to have been aware. Where such an agreement is concluded by parties, none of whom is domiciled in a Contracting State, the courts of other Contracting States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction. The court or courts of a Contracting State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.

Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of Article 12 or 15, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 16.

If an agreement conferring jurisdiction was concluded for the benefit of only one of the parties, that party shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of this Convention.

Art. 18 Apart from jurisdiction derived from other provisions of this Convention, a court of a Contracting State before whom a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered solely to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 16.

Section 7

[Examination as to jurisdiction and admissibility]

Art. 19 Where a court of a Contracting State is seised of a claim which is principally concerned with a matter over which the courts of another Contracting State have exclusive

jurisdiction by virtue of Article 16, it shall declare of its own motion that it has no jurisdiction.

Art. 20 Where a defendant domiciled in one Contracting State is sued in a court of another Contracting State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Convention.

The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

The provisions of the foregoing paragraph shall be replaced by those of Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters, if the document instituting the proceedings or notice thereof had to be transmitted abroad in accordance with that Convention.

Section 8

[Lis Pendens related actions]

Art. 21 Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion decline jurisdiction in favour of that court.

A court which would be required to decline jurisdiction may stay its proceedings if the jurisdiction of the other court is contested.

Art. 22 Where related actions are brought in the courts of different Contracting States, any court other than the court first seised may, while the actions are pending at first instance, stay its proceedings.

A court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the law of that court permits the consolidation of related actions and the court first seised has jurisdiction over both actions.

For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Art. 23 Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

Section 9

[Provisional, including protective, measures]

Art. 24 Application may be made to the courts of a Contracting State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter.

Title III

[Recognition and enforcement]

Art. 25 For the purposes of this Convention, „judgment“ means any judgment given by a court or tribunal of a Contracting State, whatever the judgment may be called, including a

decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

Section 1

[Recognition]

Art. 26 A judgment given in a Contracting State shall be recognized in the other Contracting States without any special procedure being required.

Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Title, apply for a decision, that the judgment be recognized.

If the outcome of proceedings in a court of a Contracting State depends on he determination of an incidental question of recognition that court shall have jurisdiction over that question.

Art. 27 A judgment shall not be recognized:

if such recognition is contrary to public policy in the State in which recognition is sought;

where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence;

if the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;

if the court of the State in which the judgment was given, in order to arrive at its judgment, has decided a preliminary question concerning the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills or succession in a way that conflicts with a rule of the private international law of the State in which the recognition is

sought, unless the same result would have been reached by the application of the rules of private international law of that State;

if the judgment is irreconcilable with an earlier judgment given in a nonContracting State involving the same cause of action and between the same parties, provided that this latter jugdment fulfils the conditions necessary for its recognition in the State addresses.

Art. 28 Moreover, a judgment shall not be recognized if it conflicts with the provisions of Section 3, 4 or 5 of Title II, or in a case provided for in Article 59.

In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the State in which the judgment was given based its jurisdiction .

Subject to the provisions of the first paragraph, the jurisdiction of the court of the State in which the judgment was given may not be reviewed; the test of public policy referred to in Article 27 (1) may not be applied to the rules relating to jurisdiction.

Art. 29 Under no circumstances may a foreign judgment be reviewed as to its substance.

Art. 30 A court of a Contracting State in which recognition is sought of a judgment given in another Contracting State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

A court of a Contracting State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State in which the judgment was given by reason of an appeal.

Section 2

[Enforcement]

Art. 31 A judgment given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, the order for its enforcement has been issued there.

However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Art. 32 The application shall be submitted:

in Belgium, to the tribunal de premiere instance or rechtbank van eerste aan leg.

in Denmark, to the underret,

in the Federal Republic of Germany, to the presiding judge of a chamber of the Landgericht,

in France, to the presiding judge of the tribunal de grande instance,

in Ireland, to the High Court,

in Italy, to the corte d'appello,

in Luxembourg, to the presiding judge of the tribunal d'arrondissement,

in the Netherlands, to the presiding judge of the arrondissementsrechtbank,

in the United Kingdom:

in England and Wales, to the High Court of Justice or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State;

in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court on transmission by the Secretary of State;

in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State.

The jurisdiction of local courts shall be determined by reference to the place of domicile of the party against whom enforcement is sought. If he is not domiciled in the State in which enforcement is sought, it shall be determined by reference to the place of enforcement.

Art. 33 The procedure for making the application shall be governed by the law of the State in which enforcement is sought.

The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative ad litem.

The documents referred to in Articles 46 and 47 shall be attached to the application.

Art. 34 The court applied to shall give its decision without delay; the party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

The application may be refused only for one of the reasons specified in Articles 27 and 28.

Under no circumstances may the foreign judgment be reviewed as to its substance.

Art. 35 The appropriate officer of the court shall without delay bring the decision given on the application to the notice of the applicant in accordance with the procedure laid down by the law of the State in which enforcement is sought.

Art. 36 If enforcement is authorized, the party against whom enforcement is sought may appeal against the decision within one month of service thereof.

If that party is domiciled in a Contracting State other than that in which the decision authorizing enforcement was given, the time for appealing shall be two months and shall run

from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

Art. 37 An appeal against the decision authorizing enforcement shall be lodged in accordance with the rules governing procedure in contentious matters:

in Belgium, with the tribunal de premiere instance or rechtbank van eersteaanleg.

in Denmark, with the landsret,

in the Federal Republic of Germany, with the Oberlandesgericht,

in France, with the cour d'appel,

in Ireland, with the High Court,

in Italy, with the corte d'appello,

in Luxembourg, with the Court superieure de justice sitting as a court of civil appeal,

in the Netherlands, with the arrondissementsrechtbank,

in the United Kingdom:

in England and Wales, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court;

in Scotland, with the Court of Session, or in the case of a maintenance judgment with the Sheriff Court;

in Northern Ireland, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court.

The judgment given on the appeal may be contested only:

in Belgium, France, Italy, Luxembourg and the Netherlands, by an appeal in cassation,

in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice,

in the Federal Republic of Germany, by a Rechtsbeschwerde,

in Ireland, by an appeal on a point of law to the Supreme Court,

in the United Kingdom, by a single further appeal on a point of law.

Art. 38 The court with which the appeal under the first paragraph of Article 37 is lodged may, on the application of the appellant, stay the proceedings if an ordinary appeal has been lodged against the judgment in the State in which that judgment was given or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the State in which it was given shall be treated as an ordinary appeal for the purposes of the first paragraph.

The court may also make enforcement conditional on the provision of such security as it shall determine.

Art. 39 During the time specified for an appeal pursuant to Article 36 and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures taken against the property of the party against whom enforcement is sought.

The decision authorizing enforcement shall carry with it the power to proceed to any such protective measures.

Art. 40 If the application for enforcement is refused, the applicant may appeal:

in Belgium, to the cour d'appel or hof van beroep,

in Denmark, to the landsret,

in the Federal Republic of Germany, to the Oberlandesgericht,

in France, to the cour d'appel,

in Ireland, to the High Court,

in Italy, to the corte d'appello,

in Luxembourg, to the Court superieure de justice sitting as a court of civil appeal.

in the Netherlands, to the arrondissementsrechtbank,

in the United Kingdom:

in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court;

in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court;

in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court.

The party against whom enforcement is sought shall be summoned to appear before the appellate court. If he fails to appear, the provisions of the second and third paragraphs of Article 20 shall apply even where he is not domiciled in any of the Contracting States.

Art. 41 A judgment given on an appeal provided for in Article 40 may be contested only:

in Belgium, France, Italy, Luxembourg and the Netherlands, by an appeal in cassation,

in Denmark, by an appeal to the h0jesteret, with the leave of the Minister of Justice.

in the Federal Republic of Germany, by a Rechtsbeschwerde,

in the United Kingdom, by a single further appeal on a point of law.

Art. 42 Where a foreign judgment has been given in respect of several matters and enforcement cannot be authorized for all of them, the court shall authorize enforcement for one or more of them.

An applicant may request partial enforcement of a judgment.

Art. 43 A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the State in which the judgment was given.

Art. 44 An applicant who, in the State in which the judgment was given, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedures provided for in Articles 32 to 35, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed. However, an applicant who requests the enforcement of a decision given by an administrative authority in Denmark in respect of a maintenance order may, in the State addressed, claim the benefits referred to in the first paragraph if the presents a statement from the Danish Ministry of Justice to the effect that he fulfils the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

Art. 45 No security, bond or deposit, however described, shall be required of a party who in one Contracting State applies for enforcement of a judgment given in another Contracting State on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

Section 3

[Common provisions]

Art. 46 A party seeking recognition or applying for enforcement of a judgment shall produce:

a copy of the judgment which satisfies the conditions necessary to establish its authenticity;

in the case of a judgment given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings or with an equivalent document.

