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TRADE AND DEVELOPMENT BOARD

Committee on Shipping  
Joint UNCTAD/IMO Intergovernmental Group  
of Experts on Maritime Liens and  
Mortgages and Related Subjects  
Fifth session  
Geneva, 12 December 1988  
Agenda item 2

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

Notes by the UNCTAD secretariat

Joint proposal submitted by the delegations of the United Kingdom of  
Great Britain and Northern Ireland and Hong Kong

The attached text \*/ has been submitted jointly by the delegations of the United Kingdom of Great Britain and Northern Ireland and Hong Kong for consideration by the Joint Intergovernmental Group of Experts at its fifth session.

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\*/ Also circulated under the symbol LEG/MLM/17/Add.4.

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Joint submission by the delegations of the United Kingdom of  
Great Britain and Northern Ireland and Hong Kong

Article 8 (Alternative A)

(1) The maritime liens set out in article 4 shall be extinguished after a period of [one/two] years from the date when the claims secured thereby arose, save that where a vessel is the subject of a forced sale such maritime liens shall be extinguished at the date of such forced sale in accordance with article 11.

(2) For the purpose of calculating the [one/two] year period referred to in paragraph (1) of this article, no account shall be taken of such period during which the holder of the maritime lien is legally prevented from enforcing its claim by arresting the vessel.

Article 11

Effects of Forced Sale

1. In the event of a forced sale of a vessel within the jurisdiction of a State party all mortgages, "hypothèques" or charges, [except those granted by the new owner], and all liens and other encumbrances of whatsoever nature, shall cease to attach to the vessel, provided that the forced sale has been effected in accordance with the law of the said State party and all the provisions of this Convention.

2. The sale proceeds arising from the arrest or seizure and subsequent forced sale of a vessel shall be paid and distributed in accordance with the provisions of this Convention in the following order:

- (i) in settlement of those costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel, [including the costs incurred in respect of the maintenance of the vessel during the period of arrest,] [and in respect of any premium relating to the insurance of the vessel during the period of arrest payable by the arresting party],
- (ii) in settlement of the claims of holders of maritime liens listed in article 4, 1/
- (iii) in settlement of the claims of holders of registered mortgages, "hypothèques" or charges,
- [(iv) in settlement of the claims of holders of such other [maritime] liens and the claims of persons entitled to a right of retention all as mentioned in article 6],
- (v) in settlement of the claims of holders of maritime claims against the vessel,
- [(vi) the balance of the sale proceeds (if any) shall be paid to the owner of the vessel or such other person as the court of the State party in which the vessel has been sold shall determine.] 2/

3. (1) Where a vessel registered in a State party has been the subject of a forced sale in a State party, the competent authority [in the jurisdiction of the latter State party] shall issue a certificate in favour of the new owner to the effect that the vessel is sold free of all mortgages, "hypothèques" or charges [(except those granted by the new owner)] and all liens and other encumbrances of whatsoever nature, provided that the requirements of paragraph 1 of this article have been complied with.

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1/ The costs relating to the repatriation of crew have been omitted as this element of the crew's claim can be specifically included in article 4 (i), even though in the opinion of this delegation "other sums" already encompasses this particular item.

2/ Although it may be implied, it is not at present entirely clear to whom any balance of the sale proceeds is to be paid.

(2) (a) Upon the production of the certificate referred to in subparagraph (3) (1) of this article, the Registrar of Shipping of the State party where the vessel was registered immediately prior to the forced sale, shall delete all existing [registered] 1/ mortgages, "hypothèques" and charges.

[(b) In addition, where the new owner of the vessel wishes to register the vessel under a different flag from that under which the vessel was registered immediately prior to the forced sale, the competent authority of the State party where the forced sale has been effected, shall issue a duplicate certificate under subparagraph 3 (1) of this article to enable the new owner to produce such certificate to the Registrar of Shipping of the new flag.] 2/

(3) All sale proceeds arising from the forced sale of a vessel shall be deposited with the competent authority of the State party where the forced sale has been effected and shall be freely available for distribution and transferable.

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1/ The word "registered" is not used in paragraph 1 of this article but it is used here in order to presumably emphasize that the "deletion" certificate to be issued by the Registrar of Shipping can only relate to those mortgages, hypothèques and charges, which are actually registered. There is at present no wording which covers the deletion of mortgages or charges from the Companies Registry but the general consensus at the Fourth Session of the Group in London was that special wording should not be inserted to cover a situation which only related to a few jurisdictions.

2/ Since the certificate issued pursuant to paragraph 3 (1) will have to be delivered to the Registrar of Shipping in the State party where the vessel was registered immediately prior to the forced sale, it will not be immediately available to the new register if the new owner wishes to register the vessel under a different flag. It would therefore seem expedient for a duplicate certificate to be issued in this situation to allow prompt registration of the vessel in the new register.