

ANALYSIS AND COMMENT

THE CONSTRUCTION IN THE NETHERLANDS OF ARTICLE 3(1), (4) OF THE ARREST CONVENTION 1952

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Furtrans Denzilick Ticaret Ve Sanayi AS v Augusta Due Srl (The Constanza M)

Supreme Court of the Netherlands, LjN:BT2708

I Introduction

Over the years some uncertainty has existed in the Netherlands concerning the construction of Article 3.1 and 3.4 of the Arrest Convention 1952 (Convention),² where it is stated:

3(1) Subject to the provisions of paragraph (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 than the particular ship in respect of which the claim arose, may be arrested in respect of any of the maritime claims enumerated in Article 1 (o), (p) or (q). (*emphasis added*)

3(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 arrest 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 claim. *The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.* (*emphasis added*)

The uncertainty concerned the following two questions:

- 1) Does Article 3(1) require a connection to exist between the maritime claim and the arrested ship?³
- 2) What is the scope of application of the second paragraph of Article 3(4), which allows a ship to be arrested for a claim against the debtor who is not the registered owner of the ship?⁴

These two questions have now been answered in a series of cases heard by the Dutch courts in the course of 2010 and 2011.

In *The Constanza M*,⁵ on 9 December 2011 the Supreme Court of the Netherlands (SCN) answered the second question (relating to the construction of Article 3(4)) by saying that a ship could be arrested for a claim against a debtor who was not the registered owner of the ship if, under the *lex causae*, the arrest could be enforced against the ship.

The first question (relating to the construction of Article 3(1)) has been explicitly decided upon by the Court of Rotterdam in the *Halcyon Star*, by the Court of Appeal of Leewarden in *The Don Alfonso*

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² International Convention for the Unification of Certain Rules relating to the Arrest of Sea-going Ships 1952.

³ See eg *Berlingieri on Arrest of Ships* (5th edn Informa 2011) p 207, fn 23, where the Dutch position regarding art 3.1 of the Convention is discussed.

⁴ See eg *ibid* para 7.111 through 7.116 which make clear that the Dutch position regarding art 3.4 Convention has caused some confusion.

⁵ *Furtrans Denzilick Ticaret Ve Sanayi AS v Augusta Due Srl* Supreme Court of the Netherlands 9 December 2011 LjN:BT2708.

and by the Court of Appeal of Amsterdam in *The Constanza M*, which decisions seem to have been confirmed by the Supreme Court in its *Constanza M* judgment.

These cases will now be discussed in more detail.

2 *The Ibn Badis*⁶ Court of Appeal of The Hague 5 December 1989

This case is the reason for the uncertainty that existed in the Netherlands concerning the construction of Article 3(1). The facts of this case were as follows:

CNAN had carried out agency work for Turnbull relating to the ships *Skeldergate*, *Stainless Partiot* and *Harry D*. Turnbull had made advance payments to CNAN for this agency work. CNAN had also carried out agency work for Transoceanic relating to the ship *Hope* and Transoceanic had also made advance payments to CNAN for this agency work.

CNAN did not send Turnbull and Transoceanic (Turnbull et al) final invoices and Turnbull et al alleged that there was a balance remaining in their favour which should be repaid to them by CNAN. Turnbull et al arrested the ship *Ibn Badis*, which was owned by CNAN, in Rotterdam to obtain security for their claims.

In the Court of Rotterdam CNAN argued inter alia that even if the claims for which the *Ibn Badis* had been arrested were maritime claims, the Arrest Convention did not allow the arrest of the *Ibn Badis* as there was no connection between the *Ibn Badis* and the ships to which the maritime claims related. The Court of Rotterdam apparently did not consider this argument and allowed the arrest. CNAN appealed to the Court of Appeal of The Hague which stated:

(. . .) Parties agree that the claims – which, in the Court of Appeal's opinion are maritime claims – for which the *Ibn Badis* was arrested have nothing to do with the *Ibn Badis* or any other of CNAN's ships.