Art. 47 A party applying for enforcement shall also produce:

documents which establish that, according to the law of the State in which it has been given, the judgment is enforceable and has been served;

where appropriate, a document showing that the applicant is in receipt of legal aid in the State in which the judgment was given.

Art. 48 If the document specified in Articles 46 (2) and 47 (2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.

If the court so requires, a translation of the documents shall be produced; the translation shall be certified by a person qualified to do so in one of the Contracting States.

Art. 49 No legalization or other similar formality shall be required in respect of the documents referred to in Article 46 or 47 or the second paragraph of Article 48, or in respect of a document appointing a representative ad litem.

Title IV

[Authentic Instruments and Court Settlements]

Art. 50 A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State shall, in another Contracting State, have an order for its enforcement issued there, on application made in accordance with the procedures provided for in Article 31 et seq. The application may be refused only if enforcement of the instrument is contrary to public policy in the State in which enforcement is sought.

The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin.

The provisions of Section 3 of Title III shall apply as appropriate.

Art. 51 A settlement which has been approved by a court in the course of proceedings and is enforceable in the State in which it was concluded shall be enforceable in the State in which enforcement is sought under the same conditions as authentic instruments.

Title V

[General Provisions]

Art. 52 In order to determine whether a party is domiciled in the Contracting State whose courts are seised of a matter, the Court shall apply its internal law.

If a party is not domiciled in the State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Contracting State, the court shall apply the law of that State.

The domicile of a party shall, however, be determined in accordance with his national law if, by that law, his domicile depends on that of another person or on the seat of an authority.

Art. 53 For the purposes of this Convention, the seat of a company or other legal person or association of natural or legal persons shall be treated as its domicile. However, in order to determine that seat, the court shall apply its rules of private international law.

In order to determine whether a trust is domiciled in the Contracting State whose courts are seised of the matter, the court shall apply its rules of private international law.

Title VI

[Transitional Provisions]

Art. 54 The provisions of this Convention shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after its entry into force. However, judgments given after the date of entry into force of this Convention in proceedings instituted before that date shall be recognized and enforced in accordance with the provisions of Title III if jurisdiction was founded upon rules which accorded with those provided for either in Title II of this Convention or in a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.

Title VII

[Relationship to other Conventions]

Art. 55 Subject to the provisions of the second paragraph of Article 54, and of Article 56, this Convention shall, for the States which are parties to it, supersede the following conventions concluded between two or more of them:

the Convention between Belgium and France on jurisdiction and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Paris on 8 July 1899,

the Convention between Belgium and the Netherlands on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 28 March 1925,

the Convention between France and Italy on the enforcement of judgments in civil and commercial matters, signed at Rome on 3 June 1930,

the Convention between the United Kingdom and the French Republic providing for the reciprocal enforcement of judgments in civil and commercial matters, with Protocol, signed at Paris on 18 January 1934,

the Convention between the United Kingdom and the Kingdom of Belgium providing for the reciprocal enforcement of judgments in civil and commercial matters, with Protocol, signed at Brussels on 2 May 1934,

the Convention between Germany and Italy on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 9 March 1936,

the Convention between the Federal Republic of Germany and the Kingdom of Belgium on the mutual recognition and enforcement of judgments, arbitration awards and authentic instruments in civil and commercial matters, signed at Bonn on 30 June 1958,

the Convention between the Kingdom of the Netherlands and the Italian Republic on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 17 April 1959,

the Convention between the United Kingdom and the Federal Republic of Germany for the reciprocal recognition and enforcement of judgments in civil and commercial matters, signed at Bonn on 14 July 1960,

the Convention between the Kingdom of Belgium and the Italian Republic on the recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at Rome on 6 April 1962,

the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the mutual recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at The Hague on 30 August 1962,

the Convention between the United Kingdom and the Republic of Italy for the reciprocal recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 7 February 1964, with amending Protocol signed at Rome on 14 July 1970,

the Convention between the United Kingdom and the Kingdom of the Netherlands providing for the reciprocal recognition and enforcement of judgments in civil matters, signed at The Hague on 17 November 1967,

and, in so far as it is in force:

the Treaty between Belgium, the Netherlands and Luxembourg on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 24 November 1961.

Art. 56 The Treaty and the conventions referred to in Article 55 shall continue to have effect in relation to matters to which this Convention does not apply.

They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic instruments before the entry into force of this Convention.

Art. 57 This Convention shall not affect any conventions to which the Contracting States are or will be parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

This Convention shall not affect the application of provisions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments and which are or will be contained in acts of the institutions of the European Communities or in national laws harmonized in implementation of such acts.

Art. 58 This Convention shall not affect the rights granted to Swiss nationals by the Convention concluded on 15 June 1869 between France and the Swiss Confederation on Jurisdiction and the enforcement of judgments in civil matters.

Art. 59 This Convention shall not prevent a Contracting State from assuming, in a convention on the recognition and enforcement of judgments, an obligation towards a third State not to recognize judgments given in other Contracting States against defendants domiciled or habitually resident in the third State where, in cases provided for in Article 4, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3.

However, a Contracting State may not assume an obligation towards a third State not to recognize a judgment given in another Contracting State by a court basing its jurisdiction on the presence within that State of property belonging to the defendant, or the seizure by the plaintiff of property situated there:

if the action is brought to assert or declare proprietary or possessory rights in that property, seeks to obtain authority to dispose of it, or arises from another issue relating to such property, or,

if the property constitutes the security for a debt which is the subject matter of the action.

Title VIII

[Final Provisions]

Art. 60 This Convention shall apply to the European territories of the Contracting States, including Greenland, to the French overseas departments and territories, and to Mayotte. The Kingdom of the Netherlands may declare at the time of signing or ratifying this Convention or at any later time, by notifying the Secretary-General of the Council of the European Communities, that this Convention shall be applicable to the Netherlands Antilles. In the absence of such declaration, proceedings taking place in the European territory of the Kingdom as a result of an appeal in cassation from the judgment of a court in the Netherlands Antilles shall be deemed to be proceedings taking place in the latter court.

Notwithstanding the first paragraph, this Convention shall not apply to:

The Faroe islands, unless the Kingdom of Denmark makes a declaration to the contrary;

any European territory situated outside the United Kingdom for the international relations of which the United Kingdom is responsible, unless the United Kingdom makes a declaration to the contrary in respect of any such territory.

Such declaration may be made at any time by notifying the Secretary-General of the Council of the European Communities.

Proceedings brought in the United Kingdom on appeal from courts in one of the territories referred to in subparagraph 2 of the third paragraph shall be deemed to be proceedings taking place in those courts.

Proceedings which in the Kingdom of Denmark are dealt with under the law on civil procedure for the Faroe Islands (lov for F'roerne om rettens pleje) shall be deemed to be proceedings taking place in the courts of the Faroe Islands.

Art. 61 This Convention shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary General on the Council of the European Communities.

Art. 62 This Convention shall enter into force on the first day of the third month following the deposit of the instrument of ratification by the last signatory State to take this step.

Art. 63 The Contracting States recognize that any State which becomes a member of the European Economic Community shall be required to accept this Convention as a basis for the negotiations between the Contracting States and that State necessary to ensure the implementation of the last paragraph of Article 220 of the Treaty establishing the European Economic Community.

The necessary adjustments may be the subject of a special convention between the Contracting States of the one part and the new Member States of the other part.

Art. 64 The Secretary-General of the Council of the European Communities shall notify the signatory States of:

the deposit of each instrument of ratification;

the date of entry into force of this Convention;

any declaration received pursuant to Article 60;

any declaration received pursuant to Article IV of the Protocol;

any communication made pursuant to Article VI of the Protocol.

Art. 65 The Protocol annexed to this Convention by common accord of the Contracting States shall form an integral part thereof.

Art. 66 This Convention is concluded for an unlimited period.

Art. 67 Any Contracting State may request the revision of this Convention. In this event, a revision conference shall be convened by the President of the Council of the European Communities.

Art. 68 This Convention, drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory State.

ANNEX IV

Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters

May 30, 1988

Preamble

THE HIGH CONTRACTING PARTIES to this Convention,

ANXIOUS to strengthen in their territories the legal protection of persons therein established,

CONSIDERING that it is necessary for this purpose to determine the international jurisdiction of their courts, to facilitate recognition and to introduce an expeditious procedure for securing the enforcement of judgements, authentic instruments and court settlements.

