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THE MARITIME LAW ASSOCIATION  
OF THE UNITED STATES

**SPECIAL MEETING HELD FRIDAY, SEPTEMBER 10, 1965**

President Healy: The meeting will please come to order. It is noted that a quorum is present. If there is no objection, I will entertain a motion that we dispense with the reading of the minutes of the last meeting.

Mr. Stanley Wright: I so move.

A Voice: Seconded.

President Healy: Mr. Wright moves that the reading of the minutes be dispensed with and the motion is duly seconded.

All in favor?

(There was a chorus of "Ayes.")

President Healy: Motion carried.

Next I would like to call on our Treasurer, Mr. Joseph Noble, for a report on the Comité Fund.

Mr. Noble: The total contributions which have been made by the members of the Association, by firms and by outside organizations, amount to \$93,000 plus. We have collected about \$16,000 in connection with the various events which the members wanted to attend, making an overall total of \$109,000 collected.

Our expenses to date amount to about \$30,000. We have about \$80,000 left.

President Healy: I don't think it will be there very long. We will have to pay the Waldorf-Astoria and a lot of other people. I will entertain a motion that the report of the Treasurer be approved.

A Voice: So moved.

A Voice: Seconded.

President Healy: All in favor?

(There was a chorus of "Ayes.")

President Healy: Motion carried.

President Healy: This now brings us to the primary purpose of this meeting, which is the consideration of the Report of the Committee on the Comité Maritime International on the proposed Convention on Maritime Liens and Ship Mortgages that is now in

draft. I have asked Mr. Arthur M. Boal, the Chairman of our Committee, to make that report.

Mr. Boal: In addition to Mr. Noble's report, \$500 has come in since his figures were made up, so that the total is about \$93,800. Of that amount, I think, about 70 per cent has come from the members of the Association themselves, and about 30 per cent from outside.

The principal object of this meeting is to get the views of the Association, insofar as we can, on the proposed Convention on Maritime Liens and Ship Mortgages, which will be under consideration immediately by the CMI. Now the drafting of this proposed Convention started immediately after Stockholm two years ago, and an international sub-committee was appointed by Mr. Lilar, the president of the CMI.

It has been at work ever since. The Sub-committee has met four times in two day sessions, in which they have gone over the ideas of many diverse interests and diverse nationalities.

The last meeting was in June, and you have before you now the latest draft. The object of this Convention is to improve the quality of ship mortgages, in the interest of not only the lenders, but the borrowers, since the better security the borrower can offer, the better interest rate he will get and the more readily will financing be available. It is of course in the interest of everybody who has any stake in shipping to facilitate ship financing.

Now, in this connection, we have tried, those of us who have represented this Association, to keep as nearly as possible to our existing law. We have put ahead of the mortgage—we have got ahead of it in this draft, I think—everything that is now ahead of it under our existing law, save the other liens which in our law are junior to the mortgage, by a provision that each contracting state may create such liens as it sees fit, provided they are subsequent to the mortgage.

There is one place where we have failed, and that is in the case of liens which ordinarily would be junior to the mortgage but exist when the mortgage is registered under our law and are therefore ahead of it. We tried to get a provision like that in the Antwerp draft, but we were voted down on it. We recommend that we make a further effort to get that in the Convention.

That's our recommendation to you. We believe that this is a good Convention and you have read it and I am not going to bore you by going into it in detail.

If you have any questions, we will answer them, and we would like to have your approval of our report, which recommends adoption of the principles of the Convention, with such changes as may be advisable. There will be a lot of amendments offered on which a position must be taken. Of course, the final draft will come back to you again for final action by the Association.

President Healy: Thank you, Mr. Boal.

A Voice: I move for the adoption of the report and the recommendations of the Committee, Mr. Chairman. I think they are very carefully studied and I think we should congratulate the Committee upon its very fine work, and we should give them the mandate to carry on the work in the future that they asked for.

A Voice: I second the motion.

Mr. Sol C. Berenholtz (of Baltimore): Discussion.

President Healy: Mr. Berenholtz.

Mr. Berenholtz: Mr. Chairman, gentlemen: I rise to submit for your earnest consideration something that I don't know whether it was intended should be included, and if so, was not specifically included, or whether it was deliberately excluded.

