

INTERNATIONAL MARITIME
COMMITTEE

XXVIIth CONFERENCE

NEW YORK

1965

INTERNATIONAL MARITIME COMMITTEE

CONSTITUTION

MEMBERS

BRUSSELS MARITIME CONVENTIONS

RATIFICATIONS - ACCESSIONS

NEW YORK

CONFERENCE

REPORTS & AMENDMENTS

DELEGATES

MINUTES

DRAFT CONVENTION

1965

ADDENDUM TO PAGE 645

Text voted at the first reading

Article 5

1. The maritime liens set out in Article 4 shall take priority over registered mortgages and hypothecs and such maritime liens and registered mortgages and hypothecs which comply with the requirements of Article 1 shall take priority over all other claims against the vessel.

Will the Association of Maritime Law of the United States of America please find by this the expression of the gratitude of all members of the International Maritime Committee for the magnificent hospitality kindly offered to them.

I

INTERNATIONAL MARITIME COMMITTEE

CONSTITUTION

MEMBERS

CONFERENCES

RATIFICATIONS

OF THE MARITIME CONVENTIONS

CONSTITUTION

of the International Maritime Committee

Article 1.

The Object of the Comité Maritime International is to promote, by the establishment of National Associations, by Conferences, by publications and by any other activities or means, the unification of international maritime and commercial Law and practice, whether by Treaty or Convention or by establishing uniformity of domestic laws, usages, customs or practices.

Article 2.

The domicile of the Comité Maritime International is established in Antwerp, Belgium.

Article 3.

The Comité Maritime International shall consist of :

I. *National Associations.*

The number of National Associations is unlimited.

The National Associations are formed in accordance with their respective domestic laws, but their main object must be in accord with that recited in Article I. Nevertheless, they may pursue objects of national interest provided that these do not conflict with the main object.

The National Associations shall use their utmost endeavour to enlist the recognized specialists in commerce and in law in their respective Countries, and should be in a position to maintain relations with their governmental authorities, so that they shall truly represent all commercial and maritime interests in their countries and shall perform their function with the maximum efficiency.

They shall elect their own Members, appoint their own Delegates and be responsible for their own administration, and for planning their own work in accordance with the programs and general directives laid down from time to time by the central administration of the Comité Maritime International.

At least once a year they must report to the Administrative Council upon their activities and upon the progress made by them in their Countries.

2. *Titulary Members.*

Titulary Members are appointed for life by the Bureau Permanent, upon the proposal of the National Associations concerned to the number of twelve per Association, exclusive of Members of the Bureau Permanent, who are Titulary Members as of right.

The Bureau Permanent shall in appointing Titulary Members have regard to the services rendered by the candidates to the Comité Maritime International and to the position which they have achieved in legal or maritime affairs.

Article 4.

The central authorities of the Comité Maritime International are : the Bureau Permanent and the Administrative Council.

The present Members of the Bureau Permanent are appointed by this Constitution : in the event of a vacancy, it shall be filled by an absolute majority of the votes of the Bureau Permanent.

A. The Bureau Permanent shall consist of :

1. (a) a President;
- (b) one or more Vice-Presidents;
- (c) one or more Secretaries General and Secretaries;
- (d) a Treasurer;
- (e) an Administrative Secretary, whose functions may be performed by a firm or body corporate.

These Officers shall be chosen amongst the members of the Bureau Permanent, by an absolute majority of the votes of the Members of that body.

2. One Member for each National Association appointed upon the proposal of that Association.

B. The Administrative Council shall consist of the President the Secretaries-General and the Secretaries, the Treasurer and the Administrative Secretary.

C. The present Members of the Bureau Permanent are those mentioned under Article 9 appointed for life but a Member may determine his membership by voluntary retirement, or be dismissed by the unanimous decision upon stated grounds of all the other Members, or, with the exception of the Members of the Administrative Council or the Vice-Presidents, by the decision in writing of the National Association which that Member represents upon the Bureau Permanent.

The Members of the Bureau Permanent shall perform their duties without emolument; the expenses of the Administrative Secretary shall be passed annually by the Bureau Permanent.

The Bureau Permanent may delegate its powers wholly or in part within defined limits to its President or to the Administrative Council.

Article 5.

The functions of the Bureau Permanent are to conduct the general business of the Comité Maritime International; to ensure that regular communication and co-ordinated action is maintained amongst the National Associations; to decide, after consultation by the Administrative Council with the National Associations, the topics to be studied; to fix the date, the place and the agenda of the International Conferences; to take all the necessary steps to achieve this object and to determine the constitution and composition of the International Commissions entrusted with the preparatory work; to ensure that the decisions of the International Conferences are carried into effect; to decide all questions concerning the affiliation of National Associations to and their relations with the Comité Maritime International; to determine the subscriptions payable by the National Associations and by the Titulary Members; and to pass balance sheets and accounts.

The Bureau Permanent shall meet at least once a year as convened by the President or upon the request of the majority of the Members.

The decisions of the Bureau Permanent shall be final and binding within the limits of its authority; they shall be made upon a majority of the votes of Members present or validly represented. In case of equality of votes the President shall have a casting vote. Each Member shall have one vote. In case of inability to attend a Meeting, a Member may, with the consent of the Administrative Council, appoint as his substitute a Titulary Member, provided that he shall not be entitled to delegate his voting right to a Member of a National Association other than that which he himself represents.

Article 6.

The functions of the Administrative Council are to conduct the day to day business of the Comité Maritime International; to assist the Bureau Permanent in carrying out the duties which fall upon it; to prepare in the right time the matters that will be submitted to the Bureau Permanent, especially the choice of the subjects to be examined, the National Associations being consulted previously; to carry into effect the decisions of the Bureau Permanent and of the International Conferences; to effect the coordination of work and the transmission of information and of documents; to ensure that it is regularly kept informed by the National Association of every matter of interest to the Comité Maritime International and to take all necessary steps to achieve this result; to supervise the work of the International Commissions whose duty it is to report progress from time to time

to the Administrative Council and to transmit to the Administrative Council their commentaries and drafts with prompt dispatch, so that these can be studied by the National Associations well in advance of the International Conferences; to prepare the balance sheet and present the account not later than the 31st December in each year; to edit and publish the reports of the International Conferences and to take care of all other publications of interest; and to represent the Comité Maritime International in Government circles prior to and upon the actual convening of Diplomatic Conferences.

Article 7.

The Comité Maritime International shall meet periodically in International Conference, upon the initiative of the Bureau Permanent, or upon the demand of not less than two thirds of the National Associations, for the purpose of discussing the topics upon an agenda drawn up by the Bureau Permanent.

Each National Association may be represented at an International Conference by fourteen delegates, exclusive of Members of the Bureau Permanent and the Titulary Members.

Each Association shall have one vote, but the delegates shall not have individual votes. The right to vote cannot be delegated. The decisions of the International Conferences shall be made upon the majority vote of the National Associations present provided the case of Article 8.

The President of the Bureau Permanent shall preside at the International Conferences or, in his absence, one of the Vice-Presidents in order of seniority.

The Committee of each International Conference shall consist of the Administrative Council, the Vice-Presidents of the Bureau Permanent, and the President of the National Association which has organised the Conference together with such other persons as he may consider should be attached to him.

Each International Conference shall decide the means by which its decisions can best be brought into effect; in default of such decision the Bureau Permanent or the Administrative Council will undertake this task.

Article 8.

This Constitution can be amended only by an International Conference and then provided always that the main object is not changed.

The Conference shall not consider any amendment which is not upon the agenda, and a decision to amend must be supported by at least three quarters of the National Associations present.

Article 9.

The Members of the Bureau Permanent at the date of this Constitution are (*) :

Hon. President	:	Albert LILAR
Hon. Vice-President	:	Cyril MILLER
Hon. Secretary-General	:	Carlo VAN DEN BOSCH
Hon. Secretary	:	Léo VAN VARENBERGH
Hon. Treasurer	:	Léon GYSELYNCK
Administrative Secretary	:	Firm Henry VOET-GENICOT
Members	:	Argentina, Atilio MALVAGNI
		Belgium, Jean VAN RYN
		Brasil, J.C. SAMPAIO DE LACERDA
		Canada, Peter WRIGHT
		Chile, Alfonso ANSIETA
		Denmark, N.V. BOEG
		Finland, Herbert ANDERSSON
		France, James Paul GOVARE.
		Germany, Hans Georg RÖHREKE
		Great-Britain, E.W. READING
		Greece, Kyriakos SPILIOPOULOS
		India, Nagendra SINGH
		Ireland, J. Niall McGOVERN
		Israël, R. WOLFSON
		Italy, Giorgio BERLINGIERI
		Japon, Teruhisa ISHII
		Mexico, Ignacio L. MELO
		Morocco, N.
		Netherlands, J.T. ASSER
		Norway, Alex REIN
		Poland, Stanislav MATYSIK
		Portugal, Tabora FERREIRA
		Spain, Ernesto ANASTASIO PASCUAL
		Sweden, Kaj PINEUS
		Switzerland, Walter MÜLLER
		Turkey, M.N. GÖKNIL
		United States, Arthur M. BOAL
		Uruguay, N.
		Yugoslavia, Vladislav BRAJKOVIC

(*) on oct. 1st. 1965 - The members of the Bureau Permanent being Titulary members of the I.M.C. their address has been mentioned in the list hereafter.

NATIONAL ASSOCIATIONS

ARGENTINE

ASOCIACIÓN ARGENTINA DE DERECHO MARITIMO

(Association Argentine de Droit Maritime)

Avenida Roque Saenz Peña, 615-esc. 607, Buenos Aires

Année de fondation : 1905

Comité de Direction

Président :

Dr. Alberto C. CAPPAGLI LANUSSE, Avocat, 25 de Mayo, 293, 2°,
Buenos-Aires.

Vice-Président :

Dr. Antonio R. MATHÉ.

Trésorier :

Dr. Alfredo MOHORADE.

Secrétaire :

Mr. Rodolfo Gonzalez LEBRERO.

Nombre de membres : 23.

BELGIQUE

ASSOCIATION BELGE DE DROIT MARITIME

c/o Firme HENRY VOET-GENICOT,
Borzestraat, 17, Antwerpen

Année de fondation 1896

Comité de Direction :

Président :

Mr. Albert LILAR, Avocat, Sénateur, Professeur à l'Université de Bruxelles, Président du Comité Maritime International, 33, Jacob Jordaensstraat, Antwerpen.

Secrétaire-Général :

Mr. Jean VAN RYN, Avocat à la Cour de Cassation, Professeur à l'Université de Bruxelles, 62, Avenue du Vert-Chasseur, Bruxelles.

Secrétaire :

Mr. Carlo VAN DEN BOSCH, Avocat, Chargé de Cours à l'Université de Bruxelles, Membre de la Commission Bancaire, Secrétaire-Général du Comité Maritime International, 30, Schermersstraat, Antwerpen.

Trésorier :

Mr. Léon GYSELYNCK, Avocat honoraire, Professeur honoraire à l'Université de Bruxelles, Trésorier du Comité Maritime International, Président de l'Association Belge de Banques, 48, Meir, Antwerpen.

Nombre de membres :

Associations : 28

Membres à titre individuel : 68.

BRAZIL

ASSOCIAÇÃO BRASILEIRO DE DIREITO MARÍTIMO (Brazilian Maritime Law Association)

c/o Dr. Pedro Calmon Filho,
Av. Franklin Roosevelt, 194/VIII(Rio de Janeiro, ZC-39

Established : 1961

Officers

President :

Mr. José Candido SAMPAIO DE LACERDA, Magistrate in Rio de Janeiro, Professor of Commercial Law at the Law School of the University of Brazil and of the Law School of the Federal University of the State of Rio de Janeiro, Vice-President of the Aeronautical Law Society, Rua Jardim Botânico, 152, Rio de Janeiro.

First Vice-President :

Mr. Jorge DODSWORTH MARTINS, Naval Reserve Admiral, Ex-Navy-Minister, Ex-President of the Maritime Court, Av. Atlântica, 3892/K.

Second Vice-President :

Mr. João VICENTE CAMPOS, Lawyer in Rio de Janeiro, Member of the International Juridical Institute at The Hague and of the Honor Committee of A.I.D.A., Vice-President of the Brazilian Aeronautical Law Society and of Insurance Law, Rua Senador Dantas, 20/XIII.

Third Vice-President :

Mr. Carlos da ROCHA GUIMARÃES, Lawyer in Rio de Janeiro, Guanabara State Attorney General, Member of the Federal Council of the Bar Association, of the International Law Association and of the International Fiscal Association, Rua Assemblêia, 93/XII.

Secretary General :

Mr. Pedro CALMON FILHO, Lawyer in Rio de Janeiro, Assistant Professor of Commercial Law at the Law School of the University of Brazil and at the Law School, of the Federal University of Rio de Janeiro, Deputy Judge of the Maritime Court, Shipowner, Av. Franklin Roosevelt, 194/VIII.

First Secretary :

Mr. Paulo Sergio de Araújo Silva FABIÃO, Lawyer in Rio de Janeiro, Attorney of the Nuclear Energy National Council, Av. Alte. Barroso, 81.

Second Secretary :

Mr. Aécio de Albuquerque ANTUNES, Commander, Naval Reserve Master Mariner, Head of the Merchant Service Control Office at Ishikawajima do Brazil, Estaleiros S.A., Rua Mexico, 41/XI.

Third Secretary :

Mr. Maurício DA COSTA FARIA, Lawyer in Rio de Janeiro, Director of the Section Council of the Bar Association; Av. 13 de Maio, 13/VI.

First Treasurer :

Mr. Acylino PESSOA FILHO, Lawyer in Rio de Janeiro, Attorney General of Lloyd Brasileiro, Director of the Association of Attorneys of Companies under Federal Control, Rua do Rosario, 1.

Second Treasurer :

Mr. Ruy DA CUNHA E MENEZES, Master Mariner, Professor of the Merchant Service School, President of the Professional Association of Master Mariners and Coastal Captains of the Merchant Service, Technical Assistant of the Merchant Service Committee, Rua Eugênio Hussak, 22/IX.

Membership :

Physical Members : 117

Life Members : 19

Juridical Entity Members : 10

Correspondent Members : 5.

CANADA

CANADIAN MARITIME LAW ASSOCIATION

St. James Street West, 620, Sixth Floor, Montreal 3, Quebec

Established : 1951

Officers

President :

Mr. A. Stuart HYNDMAN, 129, St. James Street West, Montreal, Quebec.

Past-President :

Mr. Peter WRIGHT, Q.C., Barrister, 365, Bay Street, Toronto, Ontario.

Vice-Presidents :

Hon. J.V. CLYNE, Company Director, c/o MacMillan & Bloedel Ltd, 1199, West Pender Street, Vancouver, British Columbia.

Mr. A.L. LAWES, President, Lawes Shipping Ltd, Coristine Building, 1509, Sherbrooke Street, West Montreal, Quebec.

Secretary :

Mr. W.T. SMITH, 620, St. James Street West, Montreal 1, P. Quebec.

Treasurer :

Mr. John STAIRS Q.C., Barrister, c/o Senecal, Turnbull, Mitchell, Stairs, Kierans & Claxton, 715, Victoria Square, Montreal, Quebec.

Members Representing :

Mr. R.F. JONES, Canadian Board of Marine Underwriters.

Mr. W.J. FISHER, Canada Shipowners Association.

Mr. J.J. MAHONEY, Dominion Marine Association.

Mr. M.G. ANGUS, Shipping Federation of Canada.

Mr. D.C. BRODIE, Vancouver Chamber of Shipping.

Mr. W. BAATZ, Individual Member.

Honorary Members :

Hon. C.J. BURCHEL, Q.C., Honorary Life President, Canadian Pacific Building, Halifax, N.S.

Hon. J.V. CLYNE, MacMillan, Bloedel and Power River Limited, 1199, West Pender Street, Vancouver, B.C.

Hon. G.R.W. OWEN, Court House, Montreal, P.Q.

Hon. R.A. RITCHIE, Supreme Court Building, Ottawa, Ontario.

Hon. Arthur I. SMITH, Court House, Montreal, P.Q.

Hon. D.C. WELLS, The Supreme Court of Ontario, Osgoode Hall,
Toronto 1, Ontario.

Mr. Paul BECK,, Thos. R. Miller & Son, 14/20, St. Mary Axe, Lon-
don E.C. 3, England.

Hon. W.R. JACKETT, President, Exchequer Court of Canada, Ot-
tawa.

Membership :

Bodies : 10

Members : 81

CHILE

ASSOCIATION CHILIENNE DE DROIT MARITIME

B.P. 75, Valparaiso

Année de fondation : 1965

Comité exécutif provisoire

Presidente :

Don Enrique BARROILHET.

Vice Presidente :

Don Félix GARCIA INFANTE.

Tesorero :

Don Arturo EWING.

Secretario :

Don Charles TURNER.

DENMARK

DANSK SØRETSFORENING

(Danish Branch of Comité Maritime International)

Skoubogade, 1, Copenhagen K.

Established : 1899

President :

Mr. N.V. BOEG, Justice of Appeal, Ceresvej, 9, Kobenhavn V.

Treasurer and Secretary :

Mr. Axel KAUFMANN, Barrister, Taarbaek Strandvej 26, Klampenborg.

Members :

Mr. Dan BJØRNER, Director, Axelborg, Copenhagen K.

Mr. Oscar A. BORUM, Professor, Dr. Jur. Ehlersvej 17, Hellerup.

Mr. Per FEDERSPIEL, Barrister, Golthergade, 109, Copenhagen K.

Mr. Bernhard GOMARD, Professor, Dr. Jur., Grunstrupsvej, 18, Hellerup.

Mr. Herbert P.A. JERICHOW, Director, Helleruplandalle 15, Hellerup.

Mr. Niels KLERK, Barrister, Amaliegade, 4, Copenhagen K.

Mr. Peter LETH, Amaliegade 4, Copenhagen.

Mr. Allan PHILIP, Professor, Dr. Jur., Strandvej 149, Hellerup.

Mr. C. RASTING, Professor, Dr. Jur., Mynstervej 3, Copenhagen V.

Mr. Alf ROSS, Professor, Dr. Jur. & Phil., I.H. Mundtsvej 10A, Kgs. Lyngby.

Mr. Kjeld RØRDAM, Barrister, Bredgade 41, Copenhagen K.

Mr. André M. SØRENSEN, Director, Barrister, Frederiksborggade 15, Copenhagen K.

Mr. Max SØRENSEN, Professor, Dr. Jur., Højagervej 9, Riisskov, Aarhus.

Mr. Niels TYBJERG, Average Adjuster, Højbro Plads, 21, Copenhagen K.

Mr. V. WENZEL, Director of the Danmarks Rederiforening, Amaliegade 33, Copenhagen K.

Membership : about 100

ESPAGNE

ASOCIACIÓN ESPAÑOLA DE DERECHO MARITIMO (Association Espagnole de Droit Maritime)

Avda José Antonio, 1, Madrid 14

Presidente de Honor Nato :

Don Antonio ITURMENDI BAÑALES, Ministro de Justicia.

Presidente de Honor :

Don Ernesto ANASTASIO PASCUAL.

Miembros de Honor :

Don Juan ABELLO PASCUAL.

Don H. Francisco ALDECOA Y BERASALUCE.

Don Eduardo de AZNAR Y COSTE.

Don Leopoldo BOADO ENDEIZA.

Don Federico CASTEJON Y MARTINEZ DE ARIZALA.

Don Francisco FARINA GUITIAN.

Don Raimundo FERNANDEZ-CUESTA Y MERELO.

Don Joaquín GARRIGUES DIAZ-CAÑABATE.

Don Ramón GORBENA RENOVALES.

Don Bartolomé MARCH SERVERA.

Don Jesús RUBIO Y GARCIA-MINA.

JUNTA DE GOBIERNO

Presidente :

Don Ernesto ANASTASIO PASCUAL.

Vicepresidentes :

Don Ignacio BERTRAND BERTRAND.

Don Rodrigo URIA GONZALEZ.

Secretario General :

Don Juan Bautista MONFORT BELENGUER.

Tesorero :

Don José Luis ESTEVA DE LA TORRE.

Vocales :

Don Carlos ANGULO GARCIA-OGARA.

Don Miguel ARIAS GANZALEZ.

Don Ignacio ARTAZA CORTES.

Don José Luis de AZCARRAGA Y DE BUSTAMANTE.
Don Miguel BAEZA DAVERAT.
Don Pelegrín BENITO SERRES.
Don Marcelino CABANAS RODRIGUEZ.
Don Alvaro CALVO ALFAGEME.
Don Buenaventura José CASTRO RIAL.
Don José María GARIBI UNDABARRENA.
Don Antonio GOMEZ GUTIERREZ.
Don Emilio GOMEZ ORBANEJA.
Don Alfonso GUEL Y MARTOS.
Don José GUTIERREZ DEL ALAMO GARCIA.
Don Gabriel JULIA ANDREU.
Don Enrique de LARRAGAN Y GIL DELGADO.
Don Juan de LEYVA Y ANDIA.
Don Antonio LOPEZ BLANCO.
Don Gregorio MARAÑON MOYA.
Don Juan NAVARRO DAGNINO.
Don Tomás OGAYAR Y AYLON.
Don Miguel de PARAMO CANOVAS.
Don Francisco PARGA RAPA.
Don José María RUIZ BRAVO.
Don Fernando RUIZ-GALVEZ Y LOPEZ DE OBREGON.
Don Baltasar RULL VILLAR.
Don Raimundo VIDAL PAZOS.

FINLAND

COMITE MARITIME INTERNATIONAL SUOMEN OSASTO - AVDELNING FINLAND (International Maritime Committee - Finnish Branch)

c/o Mr. Bertel APPELQVIST, Finland Sydamerika Linjen Ab, Södra Kajen, 8,
Helsinki

Established : 1939

Officers

President :

Mr. Herbert ANDERSSON, Director of the Finnish Steam Ship C^o
Lawyer, F.A.A., Södra Kajen, 8, Helsinki.

Vice-Présidents :

Mr. Sigurd VON NUMERS, Doctor of Laws, Head of the Legal Department of the Ministry of Foreign Affairs, Topeliusgatan, 9A, Helsinki.

Mr. Olaf RISKA.

Secretary :

Mr. Bertel APPELQVIST, Lawyer of the Finland-Southamerica Line Ltd, Finland-Sydamerika Linjen Ab, Södra Kajen, 8, Helsinki.

Members :

Mr. Eric CASTREN, Professor of Law, Wecksell.t., 4, Helsinki.

Mr. Christian ZITTING, Advocate, Glog. 3, Helsinki.

Mr. Heikki MAATTA, Lawyer of the Pohjola Insurance Company Pohjola Vakuutus Oy, Aleksant,k., 44, Helsinki.

Treasurer :

(not member of the Board) Mr. Nils-Gustav PALMGREN, Lawyer of the Finnish Steam Ship C^o, F.A.A., Södra Kajen, 8, Helsinki.

Membership

Firms : 22

Private persons : 39

FRANCE

ASSOCIATION FRANÇAISE DU DROIT MARITIME

78, Boulevard Haussmann, Paris 8me

Année de fondation : 1897

Comité de Direction

Président :

Mr. Paul CHAUVEAU, Doyen honoraire, Professeur à la Faculté de droit de Bordeaux, Avocat à la Cour d'Appel de Paris, 78, rue de Passy, Paris 16me, Villa Larrecq-Espoy (B.P.).

Vice-Présidents :

Mr. Jacques MARCHEGAY, Vice-Président du Comité Central des Armateurs de France, 73, Boulevard Haussmann, Paris 8me.

Mr. Pierre LUREAU, Président d'honneur de l'Association des Dispatcheurs Français, Président de l'Association Internationale des Dispatcheurs Européens, Bourse Maritime, Bordeaux (Gironde).

Présidents honoraires :

Mr. Francis SAUVAGE, Avocat honoraire à la Cour, 26, Boulevard Raspail, Paris 6me.

Mr. James Paul GOVARE, Ancien Président de l'Académie de Marine, Avocat à la Cour, 5, rue de Lasteyrie, Paris 16me.

Mr. Marcel PITOIS, Président Directeur Général de la Cie Navale d'Afrique du Nord, 32, Avenue de Wagram, Paris 17me.

Secrétaire-Général :

Mr. Jean WAROT, Avocat à la Cour, Ancien Secrétaire de la Conférence, 71, Boulevard Raspail, Paris 6me.

Trésorier :

Mr. Ménélas PRODROMIDES, Conseil Juridique du Comité Central des Assureurs Maritimes de France, Docteur en Droit, Rue St. Marc, Paris 2me.

Secrétaires-Généraux Adjointes :

Mr. Pierre LATRON, Docteur en Droit, Comité Central des Assureurs Maritimes de France, Rue St. Marc, 24, Paris 2me.

Mlle Claire LEGENDRE, Docteur en Droit, Secrétaire au Comité Central des Armateurs de France, Boulevard Haussmann, 73, Paris 8me.

Membres :

Mr. Claude BOQUIN, Directeur de la Compagnie Louis Dreyfus & Cie, Rue Rabelais, 6, Paris 8me.

- Mr. Pierre BOULOY, Avocat à la Cour, Rue Jean Goujon, 3, Paris 8me.
- Mr. Michel DUBOSC, Avocat, 97, Rue Jules Siegfried, Le Havre (S.M.).
- Mr. GRELLET, Directeur de la S.A. Jokelson et Handtsaem, 8, Rue Auber, Paris 9me.
- Mr. Christian HARREL-COURTES, Assureur Maritime, 23, Boulevard Malesherbes, Paris 8me.
- Mr. JAMBU-MERLIN, Professeur à la Faculté de Droit, 10, Rue Colonel Bonnet, Paris 16me.
- Mr. André MESTREJEAN, Vice-Président du Syndicat des Sociétés Françaises d'Assurance Maritime et de Transport, Directeur de « La Concorde », 5, Rue de Londres, Paris 8me.
- Mr. Michel PIERRON, Secrétaire Général du Comité des Assureurs Maritimes de Bordeaux, Docteur en Droit, Bourse Maritime, Place Lainé, Bordeaux (Gironde).
- Mr. Jacques POTIER, Directeur de la Compagnie des Chargeurs Réunis, 3, Boulevard Malesherbes, Paris 8me.
- Mr. René RODIÈRE, Professeur à la Faculté de Droit de Paris, Directeur de l'Institut du Droit Comparé, 29, Boulevard de Saint-Julien, Bellevue (S & O).
- Mr. André SIMONARD, Professeur à la Faculté de Droit de Liège, Jurisconsulte du Secrétariat Général de la Marine Marchande, 3, Rue Danton, Paris 5me.
- Mr. Jacques VILLENEAU, Avocat à la Cour, Rue Scheffer, 39, Paris 16me.

Nombre de membres: 300

GERMANY

DEUTSCHER VEREIN FÜR INTERNATIONALES SEERECHT

(German International Maritime Law Association)

4. Stock, 86, Neuer Wall, Hamburg 36

Established : 1898

Officers

President :

Prof. Dr. Hans GRAMM, Judge at Hanseatisches Oberlandesgericht,
39, Heilwigstrasse, Hamburg 20.

Vice-President :

Dr. Otto DETTMERS, Barrister, Börsenhof C, 3, Marktstrasse, 3,
Bremen.

Members :

Mr. J. Alfred EDEYE, Shipowner, Baumwall, 3, Hamburg 11.

Dr. Hans Georg RÖHREKE, Manager of the German Shipowner As-
sociation, Neuer Wall, 86, Hamburg 36.

Mr. Oscar von STRITZKY, Manager of the Nord-Deutsche Versiche-
rungs-Gesellschaft, Alter Wall, 12, Hamburg 11.

Mr. Reinhart VOGLER, President of Hanseatisches Oberlandesgericht,
Lindenstrasse, 10, Aumühle b. Hamburg.

Secretary :

Dr. Bernd KROEGER, 86, Neuer Wall, Hamburg 36.

Membership : 250

GREAT BRITAIN

BRITISH MARITIME LAW ASSOCIATION

14/20 St. Mary Axe, London, E.C. 3

Officers

Established : 1908

President :

Patrick Arthur DEVLIN, The Rt.Hon., The Lord Devlin, P.C., Lord at Appeal in Ordinary, House of Lords, London, S.W. 1.

Vice-Presidents :

Sir William Lennox McNAIR, The Hon. Mr. Justice McNair, Judge of the Queen's Bench Division, Royal Courts of Justice, Strand, London, W.C. 2.

Sir Kenneth DIPLOCK, The Rt. Hon. Lord Justice Diplock, Lord Justice of Appeal, Royal Courts of Justice, Strand, London, W.C. 2.

Hon. Secretary :

Mr. Cyril MILLER, Manager of the United Kingdom Mutual Steamship Assurance Association and of The Standard Steamship Owners' Protection & Indemnity Association Ltd., Barrister at Law, 14-20, St. Mary Axe, London, E.C. 3.

Treasurer and Secretary :

Mr. William BIRCH REYNARDSON, Manager of the United Kingdom Mutual Steamship Assurance Association Ltd., Barrister at Law, 14-20, St. Mary Axe, London, E.C. 3.

Bodies represented :

Lloyd's Underwriters Association
Institute of London Underwriters
Liverpool Underwriters' Association
Association of Average Adjusters
Chamber of Shipping of the United Kingdom
British Shippers' Council
London Chamber of Commerce
Birmingham Chamber of Commerce
Dock & Harbour Authorities Association
Protecting & Indemnity Associations
Shipbuilders' Conference
London Maritime Arbitrators Association

GRECE

HELLINIKI ENOSIS NAUTIKOU DIKAIYOU

(Association Hellénique de Droit Maritime)

1. Rue Vissarionos, Athinai

Année de la fondation : 1908; reconstituée en 1950

Comité de Direction

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Nombre de membres : 50

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Tughlak Crescent, 30, New Delhi

Established : 1960

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c/o Irish Shipping Ltd., Aston Quay, 19/21, Dublin 2

Established : 1963

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Irish Institute of Marine Underwriters
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Irish Association of Shipping & Forwarding Agents
Shipping Services Ltd.
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Irish Port Authorities Assn.
Minister of Transport & Power
Maritime Institute of Ireland
Irish Shipowners' Association.

ISRAEL

HA-AGUDA HA ISRAELIT LE MISPHAT YAMI
(Israel Maritime Law Association)

P.O.B. 4993, Haifa

Established : 1955

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ITALIE

ASSOCIAZIONE ITALIANA DI DIRITTO MARITTIMO

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Piazza Firenze, 27, Roma

Année de fondation : 1899

Comité de Direction

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Nombre de membres : 219

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Established : 1901

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Membership : 79.

MAROC

ASSOCIATION MAROCAINE DE DROIT MARITIME

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ASOCIACION MEXICANA DE DERECHO MARITIMO

(Mexican Maritime Law Association)

Apartado Postal 20926, Admon. 32, Mexico 1, D.F

Established : 1961

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NEDERLANDSE VERENIGING VOOR ZEERECHT

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Established : 1905

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(Norwegian Maritime Law Association)

Kronprinsesse Märthas plass, 1, Oslo

Established : 1899

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Personal members : 406

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POLSKIE STOWARZYSZENIE PRAWA MORSKIEGO

(Association Polonaise de Droit Maritime)

Wyższa Szkoła Ekonomiczna, Katedra Prawa
Armii Czerwonej, 101, Sopot

Année de fondation : 1957

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Nombre de membres : 60

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COMISSAO PERMANENTE DE DIREITO MARITIMO INTERNACIONAL

(Commission Permanente de Droit Maritime International)

Ministerio de Marinha, Lisboa

Année de fondation : 1924, réorganisée en 1928

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Nombre de membres : 18

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(Swedish Association of International Maritime Law)

1, Wahrendorffsgatan, Stockholm C.

Established : 1900

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SUISSE

ASSOCIATION SUISSE DE DROIT MARITIME

SCHWEIZERISCHE VEREINIGUNG FÜR SEERECHT

Rittergasse, 21, Basel

Année de fondation : 1952

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Nombre de membres : 30

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(Association Turque de Droit Maritime)

Prof. SAMI OKAY

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THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

52, Wall Street New York, City 5, New York

Established : 1899

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(Association de Droit Maritime de l'Uruguay)

Colon 1486 — Peso 3° — Montevideo

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YUGOSLAVIE

JUGOSLAVENSKO UDRUZENJE ZA POMORSKO PRAVO

(Association Yougoslave de Droit Maritime)

Opaticka, 18, Zagreb

Année de fondation : 1924; reconstituée en 1954

Comité de Direction

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Trésorier :

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Maritime à Rijeka, Zrtava fasizma, 4, Rijeka.

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Institutions et entreprises : 32

Membres à titre individuel : 120

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Subjects : Assistance, salvage and duty to tender assistance. — Jurisdiction in collision matters.

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VI. AMSTERDAM - 1904

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VII. LIVERPOOL - 1905

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XIII. LONDON - 1922

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XVII. ANTWERP - 1930

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XIX. PARIS - 1937

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Subjects : Ratification of the Brussels Convention. — Civil and penal jurisdiction in the event of collision at sea. — Provisional arrest of ships. — Commentary on the Brussels Conventions. — Assistance and Salvage of and by aircraft at sea.

XX. ANTWERP - 1947

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XXI. AMSTERDAM - 1949

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Subjects : Ratification of the Brussels international Conventions. — Revision of the York-Antwerp Rules 1924. — Limitation of Shipowners' Liability (Gold Clauses). — Combined Through Bills of Lading. — Revision of the draft-Convention of provisional arrest of ships. — Draft of creation of an International Court for Navigation by Sea and by Air.

XXII. NAPLES - 1951

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XXIII. MADRID - 1955

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Subjects : Limitation of Shipowners' Liability. — Liability of Sea Carriers towards passengers. — Stowaways. — Marginal clauses and letters of indemnity.

XXIV. RIJEKA - 1959

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Subjects : Liability of operators of nuclear ships. — Revision of Article X of the International Conventions for the Unification of certain Rules of law relating to Bills of Lading. — Letters of Indemnity and Marginal clauses. — Revision of article XIV of the International Convention for the Unification of certain rules of law relating to assistance and salvage at sea. — International statut of ships in Foreign ports. — Registry of operators of ships.

XV. ATHENS - 1962

President : Mr. Albert LILAR.

Subjects : Damages in Matters of Collision. — Letters of Indemnity. — International Status of Ships in Foreign Ports. — Registry of Ships. — Coordination of the Conventions on Limitation and on Mortgages. — Demurrage and Despatch Money. — Liability of Carriers of Luggage.

XXVI. STOCKHOLM - 1963

President : Mr. Albert LILAR.

Subjects : Bills of Lading. — Passengers Luggage. — Ships under construction.

XXVII. NEW YORK - 1965

Président : Mr. Albert LILAR.

Subjects : Revision of the Convention on Maritime Liens and Mortgages

STATEMENT OF THE
RATIFICATIONS - ACCESSIONS
OF THE
INTERNATIONAL MARITIME CONVENTIONS

(List submitted by the Ministère des Affaires Etrangères de Belgique
the 15th March 1966)

INTERNATIONAL CONVENTION FOR THE UNIFICATION
OF CERTAIN RULES RELATING TO
COLLISIONS

BETWEEN VESSELS
Signed at Brussels on September 23rd, 1910

RATIFICATION :

Austria	February 1st, 1913
Belgium	February 1st, 1913
Brazil	December 31st, 1913
Denmark	June 18th, 1913
France	February 1st, 1913
Germany (**)	February 1st, 1913
Great Britain	February 1st, 1913
Greece	September 29th, 1913
Hungary	February 1st, 1913
Ireland	February 1st, 1913
Italy	June 2nd, 1913
Japan	January 12th, 1914
Mexico	February 1st, 1913
Nicaragua	July 18th, 1913
Netherlands	February 1st, 1913
Norway	November 12th, 1913
Portugal	July 25th, 1913
Rumania	February 1st, 1913
Russia	February 1st, 1913
Sweden	November 12th, 1913

(**) *German Federal Republic* : Put again into force from November 1st 1958 between, on the one hand, the *German Federal Republic* and, on the other hand, the *Allied Powers* except *Hungary*, *Poland*, *Uruguay*, *New Zealand*, *Rumania* and the *U.R.S.S.*

ACCESSION

Argentine	February 28th, 1922
Australia	September 9th, 1930
Canada	September 25th, 1914
Ceylon	February 1st, 1913
Danzig	June 2nd, 1922
Dominican Republic	July 23rd, 1958
Egypt	November 19th, 1943
Spain	November 17th, 1923
Esthonia	May 15th, 1929
Finland	July 17th, 1923
Great Britain	February 1st, 1913
East-Africa	
Bahamas, Barbadoes, Bermuda, Cyprus, Gold Coast, Falkland, Fidji, Gambia, Gibraltar, Gilbert and Elllice, British Guyana, British Honduras, Hong-Kong	February 1st, 1913
Jamaica, (Caimans, Caicos and Turk's isl.), Labuan, Leeward Isles (Antigoa, Dominica, Montserrat, St. Christopher-Nevis, Virgin Islands)	February 1st, 1913
Federated Malay States	February 1st, 1913
Malta, Mauritius, Southern Nigeria, Norfolk	February 1st, 1913
Papua, St-Helena, Salomon, Seychelles, Sierra-Leone, Somaliland, Straits Settlements	February 1st, 1913
New Foundland	March 11th, 1914
Tobago, Trinidad, Wei-Hai-Wei, Windward (Grenada, St-Lucia, St. Vincent)	February 1st, 1913
Haiti	August 18th, 1951
Indian Union	February 1st, 1913
Italian Colonies	November 9th, 1934
Latvia	August 2nd, 1932
New Zealand	May 19th, 1913
Poland	June 2nd, 1922
Colonies of Portugal	July 20th, 1914
Switzerland	May 28th, 1954
Turkey	July 4th, 1955
U.R.S.S.	July 10th, 1936
Uruguay	July 21st, 1915
Yugo-Slavia	December 31st, 1931

INTERNATIONAL CONVENTION FOR THE UNIFICATION
OF CERTAIN RULES RELATING TO

ASSISTANCE AND SALVAGE

AT SEA

Signed at Brussels on September 23rd., 1910

RATIFICATION :

Austria	February 1st, 1913
Belgium	February 1st, 1913
Brazil	December 31st, 1913
Denmark	June 18th, 1913
France	February 1st, 1913
Germany (*)	February 1st, 1913
Great Britain	February 1st, 1913
Greece	October 15th, 1913
Hungary	February 1st, 1913
Ireland	February 1st, 1913
Italy	June 2nd, 1913
Japan	January 12th, 1914
Mexico	February 1st, 1913
Netherlands	February 1st, 1913
Norway	November 12th, 1913
Portugal	July 25th, 1913
Rumania	February 1st, 1913
Russia	February 1st, 1913
Sweden	November 12th, 1913
United States America	February 1st, 1913

ACCESSION :

Algeria	April 13th, 1964
Argentine	February 28th, 1922
Australia	September 9th, 1930
Canada	September 25th, 1914
Ceylon	February 1st, 1913
Danzig	October 15th, 1921
Dominican Republic	July 23rd, 1958
Egypt	November 19th, 1943
Spain	November 17th, 1923

(*) *German Federal Republic* : Put again into force from November 1st 1953 between, on the one hand, the German Federal Republic and, on the other hand, the Allied Powers except Hungary, Poland, Uruguay, New Zealand, Rumania and the U.R.S.S.

Estonia	May, 15th, 1929
Finland	July 17th, 1923
Great Britain	
East-Africa	February 1st, 1913
Bahamas, Barbadoes, Bermuda	February 1st, 1913
Cyprus, Gold Coast, Falkland, Fiji, Gambia, Gibraltar, Gilbert and Ellice, British Guyana, British Honduras, Hong-Kong	February 1st, 1913
Jamaica, (Caimans, Caicos and Turk's Isl.), Labuan, Leeward Isles (Antigoa, Dominica, Montserrat, St-Christopher-Nevis, Virgin Islands)	February 1st, 1913
Federated Malay States	February 1st, 1913
Malta, Mauritius, Southern Nigeria, Norfolk	February 1st, 1913
Papua, St-Helena, Salomon, Seychelles, Sierra-Leone, Somaliland, Straits Settlements	February 1st, 1913
New Foundland	March 11th, 1914
Tobago, Trinidad, Wei-Hai-Wei, Windward, (Grenada, St-Lucia, St-Vincent)	February 1st, 1913
Haiti	August 18th, 1951
Indian Union	February 1st, 1913
Erythrea, Italian Somali	June 2nd, 1913
Italian Colonies	November 9th, 1934
Latvia	August 2nd, 1932
New Zealand	May 19th, 1913
Poland	October 15th, 1921
Colonies of Portugal	July 20th, 1914
Switzerland	May 28th, 1954
Turkey	July 4th, 1955
U.R.S.S.	July 10th, 1936
Uruguay	July 21st, 1915
Yugo-Slavia	December 31st, 1931

INTERNATIONAL CONVENTION FOR THE UNIFICATION
OF CERTAIN RULES RELATING TO THE

LIMITATION

OF THE LIABILITY OF OWNERS OF SEA-GOING VESSELS
AND PROTOCOL OF SIGNATURE

Signed at Brussels on August 25th, 1924

RATIFICATION :

Belgium	June 2nd, 1930
Brazil	April 28th, 1931
Denmark	June 2nd, 1930
France	August 23rd, 1935
Hungary	June 2nd, 1930
Norway	October 10th, 1933
Poland	October 26th, 1936
Portugal	June 2nd, 1930
Spain	June 2nd, 1930
Sweden	July 1st, 1938

ACCESSION :

Dominican Republic	July 23rd, 1958
Finland	July 12th, 1934
Monaco	May 15th, 1931
Turkey	July 4th, 1955

DENUNCIATION

Denmark	June 30th, 1963 (*)
Finland	June 30th, 1963 (*)
Norway	June 30th, 1963 (*)
Sweden	June 30th, 1963 (*)

(*) These denunciations are effective since the 1st of July, 1964.

INTERNATIONAL CONVENTION FOR THE UNIFICATION
OF CERTAIN RULES OF LAW RELATING TO

BILLS OF LADING

AND PROTOCOL OF SIGNATURE
Signed at Brussels on August 25th, 1924

RATIFICATION :

Belgium	June 2nd, 1930
France	January 4th, 1937
Germany (*)	July 1st, 1939
Great Britain and Northern Ireland	June 2nd, 1930
Hungary	June 2nd, 1930
Italy	October 7th, 1938
Japan	July 1st, 1957
Poland	October 26th, 1936
Rumania	August 4th, 1937
Spain	June 2nd, 1930
United States of America	June 29th, 1937
Yugo-Slavia	April 17th, 1959

ACCESSION :

Algeria	April 13th, 1964
Argentine	April 19th, 1961
Australia	July 4th, 1955
Papua and Norfolk	July 4th, 1955
Nauru and New Guinea	July 4th, 1955
Ceylon	December 2nd, 1930
Côte d'Ivoire	December 15th, 1961
Denmark	July 1st, 1938
Egypt	November 19th, 1943
Finland	July 1st, 1939
Great Britain	
Ascension	November 3rd, 1931
Bahamas, Barbadoes, Bermuda, Northern Borneo, Camerouns, Cyprus, Gold-Coast, Falkland, Fiji, Gambia, Gibraltar, Gilbert and Ellice, British Guiana, British Honduras, Hong-Kong, Jamaica, (Caimans, Caicos and Turk's isl.), Kenya, Leeward (Antigoa, Dominica, Monserrat, St-Christopher-Nevis, Virgin Islands)	December 2nd, 1930

(*) *German Federal Republic* : Put again into force from November 1st 1953 between on the one hand, the German Federal Republic and, on the other hand, the Allied Powers except Hungary, Poland and Rumania.

Federated Malay States	December 2nd, 1930
Unfederated Malay States	December 2nd, 1930
Mauritius, Nigeria	December 2nd, 1930
St-Helena	November 3rd, 1931
Salomon	December 2nd, 1930
Sarawak	November 3rd, 1931
Seychelles, Sierra-Leone, Somaliland, Straits Settlements, Tobago, Tonga, Trinidad, Windward (Grenada, St-Lu- cia, St-Vincent)	December 2nd, 1930
Zanzibar	December 2nd, 1930
Ireland	January 30th, 1962
Israel	September 5th, 1959
Monaco	May 15th, 1931
Netherlands	August 18th, 1956
Norway	July 1st, 1938
Peru	October 29th, 1964
Portugal	December 24th, 1931
Overseas Territories	February 2nd, 1952
Sweden	July 1st, 1938
Switzerland	May 28th, 1954
Tanganyika	December 3th, 1962
Turkey	July 4th, 1955

INTERNATIONAL CONVENTION FOR THE UNIFICATION
OF CERTAIN RULES RELATING TO MARITIME

LIENS AND MORTGAGES,

Signed at Brussels on April 10th, 1926

RATIFICATION :

Belgium	June 2nd, 1930
Brazil	April 28th, 1931
Denmark	June 2nd, 1930
Esthonia	June 2nd, 1930
France	August 23rd, 1935
Hungary	June 2nd, 1930
Italy	December 7th, 1949
Norway	October 10th, 1933
Poland	October 26th, 1936
Rumania	August 4th, 1937
Spain	June 2nd, 1930
Sweden	July 1st, 1938

DENUNCIATION :

Denmark	March 1st, 1965
Finland	March 1st, 1965
Norway	March 1st, 1965
Sweden	March 1st, 1965

ACCESSION :

Algeria	April 13th, 1964
Argentina	April 19th, 1961
Finland	July 12th, 1934
Haïti	March 19th, 1965
Monaco	May 15th, 1931
Portugal	December 24th, 1931
Switzerland	May 28th, 1954
Syrie	February 14th, 1951
Turkey	July 4th, 1955

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES CONCERNING THE

IMMUNITY OF STATE-OWNED SHIPS,

Signed at Brussels on April 10th, 1926

RATIFICATION :

Belgium	January 8th, 1936
Brazil	January 8th, 1936
Chile	January 8th, 1936
Denmark	November 16th, 1950
Esthonia	January 8th, 1936
France	July 27th, 1955
Germany (*)	June 27th, 1936
Hungary	January 8th, 1936
Italy	January 27th, 1937
Italian Colonies	January 27th, 1937
Netherlands	July 8th, 1936
Curaçao, Netherlands Indies, Surinam	July 8th, 1936
Norway	April 25th, 1939
Poland	January 8th, 1936
Portugal	June 27th, 1938
Rumania	August 4th, 1937
Sweden	July 1st, 1938

(*) *German Federal Republic* : Put again into force from November 1st 1958 between on the one hand, the German Federal Republic and, on the other hand, the Allied Powers except Hungary, Poland and Rumania.

ACCESSION :

Arab Syrian Republic	October 4th, 1962
Argentina	April 19th, 1961
Greece	May 19th, 1951
Switzerland	May 28th, 1954
Turkey	July 4th, 1955
United Arab Republic	February 17th, 1960

DENUNCIATION :

Poland	March 17th, 1952
Rumania	September 21st, 1959

ADDITIONAL PROTOCOL TO THIS CONVENTION

Signed at Brussels on May 24th, 1934

RATIFICATION :

Belgium	January 8th, 1936
Brazil	January 8th, 1936
Chile	January 8th, 1936
Denmark	November 16th, 1950
Esthonia	January 8th, 1936
France	July 27th, 1955
Germany	June 27th, 1936
Hungary	January 8th, 1936
Italy	January 27th, 1937
Italian Colonies	January 27th, 1937
Netherlands	July 8th, 1936
Curaçao, Netherlands Indies, Surinam	July 8th, 1936
Norway	April 25th, 1939
Poland	January 8th, 1936
Portugal	June 27th, 1938
Rumania	August 4th, 1937
Sweden	July 1st, 1938

ACCESSION :

Arab Syrian Republic	October 4th, 1962
Argentina	April 19th, 1961
Greece	May 19th, 1951
Switzerland	May 28th, 1954
Turkey	July 4th, 1955
United Arab Republic	February 17th, 1960

DENUNCIATION :

Poland	March 17th, 1952
Rumania	September 21st, 1959

INTERNATIONAL CONVENTION FOR THE UNIFICATION
OF CERTAIN RULES RELATING TO

CIVIL JURISDICTION

IN MATTERS OF COLLISION

Signed at Brussels on May 10th, 1952.

RATIFICATION :

Belgium	April 10th, 1961
Egypt	August 24th, 1955
France	May 25th, 1957
Great Britain and Northern Ireland	March 18th, 1959
Greece	March 15th, 1965
Holy Seat	August 10th, 1956
Portugal	May 4th, 1957
Spain	December 8th, 1953
Yugoslavia	March 14th, 1955

ACCESSION :

Algeria	August 18th, 1964
Argentina	April 19th, 1961
Cambodia	November 12th, 1956
Costa Rica	July 13th, 1963
France	
Overseas Territories, Togo and Camerouns	April 23rd, 1958
Great Britain	
Sarawak	August 28th, 1962
British Guiana, Fidji, Gibraltar, Hong-Kong, Isle Maurice, Northern Borneo, Seychelles	March 29th, 1963
Virgin Island	May 29th, 1963
Bermudes	May 30rd, 1963
Antigua, Caïman Islands, Bahamas, Dominica, Grenada, Montserrat, St. Cristopher, Nevis, Anguilla, St. Helena, St. Lucia, St. Vincent	May 12th, 1965
British Honduras, British Salomon Isles, Gilbert and Ellice Isles, Caecos and Turk's Isles	September 21st, 1965
Nigeria	November 7th, 1963
Switzerland	May 28th, 1954

INTERNATIONAL CONVENTION FOR THE UNIFICATION
OF CERTAIN RULES RELATING TO

PENAL JURISDICTION

IN MATTERS OF COLLISION OR OTHER INCIDENTS OF NAVIGATION

Signed at Brussels on May 10th, 1952.

RATIFICATION :

Belgium	April 10th, 1961
Egypt	August 24th, 1955
France	May 20th, 1955
Great Britain and Northern Ireland	March 18th, 1959
Greece	March 15th, 1965
Holy Seat	August 10th, 1956
Portugal	May 4th, 1957
Spain	December 8th, 1953
Yugoslavia	April 21st, 1956

ACCESSION :

Argentina	April 19th, 1961
Burman Union	July 8th, 1953
Cambodia	November 12th, 1956
Costa Rica	July 13th, 1955
France	
Overseas Territories, Togo and Cameroons	April 23rd, 1958
Great Britain	
Sarawak	August 28th, 1962
British Guiana, Fidji, Gibraltar, Hong-Kong, Isle Maurice, Northern Borneo, Seychelles	March 29th, 1963
Virgin Island	May 29th, 1963
Bermudes	May 30th, 1963
Antigua, Caïman Islands, Bahamas, Dominica, Grenada, Montserrat, St. Cristopher, Nevis, Anguilla, St. Helena, St. Lucia, St. Vincent	May 12th, 1965
British Honduras, British Salomon Isles, Gilbert and Ellice Isles, Caecos and Turk's Isles	September 21st, 1965
Haiti	July 17th, 1954
Nigeria	November 7th, 1963
Switzerland	May 28th, 1954
Republic of South Vietnam	November 26th, 1955

INTERNATIONAL CONVENTION FOR THE UNIFICATION
OF CERTAIN RULES RELATING TO THE

ARREST

OF SEA-GOING SHIPS

Signed at Brussels on May 10th, 1952

RATIFICATION :

Belgium	April 10th, 1961
Egypt	August 24th, 1955
France	May 25th, 1957
Great Britain and Northern Ireland	March 18th, 1959
Holy Seat	August 10th, 1956
Portugal	May 4th, 1957
Spain	December 8th, 1953

ACCESSION :

Algeria	August 18th, 1964
Cambodia	November 12th, 1956
Costa Rica	July 13th, 1955
France	
Overseas Territories,	
Togo and Camerouns	April 23rd, 1958
Great Britain	
Sarawak	August 28th, 1962
British Guiana, Fidji, Gibraltar,	
Hong-Kong, Isle Maurice, Northern	
Borneo, Seychelles	March 29th, 1963
Virgin Island	May 29th, 1963
Bermudes	May 30rd, 1963
Antigua, Caïman Islands, Bahamas,	
Dominica, Grenada, Montserrat, St.	
Cristopher, Nevis, Anguilla, St.	
Helena, St. Lucia, St. Vincent	May 12th, 1965
British Honduras, British Salomon	
Isles, Gilbert and Ellice Isles, Caecos	
and Turk's Isles	September 21st, 1965
Haiti	November 4th, 1954
Nigeria	November 7th, 1963
Switzerland	May 28th, 1954

INTERNATIONAL CONVENTION RELATING TO THE

LIMITATION

OF THE LIABILITY OF OWNERS OF SEA-GOING VESSELS

Signed at Brussels on October 10th, 1957

RATIFICATION :

Denmark	March 1st, 1965
Finland	August 19th, 1964
France	July 7th, 1959
Great Britain and Northern Ireland	February 18th, 1959
Netherlands	December 10th, 1965
Norway	March 1st, 1965
Spain	July 16th, 1959
Sweden	June 4th, 1964
Switzerland	January 21st, 1966
United Arabian Republic	September 7th, 1965

ACCESSIONS :

Algeria	August 18th, 1964
Ghana	July 26th, 1959
Great Britain	
Bahamas, Bermudes, British Antarctic Territories, British Honduras, Salomon Islands, Falkland, Fidji, Gibraltar, Gilbert and Ellice, Hongkong, Isle Maurice, Seychelles, Virgin Islands	August 21st, 1964
Guernesey and Jersey	October 21st, 1964
Isle of Man	November 18 th, 1960
Singapore	April 17th, 1963
British Honduras, British Salomon Isles, Gilbert and Ellice Isles, Caecos and Turk's Isles	September 21st, 1965

(This Convention has not yet entered into force)

INTERNATIONAL CONVENTION RELATING TO
STOWAWAYS

Signed at Brussels on October 10th, 1957

RATIFICATION :

Denmark	December 16th, 1963
Finland	February 2nd, 1966
Italy	May 24th, 1963
Norway	May 24th, 1962
Peru	November 23th, 1961
Sweden	June 27th, 1962

ACCESSION :

Morocco	January 22nd, 1959
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(This Convention has not yet entered into force)

INTERNATIONAL CONVENTION
FOR THE UNIFICATION OF CERTAIN RULES RELATING TO
THE CARRIAGE OF PASSENGERS BY SEA

signed at Brussels on the 29th April 1961

RATIFICATION :

France	March 4th, 1965
Switzerland	January 21st, 1966
United Arabic Republic	May 15th, 1964

ACCESSION :

Cuba	January 7th, 1963
Peru	October 29th, 1964

INTERNATIONAL CONVENTION
RELATING TO THE LIABILITY OF OPERATORS OF
NUCLEAR SHIPS

signed at Brussels on the 25th May 1962

RATIFICATION :

Nil

ACCESSION :

Nil

II

CONFERENCE OF NEW YORK

PRELIMINARY REPORTS

AND

AMENDMENTS

MARITIME LIENS AND MORTGAGES

INTERNATIONAL SUBCOMMITTEE
ON
MARITIME LIENS AND MORTGAGES

PRELIMINARY REPORT AND QUESTIONNAIRE

Introductory Remarks

1. Cases involving maritime liens and mortgages may show a large number of international aspects. In fact, such cases are apt to possess more international aspects and more international connecting factors than almost any other maritime situation. With respect to one and the same ship the mortgage and lien creditors may each have a different nationality, while the mortgages and liens may each have accrued in a different country or, as far as liens are concerned, on the high sea. A ship may subsequently have changed its « nationality » either before or after the several liens against it have accrued; likewise mortgages on such ship may have been registered before or after it changed its « nationality ».

Finally, it often happens that a ship is arrested and sold in the jurisdiction of a country which is foreign to all the elements set out above (country of registration or flag of the ship, country in which liens accrued, nationality of mortgagees and lien creditors).

2. As is shown by its name, the International Convention for the unification of certain rules relating to maritime liens and mortgages and the Protocol of signature both signed at Brussels on April 10th, 1926, represented an attempt to create international uniformity in this field.

Until today this convention has been ratified or adhered to by nineteen States, namely Argentina, Belgium, Brazil, Denmark, Spain, Estonia, Finland, France, Hungary, Italy, Monaco, Norway, Poland, Portugal, Roumania, Sweden, Switzerland, Syria and Turkey, of which States Estonia ceased to exist as an independent sovereign nation.

(*) HYPO - 2, French translation published in French Edition.

However, a number of important maritime countries, such as Canada, Germany, India, Ireland, Japan, the Netherlands, Russia, the United Kingdom and the United States decided to remain outside.

For this reason, it cannot be maintained that the 1926 Convention fulfilled the hopes with which it was greeted at the time of its adoption.

3. Outside the Convention, that is to say when a ship is arrested and sold in the jurisdiction of a *non-Contracting State*, the problems of conflict of laws that may arise in connection therewith and with the distribution of the proceeds of the sale, are generally decided in accordance with the Private International Law of the « forum » and with the particular municipal law applied by the « forum », irrespective of the flag or nationality of the ship concerned.

The same will occur whenever a ship flying the flag of (« belonging to ») a *non-Contracting State*, is arrested and sold in the jurisdiction of a *Contracting State*, unless under the municipal law of the « forum » the provisions of the Convention or similar provisions of national law should be applicable to such case.

4. This situation might perhaps be acceptable, if the municipal law of the maritime countries on maritime liens and mortgages would be more or less the same or if the rules of conflict of laws obtaining in these countries would on the whole be similar. Unfortunately this does not seem to be the case. Apart from certain ancillary questions which will be shortly referred to hereunder, the two main problems with which maritime creditors are faced are those relating to recognition and enforcement of « foreign » mortgages and more especially of « foreign » liens and to ranking. In the Courts of many countries both problems are solved in different ways leading to varying results. Under these circumstances the protection granted by liens and mortgages will differ depending on the country in the jurisdiction of which the ship concerned is arrested and sold.

5. This divergence in the judicial decisions given by the Courts of the numerous countries involved may in part be explained by the varying legal concepts adhered to under the domestic law and under the Private International Law of the « forum ». On the one hand we find a generous application of foreign law, on the other a restriction of that application by reason of the public policy of the country of the Court seized or as a result of other juridical concepts obtaining in that country. In some countries, such as England, although in principle both foreign mortgages and liens are recognised, yet the enforcement thereof is intimately connected with problems of jurisdiction and is considered in toto as forming part of procedural law, while in other countries both recognition and ranking are classified as being matters of substantive law. Another complication is due to the fact that the categories of claims giving rise to maritime liens differ from country

to country. Again the domestic law of certain countries recognizes certain rights in ships, not being maritime liens, as for instance the English possessory lien of shipwrights and port authorities which is a common law lien and which under certain conditions ranks higher than all maritime liens. Finally, the domestic law of certain other countries seems to discriminate against the rights of foreign creditors, specially creditors of mortgages registered elsewhere, in favour of their own nationals.

6. Since the second World War, there has been an increasing need for the financing of ships and especially of new buildings. Large amounts are lent to shipowners against mortgages both on ships being operated and on ships under construction. In many cases these latter mortgages are intended to survive in some form or other after the delivery of the ship to her owner.

Considering that under the law of many countries most liens override mortgages, as far as priority is concerned, banks and other financial institutions which are prepared to put up the funds required, find themselves in the invidious position that the greater or smaller value of their security may depend on the country in which they will have to enforce this security. More often than not the choice of that country is not theirs, but is determined by some other creditor, either a lien creditor or sometimes even an unsecured creditor, who has arrested the ship in one of the world's ports. The same applies to those Governments who owing to economic circumstances or under their national policy find themselves compelled to grant loans to shipowners or to guarantee such loans granted by third parties. The same may also apply to creditors of so-called contract liens.

The above considerations induced the Bureau Permanent of the Comité Maritime International to take up the study of this subject and to see what could be done to improve the present situation.

Further contents of this Report

7. In so far as the undersigned is aware, the topic of maritime liens and mortgages has been not discussed on an international level since 1926. Anyway, the Comité Maritime International did not study the subject since that year, except in so far as mortgages on ships under construction are concerned which were dealt with in the draft convention on registration of rights in respect of ships under construction which draft convention was adopted at the Stockholm Conference of 1963.

This means that in the first place the parties interested such as banks and other financial institutions, public authorities, shipowners, ships' masters, officers and crews, salvors, passengers, marine under-

writers and possibly others such as shipwrights, suppliers etc. etc. should pronounce themselves on the preliminary question as to whether, under the present conditions, there exists a need for further international legislation in this field. This is the first question to which the national associations will be asked to supply the answer.

Supposing the answer to the preliminary question to be in the affirmative, the national associations will be asked to express an opinion on the principles on which the new international rules should be based.

In order to facilitate the study of these matters, it was thought advisable to start by listing a number of points with respect to which the 1926 Convention does not meet with the requirements of modern conditions.

Next this Report will contain certain tentative suggestions which are intended to show a possible way, in which international agreement on this complicated subject might perhaps be arrived at, without however pretending to represent anything like proposals.

Thirdly, the attention of the national associations is drawn to certain matters which are ancillary to or related with the field of maritime liens and mortgages, matters which may or may not be included in the new convention ⁽¹⁾.

Finally, this Report ends with a questionnaire, the replies to which may enable the International Subcommittee to study the possibility of securing sufficient international agreement, so as to warrant the preparing of the draft of a new convention and of a report to be submitted to the next Conference of the Comité Maritime International.

The 1926 Convention

8. The fact that this Convention has been the subject of an ever increasing number of criticisms of a varying and sometimes conflicting nature and that these criticisms are being voiced, not only in countries which did not accede to it, but also in those which became parties thereto, seems to indicate that the Convention does not meet with present time requirements.

It may be useful to set out hereunder, by way of illustration and without commenting thereon, some of the points which according to the opinions expressed in countries of either category, call for improvement.

a) The liens referred to in Article 2, sub-paragraph (5), namely liens securing « claims resulting from contracts entered into or acts

(1) The words « new convention » used here and subsequently denote either a new Protocol to the 1926 Convention or the revised text of that Convention or an entirely new international treaty which would replace the 1926 Convention.

« done by the master, acting within the scope of his authority, away
« from the vessel's home port, where such contracts or acts are neces-
« sary for the preservation of the vessel or the continuation of the
« voyage, whether the master is or is not at the same time owner of
« the vessel, and whether the claim is his own or that of ship-chandlers,
« repairers, lenders, or other contractual creditors » (1) take prece-
dence over mortgages (2).

Already in 1926 doubts were expressed with regard to this rule. Nowadays, where the shipowner is in daily contact by wireless or telex with the master of the ship and his (the owner's) agents all over the world, as a result of which the shipowner is in a position to have the « contracts » referred to in Article 2, sub-par. (5) concluded in his own name and where moreover the creditor may secure payment by other means such as, for instance, a bank guaranty, there seems to be no justification to have the liens concerned take precedence mortgages (hypothecs).

b) The Convention recognises (creates) too many liens thereby reducing the security of mortgagees.

c) The Convention takes away what under the domestic law of certain maritime nations are called the rights of possessory lien creditors, which rights include, inter alia, a right of retention with respect to the ship.

A possessory lien should be granted to shipwrights.

d) The Convention does not preclude Contracting States from creating or maintaining in their domestic law a right of retention, also in so far as such right does not grant to the creditor a lien proper. As the present circumstances do not justify the maintaining of this right, the Convention should forbid the Contracting States to create or maintain the right in their municipal law.

e) Liens against freight should be abolished, as it reduces the security of the creditor having granted a loan to the shipowner against an assignment of freight (charterhire).

f) The provisions of the Convention relating to liens against freight have been badly drafted and require revision.

(1) The only authentic text of the Convention is the French text. The above quotation and any further references to the wording of the Convention are taken from a translation published by the Belgian Ministère des Affaires étrangères et du Commerce extérieur.

(2) In this report the word « mortgage » refers to both maritime hypothecs (or hypothecations) as known in the law of many Continental countries and the maritime mortgages of Anglosaxon law, and similarly the word « mortgages » denotes the creditor whose claim is secured by such hypothec (or hypothecation) and the holder of an Anglosaxon maritime mortgage.

g) The system of ranking « per voyage » which is set out in Article 5 and Article 6 of the Convention needs to be reconsidered and improved, as it has led to conflicting interpretations. In particular, the concept of voyage is ambiguous and would need clarification.

h) It is to be regretted that the Convention does not contain provisions dealing with the position of carterers of so-called « longterm charters » (vide : § 14 of this Report).

i) The Protocol of Signature which states that it has the same force and the same value as if its provisions were inserted in the text of the Convention itself, entitles the legislature of each Contracting State to change to a certain extent the order of priorities set out in the Convention and to recognise or confer certain liens other than those recognised by the Convention. The Protocol may therefore disturb the international uniformity which is aimed at by the Convention.

The Protocol should therefore be abolished.

j) Article 9, dealing with the extinction of liens against a ship is incomplete, in that a number of causes of extinction are not mentioned therein and are therefore subject to the municipal law of each of the Contracting States. The following possible causes of extinction of liens are not mentioned in the Convention, namely :

- i) change of flag or registration of the ship in the register of another country;
- ii) requisition of the ship by the authorities of any country;
- iii) deregistration of the ship without a subsequent re-registration in the same or in another country; this may happen when the ship is deregistered in connection with her being broken up;
- iv) the constitution by the shipowner of a limitation fund either under the Convention relating to the limitation of the liability of owners of sea-going ships of 1924 or under the Convention of 1957, or under the applicable domestic law of any country whether or not being a party to the 1926 Convention;
- v) the sale of the ship by the Order of a Court of a non-Contracting State.

k) Article 9 further provides that the grounds upon which the periods of extinction of liens may be interrupted are determined by the law of the court, where the case is tried, while the last paragraph of this article states that the Contracting States may provide in their domestic law for an extension of said periods under certain circumstances which are set out in that paragraph.

It is felt that this interruption should also be a matter of uniform international law and should not be left to international law.

l) Under the Convention the interruption of the period(s) of extinction of liens should be wholly abolished.

m) Article 4 dealing with « accessories » should be reconsidered and revised.

n) The drafting of a number of provisions of the Convention is defective, such as

- i) the description of the liens in Article 2 which in certain respects is not clear;
- ii) the use of the word « accessories » in Article 4 to denote certain claims of the shipowner, is incorrect as in the law maritime that word has an entirely different meaning;
- iii) the expression « other accident of navigation » used in Article sub-paragraph 4°) is ambiguous, etc. etc.

Method of arriving at an improvement of the present international situation

9. Having regard to the practically universal dissatisfaction with the 1926 Convention which dissatisfaction is felt also in many of the countries which acceded to this Convention, it does not seem doubtful that there would be reason for improvement.

The method, whereby such improvement should be attempted and which would be in accordance with the age-old traditions of C.M.I., would be the elaboration of a revised set of rules of *uniform law*.

These rules should encompass and give *uniform solutions* to as many as possible of the problems actually existing and experienced. The most important of these problems are those which relate to the international recognition of liens and mortgages and the respective priorities as between registered mortgages « inter se », as between liens « inter se » and as between mortgages and liens.

Other problems, however, some of which have already been referred to in paragraph 8 of this report, also call for improvement or require new international uniform rules dealing therewith. In this field, where creditors whose claims have different priorities, compete in the distribution of one particular sum of money (the proceeds of the sale of a ship), any gap in the uniform rules to be applied may lead to discrepancies in the treatment of the claims concerned, depending on the country in the jurisdiction of which the ship is sold and the proceeds of the sale are to be distributed, thereby affecting the security of the claims of one or more of such creditors. Thus, the result sought, namely the international uniform protection of the different categories of creditors concerned, would not be arrived at.

When considering the drafting of a new Convention, it should be borne in mind that in 1964 the situation with respect to maritime liens and mortgages is vastly different from the one in which the 1926

Convention was adopted, in as much as since the end of World War II the importance of maritime mortgages and of the sums involved therein have far outgrown the amounts of claims secured by maritime liens, whereas in 1926 it was the international recognition of these liens and therefore the international protection of lien creditors that were considered as being of the same, if not of greater interest than the security afforded by maritime mortgages. Having this in mind, it may be necessary, firstly, to further restrict the categories of maritime liens and, secondly, to forbid as between Contracting States any discrimination against foreign registered mortgages, in order to satisfy the requirements of the largest possible number of maritime countries.

It is only when it should appear absolutely impossible to reach international agreement on one or more points which, although of minor importance, yet should nevertheless be dealt with for the reasons mentioned above, that recourse should be had to formulating rules of conflict of laws, but only as a last resort.

10. There is no need to stress that one of the main objects of the work to be undertaken, will be to obtain support for the new Convention from as many nations as possible.

To what extent such support and international agreement will be gained and what be the substance of that agreement with respect to the numerous questions involved, will depend on a number of factors which can only be ascertained after the national associations will have given detailed answers to the questions contained in the questionnaire. It would therefore be useless to attempt to give already at this stage any concrete suggestions with regard thereto.

Ancillary and related questions

A. Effect of a change of the national registration (the flag) of the ship

11. This situation which presents an important problem, is not provided for in the 1926 Convention.

The situation may occur, not only when a ship in operation is deregistered in one country in order to be registered in another, but also when, upon her construction being terminated, she is delivered to a foreign shipowner.

In reviewing this situation, it is to be supposed that both before and after the change of the country of registration mortgages have been effected and liens have accrued. Moreover, it may happen that under the municipal law of a given country this deregistration and re-registration are effected without the mortgages having been notified thereof and their consent having been obtained and without lien creditors being aware thereof.

The first question which arises in this respect is whether mortgages which were registered and liens which had accrued prior to the de-registration of the ship, should survive this de-registration. Should this system be adopted, the change of flag would not affect either the international recognition of the rights concerned nor their respective priorities, *provided* that both countries concerned were Contracting States.

Should another system be adopted, it would be necessary to set up rules which in the event of a change of flag would give sufficient protection to the creditors whose rights existed prior thereto.

A problem which is not so easy to solve, presents itself when of the two countries of registration one should be a Contracting State and the other a non-Contracting State.

Nevertheless also this contingency should be provided for in the new Convention.

B. Extinction of liens and mortgages

12. Apart from the extinction of liens by lapse of time or through other causes to be stated in the new Convention, it seems desirable to provide that the sale of a ship flying the flag of one of the Contracting States by the order of a Court of a Contracting State and the distribution of the proceeds of that sale among the interested parties, including all mortgages and lien creditors, will at any rate have the effect of all mortgages, liens and other rights on the ship as existing at the date of sale being definitely extinguished (1).

The question, however, arises whether some sort of provision should not be worked out with respect to the sale of a ship by the order of a Court of a non-Contracting State. Supposing that the ship sold flew the flag of a Contracting State, would such sale have the same effect with respect to liens and mortgages as when she would have been arrested and sold within the jurisdiction of a Contracting State? The practical importance of this question is illustrated by the recent English case of « The Acrux » (Lloyd's Rep. I 1962, 405).

C. The draft convention on registration of rights in respect of ships under construction

13. This draft convention provides international uniform rules with respect to registered rights (especially registered mortgages) on ships under construction, which topic is not dealt with in the 1926

(1) In this connection reference is made to Article VII of the Geneva Convention of the 19th June, 1948, relating to the international recognition of rights on aircraft.

Convention or in any other international instrument. The main purpose of this draft convention is to arrive at international recognition of such rights and to make it possible for the rights concerned and more especially for mortgages to remain in force after the ship will have been delivered by the yard to the shipowner and as a result thereof will have been registered in a country other than that in which the shipyard is situated. For that purpose article 9 of the draft convention provides that registered title and mortgages shall, on registration of the ship in another Contracting State, be registered in the register of the latter State, retaining the priority resulting from the original registration, while, if these rights should not comply with the statutory requirements for registration of the national law of that other State, the legal effects of the original registration shall remain in force during a period of sixty days as from the deregistration of the ship from the register of the country of the shipyard, thus giving the mortgagee and the shipowner sufficient time to effect the registration of the mortgage in the foreign ship's register.

Doubtless a convention of this kind would strengthen the international position of mortgagees of mortgages on ships under construction in that they would acquire a larger measure of certainty of survival of their security. On the other hand, once the ship will have been put into operation, the mortgagee will be faced with all the problems already described, since the draft convention deals exclusively with registered rights. Consequently, maritime liens including liens accrued prior to the delivery of the ship to the shipowner, such as a lien accruing upon a collision of the ship under construction or during her trials, are outside the scope of the draft convention. The question, how such liens or further liens accruing after said delivery should rank with respect to the mortgages effected on the ship during the construction period, remains therefore unanswered.

For these reasons it would seem highly desirable if not imperative to incorporate the essence of the Stockholm draft in the new convention which should apply to all maritime liens and mortgages irrespective whether they accrued or were effected during the construction period or subsequently.

D. Long term charters

14. Nowadays the financing of ships, and more especially of new buildings, is often secured by an assignment of the charterhire due to the shipowner under long term charters concluded by the shipowner with third parties. In many cases such assignment is considered as constituting a better security than a registered mortgage.

In as much as an international convention on maritime liens and mortgages deals primarily with matters concerning security, it may

be asked whether such convention should not include provisions relating to the international recognition of the rights concerned and moreover relating to the effect of a voluntary sale or of a sale by order of the Courts of one of the Contracting States on these rights. Here also reference is made to the above-mentioned Geneva Convention of 1948.

Considering that this topic is already being dealt with by another international subcommittee of C.M.I., and on a wider scope, it may be sufficient at this stage to draw the attention of the national associations to this topic, without an attempt being made to explore in this Report the problems connected therewith.

E. Necessity of avoiding discrepancies between the new Convention and the 1957 Convention on Limitation of the Liability of Ship-owners.

15. While article 3, 2°) of the 1957 Convention provides that in each portion of the limitation fund set up under this Convention the distribution among claimants will be effected in proportion to the amounts of their respective claims, article 4 and article 7 of the 1926 Convention seem to establish, at least by implication, the right of lien creditors to share in such fund, due regard being given to the rank of their claims.

Although it would be difficult to imagine that these seemingly conflicting provisions could in practice ever give rise to difficulties, yet it would be a wise precaution to avoid such conflict when preparing a new convention. This may be done by stating in the new convention that, in the event of the distribution of a fund as aforementioned, the creditors sharing in the fund will do so « *pari passu* » without being entitled to any priority resulting from the liens securing their claims.

Questionnaire

I. Is it your opinion that new international legislation relating to maritime liens and mortgages would be necessary or desirable ?

II. a) In what respects does the 1926 Convention need to be improved ?

(to be answered by each national Association, the country of which has acceded to the Convention)

b) Same question, but to be answered by all other national Associations.

III. a) What would in your opinion be the requirements of a new convention ?

More specially :

b) Are you in favour of the new Convention providing for rules of uniform law with respect to all the problems mentioned in this report or to as many as possible of these problems ?

c) Are there any other problems in this field which are not dealt with in this report which in your opinion are susceptible of international uniform legislation ? If, so, please state such problems.

IV. Supposing that a new draft convention containing uniform provisions were adopted, then :

a) would you be in favour of an international recognition by all the Contracting States of maritime mortgages duly entered in the public register in which the ship is registered;

i) when the country of registration should be a Contracting State, and

ii) when this country should be a non-Contracting State ?

b) Should in your opinion the categories of claims giving rise to maritime liens, as set out in Article 2 of the 1926 Convention

i) be restricted and, if so, how; or

ii) be maintained, or

iii) be extended, and if so, to which other claims ?

c) Do you not agree that at any rate the claims referred to in Article 2, sub-paragraph 5°) should not be secured by any lien ?

d) Which should be the rules of the new convention that govern priorities :

i) as between registered mortgages « inter se »;

ii) as between registered mortgages and liens, and

iii) as between liens « inter se » ?

e) Should international recognition be granted to rights on ships other than maritime liens proper, as for instance the English possessory lien or a right of retention not giving rise to a lien ?

f) If so, what should be the priority, if any, to be granted to such rights ?

g) Or should the new convention forbid the Contracting States to maintain or create such rights in their municipal law ?

h) Should or should not the Contracting States be allowed to grant in their domestic law liens in respect of claims other than those to be listed in the new convention, even if such liens should be post-posed to all registered mortgages and to all the liens listed ?

i) Do you agree that under no circumstances the Contracting State should discriminate against the rights resulting from mortgages having been duly registered :

i) in a Contracting State, or

ii) in a non-Contracting State ?

j) Are you of opinion that under the new Convention liens should be enforceable against the freight earned by the ship ?

k) If so, please set out the conditions under which, in your opinion, freights should be liable to a lien, inter alia, the freight earned by *whom* and during *what voyage*.

l) Should maritime liens be enforceable again *other* assets of the shipowners, such as one or more of the sums due to the owner and referred to in Article 4 of the 1926 Convention ?

V. a) What period or periods should be fixed in the new convention with respect to the extinction of liens ?

b) Should these periods run from the date on which the claim secured by the lien accrues or from the date on which the creditor seeks to enforce the lien ?

VI. a) Do you agree that the new Convention should list the causes of interruption of the period or periods of extinction and that under national law interruption by other causes should not be allowed ?

b) If so, what should be the causes to be listed ? (v. paragraph 8, sub-par j) of this report).

c) Or are you of opinion that under the new Convention no interruption of these periods should be allowed ?

VII. a) Should the new convention deal with problems connected with a change of nationality (flag) of the ship concerned which problems discussed in paragraph 11 of this report ?

b) In the affirmative, which is the solution you propose with regard to these problems ?

VIII. a) Do you agree that the new convention should provide that, in the event of a ship flying the flag of a Contracting State being sold by the order of a Court of one of the Contracting States, all registered mortgages and liens on such ship shall be extinct as a result of such sale and the distribution of the proceeds of the sale ?

b) Do you consider it necessary or desirable for the new convention to contain similar provisions with respect to the sale of a ship by the order of a Court of a non-Contracting State and, if so, subject to what conditions ?

IX. a) Should the new Convention also cover mortgages on ships under construction and any liens accruing against such ship during the period of construction ?

b) In the affirmative, should this be done by incorporating the essence of the draft Convention on the Registration of rights in respect of ships under construction in the new convention ?

X. a) Are you in favour of the new convention dealing with long-term charters, such as bare-boat charters, time charters and charters for consecutive voyages, for the purpose of protecting the position of the charterer in the event :

i) of a sale of the chartered ship by the order of a Court of either a Contracting or of a non-Contracting State;

ii) or of a voluntary sale of the ship ?

b) In the affirmative, should such provisions relate to long term charters without further qualifications or should the application of the provisions be restricted to the case in which the shipowner had assigned his rights under the charter to a third party by way of security ?

c) In either case, what would be your suggestions for dealing with this particular matter ?

XI. Do you agree that otherwise than in the 1926 Convention, the new convention should contain a provision of the kind mentioned in paragraph 15 in fine of this report ?

XII. a) What should be in your opinion the scope of application of the new Convention ?

b) Should it be as wide as possible, so as to apply also, *inter alia*, to ships flying the flag of a non-Contracting State ?

XIII. Please give a summary description of your domestic law relating to maritime liens and mortgages, dealing more specially with the following questions :

a) what are the maritime liens recognised in your domestic law;

b) does your domestic law recognise other rights on or with respect to ships, such as :

i) possessory liens;

ii) statutory liens;

iii) a right of retention not giving rise to a maritime lien ?

c) What are under your domestic law the respective priorities :

i) as between registered mortgages « *inter se* »;

ii) as between registered mortgages and maritime liens;

iii) as between maritime liens « *inter se* » and

iv) as between registered mortgages and maritime liens, on the one hand, and the « other rights on a ship » referred to in sub-paragraph b) above on the other hand ?

d) Under your domestic law is it possible to have a ship deleted from the national register on being sold abroad, without the mortgagees having been notified and their consent having been obtained ?

e) Under your domestic law can a ship be entered in your national register without production of evidence that her previous registration in another country was deleted ?

f) Are there any other provisions of your domestic law that would be pertinent to the subject under study ?

XIV. Which are the rules of conflict of laws applied by your Courts in cases to which the 1926 Convention does not apply ?

XV. Assuming your answer to question I to be in the affirmative, would you favour :

a) by amending the 1926 Convention, or

b) by drafting a protocol to the 1926 Convention, or

c) by preparing an entirely new convention which would replace the 1926 Convention ?

Amsterdam, January 1964.

J. T. Asser

President of the International Subcommittee

SWEDISH ASSOCIATION OF INTERNATIONAL MARITIME LAW

REPLY

INTRODUCTORY COMMENTS

The Swedish Association had the pleasure to receive the Preliminary Report and Questionnaire during the first part of January 1964 together with a request that the Association should give its answer and its report middle of March 1964. We should like at this stage to pay our tribute to the chairman of the International Subcommittee for the very lucid and full analysis of the problems involved. The subject is indeed very complicated reaching over a wide field.

The Swedish Association has endeavoured in the time available to give its answers to the various questions in as full way as possible. A group consisting of Mr. P. Dreijer, E. Hagbergh, L. Hagberg, Cl. Palme, K. Pineus, L. Rahmn have studied the subject and has also cooperated with the study group formed in Norway consisting of Mr. Sj. Braekhus, H.P. Michelet, A. Rein and Fr. Ringdal. Still the complicated nature of the subject, the various and sometimes conflicting interests involved and the limited time available for through studies of various complicated aspects make it imperative to request that our answers should be regarded as of a preliminary nature and should not necessarily on all points be held as the final and definite views of the Swedish Association.

We should like to add that many of the questions in the Questionnaire may be held as different approaches to the same problems and our answers will accordingly in many cases be overlapping.

In order not to upset the timetable of the International Subcommittee the Swedish Association after this important and general reservation should like to submit the following report.

GENERAL OBSERVATIONS

We have considered what would be the best methodical approach to the problems involved.

Jeremy Bentham's words : « The greatest happiness of the greatest number is the foundation of morals and legislation » are we submit applicable to the work in hand. One of our targets, perhaps the most important one, should be to strengthen the position of long term credits in ships. This can only be obtained if what emerges as the ultimate results of our efforts in this field is framed in such a way as to attract as many ratifications as possible and thus constitute a practical example of « the greatest happiness of the greatest number » of States. In this respect the 1926 Convention leaves much to be desired.

To that end our Association has considered the problem which we develop in our answers to the Questionnaire, whether it would not be realistic to resort to a system of « separate units » (Vide i.a. our answer to Questions I and II).

Question

I. Is it your opinion that new international legislation relating to maritime liens and mortgages would be necessary or desirable ?

Answer

Yes, we think new international legislation relating to maritime liens and mortgages desirable.

We are aware that maritime circles attach great importance to a system by which the Contracting States recognize mortgages duly created in another Contracting State.

We submit that a separate Convention be made in which it is said that the Contracting States undertake to recognize and accept a mortgage duly created in another Contracting State. Such a convention should also deal with the effect of a forced sale of a vessel in a Contracting State and should we hope be adopted by most Maritime Countries.

The draft Convention adopted in Stockholm in 1963 on registration of ships under construction has, we understand, much appeal to some countries and less to others. It would probably be technically possible to have the separate convention on mortgages referred to above worked into the Stockholm draft. The coolness shown towards it in some countries must not be allowed to wreck the general acceptance of other Conventions which otherwise might prove acceptable to most countries. For that reason it might prove advisable to retain the draft Convention on registration of ships under construction as a separate Convention.

The attitude towards maritime liens is not identical everywhere. For that reason we submit that a separate Convention be made dealing with liens, priorities, prescriptions, etc.

Naturally the three Conventions, if one has to resort to that number should be prepared in such a way as to eliminate all difficulties in

respect of coordinations for those Contracting States that are prepared to adopt all three of them.

Should the further exploration of the attitude of the various National Associations prove that there is unanimity of views of what we in this connection might call « the three units », or on two of them, then of course one might try to follow a less complicated course and have only one or two Conventions. The methodical approach we suggest has thus as its one and only aim to get as many adherents as possible.

Question

II. (a) In what respect does the 1926 Convention need to be improved? (to be answered by each national Association, the country of which has acceded to the Convention)

(b) Same question, but to be answered by all other national Associations.

Answer

As we have already said under our reply to Question number I we believe it might well prove necessary to have three Conventions :

(i) One dealing with the mutual acceptance of mortgages and registration of mortgages, and also with the effect of a forced sale.

(ii) One dealing with the registration of rights in ships under construction.

(iii) One dealing with liens, priorities and prescription. As for the Convention on liens we should like to underline the following points.

The group of liens now appearing as number 1 in Article 2 need a careful study as to the actual meaning. We have however no fundamental changes in mind. It might well be that this group had better be split up in two groups, one comprising the costs of a forced sale of a vessel and the costs for preserving the vessel after a petition has been filed for a forced sale, the other comprising charges debited for public services to the ships. It should particularly be mentioned that other public charges or taxes do not give right to a lien.

As for the content of the Protocol of Signature we believe that in some respects it should be put into the Convention itself, whereas some of it had better be cut out altogether.

The rights appearing in the Protocol under I nr 1 should we think be cut out. Article 2 nr 1 of the Convention is sufficient in that respect.

The costs of removing a wreck which now appear under 1 nr 2 should be put into the first group of liens in the new Convention.

The rest of nr I should we submit be abolished.

As for the text now appearing in the Protocol of Signature under nr II it had probably better be retained in a Protocol. Should most national Associations like to have the text of nr II appear in the Convention itself we would not oppose such a course though.

The liens in Article 2 appearing under 2 and 3 should be retained.

The idea behind the group of liens now appearing under nr 4 should be retained. We should like the wording to be improved. We think that it should be said in a general way.

(i) that a third party is entitled to a lien for damages which occur in consequence of the navigation and management of the vessel

(ii) that the indemnity for bodily injury and for cargo damage now appearing in nr 4 should be retained.

If it is felt that an enumeration should be added we think that as examples be mentioned damages due to collision, explosion and oilpollution, damages caused to harbours and costs incurred for removing a wreck which has become an obstruction to navigation.

We have carefully weighed the advantages and disadvantages of retaining the liens for claims now appearing under nr 5. We have reached the conclusion that they should be struck out. (Vide also our reply to Question IV (c) below.)

We submit that in the new convention the right of retention should be dealt with.

We are not prepared at this stage to say whether such a right should be given a rank before or after a mortgage in a ship.

In favour of the idea of having the right of retention rank immediately *before* the mortgage can be said :

(a) that it would make it more easy for a shipowner to order repairs as the shipyards would get a better security for the repair bill than they have at present in our country and

(b) that the right of retention would be given the same rank as it has already in Denmark, Norway and the United Kingdom. (We lack information however of the rank the right of retention has in other countries.)

In favour of the idea of having the right of retention rank immediately *after* the mortgage can be said :

(a) that this would permit the mortgagees to have a say on the question whether the classification work, or the work for owners account should be put in hand or not; the reasons for not doing it could well be that it would be more economic to have the ship sold without investing additional money in it. (Average repairs covered by Hull Underwriters do not enter the picture in this connection.)

(b) that for the shipyard industry as a whole to move up the rank of the right of retention would be a mixed blessing indeed; shipyards are to a very large extent long term creditors in ships. They have certainly more money at stake in that respect than the amounts of most repair bills.

(c) that shipyards have every opportunity to obtain information and check the mortgages of a ship and can decide, before starting out on a large repair works, to obtain a bankguarantee or the assent of mortgagees, should they feel this a wise precaution.

Until we know more of the rank granted to the right of retention in other countries our Association should like to reserve its view as to the rank that should be accorded to such right in the new convention.

We submit that a new Convention on liens should deal with the following problem as well :

The right to become subrogated to a lien; that is to say the Convention should say that the lien should follow the claim.

The separate Convention on recognition on mortgages should in our view settle the following problems :

(i) that a forced sale of a ship in a Contracting State according to *lex fori* finally disposes of all maritime liens and mortgages on that ship

(ii) that a buyer of such a ship has the right to register his ship on the basis of a document issued by the public authority that has sold the ship.

We mean of course in respect of (i) that nevertheless the buyer and the mortgagee should be at liberty to decide that the mortgage in the ship should be maintained.

Question

III (a) What would in your opinion be the requirements of a new convention ?

More specially :

(b) Are you in favour of the new Convention providing for rules of uniform law with respect to all the problems mentioned in this report or to as many as possible of these problems ?

(c) Are there any other problems in this field which are not dealt with in this report which in your opinion are susceptible of international uniform legislation ? If, so, please state such problems.

Answer

Our attitude towards Question III is we believe made sufficiently clear by the answer we have given to Question I and II. Still further investigation of the whole subject might well prove that there might be other problems in this field which are susceptible of international uniform legislation. For instance the subject dealt with in the report regarding « coordination of the Conventions relating to Liens and Mortgages and Limitations ». It has also been pointed out that for those States that have ratified the arrest conventions of 1952 a possible conflict between the two conventions should be looked into.

Question

IV Supposing that a new draft convention containing uniform provisions were adopted, then :

(a) would you be in favour of an international recognition by all the Contracting States of maritime mortgages duly entered in the public register in which the ship is registered;

- (i) when the country of registration should be a Contracting State, and
(ii) when this country should be a non-Contracting State ?

Answer

We should like to answer the question IV (a) (i) in the affirmative.

We do not think that a new Convention should say expressly that it *does* recognize maritime mortgages duly entered in the public register whatever the flag of the ship, nor that the Convention should say that it *does not* in case the ship flies the flag of a non-Contracting State.

Were the Convention to say that it does recognize the maritime mortgages of a Contracting State it would follow that if the ship flies the flag of a non-Contracting State it is up to the national law to decide this issue. Sweden might well be prepared to recognize the maritime mortgages made out in the non-Contracting State of A but in exceptional cases be reluctant to accept one made out in the non-Contracting State of B. The question should be left open in the Convention.

Question

IV (b) Should in your opinion the categories of claims giving rise to maritime liens, as set out in Article 2 of the 1926 Convention

- (i) be restricted and, if so, how; or
(ii) be maintained, or
(iii) be extended, and if so, to which other claims ?

Answer

Our attitude towards the number of maritime liens will follow from our answer to Question II.

With regard to the type of liens now appearing under nr 5 we have as we have already said come to the conclusion they should be struck out. We have discussed at some length before reaching this result.

Those in favour of the retention of the type of lien appearing under nr. 5 have said, that this lien makes it much easier for the master to obtain supplies, that owing to the lien for these claims the creditor will dare to make a contract without asking for cash payment or bank-guarantee, that therefore the ship will not be retained in port unnecessarily in order to await such security, that the opposition to the retention of this type of liens is based on experience from the highly efficient liner trade, that it does not take into account the problems of the small ships navigating on a thin economical margin.

Those in favour of abolishing altogether the type of liens appearing under nr. 5 submit, that communication being what they are today this type of contract is largely something of the past and has little practical importance, that experience goes to show that abuses are none

too rare, i.e. ships go on sailing, obtaining fuel and stores in various ports on the strength of maritime liens long after they are bankrupt, to the detriment of long term creditors.

Thus we advocate that liens under nr. 5 should be struck out.

Question

IV (c) Do you not agree that at any rate the claims referred to in Article 2, sub-paragraph (5°) should not be secured by any lien ?

Answer

Our answer to this question is « yes ». Claims referred to in Article 2 sub-paragraph 5° should not be secured by a lien.

Question

IV (d) Which should be the rules of the new convention that govern priorities :

- (i) as between registered mortgages « inter se »;
- (ii) as between registered mortgages and liens, and
- (iii) as between liens « inter se » ?

Answer

The answer to question IV (d) (i) should in our view be this.

The separate Convention on recognition of mortgages which we favour should contain rules as to the priorities between registered mortgages inter se. The priority should count from the time of entry in the register. If the entry is made the same date the priority should be identical, unless in the applications it is explicitly said the order of priority as between them. The priority between mortgages on the one hand and liens and right of retention on the other should be dealt with in the separate Convention on lien.

The answer to question IV (d) (ii) we have already discussed above.

In answer to question IV (d) (iii) we should like to say that Mr. Asser's description of the law of the Netherlands has much that appeals to us. Mr. Asser says (page 9 in his paper on Maritime Liens and Mortgages in the conflict of Laws) « These liens rank in the order in which they are listed in the article irrespective of the date on which they arise except that in the case of several liens for salvage the later has precedence over the earlier ». Such a system appears to us to have the additional advantage of doing away with many of the present difficulties in respect of the concept of « voyage ».

It might be worth considering if the concept of « distinct occasion » (Cf i.a. Article 2 of the 1957 Convention on Limitation) could be made to work in this connection.

Question

IV (e) should international recognition be granted to rights on ships other than maritime liens proper, as for instance the English possessory lien or a right of retention not giving rise to a lien ?

Answer

To continental lawyers the right of retentions is something with which they are familiar whereas the finer shades of the common law right of possessory lien is rather hard to grasp. In the paper *Maritime Liens and Mortgages in the Conflicts of Law*, Gothenburg 1963, Mr. Asser says (page 24) :

« Next we have the so-called possessory lien, which is a common law and not a maritime lien. In a recent case, namely « *The St. Muriel* » it has been described as the right of the shipwright or ship-repairer to retain the ship in his possession until his claims for payment are satisfied. In principle the shipwright's lien in respect of repairs ranks only after the maritime liens and is only enforceable so long as the ship remains in the possession of the shipwright, but the right of retaining the ship does not prevent her from being arrested and sold by order of the Court. In such event the English courts specifically protect the repairer's interest by ranking his claim high in the order of priorities, namely by preferring it to all registered mortgages and statutory liens, while it is being postponed to all maritime liens which accrued before the possessory lien came into being (« *The St. Merrill* » sup.). As regards questions of rank, all maritime liens override all registered mortgages whether accrued prior or after the mortgage and all statutory liens, the theory being that the mortgagee is an assignee to the owner's right of property.

Similarly, all possessory liens rank after existing maritime liens. Mortgages take precedence over later statutory liens which only accrue at the time of arrest of the ship. »

We are in favour of having a Convention on Maritime liens contain a provision about right of retention as we have already said. We are not prepared at this stage to indicate definitely the rank that should be given to the right of retention.

Whatever the outcome of the discussions that will follow on the particular issue of rank it will probably prove necessary to have the new convention to say also :

(i) that only claims for building and repairing of a ship give right of retention;

(ii) that only claims accruing whilst the vessel is in the possession of the builder or the repair yard should give right of retention. As soon as the vessel is out of the possession of the claimant the right of retention is extinguished;

(iii) that the claim for which a right of retention is exercised is payable out of the proceeds for a forced sale;

(iv) that the ship should be released as soon as the Owner has given full security for the claim for which right of retention is exercised.

In this respect the provisions of the 1957 Convention on limitation of liability might well serve as a model.

Question

IV (f) If so, what should be the priority, if any, to be granted to such rights ?

Answer

We have already when answering question IV (e) indicated that we believe that were an international Convention should contain a provision about right of retention, but we are not prepared to commit ourselves at this stage as to rank.

Question

IV (g) Or should the new convention forbid the Contracting States to maintain or create such rights in their municipal law ?

Answer

We should of course very much like a Convention on liens to forbid the Contracting States to maintain or create other rights in their municipal law even if they obtain a lower rank than the rank granted to liens, right of retention and mortgages in the new Convention.

Still this might prove to be asking too much.

If one has to resign oneself to allow the Contracting State to create special rights in their municipal law then we submit that the Convention should decide that such rights should

(i) take rank after the rights enumerated in the Convention

(ii) be applicable only for the ships flying the flag of that particular State, or of another State that has introduced the same right in its national legislation.

Question

IV (h) Should or should not the Contracting States be allowed to grant in their domestic law liens in respect of claims other than those to be listed in the new convention, even if such liens should be post-posed to all registered mortgages and to all the liens listed ?

Answer

In our answer to Question II (a) and IV (g) we said, that while we should very much like the Convention on liens to forbid the Contracting States from creating in their domestic law liens in respect of

claims other than those listed in the new Convention, we did not believe this was practical policy. We submit however again that if such rights are made permissible they should be dealt with as we explain above under our answer to Question IV (g).

Question

IV (i) Do you agree that under no circumstances the Contracting State should discriminate against the rights resulting from mortgages having been duly registered :

- (i) in a Contracting State, or
- (ii) in a non-Contracting State ?

Answer

The Swedish Association agrees that under no circumstances the Contracting State should discriminate against the rights resulting from mortgages having been duly registered in a Contracting State. As for mortgages registered in a non-Contracting State the Contracting State should in our view have liberty of action and accordingly the Convention should say nothing on the subject. (Vide also our answer to Question IV a).

Question

IV (j) Are you of opinion that under the new Convention liens should be enforceable against the freight earned by the ship ?

Answer

We have discussed and weighed very carefully the advantages and disadvantages of the present situation with regard to liens in respect of freight and other accessories appearing in Article 4 of the 1926 Convention. We have reached the conclusion that lien in accessories should be struck out entirely, with the possible exception of those appearing in Article IV nr 2. (Vide also our answer to Question IV e).

Question

IV (k) If so, please set out the conditions under which, in your opinion, freight should be liable to a lien, inter alia, the freight earned by *whom* and during *what voyage*.

Answer

In view of our negative answer to question IV (j) there is no need for us to answer this question.

Question

IV (l) Should maritime liens be enforceable against *other* assets of the shipowners, such as one or more of the sums due to the owner and referred to in Article 4 of the 1926 Convention ?

Answer

As we have already said in our reply to Question IV (j) we think that no lien should be enforceable against other assets of the shipowner than the ship, thus preferably not in any of the sums referred to in Article 4. It could be contemplated though that the sum referred to in Article 4 nr 2 for unrepaired damages should be retained.

Question

V (a) What period or periods should be fixed in the new Convention with respect to the extinction of liens ?

Answer

We think that the periods of extinction of the 1926 Convention should be maintained except of course that the particular period of six months for liens under Article 2 nr. 5 would disappear if these types of liens are struck out which we think they should.

(i) We submit that the Convention had better also say that the Court should apply the *lex fori* in respect of liens and their prescription

(ii) that a lien should become time barred within the period now appearing in Article 9 first para unless before the expiry of such period proceedings have commenced before a competent Court or an Arbitrator or an Arbitration Tribunal in a Contracting State or the claim has been filed in the bankruptcy estate of the debtor in a Contracting State.

(iii) that a right of execution is time barred unless application for a forced sale in a Contracting State is made within a year counted from a final decision of an action described in nr. (ii) above.

The Convention on mortgages should set out that mortgages are governed by the law of the State where the ship is registered.

Question

V (b) Should these periods run from the date on which the claim secured by the lien accrues or from the date on which the creditor seeks to enforce the lien ?

Answer

The period for extinction of liens should run we think from the date on which the claim secured by a lien accrues. Thus no change is advocated.

As for the extinction of the right of retention we refer to our reply under Question IV e under (ii).

Question

VI (a) Do you agree that the new Convention should list the causes of interruption of the period or periods of extinction and that under national law interruption by other causes should not be allowed.

(b) If so, what should be the causes to be listed (v. paragraph 8, sub-par. (j) of this report).

(c) Or are you of opinion that under the new Convention no interruption of these periods should be allowed ?

Answer

Our Association holds the view that the period of extinction should not be allowed to be interrupted. Our answer is therefore in respect of

(a) no; unless it is felt that it is necessary especially to mention that an action in court or before an Arbitrator or Arbitration Tribunal or filing in bankruptcy breaks the period of extinction. To us this would appear superfluous.

(b) In view of our attitude as explained to question VI (a) we do not have to give the list.

Subject to the qualification given in our answer to question VI (a) we answer (c) in the affirmative.

Question

VII (a) Should the new convention deal with problems connected with a change of nationality (flag) of the ship concerned which problems are discussed in paragraph 11 of this report ?

(b) In the affirmative, which is the solution you propose with regard to these problems ?

Answer

(a) The new Convention should in our view deal with problems connected with a change of flag.

(b) The draft convention on Registration of ships under construction, adopted by the C.M.I. in 1963, contains in article 11 provisions in this respect. Our Association believes that the solution adopted in the said article might well prove a formula that might be used in the new Convention.

To these provisions should, we think, be added the rule about forced sale which we propose under our answer to Question II.

Question

VII (a) Do you agree that the new Convention should provide that, in the event of a ship flying the flag of a Contracting State being sold by the order of a Court of one of the Contracting States, all registered mortgages and liens on such ship shall be extinct as a result of such sale and the distribution of the proceeds of the sale ?

(b) Do you consider it necessary or desirable for the new convention to contain similar provisions with respect to the sale of a ship by the order of a Court of a non-Contracting State and, if so, subject to what conditions ?

Answer

With respect to Question VIII (a) we think that the Convention should say that on sale of the ship in a Contracting State all liens and mortgages should become extinct. (Vide also our answer to Question II (d).)

As for Question VIII (b) would not the result if nothing is said in the Convention as to the effect of a sale in a Non-Contracting State, be that the Court is free to judge each case on its merits? Is that not what most of us should like?

We are not sure that it is desirable to deal in the Convention with the problem mentioned in Question VIII (b).

Question

IX (a) Should the new Convention also cover mortgages on ships under construction and any liens accruing against such ship during the period of construction?

(b) In the affirmative, should this be done by incorporating the essence of the draft Convention on the Registration of rights in respect of ships under construction in the new Convention?

Answer

For the reasons explained under our answer to Question I above we think that a new Convention should cover mortgages on ships under construction along the lines of the draft Convention on the subject adopted in Stockholm 1963. It might perhaps prove necessary to have that issue dealt with in a separate Convention prepared in such a way as to not come into conflict with a Convention of mutual recognition of mortgages and forced sale and a Convention on liens.

As already pointed out in our answer to Question I should the general reaction of the National Associations prove to be such as to make it possible to have everybody agree to have a Convention on mutual recognition of mortgages and on ships under construction made into one Convention only we should welcome it. Still at present we believe it is a sound policy to strive to have a separate Convention for ships under construction.

Question

X (a) Are you in favour of the new Convention dealing with long-term charters, such as bare-boat charters, time charters and charters for consecutive voyages, for the purpose of protecting the position of the charterer in the event:

(i) of a sale of the ship chartered by the order of a Court of either a Contracting or of a non-Contracting State;

(ii) or of a voluntary sale of the ship?

(b) In the affirmative, should such provisions relate to long term charters without further qualifications or should the application of the provisions be restricted to the case in which the shipowner had assigned his rights under the charter to a third party by way of security ?

(c) In either case, what would be your suggestions for dealing with this particular matter ?

Answer

An International Subcommittee under the chairmanship of Mr. Giorgio Berlingieri (The Berlingieri Committee, for short) has undertaken a study of the problem of charterparties. A working group within Berlingieri Committee has produced a report and a draft convention.

The work of the Berlingieri Committee has for the time being been suspended owing to the view that it might well prove desirable to see if and to what extent the registration of charterparties and the problems connected with it should form part of the revision of the 1926 Convention.

We are aware that c/p are in many cases used as collateral for a long term credit granted to a ship. In fact creditors in many cases regard the c/p as of greater importance as security than the ship itself. Our discussions have however shown that the question of registration of c/p and the position of the c/p in case of a forced sale of the vessel is very hard to find. We believe that in some countries, but not in Sweden, there is opposition to the whole idea of having c/p dealt with by an international Convention whether separate or not.

Our endeavours at this stage should be to get the widest possible acceptance of the Conventions which are to be prepared and controversial issues, if not essential to the Conventions in preparation, had better be avoided.

For these reasons, we have, reluctantly indeed, reached the conclusion that the answer to Question X (a) had better at this stage be « no ». Needless to say that if other National Associations should react positively to the query under X (a) then we shall join in the efforts to find an acceptable solution.

Our answer to question (c) is thus to a certain extent dependent on the reactions of other National Associations. If these reactions prove that most Associations prefer to have the matter of c/p kept outside a new Convention on mortgages then we believe the study of c/p should be proceeded with as separate issue, as it has become too important to be kept in cold storage very much longer.

Question

XI. Do you agree that otherwise than in the 1926 Convention, the new convention should contain a provision of the kind mentioned in paragraph 15 in fine of this report ?

Answer

It might well prove a wise precaution to avoid a possible, although farfetched, conflict with the 1957 Convention on limitation by stating in the new Convention that the creditors sharing in a limitation fund under the 1957 Convention do so *pari passu*. They should not be entitled to any priority resulting from the liens securing their claims. (Vide also our answer to Question III.)

Question

XII (a) What should be in your opinion the scope of application of the new Convention ?

(b) Should it be as wide as possible, so as to apply also, *inter alia*, to ships flying the flag of a non-Contracting State ?

Answer

We should like the convention to have a wide application.

Thus it should lay down *i.a.* that a maritime mortgage issued in a Contracting State should be held valid in other Contracting States.

We have already said that should it prove practical policy to allow the Contracting States to introduce in the national law liens or other rights not mentioned in the Convention the Court in the Contracting State shall not be permitted to apply such additional liens and rights to other vessels than those belonging to the same State as the Court or of another State that has introduced the same right in its national legislation. (Vide our answer to Question IV (g).)

As for the maritime liens that will appear in the new Convention the Convention should say that *lex fori* should apply.

Question

XIII Please give a summary description of your domestic law relating to maritime liens and mortgages, dealing more specially with the following questions :

- (a) what are the maritime liens recognised in your domestic law;
- (b) does your domestic law recognize other rights on or with respect to ships, such as :
 - (i) possessory liens;
 - (ii) statutory liens;
 - (iii) a right of retention not giving rise to a maritime lien ?

Answer

(a) Sweden has ratified the 1926 Convention and introduced its contents in the maritime code.

(b) Our law does not recognize

(i) possessory liens but we do recognise a right of retention.

(ii) Yes, we have, on the strength of article 3 second par. added a statutory lien, ranking after maritime mortgages, for claims for damage due to a B/L containing false or incomplete statements. This we think should be struck out from our law.

(iii) Yes, we have a right of retention which ranks after maritime liens and mortgages. As we have already said we should like a new Convention to introduce a right of retention.

Question

XIII (c) What are under your domestic law the respective priorities :

(i) as between registered mortgages « inter se »;

(ii) as between registered mortgages and maritime liens;

(iii) as between maritime liens « inter se » and

(iv) as between registered mortgages and maritime liens, on the one hand and the « other rights on a ship » referred to in sub-paragraph (b) above on the other hand ?

Answer

We describe, in our answer to Question IV (d) (i), the way we think a new Convention should govern priorities between mortgages « inter se ». The reply given to the said question is at the same time a brief outline of our own system of priorities between registered mortgages and our answer to Question XIII (c) (i) had therefor better be a reference to what has been said already in respect of Question IV (d) (i).

As Sweden has ratified the 1926 Convention the priorities between registered mortgages and maritime liens are those of the Convention. (Question XIII (c) (ii) and (iii).

The « other rights on a ship » to which references made under (iv) would under our law be the right of retention, which in Sweden ranks after liens and mortgages.

We have already, when we give our answer to Question IV (e), submitted our views in respect of the right of retention, that is to say we advocate that such right be inscribed in the new Convention.

Question

XIII (d) Under your domestic law is it possible to have a ship deleted from the national register on being sold abroad, without the mortgagees having been notified and their consent having been obtained ?

Answer

Unfortunately practical experience shows that it is possible in our country to have the ship deleted from the national register on being sold abroad without the mortgagees having been notified and their consent having been obtained.

This is highly unsatisfactory.

Question

XIII (e) Under your domestic law can a ship be entered in your national register without production of evidence that her previous registration in another country was deleted ?

Answer

The answer is in the affirmative.

Question

XIII (f) Are there any other provisions of your domestic law that would be pertinent to the subject under study ?

Answer

No we don't think there are.

Question

XIV Which are the rules of conflict of laws applied by your Courts in cases to which the 1926 Convention does not apply ?

Answer

Very little definite can be said about the working of the conflict of law rules in respect of maritime liens and mortgages.

Some Scandinavian Courts have accepted maritime liens in ships flying the flag of the Courts although the liens were created abroad and unknown to *lex fori*. This then would mean an adoption of « *lex loci contractus* » for liens.

As for maritime liens in respect of claims for wages this would we believe be dealt with according to the law of the flag.

If there are liens duly created under *lex fori*, maritime mortgages created abroad or vice versa or maritime liens created both abroad and at home the position in respect of rank and prescription becomes most complicated if and when the Court recognises such rights.

We do not know for certain what the decision would be but we should not be surprised that in a « mixed bag » such as described above our Courts would find that to apply *lex fori* to question of rank and prescription might perhaps be made to work, although it would not solve the position for a lien created abroad with no equivalent in *lex fori*.

The complicated problems that may occur, and have done so, should stimulate the various States towards a solution of all the problems involved.

Question

XV Assuming your answer to question I to be in the affirmative, would you favour :

- (a) by amending the 1926 Convention, or
- (b) by drafting a protocol to the 1926 Convention, or
- (c) by preparing an entirely new convention which would replace the 1926 Convention ?

Answer

We think that it would be preferable to draft entirely new conventions to replace the 1926 Convention. Probably much of the contents of the 1926 Convention might be used in the new ones.

Stockholm 10 March 1964.

for the Swedish Association of International Maritime Law

Kaj Pineus, President

Claes Palme, Hon. Secretary.

FINNISH MARITIME LAW ASSOCIATION

REPLY

I. Having regard to the fact that at the time when the Convention on Maritime Liens and Mortgages was brought into being in 1926 the shipowner's liability was limited either to the value of the ship or to a certain amount of money, but that the Brussels Convention 1957 on the Limitation of Shipowners' Liability fixes this liability at a certain amount of money only, without regard to the value of the ship, there are stipulations in the 1926 Convention, which are in conflict with the stipulations in the 1957 Convention. Thus under the 1926 Convention the holder of a claim, to which a maritime lien is attached, has the rights to be paid in full, irrespective of amounts due to other claimants, whereas according to the 1957 Convention the total proceeds are to be divided *pari passu* between all claimants.

There thus seem to be reasons for having these matters clarified.

II. a) In addition to clarification being necessary on conflicts between these two Conventions, it seems to be a widespread opinion that the maritime liens of the 1926 Convention are too far reaching and thus damaging to more important claims. As such more important claims registered mortgages have been considered.

III. b) The stipulations regarding maritime liens and mortgages could, as is the case with the 1926 Convention, be brought together in one and the same Convention. It has, however, been said that if there are two separate Conventions, one regarding ships under construction and another relating to ships trading, then, perhaps, it would be easier to secure ratification. If that is so, we would have no objections to two different Conventions, but we think it would be important to have liens for vessels under construction (and such liens can arise) regulated in a Convention relating to mortgages in ships under construction. Likewise liens regarding ships trading should be included in a Convention on mortgages in such ships.

IV. a) (i) It would be natural that a State which has ratified the Convention, as suggested under III, and which has thus become a con-

tracting State, should recognize mortgages registered in another contracting State.

In this connection it might be advisable to investigate whether in a new Convention this should enumerate the conditions the existence of which is necessary for the registering of a mortgage.

(ii) Whether a contracting State should recognize a mortgage registered in a non-contracting State would depend on so many different factors that it is difficult to give a definite answer regarding all cases. But if the requirements for the registration of a mortgage in a non-contracting State are appreciably the same as in a contracting State, then the contracting State should have no reason for not recognizing a mortgage registered in such non-contracting State.

b) Claims under 1, 2 and 3 in Article 2 of the 1926 Convention must probably also in the future be protected by maritime liens. This would also apply to claims under N° 4, although we have an open mind on the question as to how far passengers' luggage should be protected by a lien.

We understand that « public taxes » mentioned in Article 2 1) means only costs in connection with the administering of the sale of a ship and does not refer to the shipowners taxation. In Finland claims for ordinary taxes rank after mortgages.

c) Claims under Article 2 5) could, we think, be protected without resorting to maritime liens and such liens should therefore not apply to claims under N° 5.

d) (i) Mortgages take preference according to date of registration or, if preferred, from the date of application for registration.

(ii) Liens take preference before mortgages.

(iii) The stipulations in the 1926 Convention on the order in which liens are to rank, seem to be fair, equitable and practicable.

It is probably necessary to grant a ship-builder or a ship-repairer the right to have security in the ship he is building or repairing for claims arising out of the building or repairing contract (right of retention).

f) This right of retention would probably have to rank after liens but before mortgages.

g) Right of retention must probably exist as without such right ship-builders and repairers in many cases would not undertake to carry out works. The consequence in such cases would be that holders of liens and mortgages would suffer. On the other hand, it might in cases, where big repairing contracts are concerned, be necessary to have the approval of mortgage holders before repairing a vessel. This is at present a very common stipulation in contracts of credit, where the creditor has a security in the ship.

h) Although there should be no need to have additional liens there would seem to be no objection to contracting states establishing additional liens according to their domestic laws. Such liens should, however, rank after Convention liens and mortgages.

i) A contracting State should not discriminate against the rights resulting from mortgages having been duly registered

(i) in another contracting State,

(ii) but might not be able to recognize a mortgage registered in a non-contracting State, unless the conditions for registering a mortgage in such non-contracting State are such that a contracting State could approve of them.

j, k, l) There are reasons pro and con for liens being enforceable against accessories. We would, however, be prepared to have liens extended to embrace compensation and remuneration as enumerated in Article 4) 1, 2 and 3, but have an open mind on the question whether outstanding freight should be included.

V. a) and b) On the whole it seems that the stipulations in the 1926 Convention are fair, sensible and practical, both as regards the date on which a lien shall be considered to have arisen and as regards the time at the expiration of which the lien would extinguish. Consequently national laws should not be allowed to deviate from the strict rules of the Convention.

VI. a) In Article 9 of the 1926 Convention the running of the time during which a lien is in force, can be interrupted if the vessel to which the lien attaches has not been in territorial waters, where she could have been arrested. This means that, for instance, if a vessel after a collision is not in the claimant's territorial waters for say four months, then a lien for claims out of that collision would be extended by these four months, wherefore the lien would be in force sixteen months.

We are of the opinion that it is not necessary to have stipulations making it possible to have the lifetime of a lien thus extended. In the first place, we now have the Arrest Convention of 1952 and any claim having a lien attached will be a maritime claim, as defined in the Arrest Convention, and can be basis for the arrest of the ship. But even in countries, where the Arrest Convention is not in force, vessels can be arrested. Means of communications nowadays are so well arranged that arrest can be made anywhere within one year after the claim has arisen, and there should therefore be no need to have the running of the lifetime of a lien extended.

b) Reference under this heading is made to paragraph 8 (sub-paragraph j). When reading this sub-paragraph j), we come to the conclusion that same refers to a cause which extinguishes the lien and has nothing to do with the interruption of the period during which the lien would be in force.

c) We have thought it convenient to place our reply to this question under VI. a) above.

VII. a) It is advisable and necessary that the Convention should state what effect a change of flag has on the validity of liens and registered mortgages.

b) A lien or registered mortgage should follow a vessel, irrespective of a voluntary change of her flag. As to other factors which might influence the status of a lien or registered mortgage, we would refer to page 23 of this report, sub-paragraph j). In this respect we are of the opinion that a requisition of a ship by authorities should not affect these rights. If a vessel is being broken up and if for this reason she is expunged from the register, then, as the ship no longer exists, the security which claimants have had in her also de facto ceases to exist.

In such cases our Law states that claimants have security in the proceeds of the sale and that in addition the shipowner might become personally liable. Sale by order of a Court should extinguish liens and (unless otherwise agreed between the parties) registered mortgages.

The constitution of a limitation fund, where all claims are divided *pari passu*, would, of course, extinguish claims.

We think it important that the Conventions should clarify these points and, if so, there would be no difficulties as regards contracting States. Whether non-contracting States would follow the same principles would have to be looked into in each separate case.

VIII. a) and b) We have found it convenient to state our standpoint under VII.

IX. a) and b) We are of the opinion that all mortgages and liens both regarding ships under construction and ships trading, could be combined in one Convention, but we would be quite willing to accept one Convention for ships under construction and another for existing ships.

X. a) (i) Chartering of vessels has developed in such a way that in a not too distant future possibilities will have to be established to have long time charters registered in vessels. Validity of such registrations could be stipulated in the Convention to be made as regards contracting States, but none of us is able to say what standpoint non-contracting States would take.

(ii) If there is a voluntary sale of a ship, then naturally the seller and the charterer, on one side, could negotiate with the buyer, on the other side. If a vessel is let on a long charter, then the shipowner has certain rights and he can assign his rights to a third party, for instance to a credit-giving bank. But the charterer also has certain rights, and he might be interested in the uninterrupted continuation of a charter,

irrespective of the ownership of the vessel. If possibilities are established to register a long-time charter, then there is no reason why the rights of the charter party should not apply to both sides.

b) We refer to what we have said under a).

XI. It is, of course, very important that there should be no conflicts between the 1957 Convention on the Limitation of Liability and the Convention to be made on Liens and Mortgages.

XII. a) The ultimate aim would, of course, be to have a world-wide application of the new Convention.

b) Irrespective of what is said in the new Convention, its stipulations cannot be administered in non-contracting States, unless they agree. Whether contracting States should apply the Convention to vessels flying the flag of a non-contracting State would have to be decided in casu, or on lines as in Article 7 of the 1957 Convention on Limitation of Liability.

XIII. a) The liens under our Law are practically the same as in Article 2 of the Convention, but claims under N° 5 of the Convention are, in our Law, split up into two. Further, Bill of Lading claims are taken out of N° 4 in the Convention and brought in under N° 6 in the domestic law.

b) As to other rights in our domestic law,

i) there are no possessory liens;

ii) there are no other statutory liens;

iii) there are, in our Law, no explicit stipulations regarding a right of retention by a shipwright. We do not therefore want to express an opinion as to what standpoint the Courts would take, if brought to them for decision.

c) Our domestic law provides :

i) that mortgages rank from the date they are registered;

ii) registered mortgages rank after maritime liens;

iii) and iv) liens rank inter se and, in respect of registered mortgages, as prescribed in the Convention.

d) If it is impossible to contact holders of registered mortgages, it might, in exceptional cases, be necessary to have a ship deleted from the register without the mortgagees being notified or their consent being obtained.

e) There is no explicit stipulation to the effect that a vessel must be expunged from a foreign register before being entered in the Finnish register. However, all stipulations regarding registration of vessels in Finland are so complete and give the authorities such wide rights to scrutinize all information, which they also avail themselves of meticulously,

that it would be impossible to get a foreign vessel registered in Finland without the vessel having been expunged from a foreign register.

f) On the whole, our registration gives ample safeguards to protect the rights of holders of registered mortgages.

XIV. If a certain rights has arisen in a foreign country and according to the laws of that country, then our Courts will recognize the validity of such right. As to the administering of such right in Finland Lex Fori would apply.

XV. a), b) and c) We do not think that it would be advisable to make amendment to the 1926 Convention. The right course would probably be to repeal the said Convention and to draft a new one.

Helsinki / Helsingfors, 12th March, 1964.

Rudolf Beckman.

Bertel Appelqvist.

ITALIAN MARITIME LAW ASSOCIATION

REPLIES

Question

I. The revision of the 1926 Convention is certainly necessary for three main reasons, namely : (1) because on various aspects, which are going to be dealt with when answering to the subsequent questions, the present rules are not satisfactory; (2) because the number of countries which have ratified or adhered to it is not large enough and it is not likely it will increase, so that it would appear necessary to draft new rules which might obtain a wider approval; (3) because in order to achieve actual uniformity the field of application of the international rules must become much wider.

Question

II. As stated above, wider uniformity must be achieved and most satisfactory rules must be drafted. It is felt that the field of application of the convention, as presently stated in Art. 14, is not wide enough. In addition, some important problems, such as the effect of the forced sale, are not governed, and some other matters are left to national legislation, thus endangering the actual uniformity. Suffice it to indicate, as an example, the possibility for national legislations to establish the causes of interruption of the periods of extinction provided in Art. 9.