AWARE OF the links between them, which have been sanctioned in the economic field by the free trade agreements concluded between the European Economic Community and the States members of the European Free Trade Association,

TAKING INTO ACCOUNT the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgements in civil and commercial matters, as amended to the Accession Conventions under the successive enlargements of the European Communities.

PERSUADED THAT the extension of the principles of that Convention to the State parties to this instrument will strengthen legal and economic co-operation in Europe,

DESIRING to ensure as uniform an interpretation as possible of this instrument,

HAVE IN THIS SPIRIT DECIDED to conclude this Convention and Have agreed as follows:

Title I
[Scope]

Art. 1 This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

The Convention shall not apply to

1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
2. bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
3. social security;
4. arbitration.

Title II
[Jurisdiction]

Section 1

[General Provisions]

Art. 2 Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.
Persons who are not nationals of the State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that state

Art. 3 Persons domiciled in a Contracting State may be sued in the courts of another Contracting
State only by virtue of the rules set out in Sections 2 to 6 of this Title.
In particular the following provisions shall not be applicable as against them:

- in Belgium: Article 15 of the civil code (Code civil - Burgerlijk Wetboek) and Article 638 of the judicial code (Code judiciaire-Gerechtelijk Wetboek),
- in Denmark: Article 246 (2) and (3) of the law on civil procedure (Lov om rettens pleje),
- in the Federal Republic of Germany: Article 23 of the code of civil procedure (Zivilprozessordnung),

· in Greece: Article 40 of the code of civil procedure [greek text],

· in France: Articles 14 and 15 of the civil code (Code civil),

· in Ireland: the rules which enable jurisdiction to be founded on the document instituting the proceedings having been served on the defendant during this temporary presence in Ireland,

· in Iceland: Article 77 of the Civil Proceedings Act [icelandic text],

· in Italy: Articles 2 and 4, Nos. 1 and 2 of the code of civil procedure (Codice di procedura civile),

· in Luxembourg: Articles 14 and 15 of the civil code (Code civil),

· in the Netherlands: Articles 126 (3) and 127 of the code of civil procedure (Wetboek van Burgerlijke Rechtsvordering),

· in Norway: Section 32 of the Civil Proceedings Act (tvistemålsloven),

· in Austria: Article 99 of the Law on Court Jurisdiction (Jurisdiktionsnorm)

· in Portugal: Articles 65 (1) (c), 65 (2) and 65A (c) of the code of civil procedure (Codigo de Processo Civil) and Article 11 of the code of labour procedure (Codigo de Processo de Trabalho),

· in Switzerland: le for du lieu du sequestre/ Gerichtsstand des Arrestortes/foro del luogo del sequestro within the meaning of Article 4 of the loi federale sur le droit international prive/Bundesgesetz uber das internationale Privatrecht/legge federale sul diritto internazionale privato,

· in Finland: the second, third and fourth sentences of Section 1 of Chapter 10 of the Code of Judicial Procedure [finnish text],

· in Sweden: the first sentence of Section 3 of Chapter 10 of Code of Judicial Procedure (Rättegångsbalken),

· in the United Kingdom: the rules which enable jurisdiction to be founded on:

(a) the document instituting the proceedings having been served on the defendant during his temporary presence in the United Kingdom; or

(b) the presence within the United Kingdom of property belonging to the defendant; or

(c) the seizure by the plaintiff of property situated in the United Kingdom.

Art. 4 If the defendant is not domiciled in a Contracting State, the jurisdiction of the courts of each Contracting State shall, subject to the provisions of Article 16, be determined by the law of that State.

As against such a defendant, any person domiciled in a Contracting State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in the second paragraph of Article 3, in the same way as the nationals of that State.

Section 2
[Special jurisdiction]

Art. 5 A person domiciled in a Contracting State may, in another Contracting State, be sued:

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question; in matters relating to individual contracts of employment, this place is that where the employee habitually carries out his work, or if the employee does not habitually carry out his work in any one country, this place shall be the place of business through which he was engaged;
2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;
3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;
4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seized of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;
6. in his capacity as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Contracting State in which the trust is domiciled;

7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:

   (a) has been arrested to secure such payment, or
   (b) could have been so arrested, but bail or other security has been given; provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

Art. 6 A person domiciled in a Contracting State may also be sued:

1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled;
2. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seized of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
3. on a counterclaim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;
4. in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights in rem in immovable property, in the court of the Contracting State in which the property is situated.

Art. 6A Where by virtue of this Convention a court of a Contracting State has jurisdiction in actions relating to liability arising from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that State, shall also have jurisdiction over claims for limitation of such liability.

Section 3
[Jurisdiction in matters relating to insurance]

Art. 7 In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5 (5).

Art. 8 An insurer domiciled in a Contracting State may be sued:

1. in the courts of the State where he is domiciled. or
2. in another Contracting State, in the courts for the place where the policy-holder is domiciled, or
3. if he is a co-insurer, in the courts of a Contracting State in which proceedings are brought against the leading insurer.

An insurer who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

Art. 9 In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Art. 10 In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.
The provisions of Articles 7, 8 and 9 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.
If the law governing such direct actions provides that the policy-holder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

Art. 11 Without prejudice to the provisions of the third paragraph of Article 10, an insurer may bring proceedings only in the courts of the Contracting State in which the defendant is domiciled, irrespective of whether he is the policy-holder, the insured or a beneficiary.
The provisions of this Section shall not affect the right to bring a counterclaim in the court in which, in accordance with the Section, the original claim is pending.

Art. 12 The provisions of this Section may be departed from only by an agreement on jurisdiction:

1. which is entered into after the dispute has arisen, or

2. which allows the policy-holder. the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section, or
3. which is concluded between a policy-holder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State, or
4. which is concluded with a policy-holder who is not domiciled in a Contracting State, except in so far as the insurance is compulsory or relates to immovable property in a Contracting State, or
5. which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 12A.

Art. 12A The following are the risks referred to in Article 12 (5):

1. any loss of or damage to

   (a) sea-going ships, installations situated off-shore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes,
   (b) goods in transit other that passengers' baggage where the transit consists of or includes carriage by such ships or aircraft;

2. any liability, other than for bodily injury to passengers or loss of or damage to their baggage,

   (a) arising out of the use or operation of ships, installations or aircraft as referred to in (1) (a) above in so far as the law of the Contracting State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks,
   (b) for loss or damage caused by goods in transit as described in (1) (b) above;

3. any financial loss connected with the use or operation of ships, installations or aircraft as referred to in (1) (a) above, in particular loss of freight or charter-hire;
4. any risk or interest connected with any of those referred to in (1) to (3) above.

Section 4
[Jurisdiction over consumer contracts]

Art. 13 In proceedings concerning a contract concluded by a person for a purpose which can be regarded as being outside his trade or profession, hereinafter called the consumer, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5 (5), if it is:

1. a contract for the sale of goods on instalment credit terms, or
2. a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods, or
3. any other contract for the supply of goods or a contract for the supply of services, and

   (a) in the State of the consumer's domicile the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and
   (b) the consumer took in that State the steps necessary for the conclusion of the contract.

Where a consumer enters into a contract with a party who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.
This Section shall not apply to contracts of transport.

Art. 14 A consumer may bring proceedings against the other party to a contract either in the courts of the Contracting State in which that party is domiciled or in the courts of the Contracting State in which he is himself domiciled.
Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Contracting State in which the consumer is domiciled.
These provisions shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.

Art. 15 The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen, or
2. which allows the consumer to bring proceedings in courts other than those indicated in this Section, or
3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which confers jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State

Section 5
[Exclusive jurisdiction]

Art. 16 The following courts shall have exclusive jurisdiction, regardless of domicile:

1.

(a) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Contracting State in which the property is situated:
(b) however, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Contracting State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and neither party is domiciled in the Contracting State in which the property is situated;

2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the decisions of their organs, the courts of the Contracting State in which the company, legal person or association has its seat;
3. in proceedings which have as their object the validity of entries in public registers, the courts of the Contracting State in which the register is kept;
4. in proceedings concerned with the registration or validity of patents, trade marks, designs or other similar rights required to be deposited or registered, the courts of the Contracting State in which the deposit or registration has been applied for, has taken place or is under the terms of an international convention deemed to have taken place;

5. in proceedings concerned with the enforcement of judgements, the courts of the Contracting State in which the judgement has been or is to be enforced.

