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TRADE AND DEVELOPMENT BOARD
Joint UNCTAD/IMO Intergovernmental Group
of Experts on Maritime Liens and
Mortgages and Related Subjects
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**DRAFT REPORT ON THE WORK OF THE SESSIONAL GROUP OF THE WHOLE OF THE JOINT
UNCTAD/IMO INTERGOVERNMENTAL GROUP OF EXPERTS ON MARITIME LIENS AND
MORTGAGES AND RELATED SUBJECTS AT ITS NINTH SESSION**

Paper of the Informal Working Group on Article 1

The informal Working Group met from 2-4 December 1996. It was chaired by Mr. P. Calmon Filho (Brazil), and was attended by delegations from Brazil, Canada, China, Finland, France, Greece, Mexico, Netherlands, Sweden, Switzerland, United Kingdom and United States of America.

Article 1 - Definitions

Article 1 (1)

(1) "Maritime claim" means any claim concerning or arising out of the ownership, construction, possession, management, operation or trading of any ship, or *concerning or arising* out of a mortgage or an "hypothèque" or a registrable charge of the same nature on any ship, *or out of salvage operations relating to any ship*, such as any claim in respect of: ¹

(a) *physical*² loss or damage caused by the operation of the ship ~~other than loss of or damage to cargo, containers and passengers' effects carried on the ship;~~

(b) loss of life or personal injury occurring, whether on land or on water, in direct³ connection with the operation of the ship;

(c) salvage operations or any salvage agreement;

~~(d) liability to pay compensation or other remuneration in respect of the removal or attempted removal of a threat of damage, or of preventive measures or similar operations, whether or not arising under any international convention, or any enactment or agreement;~~

(d) the removal or attempted removal of a threat of damage including damage to the environment or of preventive measures or similar operations, whether or not arising under any international convention, or any enactment or agreement, or losses incurred, or likely to be incurred, by third parties⁴.

(e) costs or expenses relating to the raising, removal, recovery or destruction of the wreck of the ship or its cargo;⁵

(f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;

(g) any agreement relating to the carriage of goods or passengers in the ship, whether contained in a charter party or otherwise;

(h) loss of or damage to or in connection with goods (including luggage) carried in the ship;

(i) general average;

(j) towage;

(k) pilotage;

(l) goods, materials, provisions, bunkers, equipment (including containers) or services supplied to the ship for its operation or maintenance;

- (m) ~~construction~~ building, repairing, converting or equipping of the ship;
- (n) port, canal, and other waterway dues and charges ~~and pilotage dues~~;
- (o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;
- (p) ~~disbursements made in respect of the ship, by or on behalf of the master, owner, demise or other charterer or agent;~~
- (p) master's disbursements and disbursements made by shippers, demise charterers, other charterers or agents on behalf of the ship or its owners ;
- (q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer; ⁶
- (r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer; ⁷
- (s) any dispute as to ownership or possession of the ship or arising out of a contract for the sale of the ship ;
- (t) any dispute between co-owners of the ship as to the employment or earnings of the ship;
- (u) a registered mortgage or a registered "hypothèque" or a registrable charge of the same nature on the ship;
- (v) ~~any dispute arising out of a contract for the sale of the ship.~~

Notes:

- (i) *Amendments agreed in London (TD/B/CN.4/GE.2/10 PAGES 15-16) as revised in Geneva*
- (ii) *Amendments agreed in Geneva*

The Group further agree that it would be necessary to reconsider in future work the wording where a restriction of a maritime lien would be inappropriate in respect of a maritime claim.

Endnotes:

1. Comments by the delegation of the Netherlands: “to add an additional sub-paragraph reading: (..)which a maritime lien is granted against the owner, demise charterer, manager or operator of the ship, by the law of the State in which the arrest is made.”

Since it was the task of the working Group to ensure that all claims with maritime liens status under the 1993 MLM Convention are included in the list of maritime claims of Article 1 (ref. Doc. JIGE (viii)/7 § 18) this proposal was made to ensure that also national maritime liens granted under Article 6 of the 1993 MLM Convention were to included in the list of Article 1.

2. The Chinese and Greek delegations do not agree with the deletion of the word “physical”.
3. The Group is divided as to the retention or deletion of the word “direct”.
4. Comments by the Greek Delegation on Article 1 (d): In negotiating the Maritime Liens and Mortgages Convention of 1993 a compromise was reached, which was reflected in Article 4, (2) of the above mentioned Convention, where no maritime lien shall be attached to a vessel to secure claims which arise out of or result from the cases mentioned there.

The same compromise should be reflected in the new draft Articles for new rules on the Arrest of Sea-going ships.

Therefore, a vessel should not be arrested for claims which arise out of (a) the damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to international conventions or national law providing for strict liability and compulsory insurance or other means of securing the claims, (b) the radioactive properties or a combination of radioactive properties of nuclear fuel or of radioactive products or waste.

5. Comments of the Greek Delegation on Article 1 Paragraph 1 (e) “In discussing this definition, Greece would like to make clear to everybody that a ship under distress cannot be the subject of arrest due to the tremendous risks involved for the safety of passengers, crew and cargo of the vessel, of the vessel itself and for the environment.”
6. Comments by Greek Delegation on Article 1 (q) : The Greek Delegation has some doubts about the exact application of Article 1 (q) in several jurisdictions, where peculiarities might arise.
7. Comments by the Chinese and Greek Delegations on Article 1 (r): The two Delegations are of the opinion that the provisions of Article 1 (r) are very vague and may lead to situations where a vessel can be arrested for a very small amount of money.

Therefore, the two Delegations believe that this sub-paragraph should be deleted, bearing also in mind that the commissions, brokerages or agency fees mentioned there result from contracts. Therefore, the claimant had a fair chance to check the credibility of the owner before he entered into the contract.