III. (b) It is felt that only uniform rules of substantive law, as opposed to uniform conflict of law rules, must be sought, in as much as uniform conflict of law rules would be of very small benefit. It is a fact that uniform conflict of law rules are taken into consideration only when it is apparent that no satisfactory agreement can be arrived at on uniform rules of substantive law and that in our case the latter rules appear not only possible, but almost certainly easier to agree than conflict of law rules.

Anyhow conflict of law rules ought to be included in the new draft as regards :

(i) the hypothecs and mortgages (reference is made here to Art. 1 of the 1926 Convention);

(ii) those matters which are not governed internationally, such as the liens which can be created by national legislations under the present Article 3.

(c) The Questionnaire has been so carefully prepared that it is indeed very difficult to find some aspects which are worthy of international regulation and which have not yet been considered. There might perhaps be two problems, on which the attention of the International Subcommittee can be drawn, namely :

(i) According to Art. 1 (2) of the Protocol of Signature the Contracting States are authorised to grant a special right of retention to Port Authorities as security of their claims with respect to removal of wrecks. Since the main concern of all such Authorities is the possibility of obtaining the reimbursement of the costs of raising the wrecks out of the proceed of sale, it might perhaps be possible to govern this matter internationally by including the provision of the Protocol in the Convention itself. We realize that there is one problem, that is the nature of the right granted to the Harbour Authorities, since in some countries they have a possessory lien, whilst in other countries they have a right of retention only.

(ii) The Convention for the unification of certain rules relating to the arrest of seagoing ships of 10th May 1952 provides in its Art. 2 that no vessel can be arrested for claims other than the maritime claims. Now there are some claims which are secured by maritime liens, such as law costs, and tonnage and harbour dues, which are not maritime claims and therefore a conflict might arise between the 1926 and the 1952 convention because whilst the claimant must, in order to enforce his lien, arrest the vessel, this would not appear possible under the 1952 convention. Perhaps a better coordination is possible.

Question

IV. (a) International recognition of hypothecs and mortgages by all Contracting States according to the rule presently set forth in Art. 1 must always be provided, but also in respect to vessels registered in non-contracting States. We realize that by limiting this rule to vessels registered in contracting States a sort of pressure could be put on non-contracting States with the result that they would have an interest to adhere to the convention. But whilst the present rule set forth in Art. 1 is in line with art. 14, according to which the rules of the convention are applicable when the vessel to which the claim relates is registered in a contracting State, the situation would change if, as we recommend, Art. 14 be revised to the effect of making the convention applicable in each contracting State to all vessels, irrespective of nationality. In this case it would appear illogical to restrict the application of Art. 1 only to ships registered in contracting States.

(b) The categories of claims giving rise to maritime liens should certainly be restricted in order to assure a better protection to the mortgagees. To this effect the claims referred to in article 2, sub-paragraph 5) should not be secured by a maritime lien anymore. One of the

reasons why a maritime lien is granted in respect of claims ex contractu is to encourage, in certain circumstances, the entering into contracts with the shipowner or the master, by assuring the contracting party that his claim will be satisfied; in addition, the cause for which the claim arises is considered, in certain circumstances, worthy of special protection. None of those principles can certainly be invoked as a justification of the maritime lien in question : if contractors or suppliers do not trust the shipowner, they can obtain payment of their claim before the ship sails or request a contractual security such as a mortgage or a hypothec. If the shipowner can do neither of those things, that means that his financial conditions are very bad and it would therefore be much worse to allow him to continue to operate the vessel, by creating other debts which would be preferred to the mortgages, than to stop the vessel. It is true that the preservation of the vessel and the continuation of the voyage are matters of common interests to all parties concerned in the adventure, and that therefore, in this respect, the reason why the expense incurred might be worthy of special protection. But in the present times, when a shipowner is in sound financial condition he can remit the money necessary to pay the suppliers or contractors anywhere in the world in a very short period of time. If the preservation of the vessel or the continuation of the voyage cannot be assured, that is only due to the bad financial conditions of the shipowner and not to the impossibility of providing the master in time with the money necessary to such effect. There is therefore no justification for the maritime lien granted under Art. 2 sub-paragraph 5) and this conclusion, it must be noted, had already been arrived at by some members of the C.M.I. as early as in 1912 when the draft convention on maritime liens and mortgages was being examined.

It has been discussed in the last years whether the claims of social insurance associations or pension funds with respect to crew insurance are secured by a maritime lien and sometimes in order to try to grant such a lien it has been decided that the claim was one of the crew. It is felt that, as a consequence of the present social insurance systems, which are almost everywhere of a governmental nature, it would be reasonable to grant to the above claims a maritime lien having the same rank of that securing the claim for crew wages.

This is the only extension of the present system which might be taken into consideration.

(c) This question has already been answered in the affirmative.

(d) i) *Priority of registered mortgages inter se.*

Under Italian law the priority is based on the date of registration of the hypothec. The registrar must effect registration in the same order of application and, to this effect, he must enter all applications, imme-

diately upon presentation, in a special register, called « repertory ». But should he fail to register the hypothecs in the same order as they have been presented this would give rise only to his liability, whilst priorities would be governed according to the date of registration of the hypothecs in the register. It is felt that this is the only system which can assure satisfactory protection to all third parties.

But if an agreement cannot be arrived at as regards the rules governing priority of mortgages (or hypothecs) *inter se*, the matter could be left to the national legislations, according to Art. 1 of the 1926 Convention.

ii) *Priority between mortgages and liens.*

We are of the opinion that the present system is satisfactory, and must be kept unaltered.

iii) *Priority between liens inter se.*

The present system is the effect of a compromise which has been reached after great difficulties, and therefore it should, to the maximum extent possible, be kept unaltered. The two main principles on which the priority of maritime liens *inter se* must be established are the cause of the claim (e.g. salvage, salary of the crew) and the beneficial effect of the service done to the ship (e.g. salvage, repairs, etc.). According to the first principle, some claims are preferred to others, because they deserve a particular protection; according to the second one, the later claim must be preferred to the former ones, because it « *salvam fecit totius pignoris causam* » (D. 20.4.6).

The compromise which was agreed in 1926 is based on the following main lines : the priority is based on the cause of the claims which are to this effect divided in five categories, but only with respect to claims arising out in the same voyage. The claims arising out in different voyages belong to different groups and those arising out in a later voyage are preferred to those arising out in a former voyage.

The claims belonging to the same category rank *pari passu* if they have arisen in the same voyage, with the exception of those mentioned in sub-paragraphs 3 and 5, which rank in the inverse order of their accrual.

Although this system is not perfect, we think it has worked out satisfactorily, with one exception, that is the exact interpretation of the term « voyage ».

It is not clear in fact which is the voyage which must be taken into consideration with respects to liners and tramps; and the use of the same term with respect to the freight in Article 2 has caused additional problems, because it has been discussed whether a voyage in ballast is a separate voyage or not; the negative has prevailed, and this has again raised other problems, because it is not always clear to which voyage with cargo that in ballast is actually linked.

There are then other problems with respect to fishing vessels, tugs, etc.

We believe that a definition of voyage is necessary and that, to this effect, it is necessary to abandon any connection between the voyage as a basis of the system of priorities and the voyage during which the freight is earned, even if it will be thought convenient that liens should still be enforceable on freight.

The same definition cannot apply to liners and to tramps. As regards liners, reference should be made to the two ends of the line; it could be stated, for instance, that the voyage begins when the vessel sails from one end and terminates when the vessel sails from the other end. As regards tramps, reference should be made to the commencement of the loading and to the termination of the discharge, and it could be stated, for instance, that the voyage begins when the vessel arrives in the harbour where the loading will commence and terminates at the time of departure from the port where the last cargo has been discharged. A voyage in ballast should be considered as a separate voyage beginning at the time of departure of the vessel from the port where the last cargo has been discharged, and terminating at the time of arrival in the port where a new cargo is going to be loaded.

As regards fishing vessels, the fishing season could be considered a voyage.

As regards tugs or other small crafts who normally operate inside the harbours, the concept of voyage cannot apply.

The same conclusion holds good with respect to the period during which the vessel is laid up and the period running from the time of launching to the time of the maiden voyage.

There are undoubtedly difficulties for the clear and correct ranking of liens per voyage, but we think that efforts should be made in order to overcome such difficulties. We also realize that it might look improper to apply the same concept of voyage to a liner plying between England and Australia and to a ferry boat plying between Oslo and Kiel. But, if the ranking per voyage is abolished there will be even more problems, the solution of which will prove even more difficult.

As regards the ranking of the maritime liens which have accrued during the same voyage, we believe that some modifications should be effected to the present system, namely :

Art. 2. sub-paragraph 1 : A distinction ought firstly to be made between those costs which are secured by a maritime lien only if they are incurred in the last port, and those which are subject to the one year period of extinction. Law costs due to the State, expenses incurred in the common interest of the creditors in order to preserve the vessel or to procure its sale and the distribution of the proceeds of sale, costs of watching and preservation from the time of the entry of the vessel into

the last port belong to the first group; in fact all such costs deserve a priority only if they actually lead to the sale; if the vessel, on the contrary, sails from the port where law costs etc. have been incurred, the *ratio* which has determined the granting of the priority ceases to exist.

On the contrary, tonnage dues, light and harbour dues and other public taxes and charges of the same character and pilotage dues should only be subject to the one year period of extinction.

It follows that this sub-paragraph should be divided into two distinct groups, the first one of which should have, we believe, a higher priority.

The wording should also be improved, because it is not clear what the expenses incurred in the common interest of the creditors in order to preserve the vessel exactly are : we think that they cover both what could be defined as the juridical preservation of the security (e.g. costs of the arrest, etc.) and the physical preservation, but only to the extent that the relative expenses are incurred when the vessel is in the custody of the court. Should repairs carried out by one or more creditors be included, on the ground that they preserved the vessel, the category would be widened too much.

Art. 2. sub-paragraph 2 : Reference should be made here, as indicated above, to social insurance premiums.

Art. 2. sub-paragraph 3 : Salvage in the legal phraseology includes, we understand, also services rendered to a ship after her loss, such as her raising from the bottom of the sea. The words « assistance et sauvetage » have a more strict meaning and they refer only, at least according to Italian law, to services rendered to a ship in order to prevent her loss. We believe that a maritime lien should be granted also with respect to the raising of a ship and to the finding of a derelict at sea and, if this opinion is shared by the majority of the members of the International Subcommittee, this sub-paragraph should be amended accordingly in its French text.

Art. 2. sub-paragraph 4 : In our opinion it is not equitable to grant an equal priority to indemnities for personal injury and to indemnities for loss of or damage to cargo and baggage. In addition, reference ought to be made also to the death of passengers. We therefore suggest to split this sub-paragraph in two and to refer firstly to indemnities for death of or personal injury to passengers or crew and to persons not carried by the burdened vessel as a consequence of collision or other accident of navigation; and to refer then to indemnities for loss of or damage to cargo and baggage and for damages caused by collision or other accident of navigation.

(e) We think it is better to leave other liens to national legislations, according to Art. 3.

(f) In any case, such liens should rank after the mortgage. It must anyhow be pointed out that, to a certain extent, the claim of contractors for repairs is secured by a maritime lien under Art. 2 sub-paragraph 1 as regards the costs of preservation of the vessel.

(g) We think that the present system is satisfactory and that Art. 3 should discriminate against the rights resulting from mortgages having

(h) This question has already been answered in the affirmative.

(i) We agree that under no circumstances the Contracting States should be kept alive.

been duly registered either in a Contracting State or in a non-Contracting State.

(j) We think that the freight is not a valid and useful security and that therefore liens should be enforceable only on ships. To our knowledge very seldom it has occurred that a claimant has enforced his lien on the freight. It must also be taken into consideration that the definition of freight would be extremely difficult, and therefore it appears, also for this reason, much wiser to leave it out entirely.

(k) Reference is made to the preceding answer.

(l) Yes. But the present terminology is highly improper since the various rights mentioned under Art. 4 are not accessories of the ship. We think that it would be advisable to state, in Art. 4, that the maritime liens are *extended* to the rights listed therein, using the concept of accessories in Art. 2 only with respect to the accessories in proper sense, namely life boats, wireless set, etc.

If the maritime liens will not be enforceable on the freight anymore, the reference to the remuneration due to the owner for salvage services should be deleted. There is in fact a clear difference between the sums listed under sub-paragraphs 1) and 2) of Art. 4 and those listed under sub-paragraph 3) of this Article: in fact whilst the former two sub-paragraphs provide the extension of the maritime liens to sums which are payable to the owner of the vessel on account of her loss or of damages caused to her, and which therefore compensate the depreciation of the vessel, the latter sub-paragraph provides the extension of the security to sums which are earned by the shipowner in the course of the operation of the vessel, and have therefore the same nature of the freight.

This is the reason why, if the maritime liens will not be enforceable on the freight, they cannot be enforceable also on the remuneration due to the owner for salvage services.

As regards the sums listed under sub-paragraphs 1) and 2), we think that it would perhaps be advisable to make clear how the maritime liens can be enforced on them and which are the causes of their extinction. We believe that the payment of the sums to the shipowner causes the extinction of the maritime lien but that in order to prevent such payment an intimation to the debtor should be sufficient.

Question

V. (a) One year seems to be a reasonable period with respect to all maritime liens.

(b) The rules laid down in Art. 9 second and third paragraph should be kept unaltered. It would be very dangerous to state that the period runs from the date on which the creditor seeks to enforce the lien, because such date is not known, and therefore it would be uncertain how long the liens will be alive.

A specific rule should be provided anyhow with respect to the contribution of the vessel in general average; in fact otherwise according to the general rule laid down in the third paragraph of Art. 9 the period would run from the date when the adjustment is completed and this may occur years after the date of the general average act. We think therefore it would be convenient to insert in the second paragraph a provision according to which in this case the period runs as from the termination of the adventure.

Question

VI. We think that the period of extinction should not be subject to any interruption or extension whatsoever in order to give to third parties the certainty that only maritime liens which have accrued during the last year are still in existence. This is particularly important for mortgages. There might be some very special circumstances only in which a suspension (and not an interruption) of the running of the period of extinction is justified, namely when, after the maritime lien has accrued, the vessel is requisitioned : in fact the claimant could not, during the requisition, enforce his lien and should wait until after the derequisition; similarly, if salvage service are rendered to a ship under requisition and her owners derive some benefit from those services, a maritime lien would attach although it would be unenforceable whilst the ship remains under requisition (The *Meandros*, 16 Asp. M.L.C., 476).

It would be advisable to provide expressly that maritime liens are extinguished after the period has elapsed unless prior to it lapse the vessel is arrested. Only the arrest in fact brings to the knowledge of third parties the existence of the lien, be it a safety measure (*saisie conservatoire*) or a measure which leads to the sale of the vessel (*saisie exécution*). Of course if after the arrest the vessel is released its effect terminates and the period of extinction runs again as if the arrest would not have been effected.

Should it be thought convenient to provide for causes of interruption, this matter should anyhow be governed by the convention itself and not left to national legislation, in order to avoid lack of uniformity.

Question

VII. (a) We think this matter should be dealt with in the convention in order to avoid uncertainties both as regards the effect of the change of nationality on the existence of maritime liens and to the moment at which the nationality must be taken into consideration.

The problem is much more serious with respect to mortgages, because their survival to the deregistration of a vessel from a national register would imply the registration of the mortgage in the new register with a system similar to that adopted by the Stockholm Conference with respect to ships under construction. We fear anyhow such system will not operate easily on account of the considerable difference which exists between national law as regards the requirements of mortgages and hypothecs. In order to avoid the danger of preventing a wide ratification of the new convention, this matter should be left aside, unless it will be possible to insert a provision in this respect in the Protocol.

(b) (i) a change of nationality does not cause the extinction of maritime liens or other liens.

(ii) with respect to liens created by national laws, if it will be decided that such liens are governed by the law of the flag the relevant law will be that of the time when the lien is enforced. Of course the application of the *lex fori* would eliminate all problems in this respect.

Question

VIII. (a) It is undoubtedly very desirable that this matter be governed internationally by providing that all mortgages and liens (even those created by national laws) are extinguished as a consequence of the forced sale of the vessel (the sale in the course of bankruptcy proceedings included).

In order to protect all claimants a rule similar to that set forth in Art. 7 of the Convention relating to the international recognition of rights on aircrafts, signed at Geneva on 19th June 1948 should be adopted. The provision in this article is worded as follows :

1. Les procédures de vente forcée d'un aéronef sont celles prévues par la loi de l'Etat contractant où la vente est effectuée.

2. Les dispositions suivantes doivent, toutefois, être respectées :

a) la date et le lieu de la vente sont fixés six semaines au moins à l'avance;

b) le créancier saisissant doit remettre au tribunal ou à toute autre autorité compétente un extrait certifié conforme des inscriptions concernant l'aéronef. Il doit, un mois au moins avant le jour fixé pour la vente, en faire l'annonce au lieu où l'aéronef est immatriculé conformément aux dispositions de la loi et prévenir, par lettre recommandée

envoyée, si possible par poste aérienne, aux adresses portées sur le registre, le propriétaire ainsi que les titulaires de droits ou de créances privilégiées mentionnées au registre conformément au paragraphe 3 de l'article 4.

3. Les conséquences de l'inobservation des dispositions du paragraphe 3 sont celles prévues par la loi de l'Etat contractant où la vente est effectuée. Néanmoins, toute vente effectuée en contravention des règles définies dans ce paragraphe peut être annulée sur demande introduite dans les six mois à compter de la vente, par toute personne ayant subi un préjudice du fait de cette inobservation.

4. Aucune vente forcée ne peut être effectuée si les droits dont il est justifié devant l'autorité compétente et qui sont préférables, aux termes de la présente Convention, à ceux du créancier saisissant ne peuvent être atteints grâce au prix de la vente ou ne sont pris à charge l'acquéreur.

(b) We believe that this provision should apply also in case the forced sale is effected in a non-contracting State, although in the negative the ratification or adherence would be encouraged.

Question

IX. (a) Reference should be made to ships under construction in Art. 1 in order to extend the application of the same conflict of law rule also to ships under construction.

We do not think that other problems ought to be dealt with in this convention is as much as the rules included in the draft convention approved at the Stockholm Conference have actually, with the exception of those set forth in articles 8 and 9, no international bearing. In addition, it would seem at least abnormal to provide such rules for ships under construction and not for ships in service.

(b) The convention on registration of rights in respect of ships under construction should be left separate.

Question

X. We think the new convention should not deal with long term charters, since this is an entirely different matter and it would be utterly wrong and greatly dangerous to mix up so different problems. We are here dealing with securities only and must avoid to extend the convention to problems which are outside this field.

Any such extension would only create difficulties and endanger the actual uniformity by reducing the number of ratifications or acceptances.

Question

XI. The coordination between the 1957 Convention on limitation and the convention on maritime liens and mortgages is undoubtedly necessary and we think it is correct to state in the latter that all liens are extinguished after the limitation fund has been set up.

Question

XII. The scope of the Convention should be as wide as possible. In our opinion each Contacting State should apply the Convention in its territory in all circumstances, irrespective of the nationality of the ship concerned. This would assure real uniformity and eliminate considerable problems of conflict of law.

Question

XIII. (a) The rules of the 1926 Convention have been incorporated in the Italian Navigation Code with very few and minor alterations. As regards the claims which are secured by maritime liens, Art. 552 of the Navigation Code is divided in six sub-paragraphs, of which those numbered 1) and 2) correspond to sub-paragraphs 1) and 2) of Art. 2 of the Convention, those numbered 4), 5) and 6) correspond to sub-paragraphs 3), 4) and 5) of Art. 2.

Sub-paragraph 3) of Art. 552 adds some few claims, namely those of the Government with respect to sums advanced for the maintenance and the repatriation of the crew and those of the Social Insurance Organizations with respect to insurance premiums.

(b) The Italian Civil Code has a set of rules dealing with liens on movable and immovable property. The liens on movable property can also be applied with respect to ships, but they rank after the hypothecs which, according to Art. 575 of the Navigation Code, rank after maritime liens but are preferred to all other liens.

The Civil Code liens are of two different kinds; there are general liens, which are granted on all assets of the debtor and special liens, which are granted on a certain asset only. General liens are not a charge, but give a right of priority to the creditor at the time of the distribution of the proceeds of sale of the debtor's assets. The claimant has therefore no *droit de suite* on the debtor's assets which have been sold prior to the time of the enforcement of the claim.

Special liens instead have a *droit de suite*, which in most cases is anyhow conditional to the subject matter of the lien remaining in the possession of the claimant : they can, therefore, be considered as possessory liens. Since the loss of possession causes in those cases the extinction of the lien, the claimant is granted a right of retention in order to protect his security.

As general rule therefore the possessory liens can be enforced also if the property burdened by them has been transferred to a third party after the lien has accrued, provided the claimant has still the possession, but they cannot be enforced on a property which did not belong to the debtor at the time when the lien has accrued. There are anyhow exceptions to this rule, since certain possessory liens can be enforced on assets which are not owned by the debtor, at the time when the lien has

accrued, provided the claimant was in good faith. This rule, which increases the protection of the claimant, applies to the possessory lien which can more likely arise on ships, namely that securing the claims for costs of preservation and improvements (such are repairs carried out to a ship) : it follows that even when the repairs are ordered by a person who is not the owner of the vessel, the repairer, if he is in good faith, has a possessory lien on the vessel as security for his claim.

(c) (i) According to Art. 574 of the Navigation Code the priority of the hypothecs inter se is based on the date of their registration on the ships' register.

(ii) Maritime liens are preferred to hypothecs.

(iii) The rules which govern the priority of maritime liens inter se are alike those set forth in Art. 5 and 6 of the 1926 Convention : those two articles have in fact been incorporated in Art. 555 and 556 of the Navigation Code, with one exception only, namely that claims for loss of life and personal injury are preferred to claims for loss of or damage to cargo and baggage.

(iv) As previously stated, all civil code liens come after the hypothecs.

(d) The shipowner who wishes to sell his ship abroad must previously obtain the authorization of the Ministry of Merchant Marine and to this effect file an application to the Port Authority where the vessel is registered. The Port Authority informs all third parties by means of publication of the application on newspapers and the authorization is granted and the vessel de-registered only after sixty days have elapsed, provided nobody has opposed to the de-registration, or, if there have been objections, until they have been finally decided by the Court or a satisfactory security has been provided by the shipowner. As regards hypothecs, de-registration cannot be effected until either the hypothecs have been deleted or security has been provided.

(e) No. Registration of a foreign vessel can be effected only if a certificate of de-registration from her previous register is supplied.

(f) Subrogation is specifically governed by our law. There are various kinds of subrogation, namely :

(i) Subrogation which is the effect of a payment : this subrogation may occur either by operation of law in certain cases or by agreement between the third party which pays and the claimant or by agreement between the third party which provides to the debtor the sums necessary in order to effect the payment and the debtor. In all cases the person who pays becomes subrogated in the rights of the party who is satisfied including the relative securities, such as hypothecs and liens of any kind.

(ii) Subrogations of the mortgages or of the claimant whose claim is secured by a lien (maritime or not) when they cannot satisfy their

claims out of the proceeds of sale of the burdened property because there are other preferred creditors : in such a case they become subrogated in the other securities of the claimant who has been paid on other assets of the same debtor.

(iii) Subrogation of the purchaser of a mortgaged property who either pays the mortgagee or is deprived of his property as a consequence of the mortgagee enforcing his security : he becomes subrogated in the mortgages of the mortgagee on other assets of the debtor.

The causes of extinction are, with respect to hypothecs, specifically set forth. Many of them are applicable also to liens.

Question

XIV. Art. 6 of the Navigation Code states that rights of security (i.e. hypothecs, maritime liens and possessory liens) are governed by the law of the flag of the vessel. It is anyhow uncertain in which moment the law of the flag is relevant, in case of a change of nationality.

XV. We think that it would be preferable to draft an entirely new convention which should replace the 1926 Convention.

Italian Maritime Law Association, by

Roberto Sandiford,

Francesco Berlingieri

MARITIME LAW ASSOCIATION OF THE UNITED STATES

ANSWERS

I. Yes. It is very desirable.

II. (a) The United States has not ratified or adhered to the 1926 Convention.

(b) A more precise statement of the maritime liens which are superior to the lien of the mortgage is desirable.

III. (a) The new Convention should provide precisely for the ranking of maritime liens inter se, particularly those which are superior to the liens of the mortgage and for their extinction. The Convention should be limited to those matters on which it can be reasonably expected to get an agreement of the maritime countries.

(b) No. The Convention should be limited to rules of substantive law including the ranking of liens and mortgages.

(c) The Stockholm Convention of 1963 dealing with rights against ships under construction should be incorporated in the proposed Convention.

IV. (a) (i) Yes.

(ii) Yes.

(b) (i) Yes. The distinction between supplies ordered by the master and those ordered by others should be eliminated and the distinction between home and foreign ports should also be eliminated.

The question of liens on freight should be registered and liens on accessories other than freight eliminated.

(iii) Liens should not be extended. The ranking of the liens inter se should be clearly defined. New liens might be permitted provided they are subordinate to the lien of the mortgage.

(c) There should be no distinction between contracts made by the master and those made by any other duly authorized agent of the owner. Our law provides that any person furnishing repairs, supplies, towage, use of drydock or marine railway or other necessities to any vessel, whether foreign or domestic, on the order of the owner of such vessel or of persons authorized by the owner, shall have a maritime lien on the vessel which may be enforced by a suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel.

We think this is the correct rule.

(d) (i) A mortgage first filed should have priority over a subsequent mortgage.

(ii) Under the law of the United States the following maritime liens have priority over a preferred mortgage :

1. Salvage.
2. Wages of the crew.
3. Damages arising out of tort.
5. Wages of stevedores.

(iii) As between liens of the same rank, the last in point of time should be first and there should be a time after which the liens are extinguished.

(e) Yes. It is unlikely that a possessory lien can be asserted in a country other than that granting the lien.

(f) It should be subordinate to the maritime liens recognized by the Convention, including the mortgage.

(g) No.

(h) Yes.

(i) - (i) and (ii). An international Convention such as this should not permit any discrimination.

There is some discrimination in our Ship Mortgage Act.

(k) Consideration should be given to permitting liens for supplies which enabled the vessel to earn the freights on which the lien is claimed. This is tied in with the question of the assignment of freights, charter hire, etc., as part of the security given by the mortgage.

(l) No.

V. (a) Two years.

(b) The period should run from the date the claim accrued.

VI. (a) No.

(b) _____

(c) No interruption should be allowed.

VII. (a) Yes.

(b) If there is a change of flag it should be on condition that all existing liens are recognized as though they would have been had there been no change of flag.

VIII. (a) Yes. Provided proper and timely notice was given to the mortgagees and holders of all recorded liens of the proposed sale.

(b) Yes. The effect of a sale by the court in an action in rem should be the same in a contracting and a non-contracting State.

IX. (a) Yes.

(b) This should be so incorporated in the Convention that a State could adhere to this part and not to the rest of the Convention, or vice versa.

X. (a) No. However, where mortgages contain an assignment or pledge of charter hire or freights as part of the security for the indebtedness secured by the mortgage, a provision should be made for the recording of such charter parties.

(i) When a ship is sold by order of the court, a decree of the court will direct the payment of charter hire and protect the charterer.

(ii) In the case of voluntary sale of a ship, the charterer needs to know to whom payment should be made.

(b) This should be limited to cases in which the shipowner has assigned or pledged his rights under the charter party to a third party by way of security.

(c) This should be limited to long term charters and they should be recorded in the same place with the mortgage and notice of the assignment given to the charterer.

XI. Yes.

XII. (a) The Convention should have as wide a scope as possible.

(b) Yes.

XIII. (a) Maritime liens arise both out of contract and tort under American law. They can be enforced by an action in rem in a court of admiralty. Priorities are determined between liens of the same rank by the time the lien arose but in the inverse order — the last in time comes first. It does not depend upon possession of notice through filing. Liens may be lost by laches. In general, the liens recognized under the laws of the United States are :

1. Salvage.

2. Seamen's claims for wages.

3. Tort — (a) personal injury;
(b) property damage.

4. General average.

5. Preferred ship mortgage.

6. Supplies and repairs.

7. Towage, wharfage, pilotage, stevedoring, cargo damage, breach of charter parties.

(b) (i) Yes.

(ii) Yes.

(iii) Yes.

(c) (i) As between preferred mortgages they rank in the order in which they have been recorded, the first recorded coming first.

(ii) The following liens take precedence over the preferred mortgage.

1. Salvage, including contract salvage.

2. Wages of the crew of the vessel.

3. Damages arising out of tort.

4. General Average.
5. Wages of stevedores.

Liens arising prior to the recording of the preferred mortgage take precedence over the mortgage.

There is a provision in our Act to the effect that the American court in foreclosing a mortgage on a foreign ship, that the mortgage shall be subordinate to maritime liens for repairs, supplies, towage, use of drydock or marine railway furnished in an American port.

(iii) Maritime liens take priority in accordance with the listing under XIII (a). Liens of the same class take priority in the reverse order, i.e., the last in point of time comes first.

(iv) Mortgages and maritime liens take precedence over all other rights on the ship.

(d) No.

(c) No.

(f) There are other liens such as the ship's lien on cargo or freight for general average contribution. There are also liens given by charter party on freights and sub-freights, and there is a question of the assignment of charter hire as security for a mortgage. All of these must be considered in determining what action to take on any lien on freights.

XIV. CONFLICTS OF LAWS :

The Courts of the United States will generally apply the law of the place where the tort occurred to that tort. If the tort takes place on the high seas between an American vessel and a foreign vessel, they will probably apply the American law. If it occurs between two foreign ships and the law of the flags of both ships is the same, that will be applied. If the law of the two flags is different, they will apply the American law.

The American courts will apply to liens based upon contracts the law of the place where the repairs are made or the supplies are furnished.

By preparing an entirely new Convention.

BELGIAN MARITIME LAW ASSOCIATION

REPLY

I. Yes, most necessary.

II. a) So as to become acceptable to a greater number of interested States — and, if possible, by way of consequence, inevitable for the others.

— So as to provide for adequate publicity of all rights on ships.

b) Non-applicable.

III. a) See II. a) above.

b) As many as possible of these problems.

c) Not at present.

IV. a) (i) Yes.

(ii) No. The new Convention should provide for such legitimate means of pressure upon non-contracting States, which can otherwise (by being less demanding as regards registration, de-registration, publicity, etc.) become havens of refuge for shady transactions of every kind.

b) They should, as far as possible, be restricted. Considering the claims as they are listed in Article 2 of the 1926 Convention :

1) These are to a large extent justified and, in any case, inevitable, if ratification is to be obtained. However, only those expenses incurred to preserve the vessel (including remunerations listed under 3) here-under) should rank first. Removal of wrecks could be added.

2) These should be limited to the current contract of engagement, with an overall limit of six months.

3) Should rank first, as stated hereabove.

4) If liens are justified in respect of such claims, they should be restricted to indemnities for collision and for bodily injury to passengers.

5) Should be deleted.

c) Agreed.

d) Mortgages should rank as from their date of registration in a Contracting State (see Article 6 of the Stockholm Draft Convention

of 1963). As regards other priorities, the 1926 system might be retained, but we should prefer to provide for registration of claims secured by liens wherever possible.

e) Not being familiar with the legal mechanism of possessory.

f) liens or rights of retention other than that recognised.

g) in Belgian law in favour of an unpaid vendor, we prefer to reserve our reply to these questions until explanations and justifications are given by those (if any) interested in the preservation of such rights.

h) No. Some regard has to be given to ordinary creditors.

i) (i) Yes.

(ii) No. (see our reply to IV. a) (ii) above.

j) No.

k) No.

1) Considering the various sums as they are listed in Article 4 of the 1926 Convention :

1) Compensation due for damage YES, for loss of freight NO.

2) General average contribution due in respect of damage YES, loss of freight NO.

3) NO.

V. One year from the date on which the claim accrues.

VI. One must be careful, when dealing with these problems, to avoid confusion between :

— an event which *interrupts* a period and causes a new period (of same or different duration) to commence,

— and an event which *suspends* a period and thus simply causes that period to stop running for a certain time.

We are of the opinion that the one-year period should in no case whatsoever (except requisition, as stated below) be *suspended*. As regards *interruption* (which a creditor must cause to occur within one year, in order to preserve his lien), it might be possible for an international Convention to define very broadly the type of judicial proceedings which count as interruption, but it seems difficult to invade further the procedural field of domestic law. But we should like the new Convention to include registration of the claim as constituting interruption.

As regards the events listed in para. 8, j) of the Preliminary Report :

(i) and (iii) : no de-registration of the ship should be allowed in a contracting State (whether for breaking up or registration elsewhere)

without a prior procedure of notifications and publicity making it possible for creditors to have their claim either settled or re-registered (see Article 9 of the Stockholm Draft Convention of 1963).

(ii) requisition might be considered as a cause of suspension.

(iv) the constitution of a limitation fund should be of no concern to any mortgagee, but should purge only those claims which accrue from the event on account of which the limitation fund has been constituted.

(v) forced sale in a non-contracting State should be entirely disregarded (see our reply to IV. a) (ii) above).

VII. Yes. We suggest following the lines of the Stockholm Draft Convention of 1963 (but the penultimate paragraph of Article 9 could be improved).

VIII. a) Yes, with a provision for a prior procedure of notifications and publicity.

b) No, as stated above.

IX. Yes; we should like to see a comprehensive system set up.

X. This problem is of course most important, but its legal basis and implications are so different that it might be best to treat it separately; but, if a system of protection were devised, it would probably have to take effect by a process of registration in the Register with which we are concerned here.

XI. Yes. (see our reply to VI. (iv) above).

XII. The rules of the new Convention should apply to all cases tried or settled in one of the Contracting States and to all cases tried or settled elsewhere, where the law of one of the Contracting States is the proper law according to the rules of conflict of the *lex fori*.

XIII. a) Our domestic law embodies, since 1928, the rules of the 1926 Convention.

b) No.

c) (i) Date of registration.

(ii) and (iii) As in the 1926 Convention.

(iv) Non-applicable.

d) The problem is obscure as far as we are concerned, because our law has not expressly provided for deletion from the register.

e) Apparently yes, since our law does not require such evidence to be furnished.

f) None that we have thought of so far.

XIV. The *rank* of the various claims in rem has to be determined as part of a forced sale procedure, thus according to the *lex fori* (the rules of which embody the 1926 Convention). The *substance* of the various claims must be determined according to normal Belgian Rules of Conflict.

XV. We are in favour of proposing an entirely new Convention, to replace the 1926 Convention and to embody the principles of the Stockholm Draft Convention of 1963.

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This answer has been given by a subcommittee appointed by the Board of the Belgian Maritime Association, consisting of André G. Vaes, chairman, Léon Gyselinck, Max Hollenfeltz de Treux, René Bosmans and Etienne Gutt, members.

Antwerp. March 31st, 1964.

NORWEGIAN MARITIME LAW ASSOCIATION

REPLY

GENERAL OBSERVATIONS

The Norwegian Association welcomes the initiative taken by the C.M.I. Bureau Permanent in proposing a study of the operation of the 1926 Lien Convention and should like to compliment Mr. J. T. Asser, President of the International Subcommittee, on the very full and instructive analysis of the problems as set out in the Preliminary Report.

Norway ratified the 1926 Convention in 1933 and a considerable number of decisions by Norwegian courts interpreting the various provisions have been handed down during the last 30 years. Based on this experience the Norwegian Association feels that the 1926 Convention is no longer satisfactory. It should be replaced by a new convention rather than being modified by amendments. In preparing for a new Convention the principal aim should be to formulate a set of rules acceptable to a larger number of nations than has been the fact with the 1926 Convention. To the extent compatible with that aim the Norwegian Association would like to advocate the adoption of the following basic considerations :

1. Maritime liens should be confined to attach to the ship itself including all physical accessories and should not be extended to include substitutes for the ship or any part thereof, such as claims for compensation in tort, insurance claims, salvage claims and claims for contribution in General Average. There should be no maritime liens on freight.

2. Maritime liens should not be granted for supply claims nor for claims based on contracts entered into by the Master. Thus the provisions of Article 2 N° 5 of the 1926 Convention should be deleted altogether. On the other hand maritime liens should be granted for tort claims in general in excess of what is accepted under Article 2 N° 4 of the 1926 Convention.

3. There should be a general presumption to the effect that the transfer of the claim giving rise to the lien should also entail the transfer of the lien itself.

4. The right of national laws to recognize liens with priority ahead of convention liens should be retained on clearly defined and restricted terms along the liens set out in the Protocol of Signature to the 1926 Convention.

5. A right of retention (possessory lien) for ship repairers should be recognized on certain conditions.

6. National liens ranking behind liens recognized by the Convention should be discouraged or preferably be prohibited.

7. The new Convention should not include provisions on registration of charterparties nor grant them any protected rights.

8. The lien convention should make *lex fori* the applicable conflict of law principle in maritime lien matters whereas the law of the flag should apply in all mortgage matters.

9. To the extent the principles and provisions of the 1926 Convention are retained modifications, clarifications and improved drafting are required.

Question I

Is it your opinion that new international legislation relating to maritime liens and mortgages would be necessary or desirable ?

Answer

Yes, we are of the opinion that new international legislation covering all aspects of maritime liens and mortgages is highly necessary and desirable. In order to facilitate the financing of shipping through the utilization of the ship as a credit object such legislation should cover mortgages as well as maritime liens and apply to vessels trading as well as to vessels under construction. We submit as the ideal solution that all of these aspects should be dealt with in one convention, but taking into account the vast dissimilarities in the domestic laws of the various nations and the differences in public shipping policies we consider it realistic to assume that such a wide convention will not for the time being be universally adopted. In consequence, we suggest that three separate conventions be worked out : one for registered rights in ships under construction, one for mortgages on vessels in commission and one for maritime liens. The three conventions should be made to suit each other in such a way that combined they will form a complete system of rules relating to secured rights in ships. However, they should also be drafted in such a way that a country may adopt the one without the others if that should be deemed desirable.

Although we appreciate the drawbacks of a system of three conventions as distinct from one all-inclusive convention we believe that

the three conventions separately and combined will enjoy a wider international acceptance than the single « package » convention. It is conceivable that whereas a number of nations might adopt a mortgage convention some of them may not be prepared to adopt a lien convention. And whereas some ship importing countries and other shipbuilding and ship exporting countries may be most interested in a « ship under construction convention », other countries may be totally indifferent to legislation in that field.

We feel that the draft Convention of Registration of Rights in respect of Ships under Construction adopted at Stockholm in 1963 should be made the one corner stone in the system of three conventions to be proposed. Hence, the efforts should now be concentrated on drafting a lien convention and a mortgage convention.

Question II. a)

In what respects does the 1926 Convention need to be improved ?

Answer

The 1926 Convention is ambiguous and poorly drafted throughout and should be completely redrafted even where the substance of the provisions is acceptable. The Convention should be simplified not only by eliminating some categories of claims now giving rise to maritime liens but also in respect to assets being subjects to liens. Whenever possible generalizations should be preferred to detailed enumeration, for instance should the indemnities giving rise to liens (cp. Art. 2 N° 4 of the 1926 Convention) be generalized rather than be specified, even though it might lead to an increase in the number of lien claims.

The Norwegian Association has comments and suggestions to make to practically all of the provisions of the 1926 Convention. Some suggestions have been made in the General Observations above — others will be made below.

Question III. a)

What would in your opinion be the requirements of a new convention ?

Answer

In answer to this question reference is made to our General Observations above.

Question III. b)

Are you in favour of the new Convention providing for rules of uniform law with respect to all the problems mentioned in this report or to as many as possible of these problems ?

Answer

Subject to the comments already made herein we are in favour of the new Convention(s) providing for rules of uniform law with respect to all the problems mentioned in the Report, except those pertaining to long term charterparties.

Question III. c)

Are there any other problems in this field which are not dealt with in this report which in your opinion are susceptible of international uniform legislation ? If so, please state such problems.

Answer

Some problems only briefly touched upon in the Report would require a closer analysis. We should like to have provisions on the permissibility or non-permissibility of domestic maritime liens outside of the Convention and on the applicable law in conflict situations. Consequently, we should like to bring up for discussion the provisions of the Protocol of Signature to the 1926 Convention.

Question IV

Supposing that a new draft convention containing uniform provisions were adopted, then :

- a) Would you be in favour of an international recognition by all the Contracting States of maritime mortgages duly entered in the public register in which the ship is registered,
 - i) when the country of registration should be a Contracting State, and
 - ii) when this country should be a non-Contracting State ?

Answer

In order for a maritime mortgage entered in the public register of the vessel's home country to be internationally recognized certain minimum requirements should be met, inter alia that a copy of the mortgage has been filed with the Recorder and is available for scrutiny. The mortgage convention should restrict itself to the recognition of mortgages recorded in the Contracting States and should be silent on the question of recognition of other mortgages.

Question IV

- b) Should in your opinion the categories of claims giving rise to maritime liens, as set out in Article 2 of the 1926 Convention
 - i) be restricted and, if so, how; or
 - ii) be maintained, or
 - iii) be extended, and if so, to which other claims ?

Answer

We feel that the lien for claims arising on contracts entered into or acts done by the Master (Art. 2 N° 5) should be deleted.

On the other hand we feel that liens for indemnities (Art. 2 N° 4) should be extended to comprise all indemnities resulting from death and bodily injury and from physical damage caused through the operation of the vessel. The existing list of indemnities seems arbitrary and the wording of the provision is not clear. The term « accident of navigation » is, strictly interpreted, too narrow excluding, for instance, such accidents as explosion and fire which may occur at sea as well as in berth. Furthermore, it seems strange to restrict the liens to indemnities for damage to harbour works and docks etc. and to exclude damage to other objects outside the vessel which may be hit or otherwise damaged. Lien claims for personal injury are now restricted to injuries to passengers and crews whereas injuries to stevedores, repair workers and other persons on board are excluded. All of these inconsistencies would be remedied through a generally worded provision as suggested. The criteria would be « physical damage » and « bodily injury » thus ensuring that loss resulting from default in the ordinary performance under a contract would be excluded. On the other hand damage to cargo or any other physical damage would be included even though a contract (bill of lading, charterparty) offers the legal basis for presenting a claim. In using the words « resulting from... injury and... damage » all loss of whatever nature recoverable would be included.

Although we have no basic disagreement with the provisions of Art. 2 N° 1 we feel that the wording is unsystematic and untenable. Legal costs and enforcement expenses should certainly be secured by maritime liens but as they are of a different nature than other public charges such as pilotage dues etc. we recommend that they be treated separately and on best priority ahead of any other claims — possibly with the exception of the lien for public removal of wrecks which might head the list on first priority (cp. the 1926 Protocol of Signature). It seems unwarranted to include — without time limitation — all preservation and watching costs which the creditors might wish to incur. Assume, for instance, that the ship has been laid up in port for a year or more before a default giving rise to the public sale has occurred. Only such costs should be secured by liens as have accrued after the forced sale of the ship has been requested through application to the court.

In respect of other public charges and dues to be secured by liens we suggest that they be described in general terms rather than be enumerated. The principal consideration should be that only charges representing a remuneration for services rendered to the ship should be secured by liens whereas no maritime lien should be granted for public charges of a purely fiscal nature.

Question IV

c) Do you not agree that at any rate the claims referred to in Article 2, sub-paragraph 5°) should not be secured by any lien ?

Answer

Yes.

Question IV

d) Which should be the rules of the new convention that govern priorities :

- i) as between registered mortgages « inter se »;
- ii) as between registered mortgages and liens, and
- iii) as between liens « inter se » ?

Answer

Unless a mortgagee has expressly agreed to accept other mortgages ahead on better priorities registered mortgages should be ranked according to the date of their registration, i.e. a mortgage would rank behind those already recorded but ahead of subsequent mortgages recorded at a later time.

A provision corresponding to Article 6 paragraph 2 of the Stockholm draft on « Ships under Construction » should be adopted.

All maritime liens under the Convention should rank ahead of registered mortgages.

We are much in doubt about the ranking of liens « inter se » and should like to reserve our opinion to be expressed after we have completed a careful study of the various views advanced by the other associations. However, we are not in favour of retaining the « voyage » concept as a distinguishing factor at it has proved ambiguous and has given rise to much litigation. As a substitute might be used the concept of « distinct occasion ». We should like to consider with particular interest the Dutch system of ranking.

Question IV

e) Should international recognition be granted to rights on ships other than maritime liens proper, as for instance the English possessory lien or a right of retention not giving rise to a lien ?

Answer

The new Convention should expressly grant a right of retention (possessory lien) for shiprepairers and stipulate the terms therefore. Such a right should be recognized only for the period while the vessel is in the possession of the repairer. Furthermore, the right of retention should be granted only to secure the payment of work undertaken at

the time and not for payment of work previously undertaken. If adequate security is put up by the vessel owner the right of retention should cease to exist.

Question IV

f) If so, what should be the priority, if any, to be granted to such rights ?

Answer

The right of retention should rank ahead of mortgages but the Norwegian Association is undecided on whether it should rank behind or ahead of the maritime liens. We shall be guided by the prevalent opinion among the other Associations.

Question IV

g) Or should the new convention forbid the Contracting States to maintain or create such rights in their municipal law ?

Answer

No.

Question IV

h) Should or should not the Contracting States be allowed to grant in their domestic law liens in respect of claims other than those to be listed in the new convention, even if such liens should be post-posed to all registered mortgages and to all the liens listed ?

Answer

The Contracting States should not be allowed to grant other maritime liens in their domestic law than those authorized in the new convention. If, nevertheless, it should be decided to allow the Contracting States to grant additional liens any such lien should rank behind all convention liens and mortgages and should preferably be restricted to vessels flying the flag of the granting country and to vessels from other countries granting similar liens. A further restriction might be to make such liens applicable only in respect of claims originating in the granting country. By such provisions non-convention liens would be accepted as a purely local matter.

Question IV

i) Do you agree that under no circumstances the Contracting State should discriminate against the rights resulting from mortgages having been duly registered :

- i) in a Contracting State, or
- ii) in a non-Contracting State ?

Answer

Please refer to our answer to question IV a.

Question IV

j) Are you of opinion that under the new Convention liens should be enforceable against the freight by the ship ?

Answer

No.

Question IV

k) If so, please set out the conditions under which, in your opinion, freights should be liable to a lien, inter alia, the freight earned by whom and during what voyage.

Answer

No comment.

Question IV

l) Should maritime liens be enforceable against *other* assets of the shipowners, such as one or more of the sums due to the owner and referred to in Article 4 of the 1926 Convention ?

Answer

No. Please note sub-paragraph N° 1 of the General Observations above.

Question V. a)

What period or periods should be fixed in the new convention with respect to the extinction of liens ?

b) Should these periods run from the date on which the claims secured by the lien accrues or from the date on which the creditor seeks to enforce the lien ?

Answer

We are in favour of a one-year time bar period running from the date on which the lien claim arose. Another one-year period should be allowed to enforce the maritime lien in any Contracting State, following a res judicata decision.

Question VI. a)

Do you agree that the new Convention should list the causes of interruption of the period or periods of extinction and that under national law interruption by other causes should not be allowed ?

Answer

Yes.

Question VI. b)

If so, what should be the causes to be listed ? (v. paragraph 8, sub-par j) of this report).

Answer

The time bar period should only be interrupted by commencing suit before a competent court or arbitration tribunal in any of the Contracting States or by filing claim in bankruptcy or in similar insolvency proceedings according to national law.

In addition to time bar the following causes of extinction of maritime liens should be listed :

a) a forced sale of the ship by court order;

b) the constitution of a limitation fund in instances where the claim giving rise to the lien shares in the fund « pari passu » with all other claims.

Question VI. c)

Or are you of opinion that under the new Convention no interruption of these periods should be allowed ?

Answer

No.

Question VII. a)

Should the new convention deal with problems connected with a change of nationality (flag) of the ship concerned which problems discussed in paragraph 11 of this report ?

Answer

Yes.

Question VII. b)

In the affirmative, which is the solution you propose with regard to these problems ?

Answer

Change of flag should have no bearing on lien matters but should be of consequence in mortgage matters. A generally worded provision should be worked out along the lines of Art. 9 of the 1963 Stockholm Draft Convention on Ships under Construction. Additional provisions

should be worked out to cover change of flag in connection with a forced sale of a vessel. A forced sale in a foreign country (Contracting or non-Contracting State) should be recognized by the home country if the vessel was in the foreign jurisdiction at the time of the sale and the sale was made in accordance with *lex fori*. In such case the striking of the vessel from the old register and the re-registration of title in the new home port should be permitted.

Question VIII. a)

Do you agree that the new convention should provide that, in the event of a ship flying the flag of a Contracting State being sold by the order of a Court of one of the Contracting States, all registered mortgages and liens on such ship shall be extinct as a result of such sale and the distribution of the proceeds of the sale ?

Answer

Yes.

Question VIII. b)

Do you consider it necessary or desirable for the new convention to contain similar provisions with respect to the sale of a ship by the order of a Court of a non-Contracting State and, if so, subject to what conditions ?

Answer

Yes, subject to the conditions suggested in answer VII b).

Question IX. a)

Should the new Convention also cover mortgages on ships under construction and any liens accruing against such ship during the period of construction ?

Answer

No — see our answer to question I above. Alternatively, the Stockholm Draft Convention should be incorporated.

Question IX. b)

In the affirmative, should this be done by incorporating the essence of the draft Convention on the Registration of rights in respect of ships under construction in the new convention ?

Answer

See our answer to question IX a).

Question X. a)

Are you in favour of the new convention dealing with long-term charters, such as bare-boat charters, time charters and charters for consecutive voyages, for the purpose of protecting the position of the charterer in the event :

i) of a sale of the chartered ship by the order of a Court of either a Contracting or of a non-Contracting State;

ii) or of a voluntary sale of the ship ?

b) In the affirmative, should such provisions relate to long term charters without further qualifications or should the application of the provisions be restricted to the case in which the shipowner had assigned his rights under the charter to a third party by way of security ?

c) In either case, what would be your suggestions for dealing with this particular matter ?

Answer

No. Although desirable to protect the position of the Charterer in case of a forced or voluntary sale of a vessel we have concluded that the practical problems in that connection are insurmountable.

Question XI

Do you agree that otherwise than in the 1926 Convention, the new convention should contain a provision of the kind mentioned in paragraph 15 in fine of this report ?

Answer

Yes.

Question XII. a)

What should be in your opinion the scope of application of the new Convention ?

b) Should it be as wide as possible, so as to apply also, inter alia, to ships flying the flag of a non-Contracting State ?

Answer

The scope of application of the new lien Convention should be the widest possible and should apply in all instances — also to ships flying the flag of a non-Contracting State.

Question XIII

Please give a summary description of your domestic law relating to maritime liens and mortgages, dealing more specially with the following questions :

a) what are the maritime liens recognized in your domestic law;

Answer

Only one maritime lien on the vessel and on freight is recognized in addition to those of the 1926 Convention, viz. a lien for claims arising out of incorrect or incomplete information stated in a Bill of Lading. However, certain maritime liens are also granted on cargo.

Question XIII

b) does your domestic law recognize other rights on or with respect to ships, such as :

- i) possessory liens;
- ii) statutory liens;
- iii) a right of retention not giving rise to a maritime lien ?

Answer

Norwegian law recognizes statutory liens for certain social security charges and for wreck removal expenses as well as a right of retention granted to repairers.

Question XIII

c) What are under your domestic law the respective priorities :

- i) as between registered mortgages « inter se »;
- ii) as between registered mortgages and maritime liens;
- iii) as between liens « inter se » and
- iv) as between registered mortgages and maritime liens, on the one hand, and the « other rights on a ship » referred to in sub-paragraph b) on the other hand ?

Answer

Registered mortgages take priority, one before another, in the same order as they have been submitted for registration unless otherwise agreed between the mortgagor and the mortgagees concerned.

Maritime liens rank ahead of registered mortgages with the exception of the one particular lien mentioned under a) above which ranks behind registered mortgages.

The priorities of maritime liens « inter se » are determined in accordance with the 1926 Convention.

Statutory liens rank ahead of maritime liens but Norwegian law is unsettled on the question of priorities between maritime liens and the right of retention. The prevailing opinion is that the right of retention ranks ahead of the maritime and statutory liens. In any event it ranks ahead of the registered mortgages.

Question XIII

d) Under your domestic law is it possible to have a ship deleted from the national register on being sold abroad, without the mortgagees having been notified and their consent having been obtained ?

Answer

A ship cannot be deleted from Norwegian registry without the mortgagees having been notified and their consent having been obtained.

Question XIII

e) Under your domestic law can a ship be entered in your national register without production of evidence that her previous registration in another country was deleted ?

Answer

A ship cannot be registered in Norway unless evidence is produced to the effect that her previous registration in another country has been cancelled.

Question XIII

f) Are there any other provisions of your domestic law that would be pertinent to the subject under study ?

Answer

No.

Question XIV

Which are the rules of conflict of laws applied by your Courts in cases to which the 1926 Convention does not apply ?

Answer

In a leading decision handed down in 1961 the Norwegian Supreme Court held that maritime liens should be considered under the law applicable to the claim giving rise to the lien and thus applied American law (*lex loci contractus*) granting a maritime lien to an American shipyard which upon the order of the shipowner had undertaken repairs onboard a Norwegian vessel (ND 1961 p. 300). The priority of the « American » lien in competition with « Norwegian » liens was not at issue and consequently was not ruled upon.

Question XV

Assuming your answer to question I to be in the affirmative, would you favour :

- a) by amending the 1926 Convention, or
- b) by drafting a protocol to the 1926 Convention, or
- c) by preparing an entirely new convention which would replace the 1926 Convention ?

Answer

As outlined in our General Observations we are in favour of preparing new conventions to replace the 1926 Convention.

Oslo, March 1964.

Alex. Rein, President.

Frode Ringdal, Hon. Secretary.

THE NETHERLANDS' MARITIME LAW ASSOCIATION

ANSWERS

The following answers have been given by a Subcommittee appointed by the Board of the Netherlands' Maritime Law Association, consisting of W.E. Boeles, chairman, J. van der Berg, B. Dupuis and J.A.L.M. Loeff, members and L. Hardenberg, secretary. The Subcommittee have based themselves on the English text of the questionnaire.

I. Yes.

II. a) The Netherlands have not adhered to the 1926 Convention.
b) Yes in many respects as set out below.

III. a) See under b) and c).

b) Yes, as many as possible.

c) It has happened that a country which had the privileges of the Brussels Convention incorporated in its domestic law nevertheless by applying principles of international law admitted a privilege for a foreign claim, which was not privileged according to their domestic law. It is felt that the Convention should also deal with such problems and it would therefore seem advisable that the Contracting States accept uniform rules of international private law compelling them to apply the Convention under alle circumstances, no matter whether the claims are put forward by nationals of a Contracting State or of a non Contracting State.

IV. a) Yes.

i) Yes.

ii) Yes (also when the country is a non-Contracting State).

b) i) Be restricted by allowing only liens for the following claims.

aa) Those mentioned under 1e in art. 2 of the Convention;

bb) by restricting those mentioned under 2 exclusively to claims arising out of the engagement of Master and Crew relating to the period during which they have served on board of the ship;

cc) by restricting the claims mentioned under 4 to indemnities for collision and deleting completely the lien mentioned under 5.

It is pointed out that the claims for damage to cargo and baggage and for bodily injury to members of the crew are always insured by the owner, so that they do not need a privilege, whilst passengers may be required to insure themselves as in the majority of cases is done.

c) Yes (see above under b) i) cc).

d) The present system should be maintained.

e) and f) Certain members of the Subcommittee are in favour of the recognition of a right of retention for the ship's repairer. Others being against the recognition of such right would accept to replace it by a privilege (lien) ranking immediately after the other liens and after a mortgage if such mortgage is of prior date and otherwise before such mortgage. The former however, if no right of retention is recognized for the ships repairer, would grant him a lien ranking above mortgage, notwithstanding the mortgage is of prior date.

g) Yes.

h) No objection provided these liens will be ranking after mortgages and all the liens listed and will not follow the vessel into whatever hands it may pass.

i) Yes in both cases.

j) No.

k) —

l) No.

V. a) The liens, which on the submission of the Subcommittee should be recognized in the Convention, should expire in one year.

b) This year should run from the date on which the claim accrues.

VI. a) Yes.

b) The Questionnaire erroneously refers to para 8 j) of the preliminary report, whereas it was clearly the intention to refer to para 8 k).

It was suggested by the Committee to list as causes of interruption :

1. Arrest of the vessel, respectively the taking of the required legal steps to secure a share in the proceeds of the vessel;

2. Requisition of the vessel;

3. Impossibility to arrest the vessel in the domestic territorial waters of the claimant, provided that the lien in any case is to expire in three years.

c) No.

VII. a) Yes.

b) The new Convention should expressly state that change of flag makes no difference whatsoever.

VIII. a) Yes, as a result of such sale, not as the result of the distribution of the proceeds.

b) Yes, but subject to the conditions as referred to in article 318 t of the Netherlands' Commercial Code :

« In the event of a forced sale by order of a Court abroad of a ship entered in the Ships' Register the vessel is not released of the mortgages encumbering it according to the preceding articles, unless the mortgagees have been summoned in person to exercise their rights on the proceeds and they have been actually given the opportunity to do so. »

IX. a) Yes.

b) Yes.

X. a) i) Yes.

ii) Yes.

b) To long-term-charters without further qualifications and not restricted to the case in which the shipowner has assigned his rights.

c) Survival of the charter.

XI. Yes.

XII. The new convention should be as wide as possible.

XIII. a) According to art. 318 c of the Dutch Commercial Code Dutch law recognizes as maritime liens, which follow the ship in whatever hands it may pass :

1) the costs of execution (forced sale);

2) claims of the Master and the Crew arising under their service agreements and relating to the period during which they have served aboard the ship;

3) salvage claims, pilotage dues, canal and harbour dues and other shipping dues;

4) collision claims.

b) i) No.

ii) No.

iii) Although some doubt exists most probably Dutch Law recognizes the right of Shipyards to retain possession of the vessel for unpaid repair-accounts.

c) i) Mortgages rank inter se according to the date of their being registered in the Ships Register, Mortgages of prior registration ranking before those of later registration.

ii) Maritime liens as mentioned above rank before mortgages. There are some other privileged claims viz. those mentioned in art. 318 q of

the Dutch Commercial Code which rank after mortgages and do not travel with the vessel in whosoever possession it comes. They share all the same rank.

iii) Maritime liens rank inter se according to the number they are enumerated above. Salvage-claims of more recent date rank before older salvage-claims.

iv) ?

d) No (art. 20 Maatregel Schepen).

e) No (art. 10 Maatregel Schepen).

f) Yes, various articles of the Commercial Code among which art. 318 o, r, s, t, v and 322.

XIV. With the exception of art. 318 v of the Commercial Code as cited above under XIII f, the law of the Netherlands does not answer this question. The Courts seem to give a certain preference to the law of the country where the ship is sold and the proceeds are divided.

XV. The Subcommittee would be in favour of amending the 1926-Convention.

Amsterdam, 2 april 1964.

ASSOCIATION YUGOSLAVE DE DROIT MARITIME

REPONSE

OBSERVATION PRELIMINAIRE

La Commission nationale de l'Association Yougoslave de Droit Maritime tient avant tout à exprimer sa vive reconnaissance à M. Asser, Président de la Commission internationale, pour l'étude approfondie sur la matière concernant la révision de la Convention de 1926 qui nous a beaucoup facilité notre tâche en nous présentant les questions qui permettent d'aborder le problème qui nous est soumis.

1. En ce qui concerne les privilèges nous ne croyons pas qu'une révision de la Convention serait nécessaire, mais nous considérons qu'une telle révision serait souhaitable si elle permettrait d'élargir le nombre des Etats contractants.

2. La Yougoslavie n'a pas ratifié la Convention de 1926 mais le Décret-loi du 30 mai 1939 relatif aux droits réels sur navires et aux privilèges maritimes a introduit dans le droit interne yougoslave toutes les dispositions de la Convention, sans aucune modification. Si on procède à une révision de la Convention, il serait utile de prendre en considération le problème du transfert des hypothèques et des mortgages d'un registre national à un autre registre national et de leurs effets juridiques dans l'ordre juridique de l'Etat de la nouvelle nationalité du navire.

3. La Convention de 1926 n'ayant pas réglé les questions relatives au rang des privilèges et de leur survivance dans le cas de changement de nationalité du navire ainsi que dans le cas qu'on raye le navire du registre national, il faudrait y pourvoir par des dispositions adéquates. Une définition de la notion de « voyage » serait aussi très utile.

Dans le Rapport préliminaire une question qui nous semble de toute première importance est touchée. Il s'agit de la survivance de l'hypothèque ou du mortgage après changement de nationalité du navire et plus particulièrement des hypothèques sur navires en construction après la livraison du navire à l'acheteur étranger. Les différences

entre le mortgage anglo-américain et l'hypothèque des pays dont le droit est d'origine romaine sont bien connues. On ne peut inscrire dans les registres nationaux que des droits réels reconnus par l'ordre juridique du for. Un mortgage ne peut donc être inscrit dans le registre d'un pays ne connaissant que l'hypothèque sur navire. Des difficultés analogues subsistent probablement dans les pays ne connaissant que le mortgage. Si l'on veut rendre possible le transfert de l'inscription d'une hypothèque sur les navires en construction dans le registre national du navire et lui conserver ses effets juridiques il faut résoudre le problème des rapports entre hypothèque et mortgage sur navires. Un échange de vues sur les possibilités et la méthode à suivre pour aboutir à un résultat pratique serait peut-être utile.

Le seul critère qui devrait présider aux travaux relatifs à une révision éventuelle de la Convention de 1926 devait être celui d'adopter les modifications qui permettraient d'élargir son champ d'application. C'est pourquoi nous croyons que les suggestions des Associations nationales des pays n'ayant ni ratifié ni adopté dans leur droit interne la Convention devraient être décisives en ce qui concerne l'étude des modifications à apporter au texte de la Convention.

4. a) Nous considérons que la solution donnée au problème de la reconnaissance internationale des hypothèques maritimes par les art. 1 et 14 de la Convention de 1926 est satisfaisante. Il ne nous semble pas possible d'obliger les Etats contractants d'appliquer la Convention aux navires immatriculés dans un Etat non-contractant sans réciprocité. Il serait admissible, peut-être, de les obliger à reconnaître les hypothèques dûment mentionnés dans le registre d'un Etat non-contractant à condition de réciprocité.

b) A notre avis les privilèges de la Convention de 1926 pourraient être maintenus.

c) Il semble que dans la pratique courante des affaires le privilège du § 5 de l'art. 5 de la Convention de 1926 remplit encore un rôle important. Il résulte des sentences des tribunaux que ce privilège est préjudiciable aux créanciers hypothécaires mais il reste à établir si son abolition ne porterait pas préjudice aux intérêts de la navigation maritime.

d) A notre avis la règle du § 2 de l'art. 6 du Projet de Convention relative à l'inscription des droits sur navire en construction devrait être appliquée au rang des hypothèques enregistrées, inter se. Les Règles de l'art. 3 de la Convention de 1926 devrait continuer à régir le rang entre les hypothèques et les privilèges et l'art. 5 de la Convention celui des privilèges inter se.

e) Il nous semble qu'on ne devrait pas accorder une reconnaissance internationale aux droits qui ne sont pas de privilèges maritimes

proprement dits et en ce qui concerne le droit de retention ce problème, à notre avis, exige des études comparatives approfondies des solutions législatives dans les différents pays.

f) — — — —

g) La loi interne devrait en tout cas être conforme à la réglementation internationale.

h) Nous n'avons pas d'objection à la règle du § 2 de l'art. 3 de la Convention de 1926 selon laquelle les lois nationales peuvent accorder un privilège à d'autres créances sans modifier le rang des privilèges unifiés et sans leur donner de priorité sur l'hypothèque.

i) Nous sommes d'accord sur le principe, toutefois en tenant compte de ce qui vient d'être dit en réponse à la question N° 4, a.

j) Nous sommes d'avis qu'on pourrait maintenir le droit du créancier privilégié à faire valoir son privilège sur le fret du navire.

k) L'art 2 de la Convention de 1926 se limite à appliquer le privilège au fret « du voyage pendant lequel est née la créance privilégiée » en omettant de définir la notion de voyage et ne désignant pas les personnes par lesquelles le fret doit être gagné. On pourrait peut-être utiliser les solutions jurisprudentielles du problème ainsi posé pour arriver à une solution en ce qui concerne la notion de voyage. Le fret gagné par l'armateur pour le transport effectué devrait garantir le privilège aux conditions prévues à l'art. 10 de la Convention de 1926.

l) A notre avis les privilèges devraient produire leurs effets sur les sommes mentionnées à l'art. 4 de la Convention de 1926. Ces sommes sont les seuls actifs du propriétaire qui restent aux créanciers privilégiés qui ne sont pas des créanciers personnels du propriétaire du navire en cas de perte du navire.

5. a) Les délais établis pour l'extinction des privilèges dans la Convention de 1926 nous semblent satisfaisant.

b) Ces délais devraient commencer à prendre cours à partir des dates établies dans l'art. 9, § 2 de la Convention de 1926.

6. Il est dans l'intérêt général que la durée des privilèges soit limitée dans le temps aussi clairement que possible. C'est pourquoi nous croyons qu'on ne devrait pas admettre la possibilité de l'introduction de causes d'interruption du délai par les lois nationales / et dans ce sens, on pourrait, le cas échéant, reviser la disposition du § 5 de l'art. 9 de la Convention de 1926 / et par conséquence nous ne voyons pas de nécessité de fixer de telles causes d'interruption dans le texte de la Convention. Bien entendu, s'il faut maintenir certaines causes d'interruption de ce délai, il faut les fixer dans la Convention elle-même.

7. a) Oui.

b) A notre avis le changement de nationalité ne devrait pas affecter ni les privilèges ni les hypothèques.

8. a) Oui.

b) Oui, nous l'estimons désirable, mais la reconnaissance internationale d'une telle vente judiciaire devrait être subordonnée au respect des droits réels, les privilèges inclus, de la loi du pavillon.

9. a) Oui.

b) Oui.

10. Nous ne pensons pas que la Convention devrait s'occuper des affrètements à long terme. Ce problème relève plutôt de la matière étudiée par la Commission internationale sur la publicité navale. En tout cas on ne voit pas de rapport direct entre les privilèges et hypothèques et l'affrètement du navire à long terme.

11. Oui.

12. a) Le champ d'application de la Convention de 1926 est à notre avis satisfaisant.

b) A notre avis on pourrait peut-être élargir le champ d'application de la Convention en modifiant le texte du § 2 de l'art. 14 en obligeant les Etats contractant d'appliquer la Convention même s'il s'agit d'un navire ressortissant d'un Etat non-contractant et s'il s'agit de l'appliquer en faveur des ressortissants d'un Etat non-contractant, à condition de réciprocité matérielle.

13. a - c) La loi yougoslave se base entièrement sur la Convention de 1926. Les droits enregistrés, en général, et les hypothèques plus spécialement, prennent rang d'après le moment de la présentation de la demande d'inscription au bureau d'immatriculation de navires et les tribunaux font inscrire les hypothèques dans cet ordre.

d) Le navire grevé d'hypothèques ou de privilèges ne peut pas être vendu à l'étranger ni autrement rayé du registre de navires si les créanciers hypothécaires n'y consentent pas ou si les créanciers privilégiés s'y opposent.

e) Non.

f) Dans notre loi nationale les dispositions de droit matériel sont contenues dans le Décret-loi mentionné du 30 mai 1939 et les dispositions d'ordre formel sont celles de deux décrets du 21 mars 1940 relatifs à l'organisation du registre de navires et à la procédure relative à l'inscription de droits réels sur navires.

14. Il n'y a pas de règles de conflit de lois codifiées dans cette matière. Dans les cas où la Convention de 1926 ne s'applique pas, il y a une tendance dans notre jurisprudence d'appliquer, en principe, la loi du pavillon.

15. Nous croyons qu'en ce qui concerne l'instrument modifiant la Convention de 1926 on pourrait suivre l'exemple de la Conférence de Stockholm en ce qui concerne la révision de la Convention en matière de connaissance de 1924.

A notre avis il faut tenir compte du fait qu'en dehors des Etats ayant ratifiée la Convention de 1926 il y a un nombre des Etats qui ont adopté les dispositions de la Convention dans leur droit interne, sans ratification, et qu'il y a une utilité certaine du point de vue de l'unification du droit à se limiter aux modifications éventuellement imposés par l'évolution de la pratique maritime dans les derniers 40 ans.

Zagreb, 15 mars 1964

V. Brajkovic
Président de l'Association
Yougoslave de Droit Maritime

E. Pallua
P. Percic
Rapporteurs

ASSOCIATION FRANÇAISE DU DROIT MARITIME

REPOSE

L'Association Française de Droit Maritime a pris connaissance avec la plus grande attention du rapport présenté par M. Asser et du questionnaire qui l'accompagne.

Après une étude approfondie de ces deux documents, l'Association Française ne croit pas nécessaire d'entrer dans le détail des questions posées à raison des considérations générales qui sont exposées ci-dessous :

1. L'Association Française rappelle en premier lieu que la Convention de 1926 est le résultat d'un long effort de conciliation entre trois tendances et conceptions différentes qui furent celles des pays latins, dont la France, de la Grande-Bretagne et des Etats-Unis d'Amérique, de l'Allemagne.

Les uns et les autres de ces pays recherchant — malgré leurs divergences — une plus grande sûreté du crédit hypothécaire, tout en sauvegardant les droits d'un certain nombre de créanciers qui devaient rester privilégiés du fait que leurs créances se rattachent étroitement à l'exploitation du navire.

Dans ce but, la France a renoncé à beaucoup de privilèges qui étaient chez elle traditionnels et qui, non moins traditionnellement primaient les hypothèques.

Soucieuse de participer à l'unification du Droit Maritime et malgré que le texte proposé heurtât sur de nombreux points ses propres conceptions, elle a signé la Convention de 1926 en même temps que les représentants des autres Puissances qui avaient participé à la discussion. Elle fut l'une des premières à la ratifier avec la pensée qu'elle serait suivie par ses partenaires. L'Association Française constate avec un grand regret qu'il n'en a rien été de la part des pays vis-à-vis desquels elle avait fait les concessions nécessaires, et que dans ces conditions l'unification du droit devient absolument irréalisable.

L'Association Française souligne, dans cet ordre d'idée, que la France a toujours ratifié les Conventions internationales à la discussion desquelles elle a participé et au bas desquelles ses représentants avaient

apposé leurs signatures. Il lui paraît déplorable, parce que contraire au but recherché, qu'ici encore cet exemple n'ait été que trop rarement suivi.

2. En second lieu, l'Association Française fait remarquer que faisant un pas de plus vers l'unification, la France, après de longues études, a complètement modifié sa législation interne sur les privilèges et hypothèques maritimes pour l'aligner sur la Convention Internationale puisque une loi du 19 février 1949 a modifié son Code de Commerce afin d'y incorporer toutes les dispositions de la Convention Internationale. Elle ne pouvait faire davantage.

L'Association Française affirme à cet égard que le système établi par la Convention a fonctionné jusqu'ici sans rencontrer de difficultés tant au point de vue économique que juridique; que les organismes prêteurs, dont certains sont spécialisés dans le crédit maritime, n'ont jamais eu à souffrir de l'existence des privilèges qui d'après la Convention (et la loi interne) priment les hypothèques; que pas davantage des difficultés n'ont surgi dans la détermination du rang soit des privilèges entre eux, soit des privilèges et des hypothèques, soit des hypothèques entre elles, tant est clair et hors de discussion le classement opéré par la Convention Internationale ainsi que par la loi interne.

3. En troisième lieu, l'Association Française estime qu'il ne lui paraît pas exact d'affirmer (rapport M. Asser N° 9) qu'il existe un « mécontentement presque général au sujet de la Convention de 1926, mécontentement ressenti également par les pays qui l'ont ratifiée ». Elle n'en veut pour preuve, en outre la propre expérience de la France, que le fait que les législations nouvelles de nombreux Etats, qui n'ont pas tous ratifié la Convention, se sont appropriés ses dispositions pour en faire leur loi nationale (Lybie, Grèce, Turquie, Sénégal), sans parler des projets législatifs qui bientôt seront loi, par exemple celui de la République Argentine.

Il paraît évident que si des dispositions de la Convention étaient en soi aussi défectueuses qu'il est soutenu ou ne correspondaient plus aux exigences économiques actuelles, des législations aussi récentes ne les auraient pas retenues.

Il paraît aussi évident que ces Etats ne seront guère disposés à refondre la législation qu'ils viennent juste d'élaborer.

4. En quatrième lieu, il importe au premier chef d'éviter la coexistence de deux Conventions ayant le même objet et de ne pas recommencer l'expérience fâcheuse d'une Convention de 1957 sur la limitation de Responsabilités susceptible d'exister en même temps que celle de 1924 ayant le même objet. Car c'est alors l'unité du droit international qui se trouve détruite en son propre sein.

Il faut donc, avant toutes choses, avoir la certitude qu'une nouvelle convention aura une audience suffisamment large pour faire disparaître à coup sûr la Convention préexistante. Or ce n'est pas en multipliant les questions et les problèmes que cette audience a des chances d'être atteinte.

5. En conclusion, l'Association Française repousse comme lui paraissant non fondés la plupart des critiques formulées à l'égard de la Convention de 1926.

Dans son désir d'unification du droit, elle ne s'oppose pas cependant à reprendre l'étude, sur le plan international du régime des privilèges et des hypothèques maritimes et autres droits réels susceptibles de grever le navire, ainsi que celle de leur publicité, ne serait-ce que pour porter remède au défaut d'harmonie évident, qu'elle a déjà souligné par ailleurs, de la Convention de 1926 et de celle de 1957.

Mais au préalable, étant donné ce qui vient d'être exposé, l'Association Française estime qu'il est pour elle préférable de connaître mieux, par les réponses que recevra la Commission Internationale, la législation en la matière des principaux Pays maritimes, et les desiderata *précis et limités* de ceux-ci.

L'Association redit en terminant sa conviction qu'en cette matière l'effort d'unification doit se limiter présentement à quelques grands problèmes comme serait celui de la reconnaissance internationale des droits régulièrement acquis sur le navire et de son organisation.

Le président : *Marcel Pitois.*

Le rapporteur : *Pierre Lureau.*

INTERNATIONAL SUBCOMMITTEE
ON
MARITIME LIENS AND MORTGAGES

SECOND REPORT

Introductory Remarks

On the 11th and 12th April, 1964, a Group composed of Messrs. Francesco Berlingieri, W. Birch Reynardson, Arthur Boal, Carlo van den Bosch, Michel Dubosc, Colin Harris, Kaj Pineus, Frode Ringdal, André Vaes and the undersigned met at Oxford. Mr. L.C.H. Everard acted as Secretary, while Mrs. S. Morris, representing Mr. Albert Lilar, President of the International Maritime Committee, also assisted at the meeting.

Prior to the meeting Reports containing the Replies to the Questionnaire had been received from the following National Associations, namely, in chronological order, the Swedish, Finnish, Italian, British, American, Belgian, Norwegian, Dutch and French Associations (1).

The contents of these Reports were considered and discussed by the Group which arrived at a number of provisional conclusions, reference to which will be made hereunder.

On the basis of these discussions and conclusions a small group composed of Messrs. Francesco Berlingieri, W. Birch Reynardson, André Vaes and the undersigned met on the 13th April, 1964, and prepared the provisional draft of a new Convention on Maritime Liens and Mortgages for consideration by the Meeting of the International Subcommittee which is to take place in Amsterdam on the 19th and 20th June, 1964. The text of this provisional draft has been printed at the end of this Report.

(*) HYPO - 17 French translation published in French Editions.

(1) Further Replies prepared by the Yugoslav and Canadian Associations were received by the Undersigned only after the termination of the meeting.

Discussion of the provisional draft-Convention

I. As appears from the Reports received, the majority favours the adoption of a new Convention which would replace the 1926 Convention. In fact, only the Netherlands Association proposed to revise the 1926 Convention rather than prepare an entirely new instrument ⁽²⁾.

The French Association took a view which differed considerably from those expressed by the other Reports. According to the French Report the criticisms which are directed against the 1926 Convention do not appear to be justified and, in consequence, there seems to be no urgent need for revising the 1926 Convention, let alone the adoption of a new Convention. However, the French Association would not object to the study of the problems relating to maritime liens and mortgages and other similar rights on ships on an international level.

Under these circumstances, the Group decided to act in accordance with the majority view.

II. The Replies to the Questionnaire show in certain respects a wide divergence of opinions with regard to matters of substantive law. Consequently, the Group realized that the drafting of such rules of uniform substantive law as would satisfy the largest possible number of countries, would be an arduous task. Nevertheless, the Group decided that only in this way real international uniformity would be attained, which would not be the case if a solution were sought along the lines of a Convention that would embody or almost exclusively embody provisions of conflict of laws. Except for a few points in connection wherewith the attached draft Convention refers to national law, all other provisions thereof contain rules of uniform substantive law.

III. As regards the *scope of application* of the new Convention, the following conclusions were arrived at :

i) The scope should be as wide as practically possible. It is therefore proposed that in each Contracting State the provisions of the Convention will be applicable to all ships irrespective as to whether they are registered in a Contracting State or in a non-Contracting State (art. 13).

ii) In accordance with the majority of the Replies received, the Group arrived at the provisional conclusion that the provisions of the Convention should extend to *mortgages* granted on and *liens* attaching to *ships under construction*. It was feared that a system whereby mortgages and liens on ships in operation on the one hand and on ships under construction on the other would be dealt with in separate con-

(2) The Yugoslav Association takes a similar view.

ventions, as is suggested in the Replies of the Norwegian and Swedish Associations, might jeopardise the security of lien creditors and especially that of mortgagees of the latter kind of ships, in the event that certain countries should adhere to one, but not the other Convention.

Consequently, article 12 of the draft provides that the provisions of the Convention shall also apply to ships which are to be or are being constructed in a Contracting State. Article 12 of the new draft is therefore more extensive than the Stockholm draft Convention, in that it makes the provisions of the new draft relating to liens also applicable to ships under construction, while the only reference to liens in the Stockholm draft is to be found in article 7 of that draft providing that « priority between rights registered according to this Convention and maritime or possessory liens or similar rights shall be the same as for registered after completion », which provision does not seem to solve a number of problems, especially those arising in the event that a ship after its completion is registered in another State.

On the other hand, the Group decided not to reproduce in the new draft the other provisions of the Stockholm draft Convention such as those dealing with rights in respect of ships other than mortgages and neither those which impose upon the Contracting States an obligation to provide for the possibility of registration of ships under construction and of such other rights and mortgages. The Group felt that by doing so the new draft might be unduly burdened, while moreover the question as to whether the possibility of such registration should be made compulsory, would seem to be essentially the concern of each individual country.

However, in order to prevent the international complications which might result from the situation in which a ship under construction would be registered in more than one country, for instance in the country of construction and in that of the owner for whose account the ship is being built, the second half of article 12 of the new draft further provides that no mortgage on a vessel under construction shall be registrable elsewhere than in the Contracting State in which such vessel is or is to be built, a provision similar to that of Article 3 of the Stockholm draft-Convention. The counterpart of that rule, namely a provision forbidding each Contracting State to register a ship previously registered in another country without proof of de-registration in the latter country, is to be found in the second paragraph of Article 6 of the new draft.

iii) For the same reasons as those set out in the preceding subparagraph, the Group decided provisionally not to adopt the suggestion made in the Replies of the Swedish Association of International Maritime Law, namely to prepare *three* separate conventions, the first on maritime mortgages and the effect of a forced sale, the second on registration of ships under construction and the third dealing with liens, priorities and prescription.

iv) Following the majority view, the Group decided not to include in the new draft any provisions dealing with *long term charters*. The Group, although fully realizing the importance of this topic and the need for international legislation thereon, nevertheless believed that the inclusion of this topic, while not indispensable in a Convention dealing with maritime liens and mortgages, is fraught with so many problems that an attempt to do so not only might cause a considerable delay in the preparing of the final draft Convention by the Comité Maritime International, but might make such a Convention, if adopted, less acceptable to a number of maritime countries. Moreover, the topic is already being studied by an International Subcommittee of C.M.I. under the Chairmanship of Mr. Giorgio Berlingieri.

IV. *Mortgages, liens and ranking.*

Article 1 1) of the new draft provides for the international recognition of all *registered mortgages* irrespective as to whether granted on ships registered in a Contracting State or in a non-Contracting State, provided that certain *minimum requirements* as to *registration* and *publicity* of the mortgage have been complied with. The reference to « hypothecations » (which by the way means something quite different from the French « hypothèques ») and to « other similar charges » appearing in Article 1 of the 1926 Convention has not been reproduced in the new draft.

2) As is shown by the Replies to the Questionnaire, there seems to be a consensus of opinion that the number of *maritime liens* to be recognized under the new Convention should be restricted and that particularly there is no justification to have the claims referred to in Article 11, subparagraph 5^o) of the 1926 Convention secured by a maritime lien.

3) No such unanimity appears to exist with regard to the question which are the other liens that should be listed in the new Convention and especially which are the liens that should take precedence over maritime mortgages. This situation proved to be the most difficult problem with which the Group was faced. Should all desiderata expressed in the Replies be met, the result would be that the categories of liens overriding mortgages would be even more extensive than those set out in the 1926 Convention, whereby one of the main purposes for drafting a new Convention, namely the securing of a higher priority of and therefore a better protection for registered mortgages, would be frustrated.

In these circumstances it seemed necessary to devise a compromise which it is hoped may be acceptable to the largest number of national associations.

According to this compromise a relatively large number of maritime liens will be internationally recognised and enforceable, but only

part of the liens listed will have priority over registered mortgages, while the remainder will rank after such mortgages.

The *pre-mortgage* liens include those arising in respect of the following claims :

- i) costs, arising in connection with the arrest and sale of the vessel and the distribution of the proceeds of the sale;
- ii) costs of wreck removal;
- iii) port, canal and other similar dues;
- iv) wages etc. due to the crew and social insurance premiums payable by the employer of the crew;
- v) loss of life and personal injury claims, the definition of which claims is wider than that of Article 2, 4) of the 1926 Convention (vide : below sub-paragraph 7);
- vi) remuneration for salvage.

The further liens listed which rank *after* registered mortgages, are those securing :

- aa) claims for repairs and maintenance of the ship;
- bb) property claims.

4) The *pre-mortgage liens* may be divided into three categories, namely :

- a) the so-called « law costs » which are deemed to have incurred for the benefit of *all* creditors;
- b) costs of wreck removal and harbour and canal dues to *public authorities*, all of which enjoy a high priority in a number of national legislations;
- c) those securing claims which for *social* reasons should also override mortgages, namely crew's wages etc. and life and personal injury claims;
- d) remuneration for salvage, for the reason that all successful salvage operations are made for the preservation of the ship and therefore also for the protection of the security of the mortgagee.

5) It is further to be noted that otherwise than in Article II, sub-paragraph 2) of the Protocol of Signature to the 1926 Convention, under which each Contracting State may provide in its national legislation for the right to detain and sell a ship (or wreck) for the purpose of recovering costs of wreck removal, harbor dues or other damage caused by the ship, thus rendering illusory the rights recognised under the Convention itself, the new draft proposes to give a lien to claims in respect of wreck removal, while both that lien and those securing and harbor and canal dues rank high in the list of priorities. The object of that proposal is to ensure real international uniformity also with respect to those latter liens.

For the same reason, it was decided not to grant in the new draft to the Contracting States any liberty such as those set out in the said Protocol of Signature, except the right to recognise in their legislation liens securing other claims, provided however that such « national » liens shall rank only *after* those mentioned in Article 2 (vide : Article 4, sub-paragraph 1).

As regards pilotage dues and contribution in general average, there seems to be no real necessity to have these claims secured by a maritime lien.

6) The next problem which was considered by the Group was that relating to the *right of retention* and the *possessory lien*, belonging to shipbuilders and ship repairers. In English law, a possessory lien, although not being a lien proper, has a high priority ⁽³⁾, while the right of retention as recognized in certain other countries, although neither being a lien, gives to the creditor the possibility of having his claim paid in full over and above those of all lien creditors and all mortgagees, as the right of retention entitles the creditor to refuse to give up possession of the ship concerned until such payment has been made.

It was felt that present day circumstances do not justify any more the granting of such high ranking security to this particular class of creditors. Just as any other party entering into a contract with the shipowner (with the exception of members of the ship's crew, salvors, passengers and shippers of cargo), a shipyard is in a position where it may require the shipowner to provide security, as for instance a bank-guaranty, whenever it should entertain doubts about its claim being paid.

However, the majority of the Replies to the Questionnaire indicate a desire to grant in the new Convention some measure of protection to shipyards. In an attempt to solve this difficult problem, the Group suggests a compromise according to which the claims of the shipyard for *maintenance* and *repairs* will be secured by a maritime lien ranking immediately after the registered mortgages, while Article 4, second paragraph of the new draft entitles the Contracting States to introduce into or retain in their national laws a right of retention securing any claims whatsoever, provided that such right of retention does not prejudice the enforcement of any of the claims listed, i.e. pre-mortgage liens, mortgages and post-mortgage liens.

In practice this compromise means that such right of retention will be effective only as against the ordinary creditors of the shipowner and, depending on the national legislation of the Contracting State concerned, the creditors of so-called « national » liens referred to in the first paragraph of said Article 4.

(3) Vide : p. 7 of the Replies presented by the British Maritime Law Association.

7) The last of the *post-mortgage* liens set out in the new draft deals with property claims, i.e. claims for loss of or damage to property carried on board the ship, and property whether on land or sea caused by the ship or by any person on board the ship for whose act neglect or fault the Owner or Carrier is responsible.

These claims therefore include both claims in tort, such as, for instance, collision claims and contracting claims such as cargo and luggage claims.

It is to be noted that the definition of this category of claims as well as that of the life and personal injury claims which according to the new draft is secured by a pre-mortgage lien, is « *mutatis mutandis* » the same as that of Article 1, 1°), a) and b) of the 1957 Convention on the limitation of liability of shipowners.

The definition of both categories is more extensive than the corresponding definition in Article 2, 4) of the 1926 Convention, but it is thought that this apparent disadvantage is outweighed by the advantage of having the same concepts in different international conventions, while moreover the wider definition of life and personal injury claims seems justified for social reasons. As regards property claims, these only rank after mortgages, so that the more extensive scope of this category would not encroach upon the security granted to mortgagees.

8) Article 3 of the new draft deals with priorities and lays down, as regards the several categories of pre-mortgage liens « *inter se* », what may be called the traditional order, except that otherwise than in the 1926 Convention and in certain national legislations life and personal injury claims override salvage.

Within each category of liens, claims rank « *pari passu* », except that claims in respect of remuneration for salvage rank in their inverse chronological order.

Finally, Article 3, 4) of the new draft refers to the national law of the country of registration for the purpose of determining the rank of mortgages « *inter se* ».

9) The majority of the Replies are in favour of entirely abolishing liens on freight, but the opinions are divided as to whether a lien should be granted on what in Article 4 of the 1926 Convention are termed « *accessories* ».

Considering that in practice a lien on freight is rarely if ever enforced and that the same applies to liens on « *accessories* », the Group suggests to omit in the new draft all references to these liens. Naturally, this would not prevent Contracting States from recognizing such liens in their national legislation. Whether or not such liens would be recognized and enforced in the forum of any country other than that of the Contracting State concerned, would depend on the rules of private international law of the forum first mentioned.

V. Extinction of liens. Interruption or suspension of period of extinction.

Here again a diversity of views is shown by the Replies which caused the Group to suggest a compromise which is laid down in Article 9 of the new draft.

In formulating this compromise the Group pursued two objects, namely :

i) to abolish the concept of « voyage » as appearing in the 1926 Convention the interpretation of which concept has given rise to serious doubts;

ii) to draft rules that would be simple and clear.

According to the main rule all lien will be extinguished after a period of *two years* from the time at which the claims secured thereby arose, subject only to the following three exceptions :

a) if the ship is arrested and subsequently sold by order of the Court, all liens still in existence expire pursuant to such sale; vide in this connection : Articles 7 and 8.

b) The lien securing costs arising in connection with the arrest etc. of the ship are extinguished, if the arrest should not lead to a sale.

c) The lien securing port, canal and other similar dues are extinguished when the ship leaves the place where these claims arose, the underlying reason for this rule being that the port authorities and other authorities are in a position where they may enforce payment by refusing to give clearance to the ship.

The Group further believed that, in the event that the proposed two years period of extinction should be adopted (which is twice the period set out in Article 9 of the 1926 Convention), there would seem to be no reasonable grounds for allowing for any interruption or suspension of that period either under the new Convention or under national law, with only one exception, namely when the ship is requisitioned. In that event time will not count in respect of the period of requisition.

More especially there seems to be no need to provide for the case of impossibility of arrest, it being extremely unlikely that a creditor should not be able to arrest the ship within the two years period of extinction.

VI. Co-ordination of the new Convention and the 1957 Convention on the limitation of liability of shipowners.

Following the unanimous view expressed in the Replies and in accordance with Article 3, 2^o) of the 1957 Convention, Article 11 of the new draft provides that no maritime or other lien shall be enforceable after the setting up of a limitation fund.

VII. *Lien as « right in rem ». Effects of change of flag. Assignment of lien.*

The Articles 5, 6, sub-paragraph 1), and 10 deal with these matters.

Article 5 sets out the legal nature of the maritime lien as a right « in rem ». The first paragraph of that Article states (perhaps superfluously) that the liens listed in Article 2 accrue, irrespective as to whether the shipowner, the demise charterer or other charterer be the debtor of the claims secured by those liens, while the second paragraph enunciates the so-called « droit de suite », i.e. the right to enforce such liens against the ship notwithstanding a change of ownership or of flag, excepting a change of ownership or of flag resulting from a forced sale effected subject to the conditions of Article 7 and Article 8.

In the opinion of the Group it would however not be feasible to provide that, notwithstanding a change of flag (of registration) of the ship concerned, registered mortgages effected prior to such change shall be kept alive. The new draft does not, and should not, give detailed provisions of uniform law on the extent of the rights conferred by a maritime mortgage and neither on the formal requirements in respect of the granting and registration thereof, except the minimum requirements referred to in Article 1. These rights and these requirements may vary according to the national law of the country of registration. In these circumstances an automatic re-registration (transcription) of existing mortgages in the new register might meet with serious objections under the national law of the country of the new registration, irrespective as to whether the country of first registration would be a Contracting State or a non-Contracting State, while clearly the convention cannot provide for the re-registration in a non-Contracting State.

In order to safeguard in so far as possible the interests of mortgagees in the event of a change of flag, the first paragraph of Article 6 provides that no registration in the register of a Contracting State will be allowed without the consent of the mortgagee of a mortgage previously registered in respect of such ship in another country, whether the latter should be a Contracting State or a non-Contracting State. In the event of re-registration of such ship in one of the Contracting States the mortgagee will therefore have sufficient opportunity of protecting his rights.

Finally, a provision stating that the assignment of a claim secured by a lien will entail the automatic transfer of the lien itself, is set out in Article 10. The reason for making this rule is that under the law of certain countries it is doubtful whether a maritime lien is capable of being assigned.

VIII. The effects of a forced sale of a ship is the subject matter of Articles 7 and 8 of the new draft.

The first paragraph of Article 7 dealing with the case in which the ship is sold by the order of a Court of a *Contracting State*, contains the obvious provision that such sale shall have the effect that all liens, mortgages and other encumbrances on the ship cease to attach, subject however to two minimum requirements with which such sale should comply, namely :

- a) a minimum period of notice in respect of the sale;
- b) the giving of such notice to the Registrar of the register in which the ship is registered.

According to Article 8 the forced sale made in a *non-Contracting State* shall have the same effect in the jurisdiction of the *Contracting States*, subject to the same conditions as those set forth in Article 7 and provided further that the proceeds of such sale shall have been distributed in accordance with the provisions of the new Convention. The last provision aims at protecting in the jurisdiction of the Contracting States a purchaser who should have purchased the ship in such forced sale and any further owner of the ship.

IX. The final Article of the new draft contains a provision similar to that of Article 16 of the 1957 Convention on the limitation of the liability of shipowners.

Final Remarks

The purpose of the Group in preparing the attached draft Convention is to have a text which could serve as a basis for consideration and discussion of the many problems arising in this field by the International Subcommittee when it will meet in Amsterdam on the 19th and 20th June, 1964.

A number of the provisions of the draft represent compromises provisionally arrived at on the basis of the Replies and the discussions within the Group. It is in no way suggested that the solutions so proposed could not be replaced by others or could not be improved.

Amsterdam, May 1964.

J.T. Asser,

President of the International Subcommittee.

INTERNATIONAL SUBCOMMITTEE
ON
MARITIME LIENS AND MORTGAGES

PROVISIONAL DRAFT CONVENTION

Article 1

Mortgages on vessels shall be recognised as valid in all Contracting States provided that :

- i) the Mortgage shall have been duly effected and registered in accordance with the law of the State where the vessel is registered;
- ii) the register in which the Mortgage is inscribed is an official register open to public inspection;
- iii) such register shall specify the name(s) of the Mortgagee(s), the amount of the Mortgage, and the date which, according to the law of the State of registration, determines its rank as respects other registered mortgages.

Article 2

The following claims shall be secured by Maritime Liens on the vessel :

- i) Costs arising in connection with the arrest and subsequent sale of the vessel and the distribution of the proceeds thereof.
- ii) Costs of removing the wreck.
- iii) Port, Canal and other similar dues.
- iv) Wages and other sums due to members of the vessel's complement in respect of their employment.

Social insurance premiums payable by the employer in respect of such members.

- v) Claims for loss of life or personal injury to :
 - a) any person on board the vessel, and
 - b) any other person whether on land or on water caused by the vessel or by any person on board the vessel for whose act neglect or default the Owner or the Carrier is responsible.
- vi) Remuneration for salvage.

(*) HYPO - 14 French translation published in French Edition.

- vii) Claims for repairs and maintenance of the vessel.
- viii) Claims for loss of or damage to :
 - a) any property on board the vessel;
 - b) any other property whether on land or on water caused by the vessel or by any person onboard the vessel for whose act neglect or default the Owner or Carrier is responsible.

Article 3

1. The following claims shall rank in the order set out hereunder :

- i) Costs arising in connection with the arrest and subsequent sale of the vessel and the distribution of the proceeds thereof.
- ii) Cost of removing the wreck.
- iii) Port, Canal and other similar dues.
- iv) Wages and other sums due to members of the vessel's complement in respect of their employment.

Social insurance premiums payable by the employer in respect of such members.

- v) Claims for loss of life or personal injury to :
 - a) any person on board the vessel, and
 - b) any other person whether on land or on water caused by the vessel or by any person on board the vessel for whose act neglect or default the Owner of the Carrier is responsible.
- vi) Remuneration for salvage.
- vii) Such Mortgages on the vessel as comply with the provisions of Article 1.

- viii) Claims for repairs and maintenance of the vessel.
- ix) Claims for loss of or damage to :
 - a) any property on board the vessel;
 - b) any other property whether on land or on water caused by the vessel or by any person on board the vessel for whose act neglect or default the Owner or Carrier is responsible.

2. The claims set out in each of the above sub-paragraphs i, ii, iii, iv, v, viii and ix of this Article shall rank *pari passu* as between themselves.

3. The claims set out in sub-paragraph vi of this Article shall rank in the inverse order of the time when they accrued.

4. The claims set out in sub-paragraph vii of this Article shall rank in accordance with the law of the State where the Mortgages are registered.

Article 4

1. Each Contracting State may recognize a lien in respect of claims other than those referred to in Article 2 provided however that such claims shall rank only after those set out in Article 3.

2. Each Contracting State may also recognize a right of retention in respect of the vessel provided however that such right shall not prejudice the enforcement of any of the claims referred to in Article 3.

Article 5

1. The Maritime Liens set out in Article 2 shall accrue irrespective as to whether the claims secured by such liens are against the Owner, Demise Charterer or other Charterer of the vessel concerned.

2. Subject to the provisions of Articles 7 and 8 the Maritime Liens set out in Article 2 shall follow the vessel notwithstanding any change of ownership or of flag.

Article 6

1. No Contracting State shall permit the registration of a vessel in respect of which a Mortgage is registered without the previous consent of the Mortgagee concerned.

2. No Contracting State shall permit the registration of a vessel previously registered in another State unless a certificate of de-registration is issued by the latter State.

Article 7

1. In the event of the forced sale of the vessel in any Contracting State all Maritime and other Liens, Mortgages and other encumbrances on the vessel of whatever nature shall cease to attach to the vessel, provided however that the date and the place of such sale shall be fixed at least days prior to such date and notice thereof shall at the same time be given to the Registrar of the register in which the vessel is registered.

2. The proceeds of such sale shall be distributed in accordance with the provisions of this Convention.

Article 8

Where the vessel is the subject of a forced sale in a non-Contracting State all Maritime and other Liens, Mortgages and other encumbrances on the vessel of whatever nature shall be deemed to have ceased to attach to the vessel in each of the Contracting States, provided however that :

a) the formalities set out in the first paragraph of Article 7 have been complied with, and

b) the proceeds of such sale shall have been distributed in accordance with the provisions of this Convention.

Article 9

1. The Maritime Liens securing the claims set out in Article 2 (i) shall be extinguished if the arrest of the vessel does not lead to a forced sale.

2. The Maritime Liens securing the claims set out in Article 2 (iii) shall be extinguished when the vessel leaves the place where such claims arose.

3. All other Maritime Liens and other Liens recognized by Contracting States shall be extinguished after a period of two years from the time at which the claims secured thereby arose, unless prior to the expiry of such period the vessel shall have been arrested, such arrest leading to a forced sale.

4. This period shall not be subject to suspension or interruption, except that in the event that the vessel should be requisitioned, time shall not count in respect of the period of such requisition.

Article 10

In the event of an assignment of a claim secured by a Maritime Lien such claim shall be transferred together with such Maritime Lien.

Article 11

No Maritime or other lien securing a claim in respect of which the Owner of the vessel concerned may limit his liability shall be enforceable after the setting up of a Limitation Fund.

Article 12

The provisions of this Convention shall also apply to vessels which are to be or are under construction in Contracting States, provided however that Mortgages on such vessels shall be registerable only in the Contracting State in which the vessel concerned is to be or is being constructed.

Article 13

Subject to the provisions of Article 12 each Contracting State shall apply the provisions of this Convention to all 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.

ASSOCIATION SUISSE DE DROIT MARITIME

REPONSES

I. Nous estimons qu'une révision générale de la législation internationale sur les hypothèques et privilèges maritimes est souhaitable, spécialement pour faciliter et renforcer le crédit hypothécaire.

II. Une nouvelle Convention internationale en la matière devrait d'un côté assurer la reconnaissance internationale d'une hypothèque inscrite dans un registre public et d'autre côté restreindre pour autant que possible le nombre de privilèges primant les hypothèques inscrites. Privilèges et hypothèques sont des moyens de crédit maritime, les privilèges étant plus anciens, les hypothèques plus modernes et selon l'évolution du crédit maritime pas assez protégées à cause des législations encore existantes sur les privilèges. Avant tout à l'époque actuelle où il est assez universellement reconnu qu'un droit réel ou possessoire sur une chose doit être rendu public pour un tiers intéressé ou touché sensiblement dans ses droits, il paraît difficile à maintenir pour un grand nombre de créances un privilège occulte qui existe de plein droit comme droit réel sur le navire et même ses accessoires ou donne un droit de suite contre le navire, sans que le tiers intéressé ait la possibilité de connaître l'existence d'un tel droit avant qu'il soit exercé au détriment de son droit (qui comme l'hypothèque est rendue publique). Une nouvelle Convention internationale devrait donc trouver des moyens juridiques pour rendre les privilèges publics par une inscription sur le registre, dans lequel le navire est immatriculé. Dans plusieurs législations existent outre les hypothèques conventionnelles des hypothèques légales, pour lesquelles la loi donne le droit au créancier d'une créance garantie par une telle hypothèque légale de demander son inscription dans un registre public dans un délai assez court depuis la naissance de la créance, faute de quoi le droit réel ne pourra plus être invoqué. En cas d'urgence le juge peut provisoirement ordonner une telle inscription de l'hypothèque légale dans une procédure rapide et se réserver l'homologation dans la procédure ordinaire. Ainsi le créancier pourra facilement arriver à une inscription (provisoire) dans un délai même assez court. Si les privilèges maritimes primant les hypothèques sont conçues ainsi comme hypo-

thèques légales dont l'existence dépend d'une inscription sur le registre public prévu pour l'immatriculation du navire, ces droits seront rendus publics pour les tiers et spécialement pour les créanciers d'une hypothèque conventionnelle. Seulement pour une courte durée une créance pourrait être munie d'un privilège occulte, et si le créancier ne demande pas dans ce délai l'inscription de son privilège (comme hypothèque légale), il ne perdra pas sa créance, mais son droit réel sur le navire.

IIIa. voir réponse sous II.

IIIb. La nouvelle Convention ne pourra guère contenir des règles de droit uniforme à tous les égards. La notion de « droit réel » est différente dans les législations nationales et ne pourra pas être unifiée. L'hypothèque maritime diffère de même de législation en législation. L'assiette de l'hypothèque maritime pourrait être unifiée, et peut-être aussi les réclamations accessoires couvertes par une hypothèque (intérêts pour plusieurs années, frais d'exécution etc.). Mais avant tout les prescriptions formelles pour la constitution de l'hypothèque diffèrent, et il est difficile d'unifier le droit formel. La Convention pourrait donc se borner à fixer les conditions dans lesquelles une hypothèque sera reconnue dans un autre Etat contractant et quel droit national sera applicable à l'hypothèque en cas de vente forcée du navire à l'étranger. Par contre les règles sur les privilèges devraient être matériellement unifiées spécialement pour celles qui devraient primer les hypothèques.

IIIc. En cas de transfert de propriété ou de nationalité (pavillon) du navire les créanciers garantis par un droit réel (hypothèque ou privilège) devraient être en mesure de conserver leur droit selon la règle déjà connue dans plusieurs législations que la radiation du navire sur le registre ne pourra s'effectuer qu'avec le consentement de tous les bénéficiaires de droits inscrits. En contrepartie aucun Etat contractant ne devrait permettre l'inscription d'un navire sur ses registres que si le propriétaire fournit la preuve que le navire a été radié dans le registre où il a été immatriculé précédemment.

IVa. Oui, et sans différence si l'hypothèque a été inscrite sur le registre d'un Etat contractant ou non-contractant.

IVb. Nous serions favorables à la plus grande restriction possible des créances privilégiées primant les hypothèques antérieurement inscrites.

IVc. Oui.

IVd. Le rang des hypothèques « inter se » devrait être fixé par la loi du pays de l'immatriculation du navire (loi du pavillon). En principe c'est la règle « prior tempore, potior jure », mais il y a des

législations qui permettent le recul d'un créancier hypothécaire pour permettre l'inscription d'une nouvelle hypothèque dans un meilleur rang (système des cases hypothécaires).

Le rang entre les hypothèques et privilèges serait en principe celui que les privilèges dits internationaux (selon la Convention) puissent exclusivement primer les hypothèques, tandis que tous les autres privilèges dits nationaux prennent rang derrière les hypothèques inscrites. Pour le rang des privilèges « inter se » la décision dépendra du caractère juridique de ses droits et de leur contenu et nombre.

IVe, f, g. Seuls les droits prévus par la Convention (hypothèques inscrites et privilèges reconnus par la Convention) devraient jouir d'une reconnaissance internationale. Le droit de rétention ne pourra pas avoir un effet de droit réel ou ne pas jouir d'une priorité avant les hypothèques et privilèges reconnus par la Convention dans la distribution du prix de vente dans une vente forcée.

IVh. Si, pour arriver à une Convention internationalement acceptée, il faudra laisser aux Etats la possibilité de maintenir des privilèges nationaux qui ne pourraient toutefois jamais prendre rang avant les hypothèques et privilèges internationaux. Une exception serait concevable, si les mêmes privilèges existent dans la législation de l'Etat où l'exécution forcée contre le navire aura lieu et dans la législation de l'Etat dans lequel le navire est immatriculé.

Le créancier hypothécaire qui prête son argent sur un navire connaîtra ainsi d'avance le pays d'immatriculation et les privilèges qui pourraient faire obstacle à son droit.

IVi. Oui.

IVj, k. Non; un droit réel sur une créance est difficile à concevoir et restera occulte. Quid en cas de cession ou mise en gage de la créance de fret ? Pour écarter ses difficultés le mieux serait d'écarter le privilège sur le fret.

IVl. Si tel est praticable, oui, mais de toute façon les indemnités dues au propriétaire par l'assureur corps (casco) doivent être réservées aux créanciers hypothécaires.

Va, b. Voir notre réponse sous II. Dans notre idée la demande d'inscription tout au moins provisoire d'un privilège sur le registre du navire devrait être faite dans un délai de 3 mois, au maximum 6 mois après la naissance de la créance.

VIa, b, c. En principe les délais pour faire valoir le privilège devraient être des délais de péremption, sans possibilité d'interruption.

Les causes d'extinction du privilège devraient être réglées uniformément dans la Convention.

VIIa, b. Pour le cas du changement du pavillon qui est pratiquement un transfert du navire du registre d'un Etat dans le registre d'un autre, la Convention devrait prévoir une procédure permettant aussi le transfert des droits inscrits dans le nouveau registre. Mais il ne peut pas s'agir d'un transfert pur et simple d'un droit réel (comme p.ex. d'une hypothèque inscrite) d'un registre national dans un autre, parce que la nature, l'étendue et le contenu de ce droit réel ne sont pas identiques dans toutes les législations. En général une hypothèque doit être inscrite en la monnaie nationale du pays d'immatriculation. Une hypothèque grecque p.ex. ne pourra pas être inscrite sur le registre argentin. Mais le créancier qui donne son consentement pour la radiation du navire dans un registre y compris la radiation des droits inscrits en sa faveur voudra en même temps avoir la garantie que son droit, dans une forme équivalente, sera inscrit sur le nouveau registre en cas de transfert de nationalité du navire. Sans cette garantie il ne consentira pas à la radiation et sans certificat de radiation le navire ne pourra pas être immatriculé dans un nouveau registre. La Convention pourrait à ces fins prévoir l'immatriculation du navire et des droits qui le grèvent dans un nouveau registre d'un Etat contractant à titre provisoire, c'est-à-dire sous réserve de radiation dans le registre précédent. Le jour où cette radiation intervient, l'immatriculation nouvelle prendra tous ses effets. Cette idée a déjà été discutée lors de l'élaboration d'une Convention similaire en matière fluviale au sein de la Commission Economique pour l'Europe de l'O.N.U. à Genève, et ce modèle pourrait être suivi.

VIIIa, b. La vente judiciaire c'est une mesure d'exécution forcée pour réaliser les droits des créanciers, et il en suit l'extinction des hypothèques et privilèges. L'adjudicataire dans une vente forcée acquiert la propriété originellement et non à titre dérivative, sauf, si dans les conditions d'adjudication il est exceptionnellement prévu que l'adjudicataire deviendra débiteur des hypothèques inscrites. Quand il s'agit d'une vente forcée dans un Etat non-contractant, la Convention pourra difficilement régler ce cas qui reste hors de son champ d'application. Elle pourra seulement, à titre de représailles, si l'Etat non-contractant ne reconnaît pas les hypothèques inscrites, prévoir que sur le territoire des Etats contractants l'extinction de ces droits par la vente forcée ne serait pas reconnue.

IXa, b. Oui.

Xa, b, c. Le problème des affrètements coque-nue, à temps et même pour voyages consécutifs mérite une étude spéciale. Si ces affrètements sont conclus pour une durée assez longue (au moins une année p.ex.) l'affrèteur ou le locataire voudrait savoir, si son droit de jouir du navire sera éteint en cas de transfert de propriété, ou s'il peut exiger de l'acquéreur du navire qu'il le laisse dans sa jouissance. Cet effet

ne pourra, si on veut aussi préserver l'acquéreur de surprises, être réalisé que si l'affrètement donne lieu à une annotation dans le registre d'immatriculation du navire. Mais une telle annotation ne pourra pas faire naître un droit réel comme une hypothèque ou un privilège, mais seulement un droit obligatoire renforcé qui permet de faire condamner l'acquéreur du navire à respecter l'affrètement, sans que l'affréteur serait limité à demander des dommages-intérêts contre son contractant de la charte-partie, le vendeur du navire. Mais il faut différencier selon qu'il s'agit d'une vente volontaire ou d'une vente judiciaire ou forcée du navire. Dans le premier cas, la règle esquissée pourra être appliquée, dans le second cas, les intérêts des créanciers hypothécaires et privilégiés demandent une autre solution. Les créanciers veulent se voir payées en cas de vente forcée, mais un affrètement irrésoluble pourrait diminuer le prix d'adjudication ou rendre la vente plus difficile. La seule possibilité d'harmoniser les intérêts de l'affréteur annoté d'une part et des créanciers inscrits d'autre part réside dans la règle « prior tempore, potior jure ». Si l'affrètement est annoté sur le registre avant l'inscription d'une hypothèque, l'adjudication du navire ne pourra se faire qu'à condition que l'acquéreur accepte l'affrètement et le respecte. Si, par contre, l'hypothèque est inscrite avant l'annotation de l'affrètement, la vente forcée devrait se faire dans l'intérêt du créancier hypothécaire, c'est-à-dire une fois avec la charge de l'affrètement et une seconde fois sans cette charge. L'adjudication qui réalise le meilleur prix pour couvrir l'hypothèque sera définitive, et si l'hypothèque ne pourra être couverte que dans une adjudication sans la charge de l'affrètement annoté, celui-ci s'éteint par l'adjudication. L'affréteur pourra comme créancier chirographaire faire valoir son dommage. Pour les hypothèques, dont la date d'inscription est contrôlable, cette solution est praticable, mais pour les privilèges qui restent tout au moins pour une assez longue durée occultes, une solution juste paraît difficilement être réalisable.

XI. Nous hésitons à approuver la proposition et nous renvoyons à nos réponses au questionnaire en matière de coordination entre la Convention de 1926 et celle de 1957. La nouvelle Convention sur les hypothèques et privilèges devrait aussi être acceptable pour les Etats qui ne sont pas prêts à ratifier la Convention de 1957 sur la limitation et qui maintiennent ainsi leur propre système de limitation avec la notion de la fortune de mer.

XII. En principe la nouvelle Convention devrait faire loi dans les Etats contractants pour tous les navires. Toutefois avec la réserve possible de ne pas l'appliquer aux navires d'Etats non-contractants. Mais avant de faire usage de la possibilité de réserve, il faudrait tenir compte des intérêts des créanciers qui peuvent être de nationaux.

XIIIa. La Suisse a incorporé textuellement dans son droit national la Convention de 1926 et elle ne connaît donc que les privilèges prévus par ladite Convention.

XIIIb. En droit suisse l'usufruit comme droit réel sur un navire est reconnu, tout au moins par les textes légaux, sans portée pratique toutefois. En outre peuvent requérir l'inscription d'une hypothèque légale le vendeur du navire en garantie de sa créance, les cohéritiers en garantie des créances résultant du partage ainsi que le réparateur (chantier) du navire, mais la demande d'inscription de ces hypothèques légales doit se faire dans un délai de trois mois. Le droit de rétention sur le navire immatriculé est d'autre part interdit.

XIIIc. Les hypothèques prennent rang selon la case hypothécaire inscrite, en principe dans l'ordre de priorité selon le temps de l'inscription. Seules les privilèges prévus dans la Convention de 1926 priment les hypothèques, si la priorité est prévue par la Convention.

XIII d. La radiation du navire dans le registre des navires suisses est subordonnée au consentement expresse de tous les bénéficiaires de droits inscrits dans le registre.

XIIIe. L'immatriculation d'un navire dans le registre suisse n'est possible que contre présentation d'un certificat de radiation du navire dans le registre où il a été immatriculé précédemment.

XIV. Il n'existe pas encore de jurisprudence suisse en matière de conflit de lois concernant les privilèges et hypothèques maritimes.

XV. Nous sommes partisan de la préparation d'une nouvelle Convention remplaçant celle de 1926, si les propos esquissés devraient être réalisés.

Bâle, avril 1964.

Association Suisse de Droit Maritime.

ASOCIACION ARGENTINA DE DERECHO MARITIMO

ANSWERS

Answer I

We believe that any legal institution may be improved if sufficient experience in its application has shown that it is necessary or desirable to do so.

Answer IIa

This will be answered according to the following questions. We must point out, however, as a general rule, that any amendments that may be made in the Convention should be justified by the fact that the flaws that it contains may have been demonstrated by actual practice. In this respect we must say that Argentina adhered to the Convention by Law of Congress Number 15.787, of 14th December, 1960, which came into operation on 20th October, 1961. Our experience in connection with it, therefore, is exceedingly short, and we are yet unable to express an opinion upon the results of its application in Argentine jurisdiction. Accordingly, we shall confine ourselves to making some remarks of a general nature upon the various points submitted.

Answer IIIa

We shall reply to this when answering the following questions.
More specially :

Answer IIIb

The new Convention should solve any problems that may have arisen in practice when applying the present one. Should it be intended to introduce any amendments which would allow any countries which have not yet adhered to it to do so, care must be taken not to affect any of the fundamental principles which, harmonical associated, form the basis upon which the Convention rests, viz., 1) ship, freight and accessories form the « fortune de mer » destined to secure the privileged creditors; 2) reduction to the indispensable minimum required by the necessities of maritime navigation and operation, of the liens having

priority over mortgages; 3) acknowledgment by all Countries adhering to the Convention of any hypothecation or mortgage constituted in accordance with the respective national law and duly registered; 4) liens form part of the naval claims, and accordingly must secure contractual creditors contributing to the performance of the voyage and consequently to shipping operations.

Answer IIIc

Our lack of experience does not enable us to answer this question.

Answer IVa

Every hypothecation or mortgage constituted under the legislation of the flag of the ship and duly registered must be recognized by any Contracting State. Those constituted in non-Contracting States should only be recognized where there is reciprocity, that is to say, where such reciprocity exists under the domestic legislation of the State concerned, under conditions similar to those of the Convention.

Answer IVb

In our opinion they should be maintained.

Answer IVc

The liens mentioned in Article 2, sub-paragraph 5°) should be maintained. Powerful Owners have at their disposal other means to secure the claims of creditors against them. It is not so as regards small owners, who may be the owners of only one ship, which constitutes the whole of their capital. To suppress this lien would have the result of creating serious difficulties for their commercial development. We do not understand why, if the lien for remuneration for assistance and salvage, by which operation the claimant mortgagee benefits (sub-paragraph 3°) is maintained, it should be intended to suppress the lien of the claimant who has effected disbursements « pour les besoins réels de la conservation du navire » (sub-paragraph 5°), by which the said claimant also benefits.

Answer IVd

The hypothecations and mortgages must rank in the order of their respective dates of registration.

Answer IVe

In England the possessory lien belongs to common law, as the right of retention belongs to the common law of the latins, but with the difference that in the first case it is a lien, whereas in the second

it is not, or at least does not possess the characteristic of such. We are of opinion that a shipwright ought to be included among the privileged claimants, as his work benefits the vessel, and consequently also benefits the mortgagee.

Answer IVf

Such rights should rank fourth, after the remuneration for assistance and salvage and the ship's contribution in general average.

Answer IVg

Answered above.

Answer IVh

Upon this point, we are of opinion that it must be left open to domestic law to grant other liens, but in the form prescribed by paragraph 2 of Article 3 of the Convention.

Answer IVi

This question was answered at IVa. We must emphasize that it would not be just to recognize hypothecations or mortgages registered in a non-Contracting State if such State does not grant the same benefit to other States in its domestic law.

Answer IVj

The freight must be maintained as one of the securities for liens as prescribed by Article 2 of the Convention, because it is part and parcel of the « fortune de mer ».

Answer IVk

In our opinion, the freight which should be liable to a lien is the freight paid by the goods carried, that is to say, in the case of a time-charter, the freight payable to the Charterer, which includes the charterhire paid by him to the Shipowner. We believe that the concept of « voyage » mentioned in Article 2 of the Convention when referring to the freight, must be interpreted, in the case of a vessel which returns regularly, to her port of origin, as the freight paid, or to be paid, either in her outward-bound voyage, or in her return voyage, according to the time at which the lien accrued; in the case of a tramp steamer, the freight liable to a lien should be the freight on the goods shipped and the freight engaged on the same opportunity on goods not yet shipped.

The concept of « voyage » to which the freight refers according to Article 2 of the Convention, must be defined for each of the liens. Thus, as regards the liens mentioned in sub-section 1° of the said Article, it should be that of all the freights accrued up to the arrival to the last port; as regards those mentioned in sub-section 2°, all the freights corresponding to the period of the contract of engagement as provided by the last paragraph of Article 4 of the Convention; as regards those mentioned in sub-sections 3° and 4°, the freights on the goods which are on board at the time of the occurrence; as regards those mentioned in sub-section 5°, the freights on the goods already on board the ship and those which must be shipped in the course of the voyage in which the debt contracted by the Master arose.

Answer IVI

The sums mentioned in article 4 of the Convention must continue to be liable to the liens, as they form part and parcel of the value of the ship or of the freight, as those mentioned in sub-sections 1° and 2°; or the « fortune de mer », as those mentioned in sub-section 3°.

Answer Va

We consider that the periods of extinction of liens established by Article 9 of the Convention must be maintained.

Answer Vb

Such periods must run from the date on which the claim secured by the lien accrues, in accordance with the general principle applied to each claim in Article 9 of the Convention.

Answer VIa

For the purpose of securing international uniformity and guarantee for the privileged claimants, it would be advisable to establish that the periods of extinction are interrupted by the institution of an action in Court. But the special situations mentioned in paragraph 8, sub-par. j) of the report should also be taken into account.

Answer VIb

(v. paragraph 8, sub-par. j) of the report)

Answer VIa-b

The liens must subsist even if the vessel should change its registry or be de-registered, for instance, in case of shipwreck. Under this aspect, the Treaty of Montevideo, of 1940, on International Private

Navigation Law, signed by Argentina, Uruguay, Brazil, Colombia, Bolivia, Chile, Peru and Paraguay, provides in Article 3 : « As regards privileges (liens) and other real rights, the change of nationality does not prejudice the liens existing on the ship. The extension scope of these liens is governed by the law of the lawful flag of the ship at the time the change of nationality took place ».

Accordingly, it must be established that the change of flag or registry, or the de-registration, shall not interrupt the period of extinction of the liens, that is to say, that these shall subsist even when registered in a new register until the periods in question shall have expired.

In the event of a sale of the ship by a Court Order, or the constitution of a Limitation Fund according to the Convention of 1957, the Convention must require that a communication be made, through the Consul of the country of the flag of the ship in the jurisdiction of the Court ordering the sale, to the Register of the registry of the ship concerned, reporting the sale which has been ordered, in order that the parties concerned may enter an appearance in that Court and defend their rights.

The Contracting State in which the Register is situated must provide the necessary measures so that the parties concerned may be informed of the sale ordered by the Court, for which purpose a certain period may be fixed, for instance, three months, between the date of the communication to the Consul and the date of the auction, in order that any existing creditors may enter an appearance in the proceedings. During such period intervention might be given to the Consul so that he may defend the interests of the lien creditors. Should such period expire without any one entering an appearance, the intervention of the Consul would cease.

