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Joint UNCTAD/IMO Intergovernmental  
Group of Experts on Maritime Liens  
and Mortgages and Related Subjects  
Third session  
Geneva, 30 November 1987

REPORT OF THE JOINT UNCTAD/IMO INTERGOVERNMENTAL GROUP OF EXPERTS ON  
MARITIME LIENS AND MORTGAGES AND RELATED SUBJECTS ON ITS  
SECOND SESSION

The attached report (JIGE(II)/3)\* has been prepared on the second  
session of the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime  
Liens and Mortgages and Related Subjects.

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Joint IMO/UNCTAD Intergovernmental Group of Experts on  
Maritime Liens and Mortgages and Related Subjects

Second Session

London, 11-15 May 1987

REPORT OF THE JOINT INTERGOVERNMENTAL GROUP OF EXPERTS ON  
MARITIME LIENS AND MORTGAGES AND RELATED SUBJECTS  
ON ITS SECOND SESSION

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## INTRODUCTION

1 The Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects established by the International Maritime Organization (IMO) and the United Nations Conference on Trade and Development (UNCTAD) met for its second session at the Headquarters of IMO in London from 11 to 15 May 1987.

2 During the session, two plenary meetings were held. The present report reflects the proceedings at those meetings. The report of the Chairman summing up the discussions in the Sessional Group is annexed to this report.

### Opening statements

3 The Secretary-General of IMO, in his opening statement at the first meeting of the Joint Intergovernmental Group of Experts, said that the Group's mandate was of considerable interest to the maritime community for whom maritime liens and mortgages had important implications. Many States, developed as well as developing, attached importance to legislation in this respect. Since such legislation also affected other States, it was generally agreed that a measure of uniformity in national laws would contribute to the facilitation of maritime transport.

4 The Joint Group's task was difficult and complex because account had to be taken of the legal systems and national policies of all countries. The effectiveness and acceptability of any international regime on maritime liens and mortgages was of legitimate concern to IMO and UNCTAD, and that was why the governing bodies of IMO and UNCTAD had agreed to establish the Joint Intergovernmental Group of Experts.

5 At its first session, the Joint Group had agreed on organizational arrangements for its work and had elucidated some of the fundamental issues which would have to be analysed in the review of the existing regime. He hoped that the Joint Group would be able to build on these foundations and make further progress during this session.

6 The Chief of the Maritime Legislation Section of the Shipping Division of UNCTAD, in his opening statement at the first meeting of the Joint Intergovernmental Group of Experts, said during its first session in Geneva the Group had achieved constructive results regarding both procedural and substantive issues. Common understanding had been reached on the question of Rules of Procedures to enable the Group to conduct its sessions in an efficient manner and to make rapid progress on the substantive issues. He stated that the need to reform the existing international regime on maritime liens and mortgages and related enforcement procedures had emerged from the brief discussions held on the subject during the first session. It had been evident from the initial exchange of views that national provisions on the subject often differed from one country to another. It had been felt that establishing an international legal framework acceptable to the shipping community was desirable. He added that the extent of any such reform would depend upon the conclusions of this session. He hoped that this current and the forthcoming session in Geneva would prove to be successful in achieving positive results and that the work could be concluded at a not too distant future, bearing in mind the resources allocated for this exercise.

## Chapter I

### PROCEEDINGS AT THE CLOSING PLENARY MEETING

#### A Approval of the report of the Sessional Group

7 At its closing plenary meeting, on 15 May 1987, the Joint Intergovernmental Group of Experts approved the report on the work of the Sessional Group, as contained in document JIGE (II)/WP.6 with some amendments. (For the final text, see the annex to this report).

#### B Final statements

8 The Chief of the Maritime Legislation Section of the Shipping Division of UNCTAD, in his statement at the closing meeting, on 15 May 1987, said the second meeting of the Joint Intergovernmental Group of Experts had made remarkable progress in the consideration of the issues before it and had established a firm basis for its future debates. He stated that a spirit of co-operation had prevailed throughout the session and hoped that the same would be maintained in all future meetings of the Joint Group.

9 The Secretary-General of IMO, in his closing statement, congratulated the Chairman for his wise and effective leadership and the delegates and observers for the constructive and co-operative approach which they had adopted in the discussions. He stated that the questions considered had been important and complex. However, he noted that the Joint Group had been able to complete, at this session, substantive consideration of draft provisions for a possible new international instrument. This reflected great credit on all delegates and augured well for the eventual success of the Joint Group. He hoped that the spirit of goodwill and the readiness to explore issues objectively, which had been demonstrated by all delegates, would remain a feature of subsequent sessions, and that the Joint Group will be able to produce results which would respond to the legitimate concerns of all States and all parties interested in maritime liens and mortgages and related subjects.

