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Joint UNCTAD/IMO Intergovernmental
Group of Experts on Maritime Liens
and Mortgages and Related Subjects
Sixth session
London, 25 September 1989

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

held at the Palais des Nations, Geneva
from 12 to 20 December 1988

The attached report (JIGE(V)/4) */ has been prepared on the fifth session
of the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens
and Mortgages and Related Subjects.

*/ Also circulated by IMO under the symbol LEG/MLM/19.

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ON MARITIME LIENS AND MORTGAGES AND RELATED SUBJECTS
ON ITS FIFTH SESSION

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INTRODUCTION

1. The Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, established by the United Nations Conference on Trade and Development (UNCTAD) and by the International Maritime Organization (IMO), held its fifth session at the Palais des Nations, Geneva, from 12 to 20 December 1988.

2. During the session, two plenary meetings were held. The present report reflects the proceedings at those meetings. The report summing up the discussions in the Sessional Group is annexed to this report (see annex I).

Opening statements

3. The Director of the Shipping Division of UNCTAD said that the Joint Intergovernmental Group of Experts had a heavy task before it at its fifth session to finalize the work on maritime liens and mortgages and to take a decision regarding the remaining subjects in its terms of reference which had not been considered. The work on maritime liens and mortgages had now reached its final stage and the Group had to resolve a number of outstanding issues, including the question of bareboat charter registration and the number of claims which had to be given maritime lien status with priority over mortgages.

4. He recalled that this was the last session of the Joint Intergovernmental Group to be held in Geneva, following a decision by the Committee on Shipping at its thirteenth session to hold the Working Group on International Shipping Legislation in the latter part of 1989. He therefore hoped that the Group would be able to complete its task and draw up a text which could be widely acceptable to the international shipping community, bearing in mind the importance attached to the subject.

5. The Head of the Legal Office of the International Maritime Organization said that the progress achieved so far and the spirit of harmony and co-operation in which the Group had carried out its work provided ample confirmation of the wisdom shown by the governing bodies of UNCTAD and IMO in establishing the Joint Intergovernmental Group of Experts. He hoped that the current session would again prove fruitful and productive so that the Group would be in a position to take stock of the work achieved and of the matters still to be accomplished in order to fulfil the terms of reference given to the Group by the Trade and Development Board of UNCTAD and the Council of IMO.

6. He recalled the decision taken by the Council of IMO at its sixty-first session in November 1988 on a reorganization of the organization's work programme for 1989, in particular the decision to allocate only one meeting-week for the "legal" work of the organization for 1989, instead of two weeks as originally allocated by the IMO Assembly at its fifteenth session. He stated that when taking this decision, the Council had not expressed any view on how the single meeting-week allocated for legal work should be used. However, for constitutional reasons, the Legal Committee had

to hold at least one session every calendar year, although the length of such a session had not been prescribed. He therefore suggested that the Joint Intergovernmental Group might wish to consider, in connection with its discussions on its further work under agenda items 3 and 4, the timing of its sixth session and to decide whether it would still prefer to hold that session in May 1989 as originally envisaged, but with a slight reduction in the time available, so as to allow the IMO Legal Committee to hold a brief session, or whether some other arrangement would be more acceptable.

Chapter I

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

(Agenda item 2)

7. For its consideration of this item the Joint Intergovernmental Group had before it the following documents:

"Consideration of maritime liens and mortgages and related subjects in accordance with the terms of reference of the Joint Intergovernmental Group of Experts" (revised set of draft articles and notes) (JIGE(V)/2). */

Idem: Proposal by the Greek delegation (JIGE(V)/2/Add.1). */

Idem: Proposal by the Liberian delegation (JIGE(V)/2/Add.2). */

Idem: Proposal by the delegation of the United Kingdom of Great Britain and Northern Ireland (JIGE(V)/2/Add.3). */

Idem: Joint proposal submitted by the delegations of the United Kingdom of Great Britain and Northern Ireland and Hong Kong (JIGE(V)/2/Add.4). */

8. Agenda item 2 was referred to the Sessional Group for detailed consideration (for the report of the Sessional Group, see annex I).

*/ Also circulated by UNCTAD under the symbols TD/B/C.4/AC.8/17 and Add.1-4 respectively and by IMO under the symbols LEG/MLM/17 and Add.1-4, respectively.

Chapter II

CONSIDERATION OF FUTURE WORK ON OTHER ASPECTS OF THE TERMS OF
REFERENCE OF THE JOINT INTERGOVERNMENTAL GROUP OF EXPERTS

(Agenda item 3)

9. For its consideration of this item the Joint Intergovernmental Group had before it the following document:

"Consideration of future work on other aspects of the terms of reference of the Joint Intergovernmental Group of Experts" - Note by the secretariats of UNCTAD and IMO (JIGE(V)/3) */

10. Agenda item 3 was referred to the Sessional Group for detailed consideration (for the report of the Sessional Group, see annex I).

*/ Also circulated by UNCTAD under the symbol TD/B/C.4/AC.8/18 and by IMO under the symbol LEG/MLM/18.

Chapter III

PROCEEDINGS AT THE CLOSING PLENARY MEETING

A. Approval of the report of the Sessional Group

11. At its closing meeting, on 20 December 1988, the Joint Intergovernmental Group of Experts adopted the draft report on the work of the Sessional Group (JIGE(V)/WP/8/Add.1-3), as amended by the Sessional Group at its own closing meeting, and decided to annex that report to the report of the Joint Intergovernmental Group on its fifth session (see annex I below).

B. Final statement

12. The spokesman for the Group of 77 (Mexico) stated that his Group believed that there should be international regulations on maritime liens and mortgages/hypothèques and related subjects, which would undoubtedly lead to an increase in shipping activity, with attendant benefits for the whole world. For such regulations to be embodied in a document, it was necessary to unify the criteria in a manner that was satisfactory to all parties and that took into account the following basic points:

(a) Legal security - meaning that anyone granting or receiving credits could rest assured that his risk exposure was limited. Such a guarantee would undoubtedly reduce the cost of this service.

(b) Economic security - so that anyone taking advantage of such credits would feel encouraged to increase his shipping business, which in itself would give a distinctly beneficial boost to this activity.

(c) Absolute respect for, and protection of, the legal systems of all countries. This would render the international regulations in the convention acceptable to all parties.

Accordingly, the Group of 77 welcomed wholeheartedly any proposal which, satisfying the above-mentioned basic requirements, would lead to the final drafting of a mandatory international legal instrument.

13. In the light of the results achieved at the current session of the Joint Intergovernmental Group, the Group of 77 felt sure that, if the above-mentioned criteria were respected - as had been the case so far - the Intergovernmental Group would agree on a final draft that would be acceptable to all participants. Once it had become a juridical standard, this text would promote increased shipping activity, with greater participation by the developing countries and consequent benefit for all.

14. Finally, the Group of 77 supported the decision to hold the sixth session of the Intergovernmental Group in September 1989, in order to work on the final draft of the text on maritime liens and mortgages/hypothèques and the aspects related to the revision of the International Convention Relating to the Arrest of Seagoing Ships (Brussels, 1952). He called for the relevant documentation, as well as any proposals submitted, to be communicated to the capitals concerned at least three months before the sixth session of the Intergovernmental Group.

Chapter IV

ORGANIZATIONAL MATTERS

A. Opening of the session

15. The fifth session of the Joint Intergovernmental Group of Experts was opened by Mr. G.G. Ivanov (USSR), Chairman of the Group, on 12 December 1988. At the 1st plenary meeting, opening statements were made by the Director of the Shipping Division of UNCTAD and by the Head of the Legal Office of the International Maritime Organization (see paragraphs 3-6 above).

B. Adoption of the agenda and organization of work (agenda item 1)

16. At its 1st plenary meeting, on 12 December 1988, the Joint Intergovernmental Group of Experts adopted the provisional agenda drawn up by the secretariats of UNCTAD and IMO in document JIGE(V)/1 (issued by UNCTAD under cover of TD/B/C.4/AC.8/16 and by IMO under cover of LEG/MLM/16). The agenda for the fifth session therefore read as follows:

1. Adoption of the agenda and organization of work
2. Consideration of maritime liens and mortgages and related subjects, in accordance with the terms of reference of the Joint Intergovernmental Group of Experts
3. Consideration of future work on other aspects of the terms of reference of the Joint Intergovernmental Group of Experts
4. Provisional agenda and date of the sixth session of the Joint Intergovernmental Group of Experts
5. Other business
6. Adoption of the report of the session.

17. At the same meeting, the Joint Intergovernmental Group decided to continue its substantive work on agenda items 2 and 3 in the Sessional Group, under the chairmanship of the Chairman of the Intergovernmental Group.

C. Attendance

18. The following States members of UNCTAD and IMO participated in the session: Antigua and Barbuda; Argentina; Bahrain; Bangladesh; Belgium; Brazil; Canada; China; Côte d'Ivoire; Czechoslovakia; Denmark; Finland; France; German Democratic Republic; Germany, Federal Republic of; Greece; Honduras; India; Indonesia; Iraq; Israel; Italy; Japan; Liberia; Libyan Arab Jamahiriya; Madagascar; Mexico; Morocco; Netherlands; Nigeria; Norway; Panama; Philippines; Poland; Portugal; Republic of Korea; Saint Vincent and the Grenadines; Saudi Arabia; Spain; Sweden; Switzerland; Thailand; Turkey; Union of Soviet Socialist Republics; United Kingdom of Great Britain and Northern Ireland; United States of America; Venezuela; Yugoslavia; Zaire.