I call your attention to Article 4, Subsection 1. Now, this is the article that sets forth the liens that come prior to the mortgage and the priority of these various items that are ahead of the mortgage. As I started to say, I call your attention to Subsection 1, which reads:

“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.”

Now, I have been told, and I don't know how accurate this information is, that the phrase “other sums,” was intended to cover the thing that I am about to bring to your attention. If it was, I would like to state that this is a rather nebulous expression, “other sums,” and could be the subject of a lot of difference of opinion and litigation which I am sure we all seek to avoid.

If it was intended to cover payments payable by virtue of a contract, bargaining contract, with respect to that vessel for welfare, pension, vacation and other similar benefits, then I will propose to this committee that they change the language to specifically include that.

If, on the other hand, this was not one of the items contemplated under the expression “other sums,” then I respectfully submit for

your consideration that it should be included, because what you are seeking to do by this draft is nothing more and it is nothing new.

Wages of seamen for work done on the vessel have always been respected, and I don't have to tell you gentlemen they have always been accorded the highest priority when it came to the sale of the vessel and the distribution of the proceeds.

I realize also that one of the primary reasons for this draft Convention was to assist in the financing of vessels, and what I am about to propose will not diminish that opportunity one bit. If anything at all, it would make it more certain so that a mortgagee, a financial institution, a bank, or whoever it is that is advancing the money on the security of the vessel, will know precisely the limit of his exposure. When you use this expression, "wages and other sums," you are exposing the mortgagee to an unlimited risk.

Let's take a situation where the crew, or the welfare plan, as the case may be, is very indulgent with the ship owner, operator, or charterer, and allows him to go for six or nine months, or a year in default of those payments. The mortgagee at some time or other, if he had occasion to sell the vessel under his mortgage, would be called upon, or the fund would be called upon, to pay those items that I just enumerated to you first, aside from marshal's costs and so on, so that he would not know with this language how much money could possibly come ahead of his preferred maritime mortgage.

On the other hand, the language that I propose to submit and ask your committee to include in that Subparagraph 1, or to add a new paragraph and call it 2, and move the other ahead correspondingly—at any rate, the language which I propose to you I will read as follows, after the Subparagraph 1, which I just read to you. You could do it either one or two ways: Either say "and amounts" or have a numbered paragraph to read as follows: "Amounts payable in respect to any vessel pursuant to any pension, welfare, vacation, retirement, training, employment, or any beneficial plans pursuant to collective bargaining agreements heretofore or hereafter contracted with the owner or operator of any vessel, or the bargaining representative of such owner or operator, but in no case to exceed an amount in excess of seven dollars per gross ton of such vessel."

Now, all you have to do is very simple. You take the tonnage of the vessel, multiply it by seven, and that would be the limit of the maritime lien or priority that would be payable under that collective bargaining agency or contract. So that the financial institu-

tion, as I said before, would know exactly the maximum amount of money, so far as this type of item is concerned, that they would be exposed to.

In conclusion, as I said before, I don't know, although I have been given to understand that the clause "other sums" was intended to include just such items, but the reason why I ask that you spell it out, gentlemen, I am sure most of you know that there has been a lot of litigation in this country as to what constitutes wages and what is the precise identification to be given to moneys payable under a bargaining agreement to welfare plans or vacation plans or similar plans of training and so forth. It has been adjudicated in different courts and they have all referred to it as being something that the seaman is entitled to. It is part of his wages, but, on the other hand, I call your attention, again, to another phrase here which also leads me to believe that the language that I am asking you to substitute will eliminate a great deal of litigation because here it says, "Wages and other sums due to the master, officers, and other members of the vessel's complement."

Now, you all know the money payable under a bargaining agreement is not payable directly to the seaman. It is payable to the welfare plan, which is an organization of employers as well as employees' representatives, and is paid directly to them and not payable to the seaman. Now, if someone wants to get technical, as I said before, if this was intended to cover it, they could disrupt the intended purpose of this legislation because they could say it is not due to the master, the officers, or the crew. It is due to someone else.

Now, let's eliminate all of this uncertainty, gentlemen, and I propose the language that I read to you be substituted or added, rather, to Paragraph 1, or a new paragraph be added, called "Paragraph 2" and the other paragraph be moved ahead accordingly. Thank you.

