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and Mortgages and Related Subjects
Fourth session
London, 16 May 1988
Item 2 of the provisional agenda

CONSIDERATION OF MARITIME LIENS AND MORTGAGES AND RELATED
SUBJECTS, IN ACCORDANCE WITH THE TERMS OF REFERENCE OF THE
JOINT INTERGOVERNMENTAL GROUP.

Note by the secretariat of UNCTAD */

The attached document has been prepared for the fourth session of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, in response to the request made by the Joint Intergovernmental Group at its third session.

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IMO/UNCTAD

Joint Intergovernmental Group of Experts
on Maritime Liens and Mortgages
and Related Subjects
Fourth session
London, 16-20 May 1988
Item 2 of the provisional agenda

CONSIDERATION OF MARITIME LIENS AND MORTGAGES AND RELATED
SUBJECTS, IN ACCORDANCE WITH THE TERMS OF REFERENCE OF
THE JOINT INTERGOVERNMENTAL GROUP

Note by the Secretariats of IMO and UNCTAD

INTRODUCTION

1 The Joint Intergovernmental Group of Experts, at its third session (Geneva, November/December 1987), gave consideration to a set of draft articles on maritime liens and mortgages which had been prepared by the Chairman of the Joint Intergovernmental Group with the assistance of the Secretariats of UNCTAD and IMO. The results of these deliberations are summarized in the relevant paragraphs of annex I to the report of the Joint Intergovernmental Group of Experts for its third session (document JIGE (III)/3). In the light of the discussions held at that session a revised set of draft articles on maritime liens and mortgages has been prepared by the Chairman of the Joint Intergovernmental Group with the assistance of the two Secretariats.

2 The text of these revised draft articles is contained in Part A of this document and it is suggested that the Joint Intergovernmental Group may wish to take these revised texts as a basis for its discussions at the fourth session.

3 In connection with the consideration of the draft articles, the Joint Intergovernmental Group, at its third session, furthermore held an exchange of views on the question of bareboat charter registration. Some delegations did not consider the inclusion of provisions concerning bareboat charter registration in the draft convention necessary.^{1/} Other delegations, however, pointed out that, in view of the increasing practice of bareboat charter registration and in the light of the provisions of the United Nations Convention on Conditions for Registration of Ships (1986), it would be desirable to clarify this matter. Various proposals were put forward in this connection.^{2/}

4 However, due to the lack of sufficient information on the existing practices of bareboat charter registration, the Group did not take a final decision on the matter and requested the Secretariats of UNCTAD and IMO to prepare a study on the current practices of registration of bareboat chartered ships in order to enable the Group to take appropriate decisions. In this context, it invited delegations to provide the secretariats with the necessary information and national legislation.^{3/}

5 In the light of this request, a report on the current practices of bareboat charter registration has been prepared by the Secretariats on the basis of available information.

^{1/} See Report of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subject on its third session (JIGE (III)/3, annex I, paragraphs 9 and 20 to 32).

^{2/} Thus, in relation to subparagraph (a) of article 1, it was suggested to amend the subparagraph so as to read: "...in which the mortgage is registered"; or "... in which the vessel is permanently registered". Further proposals were made with regard to articles 3 and 12; these are reproduced in the annex to Part B of this document.

^{3/} JIGE (III)/3, annex I, paragraph 33.

This report is contained in Part B of this document^{4/}. The Joint Intergovernmental Group may wish to consider the information contained in this report when determining whether and, if so, how to deal with the question of bareboat charter registration.

^{4/} Further information on the subject may be found in a document prepared by the UNCTAD Secretariat for the second session of the Intergovernmental Preparatory Group on Conditions for Registration of Ships (TD/B/AC.34/6). This document had been prepared on the basis of replies to a note verbale sent to all Governments, requesting information on their practices in relation to, inter alia, the registration of ships on bareboat charter.

PART A

REVISED DRAFT ARTICLES ON MARITIME LIENS AND MORTGAGES

Article 1Recognition and enforcement of mortgages,
"hypothèques" and charges

Mortgages, "hypothèques" and registerable charges of the same nature, which registerable charges of the same nature will be referred to hereafter as "charges", [effected on seagoing vessels]^{1/} [to secure payment of monies] shall be enforceable in States Parties provided that:

(a) Such mortgages, "hypothèques" and charges have been effected and registered in accordance with the law of the State in which the vessel is registered;

(b) [Subject to subparagraph (d)] The register and any instruments required to be deposited with the register in accordance with the law of the State where the vessel is registered are open to public inspection,^{2/} and that extracts of the register and copies of such instruments are obtainable from the registrar; and,

1/ At its third session, the JIGE decided to delete the words "by their owners" so as to cover judicial or legal, as well as conventional mortgages/"hypothèques".

2/ A proposal to restrict access to the register to persons with a legitimate interest in obtaining information therefrom was opposed by a large number of delegations.

(c) Either the register or any instruments referred to in subparagraph (b) specifies at least the name and address of the person in whose favour the mortgages, "hypothèque" or charge has been effected or that it has been issued to bearer, the maximum amount secured, if that is a requirement of the national law of the State of registration, or, otherwise, if that amount is specified in the instrument creating the charge, and the date and other particulars which, according to the law of the State of registration, determine the rank as respects other registered mortgages, "hypothèques" and charges.

[(d)^{3/} If the law of the State in which a company owning a ship is registered requires registration of a charge on that ship in a separate companies or other register, registration of the charge pursuant to this article is without prejudice to such a requirement.^{4/}]

Article 2

Ranking and effects of mortgages, "hypothèques", and charges

The ranking of registered mortgages, "hypothèques" or charges, 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 this Convention, all matters relating to the procedure of enforcement shall be regulated by the law of the State where enforcement takes place.

^{3/} This proposal and the alternative reflected in footnote ^{4/} were put forward by one delegation, but were not considered by the Group at its third session.

^{4/} As an alternative, the draft Convention might include an article allowing States to make a reservation preserving national law requirements on registration of charges in a companies or other register.

Article 3[Voluntary] change of ownership or registration

1 In the event that a voluntary change of ownership [or voluntary change of registration] entails the deregistration of the vessel from the national register of a State Party, such State Party shall not permit the owner to reregister the vessel unless all mortgages, "hypothèques" or charges are previously deregistered or the written consent of all holders of such mortgages, "hypothèques" or charges is obtained.