10 The representative of Mexico, speaking on behalf of the Members of the Group of 77 of UNCTAD, expressed his satisfaction at the positive achievements reached during the course of this session. He emphasized, in particular, the good co-operation between the two organizations which had been in evidence throughout the discussions. He hoped very much that the same situation would prevail at the forthcoming Geneva session. He stressed that the absence of a number of countries should not in any way be interpreted as an indication of lack of interest on their part but was entirely due to financial constraints. He noted the very high level of expertise in the discussions and invited the Chairman, in this connection, to arrange for the preparation of an explanatory document focusing on legal and technical aspects of maritime liens and mortgages which would supplement the draft articles to be prepared by the two Secretariats.

## Chapter II

### ORGANIZATIONAL MATTERS

#### A Opening of the session

11 The second session of the Joint Intergovernmental Group of Experts convened on Monday, 11 May 1987. At the first plenary meeting, opening statements were made by the Secretary-General of IMO and the Chief of the Maritime Legislation Section of the Shipping Division of UNCTAD (see paragraphs 3-6).

B Adoption of the agenda and organization of work (agenda item 1)

12 At its first plenary meeting, on 11 May 1987, the Joint Intergovernmental Group of Experts adopted the provisional agenda drawn up by the Secretariats of IMO and UNCTAD in document JIGE (II)/1 (issued by IMO under cover of document LEG/MLM/5 and issued by UNCTAD under cover of document TD/B/C.4/AC.8/5).

Organization of work

13 At the same meeting, the Joint Intergovernmental Group of Experts endorsed the suggested organization of work set out in section III of the agenda and the proposed schedule of meetings (document JIGE (II)/1).

C Membership and attendance

14 The following States Members of IMO and/or UNCTAD participated in the session: Argentina, Australia, Bangladesh, Bolivia, Brazil, Canada, China, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Denmark, Egypt, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, Indonesia, Italy, Japan, Kuwait, Liberia, Mexico, the Netherlands, Nigeria, Norway, Panama, Peru, Poland, the Republic of Korea, Saudi Arabia, Spain, Sweden, Switzerland, Thailand, Trinidad and Tobago, Turkey, the USSR, the United Kingdom, the United States and Zaire.

15 The Associate Member of IMO, Hong Kong, participated in the session.

16 The following intergovernmental organization was represented at the session: African Development Bank

17 The following non-governmental organizations were represented at the session:

- International Chamber of Shipping
- International Union of Marine Insurance
- International Chamber of Commerce
- International Confederation of Free Trade Unions
- International Maritime Committee
- International Association of Ports and Harbors
- International Association of Classification Societies
- Oil Companies International Marine Forum
- Institute of International Container Lessors
- Association of West European Shipbuilders
- Council of European and Japanese National Shipowners' Associations
- International Ship Suppliers Association

D Provisional agenda and date of the third session of the Joint Intergovernmental Group (agenda item 3)

18 At its closing meeting, on 15 May 1987, the Joint Intergovernmental Group of Experts approved the provisional agenda for its third session proposed by the Secretariats of IMO and UNCTAD. The provisional agenda is therefore as follows:

- 1 Adoption of the agenda and organization of work.
- 2 Consideration of maritime liens and mortgages and related subjects, in accordance with the terms of reference of the Joint Intergovernmental Group of Experts.
- 3 Adoption of the report.

19 At the same meeting, the Joint Intergovernmental Group of Experts decided that its third session should be held in Geneva from 30 November to 11 December 1987.

E Other business (agenda item 4)

20 As there were no matters to discuss under this agenda item, the Chairman declared the item closed.

F Adoption of the report of the Joint Intergovernmental Group on its second session (agenda item 5)

21 At its second plenary (closing) meeting on 15 May 1987, the Joint Intergovernmental Group of Experts adopted the draft report on its second session (JIGE (II)/WP.5), with some amendments. It was understood that the proceedings at the closing meeting would be reflected in the final version of the report (see chapter I).

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ANNEXREPORT ON THE WORK OF THE SESSIONAL GROUP

1 The Sessional Group had before it the report prepared by the Secretariats of IMO and UNCTAD, in response to the request of the Joint Intergovernmental Group of Experts at its first session. The report was circulated as document JIGE (II)/2, also issued by IMO under cover of document LEG/MLM/6 and by UNCTAD under cover of document TD/B/C.4/AC.8/6.

2 On the basis of this document, the Sessional Group proceeded to an examination of a number of central issues to be regulated by a new instrument. In doing so, the Sessional Group took account of the texts of the 1926 and 1967 Conventions on maritime liens and mortgages as well as the CMI draft Convention.