19. The following associate member of IMO participated in the session:
Hong Kong.

20. The following specialized agency was represented at the session:
International Labour Organisation.

21. The following intergovernmental organizations were represented at the session: Arab Federation of Shipping; Organization of African Unity.

22. The following non-governmental organizations were represented at the session: International Bar Association; International Chamber of Commerce; International Confederation of Free Trade Unions; International Foundation for Development Alternatives; Institute of International Container Lessors; International Association of Classification Societies; International Association of Ports and Harbours; International Chamber of Shipping; International Maritime Committee; International Ship Suppliers Association.

D. Provisional agenda and date of the sixth session of the Joint Intergovernmental Group of Experts (agenda item 4)

23. At its closing meeting, on 20 December 1988, the Joint Intergovernmental Group of Experts approved the provisional agenda for its sixth session proposed by the secretariats of UNCTAD and IMO (JIGE(V)/WP/14). (For the provisional agenda, see annex II below).

24. At the same meeting, the Joint Intergovernmental Group decided that its sixth session would be held in London from 25 to 29 September 1989.

E. Adoption of the report of the session (agenda item 6)

25. Also at its closing meeting, the Joint Intergovernmental Group adopted the draft report on its fifth session (JIGE(V)/WP/8) and authorized the Rapporteur to complete the final report as appropriate.

Annex I

REPORT ON THE WORK OF THE SESSIONAL GROUP

INTRODUCTION

1. The Sessional Group noted that it had been requested by the plenary of the Joint Intergovernmental Group of Experts to deal with two agenda items, namely consideration of maritime liens and mortgages and related subjects, in accordance with the terms of reference of the Joint Intergovernmental Group of Experts (agenda item 2), and consideration of future work on other aspects of the terms of reference of the Joint Intergovernmental Group of Experts (agenda item 3).

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

2. The Sessional Group based its discussions on a document containing, inter alia, a revised set of draft articles on maritime liens and mortgages prepared by the Chairman of the Joint Intergovernmental Group with the assistance of the two secretariats (JIGE(V)/2, issued by IMO under cover of LEG/MLM/17 and by UNCTAD under cover of TD/B/C.4/AC.8/17).

ARTICLE 1

Recognition and enforcement of mortgages, hypothèques and charges

3. The Sessional Group noted that two phrases ("effected on seagoing vessels" and "to secure payments of monies") still appeared in brackets in the opening paragraph of article 1.

4. With regard to the phrase "effected on seagoing vessels", many delegations were in favour of retaining this text and deleting the brackets. A number of delegations felt that retention of the text would make the scope of application of the convention clearer. One delegation noted that the phrase could be of particular relevance to those States which had a separate régime for inland navigation.

5. The Sessional Group agreed to retain the phrase "effected on seagoing vessels" in the opening paragraph without brackets.

6. Differing views were initially expressed over the desirability of retaining the phrase "to secure payment of monies". Some delegations were in favour of its retention while others favoured its deletion. A suggestion to replace the term "monies" by "claims" was not supported. The Sessional Group noted that the phrase had originally been included in the draft convention because article 1 had referred to "registerable charges of a similar nature". In the meantime, the draft had been altered to "registerable charges of the same nature" and a clarification of the charges falling under the scope of the convention by the addition of a reference to the payment of monies seemed no longer necessary.

7. The Sessional Group accordingly agreed to delete the phrase "to secure payment of monies".

8. A proposal to clarify the scope of application of the convention and to bring it into line with the 1948 Geneva Convention on the International Recognition of Rights in Aircraft by altering the last part of the opening paragraph so as to read "shall be recognized and enforceable in States Parties provided that:" was adopted by the Sessional Group.

9. No comments were made in respect of subparagraphs (a), (b) and (c).

10. The Sessional Group recalled that at its fourth session it had noted a proposal by a working group to the effect that, if the convention were to deal with bareboat charter registration, it might be appropriate to insert in article 1 an additional requirement for the recognition and enforcement of mortgages, hypothèques and charges in case a vessel was temporarily permitted to fly the flag of a State other than that of registration (cf. JIGE(IV)/5, annex, p. 35). In the light of this suggestion, it was proposed in JIGE(V)/2 (footnote 1) that the Sessional Group give consideration to the desirability of inserting a further subparagraph in article 1 reading as follows:

"(d) If a vessel registered in one State is permitted to temporarily fly the flag of another State, the register of the former State specifies the State whose flag the vessel is permitted to fly and the register of that State specifies the State of original registration."

11. Many delegations expressed their support for the reflection of the principle underlying this proposal in the new convention. Differing views were, however, expressed as to the wording of such a provision and as to its location in the convention.

12. Some delegations cautioned that to include the provision in article 1 could result in the recognition of the mortgages/hypothèques being dependent on the action taken by the State of temporary registration.

13. Some delegations also drew attention to the unsatisfactory wording of the provision as drafted.

14. One delegation drew attention to a potential conflict between this provision which would impose an obligation on a State not party to the convention, and principles of international treaty law. Other delegations felt, however, that the drafting of the new provision would not be as far-reaching and, in particular, would not impose an obligation on non-contracting States.

15. Some delegations drew attention to the connection between the proposed paragraph and article 15 on interpretation.

16. The Sessional Group agreed to include a suitably drafted paragraph on this matter in the convention.

17. Some delegations recalled in this connection that they were not in favour of dealing with the question of bareboat charter registration in the context of a new convention on maritime liens and mortgages, as this dealt with a subject outside the aims of this convention.

18. The Sessional Group recalled that, at previous sessions, one delegation had proposed the insertion of a further subparagraph in article 1 intended to overcome problems under its national legislation whereby mortgages/hypothèques on a ship belonging to a company, whether or not registered under its merchant shipping legislation, had to be registered under company law.

19. The delegation in question stated that it had proved difficult to insert such a provision in article 1 and that, instead, it was now proposing an alternative approach which it had already referred to earlier and which consisted of the addition of a separate article allowing the making of a specific reservation.

20. The Sessional Group agreed to revert to this proposal once it had dealt with the other articles. (See below, paras. 197-207).

ARTICLE 2

Ranking and effect of mortgages, hypothèques and charges

21. No observations were made in respect of this draft article.

ARTICLE 3

[Voluntary] change of ownership or registration

22. The Sessional Group considered the proposal submitted by the delegation of Greece (JIGE(V)/2/Add.1).

23. The delegation of Greece emphasized that its proposal contained a more satisfactory wording which would not only provide appropriate protection to the interests of the holders of mortgages/hypothèques but would also avoid any risk of conflict with the 1986 United Nations Convention on Conditions for Registration of Ships.

24. Because the proper focus of this article should be reregistration of vessels, one delegation submitted the following text to be considered for article 3:

"A State Party shall not permit the voluntary deregistration of a vessel from its national register 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. A vessel which is or has been registered in a State Party shall not be eligible for reregistration 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 deregistered with immediate effect at such time as the new registration is effected. The date of reregistration shall be the date of deregistration of the vessel by the former State.

3. In cases other than voluntary changes of registration, the procedures set forth in articles 10 and 11 shall apply."

This delegation explained that the main purpose of its proposal was to clarify that cases other than voluntary changes of registration should be regulated by articles 10 and 11.

25. Although many delegations expressed support for the principles underlying both proposals, differing views were expressed on the way in which amendments should be introduced to the draft.

26. Some delegations felt that article 3 should refer to changes of registration but not to a change of ownership which did not involve a change of registration. It was furthermore suggested that the title of the article should not be confined to "voluntary" change of registration so as to avoid the exclusion of cases in which deregistration resulted as a consequence of administrative decisions or actions, for example cases of transfer of ownership ab intestato.

27. In order to remove any ambiguity as to the encumbrances to be entered into the register, the Greek delegation agreed to amend its proposal by referring to "unsatisfied" encumbrances in the last phrase of paragraph 1.

28. One delegation proposed to retain only paragraph 2 (b) of the basic text, since retaining also paragraph 2 (a) could result in a vessel remaining unregistered at least for a short period of time.

29. The observer for the International Maritime Committee (CMI), however, cautioned against the possibility of deleting any of the two subparagraphs in paragraph 2. He pointed out that, on account of the variations in deregistration practices observed in different countries, both subparagraphs were needed, if any gap between deregistration or reregistration was to be avoided.

30. Following these discussions, the delegation of Greece presented a new proposal which read:

"1. A State Party shall not permit the voluntary deregistration of a vessel from its national register 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. A State Party shall not permit the registration in its national register of a vessel previously registered in another State Party unless a certificate has been issued by the former State to the effect:
(a) that the vessel is free of any mortgages, 'hypothèques' or charges, or
(b) that the written consent of all holders of mortgages, 'hypothèques' or charges for the change of registration has been obtained.

3. In cases of changes of registration other than voluntary, the competent authority in charge of the register in the State in which the vessel is registered shall give, or cause to be given, at least six months written notice of the time of deregistration to:

(a) all holders or registered mortgages, 'hypothèques' or charges which have not been issued to bearer;

(b) such holders of registered mortgages, 'hypothèques' and charges issued to bearer and to such holder of maritime liens as set out in article 4 whose claims have been notified to the said authority."

31. Since several delegations had pointed out that some non-forced sale reregistrations were not included in the category of voluntary reregistrations, the delegation which had made the proposal quoted in paragraph 24 above submitted a revision of its original proposal with the following text:

"1. A State Party shall not permit the voluntary deregistration of a vessel from its register 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. A vessel which is or has been registered in a State Party shall not be eligible for reregistration 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 deregistered at such time as the new registration is effected."