Once all the above requirements should have been complied with, the judicial sale of a ship of a Contracting State ordered by the Court of another Contracting State shall extinguish the liens, hypothecations and mortgages (with the exception of those which the buyer may take upon his charge), as from the deposit in Court of the purchase price, upon which funds the liens (privileged claims) shall be transferred, in their proper order.

Where the sale has been ordered by the Court of a non-Contracting State, whose legislation does not contain principles similar to those set out above, the liens must subsist on the vessel until the extinction period shall have expired.

The Convention might take as a precedent the prescriptions of the Convention of Geneva of 1948, relating to real rights on airships, upon these points, (Article 7), and the recent project of convention relating to the registration of liens on vessels in course of construction, of Stockholm, 1963, (Article 9), although, as regards the latter, we

consider that excessive protection afforded to secured creditors or mortgagees may render difficult or hamper the sale of a ship. Should such danger exist, it is doubtful whether the Convention would be ratified by many countries.

Answers VIIIa and b

(See answer to previous Question).

Answer IXa

We believe that since during the period of construction of a ship maritime liens may accrue, for instance, in connection with collision, assistance, or crew wages during navigation tests, or while the ship is afloat completing her equipment, the Convention should also cover hypothecations and mortgages constituted on such ships. To make a separate convention for them such as that drafted in Stockholm in 1963, might give rise to conflict between the two Conventions. On the other hand, it must be remembered that, normally, when a ship is being built by means of a loan reimbursable over a long period of time, the mortgage upon the ship under construction is thereafter transferred on to the ship when in operation, so that there must be a certain coordination between the two regimes of security.

Answer IXb

We believe the rules of the draft Convention of Stockholm relating to rights upon vessels under construction should, in their essence, be incorporated in the new Convention, coordinating them with the Convention of 1926.

Answer Xa, b, c

We are of opinion that to protect the rights of the charterer in a bare-boat charter, time-charter and charters for consecutive voyages, by means of new liens which would form a charge on the ship, would be altogether inadvisable. The charterer may secure his rights, in case of a sale, whether voluntary or by a Court order, by means of other customary securities. In any event, this protection must be carefully examined, so that it may not prejudice the other creditors, who are the regular creditors in every maritime concern.

Answer XI

We think it would be advisable to have the points to which paragraph 15 of the Report refers cleared up.

Answer XIIa, b

The Convention might also be made to apply to ships of non-Contracting States, always provided that the non-Contracting State

should have incorporated the principles of the Convention in its own domestic legislation.

Answer XIIIa

The maritime liens are established by Article 1377 of the Argentine Commercial Code, as follows :

1377. The following claims are privileged on the ship, and shall share in the price thereof in the order in which they are enumerated in the present article :

1. Any judicial expenses incurred in the common interest of the creditors;
2. The expenses, compensations and assistance and salvage pay due for the last voyage;
3. The navigation dues imposed by the laws;
4. The pay of Pilots and Watchmen, and the expenses of guarding ship after its entry into port;
5. The rent of warehouses for the ship's apparel and other accessories of the vessel;
6. The maintenance expenses for the ship and its apparel after its last voyage and entrance into port;
7. The pay, emoluments and compensation due in conformity with the provisions of this Code, to the Captain and the other members of the crew for the last voyage;
8. The sums due for contribution in General Average;
9. The amount of the principal and interest owing on obligations contracted by the Captain for the needs of the ship in the cases mentioned in Article 947, with due formalities;
10. The amounts raised on bottomry on the ship's hull and apparel for gear, fittings and appertenances, if the contract was made and signed before the ship left the port in which such obligations were contracted, and the insurance premiums with their accessories for the last voyage, whether the insurance be for the voyage or for a fixed time, and so far as concerns steamers which make their voyages periodically and are insured for a fixed time, the premiums corresponding to the last six months, and, in addition, in mutual insurance societies, the distributions or contributions for the last six months.
11. Compensation due to shippers and passengers for failure to deliver the things shipped, or for damage done thereto through the fault or negligence of the Captain or crew during the last voyage;
12. Any debts arising out of the construction of the ship;
13. The price of the last purchase of the ship, with interest owing for, the last two years.

Mortgages, which may be constituted on ships of over 20 tons, rank after all the above liens (Articles 1351 and 1360 of the Commercial Code).

Answer XIIIb

Article 3939 of the Argentine Civil Code grants a right of retention to the holder of property belonging to another, as for instance, a ship, so that he may hold it in his possession until payment in full is made of what is owing to him on such property. This is not a lien.

Answer XIIIc

The priority between mortgages is governed by their respective dates of registration, and, if registered on the same date, by the respective hours of registration (Article 1357 of the Argentine Commercial Code), Articles 18, 20 and 24 of the Decree-Law N° 18.300/56).

Mortgages rank after the above-mentioned maritime liens established by Article 1377 (Article 1366 of the Argentine Commercial Code).

Liens in Article 1377 of the Commercial Code follow the order in which they are set out in this Article; those of same rank share in proportion to their respective amounts; but if the voyage has been commenced or continued, liens of the same nature accrued later rank prior to liens accrued earlier.

There are no other privileged rights on ships ranking before the liens mentioned in Article 1377. There may be other privileged claims under common laws, but they rank after maritime liens.

Answer XIV

In accordance with the doctrine laid down by the Treaty of Montevideo, as regards liens, real rights and methods of publicity the law applicable is that of the nationality of the ship. However, in the event of the Treaty of Montevideo not applying, the *lex fori* may apply, that is to say, the law of the Court where the case is being tried.

Answer XV

Considering that the amendments to be introduced into the 1926 Convention must be few, we would favour the amendment of the Convention, or the drafting of a protocol.

Atilio Malvagni

José D. Ray

Alberto C. Cappagli

GERMAN MARITIME LAW ASSOCIATION

REPLIES

- I. New international legislation relating to maritime liens and mortgages is desirable.
- II. a) The most important improvement seems in our opinion to be a restriction of those liens which secure claims arising out of contracts entered into by the master. For further improvements we may refer to our answers to the following questions.
- III. a) The new Convention should deal with all problems mentioned in the report but with the exception of long term charters. For this problem see our answer to question X.
- IV. a) i) We are in favour of an international recognition of maritime mortgages by all the Contracting States. The new Convention should contain a provision giving a definition of a registered mortgage, which should in our opinion be the following :
- « A registered mortgage (hypothèque) means a right
- a) of a claimant or his trustee (mortgagee)
 - b) registered in a public register of the port or State, where the ship is registered,
 - c) securing a claim on a certain amount of money against the shipowner or another debtor,
 - d) which entitles the mortgagee to a seizure of the vessel by action of a court,
 - e) to a judicial sale of the vessel and
 - f) to the payment of the claim out of the proceeds of the sale,
 - g) with the priority over other claims as provided for in the new Convention, in any case with priority over other claims than the legal costs, the prevailing registered mortgages and prevailing maritime liens. »
- By this definition we intend to include the Anglo-American as well as the Continental types of ship mortgages. In our

opinion, items c) and g) might be omitted, but may be useful as to avoid misunderstanding. On the other hand the Convention should not require certain steps of procedure, for instance a final court judgment on the claim secured, since national laws provide for very different forms of procedure, such as the British and American right of the mortgagee to enter into the possession of the vessel without any court procedure or to have the vessel sold by a court without any judgment on the claim or the French and German executory instruments of public notaries.

ii) A maritime mortgage should in principle be recognized either when the ship is registered in a Contracting or a non-Contracting State. For deviation from this principle see our answer under IV. i).

IV. b) The categories of claims giving rise to maritime liens as set out in Article 2 of the 1926 Convention should be reviewed in the following way :

i) The liens for law costs due to the State and expenses incurred in the common interest of the creditors in order to preserve the vessel or to procure its sale should be restricted to those costs which have been expended from the time of the entry of the vessel into the last port, as it is already provided for the cost of guarding the vessel in Article 2 N° 1 last sentence.

ii) The liens for claims arising out of the contract of engagement of the master, crew and other persons hired on board should be restricted to wages and certain claims on purposes of social emergency (e.g. repatriation hospital-treatment). In any case no lien for master's disbursements should be granted because otherwise all efforts for a revision of Article 2 N° 5 will be useless.

iii) The liens for claims arising out of contracts entered into by the master as described in Art. 2 N° 5 should be restricted. We are of the opinion that only those claims should be secured by a lien when the master is forced to ask for a credit on the ship while the owner is unable to do so instead of him. The object of our efforts should be to give in special cases of emergency a chance for the continuation of the voyage or the preservation of the vessel and the maintenance of the crew but in any case to exclude any misuse. Therefore, a lien should be granted when, the news communications or the ways of payment between the vessel or her respective harbour and the place of the shipowner's management are interrupted or the master cannot dispose of money which had been provided for him at a place where he needs it

(e.g. war, civil war, natural catastrophe). On the other hand it should never be possible to compensate the insolvency of the owner by establishing a lien which takes precedence over the registered mortgages.

- IV. c) see above.
- IV. d) The rules of the Convention that govern priorities should be the following :
- i) Registered mortgages « inter se » should rank according to their sequence in the register (this means normally according to their chronological order of their registration).
 - ii) Liens should rank before registered mortgages.
 - ii) The ranking of liens « inter se » should be governed by the principles already contained in Article 5 of the 1926 Convention. The rules of Article 6 of the 1926 Convention can be abolished when the period of extinction is short. The criterion of the « voyage » did perhaps fit into the times past. It is not applicable to the modern sea-borne trade.
- IV. e) i) Any general creditor of a shipowner having reached a final court decision on a payment of money should, when provided by his national law, be entitled to a judicial sale of the vessel. His claim to the proceeds should rank behind registered mortgages and such maritime liens, which have been duly established to the court. Thus, liens not duly established lose their priority.
- ii) Under German law, a creditor of the shipowner has a right of retention, if he is actual in possession of the ship. Practically, only shipyards have such a right against the shipowner, but not against a court seizing the vessel. In case of a forced sale the right of retention extinguishes. We think that the right of retention — where existing — should be maintained, but without giving any claim to the proceeds of a forced sale.
- IV. f) A right of retention should rank after liens and mortgages.
- IV. g) No, but if municipal law grants other rights than those prescribed in our Convention, they should have no priority over those granted according to the new Convention.
- IV. h) Yes, but those liens should be postponed to all other liens and mortgages granted according to our Convention.
- IV. i) A Contracting State should not be allowed to discriminate against the rights resulting from mortgages having been duly registered (if the Convention gives some basic rules about those rights; see our answer to question IV. a). Against non-

Contracting States discrimination should be possible as a mean of retaliation when the non-Contracting State does not recognize mortgages duly registered in a Contracting State.

- IV. j) The liens on the freight should be abolished. When — as usual in the liner service — the owner has hundreds or thousands of claims for freight the execution of the lien will be extremely difficult. The lien on the freight is a relict from the time when the owner was liable with the ship and the freight only. This system of liability is now passing away and replaced by a system as prescribed in the 1957 Convention. The freight is still of concern in some countries as a factor for counting the limitation of liability in cases of collision. But this system will also be replaced by the rules of the 1957 Convention in the near future.
- IV. k) No answer, because j) was answered in the negative.
- IV. l) Maritime liens should be enforceable only against the following other assets of the owner :
 - i) Compensation due to the owner for material damage sustained by the vessel and not repaired with the exception of claims under a hull insurance entered into by the owner.
 - ii) General average contributions due to the owner in respect of material damage sustained by the vessel and not repaired. A lien should not be exercised against compensation for loss of freight as a result of the lien on freight to be abolished and further not against remuneration for assistance and salvage because the lien on salvage remunerations is an analogy to the liens on freight.
- V. a) The period of extinction should be one year in all cases other than in case of a lien for claims resulting from a collision where the period should be two years.
- V. b) The period should run from the date on which the claim secured by a lien accrues.
- VI. a) Yes, the Convention should give two rules only :
 - i) The lienor has to apply for the decision of a court, which is necessary for the forced sale of the vessel, within the period mentioned under V. If no decision is necessary, he has to apply for the judicial sale within this period.
 - ii) An interruption of this period should be allowed only, when no competent court accepts the abovementioned application (war, etc.).
- VI. b) + c) see a).
- VII. a) Yes.

- VII. b) The change of the flag or of the State of registration must not influence the recognition of mortgages or liens and their rank. All special provisions as to the mortgage or the lien follow, however, the national law of the new flag or registration. This is, in our opinion, the already applied rule of most countries. As far as rights in ships under construction are concerned, the Stockholm Convention 1963 should be applicable.
- VIII. a) No, we agree to the proposal of the Italian Maritime Law Association that Article 7 of the Geneva Convention 1948 concerning rights in aircrafts should apply in full and as far as the extinction of rights is concerned especially paragraph 4 of Article 7 which reads :
- « No sale in execution can be effected unless all rights having priority over the claim of the executing creditor in accordance with this Convention which are established before the competent authority are covered by the proceeds of sale or assumed by the purchaser. »
- VIII. b) Such provisions are necessary and desirable. The new Convention should give a rule that a forced sale by order of a court of a non-Contracting State should not result in an extinction of the rights if the rules of Article 7 of the Geneva Convention 1948 (that means the corresponding rule in our new Convention) have not been observed.
- IX. a) Although this question is already dealt with in the Stockholm Convention 1963 we should combine this problem with our new Convention. States, which are not willing to grant mortgages on ships under construction should be given a chance not to ratify the Articles dealing with ships under construction by introducing a reservation to this effect into the protocol clauses. Liens on ships under construction are so rare that they have no practical importance.
- IX. b) The draft Convention on the registration of rights in respect of ships under construction should, therefore, be incorporated in the new Convention.
- X. a) No, we do not think that those very difficult questions should be dealt with in the new Convention. There is already a special subcommittee existing and studying these problems. When their studies are finished, the Bureau Permanent should decide on the drafting of a Special Convention on long term charters.
- X. b) see our answer to question a)
- X. c) see our answer to question a)

- XI. a) Yes.
- XII. The scope of application should be as wide as possible. Therefore the Contracting States should recognize also those rights which have accrued in a non-Contracting State and according to the law of such a State as far as the rights concerned are in principle the same than the rights described in our Convention. But a possibility of retaliation against non-Contracting States should be left open.
- XIII. a) The German law recognizes the same lien as described in the 1926 Convention and— in addition — the following liens securing the following claims :
- i) Claims arising out of the bottomry of the vessel. It is intended to abolish bottomry from the German law in the near future.
 - ii) Claims resulting from any negligent act or omission of the crew done within the scope of their employment for which the owner is liable (the most important case is the collision; see Article 2 N° 4 of the 1926 Convention).
 - iii) Claims of the national insurance scheme for seafarers for contributions of the owners to that scheme.
- XIII. b) German law does not recognize other rights in rem on the ship than liens and registered mortgages. But there is recognized a right of retention which does not give a claim to the proceeds of the vessel from a forced sale. Moreover, any general creditor may, on the basis of a final court judgment, have the vessel sold in judicial auction and is entitled to the proceeds, ranking, however, behind registered mortgages and such maritime liens, which have been duly established to the court. This means, that other lienors, who did not establish their liens, do not receive payment.
Furthermore a shipyard can apply for a registered mortgage to secure its claims resulting from the construction of the ship or her repair.
- XIII. c) i) Registered mortgages rank in the sequence of their registration in the public register.
ii) All liens have the priority over mortgages.
iii) The ranking of maritime liens inter se is in principal the same as described by Articles 5 and 6 of the 1926 Convention.
iv) Other claims (i.e. the right of retention as mentioned under b) have no priority before liens and mortgages).
- XIII. d) No, if there is no consent obtained from the mortgagees the ship remains in the register, but a note is added that the ship lost the right of flying the German flag.

XIII. e) No.

XIII. f) No.

XIV. The recognition of rights in rem on a ship by German courts depends on the following criteria :

i) Title, registered or not, and registered mortgages are always recognized by German courts provided that they have been duly originated according to the law of the flag.

ii) a) Other rights in rem are recognized if the originate under the applicable national law. If the respective right has come into existence in a foreign country the respective foreign law will insofar be applied (*lex rei sitae*). Liens for wages are governed always by the law of the flag. If the respective right has come into existence on the high seas the law of the flag of the debtors ship will be applied. But there is one exception : If there is a collision between two German vessels in foreign national waters German law will be applied irrespective of the foreign law.

b) A right in a German vessel which has arisen according to ii) a) has moreover to correspond with a lien known in German law. This means that its economic purposes are equal and the legal requirements are similar though not equal (e.g. foreign liens for necessities are recognized even without the master's order). If there is a « corresponding » right in German law it will be recognized in the same way and the same rank as it was a right which came in existence according to German law.

iii) The priority of rights in vessels is determined by the German law of procedure but with the exception that a foreign lien which originally ranked behind registered mortgages does not gain priority over them.

XV. We are in favour of drafting an entirely new Convention.

Hamburg, June 1st, 1964.

NORWEGIAN MARITIME LAW ASSOCIATION

PROPOSED AMENDMENTS
TO
PROVISIONAL DRAFT CONVENTION ON MARITIME
LIENS AND MORTGAGES SUBMITTED TO THE
INTERNATIONAL SUBCOMMITTEE OF THE
INTERNATIONAL MARITIME COMMITTEE (HYPO. 13-5-64)

I. Mortgages and executory liens

Art. 1

In this Convention

- a) a mortgage shall mean a contractual security in a vessel for a certain indebtedness;
- b) an executory lien shall mean a security in a vessel for a certain indebtedness, levied by special decree by a public authority.

Art. 2

A mortgage which has been duly executed and registered in accordance with the laws of the State where the vessel is registered shall be recognized in the Contracting States, provided

- a) that the registration has taken place in an official register;
- b) that the register and the instruments recorded therein, or authorized copies of such instruments, are open to public inspection;
- c) that the registration shall include the name of the original mortgagee, the amount secured by the mortgage and the date determining the rank of the mortgage.

Art. 3

Mortgages recognized in the Contracting States shall, in case of collision of rights, take priority, one before another, in the order of registration.

The law of the State where the vessel has been registered may, however, provide that priority shall originate from the time when an application for registration was received by the registrar, provided that such application be available for public inspection.

Art. 4

1. A Contracting State shall not permit the de-registration of a vessel without the consent of all holders of registered mortgages on the vessel.

2. A Contracting State shall not permit the registration of a vessel previously registered in another State unless a certificate of de-registration has been issued by the latter State.

3. A certificate of de-registration issued in a Contracting State shall set out, in their order, all registered mortgages on the vessel.

4. Mortgages set out in a certificate of de-registration issued in a Contracting State shall be accepted for registration in another Contracting State where the vessel is being registered, retaining their priority, *inter se*, resulting from the original registration.

If such registered mortgages do not comply with the statutory requirements for registration in the State where the vessel is being registered the interested parties shall be given at least 60 days in which to comply such requirements, all legal effects of registration remaining in force during this period.

Art. 5

The provisions in Arts. 1 - 4 shall also apply to executory liens. Such liens shall rank with mortgages in the order set out in Art. 3.

II. Maritime liens

Art. 6

In this Convention a maritime lien shall mean a security in a vessel attaching by law to a certain claim.

Art. 7

A maritime lien shall attach to the following claims pertaining to the vessel :

1. Costs levied or awarded by the competent Court in connection with the forced sale of the vessel, including costs in respect of a necessary arrest, preservation of the vessel after commencement of the legal action and the distribution of the proceeds of the sale.

2. Cost of removal of the wreck ordered by a public authority.

3. Port, Canal and Pilotage dues and other similar dues payable for a service rendered to the vessel.

4. Remuneration for salvage.

5. Wages and other sums due to the vessel's personnel in respect of their employment and premiums for social insurance payable by the employer in respect of their employment.

6. Claims for loss of life and personal injury in respect of persons on board the vessel, and in respect of persons not on board the vessel, if caused by a person in the vessel's service for whom the owner is responsible.

7. Claims for loss of or damage to property in respect of property on board the vessel, and in respect of property not on board the vessel, if caused by a person in the service of the vessel for whom the owner is responsible.

Art. 8

The maritime liens set out in Art. 7 shall attach to the claims in question whether the person liable is the owner, demise charterer or other charterer, manager or operator of the vessel.

Art. 9

The subject matter of a maritime lien shall be the vessel with its physical accessories only.

Art. 10

All maritime liens listed in Art. 7 shall rank ahead of mortgages and executory liens.

The classes of liens enumerated in Art. 7 shall rank in the order thus set out.

Within each class the liens shall rank *pari passu*, but in respect of liens for salvage (class 4) the younger shall take precedence over the older.

Art. 11

A Contracting State may recognize liens in respect of claims other than those set out in Art. 7, provided that such liens shall rank after registered mortgages and executory liens.

Art. 12

Except in case of a forced sale as provided for in Arts. 18 and 19 the maritime liens set out in Art. 7 shall be unaffected by change of flag or ownership of the vessel.

Art. 13

Unless otherwise has been agreed the assignment of a claim secured by a maritime lien shall also entail the transfer of such lien.

Art. 14

Where a claim secured by a maritime lien or other lien is subject to limitation of liability such lien shall be enforceable only for the limited amount of the claim. When a limitation fund has been set up such lien shall not be enforceable.

Art. 15

All maritime liens listed in Art. 7 shall be extinguished after a period of one year from the time when the corresponding claim arose.

If the claim has been adjudicated the lien shall be extinguished if legal action to enforce it has not been taken within one year of the date of final judgment.

The national law of each Contracting State shall determine the legal actions required for the interruption of the prescription periods.

Art. 16

The Contracting States shall apply the provisions of Arts. 6 - 15 to all vessel, irrespective of their State of registry.

III. Forced sale

Art. 17

Prior to the forced sale of a vessel in a Contracting State the competent authority of such State shall give days advance notice of the time and place of the forced sale to all known holders of mortgages, executory liens and maritime liens in the vessel. The said authority shall endeavour to obtain information of the identity of such holders from the registrar of the register in which the vessel is entered and from the vessel's registered owner.

Art. 18

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

a) the vessel is within the territory of the State in question and in the custody of its competent authorities at the time of the sale;

b) the sale is effected in accordance with the law of the State in question.

2. Out of the proceeds of the sale the holders of mortgages, executory liens and maritime liens shall be satisfied in the order of priority set out in this Convention.

Art. 19

In the event of a forced sale of a vessel in a non-Contracting State all mortgages, liens and other encumbrances shall be deemed to have ceased to attach to the vessel in the Contracting States provided that the requirements set out in Arts. 17 and 18 have been met.

13/6 1964.

ASSOCIATION HELLENIQUE DE DROIT MARITIME

REPONSES

I. INTRODUCTION

1. L'Association Hellénique de Droit Maritime a examiné avec intérêt le remarquable rapport de M. J.T. Asser sur les privilèges et les hypothèques maritimes, ainsi que le questionnaire qui y est joint.

2. L'Association Hellénique, bien que ne partageant pas tous les griefs exprimés par M. Asser au sujet de la Convention de 1926, se joint bien volontiers à l'idée de réexaminer la question des privilèges et des hypothèques maritimes, à condition toutefois que l'effort qui sera entrepris contribue à la cause de l'unification du droit maritime, c'est-à-dire qu'il soit accompli par le plus grand nombre possible d'Etats participants au Comité Maritime International.

3. Avant de répondre au questionnaire, joint au rapport de M. J.T. Asser, nous devons rendre hommage à la Convention de Bruxelles de 1926, qui a rendu de très grands services aux affaires maritimes depuis son adoption.

4. Bien que la Grèce n'ait pas ratifié la Convention précitée, ses dispositions ont été et sont encore applicables aujourd'hui à de nombreux navires battant pavillon hellénique.

Tous les actes ministériels autorisant l'enregistrement des navires, en vertu de l'article 13 du D.L. 2687-1953 sur « les investissements et la protection des capitaux étrangers » contiennent une disposition relative à l'application de la Convention.

5. D'ailleurs la récente législation hellénique, contenue dans le Code de Droit Maritime Privé (L. 3816 du 26/28-2-1958), s'est approprié plus ou moins les dispositions de la Convention de 1926.

6. Néanmoins, la dite législation hellénique n'a pas adopté toutes les dispositions de la Convention en ce qui concerne les privilèges et n'a retenu notamment qu'un nombre de privilèges plus restreint que celui prévu dans la Convention.

Nous estimons que la dite législation hellénique, dont la traduction est annexée au présent rapport, peut être utile aux travaux de la Commission.

II. REPONSES AU QUESTIONNAIRE

1. Ainsi que nous l'avons précédemment exposé, notre Association considère qu'un réexamen de la législation internationale relative aux privilèges et hypothèques maritimes est souhaitable.

2. Nous traitons ci-dessous, en répondant aux questions spéciales, les points qui doivent de l'avis de notre Association être réexaminés.

3. Mises à part les questions traitées ci-dessus, nous croyons qu'une législation internationale sur les privilèges et hypothèques maritimes, en dehors des questions déjà traitées par la Convention de 1926, doit résoudre un problème de base, celui du conflit des lois. L'anarchie qui domine la jurisprudence internationale est bien connue. Elle aboutit en fait à anéantir les droits du créancier hypothécaire, lorsque, par exemple, le navire est vendu à tel ou tel Etat avec lequel il n'a aucun autre lien que celui de la *lex fori*.

Nous estimons que la réglementation internationale des privilèges et hypothèques maritimes doit contenir une clause stipulant que c'est toujours le droit du pavillon qui doit régir les privilèges et les hypothèques maritimes, indépendamment de l'Etat où les créanciers font valoir leurs droits.

4. a) Notre Association est favorable à la reconnaissance internationale des hypothèques, dûment mentionnées dans le registre public dans lequel le navire est enregistré, que ce dernier appartienne à un Etat contractant ou non, à condition qu'une publicité satisfaisante soit assurée au registre de cet Etat.

b) et c) Nous estimons que le nombre des privilèges reconnus par la Convention doit être limité, surtout par la suppression des créances mentionnées à l'article 2 sous-paragraphe 5.

d) Le rang des hypothèques ne peut pas être autre que celui de leur enregistrement. Pour l'application de cette règle, l'enregistrement des hypothèques doit préciser la date et l'heure de l'enregistrement. Pour le reste, le système de la Convention de 1926 peut être en principe retenu, et si possible simplifié en une disposition analogue à celle de l'article 206 de notre Code de Droit Maritime Privé.

e) f) g) h) Notre Association n'admet aucune reconnaissance internationale de droits sur les navires autres que les privilèges, et considère que la Convention doit interdire aux Etats contractants de maintenir ou de créer de tels droits dans leurs systèmes juridiques internes.

i) Nous estimons qu'aucune raison n'existe de distinguer entre droits résultant d'une hypothèque enregistrée dans un Etat contractant ou dans un Etat non contractant.

j) k) Etant donné que le fret est devenu un instrument de crédit très important pour l'entreprise maritime et qu'il fait l'objet de cession au créancier nous considérons que les privilèges ne doivent plus s'étendre au fret.

l) Nous sommes d'avis que l'article 4 de la Convention de 1926 peut être aboli.

5. Un délai d'un an doit être prévu pour la prescription des privilèges. En plus, en cas de vente contractuelle du navire, nous esti-

mons que le privilège doit continuer à subsister, à condition qu'il ait été reconnu à l'égard de l'acquéreur du navire par voie judiciaire, l'action devant être introduite dans un délai extinctif de trois mois à compter de la transcription du contrat de vente dans le registre d'immatriculation.

6. En raison des différents systèmes existant dans les divers Etats nous sommes d'avis que la Convention ne doit pas contenir de dispositions relatives à l'interruption du ou des délais d'extinction.

7. Nous estimons qu'il est absolument nécessaire pour une Convention sur les hypothèques et les privilèges de régler le cas du changement de pavillon du navire, en statuant que les hypothèques et les privilèges légalement acquis sous l'ancien pavillon doivent produire leurs effets sous le nouveau pavillon, à condition que dans un délai, dont la durée doit être spécifiée, l'hypothèque soit de nouveau inscrite au nouveau registre et que l'ayant-droit au privilège exerce son droit.

8. Nous croyons qu'une vente forcée, quelle que soit l'autorité qui l'a ordonnée, doit avoir comme effet l'extinction de tous les droits de privilèges ou d'hypothèques. Autrement le système de vente forcée risque d'en être gravement affecté.

9. Nous estimons comme nécessaire l'établissement d'une clause relative aux hypothèques sur les navires en construction, mais nous ne croyons pas opportun d'incorporer à la Convention sur les hypothèques et les privilèges le projet de Convention sur l'enregistrement des droits des navires en construction.

10. Bien que le problème soulevé soit très important, nous croyons qu'il ne peut pas être réglé dans le cadre de la Convention dont il est question.

11. Il faut faire en sorte d'éviter les contradictions entre les diverses Conventions internationales, mais il est toutefois nécessaire que cet effort n'aboutisse pas à la création d'autres contradictions.

12. Nous estimons que la Convention doit avoir le champ d'application le plus large possible.

13. Nous annexons à la présente réponse la traduction des dispositions visées du droit hellénique.

14. Le Code Civil hellénique prévoit que les droits réels sur le navire sont régis par la loi du pavillon. Mais bien que, généralement, les privilèges maritimes soient considérés comme ayant la force d'un droit réel, la jurisprudence considère les règles relatives aux privilèges comme règles procédurales, et applique la *lex fori*.

15. Notre Association est d'avis que l'amendement de la Convention est la meilleure voie possible.

Athènes, le 8 juin 1964.

Theodoros B. Karatzas

Secrétaire Hon.

CODE HELLENIQUE DE DROIT MARITIME PRIVE

CHAPITRE VIII

De l'hypothèque maritime

Article 195

Seule la volonté des parties constitue un titre pour l'acquisition d'une hypothèque maritime.

Une hypothèque peut être constituée aussi sur un navire en construction à condition qu'il soit immatriculé.

Article 196

Le droit d'acquérir une hypothèque maritime est accordé en vertu d'une déclaration faite devant notaire.

La déclaration, outre les mentions requises par le droit commun, doit énoncer la description du navire aux termes des articles 2 et 4 du présent Code, le numéro d'immatriculation y compris, ainsi qu'élection de domicile de la part du créancier au lieu où le registre des hypothèques maritimes est tenu. A défaut d'élection de domicile, les significations relatives à l'hypothèque peuvent être adressées au procureur du ressort où le registre d'hypothèques maritimes est tenu.

Article 197

L'hypothèque commence à exister du moment de l'inscription en forme due dans le registre d'hypothèques du ressort du port d'attache du navire.

Article 198

A défaut d'une assurance suffisante le créancier a le droit de faire assurer le navire contre les risques maritimes aux frais du débiteur jusqu'à concurrence du montant du prêt majoré de trente pour-cent.

Si le débiteur ne paie pas les primes d'assurance le créancier a le droit d'exiger le paiement immédiat de la dette.

Le droit hypothécaire s'exerce sur le bénéfice d'assurance également.

Les dispositions des articles 190 al. 3 et 194 s'appliquent sur l'hypothèque maritime également. L'article 1287 du Code Civil n'est point applicable.

Article 199

Toute inscription d'hypothèque maritime postérieure à l'inscription d'une saisie conservatoire ou d'une saisie-exécution, est nulle et sans effet.

Article 200

La disposition de l'article 537 al. 4 du Code de Commerce s'applique également sur hypothèque maritime.

Article 201

Le changement du port d'attache ou du nom d'un navire hypothéqué sans le consentement des créanciers hypothécaires donné par écrit est interdit.

Dès l'inscription du nouveau nom dans le registre d'immatriculation l'autorité portuaire du port d'attache du navire en donne avis au conservateur du registre d'hypothèques maritimes afin qu'il effectue les modifications nécessaires.

Article 202

Toute convention d'aliénation d'un navire hypothéqué, entraînant la perte de la nationalité hellénique, est nulle si elle est faite sans le consentement des créanciers hypothécaires.

Article 203

Toute hypothèque établie sur un navire au moment où il acquiert la nationalité hellénique, continue à subsister pour autant que d'après la loi de la nationalité précédente l'hypothèque ait été acquise par inscription dans un registre public et qu'elle ait été inscrite dans le registre des hypothèques maritimes hellénique dans les soixante jours qui suivent l'immatriculation du navire en tant que navire grec.

Article 204

Pour le reste des dispositions du Code Civil relatives à l'hypothèque immobilière sont appliquées par analogie.

CHAPITRE IX

Des privilèges maritimes

Article 205

Sont privilégiés sur le navire et le fret dans l'ordre ci-dessous seules les créances suivantes :

a) les frais de justice encourus dans l'intérêt commun des créanciers, les droits et les taxes grevant le navire, les impôts afférants à la navigation ainsi que les frais de garde et de conservation depuis l'entrée du navire dans le dernier port;

b) les créances résultant du contrat d'engagement du capitaine et des autres gens de l'équipage ainsi que les droits de la Caisse des Pensions des Marins;

c) les dépenses et rémunérations dues pour assistance, et sauvetage;

d) les indemnités dues aux navires, les passagers et les cargaisons pour abordage ou heurts des navires.

Les privilèges sont préférés à l'hypothèque maritime.

Les créances privilégiées du même rang viennent en concurrence au marc le franc.

En matière de créances résultant d'assistance et de sauvetage, celles qui sont nées ultérieurement sont préférées à celles nées antérieurement.

Article 207

En cas de vente contractuelle du navire le privilège continue à subsister à condition qu'il ait été reconnu à l'égard de l'acquéreur du navire par voie judiciaire l'action devant être introduite dans un délai extinctif de trois mois à compter de la transcription du contrat d'aliénation, dans le registre d'immatriculation.

Article 208

Outre les causes générales d'extinction le privilège s'éteint par la vente du navire aux enchères.

Article 209

Le privilège ne s'exerce pas sur l'indemnité d'assurance.

Décret législatif N° 3899/1958
portant loi sur l'hypothèque de préférence sur navires

Article 1

1. En fait d'hypothèque maritime il est convenu de stipuler que le créancier a le droit d'entreprendre la gestion du navire (hypothèque de préférence) du moment de l'échéance de sa créance.

2. La prise de la gestion du navire par le créancier peut également avoir lieu dans tout autre cas prévu par l'acte constitutif de l'hypothèque de préférence.

Article 2

Le droit d'acquérir une hypothèque de préférence est accordé en Grèce en vertu d'un contrat passé par devant notaire et à l'étranger soit selon la forme requise en Grèce soit selon celle requise dans le pays où l'hypothèque est constituée.

Article 3

Le contrat d'hypothèque de préférence outre les mentions requises par le droit commun doit aussi énoncer : a) le titre d'acquisition de la propriété du navire, le nom, l'indicatif international, le port et le numéro d'immatriculation, les dimensions du navire comme elles résultent du certificat de jaugeage, la nature de la force motrice et la puissance nominale de la machine; b) élection du domicile dans le ressort du Conservateur des Hypothèques. A défaut d'élection du domicile, les significations afférant à l'hypothèque de préférence peuvent être faites au Procureur, du ressort où le Registre d'Hypothèques est tenu.

Article 4

L'hypothèque de préférence ne peut être constituée que sur le navire entier. Elle peut être constituée aussi sur un navire en construction à condition qu'il soit immatriculé.

Article 5

Hormis le droit dont l'article 1 du présent Décret-Loi, par le contrat d'hypothèque de préférence peut être conféré au créancier tout autre droit en vue d'une sûreté majeure de sa créance, y compris le droit d'aliéner le navire sans recours à la vente publique.

Article 6

1. Jugements étrangers afférents à des obligations dérivant d'une hypothèque de préférence ou bien actes reçus par des officiers étrangers, exécutoires dans le pays où ils ont été rendus, sont exécutoires en Grèce

sans revision au fond, encore que le débiteur poursuivi soit un ressortissant Grec. L'exequatur est toujours ordonné par le Président du Tribunal de Première Instance.

2. Outre le débiteur, sont appelés à l'audience si possible, les créanciers hypothécaires ou préférentiels antérieurement inscrits.

3. Le Président ne peut pas renvoyer la cause au Tribunal et l'ordonnance n'est susceptible d'aucune voie de recours ordinaire ou extraordinaire.

4. La sentence autorisant l'exécution, ne peut être exécutée que 24 heures après sa signification.

Article 7

La prise de la gestion est notifiée sans délai au Conservateur des Hypothèques Maritimes, afin que mention soit faite dans le registre hypothécaire. Mention est faite également toutes les fois que la gestion prend fin.

Article 8

Par la prise de la gestion le créancier préférentiel hypothécaire n'est pas privé de son droit à avoir recours à la vente forcée du navire pour le paiement de sa créance.

Article 9

Dès la prise de la gestion, la possession du navire passe au créancier qui exploite le navire pour son propre compte aux fins de l'encaissement de sa créance. La prise de la gestion n'est pas entravée du fait que le navire se trouve en cours de voyage, mais le créancier est tenu à achever le voyage commencé avant la prise de la gestion.

Article 10

Le créancier entré dans la gestion du navire a le droit d'accomplir tout acte et conclure toute convention connexe à la gestion et exploitation du navire mais qui n'engage pas toutefois le navire pour une durée supérieure à un an de la date fixée pour le paiement de sa dette.

Article 11

Tout montant encaissé par le créancier durant la gestion et l'exploitation du navire, déduction faite des dépenses afférentes, est porté en compensation de sa créance. Il peut être stipulé que le créancier doit rendre compte de sa gestion.

Article 12

L'hypothèque de préférence garantit le capital, les intérêts échus et les frais.

Article 13

L'acquittement de la créance de quelque façon qu'il soit fait, met fin à la gestion du navire par le créancier hypothécaire préférentiel. Si l'acquittement est contesté, le créancier est tenu à fournir les éléments de sa gestion.

Article 14

La prise de la gestion du navire par un créancier hypothécaire préférentiel donne droit à tout autre créancier hypothécaire ordinaire ou préférentiel antérieurement inscrit d'exiger le paiement immédiat de sa créance.

Article 15

Le Conservateur des Hypothèques Maritimes doit mentionner sans délai toute inscription ou radiation d'hypothèque ordinaire ou préférentielle dans le livre d'hypothèques que le capitaine est obligé à tenir à bord avec les autres documents réglementaires. Si le navire se trouve hors du ressort du Conservateur des Hypothèques, à la requête de ce dernier adressée par poste, télégraphe ou tout autre moyen adéquat, la mention visée à l'alinéa précédent est faite par l'autorité portuaire ou consulaire du ressort où se trouve le navire.

Article 16

La mention visée à l'article précédent énonce :

1. Le prénom, nom, domicile et profession du créancier et du débiteur.
2. La date du titre et de son inscription dans le registre hypothécaire.
3. Le montant de la créance.
4. La date de l'échéance de la créance.
5. Dans le cas de radiation, la date du document de l'acquittement et de ce qu'elle fut portée dans le registre.

Article 17

Le capitaine doit avoir à bord copie dûment légalisée par le Conservateur des Hypothèques du titre constitutif de toute hypothèque inscrite dans le livre prévu dans l'article 15 du présent Décret-Loi grevant le navire. Le capitaine doit présenter à tout ayant un intérêt légitime la copie dont l'alinéa précédent ainsi que le livre doit l'article 15.

Article 18

A défaut d'une assurance suffisante, le créancier hypothécaire préférentiel a le droit de faire assurer le navire contre les risques de mer et de guerre aux frais du débiteur, jusqu'à la concurrence du

montant du prêt, majoré de trente pour-cent. Si le débiteur ne paie pas la prime d'assurance, le créancier peut réclamer le paiement immédiat de la dette. La créance garantie par une hypothèque de préférence, peut être exercée sur le bénéfice d'assurance.

Article 19

Si le navire est perdu ou a subi des avaries diminuant substantiellement sa valeur, le créancier hypothécaire préférentiel peut exiger le paiement immédiat de la créance. Le droit dont l'alinéa précédent est exclu lorsque les avaries ne sont pas causées par une faute du débiteur et celui-ci offre une sûreté adéquate.

Article 20

Toute hypothèque ordinaire ou de préférence constituée sur un navire au moment où celui-ci acquiert la nationalité hellénique continue à subsister pour autant que d'après la loi de la nationalité précédente, l'hypothèque ait été acquise par inscription dans un registre public et qu'elle ait été inscrite dans le registre hypothécaire Grec dans les 60 jours qui suivent l'immatriculation du navire en tant que navire Grec.

Article 21

Le rang chronologique de l'inscription de l'hypothèque détermine la priorité de tout créancier ordinaire ou préférentiel. Les hypothèques inscrites le même jour viennent en concurrence.

Article 22

Pour le reste sont appliquées les dispositions des articles 195 à 205 du Code du Droit Maritime Privé.

Article 23

Les dispositions des articles 1 à 22 sont appliquées à des navires d'une jauge brute supérieure à 500 tonneaux. L'application de ces dispositions peut être étendue par Décret Royal à des navires d'un jaugeage inférieur.

Article 24

1. En fait des Autorités Consulaires Helléniques auprès desquelles l'exercice de l'Administration de la Marine Marchande est confiée à un Officier du Corps Portuaire, l'admission définitive de navires grecs sans égard à leur capacité et la conservation des registres d'immatriculation de toute classe ainsi que des hypothèques maritimes y compris les livres y afférant selon les provisions en vigueur, peut être exercée par le dit officier, d'après Décret Royal issu à l'instance des Ministres de la Justice et de la Marine Marchande.

2. Les navires inscrits dans les registres tenus par les Autorités Consulaires selon l'alinéa 1, sont obligatoirement transcrits dans un registre d'un port de l'Etat.

3. Par Décret Royal issu à l'instance des Ministres de la Justice et de la Marine Marchande seront déterminés :

a) La procédure de la transcription des navires et leur report des registres relatifs aux registres d'immatriculation et des hypothèques maritimes ainsi qu'aux autres registres d'un port de l'Etat.

b) La conservation des dits registres après la transcription des navires dont l'alinéa - du présent article, le but de leur conservation et les inscriptions à y passer.

c) Les pièces justificatives exigées pour l'admission d'un navire autant que navire grec par les Autorités Consulaires conformément à l'alinéa du présent article.

d) Tout autre détail pour l'exécution du présent article.

Article 25

L'affirmation assermentée de la propriété d'un navire, prévue par la dernière alinéa de l'article 6 du D.R. du 14.11.1836 sur la Marine Marchande est remplacée par une déclaration sous seing privé, soumise par l'acquéreur à l'Autorité de l'immatriculation.

La déclaration écrite de promesse et de garantie prévue par les articles 12, 13 et 14 du D.R. du 14.11.1836 est abrogée.

BRITISH MARITIME LAW ASSOCIATION

REPLIES

I. Yes.

II. a) Not applicable.

II. b) We go into greater detail about desirable improvements in later replies to this questionnaire. We believe that the following improvements are especially important :

1. We consider that the Convention, as at present drafted, accords too low a priority to rights of mortgagees, by subordinating them to the very extensive number of claims which give rise to maritime liens as enumerated in Article 2. In England, as will be seen from the Commentary pages 3 and 4, Maritime Liens are very restricted and attach only in respect of claims for damage done by a ship, salvage wages and master disbursements. The rights of mortgagees, therefore, take priority over the vast majority of claims which may be made against the vessel. We suggest that this is as it should be.

We agree that creditors should be entitled to enforce their claim by proceedings « in rem » against a ship. In this connection we should recall that the United Kingdom has ratified the Arrest of Ships Convention 1952 which enumerates an extensive list of claims in respect of which proceedings « in rem » are available. To accord the right to proceed « in rem » does not, of course, imply that a Maritime Lien attaches to the claim (though Maritime Liens can only be enforced by proceedings « in rem »). Not do proceedings « in rem » affect the priority of the various claimants including mortgagees.

2. Quite apart from the substantive criticism mentioned above, we are of the opinion that numerous drafting amendments are required to avoid ambiguities and uncertainties in the present text. We mention these in more detail below (see in particular reply to Question IV b) 1).

III. a) An indication of our view as to the requirements of a new Convention has been given in our reply to Question II.

III. b) We are in favour, if possible, of a new Convention providing for rules of uniform law covering all the problems in the report.

III. c) We think that consideration should be given to the question as to whether all Maritime Claims under the Arrest Convention should be brought into this Convention. Further, we would suggest that provision should be made in the Convention to cover the forced sale of

ships, wreck raising and the possessory lien under English law. (See reply to Question IV b) iii).

IV. 1) Yes.

IV. 2) Yes.

In the United Kingdom the position as regards the recognition and enforcement of foreign mortgages and charges on ships has changed in the last few years. Whilst a foreign judgment against a ship has always been recognised and enforced by proceedings « in rem » in the Admiralty Court (see e.g. *Minna Craig S.S.Co. v. Chartered Mercantile Bank of India (1897) 1 Q.B.*), the Courts in the United Kingdom had no jurisdiction to consider disputes respecting foreign mortgages and charges. Prior to 1956 the Admiralty jurisdiction of the High Court was limited, in general terms, to mortgages registered under the Merchant Shipping Act. Thus the registered mortgagee of a British ship could enforce his security by arrest in the Admiralty Court, whereas the mortgagee of a foreign ship, duly registered in accordance with the law of the flag of the ship, had no right to arrest such ship in a British port.

However, since the passage of the Administration of Justice Act 1956, the Admiralty jurisdiction has been extended to hear and determine any claim in respect of a mortgage of or a charge on a ship or any share therein whether the ship is British registered or not, wherever the claim may arise and to all mortgages and charges, whether registered or not and whether legal or equitable including mortgages and charges created under foreign law.

IV. b) i) We are of the view that the claims listed in Article 2 to which Maritime Liens attach are too numerous. Paragraph 5 of Article 2 should be omitted « in toto ». With modern means of communication the right of the Master to pledge his ship is unnecessary. We would also suggest that the claims set out in the other paragraphs should be restricted as follows :

Paragraph 1.

a) « *Law costs due to the State* ». These words are wide enough to cover any legal costs due to the State. We believe that what is meant is Court Fees and we suggest that this restricted term should be employed.

b) « *Expenses incurred in the common interest of creditors in order to preserve the vessel or to procure her sale and the distribution of the proceeds of sale* ».

We suggest that this provision lacks clarity and is, in any event, too widely drafted. Such expenses should be restricted to the costs of arrest, sale and distribution of funds arising therefrom.

c) « *The cost of watching and preservation* ».

We suggest that this should be deleted from the paragraph.

Paragraph 2.

« *Claims arising out of the contract of engagement of the Master, crew and other persons hired on board* ».

We think it right that the Master and crew should be entitled to the security provided by a Maritime Lien in respect of their wages. But we suggest that this paragraph is too wide both in respect of the category of persons included and in respect of the causes of action which should be restricted to wages and other similar payments (insurance, pensions, etc.). The expression « claims arising out of contract of engagement » is wide enough to include, for example, a claim made by a third party in respect of the breach of a term of the contract of engagement by the Master, etc. (i.e. the breach of the undertaking of a Master to use all reasonable means to make and keep the ship seaworthy under the Merchant Shipping Act). As regards the categories of persons included in the provisions, the words « other persons hired on board » might include, for example, stevedores, repairers and even surveyors. We think that the expression should be limited to « persons of the ships complement ».

Paragraph 3.

This provision extends the present scope of Maritime Liens under English law, which is restricted to salvage alone. We think it reasonable to extend the lien to ship's contribution to General Average, but to exclude « assistance » as being unnecessarily wide.

Paragraph 4.

This provision is somewhat loosely drafted and extends the scope of existing English Maritime Liens. We suggest that indemnities for bodily injury to passengers or crew; indemnities for loss of or damage to cargo to baggage (which are all insurable risks) should be omitted.

Paragraph 5.

To be deleted. See above.

IV. b) ii) No comment.

IV. b) iii) We are of the opinion that the categories of claims giving rise to maritime liens under the Convention should be extended as follows :

1. Although Harbour Authorities may enforce their claims for tonnage and harbour dues (Art. 2, 1) and for damage caused to docks etc. (Art. 2, 4), we are of the view that they should also be entitled to a maritime lien in respect of the costs of wreck raising. We think

it best that this should be recognized in the Convention itself, rather than in the Protocol of Signature.

2. As already indicated, we think that the possessory lien should rank as a maritime lien, thereby giving additional security to shipbuilders and repairers.

IV. c) Yes. See above under IV b) i).

IV. d) i) As between registered mortgages « inter se » ?

The date of registration of the mortgage (and not its creation) should regulate its priority.

ii) As between registered mortgages and liens ?

Priority over registered mortgages should be accorded to a severely restricted number of Maritime Claims. We appreciate that the system of priority set out in Article 2 was the subject of very lengthy International discussions and that agreement was reached after concessions made by the various parties to these discussions (for details see the report of C.M.I. Meeting 1904/1925 and Diplomatic Conferences 1910/1926). In these circumstances we think it might be unwise to suggest a different system.

iii) As between liens « inter se » ?

Here again we consider that the system set out in Article 5 though differing from that adopted in the United Kingdom is workable. We, therefore, do not recommend any changes apart from a clear definition of the « voyage », which is omitted from the Convention. We have referred to this in the Commentary. We can see no objection to omitting the concept of voyage from the Convention.

IV. e) Yes. See above.

In addition we think that, in order to avoid conflict with the Arrest Convention 1952, all Maritime claims enumerated in Article 1 of that Convention which are not included in Article 2 of the 1926 Convention on Mortgages and Maritime Liens should be granted recognition in the Convention as claims in respect of which a right in rem exists.

IV. f) The Maritime claims mentioned in e) above should be postponed to all maritime liens and mortgages.

IV. g) To allow Contracting States to create such rights would be contrary to the intention of this Convention.

IV. h) No, for the same reason as in g) above.

IV. i).

1) in a Contracting State ?

Yes.

2) in a non-Contracting State ?

Yes. See IV a) 2) above.

IV. j) We are firmly against the lien being enforceable against freight earned by the ship. If this is not accepted it would be necessary

to define the freight to be attached. We believe that this would be extremely difficult.

IV. k) See reply to j) above.

IV. l) No.

V. a) Two years would seem a reasonable period in respect of all Maritime claims.

V. b) Time should run from the date on which the claim accrues and in the case of General Average, this should be deemed to be the date on which the adjustment is completed.

VI. a) We are in principle against any interruption, though appreciate that such interruption might be found necessary for example in the case of requisition.

VI. b) Not applicable.

VI. c) See reply to Question VI a).

VII. a) Yes.

VII. b) Clearly when a vessel registered in a Contracting State is sold to a national of another Contracting State, the mortgages and liens should survive. The Convention should contain appropriate provisions covering the administrative operation of re-registering mortgages in the new country of registry. Where, however, the vessel is sold by the national of a non-Contracting State, it is impossible to impose the provisions of the Convention on the latter. The only way that any attempt can be made to safeguard the position of a mortgagee would be to provide in the Convention that mortgages, like Maritime Liens, attach to the ship into whose-soever possession she may pass. We have already suggested that this should be so (see reply to Question 1).

VIII. a) No. We think that whilst the purchaser of a ship sold by a Court be entitled to the vessel free of all encumbrances, all registered mortgages and liens on such ships should not be extinguished, but that, instead, they should attach to the proceeds of sale.

VII. b) No. While such a provision would clearly be desirable, it would be ineffective.

IX. a) and b) Yes. In principle we think it logical to have one comprehensive Convention covering both ships in commission and under construction.

X. a) No. While we appreciate that the position of a Charterer should be safeguarded, we think that this is an entirely separate topic from that dealt with in this Convention, which deals with security for services rendered, damage done or money advanced. We do not, however, wish to imply that the Convention on registration of Charter Parties should not be independently pursued.

X. b) Not applicable.

X. c) Not applicable.

XI. Yes, we think it wise to provide that on the setting up of a limitation fund the creditors sharing in the fund will do so « *pari passu* » without being entitled to any priority resulting from a lien securing their claims. But the setting up of a limitation fund should in no way prejudice the rights of mortgagees.

XII. a) We think that the Convention should be applied as widely as possible, and that its provisions should apply in contracting countries to all vessels irrespective of their flag. Indeed, this is the position in the United Kingdom (see our reply to Question IV a) 2).

XIII. a) In view of a request received from members of Mr. Asser's Working Group we have prepared a detailed commentary on the position in English Law.

We, therefore, answer the questions briefly as follows :

The maritime liens recognized in English Law are wages, damages done by a ship, salvage and disbursements.

XIII. b).

i) Possessory Liens.

Yes. See commentary.

ii) Statutory Liens ?

Yes. See commentary.

iii) A right of retention not giving rise to a maritime lien ?

Yes. A right of retention is given to ship repairers and Port Authorities in circumstances where money is owed for services rendered.

XIII. c) See commentary.

XIII. d) Yes, we believe it is. It should, however, be noted that the Merchant Shipping Acts 1894 S. 44 and 1906 S. 52 make provision for the retention on registers of mortgages when a ship is sold and is reregistered.

XIII. e) Yes.

XIII. f) At the present stage of our examination of this topic, we reply in the negative.

XIV. Mortgages and charges created under foreign law are recognized in this country as matters of *substance* (i.e. in the sense understood in private international law). As a matter of *procedure claims* will be enforced by an action « *in rem* ». The question of priority claims would, however, be governed by English Law for this is a matter for the « *lex fori* ».

XV. We are in favour of preparing an entirely new Convention.

COMMENTARY

ON THE INTERNATIONAL CONVENTION OF 1926 AND COMPARISON WITH ENGLISH LAW

Article 1

Article 1 lays down the categories of rights over a ship which may be registered. These are :

1) *Mortgages*. This must include both legal and equitable mortgages. A legal mortgage is one which is registered under the *Merchant Shipping Act 1894 s. 31-46*. All other mortgages are equitable. It is to be noted that all claims in respect of mortgages or charges, whether registered or not, and whether legal or equitable and including those created under foreign law, on any ship or share are within the Admiralty jurisdiction; see *Administration of Justice Act 1956 (4 & 5 Eliz. 2) Sec. 1 (1) (c)* which provides that « The Admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims : any claim in respect of a mortgage of or any charge on a ship or any share therein »; and Sec. 1 (4) « The preceding provisions of this section shall apply :

a) in relation to all ships and aircraft, whether British or not and whether registered or not and wherever the residence or domicile or their owners may be;

b) in relation to all claims, wheresoever arising (including in the case of cargo or wreck salvage claims in respect of cargo found on land) and

c) so far as they relate to mortgages or charges, to all mortgages and charges whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law;

Provided that nothing in this sub-section shall be construed as extending the cases in which money or property is recoverable under any of the provisions of the Merchant Shipping Acts 1894-1954. »

2) *Hypothecations*. This in English law means Bottomry and Respondentia. The Master has authority to pledge the ship and freight in circumstances of unforeseen necessity or distress to raise the funds required for the voyage. This is Bottomry. If the cargo alone is hypothecated then this is Respondentia. Though such hypothecations are obsolete in practice, they still form part of the jurisdiction « in rem » and « in personam » of the Admiralty Court — see *Administration of Justice Act sec. 1 (1) (r)*. The Court can hear and determine « (r) any claim arising out of Bottomry ». In practice both Bottomry and Respondentia are obsolete in English law. They will not be further considered.

3) *Other charges*. In the *St. Merriel (1963) 1 Ll.L.Rep. 63 at p. 68*, Hewson J. defined « other charge » by reference to shipping statutes which contain the words « a charge upon the ship ». In particular he referred to :

a) *Merchant Shipping Act 1894 S. 513 (2)* which reads : « Any damage sustained by an owner or occupier in consequence of the exercise of rights given by this Section » (which deals with the right to pass and repass over adjoining land when the vessel is wrecked stranded or in distress) « shall be a charge on the vessel, cargo or articles in respect of or by which the damage is occasioned, and the amount payable in respect of the damage shall in case of dispute be determined and shall in default of payment, be recoverable in the same manner as the amount of salvage is under this part of this Act determined or recoverable ».

b) *Merchant Shipping Act 1906 S. 35 (2)* : « If the expenses » (expenses, that is, attendant on the illness, hurt or injury of a seaman) « are not so repaid the amount thereof shall with costs be a charge upon the ship and be recoverable from the Master or from the owner of the ship for the time being either by ordinary process of law or in the Court and in the manner in which wages may be recovered by seamen ».

c) *Merchant Shipping Act 1906 S.42 (1) & (2)* : « These expenses (expenses of relief of distressed seamen) shall be a charge upon the ship (recoverable) either by ordinary process of Law or in the court and manner in which may be recovered by seamen ».

Article 2

Article 2 lays down the classes of claim in respect of which Maritime liens attach under the Convention. The article also lays down their priority, but this question is dealt with more specifically under Article 3. The Article lays down the items of the ship's adventures to be subject to such liens (e.g. Freight and accessories) but again this is dealt with in detail below under Article 4.

The maritime liens listed in the Convention are far more numerous than the maritime liens recognized by English law. Liens of all kinds recognized by English law are as follows :

1) *Maritime Liens*.

a) *Bottomry & Respondentia* : see above under Article 1.

b) *Salvage of Property*.

The lien salvage is created by rendering salvage services to a maritime res, or in certain circumstances by the saving of life from a ship. The lien attaches to the ship freight and cargo severally, but not jointly and each is liable to contribute towards the salvage in proportion to its value, but cannot except in cases of express agreement

be made liable for the salvage due from the other. The lien accrues immediately upon performance of the salvage services.

c) *Wages.*

The lien for wages attaches provided these have been earned under an ordinary mariner's contract. So long as the master and crew have earned their wages the fact that they were engaged by someone who had no right to engage them is irrelevant.

d) *Disbursements and Liabilities.*

The master has a lien on the ship for disbursements made or liabilities incurred on account of the ship. This lien is only in respect of disbursements made or liabilities incurred by the master by virtue of his general authority and in the ordinary course of his employment for which he can pledge owner's credit.

e) *Dammage done by a ship.*

This lien arises when damage is done by the ship to another ship or property; see *The Tolten* (1946) P. 135 (C.A.) where a wharf in Spain was damaged, and *Mersey Docks and Harbour Board v. Turner, The Zeta* (1893) A.C. 468 where a ship collided with a pier head. This is the case whether the casualty occurs on the high seas or in the body of a country, that is to say on any inland waterway. There must be some wrongful act of navigation of the ship from want of skill or from negligence of the persons by whom she was navigated, being at the time of the damage her owners or the servants of her owner, or having the possession and control of her by their authority. Thus where the crew of a ship cast off the moorings of another ship, and the latter was damaged as a result, it was held that no lien attached to the ship whose crew cut the moorings; *Currie v. McKnight* (1897) A.C. 97. So where Charterers have the control or where any persons are allowed to have possession for the purpose of using or employing her in the ordinary manner, they may be deemed to have authority to subject her to liens and, therefore, make her liable for their negligence. Where the person in charge or possession of the ship has no such authority no lien arises e.g. wilful damage by the Master. But see Article 13 inf. and *The Castlegate* (1893) A.C. 38 for some further discussion on this matter.

2. *Statutory Liens.*

A statutory lien attaches when the proceedings are commenced in an action « in rem » in the Admiralty jurisdiction of the High Court, the Liverpool Court of Passage, or any County Court having Admiralty jurisdiction. Under the Administration of Justice Act 1956 Sec. 3 (2) « the Admiralty jurisdiction of the High Court may be invoked by an action « in rem » against the ship or property in question » in the following claims :

Sec. (a) «any claim to the possession or ownership of a ship or to the ownership of any share therein;

Sec. (b) any question arising between co-owners of a ship as to possession, employment or earnings of that ship;

Sec. (c) any claim in respect of a mortgage of or a charge on a ship or any share therein;

Sec. (s) any claim for the forfeiture or condemnation of a ship or of the goods which are being or have been carried or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure or for droits of Admiralty. »

Under Sec. 3 (3) of the Act it is provided that where there is a maritime lien or other charge on any ship for the amount claimed the jurisdiction of the High Court may be invoked by an action « in rem ».

Under Sec. 3 (4) « where a person who would be liable on the claim (for a list of which see details infra) in an action « in personem » was, when the cause of action arose, the Owner or Charterer of, or in possession or in control of the ship, the Admiralty jurisdiction of the High Court may (whether the claim gives rise to a maritime lien or not) be invoked by an action « in rem » against :

a) that ship, if at the time when the action is brought, it is beneficially owned as respects all the shares therein by that person; or

b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid. »

The above provisions concerne the following claims under the Administration of Justice Act Sec. 1.

d) any claim for damage done by a ship;

e) any claim for damage received by a ship;

f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the Owners, Charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;

g) any claim for loss of or damage to goods carried in a ship;

h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;

j) any claim in the nature of salvage...;

k) any claim in the nature of towage in respect of a ship...;

l) any claim in the nature of pilotage in respect of a ship...;

m) any claim in the nature of goods or materials supplied to a ship for her operation or maintenance;

n) any claim in respect of construction repair or equipment of a ship or dock charges or dues;

o) any claim by the Master or member of the crew of a ship for wages and any claim by or in respect of a Master or member of the crew of a ship for any money or property which, under any of the provisions of the Merchant Shipping Acts 1894-1954 is recoverable as wages or in the Court and in the manner in which wages may be recovered;

p) any claim by a Master, shipper, charterer or agent in respect of disbursements made on account of a ship;

q) any claim arising out of an act which is or which is claimed to be a general average act;

r) any claim arising out of Bottomry.

A statutory lien attaches when proceedings are commenced in an Admiralty action « in rem ». It differs from a maritime lien in that a maritime lien attaches to the ship at the moment of the occurrence which gives rise to the claim, whereas a statutory lien attaches only on the issue of a writ. Both forms of lien travel with the ship into whosoever possession she may pass. It is imposed by law and not entered into by agreement as are mortgages and pledges.

3. Possessory Lien.

A possessory lien is the right of a person in whose possession a ship or her appurtenances is or are, to retain possession thereof. Such charges indeed have a very high priority, but no lien. Such a right belongs to one who repairs, alters or otherwise bestows labour or skill upon a ship and retains possession of it. There is no power to realize the security, even though expenses and inconvenience must be incurred in keeping it. (Also it is to be noted that Harbour and Dock Authorities generally have a right under their private statutes to detain vessels in respect of damage to the harbour or dock works. The right arises where the Authority's special Act incorporates the *Harbour Docks and Piers Clauses Act 1847* (10 & 11 Vict. C. 27) S. 74 or includes similar provisions. The mere right to detain does not involve a right to sell and has been held to amount to a possessory lien : see *Mersey Docks & Harbour Board v. Hay, The Countess* (1923) A.C. 345. Harbour and dock authorities can also detain and sell a ship in respect of dock and harbour dues : see *Harbour, Docks and Piers Clauses Act 1847* S. 44. They can take possession and remove and sell wrecks and other obstructions).

It will be seen from the foregoing that though there are but few maritime liens known to English law, the statutory liens, giving a right to proceedings « in rem » as listed by the Administration of Justice Act 1956 are numerous and to a large extent correspond to the maritime liens listed by the Convention, upon which the following comments and comparisons with English law are made :

Article 2 (1)

« Law costs and fees, etc. »

The charges of the marshall give rise to an overriding right; otherwise such costs can as a consequence be paid out of the proceeds of sale; and indeed the court almost invariably orders that the court fees and costs shall be a first charge on the proceeds of the ship or the fund in court. But under English law such charges do not of themselves give rise to a lien.

« Tonnage dues, light or harbour dues and other public taxes of the same character ».

Under existing English law there is no maritime lien for such dues. However in most cases dock and harbour authorities have the power to detain and sell for dues under their special act, either by express terms or by incorporation of the *Harbour, Docks, and Piers Clauses Act 1847 B. 44*. The effect of this power is to give a claim for dock dues priority over all other claims, even over those maritime lien holders : *The Emilei Millon (1905) 2 K.B. 817*. So far as concerns light dues, their recovery is provided for under the Merchant Shipping Act 1894 S. 649, 650 en 655. The right to distress for light dues is inferior to a maritime lien and cannot be effected when a ship is inferior to a maritime lien and cannot be effected when a ship is under arrest by the court : *The Westmoreland (1845) 2 Wm. Rob. 394*. If the words « other public taxes of the same character » cover statutory charges for removing wreck then this merely preserves existing English law, since dock owners and harbour authorities claims to wrecks which they have removed take priority over all other claims : *The Sea Spray (1907) P. 133*. « Pilotage dues ». Under English law pilotage dues are usually collected by the pilotage authority under byelaws made under the *Pilotage Act 1913 S. 171 (f)*. Under S. 149 (1) of that Act those dues are recoverable in the same way as fines under the Merchant Shipping Act 1894 : that is to say, they are recoverable as civil debts and can be levied by distress on the ship : see *Merchant Shipping Act 1894 S. 681 (2) S. 693*. But, presumably, as in the case of light dues, (see above) this right of distress is inferior to a maritime lien. In addition it was held in *The Ambatielos (1923) P. 68* that an action « in rem » lies for pilotage dues but that is was doubtful whether there was a maritime lien in respect of them; and that, if there was a lien, it probably ranked with seamen's wages. The lien for pilotage dues is now statutory, see above Administration of Justice Act Sec. 1 (1) 1.

« The Cost of watching and preservation from the time of the entry of the vessel into the last port ».

The last port must mean the port in which the ship was arrested. This provision may cover the facts in such a case as *the Carolina (1875)*

34 *LT* 399, where it was held that a seaman retained in the service of the ship after he had arrested her in an action for wages could not have judgment for wages accrued after the date of the arrest, but could only obtain a subsistence allowance by way of costs. Or the words may cover the case of *The Rene* (1922) 128 *LT* 96 the ship was under arrest had supplied ballast which was necessary for the preservation of the ship, was not entitled to priority over other necessaries men.

Article 2 (2)

« *Claims arising out of the contract of engagement of the Master, crew and other persons hired on board* ».

Under English law a seaman has by the law of Admiralty and independently of statute, a maritime lien for his wages : this includes money earned otherwise than on board the ship such as subsistence money viaticam and wages accrued due after dismissal, see *The British Trade* (1924) *P.* 104. The Convention raises two questions. There is doubt whether there is a lien for damages for breach of the contract of service as distinguished from wages e.g. damages for wrongful dismissal. It has been said that such a lien exists but this appears to conflict with the judgment in *The British Trade* (supra). There is also the question of whether a lien exists for wages due under a special contract as distinguished from an ordinary mariners contract : the answer is also in doubt in view of the judgment in *The British Trade*.

As regards the master he also has a lien for wages under *Merchant Shipping Act 1894 S. 167*, though his lien is postponed to the seaman's lien — *The Mons* (1932) *P.* 109. Under the same section of the Act the master has a lien for disbursements. « Disbursements » were defined by Lord Esher in *The Orients* (1895) *P at p.* 55 as follows : « The real meaning of the word « disbursements » in Admiralty practice is disbursements by the master which he makes himself liable for in respect of necessary things for the ship for the purpose of navigation which he as master of the ship is there to carry out — necessary in the sense that they must be had immediately — and when the owner is not there able to give the order, and he is not so near to the master that the master can ask for his authority and the master is therefore obliged necessarily to render himself liable in order to carry out his duty as master.

Article 2 (3)

« *Remuneration for assistance and salvage* ».

Salvage gives rise to a maritime lien. Assistance, of itself, to nothing. Assistance is in the context, a rather loose term anyway.

« *And the contribution of the vessel in general average* ».

This gives rise to a statutory lien, but not to a maritime lien.

Article 2 (4)

« *Indemnities for collision or other accident or navigation* ».

This coincides with the maritime lien for damage. It is to be noted that the general words specify an accident of navigation. « *Also for damage caused to works forming part of harbours, docks and navigable ways* ». This is equivalent to the maritime lien for damage. « *Indemnities for personal injury to passengers or crew* ». This gives rise to a statutory lien : see Administration of Justice Act 1956 Sec. 1 (L). It is true that the Act specifies merely « goods » which does not, as does the Convention, specifically include baggage.

Article 2 (5)

« *Claims resulting from contracts entered into or acts done by the master, etc.* »

This clearly corresponds to the maritime lien for « Bottomry » and « Respondentia ».

Article 3

Article 3 lays down the priority of mortgages, hypothecations and other charges. Priority of liens is dealt with in Articles 5 & 6. Since it is impracticable to deal separately with priority of mortgages etc. and liens the provisions of Articles 5 & 6 in that respect will also be considered here.

According to English law it would seem that the determination of the priority of liens over one another rests on no rigid application of any rules, but on the principle that equity shall be done to the parties in the circumstances of each particular case. *The Stream Fisher* (1927) P. 73. There is however a general order of priority and there are general rules which in the absence of special circumstances the court tends to apply. After payment of the marshal's charges and expenses, the right of a dock and harbour authority exercising its power under the provisions of the *Harbour Docks and Piers Clauses 1847* or other similar provisions of its special Act, to detain a ship in respect of dock and harbour dues or to take possession of and sell a wreck in respect of conservancy charges overrides all maritime liens. Next in order of priority are maritime liens. These usually rank above mortgages and statutory liens. A mortgage generally has precedence over a statutory lien. A possessory lien ranks after all liens which have attached before, and before all liens which attach after the possessory lien holder has taken possession of the ship.

« Other charges ». The meaning of this term was considered by the « St. Merriel » (see above under Article 1). These charges take priority over statutory liens. The following is a summary of the principles applicable :

1. The Marshall's charges expenses etc. are in practice paid in priority to all claims; priorities are determined in relation to the net fund available thereafter or alternatively if an arresting plaintiff pays the charges etc. in accordance with his undertaking he will recover the sum paid as costs.

2. The costs of the plaintiff in whose action the res was arrested up to the moment of arrest and including the cost of arrest, and later costs up to and including appraisalment and sale, either of that plaintiff or where the order for appraisalment and sale was obtained in a different action of the plaintiff in a different action are accorded priority over all other claims, whether for costs or not. These apart, cost are ranked with or immediately after the claim in respect of which they arise.

3. A possessory lien, although postponed to earlier maritime liens has priority over subsequent liens maritime or not. If the court orders a possessory lien holder to relinquish possession, the order will include protection for any rights he may prove to have.

4. 1) Salvage has priority over :

- a) earlier damage
- b) earlier salvage, if distinct and on a different occasion
- c) earlier wages
- d) earlier claims to forfeiture by the Crown
- e) subsequent possessory liens
- f) necessities

g) execution creditors causing the ship to be seized by the sheriff after the salvage services were rendered, and the sheriff claiming in respect of his charges and expenses

h) mortgages.

2) Salvage claims in respect of the same casualty rank « *pari passu* ».

3) Claims for life salvage have priority over claims for salvage of property.

5. 1) Damage has priority over :

- a) earlier salvage
- b) wages
- c) subsequent possessory liens
- d) necessities
- e) execution creditors and sheriff, as in 4 (1) (g), *supra*
- f) mortgages.

2) Damage ranks « *pari passu* » with damage, earlier or later.

6. 1) Wages have priority over :

- a) earlier salvage
- b) subsequent possessory liens
- c) necessities
- d) execution creditors and sheriff, as in 4 (1) (g), *supra*

- e) mortgages.
- 2) Masters' wages and disbursements both rank as masters' wages.
- 3) Masters' wages and disbursements rank, subject to (6) infra « pari passu ».
- 4) Crews' wages have priority over masters' wages and disbursements.
- 5) Crews' wages rank, subject to (6) infra, « pari passu ».
- 6) Where salvage is interposed between wages earned before and wages earned after the services, the later-earned wages have priority over the earlier-earned.
- 7) Wages include repatriation expenses, subsistence allowance etc.
- 8) Special considerations apply in certain circumstances where a master is also a part-owner.

7. Mortgage priorities are as follows :

1) British registered mortgages have priority by registration over earlier (or later) unregistered or foreign mortgages even though there is notice of the unregistered or foreign mortgage.

2) British registered mortgages have priority inter se according to date of registration.

3) Mortgages have priority over necessities unless the ship was already under arrest for the necessities when the mortgage was entered into.

4) Unregistered and foreign mortgages have priority inter se according to the dates when they were entered into, subject to the rules of equity governing equitable mortgages.

5) A mortgage has no priority over a possessory lien, for a possessory lien has priority over all claims except earlier maritime liens.

6) A mortgage has no priority over a maritime lien.

8. Necessaries usually have a very low priority.

1) When a ship has been arrested in a necessities action, the necessities have priority over mortgages entered into after the arrest.

2) Under similar conditions, necessities have priority over an execution by which a sheriff seizes the arrested ship.

3) Necessaries rank « pari passu » « inter se » and no date is of any consequence.

9. Contractual claims, e.g. for breach of charterparty, seem to rank as if the claims were claims in respect of necessities.

Article 4

Article 4 lays down those items, in addition to the ship to which the lien attaches. These are extensive and go far beyond the provisions of English law.

The word « accessories » is not apt to describe such items as « compensation », general average contributions, and remuneration.

In England the moment the damage is done by the ship, the lien attaches to her hull, tackle, apparel, furniture and freight. That freight is attachable was decided in *The Leo* (1862) *Luch* 444. See generally, *The Mary Ann* (1865) *L A I A & E* 8. The lien does not originate in possession, and it follows the ship into whosoever possession it may pass and continues even after the ship is wrecked. It may, therefore, be enforced against the wreckage *Harmer v. Bell*, *The Bold Buccleugh* (1852) 2 *Moo P.C.* c 267. The lien on freight can however only be enforced in company with the lien on the ship being consequential to that lien : *Morgan v. Castlegate S.S. Co.*, *The Castlegate* (1893) *A.C.* 38.

Under existing law the freight to which a maritime lien attaches is the freight which the vessel is engaged in earning at the time when the lien arises *The Orpheus* (1871) *L.R.* 3 & *E* 308. It includes sub-freight due to a charterer and not to the Owner *The Andalina* (1886) 12 *P.D.1*. It has never been decided whether passage money is included, but it is more than doubtful in view of the fact that freight cannot be arrested apart from the ship.

Article 5

Article 5 deals with the question of priorities which has been dealt with under Article 3 above.

It is, however, interesting to note English law as regards « the voyage ». In *Board of Trade v. Baxter* (1907) *A.C.* 373 Lord Loreburn said :

« It must in each case be a question of fact what is a voyage, and in ascertaining what it is a court may regard the following among other considerations : the duration of the venture in point of time and its unity : its geographical limits and direction; whether new cargoes are shipped or new charters made or ports visited in orderly succession and in particular whether there has been a sailing from and afterwards a return to the United Kingdom ».

Many claims giving rise to a lien will arise when a ship is not on any « voyage » in the ordinary sense of the word, but in port; e.g. dock dues. See also *Letricheux c. Dunlop* (1891) 29 *Sc. LO* 182. « I think the word voyage must be taken to embrace the period of preparation at the port of departure and the period spent at the port of destination until the cargo has been delivered ».

Article 6

Article 6 deals with questions of priority which are discussed above under Articles 3 & 5.

This Article also deals with the question of claims for wages and disbursements extending over several voyages, but all falling within one contract of engagement. These are to rank with claims attaching

to « the last voyage ». The last voyage must presumably mean the last voyage prior to the arrest. The question of the voyage generally is dealt with above : see Article 5 sup.

Article 7

The Article deals with the situation arising where there are two or more claims with a separate limit of liability in respect of each claim. The limitation fund must not be taken to be diminished (e.g. in particular where the limit of liability is the value of the ship and her freight) by such separate prior incidents. In English law such claims rank as between incident and incident, and subject always to the rules of priority dealt with above, « pari passu » — see *The Stream Fisher (1927) P 73*.

Under English law the limit of liability is now governed by the *Merchant Shipping (Liability of shipowners and Others) Act 1958* enacting the 1957 Limitation Convention and, therefore, the value of the proviso which lays down rights where the value of the ship is greater than £ 23.13.10. per ton is less than was formerly the case.

The effect of the Article can perhaps be explained by the following illustration. Suppose a ship has three successive collisions on the same voyage (a not impossible occurrence, see *The Stream Fisher (1927) P 73*) : further suppose her value after the first collision is £ 8,000, after the second £ 4,000 and after the third collision £ 2,000 and that on each of the three collisions she does £ 10,000 worth of damage to the other ship. The effect of this will be that there are claims to the extent of £ 30,000 to be satisfied out of a ship worth £ 2,000. If the claimants could only prove for the sum to which the shipowner could limit his liability in respect of each collision, the first claimant would take 4/7 of the fund, the second 2/7 and the third 1/7th. Article 7 attempts to make it clear that each claimant can prove in full without regard to the limit of liability in his case, and if so each claimant will take one third. The proviso to the Article appears to be necessary to prevent a conflict with the rules as to limitation of liability while the value of the ship is greater than the statutory limits laid down. See above.

Article 8

This Article corresponds with English law, see *The Bold Buccleugh 7 Moo P.C. 267* which was a case dealing with maritime liens.

Article 9

Article 9 provides for the extinction of liens. The lien ceases to exist. Under English law claims to enforce liens are liable to be statute barred. No action is maintainable to enforce a lien against a vessel in respect of any damage or loss to another vessel, her cargo or freight

or any property on board her or damages for loss of life or personal injuries caused by the fault of another vessel, or in respect of any salvage services unless proceedings are commenced within two years from the date when the damage, loss or injury was caused or when the salvage services were rendered. *Maritime Conventions Act 1911, (1 & 2 Geo 5 C 57) s. 8*. It is important to note that this section only affects procedure and not the substantive rights of the parties; it does not extinguish the lien or the cause of action, but only says that no action can be brought to enforce it. The restriction applies in the case of all Her Majesty's ships, as it applies in the case of other ships. Any court having jurisdiction to deal with those proceedings may however extend the time to such extent and on such conditions as it thinks fit, and except in the case of Her Majesty's ships, must if satisfied that there has not during that period been any seasonable opportunity of arresting the defendant vessel within the jurisdiction of the court, or within the territorial waters of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity. The provisions as to Her Majesty's ships are governed by the *Crown Proceedings Act 1947 (10 & 11 Geo 6 c 44)*.

An action to enforce the maritime lien for seamen's wages must be brought within six years from the date on which the cause of action accrued : *Limitation Act 1939 (2 & 3 Geo 6 c 21) s. 2 (1) & (6)*. This is subject to extension where a party is under disability : see *ibid* s 22.

Maritime liens other than those for collision, salvage and for seamen's wages are not limited to any time for enforcement, but travel with the ship into whosoever possession she may come, but they may be lost through lack of reasonable diligence in enforcing them. A maritime or statutory lien is extinguished by giving bail or a guarantee to prevent the arrest or secure the release of the res in an action to enforce the lien, by the arrest and sale of the ship in an action « in rem » by a court of competent jurisdiction, whether English or foreign, (see *Castrique v. Imrie (1870) L.R. 4 H.L. 414*) by assignment without sanction of the court (see *The Petone (1917) P 198*) and by failure to bring in the claim arising from it within the time ordained by the court in limitation proceedings. The court may, however, allow such a claim to be proved after the time fixed, but before the court has distributed the fund : see *The Zoe 1886 11 P.D. 72*.

Possessory liens are extinguished by payment, by yielding up possession, or by arrest of the ship by a court of competent authority. See : *The Scio (1867) L.R. 1 A.X.E. 353*.

It will be seen that the Convention differs materially from existing English law. Indeed there is nothing in the Convention which corresponds at all closely with existing English law.

Article 10.

Article 10 reproduces existing English law in allowing freight to be arrested in the hands of the Master or other agent. That is to say that an agent who in the course of his employment receives money on behalf of his principal to which the principal has in fact no title, is not, as a rule, liable to repay the money, or to pay a party suing, if he has actually paid it over to his principal without notice of the third party's claim. *Buller v. Harrison* (1772) 2 *Coups* 565. There is an exception to this rule in the case of a lien on sub-freight under a charterparty, and in such a case the lien cannot be exercised after the money has been paid to an agent (*Tagart, Beaton & Co. v. James Fisher & Sons* (1903) 1 *KB* 391).

So far as concerns the applicability of the principle to accessories, this is unknown to English law.

Article 11

Article 11 provides that there are no special conditions of proof and leaves it to the national law to maintain current requirements in certain special cases. This does not conflict with English law.

Article 12

Article 12 deals with the procedure and machinery which must be laid down. Under the *Merchant Shipping Act 1894 s. 5*. provision is made for the keeping of register books in respect of every registered British vessel. These books are kept by Registrars of British ships at various ports in the United Kingdom and Commonwealth. Apart from certain details regarding the ownership of the vessel, and of her name and construction or details, the only other permissible entry, which may be recorded is in respect of any mortgage of the ship or share (see Sec. 31). British ships carry on board a Certificate of Registry, but this contains no details of mortgages, hypothecations and other charges.

Article 13

Article 13 provides that a lien is in future to attach to a demised ship. It has been doubted whether this is so under existing English law. Though there are cases which support the view (see below) it may be questioned whether they can be reconciled with leading cases. In the *Castlegate* (1893) *A.C.* 38 the words of Brett L.J. in *The Parlement Belge* (1880) 5 *P.D.* 197 were expressly approved by the House of Lords. What Brett L.J. said was « Though the ship has been in collision and has caused injury by reason of the negligence or want of skill or those in charge of her, yet she cannot be made the means of compensation if those in charge of her were not the servants of her then owner

as if « she were in charge of a compulsory pilot ». Lord Watson in *The Castlegate* stated the principle « inasmuch as every proceeding in rem is in substance a proceeding against the owner of the ship, a proper maritime lien must have its root in his personal liability ». The contrary view to the effect that those having possession and control of the vessel by the owners authority can render her liable to for instance a lien for damages is supported by *The Ripon City* (1897) P 226. Thus, it is said charterers who have the control or any persons who are allowed to have the possession of a ship for the purpose of using or employing her in the ordinary manner are deemed to have authority to subject her to liens and so to make her liable for their negligence. But this presumption is not absolute and may be refuted by showing that the person navigating the ship did not derive any authority from the owners : *The Sylvan Arrow* (1923) P 220 or that the injured party is precluded by the terms of a contract from recovering against them. *The Tasmania* (1888) P.D. 110. When the person in charge or possession of the ship has no such authority, express or implied no lien arises, as is well settled. Thus, there is no lien for wilful damage by the master, or for his wilful acts *The Omid* (1842) nor as a servant or on behalf of the owner : *Yeo v. Tatem The Orient* (1871) L.R. 3 P.C. 696. See also *The Lemington* (1874) 2 Asp M.C. 475 where the vessel was chartered in circumstances in which the charterer had the sole and absolute management of the vessel and the appointment of her crew. It was held that the ship was liable in proceedings « in rem » Sir R. Phillimore said « A maritime lien attaches to a ship for damage done through the negligence of those in charge of her in whosoever possession she may be, if that damage is inflicted whilst in the course of her ordinary and lawful employment authorised by her owners ».

Article 14

Article 14 lays down how Contracting States may apply the Convention. The provisions do not appear to conflict with English law.

The Convention would appear to provide that the provisions apply to all vessels of Contracting States and to vessels of non-Contracting States where the « national law » so provided. Paragraph 2 of the Article provides that Contracting States may withhold the benefits of the Convention from the national of a non-Contracting State.

Article 15

Article 15 provides that vessels owned by the State shall not be subject to the Convention. This corresponds to English law. A maritime lien does not attach when the « res » belongs to the Crown or is owned by a foreign state : see *The Constitution* (1879) 4 P.D. 39 and *The Parlement Belge* (1880) 5 P.D. 197 C.A. *The Crown Proceedings Act 1947* 10 & *Geo 6 c. 44 s. 20 (1)* does not authorize proceedings « in

rem » in respect of any claim against the Crown, or the arrest, detention or sale of any of Her Majesty's ships or aircraft or any cargo or other property belonging to the Crown or give to any person any lien on any such ship, cargo or other property. See also *Administration of Justice Act 1956 s. 7 (3)*. If proceedings « in rem » are instituted in the reasonable belief that the property did not belong to the Crown, the court if satisfied of this may upon terms order the proceedings to be treated as if « in personam » against the Crown or other person to be sued : *Crown Proceedings Act 1947 s. 29 (2)*. When a ship is under requisition by the Crown or a foreign state no lien attaches in respect of damage done by her whilst under requisition : see *The Sylvan Arrow (1923) P. 220*. But where salvage services are rendered to a ship under requisition and her owners derive some benefit from those services a maritime lien does attach, although it is unenforceable whilst the ship remains under requisition : *The Meandros (1925) P. 61*.

Article 16

Article 16 expressly preserves the competence of the national courts, the existing forms of procedure and the methods of execution. In particular the Article preserves special modes of procedure, for example those in respect of possessory and statutory liens not covered by the Convention. Further it may be noted that under Article 3 the substance of such liens not covered by the Convention and which exist under the national law are expressly preserved.

IRISH MARITIME LAW ASSOCIATION

REPLIES

I. Yes. In our opinion international legislation relating to Maritime Liens and Mortgages is necessary and desirable, particularly if it leads to more international uniformity.

II. a) The Republic of Ireland did not ratify or accede to the 1926 Convention. The United Kingdom of Great Britain and Northern Ireland did not accede to the 1926 Convention.

II. b) The purpose of the Convention on Maritime Liens and Mortgages is to bring about international uniformity in this branch of the Law so that the rights of those who advance money on the security of a ship will be the same in each country. The primary purpose of a Convention is to increase the security of mortgagees. Anything which reduces the value or effectiveness of the security defeats the aim. Anything which strengthens the position of a mortgagee in states other than that in which the mortgage is registered assists the primary aim.

We think that Article 8 of the 1926 Convention, under which claims secured by a lien follow the vessel into whatever hands it may pass, seriously reduces the value of mortgages and that the principle expressed in Article 8 should be changed. If owner « A » allows a lien to arise against a ship and if he sells the ship to owner « B » who knows nothing of the lien, then a mortgagee from « B » takes his security subject to the lien. We think it should be permissible, but not obligatory, for a person having a claim secured by a lien to register the lien in the register of ships and that a bona fide purchaser, without notice of a non-registered lien, should take the ship free from unregistered liens. Then a mortgagee from such a bona fide purchaser would not be subject to unregistered liens.

III. a) A new convention should change Article 8 of the 1926 Convention in accordance with our answer to II b). It should also reduce the number of liens and should redefine the liens to be recognised.

III. b) If the new Convention is to be of value, it must be accepted and made part of the domestic law by many of the states which did not accept the Convention of 1926. It would be a mistake to endanger acceptance of the new Convention by trying to deal with controversial

matters. The more problems which can be solved by the new Convention, the better but anything that is likely to endanger general acceptance of the new Convention should not be pressed.

III. c) Mortgages on ships under construction present many problems. We think that such mortgages should be recognised and that it should be possible to register them. In our view, the register of ships should contain a new part, giving details of ships under construction and the mortgages affecting them; these mortgages should be automatically transferred to the part of the register dealing with a ship whenever that ship is registered. Moreover, the new Convention should contain provisions dealing with arrest, limitation of actions and ships under construction which will correspond in principle to the provisions of the Conventions dealing with arrest, limitation and ships under construction.

IV. a) i) Yes.

IV. a) ii) Yes. The object of the Convention should be to bring about a greater measure of uniformity in the domestic law of the different states. When the courts of a contracting state are dealing with a mortgage which is entered in the register in the case of a ship which is registered in a non-contracting state, we see no reason why the court of the contracting state should not deal with the mortgage in accordance with the terms of the new Convention, provided always that the requirements for registration in each state are approximately the same.

IV. b) The categories of events giving rise to claims for maritime liens set out in Article 2 of the 1926 Convention should be reduced in number and extent. Every recognised maritime lien which is preferred to a registered mortgage reduces the value of the security to the mortgagee and in the case of large advances, makes it necessary for the mortgagee to carry out time wasting enquiries. Modern conditions of communications and the right of arrest have made many formerly recognised liens unnecessary.

The Convention should recognise all liens which can be covered by insurance, e.g., salvage, General Average, collision, removal of wrecks and damage to persons or to property because mortgagees can always stipulate for insurance against these claims. The insurance company could then give security to those claiming under such liens and the vessel would be free to sail and the security would not be affected.

We think that paragraph 5 of Article 2 of the 1926 Convention should be repealed. There is no objection to giving the Master a lien on the ship for monies expended *by him* but we think it altogether wrong the contractual creditors should have liens for amounts due under contracts made by the Master.

IV. c) Yes. We agree that paragraph 5 of Article 2 should be repealed.

IV. d) i) Registered mortgages should rank « inter se » in the order in which they are registered.

ii) Those liens which we suggest should be retained should be preferred to all registered mortgages to the extent that they are not effectively covered by insurance.

iii) Contractual liens should rank « inter se » in inverse order. The later which has attached being preferred to the earlier. Delictual liens should rank « inter se » according to the date of the events which gave rise to them. Delictual liens and contractual liens should rank « inter se » according to the date of the events which gave rise to them.

IV. e) Yes. A right of detention should be granted and we think that it could be granted without prejudicing the security of mortgagees or the holders of other maritime liens. A creditor or claimant can usually obtain security for his claim by way of bail or a guarantee by detaining a ship. In this way, he can have a fund set up within the jurisdiction of which the vessel is detained, out of which he can have his claims satisfied. As bail or the guarantee is usually put up by someone other than a shipowner, the rights of mortgagees and holders of maritime liens would not be affected.

IV. f) The rights of detention should not interfere with the order of priorities of maritime liens and mortgages. We distinguish between the mere right to detain a vessel from a lien which gives the right to arrest and force a sale of the vessel. The right of detention is a weapon to be used to obtain security by bail or otherwise.

IV. g) No.

IV. h) We see no reason why the contracting states should not be allowed to recognise other liens provided they are postponed to all registered mortgages and to all the liens listed above (Answer to question IV. b).

IV. i) Yes.

ii) Yes, provided the requirements for registration in non-Contracting State are reasonable.

IV. j) We are of opinion that liens should, in certain specified circumstances, be enforceable against freight earned by the ship.

IV. k) Freight earned by an owner should be liable to a lien if it has been earned by the owner of the vessel who was owner at the time when the lien arose. Freight earned by a charterer should be liable to a lien if the charterer was in possession of, or using the vessel, at the time when the lien arose.

IV. l) Yes.

V. a) A period of one year from the date of the events which gave rise to the lien, provided there has been a reasonable opportunity of arresting the ship in the jurisdiction of any of the contracting states. If no such opportunity has occurred, the period should be two years.

V. b) We suggest that the time should run from the date upon which the claim accrues.

VI. a) Yes, subject to the right of the court to extend the time for special circumstances.

VI. b) The only causes which should be listed are those which prevent the holder of a maritime lien from taking steps to enforce his lien, e.g.; if a vessel is requisitioned, the holder of a maritime lien can hardly enforce his lien. There should be no extension of time after the holder of a maritime lien has had an opportunity to arrest the vessel and thus obtain adequate security independent of the lien.

VI. c) No. We think that interruptions of the period should be allowed.

VII. a) Yes.

VII. b) In the event of a change of flag from a Contracting State to a Contracting State, we suggest that mortgages and liens should be unaffected.

In the event of a change of flag from a non-Contracting State to a Contracting State, we suggest that the same rule should be applied, provided that the requirements for registration in the non-Contracting State meet the reasonable minimum requirements which should be laid down.

In the event of a change of flag from a Contracting State to a non-Contracting State or from a non-Contracting State to a non-Contracting State, we would apply the same rules subject to the same proviso.

VIII. a) Yes.

VIII. b) It would be desirable but entirely ineffective.

IX. a) Yes, but the new Convention should be in accord with the Convention drafted in Stockholm in 1963.

IX. b) Yes.

X. a) i) and ii) No.

X. b) In view of our answer to a) above which is No, a reply to this question is not necessary.

X. c) We do not think that this matter is suitable for inclusion in the proposed Convention and, accordingly, we leave it to the Law of the Court seized of the case.

XI. Yes. The limitation fund is set up for the benefit of those having claims arising out of the incident which gives rise to the liability and only those claimants are entitled to participate in it. The holder of a maritime lien which arises out of an event in respect of which the owner is entitled to limit his liability should have no priority in claiming against the limitation fund over any of the other claimants who have rights against the fund.

XII. a) In our opinion, the Courts in a Contracting State should apply the terms of the Convention in any case coming before them, whether the vessel is registered in a Contracting or a non-Contracting State. Also, every effort should be made to persuade the Contracting States to make the terms of the Convention part of their domestic law. The fact that a State has ratified the Convention does not necessarily make it part of the domestic law.

XII. b) Yes. This is why it is so important to get the Contracting States to agree to amend their domestic law so that it contains provisions similar to those of the convention. In the Republic of Ireland, the ratification of a convention by the National Parliament does not make any of the provisions of the convention a part of the domestic law.

XIII. a) The maritime liens recognised by the law of the Republic of Ireland are :

1. Liens for salvage.
2. Liens for bottomry bonds.
3. Liens for seamen's wages.
4. Liens for disbursements and liabilities of the Master.
5. Liens for damage caused by the ship to persons or property.
6. Liens for life salvage.
7. Liens for the expenses of the Receiver of Wrecks.

Harbour authorities have the right to board, seize and sell a ship for arrears of harbour and tonnage dues. The maritime mortgages recognised by the law of the Republic of Ireland are those entered in the register and as against an owner mortgages or charges created by lien though not registered.

XIII. b) i) Yes.

ii) Yes, in the Republic of Ireland provided that the lien was created by a statute of the British Parliament passed before the 6th December, 1922 or by a statute of the National Parliament passed after 6th December, 1921.

iii) Yes, in the sense that the High Court has power to arrest a ship for claims which do not give rise to a maritime lien.

XIII. c) i) Date of registration in the register decides priority.

ii) Maritime liens referred to in XIII a) have priority over registered mortgages.

iii) Salvage ranks before all others.

iv) Registered mortgages rank first.

XIII. d) No.

XIII. e) Yes.

XIII. f) A person may not transfer or mortgage or transfer any mortgage of a ship registered on the national register of the Republic

of Ireland without the consent of the Minister for Transport & Power and if he does so, the transaction is null and void.

XIV. The Republic of Ireland has not adopted or ratified the 1926 Convention. The law enforced in the Republic of Ireland in relation to conflict of laws is substantially the same as the law in force in England.

If a foreign ship is involved in a legal wrong committed within the territorial waters of the Republic of Ireland (soon to be 6 miles) the law to be applied in any case arising out of the wrong is the law of the Republic of Ireland. If one owner of a foreign ship sues another owner of a foreign ship in the Irish Courts for anything done outside the territorial waters of Ireland, the law applicable is the law of the Republic of Ireland.

The validity of a mortgage on a ship is judged by the law of the place where the ship is registered unless the parties have agreed that another law is to be applied to the transaction.

The validity of a lien arising out of anything done in the Republic of Ireland to a foreign ship is decided by the law of the Republic of Ireland.

XV. By preparing an entirely new convention which should replace the 1926 Convention.

DANISH ASSOCIATION OF INTERNATIONAL MARITIME LAW

REPLIES

I. The Danish Branch have the opinion that the present legislation relating to maritime liens and mortgages has in practice worked well in changing circumstances for the shipping industry. There is no urgent need for an alteration although an alteration might be considered desirable, but only provided that acceptance of such new legislation could be expected from the majority of the major seafaring nations.

II. The Convention might in our view need clarifying redrafting on various points.

As a special problem we would mention that we find it very essential to obtain the widest possible international acknowledgment of registered mortgages, and also improve the security granted to such mortgages

The priority of the various groups of Maritime Liens might be discussed with a view of alteration therein, but, in our view the present priority has by and large worked satisfactorily and has not given rise to any unreasonable results.

As far as Maritime Liens based upon the master's legal authority is concerned, we see no real reason for retaining such Maritime Lien. In view of the easy communications between the various parts of the world it is our opinion that this part of the clause is no longer necessary and is outdated, although it might be of importance especially for smaller shipowners.

IIIa, b, c. In our view there is no need for an overall revision.

IVa. (i) Yes it would in our opinion be essential that maritime mortgages are so recognized.

(ii) As to mortgages in a non-Contracting State the question should be decided on the merits, and such mortgages should only be recognized if they fulfil the convention's requirements such as to registration etc.

IVb. Please see our reply re Question II.

IVc. We feel inclined to agree, but although there may not nowadays be the same reason for maritime liens for these claims the rule may still be of importance for smaller shipowners.

IVd. (i) The priority between mortgages should be decided on the basis of the date they have been filed for registration. Mortgages filed on the same date should have equal priority.

IVd. (ii) The registered mortgages should in our view come after the Maritime Liens.

IVd. (iii) We would prefer to maintain the rules as they are as far as the enumeration is concerned, but would be prepared to consider an alteration in the present Rules as to priority timewise, for instance so that the Maritime Liens are given priority in accordance with the enumeration irrespective of their time of accrual.

IVe. We have the opinion that the convention should recognize the right of retention as having priority before the mortgages and may be before the maritime liens. The right of retention should be restricted to claims which have resulted in improvement of the ship, for instance repair bills. No right of « retention » should be given for claims without any connexity.

IVf. Already replied to under (e).

IVg. The Contracting States should not be allowed to create any such rights beyond the rights known today.

IVh. In order to obtain uniformity the Contracting States should in principle not be allowed to grant such liens.

IVi. (ii) We agree that the Contracting State should not discriminate as far as mortgages duly registered in Contracting States are concerned. As far as mortgages registered in non-Contracting States are concerned the question should be decided in its merits.

IVj. We are of the opinion that the liens should only be enforceable against the vessel and not in accessories.

IVk. In view of our negative answer to IV. (j) no answer is required.

IVl. No.

Va. In principle we find that the periods now fixed in the convention are acceptable.

VIa. We agree that the convention should state under which circumstances the period of extinction could be interrupted and further

that such interruption should only take place through legal proceedings, incl. filing claims in bankruptcy.

VIIa. We agree that the convention should deal with the problems connected with a change of flag and refer to the present rules in the Danish legislation summarized in our answer as XIII d) and e).

VIIIa. Yes, we agree that the convention should provide that enforced sale in accordance with the requirements in the convention in a contracting state should extinguish all registered mortgages and liens.

VIIIb. Our answer is no.

IXa. We would find it preferable not to have the Convention incorporated but to solve each problem in separate conventions. Great differences exist in this field between the various national laws, but probably such incorporation might at a later stage be made.

Xa. We are definitely of the opinion that the new convention should not deal with these questions.

XI. Yes, we think it would be advisable.

XIIa. It would in our opinion be important to give the new convention as wide an application as possible.

XIII. Denmark has introduced the contents of the convention in its legislation with some minor differences in wording. Further Denmark has as number 6 given maritime liens to claims for insufficient or incorrect information in Bills of Lading, which lien, however, has rank after contractual mortgages.

XIIIb. Danish law recognizes a right of retention although such claim may not give a rise to maritime liens. The right of retention has priority before the mortgage and often also before the maritime liens.

XIIIc. The priority between mortgages is decided upon the date of registration. Mortgages registered on the same day have equal priority.

XIIIc. (ii) Mortgages respect maritime liens, except the maritime lien mentioned under XIII (a).

XIIIc. (iii) According to Danish law the priority between maritime liens arising on the same voyage is in principle decided in accordance with the enumeration under the Article 2 of the convention, which has been incorporated in the Danish law. For maritime liens arising on different voyages priority is given to the maritime liens arising on the last voyage.

XIIIc. IV) The right of retention has priority before registered mortgages and often also before the Maritime Liens.

XIII d. It is not possible to have a vessel deleted without the mortgagees being notified, and the deletion cannot take place until 30 days after dispatch of the notification unless the mortgagee agrees.

XIII e. No it is not possible to have a vessel entered into the register without production of such evidence.

XIII f. No we do not think so.

XIV. It is not possible to give any definite rule on these conflicts of law questions. Presumably the Danish Courts would apply « *lex loci* » as to whether a lien was created, but the rules as to rank and priority would be decided by « *lex fori* ».

XV. We would prefer to have amendments to the 1926 Convention and refer to our reply to question I.

Copenhagen, 7th September, 1964.

N.V. Boeg

Chairman of the Association.

CANADIAN MARITIME LAW ASSOCIATION

REPLIES

Schedule « A »

C.M.L.A. ANSWERS TO C.M.I. QUESTIONNAIRE ON
MARITIME MORTGAGES AND LIENS

- I. Yes. Necessary and desirable.
- II. a) Not applicable.
b) Entirely new convention is required.
- III. a) To define and rank all Liens affecting ships on a basis of maximum agreement of countries concerned.
b) No.
c) No.
- IV. a) i) Yes.
ii) Yes, when conditions of Registration are the same.
b) i) ii) & iii) This is under consideration.
c) This is under consideration.
d) i) The Mortgages should rank in order of registration.
ii) & iii) There are special Canadian Laws to be considered.
e) No, but this problem is under further study.
f) Not applicable.
g) No.
h) Yes, they should be allowed.
i) i) and ii) Yes, provided that conditions and rules for registration in non contracting states comply with the Convention.
j) Yes.
k) The Lien should be the same as in English Law.
l) No.
- V. a) 2 years.
b) From date the claim accrued.

- VI. a) No.
b) Not applicable.
c) No interruptions should be allowed.
- VII. a) Yes.
b) All rights covered by the Conventions should continue to be recognised.
- VIII. a) Yes, provided there is provision for public notice of sale.
b) Yes, provided requirements of the convention have been met.
- IX. a) Yes.
b) Yes.
- X. a) No. Subject to further study by our Special Committee.
b) Not applicable.
c) Our Special Committee are studying this matter.
- XI. Yes.
- XII. Wide.
- XIII. a) Yes.
b) Our basis Law is same as English Law but we have special Statutory Liens and rights of retention.
c) A detailed reply will be given later.
d) No, in practice.
e) No in practice.
f) This is receiving our further study.
- XIV. Canadian Laws of conflict generally same as English Law.
- XV. Preparation of entirely new Convention.

THIRD REPORT

Introduction

The International Subcommittee on Maritime Liens and Mortgages met in Amsterdam on the 19th and 20th June 1964. Members representing fourteen National Associations, namely those of Argentine, Belgium, Canada, France, Germany, Italy, the Netherlands, Norway, Portugal, Sweden, Switzerland, the United Kingdom, the United States and Yugoslavia assisted at the Meeting. The Meeting was further attended by Mr. L.C.H. Everard and Mr. L. van Varenbergh who acted as joint secretaries and Mrs. S. Morris, representing the President of the Comité Maritime International.

Besides the Reports already mentioned in the Second Report of the Undersigned (dated May 1964), namely from the Belgian, British, Dutch, Finnish, French, Italian, Norwegian and U.S. Associations, a Report had also been received from the German Association, while the Norwegian Association had submitted the draft of an International Convention (hereinafter referred to as «the Norwegian draft») (Hypo-19) which this Association proposed to substitute for the draft which had been prepared at Oxford on the 13th April, 1964, by the small group mentioned on page 1 of the said Second Report and which was annexed to that Report. The latter draft will hereinafter be referred to as «the Oxford draft».

At the very outset of the Meeting, the delegate from the French Association made a statement to the effect that his Association, upon reconsidering the question whether a revision of the 1926 Convention on Maritime Liens and Mortgages or the preparing of a new Convention in this field would in principle be desirable, had changed the opinion expressed in its Report (document Hypo-11) and now adhered to the view that a new Convention should be drafted and submitted to the next Plenary Conference of the Comité Maritime International.

Following the view expressed by the majority of the Reports previously received, the Meeting decided unanimously to prepare a new Convention rather than to attempt a revision of the 1926 Convention. It further decided as a matter of procedure to take the Oxford draft as the basis of its work, while dealing with the contents of the Norwegian

(*) HYPO - 25 French translation published in French Edition.

draft as and when the corresponding provisions of the Oxford draft would come up for discussion. The Meeting which continued for two days, had the opportunity of fully discussing the contents of both drafts and many points which were raised in connection therewith, among which a number of amendments proposed by various delegations. As a result of the great diversity of the opinions expressed, a vote had to be taken on a large number of the provisions and amendments submitted and only relatively few decisions were carried unanimously. At the end of the second day the Meeting appointed a Drafting Committee, composed of Mr. Fr. Berlingieri, Mr. Birch Reynardson, Mr. Rein, Mr. Vaes and the Undersigned for the purpose of preparing a revised draft based on the decisions of the International Subcommittee.

The text of the Norwegian draft as well as a Summary of the proceedings of the Meeting which Summary was prepared by Mr. Everard with the assistance of Mrs. Morris and Mr. van Varenbergh are attached to this Report (Hypo-30).

On the 25th and 26th September 1964, the Drafting Committee met at Portofino and prepared a revised draft (the « Portofino draft ») which is attached to this Report (Hypo-28).

THE PORTOFINO DRAFT

A. *General remarks.*

1. As is shown by the above-mentioned Summary, most of the decisions taken by the International Subcommittee were decisions of principle. Even in the rare instances in which the Subcommittee adopted a particular text, this was done subject to final drafting by the Drafting Committee. Consequently a certain amount of latitude was granted to the Drafting Committee with respect to drafting problems. In carrying out its duties the Drafting Committee attempted to follow as closely as possible its terms of reference, i.e. the decisions above referred to, with one exception which will be explained hereunder. On the other hand, the Drafting Committee changed the order of the articles of the Oxford draft so as to arrive at a more logical and more appropriate sequence of the several provisions concerned. Thus the Articles 1 tot 3 of the Portofino draft deal with maritime registered mortgages, the Articles 4-9 with maritime liens, the Articles 10 and 11 with the forced sale of the vessel and its effects of such sale in respect of the mortgages, liens and other encumbrances attaching to the vessel, Article 12 with registered maritime mortgages and maritime liens on ships under construction and Article 13 with the scope of the Convention, while Article 14 provides that as between the Contracting States the new Convention shall replace the Convention of 1926.

2. The most important difference between the Oxford draft and the Portofino draft lies in the fact that whereas Article 3 of the Oxford

draft provided that two categories of maritime Liens, namely those securing claims for repairs and maintenance of the vessel and claims for so-called « property damage », rank after registered mortgages, according to Article 5 of the Portofino draft *all* maritime liens take priority over registered mortgages.

Two further important changes of substances were effected as a result of long debated decisions by the International Subcommittee. The first of these changes consists in the deletion of the aforesaid lien in respect of repairs and maintenance as a maritime lien recognized under the Convention; according to the second change a lien securing claims for contribution in general average has been inserted ranking *pari passu* with the lien in respect of claims for salvage.

3. Special attention is drawn to the decision of the International Subcommittee not to include in the Convention Article 11 of the Oxford draft or any provision of a similar tenor, notwithstanding that all the Reports received previously expressed the view that it would be desirable for the new Convention to contain a rule to that effect.

Assuming that the new Convention in its final form will contain no reference to any « fund », there would seem to be little fear for a conflict between the 1957 Convention on Limitation of Liability and the new Convention and therefore no real need for a provision that would eliminate the possibility of such conflict.

B. Comments on the several Articles of the Portofino draft.

Article 1

(Enforcement of registered mortgages)

The International Subcommittee expressed the unanimous view that the new Convention should not define either the concept of a maritime mortgage or that of a maritime lien. It was stated that in the countries which are parties to the 1926 Convention the fact that no such definitions appear in that Convention had not given rise to any practical difficulties and that the same obtained in other countries in which the enforcement of a foreign registered mortgage or a foreign maritime lien had been sought.

On the other hand it was decided not to reproduce the words « other similar charges upon vessels » appearing in Article 1 of the 1926 Convention (« gages sur navires » in the authentic French text), as these words are either too vague or not in accordance with modern maritime law:

Considering, however, that the legal concept of an Anglosaxon maritime mortgage differs from that of the « hypothèque maritime » as known in a number of Continental countries, the Drafting Committee suggests to refer in the final text to both concepts. Thus wherever in the final English text a mortgage or mortgages are mentioned,

such mention should be followed by « hypothèque » or « hypothèques », these words being put between quotation marks. Conversely in the French text every reference to hypothèque or hypothèques should be followed by the word « mortgage » or « mortgages », also between quotation marks. In this way, the beginning of Article 1 of the Portofino draft would read in the English text :

Mortgages and « hypothèques » on seagoing vessels... etc.

and in the French text :

Les hypothèques et les « mortgages » sur des navires de mer... etc.

The further changes in Article 1 are mostly drafting changes and do not call for any specific comment, except that sub-paragraph (c) might perhaps give rise to difficulties in those countries, the legislation of which allows a registered maritime mortgage to be registered, not in the name of a specific creditor, but to « bearer ». In view of the fact that this situation seems to obtain only in one or two countries, the Drafting Committee thought it advisable not to provide therefor in Article 1, sub-par. (c); if necessary, the countries concerned when signing the new Convention could perhaps make a special reservation dealing with this particular problem.

Article 2

(Deregistration and reregistration of mortgaged vessel)

This article *contains a combination of certain provisions of the Oxford draft and of the Norwegian draft. As the article reads now it is meant to achieve two objects, firstly the avoidance of any gap between deregistration of a vessel in one Contracting State and its reregistration in another, and secondly that no deregistration in a Contracting State will be possible without the previous consent of all mortgagees.*

Article 3

(Ranking of registered mortgages « inter se »)

This article reproduces the principle set out in Article 3, par. 4 of the Oxford draft.

Article 4 (1)

(List of maritime liens)

Attention is drawn to the fact that *the first paragraph* of this Article which *paragraph* lists the categories of maritime liens recognized under the new Convention, does *not* mention *any more* a lien in respect of costs arising in connection with the arrest and subsequent sale of the vessel and the distribution of the proceeds thereof, which lien appeared as the highest ranking lien in Articles 2 and 3 of the Oxford draft.

Article 9, par. 1 of the Oxford draft provided that this lien would be extinguished in the event that the arrest of the vessel should not lead to a forced sale, which provision reflects that which is already the domestic law of a number of countries.

The principle set out in Article 9 (1) of the Oxford draft having been unanimously approved by the International Subcommittee the Drafting Committee felt that it would be more logical to provide for another system. According to that system the legal concept of a maritime lien in respect to the costs referred to has been abolished, where-against Article 11 (2) of the Portofino draft provides that these costs shall first be paid out of the proceeds of a forced sale. Theoretically those costs become a first charge against the said proceeds, but in practice the result will be the same as that of the system adopted by the Oxford draft.

As regards the categories of maritime liens recognized in Article 4, reference is made to General Remark Nr. 2 above.

Finally the last sentence of Article 4 (1) merely contains a clarification necessary in connection with the more general provision of Article 7 (1) which latter provision reproduces and somewhat extends the rule laid down in Article 5 (1) of the Oxford draft.

Article 4 (2)

This paragraph was inserted to a decision taken by the International Subcommittee. Considering the specific rules on liability for nuclear damage as set out in the several International Conventions in this field, the granting of maritime liens securing claims for such damage would seem superfluous, besides lessening without sufficient justification the security of the mortgagee.

Article 5

(Ranking of maritime liens «inter se» and with respect to registered mortgages)

After what has been mentioned in General Remark Nr. 2 above, little further need be said on the subject of Article 5, except that likewise as in the case of several liens for salvage accruing, liens securing claims for contribution in general average shall also rank in the inverse order of the time when such claims accrued.

Article 6 (1)

(«National» liens)

The International Committee decided to maintain the principle set out in the first paragraph of Article 4 of the Oxford draft, allowing

contracting States to grant so-called «national» liens in respect of claims other than those listed in Article 4 of the Portofino draft, provided however that such liens shall rank after all the maritime liens and the registered mortgages recognized under the new Convention. These «national» liens would therefore not enjoy international recognition under the Convention. What will be their rank either «inter se» or with respect to the claims of ordinary creditors, will depend on the private international law of the forum. Moreover such «national» liens will not give rise to a «right in rem» («droit de suite») after a change of ownership of the vessel.

Article 6 (2)
(Right of retention)

This paragraph reproduces the provision of Article 4 (2) of the Oxford draft.

Article 7
(Maritime liens securing claims against other
than shipowner. «Droit de suite»)

Vide article 5 of the Oxford draft and also the last sentence of Article 5 of the Portofino draft.

In the second paragraph the word «registration» has been substituted for «flag», as the country of the flag flown by a ship need not always be the same as the country in which she is registered.

Article 8
(Extinguishing of maritime liens)

This article deals with the extinction of maritime liens. For the reasons set out in the comments on Article 4 the first paragraph of Article 9 of the Oxford draft had to be deleted. The International Subcommittee decided to delete also the second paragraph of the said Article on the ground that in many instances port, canal and other waterway dues as well as pilotage dues are apt to arise only at the time of the vessel's departure.

Finally, the Drafting Committee proposes to add two further events *in which maritime liens will not become automatically extinguished after the expiring of the two years' period, these events being* the bankruptcy and the compulsory liquidation of the vessel's owner. *The «ratio» of that provision lies in the fact that under the domestic law of many countries these events make it unlawful for an arrest of the vessel being made and that all arrests operated prior to those events occurring are automatically vacated.*

As obviously a maritime lien would be extinguished at the same time when the claim secured thereby was extinguished or became time barred, even although this should occur prior to the expiring of the two years' period, an express provision to that effect was considered to be redundant.

As regards the term «arrest», the International Subcommittee understood this term as applying to both conservatory and executory measures, while the words «requisitioned» and «requisition» are intended to be taken in their broadest sense, referring to requisition of title as well as of use.

Article 9

(Assignment of and subrogation in maritime lien)

Vide : Article 10 of the Oxford draft.

Articles 10 and 11

(Forced sale of vessel in Contracting State)

While Article 7 of the Oxford draft contained relatively simple provisions dealing with a forced sale of the vessel in a Contracting State, Articles 10 and 11 of the Portofino draft set out in greater detail the conditions precedent to and the consequences of such sale, namely the publicity required in connection with the intended sale, the distribution of the proceeds of the sale, the extinguishing of all registered mortgages, liens and other encumbrances and the deregistration of the vessel from the register in which it is registered. Thus Article 10 imposes on the competent authority of the country in which the vessel has been arrested and will be sold, the duty to give at least thirty days' notice of the time and place of the sale to alle known registered mortgagees and lien creditors and to the registrar of the register in which the vessel is registered and for that purpose to endeavour to obtain the names and addresses of such mortgagees and creditors from the said registrar and from the vessel's owner. Obviously the provisions of Article 10 constitute minimum requirements, it being left to the national law of the Contracting State to enact all such further requirements as to publicity as each Contracting State will deem fit.

Article 11 of the Portofino draft sets out the aforementioned consequences of the sale. Of those the vacating of all mortgages, liens and other encumbrances is subordinated to two conditions having been fulfilled, firstly, that the sale is effected in the jurisdiction of the Contracting State in which the ship was arrested and, secondly, that the requirements of the national law of such State and those of the Convention have been complied with, the latter requirements being those contained in Article 10 relating to the publicity with respect to the

sale and in Article 11 (2) relating to the distribution of the proceeds of the sale. The encumbrances mentioned in the first paragraph of Article 11 refer to and include the so-called « national » liens, arrests of the vessel and generally all such other charges on the vessel as may have been created under any system of national law, whether of a Contracting State or of a non-Contracting State, but not to charters. The large majority of the Reports received indicate that the new Convention should not include provisions with respect to charters, while at the Meeting of the International Subcommittee no proposal was made to that effect. Consequently, the Portofino draft does not solve the problem as to whether or not a charter is terminated through the forced sale of the vessel concerned, which problem is therefore to be decided by national law.

Attention is further drawn to the fact that the Articles 10 and 11 are also applicable whenever the vessel being the object of the forced sale is registered in a non-Contracting State. In that case it may occur that the provisions of Article 11 (1) would not be recognised and applied in non-Contracting States.

Article 11 (2) is self explanatory and does not require any comment.

The third paragraph of Article 11 has been added pursuant to a decision of the International Subcommittee. Its purpose is to protect a bona fide purchaser who has purchased a vessel in a forced sale, and therefore to avoid a situation like that in the English case of « The Acrux » (Lloyd's Rep. 1/1962, 405) from arising. The said third paragraph provides that if a vessel registered in a Contracting State is the object of a forced sale and if the requirements set out in paragraph 1, sub-paragraph (a) and (b) — including by reference the requirements of Article 10 — and those set out in paragraph 2 have been complied with, the registrar who per definition is a registrar of one of the Contracting States shall issue to the purchaser a request of deregistration. Article 11 (3) therefore makes it also mandatory that in the event described therein the vessel will be deregistered.

It is in connection with problems surrounding a forced sale of the vessel that the Drafting Committee departed from its terms of reference. It will be remembered that while Article 7 of the Oxford draft dealt with the forced sale of the vessel in a Contracting State Article 8 of the said draft contained similar provisions relating to such sale in a non-Contracting State. When discussing the Articles 7 and 8 of the Oxford draft, the International Subcommittee decided to have those articles replaced by articles 17, 18 and 19 of the Norwegian draft, subject to final drafting. Article 19 of the last mentioned draft sets out of a vessel in a *non-Contracting State* all mortgages, liens and other encumbrances would be *deemed to have ceased to attach* to the vessel in all Contracting

States, subject to certain requirements as to publicity having been complied with. Consequently the terms of reference referred to above included an instruction to the Drafting Committee to attempt the drafting of an article containing the same rule. However, after a long and exhaustive discussion the Drafting Committee, although fully realizing the importance of the problem, nevertheless decided *not* to carry out this particular instruction, the main reason of this decision being that in the event that a vessel *registered in a non-Contracting State* should be the object of a *forced sale in another non-Contracting State*, the fiction of a vacation of all mortgages would serve little or no useful effect so long as there would be no certainly that such mortgages would have been deleted in the *register of the non-Contracting State* in which the vessel was registered, as obviously the Convention could not impose the duty of deleting such mortgages on the authorities of a *non-Contracting State*. Under those circumstances the Drafting Committee refrained from drafting any provision dealing with a forced sale in a non-Contracting State. The Committee suggests that this particular problem should, if so desired, be reconsidered by the next Conference of the Comité Maritime International.

Article 12
(Vessels under construction)

The question as to whether or not registered maritime mortgages effected and maritime liens accruing in respect of a vessel when under construction, was the subject of a lengthy debate by the Meeting of the International Subcommittee.

At the end of the debate the International Subcommittee, considering that an International Convention on Maritime Liens and Mortgages which would not apply to ships under constructions, would necessarily be incomplete, as it would leave undecided whether mortgages effected and liens accruing during the period of construction would have to be recognised and enforced and which would have to be recognised and enforced and which would be their respective priorities, not only «inter se», but also with respect to mortgages effected and liens accruing after completion and delivery of the vessel by the shipyard, decided that for the purposes of the new Convention both categories of mortgages and liens should be treated in the same manner. On the other hand, it was decided that, apart from the foregoing, none of the other matters provided for in the draft Convention relating to registration of rights in respect of ships under construction which draft Convention was adopted at the Stockholm Conference, should be touched upon in the new Convention, such as the compulsory registration of rights in respect of ships under construction. Accordingly, Article 12 of the Portofino draft states that the provisions of the Convention shall also apply

to vessels under construction, but this application is qualified by two proviso's, namely :

a) that only such mortgages shall be enforceable, as are registered in the State, where the vessel is under construction, thus making it practically impossible for a Contracting State to register a mortgage on a vessel which is under construction in any other State, whether a Contracting or non-Contracting State;

b) that no claims accruing prior to the launching of the vessel shall be secured by a maritime lien as such claims would not have a typically «maritime» character. Consequently any claims accruing during the prelaunching period, such as for loss of life, personal injury or property damage, will not have any priority overriding any «real» maritime liens and any mortgages registered, whether during or subsequently to the time when the vessel becomes waterborne.

Article 13
(Scope of Convention)

This Article which reproduces Article 13 of the Oxford draft, intends to give to the provisions of the new Convention as wide as possible an application.

