

Arrest of Ships and International Private Law (summary)

Fumiko MASUDA

Professor of Commercial Law, Faculty of Humanities and Social Sciences, Okayama University

Arresting a ship is an effective way to enforce maritime claims, as it compels the shipowner, or the charterer as the case may be, to provide adequate security for the claim's fulfilment. When a maritime claimant applies for the arrest of a relevant ship and the competent court grants this request, the ship is prohibited from leaving the port until the court is satisfied with the security provided by the shipowner or charterer. The international maritime community has made efforts to harmonise the rules relating to ship arrests as differences in the conditions for arresting and releasing a ship could hinder smooth maritime transport and the enforcement of maritime claims. To date, the International Convention Relating to the Arrest of Seagoing Ships, adopted in 1952 and effective since 1956, has been ratified or acceded to by over 70 countries. This convention aims to reconcile provisional arrest proceedings in civil law jurisdictions with *in rem* actions in common law systems. The International Convention on Arrest of Ships, adopted in 1999 to modernise the 1952 Convention, came into force in 2011 although it has been less popular than its predecessor. Apparently, the international harmonisation has been successful in this area while Japan has neither ratified either Convention nor incorporated similar rules into its domestic law.

In this context, this Article examines the extent to which the 1952 Arrest Convention has achieved harmonisation of ship arrest rules and considers the path Japan should pursue. Analysis of the text of the 1952 Convention and its various interpretations among Contracting States reveals that its intentionally narrow scope and textual ambiguities grant considerable leeway to *lex fori arresti*. This allows Contracting States to adapt the Convention to align better with their domestic laws or policies, with private international law issues often viewed through the lens of *lex fori arresti*. A closer examination of the implementation of the 1952 Convention in England, Germany, and France shows that the practice of arresting ships is integrated into their national procedural frameworks. The civil law systems, in particular, embed ship arrest rules within their civil provisional remedies legislation, yet differing approaches persist regarding how to balance the conflicting interests of shipowners or charterers against those of maritime claimants. Given these insights, this Article advocates for the development of specific

rules governing ship arrests within Japanese civil provisional remedies law, while acknowledging the theoretical challenges involved.