

## The Arrest of Ship in England and Iran: A Comparative Study

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### ABSTRACT

This paper discusses the respective laws, which are applicable in the Arrest of a Ship according to the judicial systems of England and Iran. In this article is given the legal systems and the relevant legislations of law about the mentioned countries. The article discusses and compares the arrest procedure as well as the legal systems in the respective countries and highlights the contrast of the law in the two countries. It gives details of the requirement of the documentation required and details the effect of the arrest of a ship in the country of interest. The article also describes the elements of counter-security in the case of a wrongful arrest as well as the judicial sale of a ship in the two countries. It goes to describing in detail the shortcomings of the legal systems in the two countries.

**KEYWORDS:** Ship, Arrest, Law, Iran, England.

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### 1. INTRODUCTION

Ships and their cargo travel across the world delivering goods from one port to another. Due to the wide diversity of the span of the voyage, the legal problems associated with ships can never quite be the same as those associated with land transport. Since ships spend most of their time on the high seas where there is no applicable legal system, there is an element of foreign nature, which gets introduced when a dispute arises. This has always been the case for centuries. Since the establishment of the shipping industry, the seafarers and merchants brought their problems to the courts with the expectation that their problems be resolved in a manner which best suited their needs. In most cases, the rulers at that time were like minded, who saw the safety of foreign commerce part of the nation's prosperity. Ports and communities which were connected with the sea, developed customary legal rules which, over time, eventually spread beyond the boundaries for whom they were originally designed to help, carried by the same merchant and ship owners.

Currently, England has a single law system of courts to deal with matter of disputes which arise at sea. There is a distinct system of maritime courts or a maritime law. For majority of the cases, shipping law consists of the application of the generic rules of law of commerce to the distinct facts which are made available by ships and carriage by sea. However, there are special rules which are applicable to shipping cases. There is an Admiralty Court within the Queen's Bench Division of the High Court which handles almost all the cases directly concerning ships and which applies such unusual rules and procedures which still exist<sup>1</sup>.

As mentioned earlier, it is the peculiarity of the shipping law that the dispute cannot be restricted to the boundaries of any one country. A shipping case in law almost inevitably has involvement of more than one jurisdiction. For instance, a cargo of iron ore purchased from an Australian mining corporation

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<sup>1</sup> HILL, C. J. S. 1998. *Maritime Law*, London, Lloyd's of London Press.

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by Japanese dealers in order to fulfil a German Steel manufacturing contract. The cargo may be loaded on a Greek owned bulk carrier for a voyage to Hamburg. Say, the vessel collides with British-registered British-owned oil tanker carrying oil belonging to an American oil company and the ore carrier be lost with its cargo and the escaping oil pollutes the coasts of Papua. The insurers of the two ships involved, the cargoes and liabilities may be found in England, Japan and the United States. It is thus seen that the carriage of goods over the sea can see the involvement of various geographical boundaries and thus can involve the laws and jurisdictions of various countries if there is ambiguity in the matter<sup>2</sup>.

### 1.1 *What is the Arrest of a Ship?*

The ship which is the suspect can legally be inhibited from movement and trading pending the decision of the court action (an action *in rem*) in which in most cases the subject of the claim is the ship which is being arrested; the arrest being carried out in parallel to a claim rather than an arrest for its own sake. In practice the HM Revenue & Customs ascribes the Claim Form (replacing the earlier action of “nailing a writ to the mast”) together with the warrant for arrest for the ship under the directives of the court, in the United Kingdom. This is under the authority of an individual called Admiralty Marshall who resides in the Admiralty Court of London<sup>3</sup>.