Article 14
(Abrogation of 1926 Convention as between Contracting States)

No comment.

All national Associations are requested to forward their Reports on the Portofino draft to Messrs. Henry Voet-Génicot, Antwerp, not later than the 31st March 1965.

Amsterdam, November 1964.

J.T. Asser
President of the International Subcommittee.

DRAFT CONVENTION

(PORTOFINO DRAFT)

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 certifi-

(*) HYPO - 27 French translation published in French Edition.

cate 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 vessels' 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 of by a person in the service of the vessel for whom the owner is responsible.

(v) Claims for salvage and for contribution 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 (vi) of article 4 shall rank *pari passu* as between themselves.

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.

SUMMARY OF THE MEETING OF THE INTERNATIONAL SUBCOMMITTEE

Amsterdam, June 19th and 20th 1964

I. INTRODUCTION

At a meeting of the Bureau Permanent of the Comité Maritime International held in June 1963 it was decided to set up an International Subcommittee under the chairmanship of Mr. J.T. ASSER to study the possibility of a revision of the 1926 Convention relating to Maritime Liens and Mortgages.

For the purpose of preparing the discussions of the Subcommittee a working-group was formed, that met for the first time in Amsterdam on December 7th, 1963. In January, 1964, a Preliminary Report together with a Questionnaire prepared by the Chairman of the International Subcommittee, was sent to the National Associations (English text : Hypo-1; French text : Hypo-2). In the following months Replies to the Questionnaire were received from several National Associations.

On April 11th and 12th, 1964, the working-group met in Oxford to discuss the Replies received. The provisional conclusions arrived at by the group are contained in Mr. Asser's Second Report of May, 1964 (English text : Hypo-12; French text : Hypo-17). On the basis of the working-group's discussions and conclusions a small group, composed of Messrs. J.T. Asser, Fr. Berlingieri, W.R.A. Birch Reynardson and A. Vaes, prepared a provisional draft of a new Convention on Maritime Liens and Mortgages (English text : Hypo-13); French text : Hypo-14) to serve as a basis for the discussions of the International Subcommittee at its meeting in Amsterdam on June 19th and 20th, 1964.

This provisional draft will hereinafter be referred to as the « Oxford-draft ».

II. THE SUBCOMMITTEE

Delegates of 14 National Associations assisted at the Meeting of the International Subcommittee, which was composed as follows :

<i>Chairman :</i>	Mr. J.T. Asser,
<i>Argentina :</i>	J. Domingo Ray,
<i>Belgium :</i>	A. Vaes,

(*) HYPO - 29 French translation published in French Edition.

<i>Canada :</i>	P. Beck,
<i>France :</i>	Dubosc,
<i>Germany :</i>	A. Roscher, E. von dem Hagen,
<i>Italy :</i>	Fr. Berlingieri, R. Berlingieri,
<i>Netherlands :</i>	J.A.L.M. Loeff, W. E. Boeles,
<i>Norway :</i>	A. Rein, F. Ringdal,
<i>Portugal :</i>	J.A. Correa de Barros,
<i>Sweden :</i>	K. Pineus, C. Palme,
<i>Switzerland :</i>	W. Müller,
<i>United Kingdom :</i>	W.R.A. Birch Reynardson, C. Harris,
<i>United States :</i>	A. Boal,
<i>Yougoslavia :</i>	E. Pallua.

The meeting was also attended by Mrs. S. Morris representing Mr. Albert Lilar, President of the C.M.I., and by Mr. L.C.H. Everard and Mr. L. van Varenbergh, who acted as secretaries.

III. PRELIMINARY QUESTIONS

At the start of the meeting the French delegate stated that his Association now shares the other Associations' view that a revision of the 1926 Convention is desirable.

The Subcommittee then proceeded to discuss three questions of a preliminary character :

a) *Basis of Discussions.*

A few days before the meeting a number of proposed amendments to the Oxford-draft were received from the Norwegian Association, these amendments being submitted in the form of a draft for a new Convention.

The Subcommittee agreed to adopt the Oxford-draft as the basis of its discussions and to deal with the Norwegian draft in connection with the corresponding provisions of the Oxford-draft. (The Norwegian draft will be attached to this summary).

b) *New Convention or revision of the 1926 Convention?*

In accordance with the great majority of the Replies received from the National Associations to the Questionnaire (question XV), the Subcommittee decided to concentrate on preparing a new Convention rather than on amending the 1926 Convention or on drafting a new Protocol to the latter Convention.

c) *Ships under Construction.*

The question whether or not the new draft Convention should also apply to ships under construction was discussed at length.

One delegation proposed to delete art. 12 of the Oxford-draft. This delegation argued that the said article seems to entirely set aside the draft Convention relating to ships under construction (Stockholm 1963) without at the same time taking over the provisions of that draft providing for the compulsory registration of rights in respect of such ships. Other delegations pointed out that the Oxford-draft deals with ships under construction only in connection with mortgages and liens on such ships and that it has not been the intention of the authors of the Oxford-draft to have this draft replace the Stockholm-draft. It was further argued that the Stockholm-draft, and in particular article 1 of said draft (imposing on the Contracting States the obligation to provide in their domestic law for an official public register of rights in respect of ships under construction), had met with serious opposition in a number of countries. Consequently, the probability exists that such countries would adhere to a Convention on Maritime Liens and Mortgages but not to a Convention on the lines of the Stockholm-draft. Under these circumstances it would seem that a Convention of maritime liens and mortgages should also deal with such liens and mortgages on ships under construction, at any rate with respect to the sale of such ship effected under the jurisdiction of a State other than the State in which such ship is registered or has been built. This would be the more necessary, these delegations went on, as the discussions had made it clear that the concept « ship under construction » is not the same in the domestic law of various countries.

By 12 votes to 1 (one delegation not yet being present) the Subcommittee decided in favour of a provision with respect to maritime liens and mortgages on ships under construction in the event of a sale of such ship in a jurisdiction other than that of the country where it had been built, it being understood that the exact contents of such provision would be dealt with when art. 12 of the Oxford-draft would come up for discussion.

IV. THE OXFORD-DRAFT

Article 1

By 6 votes to 3 (4 abstentions; one delegate not yet present) it is decided to maintain the system of the Oxford-draft (no definitions) and not to follow the system of art. 1 of the Norwegian draft.

First sentence : By 9 votes to 2 (2 abstentions; one delegation not yet present) it is decided to insert in the first line of the English text the word « sea-going » before the word « vessels » (the word « navire » in the French text needs no clarification). The words « and other registerable rights » are inserted after the word « Mortgages » (8 votes to 5; one delegation not yet present) and the words « and enforceable » are inserted after the word « valid » (unanimous).

Subparagraph i) : The word « according » should read « accordance ».

Subparagraph ii) : It is unanimously decided to replace this subparagraph by subparagraph b) of article 2 of the Norwegian draft modified as follows : « that the register and such instruments, or authorized copies of such instruments, as may be filed therein are open to public inspection ».

Subparagraph iii) : A proposal to replace the words « the amount of the Mortgage » by the words : « the amount secured by the Mortgage » is unanimously adopted.

With regard to the requirement that the register shall specify the name of the Mortgagee it was stated that in some countries (e.g. Sweden) the name of the Mortgagee and in others (e.g. Norway) the transfer of a Mortgage are not registered. Therefore, this matter is referred to the drafting committee that will be appointed at the end of the meeting. A German proposal to add a new paragraph to this article to the effect that the way in which mortgages and other registerable rights are enforced shall be subject to the *lex fori* is unanimously adopted.

Article 2

Subparagraph i) : It was generally felt that the meaning of the words « costs arising in connection with the arrest etc. » is too broad. It was decided to restrict this lien to : « Costs awarded by the Court and arising out of the arrest etc. »

Subparagraph ii) : The question is discussed whether this lien should also attach to the costs of wreck-removal by, for example, a private dockowner or whether it should be limited to such costs incurred by public authorities. A Dutch amendment to grant a lien to costs of wreck removal « ordered or done in the public interest » was defeated by 6 votes to 6 (2 abstentions). Finally, art. 7 subparagraph 2 of the Norwegian draft as amended on the basis of paragraph I subparagraph 2) of the Protocol of Signature to the 1926 Convention was adopted by 13 votes to 1. Consequently this subparagraph will, sub-

stantially, read as follows : « Costs of removal of the wreck ordered by the authority administering harbours, docks, etc. »

Subparagraph iii) : A German amendment to insert « other waterway » dues and a Norwegian amendment to insert pilotage dues are adopted.

A Norwegian proposal to add the words « payable for a service rendered to the vessel » is withdrawn.

Subparagraph iv) : It is observed that the text of the Oxford-draft (« other sums due to etc. ») might be construed as to include the Master's disbursements, to which in the Subcommittee's unanimous opinion a lien should not attach.

On the other hand, claims for breach of contract should be included. The matter is referred to the drafting-committee.

Subparagraph v) : The Dutch delegation submits that a lien should not attach either to claims for loss of life or personal injury or to claims for loss of or damage to property; this submission finds no support from the other delegations. A British amendment to replace the words « Owner or the Carrier » at the end of this subparagraph (sub b) by the words « Owner, demise charterer or their servants » is defeated by 4 votes to 7 (3 abstentions). The Norwegian delegation proposes an amendment, based on art. 7 sub 6 in conjunction with art. 8 of the Norwegian draft and reading — subject to final drafting — as follows :

« Claims for loss of life or personal injury to persons on board the vessel or persons not on board the vessel, if caused by the owner, demise charterer or other charterer, manager or operator of the vessel or by a person for whom the owner etc. is responsible ». This amendment is adopted by 9 votes to 1 (4 abstentions).

Subparagraph vi) : It is decided to add claims for contribution in general average.

Subparagraph vii) : This subparagraph is discussed in connection with art. 3 par. 1, subpar. viii) and art. 4, par. 2, of the Oxford-draft.

Some delegations pointed out that a right of retention, as may be granted by domestic law under art. 4, par 2 of the Oxford-draft would, in fact, be without any value at all unless the new Convention should attach a lien to the claims for repairs and maintenance of the vessel with a high priority, e.g. of the same rank as Port and Canal dues etc. at any rate ranking above mortgages. The argument, these delegations went on, that the shipyard is in a position to inquire into the financial status of the shipowner applies only to the building of ships but not in the case of repairs, where it is sometimes even difficult to establish

the identity of the shipowner. Furthermore, for practical or commercial reasons the shipyard often cannot demand either full payment in advance or a guarantee. For these reasons and taking also into account that the ship's value is increased by the repairs, these delegations propose that a lien should be granted to shiprepairers ranking above mortgages but limited to claims for repairs (not for maintenance) and enforceable only during the time that the ship is in the repairer's possession.

This proposal is strongly contested by other delegations. In the first place, these delegations pointed out, it is generally agreed that, as one of the major objects of the draft-Convention is to strengthen the position of the mortgagee, the number of liens ranking above mortgage should be reduced as much as possible. Moreover, the concept of the right of retention varies considerably in a number of countries and therefore would make it practically impossible to find a definition that would be satisfactory to everybody. These delegations did not think that the shiprepairer's position is such as to justify a lien in respect of his claim. He would know whether the repairs are ordered by Underwriters or by the Owners; in the latter case he will be in a position to make inquiries and require a guarantee if necessary. Finally, these delegations do not share the view that the ship's value is necessarily increased by the repairs. For these reasons they proposed to delete subparagraph vii) of article 2 and subparagraph viii) of article 3 of the Oxford-draft.

Three votes were taken :

1. The principle of article 4, paragraph 2, of the Oxford-draft was adopted by 10 votes to 2 (2 abstentions).

2. The proposal to attach a lien to claims for repairs, ranking above mortgages but enforceable only as long as the ship is in the repairer's possession is defeated by 3 votes to 9 (2 abstentions).

3. The proposal to delete article 2, subparagraph vii) and article 3, subparagraph viii) of the Oxford-draft is adopted by 7 votes against 4 (3 abstentions).

Subparagraph viii): This subparagraph was dealt with in conjunction with subparagraph ix) of article 3. It was decided to adopt the text of art. 7, subparagraph 7) of the Norwegian draft modified as follows (subject to final drafting) :

« Claims in tort for loss of or damage to property not on board the vessel, if caused by the owner, demise charterer or other charterer, manager or operator of the vessel or by a person for whom the owner etc. is responsible ».

The German delegation suggested that, although the Oxford-draft quite rightly abolishes the claims mentioned in art. 2, subparagraph 5, of the 1926 Convention it might be reasonable to attach a lien ranking above mortgages to such claims if accrued in cases of special emergency.

The Subcommittee's general opinion was that a provision to that effect would be of no practical value and that it would be extremely difficult if not impossible to give a satisfactory definition of «emergency». The suggestion was then withdrawn.

Article 3

Paragraph 1, subparagraph vi): A Norwegian proposal to rank the claim for remuneration for salvage and for contribution in general average after the Port, Canal, other waterway and pilotage dues but before wages etc. is defeated by 4 votes to 9 (1 abstention).

A British proposal to rank these claims after wages etc. but before claims for loss of life etc. is defeated by 7 votes to 7.

Paragraph 1, subparagraph viii): This subparagraph is deleted (vide above ad article 2, subparagraph vii).

Paragraph 1, subparagraph ix): The United States delegate emphasizes that in his opinion a Convention in which the claims for loss of or damage to property will rank behind mortgages will be unacceptable to his country. He proposes that the subcommittee shall first decide whether in principle, certain claims for loss of or damage to property shall rank before mortgages.

With 9 votes to 3 (2 abstentions) the Subcommittee decides in favour of this principle and then proceeds to discuss which claims of this nature shall rank before mortgages.

A Norwegian proposal that all claims mentioned in the original text of article 7, subparagraph 7, of the Norwegian draft shall rank before mortgages is defeated by 5 votes to 6 (3 abstentions).

A German proposal to the effect that the claims mentioned in the revised text of article 7, subparagraph 7, of the Norwegian draft (see above ad article 2, subparagraph viii) shall rank before mortgages is adopted by 12 votes to 0 (2 abstentions).

Paragraph 2 and 3: The substance of these paragraphs of the Oxford-draft is adopted, subject to redrafting on account of the changes made in paragraph 1 of this article. In view of the insertion of claims for contribution in general average in article 2, subparagraph vi), the Subcommittee expresses its unanimous opinion that such claims accrue on the date of the sacrifice.

Paragraph 4: The words «inter se» are inserted after the word «rank».

Article 4

Paragraph 1 : The question is discussed of the effect of a change of flag on national liens. It appears that sometimes the *lex fori*, sometimes the law of the flag and sometimes the law of the State where the repairs were made or the services rendered is applied.

It is decided to keep this paragraph as it is but to substitute the word « grant » for the word « recognize ».

Paragraph 2 : This paragraph is also adopted with substitution of the word « grant » for the word « recognize ».

Article 5

Paragraph 1 : It is decided to replace this paragraph by article 8 of the Norwegian draft, subject to some redrafting.

Paragraph 2 : This paragraph will be slightly redrafting in order to make it clear that the « droit de suite » does not apply to national liens.

Article 6

Paragraph 1 : The word « registration » should read : « deregistration ».

This paragraph is adopted.

Paragraph 2 : This paragraph is adopted.

The Norwegian delegation proposes to add two further paragraphs to this article (article 4, paragraph 3 and 4 of the Norwegian draft), which will be applicable in the case of deregistration and subsequent registration in an other country with the consent of the mortgagee. A number of delegations, although in agreement with the underlying idea of the proposal, express their doubts as to the actual possibility of the reregistration in one country of mortgages effected in an other country. The chairman therefore suggests to vote on the principle of the Norwegian proposal and to refer this matter to the drafting-committee if the principle is adopted. The Subcommittee adopts the principle by 8 votes to 3 (3 abstentions).

Articles 7 and 8

These articles are replaced by the articles 17, 18 and 19 of the Norwegian draft, subject to final drafting. In Article 19 of the Norwegian draft the reference to article 18 of said draft is deleted.

A German Proposal to add that a forced sale cannot be effected unless all right ranking above the claim of the executing creditor which are established before the competent authority are covered by the proceeds of the sale or assumed by the purchaser finds no support and is withdrawn.

A British proposal to insert a provision to the effect that in the event of a forced sale a certificate of deregistration shall be delivered is accepted, with a reservation by the Swiss delegation in respect of the « ordre public ».

Article 9

Paragraph 1 : This paragraph is adopted.

Paragraph 2 : It is observed that the claims mentioned in this paragraph arise practically at the moment of departure. It is decided to delete this paragraph.

Paragraph 3 : The Norwegian delegation argues that this provision would make it necessary to arrest the ship even for small claims.

This delegation proposes to replace this paragraph by article 15 of the Norwegian draft. This proposal is defeated by 7 votes to 7. A Norwegian and German proposal to the effect that the liens referred to in this paragraph shall expire after one year is defeated by 4 votes to 7 (3 abstentions). The Swiss delegate observes that under the law of some countries claims are extinguished after a period of one year or even six months.

Therefore, without insisting on a vote, he wishes to record his preference for a provision that the liens referred to in this paragraph shall be extinguished after two years or after such shorter period as the claim to which the lien attaches shall become time-barred.

This paragraph is adopted, but for the sake of clarity it is decided to state explicitly that the word « arrest » comprises a conservatory as well as an executory arrest (« saisie conservatoire ou exécutoire »).

Paragraph 4 : This paragraph is adopted after a short discussion about the meaning of the word « requisition ». The Subcommittee is unanimous of the opinion that this word should be taken in its broadest sense.

Article 10

This article is adopted with the insertion of the words « and subrogation in » after the words « assignment of ».

Article 11

The Norwegian delegation explains that the purpose of article 14 of their draft is to enable the shipowner to invoke the limitation of his liability without setting up a limitation fund.

On the other hand it is pointed out that this article has been inserted in the Oxford-draft so as to avoid discrepancies between the

new Convention and the 1957 Convention relating to the limitation of the liability of shipowners.

After a long discussion the Norwegian delegation withdraws article 14 of their draft and proposes to delete article 11 of the Oxford-draft. This proposal is adopted by 7 votes to 5 (2 abstentions).

Article 12

A proposal of the German delegation to delete the words « Contracting State(s) » is unanimously adopted.

A proposal of the Swedish delegation to delete the words « are (is) to be or » is unanimously adopted.

It is further decided that the provisions of the draft Convention with respect to maritime liens shall only apply when the ship under construction is waterborne.

Article 13

This article is adopted with the deletion of the words « Subject to the provisions of article 12 ».

Article 14

This article is adopted.

Final Article

It is decided to add an article to the effect that the new Convention shall not apply to liens securing claims for damage caused by nuclear events.

With respect to a question put by the Norwegian and German delegation the Subcommittee expressed its unanimous opinion that maritime liens should attach to the ship only and not, for example, to insurance sums, owner's claims for damages to the ship, contributions in general average, freight etc.

Finally, a drafting-committee was appointed composed of Messrs. Asser, Fr. Berlingieri, Birch Reynardson, Rein and Vaes. This committee will prepare a draft-Convention in English and French based on the decisions made by the Subcommittee. The draft-Convention will be sent as soon as possible to the members of the Subcommittee.

DANISH ASSOCIATION OF INTERNATIONAL
MARITIME LAW

COMMENTS

Prepared by Mr. Bjarne Fogh

I. The Danish branch has studied the draft convention worked out by the draft committee during its conference in Portofino in September, 1964.

The Danish branch is — as already stated in its reply to the questionnaire previously sent out — of the opinion that there is no urgent need for a new convention as the present legislation has by and large worked satisfactorily.

We find, however, that an alteration with a view of obtaining the widest possible international acknowledgement of registered mortgages and a strengthening of the position of such mortgages would be desirable, provided such alteration could be expected to be accepted by the majority of the seafaring nations.

The Portofino draft might be used as a basis for such further discussions, but we cannot agree to several of the principles laid down in the Portofino draft, and in addition thereto we also have objections to the drafting in several articles, although this may be a question of re-drafting only. Without going into details at present we would give the following comments :

Article 1

II. We find the principles laid down in this article acceptable. In our reply to the questionnaire we have — like most of the other associations — mentioned that the position of the mortgages registered in a non-contracting state should be judged upon the merits. We find that the requirements of article 1, item a)-c) appropriately set out the minimum requirements for recognizing the mortgage registered in a non-contracting state.

We feel that the draft as now worded will not be fully compatible with the legal and administrative system in various countries, for instance will several countries presumably not have an official called the

registrar. Certain questions might also arise as to mortgages issued to bearer, mortgages which have not been issued for a specific amount and in respect of transfer of mortgages.

Article 2

We are of course fully in agreement with the principle laid down herein. We would, however, recommend an alteration to make the article follow the Danish law on this point. According to the Danish law of Ships' registration a vessel cannot be deleted from the Ships' registration until the registration office has notified the holders of registered rights and 30 days have elapsed after the despatch of the notification, provided the holders of such rights do not agree to a deletion before the expiry of the 30 days. For a vessel being acquired from abroad it is a requirement for registration that a certificate of deletion from the foreign register is produced, including an enumeration of the registered rights which — when the vessel has been acquired from a contracting state — will be transferred to the Danish register retaining their priority.

In the beginning the reference should be made to article 11 without mentioning specifically paragraph 3.

Article 3

We would recommend that the convention should include a rule as to the priority between mortgages and suggest that the priority should be decided on the basis of the date when the mortgage was filed for registration. If the mortgages should be filed the same date, their position should be equal.

Article 4

The Danish branch is of the opinion that the present enumeration of claims secured by maritime liens is by and large adequate. We note that the Portofino draft on several points suggests an extension and has on the other hand on other points restricted the present rules.

ad (i) No comments.

ad (ii) We have no comments except that the French text does not include pilotage dues.

ad (iii) No comments.

ad (iv) Whereas claims for loss of life and personal injury at present are only secured by maritime lien if they are in respect of persons on board the vessel, the draft proposes to extend this rule also to persons not on board. This might in certain cases turn to be a considerable extension, and we do not think that such extension is reasonably motivated.

ad (v) The French text does include « assistance ». This has been left out in the English text.

ad (vi) No comments.

The Portofino draft is using a very wide interpretation of the concept « owner », and we would prefer either the present wording or alternatively the wording used in the Oxford draft.

The Portofino draft suggests the deletion of several important groups of claims which so far have been secured by maritime lien i.e.

a) Damage to property onboard the vessel

As article 4 (vi) is worded, no maritime lien will arise in respect of damage to cargo or other property onboard the vessel. We very much doubt if this has been the intention as the chances for having the convention generally accepted if the Portofino draft is maintained on this point, would appear rather remote.

b) Masters' authority

We quite agree that as a general rule there is no real basis for maintaining maritime liens for claims based on contractual obligations undertaken by a master, but we will, however, stress that for smaller owners, fishing vessels etc., the rule may have quite some practical importance. We would, therefore, suggest that the present position in this respect should be maintained for vessels up to a certain tonnage.

Article 5

Subject to our comments in respect of article 4 we can in principle agree to the proposed system which in an important simplification of the present rules.

Article 6

We would have preferred that the contracting states should not be allowed to grant such liens, but may accept the proposed wording provided it is generally accepted.

As far as the right of retention is concerned we cannot accept the deletion of such right which the proposal in fact amounts to.

In our view a right of retention with priority before the contractual mortgages and probably also before the maritime liens should be recognized in respect of claims which have resulted in improvement of the vessel, especially claims for repairs. If the right of retention is thus restricted the granting of such right of retention would not prejudice or adversely affect the position of the contractual mortgagees or even the holders of maritime liens.

Article 7

See our comments ad article 4 (vi).

Article 8

We would prefer a time limitation of 1 year which at present with the easy means of communication should be sufficient, and for certain claims an even shorter time of limitation might be justified. To avoid arrests without any real purpose we would, therefore, suggest that any legal proceedings should be sufficient.

Article 9

No comments.

Article 10

No comments.

Article 11

We do not think an arrest necessary, but the presence of the vessel within the jurisdiction should be sufficient.

Article 12

No comments.

Copenhagen, 16th March, 1965

N. V. BOEG, Chairman of the Association

NETHERLANDS ASSOCIATION OF MARITIME LAW
NEDERLANDSE VERENIGING VOOR ZEERECHT

COMMENTS

Remarks on the Draft Convention relating to Maritime Liens and Mortgages (Revised text dated Portofino, 26th September, 1964).

The Netherlands Association wishes to extend its thanks to the International Subcommittee and the Drafting Committee for the time and efforts spent on preparing the Draft Convention under examination. In the opinion of the Association the Drafted convention contains many improvements over the Convention of Brussels.

Nevertheless the draft has given rise to some observations and suggestions, which will follow hereunder.

Article 1

The Association is of opinion that the convention should contain a definition of « Mortgages and hypothecs ». It is recommended to follow the definition of these rights, given in art. I, 1 sub. d of the Geneva Convention on the International Recognition of Rights in Aircraft dated 19th Janu. 1948, viz : « Mortgages, hypothèques and similar rights in aircraft which are contractually created as security for payment of an indebtedness », which has the further advantage of using the same language in both Conventions dealing with such rights. The Association is in favour of substituting the word hypothèque for the word hypothec. As the Convention intends to better protect the financing of ships by mortgages, it should be limited to contractual mortgages, and the hypothèques légales which in some countries exist, should not be considered as mortgages under the Convention.

If the above suggestion is adopted the first sentence of art. 1 should read « Mortgages, hypothèques and similar rights on seagoing vessels, which are contractually created as security for payment of an indebtedness, shall be enforceable in Contracting States, provided that » etc.

The Association recommends that art. 1 sub b be substituted by the words « The register and any instrument referred to therein and

filed with the registrar are open to public inspection; and any person shall be entitled to receive from the registrar duly certified copies or extracts of the particulars recorded at a reasonable charge. The new provisions were taken from the Geneva Convention referred to above. It would appear to be useful to provide that certificates must be available, and at a reasonable charge.

It is recommended to insert in art. 1, c after the word « date » the words « and other particulars », as other particulars than the date may be decisive for the rank of the mortgage. In some countries it is possible to agree that an older mortgage shall take a rank after a mortgage of more recent date.

The Association is however in favour of adding to art. 1 a second paragraph, adopting a provision similar to that of art. III paragraph 3 of the Geneva Convention :

« If the law of a Contracting State provides that the filing of a document for recording shall have the same effect as the recording, it shall have the same effect for the purpose of this convention. In that case adequate provision shall be made to ensure that such document is open to the public ».

Article 4

In this article, like in art. 1, the Association should like to have a definition. It proposes to alter the first sentence as follows « The following claims shall be secured by maritime liens, i.e. shall be preferred on the proceeds of a vessel in a forced sale ».

One of the reasons why it was felt that the Brussels Convention should be materially changed or altogether replaced by a new Convention was the number and the nature of the maritime liens ranking before mortgage. In the draft under examination some liens, which in the Convention of 1926 ranked before mortgage, have been abolished, but on the other hand new liens have been created, without sufficient grounds. In this way one of the main purposes of the new Convention, viz. the better protection of the interests of the mortgages would not be obtained.

The Association has serious objection to the introduction of liens for claims against parties other than the owner or demise charterer.

Only in the rarest exception should liens be granted on properties not belonging to the debtor. Such liens give rise to all sorts of procedural and legal difficulties and should be treated with the utmost caution. In any case liens granted to claims on charterers and operators seriously affect the position of the mortgage, especially where such claims follow the ship irrespective of change in ownership.

For the reasons set out above, the number and categories of claims secured by maritime liens should be restricted to a minimum. In the

opinion of the Association there is no compelling necessity, which justifies the maritime liens enumerated in this article under I, IV and VI.

Prima facie the maritime liens for claims for loss of life (IV) and for claims in tort for loss of or damage to property (VI) would seem a justifiable protection for those who were wronged by an insolvent shipowner. However, in view of the present wide spread Government insurance (social security) for employed persons, and private insurance in the other fields, the Association is not satisfied that a protection in the form of maritime liens is indispensable.

Claims referred to under IV and VI, if accumulated, may accrue to very substantial amounts, which would materially affect the position of the mortgages.

The Association is in favour of deleting these maritime liens.

In the opinion of the Association a limited maritime lien should be given to the shiprepairer, whose right of retention is abolished in article 5. Such lien should only be given in respect of a claim for repairs in the strictest sense, excluding maintenance, alterations, new-buildings, etc., and only to the shipyard which has possession of the vessel at the time it is arrested. As the repairs have increased the value of the vessel, the shipyards is entitled to the same protection as the salvor. Such a right is moreover indispensable to the shipyards which often at a very short notice are called upon to effect repairs. It is also in the interest of the shipowners that repairs can commence before other security is provided.

Article 6

Paragraph 2 of this article should be extended with the words « nor the delivery of the vessel to the purchaser in a forced sale », in order to remove all doubt that the right of retention cannot be relied upon against such purchaser.

Article 7

The objection to paragraph 1 has been dealt with under article 4.

Article 8

Paragraph 1 provides that the liens shall be extinguished in two years unless, within that time, the vessel is arrested, the owner is declared bankrupt or goes in voluntary liquidation. It is clear that the lien in the last two cases is not extinguished by the expiry of the two years, but it is not clear how the position is, if the arrest is lifted, or the bankruptcy or liquidation reversed or revoked, or the vessel sold by the liquidator in a private sale.

The Association suggests to delete the words « such arrest leading to a forced sale » in art. 8.1. (a) and to add after the word liquidation « provided that such arrest bankruptcy or compulsory liquidation lead to a forced sale ».

Article 10

The Association is in favour of replacing this article by a paragraph, inspired by art. VII, 2 sub b of the Geneva Convention, in the following words :

« The executing creditor shall supply to the Court or other competent authority a certified extract of the recordings concerning the vessel. He shall give public notice of the sale at the place where the vessel is registered as to nationality, in accordance with the law there applicable, at least one month before the day fixed, and shall concurrently notify by registered letter, if possible by airmail, the registered owner and the holders of registered rights in the vessel, according to their addresses as shown on the register ».

It seems preferable to leave it to the creditor to give notice of the sale, as serious delay might arise if this task is imposed on officers of State.

Article 11

The Association suggests to replace the words « in the event » in paragraph 1 by the word « through », and the words « is the object » in paragraph 3 by the words « has been the object ».

COMITE MARITIME INTERNATIONAL FINLAND BRANCH

COMMENTS

General

In the explanations on the Draft it is stated that the Continental hypothèque differs from what is known in English law as mortgage. The difference seems to be that a hypothèque through a registration act gives to a creditor, in case the registered debt is not paid, a right to satisfy his claim through the sale of the ship, whereas a mortgage means the mortgager who is indebted to the mortgagee in principle hands over the ownership of the vessel to the mortgagee who again in return hands back the ship to the mortgager to use the ship in order to enable him to pay the debt. While there is thus a difference in principle between a Continental hypothèque and the English mortgage, in practice the latter is a right of the same contents as the former. For this reason it seems superfluous to refer in the Convention both to hypothèque and mortgage. It would seem sufficient that in the English text the word « mortgage » is used and in the French text the word « hypothèque ».

On the other hand, as the purpose of this Convention is to regulate the conditions, on which a mortgage holder shall have his rights safeguarded, then it would seem natural that these rights should be defined. The definition proposed in the Norwegian Draft would seem to cover the point.

Article 1

c) In Finland a document specifying the bearer as having a claim for a certain amount of money against the shipowner can be registered as mortgaging the vessel. The name and address of the person, in whose favour the mortgage has been effected, does not necessarily appear in the register, but it is usual that the bearer or a new bearer respectively of such a document informs the registry of his name and address, so that in case where necessary, e.g. a forced sale, the register authorities can inform the bearer.

Article 2

1) It is easy to foresee cases where a holder of a mortgage, for reasons of his own, would oppose the deregistration of a vessel. He

might have specific reasons for not wanting to see the vessel transferred to another flag or to another owner. In our Law, when a vessel is sold abroad without the consent of a mortgage holder, the mortgager becomes personally liable for the debt in question and the mortgagee is entitled immediately to enforce his claim irrespective of whether the debt is otherwise due for payment or not. Thus the mortgage holder cannot prevent the deregistration, but he will be satisfied by the debt being paid.

2) and 3) seem to mean that if formalities cannot be concluded within 30 days, then the registration will not take place. The time seems short. According to our present Law, if a vessel is transferred from a foreign registry to Finnish registry and if certain mortgages have been properly registered in the ship in her foreign registry, then those mortgages will remain in force for a whole year. If the mortgage holders want their rights to be further protected, then, before the expiration of the said year, they shall have to have their rights duly registered according to Finnish Law.

Article 3

No comments.

Article 4

No comments.

Article 5

According to Article 8 maritime liens shall be extinguished after a period of two years. Therefore for instance claims for loss of life arisen 1965 would rank *pari passu* as between similar claims arising in 1967. As claims for loss of life might amount to very substantial amounts, it could be possible that such claims, combined over 2 years, would make a salvor's claim for salvage, which has taken place at the end of the 2 year period, quite illusory.

This difficulty does not arise under the 1926 Convention, because there is a limit set by reference to the voyage.

Article 6

No comments.

Article 7

No comments.

Article 8

In order to avoid arrests without any real purpose we would suggest that a writ of summons to the Court in such a case should stop the prescription from running. See also our comments at Article 5.

Article 9

No comments.

Article 10

The 30 days notice seems short and there seems to be no reason why this should not be extended to say 60 days.

Article 11

No comments.

Article 12

When drafting this Article regard has to be had to the stipulations in the Stockholm Draft Convention on ships under construction and particularly to its Article 5, which enables the holder of certain rights in ships, other than monetary claims, to have such rights registered.

According to Finnish Law the owner of ship under construction in Finland for Finnish account can have the ship registered in order to also have a mortgage registered in same. This is possible as soon as the building has proceeded so far that the ship can be identified.

Helsinki/Helsingfors, March 22nd, 1965
Comité Maritime International
Finland Branch

Rudolf Beckman, President

B. Appelqvist, Secretary

SWEDISH ASSOCIATION OF INTERNATIONAL
MARITIME LAW

COMMENTS

Introduction

The Swedish Association appointed a committee to study this draft. The committee consisted of the following members : Messrs. B. Bylund, R. Heden, L. Hagberg, C. Palme and K. Pineus. This committee having given its advice to the Association, the Association begs to report as follows :

General Observations

Sweden has ratified the 1926 Convention on Liens and Mortgages and introduced the provisions of the Convention in the Swedish Maritime Code in a form appropriate to that Code. However, Sweden has now denounced the Convention. While we believe that this was done primarily to avoid possible difficulties in coordinating the 1926 Convention with the 1957 Convention on Limitation of Liability, we venture to assume that the fact that the 1926 Convention has met with little international approval may have contributed to this step. We understand that also Denmark, Finland and Norway have denounced the 1926 Convention. In our mind, these actions underline the need to prepare the new Draft Convention in such a way that it can obtain a wide international approval.

Subject to the observations mentioned below, we think the Portofino Draft well suited to form the basis of a new Draft Convention on the subject of Liens and Mortgages.

However, when dealing with Liens, Mortgages and Hypothecs where the basic concepts as to the contents and meaning might well be different in various countries we believe it worth while to try to agree on definitions on some of the terms used in the Draft. The efforts made in the Norwegian Draft (Report N° 11, pages 32/33) might prove helpful. Such definitions might appear as an introduction to the Draft and constitute Article 1.

THE VARIOUS ARTICLES

The various Articles of the Portofino Draft elicit the following comments.

Article 1

We understand the word « enforceable » in the first alinea to mean that the Contracting State shall recognise Mortgages and Hypothecs subject to their fulfilling the requirements under (a) - (c). If the word is intended to convey any special meaning, we should like to have this made clear.

If our suggestion about definitions is adopted, this term had better be one of those to be dealt with.

(c) Under our law, the name and address of the person in whose favour the Mortgage or Hypothec has been effected does not necessarily appear in the register, but the bearer of the document may inform the registry of his name and address, should he so desire. If that is done the authorities will inform him of a forced sale of the vessel, etc.

As this system has been in operation for some sixty years with us, we are somewhat surprised to learn that it is felt essential to say that the register must specify the name and address « of the person in whose favour the Mortgage or Hypothec has been effected ». Would it not be sufficient to say that should the parties so desire, the register should set it out.

Article 2

We believe the time limit of 30 days appearing in paragraph (2) will prove too short and would suggest that a time limit of 60 days be adopted.

As for paragraph (3) we read this to mean that Mortgages and Hypothecs, when transferred from one country to another, shall retain their rank and their values but that the formalities to be followed and the right acquired under the new flag should conform with that national law and in fact become a right under that national law. Whether any clarification of the text is necessary to put this beyond doubt is, we take it, a matter of drafting.

Article 3

No comments.

Article 4

We are well aware that arguments can be put forward in favour of the idea of retaining the Liens for damages to ship's own cargo or luggage appearing in Article 2 (4) of the 1926 Convention. Still, as the general trend of the new Draft is to strengthen the position of the long term creditors and to do away with those Liens which are not absolutely essential and as moreover cargo transported on board the ship is regularly covered by insurance, we are prepared to support the Portofino

Draft which does not grant a Lien for claims for damage to ship's own cargo or luggage.

As for rank, we hold that claims for salvage and contribution in general average should move up and come immediately after the Lien for claims for Port dues etc. (ii) and become (iii). Unless salvage operations are undertaken, no values would be left from which to pay the other types of claims which are granted Liens on the ship.

We submit, in order to avoid difficulties of interpretation as to the scope of the provisions in respect of Port dues etc. that this paragraph should read :

« Port, canal and other waterway and pilotage dues payable for services rendered to the vessel ».

In (vi) the Draft uses the expression « claims in tort » and the French version « créance de nature quasi delictuelle ». Both expressions are somewhat difficult to assimilate in our law. We submit that this type of claim had better be described as « claims not based on contract » or some similar neutral expression which does not have a too close connection with a particular system of law.

As for the last alinea of Article 4, we note that it is specially said that demise charterers etc. are put on par with owners and that the same provision appears in Article 7 (1) but not in Article 8 (1). We take it that this is one of the consequences of not having any initial Article containing definitions in the Draft Convention. Do the Draftsmen mean to convey that the ruling on parity between owners and demise charterers etc. applies only to Article 4 and 7 but not to Article 8 ?

Article 5

No comments.

Article 6

We should much prefer that the Contracting State were prevented from granting additional Liens even if they rank after the Liens, Mortgages and Hypothecs of the Convention (« national liens », for short).

Under a conflict of law rule, a « national lien » duly created might well be recognised in a Contracting State although that State does not admit a Lien under its own national law for such claims. This situation, which is not only a theoretical one, will always cause trouble and lead to unhappy consequences. Even if the national liens rank after the right of the Convention, the enforcement of a national lien by arrest or otherwise might well cause harm or at least inconvenience for those creditors who have a Lien, a Mortgage or a Hypothec under the Convention.

If it proves impossible to do away entirely with national liens, we should at any rate like them to be as few as possible. They should be restricted to ships flying the flag of the Contracting State that has granted the national lien in question.

Article 7

We refer to our question under Article 4 last alinea compared with Article 7 (1) and 8 (1).

Article 8

Unfortunately, this Article is not acceptable to us in its present shape and, unless amended, will probably make it impossible for us to recommend that the Convention be accepted by our country.

The Article lays down i.a. that the Liens shall be extinguished after two years unless the ship is arrested and this arrest leads to a forced sale, or the owner is declared bankrupt or goes into compulsory liquidation.

Whether a claim is of such a nature as to give rise to a Lien on the ship is often a controversial question which might well have to be settled by an action in Court. To us, it seems obvious that a writ of summons to the Court in such a dispute should stop the prescription from running. An arrest of the ship, with its corollary to put up security for unlawful arrest, followed by the subsequent sale of the ship is a very serious affair indeed. The idea that a creditor in order to stop the prescription from running out should have to resort to such a drastic step seems to us out of all proportion to what should be the proper requirements for interruption of the prescription.

We are aware that the two years period and the arrest constituted an effort to make a « package deal », that is to say reduce the number of measures available to interrupt prescription against the normal time being extended from one to two years.

Unfortunately, we cannot accept the one or the other. We think that one year should be retained as the general rule.

To us, the Article dealing with this problem which appears in the Norwegian Draft has much appeal (Report N° 11, page 35, Article 15). Still, we should prefer to try to be even more explicit in the Convention than in the said Draft.

We submit a text reading somewhat as follows :

« All maritime Liens listed in Article 4 shall be extinguished after a period of one year from the time when the corresponding claim arose.

The prescription period shall be interrupted only if (i) a writ of summons to the Court in respect of the claims is issued, or (ii) the claim is duly submitted to arbitration, or (iii) the owner or other person liable for the claim is declared bankrupt or (iv) goes into compulsory liquidation.

If the claim has been adjudicated, the Lien shall be extinguished if legal action to enforce it has not been taken within one year of the date of the final judgment or arbitration award ».

If it should prove impossible to obtain general agreement on the second paragraph as set out above, subject naturally to such redrafting of the text as may prove necessary, one might have to resort to national law in the way appearing in the Norwegian Draft which says in this respect the following :

« The national law of each Contracting State shall determine the legal actions required for the interruption of the prescription period ».

Article 9 and 10

No comments.

Article 11

We understand from Report N° 11, page 17, that the « encumbrances » mentioned in this Article refer to and include the so-called « national liens ». We have of course nothing against the idea that the forced sale of the vessel should clear it also from the said type of liens. Whether this can be achieved by the insertion of a provision to that effect in an international Convention dealing with maritime Liens, Mortgages and Hypothecs we are not prepared to say.

Except for this question mark, we have no comments to offer in respect of Article 11.

Article 12

This Article makes the Draft Convention applicable to ships under construction. If the Draft Convention, including this Article, is accepted by the C.M.I., we suppose that the 1963 Draft Convention on Ships under Construction will not lead to any further action. For the time being, we are prepared to accept this result but reserve our Liberty of action, should the Draft Convention on Liens, Mortgages and Hypothecs not be accepted.

Article 13 and 14

No comments.

We suppose that in what is termed « clause de style » or in the permissible reservations will appear a provision that makes it possible to include the content of the Convention in national legislation « in a form appropriate to that legislation ».

Stockholm, March 26th, 1965
Swedish Association of
International Maritime Law

Kaj. Pineus, President

Claës Palme, Hon. Secretary

NORVEGIAN MARITIME LAW ASSOCIATION

COMMENTS

The Norwegian Maritime Law Association, on receipt of the Third Report by Mr. Asser, appointed a working group to study and provisionally report on the Portofino Draft. This working group consisted of Dr. Sjur Braekhus, Mr. H. P. Michelet, Mr. Alex. Rein and Mr. Frode Ringdal. Their report has been submitted to the Board of Association and the Association now begs to report as follows.

We find that the Portofino Draft is well suited to form the basis of the discussions in New York provided that a proposal for the co-ordination of article 12 and the 1963 Draft Convention on ships under construction will be worked out.

Our comments to the articles of the Portofino Draft are as follows :

Article 1

It is understood that both the English and the French texts of the Convention shall be authentic. The French text puts the word mortgages within quotation marks, thereby indicating that it refers to the English conception of a mortgage, which is a *contractual* security in a vessel for a certain indebtedness. The English text, however, refers to mortgages and hypothecs, and a hypothec in the English sense is something different from a continental « hypothèque ». We suggest that the English text should read :

« Mortgages and « hypothèques »... ».

Our reason for proposing this formal amendment is a material one. A French « hypothèque » includes a security levied by decree of a public authority, but it is doubtful whether the English word hypothec has the same meaning. As we see it, it is essential that « hypothèques » levied by public decree are eligible for registration on line with mortgages.

Re b) : We propose that the words « and filed with the registrar » be deleted. In our opinion it is a minimum requirement that any instrument referred to in the register shall be available for inspection.

Re c) : A mandatory requirement that the name and address of the original mortgagee shall be specified in the register gives rise to difficulties in countries where the normal practice is to issue mortgages to the bearer. In our opinion this requirement is not necessary and could be deleted without any harm.

Firstly, one can never rely upon the registered mortgagee to be the actual mortgagee as one cannot, for practical reasons, require that all transfers shall be registered.

Secondly, it is common practice in countries where mortgages are issued to named mortgagees that the original registered holder is not the mortgagee himself, but an agent who will transfer the instrument to the real mortgagee as soon as all formalities have been complied with.

Thus, as we can never expect the register to indentify the actual holder of the right, we may just as well recognize mortgages issued to the bearer.

Article 2

Sub-paragraph 1.

We are afraid that the wording here is too rigid. It will be necessary to give the Contracting States the right to rid the registers of obsolete registrations, particularly with regard to vessels which have physically ceased to exist, whether or not the registered mortgagees are willing to consent to deregistration.

We propose the following addition to the present text : « ... except in cases where the vessel has physically ceased to exist ».

Sub-paragraph 2.

If all holders of registered mortgages have agreed to the immediate deregistration of a vessel, there is no apparent need to resort to the complicated procedure set out in this sub-paragraph. We therefore suggest the following amendment : (underlining the additional words) :

« 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 *has been deregistered*, or will be deregistered... ».

Article 3

We take it that this article shall apply also in cases where a mortgage has originally been registered in country A and then transferred, in accordance with article 2, to country B. After the registration in country B the laws of this country shall govern the ranking. We may illustrate the point by one example :

A first and a second priority mortgage has been registered on a vessel in a country where, under the national law, the second mortgage

will automatically move up and succeed to the rank of the first priority mortgage when the latter has been redeemed. Both mortgages are then transferred to country B which has no such rule, and the certificate on the strength of which the transfer has been effected does not mention the right accorded to the second priority mortgage in country A. Then the first priority mortgage is redeemed. In such a case we take it that the second priority mortgage in accordance with the laws of country B will retain its original priority.

Article 4

Sub-paragraph 1 (i)

We strongly recommend that claims for salvage and for contribution in general average shall rank together with costs of removal of a wreck. It seems to us indispensable that costs incurred for the purpose of saving a vessel must be covered prior to the fruits of the salvage being distributed to others. If the award for salvage is not accorded first priority and the prospective salvors suspect the vessel to be burdened by maritime liens on better priority, the salvors may be reluctant to invest money in the enterprise. This is not in the interest of any maritime lien holders.

Apart from this, practical difficulties will be encountered as the removal of a wreck ordered by a competent authority may also be salvage in the proper sense. Where salvage of a wreck is contemplated on a « no cure — no pay » basis as a business proposition the salvor, we take it, will obtain a maritime lien for his claim for salvage award if he can persuade the competent authority to issue an order for the removal of the wreck. Whether or not it is necessary to have a wreck removed is a question of discretion. By exercising that discretion the authorities will, in fact, decide the ranking of maritime liens.

Sub-paragraph 1 (iv).

According to b) there shall be a maritime lien for a claim for loss of life or personal injury « caused by the owner ». This wording is too wide as it includes losses caused by the owner without any connection with the operation of the ship. We suggest the following wording : (underlining the additional words) :

« b) in respect of persons not on board the vessel if caused by the owner *in direct connection with the operation of the vessel* or by person in the service of the vessel... ».

Sub-paragraph 1 (vi).

In our proposed amendments to the Oxford Draft (Hypo - 19) we advocated that maritime liens should be accorded to « claims for loss

of or damage to property in respect of property on board the vessel and in respect of property not on board the vessel ». The international subcommittee at Amsterdam decided (Hypo - 30) to accord maritime liens only to claims for loss of or damage to property not on board the vessel. This decision is reflected in the Portofino Draft.

The Norwegian Association is not in favour of this restriction. The professed purpose of the efforts to restrict the number of claims secured by maritime liens is to strengthen the long time credit. It should be borne in mind, however, that maritime liens in respect of cargo claims do not harm the mortgagees if the owner of the vessel is adequately protected by insurance against such claims. Not only may the owner protect himself by insurance (Protection and Indemnity insurance) in respect of cargo claims, but the mortgagee has the means to see to it himself that the owner is so protected. A maritime lien for such claims will, therefore, be an incentive to the mortgagee to see to it that insurance is effected and the mortgagee will suffer only in cases where he has neglected to satisfy himself that the owner is properly protected.

Secondly, if there is no maritime lien for cargo claims the cargo owner will get practically no protection in cases where the vessel is encumbered by mortgages and liens up to its full value. The claimant, admittedly, may arrest the vessel, but if the owner can show that its value does not exceed the encumbrances he cannot be compelled to put up any security in consideration of its release. It is hard to imagine that cargo interests will accept such a situation.

The wording of sub-paragraph 1 (vi) must be amended in the same way as sub-paragraph 1 (iv), b).

We suggest the following wording of sub-paragraph 1 (vi) :

« Claims in tort for loss of or damage to property on board the vessel or not on board the vessel if caused by the owner in direct connection with the operation of the vessel or by a person in the service of the vessel for whom the owner is responsible ».

We propose to remove the last paragraph of sub-paragraph 1 to article 7 and will deal with that in our comments to article 7.

Article 5

Sub-paragraph 3.

If sub-paragraph 1 (i) of article 4 shall include only the costs of removal of wrecks there seems to be little need for a ranking provision as a wreck can hardly be removed more than once. If there is to be a provision, it must be the one set out in sub-paragraph 4 of article 5. If our proposal with regard to sub-paragraph 1 (i) of article 4 is adopted, it goes without saying that sub-paragraph 4 of article 5 must apply.

Article 6

Sub-paragraph 1.

We propose that « national liens » may only be granted in respect of national ships, and we therefore propose the following wording :

« Each Contracting State may grant liens in ships registered in the State to secure claims... ».

Article 7

Sub-paragraph 1.

We fully appreciate that the last paragraph of sub-paragraph 1 of article 4 is necessary in addition to this sub-paragraph, but we suggest that the two provisions should be set out together so as to prevent the impression that the same thing is being dealt with in two places.

The term « operator of the vessel » may give rise to certain doubts. We suggest that a maritime lien shall attach even if the claim is against an operator who has obtained possession by illegal means, say by piracy. We therefore suggest to use the term « actual operator of the vessel ».

We propose the following wording of article 7, sub-paragraph 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 actual operator of the vessel. The word « owner » in article 4 shall be given the same construction ».

Article 8

Sub-paragraph 1.

We dare say that if, apart from bankruptcy, the only way to break the prescription of a maritime lien is to arrest the vessel for the purpose of effecting a forced sale the Convention will not be acceptable in this country. Under such a system claims for relatively small amounts such as wages etc., will receive very little benefit by having a maritime lien attached to them.

We consider it essential that the prescription period may be interrupted by a writ of summons to a competent court and by invoking arbitration where arbitration has been agreed.

We agree that the declaration of bankruptcy shall interrupt the prescription period and we agree in principle that « compulsory liquidation » shall have the same effect. As the system of the so called compulsory liquidation may vary very much from country to country, we suggest that a reference to the national law would be advisable.

In case of bankruptcy or compulsory liquidation we suggest that the period of prescription shall be interrupted only in respect of claims which have been duly filed with the receiver within the time limits stipulated by the national law.

We think that a one year prescription period will be sufficient.

We further propose that a new prescription period shall run from the time final judgment has been obtained.

Accordingly, we propose the following wording of sub-paragraph 1 :

« 1. The maritime liens set out in article 4 shall be extinguished after a period of one year from the time when the claim secured thereby arose unless, prior to the expiry of such period, (a) a writ of summons in respect of the claim has been issued to a competent court or (b) the claim has been duly submitted to arbitration or (c) the owner is declared bankrupt or has gone into liquidation in accordance with the national law of the Contracting State, and the claim has been duly filed with the receiver in accordance with the national law.

When a claim has been adjudicated the lien shall be extinguished if legal action to enforce it has not been taken within one year of the date of final judgment ».

Sub-paragraph 2.

In our opinion it is very difficult to provide for the fate of maritime liens in case of requisition. A requisition may very well be effected by the government of the country where the vessel is registered, and the government may recognize liens which have attached prior to the requisition. In such case there is no need to extend the prescription period. On the other hand, to provide that the period shall be extended in cases where the claimant is barred from interrupting the period by service of writ will be very difficult in practice.

Article 11

Sub-paragraph 1.

With regard to (a) it seems to us that the point is not whether the vessel has been arrested in the jurisdiction of a Contracting State, but whether the vessel is in the jurisdiction of the said State when the forced sale is effected. Further, the point is not whether the vessel has been arrested, which in many countries is impossible in case of bankruptcy etc., but whether it is in the custody of the competent authorities at the time of the sale. We would prefer the wording of article 18 of our proposed amendments to the Oxford Draft (Hypo - 19).

Article 12

With regard to this article we must call the attention to the fact that a Draft Convention relating to the registration of rights in respect of ships under construction has already been adopted by the Comité Maritime International at the Stockholm Conference in 1963. It will be necessary to gear the present Draft to the Stockholm Draft prior to its presentation in New York.

Article 14

Those States which have ratified the 1926 Convention will have to terminate their obligations under that Convention prior to acceding to the present one. Article 14 therefore seems unnecessary. We hope that many States which did not ratify the 1926 Convention will ratify the new one. One cannot, therefore, say that this Convention shall, in respect of the relations between States who accede to it, « replace and abrogate » the 1926 Convention.

We propose that this article be deleted.

Oslo, March 29, 1965.
Den Norske Sjøretts-Forening
(Norwegian Maritime Law Association)

Alex. Rein, President

Frode Ringdal, Hon. Secretary

GERMAN MARITIME LAW ASSOCIATION

COMMENTS

1. In article 1 subpara c)

« insert the word « facts » instead of the word « date ».

The law of the state which is applicable according to Art. 3 may rule that the rank of a mortgage does not depend only from the date of registration but from other facts also.

2. In Article 1 add a new para 2 reading

« The right of a mortgagee to enter into the possession of the vessel or to sell her privately cannot be executed by virtue of this convention».

This rule is intended to remote possible obstacles from ratifying the new convention by those states which generally do not allow any private execution of rights but only a judicial one.

3. Article 2 to be deleted and replaced by the following new Article 2.

« (1) A vessel entered into the register of a contracting state can be registered in another contracting state in accordance only with the following procedure of transfer :

- a) The register to whom the owner applies for the new registration of the vessel, inserts the entries applied for including those in favour of any third person, but notes in the register that the effect of this insertion is subject to the condition that the former registration of the vessel is deleted;
- b) the registrar in whose register the vessel had so far been inserted, deletes the insertion against submission of the extract from the register of the new insertion and the approval in writing of the owner and all holders of mortgages or hypothecs and issues a certificate of deletion stating the date of deletion. The registrar cannot refuse the deletion, unless the vessel is to be registered in his own register or in any other register of his own state;
- c) upon submission of the certificate of deletion the registrar who has inserted the new registration, deletes in his register the note

made pursuant to subpara a), inserts the date of the deletion of the former insertion and issues the Certificate of Registry.

(2) For the application of this Article the registrars are entitled to contact each other directly. Any letters or documents may be written in the language of the register sending them ».

The wording of this new Article is taken from Article 11 of the ECE draft convention on the registration of inland navigation craft. We prefer this draft to Article 9 of the Stockholm Draft Convention 1963 and even Article 2 of the Portofino Draft considering the following reasons :

The Portofino Draft offers no chance to comply with the statutory requirements for registration in the new state if those requirements differ from that of the old state. If — for example — a certain mortgage registered in the old state is not eligible for registration in the new state, Art. 2 of the Portofino Draft will give no possibility to transfer the vessel from one register to the other at all. Art. 9 of the Stockholm Draft tries to overcome this difficulty by para 3 which is, however, not quite clear. It seems to us that this Art. 9 para 3 is not suitable to avoid any period of interruption between the deregistration and the new registration. Art. 11 of the ECE draft convention on the other hand does not require an absolute congruence of either national law in case the mortgagee and the shipowner agree on the new registration and furthermore it avoids any gap in time between the old registration and the new registration.

4. In Article 4 para 1 subpara iii add the words

« With the exception of claims for masters' disbursements on account of the vessel ».

This addendum is drafted in respect of sec. 167 para 2 of the Merchant Shipping Act. 1894 and other similar legislation, which includes such disbursements under the master's lien for wages.

5. In connection with Article 4 para 1 subpara iii we beg for a clarification whether social insurance premiums, which had been included in the Oxford Draft but not in the Portofino Draft, are or are not to be secured by a lien.

6. In article 4 para 1 subpara iv delete the text under a) and b)

This text is superfluous since Article 7 para 1 limits all the claims for personal injury which are secured by a lien.

7. In Article 4 para 1 a new subpara vii should be inserted reading

« Claims for loss or damage to property on board the vessel if

caused by the carrier or by a person in the service of the vessel for whom the carrier is responsible ».

Contrary to the deliberations of the Amsterdam meeting, claims for damage to cargo on board the vessel are covered by this new wording. We feel that the value of the Bill of Lading depends i.a. from the security given to the holder by a lien especially in case where the carrier is not the owner of the vessel.

8. Article 4 para 2 should be deleted

Article 7 para 1 covers all corresponding situations.

9. Article 7 para 1 should read

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

This amendment is intended to clarify possible doubts about the meaning of the words « other charterer » and « manager ».

10. Article 8 should read

« (1) The maritime liens set out in Article 4 shall be extinguished after a period of one year, in the case of claims, however, which are exclusively in tort of two years, from the time when the claims secured thereby arise unless, prior to the expiry of such period, a) the vessel has been arrested, such arrest leading to a forced sale, b) the lienor has sued the vessel in rem, c) the owner is declared bankrupt or d) the owner goes into compulsory liquidation.

(2) The periods referred to etc... ».

These amendments intend to shorten the period of extinction in the interest of the mortgagees. Only in these cases, where the lienor may meet extraordinary difficulties to find out the debtor of his claim i.e. in collision cases the period should be two years.

Art. 8 para 1a) of the Portofino Draft requires an arrest of the vessel even for small claims and even in cases where the claims have not been adjudicated by a court. Moreover, crew members and passengers who have been bodily injured may often not be able to dispose of the means for an arrest but for a mere suit. Therefore, an action in rem should be sufficient to interrupt the period of extinction. The merits of these arguments are in our opinion higher than the advantage of the publicity, possibly given by an arrest of the vessel in contrast to a mere suit.

11. In Article 10 para 1 the words « 30 days » should be replaced by the words « 60 days ».

This amendment is self-explanatory.

12. Article 10 should be amended by the following paras 2 and 3

« (2) All notices mentioned in this article shall be sent directly to the holders and to the registrar by registered airmail.

(3) The national legislation for the execution in the vessel and for the distribution of the proceeds of the vessel should not be less favourable to alien mortgagees, lienors, debtors and owners of a vessel than to nationals of the country where a forced sale takes place ».

These amendments are self-explanatory.

13. In Art. 12 para 1

« insert the words « especially Art. 2 » after the words « this convention » ».

This amendment intends to clarify that Art. 2 is applicable even in those cases which might also be covered by article 9 of the Stockholm Draft Convention on the registration of rights in respect of ships under construction.

14. Article 14 should be replaced by the following context

« Each state which ratifies this convention or accedes to it undertakes to 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 ».

To explain the proposed new Article 14 the following example may be useful :

States A and B have ratified the 1926 Convention States B and C but not state A will ratify our new convention. A vessel of state C will be sold in state B. A national of state A tries to execute a maritime lien according to Article 2 (5) of the 1926 Convention (master's contracts). The court of state B has to apply two contradictory conventions in this case. To avoid any situation alike state B has to denounce the 1926 Convention.

We may draw the attention to the fact that the French translation of the Portofino Draft differs widely from its English version. Our proposals are based on the English text.

Hamburg, March 30th, 1965

BRITISH MARITIME LAW ASSOCIATION

PROVISIONAL COMMENTS

Article 1

We note with approval the omission, from the Amsterdam draft, of the phrase « other registrable rights ». The present drafting is precise. But we consider that the word « seagoing » should be omitted from the English text. In particular, in view of the inclusion of vessels under construction (Article 12), the qualification is inappropriate. A vessel under construction is unlikely to be seagoing.

a) We consider that paragraph (a) should be amended to read « such mortgage and hypothecs have been duly effected and registered in accordance with the law of the State where the vessel is or was registered at the time such mortgage or hypothec was registered ». It is possible that a court may have to enforce a mortgage effected in accordance with the law of a state where the vessel was registered at an earlier date under another flag.

b) We approve the words in paragraph (b) « the register and any instrument referred to therein » as being more precise than « such instruments as may have been filed therein, etc... », as in the Amsterdam draft.

c) In paragraph (c) we consider that the inclusion of the name and address of the person in whose favour the mortgage or hypothec has been effected is a necessary improvement. There are two drafting corrections. In paragraph (b), Line 3 should read « mortgage *or* hypothec » and Line 7 should read « determines *its* rank ».

Article 2

1. We approve the wording of the proviso which has been added. This is necessary because, when the vessel is the object of a forced sale, the Registrar does not require the consent of the mortgagee to issue such a certificate (see Article 11 (3)). We agree that this Article should apply to Contracting State only. It is impracticable to legislate for non-Contracting States.

2. In paragraph (2) we find the word « said » in line 7 confusing and think this should be amended so that line 7 should read « be allowed by the « former » State ».

3. We consider that paragraph 3 would be clearer if drafted in the positive form to read « The vessel shall be accepted for registration in another Contracting State only if the mortgages and hypothecs set out in the Certificate mentioned in paragraph 2 are accepted for registration by such State, and retain their priority as set out in the Certificate ».

Article 3

We question whether this Article is necessary or even desirable in that unless provision is made to the contrary, which it is not, the position must be as stated.

Article 4

1. We note and approve the omission of the lien for costs awarded by the Court; such costs arise after the vessel has been sold and all liens have been extinguished. There is now adequate provision for the payment of such costs in Article 11 (2).

(i) We approve the redrafting of this Clause. The words « lawfully ordered by a competent authority » are, we think, an improvement on the earlier drafting which was too restrictive.

(ii) We have no comment.

(iii) We have no comment.

(iv) We consider that the present drafting of this Clause is too wide. A maritime lien could arise in respect of a claim which had no connection whatever with the vessel; for example, a claim by a person injured by a shipowner driving his car would rank as « a claim for personal injury in respect of persons not on board the vessel if caused by the owner ». We are of the view that claims secured by a maritime lien must have some causal link with the vessel and we suggest that a maritime lien should arise only if the loss of life or personal injury to persons not on board is caused in the navigation or management of the vessel, or in the loading or discharging of her cargo, passenger or bunkers.

(v) We remain of the opinion that claims for salvage and General Average should take priority over claims for Personal Injury. These claims preserve the « res » and should logically take priority.

(vi) We consider that this Clause should be restricted as in (iv). In Article 4 there is no lien for shiprepairers.

We cannot support this omission. In English law a possessory lien is granted in such cases. Such a lien although postponed to earlier mari-

time liens, has priority over mortgages and subsequent liens, maritime or not. If a Court orders a possessory lien holder to relinquish possession, the order will provide that his rights be protected, if he proves that he has such rights. We believe that a shiprepairer should be protected in this way. The objection to the present draft is that under Article 6, it is provided that rights of retention, though they may be granted, shall not prejudice the enforcement of maritime liens or mortgages. We think that this destroys any security given to the shiprepairer and that the Article should be amended (see below Article 6).

2. We see no good reason for this provision. If a maritime lien arises in respect of loss of life, personal injury, and property claims for « non nuclear incidents », we think it all the more reasonable that maritime liens should arise where damage occurred through a nuclear incident.

Article 5

We have no comment.

Article 6

1. We have set out our objections to the postponement of rights of retention so far as shiprepairers are concerned under Article 4 above.

2. We make the following suggested amendment to cover the position.

« Each Contracting State may grant a lien or right of retention to secure claims other than those referred to in Article 4; provided however that such liens, other than liens for repairs or necessaries, shall rank after all maritime liens and registered mortgages or hypothecs and that such right of retention shall not prejudice the enforcement of any maritime liens or registered mortgages or hypothecs as aforesaid ».

Article 7

We have no comment, apart from amending the words « as to » to « of ».

Article 8

We believe that paragraph 1 should be redrafted to read :

« The maritime liens set out on Article 4 shall be extinguished after a period of two years from the time when the claims secured thereby arose. There shall be no extinction if, prior to the expiry of such period :

- a) the vessel has been arrested, such arrest leading to a forced sale.
- b) the owner is bankrupt.
- c) the owner is in compulsory liquidation ».

Article 9

We have no comment, other than to suggest the following correction in the drafting. In line I delete « of » after the word « assignment » and change « in » after the word « subrogation » to « of ». Similarly delete « of » in line 5 and substitute « of » for « in » in line 6.

Article 10

We believe that this Article is too loosely drafted.

The Competent Authority should be obliged to give notice of the sale to all holders of registered mortgages and hypothecs. This can be done by requesting their names and addresses from the appropriate Registrar. Notice should also be given to all known holders of maritime and other liens and proper advertisements should be published in shipping papers.

Article 11

1. We welcome the amendment of this Article. The Amsterdam text was, we considered, quite unacceptable.

We would suggest that the second « with » in line 2 of paragraph 1 (b) should be deleted.

We have no comment.

Article 12

We have no comment.

Article 13

We have no comment apart from the suggestion that the words « ir-respective as to » should be deleted and the words « no matter » substituted.

Article 14

We have no comment.

THE MARITIME LAW ASSOCIATION OF THE
UNITED STATES

COMMENTS

We are setting forth our Committee's suggested changes in the Portofino Draft. The deletions are in Parenthesis and the additions are in italics.

Article 1

Mortgages (and hypothecs) *or hypothèques* on seagoing vessels shall be enforceable in *all the* Contracting States provided that :

- a) such mortgages or (hypothecs) *hypothèques* have been duly effected and registered in accordance with the law of the State where the vessel is registered;
- b) the register specifies the name and address of the person in whose favour the mortgage (of hypothec) *or hypothèque* 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) *or hypothèques and maritime liens.*

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) *or hypothèques.*

2. A vessel registered in a Contracting State on which a mortgage (or hypothec) *or hypothèque and maritime lien* 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 has been or will be deregistered (on the day) *as of the date* when the new registration is effected, provided the new registration is effected within 30 days and notice of such new registration is given to the issuing State within the 30 days period.

When such certificate has been issued no registration of rights in respect (of) *to* the vessel shall be allowed by the (said) *issuing* State

during such period of time. The Certificate (mentioned) shall set out in order of priority all registered mortgages (and hypothecs) *or hypothèques* on the vessel.

3. The vessel shall not be accepted for registration in another Contracting State unless the mortgages (and hypothecs) *or hypothèques* 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) *or hypothèques* shall rank as between themselves in accordance with the law of the State where they are registered *except as otherwise provided in Paragraph 3 of Article 2.*

Article 4

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

- a) Costs of removal of the wreck of the vessel lawfully ordered by competent authorities.
- b) Claims for salvages and for contribution in general average.
- c) Port, canal, *pilotage* (and other waterway dues) *and other similar dues.*
- d) 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.*
- e) Claims for loss of life or personal injury : in respect of persons on board the vessel; *and* in respect of persons not on board the vessel if caused in *direct connection with the operation of the vessel* by the owner or by a person in the service of the vessel for whom the owner is responsible.
- f) Claims in tort for loss of or damage to property *on board and not on board the vessel*, if caused *in direct connection with the operation of the vessel* by the owner or by a person in the service of the vessel for whom the owner is responsible.

The word « owner » *wherever* mentioned in this (article) *Convention* 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) *or hypothèques*.

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 sub-paragraphs 1 a), c), d), e) and f) of Article 4 shall rank *pari passu* as between themselves.

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

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) *or hypothèques* which comply with the requirements of Article 1 *except that maritime liens valid at the time of the original registry shall take priority over the mortgage or hypothèque*.

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) *hypothèques* 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.)

Subject to the provisions of Article 11, the maritime liens (securing the claims) set out in Article 4 *and as provided for in Article 6 shall* follow the vessel notwithstanding any change of ownership or registration.

Article 8

1. The maritime liens set out in Article 4 *and those provided for in Article 6* 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) *for the purpose of enforcing a maritime lien by way of 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) except that should the vessel be requisitioned; time shall not (count in respect of) *run during* 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.)

The assignee or subrogee of a claim secured by a maritime lien shall have all the rights of the original lienor.

Article 10

Prior to the forced sale of a vessel *pursuant to a court order* 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) *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 *pursuant to a court order* in a Contracting State, all mortgages, (hypothecs) *hypothèques*, 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) *provisions of this Convention as supplemented by the laws of said State.*

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) *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 is the subject of a forced sale *pursuant to a court order*, 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;)

Until it has become waterborne such a vessel may be registered only in the State in which it is under construction; and

- b) the maritime liens referred to in Article 4 shall attach to the vessel only (if the) *for claims* (secured thereby) *which 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.

ASSOCIATION YUGOSLAVE DE DROIT MARITIME

RAPPORT

Le projet de Portofino a réussi à fournir, selon l'avis de la Commission nationale de l'Association Yougoslave de Droit Maritime, un excellent instrument de travail pour arriver à une révision de la Convention de 1926, généralement acceptable. Le Projet a simplifié essentiellement l'assiette des privilèges et la détermination de leur rang en abolissant des notions qui ne correspondent plus à la pratique contemporaine, ce qui facilitera l'application de ses dispositions. D'autre côté le Projet a prêté beaucoup d'attention aux problèmes relatifs à la tutelle des intérêts des créanciers hypothécaires dans le moment délicat du transfert du navire du registre d'un Etat Contractant à un autre et dans le moment de la vente forcée du navire dans un Etat différent du pays d'immatriculation du navire.

En ce qui concerne les détails de la réglementation proposée, nous présentons les observations suivantes :

Article 1

Le texte de cet article donne satisfaction à nos scrupules en ce qui concerne la nécessité de tenir compte dans la Convention de l'hypothèque et du mortgage dans les deux langues officielles du C.M.I.

Article 2

La disposition du paragraphe 3 de cet article, qui nous semble en principe extrêmement utile, présentera des difficultés dans les pays dans lesquelles on ne connaît pas le mortgage, quand il s'agit du transfert d'un navire sous pavillon des pays à mortgage. Peut-être serait-il possible d'éviter cette difficulté en introduisant dans le Projet l'idée contenue dans l'amendement de l'Association Allemande de Droit Maritime à l'article 1, paragraphe 2 du Projet d'Oxford/HYPO 13/, en ce qui concerne l'effet matériel de la reconnaissance internationale des hypothèques et mortgages nationaux. Evidemment cela pourrait comporter des risques pour l'adoption de la Convention. Bien que la formule allemande nous paraît assez séduisante, nous croyons qu'il ne sera pas

possible de trouver un texte donnant satisfaction aux exigences de tous les systèmes juridiques, difficulté dont les rédacteurs du Projet de Portofino ont certainement eu conscience et c'est pourquoi on sera peut-être obligé de se tenir au texte tel qu'il est proposé dans le Projet de Portofino, laissant aux législations nationales le soin de résoudre le problème posé par le paragraphe 3 de l'article 2. Cette solution permettra d'atteindre le but essentiel de la Convention qui est d'assurer l'effet international de l'hypothèque et du mortgage, seul objet de nos efforts.

Article 3

Il nous semble qu'il serait préférable d'user dans cet article d'une façon appropriés le texte de l'article 6 de l'Avant-projet de Stockholm. On éviterait de cette manière l'incertitude qui pourrait résulter de la possibilité de l'existence des législations réglant la question du rang selon des principes qui permettraient des exceptions à la règle de l'ordre chronologique des inscriptions ou des demandes d'inscriptions. Evidemment le principe de l'ordre chronologique est le seul qui donne des garanties suffisantes aux créanciers hypothécaires.

Article 4

Nous n'avons pas d'objections au texte sauf en ce qui concerne les sub-paragraphes IV b/ et VI b/. Le texte actuel de ces sub-paragraphes qualifie les créances qui y sont privilégiées en usant le mot « causés ». Il nous semble qu'en ce mot on pourrait arriver à la conclusion que des créances peuvent naître sans fautes des personnes qui y sont mentionnées, c'est-à-dire qu'on pourrait interpréter ces dispositions comme introduisant le principe de responsabilité causale. Pour éviter des malentendus fâcheux nous considérons qu'il serait utile de substituer dans les deux sub-paragraphes IV et VI aux mots « ont été causés » les mots « résultant du fait imputable à la faute du ».

Article 8, litt. A

Un des buts de cette disposition est d'empêcher la continuation du privilège par des actes qui ne sont pas connus par tous les créanciers privilégiés et hypothécaires actuels ou éventuels. La saisie qui conduit à la vente forcée du navire n'est pas le seul acte qui donne des garanties suffisantes dans ce sens parce que ce rôle pourrait bien être rempli par l'adnotation de l'action judiciaire entreprise en vue de la réalisation du privilège dans le registre des navires du pays d'immatriculation du navire/ainsi qu'il est prévu dans la Section 30, Subsection g/a du Ship Mortgage act. 1920. Ainsi on éviterait d'obliger les créanciers privilégiés d'épuiser dans tous les cas tous les moyens allant jusqu'à la vente forcée du navire.

Article 11

Il nous semble que le texte anglais de l'article 11, § 1, litt. a/ qui précise qu'au moment de la vente forcée le navire doit être dans la juridiction du même Etat contractant « such Contracting State » soit le texte qui reflète exactement la pensée des rédacteurs du Projet de Portofino. Il faudrait corriger le texte français dans le même sens.

Article 13

A notre avis le principe de la réciprocité devrait être appliqué aux dispositions de cet article.

Il reste à voir si les dispositions des articles 12 et 15 de la Convention de 1926 ne devraient être maintenus dans la nouvelle convention. Il nous semble que ces dispositions ne sont pas devenues caduques et qu'elles conservent une importance pratique.

Enfin il nous semble qu'il faudrait insister sur la coordination de la nouvelle Convention avec la Convention sur la limitation de la responsabilité des propriétaires de navires de mer de 1957. En ce qui concerne un tel texte il suffirait peut-être, pour ne pas provoquer trop de controverses, de constater que les privilèges des créances soumises à la limitation de responsabilité ne peuvent plus être exercés pour ces créances quand les conditions de l'article 2, § 4 de la Convention de 1957 seront réunies.

En concluant nous sommes de l'avis que le Projet de Portofino n'est pas alourdi par l'adoption des solutions trop détaillées, qui bien qu'elles pourraient sembler utiles ne feraient que rendre plus difficile l'adoption, application et interprétation de la nouvelle Convention.

Zagreb, 31 mars 1965.

Vladislav Brajkovic
Président de l'Association Yougoslave
de Droit Maritime

E. Pallua
N. Percic
Rapporteurs

ASSOCIATION TURQUE DE DROIT MARITIME

RAPPORT

Le Comité Maritime turc a examiné le projet de convention intitulé « Projet Portofino » et a considéré que ce projet peut être pris comme base pour l'élaboration d'une convention au sujet des privilèges et hypothèques maritimes. D'une façon générale, le Comité est d'accord sur la nécessité d'une révision de la Convention de 1926 et approuve dans son ensemble les réformes proposées. Il a cependant des réserves sérieuses sur plusieurs points.

Il faut noter tout d'abord que le texte français n'est pas tout à fait conforme au texte anglais et nécessite une mise au point.

Nous sommes d'avis d'autre part que le projet est équivoque sur de nombreuses questions et nécessite par suite une nouvelle rédaction.

Quant au contenu du projet nous avons l'honneur d'attirer votre attention sur les observations suivants :

1. Nous suggérons en premier lieu d'ajouter au paragraphe (c) de l'article premier le mot « initial » après le mot « l'inscription » pour apporter au texte plus de précision. Il ne faut pas en effet oublier que les hypothèques ou mortgages constituées dans un pays peuvent être transmises au registre d'un autre Etat et susciter par conséquent un doute sur le sens des mots : « suivant la loi du pays de l'inscription ».

2. Nous proposons en second lieu d'ajouter au paragraphe 1^{er} de l'article 2, la disposition suivante : « Toutefois lorsque le navire perd la nationalité de l'Etat au registre duquel il est inscrit, aucun acte de disposition ne peut plus être inscrit sur ledit registre ». Nous croyons que cette disposition est nécessaire pour que les Etats ne soient pas tenus de tenir des registres pour des navires qui ont déjà perdu leur nationalité originaire.

3. On constate que le deuxième paragraphe du même article a pour but de prévenir qu'un navire soit inscrit sur plusieurs registres appartenant à des Etats différents. Mais cette disposition ne peut à notre avis suffire à atteindre ce but. Il faut donc que le nouveau conservateur du registre mette d'office l'ancien conservateur au courant du nouvel acte d'inscription. Il faut en outre que les actes de disposition

inscrits sur le nouveau registre n'aient d'effet qu'à la condition suspensive de radiation des inscriptions de l'ancien registre.

4. L'article 3 qui règle le rang des hypothèques successives nous paraît équivoque dans le cas d'inscription de plusieurs hypothèques dans différents pays. Il est nécessaire d'y apporter plus de clarté. Comment devra-t-on en effet déterminer le rang de ces hypothèques ? Est-ce la loi de l'inscription première ou celle de l'Etat de l'inscription dernière qu'on devra prendre en considération pour la détermination du rang ? Tous les deux systèmes ont chacun de leur côté des inconvénients importants. Le mieux est peut-être de régler la question par une disposition supplémentaire tranchant le fond de la question. En tout cas la proposition du Comité Maritime norvégien est plus claire et mérite d'être retenue sur ce point.

5. En ce qui concerne l'article 4, il faut tout d'abord remarquer que le paragraphe (ii) de cet article n'est pas tout à fait conforme au texte anglais. Car « port, canal and other waterway dues » sont plutôt « les taxes de port de canal etc. » et non les « frais de port, de canal, etc. ».

D'autre part le paragraphe 4 de cet article n'est pas tout à fait clair. On a un doute sur le point de savoir si la condition à laquelle le paragraphe (b) est soumis s'étend aussi au cas prévu dans le paragraphe (a). Pour dissiper ce doute il faut unifier les paragraphes (a) et (b) dans une même phrase de façon à ce que la condition à savoir « si les dommages ont été causés par le propriétaire du navire ou par une personne au service du navire et dont le propriétaire est responsable » s'étende aussi au cas prévu au paragraphe (a) du même article.

6. Nous constatons que l'article 4 ne prend pas en considération les « surrogates » c'est-à-dire les valeurs qui remplacent le navire. A notre avis c'est là une lacune importante. Car si les privilèges ne s'étendent pas aux surrogates, l'acte illicite d'un tiers aura pour conséquence de faire perdre au créancier privilégié son privilège sur le navire sans que le dommage - intérêt dû par le tiers remplace le navire. Cela nous paraît inadmissible.

Quant aux créances privilégiées énumérées dans ledit article, on remarque que cette disposition prive l'affréteur de son privilège pour des créances nées de la perte ou de l'avarie de la marchandise. Le propriétaire de celle-ci peut en effet toujours s'assurer contre les risques de l'expédition.

Nous proposons d'autre part que les créances du chef d'assistance et de sauvetage soient préférées aux créances énumérées au paragraphe (iv) du même article, car le recouvrement de ces dernières créances dépend du résultat obtenu par le sauveteur. Par conséquent il est plus équitable de reconnaître au sauveteur une préférence par rapport aux

autres créanciers prévus à l'article 4. Cette préférence aura par ailleurs pour effet d'encourager le sauveteur dans son entreprise de sauvetage.

Quant à la créance née de la contribution en avaries communes, nous pensons qu'il est inutile de lui accorder un rang primant les hypothèques. Cette créance n'est d'ailleurs pas limitée d'après la Convention de Bruxelles de 1957. Si l'on accepte notre proposition, le paragraphe 4 de l'article 5 devient alors inutile. Ce paragraphe est d'ailleurs à remanier, car en cas de sauvetage d'un navire, entrant dans un port de refuge ou en cas d'assistance à un navire en danger, pour lui aider à gagner un port de refuge, il sera extrêmement difficile de déterminer le rang des créances nées du sauvetage et de l'avarie commune. Par conséquent si l'on ne supprime pas ce paragraphe il est nécessaire d'y apporter plus de clarté. Il faut noter d'autre part que le texte français du paragraphe 4 de l'article 5 qui détermine le rang des créances énumérées au paragraphe 5 de l'article 4 n'est pas tout à fait conforme au texte anglais dudit paragraphe, car la date « à laquelle *l'événement* donnant lieu à avarie commune s'est produit » n'est pas toujours la date de *l'acte* d'avarie commune (the date on which the general average act was done).

7. Nous croyons qu'il est nécessaire d'apporter une précision au paragraphe (b) de l'article 8 qui détermine les cas d'extinction du privilège, car il est erroné d'admettre l'extinction du privilège par suite de la simple déclaration en faillite. Ce n'est que par la liquidation de la faillite que les privilèges doivent prendre fin.

8. En ce qui concerne l'article 11, il faut tout d'abord remarquer que le texte du paragraphe III dudit article n'est pas tout à fait le même dans les deux textes, car les mots « dans un Etat Contractant » n'existent pas dans le texte anglais. Il faut les y ajouter.

D'autre part ce n'est pas la radiation mais c'est plutôt un certificat attestant que le navire est exempt de privilège et d'hypothèque que l'acquéreur a besoin d'obtenir du conservateur du registre. Le texte doit en conséquence être remanié.

ASSOCIATION FRANÇAISE DU DROIT MARITIME

I

PREMIER RAPPORT

1. L'Association Française du Droit Maritime a pris connaissance du rapport de M. J. T. Asser du mois de novembre 1964, ainsi que du projet de Convention, dit projet de Portofino. Elle a accordé à l'un et à l'autre document toute l'attention que méritent un effort aussi consciencieux et un travail aussi considérable, auxquels elle désire rendre le juste hommage qui leur est dû.

La date récente à laquelle le projet a été distribué n'a pas encore permis un examen détaillé du sujet. Pressés de faire connaître son opinion pour le 31 mars, l'Association Française ne peut donc indiquer aujourd'hui que sa position générale.

II. Il lui est apparu au cours de son étude que le projet de Portofino abordait deux questions différentes : 1°) la reconnaissance et l'organisation sur le plan international des droits réels inscrits sur les navires (hypothèques et mortgages); 2°) le régime des privilèges maritimes et leur conflit avec les droits précédents.

Sur le premier point, il existe une timide ébauche de solutions dans l'art. 1 de la Convention de 1926. Ce texte est probablement insuffisant pour résoudre toutes les difficultés; aussi est-il permis de parler de vide législatif dans ce domaine, qu'il est utile de combler. L'Association Française reconnaît toute l'importance de la question, qui réclamerait une solution alors même qu'il n'existerait aucun privilège maritime et qui, par ailleurs, est en quelque sorte préjudicielle à toute autre mesure d'amélioration du crédit hypothécaire. Aussi approuve-t-elle l'effort constructif dont témoigne en ce sens le projet de Portofino, notamment dans ses art. 1, 2, 3 et 11. Elle se réserve toutefois de proposer certains amendements ou adjonctions, qu'elle pense être, sous peu, en mesure de faire connaître de façon plus précise.

III. Dans la mesure où il traite des privilèges maritimes, le projet de Portofino apparaît par contre totalement inacceptable à l'Association Française. Elle ne proposera même pas d'amendements, qui ne seraient

que des replâtrages insuffisants pour en faire un édifice valable. Reprenant ici les termes de son premier rapport, elle entend s'en tenir, jusqu'à plus ample informé, à la Convention de 1926, qui lui paraît préférable au projet de Portofino.

Elle admet que cette Convention de 1926 puisse ne pas être absolument parfaite; mais à l'expérience elle a donné satisfaction dans son ensemble et l'Association Française n'éprouve pas le besoin d'en changer. De toute façon, le projet de Portofino, dont les dispositions, aux effets parfois contradictoires, paraissent être le résultat de préférences plus ou moins subjectives, n'apporte aucun remède sérieux à ce qui, dans l'opinion de l'Association Française, constitue les imperfections les plus marquées de la Convention de 1926; il les aggrave plutôt.

L'Association Française est donc d'avis que, si l'on ne veut pas se satisfaire de la Convention de 1926, l'étude de la question serait à reprendre en entier, sur des bases et dans un esprit sensiblement différents de ceux du projet de Portofino. L'Association Française y serait disposée, mais elle doute qu'il soit possible d'aboutir d'ici le congrès de New York.

IV. Enfin, le projet de Portofino ne parle absolument plus des difficultés de coordination avec les dispositions de la Convention de Madrid. L'Association Française insiste pour que la question soit reprise, car il ne suffit malheureusement pas de passer ces difficultés sous silence pour les supprimer, ni de les ignorer pour leur trouver une solution. Cette politique de l'autruche ne peut conduire bien loin.

P. CHAUVEAU

Président de l'Association française

SIMONARD

Président de la Commission

II

DEUXIEME RAPPORT

I. L'Association française est partie de ce postulat que la raison pour laquelle la Convention de 1926 n'a pas été ratifiée par certains Pays, et pour laquelle sa modification est actuellement demandée, se trouve être que cette Convention ne favorise pas suffisamment le développement du crédit hypothécaire, surtout dans l'économie actuelle de l'Armement maritime.

De ce point de départ on se trouve aussitôt conduit à rechercher ce qui peut entraver l'utilisation de ce crédit, entendu dans le sens d'un crédit conventionnel garanti par un droit sur le navire, hypothèque ou morgage. Après consultations des représentants des banques françaises, mon Association s'est trouvée confirmée dans cette opinion que la garantie constituée par le navire était comprise, en plus de la perte ou destruction possible du bâtiment par un événement de mer, pour les deux raisons principales suivantes : A) La non reconnaissance de la garantie, hypothèque ou morgage, par les tribunaux du lieu de la saisie et vente du navire. Si le navire est saisi à l'étranger, ces tribunaux peuvent être conduits à lui dénier tout effet, voire toute existence en leur Pays, pour des raisons de forme ou de fond, telle l'absence de tout droit équivalent dans leur propre législation, ou l'inobservation de certaines règles de celle-ci. B) L'existence d'autres droits, de caractère occulte, dits privilèges, en nombre indéterminé et variables suivant le lieu de la saisie, qui seraient susceptibles d'être préférés aux créanciers hypothécaires. Il existe ainsi un problème de conflit entre hypothèques et privilèges quant au rang de préférence à leur accorder, qui a été le principal souci des auteurs de la Convention de 1926.

II. L'Association Française a estimé que les deux questions ci-dessus énoncées formaient deux problèmes plus ou moins indépendants l'un de l'autre. En effet la Reconnaissance Internationale des Hypothèques et Mortgages aurait besoin d'être organisée même s'il n'existait pas de créances privilégiées. Autrement ces créanciers hypothécaires ne pouvant pas se prévaloir de leur droit hypothécaire seraient réduits au rang de créanciers chirographaires, et tenus de subir leur concours, dès l'instant où le navire serait saisi et vendu dans un Pays où leur droit n'est pas reconnu.

Par ailleurs le conflit entre créanciers privilégiés et créanciers hypothécaires ne se conçoit que si le droit n'existe pas puisque le prétendu créancier hypothécaire n'est plus qu'un créancier chirographaire, à l'égard duquel la préférence du créancier privilégié ne se peut discuter.

La solution de la première question est donc préjudicielle. Et s'il peut y avoir intérêt pratique à résoudre les deux simultanément, il reste que cela n'est pas indispensable, les deux questions demeurant indépendantes l'une de l'autre.

III. L'association Française a compris que le projet dit de PORTO FINO visait à résoudre l'ensemble du problème. Malheureusement elle se trouve en désaccord fondamental et définitif avec la solution proposée par l'art. 4 du projet à la seconde difficulté. Le désaccord porte non pas sur des questions de rédaction, mais sur les principes de base qui peuvent inspirer cet article, pour autant qu'il soit possible de par-

ler de principes directeurs là où l'empirisme et la préférence subjective paraissent avoir été les seules guides d'un choix douteux.

Fermement décidée à rejeter toute Convention qui contiendrait un article de semblable inspiration, et convaincue que cette seconde difficulté a besoin d'être entièrement réexaminée, elle a pensée par contre que la première question de « La Reconnaissance Internationale des Hypothèques et Mortgages » pourrait fournir matière à accord indépendant à la Conférence de New York. Même si l'accord atteint outre-Atlantique était limité à ce seul point, cela constituerait déjà un progrès sérieux pour le développement du crédit hypothécaire; c'est au surplus un préalable essentiel. Et il n'est pas interdit d'espérer que, par la suite, on puisse finalement aboutir à une entente sur le second point après meilleur examen.

C'est pour faciliter cet accord au moins limité qu'elle présente son contre-projet. Il est essentiel de bien comprendre que, d'un objectif plus restreint que celui de Porto-Fino, il tend exclusivement à la « Reconnaissance Internationale des Hypothèques et Mortgages maritimes ». Il laisse volontairement de côté tout ce qui peut consacrer les Privilèges, sans pour autant apporter d'entrave à la solution ultérieure de leur statut, ni au fonctionnement des dispositions de l'actuelle Convention de 1926 y relatives.

IV. Sur le problème de la Reconnaissance Internationale des Hypothèques, il reprend les principales dispositions du projet de Porto-Fino, même si par respect de la syntaxe ou par souci de classement il leur donne une autre présentation; mais il contient aussi quelques adjonctions ou variantes, dont la principale est la subrogation au navire de l'indemnité d'assurance du corps. Cette disposition, destinée à prémunir les créanciers hypothécaires contre la perte du bâtiment, donne une valeur légale à ce qui est déjà de pratique conventionnelle. Parmi les quelques autres différences il en est auxquelles l'Association Française attache de l'importance. Elles participent néanmoins du caractère de simples variantes que le rapprochement des textes suffit à mettre en lumière, et sur lesquelles toutes explications verables pourront être fournies à New York, à moins que vous n'estimiez préférable de les résumer préalablement par écrit.

III

PROJET DE CONVENTION

(ammodé par l'Association Française)

Article 1

Les hypothèques et mortgages, constitués conventionnellement et inscrits sur un navire sont reconnus par tous les Etats contractants s'ils satisfont aux conditions ci-après.

Article 2

Les droits énumérés à l'article précédent, quel que soit le lieu de leur constitution, devront :

a) être valablement constitués conformément à la loi de l'Etat contractant où le navire est immatriculé lors de leur constitution, l'acte constitutif pouvant être établi soit en la forme requise dans le pays d'immatriculation, soit en la forme admise dans le pays où l'acte est passé;

b) être régulièrement inscrits sur un Registre officiel de l'Etat d'immatriculation et conformément à la loi de cet Etat; ce Registre devra : 1° mentionner le nom et l'adresse du titulaire du droit, le montant garanti, la date et le rang de l'inscription; 2° être accessibles au public soit par consultation directe, soit par délivrance gratuite ou moyennant taxes raisonnables à la requête de toute personne, de copies certifiées conformes, qui feront foi jusqu'à preuve contraire.

Article 3

Toutes les inscriptions relatives à un navire seront effectuées sur un seul et même Registre. Leurs effets à l'égard des tiers sont déterminés par la loi du pays d'inscription.

Article 4

Les dispositions précédentes s'appliquent également aux navires en construction, le pays de construction devant être considérés comme pays d'immatriculation pour les besoins de cette application.

Article 5

Tout navire doit avoir, parmi les papiers de bord, un extrait du Registre mentionnant les hypothèques ou mortgages inscrits et les mon-

tants garantis. Cet extrait ne devra pas avoir plus de 3 mois de date. Il indiquera l'adresse du Service chargé de la tenue du Registre.

Article 6

Si le navire est perdu, sont subrogées au navire jusqu'à concurrence la valeur de celui-ci :

- a) l'indemnité d'assurance du corps du navire
- b) et, à défaut d'assurance, ou si elle est insuffisante, les indemnités dues par des tiers à raison de cette perte.

Si le navire est seulement avarié, les mêmes subrogations ont lieu à concurrence du montant des avaries que le propriétaire ne ferait pas réparer.

Le créancier inscrit aura contre les débiteurs une action directe et le paiement fait par eux ne sera pas libératoire s'il est fait au mépris des droits du dit créancier.

Article 7

Les inscriptions des droits énoncés à l'article 1^{er} ne peuvent être rayés sans main levée préalable amiable ou judiciaire.

Article 8

Hors le cas prévu à l'article 12, toute vente à un étranger d'un navire grevé d'un des droits énoncés à l'article 1^{er} sera sans effet tant que :

- a) toutes les inscriptions n'auront pas été rayées conformément à l'article 7;
- b) ou que ces inscriptions n'auront pas été réinscrites sur le nouveau Registre d'immatriculation d'un Etat contractant, avec le rang qui leur est attribué par la loi du pays de leur inscription.

Article 9

Aux fins d'application de l'article précédent, l'immatriculation d'un navire dans un nouvel Etat contractant ne sera pas admise :

1. si les conditions de l'article précédent ne sont pas réunies;
2. si, en outre, il n'est pas produit un certificat émis par l'Etat d'immatriculation actuelle du navire attestant que le dit navire sera radié avec effet du jour où la nouvelle immatriculation aura eu lieu, sous condition que celle-ci soit effectuée dans les trente jours.

Aucune inscription nouvelle ne sera autorisée pendant ce délai. Le certificat ci-dessus prévu devra mentionner, avec leur rang respectif, tous les droits inscrits au jour de son émission.

Article 10

Si la législation du pays où l'immatriculation est demandée ne permet pas l'inscription de ces droits tels qu'ils sont inscrits, les intéressés disposeront d'un délai de soixante jours pour satisfaire aux exigences de cette législation, tous les effets juridiques de l'inscription précédente demeurant en vigueur pendant cette période.

Article 11

Sans préjudice des dispositions pénales pouvant exister dans les législations nationales, la vente d'un navire grevé de droits énoncés à l'article 1^{er} est nulle et sans effet, si elle doit entraîner l'immatriculation d'un navire dans un pays non contractant.

Article 12

Au cas de vente forcée d'un navire grevé d'un des droits prévus à l'article 1^{er}, la propriété sera transférée, libre de ces droits s'ils ne sont repris en charge par l'acquéreur, à la condition que cette vente soit effectuée conformément aux dispositions ci-après.

Article 13

La procédure de vente forcée est celle prévue par la loi de l'Etat où la vente est effectuée. Les effets sont ceux prévus par la présente convention et par la loi de l'Etat où le navire est immatriculé.

Les dispositions minima suivantes devront être respectées :

a) le créancier poursuivant doit remettre au Tribunal ou à toute autre autorité compétente un extrait certifié conforme des inscriptions prises sur le navire;

b) la date et le lieu de la vente sont fixés au moins six semaines à l'avance;

c) au moins un mois avant le jour fixé pour la vente, le poursuivant doit :

1. en faire l'annonce au lieu où le navire est immatriculé, conformément aux dispositions de la loi du lieu d'immatriculation;

2. prévenir par lettre recommandée à l'article 1^{er}, à l'adresse portée au Registre d'inscription, de la date et du lieu de la vente.

JAPANESE MARITIME LAW ASSOCIATION

OBSERVATIONS
ON
THE PROVISIONAL DRAFT CONVENTION

The Japanese Maritime Law Association have the pleasure to make the following observations respecting the Provisional Draft Convention on Maritime Liens and Mortgages (hereinafter to be referred to as the new Convention) which was prepared by Messrs. J.T. Asser, Francesco Berlingieri, W. Birch Reynardson and André Vaes for consideration by the Meeting of the International Subcommittee held at Amsterdam on June 19 and 20, 1964.

The Japanese Association agrees on the necessity and desirability of an international unification of laws on these matters. In order to throw light on the points of difficulty that seem to us to be involved in the new Convention, however, we would like to present the commentary remarks as follows :

Article 1

We understand that a Contracting State may interpret the word « mortgages » referred to in this Article so as to include open-end Mortgages (*Höchstbetragshypothek*); and therefore that « the amount of mortgages » mentioned in sub-paragraph iii) means the maximum amount of the future advances to be secured by such mortgages as well as the amount of a specified debt.

Article 2

This Article refers only to liens on the vessel, while it is suggested in the second Report prepared by Mr. Asser that each Contracting State may provide for liens freight and accessories in its domestic legislation, and that extra-territorial validity of the latter liens is a question of private international law. This approach of the new Convention may be approved as an outcome of practical necessity to reach an international agreement on this matter.

It is unanimously agreed in the Japanese Association to give lien status to all those claims specified in Sub-paragraph i) to viii) of this Article. However, as regards towage, pilotage, stevedoring services and general average contributions which are no longer to be secured by liens under the new Convention, some of our members hold the view that lien status should be restored to these claims.

The claims referred to in Sub-paragraph i), i.e., costs arising in connection with the arrest and subsequent sale of the vessel, should be construed, in our opinion, to include the costs of watching and preservation after the arrest (cf Japanese Commercial Code, Art. 842, 1); 1926 Convention, Art. 2, 1)).

Although the meaning of « port, cannal and other similar dues » provided for in Sub-paragraph iii) is not always clear, we think that wharfage should fall *de lege lata* within the category of these dues.

According to Mr. Asser's Second Report, the definition of the categories of the claims for loss of life or personal injury as are provided for in Sub-paragraph v) is « *mutadis mutandis* » the same as that of Article 1, 1), a) and b) of the 1957 Convention of the limitation of liability of shipowners ». We, too, think it desirable to bring the two Conventions into proper correlation in this regard for the reason of « the advantage of having the same concepts in different international conventions ». Thus, we suggest that the claims which give rise to liens should not be confined to those for loss of life or personal injury caused « by any person on board the vessel », but be expressly extended, in conformity with the provisions of Article 1, 1), b) of the 1957 Convention on the limitation of liability of shipowners, to the claims for loss of life or personal injury caused *by any person engaged in vessel's service whether on board or on land for whose act, neglect or default the shipowner is responsible*. The same observations will be made to those claims as specified in Sub-paragraph viii).

The words « claims for repairs and maintenance of the vessel » as used in Sub-paragraph vii) may read not to include the claims for supplies necessary for the continuation of the voyage. If not included, we are of the opinion that there should be an additional express provision for giving lien status to the latter claims.

Article 3

We agree, as a rule, on the provisions of this Article concerning priorities among the maritime liens and mortgages, except for the categories of the claims specified in Paragraph 1, Sub-paragraph viii), i.e., claims for repairs and maintenance of the vessel, together with those for supplies if they are to be added according to our suggestion as mentioned above. Some of our members are of the opinion that such claims should be ranked prior to the mortgages on the vessel.

Article 4

Under Japanese law, a person having a right of retention may only retain the property until his claim has been fully satisfied, and he has no right to obtain satisfaction of his claim out of such property in preference to other creditors. Then, it is provided that in case the property thus retained is put for sale at public auction by anyone else, whether he is a judgment creditor or a creditor whose claim is secured by a preferential right such as a maritime lien or mortgage, a successful bidder is not entitled to receive the delivery of the property auctioned off until he has paid the claim secured by the right of retention. (Sale by Public Auction Law, Art. 2, 3); Code of Civil Procedure, Art. 717, 1), Art. 649, 3) Consequently, the exercise of right of retention results as matter of fact in reducing a price to be offered by a bidder, so that it sometimes occurs that those who have enforced maritime liens or mortgages by public auction may not obtain out of the proceeds full satisfaction of their claims. This will be also the case that happens to the enforcement of the claims as provided for in Article 3 of the new Convention when Japan adopts it. Legally speaking, however, we do not think that the right of retention under Japanese law as such does « prejudice » the enforcement of these claims, not merely because the existence of the right of retention itself is by no means a legal bar for a person having any of these claims to take the proceedings for its enforcement, but because the right of retention does not, as pointed out above, include a preferential right to the proceeds of the property auctioned off. If, contrary to our interpretation, such effect of the right of retention in Japanese law as mentioned here is to be considered contradictory to the provisions of Paragraph 2 of this Article, we are afraid that Japan should be faced to a considerable extent its general law of property before it introduces into its domestic law the new Convention as it is with this particular Article.

Article 6

The word « registration » used in Paragraph 1 of this Article should be replaced with the word « de-registration ».

Article 7

We understand that the procedure for forced sale or sale by public auction, i.e., sale made in the mode prescribed by law under the process of the court, is to be governed by the law of the country in which such sale takes place. In the light of the fact that there is diversity in a great degree as to the law of procedure for such sale among various countries, the proviso of this Article seems to us to go too far. We would rather consider it sufficient if only the new Conven-

tion provides that the notice to the effect that such sale is to be made should be given to the Registrar of the register in which the vessel is registred, thus leaving the manner of fixing the date and place of such sale as well as the formalities of publicity thereof entirely to the domestic legislation of each Contracting State (cf. 1926 Convention, Art. 9, Paragraph 5). It should be added here, however, that we agree to the provisions of this Article to the extent that all maritime liens and mortgages together with any other encumbrances on the vessel should be extinguished in case of the forced sale thereof in any Contracting State.

Article 9

We consider the two-year period referred to in Paragraph 3 of the Article too long; it should be shortened to one year (cf. Japanese Commercial Code, Art. 847, 1)).

Postscript : Since the booklets N^{os} 10 and 11 have not reached us yet, our observations as set out above are made only with reference to the booklets N^{os} 1 - 9. We shall be ready to present our supplementary observations, if we find it necessary to make them when we receive the subsequent issues.

Teruhisa Ishū, President

Isuneo Ohtori, Secretary

CANADIAN MARITIME LAW ASSOCIATION

REPORT

The general subject of Maritime Liens and Mortgages has been under study by a special Committee, with special reference to the third report of the CMI International Sub-committee indentified by the number 11 (1-65).

Having regard to the broad scope of the original questionnaire, to the reports received of the meetings in Oxford, Amsterdam and Portofino, to the replies and comments of numerous National Associations, we wish to convey how much we are impressed with the brevety of the Portofino draft, covering as it does nevertheless all the essential aspects of the complexe subject under study.

The essential aim of strengthening the mortgage is well served and the draft shows a salutary resistance to any diluting of that strength by adding elsewhere to the things for which the ship is to be made the security.

The Canadian Association shares the views expressed by the Swedish and Danish Association — and perhaps others — that on the whole things have worked and continue to work very well; where situations of financial difficulty may have arisen there has been no *aggravation* of hardship under the prevailing patterns and it is doubtful whether there would really be any under even more extensive simplifying.

It is therefore only in a sense of constructive criticism that the Canadian Association has to reserve its position on several parts of the Portofino draft and in consequence on any approving of the Convention as a whole. In making comments herein on each Article of the Portofino draft Convention we elucidate our views on various provisions that at present appear to us to be capable of being improved by change. Where we are concerned with changes of substance, we have included draft texts to show our proposed amendements.

We make the suggestion that a new Article might be incorporated to provide for the use by Contracting States of a uniform mortgage document for registration purposes, with a specimen form being scheduled to the Convention text. The aim here is to avoid the undue disclosure of private business that could result from the public inspection of instru-

ments filed with a registrar (v. Article 1 b of the Portofino text), where in some jurisdictions the « instrument filed » may be the actual mortgage contract embodying by reference and « as fully as if set out » a building contract, a loan agreement, a charterparty and a variety of ancillary and subsidiary documents.

Article 1

The aspect of « undue disclosure » that arises under the sub-paragraph of the general remark immediately preceding.

Article 2

There would appear to be considerable doubt that the provisions of sub-paragraph 1 could be acceptable to the Governments of many countries; a mortgage securing a small ad hoc permanent loan from any foreign lender would have the effect of forcing the country of registration to both imprison and keep custody of the ship within its registry, a situation which would constitute an encroachment upon sovereignty.

Recognizing the interest of the bona fide mortgage lender, the following draft amendment is proposed.

Portofino Text

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.

Canadian proposed admendment

Other than as provided in paragraph 3 of Article 11, whenever an application for deregistration is not accompanied by an endorsement from each registered holder of a mortgage or hypothec, the registrar shall give to each such holder a notice of the application to deregister and allow 30 days thereafter before acting upon the application.

Some difficulty may arise over the duty which the last sentence of sub-paragraph 2 impose upon the *registrars* to rule upon and declare in their certificates, the priority inter se of the mortgages and hypothecs registered against a vessel.

The desirability of the provision is manifest but in practice the resulting delay through the imposed need for co-operation between the registrar and the Department of Justice of his country could have, in practice, the effect of completely destroying the shipowner's reasonable freedom to dispose of his property.

The Canadian Association cannot dispel its doubts as to the practicability of these provisions as to establishing « priority » in sub-paragraphs 2 and 3 of this Article 2.

Article 3

This appears to be satisfactory if the « priority » problem in Article 2 (paragraphs 2 and 3) is resolved in the manner proposed; otherwise for transferred ships there would be a ranking as in the country from which the ship has been transferred and *not* as in the new country of registration.

Article 4

As regards the item (ii), where pilotage is in so many places just optional, non official, industry-controlled and the like, it should not be included.

The Canadian Association favours the ranking of the above item (ii) to fifth place with the present items (iii), (iv) and (v) moving up to become (ii), (iii) and (iv).

The closing sentence of this Article 4 seems like one of those dilutions of the strength of the mortgagee's position; it seems like an attempt to weave a wider web in which the shipowner can become entangled. Other than demise chartering and managing or operating for the Owner or demise charterer, all chartering and all so called managing or so called operating of a vessel are simply variations of carriage contracts made by the Owner, i.e. such charterers, managers of operators are merely the « shipper » in one of his forms and Owners cannot in equity be burdened with liens on their ships for third party claims upon their shippers. It is equally unjustifiable for the ship to become the security for claims by third parties against the shipowner's shipper, whether this shipper makes himself a charterer or stays as a « mere » bill of lading holder. The following change is proposed :

(Final sentence)

Portofino text

The word « Owner » mentioned in this Article shall be deemed to include the demise or other charterer, manager or operator of the vessel.

Canadian Proposed Amendment

The word « Owner » mentioned in this Article shall be deemed to include any demise charterer and any manager or operator acting for the Owner or demise charterer.

Article 5

Does not the preservation achieved by the salvor, from which all benefit, need to be rewarded ? A change in paragraph 2 is suggested as follows :

Portofino text

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

Canadian
Proposed Amendment

The maritime liens set out in Article 4 shall rank in the order listed, except that claims under sub-paragraph (iv) of Article 4 shall take priority of rank over claims under sub-paragraph (i) to (iii) of Article 4 which accrued prior to the Salvage or General Average Act.

Also, should not the final sentence of sub-paragraph 4, also refer to salvage ?

Article 6

No comment.

Article 7

The sub-paragraph 1 will require a change similar to that proposed for the final sentence of Article 4 and for the same reasons.

Article 8
(Paragraph 1)

The intended meaning of paragraph 1 may become clearer by a re-drafting.

The question does arise whether a 2 year period is fair as regards Salvage and General Average. For General Average particularly, where the Owner declares the General Average and requires the cargo to provide cash or security before he will release it, any sacrificed cargo will not be paid in full if the Owner withholds the ship's contribution to the General Average fund. General Average adjustments often take more than 2 years to complete and the maritime lien of the sacrificed cargo upon the ship would then be extinguished. Granted that it may be valuable to seek to speed up Salvage and General Average cases, the 2 years time does seem a little short.

Article 9

No comment.

Article 10

No comment.

Article 11
(Paragraph 3)

The words « and paragraph 2 of this Article » should surely be omitted. There cannot be a just case for depriving the purchaser of proper commercial use of the vessel (that he has bought at a forced sale) once he has parted with his money in payment of the price; it cannot reasonably be asked that he should wait until the judicial distribution of the avails of the sale amongst the claimants thereon.

If the purchaser is alien to the country of registration then deregistration would become mandatory in most countries due to lack of qualification.

Article 12

The Canadian Association is divided in its views as to whether this extension to vessels under construction is really sensible and therefore no specific comment.

Article 13

No comment.

Article 14

No comment.

ITALIAN MARITIME LAW ASSOCIATION

REPORT

The Third Report of Mr. Jan Asser and the « Portofino Draft » have been carefully examined by a Committee consisting of prof. Raffaele Albano, prof. Francesco Berlingieri, prof. Antonio Lefebvre d'Ovidio and prof. Plinio Manca; the recommendations of this Committee, which have been approved by the Italian Maritime Law Association, are the following :

Article 1

In the first line in the English text the word «hypothèques» should be used instead of « mortgages ».

Article 2

In the second paragraph at lines 4 and 5 the words « the new registration is effected » should be replaced by the words « the registration in such other Contracting State is effected ». The purpose of this amendment is only to make quite clear that the (new) registration which causes the deletion from old registrar is the announced registration in the Contracting State.

Article 4

In paragraph 1 (iii) social insurance premiums should be added.

Article 11

In paragraph (1) (a) the words « has been arrested » should be deleted and the word « is » should be added. In fact whilst the past tense is incorrect, the present tense (is under arrest) would not avoid all problems, since in some countries the arrest is not always a preliminary step to the forced sale. It is felt that the fact that the vessel is in the jurisdiction of the Contracting State is sufficient.

In paragraph (3) at line 2 the words after « of a forced sale », the words, « in a contracting State » should be added. It is felt that this article should deal only with forced sales in Contracting States.

Article 14

The provision that the new Convention shall replace and abrogate the 1926 Convention in respect of the relations between States which ratify such new Convention or accede to it is not clear. If in fact the Contracting States shall, according to Art. 13 of the Portofino Draft, apply the provisions of the new Convention to all sea-going vessels irrespective as to whether they are registered in a Contracting State or in a non-Contracting State, after the coming into force of the new Convention the old one cannot be applied any more. It follows that the Contracting States which have ratified or adhered to the 1926 Convention must denounce it in compliance with its Art. 21 and the new Convention will take effect as from the time when the denunciation will operate, namely after one year.

Rome, 12th April 1965.

Giorgio Berlingieri
President

ASSOCIATION SUISSE DE DROIT MARITIME

REPONSES

Remarques générales

Dans ses articles 4 et 5 le projet essaye de trouver un compromis acceptable entre les intérêts du crédit hypothécaire et ceux des créanciers des événements maritimes dont les privilèges auront la priorité sur les hypothèques ou mortgages. Nous regrettons toutefois que le projet n'ait pas pu restreindre la liste des privilèges primant les hypothèques, parce que nous considérons que tout renforcement possible du crédit hypothécaire serait dans l'intérêt du commerce maritime.

Le projet ne se prononce d'autre part pas sur l'assiette des hypothèques et privilèges, spécialement les indemnités d'assurance et indemnités dues par des tiers pouvant être grevées par ces droits. Il paraît être indispensable que l'assurance-corps soit réservée comme garantie pour les créanciers hypothécaires. La Convention devrait régler le sort de ces accessoires juridiques du navire qui peuvent se substituer à lui selon les législations applicables. Une uniformité serait hautement désirable. Nous proposons donc qu'il soit tenu compte de ce problème dans la rédaction définitive de la Convention. Si l'assiette des privilèges et hypothèques ne devaient pas faire l'objet d'une règle uniforme dans la Convention, celle-ci devrait tout au moins contenir une disposition de droit international privé pour clarifier selon quel droit national les effets d'une hypothèque ou d'un privilège seront jugés. On pourrait par exemple prévoir que les effets d'une hypothèque seront régis par la loi du pays d'immatriculation et ceux d'un privilège par la loi du pays dans lequel l'exécution forcée aura lieu, sans que les effets des privilèges selon cette loi puissent nuire aux hypothèques au-delà des règles de la Convention. Sans une telle disposition l'article premier sur la reconnaissance internationale d'une hypothèque restera incomplet et difficile à appliquer.

Article 2

La procédure prévue à l'alinéa 2 et 3 de l'article 2 n'est pas mûrement réfléchie. Nous donnons la préférence à la proposition allemande contenu dans le document HYPO 36. L'alinéa 2 prévoit seule-

ment le cas du transfert d'un navire grevé d'une hypothèque d'un pays dans un autre, mais non le cas d'un navire non grevé de tels droits, pour lequel la Convention devrait également prévoir que l'immatriculation sur un nouveau registre d'un Etat contractant ne pourra être effectuée que contre production d'un certificat de radiation dans le registre précédent. Ainsi on évite toute double immatriculation et on garantit en même temps le droit de propriété peut-être plus important encore que celui d'un créancier.

Entre l'alinéa 2 et l'alinéa 3 il existe une certaine incongruité. D'un côté on ne permet une nouvelle immatriculation que contre présentation d'un certificat de radiation, et d'autre côté on ne permet pas la nouvelle immatriculation que si les hypothèques sont acceptées pour inscription sur le nouveau registre de l'autre Etat contractant. Si un certificat de radiation est présenté, cela veut dire, que selon l'alinéa premier les titulaires des hypothèques aient consenti à la radiation du navire tale quale, et non sous réserve que leurs droits seront repris sur le nouveau registre. En outre il y a des législations selon lesquelles les droits inscrits sont caducs par le fait de la radiation du navire lui-même. Comment de tels droits disparus pourront-ils être acceptés pour une nouvelle inscription ? Quid au cas où le préposé du nouveau registre n'accepte pas l'inscription p.ex. d'une hypothèque constituée selon un autre droit national, mais qu'il se trouve en présence d'un certificat de radiation en vertu de l'alinéa 2 ? Quelle transformation juridique de l'hypothèque sera nécessaire ? Pour une transformation faudra-t-il le consentement du titulaire et du débiteur ? Les créanciers hypothécaires ne donneront enfin leur consentement à la radiation que s'ils ont déjà la garantie que leur droit sera de nouveau inscrit sur le nouveau registre avec les mêmes effets. Et si le préposé du nouveau registre refuse l'inscription contre toute prédiction ? Il y a aussi des législations qui pour l'immatriculation d'un navire venant de l'étranger prévoient une procédure de publication préalable de la requête d'inscription pendant un délai plus ou moins long. Les 30 jours prévus à l'alinéa 2 seront donc certainement trop courts. Ces remarques non complètes mais à titre d'exemples devraient démontrer que le système et la rédaction de l'article 2 sont à remanier, de préférence selon la proposition allemande citée.

Article 8

La période pour l'extinction des privilèges devrait être ramenée à une année. Il est dans l'intérêt du crédit hypothécaire ainsi que de tout acheteur d'un navire que la période d'insécurité sera aussi courte que possible.

Les cas d'interruption de la période d'extinction du privilège sont limités à la saisie-exécutoire (parce qu'elle doit mener à une vente forcée, et la saisie-conservatoire ne suffit donc pas) et à la faillite

ou à la liquidation forcée. Ceci exigerait du créancier de faire toujours les démarches juridiques les plus rigoureuses, seulement pour interrompre le délai de prescription. Cette solution est critiquable. Il faudrait prévoir qu'une simple action judiciaire ou poursuite selon la loi du lieu de la procédure devrait avoir le même effet. Deux cas d'extinction du privilège sont en outre omis : la prescription de la créance garantie et l'extinction de la créance elle-même, étant donné que le privilège ne pourra avoir qu'un effet accessoire. Si selon la loi applicable en espèce une créance se prescrit dans 6 mois ou une année (si pour les privilèges on garde les 2 ans) il serait inconcevable que le privilège garderait ses effets malgré que la créance garantie ne pourra plus être adjugée.

Les cas proposés pour sauvegarder le privilège malgré le laps de temps ne tiennent ensuite pas compte du fait qu'il faut toujours une action quelconque du créancier qui veut éviter l'extinction ou la prescription. Le créancier qui ne réagit pas dans le délai prévu par la loi est présumé de renoncer à son droit. Cet effet connu ne pourra pas être écarté par une action d'un autre créancier plus vigilant. Le projet parle tout simplement de la saisie, de la faillite et de la liquidation forcée, sans dire que seul le créancier qui a demandé l'ouverture de ces procédures pourra se prévaloir de la prolongation du privilège. Il serait inconcevable qu'un créancier qui ne s'intéressait plus à son privilège et le laissait éteindre puisse profiter qu'un autre créancier ait encore demandé l'ouverture de la faillite par exemple une journée avant l'extinction du privilège du premier créancier. Il faut donc que tout créancier qui veut éviter l'extinction de son privilège agisse lui-même en justice. Il ne faut pas seulement penser au débiteur, mais aussi aux autres créanciers spécialement hypothécaires qui ont un intérêt à ne pas voir leur créance exposée à la concurrence ou même à la priorité d'autres créanciers qui n'ont pas agi. Si un créancier vigilant ouvre une action pour la sauvegarde de son droit et continue après jugement la procédure d'exécution, il risquerait par sa vigilance qu'il fasse interrompre le cours de la prescription pour d'autres créanciers qui n'ont pas agi. L'article 8 tel qu'il est conçu ne pourra donc pas trouver l'approbation.

Article 11

A l'alinéa 3 il est généralement prévu que le navire sera radié dans le registre du pays d'immatriculation si une vente forcée a eu lieu dans un autre Etat contractant. Cette règle n'est pas complète. D'abord la radiation seulement sur demande de l'acheteur sans preuve sera difficile. Il faudrait tout au moins la présentation du procès-verbal d'adjudication. Ensuite la vente forcée peut avoir lieu en vertu d'un jugement qui ne sera jamais exécuté dans le pays d'immatriculation,

soit à la base d'une convention existante entre les deux pays sur la reconnaissance et l'exécution des jugements, soit qu'il s'oppose à « l'ordre public » de l'Etat qui devrait le reconnaître. Si un Etat n'est pas obligé à reconnaître et à exécuter un jugement condamnant le propriétaire du navire au paiement d'une somme d'argent, cet Etat ne pourra a fortiori pas être contraint à reconnaître les effets de l'exécution du jugement dans un autre pays c'est-à-dire procéder à la radiation de l'immatriculation qui dans plusieurs législations est identique avec la perte de la propriété. Le propriétaire ainsi dépossédé ne pourra plus faire valoir son droit, même si le navire se trouve de nouveau dans la juridiction du pays où il avait été enregistré avant la vente forcée. Le système serait admissible pour la vente forcée pour faire payer un créancier hypothécaire ou privilégié selon la Convention. Mais la Convention parle de tous privilèges et autres charges et personne ne saura pour quelle créance de droit civil ou public un Etat inventera des privilèges possibles selon l'article 6 de la Convention. L'alinéa 3 de l'article 11 parle enfin de toute vente forcée pour n'importe quelle condamnation du propriétaire. Il est donc indispensable qu'une réserve surtout de « l'ordre public » sera insérée dans la Convention.

Association Suisse de Droit Maritime.

Bâle, en mai 1965.

ASSOCIATION HELLENIQUE DE DROIT MARITIME

OBSERVATIONS

I. OBSERVATIONS GENERALES

L'Association Hellénique de Droit Maritime a longuement examiné le projet de Convention Internationale concernant les hypothèques maritimes et les privilèges (projet de Portofino).

Au cours de cette étude, les membres de cette Association ont beaucoup apprécié le travail assidu que les membres du Sous-Comité International chargés de la rédaction du projet ont fourni. Néanmoins, l'Association Hellénique ne se trouve guère d'accord avec les principes énoncés dans le dit projet.

Ce projet favorise de loin les privilèges maritimes, institution qui, déjà, à l'époque de la Convention de 1926, a été considérée comme une forme de sûreté réelle, vraiment périmée, surtout à cause de son caractère occulte qui peut faciliter des pratiques abusives.

L'Association Hellénique avait indiqué, dès son premier rapport, que la législation grecque récente, (article 205 du Code de Droit Maritime Privé 1957), avait adopté un nombre de privilèges aussi restreint que possible. Elle estime que la restriction des privilèges répond aux impératifs du droit de notre ère et considère que l'amendement de la Convention de 1926 ne peut amener qu'à la limitation du nombre des privilèges, à l'instar du dit article 205 du Code Hellénique. Pourtant, elle serait disposée, dans un esprit de coopération internationale, à reconnaître des privilèges et à examiner quelques cas particuliers. Mais elle n'est de toute manière pas disposée à contribuer à l'alourdissement du fardeau des privilèges dont l'effet immédiat sera de diminuer la valeur réelle de l'hypothèque.

