4. The Brussels Convention of 10 May 1952 for the unification of certain rules relating to the arrest of seagoing ships, allows thus to arrest a ship as a precaution to obtain guarantees against a maritime claim “related" to the ship. The Convention thus provides an action against the ship, an action *in rem*, fundamental institution of Anglo-Saxon law. Now, just as it ignores the theory of property by appropriation, French law does not allow the exercise of any right against something but only against a person (action *in personam* The Brussels Convention however is not exclusively inspired by the principles of English law because it also refers to the *"continental"* notion of action *in personam,* so that it is a compromise between two radically different legal systems. Thus, whereas in its Article 3-1, the 1952 Brussels Convention allows any applicant who holds a maritime claim to arrest the ship to which the debt relates, its Article 6 paragraph 2 provides that the rules of procedures relating to the ship's arrest *"are governed by the law of the contracting state in which the arrest was made or applied for"*. However, French law does not allow the creditor to seize assets which are not the property of his debtor. The Articles 7-1 and 7-4 of the Convention further provide that the arresting party must introduce an action on merit within a fixed time either by the *lex fori* or by the court. Otherwise, the Convention provides that the defendant will be entitled to request the release of arrest.

5. Thus, the 1952 Brussels Convention provides and arranges in favour of the holder of a maritime claim the right to arrest the ship to which the claim relates. We will see that the conditions for granting this right are very liberal because just the *“allegation"* of maritime claim against the ship allows obtaining from the attachment judge a decision to arrest the ship [4]. However, when he has carried out the arrest, the Convention imposes on the holder of maritime claim to institute proceedings *“on merit"* before a judge who will rule according to the *lex fori*, law of the *for* or, the country that authorised the seizure. However, the Brussels 1952 rules are silent not only regarding the legal arguments that the arresting creditor must submit but also on the purpose of his action on the merits. Must the arresting party ask the trial court to rule on the validity of arrest only under the Brussels Convention and thus confirm the decision of the attachment judge? Should he instead refer to the law of the *for* in order to establish that the arrest was well justified? Should he again exclude any reference to the 1952 Convention and attempt to obtain from the trial judge that the title he has acquired against the ship as a precaution is "converted" into an enforceable title? In the latter case, we already have an idea of the difficulties which might be faced by the arresting creditor, faced with the task of transforming a precautionary title he has acquired *in rem* against the ship into an enforcement order that he must obtain *in personam*, against the debtor that cannot be a property and has to be a legal person.

6. These difficulties will inevitably arise when, under the Brussels Convention of 1952, the arresting creditor holds maritime claims against the ship and that the debtor will be a person different from the one who benefits from the ownership of the ship. In fact, assuming that he would have arrested the vessel to which his claim relates, on French territory, the creditor must comply with the provisions of Article 215 paragraph 1 of the Decree No. 92-755 of 31 March 1992 [5] which require him to introduce, within two months from the date of arrest, an action to obtain an enforceable title against the debtor of the claim. This text meets all the points of the French notion

of action *in personam*, irreconcilable with the notion of action *in rem* under English law. However, the Brussels Convention requires the person who invokes its provisions in France to try to reconcile these diametrically opposed notions with the risk that he may be confronted with legal problems whose complexity may generate between the parties debates going beyond those usually subjected to the natural attachment judge. In maritime matters, this is far from an academic hypothesis. Indeed, a large number of commercial vessels are given in charter by their owners to persons qualified as ship-owners, operators or charterers who themselves may entrust the operation of vessels to sub-charterers. Now, the charterer of the ship has to resort to service providers or bowsers to enable the continuation of the maritime adventure and where necessary, contract with these providers debts for which he alone will be held liable under the French law, notwithstanding the provisions of the Convention of 10 May 1952 on the provisional seizure of ships. *Quid juris* when, at the end of the charter agreement, the ship was the subject of a redelivery to its ship-owner? *Quid juris* in case of amicable transfer of ownership of the ship? What to decide also in the event that the ship was the subject of a sale by auction? What if finally, when, before being arrested in France as a precautionary measure, a judgement rendered by a foreign court has ordered the sale of the vessel to a successful bidder, who, by definition, has never had a contractual link with the previous owner or charterer of the ship?