### 1.2 *The Need for Arrest of a Ship*

One of the main reasons for arrest of a ship is for the claimant to receive satisfaction who has made a claim against the vessel *in rem*. However, it is possible for the claimant to apply for an arrest warrant at any point in time after the release of the Claim Form. The judgement does necessarily have to be entered and even after the judgement has been passed, the claimant may still arrest a ship. The vessel under query remains under the control of the court and notably the subsequent insolvency of the owner will not affect this security. This is done to ensure that should the party making the claim against the owner be successful in court, the recovery of the judgement which has been determined be possible by the sale of the property in question. The courts in the United Kingdom make the decision of the loss or victory and do not recover the monies for the successful party. In that case, the ship in query becomes the surety of the claim and the ultimate sanction by the court will be the sale of the vessel to fulfil the claim. This situation rarely may occur as the owners' bank or the insurance company of the ship will provide a letter of undertaking (historically, “bail”) which will provide as security and will clearly state that in the event of the claimant being successful, they will pay out on the claim. Thus, the ship can be released and the owner can quickly generate money from the same<sup>4</sup>.

A lasting peculiarity of maritime law which does not need to be treated at length here but which is explained in detail in the chapters to follow is Admiralty Procedure. Although the high court of admiralty does not subsist as a separate court, the Queen's Bench Division of the high court preserves an admiralty court. It is in this court, beneath the Lord High Admiral's silver oar, that the modern forms of the early procedures of the High Court of Admiralty are largely carried out.

An important and distinct feature of the Admiralty is that the proceeding can be *in rem* or against the ship or property relevant to the dispute, that is, *in personam*. In general, legal disputes against whom the claims are made are generally *in personam* or against the person, individual or corporation<sup>5</sup>. In *in rem* proceedings, the plaintiff initiates by serving the process on the ship and takes steps to have an officer of the court “arrest” the ship in question and to hold it in place. If at this point the defendant does not come forth to defend the ship, the entire proceeding may continue against the ship and finally, the vessel may be appraised and sold by the order of the court in order to satisfy the successful petitioner.

<sup>2</sup> GRIME, R. 2001. *Shipping Law* London, Sweet and Maxwell Publication.

<sup>3</sup> NIJM, V. R. A. 2011. *The Arrest of Ships in Private International Law*, London, Oxford University Press.

<sup>4</sup> MAC, C. 1999. *International Maritime Law*, London, Sweet & Maxwell.

<sup>5</sup> MEESON, N. & KIMBELL, J. 2011. *Admiralty, Jurisdiction & Judgements*, London, Lloyd's Shipping Law Library.

The claimant has a practical advantage in the *in rem* proceedings. Generally, the court allows for a piece of the property of the defendant to be taken to satisfy the judgement, if successful, but until recently it was uncommon that one be permitted to commence by going after a piece of property. When the prospect of the defendant being deprived of its valuable asset, especially a ship, which is expected to generate income, becomes a reality, it places immense pressure on the defendant to appear in court. For the claimant, the availability of the asset from which he may recover his damages and costs, if successful, is an apparent benefit<sup>6</sup>.

Arrest has an effect on *in rem* proceedings. The warrant for the arrest of the ship is executed by the Admiralty Marshall, the officer of the Admiralty Court, which the plaintiff obtains. The traditional method of serving the warrant by nailing it to the mast of the ship has proven to be impractical due to the steel masts of ships used in recent years; but the document must be affixed on the superstructure of the ship for the period and a copy of it be permanently left aboard the ship. The court has possession of the ship, once arrested, on behalf of the plaintiff and any effort to move the ship would result in contempt of court<sup>7</sup>.

Although a ship is the most common subject of *in rem* proceedings, however, other maritime property may be arrested in appropriate proceeding. A proceeding against the freight earned by the ship might emerge from a cargo claim; or a salvage claim might be enforced against the cargo that was salvaged. In general, the claim should directly relate to the property being arrested. Unless there is such property necessarily envisioned in the claim, then there will, most likely, be no right to proceed *in rem* and thus no arrest will be made. It is for this reason that paragraph (d) in Section 20(2) of the Supreme Court Act 1981, "damage received by a ship, does not support *in rem* proceeding." There is no maritime property necessarily responsible for the loss.