Par contre, les dispositions de la Convention qui régissent les hypothèques sont plus ou moins insuffisantes et doivent, par conséquent, être reconsidérées.

En conclusion, l'Association Hellénique ne considère pas que la révision de la Convention de 1926 est pour le moment mûre. La Convention de 1926 est dans son ensemble beaucoup plus satisfaisante que le projet de Portofino. Il vaut donc mieux retenir l'ancienne convention

que procéder à une révision sans la certitude que la nouvelle convention donnera des solutions plus équitables que l'ancienne.

Le sujet de révision de la Convention de 1926 peut être amplement discuté lors de la prochaine Conférence du Comité Maritime International à New York, mais il faudra éviter de prendre des décisions définitives.

II. OBSERVATIONS SUR LES DIVERSES DISPOSITIONS DE LA CONVENTION

1. *Utilisation des termes « hypothèque » et « mortgage ».*

Relativement à l'utilisation jointe des termes « hypothèque » et « mortgage », il est à noter que malgré les différences de détail qui existent entre le mortgage du système juridique des pays anglo-saxons et l'hypothèque des pays de tradition romaine, ces deux institutions sont identiques quant à leur traits principaux. Par conséquent, le terme français « hypothèque » peut normalement être traduit en anglais par le terme « mortgage » et vice-versa. L'utilisation du double terme dans le texte de la Convention n'est pas nécessaire et peut en outre provoquer des interprétations erronées.

A ce propos, il est à noter que l'existence, en droit anglais, d'une autre institution appelée « hypothecation » et dont la nature juridique est différente de celle du mortgage, pourrait éventuellement donner lieu à des interprétations erronées.

Il est donc nécessaire d'utiliser, dans la Convention, une terminologie plus exacte, à savoir « hypothèque » dans le texte français et « mortgage » dans le texte anglais.

D'ailleurs l'utilisation de cette double terminologie pourrait provoquer des difficultés considérables de traduction en d'autres langues, lors de la procédure de ratification.

D'autre part le danger de confusion, que la double terminologie vise à éliminer, pourrait facilement être écarté par l'insertion, dans le texte de la Convention, d'une définition de l'hypothèque et du mortgage, à l'instar de l'article 1 du projet norvégien.

2. *Article 1er.*

Le premier paragraphe de cet article n'accorde aux hypothèques maritimes qu'une reconnaissance internationale de leur force exécutoire. On pourrait pourtant espérer le maintien du régime de l'article 1 de la Convention de 1926 qui considérait ces hypothèques comme valables et respectées, attributions qui dépassent bien la force exécutoire. Et cela, sans méconnaître que la force exécutoire d'une hypothèque est d'une importance primordiale.

L'article 1 pourrait donc être libellé de la manière suivante :

« Les hypothèques sur un navire, constituées et inscrites, conformément aux dispositions de la loi dont le navire bat pavillon, sont reconnues dans tous les Etats Contractants ».

3. Mais la reconnaissance internationale des hypothèques n'est point suffisante. Après l'article 1^{er}, qui précise les conditions de reconnaissance internationale des hypothèques, doivent être insérés des articles contenant des dispositions visant les points suivants :

a) D'abord, sur l'étendue des droits des créanciers hypothécaires et les relations entre eux. A ce propos, la solution consiste dans le renvoi explicite de la Convention à la loi du pavillon. Mais le droit du créancier hypothécaire, sur l'indemnité d'assurance du corps du navire, doit être internationalement reconnu.

b) Ensuite, étant donné que le caractère mobile du navire rend la publicité de l'hypothèque par l'inscription au registre du port d'attache insuffisante, il faut prévoir que, parmi les documents de bord, le capitaine devra conserver un document attestant le nombre des hypothèques inscrites sur le navire, ainsi que le montant pour lequel chacune d'elles avait été inscrite (voir article 42 du Code Hellénique de Droit Maritime Privé et les articles 15 et 17 de la loi hellénique sur les Hypothèques de Préférence).

c) La force exécutoire est un troisième point que la Convention Internationale doit traiter. Il pourrait être admis que ces titres exécutoires émis en conformité avec les dispositions de la loi du pavillon par rapport à une hypothèque légalement constituée et inscrite, soient reconnus exécutoires dans tous les Etats Contractants, sans la procédure d'exécatur ou sans une intervention préalable des autorités judiciaires de l'Etat du lieu de l'exécution.

4. Article 2.

La disposition du premier paragraphe de l'article 2 visant le cas de changement de pavillon d'un navire grevé d'hypothèques doit être complétée de manière à prévoir que le consentement des créanciers hypothécaires sera fait par écrit.

Les dispositions des paragraphes 2 et 3 de ce même article sont satisfaisantes.

5. Article 3.

Ainsi qu'il a été antérieurement exposé, une nouvelle disposition doit être insérée, après l'article 1^{er}, stipulant que l'étendue des droits des créanciers hypothécaires ainsi que les relations entre eux seront régis par la loi du pavillon. Si cette suggestion est retenue l'article 3 ne sera plus nécessaire.

6. Les dispositions relatives aux hypothèques maritimes doivent être complétées par un dernier article disposant qu'en cas de saisie d'un navire, à partir de la notification de cette saisie au Conservateur des Hypothèques (voir infra sous article 10), toute inscription d'hypothèque est nulle.

7. Article 4.

a) La critique de cet article a été virtuellement faite dans les observations générales, mais on doit répéter ici qu'il ne répond pas aux besoins contemporains. Cet article est louable en ce qui concerne l'élimination de certains privilèges reconnus par la Convention de 1926, il ne l'est pas, au contraire, en ce qui concerne l'adoption de nouveaux privilèges.

b) Surtout l'élargissement des privilèges du 4^e rang de la Convention de 1926 ne répond à aucun besoin. Tous ces cas sont actuellement assurés et l'adoption d'un tel privilège ne serait, en application de l'article 9 du projet, qu'un privilège au profit des assureurs, ce qui n'est conforme ni au but, ni à la mission sociale des assureurs, dont les droits par la voie de la substitution, vont prévaloir sur ceux des autres créanciers et surtout sur des créanciers hypothécaires.

c) D'ailleurs, l'adoption des nouveaux privilèges aura comme résultat de gêner les entreprises maritimes, dont les besoins accrus de crédits ne pourraient être satisfaits à cause de l'incertitude de la valeur réelle de l'hypothèque.

d) Par contre, le fait que d'après le projet, les privilèges ne s'exercent plus sur le fret, constitue un progrès considérable. Il serait bien souhaitable que ce progrès soit complété par une disposition établissant que les privilèges ne s'exercent pas sur l'indemnité d'assurance.

e) Relativement à l'élimination des privilèges relatifs aux taxes et aux charges sociales, cette élimination, d'ailleurs très juste, risquerait de compromettre l'adoption du Projet de Convention, presque par tous les gouvernements.

f) Enfin, du point de vue de la rédaction de cet article, il est à noter que le renvoi du privilège, relatif aux frais judiciaires, à un article, n'est pas à retenir, tout simplement parce que cette solution ne donne pas à première vue le nombre exacte des privilèges.

8. Article 5.

Dans le 4^e paragraphe de cet article pourrait être retenue la disposition du paragraphe 3 de l'article 3 de la Convention de 1926, à savoir : « Les créances se rattachant à un même événement sont réputées nées en même temps ».

9. Article 6.

L'article 6 vise un problème très difficile. On doute que la solution donnée soit la meilleure possible. Ce sujet doit donc être reconsidéré.

10. Article 7.

a) Le 1^{er} paragraphe de cet article élargit d'une manière inadmissible l'étendue des privilèges. Il n'y a aucune raison valable pour que les navires soient grevés des privilèges pour des obligations des locataires ou des affréteurs du navire. D'autre part les termes utilisés, tels que l'armateur gérant, exploitant, ne sont pas précis et doivent être éliminés.

b) Le 2nd paragraphe régissant le cas de changement de propriétaire ou d'immatriculation doit être complété par une disposition statuant que dans un tel cas le créancier privilégié doit dans un délai extinctif très court, par exemple trois mois, intenter une action pour reconnaissance de son privilège.

11. Article 8.

a) Cet article aussi, élargit par comparaison à la Convention de 1926, la portée des privilèges dans le temps, sans raison valable. Le délai d'un an prévu par la Convention de 1926 est amplement suffisant pour la sauvegarde des droits des créanciers privilégiés.

b) D'ailleurs, les cas de faillite ou de liquidation forcée ne doivent pas constituer par eux-mêmes des cas d'interruption du délai. L'interruption doit se faire par l'intervention de l'intéressé à la procédure de la faillite ou de la liquidation forcée.

12. Article 9.

Cet article aussi est libellé de manière à élargir la portée réelle des privilèges. L'Association Hellénique s'oppose à cette disposition. Le privilège visant à la protection de quelques intérêts d'importance sociale ne peut pas faire l'objet d'une transaction quelconque.

13. Article 10.

a) Cet article traite tout de suite de la vente forcée d'un navire. Mais, dans presque toutes les procédures du monde entier, la vente forcée est précédée de la saisie du navire à vendre, fait auquel presque toutes les procédures attachent une série de conséquences, telles que privation du droit d'aliénation du navire et autres. Il est donc nécessaire que la saisie soit notifiée dans un certain délai, au Conservateur du Registre auquel le navire saisi ou arrêté est immatriculé. D'autre part, le mépris de ce délai pourrait être sanctionné par la nullité de la saisie.

b) Ensuite vient la question de la notification de vente forcée. La notification prévue par l'article 10 du projet « à tous les titulaires

de privilèges maritimes » favorise de nouveau les titulaires déjà assez favorisés, mais risque de créer des nullités de la procédure de vente, étant donné le caractère occulte des privilèges. Les titulaires des divers privilèges ne sont et ne peuvent pas être connus par la personne qui a l'initiative de la vente forcée.

c) D'ailleurs l'obligation de notifier la vente forcée aux créanciers hypothécaires, ne peut être retenue que pour ceux des créanciers dont les titres ont été enregistrés avant l'enregistrement de la saisie. (Voir supra sub-par. 5).

14. *Article 11.*

a) Relativement à l'alinéa 1, il est à noter que la phrase « autres charges » peut donner lieu à des interprétations erronées. Dans le cas où, par cette phrase vague, on vise les privilèges éventuellement reconnus par une législation intérieure, en application de la disposition de l'article 6 du projet, elle pourrait être remplacée par la phrase « privilèges de n'importe quelle nature ». Si par contre elle vise à d'autres saisies éventuelles, il faudra les nommer.

b) Par ailleurs, la phrase frais taxés par le Tribunal risque de provoquer des difficultés dans les pays dont la procédure a confié la taxation des frais à une autre autorité non judiciaire, telle que la personne par devant laquelle s'effectue la vente. Cet inconvénient pourrait être évité si ce paragraphe était rédigé de la manière suivante :

« Les frais taxés par le tribunal et les frais provoqués par la saisie ».

15. *Article 14.*

Le contenu de cet article doit être réexaminé de manière à éviter les problèmes qui peuvent surgir de l'application parallèle des deux conventions.

Le Secrétaire
T.B. Karatzas
Avocat

INTERNATIONAL SUBCOMMITTEE

FOURTH REPORT

1. On behalf of the International Subcommittee the undersigned begs to submit to the New York Conference the attached draft of an International Convention relating to Maritime Liens and Mortgages (hereinafter to be referred to as « the Antwerp draft »).

The Antwerp draft is the result of the proceedings of two meetings of the International Subcommittee; it was preceded by two drafts, the « Oxford » draft and the « Portofino » draft. The first of these two drafts (the Oxford draft) was prepared by a Working Group which met in Amsterdam in December 1963 and at Oxford in April 1964. This draft was subsequently submitted to the International Subcommittee which discussed its contents at its first meeting at Amsterdam on the 19th and 20th June, 1964, and appointed a Drafting Committee which subsequently revised the text of the Oxford draft in accordance with the decisions of the International Subcommittee. This revised draft (the Portofino draft) was in its turn considered in great detail by the second meeting of the International Subcommittee held at Antwerp on the 4th June, 1965 and once more referred to the Drafting Committee. On the next day, June 5th, 1965, the Drafting Committee met and amended the wording of the Portofino draft in accordance with the decisions of the meeting held on the previous day, thus producing the Antwerp draft.

2. At this point, it would seem useful to recall in a few words the main reasons which induced the Bureau Permanent to decide, at its meeting held in Stockholm in June 1963, to put this topic on the Agenda of the Comité Maritime International. Those reasons were two-fold, namely, *firstly* the fact that so far only a relatively small number of countries had ratified or had adhered to the 1926 Convention relating to Maritime Liens and Mortgages, and *secondly*, the increased need for the financing of ships and especially of new buildings which need requires a strengthening of the position of holders of maritime mort-

(*) HYPO - 47 French translation published in French Edition.

gages and moreover a uniform treatment of such mortgages, if possible on a world wide scale. Since a number of the most important maritime nations, some of which moreover play an important part in the financing of ships, had refused to become a party to the 1926 Convention and a change of attitude on their part was not to be expected, it was felt that either a revision of the 1926 Convention or the drafting of an entirely new instrument in substitution for that Convention would be desirable in the interest both of shipowners and of the financial institutions concerned. Moreover the need for new international legislation in this field was not sufficiently met by the draft Convention relating to Registration of Rights in respect of Ships under Construction adopted in 1963 by the Stockholm Conference of the C.M.I. (hereinafter referred to as « the Stockholm draft »), in as much as its provisions are limited to registered mortgages on and other registered rights in respect of ships under construction and do not apply to maritime liens attaching to ships during the construction period, and therefore do not provide either for the international enforcement of such liens or for their ranking either « inter se » or with respect to such mortgages, or subsequent maritime mortgages effected on and subsequent maritime liens attaching to the vessel when in operation.

3. Already at an early stage it became manifest that most of the national associations which submitted reports, were in favour of preparing a new Convention rather than attempting a revision of the 1926 Convention, which came in for serious criticism not only in non-Contracting States, but also in those countries which had acceded to it (vide the Preliminary Report, doc. Hypo-1 and Hypo-2). Those criticisms were levied both at certain principles underlying that Convention and at many of its articles. The drafting of an entirely new Convention therefore seemed an easier task and, as is hoped, might prove acceptable to a large number of States, including those which had stayed outside the 1926 Convention.

So far, only the Danish Association and in a lesser degree the French Association have expressed the view that there exists no real need for a new convention (doc. Hypo-31 and Hypo-41).

4. At this stage, it may be desirable to make a few remarks of a more general nature, before discussing the several articles of the Antwerp draft.

a) In its report dated March 29, 1965, the Norwegian Association draws attention to the Stockholm draft and proposes that the new draft Convention be geared to the Stockholm draft prior to its presentation to the New York Conference. At the June 1965 meeting of the International Subcommittee the Norwegian delegate stated however

that, as in the view of his Association the Portofino draft conflicted with the Stockholm draft the said proposal was to be understood as a proposal to entirely delete Article 12 of the Portofino draft. After a lengthy discussion, the International Subcommittee rejected the Norwegian proposal and therefore decided to maintain Article 12. On the other hand, a study of the question whether and if so, to what extent the two drafts contain conflicting provisions, and how, in that case, such conflicts could be remedied, would have far exceeded the time available. For that reason, the International Subcommittee decided to set up a small Committee from among its members which was entrusted with the task to investigate this particular problem and report to the Bureau Permanent which, it is understood, will be meeting in New York immediately before the beginning of the New York Conference.

b) Article 3, par. 2 of the International Convention relating to the limitation of the liability of owners of sea-going vessels signed at Brussels on October 10th, 1957, provides that in each portion of the limitation fund referred to in par. 1 of the said Article, the « distribution among the claimants shall be made in proportion to the amounts of their established claims ».

Consequently, when a limitation fund set up in accordance with the 1957 Convention is distributed, all claims against each portion of the fund rank *pari passu* irrespective whether or not they are secured by a maritime lien.

Shortly after the 1957 Convention had been adopted, the question arose whether the said par. 2 of Article 3 is not inconsistent with Article 5 of the 1926 Convention on maritime liens and mortgages, from which latter article it might perhaps be inferred that, in the event that a limitation fund should have been set up, the distribution of such fund will have to be effected with due regard to existing liens. In this connection attention was also drawn to the 1924 Brussels Convention on limitation of liability, which in its articles 6 and 7 refers to the order of liens to be observed in connection with the amount(s) representing the extent of the owner's liability. Pursuant to instructions from the Bureau Permanent the undersigned prepared in March 1963 a preliminary Report with accompanying Questionnaire which however met with little response, only the French, German and Swiss Associations having submitted reports.

When the Working Group referred to above prepared the Oxford draft, the same problem came up for discussion, although otherwise than in the 1926 Convention, the Oxford draft did not contain any reference

to a limitation fund. Nevertheless, in order to prevent from the outside that any incongruity could be considered as existing between the 1957 Convention and the new Convention, the Working Group decided to insert in the Oxford draft a specific provision (article 11 of the said draft), providing that a creditor in respect of whose claims the ship-owner is entitled to limit his liability may not rely on a maritime lien securing such claim once a limitation fund has been constituted.

However, the Amsterdam meeting of the International Subcommittee decided to entirely delete article 11 of the Oxford draft, while a Yugoslavian proposal to reinstate in the new Convention a provision similar to the said Article 11 of the Oxford draft, was defeated by a unanimous vote of the Antwerp meeting of the said Subcommittee.

The undersigned thought it proper to draw the attention of the New York Conference to this particular problem, although for the reasons set out above, the problem discussed here will have lost its importance, once the new Convention on Maritime Liens and Mortgages will have come into force, anyway for those States who will have become parties to that Convention.

Of course, the problem would remain open, in the event that a new Convention along the lines of the Antwerp draft should not be adopted, and moreover in the event that such Convention should be adopted, in so far as States having acceded both to the 1926 Convention and to the 1957 Convention, would not become parties to the new Convention. However, in both cases the problem would be *outside* the topic now under review and therefore need not be discussed in connection therewith.

c) With the exception of the French Association, all national associations which submitted reports and which were represented at the meetings of the International Subcommittee, expressed their approval with the general system both of the Oxford draft and of the Portofino draft ⁽¹⁾. The French Association, however, takes a different view which is the opposite of the one expressed by its delegate to the Amsterdam meeting of the International Subcommittee when the Oxford draft came up for discussion. In its second Report (doc. Hypo-41) this Association seems to agree tentatively with the principle of a new draft convention being prepared, provided that such draft be, anyway provisionally, confined to setting up an international regime of maritime mortgages. The said second report argues that the problem of the recognition of maritime mortgages is distinct from that of the recognition of maritime liens and from that relating to the respective ranking as

(1) Subject to the view taken by the Danish Association mentioned in par. 3 above.

between such mortgages and liens; that for the time being the efforts of the C.M.I. should be limited to reaching international agreement on the international recognition of maritime mortgages only; that the French Association fundamentally objects to the provisions of Article 4 of the Portofino draft, but that in its opinion it is not excluded that at some future date it may prove possible to reach international agreement also with respect to maritime liens.

In order to facilitate agreement, the French Association attached to its second Report a draft-convention relating only to maritime mortgages.

At the outset of the Antwerp meeting of the International Subcommittee it was decided not to discuss the French draft; the reasons for that decision being :

i) that already at its Amsterdam meeting the International Subcommittee had decided to prepare a draft-Convention covering both mortgages and liens and that, in consequence, the French proposal was out of order, anyway at this stage of the proceedings;

ii) that the system of the French draft varied considerably from that of the Portofino draft (in so far as the provisions of the latter related to maritime mortgages) and that the French draft introduced certain new concepts which were foreign to those of the Portofino draft;

iii) that it was feared that a discussion of the French draft would lead to confusion and moreover would take up the time required for a full discussion of the Portofino draft;

iv) that the said decision could not in any way prejudice the right of the French Association to submit its proposal to the Plenary Conference at New York.

d) A final remark relates to the important question concerning the number of maritime liens which ought to be given international recognition under the new Convention.

At this point it may be useful to recall one of the main purposes that actuated the decision to prepare a new draft convention, namely the need of strengthening the legal position of holders of maritime mortgages. It may be argued that this would entail and justify a restriction of the number of maritime liens, but when comparing the maritime liens listed in Article 4 and the so-called « law costs » mentioned in Article 11, par. 2, of the Antwerp draft with Article 2 and of the Protocol of signature attached to the 1926 Convention, it may be asked whether this purpose is being attained.

This comparison shows that, while in Article 4 of the Antwerp draft, the category of claims mentioned in Article 2, par. 5 of the 1926 Convention, has been omitted, on the other hand the said Article 4

lists the following claims to which the 1926 Convention does not grant a maritime lien, namely :

i) claims in respect of loss of life of or personal injury to *all* persons whether on board or not on board the vessel, while in Article 2 par. 4 of the 1926 Convention the corresponding lien is limited to claims in respect of personal injury to passengers and crew;

ii) tort claims in respect of loss of or damage to *all* property whether on board or not on board the vessel, while the corresponding provision of the 1926 Convention limits the so-called property claims to those caused by a collision or other accident of navigation, to those with respect to damages caused to works forming part of harbours, docks and navigable ways and finally to claims with respect to loss of or damage to cargo or baggage.

The several reports presented by national Associations and the proceedings of the meetings of the International Subcommittee show that even more maritime liens than those actually listed in Article 4 have been proposed, but were ultimately rejected by those meetings. It is not excluded that amendments of that nature will be submitted once more to the New York Conference. It may be asked if such attempts, if successful, would not defeat the main object of the new Convention.

5. *The Antwerp draft.*

A comparison between the Portofino draft and the Antwerp draft shows that many of the changes effected concern matters of drafting and as such do not call for special comments. The same applies to the reversal of the order of articles 2 and 3 as appearing in the Portofino draft. Further it is not intended to deal in this Report with the large number of amendments to the Portofino draft which were proposed at the Antwerp meeting of the International Subcommittee, but were rejected by that meeting, as a discussion of those amendments would exceed the scope of this Report.

Article 1

The only change of substance consists of the reference to mortgages to bearer which has been inserted in sub-par. c). In consequence, those countries, the national law of which allows a mortgage to bearer to be registered, will not be forced to change their legislation when ratifying the new Convention.

An amendment to the effect that only « contractual » mortgages should be recognised under the Convention, was defeated. As the

wording of Article 1 reads, it covers also the so-called « hypothèque légale » and the « hypothèque judiciaire » in so far as existing in the legislation of certain countries, provided of course that such mortgages comply with the requirements of Article 1.

Article 2

(Article 3 of the Portofino draft)

No change.

Article 3

(Article 2 of the Portofino draft)

The only changes effected are changes in drafting.

Articles 4, 5 and 7, par. 1

The following changes of substance were decided upon :

a) In par. 1 iii) corresponding to par. 1 iv) of the Portofino draft, and in par. 1 iv) corresponding to par. 1 vi) of the Portofino draft, the words « in connection with the operation of the vessel » have been inserted, while moreover those two sub-paragraphs specify that the claims referred to therein are secured by a maritime lien only if they are « against the owner » as defined in the last sentence of par. 1, namely the shipowner or the demise of other charterer, manager or operator of the vessel.

The insertion first mentioned was deemed necessary as without this qualification loss of life and personal injury claims and tort claims in respect of property would have been secured by a maritime lien, even although the loss of life, personal injury or loss of or damage to property should have occurred without any connection with the ship or its operation.

As a result of the insertion of the words « in direct connection with the operation of the vessel » the further qualification appearing in the Portofino draft, namely that the loss of life, personal injury and loss of or damage to property must have been caused by the owner or by a person in the service of the vessel for whom the owner is responsible, became superfluous and was therefore deleted.

The insertion of the words « against the owner » (as defined) was deemed to be necessary, in order to prevent a construction according to which all the claims listed in the said sub-pars. iii) and iv) should be secured by a maritime lien, even those in respect of which no liability would attach to the owner (as defined). This latter qualification is not needed with respect to the other claims listed in par. 1) as such claims are « per definitionem » against the shipowner or possibly against the other persons mentioned in Article 7, par. 1).

b) The International Subcommittee decided to change the respective priorities of the maritime liens « inter se » as set out in Article 5 of the Portofino draft, which decision necessitated changes in the order of listing as appearing in Article 4 of the said draft. According to this decision claims for wages etc. of Master, Officers and crew are given the highest priority, the reason being that those claims are neither insured nor insurable, while claims for wreck removal (referred to as « wreck raising » in the Antwerp draft) together with claims for salvage have been listed in the fifth category after the property claims. Finally, claims for contribution in general average have been removed to the sixth and last category.

According to Article 5 of the Antwerp draft, all liens rank in the order listed in Article 4. However, with the one exception that when liens securing claims for salvage and wreck-raising concur with other maritime liens, the liens first mentioned shall take priority over all such other liens, whenever the salvage or wreck-raising operations concerned will have been performed *after* such other maritime liens have attached to the ship, the reason being that in that case the holders of those other maritime liens will have benefited by the salvage or wreckraising whereby their security will have been (partly) preserved.

Article 6, par. 2

No change of substance except that for purposes of clarification the words « and neither the delivery of the vessel to the purchaser in a forced sale » were inserted at the end of this paragraph.

However, four national associations, namely those of Denmark, Great-Britain, Japan and the Netherlands, strongly objected against the prohibition of all rights of retention or possessory liens securing the claims of a shipyard. They contended that, anyway in so far as claims for repairs are concerned, some protection should be granted to the yard, for instance by granting à maritime lien with respect to that particular claim, as in most cases the yard is required to carry out the repairs at once and therefore without in fact having had an opportunity of asking for and obtaining security from the shipowner.

Article 7

No change.

Article 8

The substantive rule as intended to be expressed by Article 8 of the Portofino draft has been maintained but the wording of that article was neither clear nor correct and needed to be changed.

As the article now reads, it provides for an extinction of all maritime liens after a two years' period unless prior to the expiry of that period the ship should have been arrested, such arrest leading to a forced sale, while, except for the case of the arrest and sale of the ship mentioned above, the two years' period is not subject to interruption.

Similarly, no suspension of the two years' period of extinction will be allowed, except if during the two years' period the lienor should have been *legally* prevented from arresting the vessel, owing to the vessel having been requisitioned or the shipowner being bankrupt or in compulsory liquidation.

Those three events, namely requisitioning, bankruptcy and compulsory liquidation will make it impossible for the lienor to arrest the vessel within the territory of the State in which it has been requisitioned (anyway in case of a requisitioning for title) or in which the shipowner has been declared bankrupt or has been put into compulsory liquidation. Not to allow in that case a suspension of the two years' period would amount to an unjustified hardship on the lienor. On the other hand the exception would not apply, if during the two years' period the lienor could have arrested the vessel in the territory of another country.

Article 9

No change.

Article 10

No change, except the requirement that the notice referred to therein shall be in writing.

Article 11

No change of substance. The words inserted at the end of par 2) make it clear that the amounts to be collected by lienors and mortgagees out of the proceeds of the sale of the vessel shall never exceed the amounts of their respective claims.

In par. 3) the words « in a Contracting State » have been inserted after « forced sale ». Those words had been inadvertently omitted from the printed English text of the Portofino draft (vide : the French text of that draft).

Article 12

No change.

Article 13

No change of substance.

Article 14

Article 14 of the Portofino draft might have led to complications in the relationship as between two States, both of which have ratified the 1926 Convention, while only one has ratified the new Convention. The International Subcommittee therefore decided to substitute for Article 14 of the Portofino draft a new text providing that each State which ratifies the new Convention or accedes to it, shall forthwith denounce the 1926 Convention. The result will be the same as that which the old article 14 tried to achieve, but the danger that the aforementioned complications would arise will be avoided.

Amsterdam, June 1965.

J.T. Asser.

DRAFT CONVENTION

(ANTWERP DRAFT)

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 which is or has been 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

(*) HYPO - 49 French translation published in French Edition.

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 par. 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 sub-paragraphs 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 pre-

vented 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.

JAPANESE MARITIME LAW ASSOCIATION

SUPPLEMENTARY OBSERVATIONS

Article 2

The provisions in the second sentence of Paragraph 2 may be read to mean that a State which has issued a certificate of deregistration becomes free, at the expiration of the 30 day period, to resume registration of rights in respect to the vessel in question. If this be the correct interpretation, then it is feared that a complex situation will arise where different and conflicting entries of rights as to the same vessel are made concurrently in the register books of a State from whose registry the vessel has been sought to be deleted and of a State in whose registry she to be newly registered. For it possibly happens that the former State does resume the registration immediately after the lapse of 30 days period without being informed of the new registration of the vessel duly effected in the latter State within such period. Thus, we can hardly refrain from entertaining a serious doubt as to the soundness of the present provision which only says that no registration should be allowed by the former state during the 30 days period. The former State should, in our opinion, be by an express provision prohibited from resuming the registration, unless it conforms the fact that the new registration of the vessel has become no longer possible in any other State. We would like therefore to suggest that an amendment be made to this second sentence to the effect that when the certificate has been issued no registration of rights in respect to the vessel should be allowed *until the same certificate is returned to that State without being used for registration in another State*. At the same time, we also feel bound to submit a proposal that this amended provision should be followed by an additional provision which requires a notice to be given to the former State that the new registration has been duly completed in the latter State.

It ought to be added in this connection that some of our members are of opinion that, as an alternative to the foregoing amendment, the whole provisions of Paragraph 2 should be revised in accordance with the following points : i) the registrar of a State from whose registry the vessel is sought to be removed should be empowered to give a preliminary written notice of deregistration *directly* to the registrar of

a State in whose registry the same vessel to be newly registered; ii) the registrar of the latter State who has received such preliminary notice should be also empowered to give the registrar of the former State *directly* a written notice of the new registration having been duly completed; iii) the registrar of the former State should effect the deregistration *upon receipt* of such notice of the new registration; iv) the preliminary written notice of deregistration should contain all registered mortgages and hypothecs on the vessel in the order of priority; and v) no registration of rights as to the vessel should be allowed in the former State after giving such notice of deregistration.

Articles 4 & 5

1) We agree to the restoration to lien status of the pilotage dues and the claims for contribution in general average.

2) In our opinion, liens for salvage claims should be ranked with those for costs of wreck removal. The reason for the promotion is that such claims are concerned with the preservation of the vessel itself.

3) Unlike the provision of Article 2 vii) of the Oxford draft, that of the present article vi) limits the accrual of lien only to claims for loss of or damage to property *not on board* the vessel, thus denying lien on the claims for damage to cargo carried. We are not in favor of this amendment, but rather prefer the provision of the Oxford draft with the change as follows : « Claims for loss of or damage to property on board and not on board the vessel, if caused by the owner or by any person *in the service of the vessel* for whom the owner is responsible ».

4) We take it as a matter *de lege lata* that the claims as specified in iv) and vi) are limited to those caused *in direct connection with the operation of the vessel*. In order to make this point clear, however, it is desirable to insert the phrase to that effect.

5) As Article 2 vii) of the Oxford draft according lien status to claims for repairs and maintenance was struck out at the Amsterdam meeting of the International Subcommittee, such claims are no longer to be secured under the Portofino draft. But we can not support this deletion in view of the fact that the Article 6, Paragraph 2 of the present draft prohibits each contracting State from granting in its national legislation such rights of retention as will prejudice the enforcement of the maritime liens and mortgages. For the same reasons that were advanced by some delegations to the meeting of the International Subcommittee at Amsterdam (*vide*, Hypo-29, 30/1-65, at pp. 44-47), we urge that a provision should be restored in the present article by which the claims for repairs of the vessel, at least, is to be secured by maritime lien and, desirably, to be ranked at the bottom of the pre-mortgage lien list.

Article 6

As we already explained in our previous observations on Article 4 of the Oxford draft (Hypo-42/4-65, at p. 3), the exercise of right of retention by means of public auction sale under Japanese law sometimes results as a matter of fact in reducing a price offered by a bidder. Consequently, it may be said that a question as to how much satisfaction will be obtained by those who enforce maritime liens or mortgages depends upon the existence of the right of retention and the amount thereof. From the theoretical point of view, however, we do not think that the right of retention under Japanese law as such does « prejudice » the enforcement of the maritime liens and mortgages, not only for the reason that the right of retention itself by no means operates a legal bar for the maritime lienors or mortgagees to take proceedings for the execution of these rights of them, but also on the ground that the right of retention has no effect as of a preferential right to the proceeds of the property auctioned off. If it should be held, contrary to our opinion, that granting such right of retention under Japanese law is contradictory to the provisions of Paragraph 2 of this article, we would be forced to face to a difficult problem of amending our general law of property, as pointed out in the previous observations, in the course of our prospective attempt to adopt the present draft. So long as the second paragraph of this article remains as it is with such an interpretation contrary to ours, we regret to say that it appears almost unacceptable to us.

Article 8

We would like to express again our view that the two-year period referred to in the first paragraph is too long. It should be shortened to one year.

Article 10

We reconsidered the provisions of Article 7 of the Oxford draft (*vide*, our previous observations, Hypo-42/4-65, at pp. 3-4), and now being fully aware of the necessity of sufficient notice and publicity to be made prior to the forced sale, we are happy to say that we agree in principle to the provisions of this article. However, we consider the period of 30 days as specified therein to be too short : it should be extended to 60 days. In addition, it seems desirable to make it clear by an express provision that the notice be given *by registered airmail directly from the competent authority* to all known holders of registered mortgages, hypothecs and maritime liens.

BRITISH MARITIME LAW ASSOCIATION

FINAL REPORT

I. INTRODUCTION

Following the publication of Mr. Asser's preliminary report in January 1964, the British Maritime Law Association set up a Subcommittee to study this subject. The Members of this Subcommittee are :

Mr. W. Newson (Chairman)
Mr. W. Birch-Reynardson
Mr. R. D. Brown
Mr. N.J. Ottley
Mr. C. Harris (Secretary).

The first task of the Subcommittee was to answer the questionnaire contained in Booklet 1 (HYPO 1-64). The replies are contained in Booklet 9 (HYPO 21-8-64) which incorporates a detailed commentary comparing existing English law with the provisions of the 1926 Convention. During the last eighteen months, the Subcommittee has considered various drafts which have been prepared following the meetings which were held at Oxford, Amsterdam, Portofino and Antwerp. The provisional comments of the Association on the Portofino draft are contained in Booklet 12 (HYPO 37-5-65).

In the course of its study, the Association has reached the following conclusions of principle :

1. An entirely new Convention should be drafted. It would not be possible successfully to revise the 1926 Convention.
2. The scope of the Convention should be as wide as possible, i.e. within each Contracting State the Convention would apply to all ships whether registered in a Contracting State or not.
3. The Convention should contain provisions covering vessels under construction.
4. The number of maritime liens should be restricted in an attempt to enhance the security of mortgagees.
5. Notwithstanding the desirability of limiting the number of maritime liens in the Convention, the rights of ship repairers should be

protected by granting them a maritime lien for sums due in respect of work done by them in repairing and maintaining the ship.

6. Maritime liens should attach only to the ship and not, as in the 1926 Convention, to freight and accessories.

7. The conception of the voyage should be omitted in so far as concerns priority, the extinction of maritime liens and the interruption or suspension of the time limit.

8. When a mortgaged vessel is re-registered, the interests of mortgagees should be protected by providing that no deregistration should be permitted without the consent of the mortgagees and that, on re-registration, their priority should be preserved.

9. Liens and charges, other than maritime liens, which may be recognised by the domestic law of Contracting States, should be permitted, provided that such liens and charges are postponed to maritime liens and registered mortgages and in no way prejudice the rights of maritime lien holders and registered mortgagees.

10. On the forced sale of a vessel, all mortgages, liens and other encumbrances of whatever nature should be extinguished.

The final comments of the British Maritime Law Association on the Antwerp draft are set out on the pages which follow.

The British Delegation to the New York Conference naturally reserves the right to vary these comments and to propose amendments to the draft text in the light of the discussions at New York.

August 10th, 1965.

II. COMMENTS ON ANTWERP DRAFT CONVENTION

Article 1

We approve the omission of the phrase « and other registerable rights » which appeared in earlier drafts. We would strongly oppose reintroduction of this phrase which would not only be imprecise, but would also prejudice the rights of mortgagees.

We have noted the reasons advanced by other National Associations for including the word « seagoing » and we are prepared, in these circumstances, to accept the inclusion of this word, although we would prefer its omission since a vessel which is under construction on the berth is not seagoing.

Article 2

In our provisional comments on the Portofino draft (see Article 3), we suggested that this Article was unnecessary. We are content not to press our suggestion since we understand that a number of National Associations desire its retention.

Article 3

1) We approve the wording of the proviso. This is necessary because, when a vessel is the subject of a forced sale, the Registrar does not require the consent of the mortgagee to issue a certificate of deregistration (see Article 11 (3)).

2) We also approve the restriction of this Article to Contracting States. It is impracticable to attempt to legislate for non-Contracting States. We suggest that the opening words of this paragraph should be amended to read « a vessel *which is or has been* registered in a Contracting State ... ». This is necessary to avoid conflict with the provisions of subparagraph a).

3) The provision that re-registered mortgages retain their priority is, we think, of overriding importance (see Introduction, point no. 8). We suggest that the first word « The » of the paragraph should be substituted by the word « Such ».

Article 4

1) We think it correct to omit the lien for costs awarded by the Court, as contained in the Oxford and Amsterdam drafts. These costs are awarded after the vessel has been sold, i.e. when all maritime liens have been extinguished. The position with regard to such costs is covered in Article 11 2) which gives priority to these costs.

i) No comment.

ii) No comment.

iii) Although we think that the drafting of this paragraph is somewhat inelegant and could be improved, we believe that its provisions are satisfactory. We consider that the maritime lien must be restricted, as is stated in the text, to claims arising in direct connection with the operation of a vessel. In earlier drafts a maritime lien arose in a very much wider set of circumstances.

iv) We think it correct to restrict this category to claims not based on contact, e.g. no maritime liens should secure claims which arise under Bills of Lading.

v) We think that « removal of wreck » is a more satisfactory term than « wreck raising ». We agree that this lien should not be restricted to costs incurred by a competent authority; a private concern has every right to a maritime lien.

vi) No comment.

We remain of the opinion (see Introduction, point no. 5) that the rights of ship repairers should be adequately protected. In English law a possessory lien is granted to ship repairers. Such a lien, although postponed to earlier maritime liens, has priority over mortgages and

subsequent liens, maritime or not. If a Court orders a ship repairer to relinquish possession of a vessel, the order will provide that his rights be protected. We appreciate that the concept of the English possessory lien may not be recognised in many countries and, for this reason, we suggest that claims by ship repairers in respect of sums due to them for repairs and maintenance should be secured by maritime liens ranking in priority after General Average.

2) We have no comment.

Article 5

1) We agree that priority should apply only to *registered* mortgages.

2) We approve the order of priority. The expression « Removal of wreck » should be substituted for « wreck raising operations » to comply with our proposal for Article 4 v) — see above.

3) We are doubtful whether the drafting of this paragraph is free of ambiguity. We think that it should be made quite clear that the words « *pari passu* » refer to the claims set out in each separate subparagraph.

4) We suggest that the last sentence of this paragraph should be amended to read « Claims for contribution in General Average shall be deemed to have accrued on the date of the general average act ».

Article 6

We have no comment of substance other than to draw attention to the view expressed in Article 4 about claims by ship repairers. We would feel unable to accept the provisions of Article 6 in the absence of a maritime lien being granted to ship repairers. As regards drafting, we believe that paragraph 2 could be improved by amending the present wording as follows : « Each Contracting State may also grant rights of retention in respect of vessels; provided, however, that such rights shall not prejudice the enforcement of the claims set out in Article 4 which are secured by maritime liens, or of mortgages or « *hypothèques* » which comply with the requirements of Article 1, or the delivery of the vessel to the purchaser in a forced sale ».

Article 7

We approve this Article and note, in particular, the provision, in paragraph 1, that maritime liens attach to the ship irrespective of ownership. Paragraph 2 preserves the distinction, in English law, between a maritime and statutory lien.

Article 8

i) We think it essential to impose a two year limitation period on maritime liens.

ii) We agree that suitable provision must be made for the case where a lienor is legally prevented from arresting the vessel, e.g. bankruptcy and compulsory liquidation. We note that the Chairman of the International Subcommittee has suggested that the words « owing to it having been requisitioned or to the owners being bankrupt or being in compulsory liquidation », should be added after the sentence « prevented from arresting the vessel ». We think that this amendment is too restrictive and that the text should be left unaltered.

Article 9

We have no comment.

Article 10

While we agree in principle to the provisions of this Article, we think that the drafting could be tightened up. We propose to submit an amendment at a later date.

Article 11

i) We have no comment.

ii) We think that the words «in accordance with the provisions of this Convention » should follow the words « the balance shall be distributed ... ». Further, we consider that distribution of the proceeds should not be limited to holders of maritime liens, registered mortgages and « hypothèques », but should include also holders of liens under Article 6 1) and also the owner of the vessel before the forced sale to cover the position where, after distribution to creditors, a balance still remains.

iii) We are of the view that the purchaser should not be required to wait for the Registrar to issue a certificate of deregistration and the following amendment is, accordingly, suggested :

« When a vessel, registered in a Contracting State, has been the object of a forced sale in a Contracting State, the Court having jurisdiction shall, at the request of the purchaser, issue a certificate that the vessel is sold free of all mortgages, « hypothèques », liens and other encumbrances. Upon production of such certificate, the Registrar shall be bound to issue a Certificate of De-registration ».

Article 12

We think that in order to be consistent with Article 1, the word « seagoing » should precede the word « vessels » in the opening words of this Article.

Article 13

We have no comment.

Article 14

We have no comment.

FRENCH MARITIME LAW ASSOCIATION
(august 65)

REPORT

The French Maritime Law Association desire to set out clearly their position with regard to the « Portofino » draft.

We have already expressed our favourable opinion on the provisions concerning the mortgages, subject to a few suggested amendments. The following statement is therefore limited to the explanation of our more reserved position with regard to the problem of preferential claims.

At first, the Convention of 1926, in spite of some minor defects, unavoidable in any achievement by way of compromise, had in practice given satisfaction on the whole and the French Association felt no need to have it amended.

However, taking into consideration the desire expressed by several Associations to have this Convention amended, or even have a new one substituted to it, and also with the desire not to limit one contribution to negative remarks, we decided that, after having summed up our reserves with regard to the draft actually studied, we would formulate some suggestions for a new solution which we consider preferable.

I

The actual reason which seems to raise a desire of modification may probably be set out as follows : the modern means of credit having evolved, the Convention of 1926 is no longer well adapted to provide full satisfaction; specially, it does not favour sufficiently the mortgage credit, both when the vessel is under construction and when she is operated.

The amended draft presented by the French Association (vide Hypo. 41, part. 12, p. 45 et 59) tried to bring a remedy to part of the inconveniences of which the mortgagees presently suffer.

(*) HYPO - 53 original French text, published in French Edition.

This Association is fully aware that there are other inconveniences, more difficult to resolve, the principal of which seems to be the existence of maritime preferred claims, i.e. unrevealed rights guaranteeing important claims which are preferred to the mortgages.

The Convention of 1926 had already endeavoured to reach a solution. Its technics consisted in a restriction of the number of preferential claims overriding the mortgages, but without prohibiting other national preferences, ranking after the mortgage and devoid of any international protection.

The technics of the Portofino draft do not appear different from the previous one. The question is therefore to see whether the new provisions would improve the situation, as far as the working of the mortgage credit is concerned. The French Association is far from convinced thereof.

Here below are some reasons of doubts :

1° Article 4 contains a new list of claims which are preferred to the mortgages. Their number is perhaps reduced; but when one studies them carefully, one has the feeling that the mortgagees will be relegated after claims which, by their volume and their amounts, may exceed by far those admitted in the Convention of 1926.

For instance, the Convention only granted preference to claims for physical injury to « passengers » or « crew » and for loss or damage to « cargo ». The new text would extend the preferential rank to any injured person, even when not a passenger, even when not on board, and to claims for loss or damage applying to any things whatever, even other than cargo, and even on land. Such extensions may reach considerable amounts.

2° Besides, the draft doubles the time-bar delay which is extended from one year to two years. This also contributes to encrease the amounts which are to be preferred to the mortgage, as it will include, in addition, some claims born during the double length of time.

3° In the same time, the draft restricts the funding of the preferred claims, i.e. the assets from which the preferential claimants may obtain priority payment. It only mentions the vessel, alone, and makes no reference whatever to the indemnities mentioned in article 4 of the Convention of 1926, generally named substituted assets (créances de remplacement). This restriction of the amounts to be shared can but incense the conflit between mortgagees and preferential creditors.

All this, which appears to be in contradiction with the aim to be reached, is, no doubt, sufficient to explain why the French Association does not discern which real improvement the draft bestows upon the

operating of credit secured by mortgage. This Association may even fear that its becoming into force would be rather likely to impede such credit. This Association prefers the Convention of 1926, which is well known, which has the advantage of being in existence, and which has now been incorporated in the French national legislation. It is therefore deemed fit and wise to stick to it, unless the amendments suggested here-after be adopted.

II

However, with the prospect of a new text, the French Association takes the liberty, before putting forward some suggestions aiming at a different solution, to recall how we conceive the basic facts of the general problem of preferred claims; this is set out so as to throw more light upon our proposals.

It is at first essential, as has been pointed out, to avoid as far as utmost possible, that mortgagees may have to face preferential claims reaching such an amount that they may absorb almost the whole of their security, i-e the vessel.

But one cannot disregard another aspect of the problem : the one of the relations between the maritime preferential claims and those of common law, other than mortgages. The fundamental and traditional interest of maritime preferences has always been to enable maritime creditors (i.e. those whose claims have their direct origin in the working of the vessel) not to suffer a sharing with those, whose claims are unconnected with this operating and usually, more or less correctly called land creditors. It is normal that the ship's repairer, or the person whose goods were damaged during their carriage should have on the vessel a claim which, on that vessel, be preferred to the one of a creditor who has for instance made advances to build the offices or to buy equipment for accommodations on land. The French Association holds that a fundamental principle rests there, which is fair and which remains essential for the maritime credit, as one cannot take into consideration the important shipping companies alone and disregard the smaller ones and the fishing concerns.

The French Association admits that these two considerations are more or less conflicting. The first one leads to cancellation or considerable restriction of the preferential claims. The second, to their maintenance, if not even to their extension because, as soon as one cancels a preferential right, the maritime creditor that the preference protected is brought down to the rank of an ordinary unsecured creditor, who must suffer the sharing of assets with any other land creditor, and even comply with preferences which others may invoke under their common law !

The French Association endeavoured to reduce such opposition and to conciliate opposed interests by applying commercial practices and modern judicial technics. We submit to the kind attention of the other members of the C.M.I. the following suggestions :

I. It appears possible to avoid practically in many cases, the conflict between preferential creditors and mortgagees, in providing two separate assets to guarantee their claims. One may have, in this respect, recourse to the modern technic of insurance. In article 6 of our amended draft on the mortgages, we have already mentioned an assignment in favour of the mortgagees of the insurance indemnity for the hull of the vessel. Going a little further, we recommended to assign likewise the additional insurance against « recourse of third parties » which is nowadays an usual insurance and which the mortgagee may always demand from the mortgageor before granting the credit. Thereby, either the preferred creditors will be indemnified by the insurances and will not seize the vessel, either when they seize her and proceed to her sale, the mortgagees will find a compensation in the insurance indemnities.

However convenient be this process, it may nevertheless not be sufficient to solve the whole of the problems of preferential claims.

II. From a more general point of view, it appears at first that, as rightly pointed out by the Swiss Association (Hypo. 15, vol. 7, p. 7), whose opinion is shared by the Belgian Association (Hypo. 7, vol. 4, p. 3), the mortgage credit does not suffer only, nor even as much, from the number of preferential claims, than from the surprises due to their occult nature. One must lay stress on the fact that, by extending from one to two years the time-bar of these preferences, the draft of Portofino has encreased this defect instead of removing it.

Therefore, one of the fundamental principles of any new Convention should be the compulsory publicity of the greatest number possible of maritime preferred claims, which is all the easier to conceive, that such claims are « in rem », of the same nature as the mortgages and that all modern legislations tend to render compulsory, in the interest of third parties, the publicity of real rights hitting a thing. The International Convention of 1948 on aircraft, provided for the publicity of the preferential rights which it sanctions (art. IV).

This modern technic which, probably by traditionalism, the maritime law has not yet adopted, appears moreover capable of leading to a smoother solution of questions concerning the rank of preference of claims.

III. With regard to this question of preference, we recall shortly that it bears in our opinion a double aspect : 1) the reciprocal posi-

tions of the maritime preferential creditors and of the land creditors of common law; 2) the reciprocal positions of the preferred creditors and the mortgagees, as also of the preferred creditors, between themselves.

While it is advisable to maintain in favour of the maritime creditors a preferential right with regard to the land creditors, and for the only reason that the claim is maritime, it does not entail that the same consideration must prevail for the solution of the different problem concerning their position with regard to the mortgagees.

Here, the rights of the two categories of creditors are, by essence, of the same nature : a right « in rem » for a guarantee, the difference between them being that the one has a contractual origin and the other a legal one. Under these conditions, the qualification of the claim loses of its importance and the factor « time » (i.e. the due consideration to the date of birth of the claim) become an element of solution. One may recall indeed that the Maritime Law has always laid stress on this consideration. But the tendency was to grant to the more recent claims a priority on those of an earlier date, because one was anxious to uphold and renew the ship's credit during her voyage. Nowadays, when the concern is different and when the aim is to favour the expansion of a new type of credit and to protect the mortgagees, the opposite principle may appear better, subject to rare exceptions.

From the time when the owner granted a mortgage on his vessel, he has already more or less broken up the ownership and, unless one disregards the rights of the older creditors, the new ones can only lay their claims on what remains. This rule which governs already the rank of the mortgagees between themselves, should apply, for the same reason, to the ranking of maritime creditors as compared to mortgagees.

The consequence would thereby be this very simple solution : the mortgagees would rank after preferred creditors, the rights of which would be born prior to the constitution of the mortgage. But they would rank before claims born after the mortgage. Although it does not appear indispensable, the advantage of publicity appears here, obviously, to avoid surprises and to fix more accurately the respective rights.

To this principle, one should admit two exceptions :

- a) in favour of the crew's wages, which rarely reach high amounts;
- b) in favour of claims for refund of expenses or payment of services which are to the benefit of all previous creditors, and specially extraordinary expenses necessary for the safeguard of the vessel, salvage and general average contributions.

Alone these claims, very limited in number as may be seen, would be really preferred to mortgages. The other maritime claims would be brought down to the rank of ordinary legal mortgages, preferred to claims unconnected with the trading of the ship, but ranking in accordance with their date by virtue of the old maxim : prior tempore, potior jus.

It is on the basis of these general considerations and to bring them into force that the French Association suggests the following amendments to the draft of the International Committee.

Because the setting out of these amendments, separately, might prejudice their accurate understanding, and taking into consideration the fact that we were led to express our remarks in two successive reports (vol. 12, p. 45), it was deemed advisable to give, in addition, a full text incorporating the suggested amendments.

II. AMENDMENTS (August 65)

Amendment to article 4 of the draft

General remark.

This article, amendment to article 4 of the Portofino draft, is intended to be substituted to it.

It must be outlined that its aim is not to establish a rank of priority between the preferential claims, nor with regard to the mortgages or hypothèques, nor even to hint at a solution to this question, which is dealt with in the next article.

The aim is to determine which are the maritime claims (i.e. those which have their origin in the trading of the vessel) and which, for that reason, will have the benefit of an action in rem on the vessel by which they are to be preferred to the non-maritime claims, even when the vessel is encumbered with no mortgage or hypothèque.

Suggested wording.

1. In addition to rights of mortgage or hypothèque, provided here-above, the H.C.P. acknowledge a preferential right in favour of « maritime claims » defined and enumerated in article 1 (a) to (n) inclusively, to the Convention of May 10th, 1952 on the arrest of seagoing ships.

2. These preferential rights hit the ship and her material accessories, such as the indemnities due to her owner, for general average or otherwise for damage suffered by the vessel and not repaired.

3. They benefit to the creditors, whether the vessel be managed by her owner, or by a third party, managing owner or charterer, except when the owner is dispossessed of this vessel by an unlawful action.

Subject to the provisions of article... here below (compulsory judicial sale), they pursue the vessel in whoever's hands she passes.

4. They may, within three months of their birth, be recorded in the register of immatriculation of the ship, in the same conditions as mortgages or hypothèques.

Failing an agreement between the parties on the amount of the claim, the competent judicial authority, referred to in the above-mentioned Convention, will state the provisional amount for which the registration will be authorized.

Amendment to article 5 of the draft

General remark.

This article, amendment to article 5 of the Portofino draft, is intended to be substituted to it.

Its aim is :

1) to sanction the preference of the « maritime creditors » with regard to all other creditors of the owner ;

2) to establish the rank of preference between the preferential maritime claims, as also between the mortgages and preferred creditors.

Suggested wording.

1. The preferential claims mentioned in the preceding article and the mortgages of hypothèques prevail over all other preferences or rights of guarantee whatever set up by national legislations.

2. Subject to the exceptions provided for here-above, the preferred maritime claims and the mortgages or hypothèques rank between themselves according to their date of registry, it being understood that a preferential claim recorded within three months from its date, as above-mentioned ranks from the date of its birth.

3. However, claims for amounts due to the master, officers or other members of the crew, also to pilots are preferred to all other claims.

The claims for payment or refund of extraordinary expenses set out for the safety of the vessel, salvage and general average rank before all preferences or rights, prior to the action which gave birth to these claims. They rank between themselves in the reverse order of dates of their birth.

Amendment to article 8 of the draft

General remark.

The provisions of articles 6 and 7 being incorporated in the previous articles, become useless.

This article is therefore suggested as amendment to article 8 which it is expected to substitute.

The French Association joins the opinions expressed by the German and Norwegian Association (Hypo. 35 & 36) when considering that this wording is not satisfactory, this, for two reasons :

1. The two years' delay during which preferences may subsist although remaining hidden is too long and detrimental, because of the surprises it may entail for the mortgagees, unless they be compelled to make very long and always doubtful inquiries, before agreed to the required loan;

2. With regard to the French procédure, the system of suspension of this delay, concerning alone such seizure which results in a sale of the vessel, would have the effect of depriving in fact, in many cases, the creditor of the benefit of a preference granted to him in other respects. Such an important measure would not be fit for small claims. Besides, such seizure corresponds to what is named in French law an « executory seizure ». Under the French law, such a seizure is only possible for a creditor who has an enforceable title. Such a title cannot be obtained until the claim is certain, for an amount assessed and due. For instance, in case of salvage, collision or other accident of navigation, no such « executory » title may be expected within a delay of two years.

This is the reason why the French Association suggests a quite different system, which appears more compliant and which would substitute to the publicity due to the seizure of the ship, a publicity on the Ship's Register, which would guarantee the interests of the mortgagees.

Suggested wording.

When the above mentioned delay of three months has elapsed, no preferential claim can any longer be acknowledged, unless :

a) the said preferential claim be already recorded in the register ;

b) failing an agreement between the parties, a judicial or arbitration action be already entered on the merits of the claim to have its validity sanctioned and its amount assessed, and that such action be recorded in the register within a month from its beginning.

Amendment to article 8bis of the draft

General remark.

This article contains an absolutely new suggestion which aims to bring into force the idea put forward in page 3 of the general report. This aim is to avoid, as far as possible, the conflicts between mortgages and preferential claims, in assigning to them two distinct assets.

Suggested wording.

1. For the following claims ; salvage and assistance, damage caused by the vessel by collision or other navigation accident, personal injury to passenger or crew, loss of or damage to cargo or luggage, no preferential action can any longer be exercised on the vessel when the owner places at claimant's disposal the insurance he contracted to guarantee claim, subject to such insurance indemnity being acknowledged as available and sufficient.

The same rule applies to claims with regard to which the owner may limit his liability by constituting a limitation fund, as soon as such fund is actually available to the creditors.

2. When the owner lets his vessel be seized and sold without having placed the insurance at the disposal of the creditors mentioned in the above paragraph, or without having constituted the limitation fund, the beneficiaries of mortgages or « hypothèques » will be subrogated in accordance with their rank in the rights of the owner towards the underwriters, for an amount equal to the total of the monies allotted to the said creditors coming from the sale price.

III. FRENCH DRAFT

(August 65)

PART 1

MORTGAGES AND « HYPOTHEQUES »

Article 1

Mortgages and hypothèques agreed by mutual consent and recorded on a seagoing vessel are acknowledged by all H.C.P. when they comply with the following conditions :

Article 2

The rights defined in the preceding article, wherever be the place of their formation, must :

a) be validly constituted in accordance with the legislation of the H.C.P. in which the vessel is immatriculated at the time of the constitution, the constituting deed may be stated either in the form required in the state of immatriculation, or the form admitted in the state where the deed is concluded;

b) be regularly recorded on the official register of the State where the vessel is immatriculated and in accordance with the legislation of that State; this register must : 1° mention the name and address of the beneficiary of the said right, the amount guaranteed, the date and rank of recording of the deed; 2° be available to any person, either by direct disclosure, either by delivery gratuitously or for a reasonable charge at the request of any person, of certified copies which will be reputed conclusive evidence until the contrary be proved.

Article 3

All mentions concerning a vessel will be recorded on a single and same register. Their effects with regard to third parties are determined by the legislation of the state where recorded.

Article 4

The preceding provisions apply also to ships in course of construction, the state of the dockyard being considered as place of immatriculation for the sake of this application.

Article 5

Every vessel must have on board, amongst her documents, an extract of the Register mentioning the mortgages or « hypothèques » recorded and the amounts guaranteed.

This extract must not date from more than three months. It must mention the address of the office where the Register is kept.

Article 6

When the vessel goes lost, the following are substituted to the vessel up to her value :

- a) the hull insurance indemnity;
- b) and, failing such insurance, or if it is insufficient, the damages due by third parties because the said loss.

When the vessel is only damaged, the same substitution takes place up to the value of the damage which the owner does not repair.

The creditor duly recorded, will have a direct action against the debtors and payments made by them will not be a discharge, when made in defiance of the rights of the said creditor.

Article 7

The rights mentioned in art. 1 and duly recorded cannot be struck off the Register without previous amicable or judicial withdrawal.

PART II PREFERENTIAL CLAIMS

Article 8

1. In addition to rights of mortgage or hypothèque, provided here-above, the H.C.P. acknowledge a preferential right in favour of « maritime claims » defined and enumerated in article 1 (a) to (n) inclusively, of the Convention of May 10th, 1952 on the arrest of seagoing ships.

2. These preferential rights hit the ship and her material accessories, such as the indemnities due to her owner, for general average or otherwise for damage suffered by the vessel and not repaired.

3. They benefit to the creditors, whether the vessel be managed by her owner, or by a third party, managing owner or charterer, except when the owner is dispossessed of his vessel by an unlawful action.

Subject to the provisions of article... here below (compulsory judicial sale), they pursue the vessel in whoever's hands she passes.

4. They may, within three months of their birth, be recorded in the register of immatriculation of the ship, in the same conditions as mortgages or hypothèques.

Failing an agreement between the parties on the amount of the claim, the competent judicial authority, referred to in the above-mentioned Convention, will state the provisional amount for which the registration will be authorized.

Article 9

1. The preferential claims mentioned in the preceding article and the mortgages or hypothèques prevail over all other preferences or rights of guarantee whatever set up by national legislations.

2. Subject to the exceptions provided for here-above, the preferred maritime claims and the mortgages or hypothèques rank between themselves according to their date of registry, it being understood that a preferential claim recorded within three months from its date, as above-mentioned ranks from the date of its birth.

3. However, claims for amounts due to the master, officers or other members of the crew, also to pilots are preferred to all other claims.

The claims for payment or refund of extraordinary expenses set out for the safety of the vessel, salvage and general average rank before all preferences or rights, prior to the action which gave birth to these claims. They rank between themselves in the reverse order of dates of their birth.

Article 10

When the above mentioned delay of three months has elapsed, no preferential claim can any longer be acknowledged, unless :

- a) the said preferential claim be already recorded in the register;
- b) failing an agreement between the parties, a judicial or arbitration action be already entered on the merits of the claim to have its validity sanctioned and its amount assessed, and that such action be recorded in the register within a month for its beginning.

Article 11

For the following claims : salvage and assistance, damage caused by the vessel by collision or other navigation accident, personal injury to passenger or crew, loss of or damage to cargo or luggage, no preferential action can any longer be exercised on the vessel when the owner places at claimant's disposal the insurance he contracted to guarantee claim, subject to such insurance indemnity being acknowledged as available and sufficient.

The same rule applies to claims with regard to which the owner may limit his liability by constituting a limitation fund, as soon as such fund is actually available to the creditors.

2. When the owner lets his vessel be seized and sold without having placed the insurance at the disposal of the creditors mentioned in the above paragraph, or without having constituted the limitation fund, the beneficiaries of mortgages or « hypothèques » will be subrogated in accordance with their rank in the rights of the owner towards the underwriters, for an amount equal to the total of the monies allotted to the said creditors coming from the sale price.

Article 12

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.

PART III
PROVISIONS SIMILAR FOR MORTGAGE AND «HYPOTHEQUE»
AND FOR PREFERENTIAL CLAIMS

Article 13

Apart from the case provided for in art. 17, any sale to a foreigner of a vessel burdened with one of the claims enumerated in articles 1 and 8 will be null and void until :

a) all items recorded have not been struck off in accordance with article 7;

b) or all such items be recorded on the new registration of immatriculation of a H.C.P. with the rank granted to them by the law of the State of their registration.

Article 14

For the application of the precedent article, the transfer of the registry of a vessel from one H.C.P. to another H.C.P. will only be admitted :

1. when the conditions of the preceding article are fulfilled;

2. when, besides, a certificate is not produced, issued by the present State of immatriculation of the vessel, stating that the said vessel will be struck off the register, taking effect from the date on which the new registration is recorded, subject that it be within thirty days.

No new record will be admitted during that delay.

The certificate stipulated here above must mention, with their respective rank, all the claims recorded at the time of its issue.

Article 15

If the legislation of the State in which the immatriculation is required does not permit the record of these rights such as they are recorded, the applicants will have at least sixty days to satisfy the requirements of that legislation, all legal effects of the previous registration will remain in force during that period.

Article 16

Without prejudice to the penal provisions which may exist in the national legislations, the sale of a ship burdened with claims enumerated in articles 1 and 8 are null and void, if it is to entail the registration in a non-contracting State.

Article 17

In case of a judicial compulsory sale of a vessel burdened with claims enumerated in articles 1 and 8, the ownership will be transferred free from these claims unless the purchaser takes over, provided that the sale to proceed to, in accordance with the following stipulations.

Article 18

The procedure for a judicial compulsory sale is the one provided by the legislation of the State in which the sale takes place. The consequences are those provided by the present convention and the legislation of the State in which the vessel is immatriculated.

The following minima requirements must be complied with :

a) the creditor who proceeds must give to the Court or such other competent authority certified extract of the claims recorded on the vessel;

b) the date and place of sale must be stated at least six weeks ahead;

c) one month at least before the date stated for the sale, the prosecuting claimant must :

1° notify it at the place where the vessel is registered, in accordance with the legislation of that place of registry;

2° inform by registered letter of the date and place of sale the owner of the ship and titulary beneficiaries of claims acknowledged under articles 1 and 8, at the respective addresses recorded in the register in which such claims are recorded.

Article 19

The ratification of or adhesion to this Convention by a State entails the immediate termination of the Convention of April 10th 1926.

AMENDMENTS

NY - 1

GÉRMAN MARITIME LAW ASSOCIATION

The German Maritime Law Association gratefully acknowledges the preparatory work of the International Subcommittee on Maritime Liens and Ship Mortgages, and expresses its principal agreement to the Antwerp Draft on an international convention. We recommend the following amendments to the draft in order to induce as many States as possible to ratify the convention. These amendments will be proposed to the New York Conference by the German Delegation.

1. Insert in Art. 1 subpara c) after the word « register » the following words :

« or the instruments referred to therein ».

This minor amendment is meant to keep the register itself clear and easy to survey in case of many changes of the address of mortgagees and/or their representatives.

2. In Art. 1 add a new para 2 reading :

« The right of a mortgagee to enter into the possession of the vessel or to sell her privately cannot be executed by virtue of this Convention ».

This amendment shall protect ship owners and maritime creditors from Civil Law Countries against the private remedies of Common Law Mortgagees, which have been applied sometimes even in the nearer past, but which are thoroughly foreign to other legal systems of private law.

3. Art. 2, para 2 and 3 should be worded as follows :

« 2) A vessel entered into the register of a contracting State can be registered in another contracting State in accordance only with the following procedure of transfer :

a) The register to whom the owner applies for the new registration of the vessel, inserts the entries applied for including those in favour of any third person, but notes in the register that the effect of this insertion is subject to the condition that the former registration of the vessel is deleted;

b) the registrar in whose register the vessel has so far been inserted, deletes the insertion against submission of the extract from the register of the new insertion and the approval in writing of the owner and all holders of mortgages or hypothecs and issues a certificate of deletion stating the date of deletion. The registrar cannot refuse the deletion, unless the vessel is to be registered in his own register or in any other register of his own State;

c) upon submission of the certificate of deletion the registrar who has inserted the new registration, deletes in his register the note made pursuant to subpara a), inserts the date of the deletion of the former insertion and issues the Certificate of Registry.

3) For the application of this Article the registrars are entitled to contact each other directly. Any letters or documents may be written in the language of the register sending them. »

This wording is taken from the draft convention on the registration of inland navigation craft of the United Nations' Economic Commission for Europe. We deem it to be better than Art. 3 of the Antwerp draft - the former Stockholm draft of 1963 - by the following reasons :

a) Whilst the Antwerp draft provides for a period of at least 30 days when no change of title and no mortgage can be executed, not even in extreme situations of necessity, the ECE-draft allows for the continuous registration of rights.

b) Whilst the Antwerp draft requires the registered mortgagees and owners to consent to the deletion of their rights without knowing, whether their new rights will be registered at all in the new State and, if so, in what form this will be performed, the ECE-draft allows owners and creditors to examine their new, binding registration before they have to cancel the old one.

c) The Antwerp draft allows the re-registration of a mortgage in the new State only, if the new rights are in any respect equal to the old ones in the old country; in other words, it does not allow the new registration at all in most cases. The ECE-draft, however, permits with the consent of all creditors the change of currency, a new form of interest payment, the conversion from a mortgage to a hypothèque, the transition from an open-end-mortgage to a mortgage securing a fixed principal plus a fixed annual interest rate, the determination of a mortgagee instead of the mere indication of a bearer, and any other necessary or advisable regard to the peculiarities of the new legislation.

The Antwerp draft, therefore, seems to be unsatisfactory in some respect, whilst the ECE-draft may be fit to overcome all possible difficulties.

4. *In Art. 4, para 1 subpara IV the words :*

« not based on contract » should be deleted.

This important amendment is proposed in order to safeguard the negotiability, marketability and high estimation of the bills of lading, especially those signed by a carrier, who is not the owner of the vessel. If the shippers and consignees would be divested of their maritime liens, the consequences to international shipping may be incalculable and detrimental. Claims under bills of lading therefore should be protected by maritime liens also in future.

5. *In Art. 6, para 2, insert after the words « of Art. 1 » the words « their respective priority ».*

This amendment shall safeguard the maritime lienors against all prejudices at the distribution of the vessel's proceeds by possessory liens and the like.

6. Art. 8 to be drafted as follows :

« The maritime liens set out in article 4 shall be extinguished after a period of one year from the time when the claim secured thereby arose, unless, prior to the expiry of such period,

a) the vessel has been arrested by the lienor, such arrest leading to a forced sale, or

b) a writ of summons in respect of the claim has been issued to a competent court, or

c) the claim has been duly submitted to arbitration, or

d) the owner is declared bankrupt or has gone into liquidation in accordance with the national law of the Contracting State, and the claim has been duly filed with the receiver in accordance with the national law.

When a claim has been adjudicated the lien shall be extinguished if legal action to enforce it has not been taken within one year of the date of final judgment. When, in the cases of b, c and d, the claim has not been adjudicated nor rejected, it shall extinguish one year, after the last act of the court, the arbiter or the receiver. »

We deem this amendment to be the most important one and regret that, without a similar solution of the problems involved, we feel unable to recommend the ratification of the convention to our national legislative bodies.

Though it is a proper intention to protect the registered mortgagees against secret liens, this may not be done by divesting sailors, widows and other small maritime lienors of the only procedural right, which they can practically exercise to get their money and which is until now common to almost all countries. The total amount of all liens, which can still aggregate under article 4 of the Antwerp draft, will in future no longer be so high as to harm the mortgagees. On the other hand, the lienors may sometimes be unable to afford the necessary costs to arrest the vessel.

7. To Art. 8 and a new para 3 reading :

« The maritime liens set out in article 4 shall also be extinguished when a limitation fund has been constituted according to article 2 of the International Convention relating to the limitation of the liability of owners of seagoing ships (signed at Brussels on October 10th, 1957), of the limitation of liability can be invoked with respect to the claim secured by the lien. »

This amendment is necessary to avoid contradictory obligations for member-States of the 1957 liability of shipowners Convention. Without the proposed rule in the present Convention these States would not be

azle to correspond to their obligations pursuant to article 2 para 4 of the 1957 Convention within the scope of its article 7 without violating the present Convention relating to a lienor which is a member of a State which has ratified the present Convention but has not ratified the 1957 Convention. The International Subcommittee of the C.M.I. already has dealt with similar problems arising out of the relation between the Conventions of 1957 and 1926.

8. To Art. 10 add a new para 2 reading :

« All notices mentioned in this article shall be sent directly to the registrar by registered letters, if possible by airmail. The notice of the sale shall contain an information on all formalities which the creditor has to observe in order to safeguard his rights and their priority. »

This amendment, the first sentence of which is taken the Geneva Convention on Aircrafts of 1948, shall improve the position of maritime creditors in foreign countries, where they, due to the diversity of legal procedure, sometimes are unable to safeguard their vested rights against undue quick forced sales of their security. For this purpose, letters should not be mailed through diplomatic channels, but by the quickest possible way.

9. Delete Art. 12.

The deletion of any reference on ships under construction shall facilitate necessary improvements of the Stockholm draft of 1963 and the solution of related problems, the ratification of the draft on ship mortgages and maritime liens by legislative bodies of other countries, which do not know admiralty rights in ships under construction in their own legislation or which do not have the constitutional power to introduce them into their legislation. To our knowledge the present wording creates a severe obstacle against the adoption of the draft convention by several countries, though not by Germany. We, therefore, deem it necessary to draft a special convention on this subject, whereto the Stockholm draft of 1963 offers the best basis.

10. Art. 13 should be worded as follows :

« This convention shall apply whenever the ship attached by a mortgage, « hypothèque » or maritime lien is registered in a contracting State. »

This amendment is necessary, e.g., to safeguard shipowners and mortgagees of States adopting the convention, against first priority liens of States, which do not ratify the convention, whilst its shipowners and mortgagees enjoy the benefits of the convention in the territory of the adhering State.

11. Insert a new Art. 13 a reading :

« This convention does not apply to vessels of war nor to government vessels appropriated exclusively to the public service. »

This wording is taken from the Convention of 1926 and excludes vessels from the scope of the new convention, which cannot be the object of a forced sale in another country.

NY - 2

NETHERLANDS MARITIME LAW ASSOCIATION

Article 1.

The Netherlands delegation proposes to substitute for the words « shall be enforceable » in the English text the words « shall be recognized and enforceable » and in the French text to substitute for the words « seront reconnus », the words « seront reconnus et susceptibles d'exécution ».

NY - 3

Article 4, para 1.

The Netherlands delegation proposes :

a) to insert in Article 4, para. 1, after the words « The following claims » the words : « against the Owner », and

b) to substitute for the last sentence of Article 4, para. 1 the following : « The word « owner » mentioned in this paragraph shall be deemed to include the demise charterer. »

NY - 4

Article 4, para. 1 (i)

The Netherlands delegation proposes to substitute for sub-para. (i) the following text :

(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, provided that a lien will attach only extent insofar the claim does not exceed the equivalent of six months wages. »

NY - 5

Article 4, para. 1 (iv)

The Netherlands delegation proposes to entirely delete sub-para. (iv).

Alternatively it proposes to substitute for sub-para. (iv) the following text :

(iv) « Claims not based on contract in respect of loss of or damage to property or in connection with property arising from a defect of the vessel or from an act, neglect or fault of those employed on board the vessel. »

Article 4, para. 1 (iii)

The Netherlands delegation proposes to substitute for sub-para. (iii) the following text :

(iii) « Claims in respect of loss of life or personal injury, arising from a defect of the vessel or from an act, neglect or fault of those employed on board the vessel. »

Article 4, para. 1.

The Netherlands delegation proposes to insert in Article 4, para. 1 after sub-paragraph (vi) a new paragraph, reading :

(vii) « Claims for repairs to the vessel, provided that the claimant has not lost actual possession of the vessel at the time of arrest leading to a forced sale. »

Article 7, para. 1.

The Netherlands delegation proposes to delete Article 7, para. 1. *Alternatively* it proposes to substitute for article 7, para. 1 the following text :

« 1. The maritime liens set out in Article 4 arise whether the claims secured by such liens are against the owner or the demise charterer. »

Article 10.

The Netherlands delegation proposes to substitute for the second sentence of Article 10, the following text :

« 1. In addition the said authority shall advertise the intended sale in two newspapers designated by the Court which has jurisdiction over the forced sale. »

Article 11, para. 3.

The Netherlands delegation proposes to substitute for the last part of Article 11, para. 3, beginning with the words « provided always that » the following text :

« provided always that the requirements set out in paragraph 1, sub-paragraphs (a) and (b) of this Article have been complied with and provided further that the distribution of the balance referred to in the second sentence of paragraph 2 of this Article has been secured. »

MARITIME LAW ASSOCIATION OF THE UNITED STATES

Article 1.

Amend (b) of Article 1 to read follows :

« (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 ».

Explanation

The purpose of the change is to make clear that instruments which must be deposited with the mortgage registrar shall only be those that are required to be deposited under the law of the state where the vessel is registered. Under the present language of Article 1 (b), even an inadvertent failure to deposit some instrument which happened to be referred to in the register but which is of no concern to persons interested in the vessel would appear to deprive the mortgagees of the benefits of Article 1 (enforceability of the mortgage) as well as Article 6. In some instances, the mortgagor, the mortgagee and the charterer may object to the filing in a public place of copies of instruments which are of no concern to third parties but which affect the parties to the financing transaction and which for various reasons may be referred to in the mortgage.

NY - 12

Article 4.

Amend Paragraph 1 (iv) of Article 4 to read as follows :

« Claims in tort which arise in respect of loss of or damage to property occurring in direct connection with the operation of the vessel. »

This amendment is for the purpose of clarity and is really a drafting matter. It might properly be referred to the Drafting Committee. .

NY - 13

Article 4.

In Article 4 (v) the word « raising » after « wreck » should be deleted and there be substituted in its place the word « removal ».

This is really a drafting matter and might properly be referred to the Drafting Committee.

Article 4 - 1.

Amend Article 4 - Par. 1 by adding a new number (vii).

« All other maritime liens arising at any time prior to the registering of the mortgage or hypothèque. »

This would preserve those liens which exist at the time the mortgage on the ship is registered. The registering of the ship's mortgage should not destroy the existing maritime liens or existing rights in the ship. Its effect should be prospective and not retroactive.

Article 5.

Amend paragraph 1 of Article 5 to read as follows :

« 1. The maritime liens set out in Article 4 shall take priority over registered mortgages and hypothecs and such maritime liens and registered mortgages and hypothecs which comply with the requirements of Article 1 shall take priority over all other claims against the vessel. »

Explanation

The proposed addition at the end of paragraph 1 would make clear that the intended priority of maritime liens and registered mortgages and « hypothecs » shall not be disrupted (i) by statutes such as those which a government general priority over all other creditors, e.g. Rev. Stat. § 3466 (Rev. 31 U.S.C.A. § 191), (ii) or by the interposition of federal tax liens and other possible liens that could give rise to a situation involving circular priority of liens which can be most troublesome to mortgagees.

Article 6 - 2.

Amend Article 6 - 2 by striking out, in the next to the last line, the words « and neither » and substitute in their place « nor shall they prejudice » so that this paragraph will then read :

« 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, nor shall they prejudice the delivery of the vessel to the purchaser in a forced sale. »

This is a drafting matter and might properly be referred to the Drafting Committee.

Article 10.

It is proposed that Article 10 be deleted in its entirety. It deals with procedural questions which should be left to the law of the forum. In its present form it might raise a question as to the jurisdiction of the court if there is any failure to give the required notice.

Article 11.

Add a new paragraph 2 to Article 11 reading as follows (and re-number present paragraph 2 and 3) :

« No charter-party or other contract for the use of the vessel shall be deemed a lien or encumbrance but in the event of the forced sale of the vessel in a Contracting State, all charter-parties and other contracts for the use of the vessel shall cease to attach to the vessel if :

a) at the time of the sale the vessel is in the jurisdiction of such Contracting State;

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

c) the purchaser as a part of his bid or offer stipulates that the charter-party shall cease to attach to the vessel. »

Explanation

The purpose of the new paragraph is to reduce the risk of having every charter-party terminate automatically upon a forced sale of the vessel even in a situation where the charter-party is relied upon by a lender, is assigned as security for the loan and the charterer has agreed (in the assignment or other instrument) that after foreclosure of the mortgage, the mortgagee or other purchasers shall have the right to continue performing the charter-party. In situations where a prospective buyer of the vessel desires that the charter-party not be affected by the forced sale and the lender has agreed with the charterer to such effect, the desirability of automatic termination of such a charter-party is questionable. In that situation, the termination may affect adversely the mortgagor, the mortgagee and other lienors notwithstanding that the reason for automatic termination presumably is to facilitate sale, give protection and assurance to prospective buyers and thereby benefit these parties.

In clause (c) the determination that the charter-party shall cease to attach is made dependent upon the purchaser so stipulating in his

bid or offer in order to avoid the possibility of a sale being made free of the charter when the only way a lender secured by a mortgage can protect his investment or minimize his loss is to purchase the vessel with the charter-party continuing to attach.

The Brussels Convention did not include a provision such as Article 11 of the Antwerp draft but left the status of the charter-party to be resolved under applicable rules of law. The word « encumbrance » in paragraph 1 of Article 11 could be held by some court to include various (or possibly all) charter-parties. By making clear that the words « liens and other encumbrances » do not include charter-parties, the charterer and the owner (together with a lender in a loan situation) are left free to provide by agreement whether or not the purchaser of the vessel at a forced sale should have the right to perform the charter-party. If the charterer prefers, the charterer may require (by provisions in the charter-party) that no one other than the original owner shall have such right of performance after forced sale or otherwise, in which case a purchaser at a forced sale could not acquire the right to perform. In other words, if the charter-party is a valuable adjunct to the vessel there is no more reason to require that in all cases the vessel be sold free of such a charter-party than to require that it be sold free of some valuable equipment, accessory or special privilege to which it may be entitled.

NY-19

New Article 12.

Add a new Article 12 reading as follows, and renumber present Articles 12, 13 and 14.

Article 12.

« Registered mortgages and « hypothecs » which comply with the requirements of Article 1 and the maritime liens set out in Article 4 shall not be extinguished or otherwise effected by any forfeiture of, or requisition of title to, the vessel by any contracting State. »

Explanation

The objective of the proposed new Article is to make clear that a lender secured by a mortgage on a vessel will be protected against the risks of forfeiture and requisition of title to the vessel.

YUGOSLAV MARITIME LAW ASSOCIATION

Amendment to Article 1.

To add a new para. 2 reading (subject to drafting) as follows :

Nevertheless any delay, omission or mistake in the entry on the documents on board the vessel required by the national law of the vessel, shall not prejudice the registered mortgages or « hypothèques » which comply with the requirements of para. 1 of this article.

In order to avoid any possible controversies as to the question of validity of mortgages or « hypothèques » registered in the ship's register where the applicable national law provides that they should be entered also in the documents on board the vessel, we think that it would be advisable to maintain the idea of the provision of Art. 12 of the 1926 Convention in the amended wording as above.

NY - 21

Amendment to Article 1.

Litt. c) To delete the words « and other particulars » after the words « the date ».

In our opinion in order to create a completely clear and unequivocal situation as to the ranking of mortgages (and hypothèques) it is necessary to establish in the Convention the most strict provisions in this respect. We think that the most reliable principle is the one of the chronological order (as in the Art. 6 of the Stockholm Draft Convention). We believe therefore that it is advisable to avoid any terms and expressions which would allow to apply different rules of national laws of the Contracting States.

(Cfr. the Amendment to Art. 2).

NY - 22

SWEDISH MARITIME LAW ASSOCIATION

Article 1.

In b) add after the words « ... from the registrar *or other competent authority.* »

In c) insert after the words cut « issued to the bearer, the *maximum* amount secured etc. »

YUGOSLAV MARITIME LAW ASSOCIATION

Amendment to Article 2.

To substitute the following wording for the present one of art. 2 :
Registered mortgages and « hypothèques » shall have legal priority one before another, in the same order as they have been registered.

The national law of the State of registration, however, may provide that priority shall originate from the time, when an application for registration was received in the office of registration, provided that such application be available for public inspection.

In our opinion in order to attain the purpose originally set to works for the revision of 1926, namely the strengthening and the protection of the position of the mortgages, it is necessary, besides having provisions in respect of the registration of mortgages, transfer of the same from one register to another and in respect of their protection in event of a forced sale, to establish provision which would determine the ranking of mortgages in a way which would be binding for all Contracting States. The principle of chronological order, adopted in the Antwerp draft, should be expressed in all details, so that every uncertainty and divergence in the application of the principle itself is avoided. Therefore we propose that the wording of paras 1 and 2 of Article 6 of the Stockholm Draft convention relating to registration of rights in respect of Ships under construction be adopted.

NY - 24

SWEDISH MARITIME LAW ASSOCIATION

Article 8.

1. « The maritime liens set out in Article 4 shall be extinguished after a period *one year* from the time when the claims secured thereby arose.

The national law of each contracting State shall determine the legal action required for the interruption of the prescription period.

2. The *one year* period referred to... in compulsory liquidation.

Submitted on behalf of the Delegations of Denmark, Finland, Norway, Sweden.

NY - 25

Article 1.

Contractual mortgages or mortgages authorised by an act of justice and hypothèques...

Submitted by the Delegations of Denmark, Norway, Sweden, Finland.

DANISH MARITIME LAW ASSOCIATION

Article 4.

Add to paragraph 1.

VII. In relation to ships of less than 300 tons :

« Claims arising on contracts entered into or acts done by the master, acting within the scope of his authority, away from the vessel's home port, where such contracts of acts are necessary for the preservation of the vessel of the continuation of its voyage, whether the master is or is not at the same time owner of the vessel, and whether the claim is his own or that of shipchandlers, repairers, lenders, or other contractual creditors.

NY - 27

YUGOSLAV MARITIME LAW ASSOCIATION

Article 4.

To add a new para (2) reading (subject of drafting) as follows :

« It shall not be allowed to exercise the maritime liens securing the claims set out in the preceding para. of this article on the amounts due under a maritime insurance of the ship. »

In order to prevent the application of the provisions of different national laws in respect of the substitution of the amounts due under a maritime insurance to the ship, we are proposing to above amendment.

NY - 28

Ajouter un nouveau par. (2) avec le texte (sujet à rédaction) suivant :

« Le privilèges des créances énumérées au par. précédent du présent article ne pourront être exercés sur les sommes dues en vertu d'un contrat d'assurance-corps du navire. »

Pour éviter l'application des dispositions différentes des lois nationales en ce qui concerne la substitution de l'assurance corps du navire en faveur des créanciers privilégiés et considérant que cette substitution est admissible seulement en faveur des créanciers hypothécaires (et mortgagees) nous proposons l'amendement rédigé ci-dessus.

ISRAELI MARITIME LAW ASSOCIATION

Article 1.

Proposal for a definition to be inserted at the beginning of Article 1:

« A mortgage or hypothèque means any contractual charge on a vessel created by the owner thereof as a security for an existing, future or contingent liability. »

NY - 30

HELLENIC MARITIME LAW ASSOCIATION

Article 4.

1. Les alinéas (iii) et (iv) du paragraphe 1 de l'article 4 soient condensés à un seul ainsi libellé :

(iii) Les indemnités dues aux navires, les passagers et les cargaisons pour abordage ou heurts des navires;

2. l'alinéa (v) prendra le numéro (iv);

3. l'alinéa (vi) soit éliminé.

NY - 31

1. Paragraph 1, sub-paragraph 3 and 4 should be merged into single renumbered and reading as follows :

(iii) Indemnities due to vessels, passengers and cargoes deriving from collisions;

2. sub-paragraph (v) to be renumbered;

3. sub-paragraph to be deleted.

NY - 32

JAPANESE MARITIME LAW ASSOCIATION

Article 4.

To add « Claims for repairs of the vessel » as Item (vii) of paragraph 1.

As orally explained, we strongly hope that Article 6, paragraph 2 be deleted, at least to such an extent that each Contracting State may provide an adequate protection to the claims of ship repairers by means of granting them right of retention. Therefore, this amendment is submitted as a conditional one, conditioned on the disapproval of our proposal to be made later to amend Article 6, paragraph 2.

ASSOCIATION FRANÇAISE DU DROIT MARITIME

*Article 1.**Paragraphe 1.*

Après les mots hypothèques et mortgages ajouter : « Constitués conventionnellement et inscrits sur un navire seront reconnus avec force exécutoire par tous les pays contractants. »...

Paragraphe a).

Nouvelle rédaction :

« Ces hypothèques ou Mortgages aient été valablement constitués conformément à la loi de l'Etat Contractant où le navire est immatriculé lors de leur constitution, l'acte constitutif pouvant être établi soit sous la forme requise dans le pays d'immatriculation, soit en la forme admise dans les pays où l'acte est passé. »

Ajouter un d).

« Toutes les inscriptions relatives à un navire seront effectuées sur un seul et même registre. »

Article 2.

Remplacer par :

« Les effets des mortgages et hypothèques à l'égard des tiers sont déterminés par la loi du Pays d'inscription. »

Article 3, par. 1.

Supprimer et remplacer par :

« Sauf dans le cas prévu à l'art. 11, les inscriptions des droits énoncés à l'art. 1 ne peuvent être rangés sans main levée préalable, aimable ou judiciaire. »

NY - 34

*Articles nouveaux.**Article —*

Tout navire doit avoir, parmi les papiers de bord, un extrait du Registre mentionnant les hypothèques ou mortgages inscrits et les montants garantis.

Cet extrait ne devra pas avoir plus de 3 mois de date. Il indiquera l'adresse du Service chargé de la tenue du Registre.

Article —

Si le navire est perdu, sont subrogées au navire qu'à concurrence de la valeur de celui-ci :

- a) l'indemnité d'assurance du corps du navire
- b) et, à défaut d'assurance, ou si elle est insuffisante, les indemnités dues par des tiers à raison de cette perte.

Si le navire est seulement avarié, les mêmes subrogations ont lieu à concurrence du montant des avaries que le propriétaire ne ferait pas réparer.

Le créancier inscrit aura contre les débiteurs une action directe et le paiement fait par eux ne sera pas libératoire s'il est fait au mépris des droits du dit créancier.

NY - 35

ISRAELI MARITIME LAW ASSOCIATION

Article 1.

Additional proviso.

« ... and provided further that if any one or more of the particulars is not as mentioned above the validity of the mortgage or hypothèque shall not be affected so long as the principles of registration and publicity are maintained. »

Article 2.

Addition.

« Provided that the date of registration shall determine the rank of mortgages or hypothèques, in the absence of a contrary agreement by the prior mortgages concerned. »

Article 3, 1.

Addition.

« Unless the amounts due under each mortgage and hypothèque has been deposited with the competent authority of the State where the vessel is registered. »

NY - 36

ASSOCIATION BELGE DE DROIT MARITIME

Article 1.

Au littera (a), supprimer les mots : « constitués et... ».

NY - 37

Article 4, 1.

Supprimer les alinéas III. et IV.

GERMAN MARITIME LAW ASSOCIATION

Article 1.

Insert subpara c) after the word « register » the following words :
 « or the instrument referred to therein. »

Add a new para 2 reading :

« The right of a mortgage to enter into the possession of the vessel or to sell her privately cannot be executed by virtue of this convention.»

NY - 39

Article 3.

Delete Article 3, paras 2 and 3 and insert new paras 2 and 3 :

« 2) A vessel entered into the register of a contracting State can be registered in another contracting State in accordance only with the following procedure of transfer :

a) The register to whom the owner applies for the new registration of the vessel, inserts the entries applied for including those in favour of any third person, but notes in the register that the effect of this insertion is subject to the condition that the former registration of the vessel is deleted;

b) the registrar in whose register the vessel had so far been inserted, deletes the insertion against submission of the extract from the register of the new insertion and the approval in writing of the owner and all holders of mortgages or hypothecs and issues a certificate of deletion stating the date of deletion. The registrar cannot refuse the deletion, unless the vessel is to be registered in his own register or in any other register of this own State;

c) upon submission of the certificate of deletion the registrar who has inserted the new registration, deletes in his register the note made pursuant to subpara a), inserts the date of the deletion of the former insertion and issues the Certificate of Registry.

3) For the application of this Article the registrars are entitled to contact each other directly. Any letters or documents must be written in the language of the register sending them. »

NY - 40

Article 4.

In para 1 subpara IV delete the words « not based on contract ».

Article 6.

In para 2, insert after the words « of Art. 1 » the words « their respective priority, ».

Article 8.

Article 8 to be deleted. Insert a new 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 claim secured thereby arose, unless, prior to the expiry of such period,

a) the vessel has been arrested by the lienor, such arrest leading to a forced sale, or

b) a writ of summons in respect of the claim has been issued to a competent court or

c) the claim has been duly submitted to arbitration or

d) the owner is declared bankrupt or has gone into liquidation in accordance with the national law of the Contracting State, and the claim has been duly filed with the receiver in accordance with the national law.

2) When a claim has been adjudicated the lien shall be extinguished, if legal action to enforce it has not been taken within one year of the date of final judgment. When, in the cases of b, c and d, the claim has not been adjudicated nor rejected, it shall extinguish one year after the last act of the court, the arbiter of the receiver. »

3) « The maritime liens set out in article 4 shall also be extinguished when a limitation fund has been constituted according to article 2 of the International Convention relating to the limitation of the liability of owners of seagoing ships (signed at Brussels on October 10th, 1957), if the limitation of liability can be invoked with respect to the claim secured by the lien. »

Article 10.

Add a new para 2 reading :

« All notices mentioned in this article shall be sent directly to the holders and to the registrar by registered letters, if possible by airmail. The notice of the sale shall contain an information on all formalities which the creditor has to observe in order to safeguard his rights and their priority. »

Article 12.

Delete Art. 12.

Article 13.

Delete Art. 13 and insert a new article 13 :

« This convention shall apply whenever the ship attached by a mortgage, « hypothèque » or maritime lien is registered in a contracting State. »

NY - 46

Insert a new Art. 13 a) reading :

« This convention does not apply to vessels of war nor to government vessels appropriated exclusively to the public service. »

NY - 47

ITALIAN MARITIME LAW ASSOCIATION

Article 1 a)

Sub-amendment to French amendment.

Add at the end of the French amendment :

« .. provided, however, that the mortgage be executed in writing and that the signature of the mortgagor be authenticated. »

*New Article**(after Article 7)*

« The maritime liens cannot be enforced on the insurance indemnity due to the owner with respect to loss of or damage to the vessel. »

Article 8, 2.

Delete at the end of the paragraph the words :

« owing to it having been requisitioned or to the owner being bankrupt or being in compulsory liquidation. »

NY - 48

ASSOCIATION BELGE DE DROIT MARITIME

Article 2.

Ajouter au 4^e amendement du n° 33 :

« Toutefois les mesures d'exécution sont régies par la loi du pays où elles sont requises. »

MARITIME LAW ASSOCIATION OF THE UNITED STATES

Article 10.

Proposal for amendment as follows :

« Prior to the forced sale of a vessel in a Contracting State, the competent authority of such State shall give reasonable (at least 30 days) written notice of the time and place of such sale to all known holders of registered mortgages, registered « hypothèques » and registered maritime liens set out in Article 4 and to the registrar of the register in which the vessel is registered. »

Last sentence to be deleted.

NY - 50

BELGIUM, ITALY, NETHERLANDS AND THE UNITED KINGDOM

Article 4, 1 (iii).

The delegations of Belgium, Italy, Netherlands and the United Kingdom propose to substitute for sub-para. (iii) the following text :

(iii) « Claims 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. »

Article 4, 1 (iv).

The delegations of Belgium, Italy, Netherlands and the United Kingdom propose to substitute for sub-para (iv) the following text :

(iv) « Claims 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. »

NY - 51

UNITED STATES OF AMERICA AND GERMANY

Article 4, 1 (iv).

The delegations of the U.S.A. and Germany propose to word sub-para (iv) as follows :

Claims for damage or loss of cargo whether based on contract or tort and other claims not based on contract against the owner as far

as arising in respect of loss of or damage to property or in connection with property occurring in direct connection with the operation of the vessel. »

The U.S.A. delegation withdraws their proposed amendment to art. 4 para 1 (iv) NY-AM N° 2.

12

The German delegation withdraws their proposed amendment to art. 4 NY-AM.

40

NY - 52

HELLENIC MARITIME LAW ASSOCIATION

Add at the end of article 9 the following paragraph :

... except if it is the result of a disbursement effected by persons or body corporate covering maritime risks.

Ajouter à la fin de l'article 9 la phrase suivante :

... excepté le cas où la cession ou la subrogation de la créance est le fait d'un paiement effectué par une personne physique ou morale à la suite d'une assurance maritime.

NY - 53

Article 10.

a) Insert the words « or the person enforcing such sale » after the words « competent authority of such State » in line 2 and after the words « the said authority » in line 6.

b) Delete the words « and maritime liens set out in Article 4 ».

NY - 54

Article 11.

At the end of para 3 replace the words « and paragraph 2 of this Article have been complied with » by the words « 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 ».

NY - 55

Article 12.

Delete subpara (a), and delete the letter (b) from the beginning of the present subparagraph b).

ASSOCIATION FRANÇAISE DU DROIT MARITIME

Article 4.

Les créances suivantes seront garanties par un privilège maritime de premier rang sur le navire.

- i) les gages et autres sommes dues au capitaine, aux officiers et aux autres membres de l'équipage en vertu de leur contrat d'engagement à bord du navire;
- ii) les frais de port, de canal et autres droits de navigation, ainsi que les frais de pilotage;
- iii) les créances du chef d'assistance et de sauvetage et du chef d'enlèvement d'épave;
- iv) les créances du chef de contribution d'avarie commune.

NY - 57

YUGOSLAV MARITIME LAW ASSOCIATION

Article 6, 2.

To substitute the present text of para 2, Art. 6 by the following text (subject to drafting) :

Each contracting State may also grant rights of retention in respect of the vessel. 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. Nevertheless the Contracting States may grant a maritime lien to creditors exercising their right of retention if, during the time when they are exercising their right of retention, the vessel is seized and if in consequence thereof by order of a court they are compelled to relinquish possession of the vessel on which they are exercising their right of retention. The national law may to such maritime lien give a rank before all maritime liens attaching subsequently and all registered mortgages and « hypothèques ».

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In our opinion the present text of para 2 of Art. 6 is satisfactory except in respect of its provision as to the effects of the right of retention in the event of a forced sale. Even if to the right of retention the character of a right in rem is not recognized, it cannot be denied that the effects of such a right are practically analogous to a right in rem. This right would be completely devoided of such effects if it would be possible to oblige a creditor, exercising the right of retention, by order of court to relinquish his possession without granting him instead of such a remedy a right which would be preferred to the rights of other creditors, not even those of ordinary creditors. We are therefore con-

sidering that it would be advisable to amend the para 2 of Art. 6 as proposed above. In such a way perhaps it would also be possible to give satisfaction to the objections of the British Maritime Law Association to the present text of para 2 of Art. 6.

NY - 58

Substituer le texte actuel du par. 2 par le texte suivant (sujet à rédaction) :

Chaque Etat Contractant peut également reconnaître des droits de rétention sur le navire. L'exercice de ces droits ne peut pas porter préjudice à l'exercice des privilèges maritimes énumérés à l'art. 4 et des hypothèques et « mortgages » inscrits répondant aux exigences de l'art. 1. Néanmoins les Etats Contractants peuvent reconnaître un privilège aux créanciers exerçant un droit de rétention si, pendant le temps qu'ils exercent leur droit de rétention, le navire est saisi et si en conséquence ils sont par ordre de l'autorité judiciaire dépossédés du navire sur lequel ils exercent leur droit de rétention. La législation nationale pourra accorder à un tel privilège un rang primant tous les privilèges maritimes qui ont été créés postérieurement ainsi que toutes les hypothèques et « mortgages ».

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★★

A notre avis le texte du par. 2 de l'art. 6 est satisfaisant, exception faite de la disposition concernant les effets du droit de rétention en cas de vente forcée. Même si on ne reconnaît pas au droit de rétention un caractère de droit réel, on ne peut pas nier que ce droit a pratiquement un effet réel. Cet effet serait complètement supprimé si on permettait que par une saisie judiciaire on puisse déposséder le créancier exerçant son droit de rétention en ne lui donnant en compensation aucun droit qui serait préféré aux droits des autres créanciers, même chirographaires. C'est pour cette raison que nous considérons qu'il serait indiqué de modifier la disposition relative du par. 2 de l'art. 6 dans le sens de notre amendement. Il nous semble d'autre côté qu'un tel texte tiendrait compte des objections soulevées par l'Association Britannique de Droit Maritime contre le texte actuel.

NY - 59

Article 8.

To add to para 1 of Art. 8 in fine the following words (subject to drafting) :

... or unless an action in court for ascertaining the existence and the amount of the claim secured by a maritime lien has been presented and notice thereof has been recorded in the register where the vessel is registered.

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★★

401

Though we share the opinion that the period of extinction of maritime liens should be as short as possible, nevertheless, having in mind that the arrest of the vessel leading to a forced sale may prove sometimes either inopportune or practically impossible, we consider that claimants with maritime liens should be given the possibility to obtain interruption of the period of extinction by presenting an action in court, but only if such action is given publicity by recording it in the register where the vessel is registered.

NY - 60

Ajouter au par. 1 de l'art. 8 les mots (sujets à rédaction) suivants :
... ou qu'une action judiciaire n'ait été engagée pour faire reconnaître l'existence et fixer le montant de la créance privilégiée, pourvu que mention de cette action ait été portée au registre de navires dans lequel le navire est immatriculé.

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Bien que nous soyons convaincus que le délai d'extinction des privilèges maritimes en tant que droits réels invisibles doit être aussi bref que possible, nous considérons que tout de même on doit donner, en cas d'inopportunité ou impossibilité pratique d'une saisie conduisant à une vente forcée, aux créanciers privilégiés la possibilité d'interrompre le délai d'extinction par l'introduction d'une action en justice, mais uniquement à condition qu'une telle action judiciaire soit rendue publique par mention faite dans le registre de navires.

NY - 61

ASSOCIATION FRANÇAISE DU DROIT MARITIME

Article 5.

1. Les privilèges énumérés à l'article 4 auront la priorité sur les hypothèques ou mortgages inscrits.

2. Les privilèges énumérés à l'article 4 prendront rang dans l'ordre suivi à cet article, avec cette réserve cependant que les privilèges maritimes garantissant des créances du chef d'assistance et de sauvetage et du chef de relèvement d'épave prendront rang avant tous autres privilèges maritimes qui grévaient le navire au moment où les opérations d'assistance et de sauvetage ou de relèvement d'épave ont été effectués.

3. Les privilèges maritimes énumérés dans chacun des paragraphes 1 i) ii) de l'article 4 viennent en concours entre eux au marc le franc.

4. Les privilèges maritimes énumérés dans chacun des paragraphes 1 iii) et iv) de l'article 4 prendront rang entre eux dans l'ordre inverse

du moment où les créances garanties par ces privilèges sont nées. Les créances du chef de contribution en avarie commune seront censées être nées à la date à laquelle l'événement donnant ouverture à l'avarie commune c'est produit.

NY - 62

Article 6.

1. Les créances suivantes seront garanties par un privilège maritime ordinaire sur le navire :

a) Les créances contre le propriétaire du chef de mort ou lésions corporelles survenant en relation directe avec l'exploitation du navire.

b) Les créances de nature non contractuelle contre le propriétaire du chef de pertes ou dommages aux biens ou en rapport avec des biens, survenant en relations directe avec l'exploitation du navire.

— Les privilèges maritimes énumérés ci-dessus viennent en concours entre eux au marc le franc.

— Aucun privilège maritime ne grèvera le navire pour sûreté des créances visées au a) et b) du présent article résultant ou provenant de propriétés radioactives avec des propriétés toxiques, explosives ou autres propriétés dangereuses de combustible nucléaire ou de produits ou déchets radioactifs.

2. Chaque Etat Contractant peut reconnaître des privilèges pour garantir des créances autres que celles énumérées à l'article 4 et à l'article 6 § 1; à condition toutefois que ces privilèges ne prennent rang qu'après les hypothèques ou mortgages inscrits répondant aux exigences de l'article 1.

3. Chaque Etat Contractant peut également reconnaître des droits de rétention sur le navire à condition toutefois que l'exercice de ces droits ne puisse porter préjudice ni à l'exercice des privilèges maritimes énumérés à l'article 4 et des hypothèques ou mortgages inscrits répondant aux exigences de l'article 1, ni à la délivrance du navire à l'acquéreur de celui-ci en vente forcée.

NY - 63

NETHERLANDS, GREAT BRITAIN AND BELGIUM

Article 6.

1. Each Contracting State may grant liens or rights of retention to secure claims other than those referred to in Article 4.

2. Such liens shall rank after all registered mortgages and « hypothèques » which comply with the provisions of Article 1 and such rights of retention shall not prejudice the enforcement of the registered mortgages or « hypothèques » which comply with the provisions of Article

1 or of the maritime liens which comply with the provisions of Article 4 nor with the delivery of the vessel to the purchaser in a forced sale. Provided always, however, that :

a) a lien or right of retention may be 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.

b) any such lien shall be postponed to all the maritime liens set out in Article 4 but may be preferred to registered mortgages or « hypothèques » and any such right of retention may be exercisable against the vessel notwithstanding any registered mortgage or « hypothèque » on the vessel.

c) Such lien or right of retention shall be extinguished when the vessel ceases to be in the possession of the ship repairer.

NY - 64

DANISH MARITIME LAW ASSOCIATION

Subamendment to amendment NY-AM 63 proposed by the Netherlands, Great Britain and Belgium in relation to the right of retention, art. 6 :

Art. 6, para 2 b) should read :

b) any such lien may be preferred to the maritime liens set out in article 4 and to registered mortgages.

NY - 65

DELEGATION OF NORWAY

Article 4.

Amendment proposed to Article 4, 1.

Sub-paragraph v) shall read :

« Claims for salvage, wreck removal and contribution in general average. »

Sub-paragraph vi) shall be deleted.

NY - 66

NORVEGIANS MARITIME LAW ASSOCIATION

Article 5.

Article 5, 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 operations giving rise to the said liens were performed.

Article 5, 4.

The maritime liens set out in subparagraph v) of Article 4 shall rank in the inverse order of the time when the claims secured accrued. Claims for contribution in general average, etc.

NY - 67

ASSOCIATION FRANÇAISE DU DROIT MARITIME

Article 6.

Ajouter le paragraphe suivant :

Compte tenu des dispositions de l'alinéa premier tous les Etats Contractants reconnaissent avec force exécutoire les privilèges accordés pour :

- a) Frais de remorquage;
- b) Réparations, équipement d'un navire ou frais de cale;
- c) Pertes ou dommages aux marchandises et bagages transportés;
- d) Fournitures de produits ou de matériel faites à un navire en vue de son exploitation et son entretien;
- e) Débours du capitaine et ceux effectués par les chargeurs, les affréteurs ou les agents pour le compte du navire.

Ces privilèges prendront rang après les hypothèques et mortgages dans l'ordre où ils sont classés et avant toutes autres suretés accordées par les lois nationales.

NY - 68

With due consideration to the provisions of the first paragraph the following liens are acknowledged by the H.C.P. and enforceable :

- a) Towage charges;
- b) repairs, equipment and drydock expenses;
- c) cargo or luggages damages or loss;
- d) supply to the vessel of products or material required for her management and upkeep;
- e) master's expenses and those paid on ship's account by Shippers, Charterers or agents.

These liens will rank, in the order here-above listed, after the mortgages and hypothèques, but prior to all other liens granted by national laws.

Article 8 bis.

1. Pour les créances privilégiées énumérées aux paragraphes III, IV, V et VI de l'article 5 ci-dessus, aucun privilège ne peut plus être exercé sur le navire, si le propriétaire met à la disposition des créanciers l'assurance qu'il aura contracté pour garantir leur recours pourvu qu'elle soit reconnue valable et suffisante.

La même règle s'applique aux créanciers à l'égard desquels le propriétaire peut limiter sa responsabilité par la constitution d'un fonds de limitation dès que ce fonds est effectivement disponible au profit des créanciers.

2. Si le propriétaire laisse saisir et vendre son navire sans avoir mis l'assurance à la disposition des créanciers énumérés au paragraphe précédent, ou sans avoir constitué le fonds de limitation, les titulaires d'hypothèques ou de mortgages seront subrogés, suivant leur rang, aux droits du propriétaire envers ses assureurs, pour un montant égal aux sommes distribuées aux dits créanciers en provenance du prix de vente.

NY - 70

HELLENIC MARITIME LAW ASSOCIATION

(Proposed after the withdrawal of Amendment NY - AM. 3)

Article 4, § 1.

The Hellenic delegation proposes :

a) to insert in Article 4, para 1, after the words « The following claims » the words « against the Owner », and

b) to substitute for the last sentence of Article 4, para 1 the following :

« The word « owner » mentioned in this paragraph shall be deemed to include the demise charterer. »

NY - 71

(Proposed after the withdrawal of Amendment N° NY. - AM. 8)

Article 7, § 1.

The Hellenic delegation proposes to delete Article 7, para 1.

Alternatively it proposes to substitute for article 7, para 1 the following text :

1. The maritime liens set out in Article 4 arise whether the Claims secured by such liens are against the owner of the demise charterer. »

BRITISH MARITIME LAW ASSOCIATION

Article 11.

To amend Article 11, para 2 by the addition of the words underlined :

« 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 and other liens, registered mortgages and « hypothèques » in accordance with the provisions of this Convention to the extent necessary to satisfy their claim. »

NY - 73

SWEDISH MARITIME LAW ASSOCIATION

Amendment submitted in respect of 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, time to be calculated from day of dispatching the 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, to ship's master 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. »

NY - 74

ISRAELI MARITIME LAW ASSOCIATION

Article 10.

As it is desirable that prospective claimants should be notified as early as possible in order not to delay proceedings, it is felt that the notice mentioned in this Article should be given « upon proceedings for forced sale being instituted and a least 30 days prior to the sale, to enable them to submit their claims in respect to the vessel ».

It should, perhaps, be indicated that publication in a local paper of the Country where claimants may be found shall be sufficient notification, if the whereabouts of the claimants are unknown.

Article 11.

Suggested amendment of opening phrase :

« Upon the forced sale of the vessel in Contracting State all mortgages, « hypothèques », liens and other encumbrances of whatsoever nature, existing up to the time of such sale shall cease to attach to the vessel... »

Additional Provisions

The Israeli Delegation would suggest that certain provisions be included in the draft for clarification, and that, if accepted, the following be referred to the drafting committee :

1. Contracting States shall recognize validity and effect of arrests, seizures, orders of sale and deregistration duly made by Competent Courts and Authorities of other Contracting States.

2. Where orders of seizure and/or sale are made by Tribunals of two or more Contracting States, the State which had first actually arrested the vessel shall have jurisdiction thereon in all matters concerning maritime liens and mortgages, to the exclusion of the Tribunals of any other State.

NY - 75

DRAFT CONVENTION
ON
MARITIME LIENS AND MORTGAGES

REVISED TEXT AS PREPARED BY DRAFTING COMMITTEE

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 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 of any instrument referred to in paragraph (b) above specifies the name and address of the person in whose favour the mortgage or « hypothèques » 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 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 membres 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 and wreck removal.

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 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.

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PROJET DE CONVENTION
RELATIVE AUX
PRIVILEGES ET HYPOTHEQUES MARITIMES

TEXTE REVU PAR LE COMITE DE REDACTION

Article 1.

Les Hypothèques et « mortgages » sur les navires seront reconnus dans les Etats Contractants à condition :

a) que ces hypothèques et « mortgages » aient été constitués et inscrits dans un registre conformément aux lois de l'Etat où le navire est immatriculé.

b) que le registre et tous les actes qui doivent être remis au Conservateur conformément aux lois de l'Etat où le navire est immatriculé, soient accessibles au public et que la délivrance d'extraits du registre et de copies de ces actes soient exigibles du Conservateur.

c) et que le registre et tous les actes visés au paragraphe b) ci-dessus indiquent ou bien le nom et l'adresse du titulaire de l'hypothèque ou du « mortgage » ou bien que cette sûreté a été établie au porteur la somme garantie ainsi que la date et autres mentions qui, suivant les lois de l'Etat de l'inscription déterminent le rang par rapport aux autres hypothèques et « mortgages » inscrits.

Article 2.

Le rang des hypothèques et mortgages entre eux et leurs effets à l'égard des tiers sont déterminés par les lois de l'Etat d'inscription; toutefois, les mesures d'exécution sont régies par les lois de l'Etat où elles sont requises.

Article 3.

1. Sauf dans le cas prévu à l'article 11, aucun Etat Contractant ne permettra la radiation de l'immatriculation d'un navire, sans le consentement écrit de tous les titulaires des hypothèques ou « mortgages » inscrits.

2. Un navire qui est ou a été immatriculé dans un Etat Contractant ne sera susceptible d'être immatriculé dans un autre Etat Contractant, que :

a) si un certificat a été émis par le premier Etat, attestant que le navire a été radié, ou

b) si un certificat a été émis par le premier Etat, attestant que le navire sera radié le jour où cette nouvelle immatriculation aura eu lieu, et pour autant que celle-ci ait été effectuée dans les 30 jours.

Lorsque le certificat visé par le paragraphe b) ci-dessus aura été émis, aucune inscription de droits relatif au navire ne sera plus autorisée au cours de cette période de 30 jours.

Les certificats visés aux paragraphes a) et b) ci-dessus indiqueront tous les hypothèques et « mortgages » inscrits sur le navire avec leur rang respectifs.

3. Le navire ne pourra être immatriculé dans un autre Etat Contractant que si celui-ci accepte les hypothèques et « mortgages » inscrits mentionnés aux certificats prévus par le paragraphe 2) du présent article et leur conserve leur rang respectif.

Article 4.

1. Les créances suivantes seront garanties par un privilège maritime sur le navire :

i) Les gages et autres sommes dues au capitaine, aux officiers et aux autres membres de l'équipage, en vertu de leur contrat d'engagement à bord du navire.

ii) Les frais de port, de canal et autres voies navigables ainsi que les frais de pilotage.

iii) Les créances contre le propriétaire du chef de mort ou de lésion corporelle causée par un vice du navire ou par la faute commise par une personne employée à bord du navire et dans l'exercice de ses fonctions.

iv) Les créances délictuelles ou quasi-délictuelles contre le propriétaire, non susceptibles d'être fondées sur un contrat, du chef de la perte ou de l'avarie d'un bien causée par un vice du navire ou par la faute commise par une personne employée à bord du navire et dans l'exercice de ses fonctions.

v) Les indemnités d'assistance et de sauvetage, les frais de relèvement d'épave et la contribution aux avaries communes. Par propriétaire, au sens du présent article, on entend également le locataire en coque nue et tout autre affréteur, l'armateur gérant ou l'exploitant du navire.

2. Aucun privilège maritime ne grèvera le navire pour sûreté des créances visées au 1° iii) et iv) du présent article, résultant ou provenant de propriétés radioactives ou d'une combinaison de propriétés radioactives avec des propriétés toxiques, explosives ou autres propriétés dangereuses de combustible nucléaire ou de produits ou déchets radioactifs.

CANADIAN MARITIME LAW ASSOCIATION

Article 11, § 3.

Delete the words in last line « and paragraph 2 ».

BRITISH MARITIME LAW ASSOCIATION

To delete Article 11 (3) and substitute the following :

« When a vessel registered in a Contracting State, has been the object of a forced sale in a Contracting State, the Court having jurisdiction shall, at the request of the purchaser, issue a certificate that the vessel is sold free of all mortgages, « hypothèques », liens and other encumbrances. Upon production of such certificate, the Registrar shall be bound to issue a Certificate of De-registration. »

DRAFT CONVENTION
ON
MARITIME LIENS AND MORTGAGES
REVISED TEXT AS PREPARED BY
DRAFTING COMMITTEE

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 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) 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.

PROJET DE CONVENTION
RELATIVE AUX
PRIVILEGES ET HYPOTHEQUES MARITIMES

TEXTE REVU PAR LE COMITE DE REDACTION

Article 5.

1. Les privilèges maritimes énumérées à l'article 4 auront priorité sur les hypothèques et « mortgages » inscrits et aucun autre droit ne sera préféré ni à ces privilèges ni aux hypothèques et « mortgages » répondant aux exigences de l'article 1, mises à part les dispositions de l'article 6.

2. Les privilèges maritimes énumérés à l'article 4 prendront rang dans l'ordre qu'ils y occupent; cependant les privilèges maritimes garantissant les indemnités d'assistance ou de sauvetage et les frais de relèvement d'épave auront priorité sur tous les autres privilèges maritimes qui grevaient le navire au moment où les opérations d'assistance ou de sauvetage ou de relèvement d'épave ont été effectuées.

3. Les privilèges maritimes énumérés dans chacun des paragraphes (i), (ii) et (iv) de l'article 4 viennent en concours entre eux au marc franc.

4. Les privilèges maritimes énumérés dans chacun des paragraphes (v) et (vi) de l'article 4 prendront rang entre eux dans l'ordre inverse des dates où sont nées les créances garanties par ces privilèges. Les créances du chef de contribution aux avaries communes seront considérées comme étant nées à la date de l'acte générateur d'avaries communes.

Article 6.

1. Tout Etat contractant peut reconnaître des privilèges ou des droits de rétention pour garantir des créances autres que celles énumérées à l'article 4. Ces privilèges prendront rang après toutes les hypothèques et « mortgages » inscrits qui répondent aux exigences de l'article 1 et ces droits de rétention ne pourront empêcher ni de poursuivre l'exécution des hypothèques et « mortgages » inscrits ou des privilèges maritimes énumérés à l'article 4 ni de livrer le navire à celui qui l'aura acquis à la suite de cette procédure d'exécution.

2. Au cas où un privilège ou un droit de rétention serait reconnu sur un navire qui est en la possession d'un chantier de réparation, et ce pour garantir la créance du chef de réparations effectuées pendant que le navire était entre les mains du chantier, ce privilège viendra après tous les privilèges maritimes énumérés à l'article 4, mais pourra primer les hypothèques et « mortgages » inscrits et ce droit de rétention

sera opposable au navire nonobstant toute hypothèque et « mortgage » inscrits. Ce privilège et ce droit de rétention seront éteints lorsque le navire cessera d'être en la possession du chantier.

Article 7.

1. Les privilèges maritimes énumérés à l'article 4 prennent effet, que les créances garanties par ces privilèges soient à la charge du propriétaire ou à celle du locataire en coque nue, de tout autre affréteur, de l'armateur gérant ou de l'exploitant du navire.

2. Sous réserve des dispositions de l'article 11, les privilèges maritimes énumérés à l'article 4 suivront le navire nonobstant tout changement de propriété ou d'immatriculation.

Article 8.

1. Les privilèges maritimes énumérés à l'article 4 seront éteints à l'expiration d'un délai d'un an à compter de la naissance de la créance garantie, à moins que, avant l'expiration de ce délai, le navire n'ait été l'objet d'une saisie exécutoire.

2. Le délai d'un an prévu au paragraphe précédent ne sera susceptible d'aucune suspension ni interruption : cependant ce délai ne courra pas tant qu'un empêchement légal met le créancier privilégié dans l'impossibilité de saisir le navire.

Article 9.

La cession d'une créance garantie par l'un des privilèges maritimes énumérés à l'article 4 ou la subrogation dans les droits du titulaire d'une telle créance emporte par là même la transmission du privilège.

Article 10.

Préalablement à la vente forcée d'un navire dans un Etat Contractant, l'autorité compétente de cet Etat donnera connaissance par écrit, au moins 30 jours avant, de la date et du lieu de vente à tous les titulaires connus d'hypothèques et de « mortgages » inscrits et des privilèges maritimes énumérés à l'article 4 ainsi qu'au Conservateur du registre d'immatriculation du navire.

Article 11.

1. Au cas de vente du navire dans un Etat contractant, tous les hypothèques, « mortgages », privilèges et autres charges de quelque nature que ce soit, cesseront de grever le navire, à condition toutefois : a) qu'au moment de la vente, le navire se trouve dans la juridiction de cet Etat contractant;

b) et que la vente ait été poursuivie en conformité avec les lois de cet Etat et les dispositions de la présente Convention.

2. Les dépens taxés par le tribunal et provoqué par la saisie, la vente qui l'a suivie et la distribution du prix seront payés en premier lieu, par prélèvement sur le produit de la vente. Le solde en sera distribué aux titulaires des privilèges maritimes et du privilège prévu par l'article 6, paragraphe 2, et des hypothèques et « mortgages » inscrits conformément aux dispositions de la présente convention à dûe concurrence des sommes qui leur sont dûes.

3. Lorsque un navire, immatriculé dans un Etat Contractant, a fait l'objet d'une vente forcée dans un Etat Contractant, le tribunal, ou toute autre autorité compétente, délivrera, à la demande de l'acheteur, un certificat attestant que le navire est vendu libre de tous hypothèques et « mortgages », privilèges et autres charges, toujours à la condition que les exigences mentionnées aux alinéas a) et b) du paragraphe 1 ci-dessus aient été respectées et que le produit de la vente ait été consigné entre les mains de l'autorité compétente d'après les lois de l'Etat où a lieu la vente et ce pour être distribué à toute personne pouvant prétendre avoir un droit sur lui. Sur production de ce certificat, le Conservateur sera tenu de délivrer un certificat de radiation de l'immatriculation du navire en vue de sa réimmatriculation.

Article 12.

Sauf stipulations dérogatoires dans la présente convention, les Etats Contractants appliqueront les dispositions de cette Convention, à tous les navires de mer, peu importe qu'ils soient immatriculés dans un Etat Contractant ou dans un Etat non-Contractant.

Article 13.

Chaque Etat qui ratifie la présente Convention ou y adhère, dénoncera immédiatement la Convention Internationale pour l'Unification de certaines règles relatives aux privilèges et hypothèques maritimes et protocole de signature, signés à Bruxelles le 10 avril 1926.