7. The *travaux préparatoires* of the Convention make clear that the purpose of the Convention is that a creditor can arrest a ship of his debtor for his maritime claim. By allowing a sister ship arrest, ie an arrest of a different ship from the ship to which the claim relates, the Convention does not in principle require a strict connection between the alleged maritime claim and the arrested ship.
8. It is more likely that the extension to sister ships was intended to give the creditor, now that the scope of recovery was, pursuant to the Convention, limited to ships, the maximum possibility of recovery.
9. The *travaux préparatoires* do not, as far as the Court of Appeal can tell, make clear that a situation such as this – a maritime claim against an agent that is the owner of a ship that has no relation to the claim – was considered.
10. Given that a narrow interpretation of Article 3 in this case would lead to the unreasonable⁷ result that an arrest of CNAN's ship, the *Ibn Badis* would not be possible to obtain security for the maritime claims of Turnbull et al, the Court of Appeal considers it apparent, also because of the above-mentioned purpose of the Convention and because of the absence of considerations regarding cases such as the one at hand, that it was not the intention of the drafters of the Convention to deny the creditor of a maritime claim the possibility of arresting the debtor's ship, on the ground that there is no connection between the claim and the arrested ship.

⁶ *Compagnie Nationale Algérienne de Navigation (CNAN) v Turnbull Scott Management Ltd et al* SES 1990, 75.

⁷ Under Dutch law, the principles of reasonableness and fairness have a great importance when interpreting texts. The precise words of a text are not given their literal meaning if that would be unreasonable in the circumstances of the specific case. In respect of contracts, the role of reasonableness and fairness has been codified as follows in art 6:248 of the Dutch Civil Code (DCC):

- 1) A contract does not only have the legal consequences agreed between the parties, but also those that follow from the nature of the contract, the law, custom or the requirements of what is fair and reasonable.
- 2) A rule that has been agreed between parties in a contract does not apply if, in the given circumstances, standards of reasonableness and fairness would make it unacceptable for that rule to apply.

The influence of this article in Dutch contract law cannot be overemphasised: in unfair cases, under art 6:248 DCC contract clauses can be set aside and/or clauses will be implied into the contract. In this case, the Court of Appeal of The Hague applied these principles of Dutch law to the construction of the Convention.

- II. The Court of Appeal therefore construes Article 3 in such a manner that Turnbull et al were entitled to arrest the *Ibn Badis* for their claim.

2.1 Comments regarding the *Ibn Badis* and the *Ibn Siraj/High Peak*

In *The Ibn Siraj/High Peak*⁸ the facts were similar to the facts in *The Ibn Badis*. In the former judgment, the Court of Rotterdam gave the same decision that the Court of Appeal of The Hague had given in *The Ibn Badis*, whereby it used precisely the same arguments as had the Court of Appeal. The judgment is more or less a copy of *The Ibn Badis* judgment.

In *The Ibn Badis* and *Ibn Siraj/High Peak* the Court of Appeal of Amsterdam and the Court of Rotterdam gave a broad interpretation to Article 3(1) of the Convention. In my view, the judgments are wrong because a) the Convention does not limit the creditor's right to obtain security through the arrest of ships (see paragraph 8 of the judgment). The Court of Appeal of The Hague and the Court of Rotterdam were clearly mistaken concerning the object and purpose of the Convention and b) under the current Dutch law paragraph 10 of the judgment is wrong: when construing an international convention, rules of national law, such as reasonableness and fairness may not be applied. See *NDS Provider*,^{9,10} in which judgment the Supreme Court cited its earlier judgment of 24 April 1992.¹¹

For these two reasons I consider the two judgments that I have discussed above to have very limited authority.

3 *The Halcyon Star*¹² Court of Rotterdam 7 October 2010¹³

In this case the Court of Rotterdam (Mr Geerdes) gave a broad construction to Article 3(4), (second paragraph). The facts of the case were as follows:

Pianura Armatori SpA (Pianura) were the owners of the *Halcyon Star*. They were also the managers of several other ships, which they did not own. Ferrari Shipping Agency GA (Ferrari) arrested the *Halcyon Star* at Flushing to obtain security in the amount of €507,000 for claims for agency services in France rendered at Pianura's request to various ships, including the *Halcyon Star*. The part of Ferrari's claim that pertained to services rendered to the *Halcyon Star* was €52,667.

