THE ARREST news

Issued by the industry network devoted
Issue 48. Edited by the Shiparrested.com
Editorial Comm. info@shiparrested.com

April 2025



In this issue of ***The Arrest News:***

- ***Preliminary Arrest of a Vessel in Alexandria Port Based on an English Arbitration Award: A Strategic Approach to Securing Maritime Claims in Egypt*** by Soliman Advocates
- ***An Update from Georgia*** by Valerian Imnaishvili, Marine Legal Adviser
- ***Oil Pollution as Damage Done by a Ship?*** by Yoav Harris, Harris & Co. (Israel)
- ***The MV Star Voyager Incident*** by Alberto Batini, BTG Legal (Italy)
- ***The Last Ship Arrest of the SS United States*** by Gary Seitz, Gellert Seitz Busnekell & Brown LLC

Oil Pollution as Damage Done by Ship?

by Yoav Harris, Harris & Co. (Israel)

This article aims to explore the evolving interpretation of "damage done by a ship" under maritime law, from its historical context in the 19th century (Admiralty Court Act, 1861) to modern times. The article will take a closer look at the legal and environmental implications of oil pollution caused by ships, focusing on two significant incidents at Haifa port involving the M/V ***Moraz*** and M/V ***Zim Sao Paulo***. It examines the specifics of each case, including the circumstances leading to the pollution, the legal proceedings that followed, and the financial and liability disputes.

The article highlights how courts, particularly the Haifa Admiralty Court, are addressing these incidents in light of environmental protection principles and international conventions, offering insights into the ongoing tension between vessel owners, insurers, and port authorities

The pollution caused by the M/V *Moraz*

On the 4th of March 2018, the M/V ***Moraz*** moored at Haifa port and prepared to receive heavy fuel oil from a bunkering tanker. As part of the preparation, the heavy fuel oil in tank No. 5 starboard was transferred to a settling tank. This allowed tank No. 5 to receive

WITH THIS NETWORK OF TOP SHIPPING LAWYERS, ARRESTING OR RELEASING A SHIP HAS NEVER BEEN EASIER.
- Arizon - Major Sponsor 2009/2025

the incoming heavy fuel oil at its full capacity and prevented mixing the fuel oil required for the vessel's ongoing voyage—already warmed to the necessary temperature—with the new, cold heavy fuel oil being received. However, for whatever reason, one of the receiving tank's valves remained open. As a result, as the vessel was bunkered, 10 tons of heavy fuel oil mixed with oil streamed from the vessel to its surroundings, polluting the port's basin and docks. Since the vessel's Owners and Club did not take upon themselves the cleaning operations and costs, these were borne by the Israel Ports Developments & Assets Company Ltd. Instead of paying the cleaning costs as mentioned, in July 2019, the Owners applied to the Haifa Admiralty Court and following the Brussel's convention 1957[1] (which is the limitation on liability convention implemented under the Israeli law) asked the Court to set a limitation fund, limiting their liability for the pollution damages to a maximum amount of US$323,856. In their application, the Owners further asked the court to stay any arrest or execution of the vessel - following Article 5 of the Convention.

In its judgment on 20 November 2022, the honorable Judge Ron Sokol denied the Owner's application. He reasoned that the claim subject on the limitation fund application is in the nature of "damage caused to harbor works, basins and navigable water ways" as stated in Article 1(c) of the Brussels Convention which is excluded by the Israeli legislature from the list of claims which can be subject of a limitation fund. In reaching this conclusion, the judgment refers to the 1976 convention which excludes claims for oil pollution damage from limitation (Article 3). Although not adopted into the Israeli law, the article should be considered as part of the international and domestic 'polluter pays' principle and environmental protection considerations, which should guide the interpretation of the 1957 Convention and its adopting law. In addition, the court further reasoned that the claim should be excluded from limitation due to the fact that the incident resulted from the 'actual fault and privity of the Owners' (as stated in Article 1(1) of the Brussels 1957 Convention), as the owners, through its local managers, were negligent. The owners did not appeal the Judgment denying their application, and a few months later, the vessel itself was grounded and scrapped.

As the vessel was a SPV, the registered owners had no other assets apart from the vessel. On February 2024, Israel Ports Company brought its claim against the registered Owners, the local managers, and Owners' Club before the Haifa Admiralty Court claiming the costs of cleaning the pollution it had paid in the amount of NIS 3.137 Million, together with interest and costs. The claim invoked the court's authority to hear the claim under Article 7 of the Admiralty Act 1861, stating that "The High Court of Admiralty shall have jurisdiction over any claim for any damage done by any ship".

