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The Arrest of Ships in the Iranian Legal System

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ABSTRACT

This article investigates the legal framework governing ship arrest in Iran by analyzing relevant domestic legislation and selected judicial decisions. The central research question is whether the current Iranian legal system provides a clear and effective mechanism for ship arrest, particularly in the absence of Iran's ratification of the 1952 and 1999 Arrest Conventions. The study employs a descriptive-analytical approach, combining library-based research with case study analysis of selected Iranian court decisions to assess the procedural requirements and legal conditions surrounding ship arrest in the Iranian jurisdiction. It also examines Article 194 of the Iranian Maritime Code and the extent to which Iranian courts refer to international maritime customs where domestic law is silent. The article identifies legal ambiguities and practical challenges in this area and suggests legal and procedural reforms. The findings aim to provide a practical legal guide for maritime lawyers and judges dealing with ship arrest cases in Iran.

Keywords:

Ship Arrest,
Provisional Order,
Attachment of Relief,
Iran's Maritime Act,
Maritime Law.

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1. Introduction

The arrest of ships constitutes a distinct procedural mechanism in maritime law, designed to secure maritime claims through the provisional detention of a vessel. Although this legal institution has been extensively analyzed within the framework of international conventions—most notably the 1952 Brussels Convention and the 1999 Geneva Convention—its application within national legal systems remains subject to considerable variation. Iran, as a non-signatory to both conventions, lacks a codified and internationally harmonized regime for ship arrest, thereby rendering the examination of its domestic legal approach both necessary and timely.

While existing Persian-language literature has addressed aspects of ship arrest under international law—for instance, Bahareh Ghods's monograph "Detained Ships in the Realm of Maritime Law" primarily examines arrest and release under the 1982 United Nations Convention on the Law of the Sea, and Faezeh Zavareh Tabatabaei's article "Detention of Ships as a Tool for the Protection of Marine Environment" focuses on the intersection of detention and marine environmental concerns—these works fall short of a comprehensive analysis of the Iranian domestic legal regime governing ship arrest.

Unlike these studies, this article offers the first structured legal analysis of ship arrest mechanisms under Iranian law as a standalone subject. Notwithstanding the fact that ships may be considered movable property and thus subject to general asset seizure rules under Iranian law, the *sui generis* nature of maritime claims, coupled with the legal personality often attributed to ships in international practice, demands a more nuanced and specialized legal framework. Moreover, the absence of a clear legislative incorporation of international maritime conventions further complicates judicial reasoning and practice in this field. The central question this article seeks to address is whether the Iranian legal framework—despite its non-accession to global conventions—provides a functionally equivalent and effective mechanism for ship arrest.

This article seeks to address this lacuna in the legal literature by conducting a descriptive and analytical legal analysis with emphasis on statutory interpretation, doctrinal scrutiny, and comparative assessment of the Iranian legal system's approach to ship arrest. Drawing upon the Maritime Code of Iran, the Civil Procedure Code, and a selection of domestic court decisions, the study elucidates the procedural and substantive challenges confronting claimants and judicial authorities alike. Ultimately, the paper aims to offer a critical appraisal of the Iranian framework in light of comparative international standards, and to contribute to the development of a more coherent and effective legal regime in this domain.

2. Practical Legal Tools in Iran's Domestic Law applicable in Ship arrest

While Iran is not a party to the 1999 Arrest Convention (International Convention on Arrest of Ships, 1999, art 1), and its domestic maritime legislation does not explicitly define the concept of "maritime claims," there exist several procedural and substantive avenues under Iranian law through which the arrest of a vessel can be sought. In practice, attorneys filing for ship arrest must rely on general civil and commercial law principles, as well as specific provisions scattered across the Maritime Act of 1964 and the Civil Procedure Code.

It is noteworthy that the term "maritime claims," as outlined in Article 1 of the 1999 Convention, has no counterpart in Iranian law. This lack of definitional clarity gives rise to interpretive ambiguity and results in reliance on broader categories of financial or contractual claims as the basis for arrest applications. Furthermore, Iranian legislation does not distinguish between maritime claims and other civil claims when it comes to asset seizure; thus, the arrest of a vessel may be initiated in relation to any financial obligation, unlike the more restricted scope of arrest under the 1999 Convention.

Iranian courts may authorize arrest in two primary forms: documentary arrest, which

prevents transfer of ownership by freezing the ship's registration documents, and physical arrest, which restricts the vessel's movement and departure from port. Both forms require judicial authorization and are executed through general courts. It is important to differentiate this from detention, which is an administrative measure applied by port authorities in response to regulatory violations such as environmental offenses.

While action in rem—as recognized in common law systems (Tetley, 2002: 105)—is not formally adopted in Iranian law, certain practical aspects resemble it in effect. Nevertheless, all claims must be directed against a person, and the ship itself cannot be treated as the defendant (Tetley, 2002: 105).

The non-recognition of action in rem reflects the broader structure of Iran's civil law tradition, which follows Roman-Germanic influences, particularly those of France and Belgium, from which many of Iran's maritime rules have been derived. Moreover, pursuant to Iranian sovereignty over territorial waters as defined in the 1993 Maritime Zones Act, courts may issue arrest orders regardless of the vessel's nationality or flag.¹ This expands the practical applicability of ship arrest, at least territorially, while still limiting it conceptually due to the lack of specialized procedural rules for maritime enforcement.

The following section categorizes and analyzes the principal legal mechanisms through which practitioners may seek ship arrest under Iranian law, including judicial lien procedures, enforcement of preferential rights, and interim relief measures.

The absence of juridical personality for ships in the Iranian legal system—combined with the unavailability of action in rem—has direct consequences for the effectiveness of ship arrest procedures. In practice, claimants are compelled to pursue action in personam against the shipowner, which often proves problematic when the owner is a foreign entity, lacks domicile in Iran, or is otherwise inaccessible. Unlike common law systems, where the vessel itself can be treated as the defendant and arrested independently of the owner's personal liability, Iranian courts require the establishment of a direct legal link to a person. This limitation may reduce the utility of ship arrest as a swift and practical remedy in maritime disputes. It also undermines the certainty and predictability needed in international maritime commerce. Therefore, while Iranian maritime law does provide some mechanisms for enforcement—such as arrest based on preferential rights under Article 32 of the Maritime Act—the lack of an explicit recognition of ships as legal objects capable of being sued hampers the system's adaptability to the unique features of maritime claims. Recognizing a quasi-juridical status for ships, or at least incorporating elements of action in rem procedurally, could strengthen Iran's legal framework and bring it more in line with international maritime standards.