2 [Without prejudice to article 11.3] a vessel which is or has been registered in a State Party shall not be eligible for registration in another State Party unless either:

(a) a certificate has been issued by the former State to the effect that the vessel has been deregistered; or

[(b) a certificate has been issued by the former State to the effect that the vessel will be [automatically] deregistered [with immediate effect] at such time as the new registration is effected. [The date of registration shall be the date of deregistration of the vessel by the former State].

Article 4Maritime liens

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 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;
- (iii) claims for salvage [and contribution in general average];
- [(iv) port, canal, and other waterway dues and pilotage dues;]
- [(v) claims for wreck removal;]
- [(vi) 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.]

2 No maritime lien shall attach to a vessel to secure the claims as set out in subparagraphs (ii) and [(vi)] of paragraph 1 of this article which arise out of or result from oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, 1969 or of any amendments or protocol thereto which is in force, or the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties or nuclear fuel or of radioactive product or waste.

Article 5

Priority of maritime liens

1 The maritime liens set out in article 4 shall take priority over registered mortgages, "hypothèques" and charges, and no other claim shall take priority over such maritime liens or over such mortgages, "hypothèques" or charges which comply with the requirements of article 1, except as provided in paragraph 2 of 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 take priority over all other maritime liens which have attached to the vessel prior to the time when the operations giving rise to the said lien were performed.

3 The maritime liens set out in each of subparagraphs (i), (ii), [(iv) and (vi)] of paragraph 1 of article 4 shall rank pari passu as between themselves.

4 The maritime liens set out in subparagraphs (iii) [and (v)] of paragraph 1 of article 4 shall rank in the inverse order of the time when the claim 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 performed;] Claims for salvage shall be deemed to have accrued on the date on which the salvage operation was terminated.

Article 6^{1/}

Other liens and rights of retention

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

1/ Some delegations proposed, at the third session of the JIGE, an alternative text which would read as follows:

Other liens

1 Each State Party may grant maritime [or other] liens to secure, in addition to the claims referred to in article 4, claims of the following kinds:

(cont'd)

2 If a lien or right of retention is granted in respect of a vessel in possession of either:

- (a) a shipbuilder, to secure claims for the building of the vessel; or
- (b) a shiprepairer, to secure claims for repair, including reconstruction of the vessel effected during such possession,

such lien shall be postponed to, and such right of retention shall not prejudice the enforcement of, all maritime liens set out in article 4, but may take priority over registered mortgages, "hypothèques" or charges on, or be exercisable against, the vessel. Such lien or right of retention shall be extinguished when the vessel ceases to be in the possession of the shipbuilder or ship repairer, otherwise than in consequence of an arrest or seizure.

(footnote continued from previous page)

- (a) claims for wreck removal;
- (b) claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than those of or damage to cargo, containers and passengers' effects carried on the vessel;
- (c) claims arising out of contracts concluded or operations effected by the captains outside the home port, and pursuant to the legal powers, for the genuine needs of the preservation of the vessel or the continuation of the voyage, irrespective of whether or not the captain is at the same time an owner and of whether the claim is his or that of suppliers, repairers, lenders or other contractors;
- (d) claims arising out of a contract the purpose of which is the classification of a vessel;
- (e)
- (f)

Such liens shall rank after the maritime liens enumerated in article 4 and after registered mortgages, "hypothèques" or charges which comply with the provisions of article 1. They shall not prejudice either the enforcement of the maritime liens enumerated in article 4 or of registered mortgages, "hypothèques" or charges which comply with the provisions of article 1, or the delivery of the vessel to the purchaser in connection with such enforcement.

(cont'd)

Article 7Characteristics of maritime liens [and right of retention]ALTERNATIVE A

[Subject to the provisions of article 11,] the maritime liens set out in article 4 [and in article 6] follow the vessel notwithstanding any change of ownership or of registration or of flag, [except in the case of a forced sale].

ALTERNATIVE B

The maritime liens follow the vessel notwithstanding any change of ownership or of registration or of flag.

(footnote continued from previous page)

2 Each State may also grant liens other than those referred to in paragraph 1. [Such liens shall not be recognized under the present convention.] [Such liens shall be recognized only if notification thereof is given to the depositary of this convention, who shall inform the State Parties accordingly. The latter shall have ... months within which to inform the depositary whether they object to the recognition of such liens on their territory]. Such liens shall rank after the maritime liens enumerated in article 4 and after registered mortgages, "hypothèques" or charges which comply with the provisions of article 1. They shall rank also after the liens mentioned in paragraph 1 of this article. They shall not prejudice either the enforcement of the maritime liens enumerated in article 4 or of registered mortgages, "hypothèques" or charges which comply with the provisions of article 1, or the liens mentioned in paragraph 1 of this article, or the delivery of the vessel to the purchaser in connection with such enforcement.

Note: The adoption of this alternative would require consideration by the JIGE whether a separate article dealing with the right of retention should be included in the Convention.

Article 8

Extinction of maritime liens

1 ALTERNATIVE A

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 [or seized], such arrest [or seizure] leading to a forced sale.

ALTERNATIVE B

A maritime lien set out in article 4 shall be extinguished when any of the following events first occurs:

- (a) payment of claim in full; or
- (b) execution by the lienholder of a discharge of the lien; or
- (c) arrest [or seizure] of the vessel, leading to:
 - (i) the giving of bail or other security in respect of the claim secured by the maritime lien; or
 - (ii) a forced sale; or
- (d) expiration of a period of one year from the time when the claim secured by the lien arose.

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 [arrest or seizure of the vessel is not permitted by law] [lienor is legally prevented from arresting the vessel].

Article 9

Assignment and subrogation

The assignment of or subrogation to a claim secured by a maritime lien set out in [article 4] [and in article 6] [this Convention] entails the simultaneous assignment of or subrogation to such maritime liens.

Article 10^{1/}Notice of forced sale

Prior to the forced sale of a vessel in a State Party, the competent authority of such State shall give, or cause to be given, at least 30 days written notice of the time and place of such sale to:

- (a) [the registrar of the register] [the competent authority in charge of the register in the State] in which the vessel is registered;
- (b) all holders of registered mortgages, "hypothèques", or charges which have not been issued to bearer;
- (c) such holders of registered mortgages, "hypothèques" and charges issued to bearer and to such holder of maritime liens set out in article 4 whose claims have been notified to the said authority.