3 The following is a summary of the discussions and conclusions reached in respect of the various subjects examined.

Recognition and enforcement of mortgages and "hypothèques"

4 The Sessional Group noted with appreciation explanations provided by the observer of the CMI in respect of the contents of, and the differences between, article 1 of the 1926 Convention, the 1967 Convention and the CMI draft Convention.

5 The Group agreed that the text of article 1 of the 1967 Convention would be a suitable basis for further consideration.

6 The Group also agreed to the changes made by the CMI in respect of the opening sentence of the article, i.e. the introduction of the concept of "registerable charges of the same nature" as mortgages and hypothèques.

7 The second change made by the CMI to the 1967 text related to the suppression in subparagraph (c) of the requirement that the amount secured by the mortgage/hypothèque be indicated in the register of mortgages/hypothèques. It was explained that the CMI had proposed this change because this requirement had made it impossible for many countries to accept the 1967 Convention.

8 Several delegations could not agree to this deletion and expressed a preference for retaining the text as it appears in article 1(c) of the 1967 Convention. It was recognized that the CMI had redrafted subparagraph (c) in such a way as to still allow States to provide for the registration of the amount secured in their national registers by the addition of the words "at least".

9 However, some of these delegations pointed out that problems could arise in respect of ships flying the flag of a foreign State. One of the problems would be that a judge, faced with the request that an arrest be lifted, would not know at what level to set the bond that had to be posted by the shipowner in order to obtain the release of the vessel. A further problem could be created if a second mortgage/hypothèque were to be sought in a country other than the flag State, since the level of the first mortgage/hypothèque would not be known. It was also felt that, quite generally, such a lack of publicity in respect of the amount secured would be unsatisfactory. Moreover, absence of information as to the amount secured could make it more difficult for claimants to decide whether to take action.

10 Several other delegations were in favour of deleting the requirement in respect of the registration of the amount secured by the mortgage/hypothèque since this would make the new instrument much more widely acceptable. Some of these delegations suggested that, as far as the issue of the enforcement of a foreign mortgage/hypothèque was concerned, there was no question that the parties and the court would in fact be aware of the amount outstanding on a mortgage/hypothèque, particularly since any claimant would have to substantiate his claim. In respect of the problem of second mortgages/hypothèques, it was similarly suggested that financial institutions would in fact grant such mortgages/hypothèques only on the basis of full knowledge as to existing mortgages/hypothèques. Some delegations suggested also, in this context, that the maximum amount of the

mortgage/hypothèque was, in any case, much less relevant than the amount outstanding on a mortgage/hypothèque at any given time. One delegation suggested, moreover, that under the terms of most types of mortgages/hypothèques currently used in respect of ship-financing, second mortgages/hypothèques were in fact excluded.

Ranking and effects of mortgages, "hypothèques" and charges

11 The Sessional Group agreed that the text of article 2 of the 1967 Convention as amended by the CMI was acceptable, as a basis for further consideration.

Change of ownership or of registration

12 In discussing this subject, the provisions contained in article 3 of the 1967 Convention as well as the CMI draft Convention were considered. One delegation stated that article 3 of the 1967 Convention did not deal with the sale of the vessel by the mortgagee in possession, and no provisions were made either in the 1967 Convention or in the CMI draft for the ship to maintain its eligibility to stay in the registry.

13 One delegation expressed regret that the provisions of article 3 did not distinguish between change of registration or ownership within the same State and the cases of sale of the vessel to foreign purchasers. He noted that the provisions of paragraph 1 of article 3 were intended to protect the right of the mortgagees by not permitting the deregistration of the vessel without their consent. He felt that this procedure would not be necessary in cases of sale within the same State.

14 The observer for the CMI stated that the purpose of article 3 was to provide protection to mortgagees in case of change of registration upon voluntary sale of vessel. He nevertheless recognized that the title and the wording of the first sentence of the article might be misleading as it spoke of change of ownership or registration, while the problem only arises where there is a change of ownership and the purchaser is not qualified to keep the vessel under the same flag. Regarding the sale of the vessel by a mortgagee in possession, he pointed out that the sale, in such a case, would be a voluntary sale and thus covered by paragraph 1 of article 3.

15 Some delegations noted that paragraph 1 of article 3 of the CMI draft Convention would not cover the cases of deregistration of the vessel due to reasons other than change of ownership.

16 One delegation pointed out that a discrepancy existed between the English and the French text of this article: while the English text used the term "written consent" in the French text the word "consentment" was used.