7. Questions abound, the divergent doctrinal opinions and solutions provided by case law sometimes contradictory, sometimes hesitant, are not likely to quench the thirst experienced by the mind to provide a coherent and satisfactory answer to the obvious contradiction observed through the adage *"When the English condemn in rem, the French condemn in personam"*. [1]. What answer can be provided to the creditor who is forced to *"reconcile the irreconcilable"* in order to implement his rights? Far from claiming to provide our readers a definitive, conclusive solution, this study will seek to discuss the main issues arising from the conflict between the Anglo-Saxon concept, especially English, of *in rem* action and the continental, especially French concept of *in personam* action, before drawing up a report on the supra-legal, legislative, judicial and academic responses on these issues. In attempting to bring to our readers the foundation and justification for each answer, we will find that many solutions call other questions, other issues, other difficulties equally formidable as the initial questions, so that we shall have no hesitation to plead throughout this study, the famous adage, *"to the impossible no one is bound"*, requesting our readers to kindly forgive this confession of helplessness.

8. Before going further in this study, we wish to respond in advance to the objection that some may be tempted to make, which is to claim that the issues arising from inconsistencies between *in rem* action and *in personam*action are of limited interest since they are likely to arise only in textbook cases and thus, would be of no use to practitioners of maritime law. We found previously [1]that the practice of maritime trade often separates the holder of the ship’s ownership from the person operating it, so that maritime creditors can exercise real rights over the ship to guarantee the debts incurred by its charterer and for which, under the principle of the relative effect of the agreements, the ship-owner will not be held liable. [2]. These same issues also arise when the ship is subject to a redelivery to its owner, when it is the subject of a sale voluntary or by court order and all the more so when the decision of its sale in an auction was made by a foreign court. To help convince our reader who is reluctant to listen to the above statements, we may be permitted to raise in the threshold of our study, an important case which is now still pending before two levels of jurisdiction, the Commercial Court of Marseille and the second chamber of the Court of Appeal of

Aix-en-Provence, in addition to the Cour de cassation: the case relates to the ocean liners of the RENAISSANCE CRUISES fleet.

9. The ships "R ONE", "R TWO", "R THREE", "R FOUR", "R FIVE", "R SIX", "R SEVEN", "R EIGHT", "RENAI I" and "RENAI II" (the RENAISSANCE CRUISES fleet) are liners favoured by an American cruise clientele. These ships were owned by mainly French investors, organised either by economic interest groups, or by holding companies. Each ship was covered by a regularly published mortgage granted in favour of various banks that had financed their acquisition. Each owner had chartered his ship to a North American company, the company R CRUISES. This company had sub-chartered all the ships to the company under North American law, the RENAISSANCE CRUISES which operated successfully with its subsidiaries in a very favourable economic environment, given the strong demand for cruises in the US market.

However, the American events of 11 September 2001 brought a brutal end to the demand from American cruise customers and RENAISSANCE CRUISES group immediately faced insolvency. From 29 September, the bankruptcy Chamber of the Supreme Court of Florida placed all RENAISSANCE CRUISES group companies under *Chapter 11,* the American equivalent of insolvency proceedings under French law and prohibited all payments owed by the group of freight debts to the charterer R CRUISES under the sub-charter contracts. R CRUISES found itself in turn unable to honour the freight due to the owners of vessels under the charter contracts, which ceased to pay the mortgagees of ships the instalments due in repayment of the loans that enabled their acquisition.