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DRAFT CONVENTION ON MARITIME LAW AND MORTGAGES

REVISED TEXT AS PREPARED BY DRAFTING COMMITTEE

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 « hypothèques » which comply with the provisions of Article 1 and such rights of retention shall not prejudice the enforcement of the registered mortgages or « hypothèques » 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 « hypothèques » and such right of retention may be exercisable against the vessel notwithstanding any registered mortgage or « hypothèque » 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 3 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 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 regis-

tered mortgages, registered « hypothèques » 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, « 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, the liens mentioned in para 2 of Article 6, registered mortgages and « hypothèques » 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, « hypothèques », liens and other encumbrances, provided that the requirements set out in para 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 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.

BRITISH MARITIME LAW ASSOCIATION

*Article 3**Note :*

The United Kingdom Delegation proposes that the whole of this Article should be omitted from the Convention. In order, however, to ensure that priority is preserved in respect of mortgages effected on ships under construction in countries which have ratified the Stockholm Convention, it is the view of the Delegation that specific provision should be made in Article 3 to cover this position. Under English law, foreign mortgages are recognised provided that they are constituted in accordance with the law of the country where they are effected (see : e.g. Administration of Justice Act 1956 S.l. (4) (c) and no additional provision is required. This is not the case under certain other legal systems. It is in these circumstances that the following text is proposed for Article 3.

Para 1. No change.

Para 2. (new). A vessel which is being or has been constructed in a Contracting State which is also a party to the Convention...

Rights in Ships under Construction, if such vessel has not previously been registered under the present Convention, shall not be eligible for registration in any 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.

Para 3. A vessel which is or has been registered under the present Convention 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.

Para 4. When the Certificate mentioned under paragraph 2b or 3b above has been issued no registration of rights in respect of the vessel shall be allowed during the thirty days period. The certificates mentioned under paragraph 2a and 2b and paragraph 3a and 3b shall set out in order of priority all registered mortgages and hypothèques on the vessel.

Para 5. Such vessel shall be accepted for registration in another Contracting State only if the registered mortgages and hypothèques set out in the Certificate mentioned in paragraph 2 and paragraph 3 are accepted for registration by such State and retain their respective priorities.

Additional

Para 6. The provisions of paragraph 2 shall not prejudice the recognition or registration in any Contracting State of mortgages or hypothèques on vessels which are being constructed, which mortgages or hypothèques have been validly created under the law of the State in which the vessel has been or is being constructed.

Revised

Para 1. Substitute the words underlined for the words « under the present Convention ».

Para 2. (new). « A vessel which is being or has been constructed in a Contracting State which is also a party to the Convention...

Rights in Ships under Construction, if such vessel has not previously been registered as a seagoing vessel in a State party to this Convention, shall not be eligible for registration in any 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.

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CANADIAN MARITIME LAW ASSOCIATION

Articles 4 and 7.

Provided however that with respect to claims listed in sub-paragraph (ii) and (iv) of Article 4 para 1 the word « owner » shall be deemed to include the demise charterer of the vessel.

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MOTION

Les délégations signataires :

- considérant que les votes intervenus au cours des débats tenus à New York ont fait apparaître de réelles difficultés dans l'élaboration d'un texte susceptible d'être adopté par la conférence;

- considérant que les points de vue exprimés ont montré cependant la nécessité et la volonté de poursuivre la discussion en vue de faire adopter un projet de convention;

demandent

- que le projet actuellement en cours de discussion ne fasse pas l'objet d'un vote d'ensemble définitif;
- que la discussion soit reportée au sein d'une nouvelle commission internationale sur la base des propositions qui lui seront soumises par les Délégations, compte tenu des points de vue exprimés à New York;
- qu'une conférence soit réunie à la diligence du Président du C.M.I. dans un délai raisonnable, en vue d'examiner le Projet qui sera ainsi élaboré par cette commission.

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Resolution

The undersigned delegations consider that the proceedings to date at the New York Conference have clearly indicated a substantial number of fundamental and basic difficulties in producing a draft convention which would be mutually acceptable to the conference as a whole.

They also consider that the points of view expressed have already indicated a great desire to continue discussions in order to arrive at a draft convention which could have the full support of the conference.

They feel that for these reasons the present draft should not be submitted to a final vote but that, on the contrary, the discussions should be continued through a newly constituted committee on the basis of further proposals to be submitted by national delegations and reflecting the experience acquired in New York.

They therefore request that a new conference be ordered by the President of the Comité Maritime International within a reasonable time, in order to fully explore and consider the draft to be submitted by the new committee.

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CANADIAN MARITIME LAW ASSOCIATION

New Article 10.

In place of present article 10 substitute the following :

The Court in any Contracting State ordering a forced sale shall provide for at least thirty days written notice to be sent to all persons who hold a registered mortgage or registered hypothèque or who are claiming in the Court for liens or other encumbrances against the ship.

CANADA, ISRAEL

New Article 2. translation.

The ranking of hypothecs and mortgages as between themselves and the effect thereof with regard to third parties shall be determined by the law of the State where they are registered; nevertheless the process of execution shall be governed by the law of the State of enforcement.

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Article 2.

Le rang des hypothèques et « mortgages » entre eux et sous réserve des dispositions de la présente convention, leurs effets à l'égard des tiers, sont déterminés par les lois de l'Etat où ils sont inscrits; toutefois sous réserve de l'application des dispositions de l'article 10, les mesures d'exécution de l'article 10, les mesures d'exécution sont régies par les lois de l'Etat où elles sont requises.

Article 2.

The ranking of « hypothèques » 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.

III

CONFERENCE OF NEW YORK

AGENDA AND TIME-TABLE

LIST OF ATTENDANCE

MINUTES

AGENDA

OF THE CONFERENCE

Revision of the International Convention for the Unification of certain Rules relating to *Maritime Liens and Mortgages*, signed at Brussels, on April 10th, 1926.

TIME-TABLE

BUSINESS SESSIONS

The business sessions of the Conference were held in the rooms of the Association of the Bar of the City of New York, located at 42 West 44th Street, as follows :

Monday, Sept., 13th :

9,30 A.M. : business session
0,30 P.M. : luncheon recess
2,30 P.M. : business session.

Tuesday, Sept., 14th :

9,30 A.M. : business session
0,30 P.M. : luncheon recess
2,30 P.M. : business session.

Thursday, Sept., 16th :

9,30 A.M. : business session
0,30 P.M. : luncheon recess
2,00 P.M. : business session.

Friday, Sept., 17th :

9,30 A.M. : business session
0,30 P.M. : luncheon recess
2,30 P.M. : business session.

SPECIAL EVENTS

Sunday, Sept., 12th :

3,00 P.M. : Opening Ceremonies, Carnegie Hall.

4,30 P.M. : Mayor's Reception and Cocktail Party, Gracie Mansion.

Monday, Sept., 13th :

5,30 to 8,00 P.M. : Canadian M.L.A. Reception and Cocktail Party, Canadian Club (Waldorf Astoria Hotel).

Tuesday, Sept., 14th :

7,00 P.M. : « Friendship Night », Homes of Members of The Maritime Law Association of the United States.

Wednesday, Sept., 15th :

9,00 A.M. : Hudson River Excursion.

Thursday, Sept., 16th :

8,15 P.M. : Theatre Party, The New York State Theatre, Lincoln Center.

11,00 P.M. : « Champagne Supper », Promenade of The New York State Theatre.

Friday, Sept., 17th :

7,00 P.M. : Reception and Dinner Dance, Waldorf Astoria Hotel.

Saturday, Sept., 18th to Monday, Sept., 20th :

1,00 P.M. to 6,30 P.M. : Washington Trip.

LADIES' PROGRAM

Monday, Sept., 13th :

9,45 A.M. : Cruise around Manhattan.

1,30 P.M. : Visit to Museum of Modern Art.

Tuesday, Sept., 14th :

8,45 A.M. : Bus Tour of « Downtown » New York.

11,30 A.M. : Lunch at Metropolitan Museum of Art.

1,00 P.M. : Visit to Metropolitan Museum and Guggenheim Museum.

Thursday, Sept., 16th :

9,30 A.M. : « Breakfast at Tiffany's ».

12,00 M. : Luncheon and Fashion Show.

2,00 P.M. : Visit to the Frick Collection.

Friday, Sept., 17th :

11,00 A.M. : Luncheon, followed by Guided Tour of U.N. Buildings.

OFFICERS OF THE CONFERENCE

<i>Hon. President :</i>	Mr. Albert LILAR.
<i>Hon. Vice-Presidents :</i>	Mr. Cyril T. MILLER, C.B.E. Mr. Nicholas J. HEALY. Mr. Arthur M. BOAL.
<i>Hon. Secretaries General :</i>	Mr. Carlo VAN DEN BOSCH. Mr. Henry C. BLACKISTON.
<i>Hon. Treasurer :</i>	Mr. Léon GYSELYNCK.
<i>Hon. Secretaries :</i>	Mr. J. Joseph NOBLE. Mr. Léo VAN VARENBERGH. Mr. Henri-François VOET.

HOST-ASSOCIATION

THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

Officers

President :

Mr. Nicholas J. HEALY, 29, Broadway, New York 6, New York.

First Vice-President :

Mr. William G. SYMMERS, 37, Wall Street, New York 5, New York.

Second Vice-President :

Mr. Benjamin W. YANCEY, Whitney Bank Bldg., New Orleans 12,
La.

Secretary :

Mr. James J. HIGGINS, 120, Broadway, New York 5, New York.

Treasurer :

Mr. J. Joseph NOBLE, 99, John Street, New York 38, New York.

Membership Secretary :

Mr. J. Edwin CAREY, 96, Fulton Street, New York 38, New York.

Executive Committee

Term Expiring 1966 :

Mr. Thomas E. BYRNE, Jr. of Philadelphia.

Mr. John W. CASTLES, III of New York.

Mr. J. DONOVAN, Jr. of New York.

Term Expiring 1967 :

Mr. Walter E. MALONEY of New York.

Mr. Stuart B. BRADLEY of Chicago.

Mr. Clarence MORSE of San Francisco.

Term Expiring 1968 :

Mr. Sweeney J. DOEHRING of Houston.

Mr. Alfred A. LOHNE of New York.

Mr. Gray WILLIAMS of New York.

COMMITTEE ON THE
COMITE MARITIME INTERNATIONAL

Mr. Arthur M. BOAL of New York, Chairman.
Mr. Henry C. BLACKISTON of New York.
Mr. Leavenworth COLBY of Washington, D. C.
Mr. Eli ELLIS of New York.
Mr. John F. GERITY of New York.
Mr. Harry L. HAEHL, Jr. of San Francisco.
Mr. Charles S. HAIGHT of New York.
Mr. Nicholas J. HEALY of New York, *ex officio*.
Mr. Wilbur H. HECHT of New York.
Mr. Edward J. HEINE, Jr. of New York.
Mr. Walter P. HICKEY of New York.
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MINUTES

Sunday, 12th September, 1965

OPENING SESSION

Carnegie Hall, New York City

Mr. Healy, President of the Maritime Law Association of the United States :

Mr. Justice Harlan, Lieutenant Governor Wilson, President Lilar, members of the Bureau Permanent, delegates to the New York Conference of the Comité Maritime International, distinguished guests, fellow members of the Maritime Law Association of the United States, ladies and gentlemen :

The Maritime Law Association of the United States was founded some sixty-six years ago, in 1899, only two years after the organization of the Comité Maritime International. As a matter of fact, the very reason that our Association came into being was the desire of the men of wisdom who founded it to form an Association which would become a constituent member of the Comité, and thus be able to participate actively in its vital work.

It is the largest of the twenty-eight national maritime law associations which form the C.M.I. Our members are to be found in all of our port cities, whether they be on the Atlantic or the Pacific, on the Gulf of Mexico or the Great Lakes, or on our great rivers. Present today in this venerable hall are members representing each of these vast maritime areas, and I am certain I express the thoughts of each of them, and of those who are unable to be present, in bidding our visitors from abroad a most hearty welcome to our country.

I shall wait for one of our own meetings to express my appreciation to those members of our own Association who assisted in so many ways in making the New York Conference possible. However, this occasion should not be permitted to pass without a word of gratitude for the help so generously given to us by others.

First, we are most grateful for the valuable assistance rendered by the Secretariat of the Comité Maritime International, and particularly by Mr. Henry Voet and by Mr. Léo Van Varenbergh, who made a special trip to New York last May for the express purpose of assisting us with respect to the arrangements.

We are greatly indebted to the American Institute of Marine Underwriters and to the many steamship companies, banks, insurance companies and other industry contributors who helped with the financing originally undertaken entirely by our own membership.

Our thanks are also due to the Mayor of the City of New York and Mrs. Wagner, and to our good neighbors, the officers and members of the Canadian Maritime Law Association, for their generous assistance in providing hospitality for our mutual friends from Europe, Asia, Africa and Latin America.

We are most appreciative of the valuable service performed by Mrs. F. Herbert Prem and the members of her Ladies' Committee, and by Mr. George Goodfellow, the very diligent Secretary of the Planning Committee, who is probably already known, at least through correspondence, to most of the people in this audience.

The Maritime Law Association of the United States owes a debt of gratitude to Mr. Justice Harlan and Lieutenant Governor Wilson for their kindness in accepting our invitation to be here and to address this Opening Session.

Finally, we wish to thank all of our members for coming to New York and for being with us today, and to express our gratitude to all of our distinguished visitors from other countries who have made this long trip, the longest, certainly, that any of them has been obliged to make in order to attend a Conference of the Comité Maritime International.

Mesdames et Messieurs,

Les Membres de notre Association ont attendu longtemps et impatiemment ce moment; celui de l'ouverture de la première conférence du Comité Maritime International devant se tenir dans le nouveau monde.

Notre Association est fière et heureuse d'en être les promoteurs et nous espérons et souhaitons que tant les membres officiels du Comité que les délégués venus de l'étranger ainsi que les dames présentes n'aient pas à regretter que le Bureau Permanent a accepté notre invitation de tenir la 27^e Conférence du Comité Maritime International au port de New York.

La revision de la Convention de 1926 sur les « Privilèges et Hypothèques Maritimes » est d'une grande importance pour tous ceux qui s'intéressent aux navires et aux affaires maritimes et nous espérons que la Conférence de New York restera longtemps présente à notre mémoire pour avoir accompli des progrès substantiels vers un idéal d'uniformité dans cet important domaine du droit maritime.

Dans une conférence de cette envergure, il existe aussi un autre aspect : c'est l'occasion qu'elle offre pour renouer de vieilles amitiés, pour échanger des idées avec des collègues qui, quoique vivant dans

d'autres pays et parlant des langues multiples et étant différents de plus d'une manière, partagent cependant le même souci et la même affection pour le droit maritime.

Quelles que soient nos opinions sur les questions discutées au cours des sessions plénières, qu'elles soient débattues avec intensité, avec fougue ou même avec impétuosité, nous pouvons être sûrs que nos soirées seront des plus amicales et que d'après les paroles de Shakespeare,

« Do as adversaries do in law,
Strive mightily, but eat and drink as friends ».

And now it is my great privilege, ladies and gentlemen, to introduce to you the Lieutenant Governor of the State of New York, Lieutenant Governor Wilson, whom I am happy to greet here, not only as a distinguished representative of our State, and the one who will bring greetings on behalf of the State to all those present, but also as an old friend.

Lieutenant Governor Wilson.

(Applause)

Lieutenant Governor Wilson :

Mr. Healy, Mr. Justice Harlan, President Lilar, distinguished guests, officers, members of C.M.I. and your ladies and your guests.

My role here today is a very pleasant one, and I am sure you will be glad to hear, from your point of view, a very brief one, and that is, as Mr. Hearly has indicated, to extend a word of welcome to you.

So, on behalf of Governor Rockefeller, and in the name of more than 18 million residents of New York State, I bid you welcome. But for an irreconcilable conflict of schedule, the Governor would have been here himself to greet you. I bring his expressions of genuine regret and of warm personal and official felicitations.

Ladies and gentlemen, actually it is a source of great gratification that the first time in your history a conference is held in this country. That you have chosen New York at its locale, occasions special satisfaction to all of us of the Empire State, for in a sense, we regard it as your sharing of our pride in the fine record of performance of those fellow citizens of ours who are engaged with you in matters relating to the law of the sea.

The purpose of your Comité, as stated in its constitution — « To promote the unification of international maritime and commercial law and practice » — is indeed a laudable one. That you and those who have preceded you in the participation in the work of the Comité since its organization sixty-eight years ago have measured up to the challenge of that purpose is amply evidenced by the imposing litany of your

conventions which have been adopted either by ratification or by the enactment of parallel legislation.

Frankly, ladies and gentlemen, I can think of no more propitious time than this for such an international gathering of practitioners engaged in a common field in various parts of the earth — recognizing as it does the value and even the urgency for men of good will to participate in a dialogue which will result in mutual benefits in the law and in its administration. For to observe that we are living in a time of great tension, would be to belabor the obvious. Indeed, even now, as you know, the Secretary General of the United Nations is in Asia seeking to achieve a cessation of open warfare, while shortly Pope Paul VI will make an unprecedented appearance here before the United Nations to utter a plea for peace.

At the same time, in the sessions of your conference, representatives of twenty-nine nations, — men and women trained to respect facts, to respect the law, and to recognize that the establishment of order with justice should be our ultimate concern — will be demonstrating once again that men of good will, working earnestly together, can arrive at reasonable and appropriate solutions to problems which we face in common.

One more word, and I am done.

Over the portal of the ancient walled city of Siena was an inscription which read, « Our hearts are open even wider than our gates ». In that same spirit, we welcome you here — with the hope that your deliberations will be fruitful and productive, but will not be so time consuming as to deprive you of the opportunity of enjoying your visit to the fullest.

Thank you very much.

(Applause)

Mr. Healy :

Now, ladies and gentlemen, I also have the privilege of introducing the Honorable John Marshall Harlan, Associate Justice of the Supreme Court of the United States.

There is no member of our highest Court more beloved and more respected than Mr. Justice Harlan, and we feel very honored and grateful that he is here with us today.

It is also appropriate that we should be addressed by Mr. Justice Harlan, and that he should declare open this Twenty-Seventh Conference of the Comité Maritime International, because, as a member of our Nation's highest Court, charged with the supervision of the Second Circuit, the portion of our country which includes the State of New York, he is the senior ranking judicial officer in this part of the country.

We are very grateful to him for being with us, and I now present him to you.

Mr. Justice Harlan.
(Applause)

Mr. Justice Harlan :

Mr. Healy, Governor Wilson, President Lilar, members of the governing body of the Comité, ladies and gentlemen :

It is a privilege and pleasure for me to address these few words of greeting to the members of this distinguished gathering before they go upon their labors.

Better than a score of Nations, including the United States, are represented in this Twenty-Seventh Conference of the Comité Maritime International, which has as its objective the bringing about of worldwide improvement and uniformity in maritime law.

This, I am told, is the first time that the Comité has held one of its meetings in the United States.

To the words of welcome which you have already heard, I bring those of my own tribunal, the Supreme Court of the United States, which, under our scheme of things, bears a large measure of responsibility for fashioning domestic rules of maritime law and, of course, for giving to those rules that have been embodied in international conventions.

You, leading representatives of so many maritime Nations, are very welcome, indeed, in our midst and I hope that you will find your stay in our country both profitable and desirable.

Before a body of such eminent experts, it would be quite presumptuous of me to attempt to evaluate the work of the Comité from any technical standpoint, save to remark that its activities have proved to be both wideranging and fruitful.

It is, however, surely appropriate for me to observe that the accomplishments of the Comité bear witness in an eloquent way to what lawyers and laymen, though speaking in different tongues and reared under diverse systems but united by the common bond of reason, can achieve toward promoting the rule of law in the world.

May I venture to be a little more specific.

The achievement of international accord through agreement, the professed objectives of the world's various political ideologies, is proving to be a very difficult thing indeed, yet it is only persons of little insight or of unduly limited horizons who will lose patience with the process.

History has taught us that agreement among sovereigns is much more difficult of accomplishment than agreement among private interests. And that is not an unnatural thing.

Any agreement that is worth its salt must be founded upon a fair accommodation of competing interests involved. And sovereign interests are usually so diffuse and far-reaching that it will often not be long before those at the counsel table will begin to view each other with despair and suspicion for dooming all prospects of successful negotiation, or at least rendering the process much more difficult of accomplishment.

I believe that we might proceed faster in the realm of international negotiation if Nations could at least agree to be more selective in the subject matter of their negotiations rather than to attempt, as so often is the case, to encompass the entire millenium in far-flung blanket agreements.

If I may be so bold as to say so, I believe, Mr. President, the Comité is in a peculiarly advantageous position to make a real and lasting contribution to the art of international negotiation.

You operate, not in the realm of political platitudes, but in the context of immediate and concrete interests. You are content to proceed step by step in the achievement of your broader ideals, and you work in a field which has behind it the ancient traditions of the law of the sea, and in whose development, international cooperation and understanding you have long played a major role.

A record stretching back more than half a century attests to the soundness of your approach and reflects your continuing visible achievements. And that in turn promises the hope that the procedures that have been found so fruitful in your endeavours will also be found to be a useful part in other quite different realms.

To speak of your role, Mr. President, as a paradigm, as an example, does not of course overlook the peculiar character of the Comité. You are, as I understand it, composed of lay as well as legal members. You are a private organization, formed not to promote one narrow interest but to reconcile many for the good of all.

Your initial efforts are those of private citizens and your end activities encompass and involve action at the developmental level, and the fruits of all these labors in their end result come to be embodied in the domestic law of the Nations officially assenting to them.

In concluding, may I say, Mr. President and members of your distinguished governing body, that the presence of you ladies and gentlemen in such large numbers from other lands does us much honor.

I can wish for you no better than that your respective voyages might be found to be requited by the experience that you will have during the coming week, and may I also venture to hope that you will find something of profit from insights into our way of doing things that you will gather even in the brief time that you will spend in this great City, whose population numbers so many of diverse national backgrounds.

It has been a great pleasure to be asked to participate in your opening gathering, and may good fortune attend all of your proceedings.

I am asked by President Healy to announce that with the conclusion of these remarks, the Comité will officially be in session, but not without, however, some additional interludes which I hope you will find enjoyable.

Thank you very much.

(Applause)

Mr. Healy :

Thank you very much, Mr. Justice Harlan, for those very inspiring words.

Ladies and gentlemen, now that Mr. Justice Harlan has officially declared the New York Conference of the Comité Maritime International open, it is with great pleasure that I turn over the meeting to our distinguished President, the President of the Comité Maritime International, Monsieur Albert Lilar, and the first order of business of the 27th Conference will be our President's address.

Monsieur Lilar.

Honorable Albert Lilar, President of the Comité Maritime International :

On the 9th November 1959, the distinguished President of the Maritime Law Association of the United States, Mr. Arthur Boal, wrote to me :

« I am happy to state to you that I am authorized by the Association to invite the Comité to meet in this country at its meeting following that in Sweden. I assume that the date will be 1965. »

This assumption has proved right and now here we are, the twenty-nine associations representing the Comité assembled in New York and answering the invitation of the 9th of November 1959.

I address my thanks first of all to the authorities who welcome us : The Government of the United States, the Governor of the State of New York and the Mayor of the City of New York, and finally with special warmth, the President of the Maritime Law Association of the United States, Mr. Nicholas Healy.

It was with enthusiasm and gratefulness that the Bureau Permanent of the C.M.I. accepted the invitation to hold its 27th International Conference in New York. The Bureau accepted it, however, with a slight reservation. Since the Constitution of the C.M.I. at Antwerp in 1897, it has never left Europe for its International Conferences, despite welcoming there collaborators and numerous friends coming from very different countries and from very far horizons.

The warmth of your invitation soon put an end to our temporary hesitation to cross the Atlantic and today when the C.M.I. is composed of numerous National Associations whose members are spread in almost all the countries of the world, and when further affiliations are expected, we can say that that era is ended.

We are happy to be the guests of a sister Association whose importance in the economic and judicial life of its country is particularly important.

Founded in 1899, two years after the C.M.I., the American Association was amongst the first to join us and to realize the usefulness of our work to which it has given a contribution of quality for more than half a century. For many years Mr. Burlingham, its President and its spokesman and also the senior member of the C.M.I., followed our work with devotion; so did Mr. Arnold Knauth. After the Second World War, this collaboration was resumed and strengthened.

May I be permitted to refer to the presence of Mr. William Symmers at the International Conference of Antwerp in 1947. The United States delegations were active and large in numbers at the Conferences of Amsterdam 1949, Naples 1951, Madrid 1955, Rijeka 1959, Athens 1962 and Stockholm 1963, as well as at the Brussels Diplomatic Conferences on Maritime Law.

Its heads of delegations and members are too numerous to make it possible to mention them all.

But all of us remember the work at these Conferences of the late Mr. Cletus Keating and of Mr. Oscar Houston, Mr. Charles Haight, Mr. Arthur Boal, Mr. Clarence Morse, Mr. Henry Blackiston and of so many others.

I thank the Association of the United States for having obtained the assistance of so many top level persons. I am grateful to it for having provided in their big and diverse organizations a liaison Committee with the C.M.I. under the presidency of the man who for several years has never retreated from any difficulty in order to reinforce and to tighten the connections uniting your Association and the central bodies of the C.M.I., our faithful friend, Mr. Arthur Boal.

I express the wish of seeing these contacts multiply and extending in the future in both directions, in order to obtain better coordination of our work and a great uniformity in maritime law particularly on both sides of the Atlantic.

However, our aims and our wishes to all should not be limited to this part of the world. The extermination of conflicts of law and the harmony of maritime legislations interest all nations. It is today the traditional and sacred task of the C.M.I. This private institution, drawing its power and authority from the volition of its members, has imposed itself

as the world's forum where practitioners, lawyers and leading civil servants elaborate together draft conventions in the field of maritime law. It owes its permanence and its success to the especially practical nature of its work and to its profound understanding of the commercial and maritime world.

Since 1897, twenty-six International Conferences have given rise to thirteen draft conventions which, pursuant to a worldwide accepted tradition, have been handed over to the Diplomatic Conferences on Maritime Law organized periodically by the Belgian Government in Brussels.

Thirteen International Conventions have been signed there along the lines of the C.M.I. drafts. Several of them have had the benefit of a large number of ratifications and accessions, namely, those concerning collisions, assistance and salvage at sea, bills of lading. All, however, have not had the same happy fate. The convention of 10 April 1926 on Liens and Mortgages is in this category.

We are going to tackle a difficult matter which has never ceased, since the C.M.I. put it on its Agenda, to have been the seat of ardent controversies. No sector of maritime law is more fluctuating nor more exposed to the antagonistical tendencies of certain economic sectors, not to mention the divergent and constantly involving political views and requirements. It affects not only the construction, the purchase, the management of ships, i.e. the very existence and development of merchant navies, but also puts forward the requirements for an adequate guarantee in favor of those who grant credit.

The assessment of these various factors is difficult. The 1926 solution did not meet with general approval. Moreover, the situation has changed since then, particularly because of the last World War which led to the destruction of complete fleets and to the necessity of rebuilding them with large credits.

It was the American Association which had the merit and courage to interest the C.M.I. in putting its work back on the stocks in the light of new situations.

Two international subcommittees were constituted, one under the presidency of Mr. Braekhus, the other under that of Mr. Jan Asser. Thanks to work of high quality under the direction of these eminent specialists, we have obtained appreciable results : a draft convention already approved in Stockholm relating to the Registration of Rights in respect of Ships under Construction and a first draft covering the whole subject of Liens and Mortgages.

I must thank here very warmly the two Presidents I have just mentioned, the members of the International Subcommittees and also the National Association who by their active and vigilant cooperation have allowed us to start our work here in New York.

In Stockholm I had the occasion of recalling that whilst conservatism is perhaps a good thing in certain fields, it is not always so in matters of law. In fact, we are convinced of the necessity of a uniform law in matters of Maritime Liens and Mortgages and we recognize that the 1926 Convention has to be amended. It is an achievement to have established such an agreement on our goal. Of course, the methods and the ways of reaching it vary, but efforts must not fail in a country which produced two landmarks in the unification of maritime law : The Washington Convention relating to the steering and marking rules and the Harter Act.

Although not on the Agenda of the present Conference, whose task is sufficiently heavy, other important topics submitted to the C.M.I. will be discussed in the next months :

Assessment of Damages in Collision Cases, which interests a great number of nations for obvious reasons. The lack of uniform law covering this complex and controversial matter requires to be set right. We have appointed one of our most able members, Mr. James Paul Govare, to deal with these matters. He has confirmed that the work of his international subcommittee is progressing.

Another valuable member, Mr. Walter Müller, President of the Swiss Association, has accepted the difficult task of presiding over the work of an international subcommittee entrusted with proposing certain rules generally acceptable in matters of Demurrage and Dispatch Money.

One of our senior members, Mr. Giorgio Berlingieri, whose confidence in the C.M.I. contributed to a large extent to the attribution of the Christopher Columbus Prize, to which I will refer in a moment, has accepted to assume the responsibility for drafting an international convention dealing with the publicity of long term charters.

We have asked our eminent friend, Mr. Vladislav Brajkovic, President of the Yugoslav Maritime Law Association, to direct the work relative to the International Status of Ships in Foreign Ports, and we have asked Mr. Leon Gyselynck, our Treasurer, to promote the adoption of rules defining the status of Letters of Indemnity and Clean Bills of Lading.

Having made the account of our present activities, it is now my duty to refer to the losses suffered since our Stockholm Conference, and they are heavy. Death has deprived us of longstanding collaborators and friends.

Monsieur Antoine Franck nous a été ravi l'année dernière. Il était le frère cadet de Louis Franck, l'un des fondateurs du C.M.I. en 1897, que nous pouvons considérer comme notre maître à penser.

Demeurant dans l'ombre de son frère génial, mais conscient du rôle qu'il se sentait capable de tenir au moment voulu, il s'est affirmé pleine-

ment lorsque, d'accord avec son fidèle ami, Sir Leslie Scott, président intérimaire du C.M.I. après la mort de Louis Franck, il a, en 1947, conçu et fait prévaloir la nouvelle structure du C.M.I. telle qu'elle se présente aujourd'hui.

Maître Antoine Franck a participé à nos travaux depuis 1922. Il fut nommé secrétaire général en 1930 et vice-président en 1955. Depuis ce moment sa santé déclinante l'a tenu éloigné de nous mais l'intérêt qu'il vouait depuis tant d'années aux affaires du C.M.I. demeurait vivace.

Son dévouement l'avait porté à assurer et assumer tout seul, avec l'assistance de son cabinet d'avocat, le secrétariat général et administratif de notre institution jusqu'en 1955.

L'élégance de son esprit et de ses manières n'admettaient aucun éclat. Sa contribution à nos succès tant sur le plan de nos travaux préparatoires que sur celui des réalisations diplomatiques n'en est pas moins remarquable.

Monsieur Henry Voet, plus exactement sa firme mondialement connue, s'est engagé à assurer les services administratifs du C.M.I. Lui-même et son staff se sont acquittés de cette lourde tâche avec un dévouement auquel je tiens à rendre hommage.

M. Henry Voet, membre titulaire depuis 1949, était Président de l'Association Internationale des Dispacheurs Européens et Vice-Président de l'Association Belge de Droit Maritime. Il a fourni une contribution considérable à l'élaboration des Règles d'York et d'Anvers 1950. Sa disparition nous prive d'un collaborateur précieux qui a eu, cependant, la lucidité de former à son école son fils Henri et M. Van Varenbergh sur lesquels nous sommes sûrs de pouvoir compter à l'avenir.

Nous déplorons la perte du Professeur Roberto Sandiford, l'un des plus fervents de notre Institution.

Il alliait un grand savoir à une égale gentillesse.

Il était vice-président et secrétaire général de l'Association Italienne de Droit Maritime. Ses interventions aux Conférences du C.M.I. et aux Conférences Diplomatiques ont été très remarquées et efficaces.

La figure de Monsieur Luis Hermida, Président de l'Association Espagnole de Droit Maritime, évoque, avec nostalgie, les splendeurs de l'accueil madrilène en 1955.

Sa personnalité restera vive dans nos mémoires.

Son compatriote, Monsieur Vicente Sole de Sojo nous laisse l'image d'un catalan ardent, conquis aux idéaux du C.M.I.

Parmi nos amis italiens, nous perdons la collaboration appréciable de Monsieur Bruno Forti, membre Titulaire, et de Monsieur Domenido, qui, étant Ministre des Transports, représentait le Gouvernement Italien à la cérémonie majestueuse au cours de laquelle le Prix Christophe Colomb fut attribué au C.M.I.

En 1961, Jean de Grandmaison annonça à ses amis qu'il abandonnait la Barre - ce fut de la stupeur - À 70 ans, après une carrière fulgurante, notre ami prenait sa retraite. Personne ne comprenait - sa santé était excellente - il était toujours le plus redoutable des adversaires. Jean de Grandmaison avait décidé de mettre un terme à sa vie professionnelle - craignant qu'un jour ses forces physiques ne le trahissent et qu'il ne soit plus lui-même.

Jean de Grandmaison avait plaidé les plus grandes causes; il avait été appelé dans des arbitrages considérables - il assista à toutes les Conférences du C.M.I. d'après guerre et c'est à Rijeka qu'il donna toute sa mesure. Sa maîtrise de penser, la force convaincante de son verbe, la clarté et la concision de son style faisaient de lui un maître incontestable.

En janvier 1964, une dépêche de Provence nous apprit son décès.

Finally, it remains for me to pay tribute to a great man, one of yours, President Cletus Keating. Since 1949, he had been one of the promoters of an active and efficient cooperation between the Maritime Law Association of the United States and the C.M.I.

His character and his bearing as a fighter were not without humor. I remember one day in 1950 he subjected me to cross examination by thirty of his colleagues from all parts of the United States, in order to find out the philosophy and significance of the C.M.I. One must imagine I passed the examination with some success, since we are here now.

May I give thanks to my excellent and regretted friend Cletus Keating who, I am sure, would have been delighted to have been with us now. A man of his temper embodies strength and joy of living. He invites us to look to the future.

Our future depends on us and on us alone. We must wish and hope that a growing number of Nations take part in our work.

In this connection, I welcome the constitution of the Chilean Association of Maritime Law, to the foundation of which our friend, Professor Jean Van Ryn, has largely contributed.

Our member Associations show their constant interest in our common work by proposing as Titulary Members numerous eminent personalities called to take an active part in our organization.

And do we not find the effective proof of their confidence in the future by this distinguished audience that has gathered to attend the official opening of a Conference which is expected to be outstanding, thanks to the enthusiastic impulse imparted to it by President Healy, his predecessors, and their collaborators.

The future invites us to enlarge the field of activities, to build it further, with the constant object of keeping within the framework of the

facts, with the benefit of the realization and care which mark our methods of work.

But our task does not stop there.

I referred to the connection between the C.M.I. and the Diplomatic Conference on Maritime Law. The first elaborates draft conventions, the second examines, decides and signs.

But our work acquires its real meaning by the ratifications or by the accessions decided by Governments or by Parliaments, and even better, by the enactment in the domestic legislation of the rules contained in the Conventions.

It is at this stage that the action of the C.M.I. has to materialize once more through the National Associations where active intervention is expected to promote the ratifications, accessions and enactments in domestic law. It is only in this way that the work of unification will move towards reality, and will be able to be considered as accomplished.

I look to our future with confidence, and if encouragement is needed, we can find no better than the citation which the Jury of the Christopher Columbus Prize conferred on the C.M.I. in 1964. The terms are as follows :

City of Genoa

Following a proposal made by the Commission appointed by the National Research Council, the 1963 Christopher Columbus International Prize for communications, which is awarded in recognition of valuable services in the field of communications in the form of some discovery, work, research or other technical, scientific or social activities which help to promote international friendship and collaboration, having been reserved for maritime communications, is awarded to the

International Maritime Committee

for the work it has now been carrying out over a period of sixty years, with a view to the international unification of legal provisions relating to maritime transport.

The prize is awarded for the important results obtained, in recognition of the importance of future aims, in esteem of the idealistic value of the example set by the International Maritime Commission in carrying out its disinterested and spontaneous activities; the award also recognizes the valuable support given by this work to the cause of human solidarity in maritime affairs; it further recognizes the importance of legal unification against the background of present developments in

the political and economic life of the different countries, and the effect which the Committee's work will have outside the specific realm of maritime transport.

Genoa, 12 October 1963.

I thank you.

Our work will go on tomorrow morning at nine-thirty.

(Applause)

(Whereupon, at 4:10 p.m., the meeting was adjourned.)

Monday, 13th September, 1965

PLENARY SESSION (*)

Chairman : President Albert LILAR

The XXVIIth International Conference of the International Maritime Committee convened at the Association of the Bar of the City of New York, 42 West 44th Street, New York, President Albert Lilar, presiding as Chairman.

Seated on the dais were :

Mr. Cyril T. Miller, C.B.E.

Mr. Carlo Van Den Bosch

Mr. Léon M. H. Gyselynck

Mr. Henri Voet

Mr. Léo Van Varenbergh.

Mr. Nicholas J. Healy

The Chairman : The session is open.

Mr. J.T. Asser, Netherlands : Mr. Chairman, Ladies and Gentlemen.

After my last report in which I set out the details of the Antwerp Draft, and after the previous report which showed the history of the draft, I think there is only very little that I have to add.

I would, therefore, confine myself to one or two remarks of a more general nature, terminating with a few words in connection with Article 8 of the Antwerp Draft.

The reason why it was decided to put the topic of the maritime liens and mortgages on the agenda of this committee, and why the subcommittee decided to prepare a new draft convention in substitution for the Convention of 1926 has been fully explained in the report just mentioned.

This reason was the desire to strengthen the international position of the holders of maritime mortgages, and thereby to improve the conditions for the financing of ships on an international level.

A large majority of those national associations which sent in reports and were represented at a meeting of the International Subcommittee expressed the view that improvement could not be obtained by means of the existing Convention of 1926, as its general setup and provisions

(*) The English translations have been checked and the English text proof-read by Mr. Nicholas J. Healy, whose kind assistance is greatly appreciated.

do not any more meet the needs of modern times, and especially because this convention does not offer sufficient protection to maritime mortgages as security.

The need for greater protection was voiced already as early as 1949, at the Amsterdam Conference of the C.M.I., when Mr. Prizer, speaking on behalf of the United States Delegation, urged the conference to adopt a resolution requesting all maritime Nations to amend their municipal law so as to render possible and facilitate the enforcement of foreign maritime mortgages.

As you know, the resolution was eventually adopted by the Naples Conference of 1951.

In 1963, when we started our work, only nineteen countries had become parties to the Convention of 1926.

Since then, we have learned that the four Nordic States, that is to say, Norway, Sweden, Denmark and Finland, denounced the 1926 Convention, the result being that in the near future, this Convention will be the law of only fifteen States, fifteen countries.

It seems, therefore, vain to expect that in the years to come the 1926 Convention will be ratified or acceded to by other countries, even assuming that nowadays it should be considered as constituting the best possible legislation in this field, which evidently is not the case.

Those, Gentlemen, in a nutshell, were the conditions under which the International Subcommittee started its work.

When preparing the text to be discussed by this Conference, the International Subcommittee endeavored to obtain two main objects :

Firstly, to provide for simple rules of substantive law, and therefore to leave to national law all matters pertaining to procedure and to other matters, the only exception being the formalities set out in Article 10 of the Antwerp Draft, and relating to the notice to be given in the event of a forced sale of a ship.

The Subcommittee believes that this simplicity might facilitate the adoption of the new Convention by a large number of maritime Nations.

For the very same reason, a certain number of matters dealt with in the 1926 Convention have been left out of the Antwerp Draft.

The principal of those matters is the concept according to which maritime liens attach not only to the ship but also to the freight and to the other accessories mentioned in Article 4 of the 1926 Convention.

In fact, it seems that in most of the Nations which became parties to the 1926 Convention, and indeed also in those other countries the municipal law of which recognizes maritime liens on property other than the ship itself, those liens are seldom, if ever, enforced against that other property; and that, therefore, a real need was not felt for maintaining such enforceability.

The position under the Antwerp Draft is, therefore, this, that internationally, that as between contracting States and in contracting States,

maritime liens attach to the ship only, but this does not mean that contracting States would be precluded from providing in their municipal law that such liens shall also attach to freight or other accessories.

Whether, of course, in a given case a national court would allow such liens to be enforced against such other property will depend on the national law to be applied by the court in accordance with its own rule of conflicts of laws.

This was the first main object.

The second one, the second main object, in fact the main object that the International Subcommittee had continuously in mind was, of course, the strengthening of the position of the mortgagees.

Now, it is clear that the solution of this problem will, in practice, depend on the nature and number of maritime lines which, according to the new Convention, will have priority over the maritime mortgages.

Most National Associations agree that this object could only be attained if the number of those liens should be restricted to the greatest extent possible, and that only such maritime liens should be recognized as were deemed to be indispensable on economic or social grounds.

Unfortunately, no such agreement appears to exist with respect to this last question, the question, namely, of whether a particular lien is or is not indispensable on economic and social grounds.

A considerable number of amendments were referred to the International Subcommittee, some for deleting one or more liens listed in the previous draft, and others for adding new liens.

In practically each case, the decision to reject or adopt the proposals submitted was taken not by unanimous vote but by a majority vote.

This explains why the selection of the maritime liens listed in Article 4 of the Antwerp Draft as it exists is necessarily arbitrary, and why the selection was not and could not be based on any principle of law.

Gentlemen, it is beyond doubt that the ultimate fate of our efforts will depend largely, if not only, on the final decision to be taken by this conference with respect to this particular problem.

If we exercise a wise restraint in this respect, we shall probably achieve the main object of our efforts. If not, the result might well be that under a new convention, the mortgagee would find himself in a worse position than he is in now, or indeed, than under the 1926 Convention.

I want to add a final word about Article 4 of the Antwerp Draft.

As you will have seen Article 4, Paragraph 1, Subparagraph (iv), grants a maritime lien securing so called property claims, but only insofar as much claims are not based on contracts or so called tort claims.

Now, shortly after the Drafting Committee had drafted the final text of the Antwerp Draft, the question arose whether the wording of this particular provisions reflected, in fact, decisions taken by the International Subcommittee; that is to say, whether the Subcommittee had

not, in fact, decided to extend this particular lien also to contractual property claims.

I thereupon consulted the members of the Drafting Committee, but unfortunately, their recollections with respect to this particular point conflicted.

And since the Antwerp Draft had to be printed as early as possible in view of the date of this conference, there was no time for me to consult the other members of the International Subcommittee. I had, therefore, to make up my own mind what to do.

As my notes of the proceedings of the last meeting of the International Subcommittee show, contractual liens were not to be included, I drafted Article 4, Paragraph 1, Subparagraph (iv) as it now reads.

If it should, however, appear that my notes, and therefore my decision, was wrong, I already now apologize for the mistake.

Finally, Gentlemen, I come to Article 8 of the Antwerp Draft, the article dealing with the extinction of the maritime liens.

Judging by certain reports, it would seem that the wording of the article has given rise to a certain misunderstanding.

The article provides that all maritime liens are extinguished after the expiring of a two-year period unless, prior to the end of that period, the ship should have been arrested, leading to a forced sale.

Now, in the reports just mentioned, it is argued that this particular provision would put undue hardship on a lien, especially when its claim should be for a relatively small amount. It is argued that in that case, such lienor would be obliged to arrest the ship for the purpose of preventing an extinction of the particular maritime lien.

This conclusion, however, does not follow from the wording of Article 8.

The article does not say that in order to prevent the extinction of his lien, the particular creditor should himself arrest the ship.

According to the wording of Article 8, the arrest of the ship by any one creditor, whether it be a lienor, a mortgagee or indeed another creditor, will prevent the extinction of all maritime liens attaching to the ship, subject, of course, to the claims secured thereby not being time barred.

Mr. Chairman, those are the few remarks to which I wish to confine myself at this stage.

The reason why I did not mention the new French Draft is that neither the International Subcommittee nor the National Associations have had an opportunity of commenting thereon.

Any comment which I could make on the indeed very interesting new concepts proposed by our French friends would, therefore, only reflect my personal views, and I am sure that nobody is interested to know those views at this moment.

Gentlemen, yesterday, in his inaugural address, our President said a few kind words about the work of our Subcommittee.

I would only say this, that without the unflagging energy and spirit of cooperation of all those who contributed to our work, that is to say, the National Associations who had sometimes to submit reports at very short notice, the members of the International Subcommittee, and those of the initial working group, and of the Drafting Committee, we should not have had a draft, the Antwerp Draft, to be discussed by this conference.

I would say a final word of special thanks to my friend, Mr. André Vaes who not only translated all of the draft Convention into French, but moreover, who undertook the cumbersome and difficult task of translating the imperfect English of my report into perfect French.

Thank you.

(Applause)

The Chairman :

I would like to thank Mr. Asser for this report, and as we proposed yesterday, I shall now open the discussion about the first item considered in the Draft Convention, that is to say, the problems of the mortgages.

Mr. Chauveau, France (translation) :

Mr. President, Gentlemen. We are now considering the subject of mortgages, concerning which we should not be reproached for the delayed arrival of our draft. Indeed, with regard to this part of the outstanding work of Mr. Asser and his Subcommittee, I wish to stress my complete sincerity in describing this work as outstanding. I am equally sincere, along with Mr. Asser, in recognizing that if all the delegations had not performed a great amount of work, we would obviously now be confronted with not only one draft but with two. I may add here that the French Delegation also contributed its considerable share of this work and later on, when we discuss the subject of liens, I shall revert to the conditions under which we worked.

Mr. President, Gentlemen, we now have a few remarks to present on this first part of the text.

As a whole, we are in agreement with the Portofino draft - please overlook my reference to the Portofino Draft since I meant to say the Antwerp Draft, i.e. the latest text presented.

While we are in agreement with the general outline, we nevertheless hoped, without offending any one, to present a few reservations and certain amendments with the object of improving the draft and eventually of avoiding some uncertainties.

It is in this constructive attitude and spirit - and I repeat, - constructive, that we presented our counter-proposal concerning mort-

gages, and I wish to emphasize here and now, gentlemen, that if we have presented it without dealing with liens, it is merely because we were not yet prepared to submit anything valid in this field.

We never deemed that the draft we were submitting on mortgages was sufficient to stand alone. We have always been aware that, in order to resolve in its entirety this extremely complex problem with which we are faced, something would have to be done about liens. But inasmuch as we were caught short and limited as to time, we immediately forwarded to you the results of our thinking concerning the first part of this work.

We did this most willingly and restricted our remarks to this question (of mortgages) since we felt that the two problems were more or less liable to be separately studied even though bound by a common factor. We even felt that it might be preferable not to link the mortgage wagon to the liens wagon. We foresee that a more or less general agreement will evolve with regard to mortgages but the prospects are much less bright as to the formulation of an agreement on liens.

Mr. Asser brought this out just a while ago.

We concluded that if the mortgage wagon were attached to the liens wagon and if, unfortunately, the latter were to fall into a ditch or sink in a river, it would drag along in its loss the mortgage wagon. At least if the two wagons were not tied together, the mortgage wagon would be saved.

I would add that if in the course of this New York Conference, we manage to reach agreement on the single sector of mortgages, we will have achieved noteworthy results. The mere fact that five or six articles of the Antwerp Draft are devoted to mortgages is proof enough of the importance of this problem.

I realize that some people contend that in dealing solely with the question of mortgages, mortgage creditors are given only an empty bottle in which there will be nothing to drink until the bottles are filled with the wine of liens. Forgive me when I say that I am not in full agreement with the protagonists of the above argument and rather than embark on an extended discussion I will cite a practical example which will certainly interest our British and United States colleagues who make use of mortgages while we use hypothèques.

If there exists no international recognition of the term «mortgage», it is only fair to warn my British and American friends that in the event of a ship entering our ports and, by mischance, being seized and sold by a creditor, the mortgagee creditor believing himself insured regarding his rights and having his case pleaded before a French tribunal, I am almost certain that the French tribunal will wonder what a mortgage is. They will say that they do not know what this is, that there is nothing like it in their country and that their legislation does not provide for it.

When the creditor then explains what a mortgage is and that he at least has the right to appropriate the security, he may be told this is contrary to French public law. Our courts may not recognize the rights of the mortgagee creditor and reduce him purely and simply to the rank of « chirographaire » creditor.

Therefore, if by drawing up a convention dealing solely with the international recognition of mortgages and of hypothèques, we provide assurance to mortgagee creditors that their rights will be recognized, even if the ship is seized in France and that they will not be relegated to the rank of « chirographaires » creditors, we are giving them a very nice present and will have done something most useful.

This, therefore, was the general idea in which our draft was submitted. You will note there was no intent to criticize the Antwerp Draft since we ourselves adhered to the same general lines.

I must admit to surprise in reading in Mr. Asser's report that our draft strayed considerably from Antwerp's. I can only assume that, pressed for time, Mr. Asser did not read our report with complete attention, and I wish to again emphasize that we do adhere to the proposals of the Antwerp Draft and expect to achieve positive results.

Mr. President, I will not speak on wording at this time but will revert to it when the individual articles are discussed.

The Chairman : We thank you for presenting the position of your delegation.

As far as the mortgage problem, I would like now to give the floor to members of the other delegations who wanted to speak about Articles 1, 2 or 3 as a whole, as Mr. Chauveau has done.

Mr. Alex Rein, Norway : I don't think we should leave the problem raised by the French Delegation without adding a few words.

This problem was taken up already during the Stockholm Conference, when we discussed and eventually agreed on a draft convention on ships under construction.

It was then pointed out that the whole question of mortgages on ships under construction should be put on the agenda of this conference; in other words, to make even a larger package deal than the one we are tackling today.

Some delegations felt very strongly on that and urged that the draft Convention on Ships under Construction should not be adopted at all.

We at that time on the Norwegian Delegation strongly urged that the package deal in these matters was not advisable.

The Convention on Ships under Construction deals with an entirely different problem from the ones we are faced with in this connection.

Coming now to this draft convention, it is still a package deal, but it deals with two entirely different problems : mortgages and liens.

It is not necessary that these subjects should be dealt with in the same convention.

There is one reason why they should not be dealt with in the same convention. It is one of those reasons which have already been pointed out by our French colleague. I will add a word or two on it.

We all agree, I think, on all not only of the major provisions, but even the minor provisions of mortgages.

We also agree, I think, on most questions regarding forced sale with regard to mortgages.

Therefore, if we have one convention dealing with mortgages and forced sale, it will I think very soon achieve international recognition and adoption.

Liens, on the other hand, are, we know, a very controversial subject. It is very difficult to get international unity on that question.

For some reason which I cannot explain, national feelings are involved when it comes to liens.

Now, if the desires to ratify the mortgage part of the convention were very strong, it would be a good idea to make it a package deal, because then many nations who do not like all the provisions of the lien part would take it, because they have the package deal or nothing.

But we have seen since the 1926 Convention that we can manage very well any convention on mortgages, because as a matter of fact, mortgages are recognized - mortgages made in one country are recognized in the other country, as a matter of fact - but it always takes time, and it is a time-consuming process to have that decided in each case.

Therefore, it is practical to have a convention but not essential, not absolutely necessary.

Therefore, we cannot expect that many will take this package deal only because they want the mortgage part of the convention ratified.

So in principle, I think, on behalf of the Norwegian Delegation, and I think also on behalf of the other Scandinavian delegations, in principle we are in agreement with the French proposal, but we see the difficulties it has met with, and it may not be practical to take it up at this late stage of the proceedings.

Thank you, Mr. President.

(Applause)

Mr. Jan A.L.M. Loeff, Netherlands :

A lot of work has been done already. The subjects we have to deal with are rather complicated. I am afraid that from a theoretical point of view, they are very difficult to deal with.

Mr. Chairman, I think that the best way to proceed is just to take the Antwerp Draft and go through it article by article.

Thank you.

(Applause)

Mr. Arthur M. Boal, United States : M. President, Gentlemen.

I am sorry to have to disagree with Mr. Rein on splitting this convention into two, one on liens and one on mortgages, because I think that the two are inseparable.

We created in 1920 in our country a maritime lien from a mortgage. It wasn't a lien up to that time, and at that time we set forth specifically the liens which come ahead of the mortgage, and those that do not.

As a practical matter, we are dealing with a group of liens, a lien of a mortgage, a lien of a supplier, and perhaps the lien of the shipyard.

If we have a foreclosure, the court must recognize the liens and determine how to dispose of the proceeds all in one package.

I think the two are inseparable, that we will not get any satisfaction out of two separate conventions if one is adopted and the other is not. We must work for one convention which deals with the mortgage and the supplier's liens, salvage and so forth.

Thank you.

(Applause)

Mr. Peter Wright, Canada : I appreciate the American position in this situation. I understand the question regarding municipal law is somewhat different than in Canada or the United Kingdom, and I think they are perhaps in a peculiar situation as far as this is concerned, but the Canadian Delegation is inclined at this stage of the proceedings to share the Norwegian view as expressed by Mr. Rein.

But what we are faced with here is the situation of not having a true convention, but a situation of having either a convention dealing with mortgages or possibly no convention at all.

It seems to me, Mr. President, we can spend very easily the four days available to us here and come to no conclusion if we are going to deal with one convention only covering both subjects.

It appears to us that our objection of obtaining at least a minimal degree of accord cannot be achieved by dealing with the question of mortgages on a separate basis, first of all, and then taking up afterwards the question of liens to see if some degree of consent cannot be achieved.

Thank you.

(Applause)

Lord Justice Diplock, Great Britain : I should like to support the proposal made by Mr. Loeff, that at this stage of the proceedings, the most practical way of dealing with the problem is to go to the Antwerp

Draft on which so much work has been done, article by article, and see where we get.

At this stage to launch into a debate as to whether there should be two conventions, three conventions, four conventions, or, as I think, one convention, seems to me, with great respect, to be premature.

I would suggest that if we want to get some practical result from this convention and from the work which has been put in over the months by the Subcommittee, we should take their work first as a whole, go through it as a whole, see where we get to, and then when we have completed that, ask ourselves whether this is a matter which should be dealt with in one convention, or whether, if it cannot be dealt with in one convention, it is worth dealing with at all, and if so, how.

I do not want at this stage to add to the debate about whether there should be two conventions, and the reason that I do not wish to do so is that in my respectful submission, it is too early to have a useful and profitable debate upon that subject.

(Applause)

The Chairman : Gentlemen, I think that as a matter of fact, the substance of these views is that we should begin by analyzing Article 1.

I hope nobody objects to that. I assume nobody objects to that because the different speeches lead to that conclusion.

So I will start the debate on Article 1 of the draft.

Who wants to speak on Article 1 ?

Mr. Loeff, Netherlands : Mr. Chairman, on behalf of the Netherlands Delegation, I should like to propose a small amendment.

The Netherlands Delegation proposes to substitute for the words in Article 1, « shall be enforceable » in the English text, the words « shall be recognized and enforceable », and in the French text to substitute for the words « seront reconnus » the words « seront reconnus et susceptibles d'exécution ».

The difference is that the French text and the English text complete each other, but neither of them is complete by itself.

I think that we do not wish to add anything else.

Mr. Chauveau, France, (Translation) :

Following Mr. Loeff's intervention, I feel it is necessary Mr. Chairman, Ladies and Gentlemen, to explain at this point that in French legal language the words « seront reconnus » are sufficient. If an addition is required, I would agree, provided it would not be « susceptibles d'être exécutés ». The form should be more imperative and should be « seront reconnus exécutoires ».

This is the change I suggest for Mr. Loef's amendment.

Apart from this, I am prepared to accept the general decision of the Assembly.

There are two other points on which I would like to propose amendments to the Antwerp Draft as a result of our counterproposal.

The Antwerp Draft stipulates that « les hypothèques et mortgages » will be recognized in the Contracting States but with no other details concerning them. Hypothèques and mortgages may have different origins such as contractual, conventional and legal. France recognizes the legal mortgage of a married woman and judicial mortgages. I do not think anyone feels it is necessary to grant international recognition to the legal mortgage of a married woman, to judicial mortgages or to any others existing within the framework of national legislation.

The only mortgages which we wish, here, to protect are conventional mortgages drawn up in favour of someone who has loaned money. This is why we would like to have it stipulated in one form or another, for instance : « hypothèques conventionnellement constituées ».

This appears in the French text and is why we separated the contents of Article 1 to make up Articles 1 and 2. This is the first proposal we wanted to make which, while primarily a matter of drafting, touches the substance to some extent.

The next point concerns the following difficulty which we have encountered, and was drawn to our attention by our banks which grant mortgage loans on ships. In France banks sometimes experience difficulties when a loan is to be made on a foreign ship because they do not know exactly how the mortgage should be drawn up. In France a mortgage can be drawn up over a private signature. In other countries, mortgages must be notarized. This creates difficulties for banks since, in order to properly draw up the mortgage, they must ascertain the rules governing the country of registry.

Gentlemen, there is a general rule in international private law known as « *lex loci actus* » permitting the performance of a deed in the manner required by the law of the country where the deed has been signed.

To facilitate the drawing up of mortgages and to give the mortgagees a better guarantee of the validity of their mortgages, we would like it to be indicated - as was stated in our draft counter-proposal - that the deed could be drawn up either in the form required by the country of registry or as required by the law of the country where the mortgage is being constituted.

As for the rest, we find we can agree with the Antwerp Draft, since it differs only minimally from our counter-proposal and I would not wish to create further difficulties.

Thank you, Mr. Chairman.

Mr. Kaj Pineus, Sweden : Mr. Chairman, fellow delegates. It is a rather large assembly in which to discuss draft problems, and I wonder if it is really the moment to do so.

In case it is in order to do it now, the Swedish Delegation has two minor amendments to suggest to Article 1.

We submit that in Article 1 (b) should be added after the word « obtainable » the word « from the registrar or other competent authority ».

We submit that in Article 1 (c), in the third line of the English text, there should be inserted, « issued to the bearer this maximum amount secured ».

Thank you.

(Applause)

Mr. Boal, United States : Mr. President, Gentlemen :

We have an amendment to Article 1 (b), which is a drafting problem. I suggest that it be referred to the Drafting Committee.

Mr. Rachmany Wolfson, Israel : Mr. Chairman, as to Article 1, we would propose two things of principle :

Number one, in view of the difficulty of the difference between mortgage and hypothèque, we would suggest that a definition of the two instruments be put in this article, and we don't think that there would be any difficulty in mentioning that there are documents in respect of loans granted in respect of vessels.

Number two, as to subclauses (ii) and (iii), we would suggest that principles be stated, namely, that there must be the principle of registration and publicity, and leave the details for elsewhere.

Thank you.

Mr. Walter A. Hasche, Germany : Mr. Chairman, Ladies and Gentlemen :

Our delegation had handed in some amendments.

First, we propose to insert in Article 1 after the word « register », the following words : « or the instruments referred to therein ».

The reasons why this minor amendment is made is to keep the register itself clear and easy to survey in case of changes of the address of mortgagees and/or their representatives.

Perhaps, Mr. President, it is a question of the Drafting Committee, but we feel that point should not be forgotten.

Then we propose to add to the rights, the right of the mortgagee to enter into the possession of the vessel or to sell her privately can be executed by virtue of the Convention.

This amendment protects ship owners and maritime creditors from civil law countries against the private remedies of a common law mort-

gagee, which have been applied sometimes even in the nearer past, but which are thoroughly foreign to other legal systems of private law.

Mr. Nikola Percic, Yugoslavia : Our association would like to propose this amendment to Article 1 and to the Drafting Committee; namely, we would like to see inserted the words «and other particulars» after the words « the date ». I believe that in order to be quite sure and to avoid any doubts as to the ranking of the mortgagees, we should have quite a clear system based on the date of registration exclusivity.

There is another small amendment, a practical one, and namely, we would like to add a Paragraph 2 which reads as follows :

« Nevertheless any delay, omission or mistake in the entry on the documents on board the vessel required by the national law of the vessel, shall not prejudice the registered mortgages or hypothèques which comply with the requirements of Paragraph 1 of this article. »

The wording of this amendment is just taken with small corrections from the Article 12 of the 1926 Convention.

Thank you.

The Chairman : Are there other proposals or amendments for Article 1 ?

We will now close the discussion on that article and we will leave the drafting to the Drafting Committee.

We have first the amendments, several amendments by Mr. Chauveau. I think Mr. Loeff can agree with the amendments of Mr. Chauveau, to add « reconnus exécutoires » in the French, and then « recognized and so on » in the English.

Then we have the amendments of the French Delegation which are not drafting amendments. They are amendments on which we must vote.

The first I notice is the amendment consisting in limiting the convention to the hypothèque and mortgages issued from convention, and not from law.

So we have to decide that important point, important for some countries, that the convention is only to apply to conventional hypothèques or mortgages.

(There was a show of hands, and the Chairman announced the vote).

The Chairman : 11 delegations have voted in favor of the amendment, and 3 against. So the amendment is adopted.

The second point, the second proposal of the French Delegation, is important for the Drafting Committee.

It is proposed that the hypothèque may be constituted either according to the legislation of the flag or in accordance with the legislation of the country where this mortgage is admitted.

Mr. Francesco Berlingieri, Italy : Mr. President, Gentlemen.

My delegation fails to understand what is the use, the purpose of this amendment.

We don't understand why in such a way we can help the mortgagee and on the other side, we agree that a mortgage can be executed both in the form accepted by the national law and in the form accepted in the place where the mortgage has been signed, we might impose on every single national legislation, changes which are rather difficult to obtain and quite useless.

If I may give an example, under Italian law, and I think under many other continental laws, the mortgages, the hypothèques, must be in the form either of a public act or in the form of a private act with authenticated signatures.

In other countries the authenticated signature is not necessary. So as a consequence of this amendment, we would be obliged in Italy to accept the registration of a hypothèque in Italy which has not been executed in the form which is acceptable under Italian law, and I think that this would be too difficult to obtain.

The advantages which this amendment is aiming at are not so great as to justify such a change in the national legislation.

Thank you, Mr. President.

Mr. Chauveau, France, (Translation) :

Mr. Chairman, Ladies and Gentlemen :

I have listened attentively to Mr. Berlingieri's observation. His objection had not escaped us at the time we had suggested this change and which our banks had insisted we make, I repeat, since they encounter many difficulties in knowing exactly what should be done to conform with foreign legislation. It is necessary to travel to a foreign country in order to find out.

Mr. Berlingieri has just stated that this would involve a change in his own laws. I do not believe so because the determining factor will be the law of the country in which the deed is done and it is only under the mantle of the convention that you will be obliged to accept it. There will be no modification of your laws because this will act by virtue of the treaty and not by virtue of your laws.

Furthermore I would remind you that it is a general principle of international private law that a deed may be validly done in the form of the country where it is proposed. If this principle has received nearly universal acceptance, then it must be sound.

The objections you have formulated would be valid vis à vis the principle « *lex loci actus* », however, once it is accepted.

We are simply asking that this general rule be accepted as a specific regulation of mortgage deeds, and I am obviously only referring to the drawing up of mortgages.

Mr. Spiliopoulos, Greece (translation) :

Mr. Chairman, Ladies and Gentlemen :

The Greek Delegation wishes to express its complete agreement with the proposal submitted by the French Delegation. It corresponds to what we would have presented ourselves, because it is not merely a theoretical question for our country, but a practical matter of great importance to us.

I would like to cite an example. The countries which habitually grant shipping loans are the United States, the United Kingdom and probably also the Scandinavian countries. I am referring to ships of foreign registry rather than ships which secure loans under their own national flag.

Now, if a Greek vessel purchased in London must be paid for partly in cash and partly with mortgage, a mortgage must be drawn up in conformity with the laws of the country of registry, namely Greece, and this is practically an impossibility.

Whereas English or American notaries merely certify signatures to a deed, according to Greek law a notary personally drafts the deed and does not simply certify signatures. Therefore, it would not be possible to draw up a mortgage in England or in America since American and English notaries do not have the same legal powers as a Greek notary. This would therefore not conform with the regulations of Greek law.

For this reason our law is more far-reaching since with regard to private international law, practically all legislative codes embody the « *lex occupatu* » which provides for reversion to the legislative requirements of the country in which the deed is drafted.

Therefore if the French proposal is accepted, this detail should be included. Consequently, we are in favour of the French proposal.

The Chairman :

I will propose that we take up again the amendments to Article 1 and to the other articles that we have dealt with this morning, and that the vote will begin tomorrow morning at nine-thirty.

Then, we have Articles 2 and 3. First we will take Article 2 of the draft of the Committee.

Are there any observations about Article 2 ?

Mr. Nikola Percic, Yugoslavia : We mean to substitute the following words for the present ones of Article 2 (document NY. 23).

There is no doubt that you shall have noticed that the wording of this amendment is the same one taken from Article 6 of the Stockholm Draft on the Convention relating to registration of rights with respect to ships under construction.

As we have already suggested in connection with Article 1, we would like to see that the basic system of ranking of mortgages be one according to the date of registration.

Therefore, we have proposed to set out the words « other particulars » and we would also like that this principle be recognized in Article 2, but leaving to each contracting State the possibility to provide, with their own national laws, whether the date of registration, or of presenting the application, will be decisive. Thank you.

Mr. Chauveau, France (translation) :

Mr. Chairman, Ladies and Gentlemen.

We would like to suggest a small change in Article 2. At first glance you may feel this is a matter of drafting but I believe the proposed modification has some bearing on the substance.

The Antwerp Draft states that the registered hypothèques and mortgages shall rank in accordance with the laws of the State in which they are registered. This therefore signifies that their rank is determined exclusively by the law of the State in which they are registered. In our counter-proposal we had specified that the effect of mortgages with regard to third parties are determined by the laws of the country of registry. This already implies the question of determination of rank since it concerns the effects of a mortgage with regard to third parties.

But our formula is wider with regard to exact determination of the effects and scope of mortgages and we think it would be more sound to have these results dependant upon the laws of the country of registry. We feel that our formula is better but if the Assembly does not share this opinion, we would accede on this point to the majority view.

I have noticed that in our version of Article 3, which corresponds to Article 2 of the Antwerp Draft, we have made an addition of some importance. Perhaps I should have brought this up when discussing Article 1. We request that all mortgages be registered on one and the same register in order to facilitate searches. It is quite obvious that searches would be singularly difficult if five or six registers in as many countries must be consulted in order to know which mortgages are registered.

Let me further clarify this point : we are not requesting a single register per country, but that all the mortgages referring to the same

ship be inscribed on the same register. Mortgages for some ships may be registered in Liverpool, for others in London or any other port. What we are trying to avoid is having mortgages for the same ship registered in London, Liverpool and other ports.

This is why we support this addition, which did not appear in the Antwerp Draft.

The Chairman : Does anyone want to speak about Article 2 ?

(No reponse)

Then we will pass to Article 3.

Mr. Herbert Alfonso Andersson, Finland : Mr. President, according to Article 3, Section 1, an owner cannot sell his ship without the consent of all holders of registered mortgages.

If a ship is sold to a contracting State, then the mortgagee will retain its priority under Section 3 of the same article.

This seems to me to be unreasonable.

If a ship is sold to a contracting State, then the mortgage will retain its priority under Section 3 of the same article.

The difficulty arises, of course, if the ship is sold to a non-contracting State. In such cases, our law provides that a ship owner may solve this problem by paying the mortgagee what is due to him under the mortgage contract.

I do not want to make a specific proposal to amend this section 1, but I would wish to draw your attention to what I think is an unnecessary restriction on the activities of ship owner.

I thank you.

Mr. William Baatz, Canada : Mr. President, it is appropriate for Canada to make clear why the Canadian Delegation will have considerable difficulty in supporting the article as it is presently drafted.

It seems to provide a substantial restriction upon the freedom of the owner to dispose of his property reasonably to dispose of it.

We have had in Canada very unhappy experiences where ships acquired after the war were subject to a so called flag restriction, which is precisely the provision now contained in this article, that transfer shall not be possible without the consent of the mortgagee.

For such a condition to be imposed upon governments amounts, in fact, to a surrender of sovereignty.

You could have a position where a very small ad hoc loan could be arranged, which would have the effect of forcing the country of

registry of a ship to keep that ship imprisoned within its registry, even contrary to the desires of the country.

Or it could have the effect of forcing the registry to retain custody of the ship at the mere whim of the small creditor on a small ad hoc loan created for this purpose.

We consider that the dangers inherent in the provisions of this proposed law are so substantial that we should not be able to give it support.

Thank you.

Mr. Chauveau, France (translation) :

The first amendment is not of major importance but has, I believe a certain practical interest. It concerns the addition to Article 5 of our counter-proposal.

It states that every ship must have on board, amongst her documents, an extract of the Register indicating the hypothèques and mortgages recorded and the amounts guaranteed. The date of this extract should not extend beyond three months. It must also mention another important item : the address of the office responsible for keeping the Register. This is most important. Indeed, when dealing with a captain and upon request that he produce his certificate, it will be immediately possible to ascertain the address of the Registry office and subsequently obtain all required information. In such an event, the seizing creditor - as in the case of a forced sale - will know immediately what office to contact to obtain all the information he himself must provide. This is the reason we request the addition of this article. This requirement was contained in the Treaty of 1926 and I think it would be a sound policy to reincorporate it into the current draft.

I will now deal with Article 6 of our counter-proposal, which is extremely important. As you know, one of the dangers, one of the types of insecurity to which mortgagees are exposed, dwells in the damage to and/or the loss of the ship which significantly diminishes its value. Ships are generally insured by hull underwriters. Even when the ship has sunk to the bottom, we would wish that the mortgagee not be deprived of all guarantees, that his credit not be entirely lost and that he be able to obtain some kind of indemnification.

We therefore propose to transfer the right of the mortgagee to insurance indemnification. I am aware that this is already being done in practice by conventional methods but we feel it is simpler to have legal provisions, thereby eliminating the necessity for the mortgagee of resorting to personal or conventional methods of indemnification.

What we have proposed is one of the basic tenets of the French system and this we have done precisely because in France this is not absolutely automatic and the same could be so in other countries.

The Chairman : The moment now approaches to give your opinion on the important problem of Article 4 and following, - and I will open the discussion on this subject.

Mr. Boal, United States : Mr. President, Gentlemen, we have three amendments to Article 4. One will be non-controversial. The others are quite different.

We suggest that the words « wreck raising » be changed to « wreck removal ».

Now, on 1 (iv), Mr. Asser spoke on that this morning, and I am not sure exactly what his position is on it.

We have had a good deal of criticism of the term « not based upon contract » and other changes. The amendment makes this paragraph read as follows :

« Claims in tort which arise in respect of loss of or damage to property occurring in direct connection with the operation of the vessel. »

We have another amendment which will be controversial. That is, we want to add to Article 4, Paragraph 1, a new number (vii), which will read as follows :

« All other maritime liens arising at any time prior to the registering of the mortgage or hypothèque. »

So that maritime liens which have been created by law of the flag or proper law, cannot be wiped out by the mortgage or postponed to the lien or the mortgage.

The provision will wipe out or postpone existing liens and will run against constitutional difficulties in this country.

If we have a maritime lien on a ship, and a mortgage is imposed later which is superior to that, you are depriving that lien or the property in the ship which may encounter prohibitions of our Constitution.

At least it will raise constitutional questions.

When our Ship Mortgage Act was adopted in 1920, this provision was inserted. It has given no concern to the lending institutions.

It does not pose any problems of new ships being constructed and mortgages being placed upon them.

But when you take an old ship and the owner has loaded her up with liens, and he goes around and gets a mortgage on her and gives the credit on that mortgage priority over all other liens, it will be an unfair - to use an understatement - transaction.

For that reason we think that both on moral grounds and on legal grounds, a right once created should not be abolished or subordinated to a right that is created later, and that the lien or the mortgage should be forward-looking only and not retroactive.

Mr. N.V. Boeg, Denmark : Mr. President. I only wish to make one short remark. If I understand correctly, the French and English texts do not quite coincide. The French text mentions « claims for assistance and salvage » whereas the English text states « claims for salvage ».

In the Convention of 1926, you find both assistance and salvage, and I don't see any reason why we should change the text in this respect.

Lord Justice Diplock, United Kingdom : Mr. President, I have two comments. One I think is purely a drafting one, and is directed to the suggestion that the words in Paragraph 4 should be « claims based on tort » rather than « claims not based on contract ».

For reasons of English law, this is no question of principle at all. It would, I think, be preferable to maintain the present draft, but if for the purpose of other common law countries, it is desirable to combine the two, that might be the solution to the problem. It is purely a drafting one.

The other question is one of principle and is directed to Mr. Boal's suggestion for the amendment of an additional Paragraph (vii) to Article 4, 1.

In the view of the English Delegation, that raises an important question of principle, because it goes contrary to the principle to which we attach great importance of reducing maritime liens to the minimum.

You will observe that the consequences of the American suggestion, which though on the face of it postpones mortgages only to prior liens created by national law, such as liens of supplies, and not included in the category here, but the effects of such amendment, if you look at the article, would mean that all countries have to give effect to prior national liens, and give them priority over the six categories of liens which are internationally recognized.

That, with great respect, does go to the root of the question which has been considered by the Drafting Committee, because it creates, and creates in all countries with priorities, a whole series of national liens, instead of restricting the legislation to the international maritime liens which are here.

Just speaking on behalf of the United Kingdom Delegation, we should certainly be obliged to vote against any proposal which had that effect.

I appreciate the constitutional difficulties in the United States, but there are some twenty-eight other countries who would have to bow to those constitutional difficulties if this proposal were put forward.

(Applause)

Mr. Loeff, Netherlands : On behalf of the Netherlands Delegation I wish to make three short observations.

The first is that we are in full agreement with the view expressed by Lord Diplock as far as the American proposal is concerned.

Our general idea is that priority of the maritime liens ought to be limited as much as possible.

I have already had the opportunity to say that in our opinion priorities always are arbitrary or capricious, and therefore we must certainly not go far in that direction.

Another point, Mr. Chairman, concerns paragraph (iv) of Article 4. We should certainly want to exclude those claims which, though arising from tort, might have been based also on contract.

As far as I can see, I think everybody will agree and then it would be only a matter of drafting.

I shall not say much on another point which is of grave concern to us, and that is this :

We think, to put it as shortly as possible, that a time charterer should not have a maritime lien on the vessel concerned.

We want to limit maritime liens to claims against the owner himself, the original owner, and the demise charterer, and we certainly do not want to go any further.

Thank you very much.

Mr. Yoshiya Kawamata, Japan : Mr. President, I am afraid that a proposal which I am going to make now is rather against the order of the nature of things, because, if possible I would submit it to you at the later stage of time when Article 6 will be discussed.

Now, our present proposal is to add another item as item (vii) to Article 4, paragraph 1. I do think there should be claims for repairs or claims for repairs and maintenance.

Our delegation strongly hope to delete Article 6, paragraph 2, at least so as for each contracting State to be able to give an adequate protection to shiprepairers. However, since we fear that our proposal for deletion with regard to that article, which is to be made later, might be adopted and then we would find that we no longer will be allowed to place an amendment like the one just submitted, I would like to reserve the rights to present such amendment to Article 4 by making this amendment proposal. The main reason for this amendment is that this kind of claims, that is to say, those for repairs, arise from acts of improving the vessel and increasing its value.

Thank you.

(Applause)

Mr. Hasche, Germany : As to number (iv), we propose to study the problems of the legal position of the claims based on contracts. This means the claims based on the liens. We feel that it will be necessary to save the position of the bills of lading, especially those signed by a carrier who is not the owner of the vessel.

We fear that the marketability and high estimation of the bills of lading would be in a difficult position if we were not prepared to give the American liens this respect.

Therefore, we propose to discuss this question very carefully.

Thank you.

(Luncheon Interval)

The Chairman : We will go on with the discussion of Article 4.

Mr. Van Ryn, Belgium, (Translation) : Mr. Chairman, the members of the Belgian Delegation listened with much interest to the remarks made this morning regarding Article 4, and we are particularly concerned by what appears in the draft under paragraph 1, (iii) and (iv).

As far as paragraph (iii) is concerned, the text states that a lien is secured for claims against the owner in direct connection with the operation of the vessel.

Compared to the 1926 Convention, this is a widening of the list of liens, because in future the lien would be recognized for claims covering persons other than passengers or members of the crew. We wonder whether this extension, which had not been retained in 1926 ought to be accepted now, when we are trying to limit the scope of liens wherever possible and reasonable.

We feel that from this point of view, it would be preferable not to maintain this new lien, and even to delete reference to liens for death or personal injury as provided for in the 1926 Convention.

Subparagraph (iv) provides that maritime liens shall be secured for 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.

If we compare this with the 1926 Convention, we will first note that something has been eliminated : namely that liens which were recognized in 1926 in favor of the bearer of the bill of lading are now suppressed.

In future, there will be no liens for contractual claims and up to this point, we are in complete agreement with this proposal.

On the other hand, here again, the text provides for a new lien which did not exist in 1926 or in any event which was not retained in the 1926 text, in favor of cargo owners having no contract with the operator of the ship.

This new lien refers to claims for accidents incurred by cargo owners having no contract with ship owners.

Considering that we are all here for the purpose of devising means to strengthen mortgage credits and to restrict or limit liens as much as possible, is it really necessary to provide for this new lien ?

This is why the Belgian Delegation is asking your consideration as to whether it would not be preferable to omit altogether from Article 4 the liens listed in subparagraph (iii) or (iv).

I would like to revert once again to subparagraph (iii). It is obvious that, generally speaking, claims for bodily injury or death of a person are obligations which by their inherent nature are worthy of special attention and should be safeguarded by a lien.

This is a concept which, on a humane plane, may be easily upheld. But we feel we must be entirely logical from a legal point of view and admit that claims of this nature must always be safeguarded by a lien, whether the victim is a passenger or a person who has not contracted with the ship owner, and who, through some mischance has suffered an accident, for instance, because of his fortuitous presence on the vessel. In any event, and for one case as for the other, the claim should receive equal consideration.

This distinction, whether in favour of passengers or of third parties having no contract with the owner, appears to us to be arbitrary.

If we recognize that claims for personal injuries or loss of life are, by their very nature, worthy of special attention or protection, then logically and in equity, we should recognize that this holds true for all cases.

If we consider that the true point at issue or the basic reason which should carry the day is to shorten the list of liens as much as possible, then it would seem that these claims should be struck out without distinguishing between them.

In a word, we feel that the 1926 text as well as the draft text now before us are both open to criticism since they both make distinctions. In 1926, this was made in favor of those contracting for ship builders and this seemed particularly shocking to us, since they had accepted the risk, whereas third parties who are purely and simply victims of an accident should, we feel, be worthy of much greater consideration.

The distinction which has been made is actually in reverse. The text has been considerably widened and redrafted, and in terms which could lead to conflicting interpretations. What is understood by loss of

life or bodily injury incurred or directly related to the operation of a vessel? Does it suffice that an accident occurs on a vessel and as a result of an action by a crew member in order that it may be directly related to the operation of the vessel? This is a question which could result in lengthy discussions even if they were to be limited to the wording and interpretation of the draft article now before us.

We are of the opinion that it is preferable to omit the liens listed in Article 4, paragraph 1, subparagraph (iii) and (iv).

Mr. Rachmany Wolfson, Israel : Mr. Chairman, in approaching the subject of liens as mentioned in Article 4, and that of mortgages, we wish to emphasize the following points of principle which would guide us in considering the subject :

A. We appreciate the importance of safeguarding the rights of mortgages by reducing the maritime liens to their essential and equitable minimum.

B. When considering the security afforded by mortgages and charter parties, regard should be had to the fact that both securities are contractually created.

C. The relevant facts which contributed to the preservation of the security afforded by the vessel should grant priority by the order of their importance or expediency.

D. The interest secured by such loan should be covered by the proceeds of the sale of the vessel and by the credits and income derived from and connected with its operation, insofar as they are connected with the venture in question, in the order of their proximity thereto.

The covenant to Article 4 of the draft equated the question of maritime liens of the freight and accessories, or benefits or rights deriving from sources such as compensation due to the owner, general average, salvage, insurance, et cetera.

We should say that under accessories, the following should be mentioned.

Number one. Compensation to which the owner of the vessel is entitled in respect of damage caused to the vessel, and not referred or in respect of loss of freight.

Number two. Payments to which the owner of the vessel is entitled under general average, insofar as they represent compensation for damage caused to the ship and not for loss of freight.

Three. Payments due to the owner of the vessel for salvage services rendered before the completion of the voyage, less the amount collected or distributed to the master and other persons in the service of the vessel, on account of the said payments.

Number four. Insurance money due to the owner in respect of damage to or loss of the vessel. While fully realizing the problems with

which the International Subcommittee was concerned, namely, that of credit obtained on charter hire, and the importance of safeguarding the rights of banks and other bodies lending money on charter-parties, it is felt that the Convention should state the rule rather than the exception, namely, the situation in the absence of any charge created by loans secured by charter hire.

Such a loan is created either prior to a mortgage or thereafter. In both cases, it may be contractually provided as to the possibility in terms of the subsequent encumbrance or charge and the relation between the two.

As this is essentially a matter left to the agreement of the parties, i.e., the owner and the lender, in the ordinary case, such parties should be left to their contractual bargain.

The mortgagees should, therefore, be aware of the fact that in the absence of provisions in the mortgage deeds as to the creation of a charter hire charge, such charge may be created, and vice versa.

Moreover, as the liens are exercisable against the owner in the broad sense of the term, as mentioned in Article 7 of the draft, it is only reasonable that the rights in respect of the vessel and the voyage should be taken into account when rights to liens are exercised.

Coming now to the rank of the various liens, it is doubtful if the order of the liens, as described in Article 4, will be accepted by the various national legislatures.

The tendency would be to safeguard government taxes, sales fees and other matters in the first place.

Furthermore, expenses for guarding and maintaining the vessel kept as a security to cover the various liens should be taken into account. Otherwise, there is a risk that no one would be prepared to take charge of an arrested vessel liable to be forcibly sold in exercising rights to liens and mortgages.

In order to avoid exorbitant claims, it might perhaps be suggested that such claims be restricted to those found reasonable.

We would suggest the following order for the consideration of the Drafting Committee.

Number one, the expenses incurred in order to bring about the sale of the vessel and the distribution of the proceeds of the sale, and taxes and other compulsory charges due to the State or another authority, in respect of the sale or distribution.

Number two, wharfage, anchorage, pilotage, lighthouse fees, port fees of any kind, and other payments for similar port services, insofar as these other payments are due to the State, to another State, or to another authority, or have been paid to any of these by a third party.

Number three, expenses for guarding and maintenance of the vessel from the day of its entry into the last port to the day of its sale as specified in paragraph 1.

Number four, payments claimed by the master and members of the crew and other persons who have served on the vessel in consequence of their employment thereon, their successors or survivors, either under contract or as compensation for wrongs or in any other manner.

Number five, payment for the saving of life of persons of the vessel while stranded or in distress, or salvage of the vessel or cargo, equipment or luggage in the vessel, and in respect of the contribution of the vessel to general average.

Number six, compensation for the death or bodily injury of passengers in the vessel.

Number seven, compensation for damage resulting from collision at sea, or from some other navigational accident, for damage caused by the vessel's structure or installations in port or in the shipyard or fairways, or for damage to cargo or passengers' effects carried in the vessel.

After this would come mortgages and hypothèques, as number 8.

As to Article 4, § 2, it is suggested to add at the end the following words : « not caused by the fault or negligence of the owner ».

The definition of « owner » appearing at the end of paragraph 2 may be made applicable to the whole of Article 4.

The Israeli Delegation wishes to point to an omission in the draft as to lost ships, and would recommend the insertion of an article along the lines of Article 6 of the French proposal, which should apply to mortgages and liens.

Thank you.

(Applause)

Mr. Willem E. Boeles, Netherlands :

The Netherlands Delegation proposes to give a maritime lien to the shipyard for claims for unpaid repairs, provided the shipyard has not lost possession of the vessel since the repairs started, still has possession of the vessel at the time of the enforced sale or at the beginning of the enforcement.

This means that the Dutch Delegation is not in favor of giving a maritime lien to a shipyard for claims for new building or rebuilding, but only for repairs.

It will not give a maritime lien to a shipyard for unpaid repairs if it has no longer possession of the vessel.

Further, if a shipyard had repaired a ship in July and the ship had left the shipyard and had gotten back in December, the shipyard is not to have a maritime lien for the claim for repairs made in July.

In other words, we are in favor of giving the shipyard the maritime lien in those cases in which it would be able to exercise a right of retention.

You know that in the next article, the rights of retention are abolished.

The Dutch Delegation is in favor of abolishing the rights of retention for systematical reasons. We do not think that it is right that a creditor which has only possession of the vessel should be in a position to compel the other creditors which may have maritime liens or mortgages to pay its claim full.

That is the frustration of the maritime system of liens and mortgages. And it is not right that the right of retention should cut right through the system.

But if the Dutch Delegation thinks that it is not right that the shipyard that has a right of retention should be always paid in full before all other creditors, it does not mean that it is in favor of a solution by which the shipyard will get nothing, because if we take away the right of retention and do not give him anything else, the shipyard will get nothing.

We think it is most unjust that the shipyard which has recently repaired the vessel and thereby increased its value would have to suffer that only the other creditors would profit from the increased value that is due to him, and that he would get nothing.

The alternative for the one injustice, namely, that he will get everything, be paid in full, and that he will get nothing, is not right.

We think, therefore, that we would strike a good average if we would give him a limited maritime lien, ranking behind all other maritime liens, only for a claim of unpaid repairs, provided he has still possession of the vessel, has never lost possession of the vessel after the repairs started.

This is not the first time I deal with the subject. It has been dealt with at discussions of the Subcommittee. And always there were two objections raised.

The first objection is that the repairs do not always increase the value of the ship. Well, perhaps not always but in 99 per cent of cases, it increases the value of the ship.

It may be that sometimes repairs are made at a moment which is not very fortunate; but it is, of course, nonsense to say that the repairs never, or generally do not increase the value of the ship.

If you give a man a choice between a ship which is damaged and a ship which is repaired, he will pay more for the ship repaired than the one in a damaged condition. You cannot seriously maintain the

contrary, otherwise, the repairing industry would have the unique distinction of doing work of no economical value.

The second objection is that the shipyard doesn't need to have a right of retention, and therefore does not need to have a maritime lien, because it can always ask for security or advance payments.

I may draw your attention again to the fact that the Netherlands Delegation is only in favor of giving a lien for unpaid maritime repairs.

We admit that in building and rebuilding there are plans which are made a long time ahead. You can arrange security in a satisfactory manner, as much as you want.

But we feel that where damage must be repaired in the shortest possible time and at places which you cannot choose beforehand, that this should be included.

The vessel may get damaged on a voyage at sea, and it must be repaired as soon as possible, immediately, in the nearest port, which may not be the home-port but a shipyard in a foreign port which has never done business with the owners before. Every day lost costs money.

If some major damage is done to the ship, tenders are made, and the lowest bidder will get the job. But then, work must start immediately. And then there is no time, unless more loss of time is incurred, to investigate the financial standing of the owner, to investigate that he is in arrears on his mortgage, and that sort of thing.

It is very beneficial for shipping that repairs may be done immediately in the shortest time possible, and so preliminary security is in the hands of the shipyard.

And that is the way business has been done for hundreds, perhaps thousands of years. And I think it's a very good system, and we should not do away with it unless there are enormous difficulties to it.

From a general point of view, I think it is far more beneficial that repairs are carried out in the shortest notice with, as security, the vessel, at least for the time being, until further security may be obtained, with exceptional cases, the shipyard may have to exercise liens because, after all, the owner cannot meet its financial obligations.

If the shipyard is mistaken about the financial standing of the owner, you will have to admit also the mortgagee was mistaken. And if you have to choose which one should bear the burden, I think it is the mortgagee who has had all the time and opportunity to choose a debtor, to investigate the standing, to ask for his report and balance sheet, more than the shipyard who must work at short notice and is not in the position of the mortgagee.

Therefore, I repeat that the Dutch Delegation is very strongly in favor of giving a maritime lien to the shipyard for unpaid repairs, but

only in the case that the shipyard has still possession of the vessel at the time of the enforcement.

(Applause)

Mr. Berlingieri, Italy : Mr. Chairman, Gentlemen.

I should like to submit for your attention some very brief remarks on paragraph (iii) and (iv) of Article 4.

The present wording is such as to extend the liens for loss of life or personal injury, and for damaged or lost property.

In such a way, the lien which has been granted by the 1926 Convention is considerably extended because under the 1926 Convention, only persons on board and cargo on board were granted a maritime lien.

Under the 1926 Convention, the lien was granted not only with respect to contractual claims, but also with respect to claims in tort, and I should like to refer, in this respect, to collision damage.

The reference to collision damages in the 1926 Convention has the effect of granting liens to all claims for loss of life and personal injury, and to loss of or damage to property caused by a collision.

The Belgian Delegation has proposed to delete entirely paragraphs (iii) and (iv).

In the opinion of the Italian Delegation, this is going too far. The opinion of the Italian Delegation is to confine those two liens only to persons on board and to cargo on board; that by this, we are not aiming at confining the lien only to claims in contract, with respect to loss of life and personal injury, but also to extend this lien to claims in tort, and I am specifically referring to collision damage.

It is our position that in cases of claim in tort, the claimants must receive the full protection. Those claimants have not the possibility of choosing their debtor. They must accept the situation, and they are entitled to a protection.

They are entitled to a maritime lien, while claimants in contract are not entitled to a similar protection, because they have the possibility of choosing their contracting party, to a certain extent, and they can see to it beforehand that the contracting party is well off enough to pay its debt.

The proposal now of my delegation is to restrict the liens under paragraphs (iii) and (iv) to loss of life and personal injury of persons on board, whether they are occasioned by the vessel itself, or as a consequence of collision with another vessel.

As regards damage to property, we are in favor at least of confining the lien to damage in tort.

Thank you.

(Applause)

Mr. Jean S. Perrakis, Greece :

The reason why the Greek Government has never ratified or accepted the Brussels Convention of 1926 has always been the extent of the number of claims granted liens and the reason why the association has welcomed the initiative to transact the new convention, or the draft of the new convention, has always been the possibility or limiting the number of liens, instead of which we find, much to our dismay, an ever-growing number of claims which for one reason or another are proposed to be given a privileged status.

To begin with, we believe that - and I shall start from the positive point of view - that no Government in its senses would ratify a convention which does not include a privileged treatment for the lien for taxes.

The second is that we believe that the legal expenses, or the costs incurred with respect to the sale of the vessel, should be granted a privileged treatment, and the lien should be included and not to be referred in a further article later on, but in Article 4.

Number two, subparagraph (ii) should be number (iii), I assume.

Number (iii) and number (iv) of the draft should be merged into one, and really limited to claims arising out of collisions of vessels.

In that respect, we agree with Professor Berlingieri, that anybody who is contracting runs a risk and will be granted a lien for his eventual claim.

Of course, it is very hard to say in a case involving death or personal injury that a claimant was not entitled to the lien.

But again, is this universal in all other aspects of our life? A man who is damaged by an accident outside the ship does not have a general lien, and therefore will have to take it individually.

We are going to have to restrict to collisions, because we believe that collision is at the heart of the thing, which should be especially dealt with, and we should limit it to that.

Therefore, we believe number (iii) and number (iv) should be merged into one and should be phrased as to indemnities to vessel, passengers, cargo, deriving from the collision.

Number (v) should be retained.

Number (vi) should be deleted.

We can't understand why the general average contribution should be drafted in here, which will be also unjust, because the ship owner is not granted a lien for the contribution of the cargo unless he gets a letter of indemnity, and I suppose the other chaps could get something and that is now called a security.

But a lien to cover this for that is something which cannot be accepted.

Thank you.

(Applause)

Mr. McGovern, Ireland : I would like to explain the view of the Irish Maritime Law Association in respect of the proposals on liens which take priority over maritime mortgages.

We will support the granting of maritime liens in respect of any claims mentioned in subparagraph (iii), (iv), (v) and (vi) of article 4, paragraph 2 of the Antwerp Draft.

These were claims for loss of life, personal injury, claims for damage to property, claims for wreck removal and claims for general average contributions.

We would not oppose the granting of liens to secure these claims because in our view, the granting of liens in respect of these claims does not in any way impair the security of mortgages.

We feel that a mortgagee can stipulate in the mortgage deed for adequate insurance on the vessel, and that if he does so, he will be adequately protected so far as the priority of his security is concerned.

If the vessel is adequately insured, and the vessel is ultimately arrested in respect of any of the claims mentioned, the underwriters can be promptly called upon to provide security in respect of the claim, either by bail or otherwise, and the claim will then in practice rest against such fund.

We therefore feel that there is nothing to be said in respect of refusing to give a maritime lien to secure such claim.

But we do feel that the two claims mentioned in subparagraphs (i) and (ii) of Article 4, § 1, need not necessarily be protected by a remedy so drastic as a maritime lien.

We recognize, however, that any convention which does not contain provision for a maritime lien to secure such claims is unlikely to receive widespread acceptance, and if for this reason the majority here feel that such claims must be secured by maritime liens, we would go along with that, because we feel the amounts involved in such claims are likely to be small.

(Applause)

Mr. Philip, Denmark : We have had the experience confirmed this afternoon that if you wait long enough to ask for the floor, almost everything which you were intending to say will have been said.

But unfortunately, there is one thing which I am afraid nobody is going to say. So on behalf of the Danish Delegation, I am going to say it.

It is true that we are going to try to limit the number of maritime liens and the question is, as it has been said before, whether we have succeeded or if we have extended the number of liens.

There is one lien which at least has been left out, and which exists in the 1926 Convention, and which I am going to suggest we take up again, at least partly.

That is the lien for contract entered into or acts done by the Master acting within the scope of his authority.

However, I am not going to suggest that it should be generally taken up again into a convention; no need to be afraid of that.

But there is a group of ships which may rely upon, to a certain extent, these liens.

That is the small ships, which perhaps none of us are thinking very much about here, but which have quite an importance in my country.

Therefore, I am going to suggest that such liens should be admitted with regard to ships under three hundred tons.

This is the same limit of tonnage which we have in the 1957 Convention on limitation of responsibility.

Thank you, Mr. Chairman.

(Applause)

Mr. A Stuart Hyndman, Canada : First of all, dealing with subparagraph (i), Article 4, we think that consideration might be given to restricting wages due to masters and officers, not of the last voyage - and this is for protecting the interest of the mortgagee, which is the interest behind this - not a two-year limitation, but in this instance restricting the wages of the crew to one year. And secondly, insofar as subparagraphs (iii) and (iv), we agree generally with the Belgian representative that we are creating here a perhaps unnecessary extension of the basic principle of maritime liens and that they well could be deleted failing their restriction to some such item as was suggested by a speaker confining it strictly to collision damage.

This, of course, relates again to the question of the mortgagee, and although it has not been so stated by the speakers here today, it involves a further restriction in that the word « owner » should not be expanded to include the manager, operator of the vessel.

I notice in the amendment that no delegation has suggested a redefining by deleting the « manager, operator of the vessel » and in that respect, we would agree with them.

There has been discussion as well about the application or creation of a maritime lien for the shipyards insofar as concerns repairs to the vessel.

The basic position we have on that is that if we do create a maritime lien, then, of course, it ceases to be a maritime lien in the generally accepted sense, because the type of lien which has been suggested exists, or would persist only until such time as the vessel would leave the yard.

Therefore, it creates a different type of right that envisioned for the other proposed maritime liens, and certainly a different type of right to that which is envisaged by the common law at the present time.

Under the common law at the present time, of course, the shipyard does have a right of retention, and it is our submission that that right of retention provides adequate protection without creating a new right by way of a maritime lien.

Thank you.

(Applause)

Mr. Chauveau, France (translation) : Mr. President, Gentlemen, we have submitted a written amendment to article 4 and I shall naturally uphold it. But I must here emphasize that to be understood, this amendment must not be isolated from those we have submitted to article 5 and possibly to article 8. These amendments constitute an entity which - I admit - differs appreciably from the Antwerp Draft not only textually, but possibly even with the general concept of the problem. It is this general concept which I would like first of all to expound.

However, Mr. President, I shall once again seek your permission to specify precisely the position and intentions of the French Delegation regarding this problem. It so happens, that the little finger of my right hand is somewhat indiscreet and leads me to such follies as listening at doors. I have therefore discovered that the blackest and most tortuous of intentions are imputed to the French Delegation. It is stated that we are devoid of the slightest spirit of collaboration and even baser minds have gone as far as to maintain that we are here just for sabotage.

I find it difficult to understand, Gentlemen, how this fantasy came into being because such an attitude would be quite contrary to the tradition of the French Delegation. I should not have to remind you, Mr. President, that among all those here assembled, the French Delegation is one of those which has best contributed to the work of the C.M.I. and to the unification of maritime law. We have always sent men of great reputation and renown to your Conferences. There was even one whom you yourself lauded yesterday in terms both eloquent and well-deserved. I will cite still another name, among those who unfortunately are no longer with us : Dean Ripert. These men of talent have worked to the limit of their great art, in the preparation of the thirteen treaties which are a credit to C.M.I.

These men, Gentlemen, have given the best of themselves and, moreover, the French Delegation can certainly claim not only to have helped prepare these treaties, but to have signed them all. Not only have we signed them all, but have ratified and implemented them, with the exception of the last, for which we had no time.

Therefore, Gentlemen, it would be truly surprising if we changed our traditions at this point. If we can boast of having adopted the

above attitude, I'm not at all sure that the rest of you can do as much, especially those worried people I spoke of a few minutes ago.

Consequently, we have not come here imbued with a spirit of systematic opposition. When we state that we are not in agreement and make a counter-proposal, it is because we feel we are working and collaborating on something constructive. When tackling a problem as difficult and broad as that confronting us at this Conference, remarks and setbacks are a form of collaboration; sometimes collaboration consists also in sounding the alarm. It is in this spirit that we are here today and we assume the prerogative of not always agreeing with the Antwerp Draft, at least as far as liens are concerned.

We demonstrated our good will this morning when declaring ourselves in agreement with the main lines of the draft, particularly with reference to hypothèques. As for disparagement, we are not guilty. With regard to liens and their preferential ranks, we are less convinced. We have reservations about them which I shall try to briefly review at this point.

As I stated this morning, the prospects of agreement about liens are not as bright as for hypothèques. We brought this out at the very beginning and since then this rather vague misgiving has been confirmed by the various answers, written statements of the delegations, and the speeches.

I have certainly not been made aware of perfect harmony or agreement and have noted many divergent viewpoints.

First divergence : Some feel that after all this poor 1926 Treaty was not so bad after all. Certainly there was no lack of defects and I must admit it took us some time to decide on ratification because it fell far short of some of our legal concepts in France. It went against our grain. We finally ratified it through « international discipline » - to quote one of Dean Ripert's expressions - and are proud of having done so. If everyone had demonstrated the same sense of discipline, we would not be here today.

This therefore constitutes a first conflict between those who were well satisfied with the 1926 Treaty, who did not feel compelled to destroy an old building simply to erect something new, and those who felt that the 1926 Convention should be amended. We are quite ready to do something, to join together in a constructive attempt to create a new treaty. But it is not for the pleasure of drafting a new convention but for the honour of C.M.I. that we hope it will be a good treaty with which everyone, this time, will be in agreement.

In considering the Portofino and Antwerp Drafts, we feel constrained to remark that disparities exist between both texts. We feel that we are far from achieving a perfect instrument and that there are still too many liens to sap hypothèques and mortgages. This is what my Greek

colleague explained very clearly a while ago. This opinion has been shared by other delegations, although perhaps in a less absolute way, Other delegates consider that there are too few liens and that more should be added.

Another divergence : some delegations think a two year delay is much too long, whereas others find it barely long enough.

Others feel that everything possible should be included in this Treaty - even matters on ship construction; I seem to have read that other delegations deem this should be absolutely excluded. We therefore cannot clearly visualize our prospects of agreement under such conditions and have the impression of being at an impasse.

We are among those who feel that in order to do something constructive for « créanciers hypothécaires » so as to increase the value of the mortgage, the number of claims against the mortgages must be reduced. In spite of our lack of enthusiasm for the draft treaty, we tried to do something constructive. We took a lot of trouble and, possibly with some presumption attempted to do something new. We devoted a lot of attention to the Portofino Draft because it represented a vast amount of work. It was studied, Gentlemen, not only within the French Maritime Association, but we called in to assist in our deliberations representatives of our banks, maritime credit associations and shipyard people. It was this meeting of practioners, outfitters and lawyers who finally tried, as a means of escaping an impasse, to submit new solutions to you.

This is therefore the opinion of our bankers, and of our shipyard representatives which I shall try to present to you.

We felt at first that we were in the presence of a new problem - that is - relatively new because maritime mortgages have not been in existence very long under French law. They were not inscribed in French lawbooks before 1880. These mortgages were grafted on already existing trees like some kind of parasites and the parasite is now destroying the tree on which it was grafted.

But the problem is new in the sense that if maritime mortgages were known in 1926, they were not as widely used as today. The extension of their use has made the problem more acute. Therefore we are striving to find a new solution to this new problem.

We saw that the 1926 Treaty had adopted a simple procedure which consisted in granting to a certain number of claimants a right having priority over mortgages. Certains liens were simply deleted to decrease their number. The Portofino Draft used the same procedure. Therefore, if the 1926 Treaty was not satisfactory and if the Portofino Draft, which adopted the same procedure, was also not satisfactory, this means either that this procedure is not proper or does not suffice.

Gentlemen, in re-examining this question, we felt that the problem might have been obscured since 1926 because of this one point : that of

preferential rank of privileged lienors in relation to mortgage claims, as well as the number of privileged lienors who would be allowed to have priority over mortgage claims. This is the principle question requiring our attention. But if we are to consider the entire problem of liens, we can perceive that it is more vast and that certain of its aspects might be overlooked. This is why we are encountering difficulties.

Having considered all these aspects, we next sought the elements of a solution. We attempted to analyze the problem to determine the true difficulties and inconveniences encountered in practice by mortgage claimants so as to come up with an adequate remedy.

We are among those who think that to achieve the goal we have set for ourselves, that is, to reevaluate the mortgage in such a way as to favour its growth - I feel that this is our essential aim - we must reduce to a maximum - or if you prefer to a minimum - claimants having priority on mortgages so that there will be no more or hardly any more.

We seem to be in agreement on this point with the Belgian Delegation as far as understood certainly by Mr. Van Ryn's interventions.

There is another problem we should not neglect. It is no longer a question of relations between maritime creditors and mortgage creditors but of relations between maritime creditors and common-law creditors. Allow me to explain this. By maritime creditors is meant those whose claims are derived directly from the operation of the ships and which are in direct relation with this operation. Since these claims are in direct relation with the operation of the ship, we think that these maritime creditors deserve a special protection with regard to non-maritime creditors, that is whose claims are alien to the operation of the ship. This has always been a rule of maritime law to protect maritime creditors by giving them preference over creditors whom I shall designate as land-based, to use a simple word.

I shall take as an example the famous case of the drydock for repairs. I find it entirely normal that the drydock be given preference over someone who has loaned money for the construction of a building. I also find it entirely normal that preference be given to someone whose merchandise has been damaged in shipment rather than to someone who loaned money to buy a truck. We consider this to be equally important for maritime credit.

As our colleague from the Danish Delegation remarked a while ago, we cannot restrict our thinking in terms of big outfits, but we must also give some thought to more modest companies, even fishing vessels for whom we feel it is indispensable to maintain this type of credit. This obviously leads us not to accept the disappearance of some existing liens. On the contrary, it could induce us to extend them. Now you will say there is a contradiction between our first and second goals and this is true. We nevertheless tried to solve the problem and to attain our goals

we believe this conference should deign to accept two or three fundamental concepts, and then we will discuss the best means of implementation. We could then be open to all suggestions germane to these concepts.

What are these concepts ? We questioned bankers to find out what was wrong. They replied that mortgage credits encountered difficulties, because they were undertaken in an atmosphere of total insecurity. The creditor does not know where he is heading and insecurity becomes apparent the minute the shipowner asks for credit. Before extending credit, it is normal for the banker to require information on the borrower's financial solvency. He wants to know how many liens or « droits réels » exist against the vessel. There is a lot of trouble in acquiring this information because these rights border on the occult. They are not subject to any kind of publicity. As stated by the Swiss Delegation, this is contrary to the tendency of all modern legislation regarding the question of « droits réels ». I would call to your attention that in a very similar field the Geneva Convention provided for publicity to be given to liens which it recognized for aircraft. Our banks request, as a fundamental principle of all new treaties, that a system of publicity be arranged, thus enabling them, when they receive a request, to quickly obtain information on the creditors having priority on the vessel, and this without having to embark on long searches, which are always more or less indefinite.

Bankers complain of another sort of insecurity which this time does not refer to what has passed but to what is to come. This happens when, after a mortgage has been drawn up, liens suddenly crop up which absorb the entire value of the ship, leaving absolutely nothing to the mortgagee.

We are therefore obliged to reduce to a minimum the claims which, arising after the mortgage has been drawn up, may validly take priority over the latter.

We are therefore proposing a system which would be able to contend with the various requirements of the interested parties and meet the goals we are pursuing. A right exists which is traditionally called a lien. This word may no longer be quite exact. We will speak, if you wish, of a legal mortgage. This means a mortgage of a special character in favour of maritime creditors whose claims are in relation to the operation of the ship, in such a way these claims may have preferential rank over land-based claims. I must point out that if you merely suppress the lien in favour of mortgage creditors, as the Antwerp Draft does, you reduce by the same token the number of creditors who formerly had a guaranty and a preference in relation to land-based creditors; you relegate them to the ranks of unsecured creditors. I hardly think anyone wishes this to happen. Perhaps our British colleagues can think of some way to palliate the difficulty I have just described be-

cause their legislation provides for statutory liens, which we do not have in our country.

We either have one thing or another : we either have a lien or a mortgage; or we have nothing at all and must submit to the claims of all the other creditors and of the shipowner. Sometimes it is possible to invoke the right of preference under common law. But this is not a solution and I am convinced that everyone agrees that maritime creditors be granted preference in relation to land-based creditors. By the same token, this does not mean they will be allowed to take precedence over mortgage creditors.

The first problem is that of relations between maritime creditors and land-based creditors. The second is between maritime and mortgage creditors. If need be, we will ask that privileged creditors, whose claim was established before the mortgage was established, be given preference over mortgage creditors. I hope this will satisfy the American Delegation which made the same suggestion this morning. There will be no inconvenience in this since the mortgage creditor will be informed of the existence of privileged creditors and agree to their priorities. On the other hand, claims arising after the mortgage has been constituted will not take priority over mortgage creditors, who will retain their preferential rank. In brief, we refer to the date of registration and the date on which the rights arise.

We will now end up with a suggestion which is more practical than legal but which brings a solution, in principle, to the problem before us.

We suggest constituting two different funds by the insurance cover, in order to cover on the one hand the mortgages and on the other hand the liens.

In the course of a private conversation the other day, I endeavoured to explain by a fable, which I shall now repeat, how to resolve this conflict. Take two big dogs and one small bone; if you give one small bone to two big dogs, there will be a fight. If, however, you have two nice big bones and you give one to each of the dogs, they will not fight each other but will eat their bones. If the bone is big enough to satisfy their hunger, there will be no conflict. This is an over-simplified picture of the proposal we have made regarding Article 8 bis which we suggest adding to the amendments of the Portofino Draft.

Mr. President, I am entirely aware that such proposal must indeed surprise an assembly such as this which was not at all prepared for them, considering that they arrived rather late, due to our attempt to assemble as many competent people as possible, which already represents quite a crowd.

But it is never too late to do well or at least to try to do well. And it is with this attitude that we are submitting these proposals. We

are aware that it will be difficult for you to accept them in one leap and we ask that sufficient time for reflection be granted to everyone. Perhaps such an important question should be carried over to a future conference. We have the impression that the problem as a whole is not quite ready for action and that we might not be able to reach a definite decision just now. The subject certainly deserves a period of reflection because, according to an old Italian proverb « Chi va piano va sano ».

Mr. Chairman, Gentlemen, I thank you for having listened to my very long speech. (Applause).

Mr. Loeff, Netherlands : Mr. Chairman, as a matter of fact, on behalf of the Netherlands Delegation, I come over here to say that we have made several amendments of which I spoke already this morning.

I would like to give a further explanation of what our intention is.

Our amendment N.Y. 4, just limits the period over which wages and similar claims have priority to six months.

I think the Danish delegate said something about a period limited to the last voyage.

The last voyage was an idea which was dealt with in the Convention of 1926, and I think it would give rise to a lot of difficulties. I have therefore returned to the period of six months.

That is why I would limit the priority to six months.

By our next amendment, N.Y. 5, we propose, as a general idea, to limit priorities as much as possible, and therefore it is our proposal to delete entirely paragraph (iv), but in the alternative we propose the text which is set out.

There is a limitation here which may be very useful to Article 4 as it is worded now.

I may add to what I said this morning, and which is not yet in the amendment, that the intention is claims not based on contract and which really cannot be based on contract.

Our next amendment is N.Y. 6, and it deals with paragraph (iii).

These things are much too wide and you ought to get priority only in case the claims arise from a defect of the vessel or from an act or neglect of those employed on board the vessel.

Amendment N.Y. 7; Mr. Boeles gave the reason for the priority claimed for.

Then a very important point to which we attach very much importance is Amendment N.Y. 8, and we absolutely want to prevent that priority would attach to a claim against a time charterer, or somebody else who is not in a very close relation with the vessel.

We think that those priorities ought to be granted only in cases in which the real operator of the vessel is liable.

That is all for Article 4.

Thank you very much.

Mr. A. Vaes, Belgium (translation) : Mr. President, Ladies and Gentlemen, with your permission I would like to elucidate on two subjects.

The first is of a general nature and specifically concerns Dean Chauveau's intervention. He has told us he had the impression that this conference has reached an impasse, having taken note that some delegations suggested narrowing the scope and others increasing the number of liens, that some delegations proposed an extension and that others wanted to shorten the delays at the end of which liens would be nullified.

I sincerely believe that those of you who have participated in the numerous discussions during these various conferences, prior to voting, are aware that it is quite usual for many subjects of disagreement to crop up during the first day. And it is precisely to work them out that we are meeting today. As a matter of fact, had there been complete agreement on all points before coming to New York, we would not have had the pleasure of being the guests of the American Association of Maritime Law.

Please let us not give up so easily ! Let us not say, at three o'clock in the afternoon on the first day of our meeting that chances of success are lost because there are divergent opinions. Let's get to work to reach an agreement.

This being stated, Gentlemen, I think that to carry out our task with wisdom, we must squarely face the problems created by the French Delegation's suggestions, that is, that on the one hand there is the Antwerp Draft which was first known as the Oxford Draft and then as the Portofino Draft and then finally the Antwerp Draft. This last draft is the result of the work of the restricted committee, and on the other hand, the French proposal qualifies entirely as a true counter-proposal whose purpose is to substitute a completely different formula from that of the Antwerp Draft.

Having reached this crossroad, your Assembly must now be consulted in order to decide whether we are to discuss the Antwerp Draft or the French Draft, because if this is not done we will be constantly checked by this difficulty and as Dean Chauveau has said, this will end up as an impasse if we do not know whether we are discussing the Antwerp Draft or the French Draft.

If the majority of those present deem that the French Draft should be the basis of our discussions, then so be it and we will take the debate on this point. If on the other hand, this assembly opposes this, then the Antwerp Draft will be the basis of our discussions. I am therefore respectfully requesting the President to consult this assembly to determine in which direction we shall proceed.

I would now like to submit a second point and it is quite apt following the intervention of my colleague, Mr. Van Ryn and that of

the Netherlands delegate. To begin with, we are all in agreement on the principle that the re-evaluation of the hypothèque, which is our major goal, should have as a dependent condition, as far as possible, a reduction in liens and in this regard, Mr. Van Ryn proposed a rather radical reduction, i.e., the elimination of sub-paragraphes (iii) and (iv) of Article 4, complete elimination of the lien attached to claims for death or bodily injury and to damage to property.

The Irish delegate remarked with good reason a while ago that this type of claim is in fact practically always covered by insurance, so that these two liens, if they were suppressed, could not in practice cause an injury to claimants who would in any event be covered by adequate insurance policies.

If, however, it was felt, because of a certain loyalty to former concepts, that this lien should be maintained, the Irish delegate remarked that it would be no great hindrance, since it would be of a somewhat theoretical nature and that the mortgagee, who could be expected to look after his own interests, would take care to check up on the insurance policies of his mortgage debtor, so that these policies would remain in force in order to insure adequate protection to claimants for death or bodily injury or damage. Our Irish colleague seems to have forgotten that this holds true only to the extent that it applies to claims against the ship-owner.

Now, within the framework of our present draft, this lien also extends to claims arising from victims of accidents resulting in bodily injury and damage imputable to the charterer. From a practical viewpoint, it is inconceivable that a mortgagee, as careful as he may be, is able to secure complete reinsurance as to the adequate coverage of the insurance policies taken out not only by his mortgagee, but also by a demise charterer, a time charterer, a voyage charterer or by a manager. This is where I rejoin the extremely judicious position of the Netherlands Delegation which proposed limiting the definition of the word « owner » to the real owner and the demise charterer.

These are the only two persons who can be under the mortgagee's surveillance. He can check on their insurance policies and by the same token, if this assembly decides to maintain the two liens which the Delegation of Belgium has suggested to suppress, we would have less the feeling, if not to say even the conviction that these are liens, which would not burden the fate of the mortgagee because by constant vigilance, the latter could always ensure that the insurance policies destined to cover these claims will remain valid, provided, I repeat, that the Netherlands amendment is accepted, which provides that the giving rise to privileged liens would not be extended to charterers other than demise charterers.

(Applause).

Mr. Frode R. Ringdal, Norway : Mr. President, I should like to speak in defense of Article 4, as it is. I think it is about time.

I shall confine my remarks to a discussion of Subsections (iii) and (iv) of Article 4.

The long list of individual wishes presented this afternoon clearly demonstrate that they cannot be all fulfilled. Santa Claus does not have that large a bag.

We shall have to make our choice, based on some basic principles.

I should like to state that I think the Committee, Mr. Asser's Committee, in a wonderful way has been able to state those basic principles through this proposal before us.

One road is to follow Mr. Van Ryn's suggestion, to leave out the concept of maritime lien entirely. If that should be the feeling of the majority of the organization here assembled, I think that we in the Norwegian Delegation should be prepared to follow that line.

However, if that is not a feasible way to go, I see no other line to follow than the one suggested.

Two basic principles underlie the draft as it now is.

One principle is that those claimants that get their claims from contracts with a debtor, they can take care of themselves through their contract negotiations. They need no assistance.

The other principle is that those third parties suffering hardship through no fault of their own, they would be entitled to protection.

Now, if we look at the first principle for a moment, that clearly leaves out all claims for supplies or repairs.

I readily grant that the argument is quite persuasive, that those increasing the value of the ship by rendering services, they are performing a useful function for which they should be rewarded. But if we fall for that persuasive argument, it will leave us exactly where we were before, under the 1926 Convention. A repair to a ship will increase the value but so will the supply of a radar set, of a new winch. And so will the work done by a contractor in painting the deck, or doing other sort of work.

The only category that will be left out under that criterion is the supplier who is unfortunate enough to deliver goods for immediate consumption. And that is not a very substantial and serious category, and it is not the intention only to cut out that group.

I think we have no choice but to eliminate supplies altogether.

Then it has been pointed out, in respect of the other basic principles, that we are going the other way around by expanding the number of claims being entitled to liens.

Yet there must be a principle, and I can see no justification in granting a lien to collision claims and denying liens to all other claims that arise from an accident or a mishap. If there are liens for any sort or tort claims, then it would have to be for all.

As a matter of fact, it has been very eloquently pointed out that the expansion of the number of liens in that field will not cause harm to the mortgagee, because he is in a position to see to it that all such claims are insured against. To him, really, it represents no hardship.

There is one category of claims falling outside of these two principles, and one category that I don't know exactly how to handle. That is the category of cargo damage claims.

It seems so natural that cargo damage, cargo claims, should also be secured by a lien. But we must admit it is a contract claim.

I think the way to go about it is just to admit that irrespective of the specifications, it is a very practical thing to give a lien for a cargo claim; and I should like to hear what the other delegates might feel about it.

With that, I shall recommend that Article 4, Subparagraph (iii) and (iv), be adopted as is.

(Applause)

Mr. Ortiz de Guinea, Argentine, (translation) : Mr. President Ladies and Gentlemen, the Argentine Association of Maritime Law firmly believes in the necessity to uphold and improve the regulations of mortgages on ships, but deems that it is not possible to broaden the liens.

The legal immutability of the regime of liens and the necessity of upholding the mortgage impel us to accept the French proposal to study the two conventions opportunely.

All maritime claims, whether contractual or delictual should be preferential liens. The French concept of incorporating into the draft the list contained in the Brussels Convention of 1952 on the « saisie conservatoire des navires » fulfills this requirements.

This opinion was put forth in 1959 and printed in a publication on mortgages and maritime liens by the National University of the Republic of Argentina.

This tenet is sufficient to uphold maritime credit, whereas the draft of the treaty on liens cannot be the same as that on « saisie conservatoire ». Technical legal reasons force us to insist on more precision as to terms and the general terms of Article 8 of the French counter-proposal cannot satisfy us.

What exactly is an hypothèque ? I never call it a maritime credit because an hypothèque is simply a guarantee, it is not a credit. Therefore the protection of the hypothèque should be carried out without casting aspersions on liens.

As a first guarantee, I see the international recognition of registration in the same register of a country, but an international registration carried out in Antwerp would be preferable.

In this regard, the draft is more complete. But the safety of the hypothèque will be all the more effective if insurance is mandatory for the mortgagor and that the indemnification will be for the exclusive benefit of the mortgagee. I know that this type of mortgage credit, which is not « à partée maritime », derives certain satisfaction from a contractual operation as is that of insurance. It exactly parallels the idea of division of inheritance.

Another safeguard for the mortgage should be the expiry of maritime liens within the shortest possible limits. This is why mandatory registration and publicity regarding liens is necessary. Registration should be done in the port of registry of the vessel. The Geneva Convention on Aircraft and the Air Legislation of the different countries such as Argentina, my country, could serve as a model for this question of validity of liens. I would add that in my country, the period is for six months.

Another safeguard, less absolute, however, of the maritime « hypothèque » should be the competition drawn up for indemnification « et porter sur les accessoires : le fret, le crédit pour réemploi ». The Argentine Maritime Law Association would like to have these safeguards inserted in the Convention.

Insofar as a practical and more effective guarantee to the mortgagee who has advanced funds for construction and utilization for purchase of the ship, the prescription period of Article 9 of the Antwerp Draft and Article 12 of the French counter-proposal, will be the wisest standard.

The mortgagee will cease to be a mortgagee and will become the possessor of a maritime lien which can be transferred or subrogated.

This would mean the end of the fundamental opposition between the ideas of mortgage and liens, so that credit with a mortgage will have an early place in the ranks of liens.

(Applause)

Mr. Hans-Christian Albrecht, Germany : I respectfully comment on Article 4, (iv) thereof, and I am referring to what has been said just now by the Norwegian delegate.

We feel, Gentlemen, that it is rather difficult for us to stick to the wording drafted in Antwerp, « Claims not based on contract », as regards cargo damage.

We feel that those claims for cargo damage are not covered here, and should be covered, especially in cases, Gentlemen, where the carrier is not the ship's owner.

If that is so, then those consignees which, by the way, didn't contract themselves but some others did it for them, those consignees which suffered the cargo damage wouldn't have any possibility whatsoever to enforce their claim if the vessel carrying their goods is not the property of the carrier.