Claims to be secured by a maritime lien and ranking of such liens inter se

17 The Sessional Group gave consideration to the question of the types of claims to be given the status of maritime liens. There was general consensus that it was desirable to provide only for a limited number of maritime liens in any new instrument. It was suggested, in this context, that maritime lien status should be granted only in those cases where this seemed indispensable either on social or on economic grounds.

18 Some delegations also suggested that unification should be envisaged only where it seemed possible. In their view, it was important to describe the claims granted maritime lien status in broad terms without going into too much detail, since the principal aim of any new instrument should be the determination of the priority of the various maritime liens. This would ensure that any new instrument would be acceptable to many States with widely differing legal systems and national legislations.

19 The Sessional Group considered the maritime liens referred to in the 1926 and 1967 Conventions and in the CMI Lisbon draft Convention, and came to a number of tentative conclusions in respect of the claims which might be given the status of maritime liens with priority over mortgages/hypothèques. On the basis of these texts and taking the above criteria into account, the Sessional Group was able to agree on a number of claims deserving to be privileged vis-à-vis mortgages/hypothèques.

20 This was the case, in particular, in respect of wages and other sums due to the master and the crew. Differing views were expressed as to the desirability of including a reference to social insurance contributions in this context. Several delegations felt that such a reference was not

necessary. Some delegations emphasized that if a reference to these contributions was included it would have to be understood as covering also payments made by shipowners directly to social security organizations.

21 There was also wide agreement that, since salvage was an essential prerequisite to safeguarding the security out of which satisfaction was being sought, it would be necessary to grant salvage claims maritime lien status.

22 A majority of delegations were in favour of securing, with a maritime lien, claims in respect of loss or life or personal injury.

23 A majority of delegations favoured the granting of a maritime lien in respect of claims for loss or damage based on tort, except in respect of cargo, containers and passengers' effects. Some delegations, however, doubted whether it was justified to make a distinction in this respect and suggested a uniform treatment for all loss or damage based on tort.

24 Opinions were divided as to whether port, canal, waterways and pilotage dues should be privileged. Several delegations felt that it was justified to grant to the claimants of such dues, which were normally public authorities, privileged claims. Other delegations were of the opinion that there was no reason to give such claims any special treatment. Several of these delegations suggested that, if maritime liens were to be retained for such claims, they should be given a relatively low priority.

25 It was generally agreed that costs incurred by the State in connection with the arrest of a vessel, its preservation and its forced sale should be satisfied on a priority basis. It was recognized that the 1926 Convention had granted a maritime lien for these costs. Many delegations felt, however, that the approach taken by the 1967 Convention, according to which such claims are paid out of the proceeds of the sale before any other payments (article 11.2), was preferable than giving them the status of a maritime lien.

26 Some delegations were in favour of granting maritime lien status to claims of ship suppliers. One of these delegations emphasized that such protection or a right to arrest was particularly important for small firms

of ship suppliers which often had difficulty in ascertaining the creditworthiness of shipowners, particularly because of the fast turnround of ships in ports. It was also suggested that similar terms should be given to container lessors. Some delegations were, moreover, in favour of including a maritime lien in respect of indemnification for oil pollution damage.

27 With regard to the priority to be given to the various maritime liens, inter se, many delegations felt that salvage should be given a higher priority than it enjoyed at present under either the 1926 or 1967 Conventions, whereas maritime liens in respect of port and other similar dues should be given a lower priority than currently provided in the two Conventions.

28 At the request of the Sessional Group and in the light of this initial exchange of views, the Chairman prepared a draft article on maritime liens, the text of which read as follows:

#### Article A

1 Each of the following claims against the owner, demise charterer, manager or operator of the vessel shall be secured by a maritime lien 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 [including social insurance contributions, payable on their behalf];
- (ii) claims of salvage;
- (iii) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;
- (iv) claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel;
- (v) claims for wreck removal [and contribution in general average];
- (vi) [port, canal, and other waterway dues and pilotage dues].

2 No maritime lien shall attach to a vessel to secure the claims as set out in subparagraphs (iii) and (iv) of paragraph 1 of this article which arise out of or result from oil pollution or the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive productive or waste.

29 The Chairman explained that the draft article had been prepared on the assumption that a provision similar to article 11.2 of the 1967 Convention would be inserted in the new text. He further stated that proposals to provide a maritime lien in respect of claims by ship suppliers and in respect of containers had not met with enough support to be introduced in the proposed article.

30 The Sessional Group widely welcomed the draft article. Many delegations considered the draft to be a suitable basis for further discussion. Some delegations, nevertheless, expressed, at least for the time being, a preference for the equivalent provision in the 1967 Convention (article 4).