The direct claim against the P&I Club relied on its role as an insurer that issued a certificate of insurance naming the vessel and covering its Owners and managers for claims, including damage to third-party property (such as docks). It also relied on the Third Parties (Rights Against Insurers) Act 2010, which allows a third party to sue an insurer directly when the insured becomes insolvent (Article 3: "The third party may bring proceedings to enforce the rights against the insurer without having established the relevant person's liability"). This applied to the registered Owners' situation.

The pollution caused by the M/V *Zim Sao Paolo*

On 19 July 2022, while mooring at SIPG's Haifa-Bay Port dock, a slick of oil was observed between the MV *Zim Sao Paulo* hull on the starboard side and the quay. It was later traced to a crack in the vessel's No. 3 starboard fuel oil tank. Approximately 12 tons of fuel oil mixed with oil was eventually cleaned up by the Owners' Club following a LOU provided at that date by the Club in consideration of not arresting the vessel. In April 2024, Messrs. SIPG brought their claim for loss of income during the week in which the dock was closed for cleaning and unable to accomodate

1 International Convention Relating to the Limitation of Liability of Owners of Sea-going Ships, Brussels, 10 October 1957.

WITH THIS NETWORK OF TOP SHIPPING LAWYERS, ARRESTING OR RELEASING A SHIP HAS NEVER BEEN EASIER.
- Arizon - Major Sponsor 2009/2025

expected vessels, claiming a total amount of NIS 4.698 million. This claim also invoked the above-mentioned authority of the maritime claim of any damage done by any ship.

From the 19th Century to the year 1971

In the 19th century, the heirs of the master of *The Agens,* which was run over by the Spanish vessel *Vera Cruz,* resulting in the master and other seafarers drowning, brought proceedings based on the above-mentioned clause 7 of the Admiralty Act 1861. They relied on the Fatal Accident Act 1846 (known also as the Lord Campbells Act), which allows the relatives of a deceased person person to seek damages from the wrongdoer. The claim was denied in view of the question if the Act applies to non-residents of the UK and as the above-mentioned clause 7 was construed as applied to damage being physically caused by the ship and "does not apply to a case where physical injury is not done by a ship" (Seward v. *The Vera Cruz* (1884) (at [99]))[2]. Also at that time, while walking on the cargo hold cover of *The Theta* in order to reach *The Faithful* which moored closely, the chief engineer of the *The Faithful* fell down the cargo hold and was injured as the cover on which he stepped was not properly fixed. His claim based on the above-mentioned clause 7 was denied as the ship (*The Theta*) was not active in causing the damage (*The Theta* [1894]).

About 100 years later, in 1971, these two judgments were cited by the Israeli Supreme Court in the *Fada.* The court denied an insurer's claim for reimbursement of amounts paid as the cargo interests' share of salvage costs, necessitated by the vessel's poor condition after its crankshaft broke during a voyage, requiring towing to a nearby port. The court held that a vessel's bad condition does not constitute "damage done by a ship" under Article 7 of the Admiralty Act 1861. Relying on these precedents, the Owners of the polluting vessels M/V *Moraz* and M/V *Zim Sao Paulo* argued that the pollution incidents do not qualify as "damage done by a ship" because the vessels were not actively involved in causing the damage.

Physical contact is not essential for "damage done by a ship"

The claimants countered this argument by citing *The Vinalines Pioneer* [2015] (SGHC)[3], which reviews cases interpreting "damage done by a ship". In *The Eschersheim* [1976], a salvage tug (*the Rotesand*) physically casted off her tow (*the Erokwit*) and beached her. No damage to *the Erkowit* or her cargo was caused by the beaching. However, due to the wind and waves, pollution damage later occurred to the surrounding areas from oil leaking from *the Erkowit*, and her cargo and crews' personal possessions were damaged or lost. Lord Diplock opined that damage done by a ship can occur without physical contact and that a ship may negligently cause a wash by which some other vessel or property is damaged. Lord Diplock referred to the above mentioned *The Vera Cruz* (1884) and to *Currie v M'knight* [1897] as authorities establishing the meaning of "damage done by a ship". In *Currie v M'knight*, the crew of *the Dunlossit*, in order to enable the ship to reach out to sea, cut the cables of another vessel, *the Esdale,* which became unmoored and ran aground sustaining damage. Lord Halsbury opined that *"the act which was done by the crew of the Dunlossit does not make it an act of the Dunlossit and the phrase requires that the ship against which a maritime lien for damages is claimed is the instrument of mischief, and in order to establish liability of the ship itself to the maritime lien claimed some act of navigation of the ship itself should either mediately or immediately be the cause of the damage"* (at [101]). In *the Eschersheim*, Lord Diplock further opined that *"to fall within the phrase not only must the damage be the direct result or natural consequence of something done by those engaged in the navigation of the ship but the ship itself must be the actual instrument by which damage is done. The commonest case is that of collision which is specifically mentioned [in the*