32. None of the proposals enjoyed sufficient support to be adopted by the Sessional Group. Both proposals were compared by most delegations with the corresponding articles in the 1967 Convention on Maritime Liens and Mortgages and in the basic text. It was noted that, while the revised proposal in paragraph 31 avoided directly addressing the case of non-voluntary deregistration by means other than a forced sale, the proposal (in para. 30 above) did regulate this subject in its paragraph 3. However, most delegations found it difficult to accept the period of six months foreseen for the authority in charge of the register to give notice of the time of deregistration. In view of these difficulties and the relative novelty of the proposal, the delegation in question decided to withdraw this part of its proposal, stating, however, that the solution suggested had proved to be effective in its country.

33. One delegation, while generally supporting the revised proposal in paragraph 31, expressed the view that the provision of paragraph 2 (a) thereof covered situations where, under the national law of some States, there could be reasons other than those contained in paragraph 1 for refusing to grant a permission for voluntary deregistration in accordance with their national law.

34. Several delegations expressed their view that in spite of the partial improvements introduced by both new proposals, the text of the 1967 Convention was to be considered to be the most appropriate one. Some of these delegations noted that, whereas the 1967 Convention had been very clear in stating that in no circumstances was deregistration possible unless all

holders of charges had given their consent, the basic text and the proposal contained in paragraph 30 above merely referred to deregistration as a consequence of voluntary change of registration. Another delegation drew attention in this connection to the difficulties encountered in obtaining the deregistration certificate, either because of administrative complications or because of difficulty in obtaining the consent of holders of charges. Other delegations expressed preference for the basic text. One delegation, however, insisted that paragraph 2 of article 3 of the draft convention was irrelevant to the aims of this convention as it dealt only with registration of vessels and not with maritime liens and mortgages.

35. In view of the divergence of views expressed in respect of the proposals presented, it was decided that the basic text should remain unchanged.

ARTICLE 3 bis

36. In discussing article 3 bis, most delegations favoured retaining the text of paragraph 1 which had been drafted by the small working group set up during the fourth session of the Joint Intergovernmental Group.

37. The Sessional Group also gave consideration to a proposal for a new paragraph 2 of article 3 bis, contained in JIGE(V)/2, note 3, which read as follows:

"No State Party shall consent to a vessel registered in another State Party being permitted to temporarily fly its flag unless a certificate has been issued by that State to the effect that the vessel is permitted to temporarily fly the flag of another State."

38. Most delegations felt that there was no need to include such a provision in the text of the draft convention, as it had no direct relationship with the subject of maritime liens and mortgages and was, therefore, beyond the framework of the present draft convention. One delegation proposed that if such a provision was to be included in the draft convention, it was necessary to ensure that it would not conflict with the provisions of the 1986 United Nations Convention on Conditions for Registration of Ships.

39. Some delegations, however, favoured inclusion of such a provision in the draft convention. One of these delegations proposed to replace the term "... of another State" by the words "this other State" so that it would read "... unless a certificate has been issued by that State to the effect that the vessel is permitted to temporarily fly the flag of this other State".

40. Some delegations emphasized the need to state in clear terms that these provisions were in no way intended to impose any obligation on States parties to permit temporary change of flag where such a change of flag was not allowed by their national legislation.

41. The Sessional Group, therefore, agreed to retain paragraph 1 and to revert to the contents of paragraph 2 when discussing article 15.

ARTICLE 4

Maritime liens

Paragraph 1

42. The Sessional Group took note of a proposal by the delegation of the United Kingdom (JIGE(V)/2/Add.3) to reduce the number of claims protected by a maritime lien, by deleting from the basic text the maritime liens for claims for: contribution in general average, for port, canal and other waterway dues and pilotage dues, and for wreck removal. The United Kingdom delegation informed the Sessional Group that the order of subparagraphs (ii) and (iii) of its proposal should be inverted.

43. A number of delegations expressed support for the notion of a reduction in the number of claims protected by a maritime lien. In respect of the various possible maritime liens the following views were expressed.

Claims for wages and other sums due to seamen

44. There was general agreement that the maritime lien for claims for wages and other sums due to seamen should rank ahead of all other maritime liens. One delegation queried whether it would not be appropriate to give to claims of officers and members of the crew a higher priority than to those of the master, since the former had normally little or no control over the operation of the vessel.

45. The Sessional Group gave extensive consideration to the proposal made by the delegation of Liberia (JIGE(V)/2/Add.2, to state explicitly that the wages and other sums due to the members of the vessel's complement included the cost of their repatriation. In the view of this delegation, although in most cases the term "wages" would be understood to include repatriation costs, it was desirable to include a clear provision to this effect so as to avoid ambiguity which might arise under some national legislations regarding the matter. It was, therefore, essential to ensure that a maritime lien for wages would comprehend the costs of repatriation of all members of the vessel's complement so that, for example, in cases where the ship was abandoned by its owner, they would be repatriated without having to pay for it from their wage recovery. It was further clarified that the proposal was intended to cover the cost of repatriation in all circumstances and was not restricted to those cases in which the vessel underwent forced sale. The proposal was supported by a majority of the delegations.

46. One delegation, however, stated that the cost of repatriation would be covered by the present text of article 4, and that making a specific reference to such costs could have the effect of weakening the seamen's rights in respect of other claims such as claims for accommodation expenses. Nevertheless, as a matter of compromise, that delegation could go along with the view held by the majority of delegations.

47. It was recalled that a reference to the cost of repatriation had been included in brackets in paragraph 2 of article 11, which dealt with the effects of forced sale. Several delegations felt that since articles 4 and 11 covered different situations it was necessary to include a reference to the cost of repatriation in both articles. One delegation suggested that by appropriate drafting changes, the different situations covered by the two articles could be clarified.

48. One delegation pointed out that although article 11 would in most cases cover the situation, in some jurisdictions it was difficult to rationalize the deduction of the costs of repatriation of the crew from the court costs. Therefore, inclusion of a reference to costs of repatriation in both articles was necessary.

49. One delegation proposed to include not only the cost of repatriation but also any claim which resulted from the contract of employment on board the vessel.

50. The observer for the International Confederation of Free Trade Unions said that, as had been suggested by some delegations, he was also in support of the proposal to add "cost of repatriation" to article 4, paragraph 1 (i). He expressed his concern as to whether the expression "vessel's complement" included such personnel as service and catering personnel on board vessels. In this regard, he also pointed out that those service and catering personnel were very often employed by manning agents or catering companies, and not by the owner, demise charterer, manager or operator of the vessel.

51. The representative of the International Labour Organisation questioned whether article 4 was clearly intended to cover wages and other sums and repatriation costs of certain members of the vessel's complement who were not employees of either "the owner, demise charterer, manager or operator of the vessel", but employed by a concessionaire or manning agent.

52. Regarding the inclusion of social insurance contributions within the subparagraph, one delegation stated that only the portion of social insurance contributions which was in fact paid to seamen should have a privileged status. In the view of this delegation, maritime liens for social insurance contributions were not of benefit to seamen but rather to the fiscal interests of the insurer which, in most countries, were government bodies. Furthermore, even in cases where the shipowners failed to pay the contribution to the insurers, seamen would in any case receive payment because of the character of the social insurance. Therefore, seamen did not have any particular interest in a maritime lien granted to claims for "social insurance contributions payable on their behalf" as provided in the subparagraph. This view was shared by some delegations.

53. The majority of delegations, however, felt that the reference to social insurance contributions should be retained. One of these delegations stated that the underlying principle behind the social insurance scheme, whether private or governmental, was to set aside part of the crew's wages so that crew members could receive payment upon their retirement; the governmental nature of such a scheme in some countries did not make any difference.

54. The observer for the International Chamber of Shipping (ICS) expressed his support for the Liberian proposal to include "costs of repatriation", however in his view, as had been suggested by some delegations, it might be better dealt with in article 11.

55. The Sessional Group, therefore, agreed to retain the subparagraph (i) as it appeared in the basic text, with the addition proposed by the delegation of Liberia.

Claims for loss of life or personal injury

56. There was wide agreement in the Sessional Group as to the desirability of granting claims for loss of life or personal injury the status of maritime liens. One delegation, however, did not feel that such claims should be given maritime lien status. The Sessional Group agreed to retain subparagraph (ii) as it appeared in the basic text.

Claims for salvage

57. There was also general agreement that claims for salvage should be given maritime lien status. Some delegations supported the view that claims for salvage should be given a higher priority than claims for loss of life or personal injury. Reference was, however, made in this regard to article 5.2 of the draft convention. Several delegations could not agree to the United Kingdom's proposal to list salvage claims after claims for tort damage. One delegation suggested that life salvage be given a higher priority than property salvage. The Sessional Group agreed to retain the maritime lien status for salvage in third place.

Claims for general average

58. Many delegations saw no justification for including claims for contribution in general average among the privileged claims. Some delegations were in favour of retaining maritime lien status for claims for contribution in general average. Some of these delegations felt that there was no justification for treating these claims differently from those for salvage.