President Healy: Thank you.

Is there any further discussion?

A Voice: Mr. President, I would like to make one comment on the statement that was just made. Mr. Berenholtz, in the early part of your remarks you indicated that the courts in the event of a disposition of a vessel accorded a very high priority to the status of seamen's wages. I think you also added payments to these benefit funds, vacation funds, and the like. It is my understanding, as the law now exists, that these items are not included as maritime liens under our law and that for the most part the District Courts have held that what the seaman earns, or what ultimately comes to him

from this source, is not regarded as a maritime lien and is not treated as such in the event of a sale of the vessel. I think there is great difficulty in trying to incorporate this into the principle of the maritime lien for this reason: I think that as the rule is, the collective bargaining agreement obligating an employer to make contributions to a fund of this character, is not limited in any way to the man's service on an individual vessel, whereas, in principle at least, the very concept of maritime lien stems from the relationship to the vessel itself.

The problem that this produces is that it introduces an entirely new concept as to what a maritime lien consists of and I think it makes it extremely difficult for other delegates to accept such a revolutionary and different definition as to what is a maritime lien.

I don't know what the basis of your advice is that this language is intended to cover this particular type of payment. I certainly would have been surprised if anyone would have told me that was the intent of it, and I certainly did not read it in that context.

President Healy: What is now before us is Mr. Berenholz's motion to amend the Committee's resolution in the manner which he has described.

Mr. Berenholz: In the first place, I did not say that the courts have uniformly held that these payments constitute maritime liens.

I said they always have given wages the highest dignity and respect. I made no statement about how the courts have so interpreted these payments. As a matter of fact, the Supreme Court has not had the question put before them and has not decided it.

Now, the Supreme Court is the final authority on what the law is and it has not had the point raised. I know of no case that has come before the Supreme Court where they have decided it one way or the other. I can tell you that they have decided many other cases very close to it and they consider that those are the closest you can come to it.

Secondly, with respect to the difference between this type lien and any other lien being something that has a direct relationship to the vessel, I would like to call your attention to the fact that the language already proposed and the language that I propose is limited to the payments due by that vessel for services rendered on that vessel and not on any other vessel or not for any other employer. I hope that answers the objection.

President Healy: Mr. Wright.

Mr. Stanley Wright (of New York): I just wanted to say a word or so about what I think this was intended to cover. You are thinking only in terms of what our courts would consider, but there are a number of other states involved whose interpretation and whose laws are somewhat different. The word "sums" is intended to cover such items as overtime or penalty wages, which are not universally considered in the same way as wages, although they might as well be in this country. Now, that is the real intent of the words "other sums."

I just want to make one further remark and that is, gentlemen, in the proposal that is before us, whatever you may think about its merits or demerits, it seems to me that there is an undue emphasis on collective bargaining agreements, which are not universal, and which do involve various elements of uncertainty and also some of the things that they talked about are imposed by law in some states. I don't think the proposal is in any sense in accordance with what the framers of this provision had in mind, and I don't believe that it would be in any sense acceptable to them.

President Healy: Is there any further discussion? Mr. Boal.

Mr. Boal: Mr. President, I can state pretty definitely that the people who drafted this provision did not include, or intend to include, sums due under collective bargaining agreements to third parties.

Now, in dealing with these liens, we have dealt with representatives of other nations who operate under other systems and none of them have as many maritime liens as we do.

We are the leading country in the world in the development of maritime liens and there has been a great struggle on our part to get as many liens as we could recognized and give them priority over the mortgage. I don't think that the proposition that was suggested can be sold to other countries, and I would not like to see our delegation go in with a mandate that they have to support your amendment.

President Healy: Mr. Abarbanel.

Mr. Arthur Abarbanel (of New York): I would like to speak in support of Mr. Berenholtz's recommendation. My understanding, as I read these proposed drafts and the rationale behind them, was that they wanted to help encourage financing of ships, ship construction, repairs. When lending institutions go forward and give loans for this purpose, they know what the exposure is. I submit that under the existing draft, the exposure is not known to them and

instead of creating stability for them, as this body would like to do, it would be creating instability.