The legal ways through which we can apply for under Iran law will be discussed and divided into the following sections:

3. Provisional order in civil cases

Provisional order is an expedited proceeding according to which the interested party (mostly the claimant) can request the court to protect the subject of the claim from any material and immaterial interference and to avoid harm to it. By this order, the property is seized until the court decides on the matter, during which any form of interference, including the transfer of ownership or any material alteration of its current status is prohibited.

1 Civil Jurisdiction –Competent authorities of the Islamic Republic of Iran may, for the purpose of enforcing provisional measures or final judgments, take action to stop, divert, or arrest a ship and detain its crew in the following circumstances:

a) When the ship has exited Iran's internal waters and is navigating through its territorial sea;
b) When the ship is stationary within Iran's territorial sea;
c) When the ship is transiting through Iran's territorial sea, provided that the basis of the provisional measure or judgment arises from obligations or liabilities stemming from the civil responsibility of the same vessel.

Provisional orders under Article 316 of the civil procedure act can include property confiscation or require the performance or nonperformance of a specific act.

The provisional order is one of the secondary legal recourses in the Iranian civil procedural law, which cannot be the principal claim of the lawsuit. Because otherwise, the subject matter of the lawsuit must be given to the plaintiff, which is not the goal of the provisional order. The intention of the legislator by the phrase "Provisional order may be based on seizure of property, performance of action or prohibition of an action" was only aimed at preventing its transfer of ownership, but the seized property will not be given to the petitioner until the ruling is issued in his favor and the judgment is executed (Shams, 2013: 618).

According to article 310 of Iran's Civil Procedure act May 1991: "In cases where the matter is of urgency the court shall issue a temporary order." Urgency is something that is determined by the judge in court (Civil Procedure Act of Iran, art. 315). The urgency status is assumed when the claimant highly exposed to incur serious and irreparable damage will before the final judgment is issued on the merits of the case (Vandersanden, 2003: 42). There are many instances of urgency in ship-related lawsuits that allow for a provisional order for the ship's arrest. These include the discharge of pollutants into the ocean, disputes pertaining to the ship itself, the risk of the ship being destroyed if it were to leave port, transporting goods in a ship that lacks sea worthiness, the possibility of the ship being sunk or damaged, etc. There is no legal restriction in persuading the court to issue such a provisional order even in cases where the ship is the owner's only asset. This is because the legislator prohibits the seizure of those kinds of property that are considered to be the means of livelihood of the debtor. Such properties are literally called the Debt Exceptions.

However, considering that, in the most of the cases, the rights of third parties are involved in the sea transportation, the Principle of Equity, which exists in Iranian legal system, dictates in Iran that the court should consider not only the interests of the opposing parties but also evaluate the interests the third parties who may be affected by issuance of such a provisional order (Shams, 2013: 384). The point is that the element urgency should exist at the time of processing the claim not at the time of submitting the petition (Shams, 2013: 385). Therefore, if the ship's lack of seaworthiness and the possibility of damage to the goods being transported are resolved by the owner during the investigation, the arrest of the ship or the issuance of an order to prevent its voyage will be unnecessary. In order to secure a provisional order for ship arrest, the claimant must persuade the court that, should the ship depart from an Iranian port, there would be no other asset over which security could be held in order to enforce any final judgment against it.

It should be noted that according to Article 319 of the Code of Civil Procedure, the claimant is obliged to deposit security to compensate the possible damages of the defendant in the event that the claim is not proven. This provision is either the payment of cash or the deposit of property, whether movable or immovable, for the execution of court orders. This is a necessary condition for issuing a temporary order. If the request for a provisional order is submitted before filing a lawsuit, and it is granted, then the claimant should provide the court with a certificate evidencing submission of the petition on the merits (filing its lawsuit), within 20 days from the date of the issuance of the arrest order, otherwise the order will be annulled upon request of the defendant. In such an eventuality, the arrest would be lifted and the vessel would be granted port clearance.

The goal of the counter-security that the claimants are requesting is to protect the ship owners from frivolous or vexatious lawsuits. The monetary funds from aforementioned counter-security will be used to reimburse and pay for any losses that the courts established the respondents have incurred as a result of these wrongful arrests.

In the case filed under judgment number 2339 in the Third Branch of Tehran Civil Court between the Oil Industry Organization against.... Ltd, the plaintiff initially requested an interim order for the arrest of vessel and subsequently sought proceedings for a claim of damages amounting to 755,000 dollars. The court, after determining the number of potential damages based on the dollar exchange rate at the Central Bank of Iran and granting a ten-day deadline for its payment to the judiciary, agreed to issue the order upon the plaintiff's deposit of the same (Pournouri, 2003: 55).

In a collision case (Bandar Abbas Civil Court, 2024), a Panamanian flagged bulk carrier owned by a Chinese company collided with another bulk carrier owned by Iran. The Panamanian ship caused damage to the hull and propeller of the Iranian ship in Shahid Rajaei port of Bandar Abbas due to loss of control and the ropes tear. Since the departure of the Panamanian ship from the port meant that compensation for the damage could put into risk, the Iranian owner tried to obtain a provisional order to prevent the ship from leaving the port; Because accessing the ship and compensating for the damages would be a challenge if the ship left. In this collision, many and various damages were caused to the Iranian ship, the most important of which were:

1. Commercial claims which included the expenses pertaining to tugboats, crew fees, anchorage cost, charterers' claims from the ship owner, non-receipt of the freight and other costs caused by the accident.
2. Technical claims that include: the cost of repairing damages to the ship, underwater inspections, determining the classification of the ship, the cost of insurance representatives at present at the place of collision.
3. Claims of third parties, which include: claims against the ship, damages caused by the vessel, legal costs and crimes.

All these damages can be demanded if the ship's negligence is proved. In this case, If the ship with the nationality and ownership of a foreign country leaves the port of Iran, it will lead to an undeniable challenge for the ship owner to get compensated. The Iranian owner, who was one of the important shipping companies of this country, asked the court of the place of the accident to issue a provisional order so that by tendering this order to the Ports and Maritime Organization (PMO), the arrest become executed.