Therefore, under German law until now, we have the rule that in such a case, there is granted a lien to the consignee on the vessel, giving him the sole possibility to recover, always presuming or assuming that the carriers are some people in the world having no assets whatsoever. And you know that things like that happen quite often.

So we feel that there must be a provision somehow worded, and we must try hard to find out, helping to give such consignees a lien on the vessel which transports their goods.

It may be that this problem does not arise everywhere. It may be that some countries treat such claims as claims in tort.

We do not, however, do so, in Germany; and therefore, we would not be covered in this respect.

Speaking in a practical way, Gentlemen, I don't feel that it would harm the mortgages very much. Claims like that are insured against by the P & I clubs, and it would, in a way, be in the hands of the ship's mortgaging banks to ask the owners to have P & I insurance.

So I speak on behalf of finding a way to cover such claims of consignees, and feel that we should try to work it out.

Thank you very much.

(Applause)

Mr. J. Niall McGovern, Ireland : I am sorry to intervene again, but I think there is one thing that we ought to clear up here.

The maritime lien in our law is a very far reaching remedy. It is a right or privilege against the maritime res, which does not require the possession of the res, and it follows it into the hands of whomsoever it may come.

I would like the delegates here to consider whether it is really necessary to secure the claims which we have discussed here this afternoon by so far reaching a remedy as a maritime lien.

It seems to me that our problem is not simply to lay down which of those creditors of the ship owners should be paid; but our main problem, it seems to me, is to increase the security of the long-term creditor of the ship owner, to wit, the mortgagee.

There seems to have been general agreement, judging from the replies received from the various associations, that this ought to be the prime aim of the new convention, if new convention there should be.

It also seems to me that to achieve that aim, we must first of all secure uniformity in the matter of recognition of mortgages.

Secondly to that, I think we must endeavor seriously to reduce the number of maritime liens which secure claims which are preferred to mortgages.

Unless we succeed in doing this, it seems to me that a new convention drafted here will be doubtful of wide acceptance.

In view of that, I am prepared to support, on behalf of the Irish Maritime Law Association, the granting of maritime liens which do not seriously interfere with the security of the mortgagee, inasmuch as they ultimately will be covered by insurance. The claim, if any, resulting from the arrest of the vessel will be pursued against the fund which will be created by the underwriters covering that claim.

This covers all the categories save categories (i) and (ii) in Article 4. I think there are probably social reasons why the claims included in categories (i) and (ii) ought to be given maritime liens.

The reason is that most of the Governments of the countries represented here will not accept or ratify the convention which does not give security by way of a maritime lien for claims for wages and labor, wharfage, pilotage dues, and as I said before, these will be small sums, and will hardly interfere with the security of the mortgagee.

But in respect of any category of claim not capable of being covered by insurance, and which, therefore, will take serious priority before mortgagees, I think we ought to think very seriously indeed before we give any priority to such claims over the rights of mortgagees.

(Applause)

The Chairman : Does someone wish to speak on Article 4? If nobody wishes to speak on Article 4, I think the moment has come to adjourn until tomorrow morning.

Tuesday, 14th September, 1965

Chairman : President Albert LILAR

The Chairman : The session is open.

As we said yesterday, we are beginning this morning with the amendments on the first articles concerning mortgages.

The first amendment proposed by the Netherlands Maritime Law Association on Article 1 of the Antwerp Draft.

Mr. Loeff (Netherlands) : Mr. Chairman, the Netherlands Delegation has decided to withdraw the amendment.

The Chairman : The second amendment I have before me is the amendment of the United States Delegation, of Article 1, Document N.Y. 11.

Mr. Boal (United States of America) : Mr. President, Gentlemen. This is purely a drafting amendment. We would be willing to have it go to the Drafting Committee for their consideration.

The Chairman : Does anybody wish to speak to that amendment ?
(No response)

The amendment of the American Delegation is a drafting matter, and if nobody objects, it will go to the Drafting Committee.

Document N.Y. 20, the amendment of the Yugoslav Delegation, Article 1.

Does the Yugoslav Delegation wish to speak to this ?
(No response)

We are going to vote on Amendment Document N.Y. 20, an amendment presented by the Yugoslav Delegation.

Voted in favour : Argentina, Belgium, France, Greece, Poland, Switzerland, Yugoslavia.

Voted against : Canada, Denmark, Spain, Finland, Great Britain, Ireland, Italy, Japan, Mexico, Netherlands, Norway, Portugal, Sweden, U.S.A.

Abstained from voting : Germany, Israel.

The Chairman : The amendment is not adopted. We will examine now Amendment N.Y. 21 of the Yugoslav Delegation. This is c) of Article 1.

Does anyone wish to speak about it ?

(No response)

Then we will pass on to the vote on Amendment N.Y. 21 proposed by the Yugoslav Delegation to Article 1.

Voted in favour : Argentina, Belgium, Yugoslavia.

Voted against : Canada, Denmark, Finland, France, Germany, Great Britain, Greece, Ireland, Israel, Italy, Japan, Mexico, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, U.S.A.

Abstained from voting : Poland.

The Chairman : The Amendment NY 21 is not adopted.

Next is Amendment N.Y. 22 of the Swedish Delegation.

I think we may consider it a drafting amendment if the assembly agrees.

Mr. Pineus (Sweden) : Mr. Chairman, we believe that we will try to follow, as nearly as we can, the Antwerp Draft and not propose any amendments of a drafting nature, and any amendments, unless we feel strongly at some point.

We will withdraw this amendment.

The Chairman : Thank you.

The next one is Document N.Y. 25, amendment presented by the delegations of Denmark, Norway, Sweden and Finland.

Mr. Rein (Norway) : Mr. President, Ladies and Gentlemen.

This amendment was put in yesterday because of the work which was taken on the French proposal to limit this convention to contractual mortgages only.

Now, at the early stage of the preparatory work of this committee, it was agreed by all delegations in the International Subcommittee that the convention must cover not only contractual mortgages but also mortgages levied by traditional decrees, because some countries, in fact quite a lot of countries, have a system under which the levy of a judicial mortgage, if I may use that word, is a necessary element in the legal procedure of enforcement and foreclosure.

Therefore, if we limit this convention to contractual mortgages only, that means that these countries cannot possibly adopt this convention without reorganizing the whole civil procedure and that is too much to expect.

This goes for the Scandinavian countries. I think it goes for Germany, and so on.

To make it clear that this Convention should comprise also traditional mortgages, we put in a proposal at a very early stage, and we used a word in Swedish, and our English friends tell us that there is no such word in English at all; and so we explored the matter and we found a happy compromise in the Drafting Committee.

We found that the French word « hypothèque » also covers « hypothèque légale », and the English word « mortgage » by definition is a contractual matter.

So, by including the words « mortgage » and « hypothèque », it was found that we had covered also the « hypothèque légale ».

The amendment which has been put in now is unnecessary, in my opinion, if the French proposal is defeated.

The French proposal was adopted yesterday but I ascertained later that at least six were against. So I think we should have a new vote now on the French proposal, whether this convention should comprise contractual mortgages only, or whether it should also comprise the « hypothèque légale ».

I don't like to say that if the French proposal is adopted it will be physically impossible for us to ratify.

Mr. Chauveau, France (translation) : Mr. Chairman, Gentlemen. The proposal of the Scandinavian Delegations ties in with ours and I think both may be dealt with simultaneously.

We had suggested limiting international recognition to contractual « hypothèques » because we consider that this alone is in line with the convention and the goal it is pursuing. It is a matter of favouring mortgage credit. Mortgage credit means only contractual mortgages. If I have understood correctly, we are being asked to add judicial mortgages to contractual mortgages. Now, a judicial mortgage should not be in any way the concern of our convention.

Having said this, if it is really necessary to make a concession to our Scandinavian colleagues, we would be willing to accept their proposal, it being understood that this would not extend to all legal mortgages, but strictly to those enumerated here. I repeat, it is more a matter of judicial than of legal mortgages.

The Chairman (translation) : Gentlemen, I think that the intervention of the French Delegation presents a solution acceptable to all. Indeed, the Scandinavian delegates feel that the inclusion of the judicial mortgage constitutes for them a reason for ratification or of non-ratification, of acceptance or rejection. In order to clarify the situation, I am stressing that the two delegations have excluded the idea of the

legal mortgage, one limiting itself to the strictly conventional mortgage, the other adding the notion of the judicial mortgage.

The concession which the French Delegation has just made is the following: The amendment presented by the Scandinavian Delegations will refer to conventional mortgages to which judicial mortgages will be added, interpreted according to the laws of their countries but excluding legal mortgages.

I therefore submit to a vote the amendment presented by the Scandinavian Delegations : Document N.Y. 25, Amendment to Article 1.

Voted in favour : Argentina, Belgium, Denmark, Finland, France, Germany, Italy, Mexico, Netherlands, Norway, Sweden, Switzerland, U.S.A., Yugoslavia.

Voted against : Canada, Greece, Ireland, Israel.

Abstained from voting : Great Britain, Japan, Poland, Portugal, Spain.

The Chairman : The amendment is adopted. The next amendment is Document N.Y. 29, submitted by the Israeli Delegation.

Mr. Wolfson, Israel : Mr. President, in view of the resolution just adopted, suggested definition should be made to include also traditional mortgages. Otherwise we would suggest that the definition be included.

The Chairman : Does anyone wish to speak on that ?

(No response)

We will vote on the amendment submitted by the Israeli Delegation.

Voted in favour : Israel.

Voted against : Argentina, Belgium, Canada, Denmark, France, Germany, Great Britain, Ireland, Italy, Mexico, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, U.S.A., Yugoslavia.

Abstained from voting : Finland, Greece, Japan.

The Chairman : The amendment is not adopted. The next is Document N.Y. 35 of the Israeli Delegation.

Voted in favour : Israel.

Voted against : Argentina, Belgium, Canada, Denmark, Finland, France, Germany, Great Britain, Greece, Ireland, Italy, Japan, Mexico, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, U.S.A., Yugoslavia.

The Chairman : The amendment is not adopted. The next amendment, I understand, is withdrawn.

So we have to consider the second amendment to Article 1 of the French Delegation. Do they consider it a drafting problem ?

We will consider now the second amendment of Document N.Y. 33.

Mr. Chauveau, France (translation) : Mr. Chairman, Gentlemen, I would like to remind you that the aim of this amendment is to decide the form in which the act of constitution of mortgages will be drafted. Our colleague and chairman of the Greek Delegation explained yesterday by means of an excellent example, all the inconveniences inherent in the obligation to abide by the legal requirements in the country of registry. For instance if an English bank loaned the money, the act of drawing up the mortgage should be done in Greece and, if our amendment were not accepted, the act could not be validly constituted in England.

In the course of private conversations which I had yesterday, objections were made, possibly valid ones, that in some instances the legal requirements of the country where the act of mortgage is drawn up were notoriously lax. An example was quoted, more hypothetical than real, where according to the law of the country in which the loan is being made that a verbal rather than a written agreement would be sufficient. The French Delegation has never entertained the thought of considering such a brief instrument.

Therefore to allay any fears of this nature, we are completely willing to add a few words to our amendment indicating that the act of constituting the mortgage should be in writing. This was our thought and it may have been lost in the drafting. If so we apologize and are ready to examine all proposals in this vein.

Thank you, Mr. Chairman.

Mr. Berlingieri, Italy : Along the lines of what has been now said by Mr. Chauveau, there is an Italian sub-amendment to the French amendment which refers both to the necessity of having something in writing and to the need also of having — I don't know exactly the English term — the authentication or legalization of the signature of the mortgagee.

I am not now asking for a vote on the wording, but I would like to know whether it is possible to vote the two amendments together, and then to leave to the Drafting Committee to choose the proper words.

Thank you.

Mr. Philip, Denmark : Mr. Chairman, Ladies and Gentlemen :

I would like to say — I think on behalf of all the Scandinavian Delegations — that this amendment is impossible for us to accept.

Our registration system is such that a mortgage can only be registered if it is written on a certain form in a certain way and on certain kinds of paper, and so on.

It will be impossible for us to accept to have to register mortgages which have been executed in a different way.

The whole idea of the convention is that we should enforce mortgages which have been effected and registered in accordance with the law of the State where the vessel is registered, and this will be impossible if this amendment is accepted.

So therefore I suggest that you vote no to this amendment.

Thank you, sir.

Mr. Van Ryn, Belgium (translation) : Mr. Chairman, Ladies and Gentlemen. The Belgian Delegation does not think it can approve the proposal of the French Delegation. We feel that it is drawing us away from the framework of this convention and separates us from the goal we are pursuing. We are well aware of this goal : We want to arrange matters so that whoever hold a « hypothèque » or mortgage may invoke it and give it weight in all the Contracting States. This is the main purpose of this convention. For this, according to draft Article 1, there must be one indispensable condition, but which must also suffice, and that is the « hypothèque » or mortgage must be made publicly known by means of registration in a registry, said registration supplying the minimum information for interested third parties. This condition being fulfilled the mortgage or « hypothèque » will be « opposable ».

We do not think it is necessary to go beyond this and provide for cases when the registrar or official responsible for the register may or should make investigations. It is up to the official, in each country, to decide if he will or if he should go ahead with the registration.

Please note on the other hand that if the text of Article 1 is maintained as it now stands, there would be a question as to whether the position of the creditor holding the mortgage or « hypothèque » would be all we are hoping for.

In considering Article 1 as it is now drafted, I believe that whoever wants to claim his mortgage must have two proofs. He must first of all show — and this will be easy — that his right is the object of registration in the register in conformity with the laws of the State where the vessel is registered. But he must also prove that his « hypothèque » or mortgage has been regularly drawn up in conformity with these laws. This might be difficult to prove and I do not think it is our intention to impose this on mortgagees. This is precisely the reason why the Belgian Delegation submitted an amendment having a completely different meaning than that of the French amendment, because the purpose of our amendment is to delete from Article 1, a) the two

words « constituée et », or in English « effected and », in order to remove from the draft the requirement of verifying the formal regularity of the act of constitution of the mortgage.

I do not think the purpose of our convention is to internationally regulate, even on the level of private international law, the forms to be observed to validly draw up a mortgage. The aim of this convention is clear and well defined : to determine under what conditions « hypothèques » and mortgages will be internationally « opposable ». It is unnecessary for this purpose to go beyond what is indispensable. We have to decide what conditions for publicity are required, but no more.

Under these circumstances I take the liberty of asking you not to vote for the amendment proposed by the French Delegation and to take up again the amendment proposed by the Belgian Delegation.

The Chairman : Does anyone want to speak about the second French amendment, amended by the Italian Delegation ?

(No response)

We will therefore vote on the French amendment as re-amended by the Italian Delegation in agreement with the French Delegation.

Voted in favour : Argentina, Finland, Great Britain, Greece.

Voted against : Belgium, Canada, Denmark, France, Germany, Ireland, Israel, Italy, Japan, Mexico, Netherlands, Norway, Spain, Sweden, Switzerland, U.S.A., Yugoslavia.

Abstained from voting : Poland, Portugal.

The Chairman : The amendment is not adopted.

I propose now to vote on the amendment that Mr. Van Ryn has submitted, the amendment which is Document N.Y. 36 of the Belgian Delegation, Article 1.

Mr. Chauveau, France (translation) : Mr. Chairman, Ladies and Gentlemen. I have listened with complete attention to the remarks of my colleague, Mr. Van Ryn. I nevertheless have a few doubts as to their merits. Perhaps not on a theoretical point of view but in practice. Indeed, one can always argue as to whether or not a mortgage is validly constituted. If we do not determine in this convention which rules will govern this validity, we will always have to decide prejudicial questions and the solutions will always be doubtful and uncertain. This will result in the mortgagee never being quite certain, prior to a ruling being given, that his mortgage or his claim will be recognized as valid.

It is for this reason, which stems from legal practice as you know, that I deem it useful to maintain the words which Mr. Van Ryn proposes to delete.

Mr. Berlingieri, Italy : My delegation, Mr. President, wishes to support the proposal made now by Mr. Chauveau; namely, to maintain the word « effected », and I wish to add that there is another reason for which this word must remain in the draft, and this is because if we delete the word « effected », and we only leave the word « registered », the consequence might be that the whole effect of a mortgage or a « hypothèque » which has not been registered, is that it would constitute a final proof of the mortgage or the « hypothèque » being valid.

I think this is not so in most legislations.

The Chairman : We now pass to the vote on document N.Y. 36.

Voted in favour : Argentina, Belgium, Israel, Mexico, Poland, Spain, Yugoslavia.

Voted against : Canada, Denmark, Finland, France, Germany, Great Britain, Greece, Italy, Japan, Netherlands, Norway, Portugal, Sweden, Switzerland, U.S.A.

Abstained from voting : Ireland.

The Chairman : The amendment is not adopted.

Now the third French amendment. We will go back to Document N.Y. 33 for the third French amendment.

Does anyone wish to speak ?

(No response)

Then we will pass to the vote.

Voted in favour : Argentina, France, Germany, Great Britain, Ireland, Italy, Mexico, Poland, Portugal, Spain, Yugoslavia.

Voted against : Belgium, Canada, Finland, Greece, Japan, Netherlands, Norway, Sweden, U.S.A.

Abstained from voting : Denmark, Israel, Switzerland.

The Chairman : The amendment is adopted. We will pass now to Document N.Y. 38. This is the amendment of the German Delegation.

Mr. R. Herber, Germany : Mr. President, Gentlemen. Please allow me to give a short explanation as to our amendment; that is to say, Document N.Y. 38.

Our amendment as regards Article 1 lit. c doesn't need many words to explain the reasons which led us to this amendment.

We do not deem it necessary for the full address to figure in the register itself. It will be sufficient if the address is made clear in a document, which is, as well as the register, open to public inspection.

The amendment is to facilitate the administration of the register without encroaching upon any interests. But I think we could agree to consider this amendment as a matter of drafting.

Secondly, we have proposed to insert a new paragraph 2 for Article 1.

The contents of this prescription deals with the problem of mortgages which was touched by the discussion yesterday.

In our opinion, it must be made clear that the convention only grants the right of enforcement by virtue of a judgment.

During the work of the International Subcommittee, there was some discussion as to the right of a mortgagee to enter into the possession of the ship without having obtained a judgment.

According to continental law, the mortgagee does not have such a right, but it seems to exist under certain conditions in common law.

A recognition of private rights of enforcement even in the case of a mortgage on a foreign ship could not be acceptable to a lot of States.

Therefore, the lack of clarification might diminish the success of our convention.

On the other hand, there seems to be no necessity for such a right, which is, even in the countries of common law, extremely extraordinary.

Therefore, we have put forward our amendment, which is to clarify that the convention only shall cover enforcement by means of a judgment, whereas other forms shall remain to be governed by national law, including international private law.

Thank you, Mr. President.

Lord Justice Diplock, Great Britain : We have a change of drafting which I think is necessary to give to the draft the meaning which I believe the German Delegation intends.

The amendment which I should suggest is this.

First of all, the word « executed ». For that word there should be substituted the word « exercised », because that is the correct word for exercising that kind of right.

The other amendment is that the word « only » should be inserted so that the last line would read « cannot be exercised by virtue only of this convention ».

I think I am expressing the intention of the German Delegation in making those amendments, that they would, in our position, make it clear and acceptable to us.

(Applause)

The Chairman : Then we will vote on the first of the two amendments of Document N.Y. 38. It is not possible to take it in one vote.

Voted in favour : Argentina, Canada, Germany, Great Britain, Israel, Mexico, Netherlands, Spain, Yugoslavia.

Voted against : Belgium, Denmark, Finland, France, Greece, Ireland, Italy, Norway, Poland, Portugal, Sweden, U.S.A.

Abstained from voting : Japan, Switzerland.

The Chairman : The first amendment is rejected.

The second amendment, Document N.Y. 38.

Voted in favour : Argentina, Belgium, Germany, Great Britain, Switzerland.

Voted against : Canada, Denmark, Finland, Greece, Ireland, Israel, Mexico, Netherlands, Norway, Poland, Spain, Sweden, U.S.A.

Abstained from voting : France, Italy, Japan, Portugal, Yugoslavia.

The Chairman : The second amendment is rejected.

We will now pass to Article 2, Document N.Y. 23, amendment of the Yugoslav Delegation.

Does anybody wish to speak about this amendment ?

(No response.)

We will pass to the vote.

Voted in favour : Argentina, France, Ireland, Poland, Yugoslavia,

Voted against : Belgium, Canada, Finland, Germany, Great Britain, Israel, Italy, Japan, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, U.S.A.

Abstained from voting : Denmark, Greece, Mexico.

The Chairman : The amendment is not adopted.

Document N.Y. 33, the fourth amendment of the French Delegation.

Mr. Chauveau, France (translation) : Ladies and Gentlemen, I wish to remind you very briefly that our amendment which seems to be merely a simple wording, in reality has a much wider bearing because the Antwerp text is not sufficiently comprehensible. We are making this change in order to broaden its scope.

I have just learned that the Belgian Delegation has proposed a sub-amendment to our fourth amendment, N.Y. 33, by which it is specified « *Toutefois, les mesures d'exécution sont régies par la loi du pays où elles sont requises* ».

As we never intended that this matter of procedure be mixed up with our amendment concerning substance, we are perfectly willing to

accept the amendment presented by Belgium. It clarifies the situation and defines the meaning we ourselves gave our own amendment. We thank Mr. Van Ryn for having proposed this amendment.

Mr. Berlingieri, Italy : Mr. President, our association supports both the French and Belgian amendments, but we wonder whether the French amendment can substitute entirely the present wording of Article 2.

We say that the effects of mortgages with regard to third parties are governed by the law of the country where they are registered, and we wonder if that includes also the granting of the mortgages as between themselves.

We suggest that the reference to the rank be included.

Thank you.

The Chairman : We shall vote on the amendment as follows : Amendment No. 4, Document N.Y. 33, but amended and subamended by the Belgian and Italian Delegations as follows : « To substitute by : « The effects of mortgages and hypothèques with regard to third parties are determined by the law of the Registering State; however, the executory measures are regulated by the laws of the country in which they are called for ».

Is there anyother amendment proposed ?

Mr. Chauveau, France (translation) : Mr. Chairman, this article could be drafted as follows : « The rank and effects of mortgages and « hypothèques » with regard to third parties are determined by the law of the Registering State. However, the means of execution are governed by the law of the countries where they are required ». I think we are now all in agreement with this version and you may submit it to a vote.

Mr. Karatzas, Greece : Mr. Chairman, Ladies and Gentlemen, the Hellenic Delegation would like an explanation. What does the expression « mesures d'exécution » mean ? Does this mean the distribution of the product of the forced sale ? If so, we have touched on the subject of liens, since in some countries, the rules on liens are the rules of procedure. Before voting on this amendment, I would like to have this expression explained.

Mr. Van Ryn : In reply to this question, I can state that at least to our way of thinking, the term « mesures of execution » certainly does not mean the regulations governing the distribution of goods between the different claimants.

The Chairman, (translation) : Does anyone else want the floor ?
(No response)

If not, we will proceed to vote on the text as just reread by the French Delegation, Document N.Y. 33, Amendment 4, Article 2.

Voted in favour : Argentina, Belgium, Canada, France, Germany, Great Britain, Greece, Israel, Italy, Mexico, Poland, Portugal, Spain, Switzerland.

Voted against : Denmark, Finland, Ireland, Japan, Netherlands, Norway, Sweden, U.S.A.

Abstained from voting : Yugoslavia.

The Chairman : The amendment is adopted.

Document N.Y. 35, the second amendment of the Israeli Delegation.

Does anybody want to speak about that amendment ?

Mr. Chauveau, France (translation) : Mr. Chairman, Ladies and Gentlemen, the French Delegation finds it rather difficult to accept the Israeli proposal for the following reason :

This article states : « in the absence of a contrary agreement by the prior mortgagees concerned ». It would seem that according to the Israeli concept, the rank of « hypothèques » and of mortgages among them could be determined by convention.

This is absolutely contrary to French public order, for which we consider that this matter is not within the contractual field. As of now and for this reason, to our great regret, we cannot give satisfaction to our Israeli colleague.

The Chairman : Does anybody else wish to speak ?

(No response)

We will pass to the vote, Amendment 2, Document N.Y. 35, proposed addition to Article 2.

Voted in favour : Greece, Ireland, Israel.

Voted against : Argentina, Belgium, Canada, Denmark, Finland, France, Germany, Great Britain, Italy, Japan, Mexico, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, U.S.A., Yugoslavia.

The Chairman : The amendment is not adopted.

We pass now to Article 3.

We have first an amendment of the French Delegation, the fifth amendment, Document N.Y. 33.

Mr. Chauveau : I would like to explain the motivation for this amendment, what is its main objective.

If I have understood correctly, there is a clause in the Antwerp Draft which provides that an « hypothèque » cannot be cancelled except when there is an amicable agreement by the mortgagee.

The scope of our amendment is to allow cancellation of the « hypothèque » not only in the case of amicable agreement, but if there has been a court decision as well, because we have considered the hypothesis where the mortgagee would refuse for unjust motives. It is therefore necessary to allow any debtor, through legal action, to be able to cancel a mortgage which no longer has any reason for being. This the main goal of our amendment.

Lord Justice Diplock, United Kingdom : I do not wish to oppose the principle expounded by Mr. Chauveau, but I do wish to oppose the insertion of it in this convention.

It seems to me one of those things which if not inserted goes without saying, and as matter of drafting, because it is undesirable to put in expressly things which go without saying, because if you put enough of them in, then those which do go without saying and are not put in are excluded.

It is a pure drafting point. I agree, of course, with the principle, but I think it goes without saying.

(Laughter)

Mr. Heenen, Belgium (translation) : Mr. Chairman, Ladies and Gentlemen. The Belgian Delegation cannot agree with the amendment proposed by the French Delegation to Article 3, paragraph 1, for two reasons. First, for reasons explained by the United Kingdom delegate very clearly and convincingly.

The second reason is that the amendment proposed does not seem to be very much in accordance with the whole system of Article 3.

Indeed this does not envisage in any way striking out of a « hypothèque » or mortgage.

Article 3 only governs the condition in which the deregistration of the vessel can be obtained, which is quite a different problem from that of getting a mortgage discharged either by agreement or by court decision.

The authors who took part in the work of the International Subcommittee tried in Article 3 to protect the mortgagee against a change of nationality of the vessel, and this is why Article 3, par. 1 requires for this the agreement of the mortgagee.

The amendment proposed by the French Delegation is, in any case, completely different from this problem, and I don't think it can be accepted.

(Applause)

Mr. Chauveau, France (translation) : We withdraw our amendment, Mr. Chairman, following the foregoing observation, since it has nothing to do with the content of Article 3, but with another matter.

There must have been an article in the Portofino Draft concerning that point which was subsequently deleted.

The Chairman : The amendment is withdrawn.

We pass now to Document N.Y. 35, the third amendment of the Israeli Delegation, a proposed addition at the end of Article 3, Paragraph 1.

Mr. Mc Govern, Ireland : I would like to explain why the Irish Delegation will support the Israeli amendment.

We think this deals with a problem which we know exists but unfortunately did not raise yesterday. That is the question of the mortgage to bearer.

This amendment seems to cover the problems which arise out of that matter. It is difficult to see how you can give notice in the case of a mortgage to bearer if the bearer is not on the register.

It is conceivable, I imagine, in jurisdictions in which it is possible to issue a mortgage to bearer, that the name of the bearer might not appear on the register, and the registrar might not be able to give notice.

But if it is possible to provide, as is done by the Israeli amendment, for a deposit of the amount secured by the mortgage to bearer, that would get over the point of giving notice. There seems to be no inequity permitting the registration, if instead of giving the notice, and in the case of a mortgage to bearer, a deposit of the amount secured by the mortgage to bearer is made with the competent authority.

For that reason, we will support that amendment.

The Chairman : If there are no other comments, we will pass to the vote on the third amendment of Document N.Y. 35, proposals of the Israeli Delegation.

Voted in favour : Canada, France, Great Britain, Greece, Ireland, Israel, Sweden.

Voted against : Argentina, Belgium, Finland, Germany, Italy, Japan, Norway, Poland, Switzerland, U.S.A.

Abstained from voting : Denmark, Mexico, Netherlands, Portugal, Spain, Yugoslavia.

The Chairman : The amendment is not adopted.

We now have Document N.Y. 39, the amendment of the German Maritime Law Association.

Mr. Albrecht Roscher, Germany : I should like to speak on behalf of the German Amendment, Document N.Y. 39, Article 3, Paragraphs 2 and 3.

These paragraphs are drafted in order to facilitate the change of a ship's registration, when the ship comes from State A to State B, from the register in State A to a new register in State B.

The amendment which we propose to you is taken from a draft convention on inland water craft, which was prepared by the Economic Commission for Europe of the United Nations.

The International Subcommittee for a new Mortgage Convention in Amsterdam and Antwerp has studied it already, but unfortunately, due to lack of time, could not complete this study on the draft convention on inland watercraft.

In our opinion, the Economic Commission for Europe Draft, compared with the Antwerp Draft which we have right now, offers several advantages which we have to digest; and we would therefore prefer the one to the other wording of Article 3, paragraphs 2 and 3.

The Antwerp Draft always requires a period of at least thirty days, during which no entry of a mortgage change of ownership can be made to the register, not even in extreme situations of necessity.

The Draft of the Economic Commission for Europe allows entries at any time, and does not require a period during which no entry can be accomplished.

Secondly, under the Antwerp Draft, the owner and the mortgagees have to give their consent to the deletion of their rights in the old register, without having obtained any new right.

In certain cases, they will not even know whether the registrar of the new register will at all enter the re-registration of their rights in a form which is sufficient for them.

The Economic Commission for Europe Draft, on the other hand, requires the consent for the deletion in the old register not earlier than the new registration has been completed.

Thirdly, we feel that the Antwerp Draft does not in all respects overcome the many difficulties arising from quite different municipal laws on mortgages and « hypothèques ».

There may be rarely two countries with equal national law on mortgages and « hypothèques ».

However, the Antwerp Draft requires that the same mortgage be reregistered in the new register.

The Economic Commission for Europe Draft, on the other hand, does not require the entry of the same rights but only that the mortgagee agrees to his new rights being entered into the new register.

This is only a requirement of procedure, not, as in the Antwerp Draft, a requirement as to the substance of the newly entered mortgage.

Therefore, it is easy to change, for instance, the currency from a franc mortgage to a pound mortgage, if the mortgagee and the ship-owner agree on that change. .

It is easy, moreover, to change a mortgage from a Common Law country to a « hypothèque » in a Roman law country, or to change the provisions on interest payment required by the new municipal law, or to change from a mortgage issued to the bearer to a mortgagee, the mortgage of which is entered in the register.

Under the Economic Council for Europe Draft, any necessary amendment to the mortgage deed can be accomplished easily, for instance, as to the insurance requirements or the regulations on a trustee or a representative. All of this cannot be done, or at least cannot be accomplished in all cases, under the Antwerp Draft.

We strongly, therefore, suggest that you amend Article 3 according to the ECE draft, as is proposed in Amendment N.Y. 39.

Mr. Muller, Switzerland (translation): Mr. Chairman, Gentlemen, I would like to support the proposal of the German Delegation.

If you compare the text of the Antwerp Draft with that of the German Delegation, you will note that the aim is the same but in the Antwerp Draft it is expressed in terms which are not legally admissible. For example, you can never transfer a mortgage according to law A in a register B. As stated in the French amendment, a French « hypothèque » is, in its structure and effects, governed by the law of the country of registry. A French mortgage cannot therefore be inscribed in a German registry; because from some aspects, a German « hypothèque » has other effects.

This is why I feel that the German proposal is much tighter from the legal point of view and I request that you accept it.

You state, in the Antwerp Draft, that registration in another State is possible only if the registered mortgages are accepted in this other State. From that point, in practice as well as legally, you can no longer transfer a vessel bound by a mortgage because each official of a new registry can retort « I cannot accept a Chinese mortgage because it is not in conformity with the laws of my country ».

I therefore ask you to reflect on this and if you deem it necessary, to amend perhaps the German text or send it back to the Drafting Committee. But I ask you not to vote so quickly on a legal problem which can lead to many difficulties in practice, if you insist on adhering to the text of the Antwerp Draft.

Mr. E. Gutt, Belgium : I have listened with great interest to the interventions of the German and Swiss Delegates in favour of their proposals to substitute for the very carefully worked out provision of Ar-

ticle 3, the Antwerp Draft, the provision of a preliminary draft convention for inland shipping.

You have just heard the Swiss Delegate tell you that it was for instance inconceivable for a German registrar to accept a mortgage drawn up in French form.

This may well be the case. I think that if in all countries one were prepared to accept mortgages drafted in all the other countries, we should not be here.

Please let us realize that everything we do is susceptible of altering our national law. That is more often than not the effect and the purpose of a treaty.

We sometimes hear serious objections, objections that really do have to be taken into consideration.

When a moment ago, for instance, one of the Scandinavian Delegates told us that if we adopted this amendment, it meant that the Scandinavian countries would have to revise an important part of their civil procedure, that is an objection.

When we hear from the United States Delegate that some provision may one day be ruled unconstitutional, that again is an objection, subject to checking of course.

But in this case, when we hear that the very carefully thought out and worked out Antwerp Draft is not acceptable because it will mean a change in the habits of the officials concerned, I simply cannot believe for one moment that you are going to take such an objection seriously.

If I may address one remark as to the quality of the draft which is proposed to you in substitution for the Antwerp Draft, you will notice that in the very first paragraph it states that the vessel enters into the register of the contracting State and can be registered in another contracting State in accordance, et cetera.

Then you see at the end of paragraph B that the registrar cannot refuse the deletion unless the vessel is to be registered in his own register or in any other register of his own State.

Frankly, I believe that the Antwerp Draft has received considerably more thought than the draft which contains such a basic contradiction.

As to the substance, the argument, which was advanced by the German Delegation in support of their original amendment, it was that under the Antwerp Draft one had to wait at least thirty days for re-registration, but if you read the Antwerp Draft, you will see that it is at the utmost thirty days.

As a last remark I don't think that too many of us like the idea contained in the German proposal of a conditional reregistration before the other one has been deleted. We would much rather have the clearer system of the Antwerp Draft which protects the right of the creditor, in that he will refuse reregistration and that the deregistration will not

be effected until he is quite sure that a proper new registration, not one which is sort of conditional, will be effected.

Thank you, Mr. Chairman.

(Applause)

The Chairman : Does anybody want to speak about that amendment ?

(No response)

We will vote on amendment, Document N.Y. 39, of the German Delegation to delete Article 3, Paragraphs 2 and 3 and insert new Paragraphs 2 and 3.

Voted in favour : Germany, Netherlands, Switzerland.

Voted against : Argentina, Belgium, Canada, Finland, Great Britain, Ireland, Israel, Italy, Japan, Mexico, Norway, Poland, Portugal, Spain, Sweden, U.S.A., Yugoslavia.

Abstained from voting : Denmark, France, Greece.

The Chairman : The amendment is not adopted.

The French Delegation presented a proposal of an addition of two articles and this is set out in Document N.Y. 34.

Mr. Chauveau, France (translation) : Mr. Chairman, Gentlemen, I shall confine my remarks, which will be brief, to the first article we are proposing to add. First of all neither one of our proposals is an attempt to change in any way the Antwerp Draft. Their addition is simply to bring about what we consider as improvements. Therefore, as I promised Mr. Vaes yesterday, we are adhering to the framework of the Antwerp Draft.

I have drawn the gist of our first amendment from the 1926 Convention keeping the same thing in mind, since what interests us is this : When a vessel is not in its port of registry, anybody should be able to obtain information on its financial situation. It would be helpful if the captain could immediately provide a document containing sufficient information to establish and estimate of the vessel's financial status.

This is why we think it necessary for the captain to have on board an instrument indicating all the « hypothèques » attached to the vessel, at least at the time it sails from port.

To be valid from a practical standpoint, the date of this document should not be too old; we propose a period of three months. If you find this period too short, we will welcome any proposals for its extension.

In comparison with the 1926 Convention, our proposal contains an addition : this document, which the captain should have among his papers, should also indicate the Registry in which the vessel is register-

ed, the mortgages on the vessel as well as the address of the mortgagee. The latter is most valuable information for anyone desiring knowledge on the exact financial status of the vessel as they will know immediately whom to contact, thus avoiding the necessity of undertaking time consuming searches.

This, Gentlemen, is our proposal. You will note that it is simple and I hope it will not provoke too much opposition.

Mr. Matysik, Poland (translation) : Mr. Chairman, Gentlemen With regard to the first amendment proposed by the French Delegation to the effect that an extract of registry should be maintained on all vessels, or in other words an additional document, we do not object to this principle but we fear this extra paper will entail more bureaucracy. Our delegation has many good reasons to fear any kind of bureaucracy.

Mr. Hernandez Yzal, Spain, (translation) : Mr. Chairman, Gentlemen, I agree in principle to the new draft article proposed by the French Delegation, but I cannot signify my agreement regarding the additional administrative procedures and the increased bureaucratic details which will be the captain's lot if he is obliged to provide this new document to interested parties.

With regard to the lapse of three months which has been proposed, I feel this to be too short. Formalities covering all maritime matters take time in view of communications difficulties between master and owner. The chartering of a vessel, if not complicated, is at least complex. Therefore, I think a longer delay is necessary.

Mr. Berlingieri, Italy : Mr. President, Gentlemen, My association is very much afraid of the possible consequences of the first paragraph of this article.

If it is necessary that the vessel have on board an extract of the ship's register, and if it is necessary that the mortgages or « hypothèques » be registered on this paper, is it so that the mortgages or the « hypothèques » are not validly constituted unless they have been registered on this paper ?

Because, if it is so, we are very much afraid we will now vote against this proposal. But if it is not so, what is the advantage of this additional paper ?

I am afraid I cannot see that now.

Mr. Jean S. Perrakis, Greece : Our delegation thinks that the proposal made by the French Delegation will prove highly impractical. We have adopted the system for the last seven years, or six years, of having all vessels compelled to carry an official book, mortgage book, on board, which should be updated and be kept really up to date.

But it has proved that with the vessel plying long distances, the book cannot be annotated.

At the same time, the extract cannot be brought for this reason. It cannot be practically kept.

But we are not going to have any objection in voting for this thing, provided that we determine beforehand what will be the sanctions for not complying with this French amendment.

It is going to be foreclosure of the mortgage, or one of this simple penalties, or is there going to be contested the validity of the mortgage? Or are there to be fines, an actual fine of the vessel, which is neither here nor there?

Sometimes there are people who want a mortgage, because they find it important but if the mortgage is not registered, it is not their worry. And sometimes the mortgage is paid off and kept in the book.

So I am afraid the proposal, which is very logical, will prove impractical.

Mr. Boal, United States of America : Mr. Chairman, Ladies and Gentlemen : We would like to be prepared to vote on these two paragraphs separately, because we are in favor of one and not the other.

With regard to this convention, our law will probably still require that a copy of the mortgage be carried with the ship's papers. This has been so under our mortgage act since the year 1920.

The Chairman : Does anybody else wish to speak?

(No response)

As a division is asked for, we will vote separately for each paragraph of the amendment.

We will vote first on the first paragraph of the first amendment of the Document N.Y. 34.

Voted in favour : France, Israel, U.S.A.

Voted against : Argentina, Belgium, Canada, Denmark, Finland, Germany, Great Britain, Ireland, Italy, Japan, Mexico, Netherlands, Norway, Poland, Portugal, Sweden, Yugoslavia.

Abstained from voting : Greece, Spain, Switzerland.

Mr. Chairman : The amendment is not adopted.

We now discuss the second proposal of Document N.Y. 34 by the French Delegation.

Mr. Chauveau, France (translation) : Mr. President, Gentlemen, The purpose of our second amendment is to alleviate the feeling of insecurity I mentioned yesterday as surrounding our mortgagees. The first risk they take is that of the sinking of the vessel. When this hap-

pens, there does not seem to be anything to which the law may have recourse. Nevertheless this is a great risk for the mortgagee.

There obviously exist ways of protecting the mortgage creditor. There is the matter of insurance indemnification but this protects the mortgagee only if the insurance — I am speaking here of hull insurance — can be assigned to him and that therefore the right of the mortgagee can be referred back to the insurance indemnity. In case of ship's loss, the creditor will have a safeguard, in place of the lost vessel, in the form of insurance indemnity.

Thus the state of insecurity surrounding the mortgage creditor is somewhat lessened. I know that most of the time, in practice, when a creditor, or if you prefer, a banker advances funds to a owner, he incorporates into the mortgage deed a clause whereby, through a contract, the debtor delegates (his insurance) to the creditor. At least this is what is done in France. This is a conventional transfer and requires agreement. And to be valid, the insurance company must be informed of this clause. Also, in applying this system, there are sometimes objections from insurance companies. This is why we feel it would be helpful to have this done legally so that there can be no possible discussion about it. Furthermore, it would eliminate certain technical difficulties regarding execution, especially in France.

This is the general purpose of the system we are proposing : to use insurance indemnity for the benefit of the mortgagee. I repeat that this concerns only hull-insurance.

Some will say it is possible to insure the claim itself through an insurance policy. This is theoretically true but is not extensively done in France. Insurance companies do not favor this type of operation and prefer the assignment of the hull insurance.

Two situations must obviously be considered : when the ship is a total loss, in which case there is no problem. The second case concerns damage to the vessel and this is a slightly different situation. It is possible that the damage would not be repaired. The owner is not absolutely obliged to have his ship repaired. He can eventually obtain insurance indemnification and decide not to have the vessel repaired. This constitutes a serious decrease in the security of the mortgagee. Therefore, when the vessel is not repaired, we propose as well that the rights of the mortgagee be borne by the insurance indemnity, which corresponds to the loss-value of the vessel.

Thus, briefly reviewed, is the content of our second proposal.

Thank you, Mr. Chairman.

Mr. Muller, Switzerland : Mr. Chairman, I am delighted with the French proposal as regards principle but I think it will be difficult for all of us to take an immediate stand, considering the legal difficulties involved in this proposal.

I wish to speak of the direct action and also wish to remind you that in the 1926 Convention, we had completely reserved hull-insurance for the mortgagee by specifying : « payments made or due to the owner on policies of insurance, ... are not deemed to be accessories of the vessel or of the freight (Art. 4 §3). »

So it is perhaps a step back to speak only of insurance indemnities to the extent of the vessel value, which would always create difficulties even of a legal nature, in order to determine up to what amount direct action may be invoked, especially when insuring one vessel in order to buy another in case of shipwreck.

I would like to ask you whether it would not be possible, according to our rules of procedure, to only vote at this time on the principle of this proposal and to send it back to a committee to see whether the text could not be made more acceptable to everyone. If not, I think we will run up against difficulties of a legal nature which will prevent some of the delegations from accepting this proposal, even while all may basically agree with its principle.

Thank you, Mr. Chairman.

Mr. Wolfson, Israel : In supporting the French proposal, we would only suggest that the following words be deleted in subparagraph b, namely : « à défaut d'assurance, ou si elle est insuffisante ».

We feel that any proceeds, as to the rights of the creditors, that they should also come and be distributed.

Nevertheless, the insurance rates are not necessarily relevant.

We request the French Delegation to amend their proposal accordingly, if it so agreed.

Lord Justice Diplock, United Kingdom : Mr. President, on behalf of the United Kingdom Delegation, I would oppose this amendment, and oppose it for two reasons.

In the first place, it is not, in my submission, necessary.

The purpose of this convention is to protect mortgage creditors, but to protect prudent mortgage creditors and not fools.

(Laughter)

So far as the prudent mortgage creditor is concerned, his name, if he has any prudence, will be marked on the hull-insurance, and he will be safely safeguarded in this way.

My other objection to it is that, insofar as English law is concerned, it would mean a drastic amendment of a kind which I do not fully understand, in the whole basis of English law, including the law of insurance.

Let me give you one example, under subparagraph b), the case of the undervalued policy.

In the case of a total loss, the insurances are subrogated to the rights of the third parties; and this would interfere with the general law of insurance.

Apart from that, there are the difficulties of the direct action. And when I look at the paragraph relating to if a vessel is totally damaged, I simply do not understand what the juridical position will be.

In our respectful submission, this is quite unnecessary, so far as prudent mortgagees are concerned. And those are the only ones with which I am concerned.

It would, as I say, raise juridical difficulties of enormous size, so far as English law is concerned and, I suspect, so far as the law of many other countries is concerned.

(Applause)

The Chairman : Before proceeding to the vote, I will ask the French Delegation if, following the Israeli Delegation's remarks, there is any other wording that it wishes to propose.

If not, we must vote on the wording as it has been proposed.

We will vote on the second proposed article of the French Delegation Document N.Y. 34.

Voted in favour : Argentina, France, Greece, Israel, Spain.

Voted against : Canada, Denmark, Finland, Germany, Great Britain, Ireland, Italy, Japan, Mexico, Netherlands, Norway, Sweden, U.S.A.

Abstained from voting : Belgium, Poland, Portugal, Switzerland, Yugoslavia.

The Chairman : The proposal is not adopted.

(Lunch Interval)

The Chairman : We have now to continue the discussion on Article 4.

Lord Justice Diplock, United Kingdom :

Mr. President, I shall at the appropriate stage be proposing some amendments jointly on behalf of the Italian, the Netherlands, the Belgian and the United Kingdom Delegations.

But I should like at this stage to define the attitude of the United Kingdom Delegation to the problems of Article 4.

The object of this conference, as I imagine any conference dealing with maritime or commercial law, is a practical one.

Our purpose is to assist the financing, particularly of new construction, by providing reasonable security for those who advance on mortgage of ships.

We shall be wasting our time here if we produce a draft which is not going to be ratified by any of the Governments or any appreciable number of the Governments concerned.

So that while here we are representing shipping interests, those concerned with the maritime interests in general, we must remember that the Governments which will have to be present first at the Diplomatic Conference, and thereafter to ratify the convention, if our work is not going to be solely wasted, represent not merely the shipping interests but other interests as well.

The attitude of the United Kingdom towards maritime liens is on the whole one of dislike of them. We have a very small number of maritime liens existing in our national law.

But if we are going to achieve our object, which is of making the security of the mortgagee a better security so as to facilitate the financing of new building, we have got to make some compromise with other countries which take a different view and a more favorable view of maritime liens.

The fact that we have, all of us, if we are going to make progress in the purpose of this convention, to sacrifice some parts of our law which we regard as preferable to others, might mean that those maritime liens which we are going to recognize as going ahead of mortgages and thus reducing the security available to the lender, will not be a logical system, because it will be a compromise between a number of different points of view.

We approach the positions of Article 4 and the maritime liens listed there very much on the same point of view which was expressed better and more briefly by the Irish Delegate yesterday, if we remember what happened yesterday.

We work on the Antwerp Draft, and we do that because a great deal of work and care has been put into that draft, and we look at the liens set out there and ask ourselves one or two questions about them.

The first question, I think, which was asked is what is the practical effect of these liens in the ordinary course of maritime business with prudent lenders.

The second is what are the chances of getting ratification from Governments which are concerned not only with maritime interests, or other interests, but other interests as well, if we cut out a lien which has social or political reasons behind it.

May I just make these observations about the six classes which are in the Antwerp Draft.

They seem to us on the United Kingdom Delegation, with the possible exception of six, to be the minimum which has to be accepted, and may I add, probably the maximum which is acceptable.

Paragraph 1, dealing with wages. It seems to us that has got to be left unchanged, not because it has merit in itself, but because I think I can say this quite confidently for the United Kingdom Government, that if you try to cut it down, no matter which way you try cut it down, there is no prospect of acceptance by either the present Government of the United Kingdom or any future Government, if there might be a change (laughter).

Paragraph 2 falls into the same category when so many ports and other waterways in so many countries are either Government-owned or Government-controlled or owned by public authorities.

Paragraph 2, which seems to me to have little merit in itself, is one which for political reasons we think we have got to accept if we are going to have any practical result from our visit to New York this week.

Paragraph 3 and Paragraph 4 I will not speak about at the moment because, with your permission, when we come to this detail, I shall prepare a joint amendment on behalf of the four delegations.

Paragraph 5, for salvage, is one which we think must be accepted. We think it is one which has merit on its own, because obviously the preservation of the res is for all those concerned in it, and Paragraph 6, about which we feel not very strongly, is also one which we think should be accepted for the purpose of getting practical results out of this conference.

So that if I may say in advance how the United Kingdom Delegation will vote on these particular paragraphs, it is that on 1 and 2, for the reasons which I have given, which are political and social, and only political and social so far as I am concerned, we shall oppose any reduction or accretion to those paragraphs.

3 and 4 I shall speak about later.

Paragraph 5, I think I have heard much opposition to Paragraph 5, but we shall support it.

Paragraph 6, I think we shall support that, but we are always willing to listen to reason.

(Laughter)

I would close with these words, which I am afraid are no more than repetitious of what I have said earlier.

If any of the countries here is going to insist upon what it regards as an ideal convention, we shall get no convention at all.

The only way of getting practical results out of this conference, and we shall have wasted our time if we do not get practical results,

is to look upon it in a spirit of compromise, and say to ourselves, how much harm are we doing by accepting this which we don't regard as ideal.

Is it worthwhile throwing up the chance of an international convention which will enable us to facilitate the financing of new building under modern conditions because there is some minor and not essential point which other people want, and we don't.

We are prepared in the United Kingdom Delegation, and I know it is sometimes regarded as a regrettable English habit, but we are prepared to compromise on everything except those which we think, if accepted, would destroy the object of the conference altogether.

(Laughter and applause.)

Mr. Govare, France (translation) : Mr. Chairman, Ladies and Gentlemen. We are now considering Article 4 and the amendment presented by the French Delegation. This amendment was drafted a while ago and is now being submitted. It is with an attempt at compromise and in a spirit of great conciliation that this proposal has been drafted. But if you only have the first part before you, i.e., Article 4, you will not easily understand — or perhaps not at all — all of our proposal.

Indeed, we wanted to respect the Antwerp Draft and adopted it in principle but we signified that we were seeking to have less privileged liens against « hypothèques » in order to give the latter more weight.

We had remarked that the other day, when we spoke of deleting certain liens — listed in (iii) and (iv) of Article 4 — there were a few adverse reactions because these claims are important after all and that the claimants would then be without any safeguards. Also, our draft is more extensive. We maintain the beginning of Article 4 as is. We suppress paragraphs (iii) and (iv). But so that the claimants benefitting from these liens not be deprived of safeguards, they will now be considered as favoured claimants of second rank, after the mortgages.

We next consider as favoured of first rank, taking precedence over « hypothèque », Articles 1, 2, 5 and 6, as the United Kingdom Delegation requests. These are liens which should take precedence over « hypothèques ».

Next come « hypothèques » and mortgages. Then, instead of having immediately after all the national liens which the various countries can set up, we are asking for the establishment of international liens, which we will set up, but which come after the « hypothèques ».

Thus our Article 5 would be the present Article 5 but reworked. Its six paragraphs would be renumbered but we have an Article 6 which would comprise on the one hand the numbers (iii) and (iv) we withdrew from the list of claims favoured over « hypothèques », next

the national liens which the various States could indicate. The second and third paragraphs would concern the right of retention.

Consequently we have now set up the order of precedence of privileged claims : first rank, the « hypothèque »; second rank, the international lien after the « hypothèque »; then the liens of third and fourth rank, that is, national liens and the others that follow.

Thus, without having to discuss whether such and such a lien, like that for general average, should be maintained or not, we have given the general plan of what we had envisaged.

Mr. Suchorzewski, Poland (translation) : Mr. Chairman, Gentlemen. I would like to present a few remarks on the French proposal.

I deeply regret my inability to associate myself with the French colleagues, because it seems to me that one must differentiate between the situation of a mortgage claimant — in other words a claimant who has every opportunity to carry out a contractual insurance — and a claimant whose claim stems from unforeseen circumstances.

I feel that the position of the contractual mortgage claimant differs from that of the second claimant because the former is able to arrange for all the insurance he needs. I feel it necessary to protect exclusively this real insurance, without bringing up other insurance possibilities under contractual form.

With reference to this real insurance, persons should be protected who become claimants through unforeseen circumstances.

If we wish to regulate opportunities for real insurance, we must particularly safeguard the interest of claimants who are in a much more difficult position because they have neither the opportunity nor the time to provide for the form their claim should take; they can avail themselves only of this real insurance.

It would appear that the proposal submitted by the International Commission should be supported, as contained in the Antwerp Draft and especially in paragraph 3, namely, claims against owners due to death or personal injury occurring as a direct result of the operation of the vessel.

I would like to pose a comment here to the effect that the expression « lésions corporelles » does not seem to quite correspond to the English term « personal injury ». In the Convention relating to nuclear ships we adopted the words « dommages aux personnes ». This wording seems to be much more in conformity with the English wording « personal injury ».

I therefore wish to propose acceptance of Article 4 as drafted by the International Commission and retained in the Antwerp Draft.

Thank you.

(Applause)

Mr. Mc Govern, Ireland : I would like to endorse what the British delegate said, and in particular I think we ought to remember this.

I don't think that any of us seriously disputes that claims against the shipowner ought to be paid or ought to be met.

But the problem which we have to deal with is which, if any, of these claims should be secured by a remedy as drastic as a maritime lien.

Let us not forget that the real distinguishing feature of the maritime lien is that it follows the vessel into the hands of whomsoever it may come — even a bona fide purchase for value without notice, and I think this far-reaching remedy is perhaps too much protection for some rights which, in my opinion, can be adequately secured otherwise than by maritime liens.

If the Convention of 1957 was widely ratified, I think the maritime claims listed in that convention could be properly and adequately secured by the procedure of arresting the vessel.

I ask you seriously to consider how many of the claims against shipowners are appropriate for securing by maritime liens.

The Chairman (translation) : Does anyone else wish the floor to discuss Article 4 ?

We now have before us the amendment of the French Delegation which is the most radical in that it calls for the substitution by a new text of that submitted by the International Subcommittee.

Before submitting this article to a vote, I am requesting a clarification from the French Delegation regarding the amendment set forth in Document N.Y. 56. Does the French Delegation feel that the text of this amendment represents Article 4 in its entirety ?

Mr. Govare : Yes, that is correct.

The Chairman : Then all of Article 4 vanishes in your proposal and is replaced by the text of Document N.Y. 56.

Mr. Govare, France : I desire to point out that if we delete Section 4 and put in ours and that if we drop out certain parts of Article 4 of the Antwerp Draft, it is not that they are definitely struck out, but you will find them back again in Articles 5 and 6 for the liens that come after the mortgage, and are all the same secured in international secured liens.

The Chairman : We have now to vote on the French proposal, Document N.Y. 56, deleting all of Article 4 and replacing it by the text of document N.Y. 56.

Voted in favour : Argentina, France, Israel, Spain.

Voted against : Belgium, Canada, Denmark, Finland, Germany, Great Britain, Ireland, Italy, Japan, Netherlands, Norway, Poland, Sweden, Switzerland, U.S.A.

Abstained from voting : Greece, Mexico.

The Chairman : The amendment is not adopted. We will now consider the different amendments to the paragraphs of Article 4.

The first one that I have before me is the amendment of the United States, Document N.Y. 12, to amend paragraph 1 (iv) of Article 4.

Mr. Boal, United States : We have joined in the German amendment which is N.Y. 51, and if that is adopted, we will withdraw our proposed amendment.

So I suggest that it be passed until consideration be given to the joint United States-German amendment.

The Chairman : So we will immediately consider Document N.Y. 51.

Mr. Boal, United States : 51 differs from the Antwerp Draft in that it gives cargo a lien whether that claim is based on tort or contract.

There has been a lot of dispute, at least in our country, over the term « not based on contract ». We are afraid that we will either distort the law of contract or contract the law of tort no matter which way we go.

After all, cargo claims are insured by P & I insurance, and they present no practical problem.

Cargo is very important in ocean transportation. If we didn't have cargo, we wouldn't be here, and we wouldn't have any C.M.I.

I think we should accord cargo a pretty liberal interpretation and not quibble as to whether the lien must be based on contract or on tort.

That is the only change made in the substance of the Antwerp Draft, which is embodied in N.Y. 51.

I urge its adoption.

Mr. Albrecht, Germany : The United States delegate just explained some of the reasons for which the United States and German Delegations have proposed this amendment.

The British delegate some minutes ago, I feel, left out something. He said that there are many more than six, but that is probably a maximum, and I refer to the properties, Gentlemen. I feel it should be really a little bit more than six until now.

The United States delegate just explained what he had in mind, cargo.

He said yesterday that there is no practical harm to the mortgages if for those cargoes there is a lien.

I explained yesterday that there is a practical need, and especially then, if, and that happens very often, a carrier signs a bill of lading not as a captain or a shipowner, and is not the owner of the vessel.

However, should that be protected and when there is something more to be said about it, we feel that we all are working here and have been practical this morning. It has been said eloquently, that we have find compromises, and we have to achieve practical ends.

There are no real practical arguments against it, as to P & I insurance, and if there is a practical argument for it, we need some liens for cargo owners. Then, Gentlemen, I feel that the scale for compromise is on the side on which we have drafted here.

I feel it is very important and under at least our law, and I believe under many other countries' laws, we have already made quite a lot of compromises.

You said this morning — some of the delegates — that they are not very much in favour of maritime liens. Who is, I might ask.

But the laws in the various countries, there are quite a lot of them, and so with the German law. I feel we must reserve the right to get this lien, and I therefore strongly ask you and beg you to help us in this respect.

Thank you.

Mr. Karatzas, Greece (translation) : Mr. Chairman, our delegation suggests not to pass separately the amendments proposed by the different delegations, but to deal with each rank of liens separately and at the end, the text of Article 4 as a whole.

It is not possible to adopt or to reject a single amendment to the whole.

Thank you, Mr. Chairman.

The Chairman : (interpretation from French) : I am willing to put this motion to the vote, and I think it is preferable to vote on each provision.

Lord Justice Diplock, United Kingdom : Mr. President, I am sorry to address the assembly so shortly after I have already addressed them, but it must be apparent from the joint amendment which is being put forward by four delegations, that we are opposed to this extension of maritime liens to cargo claims in contract, to bills of lading holders.

It may be that such a lien exists in some countries, but the carriage of cargo by sea has gone on for many, many years, many hundreds of years, with a complete absence of such a remedy in the case of bills of lading holders.

As I said earlier, the purpose of this convention is to improve the security of the mortgagee, and if we are going to bring this new claim, which may be a very large claim, into the ranks of secured liens, ranking above the mortgage, then we are going to fail in the object of this Convention.

In our submission, and I speak here for the four delegations, this is an unnecessary extension of maritime liens, and I am bound to say, so far as the United Kingdom Delegation is concerned, that this is not one which is within the possible extension of those which we are prepared to accept.

Mr. Rein, Norway : Mr. President, from a theoretical point of view, I couldn't agree more with the British Delegation's point of view.

From the practical point of view, the Norwegian Delegation will support the American amendment.

I quite agree that as to the contractual relationship between cargo and ships, cargo has within its power, from a very theoretical point of view, to have the security arranged by contract. They don't need anything else.

Secondly, cargo is invariably — almost invariably — insured and we don't very much care about the underwriter's claim for compensation.

So with this theoretical departure, the British point of view is unassailable.

On the other hand, it is a practical difficulty to distinguish between cargo for which there is a contract and other objects on board the ship for which there is no contract.

Any physical damage caused to things carried on the ship will have a lien, but not cargo, because it is a contractual relationship.

That will create difficulties and it isn't worthwhile to create those difficulties, because cargo claims can be effectively insured against by the owners taking out P & I insurance, and the prudent owner ought to do so.

Furthermore, the prudent mortgagee — and as Lord Justice Diplock pointed out previously today, we are only concerned about the prudent mortgagee — the prudent mortgagee, I say, should see to it that the owner is adequately covered by P & I insurance.

Therefore, it is unnecessary to leave out cargo claims in order to protect the prudent mortgagee.

Therefore, in our opinion, no harm is done by including the lien for cargo claims.

And now, finally, comes the consideration which to us is paramount :

We want this Convention to be adopted by as many Nations as possible. We know very well that among some of the great Nations whom we very much want to have included among those who ratify this Convention, there is a strong feeling that cargo claims should be protected by liens. This applies to the United States, for instance.

I have a feeling — I have, as a matter of fact, been told by my American friends — that the chance of having America adhere to this Convention will be much greater if we protect cargo claims with a lien.

And as has been pointed out, it doesn't cost very much to do so; why shouldn't we ?

This is a practical compromise, and as the British Delegation has already pointed out, this should be the governing principle in this respect.

Let me point out in concluding that I understand the American proposal in Document N.Y. 51 to be only a proposal in principle, but cargo claims should be included.

Therefore, I think that the Americans have no great feelings about the rest of the wording of their article. The Americans want to propose in N.Y. 51 to have cargo included in principle, and the rest of the question of the wording of subparagraphs 3 and 4 can be left until we vote on the British, Italian and Netherlands proposal in N.Y. 50.

(Applause)

Mr. Pineus, Sweden : In respect of Article 4, paragraph 4, we have before us not only the American proposal contained in Document N.Y. 51, but also two proposals in Document N.Y. 50.

It is probably not easy to vote for N.Y. 51 and also for N.Y. 50, because they are dealing with the same subject. For once, you will witness the spectacle of the Scandinavian delegates not voting in the same way.

We are going to support the proposal contained in Document N.Y. 50, and then we cannot see easily how it is possible to vote also for the American proposal in Document N.Y. 51. And I wanted to explain that we will vote against the American proposal.

Thank you.

Mr. Boal, United States : Mr. Chairman, Gentlemen. As Mr. Rein has stated, this is a practical problem.

These claims are all covered by insurance. They present no difficulty.

The prudent mortgagee is going to see that he has insurance which is available to him, to protect him.

Cargo claims are brought usually in contract and in tort. The only difference between them is the theoretical one of the burden of proof, which largely disappears.

It seems to me that from a practical, successful consideration, cargo should have a lien, if that lien is claimed in tort or in contract.

The conception of cargo's lien in this country is based on a theoretical union of two inanimate objects, the ship and the cargo.

When loaded on board, the ship is obligated to carry that cargo to the destination, because of the relationship between the two, and the cargo is bound to pay its freight without which we wouldn't have any ship owners.

The Chairman : Does anybody want to speak further on this amendment ?

(No response)

Then we will go to the vote on the American-German amendment, Document N.Y. 51.

Voted in favour : Argentina, Denmark, Germany, Japan, Norway, U.S.A., Yugoslavia.

Voted against : Belgium, Canada, Finland, Great Britain, Greece, Ireland, Israel, Italy, Mexico, Netherlands, Spain, Sweden, Switzerland.

Abstained from voting : France, Poland.

The Chairman : The amendment is not adopted.

The American Delegation will now take up again the Amendment Document N.Y. 12.

Mr. Boal, United States : Mr. Chairman, Ladies and Gentlemen.

We go back now to our original amendment to Article 4, Paragraph 1 (iv), changing claims not based on contract but tort.

Wherever there is liability for those claims, that is, they will constitute a lien.

We make this amendment proposal for the purpose of clarity, because there has been a good deal of confusion and a good deal of uncertainty in the minds of many about the term « not based on contract ».

Lord Justice Diplock, Great Britain : Mr. Chairman, I am not quite certain whether the purpose of the amendment is one of drafting, as is suggested in Document N.Y. 12, or one of substance.

If it is one of drafting, and its purpose is to exclude, as our last vote suggested claims in respect of cargo carried under contract, then I do not think, so far as the English draft is concerned, that it successfully achieves that object.

If, on the other hand, the purpose of it is to bring in, by way of claims for tort, claims for damage to cargo carried under contract, I oppose it; and I think that thirteen against seven of the countries' delegations represented here have also expressed their view in opposition.

So I will deal with it on the assumption that this is a drafting amendment, and would ask you to turn, if you will, to paper 50, which I would suggest in that respect, although perhaps not perfect, does, at least, make clear what the intention is.

You will see that the draft which is proposed in order to exclude claims on contractual cargo is, on our proposal, phrased in these words :

« Claims based on tort and not capable of being based on contract. »

In that way one overcomes the difficulty in those countries, such as England and the United States, that you can put a claim alternately in tort or in contract, where there has been damage to cargo caused by a negligent act.

I venture to think that if that was the purpose of the American amendment, merely a drafting one, to make it clear that it dealt with claims for cargo not covered by contract, a better draft and one which is liable to cause less confusion is in Number 50.

If, on the other hand, the purpose of the American proposal is a more subtle one, I am against it.

(Laughter)

Mr. Boal, United States : Ladies and Gentlemen, I am very much confused by Lord Justice Diplock's remarks, because I don't know of any cargo claim where the cargo is not carried under some kind of contract.

The British position is a radical departure from the Antwerp Draft. It is, it represents for us, for the Americans, a very serious obstacle.

I don't think it would be possible, if claims of cargo which are capable of being based on contract are excluded, to get it ratified.

This is getting down to a real fundamental.

After all, cargo is insured. The owner is insured by the P & I insurance. The lenders know that they have insurance, and they see that they get it, and it is presented to the lender and there is no problem at all.

I simply say that, as far as the American Delegation is concerned, we cannot accept the British proposal.

The chairman : Does anyone wish to speak ?

(No response)

We will go to the vote on Document N.Y. 12.

Voted in favour : Argentina, Germany, U.S.A.

Voted against : Belgium, Canada, Finland, Great Britain, Greece, Ireland, Israel, Italy, Japan, Netherlands, Spain, Sweden.

Abstained from voting : Denmark, France, Mexico, Norway, Poland, Portugal, Switzerland, Yugoslavia.

The Chairman : The amendment is not adopted.

We have from the United States another amendment. I think it is Document N.Y. 13. I believe also that it is pure drafting.

Mr. Boal, United States : It is a drafting matter.

The Chairman : Perhaps we can send it back to the Drafting Committee. I think it is really a drafting matter.

So it will be sent to the Drafting Committee.

Then we have another amendment of the United States, Document N.Y. 14.

Mr. Boal, United States : Mr. President, Ladies and Gentlemen.

This amendment is a new addition to the list of liens which come ahead of the mortgage in Article 4, paragraph 1.

That is, if a lien has been created and is in existence and the mortgage is registered, that lien is still ahead of the mortgage.

As stated before, earlier, a lien is a right in a ship, a right in rem. It is a property right.

And once that right is created, it should be respected. It should not be wiped out by the mere registering of a subsequent transaction.

This presents to us serious constitutional problems which, as Lord Justice Diplock said, they don't have in England, in the original common law jurisdiction.

But we do have a Constitution. It presents us with a real problem.

On the mortgage act that was passed in 1920, we were very careful to preserve all existing rights.

Therefore, I urge the adoption of this amendment.

For the prudent lender, the prudent mortgagee, as distinguished from the foolish one, it doesn't present any real problems, because the prudent lender will look to the owner and see what claims he has outstanding.

On the other hand, he would be able, if they were wiped out, to cover a ship with liens, and then put a mortgage on it and then wipe them out, which would not be very nice, nor very fair.

Thank you.

Mr. Loeff, Netherlands : Mr. Chairman, I am sorry we have to say so, but the Netherlands Delegation does not understand this amend-

ment. Article 4 of the Antwerp Draft contains a list, a full list, an exhaustive list of the claims to which maritime liens attach. Now the United States amendment Document N.Y. 14 refers to « all other maritime liens » etc. How is it possible that a Convention which gives an exhaustive list of maritime liens, nevertheless supposes that there may be other liens, i.e. liens not contained in the Convention? Article 4 gives a full list so in cases governed by the Convention no other liens can exist.

Lord Justice Diplock, United Kingdom : Mr. President, if I understand this amendment — and I am not sure that I am not as baffled as Mr. Loeff about it — I think it is probably meant to cover any liens created under any form of national law.

If that is what it means, then it means it gives liberty to every country to create any maritime lien for any purpose that it likes and to get that internationally recognized, as against other creditors, against all other creditors.

If this amendment is accepted, it gives carte blanche, so far as I see, to every country to create a maritime lien, I suppose, if they like, for the cost of hiring a horse to ride. And every country has to recognize its security and priority over all creditors.

I simply cannot believe that that was the intention of this amendment. But if it was, I vote against it, and will vote several times against it, if necessary.

(Laughter)

Mr. Govare, France (translation) : Mr. Chairman, I always hesitate to take the floor to repeat something already in our report but I will be very brief.

I simply wish to point out that, if we are prepared to discuss comprehensively anything concerning liens, we insist on a point which is most important for us, namely that all liens must be inscribed on the same register, the same and only register on which the mortgages or « hypothèques » against the vessel are inscribed, so that there will be no hidden liens. They would be hidden because they would be unknown, and they consequently could involve immense sums. Therefore, in order to invoke a privileged claim, it has to be inscribed on the register.

The Chairman : Does anybody want to speak about this amendment?

(No response.)

We will proceed to the vote.

We are voting on Document N.Y. 14, which is the U.S. Amendment to Article 4, paragraph 1.

Voted in favour : Argentina, U.S.A.

Voted against : Belgium, Canada, Denmark, Finland, France, Germany, Great Britain, Greece, Ireland, Israel, Italy, Japan, Mexico, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Yugoslavia.

The Chairman : The amendment is not adopted.

We pass now to Document N.Y. 26, the amendment of the Danish Delegation.

Does anybody want to speak about this amendment ?

(No response.)

We shall pass to the vote on Document N.Y. 26.

Voted in favour : Denmark, France.

Voted against : Argentina, Belgium, Germany, Great Britain, Greece, Ireland, Israel, Italy, Japan, Mexico, Netherlands, Norway, Poland, Sweden, Switzerland, Yugoslavia.

Abstained from voting : Canada, Finland, Portugal, Spain, U.S.A.

The Chairman : The amendment is not adopted.

Next we pass to Document N.Y. 30, the amendment of the Greek Delegation.

Mr. Jean S. Perrakis, Greece : In view of the fate of the other amendment, this amendment is withdrawn.

The Chairman : Next is N.Y. 32.

We will take Document N.Y. 32, amendment presented by the Japanese Delegation.

Mr. Yoshima Kawamata, Japan : I proposed this amendment yesterday because we feel that any proposal in respect to Article 4 should not be allowed to be made when we discuss Article 6.

So if it is possible to submit a proposal like ours, after we will have discussed or considered amendments with respect to Article 6, I beg to withdraw temporarily our proposal, reserving the right to submit it again.

Thank you.

(Applause)

The Chairman : We will pass now to Document N.Y. 37, amendment of the Belgian Delegation.

Mr. Van Ryn, Belgium (translation) : Mr. Chairman, Gentlemen, I had the opportunity of stating yesterday the reasons we proposed an

amendment which was apparently quite radical in that it suppressed Article 4, paragraph 1 (iii) and (iv). Briefly our reasons were as follows :

First of all, it seemed as though, to the extent that these provisions created new liens in relation to those provided for in 1926, they were going against the purposes of the present Convention. Furthermore their drafting appeared to be unsatisfactory and likely to give rise to discussions and difficulties of interpretation. This is the reason why, always in the spirit by which we must be guided, namely, to decrease as much as possible the number of liens prevailing over the maritime mortgages, we suggested the elimination of these two provisions.

But the British Delegation proved that we were too pessimistic with regard to the drafting and that it was possible to formulate rules provided by paragraphs (iii) and (iv) in other terms capable of eliminating controversies and discussions in a reasonable manner. Furthermore, we also are aware that it is necessary to be conciliatory and not to insist on maintaining concepts which are too theoretical.

With regard to claims arising because of loss of life or personal injury, I stated yesterday that we could consider such claims, because of their very nature and from the human standpoint, as being worthy of consideration as liens but that this should be done in such a way as to eliminate any possible contention as to the meaning of the text.

For this double reason, that is, marked improvement in the drafting and the satisfactory compromise, we have reached, that we have rallied most willingly to the proposal of the British Delegation, as set forth in Document N.Y. 50.

It goes without saying that under these conditions, the proposal we submitted yesterday must be considered as withdrawn.

Lord Justice Diplock, United Kingdom : Mr. Chairman, the fact that Mr. Van Ryn referred to this as the British draft ought not to lead to concern.

We can take the joint recommendations of the Delegations of Belgium, Italy, Netherlands and the United Kingdom, and I am presenting it on behalf of all four delegations, as they had asked me to do so at a time when they realized that I should already have spoken so much this evening before it came up.

This is, in our view, the claim in respect of loss of life or personal injury, one which for political or social reasons must be accepted, and that is the reason for which we accept it.

Against such claims, ship owners and their mortgagees can insure, so as a practical risk to the ship owner and the mortgagee this is not very great.

I would hasten to say, and I speak listlessly on behalf of the United Kingdom Delegation, that we are not entirely brutal about the rights of underwriters.

(Laughter)

Whether there is a maritime lien for this type of claim in English law is doubtful, but we are prepared to accept it on social grounds for we fear the danger of non-application if it is not accepted.

You will observe, as Mr. Van Ryn has said, that the draft which represents a compromise draft between the four delegations joined together in putting it before you, limits the claims, and I hope it is sufficiently clear to avoid any doubt as to those who will be entitled to the maritime liens.

This is not a case, as it will be when we come to Article 4, where persons can insure against the risks, I mean, the persons who suffer the claim.

We feel that it is essential in its restricted form to accept this lien if we hope to succeed in getting a concrete result from this conference.

(Applause.)

Mr. A. Stuart Hyndman, Canada : Mr. President, it is not in a spirit of obstructionism that we have found it necessary, the Canadian Delegation, to vote against the United States proposals, and we now unfortunately find it necessary to vote against the United Kingdom proposal as advanced at this moment.

It is basically for this reason that although we appreciate the importance of this proposal as an endeavor to overcome the potential impasse in the matter, and that although we realize the political and social reasons which might lie behind it, we are fearful through the creation of a new maritime lien for personal injuries, we are somewhat fearful of the wording used in this particular amendment.

In that connection, we particularly fear the use of the words « defect on the vessel » and the words following « with respect to those on board the vessel in the course of such employment ».

It is in that connection that we are preparing and will submit this evening an amendment which we suggest will go some distance to correct the situation as far as we are concerned.

We would rephrase this subparagraph 3 to read as follows :

« Claims in respect of loss of life or personal injury arising from the negligence of the owner or his servants in the management or navigation of the vessel. »

This would remove it from the realm of « defect of the vessel », which might or might not imply negligence, but certainly leaves the door open to a situation where there is no negligence. We would further suggest as a possibility that this should be, inasmuch as it is a new

situation, limited to those claims on which a six-month notice has been given.

So one might add that at the end of the wording which I have suggested, a proviso « providing that notice of such claim shall have been received by the owner within six months after the occurrence ».

It is for this reason, in view of our intended rephrasing, that we find it necessary to vote against this proposal, and it is not, Mr. Chairman, to obstruct the purpose, which is to try and achieve some form of agreement at this convention.

Mr. Ringdal, Norway : Mr. President, if the joint amendment now before us should be adopted, we shall in the Norwegian Delegation be quite happy to live with it.

However, we happen to feel that the Antwerp Draft in some respects is preferable and we shall therefore primarily vote in favour of the Antwerp Draft as is.

In the Antwerp Draft liens are based on the nature of a claim; that is, claims for damage and injuries, personal injuries, irrespective of the cause of the claim. In the joint admendment, the liens are based on the cause — that is the cause of the damage or injury. In the amendment there are listed two criteria for the lien. One is negligence on the part of persons on board. The other is defect in the vessel.

By establishing those criteria and introducing the cause of a claim as a condition for granting these liens — with regard to the nature of the claim — —we feel that the amendment narrows the scope of the lien too much.

Let us look at the negligence criterion. Whereas the amendment will grant liens for negligence on the part of persons on board, there will be no lien if there is an owner's privity, which is negligence that, in our opinion, is of a more serious nature.

Suppose a damage occurred as a result of the owner deliberately sending his vessel into a very dangerous area. Suppose it is a mine field that he happens to know about and he is negligent in that respect, and there is something damaged. We feel that the claimant should be entitled to a lien exactly as if it had been the master who had been guilty of the negligence.

What about negligence on the part of the owner's agent ? Suppose, for instance, that the agent has accepted for carriage a cargo of a dangerous nature that has been insufficiently packaged. Suppose the whole vessel blows up with resulting damage. Then the negligence is attributable to the agent only, and I see no reason why those parties suffering damage should not also have a lien in such cases.

The next criterion, defect in the vessel. Also, I think, this is a too narrow criterion. I take it that in the English language defect in the vessel is different from unseaworthiness of the vessel. Suppose

there is damage to objects, or persons on board, as a result of faulty or improper stowage, then there would be no defect in the vessel. Improper stowage would not necessarily be attributable to negligence on board.

Let's again take as an example insufficient marking of dangerous goods, of the nature of which those on board have no knowledge.

For these reasons, we feel that there is not much gained by introducing the cause of the damage or the injury as a condition for granting the lien.

We think that it is better to base the lien on the nature of the claim in the same way as the Antwerp Draft has done, and for that reason we urge that the Antwerp Draft be adopted on this point.

Mr. Herber, Germany : We want to support the Norwegian point of view in opposing the amendment in Document N.Y. 50.

We cannot see why a claim caused by act or neglect on the part of the owner himself, or by those employed on land shall not give rise to a lien.

We cannot consider such a difference as a just one and, moreover, we fear that there will be some confusion as to the application of the provision.

Therefore, we should decide to extend the lien to claims caused by persons on land, as it is foreseen in the Antwerp Draft, and should maintain the present wording.

It should not be stated that the claim must be caused by act, neglect or fault of anyone. Normally maritime claims don't arise without personal fault of anyone.

If international law, in exceptional cases, decides to grant a claim against the owner by reason of pure causes of damage, it should be secured as a claim caused by fault. Even if one doesn't like such claim, it would not be an apt solution to refuse a reasonable guarantee to the claimant.

Lord Justice Diplock, United Kingdom : I think, Mr. Chairman, and I have particular reference to the observations made on behalf of Norway and Germany, that it is really a drafting question.

The examples given by the representatives of Norway, every single one of them, from my understanding of the draft, were covered by the present draft.

I don't think that there is really any difference in principle on that matter, and I wonder whether it shouldn't better go to the Drafting Committee to settle.

(Applause)

Mr. Boal, United States : Mr. President, Ladies and Gentlemen. If I understand the remarks by the Norwegian Delegate and the

text of the proposed amendment, it is a matter of substance. It is not a drafting question.

We support the Norwegian position, and prefer the Antwerp Draft to this amendment.

The Chairman : We will now vote on the first amendment of the Delegations of Belgium, Italy, Netherlands and the United Kingdom, Document N.Y. 50, the first of the two amendments mentioned in that document.

Voted in favour : Belgium, Great Britain, Greece, Ireland, Italy, Mexico, Netherlands, Portugal, Spain, Sweden.

Voted against : Argentina, Canada, Germany, Japan, Norway, Poland, U.S.A., Yugoslavia.

Abstained from voting : Denmark, Finland, France, Israel.

The Chairman : The amendment is adopted.

The following amendment, the second amendment of Document N.Y. 50.

Lord Justice Diplock, Great Britain : Mr. President, I proposed this amendment on behalf of Belgium, Italy, Netherlands and the United Kingdom; and I think that in our early discussions on cargo claims, I really said, in the course of them all that is necessary in respect of this amendment, except this, to explain the particular phraseology of the words « Claims based on tort and not capable of being based on contract. »

In English law, whatever the position may be in the United States law, it is possible for goods to be carried on board a vessel without a contract, or without the effect of a contract where a deviation occurs.

It is a curious anomaly of English law, and it was for that particular reason that these words were adopted in this form.

You will see that this restricts the claims, the maritime lien claims, to cases where there is no contract, and to accidental damage to people who have no opportunity of avoiding it.

In those circumstances, we feel that it is one which ought to be accepted.

It is, of course, one which can be and should be insured against, both by the owner and with the mortgagee as a party to the insurance.

The Chairman : Does anybody else wish to speak ?

(No response.)

We will vote on the second amendment in Document N.Y. 50.

Voted in favour : Belgium, Great Britain, Greece, Ireland, Israel, Italy, Mexico, Netherlands, Portugal, Spain, Sweden.

Voted against: Argentina, Canada, Denmark, Germany, Norway, U.S.A., Yugoslavia.

Abstained from voting: Finland, France, Japan, Poland.

The Chairman: The amendment is adopted.

I still have one amendment to Article 4, Document N.Y. 27 and Document N.Y. 28.

This is the amendment presented by the Yugoslav Delegation.

Does anybody want to speak on this?

(No response.)

We will pass to the vote on Documents N.Y. 27 and 28.

Voted in favour: Argentina, Germany, Greece, Poland, Yugoslavia.

Voted against: Belgium, Canada, Denmark, Finland, France, Great Britain, Ireland, Israel, Italy, Japan, Netherlands, Norway, Sweden, U.S.A.

Abstained from voting: Mexico, Portugal, Spain.

The Chairman: The amendment is not adopted.

Are there any observations about Article 4?

Mr. Loeff, Netherlands: Mr. Chairman, I should like to say a few words on the present position of Article 4. At the beginning of this Conference we proposed various amendments but the position has changed now fundamentally and the Netherlands Delegation feel that probably the far greater part of those amendments including the amendments that have not yet been discussed can be withdrawn. Therefore we want an opportunity to consider the position and we are prepared to bind ourselves to state at the beginning of the session of next Thursday which amendments are withdrawn. I repeat that we shall withdraw practically the whole of the further amendments to Article 4 but there are some small points we want to consider.

The Chairman: Gentlemen, I think the assembly is tired. I am not. But I should propose to you that we should not leave tonight without appointing at least a Drafting Committee.

I propose that we could appoint on this Drafting Commission, people who have already been on it, with the addition of those who want to joint that committee.

May I call on Mr. Asser, Mr. Berlingieri, Mr. Vaes and Mr. Rein. If there are other candidates, we would be glad to have them.

These Gentlemen will meet under the presidency of Mr. Asser.

The meeting is adjourned.

I will ask the assembly to vote on it (N.Y. 15).

Voted in favour : Belgium, Denmark, France, Germany, Great Britain, Mexico, Portugal, Spain, Switzerland, U.S.A., Yugoslavia.

Voted against : Argentina, Canada, Finland, Japan.

Abstained from voting : Greece, Ireland, Israel, Italy, Netherlands, Norway, Poland, Sweden.

The Chairman : The amendment is adopted.

We will examine the amendment of the French Delegation referred to in Document N.Y. 61.

Mr. Chauveau, France, (translation) : We withdraw the amendment.

The Chairman : Does anybody want to speak about Article 5 ?
(No response.)

We will proceed now to Article 6.

Does anybody want to speak on Article 6 ?

(No response.)

I have the first amendment on Article 6. That is Document N.Y. 16, the amendment of the United States Delegation.

The United States Delegation considers it as a matter of drafting. I think it is and we can refer it to the Drafting Committee.

We have another amendment from the German Delegation, Document N.Y. 41.

Mr. Eberhard von dem Hagen, Germany : Article 6, par. 2 as it stands now will help the holders of maritime liens and mortgages in cases where the right of retention of lien is exercised by the ship repairer or anybody else but we feel that this position will not protect the lienor or mortgagees against the danger that, nevertheless, the national law will allow distribution of the proceeds of the sale in the first rank to the ship repairer or anybody else who has such a lien.

Therefore, we should have a provision which makes sure that the lienors and mortgagees will have retained their rank in any case.

The Chairman : Does anybody want to speak about this amendment ?

(No response.)

We will pass to the vote.

Voted in favour : Belgium, France, Germany, Greece, Israel, Spain, U.S.A., Yugoslavia.

Voted against : Argentina, Canada, Italy, Japan, Netherlands, Norway, Portugal, Sweden.

Abstained from voting : Denmark, Finland, Great Britain, Ireland, Mexico, Poland, Switzerland.

The Chairman : The amendment is not adopted.

The following document is Document N.Y. 57, amendment of the Yugoslav Delegation, Article 6, Paragraph 2.

Does anybody wish to speak ?

(No response.)

Then we will pass to the vote.

Voted in favour : Poland, Yugoslavia.

Voted against : Argentina, Belgium, Canada, Great Britain, Italy, Netherlands, Norway, Portugal, Sweden, Switzerland.

Abstained from voting : Denmark, Finland, France, Germany, Greece, Ireland, Israel, Japan, Mexico, Spain, U.S.A.

The Chairman : The amendement is not adopted.

The following document is the amendment of the French Delegation. This is Document N.Y. 62.

Mr. Paul Chauveau, France, (translation): Mr. Chairman, Gentlemen. As the French amendment on Article 4 was rejected, we withdraw our amendment referred to in Document N.Y. 62.

The Chairman : The amendment N.Y. 62 is withdrawn.

The following document is Document N.Y. 63, a Netherlands, British and Belgian amendment to Article 6.

Does anybody wish the floor on Document N.Y. 63 ?

The Rt. Hon., The Lord Devlin, P.C., United Kingdom : Mr. Chairman, on behalf of the Delegation of the United Kingdom, we should like to propose this amendment to Article 4, which is, frankly, a compromise amendment.

The Conference has already heard discussions about a maritime lien for ship repairers, and the quite cogent arguments on this matter.

On the other hand, there were arguments against adding to maritime liens, particularly for the purposes of protecting ship repairers.

The Delegation of the United Kingdom has come to the conclusion that there is an acceptable compromise which might commend itself to the Conference, and that is that without giving to the ship repairers' claim the full status of a maritime lien, it might be given the status of what is known in English law as a possessory lien, and in other systems as one sort of right of retention.

On this basis, it would be ranked after maritime liens, but before mortgages, and that is the object of this amendment.

I think it may be that the amendment will need a little tidying up, possibly, as a matter of drafting.

I might just refer to the very last subparagraph c), « Such lienor's right of retention shall be extinguished when the vessel ceases to be in the possession of the ship repairer. »

That might create this difficulty, that if an order of the court is obtained by the holder of a maritime lien while the ship is still in the possession of the ship repairer, and if it might be, under some systems of law, the possession of the ship, by operation of the law, passes into the hands of the court, then of course under this clause, as it stands, it would be extinguished.

If the order of the court is followed up by a forced sale, undoubtedly on delivery the possessory lien would be extinguished, and that might create complications when the time came for distributing the proceeds under the sale.

Normally in English law, the court, when it makes an order, protects the holder of the possessory lien.

I think it can probably be dealt with by adopting the language that I read in Article 8. Article 8 deals with the extinction of maritime liens, and says, «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. »

I should have thought that it would be a matter of drafting to incorporate some words of that sort. The other point is that I should think it would be necessary, when we come to it, that there should be some consequential amendment to Article 11 (2). That is an amendment which deals with the distribution of proceeds of the sale, and after providing for the priority of costs, it goes on to say that the balance shall be distributed among the holders of maritime liens, etc.

There is at present no room for this half and half creature which the amendment created, and for which I think some provision would have to be made in Article 11.

Accordingly, on behalf of the Delegation of the United Kingdom, I move the amendment.

Mr. Willem E. Boeles, Netherlands : The Dutch Delegation has made a proposition to add a maritime lien for ship repairers who have still possession of the vessel, an amendment to Article 4.

However, the new proposition made by the British Delegation meets so far our wishes we shall be happy to drop our suggested amendment of Article 4 if this amendment be accepted.

We would leave to the national legislatures to create the right of retention or a lien for the shipyard.

Thank you.

Mr. Philip, Denmark : Mr. Chairman, Gentlemen, the Danish Delegation agrees in principle to the amendment proposed by the United Kingdom, Netherlands and Belgium.

However, we have a small problem with regard to the priorities of this right of retention, and therefore we have submitted a subamendment, which is distributed in Document N.Y. 64, which I would like to have taken up at the same time as the British amendment.

It is a time-honored principle, I think, in most countries, that if you have made an arrangement to do something for somebody else, you don't do it before you get your payments.

This, under our law, among other things, has led to the right of retention for repairers of any kind of goods, not only ships, but in any part of the law you find this right of retention.

This right of retention goes before, in priority, before any other rights in the matter.

We therefore suggest that this principle should apply, should still apply to ships, and therefore we cannot agree to the priority ranking which has been suggested in paragraph 2 (b) of the British amendment.

So I want to ask the assembly to vote this small amendment, and I then also support the British amendment.

Thank you, sir.

Mr. Andersson, Finland : Mr. Chairman, Ladies and Gentlemen, the purpose of this amendment is to enable legislation be made to create additional liens and rights of retention.

If you read this amendment only as regards liens, you see in Paragraph 1, that each Contracting State may grant liens to cover claims other than those referred to in Article 4, and in Paragraph 2, you say that such liens shall rank after registered mortgages and « hypothèques » which comply with the provisions of Article 1.

You have however in the end of paragraph 2 provided that such lien may be preferred to registered mortgages and « hypothèques ».

It seems to me that subparagraph (b) would apply both to liens and rights of retention, whereas subparagraphs (a) and (c) apply only to possessory liens.

Now the British delegate said that this standpoint is that (a), (b) and (c) shall apply only to possessory liens, that is so then the drafting should be in accordance with that.

On behalf of the Finnish Delegation, I support an amendment to the effect that national legislation may establish additional liens and that they may also establish rights of retention, but they should rank after mortgages.

I thank you.

Mr. Berlingieri, Italy : I am speaking on behalf of the Italian Delegation. My delegation is firmly opposed to the Danish amendment.

We think we have already agreed that all liens securing claims arising out of contract should be out of this Convention.

The person who is entering into a contract can see to it to obtain sufficient security before entering into such contract.

We have already got rid of many other liens on that basis, and I see no reason whatsoever that this very lien should not only be included in the Convention, but should come ahead of all other liens and all mortgages.

As regard the joint Dutch, British and Belgian amendment, with great respect, it is our feeling that the subamendment, if I may call it so, which has been introduced by Lord Devlin, is not a question of drafting only, but there are some points of substance in there.

For that reason, with great respect at the present stage, my delegation must vote against this amendment, but it expresses the hope that at the second reading of this Article 6, an agreement can be arrived at.

Thank you.

Mr. McGovern, Ireland : Mr. Chairman, Gentlemen, I would like to explain why we will vote against the combined amendment of the Netherlands, Great Britain and Belgium.

We take the view that contractual rights in which are included the right of a ship repairer to be paid, are not suitable for inclusion in this Convention so as to give them priority over maritime liens or mortgages.

We feel that a ship repairer ought to be able at least to make some inquiry into the credit worthiness of the owner for whom he undertakes to carry out the repairs, and if he fails to do so, he ought not to get priority over existing maritime liens and existing mortgages on that vessel.

We take the view that if this amendment goes through, much of that which we discussed on previous days will be undone, because it seems to me that the effect of subparagraph (b) of paragraph 2 of this amendment, Document N.Y. 63, will give a ship repairer rights far exceeding those conferred on any other creditor of a shipowner, and we would be against that.

We believe our prime purpose here is to reinforce the long-term creditor, and for that reason we vote against this amendment.

Mr. Kawamata, Japan : Mr. President, Ladies and Gentlemen, I am here to support with very few words the British, Dutch and Belgian proposal or amendment.

As I already presented to you when I submitted our proposal for amendment with respect to Article 4, Paragraph 1, our delegation is

of the strong opinion that the claims for ship repairers should be protected, and such protection should be given that they have priority over mortgages and « hypothèques ».

This is necessary because, as I told you, and I hope all of you have appreciated that, these claims arise out of acts which result in an increase of the value of the vessel.

Besides, I would like to submit, and I should like to point out that perhaps unlike lenders, ship repairers may not have enough time and adequate means to investigate the financial status of the shipowner who orders a repair.

I also would like to inform you that if this joint proposal made by the British, Dutch and Belgian Delegations goes through, we are ready to withdraw our conditional proposal which was made when Article 4 was discussed, and then temporarily withdrawn.

Thank you very much.

Mr. Boal, United States : Mr. President, Ladies and Gentlemen, it is with much feeling that I speak on this proposal.

We have taken no part in the discussion of the possessory lien in the deliberations of the Subcommittee because for us it is a peculiar problem.

A possessory lien is here a matter of State law, and we have fifty States.

We have no federal legislation on it, except legislation which provides for the enforcement appropriately in our federal courts of the possessory liens as are given by the States.

It is not very different from the proposal here.

Nevertheless, we are opposed to this, because of the emasculation which you voted on Tuesday of (iii) and (iv) of Article 4, Paragraph 1.

If you want to cut down liens, cut out cargo liens completely, and cut in half the liens for personal injury, I see no justification in the interests of increasing the value of the mortgage, in adding an additional lien for a ship repairer.

For that reason we are against this amendment unless there is reconsideration of Article 4.

(Applause)

Mr. André Vaes, Belgium, (translation) : Mr. Chairman, Gentlemen. After the different interventions regarding the amendment of Belgium, Netherlands and Great Britain and the subamendment of Denmark, I think the time has come to sum up the position.

As Lord Devlin very properly said, the British, Dutch and Belgian amendment is a compromise. It must be understood in this sense.

Some national legislations recognizes a lien in favor of the ship repairer. Others recognize what is known as a right of retention and

still others possessory liens, although we had much difficulty understanding the shades of meaning between these last two types of liens.

Finally, there are legislations, such as the Belgian legislation, which does not recognize any lien in favor of a ship repairer.

We have all had to face a problem where the national legislations are particularly divergent. In the face of such a problem, the only possible solution is a compromise one.

Why have delegations such as the Belgian Delegation, whose country doesn't recognize the lien in its national legislation, why has this delegation supported the Netherlands position, whose legislation recognizes the lien, and the British Delegation, whose legislation knows a possessory lien ?

It is because it is debatable whether the ship repairer who has carried out the latest repairs to the ship just before it is seized and sold should be presumed to have increased the value of the ship in the common interests of all the creditors who are going to claim against the ship.

It is fair that we give the ship repairer, who often hasn't had the time to check the solvency of the ship owner and has to carry out repairs in an urgent situation, which increases the value of the ship a few days before its sale by court order.

On the contrary therefore, the Danish proposition which seeks to give this repairer a lien, and to put it in front of all the other liens, completely destroys the whole objective of the joint British, Belgian and Netherlands proposal.

Indeed, we all agree, Gentlemen, that we must keep the first rank for the crew salary and port dues for reasons very well explained by Lord Diplock, which are reasons which may be called social but which are, in reality, political ones. Therefore, if we agree that, for political and social reasons, we must keep entirely untouched the first rank of privilege, such as crew's wages, port dues, you cannot accept the Danish proposal which will give the ship repairers a lien before all the first rank liens, because, in that case, nothing would remain of Article 4.

I come now to my last observation. I think some delegations have not entirely understood the scope of the joint proposal of the British, Belgian and Netherlands Delegations. If I understood the Irish delegate, he thought that our objective was to give the ship repairer the privilege of getting in front of the other liens, while, in fact, we make it come after the maritime liens, in the last rank of the maritime liens, but before mortgages; and under a double condition that they are the very last repairs carried out just before the arrest of the ship and that the ship repairer has the ship still in his possession.

I think, on this point, there might have been a certain misunderstanding on the part of certain delegations.

I, therefore, sum up our joint proposal : to grant the ship repairer solely with the very latest repairs, not for repairs made one year before, and provided the ship is still in his possession, a lien which comes after all the other maritime liens but before mortgages.

These provisions, we ask all the delegations urgently to realize that they are a compromise, not a perfect solution, on which the people who have various, divergent opinions would be able to find common ground in a compromise solution, which would give everyone some satisfaction.
(Applause)

Mr. McGovern, Ireland : Mr. President, Gentlemen.

I am sure I did make that mistake when I was speaking. For that I apologize.

I just want to interpose to say that it is the fact that this possessory lien takes precedence over registered mortgages, which bothers me.

Mr. Spiliopoulos, Greece, (translation) : Mr. Chairman, Ladies and Gentlemen.

I want to express my regret that I cannot support the proposal presented by the British, Netherlands and Belgian Delegations.

We are basing ourselves on the basic principle that the object of the Convention is to increase maritime credit and give the ship owner a weapon which will enable him at any time to get credit.

For this reason we must lessen, as much as possible, the number of liens, and also shorten the time they are valid.

If we want to go further, we must accept the principle put forward by the French Delegation, which is that of liberating liens by means of publicity, from a sort of hidden arm which they have at the moment. It is a new principle but I am sure it will, in time, become acceptable.

I think, that with the exception of liens made for philanthropic or social purposes, the lien granted to the ship repairer, arguing that he has improved the value of the ship, is contrary to the idea on which our Convention should be based. That is to say, I repeat, to diminish, as far as possible, the number of liens.

That is why I think we must vote against the proposal made by the British, Dutch and Belgian Delegations.

To the argument of Mr. Vaes according to which the repairer of the ship has improved its value, we can reply with the argument presented by the Irish Delegation, that the repairer of the ship can always find out the financial position of the ship before he starts to repair. Furthermore, I don't think that the repairers in shipyards are people like the crew, who require, for social reasons, more liens.

That is why I am against the amendment.

(Applause)

The Chairman, (translation) : According to the rules of voting, we must first give an expression on the Danish subamendment, Document N.Y. 64.

Voted in favour : Denmark.

Voted against : Argentina, Belgium, Canada, Germany, Great Britain, Greece, Ireland, Israel, Italy, Japan, Mexico, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, U.S.A., Yugoslavia.

Abstained from voting : Finland, France.

The Chairman : The subamendment is not adopted.

We will now vote on the amendment proposed by the Netherlands, the United Kingdom and Belgium, Document N.Y. 63.

Voted in favour : Argentina, Belgium, Canada, Denmark, Great Britain, Japan, Netherlands, Poland, Spain, Sweden.

Voted against : France, Germany, Greece, Ireland, Israel, Italy, Norway, U.S.A., Yugoslavia.

Abstained from voting : Finland, Mexico, Portugal, Switzerland.

The Chairman : The amendment is adopted.

We will now take up the French amendment to Article 6, Documents N.Y. 67 and N.Y. 68.

Mr. Chauveau, France, (translation) : Mr. Chairman, Gentlemen, as I have said to you, this amendment, originates from a different idea than that which was the basis of the amendment you have just adopted.

We understand that the first part of Article 6 signifies in fact that your Conference and the C.M.I. renounce any unification in matters of liens except for those set out in Article 4.

It follows that as to the national liens, each country will have its own list. However these lists can vary very considerably from one country to another. Mr. Vaes, a few minutes ago, gave an example on a special subject.

This desire not to go any further in unification may be an expression of wisdom; nevertheless, in some respects, it is rather a pity, for we find ourselves confronted by practical difficulties.

Let me point out two. When a vessel is sold one national list is to be applied. We are going to have then the difficulty in deciding which list will be applied, that of the court where it is for sale, probably, or perhaps that of the flag country. This question is not solved.

I do not want to initiate discussion on this point, even not ask you for a solution. Each country will have his own legal position on this point.

There is another question which is more important in our eyes, and that is to know whether, at this time, you won't give any sort of international recognition, to these national liens.

So it can happen that a creditor whose credit accrues in a country which grants the liens, may be refused this lien if the vessel is arrested and sold in another country where this same lien does not exist.

This can cause great inconvenience and that is why we ask that there should be international recognition, for a small number of liens, at least, for what I would call liens attaching to maritime credit, which are those listed in our amendment.

That is exactly the aim of our amendment, the question of giving international recognition to these national liens.

It must be clearly understood, Gentlemen, that this in no way affects what you have decided up to the present.

These national liens will still rank after mortgages and « hypothèques » but after national liens of common law having nothing to do with the operation of the ship.

Thank you, Mr. Chairman.

Mr. Boal, United States : Mr. President, Ladies and Gentlemen, this Convention has been drafted as one dealing with mortgages, and the liens dealt with are only those which are to come ahead of the mortgage. It is left to the national legislatures to use their own discretion as to the liens they wish to create, which are junior to the mortgage.

I don't think we should attempt in any way to enumerate any liens which shall come junior to the mortgage but ahead of other national liens.

Many of these we have in our own law, but I think if we go into the whole subject of liens, it will require another conference and a lot of preparatory work.

For that reason, we are opposed to the French amendment.

The Chairman : Does anyone else wish to speak ?

(No response.)

We will pass to the vote, Document N.Y. 67, presented by the Delegation from France.

Voted in favour : Argentina, France.

Voted against : Belgium, Canada, Denmark, Finland, Germany, Great Britain, Greece, Italy, Japan, Netherlands, Norway, Poland, Portugal, Sweden, Switzerland, U.S.A.

Abstained from voting : Ireland, Israel, Mexico, Spain, Yugoslavia.

The Chairman : The amendment is not adopted.

Does anybody want to speak about Article 6 ?

(No response.)

We will pass to Article 7.

Does anybody wish to speak on Article 7 ?

(No response.)

We have an amendment of the Netherlands Delegation, Document N.Y. 8.

Mr. Loeff, Netherlands : We withdraw it.

The Chairman : The amendment of Document N.Y. 8, is withdrawn.

We will pass to Article 8.

We have several amendments to Article 8.

The Swedish Delegation, Document N.Y. 24; the German Delegation, Document N.Y. 42, and that of the Yugoslav Delegation, Document N.Y. 59, I believe.

I believe the amendment of the German Delegation is more radical, unless I am mistaken, and it would be suitable, therefore, to examine the German amendment first of all.

Mr. Roscher, Germany : Mr. President, Ladies and Gentlemen.

I speak on behalf of the German amendment N.Y. 42 to Paragraphs 1 and 2 of Article 8.

Paragraph (3) of our amendment covers a special problem which has nothing to do with our problem now.

As has been pointed out, the Swedish amendment, N.Y. 24, relates to the same problem as our amendment, but since our amendment tries to give a substantial solution of the problem, while the Scandinavian joint amendment tries to give a solution by means of private international law, it might be better to deal first with our proposal, which tries to give a substantial solution.

Paragraphs 2 and 3 of Article 8, in the form of our amendment, are based on the Scandinavian joint proposal to the International Subcommittee.

The purpose of this amendment, which is now ours, is to reserve the rights of small lienors, mainly sailors and the victims of personal injury.

The Antwerp Draft as it is now deprives the lienor of a procedural right which he has nowadays in most countries.

According to the Antwerp Draft, these lienors shall not be entitled to safeguard their rights to their claims by a suit in the competent court against the shipowner.

The only possible way in which they can in the future save their rights and reach the payment of their claim is an arrest of the vessel.

The lienor has to arrest the vessel even in those cases when the claim is a very small one, and even in those cases where the amount of his claim may be smaller than the cost of the arrest.

This seems to be very uneconomic in view of shipping as a whole.

Moreover, it does not seem to be advisable that only one active lienor can interrupt the prescription time of other lienors who remain inactive.

Finally, the lienor, if he is a small creditor, will sometimes not be able to afford the cost of an arrest of the vessel.

On the other side, he will usually be able to cover the lawsuit fees against the shipowner in a lawsuit in a competent court.

If we think that his claim is important enough to be secured by the lien of the vessel, we should leave him the quite usual right of the usual procedure in a competent court.

We suggest that you not deprive him of this procedural right.

A separate question is whether the lawsuit of the lienor against the owner should be notified to the ship register, as the Yugoslav Delegation proposes in its amendment, N.Y. 59.

We are strongly in favor of that amendment of the Yugoslav Delegation.

As a matter of procedure, however, these two amendments have to be voted separately.

As a second matter of procedure, we recommend voting separately on the question whether the prescription period for maritime liens should run two years, as the Antwerp Draft says, or should only run one year, as we said.

We believe that one year is enough.

In order to have a chance of separate decisions on the questions involved, which are different questions, we ask for separate votes on the question, first, of the prescription time, and on the other hand, on the question which form of procedure is necessary to interrupt the prescription period.

Thank you, Mr. President.

Mr. Berlingieri, Italy : Mr. Chairman, Gentlemen. My delegation is firmly convinced that Article 8 of the Antwerp Draft as it stands now is an essential feature of this Convention.

If we would ever accept the proposal of the German Delegation, the protection of the mortgagees would be severally impaired, because the number of liens which we are trying to restrict would increase as regards the amount of the money involved, because it would be sufficient for any lienor in order to keep his claim and his security alive, to issue a summons to give notice of a citation, and this would be enough for him to keep his lien alive for years and years and years.

Other liens might arise afterwards. The lienor would be able to issue other writs and keep the liens alive.

The mortgagees would never know where they stand, because if you confine the time to one year, a mortgagee or somebody who is requested to loan money might, to a certain extent, make some inquiries as to the position of the vessel and as to what has happened to that vessel during the last year, whether the vessel has entered into a collision with another one, whether there are claims for wages and so on.

But if the period is extended to many, many years, this inquiry cannot be carried out absolutely.

It has been pointed out that the intention is to protect the small claimants, but, of course, if we accept the German proposal, the consequences will be that all claimants will be excepted, small and big.

It has then been pointed out that small claimants must be protected because these claimants would find it rather difficult to put up security, which security is essential in order to obtain the arrest of the vessel.

With great respect, I should think that this problem can be solved in national law. Why on earth is it necessary to put up a security in order to obtain the arrest of the vessel ?

It may very well be established in national legislation that the holders of maritime liens can arrest the vessel without putting up security, and I think that this is not a problem which should be dealt with in the Convention, and this is not a difficulty which should prevent us from accepting the Antwerp Draft as it stands.

May I just add that the question of the time is a separate issue. We might discuss that at a later stage, whether the two-year period or one-year period is a proper period.

I think we should now leave that aside and discuss it separately. Thank you.

Mr. Boal, United States : Mr. President, Ladies and Gentlemen, we stand by the Antwerp Draft, Article 8. We want no changes in it.

We think that a limitation period should be definite and certain without conditions or limitations.

It is only in that way we will know really a claim is time-bound.

Mr. Roscher, Germany : Mr. President, Ladies and Gentlemen, I should like to answer briefly the remarks of Mr. Berlingieri.

The amendment of the German Delegation does not allow that a lien after once a lawsuit has been instituted is to remain for years and years.

In Paragraph 2 of our amendment, it is expressly said that when the lawsuit is interrupted for more than one year, the lien extinguishes without any further procedure.

This means that it is not possible, for instance, to have the lawsuit resting for, let's say, three or four years, and by this way have a lien remaining for a couple of years; that is not possible.

The second question I want to answer to is that in most continental laws it is not possible to have an arrest of a ship without a final judgment.

(Cries of « no ».)

The legal requirements for an arrest will sometimes be met when the shipowner is a very small one and is not good for the claim.

But in most cases, the liens have to be settled in a lawsuit. The legal requirements for the arrest are not fulfilled mainly in those cases where the shipowner is good enough for the claim against him.

Thank you.

The Chairman : Does anyone wish to speak on the subject of the amendment of the German Delegation, Document N.Y. 42 ?

(No response.)

Voted in favour : Denmark, Finland, Germany, Norway, Sweden, Switzerland.

Voted against : Argentina, Belgium, Canada, France, Great Britain, Greece, Ireland, Israel, Italy, Netherlands, Poland, Portugal, Spain, U.S.A.

Abstained from voting : Japan, Mexico, Yugoslavia.

The Chairman : The amendment is not adopted.

We come back to the amendment by the Swedish Delegation, Document N.Y. 24, an amendment in respect of Article 8.

Mr. Pineus, Sweden : Mr. President, Ladies and Gentlemen, in respect of Article 8, the Scandinavian Delegation proposes an amendment contained in Document N.Y. 24.

May I ask our Chairman whether when we come to the vote we can have two separate votes on that amendment, because it contains two points ?

The first one is contained in the first paragraph and also in the second, to reduce the time of prescription from two years, as in the Antwerp Draft, to one year in our amendment.

The second vote I should like to ask is on how to break the prescription.

We have to consider various interests in respect of this Convention. We have the long-term creditor and we want to protect his right.

We have also the short-term creditor, and to him we have given a maritime lien.

We have to strike a just balance between those sometimes conflicting interests in order that we may arrive at a good result.

We in the Scandinavian Delegation believe that we protect the long-term creditor and his interests better by reducing the time from two to one year, as it is at present in the 1926 Convention, and in that way we will prevent maritime liens from accumulating.

For that reason we think we are looking after the interests of the long-term creditor.

We recommend that that proposal be adopted.

May I, while I am here, also speak about the second part of our amendment.

We have in the 1910 Convention on salvage, and in the Convention on collision, and in the 1924 Convention on bills of lading, and in the 1926 Convention on maritime liens, various time limits.

In the Convention of 1910 that is left to the court seized with the matter to decide how the time interval should be interrupted.

In the 1924 Convention on bills of lading, a writ of summons is regarded sufficient.

In the 1926 Convention, nothing is said on how to break that prescription period from running out.

We admit and we realize from what was said on behalf of the Italian Delegation, that we are up against strong opposition, and that what is actually the national law in our four countries is a specialized difficulty which nobody wants to take into account. That may well be.

Still, in order to introduce an amendment of this, I would say, magnitude, to us, you should, I think, prove your case by saying that the present easy way, as Mr. Berlingieri put it, to keep the prescription from running out has great difficulties, and we are not aware of such difficulties.

When we started out with this work, you will appreciate that it is a somewhat ironical situation in which we are here, because it was on the initiative of the Italian and Swedish Association that it was submitted in 1963, that the Comité Maritime International should start a study of remodeling the 1926 Convention in such a way that it would reach a large acceptance.

We have suddenly come across a point where we have different views.

May I point out to my fellow delegates that if we are to reach a very large amount of agreement, where it is not essential to some delegates, try to find a compromise solution, and we will have — and I think that will be true of also the other Scandinavian countries — endless difficulties with our Governments if the Antwerp Draft on this particular point is accepted.

You may say that we come rather late with our proposal, that we have suggested it when taking part in the work which led to the Oxford Draft.

We have again argued it in what led us to the Portofino Draft, and we have again come forward with it in the draft which led up to the Antwerp Draft now under your examination.

We wouldn't be that insistent unless we thought it was something essential to us, and that we should try to find something which would after all not be so difficult for you to swallow.

For that reason, we do not like the document that was just rejected. We do not ask you anything except how to relieve this matter of how to break the prescription, to leave that to national law, and that is the reason Mr. Chairman why I ask you kindly to submit this last proposal also to a separate vote.

Thank you.

(Applause)

Mr. Berlingieri, Italy : Mr. Chairman, Gentlemen.

I am certain that nobody else would be asked to answer the persuasive arguments of the preceding speaker. But to my great regret, my delegation cannot support the first part of the amendment.

May I draw your attention to the fact that the first part of the joint Scandinavian amendment is as dangerous as the German amendment, because if you leave the question of the interruption of the time limit to national law, uniformity cannot be achieved on a vital point of this Convention.

Let us assume that an English vessel which is mortgaged in England travels around the sea, and one day she comes to Sweden. A maritime lien arises in Sweden.

Some time passes by, some eight, nine months; and at that time, an action is entered into, in Sweden against the owner.

The vessel leaves Sweden. She doesn't go back there for years.

After three, four, five years, she goes back to Sweden. All of a sudden, she is arrested in Sweden, and the lienor tries to enforce his claim. And the claim is still alive, because under Swedish law, an action which has been commenced, within a one-year time limit, has had the consequence of interrupting the time limit.

The poor English mortgagee doesn't know anything at all about that.

So what he should do is inquire about all the laws of the world in order to be sure that in all the countries of the world, the limit cannot be interrupted by way of a writ of summons.

This would be the drastic consequence if we refer to national laws.

Thank you.

(Applause)

M. Boal, United States : Mr. President, Ladies and Gentlemen. We oppose the Scandinavian amendment, as we did the German. We want to stick to the Antwerp Draft on Article 8.

We want a definite period of limitation, so we know what we can count on. We think that one year is too short.

The reference to the Hague Rules is certainly out of order in the present state of the record, because you have excluded all cargo claims, so we need not worry about them.

(Laughter).

The collision statute has a two-year period. We still have in the Convention some liens for personal injury and death claims, cut in half, but they are still there.

When we had up for consideration before our Congress the old collision convention, organized labor insisted upon three years, a limitation of three years. We won't be able to sell one year to our Congress. We probably can sell two.

I think two years is reasonable, and should be adhered to, and we should stick to the Antwerp Draft of Article 8.

Mr. Spiliopoulos, Greece, (translation) : I should like to say that the Greek Delegation is in favor of the amendment presented by the Scandinavian countries since the time limit has been reduced to one year. We would like a still shorter period but as it will not be possible to obtain a shorter time we accept the amendment.

I partly agree with what Mr. Berlingieri from the Italian Delegation has said, and we could perhaps find a solution by adding to the proposal that « The national law of each Contracting State shall determine the legal action required for the interruption of the prescription period » « à condition que cette période ne dépasse pas un certain temps (provided this period should not exceed a certain time) » and that follows the remarks made by the Italian Delegation.

I think this is a compromise solution which would eliminate the dangers of which Mr. Berlingieri gave us an example.

The Chairman (translation) : I will ask the Assembly to vote on the text, but not in the first sentence but in the second sentence, that is to say, the following words :

« The national law of each Contracting State shall determine the legal action required for the interruption of the prescription period ».

Afterwards we will vote on the delay « one year ».

In that way there will be no possible misunderstanding ? Does everyone understand the scope of the vote ?

Voted in favour : Denmark, Finland, Germany, Japan, Norway, Poland, Sweden, Switzerland.

Voted against : Argentina, Belgium, France, Great Britain, Greece, Ireland, Israel, Italy, Mexico, Netherlands, Portugal, Spain, U.S.A., Yugoslavia.

Abstained from voting : Canada.

The Chairman : The amendment is not adopted.

Does the Swedish Delegation now wish to vote on the question of duration, one or two years ?

Mr. Pineus, Sweden, (translation) : What I would like is that the Chairman put to the vote the question of whether Article 8 should contain a time lapse of two years, or, as we propose, of one year.

The Chairman, (translation) : Consequently, the amendment as it is set out in Document N.Y. 24, is not maintained in the state that it is now in.

Gentlemen, we are voting on the Swedish proposal as it is presented now, to replace the words « two years » by the words « one year ».

Voted in favour : Argentina, Canada, Denmark, Finland, France, Greece, Ireland, Israel, Italy, Japan, Mexico, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland.

Voted against : U.S.A.

Abstained from voting : Belgium, Germany, Great Britain, Yugoslavia.

The Chairman : The amendment is adopted.

Now we will take up the Italian Delegation's proposal.

We will go to Document N.Y. 47, amendment of Article 8, paragraph 2, the last paragraph.

Mr. Berlingieri, Italy : The proposal of the Italian Delegation is to delete the last words of paragraph 2 of Article 8, namely, the words « ...owing to it having been requisitioned or to the owner being bankrupt or being in compulsory liquidation. »

This is not an amendment of substance. It is our feeling that if we leave these words in, we might restrict too much the cases of interruption.

There might be other causes of interruption in some laws, and we do not want to restrict that so much.

Thank you.

Mr. Chauveau, France, (translation) : Mr. Chairman, Gentlemen, Perhaps a compromise solution could consist in adding a word to Article 8, paragraph 2 : « namely ». It should be made clear that the

wording is not restrictive, and that the cases referred to are exemplary and not restrictive. The Drafting Committee could deal with it.

The Chairman : If Italy doesn't agree you will vote on the Italian proposal as it is before you, Document N.Y. 47, the last part of it, relating to Article 8, paragraph 2.

Voted in favour : Argentina, Belgium, Denmark, France, Great Britain, Ireland, Israel, Italy, Japan, Norway, Poland, Portugal, Sweden, Switzerland, Yugoslavia.

Voted against : Canada, Germany, Greece, Mexico, Netherlands, Spain, U.S.A.

Abstained from voting : Finland.

The Chairman : The amendment is adopted.

We have now before us Document N.Y. 59, the amendment of the Yugoslav Delegation to Article 8.

Does anybody wish to speak on this item ?

(No response.)

We will pass to the vote.

Voted in favour : Argentina, Denmark, Finland, France, Germany, Norway, Poland, Sweden, Switzerland, Yugoslavia.

Voted against : Belgium, Canada, Great Britain, Greece, Ireland, Israel, Italy, Japan, Netherlands, U.S.A.

Abstained from voting : Mexico, Portugal, Spain.

The Chairman : The amendment is not adopted.

Document N.Y. 69 presented by the French Delegation.

Mr. Jacques N. Villeneau, France, (translation) : The amendment, Document N.Y. 69, which has just been put before you, is not completely new for you, as it is part of the French Draft Convention.

This amendment does not modify at all the Draft Convention as voted by the Assembly. The object followed by the French Delegation is purely to strengthen mortgage credit. In avoiding discussions as far as possible, and various conflicts between liens and « hypothèques » we thought we could produce the result which was illustrated, the other day, by Mr. Chauveau in the story of the two bones and the two dogs.

Our aim is not to modify principles, but merely to reinforce mortgage credit by avoiding discussions between mortgagees and holders of liens.

There are two parts in our proposal. First of all we say that the privileged creditor must stop his action when he has in front of him a fund out of which he can be paid.

This fund will be either the limitation fund for his liabilities which the owner of the ship is entitled to put forward in conformity with the international conventions, or the indemnification paid by his underwriters.

When such a limitation fund or the benefit of insurance is offered to the holder of the lien, he must in any event stop his proceedings against the ship, which he is not obliged to do at the moment. You will understand the advantage of this to the mortgagee, who will find his pledge untouched. In other words, the first point is to stop all proceedings by the lienor when he has something out of which he can be paid.

The second point of our proposal is as follows : When for one or another reason, the privileged creditors whose claim can be covered by insurance, i.e. those shown in Article 4 under paragraphs 3, 4, 5 and 6, when he hasn't been able to be paid by these credits, has not been paid by the insurers, then the benefit of the insurance passes to the mortgage creditor.

When the lienor has no benefit from the insurance, when the ship has been sold, the benefit of the insurance thereafter passes to the mortgagee who is subrogated to the rights of the proprietor. It appears rather complicated but I am going to try very rapidly to explain the position in which we may find ourselves, and to show the unfair situation of the mortgagee.

Normally, the position is following : the lienor will try to sell the ship which is the security of the mortgagee. Once the lienor has been paid, then the owner of the ship as a consequence of his payment has an action against his insurer to call for the repayment of the sum he paid to the lienor and for which he is insured.

There is much legislation which does not enable the owner of a ship to obtain from his insurance the repayment of sums which have been already paid. Very often the insurers refuse to advance the sums. The insured has to pay first of all, and to ask afterwards to be repaid. Having paid with the proceeds of the ship, having a claim against his insurer, the owner of the ship is to receive from his insurer a sum which is theoretically equal to the value of the ship sold.

What will happen is that the mortgagee who had the ship as guarantee, will find himself in the position of an ordinary creditor because when the owner of the ship will have in hand the money, the money coming from his insurance, that money will be available not only to the mortgagee but also to the ordinary creditors. Consequently, as a result of this procedure, the mortgagee will no longer have any security, will have no priority with respect to the sums paid by the insurers. Nevertheless, these sums represent the repayment of the price of the ship on which the mortgagee had a guarantee.

You see, Gentlemen, what difficulty we are trying to get around, that is to avoid that by the combination of the sale of the ship and

the payment of the insurance, the mortgagee should find himself deprived of all security. To get around this we thought it very easy to give him a subrogation in the place of the owner of the ship, against the insurers and equal to the amount of the sums coming from the sale of the ship and paid to the lienors.

There is the system we are proposing, which adds an additional guarantee to that which you have already given the mortgagee, which in no way prejudices the system, but which remedies the unfairness or even the fraud which can arise as a result of various legislation.

Mr. Berlingieri, Italy : Mr. Chairman, with great regret my delegation must oppose this amendment.

As regards the first paragraph, my delegation fails to understand how the indemnity due from the underwriters who insured the liability can be put at the disposal of the claimant.