2 Seward v. The Vera Cruz (1884) 10 App.Cas. 59, 52 L.T.

3 The "Vinalines Pioneer", Registrars appeal no. 402 of 2014, Singapore High Court, 26 October 2015.

WITH THIS NETWORK OF TOP SHIPPING LAWYERS, ARRESTING OR RELEASING A SHIP HAS NEVER BEEN EASIER.
- Arizon - Major Sponsor 2009/2025

1952 Arrest Convention]: but physical contact between the ship and whatever object sustains the damage is not essential, a ship may negligently cause a wash by which some other vessel or some property on shore is damaged" (at [8-9]).

In this regard, D.R Thomas in "Maritime Liens" also mentions that *"although there existed an early but ephemeral indication to construe the phrase 'damage done by a ship' as confined to damage directly caused by a ship in a physical collision with another, the phrase is now construed unrestrictedly and with the statutory words as bearing their ordinary and literal meaning"*. This aligns with the corresponding provision in the Brussels Arrest Convention 1952 Article 1 [4](a) –"damage caused by any ship either in collision or otherwise." (1980, at [175]). Furthermore, in the Senior Courts Act 1981 the wording which was chosen is "any claim for damage done by ship"(clause 20(2) (e)).

The Haifa Admiralty Court will not freeze at the century in which the Admiralty Acts were enacted

While arresting the M/V *Mirage 1* under a decision rendered on 8th September 2011 recognizing bunkers supply as "necessaries supplied to a ship", the Haifa Admiralty Court held that the days on which the master toured the markets at the shore in order to buy provisions required for the vessel's voyage had passed long ago, as commerce is now done by fax and electronic communications. Therefore, the Court cannot freeze and adopt only the meaning given in the past to the Admiralty Acts (of the years 1840 and 1861) and has to interpret them in accordance to the modern contexts.

Vessel's heavy oil pollution as "damage done by a ship"?

By implementing this principle "any claim for any damage done by any ship", and considering the fact that fuel oil is the 'lifeblood' of a navigating vessel[5] and the growth of law - both in relation to the phrase and environmental protection (e.g., Article 192 of the UNCLOS – "States have the obligation to protect and preserve the marine environment") it seems that polluting vessels and their Owners and operators and underwriters are in jeopardy of being subject to an enforcement of maritime liens due to damages caused as a result of the pollution.

The above two matters of M/V *Moraz* and M/V *Zim Sao Paulo* are the first time in which the Haifa Admiralty Court is required to exercise its authorities on commercial damages resulting from a vessel's fuel oil pollution. Currently, the parties to these matters are in negotiations. If successful, a judicial ruling will have to wait til the next occasion. Until then, we hope this article of ours brings some points of thought to our modern world and risks of pollution.

Case References

· Folio no. 3470-02-24 Israel Ports company v. Moraz Shipping and others. Adv. Gideon Schreuer and Shimon Ohanina of Shroyer & Co. for the Claimants. Adv Roiy Cohen and Hila Nissan of S. Freidman, Abramson & Co. for the Defendants;
· Folio no. 7260-04-24 SIPG Terminal Bay Port Ltd vs.MV Zim Sao Paulo and others, Adv. Assaf Priel and Ido Frishta of Tadmor Levy & Co, for the claimants, Adv Roiy Cohen and Hila Nissan of S. Freidman Abramzon & Co. for the Defendants.

The undersigned acts as a consultant to the claimants.



Adv. Yoav Harris
Harris & Co., Haifa, Israel
e: yoavh@maritime-law.co.il
t: +972 4 8 45 4040
w: www.lawships.com

4 International Convention Relating to the Arrest of Seagoing Ships, 1952 (Brussels, May 10, 1952).

5 Reference is also made to The World Dream [2024] where it was held the gambling equipment of a cruise vessel is also included under the term "ship" in the deed of mortgage as the term encompasses "any object which is either (a) necessary to the navigation of the ship…or (b) necessary to the prosecution of the adventure" [At [51]] (Kfw Ipex-Bank GmbH v Owner of the Vessel "World Dream", [2024] SGHV 56, Singapore High Court, Admiralty, (Justice Mohan)-8 February 2024.

WITH THIS NETWORK OF TOP SHIPPING LAWYERS, ARRESTING OR RELEASING A SHIP HAS NEVER BEEN EASIER.
- Arizon - Major Sponsor 2009/2025