In Iran, the foreign claimants with any nationality have the possibility to file a lawsuit including requesting such provisional order. But these foreign claimants are subject to some specific conditions when they filing a suit in courts.

In Article 144 of the Civil Procedure Law, foreign nationals who want to file lawsuits against Iranian persons in Iranian courts, must provide adequate security. According to this article: "Foreign nationals, whether they are the main plaintiffs or enter the lawsuit as a third party, upon the request of the defendant, must provide adequate security, to cover any damages that may be awarded against them for court costs and attorney fees."

A key consideration is that, in the majority of instances, the petitioner seeks a temporary order to stop the ship from departing the port. The seizure of the ship's documents is not typically part of the arrest process, except in specific claims involving disputes over the vessel's ownership.

Although the arrest of the ship's document is of double importance compared to demands such as proof of ownership. Article 26, Chapter 4 of the Ship and Vessel Registration Regulations 1965 states that: "The Central office for Registration of Ships and Vessels shall record and register in their registration books any change in the ownership and construction or other characteristics of the ship after in the examining the relevant documents and in compliance with Article 19 of Iran's Maritime act. Therefore, if the claim of the plaintiff is related to the ship, including proving its ownership or compensating the damages caused by the collision of

the ships, the plaintiff can demand for an arrest of ship's documents. In this regard, the court send this provisional order to the Central department for Registration of Ships and Vessels based in the PMO for the sake of executing the arrest of the ship or prohibiting its transfer of ownership. The arrest issued under this kind of provisional order (documentary arrest) does not exactly correspond to the detention of the vessel mentioned in the 1999 Convention. However, they pursue a common goal with the 1999 convention (International Convention on Arrest of Ships, 1999: art. 2(3) which is obtaining an early security as a pre-emptive act in order to prevent damages until the judicial authority is awarded its final judgment.

A notable procedural requirement in the Iranian legal system for issuing provisional orders is the need for approval by the head of the judicial district. While this safeguard may serve an administrative function, its necessity becomes questionable when compared to other legal areas. For instance, in family law proceedings, provisional orders may be issued without such supervisory endorsement, due to the urgency and sensitivity involved (Article 7 Family protection act).¹ By way of analogy—indeed, a fortiori—it can be argued that commercial maritime disputes, which often require immediate judicial action to prevent irreparable harm (e.g., a ship leaving port), merit similar procedural flexibility. Therefore, streamlining or even waiving such formalities in maritime contexts would not only be consistent with internal judicial practice but would also harmonize domestic procedure with the efficiency-based standards of international instruments such as the Arrest Conventions of 1952 and 1999.

4. Provisional order in criminal cases

The legislator has not explicitly defined the provisional order in criminal matters and only mentioned some examples in Iran's criminal law. For example, in Article 114 of the Criminal Procedure act, the judge as the judicial authority can issue a provisional order in cases where, according to reasonable evidence, the continuation of an action involves the commission of criminal acts that are harmful to health, disturbing the security of society or public order. or in Note 1 of article 690 of the Iran's Islamic Penal Code in the Discretionary Punishment section, enacted in 1996, it has somehow referred to an immediate order and stipulated that "the judicial authority, after preparing the minutes/records of the that hearing session², will order the suspension of the aggressor's operations until a final verdict is issued. In criminal matters like civil matters, urgency, which is the essential element of issuing the provisional order is to be approved and confirmed by the judge but the crucial distinction is that, in criminal cases, the granting of a provisional order does not require the claimant to provide suitable security, unlike in civil matters where such a condition is typically imposed (Rahmdel, 2018: 105).

Although the concept of urgency in criminal matters is wider than in civil matters, in all cases it is not possible to issue a criminal provisional order. In other words, the issuance of such order in civil matters is not enumerated in law, and in any case, including arrest of ships for any kind of civil claims, if urgency requires, the judicial authority proceeds to issue this order. But in criminal cases, except for the instances that can be interpreted to be subject of the Article 114 of the Criminal Procedure act, the judicial authority is not allowed to issue such order. Since, unlike civil lawsuits, in criminal cases, the distinguishing factor for urgency is the prevention of public and social harm, hence that the judicial authority can issue the such

1. Article 7 Family protection act:

The court may, prior to issuing a decision on the merits of the case, upon the request of either party, issue a provisional order without requiring security in urgent matters such as child custody, guardianship and visitation rights, and spousal or dependent maintenance. This order shall be enforceable without the need for approval from the head of the judicial district. However, if the court fails to rule on the merits of the case within six months, the provisional order shall be deemed null and void, unless the court issues a renewed order pursuant to this article.

2. The written record or paperwork that the court produces to formalize the ruling.

provisional order in criminal cases without the request of the claimant (Rahmdel, 2018: 111, 15).

In a case¹, the Trading company, as the consignee, filed a complaint against an Iranian shipping company, as the carrier and owner of the ship, in Branch One of the Investigation units² under the title of forgery and breach of trust. The plaintiff purchased approximately 5000 tons of pipes from the Chinese seller as General Cargo via the Iranian shipping company, The captain, representing the owner, issued a bill of lading with the names of the Shipper and consignee. During the voyage, the Charterer, which was a company named Mineral....., requested the issuance of a Switch BL, changing the name of the consignee to the company Toseee.... company. The unloading of the ship's cargo was to take place at two ports in Iran (Mahshahr and Bandar Abbas). According to the original bill of lading, part of the cargo, including the plaintiff's shipment, was to be unloaded at Mahshahr, while the remaining cargo was to be unloaded at Bandar Abbas. However, under the substituted bill of lading, the unloading port for the mentioned shipment was changed to Bandar Abbas. With claims of forgery of the signature and seal of the consignee on the NOC issued by this company, a complaint of forgery was filed against the Charterer and a breach of trust complaint was filed against the shipowner in Branch One of the Investigation Unit in Tehran. To prevent the relocation of the cargo and its transfer to Bandar Abbas, the investigating judge issued a provisional order, effectively preventing the ship from leaving Mahshahr. This order is a clear example of the arrest of a ship under Iranian law, as the investigating judge prohibited the ship's departure regardless of the outcome of the case.

Regarding container ships, the issuance of provisional orders can occur more often than for bulk ships. Because the first type of ship has many owners of goods with multiple unloading destinations in Iran, while bulk carriers usually come from foreign ports to one of Iran's ports and proceed to unload cargo. In other words, the traffic between several Iranian ports gives more time for the claimant to obtain a judicial order to seize the ship and provide funds.