1/ One delegation proposed an alternative text for this article which would read as follows:

Notice of proceedings leading to forced sale

Not less than [5] days (to permit provision of satisfactory alternative security), nor more than [15] days, after the commencement of a proceeding which may lead to the forced sale of a vessel, and at least [25] days prior to the order of such sale, the State Party shall give, or cause to be given, written notice of such proceeding, by the most expeditious means available, to:

- (a) the registrar of the register in which the vessel is registered and public notice of the commencement of such a proceeding shall be required to be given by general publication in the manner directed by the competent authority of the State Party;
- (b) all holders of registered mortgages, "hypothèques", or charges which have not been issued to bearer;
- (c) such holders of registered mortgages, "hypothèques" and charges issued to bearer and to such holders of maritime liens set out in article 4 whose claims have been notified to the said authority.

Article 11

Effects of forced sale

1 In the event of the forced sale of the vessel in a State Party all mortgages, "hypothèques" or charges, except those assumed by the purchaser with the consent of the holders and all 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^{1/} of such State, and

(b) the sale has been effected in accordance with the law of the said State and the provisions of this Convention.^{2/}

2 The costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel [including the costs incurred for the upkeep of the vessel from the time of arrest [and the costs of repatriation of the crew]],^{3/} and of the distribution of the proceeds shall be paid first out of the proceeds of sale. The balance of the proceeds shall be distributed among the holders of maritime liens, liens and rights of retention mentioned in paragraph 2 of article 6 and registered mortgages, "hypothèques" or charges, in accordance with the provisions of this Convention to the extent necessary to satisfy their claims.

^{1/} One delegation proposed to replace this text by the phrase "under the jurisdiction".

^{2/} Some delegations were in favour of deleting this subparagraph.

^{3/} The Group recognized that this matter was closely linked to the contents of articles 4 and 5.

3 When a vessel registered in State Party has been the object of a forced sale in a State Party, the competent authority^{4/} shall, at the request of the purchaser, issue a certificate to the effect that the vessel is sold free of all mortgages, "hypothèques" or charges, except those assumed by the purchaser, and of all liens and other encumbrances provided that the requirements set out in paragraphs 1(a) and (b) have been complied with [, that the proceeds of such forced sale have been deposited with the authority that is competent under the law of the place of sale and that these proceeds are actually available and freely transferrable]. Upon production of such certificate, the registrar shall be bound to delete all registered mortgages, "hypothèques" or charges except those assumed by the purchaser, and to register the vessel in the name of the purchaser or to issue a certificate of deregistration for the purpose of reregistration, as the case may be.^{5/}

^{4/} One delegation proposed to replace the phrase "competent authority" by "a court in such State".

^{5/} One delegation proposed to add, at the beginning of this sentence, the following phrase: "Unless contrary to the law of the State of registration,". It was also noted that this sentence refers to the effects of registration and that it should, accordingly, be moved to article 3.

PART B

CURRENT PRACTICES ON BAREBOAT CHARTER REGISTRATION

An analysis of available national legislations shows that many countries do not permit ships bareboat chartered-in by national operators to be registered in a national register or to fly the national flag. In the same way, they do not allow ships on the national register which have been bareboat chartered-out to be registered in the country of the bareboat charterer or to fly the flag of that country. Some countries, however, permit such practices provided that certain prescribed conditions are satisfied. While the most common feature is to grant a permission to the ship on bareboat charter to fly the flag of the charterer's State for the duration of the bareboat charter, the required conditions vary, in some cases quite considerably, from one country to another. In some countries the ship, as well as mortgages and similar charges are reregistered in the charterer's State. However, from the examination of the relevant national legislations, the following patterns emerge.

I.

Some countries allow a ship bareboat chartered-in to be registered in their national register and to fly the national flag, provided that the country of original registration agrees to delete the ship from its register. Similarly, a ship which is bareboat chartered-out to a foreign operator may be permitted to be registered in the register of the foreign country and to fly the flag of that country, for the duration of the bareboat charter, during that period the ship is deleted from the original register:

AUSTRALIA

Bareboat chartering-in

In Australia, according to the Australian Shipping Registration Act of 1981, ships on demise charter to Australian-based operators are registered

provided that application to that effect is made in accordance with the provisions of the Act.^{1/} The Registrar is not, however, permitted to register a ship which is registered under the law of a foreign country.^{2/} Where a ship, entitled to be registered in the Australian Register of Ships, was, immediately before the commencing date, registered in a foreign country, such a ship cannot be registered unless the person responsible for the maintenance of the foreign register concerned, transmits to the Registrar the following:

- all the particulars entered in the foreign register in relation to the ship;
- the name of all the persons appearing in the foreign register to be interested in the ship, either as owners or mortgages: and consents to the closing of the registration of the ship in that register.^{3/}

It appears, therefore, that the ship is in fact registered in the shipowner's name and according to the Act the bareboat charterer is registered as the "registered agent" of the ship.^{4/}

Bareboat chartering-out

The bareboat chartering-out with change of registration is also permitted in Australia. According to the provisions of the Act, where an Australian-owned ship is operated by a foreign resident under a demise charter, the responsible Minister may exempt the ship during the term of the charter from the requirement to be registered in the Australian Register.^{5/} Thus, if a ship registered in the Australian Register of Ships is bareboat chartered-out to a foreign resident, the Australian registration of the ship is closed for the duration of the bareboat charter and while the ship is registered in the register of the State of the bareboat charterer and flies the flag of that country.

^{1/} Section 14(d).

^{2/} Section 17(1).

^{3/} Section 87(1) and (3).

^{4/} Section 64(1)(b).

^{5/} Section 12(2).

II.

Some national legislations permit the ship bareboat chartered-in by a national operator to fly the latter's national flag while the original registration of the ship is maintained in another country. Similarly, a ship may be bareboat chartered-out with the right to fly the flag of the country of the bareboat charterer while maintaining its original registration:

GERMAN DEMOCRATIC REPUBLIC

Bareboat chartering-in

In the German Democratic Republic, according to the Register of Shipping Ordinance of 27 May 1976, the general principle is that seagoing ships owned by enterprises or citizens of the German Democratic Republic must be entered in that country's register of seagoing ships. If a ship was entered, prior to its registration in the register of the German Democratic Republic, in a register of another country, the entry in the register of the German Democratic Republic does not become effective until the entry in the register of the other country has been cancelled.^{6/} The ships registered in the register of seagoing ships are entitled to fly the flag of the German Democratic Republic. However, as an exception, the right to fly the flag may be granted to foreign ships if they are operated by enterprises in the German Democratic Republic in their own name, provided:

- the ship is manned and licensed for navigation according to the regulations of the German Democratic Republic
- the owner of the ship agrees to the change of flag, and
- the law of the State in whose register the ship is registered permit the change of flag.^{7/}

Thus, upon application from an operator in the German Democratic Republic and upon satisfaction of the above conditions, a ship owned and registered in

6/ Article 21.

