

DOCUMENT No. 489
July, 1965

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

**REPORT OF THE COMMITTEE ON THE COMITÉ MARITIME
INTERNATIONAL ON THE DRAFT CONVENTION ON
MARITIME LIENS AND SHIP MORTGAGES**

The Comité Maritime International set up an international sub-committee to prepare a draft for a Convention on Maritime Liens and Ship Mortgages. This sub-committee has had four meetings—two in Amsterdam, one in Oxford and one in Antwerp. In addition to the work of the sub-committee, a drafting committee has been at work. The purpose of the drafting committee is to put into the best language possible the agreements reached by the sub-committee. We are submitting herewith a copy of the final draft of the sub-committee which was agreed upon at its meeting in Antwerp on June 4, 1965 and as prepared by the drafting committee at its meeting on June 5, 1965 and also a report of Jan Asser, Chairman of the sub-committee, which explains the work that the sub-committee and the drafting committee have done.

The purpose of this Convention is to improve the quality of the ship mortgage and to bring about as much international uniformity as is possible.

The differences between the proposed Convention and our existing law are not substantial.

The proposed Convention places the following maritime liens ahead of the lien of the mortgage:

- (i) Wages of the master and crew.
- (ii) Port, canal and other waterway dues and pilotage dues.
- (iii) Claims against the owner for death and personal injury.
- (iv) Tort claims for damage to property.
- (v) Claims for salvage and wreck raising.
- (vi) Claims for contribution in general average.

With the exception of waterway and pilotage dues, substantially the same maritime liens come ahead of the mortgage under our existing law. It is provided in Title 46 U.S.C.A., Section 953:

“(a) A lien arising prior in time to the recording and indorsement of a preferred mortgage in accordance with the provisions of this chapter; or (2) a lien for damages arising out of tort, for wages of a stevedore when employed directly by the owner, operator, master, ship’s husband, or agent of the vessel, for wages of the crew of the vessel, for general average, and for salvage, including contract salvage.”

To preserve those liens which under our law are junior to the lien of the mortgage, it is provided in Article 6:

“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 I.”

There is a difference in our law between a foreign mortgage and a domestic mortgage. Title 46, U.S.C.A., Section 951 provides that:

“such ‘preferred mortgage lien’ in the case of a foreign vessel shall also be subordinate to maritime liens for repairs, supplies, towage, use of drydock or marine railway, or other necessities, performed or supplied on the United States.”

The giving of liens for repairs and supplies a position superior to a foreign ship mortgage, but inferior to an American ship mortgage is, discriminatory. It is, of course, impossible to have any such provision in an international convention whose purpose is international uniformity.

The most important difference between the Convention and our law is that our law provides that a maritime lien which exists at the time of the recording of a preferred ship mortgage shall take priority over the mortgage. There is no such provision in the Convention.

Your representatives on the sub-committee urged the insertion of a provision making it clear that valid maritime liens in existence when the mortgage is registered or recorded should have priority over the mortgage, but they were not successful.

Your Committee recommends that the Association approve the draft Convention in principle and authorize its delegation to support it at the plenary session of the Comité Maritime International and urge or agree to such amendments as may seem to them advisable and that they be specially authorized and directed to propose an amendment which will place ahead of the lien of the ship mortgage any valid maritime liens existing on the day of the recording or registering of the mortgage.

HENRY C. BLACKISTON
LEAVENWORTH COLBY
ELI ELLIS
JOHN F. GERITY
HARRY L. HAEHL, JR.
CHARLES S. HAIGHT
WILBUR H. HECHT
EDWARD J. HEINE, JR.
WALTER P. HICKEY
MARSHALL P. KEATING
PEIDER KONZ
EDWIN LONGCOPE
HERBERT M. LORD
EDWARD H. MAHLA
WALTER E. MALONEY
LEONARD J. MATTESON
JOHN C. MCHOSE
JOHN C. MOORE
CLARENCE MORSE
J. LESTER PARSONS
SHERMAN V. PETRIE, JR.
F. HERBERT PREM
EDWARD D. RANSOM
JOSEPH M. RAULT
NORMAN B. RICHARDS
JOHN W. SIMS
WILLIAM G. SYMMERS
GEORGE B. WARBURTON
BURTON H. WHITE
STANLEY R. WRIGHT
BENJAMIN W. YANCEY

ARTHUR M. BOAL,
Chairman.