The judicial authority, if the element of urgency becomes evident for the judge, he has the discretion to take the necessary measures at every stage of the criminal investigation to issue such order (Rahmdel, 2018: 110-111); And that regarding the ship, an order can be issued to prevent it from leaving the port through.

The point is that in Iran's legal system, a provisional order in criminal matters does not require the submission of adequate security for future possible damages. And at the same time, the defendant cannot remove the effect of arrest by giving security to the court, while in civil matters, the legislator has explicitly recognized this right for the defendant. This approach in civil provisional order is in line with Article 4 of the 1999 Convention, which considers providing sufficient security as a way to free the arrested ship (International Convention on Arrest of Ships, 1999). Also, the validity of the provisional order in criminal matters is at the discretion of the judge and he can remove it and suspend it; While in civil matters, the validity of the order is until the end of the proceedings.

5. Attachment of relief

This legal way is also one of the precautionary measures anticipated in Iran's legal system. The subject of attachment of relief is only seizure of the property that is the plaintiff's main claim and it is appealable in the issuing court within ten days from the date when the defendant received the notice (Rashtian Baboli, 2024). However, arresting a property specifically that of

1. Bandar Abbas Public and Revolutionary Prosecutor's Office, 9th Investigation Branch, Case No. 140340920000963472; Tehran Public and Revolutionary Prosecutor's Office, 1st Branch, District 30, Case No. 140268990005635299.

2. The investigation branch is one of the authorities in the hierarchy of judicial authorities in the prosecutor's office, which is responsible for conducting preliminary investigations, investigating how a crime occurred, finding the accused and interrogating him and can issue different types of final decisions

a high value like a ship necessitates that the claimant submit adequate security to the court before a provisional order or attachment of relief can be granted. Therefore, it is of utmost importance for a plaintiff to be aware of the legal exceptions that are anticipated in Iran's legal system when tendering security to court is excepted.

In Article 108 of the Civil Procedure Law, the Iranian legislator has listed four conditions in which the court is obliged to issue an attachment of relief in favor of the plaintiff without requesting any security from the plaintiff. If the petitioner can relate his request to the enumerated conditions in paragraph A to C, there is no need to deposit security, which include:

A) The lawsuit is based on an official document (Civil Procedure Act of Iran, art. 1287)

Here, it should be noted that Supreme Court of Iran, in one of its rulings known as a Ray-e Esrari (literally translated as "Resolute Judgment" or "Insistence Judgment")¹ has declared that "If the request for the issuance of an attachment of relief in a complaint is based on an official document it will not require to deposit a security. This is only possible if that "document is registered in the notary office and its substance and purport is explicit and enforceable without the need for judicial proceedings..." (Resolute Judgment No. 2915, Civil Branch of the Supreme Court 25 October 1958). The vessel registration document is a great example of an official document for claims when asserting ownership of the ship.

According to paragraph (a) of Article 24 of the Iran's Maritime Law: "All transfers, transactions, and rescissions related to the ownership of vessels that are subject to this law, as well as their interests is must be registered within the country". The transfer of a vessel is conducted in notary offices hence they are considered an official document. Therefore, in cases where the claim is based on an official document, securing the claim can be done without the need for additional security.

B) The subject matter of the claim is at risk of being lost or negligence

It can be said that according to the legislator, the loss is occurred through action and negligence occurs through inaction. In this way, if the claim is in the state of being wasted or lost, either because of the action or the inaction of, the condition prescribed in this paragraph is valid and can be relied upon. Therefore, if proving actions such as the intention to take money out of the country or transfer it to another, inadvertence in keeping the property (like abandoning the ship in an unsafe place) or use of property in an unconventional manner, and also in lawsuits where the claim is a specific property (action in-rem), are examples of situations based on which the claimant can apply for a provisional order (Shams, 2013: 418).

However, the plaintiff may have a monetary claim like cash and the defendant does not have immovable property that can be seized and is about to take the ship out of the country, which is his only property, the court may consider this as a cause of loss and consequently proceed to issue a civil provisional order.

Claims regarding loss and neglect can be established with evidences such as witness testimony, local investigation, examination of the place and the signs, and deciding in this regard is completely dependent on the opinion of the court at its discretion (Shahidi, 1961: 66).

C) Dishonored Commercial Documents²

1. (ray-e esrari) is a specific legal term in Iranian law which in common English translation would be translated as "Resolute judgment" or "Insistence Judgment" refers to a ruling issued by a court despite being contrary to the Supreme Court's opinion. According to the Human Resources and Cultural Affairs Department of Tehran Province Justice Administration, a "resolute judgment" is a verdict that a court issues notwithstanding the Supreme Court's opinion.

2. This term refers exclusively to commercial instruments which are promissory notes, bills of exchange, and cheques, that have not been paid by the due date therefore the holder of these documents proceeds to gain a document called a Dishonored Note in order benefit from some legal advantages which will be discussed in the following.

The legislator has designated some legal privileges for these three specific commercial documents which are Cheques, Bill of Exchange and Promissory Notes. To secure an attachment of relief without providing security, it is essential to follow the procedural requirements¹ associated with disputing commercial documents. Under Article 315 of Iran's Commercial Code, the holder must obtain a non-payment certificate within fifteen days of the cheque's issuance. If this step is not completed, the holder can only request an attachment of relief by offering security. For promissory notes, this deadline is stricter, requiring action within just ten days (Iran Commercial Code, art. 280).

In fact, if the plaintiff holds one of the commercial documents (bill of exchange, promissory note, and cheque) and receives the certificate of non-payment, he can proceed to confiscate the property of the defendant. Among his property can be a ship registered in his name. It should be noted that the enforcement authority usually begins the confiscation from the property from which it is easier and more accessible for the claimant to collect, (Enforcement of Civil Judgments Act 1977, art. 53) and since the process of arresting the ship and auctioning it is much more difficult compared to other confiscation of other kinds of properties such as immovable property or movable property like cars, or freezing accounts, request to arrest the defendant's ship can be requested in two situations: 1- when no other property is identified to belong to the defendant, 2- in the case that the ship is the exact subject matter of the claim in the plaintiff's complaint, which will be discussed in the following.