Informed of the insolvency of their debtor, numerous creditors of RENAISSANCE CRUISES group companies declared their rights with the US liquidator in charge of the bankruptcy proceedings. Moreover, creditors holding mortgages on ships obtained either from the High Court of Justice of the United Kingdom or from the Supreme Court of Gibraltar [1], the

opportunity to realise their sureties through the judicial sale of the ships. Each of the ships was the subject of an auction notice in the professional maritime press and was then sold by judicial authority to the highest bidder[1]. The liners "RENAI I" and “RENAI II" were awarded to the company GRAND SEAWAYS LIMITED while other ships were sold to the *Single Ship Company,* and the Cruiseinvest company. The auction prices were deposited in the hands of the courts which had ruled on the sales and the proceeds were distributed among the various maritime creditors of the ships.

Pending the conclusion of contract with a person likely to operate the liners, the new owners moored the ships “R THREE R" and "R FOUR" in PAPEETE and the others in the Port of Marseille. Many holders of maritime claims against vessels (shipping agents, other service providers, all suppliers or bunker refuelling, etc.) who claimed not to have been paid petitioned the President of the Commercial Court of Marseilles for authorisation to seize the ships of the former fleet of RENAISSANCE CRUISES, while the debts had been incurred not only by the company RENAISSANCE CRUISES, but also before the judicial sale of the ships. In addition to the demands for payment, the President of the Commercial Court of Marseilles upheld over twenty requests seeking the arrest of the ships moored in the Port of Marseille, based on the Brussels Convention of 10 May 1952. Disputing all liability to pay the debts that led to the arrests, the new owners of ships summoned each creditor for the purposes of quashing the orders that authorised the arrest and obtaining the retraction of the provisional arrests of ships moored in Marseille.

11. Ruling in summary proceedings, the President of the Marseille Commercial Court therefore had to rule and must still rule today on the question of the validity of the arrest made in France against a ship in order to have surety and guarantee of a maritime claim that arose prior to the sale by auction of the ship under a court order issued by a foreign court. Many of the orders issued to date on this point have been overturned by the Court of Appeal of Aix-en-Provence, which adopts a position opposite to that which had been held by the trial judges. Some disputes relating to the validity of such an arrest, are also submitted for a ruling from the Cour de Cassation which must therefore rule on this issue in its turn. There is no doubt that the solution of these disputes currently pending before the High Court will create a case law, given the importance of the legal issues raised by this case as well as the divergent interests of ship-owners not debtors of maritime claims on the one hand and the holders of maritime claims on the other hand.

12. Far from the pretension to try making a work of "legal prospective" as risky as uncertain with regard to the orders to be issued, this study offers the reader to approach the questions to be answered by the Cour de Cassation in the case relating to liners of the former RENAISSANCE CRUISES fleet through a "reading grid" consisting of the principles established by international conventions, French law, case law, as well as French and Anglo-Saxon doctrines on the arrest of ships. The comprehensive study of its principles shows a frame, a logic that is reminiscent of the diction already mentioned according to which *When the English condemn in rem, the French condemn in personam".* Indeed, the Brussels Convention of 10 May 1952 grants to the person alleging a maritime claim on a ship, the right to arrest it as a precaution. The arresting creditor must then introduce proceedings on merits, for the purpose, in the case of an action submitted before a French judge, of obtaining an enforcement order which can be issued only against a person, only the owner of a property and therefore, only likely to be responsible for the payment of obligations or maritime claims relating to the arrested ship.

In other words, if the notion of action *in rem* dominates that of the action *in personam* at the stage of the arrest procedure (Title I), the action *in rem* declines in favour of the action *in personam* in the context of converting a precautionary title in France into an enforceable title against the successful bidder purchaser of the seized ship (Title II).

The task is ambitious, large, difficult. The subject is beautiful, like the ships. Going back to our first point, a ship is always beautiful, but it can be complex... This is perhaps the price of fascination exerted by ships on men who love the sea.

