

## EXTRACTS OF THE JUDGMENT OF THE SUPREME COURT

### ***The United States of America v. Havenschap Delfzijl/Eemshaven (Delfzijl/Eemshaven Port Authority)***

In November and December 1990 the seagoing motor vessel Cape May, which sailed under the flag of the United States, berthed in the Dutch port of Eemshaven. The ship was owned by the United States. The berthing had taken place on conditions contained in a document drawn up by the Port Authority, which had been signed in confirmation of the agreement of the United States by Mijne and Barends B.V. for or on behalf of OMI Corporation in New York. While the ship was berthed a number of boiler tubes fell overboard during loading. The Port Authority was involved in the salvage of these tubes and incurred costs in this connection. Subsequently the Cape May broke from its moorings on a number of occasions and drifted away. It collided with quayside walls belonging to the Port Authority and caused damage. The Port Authority sued the United States claiming compensation for the items of damage. The United States claimed that the Dutch Courts lacked jurisdiction.

The Supreme Court held:

[...] Part 1 therefore raises the question of whether the United States is entitled on the basis of unwritten rules of international law to immunity from jurisdiction in respect of a claim which has arisen in the Netherlands on account of the use by the United States of a vessel belonging to or operated by the United States if, at the time when the cause of action arose, this vessel had the status of a warship or military supply ship and was used exclusively to carry out a military (i.e., non-commercial) public function.

This question must be answered in the affirmative. As international law stands at present, foreign States are not subject to the jurisdiction of the Dutch courts in respect of claims arising in the Netherlands as the result of the operation of ships which belong to or are operated by them and which are used in the performance of a typical government function (such as military action). The nature of the act or event giving rise to the claim is not of importance in this connection. [...]