## **2. The Legal Systems and the Relevant Sources of Law**

The legal concept that a ship can be arrested and prevented from moving is archaic. The arrest of a vessel in the United Kingdom (and other jurisdictions) requires the vessel to be served with a "warrant of arrest" analogous to the criminal proceedings; although this arrest may be for a completely different reason and this form of arrest is part of a civil law admiralty procedure. Due to certain restrictions and limitations during the preparation of this report, brevity is of utmost importance and the author has attempted to give a comparison of the laws which govern the arrest of a ship in England, where the author is currently completing her education and Iran, the home country of the author. The author has discussed the significant differences and also has highlighted the similarities of these governing laws. The comparison will show the shortcomings of the judicial system of Iran and highlight the scope for change in the Iranian judicial system.

### **2.1 International Conventions**

#### **2.1.1 The Brussels Convention 1952**

The Brussels Convention, officially known as the "Convention of 27 September 1952 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters" was created in 1952 in the member states of the EU, with the goal to make free movement for verdicts, improving economic efficiency and boosting a single market by harmonising the rules on jurisdiction and to avoid the occurrence of simultaneous multiple litigations. The ineffectiveness of the enforcement of verdicts was regarded as a problem which was a hindrance for economic integration. Congregation of the rules of arrest was indeed required if one were to unify the rules which governed the relationship between ship

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<sup>6</sup> HILL, C. J. S. 1998. *Maritime Law*, London, Lloyd's of London Press.

<sup>7</sup> LAX, M. 2003. *An Arresting Development* [Online]. Oxford. Available: [http://www.maritimeadvocate.com/ship\\_arrest/an\\_arresting\\_development.htm](http://www.maritimeadvocate.com/ship_arrest/an_arresting_development.htm) [Accessed 23/06/2012].

owners and their creditors on the trail towards global unison. This was the main reason which led to the formation of the 1952 Brussels Convention<sup>8</sup>.

Before the convention came into effect, civil and common law regimes shared two common differences. The primary difference was that the common law regime allowed only for the ship to be arrested for specific claims. Further, only that ship, against which the claim was made, was subject to custody. On the other hand, the civilians permitted the arrest for all claims and there was not required to be a link between the claim and the ship. The Convention has largely regulated the questions which, at large, reflect the common law since it was existent before the Convention came into force. The secondary difference between the civil and common law was the liability of wrongful arrest. The rules for wrongful arrest proved hard to accumulate and thus were not incorporated in the Convention.

### 2.1.2 The Supreme Court Act 1981

The cases regarding Admiralty jurisdiction are administered by the Supreme Court Act 1981, Sections 20 – 24. This act has overruled the former Administration of Justice Act 1956 which was passed to implement the 1952 Arrest Convention. Since the convention has not fully been absorbed into English Law, arrest is limited to when the action *in rem* against a ship is available. Thus it can be said that the list in Article 1(1) of the Arrest Convention is not exhaustive. Moreover all the claims secured by a maritime lien under English Law and thus the claims for which an *in rem* action can be brought are found in the list in Article 1(1) and in section 20(2) of the Supreme Court Act 1981. With the exceptions for the claims stated in subparagraph (d) of Section 20(2), all the claims can be pursued *in rem*. However many of those claims can fall under subparagraph (e) instead. In order for there to be an *in rem* action it is not necessary for the claim to have a maritime lien status. Therefore, according to Section 21(3) of the Supreme Court Act 1981, all maritime liens can be pursued by *in rem* actions<sup>9</sup>.

In the United Kingdom, the admiralty jurisdiction can be exercised in either *in rem* or *in personam* actions<sup>10</sup>. The list for which there is Admiralty jurisdiction is set out in the Supreme Court Act 1981 section 20(1)(a) and 20(2). In the English legal system, ‘arrest’ and ‘jurisdiction’ are closely related. Jurisdiction is given on the basis of an action under *in rem* and thus it follows that it is not only given for the claims which are listed in Article 7(1)(a)-(f) of the 1952 Arrest Convention. The provisions set out in the Act are applicable to not only the ships, both, British and foreign alike wherever their residence may be and for all claims wherever they arise.