Section 6
[Prorogation of jurisdiction]

Art. 17

1. If the parties, one or more of whom is domiciled in a Contracting State, have agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have exclusive jurisdiction. Such an agreement conferring jurisdiction shall be either:

(a) in writing or evidenced in writing, or
(b) in a form which accords with practices which the parties have established between themselves, or
(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

Where such an agreement is concluded by parties, none of whom is domiciled in a Contracting State, the courts of other Contracting States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

2. The court or courts of a Contracting State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.
3. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 12 or 15, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 16.

4. If an agreement conferring jurisdiction was concluded for the benefit of only one of the parties, that party shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of this Convention.
5. In matters relating to individual contracts of employment an agreement conferring jurisdiction shall have legal force only if it is entered into after the dispute has arisen.

Art. 18 Apart from jurisdiction derived from other provisions of this Convention, a court of a Contracting State before whom a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered solely to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 16.

Section 7
[Examination as to jurisdiction and admissibility]

Art. 19 Where a court of a Contracting State is seized of a claim which is principally concerned with a matter over which the courts of another Contracting State have exclusive jurisdiction by virtue of Article 16, it shall declare of its own motion that it has no jurisdiction.

Art. 20 Where a defendant domiciled in one Contracting State is sued in a court of another Contracting State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Convention.
The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.
The provisions of the foregoing paragraph shall be replaced by those of Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters, if the document instituting the proceedings or notice thereof had to be transmitted abroad in accordance with that Convention.

Section 8
[Lis Pendens - related actions]

Art. 21 Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Contracting States, any court other than the court first seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established.
Where the jurisdiction of the court first seized is established, any court other than the court first seized shall decline jurisdiction in favour of that court.

Art. 22 Where related actions are brought in the courts of different Contracting States, any court other than the court first seized may while the actions are pending at first instance, stay its proceedings.
A court other than the court first seized may also, on the application of one of the parties, decline jurisdiction if the law of that court permits the consolidation of related actions and the court first seized has jurisdiction over both actions.
For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgements resulting from separate proceedings.

Art. 23 Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seized shall decline jurisdiction in favour of that court.

Art. 24 Application may be made to the courts of a Contracting State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter.

Title III
[Recognition and Enforcement]

Art. 25 For the purposes of this Convention, judgement means any judgement given by a court or tribunal of a Contracting State, whatever the judgement may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

Section 1
[Recognition]

Art. 26 A judgement given in a Contracting State shall be recognised in the other Contracting States without any special procedure being required.

Any interested party who raises the recognition of a judgement as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Title, apply for a decision that the judgement be recognised.

If the outcome of proceedings in a court of a Contracting State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.

Art. 27 A judgement shall not be recognised:

1. if such recognition is contrary to public policy in the State in which recognition is sought;
2. where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence;
3. if the judgement is irreconcilable with a judgement given in a dispute between the same parties in the State in which recognition is sought;
4. if the court of the State of origin, in order to arrive at its judgement, has decided a preliminary question concerning the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills or succession in a way that conflicts with a rule of the private international law of the State in which the recognition is sought, unless the same result would have been reached by the application of the rules of private international law of that State;
5. if the judgement is irreconcilable with an earlier judgement given in a non-contracting State involving the same cause of action and between the same parties, provided that this latter judgement fulfils the conditions necessary for its recognition in the State addressed.

Section 9
[Provisional, including protective, measures]

Art. 28 Moreover, a judgement shall not be recognised if it conflicts with the provisions of Sections 3, 4 or 5 of Title II or in a case provided for in Article 59.

A judgement may furthermore be refused recognition in any case provided for in Article 54B (3) or 57 (4).

In its examination of the grounds of jurisdiction referred to in the foregoing paragraphs, the court or authority applied to shall be bound by the findings of fact on which the court of the State of origin based its jurisdiction.

Subject to the provisions of the first and second paragraphs, the jurisdiction of the court of the State of origin may not be reviewed; the test of public policy referred to in Article 27 (1) may not be applied to the rules relating to jurisdiction.

Art. 29 Under no circumstances may a foreign judgement be reviewed as to its substance.

Art. 30 A court of a Contracting State in which recognition is sought of a judgement given in another Contracting State may stay the proceedings if an ordinary appeal against the judgement has been lodged.

A court of a Contracting State in which recognition is sought of a judgement given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State of origin by reason of an appeal.

Section 2
[Enforcement]

Art. 31 A judgement given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, it has been declared enforceable there.

However, in the United Kingdom, such a judgement shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Art. 32

1. The application shall be submitted:

- in Belgium, to the tribunal de premiere instance or rechtbank van eerste aanleg,
- in Denmark, to the byret,
- in the Federal Republic of Germany, to the presiding judge of a chamber of the Landgericht,
- in Greece, to the [greek text],
- in Spain, to the Juzgado de Primera Instancia,
- in France, to the presiding judge of the tribunal de grande instance,
- in Ireland, to the High Court,
- in Iceland, to the heradsdomari,
- in Italy, to the corte d'appello,
- in Luxembourg, to the presiding judge of the tribunal d'arrondissement,
- in the Netherlands, to the presiding judge of the arrondissementsrechtbank,
- in Norway, to the herredsrett or byrett as namsrett,
- in Austria, to the Landesgericht or the Kreisgericht,
- in Portugal, to the Tribunal Judicial de Circulo,
- in Switzerland:
  (a) in respect of judgements ordering the payment of a sum of money, to the juge de la mainlevee/Rechtsöffnungsrichter/giudice competente a pronunciare sul rigetto dell' opposizione, within the framework of the procedure governed by Article 80 and 81 of the loi federale sur la poursuite pour dettes et la faillite/Bundesgesetz uber Schuldbetreibung und Konkurs/Aegge federale sulla esecuzione e sul fallimento,
  (b) in respect of judgements ordering a performance other than the payment of a sum of money, to the juge cantonal d'exequatur competent/zustandiger kantonaler Vollstreckungsrichter/ giudice cantonale competente a pronunciare l'exequatur,
- in Finland, to the ulosotonhaltija/overexekutor,
- in Sweden, to the Svea hovrätt,

- in the United Kingdom:
  (a) in England and Wales, to the High Court of Justice, or in the case of a maintenance judgement to the Magistrates' Court on transmission by the Secretary of State;
  (b) in Scotland, to the Court of Session, or in the case of a maintenance judgement to the Sheriff Court on transmission by the Secretary of State;
  (c) in Northern Ireland, to the High Court of Justice, in the case of a maintenance judgement to the Magistrates' Court on transmission by the Secretary of State.

2. The jurisdiction of local courts shall be determined by reference to the place of domicile of the party against whom enforcement is sought. If he is not domiciled in the State in which enforcement is sought, it shall be determined by reference to the place of enforcement.

Art. 33 The procedure for making the application shall be governed by the law of the State in which enforcement is sought.
The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative ad litem.
The documents referred to in Articles 46 and 47 shall be attached to the application.

Art. 34 The court applied to shall give its decision without delay; the party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.
The application may be refused only for one of the reasons specified in Articles 27 and 28.
Under no circumstances may the foreign judgement be reviewed as to its substance.

Art. 35 The appropriate officer of the court shall without delay bring the decision given on the application to the notice of the applicant in accordance with the procedure laid down by the law of the State in which enforcement is sought.

Art. 36 If enforcement is authorised, the party against whom enforcement is sought may appeal against the decision within one month of service thereof.

If that party is domiciled in a Contracting State other than that in which the decision authorising enforcement was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

Art. 37

1. An appeal against the decision authorising enforcement shall be lodged in accordance with the rules governing procedure in contentious matters:

   - in Belgium, with the tribunal de premiere instance or rechtbank van eerste aanleg,
   - in Denmark, with the landsret,
   - in the Federal Republic of Germany, with the Oberlandesgericht,
   - in Greece, with the [greek text];
   - in Spain, with the Audiencia Provincial
   - in France, with the cour d'appel,
   - in Ireland, with the High Court,
   - in Iceland, with the heradsdomari;
   - in Italy, with the corte d'appello,
   - in Luxembourg, with the Cour superieure de justice sitting as a court of civil appeal,
   - in the Netherlands, with the arrondissementsrechtbank,
   - in Norway, with the lagmannsrett,
   - in Austria, with the Landesgericht or the Kreisgericht,
   - in Portugal, with the Tribunal da Relacao,
   - in Switzerland, with the tribunal cantonall / Kantonsgericht/ tribunale cantonale,
   - in Finland, with the hovioikeus/hovrätt,
   - in Sweden, with the Svea hovrätt,
   - in the United Kingdom:

   (a) in England and Wales, with the High Court of Justice, or in the case of a maintenance judgement with the Magistrates' Court,
   (b) in Scotland, with the Court of Session, or in the case of a maintenance judgement with the Sheriff Court,
   (c) in Northern Ireland, with the High Court of Justice, or in the case of a maintenance judgement with the Magistrates' Court.