FIRST TITLE: ARREST OF VESSEL: ACTION *IN REM* DOMINATES

Any person alleging a maritime claim against a ship may, under the provisions of the Brussels Convention of 10 May 1952, arrest as a precautionary measure the ship to which the claim relates (Chapter I). Moreover, the Convention requires the creditor to file an action on the merits, determining condition for the maintenance of arrest on the ship. Under the French rules of procedure, the proceedings on merit filed by the creditor must seek to convert his precautionary title obtained on the ship into an enforceable claim against the debtor that can only be a person (Chapter II).

CHAPTER I: ARREST OF THE SHIP AS A PRECAUTIONARY MEASURE: ACTION IN REM

The Convention for the unification of certain rules relating to the precautionary arrest of ships signed in Brussels on 10 May 1952 allows arresting a ship as a precaution subject to satisfying certain conditions relating to the debt to be secured (Section I) as well as to the ship to be arrested

and to its owner (Section II). The rules of procedures to be observed by the seizing creditor are determined by the law of *for* (the country where proceedings are filed) (Section III).

SECTION I: CONDITIONS RELATING TO THE DEBT TO GUARANTEED

13. The French law on precautionary arrest of ships has a dual character: In addition to provisions of the Brussels Convention of 10 May 1952 applicable in France since 24 February 1956, domestic law governs the arrest of ships by virtue of Law No. 67-5 of 3 January 1967 on the status of ships and other seagoing vessels and its application decree No. 67-967 of 27 October 1967. It is however necessary to distinguish between the regime of precautionary arrest under the domestic law according to Article 29 paragraph 2 of the Decree of 27 October 1967 and the Brussels Convention of 10 May 1952 on the unification of certain rules on the arrest of seagoing ships.

Like the common national law, the 1967 decree authorises the vessel's arrest from the moment the arresting party justifies a *"debt founded in principle",* whatever its nature. [1]. Inspired by the concept of action *in personam,* fundamentally linked to the principle of the unity of property, all assets of the debtor meeting all his debts, personal, professional or family, we will not deal with the arrest of ships in domestic law to devote ourselves exclusively to that made available to the creditor by the Brussels Convention of 1952.

Under Article 2 of the 1952 Convention [1], the arrest of a ship may be permitted provided that the applicant exercises a maritime claim (Comm. 26 May 1987 Bull. Civ. IV, No. 123; Com. 12 January 1988, Bull. Civ. IV, No. 15, vessel *"Nora"*). The seizing creditor thus needs only to allege a maritime claim (§ 1). However, Article 1 of the Convention allows the arrest only under certain debts exhaustively listed (§ 2).

§ 1. The requirement of a single allegation of maritime claim.

14. The mere reference to an allegation of maritime claim demonstrates the liberal character of the Convention as it does not even require an appearance of debt which satisfies the domestic law. Consequently, the French judge may not require any person invoking the provisions of the 1952 Convention that he should establish the certain and serious nature of his claims and the Cour de cassation inevitably rules against the trial courts that grant the release of arrest made based on the Convention on the grounds that the claim should demonstrate a real and serious nature (Cass. Com. 12 January 1988, DMF 1992 somm. Comm. p. 134). The Court of Appeal of Aix-en-Provence has also ruled that the judge had failed to consider whether the maritime claim was subject to any limitation (Aix-en-Provence, 2^{e} ch., 6 December 1995, vessel *"Friday Star"*, DMF 1996, No. 572, p. 591 s., obs. Y. TASSEL). Pledge of simplicity and speed, this requirement is particularly suited to the maritime domain, because it allows the person claiming to be a creditor to arrest a ship without having to justify his credentials. Thus, the creditor will avoid wasting precious time during which the ship to be arrested may leave port. According to the formula of Rodière, the attachment judge does not have to require the creditor to present any evidence whatsoever except that the person should hold a claim falling within the list contained in Article 1 ^{er} of the Convention[1].

