

IMPLEMENTATION AND INTERPRETATION OF INTERNATIONAL CONVENTIONS

INTRODUCTION

I. IMPLEMENTATION

The methods of national implementation of international conventions differ from country to country and, sometimes, various methods are used on different occasions in the same country. In some countries, treaties, if self-executing, have the force of law as a consequence of their ratification, and they are therefore automatically incorporated in the national legal system. In most countries, however, some sort of implementing legislation is required. This is so in the United Kingdom and in the countries of the Commonwealth. This is also the case in many other countries, such as, for example, most of the civil law countries. The implementing legislation may vary from the promulgation or publication to the enactment of a Convention, to the translation of substantive provisions of the Convention into terms of national law, and to the application of a Convention within the framework of a more general law.

The method of implementation may have positive or negative consequences in the actual implementation of the provisions of a convention by contracting States and in their uniform interpretation.

A. The method of promulgation or publication adopted in several civil law countries has the advantage of ensuring that the provisions of a convention are incorporated in the national legal system without any change in the text which, at least in some countries, becomes part of the national legal system in its original languages, thereby avoiding the danger of changing the meaning of its provisions as a consequence of a bad translation. Conversely, it has the disadvantage, unless the necessary adjustments are made to the existing national legal system, of a) overlaps or, b) difficulties in the enforcement of the uniform rules.

a) Even though in most jurisdictions substantive uniform rules prevail over domestic rules and, therefore, to the extent they regulate the same matter they entail the tacit abrogation of the domestic rules or in any event must be applied in lieu of the domestic rules, doubts may occur whether and to which extent they actually overlap certain domestic rules. Reference may be made,

as an example of this problem, to the enactment in Italy of the Salvage Convention 1989 by the so-called “order of execution”: a one article law that simply says that full execution is given to the Convention and thereby when the Convention became binding for Italy, automatically caused its provisions to become part of the Italian legal system. Of course there existed in Italy domestic rules on salvage. More precisely, there existed three separate sets of rules governing (a) assistance and salvage, (b) salvage of sunken ships and other property, and (c) finding of derelicts: clearly the provisions of the Convention prevail over those of Italian domestic law in respect of assistance and salvage (of course to the extent that they are in conflict with them); but the question whether they prevail over those mentioned under (b) and (c) may give rise to doubts. The problem would have been overcome if the implementing legislation had indicated whether and to which extent the uniform rules governed the operations mentioned under (b) and (c).

b) The provisions of a Convention when becoming part of a national legal system may suffer something similar to what in transplantation is called a rejection: quite often the uniform rules, being the end result of a difficult compromise between delegations belonging to different legal systems, do not easily fit into anyone of such systems and require some changes in the existing laws or they may require collateral implementing legislation.

B. The technique of the translation of the rules of a convention into terms of a national law, which is frequently used in Scandinavian countries, may avoid, wholly or partly, the difficulties mentioned above. It could, however, entail a different problem. When in fact the provisions of a convention are translated into terms of national law the danger arises that they are interpreted on the basis of other (general or special) national rules rather than on the basis of the convention from which they originate, no account being taken anymore of the need for their uniform interpretation. This seems to be a real danger in some countries, where this type of implementation cuts away the link between the uniform rules and the convention from which they originate. The danger appears to be minor in common law countries, in which the principle seems to prevail whereby provisions of an international origin must be interpreted, when their formulation permits, so as to enable the State to fulfil its international obligations.¹

¹ In England see *Attorney-General for Canada v. Attorney-General for Ontario*, [1937] A.C. 326; *The “Banco”* (C.A.) [1971] 1 Lloyd’s Rep. 49 at p. 52; *The “Sandrina”* (H.L.) [1985] 1 Lloyd’s Rep. 181, at p. 185. In Australia see *Minister for Immigration and Ethnic Affairs v. Teoh* (1995) 183 CLR 273 at p. 287 cited by MASON, *Harmonization of Maritime Laws and the Impact of International Law or Australian Maritime Law*, F.S. Dethridge Memorial Address, Conference

Implementation and Interpretation of International Conventions

For the CMI, that for 110 years has been striving for uniformity of maritime law, it may therefore be important to find out what happens of international conventions after their adoption and entry into force. This has been already done, at least in part, for the Salvage Convention 1989 and, more recently, for the limitation conventions (CLC 1992, LLMC and HNS) in respect of which a CMI International Sub-Committee, under the chairmanship of Gregory Timagenis, is presently considering the possible adoption of guidelines in respect of the procedural aspects of limitation. On a personal more limited basis one of the undersigned has tried to carry out a similar investigation in respect of the Arrest Convention 1952.