7/ Article 4(2).

a foreign country may be allowed to fly the flag of the German Democratic Republic. In a such case, only a "flag certificate" (as opposed to the certificate of registry) is issued and the ship is entered in a special flag list.^{8/} The right to fly the flag is granted for a period of up to two years.^{9/}

Bareboat chartering-out

In the same way, a ship, which is owned by enterprise in German Democratic Republic and is to be operated by an enterprise or a citizen of another country in its own name, may be exempted from the requirement to fly the flag of the German Democratic Republic if the ship is granted the right to fly the flag of the other country.^{10/} The exemption from the obligation to fly the flag of the German Democratic Republic may be granted for a period of up to two years.^{11/} Thus, the ship is kept on the register of the German Democratic Republic while it is operated under a foreign flag.

FEDERAL REPUBLIC OF GERMANY

Bareboat chartering-in

Requirements under the law of the Federal Republic of Germany^{12/} are somewhat similar to those of the German Democratic Republic. While, in principle, ships owned by individuals or corporate bodies of the Federal Republic of Germany must fly that flag, ships owned by a foreign shipowner and registered in a foreign country may, on application from the charterer in the Federal Republic of Germany and upon satisfaction of the specified conditions, be permitted to fly the flag of the Federal Republic of Germany for a period of up to two years, provided that the law of the country of

^{8/} Article 29.

^{9/} Article 6(1).

^{10/} Article 4(3).

^{11/} Article 6(1)3.

^{12/} Gesetz über das Flaggenrecht des Seeschiffe und die Flaggenführung der Binnenschiffe (Flaggenrechtsgesetz), February 1951.

registration permits the change of flag.^{13/} The ships which are granted the right to fly the flag of the Federal Republic of Germany are issued with a "document of flag" indicating the names of the shipowner and the charterer, and the duration of the bareboat charter party. Such ships are listed in a special list of chartered ships and not in the Federal Republic of Germany Shipping Registry.^{14/}

Bareboat chartering-out

Similarly, the Minister of Transport may, on application, exempt a ship registered in the Federal Republic of Germany and bareboat chartered-out to a foreign charterer from the obligation to fly the flag of the Federal Republic of Germany, provided that the foreign country grant the ship the right to fly its flag for the duration of the bareboat charter. The permission to fly the foreign flag may be granted for a period of up to two years.^{15/} The fact that the ship is permitted to fly the foreign flag during the bareboat charter period is noted in the ship's Certificate and the ship's registry remains unaffected by the change of flag.

POLAND

Bareboat chartering-in

In Poland, the Maritime Code of 1961 as amended in 1986 allows Polish nationality to be granted to a foreign ship on a temporary basis, provided that:

- an application is lodged by the Polish operator who undertakes to take possession of the ship and to apply Polish regulations with regard to manning, measurement, safety of navigation and ship's documents;
- the shipowner agrees to his ship being temporarily granted Polish nationality;

^{13/} Article 11.

^{14/} Article 12.

^{15/} Article 7.

- the law of the State, the flag of which the ship has flown and in whose register it has been entered, does not oppose Polish nationality being temporarily granted to the ship, and the competent authority in that State ensures that, while under Polish nationality, the ship shall not fly the flag of that State.

Once the above requirements have been met, a decision is taken by the Minister to grant Polish nationality temporarily to the ship, indicating its duration.^{16/}

A ship, which has temporarily obtained Polish nationality, is issued with a "document of flag" which is valid for the period during which Polish nationality is granted to the ship. The document of flag is issued by the marine chamber which keeps a record of such documents.^{17/}

While, in principle, real rights on a ship are subject to the law of the flag State, it is provided that real rights on a ship entered in the register of ships or other public register kept outside the flag State, are subject to the law of the State of registration.^{18/}

Bareboat chartering-out

The law further permits temporary exemptions of a ship from Polish nationality provided that:

- the shipowner transfers the possession of the ship to a foreign operator and agrees to temporary exemption of the ship from Polish nationality;
- the law of the State, the nationality of which is to be temporarily granted to the ship does not oppose the transfer of flag, and
- upon application by the shipowner, the Minister exempts the ship from Polish nationality and determines the period of such exemption.

^{16/} Article 15.

^{17/} Article 30.

^{18/} Article 7(1)(2).

The shipowner must inform the marine chamber that keeps the register of ships in which the ship is registered of the decision. During the period of exemption from Polish nationality, the ship cannot fly the Polish flag. The marine chamber must be equally notified as to the termination of the exemption, which occurs either upon the expiry of the specified period or upon receipt of notice that any of the required conditions is no longer complied with.^{19/}

SPAIN

Bareboat chartering-in

In Spain, according to a Royal Decree of 1977^{20/}, foreign ships may be authorized to fly the Spanish flag on a temporary basis and, thus, acquire provisional Spanish nationality. In this case, the ship must be registered in the Maritime Register^{21/} in order to be granted Spanish nationality.

To obtain authorization for provisional flagging of a foreign ship, an application must be submitted to the competent maritime authorities attaching the following documents:

- a copy of the charter party;
- justification for flagging-in a foreign ship and its benefits;
- a copy of the license application for the temporary importation of the ship, and
- an official certificate from the foreign State authorizing the flagging-out and indicating the relevant particulars of the ship;^{22/}

During the period of provisional flagging-in or flagging-out, the ship is subject to the law and jurisdiction of the flag State. On expiration of such period, the ship will automatically revert to her original flag.^{23/}

19/ Article 16.

20/ Real Decreto 3327/1977.

21/ Registro de la Comandancia de Marina, see article 8.

22/ Article 9.

23/ Article 12.

Bareboat chartering-out

The law also permits provisional flagging out of the Spanish ship provided that the ship is temporarily deleted from the Maritime Register (Registro Marítimo) as opposed to the Commercial Register (Registro Mercantil). The Commercial Register records, inter alia, mortgages and charges on the ship. It is, however, provided that such loss of nationality will not affect the rights of the Spanish crew.^{24/}

The conditions required for obtaining authorization for flagging out Spanish ships are similar to those required for flagging-in foreign ships. In addition, the shipowner must obtain a certificate from the Commercial Register stating whether the ship was free of all charges and encumbrances or that any mortgage or charge existed on the ship. In the latter case, the written consent of the mortgagees or other creditors must be submitted.^{25/}

III.