## 2.2 England

The first recorded use of the Admiral term in England was in 1300. For time out of mind, the law of England has known the admiral which enabled the kings the collection of profits and emoluments of the marine lands. The maritime also acted as a court and exercised its powers in piracy and maritime matters. The extensive jurisdiction of the civilian origin hastened the conflict with the jurisdictions exercised by the courts in local seaports and the common law courts. This led to the passage of three statutes giving the Admiralty Court, although statutory, jurisdiction over the sea. The expansion of shipping and trade in England during the Elizabethan age resulted in tremendous development in Admiralty court which outraged the common law practitioners because of the increased stature, business and income of the civilian counterparts<sup>8</sup>.

Since as early as the nineteenth century, the origins of the English Admiralty action *in rem* can be traced to action *in rem* of Roman law. This relation could easily be established due to the linguistic nature of the *in rem* actions. The *in rem* action has been mentioned in several famous work, one of which is *A*

<sup>8</sup> FORCE, R. 2005. Jurisdiction and Forum Selection in International Maritime Law. In: DAVIES, M. (ed.). Kluwer Law International Publication.

<sup>9</sup> NIGM, V. R. A. 2011. The Arrest of Ships In International Law. London: Oxford University Press Publication.

<sup>10</sup> GRIME, R. 2001. *Shipping Law* London, Sweet and Maxwell Publication.

*Compendious View of the Civil Law and of the Law of the Admiralty*, published in 1802 where the author, Arthur Browne mentions: “*This remedy in rem against the ship or goods is founded on the practice of the civil law, which gives an action in rem, to recover or obtain the thing itself, the actual specific possession of it...*”<sup>11</sup>.

In modern times, the main governing law for the arrest of a vessel in the United Kingdom is the Supreme Court Act 1981. Section 20(2) of this Act states nineteen types of maritime claim within the admiralty jurisdiction of the High Court and in respect of which a ship may be arrested. Among these are included claims regarding the possession or ownership of, or mortgage on, a ship; claims for the damage done by or to a ship; claims relating to the carriage of goods on the vessel; claims arising out of a general average act; claims for the loss of life or personal injury due to a defect in the vessel; claims relating to the use or hire of a ship; claims for goods and materials supplied to a ship; claims in respect of the construction or repair of a ship; claims by the master or crew for wages; claims for salvage, towage and pilotage; and claims arising out of bottomry and collisions<sup>12</sup>. As any law, there are certain exceptions to the case, when the arrest of the vessel is not a possibility, such as claims for insurance premiums and claims for legal costs. The English Law does not distinguish between English and Foreign ships and treats both ‘conventional’ and ‘non-conventional’ ships equally.

### 2.3 Iran

The Maritime Law of Iran 1964 does not include the provisions for the arrest of seagoing ships. There is no specific procedure for the arrest of a vessel. Thus a ship is arrested like any other property by the assistance of the combination of Iran’s Maritime Law (1964) together with Iranian Civil Procedure Code and Commercial Code by port authorities on administrative or criminal grounds (such as infringing anti-pollution laws or posing health or safety hazards or refusing to pay state dues or taxes). Iran, like England, has a long coast line and although Iran has one of the largest fleet of merchant vessels in the Middle East, it has failed to keep up the pace with the recent growth and the required legislation is lagging behind. For serious issues, an application for the arrest of the ship can be made in writing to the court of the coastal province whose jurisdiction the ship comes under, stating the nature of the claim, the course of action, and the name of the ship along with the applicable supporting evidence<sup>13</sup>. It is essential that these documents be accompanied with their official translation into Persian language, upon filing of which the court may grant a ruling.

The ship can be arrested for any claim which has the approval of the court of law including those rising from privileged claims (matters regarding the crew’s pay and similar labour issues), claims by third parties such as debt recovery agencies, for the carriage of illegal goods or passengers, the intervention of the port authorities to collect dues and levies or over incidents of collision and pollution, and for posing a hazard to the health with or without casualty<sup>12</sup>.

## 3. The Arrest Procedures

This chapter will review the methods of arrest in the two countries under consideration, England and Iran. This chapter is particularly important to understand the effectiveness of the arrest as a means for debt collection, which would largely depend on the ready availability for the claimant.