D) The plaintiff must pay in cash to the court treasury any damages that may be incurred by the opposing party

The final way to request a provisional attachment order from the judicial authority (Court) is to deposit potential damages to the court treasury. According to paragraph 4 of Article 108 of the Civil procedure code: "Determining the amounts of potential damages, considering the amount claimed, is at the discretion of the court that agrees to issuance of the security request. Issuing the security order will be contingent on depositing the [possible perspective] damages."

Therefore, a plaintiff seeking to arrest a ship but lacking the three aforementioned conditions stipulated in the article 108 of civil procedure code can proceed this way.

In a verdict issued on February 20, 2001, (Pournouri, 2003: 48, 30) by the Third Branch of Tehran Civil Court, a claim was filed by a service company for payment of bills related to ship and port services provided during July-August based on an agency agreement between plaintiff and defendant. The plaintiff requested provisional attachment and arrested one of defendant's ships after depositing the claimed amount to court treasury. The court, after examining evidence including payment receipts for ship expenses and the agency agreement, approved the provisional attachment order pending final decision.

Thus, regardless of the case merits which may not necessarily favor the plaintiff, under the mentioned conditions, ship seizure can help secure the claim. Urgent measures like provisional attachment provide significant assistance to plaintiffs in this regard.

Although the Iranian Maritime Code contains no provision explicitly recognizing maritime claims, Article 29² may nonetheless be interpreted as an implicit acknowledgment by the

1. Within 10 days after the due date of the promissory note or Bill of exchange, the holder should register its request by referring to the Judiciary Objection Department through completing and delivering the relevant documents.

2. Article 29 – Maritime privileged rights

The following claims shall be deemed privileged in respect of the vessel, the freight earned during the voyage in which such claims arose, and the appurtenances of the vessel and freight as defined in Article 35, provided that they originated after the commencement of the voyage:

1. the master himself, a supplier of provisions or repairs, a lender, or any other contractor. Judicial costs and expenses incurred for the preservation of the common interest of creditors, including those arising from the protection, arrest, or sale of the vessel and the distribution of sale proceeds; in addition, harbor dues and charges legally prescribed by the

legislature of a category of such claims which, in substance, correspond to those maritime obligations identified in international maritime conventions (Article one- International convention relating to the Arrest of Seagoing, 1952)¹. By this provision, the legislator has delineated such claims from ordinary civil actions and conferred upon them a privileged status. This legislative choice demonstrates that, as early as 1964 (1343 H.S.), when many jurisdictions had yet to establish an effective maritime legal framework, Iranian law had already classified and accorded special treatment to these claims (Sedigh-Hassan, 2016: 22).

An important point to note is that proceedings related to maritime privileges claims are handled on an expedited and extraordinary basis. This is a privilege granted by the legislator, who has not only recognized these claims as substantively privileged but has also distinguished their procedural treatment from that of ordinary civil claims. In the author's view, by analogy with the procedural treatment of the main claim in such cases, it is possible to subject their associated provisional remedies—such as provisional orders and attachments of relief—to special considerations. Specifically, the conditions for issuing an attachment of relief without requiring counter-security (compensation for possible damages) may, beyond the four cases explicitly stipulated in the law (Article 108 procedural civil code of Iran), be extended to credible documents in maritime matters, even if not officially registered. This may include, for example, a bill of lading that meets the accepted formal and substantive requirements, or other port documents that warrant further academic inquiry in a separate article.

6. Enforcement of Financial Judgments Act

Issuance of a final judgment in favor of the plaintiff is another way to arrest the ship in Iran. But, when we have a final decision, we can seize any property from the defendant, including his ship. But when the subject of the final decision is only the seizure of the ship itself, we can proceed directly to seize the same ship.

Another related law regarding arrest is the Enforcement of Financial Judgments act. According to Article 1 of this act: "Anyone who is sentenced by a court to deliver any type of property to another and refuses to comply with the ruling, if the subject of the judgment is a specific item/property, that property shall be seized and delivered to the entitled party. If returning the specific item is not possible or if the subject of the judgment is not a specific item, the assets of the convicted party shall be seized, taking into account the Debts Exceptions, in accordance with the Civil Procedure Law and other relevant regulations, and the judgment shall be satisfied from the seized assets or their equivalent value."

Ports and Shipping Organization, as well as comparable public dues and charges; and expenses incurred in safeguarding the vessel after her arrival at the final port of call.

2. Claims arising from employment contracts with the master, crew members, and other personnel engaged on board the vessel.
3. Salvage remuneration and any other payments relating to assistance at sea, including that portion of general average contributions which is borne by the vessel.
4. Damages arising from collisions or other navigational accidents, including damage caused to port facilities, ship repair yards, and navigable waterways; claims for personal injury or death sustained by passengers or crew; and loss of or damage to cargo or passengers' personal belongings carried on board the vessel.
5. Claims arising from contracts or operations entered into by the master, outside the vessel's home port and within the scope of his statutory authority, for the purpose of safeguarding the vessel or ensuring the continuation of the voyage, irrespective of whether the master is the owner of the vessel, and regardless of whether the creditor is

1. Article one- International convention relating to the Arrest of Seagoing. SIGNED AT BRUSSELS, ON 10 MAY 1952:

In this Convention the following words shall have the meanings hereby assigned to them:

(1) "Maritime Claim" means a claim arising out of one or more of the following:

- (a) damage caused by any ship either in collision or otherwise;
- (b) loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship;
- (c) salvage;
- (d) agreement relating to the use or hire of any ship whether by charter-party or otherwise;
- (e) agreement relating to the carriage of goods in any ship whether by charter-party or otherwise;

This article contains significant points. First of all, if it is a specific object (in our topic, a ship), its documentary and/or physical arrest is carried out through the execution of civil laws and it surrendered to the plaintiff. While in financial judgments(sentences) in general, arrest of the ship is not the first step to satisfy the judgment, but it can be achieved under the conditions as stipulated above in Article 53 of the Enforcement of Judgments act.

Exceptions to the debts, in fact, they mean those properties of the debtor that are not subject to execution of the decree or judgment, and are not seized and are not sold to the detriment of the debtor (Shah-Hosseini Angasi, 2024: 12).

According to Article 24 of the Enforcement of Financial Judgments act, one of the Debt Exceptions include “Tools and equipment for merchants, craftsmen, farmers, and others that are necessary for their livelihoods and the support of their dependents.”