Under some national legislations, foreign registered ships bareboat chartered-in may be permitted to be registered and fly the national flag provided that the written consent of the country of original registration is submitted. Some of these legislations require reregistration of the existing mortgages/hypothèques on the bareboat charter register:

SAINT VINCENT AND THE GRENADINES

Bareboat chartering-in

Under the Merchant Shipping (Amendment) Act 1986 of Saint Vincent and the Grenadines, the Minister/Commissioner may authorize registration of ships on bareboat charter to a citizen or national. A bareboat charterer of a ship

^{24/} Article 2.

^{25/} Article 3.

registered in a foreign registry, may obtain a bareboat charter certificate of registry for a period of two years (which may be extended where permitted by the foreign registry) upon presentation of the following documents:

- a written application;
- proof of ownership and consent of the registered owner of the ship;
- a copy of the charter party;
- consent of the holders of all mortgages, hypothèques or similar charges against the ship in the foreign registry;
- copies of the mortgages/hypothèques or similar charges indicating the name of the ship, the name of the parties, the amount secured and the date of maturity;
- written consent of the country of registration or presentation of satisfactory evidence that such consent is not required, and
- a certificate of ownership and encumbrances, transcript of registry or other such document from the foreign registry showing all recorded liens and encumbrances.^{26/}

The Act provides for reregistration of mortgages/hypothèques and other charges. Thus, during the period in which a ship carries a bareboat charter certificate of registry any mortgage, hypothèque or similar charge which is recorded in the foreign registry must be recorded in the office of the Registrar and the Commissioner. They are recorded in a "bareboat charter mortgage book" in the same order as recorded in the foreign registry. The relevant information must be endorsed upon the ship's bareboat charter certificate of registry; a certified copy of the recorded document is furnished to the bareboat charterer to be placed on board the ship. All such foreign mortgages, hypothèques and charges are considered as having preferred status.^{27/}

^{26/} Section 18A(2), (5)(a).

^{27/} Section 18A(5), (b) and (c).

The bareboat charter certificate of registry may be cancelled prior to the date of expiration upon presentation of the following documents:

- written consent of all holders of mortgages, hypothèques or other charges on the ship;
- written consent of the owner;
- written consent of the bareboat charterer, and
- surrender of the bareboat charter certificate of registry.

The sale of the ship during the time it carries a bareboat charter certificate of registry will render the certificate null and void, except where there are any recorded mortgages, hypothèques or other charges: these continue to subsist until satisfied or removed.^{28/}

Bareboat chartering-out

The Act also allows the bareboat charterer of a ship registered in Saint Vincent and the Grenadines to register the ship in a foreign jurisdiction, where permitted by that jurisdiction, upon obtaining written consent of the Registrar or the Commissioner. Such a permission may be granted upon presentation of the following documents:

- written consent of the owner;
- written consent of all holders of recorded mortgages, hypothèques, or other charges, and
- satisfactory proof that all recorded mortgages are endorsed upon the ship's document issued by the foreign jurisdiction.

Upon registration of the ship in the foreign jurisdiction the ship is deleted from the Saint Vincent and the Grenadines registry.^{29/} It should be noted that as indicated above, in case of bareboat chartering-in, only the consent of the foreign jurisdiction was required, and not deletion of the ship from its original registry.

^{28/} Section 18A(5)(e).

^{29/} Section 18A(5)(f).

VANUATU

The Maritime Act of Vanuatu^{30/} contains provisions almost identical to those found in the Saint Vincent and the Grenadines Merchant Shipping Act of 1982. The main difference is that the Maritime Act of Vanuatu does not provide for deletion of the ship from the Vanuatu registry upon her registration in a foreign jurisdiction following bareboat chartering-out.

CYPRUS

In Cyprus, the Merchant Shipping (Registration of Ships, Sales and Mortgages) (Amendments) Law of 1986^{31/} permitted only the bareboat chartering-in of ships registered in a foreign registry. In 1987, similar legislation was passed allowing the bareboat chartering-out of ships registered in the Cyprus Registry to a foreign operator.

Bareboat chartering-in

Part VA of the Merchant Shipping Law which deals with the subject under the heading "Parallel Registration of Ships", defines parallel registration as follows:

"Parallel registration, within the meaning of this part, is the registration in the Cyprus Register, for a certain period of time and under special legal prerequisite conditions, of a ship, which continues to be registered in a foreign register."^{32/}

^{30/} The act No. 8 of 1981 as amended by Maritime Act No.36 of 1982. It is understood that this Act is to be revised so as to provide, inter alia, that subject to the consent of the mortgagees, the mortgages recorded in the ship's original register may not be recorded in Vanuatu: See Guide to International Ship Register, International Shipping Federation, Bulletin No.1, December 1987.

^{31/} Law No.57.

^{32/} Section 23A (1), official English translation.

The parallel registration and the use of the Cyprus flag is allowed provided a ship is bareboat chartered by a Cypriot or by a corporation qualified to own Cyprus ship.^{33/} The parallel registration is achieved by the registration of the foreign ship in the "Special Book of Parallel Registration of the Cyprus Register". Such registration is effected by the Registrar upon an application by the charterer and approval of the Minister provided that:

- the law of the country of the foreign registry allows the parallel registration of the ships registered in its registry; and
- the required documents are submitted with the application, namely: copy of the charter-party; written consent of the shipowner, the mortgagees and the appropriate maritime authorities of the country of the foreign registry, including a confirmation as to the ownership of the ship and as to the mortgages or other encumbrances on the ship.^{34/}

During the period in which parallel registration is in force, the ship must fly the Cyprus flag and the name of the ship and the Cyprus port of registry of the ship must be marked on its external parts.^{35/} During such period the ship is furnished with a "Certificate of Parallel Registration" in a form similar to the certificate of registration of ships registered in the Cyprus Register. The certificate of parallel registration must record the same particulars required in respect of ships registered in the Cyprus Register as well as the particulars of the shipowner, the charterer and the foreign register of the ship.^{36/}

^{33/} Section 23A(2).

^{34/} Section 23B(1).

^{35/} Section 23B(6).

^{36/} Section 23C(1).