It is thought, however, that this investigation should be expanded and it is suggested that it should cover three different areas:

1. The techniques of implementation of conventions and their actual impact on ensuring actual uniformity

of the Maritime Law Association of Australia and New Zealand, Cairns, 30 September 1998. With specific reference to the Arrest Convention Brandon, J. (as he then was) so stated in *The "Eschersheim"*, [1974] 2 Lloyd's Rep. 188, at p. 192:

The second consideration is that the 1956 Act was passed for the purpose, among others, of giving effect to the adherence of the United Kingdom to the International Convention Relating to the Arrest of Seagoing Ships made at Brussels, Oct. 10, 1952. In such a case there is a presumption that the legislature, in giving effect to the Convention, intended to fulfil the international obligations of this country rather than to depart from them, and it follows that, where any provisions of the 1956 Act apparently intended to give effect to the Convention are capable of more than one meaning, the Court may look at the terms of the Convention in order to gain assistance, if possible, in deciding which meaning is to be preferred: *The Banco*, [1971] P. 137; [1971] 1 Lloyd's Rep. 49, applying *Salomon v. Commissioners of Customs and Excise*, [1967] 2 Q.B. 116; [1966] 2 Lloyd's Rep. 460 and *Post Office v. Estuary Radio*, [1968] 1 Q.B. 470; [1967] 2 Lloyd's Rep. 299.

A partially different approach has however been adopted in Scotland by the Outer House of the Court of Session in *Landcatch Ltd. v. International Oil Pollution Compensation Fund and Braer Corporation* [1998] 2 Lloyd's Rep. 552. Lord Gill in fact so stated (at p. 566 and 567):

The Court should start from the assumption that Parliament has accurately implemented the treaty obligations set out in the relevant Conventions. The sections should therefore be construed in the first instance without reference to the Conventions or other related sources such as travaux préparatoires. If the sections disclose a clear-cut meaning, then that is the meaning that they should be given, whether or not that meaning is at odds with the assumed purpose of the Convention. It is only if the statutory provisions are obscure or ambiguous that there is any need to resort to the Conventions themselves, or to any other secondary sources, as an aid to construction (*Salomon v. CEC*, [1967] 2 Q.B. 116, Lord Justice Diplock at pp. 143-144). At that point, it becomes a matter for the Courts as to the weight to be given to the various secondary sources of assistance in the interpretation of the statutory provisions (cf. *Fothergill v. Monarch Airlines*, [1981] A.C. 251, Lord Scarman at p. 295C).

The decision of the House of Lords in *Fothergill v. Monarch Airlines* [1980] 2 Lloyd's Rep. 295 is not directly relevant, because the Warsaw Convention as amended by the Hague Protocol has been given the force of law in England.

Introduction, by Anthony Antapassis and Francesco Berlingieri

2. The relationship between the uniform rules, when they are given the force of law in a State Party, and the pre-existing national rules that regulate the same matter.
3. The extent to which the provisions of a convention require implementing legislation in order to ensure their satisfactory (and uniform) application.

The areas under (1) and (2) could be investigated, at least in a first stage, by means of a questionnaire an outline of which is enclosed (Annex I).

The area under (3) needs to be investigated in respect of each individual convention and, in order to enable the Conference to assess the feasibility and usefulness of this exercise, an overview has been made in Annex II of the provisions of the draft UNCITRAL Convention on the Contract for the International Carriage of Goods Wholly or Partly by Sea² that expressly or impliedly refer to provisions of national law or to customs usages and practices of the trade.

The above two documents have been prepared by one of the co-authors of this paper, Prof. Berlingieri.