Determining the example of this clause in the context of ships arrest leaves a place for more consideration and thought. On the one hand, in general, the ship is a means for profitable international trade and beyond the scope of a simple livelihood. However, the ship is a tool of trade for the merchant and extension of the ship to Debt exception seems to be interpretable. According to Article 1, and also Paragraph 2 and 10 of Article 2 of Iran's commercial code,¹ the ship owner is generally considered a merchant. In this regard, if the merchant establishes the fact that he only possesses one ship and this ship is his only/main means trade and income, he can invoke the Debt Exceptions to prevent the arrest of ship. Moreover, in determining the examples and types of “Tools and equipment” as mentioned in the Article 24 of the Enforcement of Financial Judgments act, the judge's opinion will be decisive and the word “Necessary” in the above paragraph can be interpreted. In other words, there may be different criteria for identifying "Necessity". For instance, if the quality and quantity of these Tools and equipment is surplus to the needs of the merchant's business, it will be quite determining in judge's decision.

Therefore, by taking into account the legal practice and jurisprudence in Iran, the courts apply the Debt Exception principle solely to ensure that merchants retain a minimum level of property and tools necessary to continue their business, only to the extent necessary to prevent the interruption of the merchant's operations. Therefore, it is quite probable that the judge orders the arrest and/or auction of the sole ship(property) of the defendant with the reasoning that the defendant's ship's value is substantial enough to pay and cover the debts and the merchant still continue its business with the remaining funds from the ship value and the merchant can continue its business with a smaller ship.

It is worth noting that the single-ship company doctrine is not applied in Iran. The "one-ship company" structure is a well-established practice in the maritime industry, allowing shipowners to limit liability to the value of the vessel owned by the company. The legal principle that governs this arrangement is based on the doctrine of corporate separateness, where the company is treated as a separate legal entity from its shareholders. The seminal case of *Salomon v. A*

1. *Iran Commercial Code*, arts. 1–2: “A merchant is someone whose regular occupation is commercial transaction. Article 2: Commercial transactions are defined as follows:

1. The purchase or acquisition of any type of movable property for the purpose of sale or rental, regardless of whether any alterations have been made to it.
2. Engaging in transportation by land, sea, or air in any form.
3. Any type of brokerage or agency operations (commission work), as well as managing any kind of establishment created for specific purposes, such as facilitating real estate transactions, finding staff, or supplying and delivering goods, etc.
4. Establishing and operating any kind of factory, provided it is not for personal needs.
5. Engaging in auction operations.
6. Managing any type of public exhibitions.
7. Any type of currency exchange and banking operations.
8. Transactions involving promissory notes, whether between merchants or non-merchants.
9. Marine and non-marine insurance operations.
10. Shipbuilding, buying and selling ships, domestic or international shipping, and related transactions.”

Salomon & Co Ltd. [1897] AC 22 (House of Lords) firmly established that a company, once incorporated, is a separate legal entity from its members, with its own rights and liabilities. This principle has been applied consistently in maritime law as well, ensuring that the one-ship company structure is respected unless there is evidence of fraud or other exceptional circumstances (Pareshnath Hathi and Hathi, 2024).

Given that the single- ship company doctrine is not recognized in Iran, even if a company owns no asset other than a single ship, according to the combined reading of Article 2 of the Commercial Code—which recognizes engagement in maritime transportation as a commercial activity—and the principle that a person engaged in such activity is considered a merchant, it follows that such a person cannot claim insolvency or invoke debt exceptions under Iranian law.

Nevertheless, the arrest of a vessel may be prevented in cases where the shipowner has been declared bankrupt and is undergoing liquidation proceedings. According to the Iranian Commercial Code, the assets of a bankrupt merchant are subject to sealing (attachment), and creditors are not permitted to take direct legal action against such assets (Article 419 commercial code).¹

It is noteworthy that paragraph 3 of Article 444 of the Commercial Code exempts certain items even from sealing, and through interpretation, this provision could be extended to include vessels—thereby preventing their arrest during the liquidation stage. Pursuant to this paragraph:

“Items necessary for the operation of the bankrupt merchant’s capital and its productive use may, upon the request of the trustee and by authorization of the supervisory member, be excluded”

Prevention of asset seizure during bankruptcy proceedings is rooted in the principle of equal treatment of creditors, and it has also been recognized in other legal systems, including common law jurisdictions (Davis, 2018: 5-8).

Moreover, UNCITRAL regulations reflect the same approach by prohibiting direct enforcement actions such as seizure during insolvency proceedings.²

Now that we explained the legal basis for arrest, in the next step we must examine how the procedures for enforcing a civil judgment would be carried out in the case of accepting the arrest of a ship. In this regard, the Iran’s Enforcement of Civil Judgments act 1977 can be referenced, which will be discussed further below.

7. Enforcement of Judicial order issued to arrest the ship:

Depending on the legal basis of such order, the execution of arrest order in Iran's judicial system may vary.

A ship that is the owner’s trading tool and incurs thousands of dollars in daily rent and operating costs can cause irreparable costs to the owner. Therefore, in the case where the defendant, for the sake of execution the judgment, does not provide any assets within the specified time and when the plaintiff possesses the initiative, the arrest of the ship can put significant pressure on the owner, forcing them to comply voluntarily.

According to Article 42 of Iran's Maritime act (Iran Maritime Law, art. 42), a ship is recognized as a movable property. In the event that the execution award is served to the losing party and he fails to either pay the debt or provide assets within ten days, one of the properties of the defendant upon the request of the plaintiff will be seized. This property can be his ship. Any property that is seized from the defendant usually brings difficulties to him, because in the case of movable property, the seizure basically leads to confiscation of the possession of the

1. Article 419 commercial code: From the date of the bankruptcy judgment, anyone who has a claim—whether concerning movable or immovable property—against the bankrupt merchant must file or pursue their lawsuit through or against the liquidator. All enforcement actions shall also be subject to the same requirement

2. V. The arrest of a ship after the recognition of foreign insolvency proceedings

convicted person and literally makes it unusable for him. The degree of difficulty of confiscating property depends on the property that is seized.