In order for the court to be involved in the arrest of a ship for either of the countries, a claim must be one prescribed as a maritime claim, which will be explained in detail in Chapter 6. The individual procedures of arrest of ship will be discussed here in this chapter and a summary of differences and similarities, if any, will be given.

<sup>11</sup> BROWNE, A. 1802. *A Compendious View of the Civil Law and of the Law of the Admiralty*. vol. II.

<sup>12</sup> Section 20(2)(a)-(r) of the Supreme Court Act 1981.

<sup>13</sup> AMIRSHAHI, D. H. 2004b. Ship Arrest In IRAN. Available: <http://www.shiparrested.com/wp-content/uploads/Iran-@-Ship-Arrests-in-Practice-6th-ed.pdf> [Accessed 10/04/2012].

### 3.1 *Arrest procedure in England*

The procedure of arrest of a ship in England is fairly straightforward involving the lodging of an application and supporting witness statements with the Admiralty Marshal. It does not involve a hearing. Certain documents need to be prepared to obtain an arrest. This includes a Claim form which needs to be drafted and issued and Warrant of Arrest<sup>14</sup>. One of the important documents is the application and an undertaking to the Admiralty Marshal. The Court officer who is in charge of the procedure of arrest, sale and appraisal of the property in Admiralty proceeding is the Admiralty Marshal. An undertaking has to be made to ensure that the fees of the Admiralty Marshal and any other expenses incurred by him with respect to the procedure of arrest, the maintenance and custody of the vessel and its release or endeavours to release it are covered<sup>13</sup>. The undertaking will include the expense incurred in activities such as the hire of launch or instructing agents to serve the arrest papers on the ship, by the Admiralty Marshal. It should also include the cost of local agents to victual and bunker the ship during arrest and the port charges<sup>15</sup>.

This undertaking is given by the solicitors of the plaintiffs and thus an implied risk exists on the solicitors for the Admiralty Marshal's fees. To avoid any such personal liabilities, the solicitors may require their clients to provide an undertaking which would indemnify them from the liability of paying any such fees to the Admiralty Marshal as a result of their undertaking to pay the fees; before signing the documents<sup>13</sup>.

Another document which is essential is a Declaration in support of the application for the warrant of arrest<sup>16</sup>. This document will contain specific information with regards to the nature of the claim. It will specify the details of the ship to be arrested and its ownership. It will also specify the amount for which the security is sought for. It is essential that this declaration be verified by the statement of truth affirming that the facts stated in the declaration are truthful.

At present, the electronic filing of documents is not possible. A notary is required to certify the documents however if the supporting documents being submitted require translation, the translations must be certified by a notary.

In the case where vessel is used for commercial purposes such as a charter yacht which would incur a loss of income to the owner when he is aware that the vessel may be arrested, it is possible for the owner to enter a "caution" into the Admiralty Marshall's register. The owner then has to provide an undertaking to file an acknowledgement of service to the claim and provide security to satisfy the claim with the cost of interest<sup>17</sup>.

Before the arrest of a ship, the Admiralty Marshall's register is searched for any caution which may have been lodged against the ship. This register is at the Admiralty and Commercial Registry in London. If in the case a caution has been lodged against a ship, the caveator i.e. the person who lodged the caution must, within 3 days of notice that the action has begun, provide the amount stated in the caution, as security<sup>18</sup>. Even though a caution has been issued against a vessel, it can still be arrested if the claim is strong enough, failing which the Court has the discretionary power to order the release of the ship and may order that compensation be paid by the arresting party<sup>19</sup>.

### 3.2 *Arrest Procedure in Iran*

There is currently not a single law for the arrest of a ship in Iran. The Maritime Law of Iran does not specify rules for the arrest of a vessel and thus there is no specific procedure as such for the arrest of a ship in Iran. In Iran, a ship can be arrested like any other property based on the combination of Iranian

<sup>14</sup> MCARDLE, A. D. 1988. *International Ship Arrest A Practical Guide*. London: Lloyd's of London Press.