59. The Sessional Group agreed not to grant maritime lien status to claims for contribution in general average.

Claims for port, canal, and other waterway dues and pilotage dues

60. While several delegations were in favour of deleting these claims from article 4, many were in favour of retaining the maritime lien status for these claims. One delegation suggested that in practice port authorities had, in any case, the power to detain a vessel and to prevent it from sailing if it owed any dues to the port authorities. One delegation felt that it was important to retain the privileged status of such claims, since this would have a beneficial effect on the maintenance and improvement of port installations. It was also pointed out by one delegation that, since such claims were normally for relatively modest amounts, they would not seriously affect mortgages.

61. The observer for the International Association of Ports and Harbours stated that it would be in the interest of the shipping community as a whole to retain maritime liens for claims for port, canal and other waterway dues and pilotage dues, wreck removal and damage caused to port installations.

62. The Sessional Group agreed to retain maritime lien status for these claims in the fourth place, as it appeared in the basic text.

Claims for wreck removal

63. Many delegations were in favour of deleting claims for wreck removal from article 4. Some of these delegations suggested that since wrecks no longer constituted "vessels", they were in any case outside the scope of application of the convention. Some delegations were in favour of including these claims in article 4. Some delegations suggested that granting a right of retention in respect of wrecks might be more appropriate.

64. The Sessional Group agreed not to grant maritime lien status to claims for wreck removal.

Claims based on tort

65. Many delegations were in favour of granting maritime lien status to such claims based on tort.

66. A number of delegations expressed a preference for the approach taken in this respect in article 4.1 (vi) of the basic text as against the solution proposed by the delegation of the United Kingdom whereby the maritime lien would be limited to "claims for damage caused by the vessel either in collision or otherwise", but without any exclusion in respect of cargo or passengers' effects. During discussion the delegation of the United Kingdom amended its proposal to include such an exclusion.

67. Some delegations expressed reservations about the inclusion of tort damages among the claims protected by a maritime lien. One of these delegations pointed out that the retention of such a lien in the new convention would have very grave economic consequences for the mortgagee since the size of potential claims had increased dramatically since the adoption of the 1926 Convention. That delegation accordingly favoured reserving the maritime lien status to claims for damage which resulted directly from a collision, including direct repair costs. It further emphasized in this context the need to take account of the progress which had been achieved in the field of limitation of liability, both on the national and the international level.

68. One delegation suggested that the term "passengers' effects" be replaced by "passengers' belongings" so as to also exclude vehicles owned by passengers from the scope of the provision.

69. The observer for the International Chamber of Shipping expressed his preference for the formulation of article 6 in JIGE(V)/2 or the régime under the 1967 Convention, though he recognized the necessity of this lien in order to follow through collision claims.

70. The Sessional Group agreed to retain maritime lien status for claims based on tort as worded in article 4.1 (vi) in the fifth place.

71. The Sessional Group reverted to the question of the scope of the reference to the International Convention on Civil Liability for Oil Pollution Damage, 1969, a question it had already considered at its fourth session (see JIGE(IV)/5, annex, para. 35). The Sessional Group agreed to replace the word "meaning" by the words "scope of application".

ARTICLE 5

Priority of maritime liens

72. The Sessional Group agreed to delete the texts in brackets in paragraphs 2 and 4 as a consequence of the decision taken on article 4 to delete claims for wreck removal and contribution in general average from the list of claims to be given maritime lien status. One delegation, however, pointed out that consideration should be given to granting life salvage a higher priority.

73. The decision concerning the reference in paragraph 1 to article 6.2 was deferred until after completion of the discussion on article 6.

ARTICLE 6

Other liens and rights of retention

74. The Sessional Group gave extensive consideration to the proposal put forward by the United Kingdom delegation to amend article 6 and to deal separately with the rights of retention in a new article 6 bis (JIGE(V)/2/Add.3). The Sessional Group also considered a proposal submitted by the Liberian delegation to include a new article on recognition and enforcement of State-granted liens (JIGE(V)/2/Add.2).

75. In the view of the delegation of the United Kingdom, the new article 6 would provide for an essential clarification, namely, that the term "maritime lien" should relate solely to liens included in article 4.1 and that other liens granted under national law should not be referred to as "maritime" liens and should not travel with the ship into other jurisdictions. In this regard, this delegation stressed that the reason for not extending such liens beyond the jurisdiction of the State granting them was to avoid confusion over the duty of one State to recognize liens granted by another one. However, the decision on whether such liens would or would not be enforced should be ultimately left to the lex fori.

76. Following the decision to include claims for port, canal and other waterway dues, and pilotage dues, among the maritime liens listed in article 4.1, the United Kingdom delegation agreed that there was no need to retain a reference to these claims in its draft article 6 bis. The delegation emphasized that in order to enable acceptance by its country of the convention, it was essential that any listing of liens other than those included in article 4, paragraph 1, be avoided.

77. The delegation of Liberia stated that the main reason for the introduction of its proposal was to make the draft convention as comprehensive and complete as possible by including certain liens normally ranking after mortgages/hypothèques. It emphasized that the support of its country for a new convention would be determined by the inclusion in the draft of the recognition and enforcement of the liens granted by States Parties in respect of supply of goods, materials, etc., or services in furtherance of the operation of the vessel. The delegation furthermore stated that the enforcement of State-granted liens in respect of claims for wreck removal would in fact hardly apply, for in most situations these claims would be secured by rights of retention. The delegation clarified that its proposal was intended to include the claims of container lessors and classification societies.

78. Many delegations, including a number of those which supported the United Kingdom proposals in principle, expressed doubts as to the last phrase of article 6 as proposed by the United Kingdom, which stated that other liens granted by a State would not extend beyond that State's jurisdiction. It was suggested that this approach was contrary to current international practice in this respect. A proposal to add to the United Kingdom text an indication that these additional national liens would not travel with the vessel into another jurisdiction on the basis of a voluntary sale was also rejected by some delegations who felt that such voluntary sales should not extinguish a lien granted by a particular State.

79. Some delegations which supported the Liberian proposal pointed out that, in accordance with their legal system, statutory liens were necessary to secure, by means of arrest, claims by suppliers, etc. One of these delegations stated that it was desirable to provide that national maritime liens listed in paragraph 2 should have priority over other national maritime liens.

80. Some delegations supported the proposal not to include in the article any listing of State granted liens, even if they ranked after the mortgages/hypothèques. They felt that such listing would encourage proliferation of more liens. Also, hidden charges would affect the second-hand market.

81. Many delegations favoured the proposal to include a separate provision referring to the rights of retention.

82. One delegation reiterated its strong preference, already expressed in former meetings of the Sessional Group, for deleting from the basic text any provision concerning rights of retention. This delegation pointed out that the right of retention was based on the possession of the ship and, as such, was not in the nature of a maritime lien. In the view of this delegation, the inclusion of the reference to rights of retention in the 1967 Convention had been one of the reasons why that Convention had not been widely ratified. This delegation cautioned that incorporating an equivalent provision in the new convention might lead to a similar situation.

83. One delegation which was not in favour of including any reference to rights of retention in the new convention felt that the United Kingdom proposal could prove acceptable to it if the convention were to permit States to exclude the application of the proposed article 6 bis on rights of retention by means of a reservation.

84. Some delegations emphasized the importance of arriving at a conclusion on the question of whether the substantive application of article 6 should be left to the lex fori or to the law of the State in which the vessel was registered.

85. The observer for the Institute of International Container Lessors (IICL) expressed his support for the Liberian proposal in JIGE(V)/2/Add.2, which did cover the interests of container lessors by including the wording "supply of ..., equipment, appurtenances or services", although IICL in its written statement to the Sessional Group had proposed the granting of a specific maritime lien. ("Consideration of Maritime Liens and Mortgages and Related Subjects", circulated in English only under cover of JIGE(V)/NGO/1.) He explained that economic operation of vessels was as important as economic construction and sale of vessels.

86. He also noted that the observer of the International Association of Ship Classification Societies had authorized him to state that IACS associated itself with IICL's statement.

87. The observer for the International Ship Suppliers' Association (ISSA) said that the primary work of the ship suppliers' industry was the provision of food and other needs of the crew, which in some instances were regarded as part of their wages. The 1967 Convention excluded lien granted for claims by ship suppliers which had been granted under the 1926 Convention. He therefore stressed that the retention of the lien for the ship suppliers' industry was of vital importance, whether or not such lien would rank before or after mortgages.

88. The observer also expressed his support for the second proposal which he found very useful as it did recognize liens for suppliers.

89. In view of these discussions, two further proposals were submitted. One of these read as follows:

"1. Each State Party may grant liens on the vessel to secure claims other than those referred to in article 4, but:

(a) in respect of a vessel registered in one of its registers, these claims shall be protected in the territory of another State Party only if they are protected by such a lien under the law of that other State Party: and

(b) in respect of a vessel registered in the register of another State Party, these claims shall be protected in the territory of the first State Party only if they are also protected by such a lien under the law of that other State Party.

2. Such (national) liens shall, nevertheless, rank after the maritime liens enumerated in article 4 and after registered mortgages, 'hypothèques' or charges which comply with the provisions of article 1 and are extinguished according to the provisions of article 8. Any other matters relating thereto shall be governed by the law of the State in which the vessel is registered (of the State within whose jurisdiction a forced sale takes place)."

90. Two other delegations submitted a joint proposal for a new article 6 and a separate article 6 bis dealing with rights of retention. The proposal read as follows:

"Article 6

Other maritime liens

1. Each State Party may grant maritime liens to secure [maritime] 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.

2. Without restricting the right of the States Parties to grant other liens under paragraph 1, such liens may include a lien arising out of the supply of goods, materials, provisions, equipment, appurtenances, or services in furtherance of the operation, navigation, repair or maintenance of the vessel."