Under the 1999 Arrest Convention, initiating legal action against the ship's owner or demise charterer can establish the right to arrest the vessel (International Convention on Arrest of Ships, 1999: art. 3).¹ In contrast, under Iranian law, property arrest is generally permitted only when the defendant is the owner, and the conviction of the charterer cannot result in arrest of the property (ship). This is why the application of ship arrest in Iran is only envisaged if the conviction is against the registered owner of the ships.

It should be noted that commercial vessels are often under multiple leases to various charterers and transport operators; this means that at the time of enforcement of an arrest order, the ship is in the possession of third parties as the lessees/charterers. For this situation we have specific rules. According to Article 61 of the Enforcement of Civil Judgments act: "Movable property in the possession of someone other than the judgment debtor and for which the possessor claims ownership or asserts the property to belong to another, shall not be seized as the property of the judgment debtor. If the claim of the possessor is proven false, he shall be liable for damages to the Judgment creditor." The leasing of a ship is a clear example of a third party possessing someone else's property; the question then arises: does a mere claim of ownership by the possessor obstruct enforcement? The answer to this question entirely depends on the circumstances and prevailing customs. While a person possessing a laptop is generally considered its owner, and their claim of ownership would activate Article 61, the situation regarding ships is different. In fact, despite the article stating that a mere claim of the possessor will prevent the enforcement of the order, it appears that in most cases, the possessor of a ship is someone other than its registered owner, and a simple claim cannot prevent the seizure of the vessel. Taking into account the conditions surrounding the charter of ships and their possession by charterers, accepting an unconditional claim of ownership contradicts the primary goal of enforcing judgments and collecting debts from the judgment debtor. Nevertheless, it remains open for charterers to avoid the ship to be arrested by presenting conclusive evidence of their ownership claim.

However, this approach in the context of shipping industry is not that simple, as ship ownership transfer requires specific formalities, such as registration in the official transfer ledger. Therefore, a renter cannot use a simple sale agreement to claim ownership of a ship and stop it from being seized. But after demonstrating that the ownership transfer complied with all legal requirements, they can use Article 61 to prevent the ship from being seized.

This article can also bring challenges to the shippers (cargo owners) as well. Since their contractual counterpart, the charterer or carrier, is not the ship's owner, the cargo owner cannot simply arrest the ship under Article 61 because their contract is with the charterer, who is the tenant and not the owner of the vessel. In this case, the only way to authorize the seizure of the ship is trying to extend liability to the ship's registered owner, which would then allow the seizure to be enforced.

In Iran's legal system, when the carrier has contractual liability based on an agreement, seeking recourse against the ship owner on the grounds of non-contractual (tort) liability is not easily justifiable. Under a general principle in Iranian law, pursuing tort liability (in this case,

1 *International Convention on Arrest of Ships* (adopted 12 March 1999, entered into force 14 September 2011) UNCTC, art. 3 "Exercise of right of arrest":

"1- Arrest is permissible of any ship in respect of which a maritime claim is asserted if:

(a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is affected; or

(b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is affected; or..."

against the ship owner) is prohibited when a contractual liability exists, as it conflicts with the legislator's intent to separate different systems of liability. The legislator prefers to keep these relationships distinct, ensuring that each is governed by its own specific rules (Katouzian, 1995: 197).

But in the case of the ship, if the legal and contractual obligations of the owner towards the carrier have a direct effect on the owners of the goods, action against the owner and subsequent seizure of the ship will also be possible.

A claim for compensation by the cargo owner, based on the ship owner's non-contractual (tort) liability, can be brought up in various situations:

- 1) When the incident resulting in the loss does not stem from a failure to comply with the terms of the carriage agreement (Theocharidis, 2013: 220). Including when the owner of the sunken ship was negligent in fulfilling his obligations in order to provide a seaworthy ship.
- 2) When the damage is a result of committing a crime and not a violation of the contract of carriage (Hadden, 1971: 225).
- 3) When the damage is a result of the violation of the contract of carriage, but in order to bypass the limits of compensation for contractual damages, the owner of the goods prefers civil liability lawsuit (non-contractual liability) to contractual liability (Paramita, 2016: 26).

In explaining the above cases and determining the examples of the obligations of the ship owner in Iranian law, we need to identify the responsibility of the vessel owner and separate them from the obligations of the charterer.

The owner's obligations, and thus their liabilities, vary significantly depending on the type of lease agreement they have with the tenant. In time charters, voyage charters, and bareboat charters, the nature of these obligations differ, leading to different responsibilities. Ship operations can be categorized into two primary groups:

1. **Navigation:** This includes technical outfitting of the ship, ensuring a competent captain and sufficient crew, paying wages and insurance for the crew, and covering maintenance costs. In all three types of charters—voyage, time, and bareboat—the owner is fully responsible for navigation matters, with no input from the tenant allowed.
2. **Commercial Operations:** This covers decisions about routes and the interval stops within the charter party, fuel expenses, pilot fees, and port docking fees. In time charters, these commercial responsibilities fall on the tenant, who is accountable for both their own actions and those of the captain. Although the captain is employed by the ship owner, in these commercial matters, they act under the tenant's orders, as the tenant is the economic beneficiary of the ship. In bareboat charters, these commercial powers also lie with the tenant, but in voyage charters, they remain with the owner (Sadeghi Neshat, 2012: 97).

Additionally, given that BIMCO form contracts are widely accepted in Iran's shipping industry and used in international trade, it can be argued that Iran's practices align with those of other countries in this regard.

Contrary to Article 69 of Iran's Maritime act,¹ which explicitly recognizes the liability resulting from the actions of non-owners, according to the second paragraph of Article 55 of the Iran's Maritime act: "The ship and the carrier will not be responsible for the loss or damage caused by the following action: A- Negligence and malpractice or the actions of the captain, staff, pilots, or the authorized agent of the carrier navigation and ship management". These two

1. *Iran Maritime Law*, art. 69: "The owner of the ship is personally responsible for his actions, obligations, negligence and mistakes, as well as responsible for the actions of the master and the contracts he concludes while performing his duties. The ship owner will also be responsible for the operations of the ship's staff and virtual agents who are assigned to serve on the ship on his behalf."

articles together highlight that liability falls on the shipowner, rather than the carrier, when damage results from the negligence of the crew or employees.

Under Iran's Maritime Act, legal responsibilities are placed on the shipowner regardless of the type of charterparty, the violation of which gives rise to his liability. Among these obligations: Violation of commitments in receiving, loading, transshipment, stowage, carriage, storage, care, unloading, and delivery of goods, breach of commitment regarding seaworthiness, deviation from the route, and commitment to observe reasonable and safe speed.