<sup>15</sup> SACH, K. & MCFADYEN, L. 2006. *Ship arrest in England and Wales*.

<sup>16</sup> MCFADYEN, L. & SACH, K. *Sach Solicitors* [Online]. Available: [www.sach-solicitors.co.uk](http://www.sach-solicitors.co.uk).

<sup>17</sup> NIGM, V. R. A. 2011. *The Arrest of Ships In International Law*. London: Oxford University Press Publication.

<sup>18</sup> NEUBERGER, D. 2011. *The Admiralty and Commercial Court Guide*. London.

<sup>19</sup> ASFAD, D. M. N. 2011. *Maritime Law*. Available: [http://www.ses.ac.ir/files/nimehhozuri/pages/jozve\\_hoghoghe\\_daryayi892.pdf](http://www.ses.ac.ir/files/nimehhozuri/pages/jozve_hoghoghe_daryayi892.pdf) [Accessed 06/06/2012].

laws such as the Civil Procedure Code and the Commercial law of Iran and the Brussels Convention of 1952<sup>20</sup>. The latter forms the major contributor to the procedure of arrest in Iran. Since the ship possesses juridical personality, a motion for arresting any ship can be submitted to the Iranian competent courts, where the subject matter of the claim has no relationship with Iran and Iranian nationals. This is possible even if the cargo is not shipped to or from Iran, and the parties involved in the contract of sale or the charter party are not Iranian nationals<sup>21</sup>.

A ship can be arrested by the Islamic Republic of Iran, not only for matter arising from rising from privileged claims but also for claims by third parties such as debt recovery agencies, for the carriage of illegal goods or passengers, the intervention of the port authorities to collect dues and levies or over incidents of collision and pollution, and for posing a hazard to the health with or without casualty. In the case that a ship needs to be arrested by the Iranian government, irrespective of the ownership of the ship i.e. whether it belongs to an Iranian National or not, an application can be filed with the court of the coastal province where the ship anchors or is expected to arrive. The court will receive the application which will contain specific information regarding the grounds for arrest, the size of the claim and should also mention the name of the ship in question. It is essential that the application, along with the relevant documents be submitted to the court in Persian (Farsi) which is the official language, following which the court will grant a ruling.

Once the court grants the arrest of the ship, a security can be submitted in the form of cash or a letter of guarantee by a bank; subject to the consent of the claimant, value of which is equivalent to the amount for which the arrest has been filed for. According to Iranian Law the claimant also has to deposit a sum which may be ten to fifteen percent of the damages claimed as decided by the court<sup>38</sup>, which acts as counter-security against the damages which may be incurred by the plaintiffs. This amount is required to be deposited to the Justice Administration's Fund.

#### **4. Effects of Arrest**

This section intends to give an overview of the consequences of an arrest being granted. It will cover both, the positive effects as well as the ill effects of the action of arrest of a ship. In order to provide a comparative study, only the points of comparison will be considered and general aspects of the effects will not be discussed in this section.

##### **4.1 Presence of Asset Ensured**

The primary reason for the arrest of an asset is to ensure that the claim of the creditor can be implemented. The arrest of a ship prevents the change of ownership thus preserving the right of the claimant and securing his interests. This is done prior to the ship beginning its journey at sea, after which the ship along with its cargo may not be traceable. Also, the ship can change its flag to its convenience thus changing its identity between ports<sup>22</sup>. Due to all these reasons it is practically impossible to arrest a ship without taking the vessel into custody. Hence, the arrest of a ship has become essentially a vital remedy for the maritime claimant.

In English Law, both arrest and attachments involve the ship being taken into custody. In contrast, the Iranian court has the power of discretion to decide whether or not the arrest shall involve detention. Although, however, there is an exception; when the claimant has a claim which is secured by a lien or mortgage, the ship has to be arrested<sup>23</sup>.

