

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

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

(Antwerp Draft dated June 5, 1965)

ARTICLE 1.

Mortgages and "hypothèques" on sea-going vessels shall be enforceable in Contracting States provided that:

- (a) such mortgages and "hypothèques" have been 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 are open to public inspection, and that extracts of the register and copies of the instruments referred to therein are obtainable from the registrar; and
- (c) the register specifies the name and address of the person in whose favour the mortgage or "hypothèque" has been effected or that it has been issued to bearer, the amount secured and the date and other particulars which, according to the law of the State of registration, determines the rank as respects other registered mortgages and "hypothèques".

ARTICLE 2.

Registered mortgages and "hypothèques" shall rank as between themselves in accordance with the law of the State where they are registered.

ARTICLE 3.

1. Subject to the provisions of Article 11, no Contracting State shall permit the deregistration of a vessel without the written consent of all holders of registered mortgages and "hypothèques".

2. A vessel registered in a Contracting State shall not be eligible for registration in an other Contracting State, unless:

- (a) a certificate has been issued by the former State that the vessel has been deregistered; or
- (b) a certificate has been issued by the former State that the vessel will be deregistered on the day when such new registration is effected, provided that the registration is effected within 30 days.

When the certificate mentioned under (b) above has been issued, no registration of rights in respect of the vessel shall be allowed during the 30 days' period.

The certificates mentioned under (a) and (b) above shall set out in order of priority all registered mortgages and "hypothèques" on the vessel.

3. Such vessel shall be accepted for registration in another Contracting State only if the registered mortgages and "hypothèques" set out in the certificates mentioned in paragraph 2 are accepted for registration by such State and retain their respective priorities.

ARTICLE 4.

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

- (i) wages and other sums due to the Master, Officers and other members of the vessel's complement in respect of their employment on the vessel.
- (ii) Port, canal and other waterway dues and pilotage dues.
- (iii) Claims against the owner which arise in respect of loss of life or personal injury occurring in direct connection with the operation of the vessel.
- (iv) Claims not based on contract against the owner which arise in respect of loss of or damage to property or in connection with property occurring in direct connection with the operation of the vessel.

- (v) Claims for salvage and wreck raising.
- (vi) Claims for contribution in general average.

The word "owner" mentioned in this paragraph 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 as set out in paragraph 1(iii) and (iv) of this Article 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 registered mortgages and "hypothèques".

2. The maritime liens set out in Article 4 shall rank in the order listed, provided however that maritime liens securing claims for salvage and wreck raising shall have priority over all other maritime liens which have attached to the vessel prior to the time when the salvage or wreck raising operations were performed.

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

4. The maritime liens set out in each of the subparagraphs (v) and (vi) 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 performed.

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 registered mortgages and "hypothèques" 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 registered mortgages or "hypothèques" which comply with the requirements of Article 1, and neither the delivery of the vessel to the purchaser in a forced sale.

ARTICLE 7.

1. The maritime liens set out in Article 4 arise whether the claims secured by such liens are against the owner or against the 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, the vessel has been arrested, such arrest leading to a forced sale.

2. The two years' period referred to in the preceding paragraph shall not be subject to suspension or interruption, provided however that time shall not run during the period that the lienor is legally prevented from arresting the vessel, owing to it having been requisitioned or to the owner being bankrupt or being in compulsory liquidation.

ARTICLE 9.

The assignment of or subrogation to a claim secured by a maritime lien set out in Article 4 entails the simultaneous assignment of or subrogation to 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 written notice of the time and place of such sale to all known holders of registered mortgages, registered "hypothèques" 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, "hypothèques", liens and other encumbrances of whatsoever nature shall cease to attach to the vessel, provided however that:

- (a) at the time of the sale the vessel is 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 "hypothèques" in accordance with the provisions of this Convention to the extent necessary to satisfy their claims.

3. When a vessel registered in a Contracting State has been the object of a forced sale in a Contracting State, the registrar shall issue, at the request of the purchaser, a certificate of deregistration, provided always that the requirements set out in paragraph 1, subparagraphs (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 "hypothèques" 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, no matter whether they are registered in a Contracting State or in a non-Contracting State.

ARTICLE 14.

Each State which ratifies this Convention or accedes to it, shall forthwith denounce the International Convention for the Unification of certain rules relating to Maritime Liens and Mortgages and the Protocol of Signature signed at Brussels on April 10th, 1926.