II. APPLICATION AND INTERPRETATION

When considered from a comparative point of view, the issue of the application of the international maritime conventions, is of great interest because it presents various aspects. It is interrelated: **a)** with the application of those conventions both in the international field and in national legal systems (administrative measures for the execution of the international conventions, legislative and jurisdictional application); **b)** with their legal effects in national legal systems. This is especially so in the case of conventions with legislative content, such as the maritime conventions under examination; **c)** with their application, which may be direct, or may require a special administrative act of domestic public law or a legislative incorporating act or the consent of Parliament given by a ratifying law; **d)** with terms varying to their application, such as the official publication, the observance of publicity. At this point, let me note that the principle of mutuality is of interest with regard to the application of the maritime conventions, because some of them (see article 8 of the 1952 convention on the arrest of seagoing ships or other similar international conventions, see article 1 of the n. 19 international labour convention of 1925 which also applies to seamen) and mostly because the Constitutions of some states (see the French Constitution,

² This is the title chosen by the Working Group at its last session held in Vienna in January 2008.

Implementation and Interpretation of International Conventions

Article 55, the Greek Constitution, Article 28 par. 1 and the Portuguese Constitution, Article 15 par. 3 on a limited scale) impose the term of mutuality for the application of an international convention to the respective national legal system. The breach or the infringement of the term of mutuality, results in the non application or the suspension of the convention or its termination? The Convention of Vienna of 1969 on the law of treaties (article 60) allows under conditions the termination of the respective international convention; **e**) with limitations to the application of an international convention either by allowing a contracting party when ratifying or acceding to the convention or even later, to provide, that it will not apply or that it will limit the application of the convention as a whole or of some of its provisions to certain relations (see article 15 par. 2 of the International Convention of London of 1976 on the limitation of the liability on maritime claims) or when ratifying or acceding to the convention, to make a reservation, that is to declare that some of the convention's provisions do not apply vis-à-vis that state or even to give to these provisions a certain meaning, as long as these reservations are positively allowed or they are not generally or specifically prohibited by the convention or they are not contrary to the object and the purpose of the convention; **f**) The issue of interpretation of the international maritime conventions, which are conventions of legislative content and therefore they have direct legal effects in the national legal systems of the contracting parties, is presented during their application, is a matter of high importance. Primarily, what is of interest is how the courts of each contracting party interpret the rights and obligations which arise from such a convention. Such an interpretation is a recognized competence which is not however binding for the other contracting parties. In many national legal systems courts have the exclusive jurisdiction to interpret international conventions. The interpretation that the Administration may give to a convention is not binding for courts. The issue of interpretation of international conventions, especially of those which have legislative content, by English courts is of interest because of the particular system of the incorporation of an international convention to the English legal system.

The courts of Great Britain do not apply *in casu* the original text of an international convention but the text contained in the national law by which it was incorporated into English legal system. They do not take into consideration the original content of the convention, even though it may be an appendix to the incorporating national law. Therefore this text is considered as a *factum*. The examination within a comparative framework of the practice of the states regarding the interpretation of international maritime conventions, will help to clarify the complementary role which such a practice has in their jurisdictional application and it will show the interdependence between their interpretation and their application; **g**) the

application of international conventions is closely connected to the supremacy of the international convention law. Its examination should take place not from the point of view of the international law but of national law. According to national law, the issue is dealt either with constitutional provisions which recognize directly or indirectly the supremacy of international convention law, or with special provisions of international conventions or of the national legislation which reserve the supremacy of the relevant international convention or of a specific category of international conventions or provisions of national law which regulate specific categories of legal relations. The recognition of the supremacy of the international convention law with the enactment of direct and clear constitutional provisions (see the French Constitution of 1955, Article 55, the Dutch Constitution of 1956 as amended in 1983, Articles 66 and 95, the Greek Constitution, Article 28 par. 1) or with the appropriate interpretation of constitutional provisions (this category includes the Constitutions of Spain, Portugal, Germany, Italy, Luxembourg, Denmark and Ireland) or other legislative provisions. The consequence of the recognition of the supremacy of the international convention law, especially if it arises from a constitutional provision, is that, in case of conflict between a national rule and an international convention provision, the national rule will not be applied and also the *ex officio* examination of the opposition of the national rule to the international convention by courts. According to the most persuasive view, the international convention provisions do not prevail over the constitutional provisions, unless there is a specific provision made in them.

Annex III, prepared by Prof. Antapassis, aims to the examination of some provisions of the International Convention of 1993 on Maritime Liens and Mortgages, which either deal with the scope of application, or refer to the national law (*lex navis, lex fori*), or do not regulate some issues, allowing thus, the national legislations to regulate them. That means that the application of the Convention is to a very important degree affected by the applicable national law.