<sup>20</sup> AMIRSHAHI, D. H. 2004a. *Generalities of Arrest Procedure in IRAN* [Online]. Tehran. Available: <http://www.shiparrested.com/generalities-of-arrest-procedure-in-iran-islamic-rep-of-iran-by-dr-hassan-amirshahi-partner-law-offices-of-dr-hassan-amirshahi-associates.html> [Accessed 15/05/2012 2012].

<sup>21</sup> NAJAFI, M. 2008. *Maritime Law of IRAN* Tehran, sazman motalee va tadvin kotob olom ensani daneshgahha.

<sup>22</sup> MAC, C. 1999. *International Maritime Law*, London, Sweet & Maxwell.

<sup>23</sup> ASFAD, D. M. N. 2011. *Maritime Law*. Available: [http://www.ses.ac.ir/files/nimehhozuri/pages/jozve\\_hoghoghe\\_daryayi892.pdf](http://www.ses.ac.ir/files/nimehhozuri/pages/jozve_hoghoghe_daryayi892.pdf) [Accessed 06/06/2012].

#### 4.2 *Release of Arrested Ship against Security*

Once claimant has filed for the arrest of a ship, in accordance to both the laws, English and Iranian, it is possible for the debtor to prevent the arrest or attachment of his ship and release his ship from arrest by providing security for the claim<sup>24</sup>. Once the security has been lodged, the 'security' is considered to be the 'arrested ship' in relation to the claim for which the ship was arrested for. This implies that, henceforth, all the subsequent actions for the arrest claim for which the ship was arrested for, has to be instituted against the security which has been submitted instead of the ship itself.

The release of an arrested ship against security is mutually beneficial to both, the debtor as well as the creditor. For the creditor, it means that he does not have to worry about the other claims which take priority over his own such as port dues and wages. By providing security, the debtor can ensure that the still available for business and is not incurring debt by being bound to the harbour. This is also beneficial to the creditor by reducing his potential liability in the case of wrongful arrest. In addition to the stated benefits to both the parties involved, lodging security means that variations in the market value of the arrested ship will not affect the creditor<sup>25</sup>.

Once the ship has been arrested, the court will order the release of the arrested vessel upon successfully lodging the deposit.

##### 4.2.1 *English Law*

In the case of English law, the amount of the sufficient security for "reasonably best argued case"<sup>26</sup> is limited to the maximum value of the ship. A demand for excessive security by the plaintiff will result in the penalisation in costs<sup>27</sup>. The method of payment of security can be any of the following methods as mentioned below<sup>28</sup>:

- Payment of funds into Court,
- A Letter of Undertaking from the vessel's P&I Club,
- An undertaking to the Court, or,
- Bank guarantee from a bank acceptable to the Court (Most common)

Upon submission of the security, an application form, Form ADM12, must be filled along with the approval of the plaintiff<sup>29</sup>. In the case the security is insufficient, re-arrest is possible; however, the amount cannot exceed the value of the ship when it was first arrested.

##### 4.2.2 *Iranian Law*

In the case of Iranian Law, the amount of security is similarly limited to the value of the ship and is termed as "sufficient bail or other security"<sup>30</sup>. It merely states that the amount of security has to be "sufficient" which is decided by the Iranian Court, having the value of the ship as the upper limit of the amount. The method of payment of security can be any of the following methods as mentioned below<sup>31</sup>:

- Payment of funds into Court,
- An Undertaking to the Court, or,
- Bank guarantee from a bank acceptable to the Court.

<sup>24</sup> Article 5 of the Brussels Convention of 1952.

<sup>25</sup> NIJM, V. R. A. 2011. *The Arrest of Ships in Private International Law*, London, Oxford University Press.

<sup>26</sup> The Moscanthy [1971] 1 Lloyd's Rep. 37, Tribels [1985] Lloyd's Rep. 129

<sup>27</sup> The Polo II [1977] 2 Lloyd's Rep. 115

<sup>28</sup> MCARDLE, A. D. 1988. *International Ship Arrest A Practical Guide*. London: Lloyd's of London Press.

<sup>29</sup> NEUBERGER, D. 2011. *The Admiralty and Commercial Court Guide*. London.