31 A number of points were made in respect of various aspects of the draft. One delegation expressed doubts as to the use of the term "demise charterer" in paragraph 1. Another delegation felt that the reference to the term "the vessel's complement" in subparagraph (i) which stemmed from the 1967 Convention was no longer suitable. Another delegation suggested the insertion in subparagraph (i) of the phrase "and to their families" after the word "complement", since, in case of fatal accidents incurred by seamen, many national legislations allowed claims which were wider than those generally granted in respect of loss of life.

32 Many delegations welcomed that salvage had been given a much higher priority than in the 1967 Convention or in the CMI draft. Some of these delegations felt, however, that the relationship between this provision and article 5.2 of the 1967 and the CMI draft would have to be further examined. While some delegations suggested that salvage claims should be given highest priority and rank before claims for wages, other delegations expressed doubts as to the desirability of giving salvage claims a higher ranking than they enjoyed at present under the 1967 Convention and the CMI draft.

33 In respect of subparagraphs (iii) and (iv) which had been based on the CMI draft, some delegations expressed their doubts. In particular they noted that these provisions would have the effect of broadening the scope of claims secured by maritime liens and increasing the number of privileged claims.

34 Some delegations suggested that the maritime lien in respect of claims relating to wreck removal be abolished. Some other delegations suggested also that the maritime lien in respect of claims based on general average should be dropped.

35 The low priority suggested in respect of port, canal, waterway and pilotage dues was welcomed by a number of delegations. It was suggested in this context that there was little need for such a lien since such dues were normally paid in advance or at the time the service or facility was being rendered to the ship. It was also noted that, in most cases, the sums involved were very minor if compared to the value of the vessel itself. Other delegations, however, objected to the proposed reduction in ranking. In their view, the fact that, in respect of dues, a governmental authority was in most cases the claimant did not, by itself, justify that the claims be given a low priority.

36 Differing views were expressed as to the desirability of excluding, on a general basis, the creation of a maritime lien for loss of life, personal injury, or other loss or damage due to oil pollution. It was recognized that such exclusion could be justified where there existed a system of compulsory insurance for such damage. However, it was pointed out that the scope of application of the 1969 Civil Liability Convention was not wide enough and that even the 1984 Protocol thereto might not cover all cases. Some delegations suggested, therefore, that a provision be inserted modelled on the basis of article 3(b) of the 1976 LLMC Convention; the creation of a maritime lien would then be excluded only in respect of those claims which were for oil pollution damage within the meaning of the 1969 CLC Convention or any Protocol thereto which was in force.

37 The Sessional Group agreed that the draft submitted by the Chairman was acceptable as a basis for further discussion.



38 The observer of the International Association of Classification Societies (IACS) invited the Group to consider establishing a maritime lien for claims arising from the services of classification societies. He stated that this lien need not have priority over mortgages/hypothèques. He added that his organization supported the draft revision of the 1952 Arrest Convention prepared by the CMI which would include a provision on the arrest of a ship to enforce claims arising from services as well as goods and materials provided by a ship.

39 The observer of the Institute of International Container Lessors (IICL) referred to the need for a lien as security for suppliers, including container lessors. He emphasized that suppliers provided equipment and services which enabled the vessel to continue to perform the functions for which it had been built and for which mortgagees had lent monies and that the credit of ship lines was hard to assess and often of low standing. For these reasons, remedy similar to that of article 2(5) of the 1926 Convention was required. His organization felt that the interests of all countries are affected, in particular, those of developing countries.

40 The observer of the International Ship Suppliers Association (ISSA) recalled that the maritime lien for ship suppliers has been a traditional institution which had been granted due to the peculiarity of their work. It should not be forgotten that the principal part of supply was the provision of food and other basic needs of the crew and had therefore to be regarded as part of crew's wages. Moreover debts of a ship supplier constituted a tiny proportion of the cost of a ship and did not affect the resources available for the mortgage/hypothèque. He recommended that the concept of a maritime lien for ship suppliers be reintroduced in the new instrument.

41 The observer of the International Association of Ports and Harbors (IAPH) stressed his organization's wish to retain, and award the highest possible priority to, maritime liens in respect of port, canal and other waterway dues and pilotage dues. The sound reasons for their priority in the 1926 and 1967 Conventions remained valid. Further, their inclusion within the national liens of many maritime States clearly reflected States' belief that sums due to ports represented expenses incurred by them directly related to the operation and protection of the vessel and were of benefit to the shipowners and security holders. To do otherwise would be to discourage actions taken to secure and protect the vessel and other shipping.

42 The observer of the International Confederation of Free Trade Unions (ICFTU) shared the views expressed by the observer of IAPH and emphasized the need for a maritime lien in respect of social insurance contributions.