ANNEX I**QUESTIONNAIRE ON THE IMPLEMENTATION
OF INTERNATIONAL CONVENTIONS**

1. Which is under your Constitution the technique that must be used in order to implement an international convention on uniform substantive law into the national legal system.
2. What is the status of the uniform rules after they have become part of your national legal system as respects other national laws.
 - 2.1 Do the uniform rules repeal or in any event prevail over the national rules or are they on the same level?
 - 2.2 If they repeal the existing domestic rules which are in conflict with them does this occur because the uniform rules possess a higher status (e.g. that of constitutional or semi-constitutional rules) or merely on the basis of the principle that a more recent law prevails over an older one (*lex posterior derogat priori*) or of the principle that a special law prevails over a more general law (*lex specialis derogat generali*)?
 - 2.3 If neither 2.1 or 2.2 is applicable, what is the relationship between pre-existing domestic rules and uniform rules?

Annex II

ANNEX II

**ANALYSIS OF THE PROVISIONS OF THE DRAFT
INTERNATIONAL CONVENTION ON CONTRACTS
FOR THE CARRIAGE OF GOODS WHOLLY OR PARTLY BY SEA
THAT REFER TO DOMESTIC RULES*****1. Provisions in which reference is made to national law****Article 12. Period of responsibility of the carrier*

1.

2.(a) If the law or regulations of the place of receipt require the goods to be handed over to an authority or other third party from which the carrier may collect them, the period of responsibility of the carrier begins when the carrier collects the goods from the authority or other third party.

(b) If the law or regulations of the place of delivery require the carrier to hand over the goods to an authority or other third party from which the consignee may collect them, the period of responsibility of the carrier ends when the carrier hands the goods over to the authority or other third party.

States that intend to ratify the Convention may wish to consider whether there exist in their countries any rules of law or regulations requiring the goods to be handed over at the port of loading to an authority from which the carrier must collect them and/or requiring the carrier to hand over the goods at the port of discharge to an authority from which the consignee may collect them and, if there are none, whether there is any good reason to issue them. In addition, any information in this respect would enable all interested parties to know in advance whether the above provisions apply in respect of the agreed ports of loading and discharge and thus integrate the uniform rules.

Article 30. Shipper's obligation to provide information, instructions and documents

1. The shipper shall provide to the carrier in a timely manner such information, instructions and documents relating to the goods that are not otherwise reasonably available to the carrier, and that are reasonably necessary:

(a)

(b) For the carrier to comply with law, regulations or other requirements of public authorities in connection with the intended carriage, provided that the carrier notifies the shipper in a timely manner of the information, instructions and documents it requires.

2. Nothing in this article affects any specific obligation to provide certain

Implementation and Interpretation of International Conventions

information, instructions and documents related to the goods pursuant to law, regulations or other requirements of public authorities in connection with the intended carriage.

The need for such laws and regulations may exist for safety and security reasons and States ought to take this provision into account when considering ratification of the Convention. In addition, although the carrier and the shipper should be aware of the existing laws and regulations and other requirements reference to which is made in the above article, some investigation in that respect in a number of maritime countries may probably be helpful in order to clarify the effect of this provision.

Article 50. Goods remaining undelivered

1.
2. Without prejudice to any other rights that the carrier may have against the shipper, controlling party or consignee, if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take such action in respect of the goods as circumstances may reasonably require, including:
 - (a)
 - (b)
 - (c) To cause the goods to be sold in accordance with the practices or pursuant to the law or regulations of the place where the goods are located at the time.

The lack of any provision in this respect may adversely affect the smooth operations in a port and, therefore, if they do not exist, their enactment may be useful and would avoid problems in the application of this article.

Article 66. Action for indemnity

An action for indemnity by a person held liable may be instituted after the expiration of the period provided in article 64 if the indemnity action is instituted within the later of:

- (a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or
- (b) Ninety days commencing from the day when the person instituting the action for indemnity has either settled the claim or been served with process in the action against itself, whichever is earlier.

States Parties may consider whether to provide in their national law a period longer than that indicated in the above article.