Now, various nations have various laws. I don't think that any nation has definitely decided as to whether contributions to pension, welfare and vacation funds constitute a preferred maritime lien or maritime liens. This is an open area, and from my own personal knowledge I know that Egypt, under the present information available to me, thinks it does not constitute a maritime lien. Therefore when we go out and ask various nations to adopt a draft, they want to know with a fair amount of certainty, as a result of precision draftsmanship on the part of the drafters of the act, what their exposure would be and what the law would be.

I think that if you would spell it out, at least they would know what their exposure is and the lending institutions can follow suit.

I believe right here in this country, under the United States system, in the case of uncertainty and the lack of rulings on this subject by the United States Supreme Court that many interests—and that includes not only the labor unions, not only the lending institutions, but also the steamship companies—have a movement to try to create stability in this area by finding these contributions as a maritime lien.

I recommend, of course, that the delegation be authorized to request that contributions be considered a maritime lien, as Mr. Berenholtz suggested.

President Healy: Mr. Donovan.

Mr. James Donovan (of New York): I wish to speak in opposition to the proposed amendments. I feel, in the first place, that it is necessary to decide whether we are merely talking about a lien as such, as Mr. Berenholtz has done, or whether we are talking about a preferred lien. Now, under Article 6 of the draft Convention, it is stated that 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.

I myself cannot see why the proposals which Mr. Berenholtz wishes to be covered under either Subsection 1, or a new Subsection 2 of Article 4, should be preferred. I think that under our law these could be covered as liens, but not necessarily as preferred liens, and for that reason I suggest that the proposed provision be turned down.

President Healy: Is there any further discussion on the proposed amendment?



Mr. Elder.

Mr. Scott H. Elder (of Cleveland): I think the discussion so far achieves one thing, and that is, that it shows that the differences, contrary to the report, between our present law and the proposed convention, are substantial. Certainly it is not clear to the members at this meeting, any way, what the term "other sums" means. I will point out also that it is my belief that under our law the master does not currently have a lien and this would be created under the Convention.

Further, it is not clear what happens to the priority of the lien of the stevedore, and also it is not clear, to me, at least, what happens to the lien for contract salvage, whether the term "salvage" which is used in the Convention includes contract salvage, which to us on the Great Lakes is very important.

Speaking for the Lakes, we feel that this Convention destroys materially the priority of liens under our present law, and for that reason we are opposed.

I would make the further observation that we believe it is wrong to approve in principle this Convention on the condition that we are going to seek certain amendments, or as many amendments as we possibly can.

I think if this Convention is not proper, if it is not right in accordance with our law and what we want, then we should disapprove the Convention, seek the amendments, and come back.

I think under that approach our bargaining position would be much stronger and more would be achieved.

President Healy: As I understand it, Mr. Elder, you are not speaking with respect to the proposed amendment, but with respect to the original report of the committee?

Mr. Elder: I am speaking with respect to both, Mr. President.

President Healy: Is there any further discussion?

Mr. Walter B. Hall (of New York): I have a number of objections to what I see reported. Article 10 is the one that I would take particular exception to. It will undoubtedly result, any time enforcement of a lien or foreclosure of a mortgage is involved, in a delay of thirty days or more, and I would ask the question seriously, who is going to pay for all of the expenses that are involved in holding a ship for thirty days in order to give a notice that may or may not be received?

I think that's a very serious objection. Have any of you tried foreclosure of preferred mortgages, or dealing with them, where there are multiple liens involved? I think you will agree with me that Article 10 ought to be taken out of the Convention entirely.

President Healy: Thank you.

Is there any further discussion on the proposed amendment?  
Mr. Boal.

Mr. Boal: The Committee had a meeting on Wednesday and we all agreed we would ask to have Article 10 deleted.

President Healy: Is there any further discussion on the amendment proposed by Mr. Berenholtz?

Mr. Berenholtz, could I please ask you to restate your proposal so that we will all know precisely what we are voting on? Then we will take a vote on the proposed amendment before voting on the recommendation of the Committee as such.

Mr. Berenholtz: I propose the following amendment to Article 4, Subparagraph 1, to read as follows: "Wages, maintenance, overtime and any other sums due to seamen, officers or masters of vessels in connection with the services aboard the said vessel and amounts payable in respect to any vessel pursuant to any pension, welfare, vacation, retirement, training, employment, or other beneficial plans pursuant to collective bargaining agreements heretofore or hereafter contracted with the owner or operator of any vessel with respect to that vessel, or the bargaining representative of such owner or operator of that vessel, but in no case to exceed an amount in excess of \$7 per gross ton of such vessel."