<sup>30</sup> Article 5 of the Brussels Convention 1952.

<sup>31</sup> AMIRSHAHI, D. H. 2004b. *Ship Arrest In IRAN*. Available: <http://www.shiparrested.com/wp-content/uploads/Iran-@-Ship-Arrests-in-Practice-6th-ed.pdf> [Accessed 10/04/2012].

In contrast to the English courts, the Iranian courts do not acknowledge a Letter of Guarantee from the vessel's P&I Club as a mode of security. In the case of a foreign letter of guarantee is contingent upon their issuance through an Iranian bank. For the Iranian Courts, cash is the best mode of payment of the security.

## **5. Conclusion**

One can imagine that the law to govern the shipping trade is as old as the profession itself. The term of Admiralty was first used in 1300 which has grown exponentially ever since with no turning back. The Elizabethan period saw a tremendous growth in the shipping trade and thus saw the rapid evolution of the Maritime Law. The ineffectiveness of the enforcements of verdicts was regarded as a problem and a major hindrance for economic growth which eventually led to the formation of the Maritime law as we know today. One can safely assume that similar conditions across the globe forced the formation of their respective maritime laws.

The origins of the English system of law and the rest of the European continent (including Iran, since it follows the Brussels Convention of 1952) stem from the same roots but gradually over a period of time, English law has drifted away from the common outset due to various reasons.

Today, England has a fully mature system relating to shipping law. All the cases relating to admiralty jurisdiction are administered by Section 20 to Section 24 of the Supreme Court Act 1981. The arrest of a ship in English Law has a specific procedure in place. Iran, on the other hand, has not joined the band wagon. Although it has a very large coastline and was one of the largest fleets of merchant vessels in the Middle East, it does not have a single law system. The admiralty jurisdiction in Iran is a combination of the local law of the country as well as a partial incorporation of the Brussels Convention of 1952. There is no specific procedure of arrest of a ship in Iran. A ship is arrested like any other property by the assistance of the Maritime Law of Iran 1964 along with the Iranian Civil Procedure Code and the Commercial Code enforced by port authorities on administrative or criminal grounds.

The ship is mostly arrested with the intention to giving the claimant a sense of satisfaction against the vessel *in rem*. The procedure involved in different countries may be different but the underlying principle remains the same. The arrested vessel remains under the control of the Court until the ruling which then decides the outcome of the vessel.

For the arrest of a vessel in both the countries, an application must be made. In addition to the claim form, in England, certain other documents are required which would further include an undertaking and a declaration. In Iran, in addition to the application, the claimant is required to submit all other "relevant" documents. The major difference between the procedures in the two countries is that for the arrest of a ship in England, there is no hearing in the court in majority of the cases. The arrest procedure can be continued with all the required documents being presented to the Admiralty Marshall. However, the Iranian procedure requires that the application be submitted to the court of law along with the relevant documents supporting the claim to the court, upon filing of which, the court may grant a ruling. However, in both the countries, the electronic filing of documents is not an option and a written application has to be submitted.

The English system requires the solicitors of the plaintiffs to submit an undertaking for the fees of the Admiralty Marshall, on their behalf. In order to not incur any costs themselves, the solicitors get the relevant documents signed from the plaintiffs before signing of the documents. In Iran, the mode of security is left to the discretion of the claimant and can be either in the form of cash or a letter of guarantee.

Once the arrest of the vessel has been filed for, both the countries have provisions for the release of the vessel against security for the claim. This case is mutually beneficial to the parties, the claimant as well as the plaintiff. In England, the maximum amount of security is limited to the maximum value of the

ship and demand for additional amount can result in penalization. This security can be provided in the form of a letter of undertaking from the vessel's P&I Club, an undertaking to the court, a bank guarantee from a bank acceptable to the court and payment of funds to the court. The amount of security should be "sufficient" and is determined by the court of law in Iran. The similar modes of security is acceptable to the courts in Iran, except for the letter of undertaking from the vessel's P&I Club which is not recognized as an acceptable security.

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