§ 2. The restrictive nature of maritime claims.

15. Article 1 of the Convention contains an exhaustive list of claims admissible as maritime claims. These are rights or claims originating in:
- A damage caused by a ship

- The loss of life or personal injury caused by a ship or arising from the operation of a ship
- An act of assistance and rescue
- Contracts for the use or hire of a ship whether by charter-party or otherwise
- Contracts for the transport of goods by a ship under a charter party, bill of lading, or otherwise
- Loss or damage to goods including baggage carried in a ship
- A common damage
e- A bottomry
- A pilot service
- Supplies, regardless of location, of products or materials to a ship for her operation or maintenance
- Construction, repair or equipment of a ship or dock charges
- The wages of masters, officers or crew
- The captain's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner
- The disputed ownership of a ship
- The contested possession, or operation, or the rights to revenue from a ship in joint ownership
- Any maritime pledge or mortgage.

This list therefore dismisses all claims not from the maritime activity. It does not however seem to include all the claims of a maritime nature in that it does not provide for the errors committed by the captain in the exercise of his functions (Com. 21 June 1983, DMF 1985, p. 438, ship *"Gavion"*) or those resulting from the failure of a ship's sale agreement unless its ownership is disputed (Com. 9 May 1990, D. 1990 somm. Comm. p. 271, obs. Mr Remond-Gouilloud, ship *"Yamoussoukio"*). Moreover, the judges of the trial court had the opportunity to clarify that the tort or contractual basis of the creditor's action is irrelevant if its cause is found in the cases listed in the list of Article 1 (in this case, claim arising from a contract for the transport of goods under bill of lading: Aix-en-Provence, 2nd ch., 16 October 1996, the ship *"Enarxis"*, DMF 1997, No. 572, p. 603; in the same context, with regard to the question of the debtor of the claim to be guaranteed: Aix-en-Provence, 10 July 1987, the ship *"Trsat"*, DMF 1988, p. 543 s.).

Held by the limitative nature of the list of Article 1, the case law adopts a restrictive view of the concept of maritime claim within the meaning of the 1952 Convention by granting this quality only for claims directly related to the ship or to the maritime activity. For example, in a judgement dated 14 November 1996, a higher court refused to grant a maritime character to the debt arising from a loan contracted in order to make repairs to a ship for its operations because it does not appear among the causes listed in Article 1 of the Brussels Convention, while the creditor showed that the loaned sums had been allocated to the operation of the ship (Aix-en- Provence, 2nd ch, 14 November 1996, the ship "ZAMOURA" DMF 1997, No. 572, p 606, obs Y. TASSEL; in the same direction about a debt repayment of bonds agreed in part for the acquisition of a ship: Aix-en-Provence, 2nd c., 26 October 2001, the ship *"Canmar Supreme"*, DMF 2002, No. 622, p. 20 s., Obs. JP REMERY).

SECTION II: CONDITIONS RELATING TO THE SHIP AND ITS OWNER

Arrest as provided by the Brussels Convention of 1952 can be obtained on the territory of a Contracting State against a vessel flying or not the flag of a contracting State (Article 8). Under Article 3-1 of the Convention, any applicant may arrest the ship to which the claim relates, or any other ship belonging to one who, when the maritime claim arose, was the owner of the particular ship to which the debt relates, even though the seized ship is ready to sail but no ship may be

arrested for claims set out in paragraphs o), p), q) of Article 1 with the exception of that ship which relates to the claim."

This text thus allows arresting not only the ship to which the maritime claim relates (§ 1) but also other ships comprising the property of the ship-owner's to which the claim relates (§ 2).

§ 1. The ship to which the claim relates.

16. The Convention specifies firstly that the applicant may arrest any ship that relates to his maritime claim. The power granted to the creditor is a topical example of direct application of the *in rem* action since it excludes any reference to the ship-owner and at the same time the question of the obligation of the ship-owner to pay the debt at the origin of the application for arrest, which would be a prerequisite for the seizure under the French law. Under the Convention, the ship alone is *"debtor" of* the maritime claim since its origin is linked to the ship or its operations, which justifies its arrest.