In the event of attributing damages to the breach of any of the aforementioned commitments regarding ensuring seaworthiness, non-deviation from the route and adherence to safe speed, considering the type of charter and crew supply contract by the owner, the possibility for cargo owners or passengers to take action against the shipowner exists. This matter is even observable in BALTIME charterparties¹, as stated in clause "A" of Article 48. According to this clause: "Claims for damages resulting from the lack of seaworthiness of the vessel or errors and faults in navigation are the responsibility of the shipowner unless the owner proves that this lack of seaworthiness resulted from deficiencies in loading, stowage, unloading, and delivery of goods." Subsequently, clause B stipulates that Claims for damages resulting from loading, stowage, unloading, and delivery of goods are the responsibility of the charterer unless they prove that the failure to fulfill the mentioned commitments was due to deficiencies affecting seaworthiness (BALTIME Charter Party, art. 48 b). In the above clauses, in addition to the commitments related to the cargo, reference is made to the commitment to ensure seaworthiness, indicating the possibility of liabilities arising from breaches of commitments towards the owner and indicating the existence of a legal framework to claim against the owner as well.

Referencing judicial decisions in this context will greatly contribute to substantiating and elucidating the judge's legal stance. For example, in the case of *Petrofina S.A. of Brussels v. Compagnia Italiana Trasporto Genoa of Minerali Oil*, a charterparty was concluded for the transportation of a quantity of gasoline. Article 1 of the charterparty stipulated that the ship must be fully prepared and suitable for the mentioned sea voyage in the contract and this condition must be maintained throughout the entire journey. Article 16 obligated the ship's master to keep all tanks, pipes, and pumps clean, and Article 27 of the contract deemed the approval of the appointed inspector by the charterer regarding the cleanliness of pipes, pumps, etc. necessary. During the unloading of the cargo, it was observed that the color of the gasoline had changed, and evidence indicated that this change was due to the fault of the master. In response, the shipowner refused responsibility, and by relying on Article 27 of the contract stated that his obligation was solely to maintain the tanks in a manner approved by the charterer's inspector, which he fulfilled, and the cleanliness of the tanks, pipes, etc. was also approved by the mentioned inspector. Yet the court ruled as follows: Articles 1 and 16 pertain to the "cargo worthiness" of the ship and article 27 merely grants more inspection powers to the charterer, and the inspector's approval will not satisfy the fulfillment of the shipowner's seaworthiness commitment (Nikolaev Djadjev, 2016: 167). Therefore, in the event of entering into a transport contract, despite the possibility for the holder to refer to the carrier for contractual liability, the shipowner can bear strict liability in the presented scenario and is obligated to compensate the shipper for damages.

Furthermore, considering the established position of international custom in Iranian law and Iran's positive approach at the International Law Commission meeting in 2012 regarding Iran's alignment with the acceptance of international customary law, as well as the prescription of this matter in Article 194 of the Iranian Maritime act which emphasize the acceptance of

1. BALTIME is a widely recognized standard time charter party and is among the earliest forms developed by BIMCO. It was first introduced in 1909, with the most recent version being BALTIME 1939, which was revised in 2001.

international custom, recourse to international custom and practice can also be sought. In this regard, referencing Conventions 1999 and 1952 with the argument that the provisions of these conventions stem from international customary law in the maritime sector can be justifiable for the court.

8. Conclusion

In the absence of Iran's ratification of key international conventions on ship arrest, such as the 1952 Brussels and 1999 Geneva Conventions, Iranian law has developed a hybrid legal framework grounded in general civil enforcement mechanisms and complemented by provisional remedies in both civil and criminal contexts. While these mechanisms allow for the arrest of ships under various circumstances, they remain fragmented, discretionary, and at times procedurally cumbersome—particularly for foreign claimants unfamiliar with domestic practices.

This study reveals that, while Iranian courts permit the arrest of ships as part of broader enforcement tools, the absence of a defined concept of maritime claims and the lack of uniform procedural safeguards pose challenges to claimants, particularly foreign ones. Furthermore, the distinction between documentary and physical arrest, the requirement for security deposits, and the discretionary power granted to judges underscore the fragmented and highly contextual nature of ship arrest proceedings in Iran.

To bridge these gaps, Iran may benefit from legal reforms that codify maritime claims, streamline arrest procedures, and consider accession to one or more international conventions. Until such reforms are undertaken, the current regime—though functional—remains inherently limited in scope and certainty. Nevertheless, Iran's domestic legal framework provides practical legal tools for ship arrest. These include:

- Provisional orders under Articles 310 and 316 of the Civil Procedure Act,
- Attachment of relief under Article 108 for specific monetary claims,
- Criminal provisional orders in cases involving threats to public order or property rights, and
- Enforcement of financial judgments under the revised 2014 act.

Moreover, in urgent or risk-prone situations, Iranian courts are empowered to seize a ship either physically or through its documents.

A notable procedural constraint is the requirement of approval by the head of the judicial district for issuing certain provisional orders. While absent in urgent civil domains such as family law, this formality persists in commercial contexts where speed is often essential. By analogy—indeed, a fortiori—it is argued that maritime claims, especially those involving the imminent departure of a vessel, should benefit from similar procedural flexibility. This would not only align Iranian practice with its own internal judicial logic but also move it closer to the efficiency-centered standards of international instruments.

In addition, the legislator's recognition of maritime lien claims as substantively and procedurally privileged—by allowing for expedited and extraordinary treatment—suggests a rationale for affording their related provisional remedies (such as arrest or attachment) a similarly exceptional status. By extending the conditions under which security is waived, for instance, to credible yet informal maritime documents (such as properly executed bills of lading), the Iranian judiciary could enhance access to interim relief in line with the practical realities of maritime trade.

In sum, Iran's current regime for ship arrest, though operational, suffers from conceptual ambiguities and procedural rigidity. Legal reform is thus warranted—whether through judicial interpretation or legislative action—to define maritime claims, streamline arrest procedures, and, potentially, accede to international conventions. Until such harmonization is achieved, the

Iranian framework, while imperfect, continues to provide claimants with a set of practical yet fragmented remedies suited to securing maritime claims in urgent situations.

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