2. The judgement given on the appeal may be contested only:

   - in Belgium, Greece, Spain, France, Italy, Luxembourg and
   - in the Netherlands, by an appeal in cassation,
   - in Denmark, by an appeal to the højesteret, with the leave of the Minister of Justice,
   - in the Federal Republic of Germany, by a Rechtsbeschwerde,
   - in Ireland, by an appeal on Court,
   - in Iceland, by an appeal to the Hæstirettur,
   - in Norway, by an appeal (kjæremål or anke) to the Høyesteretts Kjæremålsutvalg or Høyesterett,
   - in Austria, in the case of an appeal, by a Revisionsrekurs and, in the case of opposition proceedings, by a Berufung with the possibility of a Revision,
   - in Portugal, by an appeal on a point of law,
   - in Switzerland, by a recours de droit public devant le tribunal federal/staatsrechtliche Beschwerde beim Bundes gericht/ricorso di diritto pubblico davanti al tribunale federale,
   - in Finland, by an appeal to the korkein oikeus/högsta domstolen,
   - in Sweden, by an appeal to the högsta domstolen,
   - in the United Kingdom, by a single further appeal on a point of law point of law to the Supreme

Art. 38 The court with which the appeal under the first paragraph of Article 37 is lodged may, on the application of the appellant, stay the proceedings if an ordinary appeal has been lodged against the judgement in the State of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within such an appeal is to be lodged.

Where the judgement was given in Ireland or the United Kingdom, any form of appeal available in the State of origin shall be treated as an ordinary appeal for the purposes of the first paragraph.
The court may also make enforcement conditional on the provision of such security as it shall determine.

Art. 39 During the time specified for an appeal pursuant to Article 36 and until any such appeal has
been determined, no measures of enforcement may be taken other than protective measures taken against the property of the party against whom enforcement is sought.
The decision authorising enforcement shall carry with it the power to proceed to any such protective measures.

Art. 40

1. If the application for enforcement is refused, the applicant may appeal:

- in Belgium, to the cour d'appel or hof van beroep,
- in Denmark, to the landsret,
- in the Federal Republic of Germany, to the Oberlandesgericht,
- in Greece, to the [greek text];
- in Spain, to the Audiencia Provincial,
- in France, to the cour d'appel,
- in Ireland, to the High Court,
- in Iceland, to the heradsdomari,
- in Italy, to the corte d'appello,
- in Luxembourg, to the Cour superieure de justice sitting as a court of civil appeal,
- in the Netherlands, to the gerechtshof,
- in Norway, to the lagmannsrett,
- in Austria, to the Landesgericht or the Kreisgericht,
- in Portugal, to the Tribunal da Relacao;
- in Switzerland, to the tribunal cantonal/ Kantonsgericht/ tribunale cantonale,
- in Finland, to the hovioikeus/hovrätt,

- in Sweden, to the Svea hovrätt,
- in the United Kingdom:
  (a) in England and Wales, to the High Court of Justice, or in the case of a maintenance judgement to the Magistrates' Court,
  (b) in Scotland, to the Court of Session, or in the case of a maintenance judgement to the Sheriff Court,
  (c) in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgement to the Magistrates' Court.

2. The party against whom enforcement is sought shall be summoned to appear before the appellate court. If he fails to appear, the provisions of the second and third paragraphs of Article 20 shall apply even where he is not domiciled in any of the Contracting States.

Art. 41 A judgement given on an appeal provided for in Article 40 may be contested only:

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
- in Denmark, by an appeal to the højesteret with the leave of the Minister of Justice,
- in the Federal Republic of Germany, by a Rechtsbeschwerde,
- in Ireland, by an appeal on a point of law to the Supreme Court,
- in Iceland, by an appeal to the Hæstirettur,
- in Norway, by an appeal (kjæremål or anke) to the Høyesteretts kjæremålsutvalg or Høyesterett,
- in Austria, by a Revisionsrekurs,
- in Portugal, by an appeal on a point of law,
- in Switzerland, by a recurs de droit public devant le tribunal federal/staatsrechtliche Beschwerde beim Bundesgericht/recorso di diritto pubblico davanti al tribunale federale,
- in Finland, by an appeal to the korkein oikeus/högsta domstolen,
- in Sweden, by an appeal to the högsta domstolen,
- in the United Kingdom, by a single further appeal on a point of law.

Art. 42 Where a foreign judgement has been given in respect of several matters and enforcement cannot be authorised for all of them, the court shall authorise enforcement for one or more of them.
An applicant may request partial enforcement of a judgement.

Art. 43 A foreign judgement which orders a periodic payment by way of a penalty shall be enforceable in the State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the State of origin.

Art. 44 An applicant who in the State of origin, has benefited from complete or partial legal; aid or exemption from costs or expenses, shall be entitled, in the procedures provided for in Articles 32 to 35, to benefit from the most favourable legal aids or the most extensive exemption from costs or expenses provided for by the law of the State addressed.
However, an applicant who requests the enforcement of a decision given by an administrative authority in Denmark or Iceland in respect of a maintenance order may, in the State addressed, claim the benefits referred to in the first paragraph if he presents a statement from, respectively, the Danish Ministry of Justice or the Icelandic Ministry of Justice to the effect that he fulfils the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

Art. 45 No security, bond or deposit, however described, shall be required of a party who in one Contracting State applies for enforcement of a judgement given in another Contracting State on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

Section 3
[Common provisions]

Art. 46 A party seeking recognition or applying for enforcement of a judgement shall produce:

1. a copy of the judgement which satisfies the conditions necessary to establish its authenticity;

2. in the case of a judgement given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the Proceedings or with an equivalent document.

Art. 47 A party applying for enforcement shall also produce:

1. documents which establish that, according to the law of the State of origin, the judgement is enforceable and has been served;
2. where appropriate, a document showing that the applicant is in receipt of legal aid in the State of origin.

Art. 48 If the documents specified in Article 46 (2) and Article 47 (2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.
If the court so requires, a translation of the document shall be produced; the translation shall be certified by a person qualified to do so in one of the Contracting States.

Art. 49 No legalisation or other similar formality shall be required in respect of the documents referred to in Articles 46 or 47 or the second paragraph of Article 48, or in respect of a document appointing a representative ad litem.

Title IV
[Authentic Instruments and Court Settlements]

Art. 50 A document which has been formally drawn up or registered as an authentic instrument and
is enforceable in one Contracting State shall, in another Contracting State, be declared enforceable there, on application made in accordance with the procedures provided for in Article 31 et seq. The application may be refused only if enforcement of the instrument is contrary to public policy in the State addressed.
The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin.
The provisions of Section 3 of Title III shall apply as appropriate.

Art. 51 A settlement which has been approved by a court in the course of proceedings and is enforceable in the State in which it was concluded shall be enforceable in the State addressed under the same conditions as authentic instruments

Title V
[General Provisions]

Art. 52 In order to determine whether a party is domiciled in the Contracting State whose courts are seised of a matter, the Court shall apply its internal law.
If a party is not domiciled in the State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Contracting State, the court shall apply the law of that State.

Art. 53 For the purposes of this Convention, the seat of a company or other legal person or association of natural or legal persons shall be treated as its domicile. However, in order to determine that seat, the court shall apply its rules of private international law.
In order to determine whether a trust is domiciled in the Contracting State whose courts are seised of the matter, the court shall apply its rules of private international law.

Title VI
[Transitional Provisions]

Art. 54 The provisions of this Convention shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after its entry into force in the State of origin and, where recognition or enforcement of a judgement or authentic instrument is sought, in the State addressed.
However, judgements given after the date of entry into force of this Convention between the State of origin and the State addressed in proceedings instituted before that date shall be recognised and enforced in accordance with the provisions of Title III if jurisdiction was founded upon rules which accorded with those provided for either in Title II of this Convention or in a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.
If the parties to a dispute concerning a contract had agreed in writing before the entry into force of this Convention that the contract was to be governed by the law of Ireland or of a part

of the United Kingdom, the courts of Ireland or of that part of the United Kingdom shall retain the right to exercise jurisdiction in the dispute.