Article 67. Actions against the person identified as the carrier

An action against the bareboat charterer or the person identified as the carrier pursuant to article 39, paragraph 2, may be instituted after the expiration of the period provided in article 64 if the action is instituted within the later of:

Annex II

(a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or

(b) Ninety days commencing from the day when the carrier has been identified, or the registered owner or bareboat charterer has rebutted the presumption that it is the carrier, pursuant to article 39, paragraph 2.

Same comment as that in respect of article 66. Attention should be drawn to the fact that in this case there could be a greater need for a longer period, in view of the possible difficulties a claimant might have in order to commence an action against the actual carrier.

Article 69. Choice of court agreement

1.

2. A person that is not a party to the volume contract is only bound by an exclusive choice of court agreement concluded in accordance with paragraph 1 of this article if:

(a)

(b)

(c)

(d) The law of the court seized recognizes that that person may be bound by the exclusive choice of court agreement.

The need to consider this provision arises of course only if a State Party decides to opt-in the chapter on Jurisdiction. In such a case that State may wish to consider whether it would be advisable to clarify by legislation whether a jurisdiction clause in a transport document is binding on a third party or not. At present this is an issue decided by jurisprudence and in some countries (e.g. France and Italy) the decisions go in opposite directions.

Article 75. Recognition and enforcement

1. A decision made by a court having jurisdiction under this Convention shall be recognized and enforced in another Contracting State in accordance with the law of that Contracting State when both States have made a declaration in accordance with article 76.

2. A court may refuse recognition and enforcement:

(a) Based on the grounds for the refusal of recognition and enforcement available pursuant to its law; or

(b) If the action in which the decision was rendered would have been subject to withdrawal pursuant to article 73, paragraph 2, had the court that rendered the decision applied the rules on exclusive choice of court agreements of the State in which recognition and enforcement is sought.

3.

Always in case a State Party decides to opt-in the chapter on Jurisdiction this chapter may require a review of the existing legislation.

Article 85. Global limitation of liability

Nothing in this Convention affects the application of any international convention or national law regulating the global limitation of liability of vessel owners.

Even though no action is required at a national level in connection of this article, States Parties may wish to take this opportunity to consider whether the law on global limitation is in line with that adopted in the more recent international conventions.

Article 88. Damage caused by nuclear incident

No liability arises under this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:

(a) Under the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended by the additional Protocol of 28 January 1964, the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 as amended by the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988, and as amended by the Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage of 12 September 1997, or the Convention on Supplementary Compensation for Nuclear Damage of 12 September 1997, including any amendment to these conventions and any future convention in respect of the liability of the operator of a nuclear installation for damage caused by a nuclear incident; or

(b) Under national law applicable to the liability for such damage, provided that such law is in all respects as favourable to persons that may suffer damage as either the Paris or Vienna Conventions or the Convention on Supplementary Compensation for Nuclear Damage.

States Parties ought to review their national laws, if any, on liability for damage caused by a nuclear incident in order to find out whether they are more favourable to persons that may suffer damage or not.

B) Provisions in which reference is made to customs, usages and practices of the trade

Article 26. Deck cargo on ships

1. Goods may be carried on the deck of a ship only if:
 - (a) Such carriage is required by law;

Annex II

(b) They are carried in or on containers or road or railroad cargo vehicles that are fit for deck carriage and the decks are specially fitted to carry such containers or road or railroad cargo vehicles; or

(c) The carriage on deck is in accordance with the contract of carriage, or the customs, usages, and practices of the trade in question.

It is suggested that it is of great importance for States Parties to check whether or not there are in existence in their ports customs, usages and practices in respect of carriage on deck of containers, road or railroad cargo vehicles, to establish whether they are consistent with present transportation techniques and whether they are the same in all national ports or not. States ought also to clarify which is the difference at a national level between customs, usages and practices of the trade.

Article 45. Obligation to accept delivery

When the goods have arrived at their destination, the consignee that exercises its rights under the contract of carriage shall accept delivery of the goods at the time or within the time period and at the location agreed in the contract of carriage or, failing such agreement, at the time and location at which, having regard to the terms of the contract, the customs, practices and usages of the trade and the circumstances of the carriage, delivery could reasonably be expected.

Time and location of delivery is important and, therefore States ought to review the existing national (or local) customs, usages, and practices of the trade in respect of the time and place of delivery of goods carried by sea, rail or road.