To authorize parallel registration of a ship registered in a foreign register, it is required that during the parallel registration of the ship in the Cyprus Register, "the registration in the foreign register shall be suspended, save as regards transfers or transmissions and the creation, registration or deletion of mortgages or other encumbrances on the ship. A transfer or transmission in accordance with the relevant provisions of this law shall not affect these registrations". It is further required that the endorsement of the change must be notified to the Registrar for information purposes.^{37/}

Mortgages and other encumbrances existing at the time of parallel registration in the Cyprus Register continue to be valid and be governed by the law governing them at the time of their creation, without being affected by the fact of the parallel registration of the ship in the Cyprus Register. After the parallel registration of the ship, mortgages or other encumbrances must be created only by its owner and in accordance with the law of the country of foreign registry in which they must be recorded. The law does not allow registration of the mortgage in the Cyprus Register. It nevertheless provides that the mortgages and other encumbrances must be recorded in the Special Book of Parallel Registration of the Cyprus Register, for information purposes.^{38/}

During the bareboat charter registration, the ship is subject to the Cyprus Merchant Shipping Law and Regulations, unless it is provided to the contrary.^{39/}

The ship is deleted from the Special Book of Parallel Registration in the following cases:

- where the maritime authorities of the foreign registry revoke their consent for the parallel registration of the ship in the Cyprus Register;
- where the charter is terminated;

^{37/} Section 23A(3).

^{38/} Section 23E(1)-(4).

^{39/} Section 23G.

- upon the lapse of time for which the parallel registration was authorized, or
- if there is any reason for deletion which applies in the case of ships registered in the Cyprus Register.^{40/}

Bareboat chartering-out

In case of bareboat chartering-out, the 1987 legislation which forms part of the Merchant Shipping Law (part VA), allows parallel registration of a Cyprus ship in a foreign registry provided the ship is bareboat chartered to a foreign person or company and the law of the country of the foreign registry allows the parallel registration of ships under conditions similar to those required for the parallel registration of foreign ships in the Cyprus registry.^{41/} Such registration is effected upon the approval of the Minister and on application by the shipowner and presentation of documents somewhat identical to those required in case of bareboat chartering-in.^{42/}

During the parallel registration of a Cyprus ship in the foreign registry, the ship does not fly the Cyprus flag but the flag of the country of the foreign registry. As regards Cyprus registration, although the Cyprus Certificate of Registry is withdrawn during the parallel registration, it is nevertheless provided that the Cyprus Registry is suspended, but subject to the following provisions:

- transfer of ownership for any reason, execution, registration, transfer or discharge of a mortgage on a Cyprus ship under parallel registration in a foreign registry are effected according to the Cyprus law and are registered in the Cyprus Registry;
- mortgages to which the ship is subject at the time of parallel registration in a foreign registry continue to be subject to the Cyprus law without being affected by the fact of the parallel registration of the ship in the foreign registry;

^{40/} Section 23H.

^{41/} Section 23I, unofficial translation.

^{42/} Section 23J.

- the entry in the foreign registry relating to ownership, registration, transfer or discharge of mortgages or other registered encumbrance on a Cyprus ship under parallel registration in the foreign registry is not permitted. Any such act is considered null and void under Cyprus Law and constitutes a ground for the withdrawal of the Cyprus nationality of the ship;
- entries in the Cyprus Registry relating to the transfer of ownership or registration or discharge of a mortgage are notified to the competent authorities of the foreign registry for "up-dating the Registry" and other relevant documents;^{43/}
- the ship, during parallel registration in the foreign registry, is subject to the same financial obligations as the remaining Cyprus ships including payment of the same annual dues and fees, which must be paid in advance at the time the parallel registration is authorized.^{44/}

LIBERIA

Bareboat chartering-in

In Liberia,^{45/} in order to obtain provisional Liberian registration for a ship bareboat chartered by a Liberian citizen or national, the charter-party must be recorded in a special register kept for that purpose. An application must be made by the charterer for such registration and the following documents must be presented:

- an official certificate from the foreign State of registration indicating the ownership of the ship and any recorded encumbrances;
- the written consent of the shipowner, and of the mortgagee(s), if any, and
- satisfactory evidence that the foreign State of registration will withdraw the right to fly the flag from the ship while it is under Liberian Bareboat Charter Registration.^{46/}

^{43/} Section 23M.

^{44/} Section 23N.

^{45/} Title 22 of the Liberian Code of Laws of 1956.

^{46/} Section 85.

The bareboat charterer is further required to give an undertaking under oath, that the ship will not fly any other flag while it is granted the right to fly the Liberian flag,^{47/} and that he acknowledges the exclusive jurisdiction and control of Liberia over the ship and that within 30 days of the termination of the charter party or the expiration of the provisional certificate of registry, whichever is earlier, he will surrender all the certificates issued to the ship.^{48/} Upon compliance with these requirements and payment of all taxes and fees, the ship is issued a Provisional Certificate Registry which is valid for two years. This certificate may be re-issued upon application for a further period of two years, but in no case beyond the date of termination of the charter-party.^{49/}

The Liberian Maritime Law is permissive regarding recording of foreign registererd mortgages in the Liberian Register. Recognizing the continuing legal status of ship-mortgages, hypothèques or similar charge made and registererd in accordance with the laws of a foreign State, it provides that such foreign mortgages or charges may also be recorded in the Liberian Register, in which case they constitute Liberian preferred mortgages. If a foreign mortgage is so recorded, then any mortgage subsequently registererd in accordance with the laws of the foreign State of registration of the ship must also be recorded.

However, no mortgage, hypothèque or similar charge is accepted for recording unless it has first been duly executed and registered in the foreign State of registration of the ship. If there is more than one such mortgage or charge, then all such instruments must be recorded in the same order as they are registererd in the foreign State of registration.^{50/}

^{47/} Section 86.

^{48/} "Requirements for Vessel Registration and Recording of Instruments" (Publication RLM 100), Section F5.

^{49/} LML, Section 37.

^{50/} Section 89.