Art. 54A For a period of three years from the entry into force of this Convention for Denmark, Greece, Ireland, Iceland, Norway, Finland and Sweden, respectively, jurisdiction in maritime matters shall be determined in these States not only in accordance with the provisions of Title II, but also in accordance with the provisions of paragraphs 1 to 7 following. However, upon the entry into force of the International Convention relating to the arrest of sea-going ships, signed at Brussels on 10 May 1952, for one of these States, these provisions shall cease to have effect for that State.

1. A person who is domiciled in a Contracting State may be sued in the courts of one of the States mentioned above in respect of a maritime claim if the ship to which the claim relates or any other ship owned by him has been arrested by judicial process within the territory of the latter State to secure the claim, or could have been so arrested there but bail or other security has been given, and either:

   (a) the claimant is domiciled in the latter State, or
   (b) the claim arose in the latter State, or
   (c) the claim concerns the voyage during which the arrest was made or could have been made, or
   (d) the claim arises out of a collision or out of damage caused by a ship to another ship or to goods or persons on board either ship, either by the execution or non-execution of a manoeuvre or by the non-observance of regulations, or
   (e) the claim is for salvage, or
   (f) the claim is in respect of a mortgage or hypothecation of the ship arrested.

2. A claimant may arrest either the particular ship to which the maritime claim relates, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship. However, only the particular ship to which the maritime claim relates may be arrested in respect of the maritime claims set out in (5) (o), (p) or (q) of this Article.
3. Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.

4. When in the case of a charter by demise of a ship the charterer alone is liable in respect of a maritime claim relating to that ship, the claimant may arrest that ship or any other ship owned by the charterer, but no other ship owned by the owner may be arrested in respect of such claim. The same shall apply to any case in which a person other than the owner of a ship is liable in respect of a maritime claim relating to that ship.
5. The expression maritime claim means a claim arising out of one or more of the following:

(a) damage caused by any ship either in collision or otherwise;
(b) loss of life or personal injury caused by any ship or occurring in connection with the operation on any ship;
(c) salvage;
(d) agreement relating to the use or hire of any ship whether by charterparty or other wise;
(e) agreement relating to the carriage of goods in any ship whether by charterparty or otherwise;
(f) loss of or damage to goods including baggage carried in any ship;
(g) general average;
(h) bottomry;
(i) towage;
(j) pilotage;
(k) goods or materials wherever supplied to a ship for her operation or maintenance;
(l) construction, repair or equipment of any ship or dock charges and dues;
(m) wages of masters, officers or crew;
(n) master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
(o) dispute as to the title to or ownership of any ship;
(p) disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship;
(q) the mortgage or hypothecation of any ship.

6. In Denmark, the expression "arrest" shall be deemed as regards the maritime claims referred to in (5) (o) and (p) of this Article, to include a "forbud", where that is the only procedure allowed in respect of such a claim under Articles 646 to 653 of the law on civil procedure (lov om rettens pleje).
7. In Iceland, the expression "arrest" shall be deemed, as regards the maritime claims referred in (5) (o) and (p) of this Article, to include a logbann, where that is the only procedure allowed in respect of such a claim under Chapter III of the law on arrest and injunction (log um kyrrsetningu og logbann).

Title VII
[Relationship to the Brussels Convention and to other Conventions]

Art. 54B

1. This Convention shall not prejudice the application by the Member States of the European Communities of the Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, signed at Brussels on 27 September 1968 and of the Protocol on interpretation of that Convention by the Court of Justice, signed at Luxembourg on 3 June 1971, as amended by the Conventions of Accession to the said Convention and the said Protocol by the States acceding to the European Communities, all of these Conventions and the Protocol being hereinafter referred to as the "Brussels Convention".
2. However, this Convention shall in any event be applied:

(a) in matters of jurisdiction, where the defendant is domiciled in the territory of a Contracting State which is not a member of the European Communities, or where Articles 16 or 17 of this Convention confer a jurisdiction on the courts of such a Contracting State;
(b) in relation to a lis pendens or to related actions as provided for in Articles 21 and 22, when proceedings are instituted in a Contracting State which is not a member of the European Communities and in a Contracting State which is a member of the European Communities;
(c) in matters of recognition and enforcement, where either the State of origin or the State addressed is not a member of the European Communities.

3. In addition to the grounds provided for in Title III recognition or enforcement may be refused if the ground of jurisdiction on which the judgement has been based differs from that resulting from this Convention and recognition or enforcement is sought against a party who is domiciled in a Contracting State which is not a member of the European Communities, unless the judgement may otherwise be recognised or enforced under any rule of law in the State addressed.

Art. 55 Subject to the provisions of the second paragraph of Article 54 and of Article 56, this Convention shall, for the States which are parties to it, supersede the following conventions concluded between two or more of them:

- the Convention between the Swiss Confederation and France on jurisdiction and enforcement of judgements in civil matters, signed at Paris on 15 June 1869,
- the Treaty between the Swiss Confederation and Spain on the mutual enforcement of judgements in civil or commercial matters, signed at Madrid on 19 November 1896,
- the Convention between the Swiss Confederation and the German Reich on the recognition and enforcement of judgements and arbitration awards, signed at Berne on November 1929,
- the Convention between Denmark, Finland, Iceland, Norway and Sweden on the recognition and enforcement of judgements, signed at Copenhagen on 16 March 1932,
- the Convention between the Swiss Confederation and Italy on the recognition and enforcement of judgements, signed at Rome on 3 January 1933,
- the Convention between Sweden and the Swiss Confederation on the recognition and enforcement of judgements and arbitral awards signed at Stockholm on 15 January 1936,
- the Convention between the Kingdom of Belgium and Austria on the reciprocal recognition and enforcement of judgements and authentic instruments relating to maintenance obligations, signed at Vienna on 25 October 1957,
- the Convention between the Swiss Confederation and Belgium on the recognition and enforcement of judgements and arbitration awards, signed at Berne on 29 April 1959,

- the Convention between the Federal Republic of Germany and Austria on the reciprocal recognition and enforcement of judgements, settlements and authentic instruments in civil and commercial matters, signed at Vienna on 6 June 1959,
- the Convention between the Kingdom of Belgium and Austria on the reciprocal recognition and enforcement of judgements, arbitral awards and authentic instruments in civil and commercial matters, signed at Vienna on 16 June 1959,
- the Convention between Austria and the Swiss Confederation on the recognition and enforcement of judgements, signed at Berne on 16 December 1960,
- the Convention between Norway and the United Kingdom providing for the reciprocal recognition and enforcement of judgements in civil matters, signed at London on 12 June 1961,
- the Convention between the United Kingdom and Austria providing for the reciprocal recognition and enforcement of judgements in civil and commercial matters, signed at Vienna on 14 July 1961, with amending Protocol signed at London on 6 March 1970,
- the Convention between the Kingdom of the Netherlands and Austria on the reciprocal recognition and enforcement of judgements and authentic instruments in civil and commercial matters, signed at the Hague on 6 February 1963,
- the Convention between France and Austria on the recognition and enforcement of judgements and authentic instruments in civil and commercial matters, signed at Vienna on 15 July 1966,
- the Convention between Luxembourg and Austria on the recognition and enforcement of judgements and authentic instruments in civil and commercial matters, signed at Luxembourg on 29 July 1971,
- the Convention between Italy and Austria on the recognition and enforcement of judgements in civil and commercial matters, of judicial settlements and of authentic instruments, signed at Rome on 16 November 1971,
- the Convention between Norway and the Federal Republic of Germany on the recognition and enforcement of judgements and enforceable documents, in civil and commercial matters, signed at Oslo on 17 June 1977,

- the Convention between Denmark, Finland, Iceland, Norway and Sweden on the recognition and enforcement of judgements in civil matters, signed at Copenhagen on 11 October 1977,
- the Convention between Austria and Sweden on the recognition and enforcement of judgements in civil matters, signed at Stockholm on 16 September 1982,
- the Convention between Austria and Spain on the recognition and enforcement of judgements, settlements and enforceable authentic instruments in civil and commercial matters, signed at Vienna on 17 February 1984,
- the Convention between Norway and Austria on the recognition and enforcement of judgements in civil matters, signed at Vienna on 21 May 1984, and
- the Convention between Finland and Austria on the recognition and enforcement of judgements in civil matters, signed at Vienna on 17 November 1986.

