



**Conference of Plenipotentiaries
on a Convention on
Maritime Liens and Mortgages**

Distr.
LIMITED

A/CONF.162/L.2/Add.1
29 April 1993



Original: ENGLISH

Geneva, 19 April 1993
Agenda item 8

PREPARATION AND ADOPTION OF A CONVENTION
ON MARITIME LIENS AND MORTGAGES

Draft articles for a convention on maritime liens and mortgages,
referred by the Main Committee to the Drafting Committee

CONTENTS

<u>Articles</u>		<u>Page</u>
Article 11	Effects of forced sale	2
Article 13	Communication between States Parties	4
Article 14	Conflicts of conventions	4
Article 15	Temporary change of flag	4

DRAFT ARTICLES FOR A CONVENTION ON MARITIME LIENS AND MORTGAGES

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 area of the jurisdiction of such State,
- (b) the sale has been effected in accordance with the law of the said State and the provisions of article 10 and this article of this Convention.

2. The costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel, including costs incurred from the time of arrest or seizure such as claims for the upkeep of the vessel and the crew as well as claims referred to in article 4, paragraph 1(a), shall be paid first out of the proceeds of sale. The balance of the proceeds shall be distributed in accordance with the provisions of this Convention, to the extent necessary to satisfy the respective claims.¹

¹ The Drafting Committee to place the following text of the Greek proposal in A/CONF.162/CRP.5 in an appropriate place, not in paragraph 1 of article 11:
"the residue of the proceeds, if any, shall be paid to the owner and it shall be freely transferable".

3. A State Party may provide in its national legislation that, in the event of the sale of a stranded or sunken ship, which was removed by the Government in the public interest ², the costs of wreck removal shall be paid out of the proceeds of the sale, before all other claims which shall be secured by a maritime lien on the vessel.

4. If at the time of the forced sale the vessel is in the possession of a shipbuilder or of a shiprepairer who under the law of the State Party in which the sale takes place enjoys a right of retention, such shipbuilder or shiprepairer must surrender possession of the vessel to the purchaser but is entitled to obtain satisfaction of his claim out of the proceeds of sale after the satisfaction of the claim of holders of maritime liens mentioned in article 4.

5. When a vessel registered in a State Party has been the object of a forced sale in a State Party, the competent authority 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 incumbrances, provided that the requirements set out in paragraphs 1 (a) and (b) have been complied with. 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 registration, as the case may be.

6. States Parties shall ensure that any proceeds of a forced sale are actually available and freely transferable.

² Drafting Committee to clarify "public interest".

Article 13

Communication between States Parties

For the purpose of articles 3, 10 and 11, the competent authorities of the States Parties shall be authorized to correspond directly between themselves.

Article 14

Conflict of conventions

Nothing in this Convention shall affect the application of an ³ international convention providing for limitation of liability or of national legislation giving effect thereto.

Article 15

Temporary change of flag

If a seagoing vessel registered in one State is permitted to fly temporarily the flag of another State, the following shall apply:

- (a) References in this Convention to the "State in which the vessel is registered" or to the "State of registration" shall be deemed to be references to the State in which the vessel was registered immediately prior to the change of flag, and references to the "competent authorities in charge of the register" shall be deemed to be references to the competent authority in charge of the register in that State.
- (b) The law of the State of registration shall be determinative for the purpose of recognition of mortgages, "hypothèques" and charges.

³ Drafting Committee to consider replacing "an" by "any".

- (c) The State of registration shall require a cross-reference entry in its register specifying the State whose flag the vessel is permitted to fly temporarily; likewise, the State whose flag the vessel is permitted to fly temporarily shall require a cross-reference entry in its register specifying the State of registration.
- (d) No State Party shall permit a vessel registered in that State to fly temporarily the flag of another State unless all registered mortgages, "hypothèques" or charges on that vessel have been previously satisfied or the written consent of the holders of all such mortgages, "hypothèques" or charges has been obtained.⁴
- (e) The notice referred to in article 10 shall be given also to the competent authority in charge of the vessel's record in the State whose flag the vessel is permitted to fly temporarily.
- (f) Upon production of the certificate of deregistration referred to in paragraph 3 of article 11, the competent authority in charge of the vessel's record in the State whose flag the vessel is permitted to fly temporarily shall, at the request of the purchaser, issue a certificate to the effect that the right to fly the flag of that State is revoked.
- (g) Nothing in this Convention is to be understood to impose any obligation on States Parties to permit foreign vessels to fly temporarily their flag or national vessels to fly temporarily a foreign flag.

⁴ The Drafting Committee to consider the need for cross reference to article 3, paragraph 1.