

International Civil Jurisdiction of Maritime Cases in Japan (summary)

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The maritime liens and mortgages or 'hypothèques' based on the foreign laws have been treated in equal manners as those based on Japanese law in the judicial proceedings of provisional orders or enforcement. Therefore, we have no explicit arguments as to the international civil jurisdictional problems concerning the obligations supported by these legal securities.

These treatments superficially contradict with the general principles of international civil jurisdictions in civil and commercial matters in Japan. According to the rulings expressed in the judgments of the Supreme Court, there are no express provisions prescribing the rules of international civil jurisdiction in Japan; therefore, the rules are to be found in 'natural reason'. For ascertaining these, the court has to take into account the ideals of realizing i) the fair treatment of the parties, and ii) the adequacy and quickness of the litigation procedures. If one of the causes of personal jurisdiction in Japanese Code of Civil Procedure gives the justification to the international civil case at hand, we can assume that there exists the natural reason to support the jurisdiction, as long as there is no special circumstances which make the litigation in Japan against the 'natural reason' indicated.

This somewhat circular reasoning has strong similarity with the theory of Natural Forum (or Forum (Non) Conveniens) established by Spiliada, which is now quite widely supported by Anglo Commonwealth jurisdictions. In short, this theory tries to realize a sort of international transfer of litigation to the Natural Form so as to attain a better disposal of international civil litigation by letting the most appropriate forum solve the dispute and by deterring the so-called 'forum shopping' by the parties. In other words, this theory tries to promote the civil judicial cooperation between different jurisdictions on spontaneous and voluntary basis.

It is remarkable to find that the same spirit is now adopted in the International Convention on Arrest of Ships, 1999. In its article 7, besides respecting the wide-

ly accepted practice of arresting a ship for starting a proceeding to recover the debt there, the method of promoting voluntary adjustment of international civil proceeding based on the same theoretical foundation as Natural Forum Theory and judicial cooperation are introduced by Art. 7.

Article 7: Jurisdiction on the merits of the case

1. The Courts of the State in which an arrest has been effected or security provided to obtain the release of the ship shall have jurisdiction to determine the case upon its merits, unless the parties validly agree or have validly agreed to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.

2. Notwithstanding the provisions of paragraph 1 of this article, the Courts of the State in which an arrest has been effected, or security provided to obtain the release of the ship, may refuse to exercise that jurisdiction where that refusal is permitted by the law of that State and a Court of another State accepts jurisdiction.

3. In cases where a Court of the State where an arrest has been effected or security provided to obtain the release of the ship:

(a) does not have jurisdiction to determine the case upon its merits; or

(b) has refused to exercise jurisdiction in accordance with the provisions of paragraph 2 of this article, such Court may, and upon request shall, order a period of time within which the claimant shall bring proceedings before a competent Court or arbitral tribunal.

(4.)

5. If proceedings are brought within the period of time ordered in accordance with paragraph 3 of this article, or if proceedings before a competent Court or arbitral tribunal in another State are brought in the absence of such order, any final decision resulting therefrom shall be recognized and given effect with respect to the arrested ship or to the security provided in order to obtain its release, on condition that:

(a) the defendant has been given reasonable notice of such proceedings and a reasonable opportunity to present the case for the defence; and

(b) such recognition is not against public policy (ordre public).

(6.)

The extended use of the arrestment of foreign ships and Japanese present rule of international civil jurisdiction (jurisdiction of the merit established by the arrests of foreign ships) can be reconciled within the wider framework of promoting international judicial cooperation, if we tries to establish and maintain good interactive and communicative relationships with neighboring jurisdictions, which might obtain either the jurisdictions on the merits or those of arresting ships and, as a result, require mutual cooperation for realizing the justice in these situations.