In these proceedings, Pianura requested the Court to order Ferrari to lift the arrest on the *Halcyon Star* within one hour of payment to Ferrari of the amount of €52,667. Pianura argued that Ferrari's claims pertained to Pianura as manager, and not to Pianura as owner of the other ships and that the arrest of the *Halcyon Star* for claims against the other ships, which were not owned by Pianura, was wrongful. Pianura cited Article 3(1) of the Arrest Convention and alleged that that Article required a connection between the arrested ship and the claim, in the sense that the ship to which the claim pertained and the arrested ship should both be owned by the debtor.

Ferrari contended that Article 3(1) of the Convention did not require a connection between the ship and the claim. Alternatively, it said that, according to the second paragraph of Article 3(4) of the Convention, it was entitled to arrest the *Halcyon Star* to obtain security for claims against Pianura in its capacity as manager of the other ships.

The judge (Mr Geerdes) said that the *travaux préparatoires* of the Arrest Convention made clear that the purpose of that Convention was that the creditor with a maritime claim must be able to arrest a ship that was owned by the debtor. By allowing a sister ship arrest, the Convention did not as a

⁸ *Flensburger Übersee Schifffahrt Gesellschaft Jaco mbH & Co KG et al v Société Nationale de Transport Maritime & Compagnie Nationale Algérienne de Navigation Maritime* Court of Rotterdam 4 March 1999 SES 2002, 28.

⁹ *Nile Dutch Africa Lijn BV et al v Delta Lloyd Schadeverzekering NV et al* Supreme Court of the Netherlands SES 2008, 46.

¹⁰ A case note in English on this case can be found at <http://www.onlinedmc.co.uk>.

¹¹ *Assurantie-Maatschappij Nieuw Rotterdam NV v Thailand Thai Airways International Ltd* NJ 1992, 688.

¹² This case note has also been published at http://www.onlinedmc.co.uk/index.php/Pianura_Armatori_v_Ferrari_Shipping.

¹³ *Pianura Armatori SpA v Ferrari Shipping Agency GA* SES 2011, 123.

matter of principle require a strict connection between the alleged maritime claim and the arrested ship, apart from the exceptions mentioned in Article 3(1). Mr Geerdes said that this would be his starting point.

Mr Geerdes further found that, as Pianura was not the owner of the other ships, Article 3(1) of the Convention did not apply.

He then considered whether Article 3(4) paragraph 2 allowed the arrest, concluding as follows.

The words of the second sentence of Article 3(4) allow this arrest. Maritime claims that we are dealing with in this case – maritime claims against the manager who is not the owner of the ships, [which themselves] are in no way connected to the claim – were, as far as one can tell from the *travaux préparatoires*, not considered by the drafters of the Convention. Considering the above-mentioned purpose of the Convention, and in the absence of clear indications to the contrary, the Court does not believe that it was their purpose to deny a creditor of a maritime claim the possibility to arrest a ship that is owned by the debtor on the basis that a connection does not exist between the claim and the arrested ship. For that reason, Pianura's request is denied.

3.1 Comments regarding The Halcyon Star

This decision is indeed in accordance with the literal meaning of the words of Article 3(4) paragraph 2 of the Convention. If this construction were to be correct, the opportunities to arrest ships in the Netherlands for claims against a debtor who is not the owner of the ship would have been considerably increased. However, as has already been stated above and will be discussed in more detail below when looking at the decision of the Supreme Court of the Netherlands in *The Constanza M*, the Supreme Court reaches a different conclusion to the one in *The Halcyon Star* regarding the correct construction of Article 3(4) paragraph 2.

4 The Don Alfonso, Court of Appeal of Leeuwarden 26 July 2011¹⁴

This case concerns the construction of Article 3(1) of the Convention. It confirms the decision of the Court of Appeal of Amsterdam of 16 March 2010 in *The Constanza M*¹⁵ regarding the construction of Article 3(1), to which decision the Court referred. The facts of the case were as follows.

Greatship, as owner, time chartered its ship *Greatship Dhriti* to Oceanografia. A dispute arose and Greatship commenced London arbitration proceedings against Oceanografia in which it claimed US\$2.6 million outstanding hire.