"Article 6 bis

Rights of retention

A State Party may grant under national law a right of retention in respect of a vessel to:

(a) a shipbuilder, to secure claims for the building of the vessel,

or

(b) a ship repairer, to secure claims for repair, including reconstruction of the vessel,

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 exercisable against the vessel. Such 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."

91. The majority of the delegations acknowledged that both proposals presented a step forward to solve the problem addressed during the earlier stages of discussions on this article.

92. Several delegations pointed out that paragraph 1 of the first proposal, in providing for reciprocity in respect of recognition of maritime liens other than those referred to in article 4, represented a compromise in so far as it provided that the liens in question should be accepted by both the law of flag State and the lex fori. Some delegations, however, stated that the principle of choice of law should be included. Another delegation stated that the proposal should be expanded to enable State Parties to choose to apply the law of the flag State regardless of reciprocity. Other delegations emphasized that in their opinion the applicable law should be that of the flag State and, consequently, any provision in the lex fori which opposed the law of the flag State should not apply. One delegation pointed out that the system of reciprocity was too complicated and might not work, for example in cases where both States had not introduced appropriate national legislation.

93. One delegation proposed to add in paragraph 2 of this first proposal the words "at the latest".

94. Some delegations considered that the inclusion of the suppliers lien in paragraph 2 of article 6 in the second proposal was redundant in so far as it referred to this lien merely as an example of a lien which could be granted. One delegation emphasized that it would have to reserve its position in respect of any draft provision which did not imply full recognition of this lien.

95. It was suggested that both proposals could be integrated into a single one.

96. A number of delegations reserved their position regarding both proposals.

97. One delegation suggested that the convention should in any case contain a choice of law rules so that the recognition of national liens was not left to conflict of law rules.

98. In the light of the discussions, the Sessional Group agreed to retain the basic text including the word "maritime" and to delete the brackets. The Group also agreed in principle to deal with the right of retention in a separate article.

ARTICLE 7

Characteristics of maritime liens

99. In discussing article 7, one delegation proposed to make a reference in this article to maritime liens listed in article 4. Some delegations felt that such a reference to article 4 would be inconsistent with the decision taken to retain the term "maritime lien" in article 6, since all maritime liens had the same characteristics regardless of whether they were created by the convention or national law. These delegations, therefore, felt that in such a case it was necessary to also mention article 6. Most delegations, however, were of the view that the present text of article 7 was satisfactory and no reference to articles 4 or 6 was necessary. In the light of these discussions, the Sessional Group agreed to retain the basic text of article 7.

ARTICLE 8

Extinction of maritime liens by [passage] [lapse] of time

100. In discussing article 8, the Sesssional Group gave consideration to the proposal submitted by the delegations of the United Kingdom and Hong Kong (JIGE(V)/2/Add.4). It was explained that the proposal was aimed at initiating discussion on some of the problems which existed regarding the basic text. In particular, it was pointed out that the main difficulty with the present draft concerned the short period of one year provided for the extinction of maritime liens; it would create problems as regards the acceptability of the convention to States as well as its practical application. National legislations often provided for longer periods of time bar for certain claims such as those of seamen, and it was not unusual for seamen not to be paid for more than a year.

101. Some delegations expressed support for this proposal. Some of these delegations felt that, while it was more clearly worded, the proposal could be further improved by deleting in paragraph 2 the words: "the vessel" at the end of the paragraph so as to read: "... the holder of maritime lien is legally prevented from enforcing its claim by arrest". The majority of delegations, however, favoured the basic text contained in JIGE(V)/2.

102. As regards the heading of this article, some delegations proposed to retain only the term "Extinction of maritime liens". Most delegations, on the other hand, preferred a specific reference in the heading to the fact that the article only dealt with the extinction of maritime liens by lapse of time, since there were several other causes for extinction of maritime liens. Some of these delegations favoured retention of the term "passage" while most preferred the word "lapse" of time. The Sessional Group, therefore, agreed to retain the heading of the article as "Extinction of maritime liens by lapse of time".

103. Regarding paragraph 1, a question was raised as to whether the reference in this article to article 4 was intentional, bearing in mind the decision to delete such a reference in article 7. It was pointed out by some delegations that, while article 7 was intended to reaffirm the established principle of maritime law regarding the characteristics of maritime liens, article 8 was to establish a rule for the extinction of maritime liens and, therefore, such a distinction was appropriate. Some delegations emphasized that it was necessary to maintain the reference to article 4 so as to make it clear that the provision of this article applied only to maritime liens listed in article 4 and not to those created by national legislations under article 6, the time for the extinction of which would also be set by the relevant national legislation. One delegation pointed out that extending the same period of time bar to liens created under national law, including contract liens with a long limitation period, could involve serious social consequences and would weaken the chances of the entry into force of the convention.

104. Other delegations, however, felt that for reasons of uniformity the same rule should apply both to liens listed in article 4 and to those created under national legislation, and that it was undesirable to allow the possibility of national liens to remain valid for a period longer than that permitted for maritime liens listed in article 4.

105. Some delegations emphasized that it was necessary for the convention to include conflict of law rules in respect of the recognition of liens created under article 6. One delegation stated that it was essential to provide for a lex fori provision regarding the recognition of foreign liens.

106. In the light of these discussions, the Sessional Group agreed to place the term "set out in article 4" in brackets for consideration at a later stage.

107. Differing views were expressed regarding the period of time during which maritime liens should continue to remain valid. Some delegations felt that the period of one year was too short and therefore proposed that it should be extended to two years. They pointed out the difficulties which could arise as a result of the adoption of a one-year period. One delegation pointed out that a one-year period commencing from the time when the claim arose until the arrest of the vessel, could often be too short, bearing in mind that the vessel had to be arrested in the port of a Contracting State.

108. One delegation suggested that, in view of the support for a two-year period of validity, a compromise between the two positions might be to allow maritime liens recorded at the end of one year to continue their validity for another year. That delegation stated that it would consider submitting such a proposal. This proposal was supported by some delegations. The majority of delegations, however, were of the opinion that the one-year period was sufficient since maritime liens were hidden charges and should not remain valid for a period longer than one year.

109. One delegation also pointed out the obstacles which seamen often faced when taking steps to obtain the arrest of the vessel.

110. Some delegations emphasized the undesirability of permitting a situation where maritime liens continued to exist while the underlying claim was extinguished. These delegations proposed to clarify the issue in paragraph 1 by providing that, unless the claim was extinguished prior to the expiry of one year, the maritime lien should continue to be valid during this one-year period. Most delegations, however, were of the view that this clarification was not necessary, since it was obvious from the provisions of articles 4 and 6 that, unless there was a valid claim, there could be no maritime lien.

111. The observer for the International Confederation of Free Trade Unions proposed that consideration be given to extending the period of validity of maritime liens to two years, at least in case of crew wages, since the crew members often stayed on board ship for a period longer than one year during which time they were not paid.

112. The representative of the International Labour Organisation stated that the problem was even more serious in case of social insurance contributions, as often the crew members discovered much later that social insurance contributions had not been paid. He therefore suggested that a two-year period be adopted regarding such claims.

113. The Sessional Group, however, agreed to retain the basic text of the article which provided a period of one year for the validity of maritime liens.

114. The majority of delegations agreed to retain the words "or seized" and "or seizure" in paragraph 1 so as to cover both cases of arrest as a conservatory measure and seizure in execution of judgement.

115. Regarding paragraph 2, the Sessional Group noted that the words "arrest or seizure of the vessel is not permitted by law" and "lienor is legally prevented from arresting the vessel" still appeared in brackets. No clear majority emerged in favour of one or the other text. Some delegations preferred to keep the first text, while others favoured the second.

116. The Sessional Group agreed to revert to the issue in due course.

ARTICLE 9

Assignment and subrogation

117. The Sessional Group noted that there were three alternatives contained in the basic text. Under the first of these, the article would refer only to maritime liens listed in article 4; under the second alternative, to maritime liens listed in articles 4 and 6; and under the third alternative, to maritime liens mentioned in the convention without any reference to a specific article.

118. Several views were expressed as to which of these alternatives would be the most appropriate one. However, the Sessional Group agreed to defer the decision on this article until the contents of article 6 had been determined.

119. One delegation expressed a reservation in respect of this article. This delegation felt that the question of assignment should be governed by national law since under its legal system certain claims, such as those for wages, could not be assigned.

ARTICLE 10

Notice of forced sale

120. In the light of the discussions, which took place at the fourth session, the delegation of Liberia proposed to amend the opening paragraph of article 10 by adding after "in a State Party" the words: "and in addition to any notice by publication", and after "cause to be given" the words: "by receipted post or by means of electronic communication" (JIGE(V)/2/Add.2).

121. Most delegations expressed support for this proposal in principle. They felt that the additions would remove any ambiguity and make it clear that a public notification, such as in a newspaper, would, by itself, not be sufficient. One delegation felt that the problem could be solved by simply adding at the end of the opening paragraph of the basic text the words "each of the following:".

122. One delegation reserved its position on the Liberian proposal.

123. Several delegations noted that, by referring only to receipted post and means of electronic communications, other forms of notification, which were in current use in a number of States, were being excluded. The Liberian delegation emphasized that this had not been the intention and that the matter could be solved by some further editorial changes. Another delegation suggested in this context that the problem could be solved by adding in the basic text the words "even by electronic means" after the phrase "at least 30 days' written notice".