President Healy: You have heard the motion, gentlemen, and I now call for a vote.

All in favor of the proposed amendment as read by Mr. Berenholtz will please say Aye.

(There was a chorus of "Ayes".)

President Healy: Those opposed?

(There was a chorus of "Nays".)

President Healy: The "Nays" obviously have it and the proposed amendment is defeated.

Is there any further discussion on the resolution before we take a vote on the resolution itself? Mr. Berenholtz.

Mr. Berenholtz: Gentlemen, I hope you will forgive me. I am not trying to monopolize the podium, but I do propose at this point then that our committee attend this Conference and make an

effort to have included the proposal which I read to you just a moment ago.

President Healy: If I understand your motion, Mr. Berenholtz, it is pretty much the same as the last one.

Mr. Berenholtz: No, it is not the same. The other was an amendment. If the amendment were approved, why, the Committee would have no choice about it. I now propose that this body authorize the Committee to attempt to persuade intelligently the other members of the Comité to adopt that at the ultimate Conference.

President Healy: I must confess that I don't see any real difference between the instruction of this Association to the Committee, by which I take it you mean the delegation of the Association—

Mr. Berenholtz: I am proposing that this body authorize our delegates to make an attempt at the Conference to have that included. If they are unsuccessful, they are unsuccessful. They still have whatever authority or approval this body will give them with respect to the draft. All that I am asking this body to do is to authorize and to instruct them to attempt to have that included as part of the draft.

President Healy: Well, it seems to me it is pretty much the same thing, but is there a second?

Mr. Abarbanel: I will second that motion.

President Healy: The proposal now is that the delegation of the Maritime Law Association of the United States to the New York Conference which opens on Sunday should attempt to persuade the delegates from the other countries represented at the Conference to adopt a change in the proposed Convention which would in effect be the same change as was proposed in Mr. Berenholtz's first motion.

That motion has been made and seconded.

All in favor say Aye.

(There was a chorus of "Ayes".)

President Healy: Those opposed?

(There was a chorus of "Nays".)

President Healy: The "Nays" have it.

Is there any further discussion on Mr. Boal's report?

Mr. Cornelius Van Reese (of New York): I think the discussion that has just ensued shows how long we can go on on one point. While I am generally in favor of the proposed Antwerp draft, I

think there are a great many little points in the draft that can be considered, some as matters of clarity, some as substantive points. Therefore, I would like to have it made clear that in voting in favor of the Committee's report the members of this Association will be free, nevertheless, next week to make such suggestions and criticisms at the meeting of the Comité as they may wish. Therefore, I propose that the motion be amended to add this language at the end: "provided, however, that the individual members of the Association shall be free at the Meeting of the Comité to make such other suggestions and requests for amendments as they see fit."

President Healy: Mr. Van Reese, I am afraid this would not be possible under the Constitution of the CMI. The only ones who will have the right to be heard at the preliminary session are the official delegates, namely, the members of our Association who are titular members of the Comité and the fourteen others who have been appointed delegates by the Executive Committee—the maximum number possible under the Constitution of the CMI.

Mr. Van Reese: So that in voting in favor of the motion to approve the Committee's report, then, I think you are suggesting, Mr. Chairman, that we are in fact endorsing all the language and there would be no further right to ask for any amendments and that we have to make our criticism right now?

President Healy: Mr. Boal will answer you on that.

Mr. Boal: I am sure the delegates will welcome suggestions from anyone as to any changes at any time. But they would have to be made by the delegates themselves. Now, the Committee has been inviting criticisms of this Convention for about a year and a half. We received very few. The lending institutions came up with some this week which they have not yet been able to put in writing, and I am sure that the delegates who have this in charge will welcome suggestions from any source at any time, but they'd better get them in early or it may be too late for their consideration.

President Healy: Mr. Zisgen.

Mr. John W. R. Zisgen (of New York): Mr. President, I have an amendment to propose to the language of Article 4, Section 1, Subsection 4 of the draft convention. That subsection deals, I should say first, with liens which shall take priority over the mortgage, and it reads: "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."