In addition, Article 3-4 of the Convention provides the opportunity to arrest a given ship in charter with handing over of the nautical management of the ship when the charterer alone is responsible for a maritime claim relating to this ship, whoever may be its owner. The case law provides that the arrest can be obtained even if the charter contract may have ended.[1].

The Article 3-1 also specifies that only that ship can be seized that relates to the claims of disputed ownership of a ship (Article 1-o), its possession, operation, or

the rights to revenue from the operation of a ship in joint ownership (Article 1-p) and to maritime mortgages. Conversely, if he alleges another maritime claim, the applicant may arrest a ship that has no connection with the debt to be guaranteed. The sole connecting factor lies in the person of the owner of the ship to which the claim relates.

§ 2. The other ships belonging to the owner of the vessel to which the claim relates.

17. Article 3 of the 1952 Convention also provides that the applicant may arrest any vessel belonging to the person who, when the maritime claim arose, was the owner of the ship to which the claim relates, *"even though the ship arrested is ready to sail"*. This provision highlights a cumulative application of the notions of action *in rem*and action *in personam*; originating on the ship to which the claim relates, the right to arrest conferred on the person who invokes the Brussels Convention can be extended to all ships that composed at the time of the origin of his claim, the property of the ship that gave rise to the claim.

To overcome the difficulties engendered for them by this option, ship-owners owning several ships have recourse to the creation of *Single Ship Companies*, companies inspired by fiduciaries, whose assets are composed of a single ship and whose control is exercised by the owner having the ships. Case law states that this practice does not constitute a fraudulent act in itself. The creditor who intends to clear the obstacle created for him by the moral personality of a *Single Ship Company* will have to resort to common law on companies inspired by the case law on bankruptcy proceedings to establish the absence of autonomy of *Single Ship Companies* in respect of the owner. He must thus demonstrate to the judge that these companies are fictitious or that their assets are merged. However, the mere existence of a community of interests between two companies is not likely to demonstrate the fictitious nature of one or the other company. Thus, in a judgment dated 21 January 1997, the Commercial Chamber of the Cour de Cassation, in view of Article 1842 of the Civil Code, declared the annulment of the order which had refused to release the arrest made on the ship of a

company to guarantee the maritime debts of another company on the ground that the two companies were united by a community of interest (Cass. Com. 21 January 1997, ship *"Cast Husky"*, DMF 1997, No. 572, p, 612 s.; in the same context, Cass. Com. 19 March 1996, ship *"Alexander III"*, DMF 1996, n° 560, p. 503).

Under Article 3-4 of the Convention, the applicant may also arrest any ship owned by the charterer who answers alone a maritime claim relating to a ship that was given to him in charter with handing over of its nautical management.

SECTION III: RULES OF PROCEDURE OF ARREST IN FRANCE

18. Article 4 of the 1952 Convention provides: *"A ship may be arrested under the authority of a court or other competent judicial authority of the contracting State in which the arrest is made."* Its Article 6 paragraph 2 provides that *"the rules of procedure relating to the seizure of a ship (...) and all other matters of procedure which the arrest may entail are governed by the laws of the contracting country where the arrest was made or applied for."* The meaning given to the term "arrest" by the Brussels Convention of 10 May 1952 is a precautionary measure, under Article 1 -2, which states: *"arrest' means the detention of a ship with permission of the competent judicial authority to secure a maritime claim, but does not include the seizure of a ship for the enforcement of a title."*.

19. Under Article 29 of the Decree of 27 October 1967, the arrest is authorised by order issued on request by the President of the Commercial Court or, failing that, by the trial judge.