Bareboat chartering-out

For the bareboat charter registration of a Liberian registered ship in a foreign State, the shipowner must obtain the permission of the Liberian Administration and the written consent of the holders of preferred ship mortgage.^{51/} In addition, the shipowner must file a certified copy of the charter party together with a written undertaking to immediately notify the Liberian Administration whenever the charter party has terminated or where the shipowner has retaken possession of the ship.^{52/}

Upon granting permission to obtain bareboat charter registration in a foreign State, a certificate of permission is issued to the ship, indicating that the right to fly the Liberian flag is withdrawn (but the ship is retained on the Liberian register^{53/}) while the ship is subject to the demise charter. It further states that Liberia recognizes the foreign State as the competent authority to exercise exclusive jurisdiction and control over the ship during the bareboat charter registration.^{54/} Nevertheless, one of the conditions required for issuance of the certificate of permission for foreign bareboat charter registration is that the shipowner and the demise charterer enter into an agreement undertaking that the ship shall be equipped, maintained and navigated to standards which are at least substantially equivalent to those required in the Liberian Maritime Law and regulations.^{55/}

Once the certificate of permission for foreign bareboat charter registration has been granted, a new Provisional Certificate of Registry is issued to the ship, endorsed to show that the right to fly the Liberian flag has been withdrawn during the bareboat charter registration. This certificate is issued for a period of two years and may be reissued upon application for a further period of two years, but in no case beyond the termination date of the demise charter party.^{56/}

^{51/} Sections 90-91.

^{52/} Publication 100, op.cit., Section E.

^{53/} Ibid., Section E1.

^{54/} LML section 93.

^{55/} Publication RLM 100, op.cit., Section E 5(b).

^{56/} Ibid., Section E 7, and LML Section 94.

When the bareboat charter party terminates or when the shipowner otherwise retakes possession of the ship and upon presentation of certain required documents, a new certificate of registry is issued to the ship.^{57/}

PANAMA

Bareboat chartering-in

In Panama,^{58/} a foreign registered ship, bareboat chartered to a Panamanian company for a period of not more than two years, may be registered in Panama without waiving their foreign registration, provided that the Government of that country gives its consent. To obtain bareboat charter registration, it is necessary to submit to the maritime authorities an application, together with a copy of the charter party, the consent of the shipowner, the Certificate of Registry in the foreign country and the Certificate of Consent of the country where the ship is registered. Upon compliance with these requirements the ship is issued with a special navigation permit (Patente de Navegación Especial), indicating the names of the shipowner and charterer, the foreign port of registration and any charge or encumbrance which appears in the foreign register certificate. It is further provided that, during the bareboat charter registration, property titles and consequently mortgages, hypothèques and other encumbrances, can not be registererd in the Panamanian Public Register. The mortgages registered in the foreign register are subject to the law of that country.

The Special Navigation Permit is issued for two years, which can be extended, and is kept in a separate register where the party concerned is classified as "owner/charterer".

^{57/} Ibid., Section E 9.

^{58/} Article 3 of the Law No.8, 1925, as amended by article 1 of the Law No.11 of 1973.

Bareboat chartering-out

The law also permits bareboat chartering-out of Panamanian registered ships.^{59/} A ship bareboat chartered to foreign operators for a period of two years may be registered in the Special Register of the foreign country without waiving the Panamanian registration, and thus without losing its status as a national Panamanian ship, provided that the country in which it is to be registered has provisions similar to those of the Panamanian Law, and that the maritime authorities approve such registration.

The Panamanian ship which is registered in a Special Foreign Register will continue to be subject to all legal and fiscal obligations under the law of Panama and the shipowner will not be entitled to register the property title and charges in the foreign register. Any such registration is regarded as null and void and may result in cancellation of the Panamanian registration.

SRI LANKA

Bareboat chartering-in

It is understood that in Sri Lanka draft legislation has been proposed in order to allow "parallel registration".^{60/} Accordingly, "parallel registration, under which a vessel registered in a foreign country is entitled to fly the Sri Lankan flag, may be allowed for such period of time as the Minister may approve". This applies to ships bareboat chartered by a Sri Lankan national or corporate body qualified to own a Sri Lankan ship.

To authorize parallel registration, the following conditions are required:

- the law of the foreign country of registration must allow parallel registration;
- the registration in the foreign registry must be suspended for the period of the bareboat charter, and

^{59/} Article 1 of the Law No.83 of 1973.

^{60/} Guide to International Ship Registers, International Shipping Federation, Bulletin No.1, December 1987.

- the following certified documents should be submitted with the application:
 - written consent of the maritime authorities of the country of foreign registry, also confirming the ownership and details of the mortgages and liabilities on the ship;
 - written consent of the mortgagees;
 - a copy of the charter party, and
 - the written consent of the shipowner.

Ships accepted for parallel registration will be entered in the "Book of Parallel Registration" in Sri Lanka's ship registry and issued with a certificate of parallel registration. During the period of parallel registration, the ship must fly the Sri Lankan flag, but the name of the ship and its port of registry shall be that of the foreign registry.

Although suspension of the foreign registration, during the period of bareboat charter, is a condition for allowing parallel registration, yet it is provided that "the mortgage and any other encumbrances shall continue to be recorded in the foreign register", and "registration of mortgage in the Sri Lankan register will not be permitted".

During the period in which the ship is under parallel registration, the Merchant Shipping Act and the regulations issued by the Sri Lankan authority shall apply.

ANTIGUA AND BARBUDA

Bareboat chartering-in

It appears that in Antigua and Barbuda, the Merchant Shipping (Amendment) Act, 1987, permits registration of bareboat chartered ships.^{61/} Thus, a "foreign registered vessel which is bareboat chartered to a person or company

^{61/} Guide to International Ship Registers, International Shipping Federation, May 1987.

wishing to register the vessel in Antigua and Barbuda, may be so registered if the law of the country of original registration permits it". Therefore, it seems that the bareboat charterer does not need to be a national of Antigua and Barbuda. It is, however, required that a copy of the charter party, the consent of the shipowner, the mortgagees and of the appropriate maritime authorities of the foreign registry, containing confirmation as to the ownership of the ship and as to the mortgages and encumbrances on the ship, must be submitted.

HONDURAS - BAHAMAS

The Maritime Law of Honduras and legislation introduced in the Bahamas at the end of 1986 also permit ships registered in a foreign country to fly the national flag during bareboat charter registration, while the mortgage is retained in the original country of registration. Alternatively, in case of bareboat chartering-out, the ship may fly the flag of another country retaining the mortgage in the original register.^{62/}

^{62/} Guide to International Ship Registers, op.cit., May 1987, and Bulletin No.1, December 1987.

IV.

In some countries, foreign ships bareboat chartered-in are entered in a special register without change of flag or registration:

MEXICO

In Mexico, the Law for the Development of the Mexican Merchant Marine^{63/} introduced the concept of registration of foreign ships in what is called "Padrón de Abanderamiento Mexicano" (the "Padrón"). To register in the "Padrón", it is required, inter alia, that ownership of the foreign flag ship must be transferred to the Mexican operator at or prior to the expiration of the bareboat charter. Failure to comply with this requirement will render the Mexican operator liable to the Government for reimbursement of all benefits accrued during registration of the ship in the "Padrón".