Such an indemnity cannot be put at the disposal of anybody. The only way to put that indemnity at the disposal of the claimant would be for the underwriters to put up a security, and in this case we don't need a rule in this Convention for that purpose.

This is done every day, and we do know very well how to do it without having a provision in the Convention.

Moreover, my delegation fails to understand how we can accept the last words of the first sentence in the first paragraph, « provided that the insurance has been recognized as valid and sufficient ». How can we find that out ?

We think it is quite impossible.

Coming to the second paragraph, we understand this to mean that there is in a way a subrogation of a second degree. The claimant is not going to be subrogated to a credit of his debtor, but he is going to be credited with a credit of a third party against his debtor.

This is not a direct subrogation and we don't think this can be acceptable.

Thank you.

Lord Justice Diplock : Mr. President, this article raises the same sort of insurance problems that were raised by Article 6 on which I spoke on Tuesday, and is open to the same objections which have already been indicated by the Italian Delegation.

I would only add that it has a further objection in this case which does not exist in Article 6.

Many of the insurances dealt with here are covered by P and I Clubs. It is impossible at the time of the accident to say whether the indemnity is available and sufficient. It is even impossible to say with certainty that it is available, because an indemnity under a P and I policy is subject to the condition subsequent that the claims are paid

and in our submission, this raises an impossible situation in law if it is accepted.

Mr. Jan A.L.M. Loeff, Netherlands: Mr. Chairman, as I explained several times, the Netherlands Delegation is against the principle laid down in this amendment, but I do not intend to speak concerning that principle. We should only like to make one additional observation concerning the text which refers to the right of the creditors of the owners on the insurance indemnification.

But how can those creditors exercise a right? They don't know each other and are not organized.

The Chairman : We will now have a vote on Document N.Y. 69.

Voted in favour : Argentina, France, Spain.

Voted against : Belgium, Canada, Denmark, Finland, Germany, Great Britain, Ireland, Israel, Italy, Japan, Netherlands, Norway, Poland, Portugal, Sweden, U.S.A.

Abstained from voting : Greece, Mexico, Switzerland, Yugoslavia.

The Chairman : The amendment is not adopted.

The German Delegation wants a special vote, and I think they are right, because we voted on their amendment on Article 8, but not the last number, not the last paragraph. That is Document N.Y. 42.

Mr. Rolf Herber, Germany : Mr. Chairman, Gentlemen. The German Delegation has proposed a new paragraph 3 of Article 8. In our opinion it must be mentioned in our Convention that the lienor may not refer to his lien if the owner has limited his liability pursuant to the Brussels Convention of 1957 with regard to the claims secured by the lien.

There is no need to maintain the lien in this case since the claimant is protected by the fund constituted under the 1957 Convention.

But it seems absolutely necessary to have an express rule governing this case in the present Convention in order to avoid conflict.

The International Subcommittee at the very beginning of its work has dealt with the question whether it must be made clear by an amendment to the Convention of 1926 that the Convention of 1957 would prevail over the Convention of 1926.

If there was any doubt as to the necessity of this clarification as regards the 1926 Convention, the doubt was caused by Article 7 of the 1926 Convention.

The present Convention does not contain a similar rule. If the proposed rule would not be inserted, the Contracting States would not be able to meet their obligations pursuant to Article 2, Paragraph 4 of the 1957 Convention within the scope of its Article 7 without violating

the present Convention relating to a lienor, which is a member of a State having ratified the present Convention but not having ratified the 1957 Convention.

For instance, if a ship is owned by a member of a Contracting State of the 1957 Convention, the lienor, however, is a member of a non-Contracting State with respect to the 1957 Convention, but of a Contracting State to the present Convention, the court in a Contracting State of both conventions must violate one of them.

Therefore, the proposed Paragraph 3 is necessary. Naturally, it is a question of drafting if the proposed rule is to be inserted in connection with Article 8, and even if it shall have exactly the proposed text. But anyway we need such a rule. If we do not insert it, we feel that no State which is a member State of the 1957 Convention or will become a member State of the 1957 Convention will be able to ratify the present Convention.

Mr. Jan T. Asser, Netherlands : Mr. Chairman, Gentlemen : I am afraid that we are against this amendment, for the following two reasons.

In the first place, we don't think it is necessary to have this particular amendment in this particular Convention.

There was a question when we had adopted the 1957 Convention on limitation of liability of shipowners, whether or not some sort of provision should be made to avoid conflict between the 1957 Convention and the 1926 Convention on maritime liens and mortgages.

As you well remember, the 1926 Convention contains certain provisions which refer to a lien having been put up under the 1924 Convention on limitation of liability, whereas in the 1957 Convention on limitation of liability, it is said in the distribution of the two funds, all claims are treated *pari passu*.

Otherwise than in the 1926 Convention, there is no reference in this draft to any limitation fund, and therefore we think that it is unnecessary and superfluous to mention the 1957 Convention and any fund created thereunder in this particular instance.

A second reason for not accepting this particular amendment would be that some States who ratify and adopt this Convention may not ratify the 1957 Convention, and vice-versa.

A third reason why we are opposed to the amendment is that it may create difficulties and complications that we cannot foresee at this particular moment.

Mr. Eberhard von dem Hagen, Germany : Mr. Chairman, I think we should explain our problem again.

Perhaps there might be two States and both of them have ratified our Convention on liens and « hypothèques ». One of those States has additionally ratified the 1957 Convention.

Now a ship is going to a forced sale in that second State which has ratified both conventions.

Now, the lienor, which is a citizen of the first State, asks that his liens would be accepted and he is paid out of the proceeds of the forced sale. The second State must pay because it is not allowed to refer to the 1957 Convention.

Therefore, there are two contradictory obligations of international law, and you can only give weight to one of these obligations.

Thank you, Mr. Chairman.

Mr. Herbert Alfonso Andersson, Finland : Mr. Chairman, Ladies and Gentlemen :

In proposing this amendment, I think the German Delegation has overlooked the fact that the limitation fund under the 1957 Convention applies only to claims in relation to which the shipowner is entitled to limit his liability.

Under Article 4 of the Convention we are working on, there are claims for which the shipowner cannot limit his liability, but for which there are liens.

I mention only as an example port, canal and other similar dues.

Thank you.

Mr. Chauveau, France, (translation) : The French Delegation will vote in favor of the German proposal. It has been a very long time since, you will remember, we brought up the question of difficulties likely to arise in the application of the 1957 Convention with other Conventions.

Very correctly, the German delegate a few minutes ago gave us an example; that is perhaps not the only one. But their proposal tends anyway to suppress certain of these difficulties with conflicts of law and international law.

I am almost certainly able to reply to what our Finnish colleague said that in the spirit of what was said by the German Delegation, it is obviously not a question of a creditor in respect of whom the responsibility can be invoked.

It is very possible, indeed, that on that point, the German delegate's proposal will not be completely clear in its drafting. It is only a question of drafting and perhaps it should be sent to the Drafting Committee.

The Chairman : Does anyone else wish to speak on Document N.Y. 42 ?

If nobody wants to speak, we will pass to the vote.

Voted in favour : France, Germany, Norway, Yugoslavia.

Voted against : Argentina, Canada, Denmark, Finland, Great Britain, Greece, Ireland, Israel, Italy, Japan, Netherlands, Poland, Portugal, Spain, Sweden, Switzerland, U.S.A.

Abstained from voting : Belgium, Mexico.

The Chairman : The amendment is not adopted.

(Luncheon interval)

The Chairman, (translation) : Gentlemen, we shall continue our work. We will take up Article 9.

Does anyone wish to speak on Article 9 ?

As to Article 9, we have received Document N.Y. 52, containing proposals from the Greek Delegation.

Does anyone wish to speak about this proposal ?

Mr. Spiliopoulos, Greece, (translation) : Mr. Chairman, Ladies and Gentlemen, Article 9 allows the assignment of a claim or the subrogation of a claim guaranteed by one of the maritime liens mentioned in Article 4 and even in certain cases, both assignment and subrogation of the liens.

Our amendment will result in widening the real scope of the liens.

We have admitted, in our work, a restricted number of principally social interests.

We do not think that the exceptions we admitted will protect other interests, such as those of underwriters whose trade consists in covering certain risks against a premium agreed upon.

The Greek Delegation, therefore, feel they have to clarify this situation by adding an amendment excepting the case where the assignment or subrogation of the claim is the result of payment made by a person or a company as a consequence of a case of assistance at sea. The proposal which we present will thus result in excluding the subrogation and assignment in the case of insurance.

This article, of course, will still be applicable in the case of where people who have liens, would, in some manner, find someone to discount their claim in order to obtain money more quickly in respect of the claim for which they have a lien.

Mr. Vaes, Belgium, (translation) : The Belgian Delegation is not in favor of the Greek amendment for the following reasons :

Take a concrete example : a shipowner has covered the assistance and salvage risk of his vessel.

The underwriter who has covered this risk pays an assistance reward due from the shipowner. The underwriter concerned pays the amount of the reward due from the shipowner.

Normally, this underwriter is subrogated to the salvor. If in conformity with the Greek proposition the shipowner, in the case the ship is sold, is not entitled to oppose the lien, the result will be that the underwriters covering this type of risk, will, in the future, ask higher premiums, because the insurance would lose the benefit of the lien attached to the claim which they have paid.

There is a second objection which I wish to put forward. All insurance covers are not obtained against a fixed premium. Some owners are covered as P and I Club members and it is not admissible to deprive the mutual insurance association from the subrogation in the rights of their members. Indeed, in such case there is no premium which is a counterpart of the estimation of the risk. Therefore, there must be a new distinction made between the underwriters who must not have the benefit of the lien and the mutual insurance association who could keep the subrogation.

This will bring lots of discussion, whereas the wording proposed by the Antwerp Draft takes simply a rational attitude and is not open to any contestation.

The Chairman, (translation) : Who else would like to speak on the Greek amendment ?

(No response.)

If no one wishes to speak, I will put this amendment to the vote.

Voted in favour : Greece.

Voted against : Argentina, Belgium, Canada, Denmark, Finland, France, Germany, Great Britain, Ireland, Israel, Italy, Japan, Mexico, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, U.S.A., Yugoslavia.

Abstained from voting : Poland.

The Chairman : The amendment is not adopted.

Does anybody want to speak any further on Article 9 ?

(No response.)

As we have nothing else for Article 9, we will pass to Article 10.

We have an amendment proposed by the Netherlands, Document N.Y. 9.

Mr. Loeff, Netherlands : Mr. Chairman, on behalf of the Netherlands Delegation, I want to give you a short explanation. The object of the amendment is twofold. We propose to delete the last sentence of Article 10.

What happens if no such names or addresses can be found? Article 10 in its present text leaves this in doubt and therefore we think we had better delete these words. The sentence we want to substitute, we think this is very important, leaves much to the Court which has jurisdiction over the forced sale. We proposed therefore in the second part of our amendment that the Court will select two newspapers in which the intended sale will be advertized and in our opinion this ought to be enough. We must not forget that even apart from any measure prescribed in Article 10, the sale of a seagoing vessel by auction is interesting news for a newspaper and therefore apart from any specific measure it is very likely that it will become known very easily all over the world. Therefore we prefer not to bind the Court too much and just leave it to them to decide on the steps to be taken in order to publicize the sale.

Thank you.

Mr. Burton H. White, United States : I am speaking on behalf of the American Delegation.

We are opposed to the Netherlands amendment.

It occurs to us that it deals with purely local procedures. If this approach is once adopted, there are millions of other suggestions which could be made with respect to sale procedures.

We feel that this is solely a matter for the State in which the sale is taking place, and it is quite inappropriate to go into it here.

The question of advertising is only one of several matters which could be dealt with, but we feel that none of them should be dealt with in this particular Convention, other than a general requirement of notice.

Thank you.

(Applause)

The Chairman : Does anybody else wish to speak to the amendment of the Netherlands Association, Document N.Y. 9?

(No response.)

We will now vote on the amendment of the Netherlands Delegation, Document N.Y. 9.

Voted in favour : Belgium, Germany, Israel, Netherlands, Switzerland.

Voted against : Argentina, Canada, Denmark, Finland, France, Great Britain, Greece, Italy, Japan, Mexico, Norway, Poland, Portugal, Sweden, U.S.A.

Abstained from voting : Ireland, Spain, Yugoslavia.

The Chairman : The amendment is not adopted.

We have the amendment of the United States, Document N.Y. 17.

Mr. White, United States : We have submitted two amendments to Article 10. Document N.Y. 17 will be withdrawn by us.

The Chairman : The American Delegation presented a second amendment to Article 10, Document N.Y. 49.

Mr. White : This amendment makes several very modest changes in Article 10.

The first change, that is, the use of the word « reasonable » in place of « at least thirty days » is inserted because it is hoped that in many situations thirty days may not be necessary or required.

A ship's time is valuable. Ships should not be laid up unnecessarily in the course of a ship's sale; and if a notice can appropriately be given in less than thirty days, this should be done.

The second change lies in the use of the word « registered » before « maritime liens ».

We were a bit concerned that the requirement of notice to holders of maritime liens was so indefinite and intangible as to prevent its being fully carried out, and might create the danger of a potential defect in the enforcement proceedings by failure to give the proper notice.

Therefore, we require notice to registered maritime lien holders, and that is all.

This change, if adopted, would avoid the necessity of the last sentence, which becomes unwise and meaningless if we limit the notice requirement to the holders of registered maritime liens.

We think this helps in creating certainty in the enforcement proceedings, and avoids ambiguity.

Thank you.

Baron Ferdinand van der Feltz, Netherlands : Mr. Chairman, the Netherlands Delegation on whose behalf I am speaking, is in favor of the amendment N.Y. 49, but it is afraid there are some difficulties.

Article 11, Paragraph (b), says that the sale has been effected in accordance with the law of such State and with the provisions of this Convention.

So if we accept the reasonable written notice, then if the vessel is sold in a contracting State and the vessel comes to another contracting State, then the court of that State can say, this vessel has been sold in accordance with the Convention, but the notice given was in this case not reasonable because the claimant in this court couldn't protect his

rights within the time given or stated by the court in the State where the ship was sold.

Therefore, I think you must have in this article a definite period, so that if the forced sale has to be recognized in another country, the courts of that country can easily decide whether the sale has been in accordance with the law of the State where the ship was sold and with the provisions of this Convention, which you cannot have if you say that you must give reasonable notice.

In the opinion of the Dutch Delegation, you may perhaps say within forty-five or sixty days, but you must have a definite period.

Thank you.

(Applause)

Lord Justice Diplock, United Kingdom : After what has been said by the Dutch Delegation, I don't think I need add anything on the point « reasonable (at least thirty days). »

But I do want to say a word about the second part of the amendment which requires notice only to be given to holders of registered maritime liens.

There is nothing in this Convention which requires registration of maritime liens, and if this goes in, it will be indirectly requiring registration of maritime liens.

We voted against registration of maritime liens yesterday. I suggest we should vote against the consequences of non-registration today.

(Applause)

Baron van der Feltz, Netherlands : Mr. Chairman, the Netherlands Delegation proposes two subamendments. The first is to delete the words « reasonable (at least thirty days) », and to replace those words by « at least sixty days ».

The second subamendment is to delete the words « registered » before « maritime liens ».

The Chairman : Does the American Delegation accept the subamendment ?

Mr. White, U.S.A. : No.

The Chairman : We will vote on it.

First the subamendment of the Netherlands Delegation replacing the words « reasonable » and « thirty days » by « sixty days ».

Voted in favour : Netherlands.

Voted against : Argentina, Belgium, France, Great Britain, Greece, Ireland, Israel, Italy, Norway, Poland, Portugal, Spain, Sweden, U.S.A.

Abstained from voting : Canada, Denmark, Finland, Germany, Japan, Mexico, Switzerland, Yugoslavia.

The Chairman : The subamendment is not adopted.

The second subamendment is to drop the word « registered » before the words « maritime liens ».

Voted in favour : Finland, Great Britain, Ireland, Israel, Italy, Japan, Netherlands, Portugal, Yugoslavia.

Voted against : Argentina, Belgium, France, Germany, Poland, U.S.A.

Abstained from voting : Canada, Denmark, Greece, Mexico, Norway, Spain, Sweden, Switzerland.

The Chairman : The subamendment is adopted.

Now we have to vote on the amendment, on the whole of the amendment, Document N.Y. 49.

Mr. Heenen, Belgium, (translation) : Owing to the negative vote on the Dutch amendment, the Belgian Delegation would like to ask the United States Delegation a question about the text we are supposed to vote on.

We now know that this amendment will obligate only the competent authority and, perhaps, if an other amendment is adopted, the creditor, to give the provided information to all the creditors, both lienors and mortgagees.

The Chairman : The word « registered » before « maritime liens » has been dropped.

Mr. Heenen, Belgium : My question remains and I am asking all those in favor of the Dutch text. What does a known creditor mean ? That is the question.

Of course, a mortgage creditor is known because his rights are published, but a known creditor — known by whom; the person who is taking action, the competent authority ? How to supply evidence ?

Will it be possible afterwards to annul a sale, arguing that it is proved that the claim existed and that the notification was not made in due time.

That is the question which arises from the text as a result of the suppression of the word « registered ».

Mr. White, U.S.A. : Gentlemen, as matters now stand, the first Dutch amendment to our amendment was lost, which leaves the text there open for vote here.

The second suggestion for eliminating the word « registered » before « maritime liens » was carried. That leaves the language as it is in the Antwerp Draft in that respect.

But we have still the final question of the last sentence. We still feel that last sentence should be omitted. We think it is misleading and we think that it could create situations which could cast a cloud on the foreclosure proceedings and potentially effect a sale to the detriment of the mortgagees.

For that reason we press the amendment even in its present form.

Mr. Perrakis, Greece : I believe the amendment as presented now by the United States should be adopted, because the last sentence as it is drafted in the Antwerp Draft leaves a great deal to be desired, at least as the matters stand in most of the countries.

Since, as Lord Diplock said before, liens cannot be registered and we are all in favor that we can't create a registry of liens, then we are really at the mercy of the creditor, the shipowner's creditor, to divulge the extent of his liabilities, and which of all liabilities are really covered by liens.

Therefore, we might face the possibility to create sanctions before certain courts, and we should not forget that the vessel navigates all over the world. Certain courts might hold that the sale, the forced sale of certain ships, is invalid, and therefore that the owner, the actual owner, could be disposed because of that.

On the other hand, the register does not have any possibility of disclosing anything else but the mortgages.

Therefore, we can really find that the application, the adoption of the last sentence creates a lot of dangers.

We shall vote for the amendment.

Thank you.

Baron Ferdinand van der Feltz, Netherlands : Mr. Chairman, I should like to make two short observations.

First, in order to try to come to a compromise about the reasonable period of at least thirty days, would it not be possible to accept a system according to which the competent court with regard to the forced sale will fix the delay, taking into consideration the circumstances of the special case which lies before the court ?

The second point I should like to make is a question of a point of order.

I should appreciate if the vote is taken in separate votes, one vote on the first paragraph of the American amendment and the second vote on the second proposal that the last sentence of Article 10 will be deleted.

Thank you.

Mr. Govare, France, (translation) : Mr. Chairman, the French Delegation considered in one of its amendments that the liens should be registered in the same way as « hypothèques » and mortgages. This amendment was rejected, and we are now facing one of the difficulties that arises from this rejection, because in the draft before us we have registered mortgages. We know what they are, and we add maritime liens without indicating that they will be registered. How can we know which claims are privileged if they are nowhere registered.

Secondly, it is indicated in this draft that it shall be competent authority who will try and find who are the privileged creditors. The English text reads « for this purpose, the said authority shall endeavor to obtain... », which is very vague. It seems to be much more practical and logical to say that it is the claimant who must do this, make these inquiries under the control of the court who will decide.

Therefore, it is up to him, under the court's control, to find out what the position is, and it is not up to the competent authority as mentioned in the proposed text. Such procedure would be extremely difficult.

Furthermore the French Delegation has agreed to the second phrase being suppressed, which is an elaborate procedural question which we don't want to deal with, and it merely concerns the competent tribunal.

The Chairman, (translation) : It is thus asked to have separate votes on the amendment of the United States Delegation. Consequently we will express, first of all, an opinion on the first paragraph of the United States amendment, referred to in Document N.Y. 49 and amended as a result of two votes on the Dutch subamendments, the first having been rejected, the second adopted.

Voted in favour : Ireland, Japan, Portugal, Spain, U.S.A.

Voted against : Argentina, Belgium, Canada, Denmark, Finland, France, Germany, Great Britain, Italy, Netherlands, Norway, Poland, Switzerland, Yugoslavia.

Abstained from voting : Greece, Israel, Mexico, Sweden.

The Chairman : The amendment is not adopted.

We have now the second part of Document N.Y. 49. The object is only to delete the last sentence of Article 10.

Voted in favour : Belgium, France, Great Britain, Greece, Ireland, Israel, Italy, Japan, Netherlands, Portugal, U.S.A.

Voted against : Argentina, Denmark, Finland, Germany, Norway, Sweden.

Abstained from voting : Canada, Mexico, Poland, Spain, Switzerland, Yugoslavia.

The Chairman : The amendment is adopted.
We have now Document N.Y. 43, the German amendment.

Mr. von dem Hagen, Germany : The German amendment, N.Y. 43, is not a revolutionary one. It is drafted only to help the mortgagee to safeguard his rights. He should be able to observe the formalities of the competent court, and should be able to do so in time.

Therefore, we are of the opinion that a new paragraph 2 should be added.

The text of this amendment is more or less taken from the Geneva Convention on Rights of Aircraft of 1948, which has been ratified by many Nations.

Thank you.

The Chairman : Does anybody else wish to speak to this amendment ?

We will vote on the German amendment, N.Y. 43.

Voted in favour : Denmark, Germany.

Voted against : Argentina, Belgium, Canada, Finland, France, Great Britain, Ireland, Israel, Italy, Mexico, Netherlands, Norway, Poland, Portugal, Spain, Sweden.

Abstained from voting : Greece, Japan, Switzerland, U.S.A., Yugoslavia.

The Chairman : The amendment is not adopted.

The next amendment is Document N.Y. 53, the amendment proposed by the Greek Delegation.

Mr. Jean S. Perrakis, Greece : This amendment is really a very minor one, and we think that after the adoption of the American proposition, this also should be adopted.

First, it is divided into two parts, and I will deal with the second part first.

This is really directly related to the deletion of the last portion of this article.

Since there is no possibility of ascertaining the existence of maritime liens unless there is a registration — and we are certain this conference does not want the registration of liens — we would think that the words « and maritime liens set out in Article 4 » should be deleted also. And this is self-explanatory, and I would not like to take your time to explain that.

As to the first paragraph, however, which refers to the insertion of the words, « or the person enforcing such sale » after the words « competent authority of such State », and after the words « the said authority », we believe that this being a notice by itself, will greatly

increase the possibility of the adoption of the Antwerp Draft by such Nations as ours, where the procedure prescribes that the person enforcing such sale will do all the notifying.

We therefore believe that the adoption of the Convention should assure, if it is possible, as little change as possible in the national procedure.

Therefore, we move that these amendments be adopted.

Mr. White, United States : The American Delegation supports the Greek amendments.

We believe that they help to resolve a quite serious problem of giving notice to maritime lien holders who may or may not be known to the mortgagee or to the court of the State in which the sale is being made, because we are dealing not merely with a situation covering the foreclosure of ship mortgages, but also the sale of vessels in connection with liens.

And there may be hundreds of outstanding liens, and no one knows where they are or who is the lien holder, and the suggestion that a notice must be given to such parties can cast a most serious doubt on the sale.

We think that the Greek amendment helps in resolving this problem in the present state of affairs, and we strongly support it and urge that it be adopted.

Mr. Vasco Taborda-Ferreira, Portugal, (translation) : Mr. Chairman, Gentlemen. I fail to understand how we can vote now on the Greek amendment to paragraph 2, because we have deleted by vote the last sentence of Article 10.

Thank you, Sir.

Mr. Perrakis, Greece : I really am sorry to say that I don't understand the hesitation of my Portuguese colleague in this respect, because I do believe that, on the contrary, after the deletion of the last paragraph, it will be extremely doubtful or impossible, as was expressed also by the American delegate, to ascertain the extent and the number of the existing claims that are covered by liens.

Therefore, I believe there is no contradiction whatsoever.

Thank you, sir.

The Chairman : We will proceed to the vote on the first part of the amendment of the Greek Delegation in Document N.Y. 35.

Voted in favour : Belgium, Canada, Great Britain, Greece, Israel, Italy, Japan, Switzerland, U.S.A., Yugoslavia.

Voted against : Argentina, Denmark, Finland, France, Germany, Ireland, Mexico, Netherlands, Norway, Poland, Portugal, Spain, Sweden.

The Chairman : The amendment is not adopted.

We will now vote on the second amendment of the Greek Delegation to Article 10, Document N.Y. 53.

Voted in favour : Argentina, Belgium, Canada, France, Great Britain, Greece, Israel, Japan, Netherlands, U.S.A.

Voted against : Denmark, Finland, Germany, Ireland, Italy, Mexico, Norway, Poland, Spain, Sweden, Switzerland, Yugoslavia.

Abstained from voting : Portugal.

The Chairman : The amendment is not adopted.

Document N.Y. 73, amendment of the Swedish Delegation.

Mr. Kaj Pineus, Sweden : This is an amendment proposed by the Swedish Delegation. The sole purpose of it is to clarify the issues.

There are no high principles involved. We want it to be quite clear how the period of thirty days should be calculated. We should say time should be calculated from the day of dispatching the notice, and in that way we would know exactly how to deal with that problem.

The second suggestion is that notice should always be given also to the ship's master, as he is probably the one who would know most about this particular problem, where the holders are to be found.

The last sentence appearing in the Swedish amendment has already been rejected and does not form part of our proposal.

Thank you.

The Chairman : We are going to vote on Document N.Y. 73, the last sentence being deleted, starting with the words « For this purpose ».

Does anyone want to speak ?

Mr. Loeff, Netherlands : The Netherlands Delegation sees a difficulty in the word « Master ». It is quite possible that a vessel having been arrested lies for some time in port and that the whole crew including the master and the officers leave her. Then you would have to find out the name of the master and where he lives and it is quite possible that you do not succeed and then the sale in Court would be impossible. I should like to add that the deletion of the last sentence has certain consequences in this respect : the last sentence provided that it was sufficient if the authority endeavored to obtain the names and addresses of persons to whom notice had to be given but now we have deleted that sentence and it is a quite acceptable reasoning

now to say that under the first sentence you are bound to give notice to the master and if you cannot find him, you cannot comply with the requirements of the first sentence. Our opinion therefore is, that the amendment of our Swedish friends would be more acceptable if the reference to the master were deleted.

Thank you.

Mr. Kaj Pineus, Sweden : May I suggest that we take two votes on this amendment.

The Chairman : We will take two votes on this amendment. The first will be concerning the amendment that the time could be calculated from date of dispatching the notice.

That is the one on which we vote now.

Voted in favour : Denmark, Finland, France, Germany, Ireland, Italy, Netherlands, Sweden, Switzerland, U.S.A.

Voted against : Argentina, Great Britain, Greece, Israel, Japan, Mexico, Norway, Poland, Portugal, Spain.

Abstained from voting : Belgium, Canada, Yugoslavia.

The Chairman : The amendment is not adopted.

Then the second part of the amendment of the Swedish Delegation, the question of the ship's master.

Voted in favour : Finland, France, Germany, Greece, Mexico, Norway, Sweden, Switzerland.

Voted against : Argentina, Belgium, Canada, Denmark, Great Britain, Ireland, Israel, Italy, Japan, Netherlands, Poland, Portugal, U.S.A.

Abstained from voting : Spain, Yugoslavia.

The Chairman : The amendment is not adopted.

We pass on to Document N.Y. 74, the proposal of the Israeli Delegation, on amendment to Article 10 which I understand is withdrawn.

We now pass to Article 11. Who wants to speak on Article 11 ?

Mr. Walter Müller, Switzerland, (translation) : Mr. Chairman, I wish to comment on paragraph 3 of Article 11. This paragraph is drafted in a general way so that all possibilities of forced sale are covered and if you read this article, in the context of Article 13, it means that it is applicable to all ships registered either in a contracting or a non-contracting State.

Here arises a problem of public policy. For a forced sale of a ship you need a judgment, and the result of the judgment is serious, that

is to say, the forced sale of the ship. Now, you did not refer to public policy as all other international conventions do in matter of recognition of judgments. I know many of these conventions, signed by the Netherlands, Belgium or Germany, in which always the public policy is reserved as a reason for not recognizing judgment.

I don't think I need quote all the cases which a judgment might offend the public policy of a particular State. It is really a policy question, I don't want to raise that here, but we can imagine certain cases.

It is very difficult to declare that property has no longer stood by giving a purchaser a certificate of deregistration.

In certain countries the registration and deregistration has constitutive effects whereas in other countries they imply only prima facie evidence. Consequently, if one loses his ownership owing to a forced sale ordered by a judgment which is not recognized in the State of registry because it is against the public policy of that State, he will not be allowed to claim his property even if the ship comes into the jurisdiction of the said State.

I don't want to make any written proposal here; one could say « *exigences de l'ordre public ainsi que celles mentionnées...* »

I think that this question could be taken up again at the Brussels Diplomatic Conference.

But I wanted to draw the attention of your conference to this problem.

Thank you, Mr. Chairman.

The Chairman : We pass to Document N.Y. 10, amendment of the Netherlands Delegation.

Mr. Loeff, Netherlands : Mr. Chairman, the Netherlands Delegation has proposed to substitute for the end of paragraph 3 of this article the text which you can find in Document N.Y. 10. To put it as shortly as possible : the idea is that the registrar of the register where the vessel has been registered can de-register without going into the question of whether the provisions of paragraph 2 have been complied with. We think this is necessary for otherwise, you would give the registrar power to check and control the way in which the proceeds of the sale have been distributed by the Court under whose jurisdiction the sale has taken place.

That is the first point.

A second point is that in practice, if a vessel is sold to somebody of a different nationality, it is necessary to de-register her as soon as possible and you ought not to have to wait till the proceeds have been distributed. This is a practical point and very important. We

think that the results we want will be fully reached if you substitute the text as proposed in Document N.Y. 10 for the present text.

I should like to say a word on what Mr. Walter Müller said. I am afraid it is not possible in this case to make a reservation as to public policy : it would be very awkward if after a vessel has been sold by order of the Court, the validity of that sale could be contested after even if the sale took place in the prescribed form. Nevertheless the point had been raised and at a later stage, we shall have to consider it.

Thank you.

Mr. A. Stuart Hyndman, Canada : Mr. Chairman, the Canadian Delegation supports in principle the position taken by the Netherlands on this, but we have at the moment a very brief amendment which I think will look after the situation.

We think it is preferable simply to delete the words in paragraph 3, the words reading « and Paragraph 2 » in the last line of Paragraph 3.

In other words, what we are saying is that once a purchaser, using the example of a foreign purchaser, has purchased a vessel at a forced sale, there should be no formalities for which he must wait before he gets a certificate of re-registration.

His taking possession and re-registration of the vessel in his own jurisdiction should not be dependent on the costs awarded by the court, or the distribution of the balance between holders of maritime liens.

Mr. Dimitri J. Markianos, Greece : The Greek Delegation fully agrees with the proposition of the Netherlands Delegation that the buyer should not wait until the proceeds have been fully distributed.

On the other hand, it is right that the lienors and mortgagees have some sort of assurance that they will get their money, and this is why we have proposed the amendment in Document N.Y. 54, which says the same thing as the Dutch amendment, with the difference that instead of the words « the distribution of the balance has been secured », which are in the Dutch amendment, we have said a little more accurately, maybe, that the proceeds of such forced sale should have been deposited with the authority competent under the law of the place of the sale in order to be distributed, and we think in this way there will be some assurance for the mortgagees and lienors that they will have their money, and at the same time the buyer will not have to wait until the proceeds are fully distributed.

I don't know whether it is in order to combine the two amendments, Mr. Chairman.

The Chairman : I would propose it to you.

You don't mind doing that ?

Mr. Markianos : We have no objection if the Dutch Delegation agrees.

The Chairman : Thank you.

Mr. James-Paul Govare, France, (translation) : The French Delegation does not wish to hide the fact that it has some difficulty in deciding how to vote on this amendment.

The first part deals with procedural questions which are not superfluous and which we are prepared to accept. However, we are of the opinion that if all questions had to be dealt with, it would be too long.

As far as the second part is concerned, we cannot agree with it because it is not possible that the purchaser by a forced sale, consequent upon a judicial sale, could not have the benefit of an immediate free disposal of the ship whereas he met all his obligations, i.e. paid the price of the ship to the trustee or to anybody else appointed by the court. It is not admissible that the purchaser has to have to wait until the money has been apportioned between the various creditors, whether they are privileged or not, which may take a very long time and result in long proceedings in which he is not concerned.

Mr. Berlingieri, Italy : Mr. Chairman, Gentlemen.

My delegation wishes to support the Canadian proposal, namely, deleting in the last paragraph of Article 11 the words « and paragraph 2 ».

In our submission, these words can be deleted without any damage whatsoever because if reference is made to paragraph 1, subparagraphs a) and b), we have this consequence, that in paragraph b) it is said that the sale has been or must be effected in accordance with the law of the said State and with the provisions of this Convention. Now, paragraph 2, Article 11, is one of the provisions of the Convention.

So we think it is completely unnecessary and misleading to refer again to paragraph 2 in the last paragraph of this article.

Thank you.

Mr. Van Ryn, Belgium, (translation) : Mr. Chairman, Gentlemen. The Belgian Delegation thinks that the amendment proposed by the Netherlands Delegation is a real necessity because in the present state of the text of Article 11, the rights of the mortgage creditors are in no way guaranteed in the case of a forced sale of the ship.

Indeed, the first paragraph provides that mortgages, liens, other encumbrances will cease to attach to the ship, without stating that the proceeds of the sale should be reserved for them. There seems to be a certain gap there, and it is this gap that the Netherlands amendment is trying to fill.

To be accurate, as has been pointed out, the same preoccupation is at the basis of the Greek amendment, in Document N.Y. 54.

Having compared the two amendments, it seemed to us that, on the whole, the Greek Delegation's amendment was the preferable one. It avoids certain objectionable features that exist in the Dutch amendment, in the sense that it does not make the purchaser wait until the price of the sale has been divided among all the creditors, mortgagees or otherwise who have a claim, but it does oblige this price to be deposited somewhere for this purpose.

This seems to us the minimum that can be required for the purchaser to dispose of the vessel, that he should have done what depends on him in order that the money be apportioned later on between the various claimants, lienors or mortgagees.

I think, subject to a few drafting questions which I don't want to deal with here, the Greek amendment is the one which meets the requirements best.

I wish to add, in order to cover the problem, that the Canadian amendment does make us feel embarrassed because far from filling up this gap, it would make the position of the mortgage creditors even worse, for the dropping of paragraph 2 dealing with distribution would leave us without any mention of what the purchaser of the ship has to do after the forced sale so that he could suppose himself authorized to dispose of the ship without regard to the rights of the lienors and mortgagees.

That is why, as far as we are concerned, we support the Greek text, and we ask that it should be seriously considered.

Mr. Loeff, Netherlands : Mr. Chairman, the Netherlands Delegation is very much indebted to the Canadian Delegation and also to the Greek Delegation for their observations. We think that each of their proposals is better than ours and therefore we withdraw it. Perhaps it is a matter for the Drafting Committee but at any rate we withdraw our amendment.

Thank you.
(Applause)

The Chairman (translation) : I feel it is better to deal right now with the Greek amendment in order to decide the question.

Does anyone want to speak on the Greek amendment ?

Mr. Perrakis, Greece : Mr. Chairman, just two words on the subject, because the subject has been expanded upon.

We believe that the amendment proposed by the Greek Delegation contains the minimum guarantees for all privileged creditors and those

mortgagees, and we believe that we should safeguard all people having a lawful interest in the vessel by insisting that no deletion of the vessel from the registry should be adopted unless the product of the sale is deposited by the competent court.

The Chairman : Does anyone wish to speak on the wording of the Greek amendment ?

(No response.)

We are going to vote on Document N.Y. 54.

Voted in favour : Argentina, Belgium, Finland, France, Greece, Ireland, Italy, Netherlands, Portugal, Switzerland, U.S.A., Yugoslavia.

Voted against : Canada, Denmark, Germany, Great Britain, Japan, Norway, Poland, Spain, Sweden.

Abstained from voting : Israel, Mexico.

The Chairman : The amendment is adopted.

We now have the amendment of the American Delegation, Document N.Y. 18.

Mr. Boal, United States : This amendment to Article 11 is the adding of a new paragraph after the first paragraph.

It is done at the request of our lending institutions who are worried about the effects of a foreign foreclosure sale on charter parties.

Naturally, they are more interested in the assignment of charter hire than they are in a lien on the vessel itself, and they want to make sure that the determination of encumbrances on the vessel does not affect charters.

I discussed with them the question, and I said that I did not think a charter was an encumbrance. But they said they couldn't get any admiralty lawyer in New York to say yes or no to it. So they were in doubt about it.

This is the sole purpose of this amendment, to leave that charter party intact, so the parties can deal with it as they see fit.

The Chairman : Does anyone want to speak about the amendment of the United States, Document N.Y. 18 ?

Mr. Van Ryn, Belgium, (translation) : Mr. Chairman, we would prefer that two ideas in this amendment should be examined separately.

The first idea is explained by the first two lines whereas the second idea is introduced by the word « but ».

We would like to be able not to vote on the whole, and we hope, therefore, that the second part could be voted on separately, if you don't see any objection.

The Chairman, (translation) : I can only do that if the delegation proposing the amendment is in agreement.

Mr. Boal, U.S.A. : No objection.

The Chairman, (translation) : Since the American Delegation has no objection, we will have two votes. The first vote is on the first line and a half so that it should read « No charter-party or other contract for the use of the vessel shall be deemed a lien or encumbrance ».

We will vote afterwards on the rest.

Does anyone wish to speak on the first part of the amendment ?

Mr. Berlingieri, Italy : Mr. Chairman, Gentlemen. I am afraid my delegation cannot support this first part of the American amendment.

We think it is out of order to say in the Convention which rights or claims do not constitute liens. Otherwise we would be bound to make a long list of all claims which do not constitute liens.

We are dealing here positively with the liens which are internationally recognized, but all other claims which do not constitute liens cannot be dealt with in this Convention.

Thank you.

(Applause).

The Chairman, (translation) : Does anyone else want to speak ?

We are voting on the first part of the amendment of the United States.

Voted in favour : Belgium, Canada, Denmark, Finland, Germany, Great Britain, Greece, Ireland, U.S.A.

Voted against: Argentina, Israel, Italy, Japan, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Yugoslavia.

Abstained from voting : France, Mexico.

The Chairman : The amendment is not adopted.

We have the second part of the amendment. Perhaps we can delete the word « but ». I propose to say « in the event » and so on.

Does anybody want to speak about this second part ?

(No response.)

We will continue to the vote.

Voted in favour : U.S.A.

Voted against : Argentina, Belgium, Canada, Denmark, Finland, France, Germany, Great Britain, Greece, Ireland, Israel, Italy, Japan,

Netherlands, Norway, Poland, Portugal, Sweden, Switzerland, Yugoslavia.

Abstained from voting : Mexico, Spain.

The Chairman : The amendment is not adopted.

We now have Document N.Y. 72, amendment proposed by the Delegation of the United Kingdom.

Does anyone want to speak to this amendment ?

Lord Devlin, United Kingdom : This amendment is really only a formal amendment that I indicated this morning I thought would be necessary if the conference adopted, as it did, the amendment which the British Delegation proposed on Article 6.

Now it is quite clear that the possessory lien under Article 6 may qualify for a share in the distribution of proceeds, and its share will be above that of mortgages.

Accordingly, it is necessary to provide in Article 11 for that situation, and the United Kingdom Delegation thinks it can be done quite simply by the addition of the words « and other », so that the last sentence reads, the last sentence of Paragraph 2 —

The Chairman : Do you think it is a pure drafting problem ?

Voice : No.

Lord Devlin, United Kingdom : I should have thought it was just a little more than a mere drafting point. It is a consequential amendment. It is conceivable someone might take the view that although we would like a lien. I think this had better be voted upon.

The Chairman : As the British Delegation considers this a decision to be taken, I think we have to vote on this amendment.

Voted in favour : Argentina, Belgium, Canada, Denmark, Finland, France, Great Britain, Ireland, Japan, Netherlands, Spain.

Abstained from voting : Germany, Greece, Israel, Italy, Mexico. (not completely recorded).

The Chairman : The amendment is adopted.

We will vote on Document N.Y. 74, the Israeli Delegation amendment.

Mr. Wolfson, Israel : We consider this proposed amendment as purely a matter of clarification and perhaps drafting, as we think it is necessary that the determining time or date when the liens cease to exist should be clear.

That is why we propose to add the words « existing up to the time of such sale », namely, the sale will be the determining time or factor.

The Chairman : Can we consider that drafting ?

Lord Justice Diplock, United Kingdom : Mr. President, there is a further amendment to Article 11 proposed by the United Kingdom Delegation. I refer to Document HYPO-52.

It is a procedural amendment and the reasons for it are set out as succinctly as they can in the same document.

It is the view of the United Kingdom Delegation that when there has been a forced sale, the best procedure for dealing with the purchaser situation and the de-registration of the vessel is that the court should issue a certificate, and upon issue of the certificate, hand the certificate to the registrar. You will observe this deals with cases primarily where there has been a sale in one contracting State of a vessel registered in another.

Whereas the present article, paragraph (iii) provides for application to the registrar by the purchaser, since the sale is a forced sale by the court, the amended procedure which we suggest provides for a certificate from the court that there has been such sale, and on production of the certificate to the registrar the de-registration takes place.

It isn't, I think, a matter of principle, it is a matter of tidy mechanics for the de-registration.

The Chairman : Does anybody wish to speak about this proposal ?

Mr. Perrakis, Greece : I am afraid that we cannot accede to the proposition, since you remember, we moved the proposals, which have been adopted, about safeguarding the position of the sale proceeds prior to the issue of the certificate; unless the British Delegation would like to amend that, in order to comply with Article 11, Paragraph (iii), as amended by these amendments proposed by the Greek Delegation.

Otherwise the adoption of the British proposal could lead to very serious trouble when the court of a certain State might issue the certificate of de-registration without ascertaining first the deposit of the sale proceeds.

Thank you.

Lord Justice Diplock : I think, Mr. President, that the point raised by the Greek Delegation is one of drafting. It would require, I agree, a consequential amendment to this as a result of the amendment which we accepted on the Greek lines, but I would venture to suggest that that is a pure drafting point.

Mr. Etienne Gutt, Belgium : Mr. Chairman, I am sorry to take up more time on a very minor point. It appears that the draft submitted by the United Kingdom Delegation is an improvement on the Antwerp Draft, but there is still one little hitch.

It is that in both instances it seems to assume that the vessel will be registered in one contracting State and sold in a public sale to the resident of another contracting State. The certificate of discharge is all right, because the court will issue a certificate that the vessel is sold free of all mortgages and so on, and that is in order, whether the vessel is sold at forced sale in its own country or in another contracting State.

But if by any chance the buyer is of the same nationality, the registrar will never be able to issue the certificate of de-registration, because the ships will remain on the same register.

If everybody agrees, that problem can be left to the Drafting Committee, but I think it had to be brought to the attention of the meeting.

Thank you.

The Chairman : Shall we send it to the Drafting Committee ?

Lord Justice Diplock : Yes, I quite agree with what Mr. Gutt says.

The Chairman : We have to vote on the substitution of the last paragraph, HYPO-52, instead of point 3 of Article 11.

Voted in favour : Argentina, Belgium, Great Britain, Israel, Italy, Japan, Norway, Poland, Portugal, Sweden, U.S.A.

Abstained from voting : Canada, Denmark, Finland, France, Germany, Greece, Ireland, Mexico, Netherlands, Spain, Switzerland, Yugoslavia.

The Chairman : The amendment is adopted.

Friday, 17th September, 1965

PLENARY SESSION

Chairman : President Albert LILAR

The Chairman : We will begin our work with a discussion of Article 12.

I give the floor to anyone who wants to address the meeting on Article 12.

If no one wants the floor, we will now examine the amendments proposed to Article 12.

The first amendment is that put forward by the German Delegation, which is Document N.Y. 44, with a proposal that the whole article be struck out.

Mr. Albrecht Roscher, Germany : Mr. President, Ladies and Gentlemen :

The German Delegation suggests the deletion of Article 12 in its entirety, so that no reference to ships under construction remains in our new Mortgage Convention. I would like to present our reasons very briefly.

First, we have the Stockholm Draft Convention of 1963, which the C.M.I. prepared at the conference in Stockholm in 1963. That Convention deals only with ships under construction, whereas, on the other hand, Article 12 of this Convention has just a very short reference to ships under construction and the new Mortgage Convention applies in its entirety to ships under construction.

We are afraid there may be certain contradictions between the application of our new Mortgage Convention to ships under construction on the one hand, and on the other hand, the Stockholm Draft Convention of 1963, on the same subject.

Of course, even if there are no legal contradictions, there are certain practical obstacles to having two regulations on the same subject.

The Stockholm Convention, moreover, has detailed regulations in almost all of its articles on ships under construction which are not included in the new Mortgage Convention.

With all due respect, we prefer the Stockholm Draft Convention of 1963 to our new Article 12.

Secondly, Article 12 of this new Mortgage Convention provides some obstacles for some countries to ratify the new Mortgage Conven-

tion. Some of them will not be willing to introduce regulations on ships under construction into their domestic law at all; and some of them, although not Germany, may even be prevented by constitutional law to have a provision like that ratified as a whole.

We suggest, therefore, that you take the Stockholm Draft Convention of 1963, even if there may be certain possibilities of improvement, and drop Article 12 here in its entirety.

Thank you.

(Applause)

Lord Justice Diplock (Great Britain) : Mr. President, Article 12 is one of those articles on which there is a conflict of views dependent, I think, largely upon the domestic laws of the States concerned.

It is the view of the United Kingdom Delegation that there is a possibility here of a compromise which we think should be satisfactory to both sides who are concerned in this controversy.

As Article 12 stands in the Convention at the moment, its effect is to make it compulsory to recognize registered mortgages on ships under construction which have been created in a contracting State whose law provides for the registration of such mortgages.

However, it leaves it voluntary to each contracting State, whether to provide in its own domestic law for registration of mortgages upon ships under construction.

The essential difference in principle between Article 12 in this Convention and the provisions of the Stockholm Convention are that, in the Stockholm Convention it makes it compulsory not only to recognize registered mortgages on constructions from other States, but also to maintain a register of mortgages upon construction in one's own State, at any rate, if the construction is being undertaken for a member of another State.

The other difference is not one of principle, but is one of practice to which the German Delegation has already referred, and that is that the Stockholm Convention does contain a number of detailed mechanical provisions as to what is to go into the register of ships under construction.

If we leave Article 12 in the present draft, I think there are two consequences that will follow.

First of all, it seems to me probably true that those doubts which I understand are felt, at any rate by Norway, and probably by the Scandinavian countries in general, that if Article 12 remains in this draft, then the Stockholm Convention will, in effect, become a dead letter.

I think there is some justification for that view.

That would have two consequences.

The first is that one would not obtain, in this draft, or under Article 12, those detailed provisions. It would also mean that probably the Stockholm Convention, the work which has been done on it, would be wasted, because if the majority of countries adhere to this draft, they might well feel that it left more to voluntary choice open than the Stockholm Convention would consider.

If, on the other hand, we fall in with the recommendation of the German Delegation and omit Article 12 without taking any further step, or making any further reference to ships under construction, two things might happen.

First of all, of course, it is open to countries, under their national law, to recognize foreign mortgages on ships under construction. The English law does that if they are validly created in the country in which the construction is taking place. So that, so far as English law is concerned, the omission of Article 12 would make no difference.

But one must distinguish between what can be done voluntarily by countries under their own national law and what is compulsory under the Convention.

It is only what is in the Convention that is compulsory. And there are, I believe, other systems of law in which mortgages of ships under construction created in other countries, foreign countries, are not recognized in the national law.

The United Kingdom Delegation suggests as a compromise which we believe would meet the views of both parties upon this controversial issue, the following procedure.

There are two parts of it.

The first part is voluntary, and therefore it is not necessary to insert in the Convention, but I mention it so as to show you the pattern of the scheme of compromise.

It would, of course, remain open to each country, under its national law, to recognize mortgages upon ships under construction in whatever form they were made.

It would be compulsory, however, to recognize on first registration of a ship under this Convention, mortgages which had been validly created in accordance with the Stockholm Convention by countries which adhere to the Stockholm Convention.

In that way one could avoid any conflict between the two conventions, which is the danger we foresee if Article 12 is deleted and no provision at all is made for the recognition on first registration under this Convention of mortgages which have been made in accordance with the Stockholm Convention.

The position, then, would be this : There would be three classes of countries.

There are those which may ratify both the Stockholm Convention and this one, and there no difficulty arises.

There may be those, though I should have thought it unlikely, which ratify the Stockholm Convention but not this Convention, and there no difficulty arises under this Convention that I can see because they would not be contracting Parties to this.

But there may be countries which are contracting Parties to this Convention and not contracting Parties to the Stockholm Convention.

So far as they are concerned, it is not compulsory upon them to maintain a register, themselves, of ships under construction in their own country.

It is not compulsory upon them to recognize mortgages on ships under construction which have not been constructed in Stockholm Convention countries, but it would be obligatory upon them to recognize first registration mortgages which have been validly created in Stockholm Convention countries, upon ships under construction there.

If I may say so, the advantage or the desirability of putting it that way is that when you are providing for international recognition of mortgages or titles credited under any other system of law, it is highly desirable that you should have a uniform system so that there are no difficulties of private international law in recognizing what the valid mortgage is.

So broadly speaking, if I may put it in a sentence, Gentlemen, we accept and support the deletion of Article 12, but subject to the provision that when we go back to Article 3 — because it arises under Article 3 — an amendment is made to provide that on first registration of a seagoing ship, when the construction is completed under this Convention, effect will be given to any mortgage already created under the Stockholm Convention upon the vessel being constructed in the Stockholm country.

I recommend this to the delegations as a compromise which ought, I suggest, to meet the fears of both kinds of country here.

I am really recommending it purely as an aimable compositeur, because it won't affect the law of the United Kingdom.

(Applause)

Mr. Rein, Norway : I am speaking not only on behalf of the Norwegian Delegation, but also on behalf of the Delegations of Denmark, Finland and Sweden.

We would very much like to support and second the German proposal.

We also go along with the British compromise proposal in principle, but we must reserve our freedom of action until we have seen whether the clause to be built into Article 3 will be workable.

But in principle we are in full agreement.

Thank you, Mr. President.

Mr. Govare, France, (translation) : Mr. Chairman, the French Delegation abstains willingly from expressing any opinion whatever upon the British amendment which has just been explained to us until we have the wording before our eyes.

I speak, therefore, only of the German amendment.

Throughout our discussion we have endeavored to put our thoughts to matters of principle, principles concerning mortgages and liens, and I believe it is important that so far as possible these same principles should apply to ships under construction. Consequently, if we retain Article 12, for which we shall vote, we consider that that article lays down principles which should be maintained in a possible convention about ships under construction, accepted by a Diplomatic Conference.

Therefore, I believe that it would be dangerous to radically delete Article 12, under the understanding that we have not yet seen the wording of the British amendment.

The Chairman : The Secretariat has just received it.

Gentlemen, I believe that in the meantime, the meeting could get acquainted with the proposals put forward regarding Article 12.

There is a proposal by the United States Delegation on the subject of Article 12. It is the proposal contained in Document N.Y. 19, and proposes a new article.

Mr. Arthur M. Boal, United States : Mr. President, Ladies and Gentlemen :

This is proposed as a new article. It is not an amendment at all. It should go before Article 12, if adopted.

It provides that in the case of forfeiture of a vessel, that forfeiture shall not invalidate the mortgage; the mortgage shall survive the forfeiture, forfeiture for violation of Customs laws, government regulations; that is to exempt the mortgagee from the penalty of the forfeiture.

This is one that was requested of us by our lending institutions.

We have a similar provision in our own domestic law. We urge its adoption.

Mr. Berlinigeri, Italy : Mr. Chairman, Gentlemen.

It is the feeling of my delegation that we cannot deal with this problem in this Convention.

The forfeiture questions are matters of public law and we cannot include in this Convention a provision whereby the transfer of title to the vessel by the fact of a forfeiture or requisition leaves all mortgages alive.

In many countries, a requisition or forfeiture brings about what we would call an acquisition of title. I am sorry, I cannot find the

English word for that — and in that case it is impossible to allow the liens or mortgages to remain alive.

Under many legislations, and not only under Italian legislation, in such a case the price which is going to be paid to the owner of the vessel as a consequence of the forfeiture, the requisition, will be put at the disposal of the holders of maritime liens and mortgages and will be distributed between them according to the same rules which may be applicable in the case of forced sale.

But we cannot just say that the liens or the mortgages will follow the vessel in case of the vessel being transferred to somebody else as a consequence of forfeiture or requisition.

Thank you.

Mr. Boal, United States : Mr. President, Ladies and Gentlemen.

This does not involve requisition. It does not involve any marshaling of claims. Forfeiture is simply a case where the Government seizes a vessel for violation of her laws and takes the whole vessel.

Now the question is whether they may take the whole vessel or take her subject to the mortgage. That is all this covers.

I don't think it is any more difficult to make this compatible with domestic law than many of the other provisions in the Convention.

This is in the interest of improving the quality of the mortgage and poses no burden upon any other element of the industry.

It simply means the Government cannot forfeit the mortgagee's interest in the ship.

Mr. Jean S. Perrakis, Greece : Mr. Chairman, Gentlemen.

I don't think that I would have any objection to agreeing with the American proposal. In fact, I am not going to vote against it.

But I can't see what practical purpose it would serve. If it refers only to a matter of expropriation following a Government intervention, or a law, then it is obvious that even the contracting State will not respect the Convention.

Therefore, it is not a question of challenging the title granted by that State.

On the other hand, if the vessel sails outside the territorial area of the State that has expropriated the property of the vessel, then I can't see any court — at least not a Greek court — that would uphold an expropriation of the lawful owner.

Therefore I really can't see any practical reason for it.

Thank you.

The Chairman (translation) : If no one wishes to speak, we will proceed to a vote.

We are voting on Document N.Y. 19, U.S. amendment, new Article 12.

Voted in favour : Greece, Israel, Mexico, Spain, U.S.A.

Voted against : Argentina, Denmark, Finland, Great Britain, Italy, Japan, Netherlands, Norway, Portugal, Sweden, Switzerland, Yugoslavia.

Abstained from voting : Belgium, Canada, France, Germany, Ireland, Poland.

The Chairman : The amendment is not adopted.

We have not finished with Article 12, but we will leave Article 12 for the time being and then come back to it.

On Article 13, we received a proposal from the German Delegation, Document N.Y. 45.

Mr. Rolf Herber, Germany : Mr. Chairman, Gentlemen.

We propose to restrict the scope of application of our Convention to ships registered in contracting States.

We feel it would not be useful to grant the guarantee of the present Convention to ships flying the flag or registered in a non-contracting State.

Article 13 of the present Convention would not stimulate non-contracting States to ratification of or adherence to our Convention.

Moreover, the ample scope of application provided by the Antwerp Draft could not be granted by the contracting State at all.

Thank you, Mr. President.

Mr. Jacques G. Heenen, Belgium, (translation) : Mr. Chairman, Gentlemen. The Belgian Delegation proposes to the assembly that the amendment proposed by the German Delegation be rejected.

Indeed, the Draft Convention which you have before you does not aim to protect the owner of the vessel, but to improve the mortgage credit and to improve the situation of the mortgagee.

It is easy to show that the wider scope of the Convention, the better would its object be attained.

Let us suppose that the ship of a non-contracting State is seized in a contracting State.

If according to the Antwerp text, the Convention applies, in this case only the liens provided for by the Convention can be invoked against the mortgagee. These liens will have priority provided that the prescription period of one year during which the liens have to be exercised, has not expired.

If, on the contrary, in the hypothesis that the Convention does not apply, the court would then have to decide, according to its own system of law, what liens can be invoked and to what extent they have priority against the mortgagees.

Naturally, it is difficult to foresee all the answers which might be given by the courts of the various contracting States, but we can say that there is a considerable chance that the competent judge would apply the law of the flag, the law of the non-contracting State.

This might result in recognizing a much greater number of liens than those we have agreed to accept in our proposal.

There is another possibility, that of a ship of a non-contracting State seized in a non-contracting State, but that is a case to which it is impossible to give a reply.

That is why, Gentlemen, I think we should reject the amendment of the German Delegation, because it would run the risk of making us miss the object we are trying to achieve by this Draft Convention.

(Applause)

Mr. Jan A.L.M. Loeff, Netherlands : Mr. Chairman, speaking on behalf of the Netherlands Delegation, I want to say that this is a very useful provision. One of the difficult problems of private international law at the present moment is which law governs the distribution of the proceeds of a vessel which has been put up for auction and sold by order of the court.

In this conference we try to come to reasonable solutions, very often of course compromises which in our opinion are acceptable to every Nation, but if we think we have found a reasonable solution we must not be afraid to apply it to vessels flying the flag of a Nation which has not adhered to the Convention.

As far as I know, under the present system where there is no convention, nevertheless most courts apply their own law perhaps not in all respects but certainly on the question of the rank of the maritime liens. Now, if we adopt this Article 13, what we really do is to sanction this general practice. We consider this solution to be reasonable; why not make a provision which ensures that this solution will be applied as much as possible.

Thank you.

(Applause)

Mr. Herber, Germany : If you will allow me to add a reference to Article 14 of the Convention of 1926.

If we maintain Article 13 as it now stands in the Antwerp Draft, I think we would need, anyway, another exception, namely, the exception now contained in Article 14, Paragraph 2 of the 1926 Convention, that will state an exception, saying that the Convention is only applicable to vessels of contracting States.

Thank you.

Mr. Berlingieri, Italy : To great regret, we must oppose this sub-amendment of the German Delegation, because otherwise we would arrive at this result :

When a vessel is sold in one of the contracting States, only the nationals of the contracting States would be in a position to request the application of the International Convention, and the ranking between them would be done on the basis of this Convention.

But if there is a claimant of another country which has not ratified the Convention, I wonder, really, which law would apply to his claim without ranking.

We would have this unbelievable result that the ranking would be governed by various laws, and this is quite impossible.

Thank you.

Mr. Govare, France, (translation) : Mr. President, the French Delegation consider that to make uniform the maritime law, it is advantageous that diplomatic conventions to which we shall adhere, shall apply as widely as possible in the whole world.

Therefore, we want our conventions to apply as widely as possible without trying to find what the national legislation of this or that ship is.

We want, for instance, that if a ship flying the flag of a non-contracting State comes to France, we are able to seize it, and that the French judge, without having to bother with what the law of this country is, can apply the Convention.

Mr. Herber, Germany : Mr. Chairman, in view of the argument put forward in this discussion, the German Delegation wants to withdraw the amendment.

(Applause)

The Chairman : We have a second German amendment to the same article, Document N.Y. 46. Is that withdrawn too ?

Mr. Herbert, Germany : No.

The Chairman : We will now discuss the second German amendment to Article 13, Document N.Y. 46.

Mr. Herber, Germany : Mr. Chairman, we have put this forward with the intention only to complete the Convention.

We have proposed to insert a new article after Article 13 in order to exclude vessels of public service.

We shall have such a rule in order to clarify that public ships are not capable of being subject to a forced sale.

This is taken exactly in its wording from Article 15 of the 1926 Convention.

Thank you, Mr. President.

Mr. Govare, France, (translation) : Mr. President, the French Delegation would like to know whether the German Delegation is going to modify, and to what extent, the Convention already agreed on on the immunity of State owned ships.

It seems that this is in contradiction to what has already been voted and consequently this article seems to be superfluous.

Mr. Rolf Herbert, Germany: To answer the question of the French Delegation, I would say that it is a question of conflict of Conventions.

It is conceivable that probably not all States which will ratify our Convention have ratified the Immunity Convention of 1926.

Thank you, Mr. Chairman.

The Chairman, (translation) : Does anyone else want the floor on this amendment ?

(No response.)

I will put to a vote the amendment offered by the German Association, Document N.Y. 46.

Voted in favour : Denmark, Germany, Ireland, Mexico, Yugoslavia.

Voted against : Argentina, Belgium, Canada, France, Great Britain, Israel, Italy, Japan, Netherlands, Norway, Portugal, Spain, Sweden.

Abstained from voting : Finland, Greece, Poland, Switzerland, U.S.A.

The Chairman : The amendment is not adopted.

Does anybody wish to speak on Article 14 ?

Mr. Frode E. Ringdal, Norway : Mr. President, Gentlemen. One short word on Article 14, which we think has been phrased a little unfortunately.

If a contracting State wants to switch from the 1926 Convention to this new Convention, the logical procedure would be, first to denounce the 1926 Convention, and then adopt this Convention.

It does not seem quite logical first to adopt this new Convention, and then have to live with the two until the renouncing of the old Convention goes into effect.

That is one point.

The second point is the question I would like to raise as to whether this Article 14 is necessary at all. A country adopting this Convention certainly is bound to accept it and to follow the provisions of the Convention.

I can't see, then, that it should be necessary to say anything about what that country, having accepted its new obligations, shall do about its old obligations.

Thank you.

The Chairman : If I understand your remarks, you propose to delete Article 14 ?

Mr. Ringdal, Norway : Yes.

The Chairman : So we have a proposal for the deletion of Article 14. Does anybody wish to speak to this proposal ?

(No response.)

We will vote on that point, the deletion of Article 14.

Voted in favour : Denmark, Finland, France, Norway, Switzerland, U.S.A.

Voted against : Argentina, Great Britain, Ireland, Japan, Netherlands, Poland, Sweden, Yugoslavia.

Abstained from voting : Belgium, Canada, Germany, Greece, Israel, Italy, Mexico, Portugal, Spain.

The Chairman : The proposal is not adopted.

Now we go back to Article 12.

Gentlemen, the various delegations have in their possession the amendment submitted by the United Kingdom Delegation to Article 3, in connection with our examination of the proposal by the German Delegation to delete Article 12.

We take up, therefore, the examination of the German amendment as it has been developed.

Does anyone wish to speak ?

Mr. Govare, France, (translation) : Mr. Chairman, the French Delegation hoped that the British Delegation will made some remarks itself, on the terms of the proposals put to us.

I should like to say that we are a little worried.

On the one hand, the note points out that : « Under English law, foreign mortgages are recognized, provided that they are constituted in accordance with the law of the country where they are effected... ».

In France we have a very clear principle that verbal mortgages are not admitted even if they are valid in the country where the ship is registered.

On the other hand, concerning paragraph 2, we read that « a vessel which is being or has been constructed in a contracting State... » Consequently this does apply not only to ships « under construction » but also to old ships which were built in a contracting State. They might have been built years before. That should have no influence on our Convention.

Another paragraph reads : « Such vessel has not previously been registered under the present Convention, shall not be eligible for registration, in any other contracting State... ». A ship that has not been registered in a country cannot be re-registered in an other contracting State, unless it produces a certificate of de-registration.

Now, this applies to vessels which have not been registered. How can you ask for a certificate of de-registration for a ship that has not been registered ?

The Chairman : I think it would be well for the United Kingdom Delegation to give some comments upon their wording.

Lord Justice Diplock, Great Britain : In order to enable us to make progress, Mr. President, the United Kingdom Delegation is prepared to vote in favor of the German amendment, irrespective of whether or not we can get an agreed amendment to Article 3. So far as we are concerned, we are prepared to accept the provision with Article 12 deleted.

The Chairman : Does anyone else want to speak ?
(No response.)

If no one else asks for the floor, we will proceed to the vote on the German proposal, the deletion of Article 12. This is Document N.Y. 44.

Voted in favour : Argentina, Canada, Denmark, Finland, Germany, Great Britain, Greece, Ireland, Israel, Italy, Japan, Netherlands, Norway, Sweden, Switzerland, U.S.A.

Voted against : Belgium, France, Mexico, Poland, Spain, Yugoslavia.

Abstained from voting : Portugal.

The Chairman : The proposal is adopted.

The Israeli Delegation has put forward an amendment as an addition to be put at the end of the Convention, Document N.Y. 74, Paragraph B.

Mr. Wolfson, Israel : As the object of the proposed Convention is essentially the international recognition of rank of priority of maritime liens and mortgages, it is felt that it is essential that the Convention would also include an express provision recognizing the process leading to the realization of such rights.

Experience has shown that whenever a vessel is put up for sale by international tender, the first question asked by bidders is whether or not the proceedings leading to the forced sale of the vessel would be recognized by other States, or whether the vessel may be liable to be seized and sold in another State in respect of the same or other debts.

Although the Convention provides for the extinction of all previous liens upon sale, it appears to be desirable to establish the principle of international recognition of the process.

This would give more clarity and certainty to a principle which is the basis of the whole Convention and will avoid and obviate many difficulties in practice.

The question may perhaps be considered as one of drafting, and it is suggested to refer the matter to the Drafting Committee as to how the principle should be defined.

I would only mention as to the drafting of the suggestion, which is, of course, not final, that it refers to arrest seizures, orders of sale and their registration duly made in pursuance of this Convention.

The second point relates to the question of conflicting orders given by tribunals of different States. This is also a matter of practical importance.

In reality, the State which has actually arrested the vessel and keeps it within its jurisdiction would be able to exercise the necessary powers for its sale, and orders given by other tribunals would be inoperative.

The idea is universally accepted and it may be argued that it emanates from the Convention.

Here again it is proposed to refer the matter to the Drafting Committee for its consideration as to whether or not it should be expressly spelled out.

The Chairman, (translation) : After what the Israeli delegate has said, I should like to tell you that it is not possible to send questions to the Drafting Committee which are substantive.

They cannot make a pronouncement on a basic question, and I don't think it would be desirable to leave it to the Drafting Committee.

The proposals of the Israeli Delegation are questions upon which, if the Israeli Delegation wishes, the assembly must give an opinion, and it could be sent to the Drafting Committee afterwards to be cleaned up a little, perhaps, but it is understood that on both questions brought up, if the Israeli Delegation insists, the assembly should give its opinion.

Mr. Wolfson, Israel : Thank you, Mr. President. In this case we would propose to vote the first point with the addition that this relates, of course, to orders given in pursuance of this Convention.

Thank you.

The Chairman, (translation) :

The Israeli Delegation proposes that we vote on the first point, it being understood that the first point relates in the execution within the framework of the Convention that we are examining.

Mr. Berlingieri, Italy : Mr. Chairman, Gentlemen :

May I respectfully point out that this amendment is, to a certain extent, covered by Article 11, namely, insofar as it refers to the de-registration of vessels.

As regards arrest and seizures, we have another Convention, namely the Convention of 10 May 1952, which deals the arrest and seizing of ships, and I am afraid we cannot deal with the same matter in this Convention without the great danger of having conflicting provisions.

Mr. Jean S. Perrakis, Greece : I believe the Israeli suggestion really covers a real need. I think it should be upheld.

But what the delegate of Italy said, very aptly, cannot be invoked to provide an argument for opposing the amendment.

There are a fair amount of Nations which have not ratified or accepted the previous Convention, and if we don't accept this, we shall reach a point where no convention would be accepted unless other conventions were accepted also; that is to make, so to speak, that all conventions should be accepted as a package deal, which is not the purpose of this.

Therefore, we better leave the Israeli amendment as it was amended subsequently, because it really covers a need and it will exclude all argumentation about those various procedural questions which are dealt with there.

Thank you.

Mr. Jan T. Asser, Netherlands : Mr. Chairman, Gentlemen :

To our regret, the Netherlands Delegation is opposed to this amendment, not because we are against the principles set out therein. In fact, we fully agree with the principles. But we cannot at the moment foresee the implications of the proposal as it has been made. For this reason, we shall vote against it.

Thank you.

Mr. Walter Müller, Switzerland, (translation) : Mr. Chairman, Gentlemen :

We are going to oppose this suggestion for the following reasons.

It is the question of the international recognition of judicial measures. Now, what I said yesterday, with regard to public policy in

matters of judgments, also applies to judicial measures, which are even more important.

Furthermore, I should like to remind you that international conventions dealing with the recognition of judicial measures contain provisions for the protection of the debtor in obliging the court to call upon the debtor to give him the opportunity of preparing the necessary evidence for his defense. It is not allowed to mention purely and only in the Convention that the judicial measures are internationally recognized. « tale quale » without mentioning the provisions which are necessary for the protection of the rights of the debtor.

That is why we cannot support such a general measure in our Convention. It would oblige us to draft a complete code and we should still be busy debating this in fifteen day's time.

The Chairman, (translation) : Does someone else wish to speak ?

If no one else wishes to speak, we will vote on No. 1, Document N.Y. 74, the Israel's proposal.

Voted in favour : Greece, Israel.

Voted against : Argentina, Belgium, Canada, Denmark, Finland, France, Germany, Great Britain, Ireland, Italy, Japan, Mexico, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, U.S.A., Yugoslavia.

The Chairman : The amendment is not adopted.

(Luncheon Interval)

The Chairman : Gentlemen, we will now examine article by article the drafts that have been prepared by the Drafting Committee. We will vote on each article separately.

We will begin with the first article, Article 1 in Document N.Y. 75 in English, N.Y. 76 in French.

Are there any remarks about Article 1 as drafted by the Drafting Committee ?

Mr. Asser, Netherlands : Mr. Chairman, I wish to say a few words on Article 1, not as a member of the Netherlands Delegation

but as chairman of the Drafting Committee, because I think I should give a short explanation.

You will remember that in the course of the last days, there was an amendment to Article 1 proposed by the Delegations of Denmark, Norway, Sweden and Finland, and which is the subject matter of Document N.Y. 25.

This amendment was adopted.

Because of this amendment, the beginning words, the first words of Article 1 should read, « Contractual mortgages or mortgages authorized by act of justice and « hypothèques ».

If you look at Article 1, the text of Article 1 as prepared by the Drafting Committee, you won't find these words, the result of this amendment. This was done for the following reasons.

We tried very hard to find an English expression for the words « mortgages authorized by act of justice »; we couldn't.

It was our understanding and the understanding of the Drafting Committee that the object of the amendment was to exclude from the Convention the so-called « hypothèque légal », and after a long talk we tentatively tried to read the provision as follows :

« Mortgages and « hypothèques », with the exception of « hypothèques légales », and so on, « shall be enforceable ».

This, however, was unacceptable to the French members of the Drafting Committee, and in consequence also of the request of those members, it was decided to leave the first words of the article as it read in the Antwerp Draft.

Thank you, sir.

The Chairman : Does anybody else wish to speak on the draft of Article 1 ?

(No response.)

Voted in favour : Argentina, Belgium, Canada, Chile, Denmark, Finland, France, Germany, Great Britain, Greece, Ireland, Italy, Japan, Mexico, Norway, Poland, Spain, Sweden, U.S.A.

Abstained from voting : Netherlands.

The Chairman : Article 1 is adopted.

We pass to Article 2.

Mr. Asser, Netherlands : Mr. Chairman, Gentlemen, I am sorry to have to speak again, but I have make another explanation with respect to Article 2.

You will remember two amendments with respect to Article 2 were adopted.

One amendment was submitted by the French Delegation to the effect that the rank and other effects of mortgages should be governed by the law of the country of registration.

The second amendment, submitted by the Belgian Delegation, stated, in the second paragraph of the article, that measures of enforcement shall always be governed by the law of the country in which such measures are taken.

You will see, probably with some surprise, that the Drafting Committee has been very naughty, and Article 2 now reads as it read before the amendments had been adopted.

I want to give you a few explanations of why this was done.

When we started drafting Article 2 in the Drafting Committee, our first question was, what was the exact meaning of the French amendment.

We were told by the French members of the Drafting Committee — and you will remember that that amendment was adopted without very much discussion; I think with hardly a discussion at all — the main object of the French Delegation was to make a rule of conflicts of law.

When we pursued our discussions in the Drafting Committee on how this particular amendment should be built into Article 2, we came to the conclusion that the words « effets de l'hypothèque » — effects of the mortgage — were extremely bad, and might also apply to such provisions of the loan agreement which had nothing to do with the mortgage.

The difficulty arose, how to translate this into English. And again, after long discussion, we came to the conclusion — and this was the opinion of both the British and the American members of the Drafting Committee — that the translation was practically impossible.

For that reason, the Drafting Committee decided unanimously to leave the text of Article 2 as it is, because it was the opinion that the rule of conflicts of law, which was intended to be set forth in the French amendment, is sufficiently covered by Article 1 and by the general acceptance of mortgage and registered mortgage as a « droit réel ».

I thank you.

The Chairman, (translation) : Gentlemen, I am afraid we have to face a real difficulty.

Whatever the explanation given by Mr. Asser, it seems to me to be indispensable that the French text and the English text of the draft of Article 2 should be the same.

(Laughter)

I don't see how we can submit to this meeting a French text and an English text which don't agree with each other.

Mr. Asser, Netherlands : I must apologize. I don't know who is responsible for the text; I only saw the English draft.

I would add one more word to my explanation, and that is, in view of the difficulty which we found in the Drafting Committee, the French members of the Committee agree provisionally — of course, provisionally — to leave Article 2 as it is.

The Chairman : I am wondering whether your statement solves the problem.

Mr. Chauveau, France, (translation) : Mr. Chairman, Gentlemen. I think that here we are confronted with a problem which is only a translation difficulty and nothing else. The French text was adopted. That is something which is settled.

What we voted on has not to be sent to the Drafting Committee. I believe it has never been the task of a Drafting Committee to modify a text we passed. I don't think that.

My representatives on the Drafting Committee assure me that, contrary to what Mr. Asser thought, they had never given their agreement to what he has just said. So we are going to ask the Drafting Committee to make a new effort of translation. I am quite prepared to admit that they may be unable to do so, in a case, where we have a purely continental concept which is strange to Anglo-Saxon countries. I remember that at the Warsaw Conference there were similar difficulties when we wanted to speak in French about « willful misconduct », an idea which does not exist in our law; and when we wanted to speak to the English about « dol » they also did not understand. We accept their apologies, of course. The Drafting Committee had to find a formula.

I would therefore request that we do the same, that the French text be adopted, and that the Drafting Committee meet again to get a satisfactory English translation.

Thank you, Mr. Chairman.

The Chairman, (translation) : I would like to appeal to the Chairman and the members of the Drafting Committee, because I cannot submit to the Assembly two different texts together. I think that the French text is in accordance with what was voted by the meeting.

In that case, taking into account the linguistic and legal divergencies, we have to find the English equivalent.

Mr. Van Ryn, Belgium, (translation) : Mr. Chairman, Gentlemen, I think the difficulty is a very real one, and this originates probably

from the fact that the amendment voted on the proposal of the French Delegation was at that time drafted in French, so the difficulty of translation arose later.

I wasn't on the Drafting Committee, and I don't know what the objections are which were made by the British Delegation. But if I understood well what I was told, it is the « effets des hypothèques et mortgages » which seems difficult to understand.

For us, I think this expression corresponds to something which is real, but I have neither the time, nor is this the place for me to give a lecture, and I would nevertheless ask you, whether it would be possible to find a solution by modifying slightly the French text and see whether thus modified, it could not have a satisfactory translation.

The suggested modification is very small, and could be as follows : « Le rang des hypothèques et mortgages entre eux et les effets de l'inscription à l'égard des tiers sont déterminés par les lois de l'Etat d'inscription; toutefois, les mesures d'exécution sont régies par les lois de l'Etat où elles sont requises ». It is purely a question of replacing the words « leurs effets », which cover a very general scope, because they deal with the rights originating from « hypothèques » or mortgages as a whole, by the words : « Les effets de l'inscription ». It seems to us that the restriction of the original French amendment would have no damaging practical consequences. We could accept it and we made the proposal only to try and to help to find a translation.

Mr. Rein, Norway : To put it very briefly, in the Drafting Committee we thought that it would be inadvisable to put into the Convention a broad rule to the effect that all consequences with regard to third parties of the ranking of mortgages should be governed by the *lex loci*.

I suggest that we proceed at once to the vote on this question, whether to adopt Article 2 as it appears in the English version from the Drafting Committee or as it appears in the French version.

To open a debate on the real issue would be a waste of time and I don't think we can possibly do it.

The Chairman, (translation) : This is something which puts in question all the decisions we have taken. I repeat that I cannot have a discussion of this nature, if we are asked to go into a subject which had already been decided.

I suggest, therefore, that we follow what has been voted and that we try to find an adequate translation.

I quite understand that we can sometimes not find in the two languages, as in the two legal systems, translations which are absolutely literal. We all understand that, but we must try to find an equivalent covering as far as possible the text which we voted.

Gentlemen, certain members are making efforts to find an adequate translation of Article 2.

This will take a few minutes, and in the meantime we will go on with Article 3 and we will come back to Article 2 after Article 3.

We will take now the draft of Article 3.

Lord Justice Diplock, United Kingdom : This morning I suggested that in the role of « aimable compositeur », we should try to produce an amendment to Article 3 which would satisfy all parties.

My fate has been the usual fate of an « aimable compositeur ».

The only draft I could produce satisfied none of the parties.

I think that the attempt to produce a draft did clarify our ideas, and in order to avoid prolonging the discussion, and in order to insure that we can reach a decision upon this Convention at this conference, I would, with your permission, withdraw the proposed amendment of the United Kingdom Delegation, with humble apologies to you, sir, and to all the members of the conference for wasting your time.

(Applause).

The Chairman, (translation) : Does anybody want to speak with regard to the proposed wording of Article 3 ?

(No response.)

If no one wants to speak, we will proceed with the voting on Article 3 as proposed by the Drafting Committee.

Voted in favour : Argentina, Belgium, Canada, Chile, Denmark, Finland, France, Great Britain, Ireland, Israel, Italy, Japan, Mexico, Netherlands, Norway, Poland, Portugal, Spain, Sweden, U.S.A., Yugoslavia.

Voted against : Germany.

Abstained from voting : Greece, Switzerland.

The Chairman : Article 3 is adopted.

We will pass to Article 4.

Mr. Boal, United States : Mr. President, Ladies and Gentlemen, we would just like to state again briefly the reasons why we will have to vote against Article 4.

The minimum we could accept would be the Antwerp Draft. The reasons we are opposed to the present draft is that it takes out not only liens in existence when mortgages are recorded, but cuts in half liens for loss of life and personal injury.

It eliminates entirely cargo claims.

We have a mandate from our own Association on all these three points.

We are sorry that we cannot reach an accord on it. We very much wanted to reach an accord. We wanted to get a convention here on which all would agree and which could go to the Diplomatic Conference as the united work of the C.M.I., and that the C.M.I. could present to the Diplomatic Conference a united front.

We know, as all of you do, that transportation by water is international. No one Nation can regulate it. It requires accord and it should be an almost unanimous accord.

We have our problems which we have stated to you, that we cannot get a convention adopted in this country, or ratified, that it is opposed by cargo and opposed by personal injury claimants who are represented by organized labor.

Perhaps this is not important to you, but it is a difficulty with which we have to deal, and you may not feel it is something you should consider or on which you should yield to enable us to present a united front in our own country and get ratification.

But these are the problems which we face and we want to make sure that you understand them.

Thank you.

Mr. Rein, Norway : Mr. President, subparagraph (iii) and subparagraph (iv) of Article 4, as it now appears in the last draft from the Drafting Committee, is the result of a proposal put forward by the United States Delegation, and I think the United Kingdom Delegation.

I have the permission of those delegations to put forward this proposal, to reopen the debate on these subparagraphs, but I hope the debate will be a very short one, because in the Drafting Committee we came to the conclusion that the difference between the Antwerp Draft and the United Kingdom, et cetera, proposal was in effect only a question of drafting.

We further came to the conclusion that the version of the Antwerp Draft is the better one.

So what we propose is to return to the Antwerp Draft with only one amendment, namely, as to cargo claims. Cargo claims were excluded by an ambiguous vote. The words in subparagraph (iv) « claims against the owner based on tort and not capable of being based on contract » should be added to the Antwerp Draft, otherwise we propose the Antwerp Draft entirely.

Lord Devlin, United Kingdom : Mr. President, I am very sorry that there seems to have been some misunderstanding between our very good friends of the Norwegian Delegation and the United Kingdom Delegation.

The United Kingdom Delegation are not terribly interested in this particular point. We think that the two drafts, the one in the original

Antwerp Draft, and the one that was adopted, are very much the same, and there is only a small area between them.

But we cannot support a proposition that seeks to reopen an article at this stage. The amendment has been adopted, and it is there, and the United Kingdom Delegation cannot support the reopening of this or any other article.

But I think we did say, and this may have caused the misunderstanding, that we had great sympathy with the views of the Norwegian Delegation, that we did not attach a great deal of importance to it, ourselves, and that if this matter was reopened again at the Diplomatic Conference, we would certainly not oppose any suggestion they might then make to go back to the original draft; but not now.

Mr. Boal, United States : Mr. President, Ladies and Gentlemen, we are in favor of reopening, of course, the discussion of Article 4, but on the broad basis of including cargo claims, not a narrow exclusion such as has been suggested.

Thank you.

Mr. Govare, France, (translation) : Mr. Chairman, on the subject of this Article 4, and particularly paragraphs (iii) and (iv), the French Delegation had presented an amendment which was rejected. Other amendments were presented, which were adopted.

The question now is to know whether, after having adopted certain amendments whose wording is definite, we start reexamining the same paragraphs of the same article and of the same amendments this evening or to morrow morning. We ask that after a definite vote has taken place and a definite decision taken, we should not come back to it.

(Applause)

The Chairman : We are going to take a decision upon the amendment mentioned in Document N.Y. 70, under (a).

The Greek Delegation proposes to insert in Article 4, after the words « The following claims », the words « against the Owner ».

Mr. A. Stuart Hyndman, Canada : I don't have to point out to the delegates, Mr. Chairman, that it is possible to make a clear distinction between the two amendments proposed by the Greek Delegation.

In the first place, the word « owner » as appears in Article 4 of the Antwerp Draft does not appear in subsections (i) and (ii), whereas it does appear in the subsections (iii) and (iv) of the revised draft.

So that it is possible, therefore, to vote, shall we say, negatively with respect to the first and still be in agreement in principle on the

second vote by saying yes, so far as the effects of subparagraphs (iii) and (iv).

The Chairman, (translation) : We are going to take a vote on the first part of the Greek amendment to Article 4.

Voted in favour : Argentina, Belgium, Denmark, Finland, Germany, Greece, Netherlands, Poland, Spain, Yugoslavia.

Voted against : Canada, Chile, Great Britain, Ireland, Italy, Japan, Mexico, Norway, Sweden, Switzerland, United States.

Abstained from voting : France, Israel, Portugal.

The Chairman : The amendment is not adopted.
The second amendment of the Greek Delegation now.

Mr. Berlingieri, Italy : I am sorry to take your time, but I just want to draw your attention to this, that the effect, the practical effect of including the time charterer in the definition of owner in this Article 4 has a practical effect only as regards the lien of subsection (iii), namely, the claims against the owner in respect of loss of life or personal injury.

This is, in my submission, the only case in which there may be a liability of a time charterer in the case of a passenger vessel.

I should like to draw your attention to this fact and submit for your consideration the advisability of excluding a lien in such a case when a vessel is operated by a time charterer, and that there is a loss of life or personal injury for which the time charterer is responsible.

In my submission, this is utterly unfair.

Thank you.

The Chairman : Would anyone else want to take the floor on this amendment ?

We are going to vote on it.

This is the last amendment on Document N.Y. 70, section (b).

Voted in favour : Canada, Denmark, Finland, Greece, Ireland, Israel, Netherlands, Poland, Portugal, U.S.A., Yugoslavia.

Voted against : Argentina, Belgium, Chile, France, Germany, Great Britain, Italy, Japan, Mexico, Norway, Sweden, Switzerland.

Abstained from voting : Spain.

The Chairman : The amendment is not adopted.
Does anybody wish to speak any more about Article 4 ?

Mr. Alex Rein, Norway : Mr. President, during the discussions of Article 4 in the Drafting Committee, it was felt by all present that it would be an advantage if the claims for contribution in general average

which now appear as subparagraph (vi) were put on the same footing as claims for salvage and wreck removal.

There are many technical reasons for doing this, and I am sure that we will avoid a lot of difficulties by putting general average contribution and salvage on the same level, because salvage is very often distributed in general average.

It was decided that the Norwegian Delegation should put forward a formal proposal to this effect, and it is to be found in Document N.Y. 65.

Now, if you look at the draft from the last draft of the Drafting Committee, you will find that in the French version this proposal has already been adopted, and worked into the text.

Thank you, Mr. Chairman.

The Chairman : We are voting on Document N.Y. 65.

Voted in favour : Argentina, Belgium, Chile, Denmark, Finland, France, Ireland, Italy, Mexico, Netherlands, Norway, Portugal, Sweden, Switzerland, U.S.A.

Voted against : Canada, Greece, Japan, Poland, Spain, Yugoslavia.

Abstained from voting : Germany, Great Britain, Israel.

The Chairman : The amendment is adopted.

Are there remarks on the Drafting Committee's text for Article 4? If there are no other remarks, we will now vote on the amended text.

Voted in favour : Argentina, Belgium, Denmark, Finland, Great Britain, Ireland, Israel, Italy, Netherlands, Norway, Sweden, Yugoslavia.

Voted against : Canada, Chile, France, Germany, Greece, Mexico, U.S.A.

Abstained from voting : Japan, Poland, Portugal, Spain, Switzerland.

The Chairman : The article is adopted. We pass to Article 5.

Mr. Asser, Netherlands : Mr. Chairman, Gentlemen, only one very short remark.

As a result of the Norwegian amendment which was adopted with respect to Article 4, one should delete in the fourth paragraph of Article 5 the words « and (vi) ».

Mr. Mc Govern, Ireland : I think we have used the term « wreck raising » in this article, whereas in other articles, we have used « wreck

removal »; « wreck raising » should be « wreck removal », I would think.

Mr. Rein, Norway : Mr. President, as we have now adopted the Norwegian proposal, Document N.Y. 65, to put salvage, wreck removal and contribution in general average on the same footing, some consequential amendments will have to be made in Article 5, and the proposal to this effect will be found in Document N.Y. 66.

Thank you.

The Chairman : We will vote on Document N.Y. 66, the proposed amendments to Article 5 of the Delegation of Norway.

Voted in favour : Argentina, Belgium, Canada, Chile, Denmark, Finland, Germany, Great Britain, Ireland, Israel, Italy, Japan, Mexico, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, U.S.A., Yugoslavia.

Voted against : France.

Abstained from voting : Greece.

The Chairman : Article 5 is adopted. We pass to Article 6.

Does anybody wish to speak about Article 6 ?

We vote on Article 6.

Voted in favour : Argentina, Belgium, Canada, Chile, Denmark, Finland, Germany, Great Britain, Ireland, Israel, Italy, Japan, Mexico, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, U.S.A., Yugoslavia.

Voted against : Greece, France.

The Chairman : Article 6 is adopted. We pass now to Article 7.

Gentlemen, a division is asked for in Article 7, so we will take a separate vote on each of the two paragraphs of this article.

Does anybody want to speak about it ?

We will vote, therefore, on the first paragraph of Article 7 as it is presented by the Drafting Committee.

Voted in favour : Argentina, Belgium, Chile, Denmark, Finland, Germany, Great Britain, Italy, Japan, Norway, Poland, Portugal, Spain, Sweden, U.S.A., Yugoslavia.

Voted against : Canada, Greece, Ireland, Netherlands.

Abstained from voting : France, Israel, Mexico, Switzerland.

The Chairman : The first paragraph of Article 7 is adopted. We will now vote on the second paragraph of the same Article 7.

Voted in favour : Argentina, Belgium, Canada, Chile, Denmark, Finland, France, Germany, Great Britain, Greece, Ireland, Israel, Italy, Japan, Mexico, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, U.S.A., Yugoslavia.

The Chairman : The second paragraph of Article 7 is adopted unanimously. Who wants to speak about Article 8 ?

Mr. Van Ryn, Belgium, (translation) : Mr. Chairman, Gentlemen, in examining the wording which has been submitted to us, we notice that there is here also some divergency between the French and the English text. At the end of the first paragraph of Article 8 the English version refers to : « such arrest leading to a forced sale » whereas in the French text appears : « d'une saisie exécutoire ». In Belgian law « saisie exécutoire » has only a vague meaning and a literal French translation of the English text seems very difficult.

In any case, the texts are different, and I think that this difficulty should be resolved before we can go on to the vote.

The Chairman, (translation) : I believe the drafting has brought out something which really doesn't exist, because in the Antwerp Draft, in this expression « forced sale », it was reproduced in French by « vente forcée », which looks correct.

We all agree on the English text. As far as the French text is concerned, to define the question of the translation, we will reproduce the text as in the Antwerp Draft with the only difference, a delay of one year instead of two years.

That being so, the Antwerp text follows the English text almost word for word.

Now, if nobody else asks for the floor, we are going to put Article 8 to the vote.

Voted in favour : Argentina, Belgium, Canada, Chile, Denmark, Finland, France, Great Britain, Ireland, Israel, Italy, Japan, Mexico, Netherlands, Norway, Poland, Portugal, Spain, U.S.A., Yugoslavia.

Voted against : Germany.

Abstained from voting : Greece, Sweden, Switzerland.

The Chairman : Article 8 is adopted.

We pass to Article 9.

Does anybody wish to speak on Article 9 ?

(No response.)

We will vote on Article 9.

Article 9, 21 votes in favor, one against, two abstentions.

Article 9 is adopted.

We pass now to Article 10. We have before us a proposal of the Drafting Committee for Article 10, and just now another proposal from the Canadian Delegation for another draft of the same article.

Mr. Peter Wright, Canada : This draft arises because of the rather prolonged, and to my eyes, at least, extraordinary session we had over Article 10.

We only had eleven votes on Article 10, and no doubt the Assembly and the Drafting Committee were perfectly clear when it was all over, but some of the Canadian Delegation were not so fortunate and we therefore thought we would like to prepare a drafting deal with some of the difficulties that have been mentioned, but not dealt with in our humble submission in the final draft.

These difficulties are : First, the use of the words « competent authority » with regard to a forced sale.

It is our view that in any forced sale there is a ready competent authority in every country, and that is the court that is ordering the forced sale, and that the duties that we ought to prescribe should be duties put on the court, because the court in every country can discharge these duties.

Our second point is one that was much debated and that is the use of the word « known ». If the word « known » is left as it is now in the draft, one is faced with the insoluble problem of trying to decide who are these claims known to.

Is it the competent authority ? And if the competent authority, well, I assume the government, like God, knows everything.

What we are striving to do in this section, I believe, is to insure that people who have claims get notice. That is all we want to do.

There is one further point that I want to criticize in this, and this is the reference to the maritime liens set out in Article 4. The practical effect of the advertisements under Article 10 is to lead on to the cancellation of the liens in the beginning of Article 11, and they are not the mortgages, « hypothèques » and liens referred to in Article 10.

What is cancelled in Article 11 are all mortgages, « hypothèques », liens and other encumbrances of whatsoever nature, and it is our submission that if the notice is to be given, it should be given to the people whose rights are going to be taken away as a result of the notice.

It is to give effect to these points that we have drafted this substituted article. It is not my place, in view of the rulings from the Chair, to propose this as an amendment. I merely express criticism of Article 10.

If you should be so advised as to defeat it, then it would be our intention to propose the new draft of Article 10, which is Document N.Y. 85, and which reads that the court in any contracting State ordering a forced sale shall provide for at least thirty days' written

notice to be sent to all persons who hold a registered mortgage or registered « hypothèque » or who are claiming in the court for liens or other encumbrances against the ship.

In our submission, this is something that can be carried out and raises no question.

Article 10, as now before you, is going to be difficult to carry out and raises the serious question of who are these claims known to.

Mr. Van Ryn, Belgium, (translation) : Mr. Chairman, Gentlemen, It seems to us that the proposal you have just heard is worthy of being examined. However, I must point out that from the point of view of the French text, it would give rise to certain difficulties. In any case, we have only the English text in front of us, which cannot be translated literally in an acceptable fashion. Under such condition we agree with the principle of the Canadian amendment of Document N.Y. 85, but the French text would require a very careful examination.

Mr. Per Gram, Norway : We will vote against the Canadian amendment, in favor of the Drafting Committee.

That is for certain reasons, but mainly, for the following reason.

In the Canadian amendment, the duty to notify the registrar of the ship's home port has been dropped, and we consider that a very important difference.

Mr. Van Ryn, Belgium, (translation) : Mr. Chairman, as far as we are concerned, the Canadian amendment calls for two small reservations which I don't think should stop it from being adopted eventually.

First of all, it refers exclusively to the judicial authorities, whereas, in the text of Article 10 as proposed, we talk about the « competent authority ».

I don't think this can give rise to difficulties.

On the other hand, in the text of the Canadian amendments has been added to the list of Article 10 of the Drafting Committee's text, after « the known holders of liens and mortgages », mentioned after the maritime liens set out in Article 4, the words « other encumbrances ».

If the text were maintained, we couldn't accept it, because it is not possible in the way we run things in Belgium for there are claimants with secured claims but not with encumbrances.

Therefore, if these words must be kept in, we cannot accept the amendment.

Mr. Reycraft, Canada : As I tried to explain, that word comes from the Antwerp Draft art. 11, 1.

It is simply the result of a logical process.

Under Article 11, 1, mortgages, « hypothèques », liens and other encumbrances are to cease to attach.

The only reason it is included in the notice is that these are the people who will lose their rights.

I take it they won't lose them in Belgium because they don't have any. But in other countries, apparently they have. Therefore, the same language is used in the draft as is used in the section which destroys those rights.

I am most agreeable to accepting anything, and particularly the suggestion from Norway. If it is desirable to inform the registrar of the registry, I am all in favor. But he isn't losing any rights.

It is the people who lose rights that are entitled to have their notice. And that is the principle.

(Applause)

The Chairman, (translation) : The Canadian Delegation says that in a spirit of compromise, they will drop the words « or other encumbrances ».

We will, therefore, pass to the vote on the Canadian proposal of Document N.Y. 85, with the words « or other encumbrances » struck out.

Voted in favour : Belgium, Canada, Chile, France, Greece, Italy, Netherlands, Poland, U.S.A., Yugoslavia.

Voted against : Argentina, Denmark, Finland, Germany, Great Britain, Ireland, Israel, Japan, Norway, Spain, Sweden, Switzerland.

Abstained from voting : Mexico.

The Chairman : The proposal is not adopted.

Does anybody wish to speak on the draft of the Drafting Committee ?

Mr. Chauveau, France, (translation) : There is a small difficulty, because we talk about « known creditors ». How are they known ? By whom are they known, and by what method ? Common rumor or by legal methods ? Or how are they known ?

I am afraid owing to a lack of precision, when we come before the Court with cases it will be, in fact, extremely difficult to find a solution.

This is, perhaps, not only a question of drafting and our suggestion comes perhaps rather late.

The Chairman, (translation) : Does anyone propose an amendment to the draft of the Drafting Committee ?

(No response.)

If nobody proposes an amendment to the text of the Drafting Committee, we will vote on the text of the Drafting Committee.

Voted in favour : Argentina, Canada, Denmark, Finland, Germany, Great Britain, Ireland, Israel, Italy, Japan, Mexico, Netherlands, Norway, Portugal, Sweden, U.S.A., Yugoslavia.

Voted against : Belgium, Greece, Poland, Spain.

Abstained from voting : Chile, France.

The Chairman : Article 10 is adopted.

Does anyone wish to speak on Article 11 as proposed by the Drafting Committee ? Nobody wants the floor on Article 11 ?

In that case we will vote on Article 11 as proposed by the Drafting Committee.

Voted in favour : Argentina, Belgium, Canada, Chile, Denmark, Finland, France, Germany, Great Britain, Greece, Israel, Italy, Japan, Mexico, Netherlands, Norway, Portugal, Spain, Sweden, U.S.A., Yugoslavia.

Abstained from voting : Ireland, Poland, Switzerland.

The Chairman : Article 11 is adopted.

We pass now to Article 12.

It is not the old Article 12 which we deal with, but the old Article 13.

Mr. Vaes, Belgium, (translation) : Mr. Chairman, I apologize for asking the floor in connection with a minor point of drafting. I am talking specially to the French speaking delegates. Shouldn't we strike out the words « peu importe » which do not correspond exactly with the English text ?

Thank you, Mr. Chairman.

The Chairman, (translation) : I would point out that these words « peu importe » exist in the English language : « no matter whether they are ».

Mr. Chauveau, France, (translation) : Yes, but in French we do not need them.

The Chairman, (translation) : Of course it is only a question of drafting.

If nobody else wants the floor on this article we will vote.

Voted in favour : Argentina, Belgium, Canada, Chile, Denmark, Finland, France, Germany, Great Britain, Greece, Ireland, Israel,

Italy, Japan, Mexico, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, U.S.A., Yugoslavia.

Abstained from voting : Poland.

The Chairman : Article 12 is adopted.

Does anyone wish to speak on the subject of Article 13, the last article in the draft ?

Mr. Mc Govern, Ireland : Mr. President, just one small point on this as drafted.

It says that each State which ratifies this Convention or accedes to it, shall forthwith denounce the International Convention, and so on; but there are States which may not have ratified the Convention of 1926, in which case they couldn't denounce it.

(Laughter)

The Chairman, (translation) : The remarks of the Irish delegate have some foundation, but it could easily be corrected simply so that the words be included, « if necessary ».

I think that would meet your thought, Mr. McGovern.

(General agreement.)

Are there any other remarks for Article 13 ?

(No response.)

I will put Article 13 to the vote.

Voted in favour : Argentina, Belgium, Canada, Finland, France, Germany, Great Britain, Israel, Italy, Japan, Mexico, Netherlands, Poland, Portugal, Spain, Switzerland, U.S.A., Yugoslavia.

Voted against : Denmark, Chile, Greece, Ireland, Norway, Sweden.

The Chairman : Article 13 is adopted.

We now go back to Article 2.

We have now before us two amendments, one introduced by the Canadian and Israeli Delegations and the other referred to in Document N.Y. 87.

Does anyone wish to speak on Article 2 ?

Mr. Asser, Netherlands, (translation) : Mr. Chairman, I think there is a slight error in the two texts. The draft reads : « The ranking of « hypothèques » and mortgages as between themselves... » I think we should say : « The ranking of registered « hypothèques »... The same is applicable to the French text. In the whole Convention we speak always of registered mortgages and not of the others.

The Chairman, (translation) : Gentlemen, I do not think that we have to consider this remark. But, if an amendment is presented, I will

put it to the vote. Mr. Asser should in that case introduce an amendment adding the word « registered » to the English text, and « inscrits » to the French text.

Is it necessary to take a vote on that point or can I assume that everybody agrees ?

(General agreement.)

Then we will vote on the Article 2 as amended.

Voted in favour : Argentina, Belgium, Canada, Chile, Denmark, Finland, France, Germany, Great Britain, Ireland, Israel, Italy, Japan, Mexico, Netherlands, Poland, Portugal, Spain, Sweden, U.S.A., Yugoslavia.

Voted against : Norway.

Abstained from voting : Greece, Switzerland.

The Chairman : Article 2 is adopted.

Gentlemen, there only remains for us now to vote on the whole of the Convention.

Mr. Perrakis, Greece : Mr. Chairman, Ladies and Gentlemen :

On behalf of the Greek Delegation, I have the honor to propose the following draft resolution which I am going to submit to the Chairman, and which is supported by the following Delegations : Argentina, Chile, Mexico, France, Spain, United States, Yugoslavia, Poland, Portugal and Greece.

I shall read the text of the resolution, and I very much regret that owing to lack of time, I have not had time to distribute it earlier (Documents No. 83-84).

I would like to add a few words. The reason why we arrive at this draft resolution is not because we are superstitious now that the draft contains only thirteen articles, nor do we want to justify New York just with having fun, which so lavishly was bestowed by the United States Delegation, but it is because we believe that the way the text and the discussions were carried out throughout the last few days, and especially today, when even at the moment of taking the final vote, we have been pondering about the expressions in various languages, that is to say, the different expressions in the French and English texts, on a Friday evening, and we have not agreed. We believe that the whole text of the Convention, the form, shall y say the form of the Convention, is to our mind premature, and we believe that this is the view shared by the other delegations.

It is not the first time, Mr. Chairman, that the subject which is under discussion before the assembly has been referred to another conference, and we believe that a good job justifies even a slight postponement.

Finally, I would like to add the following.

We are all for the Convention. We are all for an agreement, but we don't want to have the failures of the previous conventions reflected in our new work.

We believe that this postponement would lead to a lasting convention, a convention that would be just as useful as the Convention on collision at Sea.

This is a matter which now, with international trade as it is, is just as important as the Salvage Convention or the Collision at Sea Convention.

We repeat that we are all for the Convention, and that is why we have devoted such time, and it is with great regret that we have arrived at this last draft resolution proposal.

We have honestly and diligently tried to help the work of the conference and we believe that there has not been any obstructive work but only constructive work from all delegations, and our own.

So we believe that we will submit to you, Mr. Chairman, that this draft resolution after discussion be put to the vote.

The Chairman, (translation) : You have just heard the proposal presented by the Greek Delegation not to go on with the vote on the whole of the draft, which has been the object of our discussions.

Does anyone wish to speak upon this proposal ?

Lord Devlin, United Kingdom : Mr. President, the Delegation of the United Kingdom is shocked by this proposal coming on the fourth day, coming at the very end of our deliberation. Let us consider what it amounts to.

« The undersigned delegations consider that the proceedings to date at the New York Conference very clearly indicated a substantial number of fundamental basic difficulties in producing a draft convention », it says.

Certainly they have, they always do, and that is why we are here and that is why we have been talking about it for the last four days.

« In producing a draft convention which would be mutually acceptable to the conference as a whole » — now what does that mean ? Does it mean that we are required to have a unanimous vote before we agreed upon a convention, or does it mean that we proceed as we have proceeded, by majority vote, or does it mean something in between the two is to be substituted, two-thirds or three-quarters, and if so, what ?

« They also consider », it says, « that the points of view expressed have already indicated a great desire to continue discussions ».

I can't speak for anybody else's point of view, but the points of view expressed by the Delegation of the United Kingdom have indicated

no desire whatsoever to continue discussion, they have indicated a desire to reach an agreement.

(Applause)

« In order to arrive at a draft convention », it goes on, « which could have the full support of the conference ».

Impossible, you'll never get it, you never have and you never will.

« They feel that for these reasons the present draft should not be submitted to a final vote but that, on the contrary, the discussions should be continued through a newly constituted committee on the basis of further proposals ».

What further proposals? The same ones we have already been covering or different ones? And if different ones, why weren't they considered during the four days which we have devoted to this subject?

« To be submitted by national delegations », it says, « and reflecting the experience acquired in New York ».

Very expensive experience.

(Laughter)

I don't know how other delegations arrange their affairs, but the affairs of the British Delegation, the affairs of the British Maritime Law Association are supported by a number of commercial bodies. They have been in the Comité Maritime from the very beginning and they have been supported by gentlemen who are concerned in shipping, in the trade of shipping, and in order to reach commercial results.

If when we go back, and I as the President of the British Maritime Law Association have to report that what we have gained is the valuable experience acquired in New York, I think they will say, « What have you done with our money? »

(Laughter)

After all, Mr. President, this is a serious matter. We can't go back, you know, after four days and when we are asked, what happened in New York — we say, « We had a perfectly lovely time. We met a lot of old friends and we had wonderful hospitality, and we had some most interesting legal discussions ».

They will say, « Did you agree to anything? »

« Certainly », we will say, « We agreed to everything, we had two drafts, first of all the Portofino Draft and then the Antwerp Draft, and then it all came before the full conference. We debated it clause by clause, we voted on each article, we agreed to everything ».

« Well, then, can you show us what you agreed to? »

« Oh, no, I am afraid not, because, you see, there was a great desire to continue discussion. »

(Laughter and applause.)

The Chairman : There is only one thing to do. Put the proposed resolution, as introduced by the Greek Delegation, to the vote.

Voted in favour : Argentina, Chile, France, Greece, Mexico, Poland, Portugal, Spain, U.S.A., Yugoslavia.

Voted against : Belgium, Canada, Denmark, Finland, Germany, Great Britain, Ireland, Israel, Italy, Japan, Netherlands, Norway, Sweden, Switzerland.

The Chairman : The proposal put forward by the Greek Delegation is rejected.

We will proceed to the vote on the whole Convention.

Voted in favour : Argentina, Belgium, Canada, Chile, Denmark, Finland, Germany, Great Britain, Ireland, Israel, Italy, Japan, Netherlands, Norway, Spain, Sweden, U.S.A.

Abstained from voting : France, Greece, Mexico, Poland, Portugal, Switzerland, Yugoslavia.

The Chairman : Here are the results : the Convention is adopted by seventeen votes, none against and seven abstentions.

(Applause)

Gentlemen, I think we may consider that we have ended our work with agreement.

Gentlemen, I think we have ended our common work.

I want to thank you on my own behalf for the active collaboration that everyone has given to our work, either in supporting or in opposing the amendments which were presented.

As the President of the British Maritime Law Association just pointed out in his last speech, I think this is really the essence of our common work.

Nevertheless, I would like to say to our Greek friends that we are convinced that this work in common has been the New York experience.

I want to thank you all but especially I want to extend our thanks here, in the presence of all the Delegations, to the United States Delegation. (applause). Not only for their participation in our work performed in this room but also for the support they gave us through the warmth of their hospitality.

In fact our opinions could not have been expressed in such a lively manner if we had not at the same time been welcomed so amiably and so warmly.

I insist upon saying to our American friends that what impressed all delegations, all of them, was this personal contact, the warmth of their welcome, the really human and truly friendly spirit which met us as soon as we set foot on American soil.

I want to express our warmest thanks to all our American friends without any exception but particularly to the President of the Maritime Law Association of the United States, Mr. Healy, who is certainly a President as all our Associations should like to have one.

I wish also to address Mr. Boal, the spokesman of the American Association, whom we called formerly the pilgrim of the Antlantic, because of his numerous visits to Europe. He proved himself equal to our friendship. (Prolonged applause.)

I extend my thanks to both of them but as I expressed our feelings to all our American friends, I want to mention one of them who, with them, has helped us in solving these thousands of difficulties we have to face when we are far from home; I am talking of Mr. Goodfellow, who I wish to thank for his wonderful job. I do not know whether he is here amongst us for the moment or whether he is hidden some where, but I wish to thank him for doing for all of us during our long stay here, all kind of favours we have highly appreciated.

(Applause)

I also extend my thanks to the members of the Secretariate both of the Comité Maritime International and of the American Association, who spared no trouble in order to facilitate our work. With your leave I will say to them how thankful and grateful you are to them.

(Applause)

Mr. Boal, United States of America : Mr. President, Ladies and Gentlemen :

I think we should give a rising vote of thanks and appreciation to Albert Lilar for the wonderful job he has done in handling this conference.

(Applause)

I think he is the best presiding officer I have ever had any contact with in my limited experience.

I also want to say that I appreciate being here and working with this group, and doing what I hope is a very constructive piece of work.

The hour is late and I am not going to speak at length. I remember a story which is well authenticated, of a very long-winded lawyer arguing a case before the Massachusetts Supreme Court, when Oliver Wendell Holmes, Jr., was Chief Justice.

The lawyer completed and had exhausted his time, and he asked for additional time, and Holmes in a whisper used two words. They were: « Jesus Christ ! »

(Laughter)

So, with that I wish to extend to you my personal thanks for your being here and for having an opportunity to work with you and cross swords with you.

(Applause)

Mr. Healy : Lord Devlin said he was afraid that the people back home might ask for an explanation about spending their money for

them, but I can say that we in the American Association are all very happy that you spent the money and came over here to see us.

We have enjoyed your visit a great deal. It is not quite over yet.

We have a party planned for this evening, wish I hope you will enjoy.

I know most of you are going to Washington, and I hope that will be enjoyable too.

I hope not too many years will go by before you will be back again in this country for another conference.

Once again, Ladies and Gentlemen, many thanks, and I hope to see you at the Waldorf Astoria this evening.

(Applause)

The Chairman : The XXVIIth Conference is closed.

IV

CONFERENCE OF NEW YORK

DRAFT CONVENTION

PROJET DE CONVENTION INTERNATIONALE
PORTANT MODIFICATION DE LA CONVENTION INTERNATIONALE
POUR L'UNIFICATION DE CERTAINS REGLES RELATIVES AUX

PRIVILEGES ET HYPOTHEQUES
MARITIMES

Signée à Bruxelles, le 10 avril 1926

Article 1.

Les Hypothèques et « mortgages » sur les navires seront reconnus dans les Etats Contractants à condition :

a) que ces hypothèques et « mortgages » aient été constitués et inscrits dans un registre conformément aux lois de l'Etat où le navire est immatriculé;

b) que le registre et tous les actes qui doivent être remis au Conservateur conformément aux lois de l'Etat où le navire est immatriculé, soient accessibles au public et que la délivrance d'extraits du registre et de copies de ces actes soient exigibles du Conservateur;

c) et que le registre et tous les actes visés au paragraphe b) ci-dessus indiquent ou bien le nom et l'adresse du titulaire de l'hypothèque ou du « mortgage » ou bien que cette sûreté a été établie au porteur, la somme garantie ainsi que la date et autres mentions qui, suivant les lois de l'Etat de l'inscription déterminent le rang par rapport aux autres hypothèques et « mortgages » inscrits.

Article 2.

Le rang des hypothèques et « mortgages » inscrits entre eux et sous réserve des dispositions de la présente convention, leurs effets à l'égard des tiers, sont déterminés par les lois de l'Etat où ils sont inscrits; toutefois, sous réserve de l'application des dispositions de l'article 10, les mesures d'exécution sont régies par les lois de l'Etat où elles sont requises.

INTERNATIONAL DRAFT CONVENTION
TO AMEND THE INTERNATIONAL CONVENTION FOR THE
UNIFICATION OF CERTAIN RULES RELATING TO

MARITIME LIENS AND
MORTGAGES

Signed at Brussels, April 10th, 1926

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 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 « 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.

The ranking of registered « hypothèques » 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. Sauf dans le cas prévu à l'article 11, aucun Etat Contractant ne permettra la radiation de l'immatriculation d'un navire, sans le consentement écrit de tous les titulaires des hypothèques ou « mortgages » inscrits.

2. Un navire qui est ou a été immatriculé dans un Etat Contractant ne sera susceptible d'être immatriculé dans un autre Etat Contractant, que :

a) si un certificat a été émis par le premier Etat, attestant que le navire a été radié, ou;

b) si un certificat a été émis par le premier Etat, attestant que le navire sera radié le jour où cette nouvelle immatriculation aura eu lieu, et pour autant que celle-ci ait été effectuée dans les 30 jours.

Lorsque le certificat visé par le paragraphe b) ci-dessus aura été émis, aucune inscription ou droits sur le navire ne sera plus autorisée au cours de cette période de 30 jours.

Les certificats visés aux paragraphes a) et b) ci-dessus indiqueront tous les hypothèques et « mortgages » inscrits sur le navire avec leur rang respectif.

3. Le navire ne pourra être immatriculé dans un autre Etat Contractant que si celui-ci accepte les hypothèques et « mortgages » inscrits mentionnés aux certificats prévus par le paragraphe 2) du présent article et leur conserve leur rang respectif.

Article 4.

1. Les créances suivantes seront garanties par un privilège maritime sur le navire :

i) Les gages et autres sommes dues au capitaine, aux officiers et aux autres membres de l'équipage, en vertu de leur contrat d'engagement à bord du navire.

ii) Les frais de port, de canal et autres voies navigables ainsi que les frais de pilotage.

iii) Les créances contre le propriétaire du chef de mort ou de lésion corporelle causée par un vice du navire ou par la faute commise par une personne employée à bord du navire et dans l'exercice de ses fonctions.

iv) Les créances délictuelles ou quasi-délictuelles contre le propriétaire, non susceptibles d'être fondées sur un contrat, du chef de la perte ou de l'avarie d'un bien causée par un vice du navire ou par la faute commise par une personne employée à bord du navire et dans l'exercice de ses fonctions.

v) Les indemnités d'assistance et de sauvetage, les frais de relèvement d'épave et la contribution aux avaries communes.

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.

Par « propriétaire », au sens du présent article, on entend également le locataire en coque nue et tout autre affrèteur, l'armateur gérant ou l'exploitant du navire.

2. Aucun privilège maritime ne grèvera le navire pour sûreté des créances visées au 1° iii) et iv) du présent article, résultant ou provenant de propriétés radioactives ou d'une combinaison de propriétés radioactives avec des propriétés toxiques, explosives ou autres propriétés dangereuses de combustible nucléaire ou de produits ou déchets radioactifs.

Article 5.

1. Les privilèges maritimes énumérés à l'article 4 auront priorité sur les hypothèques et « mortgages » inscrits et aucun autre droit ne sera préféré ni à ces privilèges ni aux hypothèques et « mortgages » répondant aux exigences de l'article 1, mises à part les dispositions de l'article 6.

2. Les privilèges maritimes énumérés à l'article 4 prendront rang dans l'ordre qu'ils y occupent; cependant les privilèges maritimes garantissant les indemnités d'assistance ou de sauvetage, les frais de relèvement d'épave et les contributions aux avaries communes auront priorité sur tous les autres privilèges maritimes qui grevaient le navire au moment où les opérations d'assistance ou de sauvetage ou de relèvement d'épave ont été effectuées.

3. Les privilèges maritimes énumérés dans chacun des paragraphes (i), (ii) et (iv) de l'article 4 viennent en concours entre eux au marc le franc.

4. Les privilèges maritimes énumérés dans le paragraphe (v) de l'article 4 prendront rang entre eux dans l'ordre inverse des dates où sont nées les créances garanties par ces privilèges. Les créances du chef de contribution aux avaries communes seront considérées comme étant nées à la date de l'acte générateur d'avaries communes.

Article 6.

1. Tout Etat contractant peut reconnaître des privilèges ou des droits de rétention pour garantir des créances autres que celles énumérées à l'article 4. Ces privilèges prendront rang après toutes les hypothèques et « mortgages » inscrits qui répondent aux exigences de l'article 1 et ces droits de rétention ne pourront empêcher ni de poursuivre l'exécution des hypothèques et « mortgages » inscrits ou des privilèges maritimes énumérés à l'article 4 ni de livrer le navire à celui qui l'aura acquis à la suite de cette procédure d'exécution.

2. Au cas où un privilège ou un droit de rétention serait reconnu sur un navire qui est en la possession d'un chantier de réparation,

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 », 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 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 (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 « hypothèques » which comply with the provisions of Article 1 and such rights of retention shall not prejudice the enforcement of the registered mortgages or « hypothèques » 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

et ce pour garantir la créance du chef de réparations effectuées pendant que le navire était entre les mains du chantier, ce privilège viendra après tous les privilèges maritimes énumérés à l'article 4, mais pourra primer les hypothèques et « mortgages » inscrits et ce droit de rétention sera opposable au navire nonobstant tout hypothèque et « mortgage » inscrits. Ce privilège et ce droit de rétention seront éteints lorsque le navire cessera d'être en la possession du chantier.

Article 7.

1. Les privilèges maritimes énumérés à l'article 4 prennent effet, que les créances garanties par ces privilèges soient à la charge du propriétaire, ou à celle du locataire en coque nue, de tout autre affrètement, de l'armateur gérant ou de l'exploitant du navire.

2. Sous réserve des dispositions de l'article 11, les privilèges maritimes énumérés à l'article 4 suivront le navire nonobstant tout changement de propriété ou d'immatriculation.

Article 8.

1. Les privilèges maritimes énumérés à l'article 4 seront éteints à l'expiration d'un délai d'un an à compter de la date de la naissance de la créance garantie, sauf si avant l'expiration de ce délai, le navire a été saisi, cette saisie conduisant à une vente forcée.

2. Le délai d'un an prévu au paragraphe précédent ne sera susceptible d'aucune suspension ni interruption; cependant ce délai ne courra pas tant qu'un empêchement légal met le créancier privilégié dans l'impossibilité de saisir le navire.

Article 9.

La cession d'une créance garantie par l'un des privilèges maritimes énumérés à l'article 4 ou la subrogation dans les droits du titulaire d'une telle créance emporte par là même la transmission du privilège.

Article 10.

Préalablement à la vente forcée d'un navire dans un Etat Contractant, l'autorité compétente de cet Etat donnera connaissance par écrit, au moins 30 jours avant, de la date et du lieu de la vente à tous les titulaires connus d'hypothèques et de « mortgages » inscrits et des privilèges maritimes énumérés à l'article 4 ainsi qu'au Conservateur du registre d'immatriculation du navire.

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 « hypothèques » and such right of retention may be exercisable against the vessel notwithstanding any registered mortgage or « hypothèque » 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 « hypothèques » and maritime liens set out in Article 4 and to the Registrar of the register in which the vessel is registered.

Article 11.

1. Au cas de vente forcée du navire dans un Etat Contractant, tous les hypothèques, « mortgages », privilèges et autres charges de quelque nature que ce soit, cesseront de grever le navire, à condition toutefois :

a) qu'au moment de la vente, le navire se trouve dans la juridiction de cet Etat Contractant;

b) et que la vente ait été poursuivie en conformité avec les lois de cet Etat et les dispositions de la présente Convention.

2. Les dépenses taxés par le tribunal et provoqué par la saisie, la vente qui l'a suivie et la distribution du prix seront payés en premier lieu, par prélèvement sur le produit de la vente. Le solde en sera distribué aux titulaires des privilèges maritimes et du privilège prévu par l'article 6 paragraphe 2, et des hypothèques et « mortgages » inscrits conformément aux dispositions de la présente convention a due concurrence des sommes qui leur sont dues.

3. Lorsqu'un navire, immatriculé dans un Etat Contractant, a fait l'objet d'une vente forcée dans un Etat Contractant, le tribunal, ou toute autre autorité compétente, délivrera, à la demande de l'acheteur un certificat attestant que le navire est vendu libre de tous hypothèques et « mortgages », privilèges et autres charges, toujours à la condition que les exigences mentionnées aux alinéas a) et b) du paragraphe 1 ci-dessus aient été respectées et que le produit de la vente ait été consigné entre les mains de l'autorité compétente d'après les lois de l'Etat où a lieu la vente et ce pour être distribué à toute personne pouvant prétendre avoir un droit sur lui. Sur production de ce certificat, le Conservateur sera tenu de délivrer un certificat de radiation de l'immatriculation du navire en vue de sa réimmatriculation.

Article 12.

Sauf stipulations contraires de la présente Convention les Etats Contractants appliqueront ces dispositions à tous navires, qu'ils soient ou non immatriculés dans un Etat Contractant.

Article 13.

Chaque Etat qui ratifie la présente Convention ou y adhère, dénoncera, s'il y a lieu, immédiatement la Convention Internationale pour l'Unification de certaines règles relatives aux privilèges et hypothèques maritimes et protocole de signature, signés à Bruxelles le 10 avril 1926.

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, the liens mentioned in paragraph 2 of Article 6, registered mortgages and « hypothèques » 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, « hypothèques », 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 or 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 purpose of reregistration.

Article 12.

Unless otherwise provided in this Convention the Contracting State 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.

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