Oceanografia owned the ship *Don Alfonso* that was being built in the Netherlands. Oceanografia subsequently entered into a financial restructuring arrangement with its bankers and transferred the property in the *Don Alfonso* to a company called CFA, which Company was 99.99 per cent owned by Oceanografia.

Greatship then arrested the *Don Alfonso* to obtain security for its hire claim against Oceanografia and for an alleged claim against CFA. The Convention applied.

The district Court of Leeuwarden (ie the Court of First Instance) lifted the arrest on the *Don Alfonso* because it said that Article 3(1) and 3(2) opposed the arrest. Greatship appealed the judgment. The Court of Appeal of Leeuwarden held as follows.

17. (...) Pursuant to Article 3(1) of the Convention 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 in relation to which the maritime claim arose. The Court of first instance has held that Greatship's maritime claim, i.e. the claim for unpaid hire, related to the *Greatship Dhriti*, that Greatship and not CFA or

¹⁴ *Greatship (India) Limited v Caballo Frion Arrendadora SA et al* SES 2011, 125.

¹⁵ Discussed below, at the discussion of the Supreme Court's decision in *The Constanza M*.

Oceanografia is the owner of that ship, so that Article 3(1) of the Convention does not allow an arrest of a ship of Oceanografia or CFA. The Court of First Instance further held that now that the *Don Alfonso* is owned by CFA, Greatship has acted in contravention of Article 3(1) of the Convention by arresting that ship.

18. Greatship considers this construction of Article 3(1) to be incorrect. The construction would mean that an owner could never arrest a ship owned by its charterer to obtain security for its claim under the charterparty as the owner's claim under the charterparty will per definition relate to its ship and not to that of the charterer. The consequence of this interpretation is unacceptable and cannot have been the intention of the drafters of the Convention [so says Greatship]. It would mean that ratification of the Arrest [Convention] would have led to a reduction of the arrest opportunities that had existed before under Dutch law. Greatship argues that nothing in the legislative history indicates that this was the intention of the ratification.
19. The Court of Appeal's starting point is that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (Article 31 paragraph 1 of the Vienna Convention 23 May 1969).
20. In the view of the Court of Appeal the Convention leaves little room for interpretation. The Convention applies in a great many states so that it is in the interest of international shipping that as little doubt as possible should exist concerning its construction. The preamble of the Convention makes clear that its purpose is to establish uniform rules. To accept a broad construction of articles of the Convention would be in contravention of that purpose. This means that in principle the words of the Convention should as much as possible be given a literal meaning (see also Court of Amsterdam 16 March 2010, SES 2011, 26 consideration 4.6. [Constanza M]).¹⁶ It is the Court of Appeal's view that the words of Article 3(1) of the Convention are clear. They do not leave any room to doubt that it is only possible to arrest the ship to which the claim relates, in this instance the *Greatship Dhriti* and to arrest ships that are owned by the owner of the *Greatship Dhriti*.
(...)
23. The Court of Appeal is also of the opinion that now that the purpose of the Convention is to give uniform rules in the area of international property law [sic!], there is no room for *application of other exceptions based on national law, such as the limiting operation of reasonable and fairness* (see SCN I February 2008, LjN: BA5799, NJ 2008, 505) [NDS Provider].

4.1 Comments regarding The Don Alfonso

The Court of Appeal of Leeuwarden's judgment in *The Don Alfonso* (and the Court of Appeal of Amsterdam's judgment in *The Constanza M*,¹⁷ which, in respect of the decision regarding Article 3(1) was confirmed by the Supreme Court) therefore correct the decisions regarding *The Ibn Badis* and *The Ibn Siraj/High Peak*. The Court of Appeal of Leeuwarden clearly states that there is no room for applying rules of national Dutch law when construing the Convention.