Other liens and rights of retention

43 In discussing the principles contained in article 6 of the 1967 Convention, many delegations expressed support for retaining a provision allowing States to grant liens to secure claims under national legislation. Such liens, it was stated, should rank after the liens listed in the Convention and after mortgages and hypothèques. This category of liens, one delegation observed, might include maritime liens to secure the claims of suppliers and container lessors.

44 Many delegations expressed concern regarding reference to "the rights of retention" in article 6 of the 1967 Convention. It was noted by some delegations that a right of retention was a right based on possession of a ship and not in the nature of a maritime lien. Some delegations were of the opinion that a convention on maritime liens and mortgages/hypothèques should not include a provision on rights of retention. One delegation's proposal to delete the provisions relating to the right of retention, in particular paragraph 2 of article 6 of the 1967 Convention, was supported by several delegations.

45 A number of delegations, however, were of the opinion that a provision indicating the relationship between maritime liens and mortgages/hypothèques and rights of retention was important and should be retained.

46 Some delegations supporting this view said article 6 as it was drafted in the 1967 Convention should be considered as a "package". The observer from CMI recalled that paragraph 2 of article 6 of the 1967 Convention had been adopted as a compromise to limit the rights of retention which could be established by national law to take priority over mortgages/hypothèques. Paragraph 2 provided that a right of retention could be granted by national law to shipbuilders or shiprepairers who were in possession of a ship; but, although such right could be preferred to a mortgage/hypothèque, it could not take priority over the maritime liens listed in the convention.

47 Some delegations expressed the opinion that the situation of the shipbuilder and shiprepairer could be distinguished on the grounds that it was unlikely that liens would attach to a ship which is not yet operational.

48 In the opinion of some delegations, the claims of the shiprepairer should be guaranteed by the convention either by a right of retention or by a lien similar to article 2, paragraph 5 of the 1926 Convention.

49 One delegation said that under its national law, the right of retention had priority over maritime liens as well as mortgages/hypothèques and any convention limiting this right would be unacceptable. This delegation supported the deletion of paragraph 2 of article 6 and proposed that the phrase "rights of retention" also be deleted from paragraph 1 of article 6.

50 In response to a question, the observer from the CMI stated that under article 6, as it was drafted in the 1967 Convention, a shipbuilder or shiprepairer exercising a right of retention would have to surrender possession of the ship to a court if the holder of one of the maritime liens listed in article 4 applied for arrest and sale of the ship to enforce the lien. He added that paragraph 2 of article 6 of the 1967 Convention was intended to limit to two the types of rights of retention which could take priority over mortgages/hypothèques.

51 One delegation pointed out that in the case mentioned by the observer of the CMI the claim of the ship repairer would rank after all maritime liens and mortgages/hypothèques.

52 In the opinion of one delegation, paragraph 2 of article 6 of the Convention provided at least some basis for international uniformity over the issue of which rights of retention could take priority over a maritime lien or mortgage/hypothèque; and therefore the provision should be retained.

53 One delegation suggested a compromise which would delete the words "rights of retention" from article 6 of the 1967 Convention but permit States to grant a maritime lien to protect the claim of shiprepairers. This would provide a guarantee to the shiprepairer but also permit rights of retention to be recognized under national law.

54 One delegation, in supporting the text of paragraph 2 of article 6 of the 1967 Convention, said that the claim of the shipbuilder and shiprepairer should be considered in the context of other existing claims. This delegation noted that the shipbuilder and shiprepairer in possession would lose their claims if possession is surrendered.

55 One delegation said that the shiprepairer's right could be derived from the 1952 Arrest Convention and need not be included in the new instrument.

#### Characteristics of a maritime lien

56 The Sessional Group agreed that the texts of article 7.2 of the 1967 Convention and article 7 of the CMI draft were acceptable as a basis for further consideration.

#### Extinction of maritime liens

57 The Sessional Group considered the provisions contained in article 8 of the 1967 Convention and in the CMI draft convention concerning extinction of maritime liens. Some delegations expressed support for retaining the provisions of article 8, as amended by the CMI, and therefore suggested that the CMI draft should be taken as a basis for further debate. Other delegations, however, favoured the text of the 1967 Convention as it stood.

58 One delegation was of the view that the period of time during which maritime liens should remain in force should be shortened in respect of certain claims, as provided by article 9 of the 1926 Convention in respect of liens for supplies. Other delegations suggested that requirement for the interruption of the period of extinction of one year should be the commencement of judicial proceedings rather than arrest or seizure as provided in the CMI draft Convention.