124. Some delegations suggested that the wording should also be amended so as to make it clear that it was a text, not an oral communication, that was being transmitted by electronic means. One delegation queried the need for this addition since the paragraphs already referred to a written notice.

125. In the light of the views expressed, the Sessional Group agreed to adopt the amendments proposed by the Liberian delegation with suitable modifications so as to take account of the concerns expressed.

126. The Sessional Group considered a proposal put forward by a delegation which read as follows:

"1. A State Party conducting a forced sale of a vessel shall ensure that, prior to the forced sale, either:

(a) Thirty days' notice of the suit and/or time and place of sale is given in the manner directed by the authority conducting the proceeding to:

- (i) the competent authority in charge of the register of the State in which the vessel is registered;
- (ii) all holders of registered mortgages, 'hypothèques' or charges which have not been issued to bearer; and
- (iii) all such holders of registered mortgages, 'hypothèques' and charges issued to bearer and to such holders notified to the State Party register authority, or

(b) If the national law of the State conducting the forced sale permits a forced sale with less than thirty days' notice, all parties identified in subparagraph (a) have received notice of the suit and/or time and place of sale in the manner directed, and:

- (i) all holders consented to the sale; or

(ii) in the discretion of the authority conducting the proceeding, the notice provided was reasonable and all holders participated in the proceeding or had an adequate opportunity to do so.

2. If a vessel which is the subject of the notice required in paragraph 1 is not sold, the State Party authority conducting the proceeding shall provide notice to this effect to the State Party register authority.

3. A State Party register authority shall file any notices received in compliance with this article in the manner prescribed by its national law."

127. The delegation putting forward this proposal explained that it was aimed at ensuring that, in cases of a forced sale of a vessel, adequate notice of the forced sale proceedings were provided to all interested parties and that forced sales would therefore be expedited in order to avoid wasting assets and excessive preservation costs.

128. Several delegations expressed their support for this proposal in principle, while expressing reservations or doubts on a number of specific provisions contained therein.

129. Some delegations reserved their position on the proposal; one of these felt that the article as proposed would be too complicated and that it attempted to regulate matters which should best be left to domestic law.

130. In respect of paragraph 1 (a), questions were raised as to the meaning of the term "suit" and the calculation of the 30 days' notice in relation to that suit.

131. One delegation emphasized that the new proposal should not induce unnecessarily the issuing of notifications. Several delegations expressed some doubts in respect of the suggestion that the 30 days' notice could be shortened on condition that all holders of charges consented to such an advanced forced sale. Some delegations felt that this would affect the certainty and uniformity of the law. Another delegation emphasized that the 30-day requirement had not been introduced solely in the interest of the holders of mortgages/hypothèques and other charges, but also with regard to the debtor. That delegation suggested that the proposal would be more acceptable if it were to require the consent of all parties rather than merely that of all holders. One delegation also suggested that not all holders might be known. A number of delegations felt, however, that the proposal to provide for a shortening of the notice period, if all holders consented, was good and merited further study. One delegation questioned the philosophy of the proposal in this respect, noting that the question of wasting assets could not arise so quickly in respect of ships.

132. In respect of paragraph 1 (b) (ii), questions were raised as to the justification of granting discretion to the authority conducting the proceedings and as to the impact of the references to "reasonable" and to "adequate opportunity".

133. Some delegations questioned the need for paragraph 2 of the proposal. One delegation suggested that the paragraph should be re-phrased so as to ensure that all parties which had been informed of the first unsuccessful sale, were also informed of the subsequent sale.

134. Several delegations questioned the need for paragraph 3 of the proposal.

135. In the light of the views expressed, the Sessional Group agreed to retain, for the time being, the basic text, but invited the delegation which had put forward the proposal to introduce a new text, taking account of the views expressed.

136. The Sessional Group then briefly gave consideration to changes that might have to be made in subparagraph (a) of the basic text of article 10 if it were decided to deal in the convention with the question of bareboat charter registration. The Group noted in this context a text prepared for this purpose by the Chairman and contained in footnote 4 of JIGE(V)/2.

137. Some delegations expressed support for this provision. One of these delegations proposed the insertion of the word "permanently" before "registered" and the word "also" after "another State", in order to give greater clarity to the text.

138. The Sessional Group agreed to revert to this matter when considering article 15.

ARTICLE 11

Effects of forced sale

139. With respect to paragraph 1, the Sessional Group agreed that subparagraph (a) should read as follows:

"(a) At the time of the sale, the vessel is in the area of the the jurisdiction of the State, and"

140. The Sessional Group noted a proposal put forward by one delegation to add a new subparagraph (c) reading as follows:

"(c) the proceeds of the sale are actually available and freely transferable."

141. Many delegations supported this suggestion. Some of these delegations noted that such a clarification was desirable since it would not be satisfactory for charges to cease to attach to the vessel after its forced sale if the proceeds of such sale could not be transferred. Several delegations also emphasized that this proposal dealt with a different issue from that referred to in paragraph 3, which related to the contents of the certificate by prescribing that it had to state that the proceeds were transferable, and that accordingly both provisions were necessary.

142. The Sessional Group agreed to adopt this proposal.

143. In respect of paragraph 2, the Sessional Group gave consideration to a proposal put forward jointly by the delegations of the United Kingdom and Hong Kong (JIGE(V)/2/Add.4). Some delegations expressed sympathy for the aim of the proposal to present the contents of the paragraph in a more structured and detailed manner. Most delegations expressed, however, serious doubts as to the contents of the proposal. In this connection, one delegation stressed that article 11 was intended to deal only with the effect of a forced sale on maritime liens and mortgages/hypothèques, but not to regulate forced sales as such. Moreover, several delegations felt that the proposal resulted in the establishment of priorities of further maritime claims over other claims, which seemed unacceptable. Particular reference was made in this context to subparagraph (v) of the joint proposal and the fact that the term "maritime claims" was not defined. The delegation of Hong Kong confirmed in this connection that a claim in respect of which a maritime lien had extinguished would still remain a "maritime claim" as referred to in subparagraph (v). One delegation suggested that priorities with regard to the satisfaction of claims should be dealt with solely in article 5 of the draft convention. Another delegation considered the proposal unacceptable because subparagraph (iv) resulted in a change in the ranking of the rights of retention of shipbuilders and ship repairers.

144. In respect of paragraph 2 as it appeared in the basic text, the Sessional Group recalled its discussion in respect of the repatriation of seamen in connection with article 4.1 (i) and agreed to retain in paragraph 2 the reference to the costs of repatriation of the crew. It accordingly decided to remove the brackets. One delegation suggested in this context to add the words "resulting from the decisions of the purchaser" after "repatriation of the crew".

145. In respect of the second sentence of paragraph 2 of the basic text, two proposals were made. The first of these was to include a specific reference to article 4 in addition to the reference to article 6 already contained in the draft. The second proposal was to delete any such specific references altogether and to include instead only a reference to the convention as such, so that the sentence would read:

"The balance of the proceeds shall be distributed in accordance with the provisions of this Convention."

146. Support was expressed for both proposals and the Sessional Group, while agreeing that the sentence needed to be amended, did not take a decision as to which of the two proposed amendments should be adopted.

147. One delegation, in expressing a preference for the first alternative, suggested that the provision should also include an indication as to the order in which the proceeds of the forced sale would be distributed and it was suggested that this could be achieved by adding, after the reference to article 4, the words "in the order provided therein".

148. In respect of paragraph 2, the observer of the International Association of Ports and Harbours (IAPH) stated that nowadays more and more vessels were abandoned in ports, thus further reducing the already limited capacity of many ports, particularly those of developing countries. He accordingly suggested that ports have their conservation expenses reimbursed and that these expenses cover all costs accruing to the port from the moment the vessel had been abandoned, rather than merely from the time of arrest.

149. In respect of paragraph 3 of the draft text, one delegation suggested a rearrangement of the first sentence in order to remove any potential ambiguity and to make it clear that the certificate must not contain any conditions.

150. A number of delegations expressed some sympathy for paragraph 3 of the joint proposal by the United Kingdom and Hong Kong but stated that they could not take a definite position on the text of the proposal at this stage. The observer of the International Maritime Committee (CMI) stated that the proposed paragraph did not seem to cover the two alternatives contained in the last sentence of paragraph 3 as it appeared in the basic text.

151. With regard to an additional paragraph regarding the situation when, at the time of a forced sale, a vessel was temporarily flying the flag of a State other than the State of registration, the Sessional Group decided to take up this matter in the context of its examination of article 15.

152. The Sessional Group also considered the proposal by one delegation to add a further paragraph which would read as follows:

"This does not affect the competence of each State Party to provide in its national legislation for the effects of a forced sale of a vessel on charter parties or contracts for the use of the vessel".

153. The delegation putting forward this proposal recalled that a similar provision was contained in the 1967 Convention but that at the 1985 Lisbon Conference the CMI had considered such a provision unnecessary and unclear and had therefore decided not to include it in the new draft convention. Nevertheless, that delegation considered that the provision was important and should be retained in the new convention.

154. Several delegations shared this opinion. Some of these delegations felt that, while the wording of the paragraph would have to be examined further, it would be essential to include an explicit provision, not least in order to prevent courts from drawing a negative inference from its absence. One of these delegations stated that it was important to leave the matter to national law since there were considerable variations as to the currently existing laws in this respect.

