

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

**DRAFT CONVENTION ON MARITIME LIENS AND
SHIP MORTGAGES**

(PORTOFINO DRAFT)

The following is the English text of the Draft Convention on Maritime Liens and Ship Mortgages, known as the "Portofino Draft", prepared by the International Sub-Committee of the Comité Maritime International on Maritime Liens and Mortgages. This Draft Convention will be the chief topic on the agenda of the Comité Maritime International when it meets in plenary session at New York, September 12-18, 1965.

ARTICLE 1

Mortgages and hypothecs on seagoing vessels shall be enforceable in Contracting States provided that:

- a) such mortgages or hypothecs have been duly effected and registered in accordance with the law of the State where the vessel is registered;
- b) the register and any instrument referred to therein and filed with the registrar are open to public inspection; and
- c) the register specifies the name and address of the person in whose favour the mortgage or hypothec has been effected, the amount secured and the date which, according to the law of the State of registration, determines the rank as respects other registered mortgages and hypothecs.

ARTICLE 2

1. Subject to the provisions of paragraph 3 of article 11, no Contracting State shall permit the deregistration of a vessel without the consent of all holders of registered mortgages and hypothecs.

2. A vessel registered in a Contracting State on which a mortgage or hypothec is registered shall not be eligible for registration in another Contracting State unless a certificate has been issued by the former State that the vessel will be deregistered on the day when the new registration is effected, provided that the new registration is effected within 30 days. When such certificate has been issued no registration of rights in respect of the vessel shall be allowed by the said State during such period of time. The certificate mentioned shall set out in order of priority all registered mortgages and hypothecs on the vessel.

3. The vessel shall not be accepted for registration in another Contracting State unless the mortgages and hypothecs set out in the certificate mentioned in paragraph 2 are accepted for registration by such State, retaining their priority as set out in the certificate.

ARTICLE 3

Mortgages and hypothecs shall rank as between themselves in accordance with the law of the State where they are registered.

ARTICLE 4

1. The following claims shall be secured by maritime liens on the vessel:

(i) Costs of removal of the wreck of the vessel lawfully ordered by competent authorities.

(ii) Port, canal and other waterway dues and pilotage dues.

(iii) Wages and other sums due to members of the vessel's complement in respect of their employment.

(iv) Claims for loss of life or personal injury:

a) in respect of persons on board the vessel;

b) in respect of persons not on board the vessel if caused by the owner or by a person in the service of the vessel for whom the owner is responsible.

(v) Claims for salvage and for contributions in general average.

(vi) Claims in tort for loss of or damage to property not on board the vessel, if caused by the owner or by a person in the service of the vessel for whom the owner is responsible.

The word "owner" mentioned in this article shall be deemed to include the demise or other charterer, manager or operator of the vessel.

2. No maritime lien shall attach to the vessel securing claims for loss of life or personal injury or for loss of or damage to property which arise out of or result from the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste.

ARTICLE 5

1. The maritime liens set out in article 4 shall take priority over mortgages and hypothecs.

2. The maritime liens set out in article 4 shall rank in the order listed.

3. The maritime liens set out in each of the subparagraphs (i), (ii), (iii), (iv) and (v) of article 4 shall rank *pari passu* as between themselves.

4. The maritime liens set out in sub-paragraph (v) of article 4 shall rank in the inverse order of the time when the claims secured accrued. Claims for contribution in general average shall be deemed to have accrued on the date on which the general average act was done.

ARTICLE 6

1. Each Contracting State may grant liens to secure claims other than those referred to in article 4, provided however that such liens shall rank after all mortgages and hypothecs which comply with the requirements of article 1.

2. Each Contracting State may also grant rights of retention in respect of the vessel provided however that such rights shall not prejudice the enforcement of the maritime liens set out in article 4 or of mortgages or hypothecs which comply with the requirements of article 1.

ARTICLE 7

1. The maritime liens set out in article 4 arise irrespective as to whether the claims secured by such liens are against the owner, demise or other charterer, manager or operator of the vessel.

2. Subject to the provisions of article 11, the maritime liens securing the claims set out in article 4 follow the vessel notwithstanding any change of ownership or of registration.

ARTICLE 8

1. The maritime liens set out in article 4 shall be extinguished after a period of two years from the time when the claims secured thereby arose unless, prior to the expiry of such period, (a) the vessel has been arrested, such arrest leading to a forced sale, (b) the owner is declared bankrupt, or (c) the owner goes into compulsory liquidation.

2. The two years' period referred to in the preceding paragraph shall not be subject to suspension or interruption; provided however that should the vessel be requisitioned, time shall not count in respect of the period of such requisition.

ARTICLE 9

The assignment of or subrogation in a claim secured by a maritime lien set out in article 4 entails the simultaneous assignment of or subrogation in such maritime lien.

ARTICLE 10

Prior to the forced sale of a vessel in a Contracting State, the competent authority of such State shall give at least 30 days notice of the time and place of such sale to all known holders of registered mortgages, registered hypothecs and maritime liens set out in article 4 and to the registrar of the register in which the vessel is registered. For this purpose the said authority shall endeavour to obtain the names and addresses of such holders from the said registrar and from the owner of the vessel.

ARTICLE 11

1. In the event of the forced sale of the vessel in a Contracting State all mortgages, hypothecs, liens and other encumbrances of whatever nature shall cease to attach to the vessel, provided however that:

(a) at the time of the sale the vessel has been arrested in the jurisdiction of such Contracting State; and

(b) the sale has been effected in accordance with the law of the said State and with the provisions of this Convention.

2. The costs awarded by the Court and arising out of the arrest and subsequent sale of the vessel and the distribution of the proceeds shall first be paid out of the proceeds of such sale. The balance shall be distributed among the holders of maritime liens, registered mortgages and registered hypothecs in accordance with the provisions of this Convention.

3. When a vessel registered in a Contracting State is the object of a forced sale, the registrar shall issue, at the request of the

purchaser, a certificate of deregistration, provided always that the requirements set out in paragraph 1, sub-paragraphs (a) and (b) and paragraph 2 of this article have been complied with.

ARTICLE 12

The provisions of this Convention shall also apply to vessels which are under construction, provided however that:

(a) only such mortgages and hypothecs as have been registered in the State in which the vessel is under construction shall be enforceable;

(b) the maritime liens referred to in article 4 shall attach to the vessel only if the claims secured thereby accrue after the vessel has become waterborne.

ARTICLE 13

Unless otherwise provided in this Convention the Contracting States shall apply the provisions of this Convention to all sea-going vessels irrespective as to whether they are registered in a Contracting State or in a non-Contracting State.

ARTICLE 14

In respect of the relations between States which ratify this Convention or accede to it, this Convention shall replace and abrogate the International Convention for the unification of certain rules relating to Maritime Liens and Mortgages and the Protocol of Signature signed at Brussels on the 10th April 1926.