59 One delegation suggested that express provisions should be made to ensure that in no case a lien could continue to exist if the claim was extinguished or time-barred under national legislation. Another delegation felt that the time during which maritime liens should remain valid ought to be short and should require extraordinary measures in order to be extended

beyond one year. However, it suggested an exception in case of crews' wages to allow the interruption of the period of extinction by commencement of judicial proceedings.

60 The observer for CMI referred to the secret nature of maritime liens and felt that they should only be allowed to remain secret for a limited period of time. To allow the interruption of the period of extinction by commencement of judicial proceedings would entail extension of such period.

61 One delegation expressed concern regarding the applicability of article 8 to those liens referred to in article 4 and not in article 6, which could continue to remain valid for a long period of time. It further questioned the effect of article 8 where, upon arrest of the vessel, the shipowner provides security and the vessel is released, whether in case of insufficient security such lien will be extinguished.

62 The observer for CMI pointed out that the Convention was intended to regulate maritime liens which had priority over mortgages/hypothèques and not the liens created under national legislations. Concerning the second point, he stated that posting of an insufficient bond was not a justification for interruption of the time bar.

63 One delegation felt that some of the provisions of the 1926 Convention were satisfactory but had not been reflected in the 1967 Convention or in the CMI draft Convention. In this context, he pointed out paragraph 2 of article 9 which provides for the starting point for the period of extinction of maritime liens, which he considered important for unification of national legislations. He added that further useful provisions were contained in the third and fourth paragraph of article 9 and could be maintained in a new Convention. This view was supported by some other delegations.

64 The observer for the CMI was requested to explain why the provisions contained in article 9 had not been reflected in the 1967 Convention or in the CMI draft Convention. He explained that the second paragraph made provision for the starting point for the period of extinction in respect of certain claims including salvage, collision, personal injuries and loss of or damage to cargo or baggage. As claims for loss of or damage to cargo were no longer granted maritime lien status, it was felt that the remaining

two types of claims did not require specific provisions and could be covered by the general provisions of paragraph 1 of article 8. Regarding the consequences of voluntary sale, it was felt that such a sale should not in any event justify suspension of running of time as it would adversely affect the mortgagee's rights.

65 One delegation, however, considered that article 9 contained provisions which could not assist in achieving uniformity. In particular, paragraph five which permitted the grounds for interruption of the period of extinction to be determined by the law of the Court where the case is tried was considered unacceptable.

66 One delegation suggested to extend the period of extinction from one year to two years. Other delegations suggested that any new instrument should specify the type of arrest as conservatory measure as well as seizure to cover actions in execution of a judgement.

#### Assignment and subrogation

67 The Sessional Group agreed that the text of article 9 of the 1967 Convention (which is identical to the text of the CMI draft) was acceptable as a basis for further consideration.

#### Notice of forced sale

68 The Sessional Group gave consideration to the requirement for the competent authority of the State in which the forced sale of a vessel is to take place, to give, or cause to be given, advance written notice of the time and place of the sale to certain parties. Under article 10 of the 1967 Convention and the CMI Lisbon draft, these parties would include holders of liens and mortgages/hypothèques, and the registrar in the State of the vessel's registration

69 One delegation noted that the situation may arise in which the State where the forced sale is to take place is different from the State where the vessel is registered, in which case identification of the holders of registered mortgages/hypothèques might depend on communicating first with the "registrar of the register in which the vessel is registered"

(subparagraph (c) in article 10 of the 1967 Convention and the CMI Lisbon draft). It was therefore proposed, with the support of another delegation, that article 10 might be structured in a way to reflect that notification to the register may need to occur in advance of notification to holders of registered mortgages/hypothèques and to holders of maritime liens listed in the Convention.

70 The Sessional Group agreed that the text of article 10 of the 1967 Convention, as amended by the CMI draft, was acceptable as a basis for further consideration.

#### Effects of forced sale

71 The Sessional Group gave consideration to the effects of the forced sale of a vessel as provided in article 11 of the 1967 Convention and the CMI Lisbon draft.

72 One delegation observed that paragraph 3 had political as well as economic implications. The provision obliged a State to recognize a certificate issued by any official stating that all in rem rights had been cancelled subsequent to a forced sale. This obligation would persist even in cases where the creditor might not be able to receive the funds raised from a forced sale because of restrictions on the free transferability of funds. The need to ensure that a vessel brought a good price in a forced sale had to be balanced with the need to ensure that the mortgagee was able to recover his outstanding loan.

73 This concern was supported by another delegation which agreed that any certificate stipulating that the vessel had been sold free of all encumbrances should be conditioned on guarantees that the funds were available to claimants and satisfactory legal procedures were available to enforce the relevant court judgement.

