

CMI – IWG open meeting on Liability for Wrongful Arrest of Ships

Follow-up Questionnaire

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

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

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

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

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

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

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

Thank you.

Dr Aleka Sheppard - IWG Chairman