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Joint UNCTAD/IMO Intergovernmental Group
of Experts on Maritime Liens and
Mortgages and Related Subjects
Seventh session
Geneva, 5 December 1994
Item 6 of the provisional agenda

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

Rapporteur: Mr. Zengjie Zhu (China)

AGENDA ITEM 3

Speakers: Officer-in-charge of the Services Development Division
of UNCTAD
Brazil
United States of America
International Chamber of Commerce

Note for Delegations

This draft report is a provisional text circulated for clearance by delegations.

Requests for amendments - to be submitted in English or French - should be communicated **by Friday, 16 December 1994 at the latest** to:

The UNCTAD Editorial Section
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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), held its seventh session at the Palais des Nations, Geneva, from 5 to 9 December 1994.

2. During the session, ... plenary meetings and ... informal meetings of the sessional group of the whole were held.

Opening statement

3. The Officer-in-charge of the Services Development Division of UNCTAD, speaking on behalf of the Secretary-General of IMO and the Officer-in-charge of UNCTAD, congratulated the Joint Group for the excellent work carried out during the six sessions held between 1986 and 1989 in preparing the Draft Convention on Maritime Liens and Mortgages. The adoption of the International Convention on Maritime Liens and Mortgages, 1993, by the UN/IMO Conference of Plenipotentiaries was an outstanding achievement in the unification of law and marked an excellent example of fruitful cooperation between UNCTAD and IMO.

4. The task of the Group was both very important and complex, as the subject of arrest of ships was of crucial importance to the shipping community. Arrest being a means of enforcing maritime liens and mortgages, it was essential that the international Conventions governing these issues be closely aligned so as to ensure that all claims secured by maritime liens were given right of arrest under the Convention. The Group would therefore need to consider the scope of amendments necessary to the 1952 Convention on Arrest of Ships.

Chapter I

CONSIDERATION OF THE POSSIBLE REVIEW OF THE INTERNATIONAL
CONVENTION FOR THE UNIFICATION OF CERTAIN RULES
RELATING TO THE ARREST OF SEA-GOING SHIPS, 1952

(Agenda item 3)

5. For its consideration of this item, the Joint Intergovernmental Group of Experts had before it the following documentation:

"Consideration of the review of the 1952 Convention on Arrest of Sea-going Ships" - report by the UNCTAD secretariat (TD/B/CN.4/GE.2/2);

"Consideration of the scope of the revision of the International Convention relating to the Arrest of Seagoing Ships" - note by the secretariat of UNCTAD (TD/B/C.4/AC.8/22).

6. The representative of Brazil said that uniformity of the rules applying to maritime mortgages was necessary to facilitate international maritime finance. The opportunity should not be lost to revise the 1952 Arrest Convention, which should be an international instrument guaranteeing the execution of maritime claims, including mortgages, and which should also serve as a guideline for the revision of national legislation concerning arrest of ships. Except for one, the countries of Latin America had not ratified the 1952 Arrest Convention, mainly because the majority found it unsatisfactory and in conflict with their current national laws and practices. For the sake of uniformity, all Latin American countries should join in an effort to review and enact a new law on arrest of ships. The purpose of uniformity could be better achieved if regional governmental or non-governmental organizations dealing with maritime law, with the support of UNCTAD and IMO, proposed a model law for consideration by Latin American countries. This task was in fact part of the mandate given by the governing bodies of UNCTAD and IMO to the Group of Experts. Finally, his delegation supported the revision of the 1952 Arrest Convention, taking into account the CMI Lisbon Draft and the International Convention on Maritime Liens and Mortgages, 1993.

7. The representative of the United States of America said that, if it merely limited its discussion to "editorial" changes to the 1952 Convention on Arrest of Ships, the Group would not discuss those areas where conflicting interpretations existed or where time had shown a need for improvement. His delegation was in favour of addressing the problems identified by the CMI and

the secretariats of UNCTAD and IMO and not merely bringing the 1952 International Convention on Arrest of Ships into line with the International Convention on Maritime Liens and Mortgages, 1993.

8. The observer for the International Chamber of Commerce said that his organization favoured an examination, and the inclusion in a new convention, of the enforcement procedures to be followed between arrest and forced sale. The inclusion of liens and mortgages - particularly mortgages - as a basis for arrest failed to take full account of those enforcement mechanisms commonly available under the national laws of most maritime nations. With regard to methods of enforcement, particularly during the interval between arrest and forced sale, the procedures to be followed should be flexible. The proposed new convention on arrest of ships should permit a vessel to be sold prior to entry of a judgement, in order to spare creditors from unreasonable custodial costs, as was already the case in some countries, and States that became parties to the new convention should, in order to deal with methods of enforcement, overhaul their procedures to take account of the need to permit a sale, pursuant to court order, prior to entry of a formal judgement or forced sale under Articles 11 and 12 of the International Convention on Maritime Liens and Mortgages, 1993.

(To be completed)

Chapter II

ORGANIZATIONAL MATTERS

A. Opening of the session

9. The seventh session of the Joint Intergovernmental Group of Experts was opened by Mr. G.G. Ivanov (Russian Federation), Chairman of the Group at its sixth session, on 5 December 1994.

B. Election of officers

(Agenda item 1)

10. At its opening plenary meeting, on 5 December 1994, the Joint Intergovernmental Group of Experts decided that the officers for its seventh session would be the same as for its sixth session. The officers for the seventh session were thus as follows:

<u>Chairman:</u>	Mr. G.G. Ivanov	(Russian Federation)
<u>Vice-Chairmen:</u>	Mr. S. Ruíz Olmedo	(Mexico)
	Mr. K.-J. Gombrii	(Norway)
<u>Vice-Chairman cum-Rapporteur:</u>	Mr. Zengjie Zhu	(China)

C. Adoption of the agenda and organization of work

(Agenda item 2)

11. At its opening plenary meeting, on 5 December 1994, the Joint Intergovernmental Group of Experts adopted its provisional agenda, as contained in document TD/B/CN.4/GE.2/1-LEG/MLM/28. The agenda for its seventh session was thus as follows:

1. Election of officers
2. Adoption of the agenda and organization of work

3. Consideration of the possible review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952
4. Provisional agenda and date of the eighth session of the Joint Intergovernmental Group of Experts
5. Other business
6. Adoption of the report of the Joint Intergovernmental Group on its seventh session

12. Also at its opening plenary, the Joint Intergovernmental Group decided to establish an informal sessional group of the whole to consider agenda item 3.

D. Provisional agenda and date of the eighth session of the Joint Intergovernmental Group of Experts

(Agenda item 4)

(To be completed)

E. Other business

(Agenda item 5)

(To be completed)

F. Adoption of the report of the Joint Intergovernmental Group on its seventh session

(Agenda item 6)

(To be completed)