155. Several other delegations, however, were against the inclusion of such a provision in the new convention. One of these felt that precisely because the provision contained in the 1967 Convention had caused uncertainty, it seemed advisable not to include an equivalent text in the new convention. Another delegation noted that the text of the proposal could be understood to apply to vessels registered in another State Party and emphasized that this would be an unacceptable interpretation.

156. Some delegations, which were also opposed to the proposal, recalled that the main objective of a forced sale was to secure the best possible price for the creditors. This goal would be defeated in many cases if the purchaser of the vessel were to be bound by an existing charter party even though, on occasion, the reverse might be true and the existence of a charter party increased the sale price.

157. One delegation suggested in this context that it would be desirable to obtain factual information as to which national legislations considered that a forced sale terminated existing charter parties and which did not.

158. The delegation putting forward the proposal stressed that, whatever the wording of the text, it would be essential to state that a forced sale would not, by itself, terminate an existing charter party.

159. One delegation queried the differentiation made in the proposed text between charter parties and "contracts for the use of the vessel".

160. Several delegations stated that they needed to examine the proposal in greater detail before coming to any conclusion and, accordingly, reserved their position on the proposal.

ARTICLE 12

Scope of application

161. In respect of paragraph 1, the Sessional Group took note of the information provided by the two secretariats on the relevant provisions of several international conventions regarding the possible application of the draft convention to ships registered in non-Contracting States (JIGE(V)/2, Part B). It was explained that paragraph 1 was intended to make the national laws implementing the Convention applicable to all vessels, irrespective of their nationality, so as to ensure that the same rule applied to all vessels.

162. One delegation reiterated its preference for the wording of article 14 contained in the 1926 Convention since this wording was more appropriate than the one contained in the basic text.

163. Noting that paragraph 2 excluded from the application of the convention only those vessels which were appropriated to non-commercial services, one delegation stated that the new convention would not be acceptable to its authorities unless a further paragraph were to be added regarding State-owned vessels used for commercial purposes. He recalled that he had already made a proposal to this effect at earlier sessions of the Joint Group. The proposal was that a vessel owned by a State and used for commercial purposes should be exempted from arrest for the enforcement of maritime liens, provided that the vessel carried a certificate issued by the appropriate authorities of the State of the vessel's registry stating that the vessel was owned by that State and that the vessel's liability under the claims enumerated in article 4 was covered. It was equally explained in this connection that the certificate

would not refer to the existence of an insurance cover but rather attest to the responsibility of the State in respect of claims by holders of liens, mortgages/hypothèques and other charges. The precedent of the 1969 Civil Liability Convention was referred to in this context. An alternative suggestion was made to delete paragraph 2 from the basic text.

164. Several delegations opposed either the inclusion of the above-mentioned proposal or the deletion of paragraph 2. It was felt that paragraph 2 not only corresponded with the principle contained in article 32 of the United Nations Convention on the Law of the Sea, but also complied with the customary practice of including such types of provisions in international conventions, whereas the proposed additional paragraph was completely at variance with currently accepted principles of international law. It was equally pointed out that this matter was still being discussed by other international bodies and that, consequently, it was preferable to wait for the outcome of such deliberations to decide on any alteration to the existing practice. As an alternative, it was suggested that a solution be found by means of bilateral agreements.

165. The observer for the International Maritime Committee explained that in his opinion the liens granted by a State Party in accordance with article 6 of the basic text would, by virtue of article 12, apply in all cases to all vessels. He stated that, in some cases such as those leading to a forced sale, the law of the flag State which was not a Party could apply if it did not contradict the provisions of the Convention.

166. The Sessional Group agreed that the basic text should remain unchanged.

ARTICLE 13

Communication between States Parties

167. One delegation reiterated its opinion that, while article 13 dealt with the communication between States Parties in an appropriate way, the problem of direct notifications from the authority of one State to private persons in another State had not been addressed. The delegation suggested that such an important matter be dealt with.

168. The Sessional Group agreed to a slight editorial adjustment to the French text in order to align it fully with the other languages.

ARTICLE 14

Conflict of conventions

169. It was suggested by one delegation that, in addition to the reference to "an international convention providing for limitation of liability", a further reference be made to the 1952 Arrest Convention. It was explained that the reference to a liability convention had been considered necessary because the 1976 Convention on Liability for Maritime Claims provided for the constitution of a fund which would be distributed among claimants without priority. A reference to the 1952 Arrest Convention was considered unnecessary, bearing in mind the provision contained in article 9 thereof.

170. The Sessional Group agreed to keep the text unchanged for the time being.

ARTICLE 15

Rule of interpretation

171. The Sessional Group considered the text contained in JIGE(V)/2, drafted by the Working Group at the fourth session, regarding the interpretation of certain terms used in the draft convention. This had been considered necessary as a result of the practice, by some States, of permitting a vessel to fly temporarily the flag of a State other than that of the vessel's registration.

172. The Sessional Group noted that a number of proposals had been put forward in JIGE(V)/2 (notes 1, 3, 4 and 5) which were intended to provide for the necessary amendments or additions to the other provisions of the draft convention in case of the adoption of provisions concerning bareboat charter registration.

173. The Sessional Group also gave consideration to two proposals in relation to this subject. One proposal which had been submitted by a delegation read:

"Notwithstanding that a vessel permanently registered in one State may be temporarily registered in another State, the law of the State of permanent registration shall govern in the matter of recognition and enforcement of registerable charges."

174. The delegation which had submitted this proposal stated that it could be included either in article 1 or article 15. It further explained that its proposal was intended to clarify that it was the law of the State of permanent or underlying registration that governed the recognition and enforcement of mortgages/hypothèques in a situation where the vessel was temporarily flying the flag of another State which also required registration of such charges in its register. In other words, where the mortgages and charges were registered in two registers, the law of the permanent or underlying registration applied. Since article 15 contained a general rule of interpretation and did not address this particular issue, it was necessary to include a specific provision to cover the situation.

175. The second proposal submitted by another delegation read as follows:

"2. Nothing in this Convention is to be understood to impose any obligation on States Parties to permit foreign vessels to temporarily fly their flag or to permit national vessels to temporarily fly a foreign flag."

176. The delegation which submitted this proposal stated that it could be included in article 3 bis or article 15. It further explained that the proposal was intended to make the convention acceptable to those States which did not permit the practice of temporary change of flag. The proposal clarified that the convention did not impose any obligation on States Parties to permit such a practice.

177. The majority of delegations felt that it was necessary to retain the text for article 15 which had been drafted by the Working Group in order to avoid any ambiguity or confusion as to the interpretation of certain terms used in the draft convention. One delegation, which was opposed in principle to the inclusion of such a provision in the draft convention, stated that it would not insist on its point of view because of the wide support given by the majority of delegations.

178. Regarding the two proposals submitted during the session, most delegations stated that they could accept the principles contained therein. Some of these delegations felt that although they considered the latter proposal superfluous, they could nevertheless agree to its inclusion, with some drafting amendments, if this were to make the convention more acceptable to States. Some delegations stated that their national legislation did not permit the practice of temporary change of flag, therefore, the inclusion of such a provision was necessary in order to enable their countries to become parties to the convention. One delegation stated that since a new concept had been introduced into the draft convention, it was useful to clarify that there was no obligation placed on the States Parties to accept such a practice.

179. One delegation stated that this objective could be achieved by redrafting article 3 bis.

180. Another delegation stated that it could not accept the first proposal since it dealt only with the applicable law but did not specify where the mortgages/hypothèques were to be registered and which register was the decisive register.

181. Some delegations proposed drafting amendments to the proposals. The proposal to use the terms "permanent" and "temporary registration" in this context was not supported since some delegations felt that this would give the impression that two registers existed.

182. One delegation pointed to the different concepts of registration in civil law and common law countries, and the fact that while civil law countries envisaged only one register, i.e. the register of ships, some common law countries recognized dual registration (in ship register as well as commercial register).

183. A number of delegations emphasized that the new convention should not in any way contain provisions which would allow dual registration. In this context, references were made to provisions of the United Nations Convention on Conditions for Registration of Ships, 1986, which permitted registration of ship in only one register. It was pointed out that every effort should be made to ensure that in this respect the new convention would not conflict with the 1986 Registration Convention.

184. It was therefore proposed by some delegations to use the term "recorded in" in relation to vessels permitted to fly temporarily another flag without reference to "registration", so as to make it clear that only one registration existed.

185. The majority of delegations proposed that all the proposals regarding different aspects of temporary change of flag should be grouped in one separate article. In the light of these discussions, the Chairman of the Sessional Group proposed the following new text for article 15:

Vessels permitted to fly temporarily the flag of another State

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

1. References in this Convention to the 'State where the vessel is registered' or to the 'State of registration' shall be deemed to be references to the first-mentioned State 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 the first-mentioned State.
2. The law of the State of registration shall be determinative for the purpose of recognition and enforcement of mortgages, 'hypothèques' and charges.
3. The recognition and enforcement of mortgages, 'hypothèques' and charges in accordance with article 1 shall also be subject to the register of the State of registration specifying the State whose flag the vessel is permitted to fly and to the document of this latter State where the vessel is entered specifying the State of registration.
- 4 (a) No State Party shall consent to a vessel registered in that State being permitted to fly temporarily the flag of another State unless all registered mortgages, 'hypothèques' or charges on that vessel have been previously deregistered or the written consent of the holders of all such mortgages, 'hypothèques' or charges has been obtained.
- 4 (b) No State Party shall consent to a vessel registered in another State being permitted to temporarily fly its flag unless a certificate has been issued by the State of registration to the effect that [the vessel is permitted to temporarily fly the flag of another State] [the right of the vessel to fly its flag has been suspended].
5. The notice referred to in article 10 shall be given also to the competent authority of the State whose flag the vessel is permitted to fly temporarily, in charge of the document where the vessel is entered.
6. Upon production of the certificate of deregistration referred to in paragraph 3 of article 11 the competent authority of the State whose flag the vessel is permitted to fly temporarily, in charge of the document where the vessel is entered shall, if the purchaser so requires, issue a certificate to the effect that the right to fly the flag of that State is revoked."