Now, the report of our Committee, Document 489, Page 5218, interprets that language as placing, ahead of the mortgage, tort claims for damage to property. If that is the intent of that language, I suggest that it needs clarification very badly, because most claims for damage to property carried on vessels are based both on contract and on tort, and in at least one decision, the case of "*The Hurry On*", which went from the Supreme Court of Canada to the Privy Council, which was reported not only in the British reports, but also in A. M. C. in 1939, the Privy Council expressed substantial doubts that it was possible to prosecute a claim in tort alone for damage to cargo carried on a vessel if a bill of lading had been issued.

I propose that the language of Subsection 4 be amended in one or the other of two ways, so as to clarify its intent as set out in the report of our Committee.

I propose either that the words "not based on contract" be deleted or, alternatively, that there be substituted for them the words "based on tort whether or not also based on contract." Thank you.

President Healy: Mr. Boal.

Mr. Boal: Mr. Zisgen has stated an objection which we have gotten from many sources. The Oxford draft used the term "tort." This was changed, which was a Swedish suggestion, and there was no intent to change the substance of it. Now, we have had a hard time getting this provision ahead of the mortgage, and I am not sure we are going to keep it ahead of it at the plenary session of the CMI, because the Europeans don't want that; at least a great many of them don't. I don't think you need any motion on that. The delegates are very much aware of it. They already have prepared an amendment to take care of it, which will be proposed at the proper time.

President Healy: Is there a second to Mr. Zisgen's motion to amend the recommendation made in the Committee's report?

A Voice: I second it.

President Healy: Is there any further discussion on Mr. Zisgen's proposal?

Mr. Leonard J. Matteson (of New York): There does not seem to be a motion on this point. It has been clearly discussed in Committee and among the delegates who are going to attend the Meeting. I think they made up their minds on it and I think they should proceed without any further instructions.

Mr. Zisgen: I would not try to hamper the delegation with a formal instruction. I will withdraw the motion.

President Healy: Does the seconder consent to the withdrawal of the motion?

A Voice: Yes, sir.

President Healy: Mr. Wright.

Mr. Wright: At the top of Page 5220, which is Arthur Boal's Committee's report, the recommendation is that the Association approve the draft Convention in principle and authorize the delegation to support it along with such amendments as may seem advisable. Therefore I think Mr. Zisgen's withdrawal of his motion was quite in order.

President Healy: Is there any other discussion on the recommendation of the Committee?

Mr. Abarbanel: With respect to the discussion concerning Article 10, it is my understanding, and this is more or less a point of information with respect to procedure, that when we vote on this draft it would include Article 10. Mr. Boal stated that it was the intention of the delegates to recommend that it be deleted. This causes a little confusion in my mind, because I think Article 10 should stay in. I think it is a very necessary thing that the lienors, including the mortgage holders, have proper notice of any sale. We who are experienced in this field know from a practical point of view that sales do not take place that fast under the laws of any nation, and it is a question that the rights of the lienors are protected.

As far as the expense, the maintenance of the vessel, marshal's or administrative expenses, that comes out of the proceeds of the sale ahead of any lien and that's so almost under any nation's laws. To do away with the notice of sale I think would perhaps deprive a lot of lienors of their rights and this would, among the member nations of the Comité, I think create a little fear and a lot of anxiety and perhaps they may vote against the draft because of this.

I recommend that it stay in.

President Healy: Mr. Boal.

Mr. Boal: Mr. President, the reason for suggesting that this be deleted is that we do not want right in this Convention any rules of procedure. Those should be left to the forum and we think this is a proper matter for the Court that is handling the foreclosure to determine.

Mr. Berenholtz: Did I understand you to say that after the Conference, the Meeting about to come up, that this draft would be submitted to this body again for final approval?

President Healy: No. The draft would either be approved in its present form, or in some modified form at the Conference, or it would be disapproved. If it is approved at the Conference, it would be submitted to the Belgian Government, which would then call an international diplomatic conference in order to discuss and consider the draft Convention at the diplomatic level. Then the representatives of the various governments would debate it and perhaps amend it, and either approve it or disapprove it, and if it were approved it would then go to the various governments for ratification—in the case of our country, of course, by the Senate.