During the period of registration in the "Padrón", the ship keeps its original registration and flag. Thus, no formal consent or approval from the authorities of the ship's original State of registration is required and no titles or mortgages are registered in the "Padrón". However, ships registered in the "Padrón" enjoy the benefit of legislation concerning cargo reservation and are entitled to subsidized bunkers.

PERU

The Peruvian law contains somewhat similar provisions to those of Mexico.^{64/}

ARGENTINA

In Argentina, foreign flag vessels bareboat chartered-in retain their original registration and flag. They are however considered as flying the Argentinian flag with respect to cargo reservation and are registered for administrative purposes.^{65/}

^{63/} Ley para el Desarrollo de la Marina Mercante Mexicana, December 1980, modified by Decree of Dec. 1984, article 4.

^{64/} Financial Leasing Decreto Supremo 025-86-TC.

^{65/} Ley de Navegación 20094, Ley 20447, Reglamento y Resolución Serie No.507 del 22 Dec.76.

Concluding remarks

An attempt has been made in this report to provide a brief account of the existing national legislations and practices concerning bareboat charter registration. It appears from the report that the practices vary considerably from one country to another.

In some countries, bareboat chartered ships may be registered only upon deletion from the original register. In others, the consent of the appropriate authorities of the State of original registration is required regarding the change of flag while the ship remains in the original register: in some of these cases, the ship and the mortgages/hypothèques and similar charges are reregistered in the bareboat charterer's State. As a result, there may be circumstances where the ship, mortgages/hypothèques and similar charges on the vessel are registered in two registers. In some cases, while the requirement is to "suspend" the original registry without any qualification, the mortgages and similar charges are still required to be registered in the original register during the period of the bareboat charter. In other words, the "suspended" register continues to be operational.

Clearly, the practice of bareboat charter registration has been rapidly increasing.^{66/} In view of the important role of bareboat charter registration for the development of merchant fleets particularly of those of developing countries, there is need for appropriate guidelines on this matter,

66/ It is interesting to note that the Law permitting parallel registration in Cyprus was passed in 1986 and, by the end of July 1987, the total number of ships which have flown the Cyprus flag under parallel registration was 121, with a total gross tonnage of 505,868, out of which 116 were registered in the Federal Republic of Germany: see the paper delivered by Chrysses Demetriades, at the ICC Symposium on Bareboat Charter Registration, on "The present and future of Bareboat Charter Registration with particular reference to Cyprus".

It is understood that in the Philippines, the Law allowing bareboat charter registration was passed in 1975 and out of more than 400 ships making up the country's overseas fleet, only 50 were owned or permanently registered in the country, the rest being temporarily registered under the bareboat charter registration system: Lloyd's Ship Manager, July 1987.

bearing in mind the principles laid down in the relevant international conventions, particularly the United Nations Convention on the Law of the Sea, 1982, and the United Nations Convention on Conditions for Registration of Ships, 1986.

As regards the current work of the Joint Intergovernmental Group, the Group may wish to consider whether or not the interests of the mortgagees are best protected by inclusion of specific provisions on the subject in the draft convention on maritime liens and mortgages.

Annex

Proposals put forward during the third session of the JIGE
regarding bareboat charter registration

Article 3bis*

1 In the event of temporary registration of a vessel, registered in a State Party, in another State Party, the former State shall not permit suspension of registration without the written consent of all holders of registered mortgages, "hypothèques" or charges.

2 A vessel which is registered in a State Party shall not be eligible for temporary registration in another State Party unless either:

- (a) a certificate has been issued by the former State that the registration of the vessel has been suspended; or
- (b) a certificate has been issued by the former State that the registration of the vessel will be suspended when such temporary registration is effected.

Article 3 Change or suspension of registration**

1 In the event of a voluntary change of ownership or voluntary change of registration of a vessel, entailing the deregistration of the vessel from the national register of the State Party as well as in the event of temporary registration of a vessel, registered in a State Party, in another State Party in connection with the vessel being bareboat chartered in, no State Party shall permit the owner to deregister the vessel nor permit suspension of registration without the written consent of all holders of registered mortgages, "hypothèques" or charges.

2 A vessel which is or has been registered in a State Party shall not be eligible for registration or even temporary registration in another State Party unless a certificate has been issued by the former State to the effect that the vessel has been deregistered or that her registration has been suspended.

* Proposed by the Chairman of the Joint Intergovernmental Group of Experts.

** Proposed by the USSR delegation.

Article 12bis - Scope of application as to registered bareboat charter***

1 Bareboat chartering contracts so far as registered merely as to entitle the bareboat charterer to fly the flag of the State to which he is a national [or in which he has his main seat of business] (flag [and operator] registration), shall not affect the rights and obligations of shipowners having their vessels chartered out, mortgagees, lienholders, courts and competent authorities [registrars] under this convention. Therefore:

- (a) suspension is assumed to be valid under the laws of the State where property, mortgages, hypothèques and charges are registered (real rights [ownership] registration) with respect to fly the flag, but not as to evidence mortgages and hypothèques, voluntary change of ownership and registration except the right to fly the flag;
- (b) applicable law under article 2 is the law of the State of the real right registration;
- (c) change of registration according to article 3(1), and certificate as to notify deregistration according to article 3(2) refer to the real right [ownership] registration correspondingly;
- (d) the obligation of the competent authority to notify the time and place of sale to the registrar [competent authority] as per article 10 refers to the real right [ownership] registration.

2 Additionally, the voluntary change of ownership and/or [real rights] [ownership] registration [other than flag registration] the deregistration and reregistration have to be notified to the competent authority of the State of flag registration, by both the former and the new State of real rights [ownership] registration. In the event of forced sale according to article 10, the notification has to be given to the bareboat charterer as well, and neither the certificate as per article 11(3) nor the deletion from real rights [ownership] registration shall affect the flag registration, unless the latter has already ceased subsequent to an event of default and the flag State has applied for and decided accordingly.

3 Does the State of flag registration provide for recording mortgages, hypothèques and other charges, the State of real rights registration has to notify the State of flag registration accordingly of any entry into its register. Accrual and cession of real rights must not be effected in the State of flag registration unless real rights registration has shifted under observation of all requirements of articles 10.

*** Proposed by the delegation of the German Democratic Republic.