186. The Sessional Group held a preliminary exchange of views on this proposal.

187. The majority of delegations expressed support for the basic principles contained therein but felt that it required further consideration.

188. Some delegations proposed to include provisions specifying that the Convention did not impose any obligation on States Parties to permit temporary change of flag. One delegation pointed out that such a provision should be covered in a separate article since it was a different issue and not the consequence of the temporary change of flag.

189. One delegation proposed to insert in the opening paragraph the term "sea-going" before the word "vessel" so as to read: "If a sea-going vessel registered in one State..."

190. One delegation questioned the meaning of paragraph 2 in the context of articles 1 and 2. This paragraph had been drafted on the basis of a proposal submitted by one delegation, which subsequently agreed to place the words "and enforcement" in brackets so as to indicate that the enforcement of mortgages/hypothèques would be subject to lex fori provisions.

191. Some delegations proposed to delete paragraph 3 since the inclusion of such a provision would make the recognition of mortgages/hypothèques dependent upon the action taken by the State whose flag the vessel was temporarily flying.

192. Some delegations preferred to use the term "vessels' record" in paragraph 3, line 4, in place of the word "document".

193. One delegation proposed to replace the word "deregistered" in line 4 of paragraph 4 (a), with the word "satisfied" since the main requirement was the satisfaction of a mortgage/hypothèque and not its deregistration.

194. Some delegations proposed to delete paragraph 4 (b) since they considered it dealt with the question of registration of vessels and was outside the scope of the convention on maritime liens and mortgages. One delegation, however, pointed out that the two sets of texts in brackets in paragraph 4 (b) were not necessarily exclusive alternatives and therefore proposed to retain both.

195. Some delegations proposed to delete paragraph 6 since it could impose certain obligations on non-contracting States when the vessel was temporarily flying the flag of a State which was not a party to the convention.

196. In the light of these discussions, the Sessional Group agreed that the article should be revised so as to incorporate the proposed changes.

ARTICLE X

197. The Sessional Group reverted to the question of the problems faced by some delegations in the fact that their national laws required that charges on a vessel owned by a company be registered, not only in the ship's register, but also in the companies' register (see paras. 18 to 20 above).

198. In this connection, the United Kingdom delegation stated that it had proved very difficult to treat this matter satisfactorily within the context of article 1. Instead it was now proposing that a separate article be included among the final clauses of the Convention which would permit States to reserve their national law in respect of the registration of charges in their companies' register (see JIGE(V)/2/Add.3). The United Kingdom delegation emphasized that the absence of a satisfactory solution to this problem in the 1967 Convention had been one of the obstacles to acceptance of that Convention.

199. One delegation, whose company law had been inspired by English law, expressed support for the United Kingdom proposal.

200. Several delegations, however, expressed objections to the proposal.

201. One delegation stressed that, while it had had no objection to solving the problem in the context of article 1, the adoption of an article allowing a reservation in respect of this problem could prejudice the question of the admissibility of reservations in general. That delegation therefore emphasized that this matter should be left open for the time being.

202. Another delegation felt that the admissibility of a reservation would eventually depend on whether it would defeat the object and purpose of the Convention or whether it merely related to a matter of minor importance. Since the proposed reservation had implications on the extra-territorial application of the convention, a detailed examination of the proposal seemed essential.

203. One delegation which also felt that the matter could not be settled at this stage, suggested that the following phrase be added at the end of the proposed article:

"... without prejudice to the validity of charges on vessels not flying the flag of that State Party."

204. One delegation expressed particularly serious misgivings about the proposal. In the view of that delegation, the proposal safeguarded the application of existing English law which, in this respect, ran counter to one of the fundamental principles on which the draft convention was based, namely the recognition and enforcement of charges effected in one State Party by the other States Parties to the Convention. In the view of that delegation, English law required that a charge on a vessel flying a foreign flag and owned by a foreign company with a place of business in the United Kingdom had to be registered in the United Kingdom Companies' Register within 21 days of the creation of the charge, otherwise the charge would be null and void. That delegation could only agree to such a reservation clause if its application was restricted to vessels registered in the United Kingdom.

205. The United Kingdom delegation stated that it did not fully accept this analysis and emphasized that the apparent severity of the English law in this respect had in fact been tempered by the practice of courts in applying it. United Kingdom courts were aware of the problem and had addressed the issue repeatedly and the practice of the United Kingdom had been long-standing. The delegation expressed willingness to submit in due course a study setting out the implications of the proposed reservation clause.

206. One delegation felt that the problem could be solved if the burden of registration in a company register was placed, not on the lender, but on the ship's register. The United Kingdom delegation indicated that this solution had been examined but considered unsuitable because of the possible failure of the ship registrar to take timely action and the uncertainty as to the legal consequences of such failure.

207. The Sessional Group concluded that this matter could be addressed properly only by the diplomatic conference and on the basis of detailed documentation on the scope and implications of such a reservation clause.

ARTICLE Z

208. The Sessional Group took note of a proposal put forward by one delegation which reads as follows:

"When a certificate or other document is issued by the authority of a State Party pursuant to this Convention, the domestic procedural requirements of such authority with respect to such issuance shall apply, including payment of any required fees."

209. One delegation considered the proposal acceptable, though unnecessary. Another delegation felt that, as the proposal was not really necessary, it would be more correct not to include it in the convention. Some delegations were of the opinion that the provision would not be appropriate, that it could lead to an a contrario interpretation in respect of other matters in the convention which were not specified, and that it could also create a temptation for national administrations actually to introduce new fees in respect of forced sale procedures.

210. In the light of these observations, the delegation which had submitted the proposal withdrew it.

II. CONSIDERATION OF FUTURE WORK ON OTHER ASPECT OF THE TERMS OF REFERENCE OF THE JOINT INTERGOVERNMENTAL GROUP OF EXPERTS

211. The Sessional Group agreed that the Joint Intergovernmental Group would hold its sixth and last session in London from 25 to 29 September 1989. It took note of the fact that, for constitutional reasons, the Legal Committee of IMO would have to hold a brief session in the same week. The Sessional Group was, however, informed that this would not affect the work of the Joint Intergovernmental Group and the scheduling of its meetings.

212. The Sessional Group gave consideration to the remaining items in its terms of reference, namely enforcement procedures such as arrest, feasibility of establishing an international registry of maritime liens and mortgages, and preparation of guidelines or model laws on maritime liens and mortgages and related enforcement procedures.

213. With regard to the question of arrest, many delegations felt that, in view of the wide acceptance of the 1952 Arrest Convention, no radical changes should be made to it; rather, the revision work should be restricted to those provisions in the 1952 Convention which needed amending in the light of the decisions taken in respect of the Maritime Liens and Mortgages Convention.

214. Some delegations drew attention to the difficulties encountered by some States in implementing the 1952 Arrest Convention and noted the preparatory work carried out by the International Maritime Committee (CMI) in respect of a revision of that Convention. They accordingly suggested that the secretariats be given a somewhat wider mandate in the preparation of the study so as to determine what further amendments to the Convention might be required. In the view of some of these delegations, it would seem premature for the Joint Group to take a decision on the scope of any revision of the 1952 Arrest Convention until the efforts of the CMI to ensure wider acceptance of this Convention had been highlighted in a secretariat study and considered by the Joint Group.

215. In this connection, the two secretariats were requested to prepare a study of the provisions in respect of which changes would be required.

216. One delegation stated that, if revision of the 1952 Arrest Convention were considered, it would not feel constrained to restrict consideration only to changes consequential upon decisions taken with regard to maritime liens and mortgages.

217. The Sessional Group agreed that the preparation of guidelines or model laws on maritime liens and mortgages and related subjects was premature at this stage as it was only after completion of the work on the maritime liens and mortgages convention that this question could be properly addressed.

218. The Sessional Group also agreed that the work on an international register for maritime liens and mortgages and related subjects should not be taken up at this stage.

219. The Sessional Group took note of the difficulties experienced as the result of the late submission of proposals and accordingly decided that all proposals for discussion at the sixth session regarding the draft convention on maritime liens and mortgages should be submitted to the secretariats of UNCTAD and IMO by 20 June 1989.

Annex II

PROVISIONAL AGENDA AND DATE OF THE SIXTH SESSION OF THE
JOINT INTERGOVERNMENTAL GROUP OF EXPERTS */

Provisional agenda for the sixth session,
London, 25-29 September 1989

1. Adoption of the agenda and organization of work
2. Final reading of the draft articles for a Convention on Maritime Liens and Mortgages
3. Consideration of the scope of the revision of the International Convention Relating to the Arrest of Seagoing Ships signed at Brussels, on 10 May 1952
4. Consideration of the final report of the Joint Intergovernmental Group on its work to the Committee on Shipping of UNCTAD and the Council of IMO
5. Other business
6. Adoption of the report of the session.

*/ As approved by the Joint Intergovernmental Group of Experts at its closing meeting, on 20 December 1988 (see para. 23 above).