Mr. Berenholtz: In other words, whatever changes our delegates seek to make at the coming Conference, we would not have an opportunity to pass on that one way or the other; is that correct?

President Healy: That is correct, but the proposal is to the effect that the delegation be authorized to support the draft Convention in principle, and to urge or agree to such amendments as may seem to them advisable and that they be specifically authorized and directed to propose an amendment which would place ahead of the lien of the ship's mortgage tort liens existing on the day of the recording or registration of the mortgage.

Mr. Matteson.

Mr. Matteson: Mr. President, I think we could add to this that whatever Convention or form of Convention is approved by the Comité when it comes before the diplomatic conference, and before it comes there, this Association will have an opportunity to take a position with respect to it, and to propose any changes that it has in mind with respect to the draft that will then be under consideration.

In other words, in that sense it does come back to this Association for a determination of a position that we will take in dealing with our own Government representatives who will vote at that conference and the whole document will be wide open for further amendment.

President Healy: Is that your understanding, Mr. Boal?

Mr. Boal: That is right. I think that we will report to you what comes out of the plenary session of the Comité and if a diplomatic conference is called, you will have an opportunity to state your position on that and suggest to the State Department any amendments which you think should be made to it and then after it comes back from the diplomatic conference, we will again have a chance to take a position on it before any action is taken by the State Department.

President Healy: But at least, as I understand it, Mr. Boal, whatever vote our delegation makes with respect to the draft Convention, at the Conference to be held next week, that vote will not be subject to review after the Conference is over by this Association and before any draft approved at the Conference is submitted to the Belgian Government?

Mr. Boal: That is correct. We will have a chance to take a position on it before the diplomatic conference and that position can be submitted to the State Department in proper time.

President Healy: Is there any further discussion? Yes, Mr. Heckman?

Mr. Christopher E. Heckman (of New York): I have some concern over Article 13, providing for the application of the Convention to all seagoing vessels. Under our United States laws, a large number of our coast-wise vessels are seagoing vessels. Since Article 7 appears to me to be a change from the basic United States law that a charterer may impose a lien on the vessel without any provision at all, may freely impose a lien, it could be that we have a situation where a coast-wise vessel is seagoing and the charterer may incur a lien, whereas against a vessel that is not seagoing, the charterer may not incur a lien. The suppliers would be in a very uncertain position which could be eliminated by using another word instead of "seagoing."

Mr. Abarbanel: I have a motion, I believe with respect to Article 10, before proceeding to Mr. Heckman's subject. I would like to have a ruling on that.

President Healy: I believe Mr. Boal reported that the Committee has since voted to endeavor to obtain the deletion of Article 10.

Mr. Abarbanel: I stated if that is the Committee's decision, I make a motion before this body that it be reconsidered and that it be left in the draft.

President Healy: That motion has been seconded, I believe.

A Voice: No.

Mr. Berenholtz: If it has not, I will second it.

President Healy: It has been moved and seconded that our delegation be instructed to retain Article 10.

Is there any further discussion on this proposal?

Mr. Matteson: An additional reason for eliminating Section 10 is simply this: One of the prime objectives of the Convention is



to make a judicial foreclosure proceeding final and certain, whenever it takes place. The provision in Article 10 that before proceeding, as I say, judicially, the local court shall take certain steps with respect to notice, may leave open an avenue of contest after the sale has taken place. A claimant may attack the sale itself as being invalid, and consequently a purchaser, having to take this into consideration, will pay less for the vessel and less will be realized. So it will provide for uncertainty in procedures. That is one of the reasons that we think Article 10 could well be eliminated from the Convention.

President Healy: Is there any further discussion on the proposal to retain Article 10?

All in favor of the motion to approve the retention of Article 10 of the draft please signify by saying Aye.

(There was a chorus of "Ayes".)

President Healy: Those opposed?

(There was a chorus of "Nays".)

President Healy: The motion is lost.

Is there any further discussion on the report?

Mr. John J. Martin (of New York): I move the question.

President Healy: There is a motion to have the question put to a vote. I think that takes priority over any discussion. Is there a second to that motion?

A Voice: Seconded.

Mr. Berenholtz: Hold it. The question of the discussion, you say, is junior to the motion to call the question?