Art. 56 The Treaty and the conventions referred to in Article 55 shall continue to have effect in relation to matters to which this Convention does not apply.
They shall continue to have effect in respect of judgements given and documents formally drawn up or registered as authentic instruments before the entry into force of this Convention.

Art. 57

1. This Convention shall not effect any conventions to which the Contracting States are or will be parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgements.
2. This Convention shall not prevent a court of a Contracting State which is party to a convention referred to in the first paragraph from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in a Contracting State which is not a party to that convention. The court hearing the action shall, in any event, apply Article 20 of this Convention.
3. Judgements given in a Contracting State by a court in the exercise of jurisdiction provided for in a convention referred to in the first paragraph shall be recognised and enforced in the other Contracting States in accordance with Title III of this Convention.
4. In addition to the grounds provided for in Title III, recognition or enforcement may be refused if the State addressed is not a contracting party to a convention referred to in the first paragraph and the person against whom recognition or enforcement is sought is domiciled in that State, unless the judgements may otherwise be recognised or enforced under any rule of law in the State addressed.
5. Where a convention referred to in the first paragraph to which both the State of origin and the State addressed are parties lays down conditions for the recognition and enforcement of judgements, those conditions shall apply. In any event, the provisions of this Convention which concern the procedure for recognition and enforcement of judgements may be applied.

Art. 58 (None)

Art. 59 This Convention shall not prevent a Contracting State from assuming, in a convention on the recognition and enforcement of judgements, an obligation towards a third State not to recognise judgements given in other Contracting States against defendants domiciled or habitually resident in the third State where, in cases provided for in Article 4, the judgement could only be founded on a ground of jurisdiction specified h1 the second paragraph of Article 3.
However, a Contracting State may not assume an obligation towards a third State not to recognise a judgement given in another Contracting State by a court basing its jurisdiction on the presence within that State of property belonging to the defendant, or the seizure by the plaintiff of property situated there:

1. if the action is brought to assert or declare proprietary or possessory rights in that property, seeks to obtain authority to dispose of it, or arises from another issue relating to such property, or
2. if the property constitutes the security for a debt which is the subject-matter of the action.

Title VIII
[Final Provisions]

Art. 60 The following may be parties to this Convention:

(a) States which, at the time of the opening of this Convention for signature, are members of the European Communities or of the European Free Trade Association;
(b) States which, after the opening of this Convention for signature, become members of the European Communities or of the European Free Trade Association;
(c) States invited to accede in accordance with Article 62 (1) (b).

Art. 61

1. This Convention shall be opened for signature by the States members of the European Communities or of the European Free Trade Association.
2. The Convention shall be submitted for ratification by the signatory States. The instruments of ratification shall be deposited with the Swiss Federal Council.
3. The Convention shall enter into force on the first day of the third month following the date on which two States, of which one is a member of the European Communities and the other a member of the European Free Trade Association, deposit their instruments of ratification.
4. The Convention shall take effect in relation to any other signatory State on the first day of the third month following the deposit of its instrument of ratification

Art. 62

1. After entering into force this Convention shall be open to accession by:

(a) the States referred to in Article 60 (b),
(b) other States which have been invited to accede upon a request made by one of the Contracting States to the depositary State. The depositary State shall invite the State concerned to accede only if. after having communicated the contents of the communications that this State intends to make in accordance with Article 63, it has obtained the unanimous agreement of the signatory States and the Contracting States referred to in Article 60 (a) and (b).

2. If an acceding State wishes to furnish details for the purposes of Protocol No. 1, negotiations shall be entered into to that end. A negotiating conference shall be convened by the Swiss Federal Council.
3. In respect of an acceding State, the Convention shall take effect on the first day of the third month following the deposit of its instrument of accession.
4. However, in respect of an acceding State referred to in paragraph 1 (a) or (b), the Convention shall take effect only in relations between the acceding State and the Contracting States which have not made any objections to the accession before the first day of the third month following the deposit of the instrument of accession.

Art. 63 Each acceding State shall, when depositing its instrument of accession, communicate the information required for the application of Articles 3, 32, 37, 40, 41 and 55 of this Convention and furnish, if need be, the details prescribed during the negotiations for the purposes of Protocol No 1.

Art. 64

1. This Convention is concluded for an initial period of five years from the date of its entry into force in accordance with Article 61 (3), even in the ease of States which ratify it or accede to it after that date.
2. At the end of the initial five-year period, the Convention shall be automatically renewed from year to year.
3. Upon the expiry of the initial five-year period, any Contracting State may, at any time, denounce the Convention by sending a notification to the Swiss Federal Council.
4. The denunciation shall take effect at the end of the calendar year following the expiry of a period of six months from the date of receipt by the Swiss Federal Council of the notification of denunciation.

Art. 65 The following are annexed to this Convention:

- a Protocol No. 1, on certain questions of jurisdiction, procedure and enforcement,
- a Protocol No. 2, on the uniform interpretation of the Convention,
- a Protocol No. 3, on the application of Article 57. These Protocols shall form an integral part of the Convention.

Art. 66 Any Contracting State may request the revision of this Convention. To that end, the Swiss Federal Council shall issue invitations to a revision conference within a period of six months from the date of the request for revision.

Art. 67 The Swiss Federal Council shall notify the States represented at the Diplomatic Conference of Lugano and the States who have later acceded to the Convention of:

(a) the deposit of each instrument of ratification or accession,
(b) the dates of entry into force of this Convention in respect of the Contracting States,
(c) any denunciation received pursuant to Article 64,
(d) any declaration received pursuant to Article Ia of Protocol No. 1,
(e) any declaration received pursuant to Article Ib of Protocol No. 1,
(f) any declaration received pursuant to Article IV of Protocol No. 1,
(g) any communication made pursuant to Article VI of Protocol No. 1.

Art. 68 This Convention, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Icelandic, Irish, Italian, Norwegian, Portuguese, Spanish and Swedish languages, all fourteen texts being equally authentic, shall be deposited in the archives of the Swiss Federal Council. The Swiss Federal Council shall transmit a certified copy to the Government of each State represented at the Diplomatic Conference of Lugano and to the Government of each acceding State.

ANNEX V

PROTOCOL NO. 1 ON CERTAIN QUESTIONS OF JURISDICTION, PROCEDURE AND ENFORCEMENT

THE HIGH CONTRACTING PARTIES have agreed upon the following provisions, which shall be annexed to the Convention:

Art. I Any person domiciled in Luxembourg who is sued in a court of another Contracting State pursuant to Article 5 (1) may refuse to submit to the jurisdiction of that court. If the defendant does not enter an appearance the court shall declare of its own motion that it has no jurisdiction.
An agreement conferring jurisdiction, within the meaning of Article 17, shall be valid with respect to a person domiciled in Luxembourg only if that person has expressly and specifically so agreed.

Art. Ia

1. Switzerland reserves the right to declare, at the time of depositing its instrument of ratification, that a judgement given in another Contracting State shall be neither recognised nor enforced in Switzerland if the following conditions are met:

   (a) the jurisdiction of the court which has given the judgement is based only on Article 5 (1) of this Convention, and
   (b) the defendant was domiciled in Switzerland at the time of the introduction of the proceedings; for the purposes of this Article, a company or other legal person is considered to be domiciled in Switzerland if it has its registered seat and the effective centre of activities in Switzerland, and
   (c) the defendant raises an objection to the recognition or enforcement of the judgement in Switzerland, provided that he has not waived the benefit of the declaration foreseen under this paragraph.

2. This reservation shall not apply to the extent that at the time recognition or enforcement is sought a derogation has been granted from Article 59 of the Swiss

Federal Constitution. The Swiss Government shall communicate such derogations to the signatory States and the acceding States.

3. This reservation shall cease to have effect on 31 December 1999.

It may be withdrawn at any time.

Art. Ib Any Contracting State may, by declaration made at the time of signing or of deposit of its instrument of ratification or of accession, reserve the right, notwithstanding the provisions of Article 28, not to recognise and enforce judgements given in the other Contracting States if the jurisdiction of the court of the State of origin is based, pursuant to Article 16 (1) (b), exclusively on the domicile of the defendant in the State of origin, and the property is situated in the territory of the State which entered the reservation.

Art. II Without prejudice to any more favourable provisions of national laws, persons domiciled in a Contracting State who are being prosecuted in the criminal courts of another Contracting State of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person.

However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgement given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other Contracting States.

Art. III In proceedings for the issue of an order for enforcement, no charge, duty or fee calculated by reference to the value of the matter in issue may be levied in the State in which enforcement is sought.

