

DOCUMENT No. 499
April 1966

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

MARITIME LIENS AND MORTGAGES

DRAFT CONVENTION

AS VOTED ON SEPTEMBER 17th, 1965

Article 1

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

a) such mortgages and "hypotheques" have been effected and registered in accordance with the Law of the State where the vessel is registered.

b) the register and any instruments required to be deposited with the registrar in accordance with the law of the State where the vessel is registered are open to public inspection, and that extracts of the register and copies of such instruments are obtainable from the registrar and

c) the register or any instrument referred to in paragraph (b) above specifies the name and address of the person in whose favour the mortgage or "hypotheque" 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 "hypotheques".

Article 2

The ranking of registered "hypotheques" and mortgages as between themselves and, without prejudice to the provisions of this convention, their effect in regard to third parties shall be determined by the law of the State of registration: however, without prejudice to the provisions of Article 10, all matters relating to the procedure of enforcement shall be regulated by the law of the State where enforcement takes place.

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 which is or has been registered in a Contracting State shall not be eligible for registration in another 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 in respect of loss of life or personal injury, arising from a defect of the vessel or from an act, neglect or default of those employed on board the vessel in the course of such employment.

iv) claims against the owner based on tort and not capable of being based on contract in respect of loss of or damage to property arising from a defect of the vessel or from an act, neglect or default of those employed on board the vessel in the course of such employment.

v) claims for salvage, wreck removal and 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 para. 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" and no other claims shall take priority over such maritime liens and over mortgages and "hypothèques" which comply with the requirements of Article 1 except as provided in Article 6.

2. The maritime liens set out in Article 4 shall rank in the order listed, provided however that maritime liens securing claims for salvage, wreck removal and contribution in general average shall have priority over all other maritime liens which have attached to the vessel prior to the time when the removal operations given [sic] rise to the said liens were performed.

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

4. The maritime liens set out in each of the subparagraphs [sic] (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 performed.

Article 6

1. Each Contracting State may grant liens or rights of retention to secure claims other than those referred to in Article 4. Such liens shall rank after all registered mortgages and "hypotheques" which comply with the provisions of Article 1 and such rights of retention shall not prejudice the enforcement of the registered mortgages or "hypotheques" which comply with the provisions of Article 1 or of the maritime liens set out in Article 4 nor the delivery of the vessel to the purchaser in connection with such enforcement.

2. In the event that a lien or right of retention is granted in respect of a vessel in the possession of a ship repairer to secure claims for repair of the vessel effected during such possession, such lien shall be postponed to all maritime liens set out in Article 4 but may be preferred to registered mortgages or "hypotheques" and such right of retention may be exercisable against the vessel notwithstanding any registered mortgage or "hypotheque" on the vessel. Such lien or right of possession shall be extinguished when the vessel ceases to be in the possession of the repairer.

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 one year 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 one year 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.

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 "hypotheques" and maritime liens set out in Article 4 and to the Registrar of the Register in which the vessel is registered.

Article 11

1. In the event of the forced sale of the vessel in a Contracting State all mortgages, "hypotheques", 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, the liens mentioned in paragraph 2 of Article 6, registered mortgages and "hypotheques" and 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 Court or other competent authority having jurisdiction shall, at the request of the purchaser, issue a certificate that the vessel is sold free of all mortgages, "hypotheques", liens and other encumbrances, provided that the requirements set out in paragraph 1, subparagraphs (a) and (b) have been complied with, and that the proceeds of such forced sale have been deposited with the authority that is competent under the

law of the place of the sale in order to be distributed to any persons having a right thereto. Upon production of such certificate the Registrar shall be bound to issue a certificate of deregistration for the purposes of reregistration.

Article 12

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 13

Each State which ratifies this Convention or accedes to it, shall forthwith denounce eventually 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.