President Healy: Now there has been a motion to have the proposition voted on and it has been seconded and—

Mr. Berenholtz: It was not seconded before I asked to have the floor. It was not seconded. I don't want to appear obstreperous but I think I am entitled to this.

President Healy: Mr. Martin, would you withdraw your motion until Mr. Berenholtz speaks?

Mr. Martin: As long as he is not going to make another motion, I will.

Mr. Berenholtz: Gentlemen, may I say this, and it has nothing to do with what I proposed before at all. I have heard a lot of discussion here today about various articles, various sections of the Convention. Now, I submit to you as reasonable men—and we are all lawyers, and you know there is nothing hasty about the law,

and it should not be, and that's the way it should be—the law moves slowly, and whether we adopt the Convention today, next week, or six months from now is not going to make a bit of difference. It is going to make a tremendous difference if you adopt a Convention and you have things there objectionable to the American judicial maritime system.

Now, I submit to you that it is one thing to have an opportunity to pass on the Convention as finally adopted through our delegates, rather, when it goes to the diplomatic level, and it is another thing to have an opportunity to discuss it intelligently before then. Now, gentlemen, you know very well when it reaches the diplomatic level there is very little opportunity of changing it, no matter in what respect you are talking about, and I am speaking about the best welfare of this nation and the Maritime Law, and I am not speaking about any particular phase of it. I have heard much discussion here today and much can be said one way or the other, and I am sure the delegates have considered it, but I do believe it ought to come back here before it is sent to the Belgian Government for discussion and to other diplomatic agencies, and I so move.

President Healy: Mr. Berenholtz, I am afraid your motion is out of order because this is an impossibility. There is no machinery that I know of under the rules of the Comité whereby this can be done. Do you know of any, Mr. Boal?

Mr. Boal: The Comité meets Sunday. It will take action on this Convention and then the President of the Comité will, in due course, ask the Belgian Government to call a diplomatic conference for its consideration. We've got to act on it at this Meeting of the Comité. We can't delay it.

Mr. Berenholtz: I have very definitely understood you to say, and I heard this gentleman announce in no uncertain terms, that this draft Convention, if adopted by the Conference, would be submitted, and we will have an opportunity to object, to voice our opinion about any phase of it when it reaches the diplomatic level.

Now, am I right or wrong about that?

President Healy: Yes, you are quite right.

Mr. Berenholtz: May I continue, then.

All that I am asking is that after the Conference acts on it finally, we be given the opportunity to pass our objections or pass our opinions about it then, before it reaches the diplomatic level.

President Healy: On that, Mr. Boal will be heard.

Mr. Boal: You will have that opportunity.

Mr. Berenholtz: That's all I want.

President Healy: I take it you will withdraw your motion?

Mr. Berenholtz: On the basis of that statement, I do, sir.

President Healy: You have heard the report of the Committee, gentlemen, and I will repeat the recommendation. It is 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.

If I understand Mr. Boal correctly, since this recommendation was submitted to the membership by Document No. 489 in July of this year, the Committee has voted that we should endeavor to delete Article 10 from the proposed Convention. Is that correct?

Mr. Boal: That is correct.

President Healy: All in favor of the recommendation as so amended, that is, as amended by the proposed deletion of Article 10 of the draft Convention, please signify by saying Aye.

(There was a chorus of "Ayes".)

President Healy: Those opposed?

(There was a chorus of "Nays".)

President Healy: The Ayes overwhelmingly have it.

Is there any further business before the meeting?

Mr. Herbert Lord.

Mr. Lord: I think we would neglect our opportunity if we would not, each of us, in some manner, recognize our obligation to Mr. Boal for the magnificent job he has done. I must say that some years ago, when I first learned of the prospect of the Comité being held here in New York City, I then thought it to be an impossibility and I preferred to have it somewhere else, perhaps in Washington, because I could not see that we could raise the money necessary to handle an event of this dimension in New York City.

I think Mr. Boal's terrific efforts and the magnificent results he has achieved should be acknowledged by all of us.

President Healy: Yes, they certainly should be.

(Applause.)

President Healy: Is there any further business?  
If not, I will call for a motion to adjourn.

A Voice: So moved.

A Voice: Seconded.

President Healy: All in favor?

(There was a chorus of "Ayes".)

President Healy: The meeting is adjourned.