Art. IV Judicial and extrajudicial documents drawn up in one Contracting State which have to be served on persons in another Contracting State shall be transmitted in accordance with the procedures laid down in the conventions and agreements concluded between the Contracting States.

Unless the State in which service is to take place objects by declaration to the Swiss Federal Council, such documents may also be sent by the appropriate public officers of the State in which the document has been drawn up directly to the appropriate public officers of the State

in which the addressee is to be found. In this case the officer of the State of origin shall send a copy of the document to the officer of the State applied to who is competent to forward it to the addressee. The document shall be forwarded in the manner specified by the law of the State applied to. The forwarding shall be recorded by a certificate sent directly to the officer of the State of origin.

Art. V The jurisdiction specified in Articles 6 (2) and 10 in actions on a warranty or guarantee or in any other third party proceedings may not be resorted to in the Federal republic of Germany, in Spain, in Austria and in Switzerland. Any person domiciled in another Contracting State may be sued in the courts:

- of the Federal Republic Of Germany, pursuant to Articles 68, 72, 73 and 74 of the code of civil procedure (Zivilprozessordnung) concerning third-party notices;
- of Spain, pursuant to Article 1482 of the civil code;
- of Austria, pursuant to Article 21 Of the code Of civil procedure (Zivilprozessordnung) concerning third-party notices;
- of Switzerland, pursuant to the appropriate provisions concerning third-party notices of the cantonal codes of civil procedure.

Judgements given in the other Contracting States by virtue of Article 6 (2) or Article 10 shall be recognised and enforced in the Federal Republic of Germany, in Spain, in Austria and in Switzerland in accordance with Title III. Any effects which judgements given in these States may have on third parties by application Of the provisions in the preceding paragraph shall also be recognised in the other Contracting States.

Art. Va In matters relating to maintenance, the expression court includes the Danish, Icelandic and Norwegian administrative authorities.

In civil and commercial matters, the expression court includes the Finnish ulosotonhaltija / overexekutor.

Art. Vb In proceedings involving a dispute between the master and a member of the crew of a sea-going ship registered in Denmark, in Greece, in Ireland, in Iceland, in Norway, in Portugal or in Sweden concerning remuneration or other conditions Of service, a court in a

Contracting State shall establish whether the diplomatic or consular officer responsible for the ship has been notified of the dispute. It shall stay the proceedings so long as he has not been notified. It shall of its own motion decline jurisdiction if the officer, having been duly notified, has exercised the powers accorded to him in the matter by a consular convention, or in the absence of such a convention has, within the time allowed, raised any objection to the exercise of such jurisdiction.

Art. Vc (None).

Art. Vd Without prejudice to the jurisdiction of the European Patent Office under the Convention on the grant of European patents, signed at Munich on 5 October 1973, the courts of each Contracting State shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State which is not a Community patent by virtue of the provision of Article 86 of the Convention for the European patent for the common market, signed at Luxembourg on 15 December 1975.

Art. VI The Contracting States shall communicate to the Swiss Federal Council the text of any provisions of their laws which amend either those provisions of their laws mentioned in the Convention or the lists of courts specified in Section 2 of Title III.

ANNEX VI

PROTOCOL NO. 2 ON THE UNIFORM INTERPRETATION OF THE CONVENTION PREAMBLE

THE HIGH CONTRACTING PARTIES,

HAVING regard to Article 65 of this Convention,

CONSIDERING the substantial link between this Convention and the Brussels Convention,

CONSIDERING that the Court of Justice of the European Communities by virtue of the Protocol of 3 June 1971 has jurisdiction to give rulings on the interpretation of the provisions of the Brussels Convention,

BEING AWARE OF the rulings delivered by the Court of Justice of the European Communities on the interpretation of the Brussels Convention up to the time of signature of this Convention,

CONSIDERING that the negotiations which led to the conclusion of the Convention were based on the Brussels Convention in the light of these rulings,

DESIRING to prevent, in full deference to the independence of the courts, divergent interpretations and to arrive at as uniform an interpretation as possible of the provisions of the Convention, and of these provisions and those of the Brussels Convention which are substantially reproduced in this Convention,

HAVE AGREED AS FOLLOWS:

Art. 1 The courts of each Contracting State shall, when applying and interpreting the provisions of the Convention, pay due account to the principles laid down by any relevant decisions delivered by courts of the other Contracting States concerning provisions of this Convention.

Art. 2

1. The Contracting Parties agree to set up a system of exchange of information concerning judgements delivered pursuant to this Convention as well as relevant judgements under the Brussels Convention This system shall comprise:

   - transmission to a central body by the competent authorities of judgements delivered by courts of last instance and the Court of Justice of the European Communities as well as judgements of particular importance which have become final and have been delivered pursuant to this Convention or the Brussels Convention;
   - classification of these judgements by the central body including, as far as necessary, the drawing up and publication of translations and abstracts;
   - communication by the central body of the relevant documents to the competent national authorities of all signatories and acceding States to the Convention and to the Commission of the European Communities.

1. The central body is the Registrar of the Court of Justice of the European Communities.

Art. 3

1. A standing Committee shall be set up for the purposes of this Protocol.
2. The Committee shall be composed of representatives appointed by each signatory and acceding State.
3. The European Communities (Commission, Court of Justice and General Secretariat of the Council) and the European Free Trade Association may attend the meetings as observers.

Art. 4

2. At the request of a Contracting Party, the depositary of the Convention shall convene meetings of the Committee for the purpose of exchanging views on the functioning of the Convention and in particular on:

   - the development of the case-law as communicated under the first paragraph first indend of Article 2,
   - the application of Article 57 of the Convention.

3. The Committee, in the light of these exchanges, may also examine the appropriateness of starting on particular topics a revision of the Convention and make recommendations.

ANNEX VII

PROTOCOL NO. 3 ON THE APPLICATION OF ARTICLE 57

THE HIGH CONTRACTING PARTIES

have agreed as follows:

1. For the purposes of the Convention, provisions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgements and which are or will be contained in acts of the Institutions of the European Communities shall be treated in the same way as the conventions referred to in paragraph 1 of Article 57.
2. If one Contracting State is of the opinion that a provision contained in an act of the Institutions of the European Communities is incompatible with the Convention, the Contracting States shall promptly consider amending the Convention pursuant to Article 66, without prejudice to the procedure established by Protocol No. 2.

ANNEX VIII

DECLARATION BY THE REPRESENTATIVES OF THE GOVERNMENTS OF THE STATES SIGNATORIES TO THE LUGANO CONVENTION WHICH ARE MEMBERS OF THE EUROPEAN COMMUNITIES ON PROTOCOL No. 3 ON THE APPLICATION OF ARTICLE 57 OF THE CONVENTION

Upon signature of the Convention on jurisdiction and the enforcement of judgements in civil and commercial matters done at Lugano on 16 September 1988, The Representatives of the Governments of the member states of the European Communities, Taking into account the undertakings entered into vis-a-vis the member states of the European Free Trade Association, Anxious not to prejudice the unity of the legal system set up by the Convention, Declare that they will take all measures in their power to ensure, when Community acts referred to in paragraph 1 of Protocol No. .2 on the application of Article 57 are being drawn up, respect for the rules of jurisdiction and recognition and enforcement of judgements established by the Convention

ANNEX IX

DECLARATION BY THE REPRESENTATIVES OF THE GOVERNMENTS OF THE STATES SIGNATORIES TO THE LUGANO CONVENTION WHICH ARE MEMBERS OF THE EUROPEAN COMMUNITIES

Upon signature of the Convention on jurisdiction and the enforcement of judgements in civil and commercial matters done at Lugano on 16 September 1988.

The Representatives of the Governments of the member states of the European Communities Declare that they consider as appropriate that the Court of Justice of the European Communities, when interpreting the Brussels Convention, pay due account to the rulings contained in the case law of the Lugano Convention.

ANNEX X

DECLARATION BY THE, REPRESENTATIVES OF THE GOVERNMENTS OF THE STATES SIGNATORIES TO THE LUGANO CONVENTION WHICH ARE MEMBERS OF THE EUROPEAN FREE TRADE ASSOCIATION

Upon signature of the Convention on jurisdiction and the enforcement of judgements in civil and commercial matters done at Lugano on 16 September 1988.

The Representatives of the Governments of the member states of the European Free Trade Association Declare that they consider as appropriate that their courts, when interpreting the Lugano Convention, pay due account to the rulings contained in the case law of the Court of Justice of the European Communities and of courts of the Member States of the European Communities in respect of provisions of the Brussels Convention which are substantially reproduced in the Lugano Convention.