74 Several delegations referred to their national law to describe situations where implementation of article 11, as it was drafted in the 1967 Convention and the CMI Lisbon draft, would be difficult.

75 One delegation said its system would not permit the removal of a mortgage/hypothèque from the ship's register without a court order. Therefore, the registrar could not delete a registered mortgage/hypothèque from the registry simply on the basis of a certificate produced under paragraph 3 of article 11. One possible way to avoid this conflict with national law, the delegation suggested, was to insert the words "or otherwise indicate satisfaction of the mortgage/hypothèque" after the word "delete" in paragraph 3 of article 11.

76 Another delegation said it would have to make some adjustments in its system in order to be able to issue a certificate of deregistration as would be required under the last part of paragraph 3. Sale of a mortgaged vessel registered in this delegation's country was not permitted to a non-citizen without permission of certain authorities.

77 One delegation said the certificate provisions of paragraph 3 of article 11 would be in conflict with its national law.

78 In response to a question, the observer from CMI said the last part of paragraph 1 of article 11 of the 1967 Convention was not retained in the CMI Lisbon draft because the text did not explain the effect of a forced sale on a charter-party, and the text did not appear to serve a useful purpose.

79 The Sessional Group agreed that the text of article 11 of the CMI Lisbon draft was acceptable as a basis for further consideration.

#### Scope of application of a new instrument

80 The Sessional Group took as a basis for the examination of this issue article 12 of the CMI draft.

81 In respect of paragraph 1, it was noted that the Convention declared itself applicable also in respect of vessels registered in a State not Party to the Convention. Some delegations expressed doubts as the scope and implications of such a provision. They felt that making the Convention applicable to ships registered in States not Parties might be in conflict with general principles of international law, the 1969 Vienna Convention on the Law of Treaties and the public policy of some States. Some other delegations, however, suggested that there was no such conflict.



82 It was the view of these delegations that, by becoming a Party to the Convention, the contents of the Convention became, by whatever method, part of the domestic law of that State and every State was entitled, as a matter of sovereignty, to apply its domestic law to foreign vessels under its jurisdiction. According to these delegations, the only effect of paragraph 1 was to ensure that all States Parties applied the provisions of the Convention uniformly without, however, altering the scope of application. Reference was also made in this context to the last phrase of article 2 of the 1967 Convention.

83 One delegation proposed the addition of a further paragraph to the article as follows:

"3 Nothing in this Convention shall enable rights on maritime liens to be enforced against a vessel owned by a State and used for commercial purposes if the vessel carries a certificate issued by the appropriate authorities of the State of the vessel's registry stating that the vessel is owned by that State and that the vessel's liability under the claims enumerated in article 4 is covered."

84 The delegation submitting this text emphasized that the proposal would exclude the enforcement procedures contained in the new instrument only in respect of maritime liens. It further stated that precedent for such an approach could be found in the 1969 Civil Liability Convention and emphasized that the inclusion of such a provision in any new instrument would be essential for enabling it to becoming a Party to the instrument.

85 The Sessional Group noted the views expressed and the proposal made and agreed that article 12 of the 1967 Convention as amended by the CMI draft was acceptable as a basis for further consideration.

#### Communication between States Parties

86 The Sessional Group agreed that the text of article 13 of the 1967 Convention as amended by the CMI draft was acceptable as a basis for further discussion.

Conflict of conventions

87 The Sessional Group agreed that the text of article 14 of the CMI draft was acceptable as a basis for further discussion.

Object of the maritime lien

88 One delegation expressed regret that the contents of article 2 of the 1926 Convention, which defined the accessories of the vessel, had not been taken up in the 1967 Convention and the CMI draft. Another delegation pointed out that since, unlike the 1926 Convention, the 1967 Convention and the CMI draft had limited the object of the maritime lien to the ship itself, there was no longer a need to retain the contents of article 2 of the 1926 Convention.

89 The Sessional Group agreed not to include a provision regarding the accessories of the vessel.

Action by the Sessional Group

90 The Sessional Group requested the Secretariats of IMO and UNCTAD to prepare, on the basis of the various views expressed and the decisions taken by the Group, a set of draft articles on maritime liens and mortgages/hypothèques for consideration by the Joint Intergovernmental Group of Experts at its third session.

91 One delegation suggested, in this connection, that the titles used for each article in the CMI draft be retained in the draft to be prepared by the Secretariats.

92 At its closing meeting, on 15 May 1987, the Sessional Group approved its report, as contained in document JIGE (II)/WP.6, with the amendments introduced by delegations, and transmitted it to the Joint Intergovernmental Group of Experts at its closing plenary.