5 *The Constanza M*, Court of Appeal of Amsterdam 16 March 2010¹⁸ and Supreme Court of the Netherlands 9 December 2011¹⁹

The facts of this case were as follows. Augusta (as purchaser) entered into a contract with Furtrans (as contractor) for the building and purchase of the ship *Stromboli M* (contract), which was already under construction. The contract price was €29,950,000. Augusta made a down payment of €3,000,000. Pursuant to the terms and conditions of the contract, Augusta would pay the balance of the contract price on delivery of the ship, which was to take place on 4 February 2010. The property in the *Stromboli M* remained with Furtrans during the construction period.

¹⁶ *ibid.*

¹⁷ *ibid.*

¹⁸ SES 2011, 26.

¹⁹ This discussion of this case has also been published at www.onlinedmc.co.uk.

Augusta failed to take delivery of the ship and did not pay the balance of the contract price.

Augusta also owned other ships, including the *Constanza M*. Furtrans arrested the *Constanza M* at Amsterdam to obtain security for the balance of the contract price, interest and costs. Furtrans alleged a maritime claim as set out in Article 1(1) of the Arrest Convention, namely a claim arising out of the construction of a ship, and said that Augusta was a 'party' within the meaning of the second paragraph of Article 3(4) of the Convention.

5.1 Court of Appeal of Amsterdam

The Court of First Instance allowed the arrest. The Court of Appeal of Amsterdam however rejected Furtrans' argument that the second paragraph of Article 3.4 allowed the arrest. It said:

The words "a person other than the registered owner of a ship is liable" in the second paragraph of Article 3(4) are meant to refer to a different party that is equal to the charterer by demise that is referred to in the first paragraph of Article 3(4), in the sense that that other person is in command of or has the actual power over the particular ship to which the claim pertains and is liable for that claim in that capacity. As in this case Furtrans retained the property and the actual power over the built ship, the *Stromboli M*, Augusta is not an "other" person as meant in this sentence.

The Court of Appeal invoked the *travaux préparatoires* to support this decision. Furthermore, in its judgment the Court gave a narrow construction of Article 3(1). It said that that Article clearly stated that not only could the particular ship to which the claim related be arrested but also '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'. It said that Furtrans was the owner of the *Stromboli M* and Augusta was not; in principle Article 3(1) prevented Furtrans from arresting the *Constanza M* to obtain security for its claim against Augusta.

5.2 Comments regarding the Court of Appeal's judgment in The Constanza M

The Court of Appeal's decision regarding the construction of Article 3(1) is in accordance with the other case law, with the exception of the cases *The Ibn Badis* and *The Ibn Sarij/High Peak*, which last two cases I consider to be clearly wrong for the reasons stated above. We will see that the Court of Appeal's decision regarding the construction of Article 3(4), which was considerably narrower than Mr Geerdes' construction in *The Halcyon Star*, was reversed by the Supreme Court.

5.3 The advice of the Advocate General to the Supreme Court

Furtrans appealed to the Supreme Court regarding the manner in which the Court of Appeal had construed Article 3(4). Under Dutch law, the Court is advised by an Advocate General before it renders its judgment. In this case the Advocate General (Mr L Strikwerde) discussed the construction of Article 3(4) in great detail and came to the conclusion that a literal interpretation of Article 3(4) of the Arrest Convention does not bring clarity. He then went on to argue in some detail that for this reason, with reference to Article 32 of the Vienna Convention (which he considered could be applied in this case) he was entitled to look at the *travaux préparatoires* when construing the Arrest Convention. The Advocate General's studies of the *travaux préparatoires* of the Arrest Convention led him to advise the Supreme Court that the Court of Appeal of Amsterdam's narrow construction of the second paragraph of Article 3(4) was correct and that that judgment should therefore be confirmed.

5.4 The Supreme Court's decision

The Supreme Court allowed Furtrans' appeal concerning the construction of Art 3(4) by the Court of Appeal. It considered that the literal words of the Convention were 'in the first place to be decisive',²⁰ and did not offer any support for the narrow interpretation that the Court of Appeal

²⁰ The Supreme Court probably used these words because the Advocate General had advised that the literal words of the Convention were not clear, so that art 31.1 of the Vienna Convention could not be applied and recourse could be made to art 32 of the Vienna Convention. The Court apparently wished to indicate with these words that it did not agree with the Advocate General's point of view.

had placed on the second paragraph of Article 3(4). The Court then went on to explain why, in its view, the words of Article 3(4) were clear.