Before the President of the Commercial Court, matters of orders on petitions are governed by the provisions of Articles 874-876 of the Civil Procedure Code. Under Article 876, *"in case of emergency, the application may be submitted at the home of the president or the place where he carries on professional activity."* According to Article 852 of the same code, the application for authorisation to arrest can be submitted in person or by an agent holding a special power if he is not an attorney.

The application, submitted in duplicate, must be reasoned (Article 494) and shall seek the application of the Brussels Convention of 1952. Any reference to the law of 3 January 1967 should be avoided, because the benefit of provisions on legal and supra-legal origin cannot be cumulated. [1]. The order authorising the arrest must be reasoned (Article 495) and shall subordinate, in any event, the validity of the arrest to intervene complying with the conditions set out in Articles 210 and following of Decree No. 92-755 of 31 July 1992 that impose the statement of the amount for which the arrest will be allowed as well as fixing the time limit within which the seizing party must introduce before a competent court, proceedings on the merits, on pain of nullity of the arrest. In its enforceable order *"based solely on the record"* [1], the President shall specify that the matter should be referred to him in case of difficulty, notwithstanding opposition or appeal. In any event, the judge who authorised the seizure is always competent to give discharges (Comm., 7 June 1994, the ship *"Heidberg"* Bull. Civ. IV, No. 206). The arrest will be made by a judicial officer having jurisdiction in the place where the ship to be arrested is located. Arrest is not, in principle, subject to any publicity measure (see, however, in the case of an enforcement seizure: Aix-en-Provence, 15e ch., 25 February 1981, DMF 1982, p. 420, note Mr Rémond-Gouilloud).

20. The arrest must not infringe the owner's rights. [1]. It detains the ship. The main effect of arrest, as stated in Article 30 of Decree No. 67-967 of 27 October 1967 on the status of ships and other

seagoing vessels, is to prevent them, under the supervision of port authorities, from leaving the port. This measure is therefore seriously detrimental to the owner-operator of the ship from a financial point of view. [2]. In fact, he is unable to operate the vessel while he remains liable for all the costs related to the ship, particularly for its maintenance. The Cour de cassation was thus able to decide that the loss of a ship resulting from a lack of maintenance during the arrest may not be attributed to the arrest unless the owner is able to prove that the arrest prevented the maintenance of the ship (Com. 3 March 1998 *Juris*-Data No. 000922). The reports of the arrest must be notified as prescribed by Article 221 of the Decree of 31 July 1992, compliance with which may be submitted for assessment by the courts (RENNES 2nd c., 13 July 1993, *Juris-Data* No. 044729). When the port authorities are notified of the decision which authorised the arrest, they shall refuse the ship any clearance for its departure. Articles 27 and 28 of the Decree of 27 October 1967 however, allow the President of the competent high court, ruling on interim matters, to authorise the ship to perform one or more specific voyages, provided a *"sufficient guarantee*" is granted to the creditor. The period within which the ship must return to the arresting port of entry must be strictly observed or risk that the *"sufficient guarantee"* is retained by the creditor. However, some authors believe that this temporary authorisation procedure for departure is incompatible with the purpose of arrest under the Brussels Convention of 1952 which consists in giving the creditor a *"leverage"* promoting the settlement of his claim. [1]. Without prejudging the question whether the arrest under the Brussels Convention is or is not intended to give the creditor a means of pressure on the debtor, we simply note that the Convention requires the exercise of substantive proceedings, which, before the French judge, must have the objective of obtaining an enforceable title. Therefore, the application of the 1952 Convention in French law is not limited to mere threatening effect of the arrest but extends to the obligation imposed on the arresting party to demonstrate that it holds an order enforceable against a person.

Article 496 provides that if the application for precautionary arrest is not granted, the applicant can appeal within 15 days. If the application is admitted, any interested party may refer to the judge who issued the order. From the time, he has proceeded with the arrest, the creditor will be obliged to fulfil certain formalities that we will consider in turn.