In an *obiter dictum*, which was probably given because of the Advocate General's in depth discussion of the *travaux préparatoires* which had led him to conclude that the Court of Appeal of Amsterdam's judgment was correct, the Supreme Court then went on to discuss the *travaux préparatoires* relating to Article 3(4), saying that it followed therefrom that '(...) an arrest is allowed in all instances where a party other than the owner of the ship is liable for a maritime claim and that in such cases an arrest is also possible on other ships of that different party'.

The Court then pointed out that the *travaux préparatoires* made clear that there were objections to Article 3(4) because of the broad opportunities which that Article seemed to create for the arrest of a ship for a maritime claim which pertained to a ship that was not owned by the debtor of the claim. After discussing the *travaux préparatoires* the Court said:

Article 3 of the Convention must be construed in such a way that an arrest based on the Convention is only possible if, under the applicable law, it is possible to enforce the arrest against the ship. It is true that following the words of the Convention an arrest is also possible outside of this case, but outside of this case the arrest should not be allowed because of the absence of a lawful interest to arrest the ship, as it will not be possible to pursue the arrest. The reason for this conclusion is that pursuant to the Convention an arrest is solely allowed to secure a maritime claim (see Article 9 and Article I, paragraph I and at 2).

The Supreme Court went on to say that this construction of Article 3 accords with that followed in many other countries and it referred to F Berlingieri *Arrest of Ships – A Commentary on the 1952 and 1999 Arrest Conventions* (4th edn 2006, appendix II, question 7.2, pp 367–69). The Court concluded by saying that Furtrans, assuming that its claim was indeed a maritime claim, was entitled to arrest the *Constanza M*, subject to the applicable law allowing the arrest to be enforced against the *Constanza M*.

The Court of Appeal's decision regarding the construction of Article 3(1) did not form part of the appeal to the Supreme Court, which did, however, state the following regarding the construction of that Article:

Article 3 of the Convention regulates which ships a creditor of a maritime claim can arrest. Pursuant to Article 3(1) that is, in so far as that is relevant in this case, the ship that the maritime claim relates to and every other ship that is owned by the person who, at the time of the existence of the maritime claim, was the owner of the ship to which the claim related.

This consideration of the Court seems implicitly to confirm *The Halcyon Star* and *The Don Alfonso* judgments, as well as the Court of Appeal's judgment in *The Constanza M*.

5.5 Comments regarding the Supreme Court's judgment and overall conclusions

- 1) The decision of the Court in respect of Article 3(4) is in accordance with the view of Professor Philip, as discussed by Berlingieri (paragraph 7.118). It also corrects the Court of Rotterdam's judgment in *The Halcyon Star*, as discussed above.
- 2) The decision of the Supreme Court with regard to the construction of Article 3(1) is in accordance with the decisions given in the Court of Appeal's judgment in *The Constanza M*, and in *The Halcyon Star* and *The Don Alfonso*. These decisions all make clear that the Court of Appeal of The Hague's judgment in *The Ibn Badis* and the Court of Rotterdam's judgment in *The Ibn Siraj/High Peak* are wrong.
- 3) In its two decisions of 12 September 1997 relating to *The Hanjin Oakland*²¹ and *The Micoperi 7000*,²² the Supreme Court decided that under Dutch Private International Law (Conflict of Laws), an arrest of a ship to secure a claim against a different party other than the owner of the

²¹ *United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd v Hanjin Shipping Co Ltd* NJ 1998, 687.

²² *United Towing Limited v Micoperi Offshore SpA*, NJ 1998, 688.

ship was only lawful if it was possible to enforce the claim against the arrested ship under both the *lex causae* (the law that governs the merits of the claim) and the *lex registrationis* (the law of the place where the ship is registered). It would now seem that, in the light of the decision in *The Constanza M*, a ship can be lawfully arrested in the Netherlands, in a case where the Arrest Convention applies, for a claim against a party other than the owner if the claim can be enforced against the ship under only the *lex causae*. If this conclusion is correct, the possibilities of arresting ships in the Netherlands for a claim against a party other than the owner of the ship have been increased.