Article 50. Goods remaining undelivered

1.
2. Without prejudice to any other rights that the carrier may have against the shipper, controlling party or consignee, if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take such action in respect of the goods as circumstances may reasonably require, including:
 - (a)
 - (b)
 - (c) To cause the goods to be sold in accordance with the practices or pursuant to the law or regulations of the place where the goods are located at the time.

In this article reference is made, for the sale of goods that remain undelivered, to the practices, laws and regulations of the place where the goods are located. In order to ensure the smooth application of this article, a review of the existing practices, if any, ought to be made by States Parties.

ANNEX III**A SHORT ANALYSIS OF CERTAIN RULES
ON THE INTERNATIONAL CONVENTION ON MARITIME
LIENS AND MORTGAGES 1993****1. Introduction**

Since the end of the 19th century, the financing of shipowners by banks or other financial institutions gained ever increasing importance in the international economic relations. The need to recognize internationally the principal factor of a shipowner's creditworthiness for the building or purchase of ships, namely the maritime mortgage, became apparent to those interested in the merchant marine. Also, the need became apparent to limit the number of maritime liens which took precedence over maritime mortgages only to those creditors whose claims were formed during the exploitation of the ship and were indeed in need of protection. The latter dictated the international unification of maritime liens' regime. That was the only way to overcome any uncertainty as to the, then more significant,¹ differences of the national legislations regarding the maritime liens regime.² The fact that maritime liens may be different from one jurisdiction to another as well as the fact that they are created during the voyage of a ship, may be the cause for the creation of maritime liens recognized as such in one jurisdiction but not recognized or having different weight in another. That phenomenon not only does it weaken the creditworthiness of a shipowner during the building, the buying of a ship and its exploitation but also it may lead to unjust results.

The issue above was dealt with by Comité Maritime International at its first Conferences. During the 1904 Amsterdam Conference the CMI decided that the best way forward for the achievement of the international unification of substantive law would be the drafting of an international code of maritime liens. That was so because the creation of a rule of private international law based on the law of the ship's flag could not be applied without exceptions.

That position was initially stated in the international convention on the unification of certain rules relating to maritime liens and mortgages of 10 April 1926. For reasons beyond the scope of the present paper, that

¹ See *Hennebick*, Note de droit comparé sur les principes en matière de privilèges et hypothèques, Bulletin CMI (Conférence d'Hambourg), at p. 12 et seq.

² See Bulletin CMI n. 11 at p. ?, ?? and 218.

Annex III

Convention had a limited success.³ The International Convention of 27 May 1967 on the same topic followed. The latter Convention's stated goal (Art. 25) was to replace the 1926 Convention in order to serve better the extended long-term financial needs of the shipowner and thus achieve wider acceptance. However, despite the effort made, that Convention was not widely accepted, it did not come into force, so it did not replace the convention of 1926.⁴

So, in 1985 the IMO and UNCTAD, assisted by the CMI, began working

³ The following states have ratified the international convention of 1926: Belgium, Brazil, Estonia, France, Hungary, Italy, Poland, Romania and Spain. The following states have acceded to it: Algeria, Argentina, Cuba, Haiti, Iran, Lebanon, Madagascar, Monaco, Portugal, Switzerland, Syria, Turkey, Uruguay and Zaire. It is in force among the member states from 2-6-1931. Denmark, Finland, Norway and Sweden had ratified the 1926 Convention but denounced it in 1 March 1965. The 1926 Convention had influenced legislation in Yugoslavia (see. *A. Suc*, La nouvelle loi yougoslave à l'utilisation des navires de mer, D.M.F. 1959, 696), Israel (see. *S. Friedman*, Le droit maritime d'Israël, D.M.F. 1962, 52) and in other countries which were influenced by the French legal thought (see ? *Bokobza*, Aperçu sur le code de commerce maritime tunisien, D.M.F. 1962, 760)? *G.- H. Lafage/J. Villeneau*, Étude sur l'application des conventions internationales de Bruxelles dans les états indépendants dont la souveraineté était autrefois exercée par la France, D.M.F. 1966, p. 586, 649).

Greece did not ratify the 1926 Convention. The Greek Code of Private Maritime Law however (Arts. 205-209) has been influenced up to a point by that convention. Further, the administrative acts by which ships are capitals as foreign registered (those ships form the bulk of the Greek merchant fleet) stated that the maritime liens, included in Art. 2 of the 1926 Convention, on ships falling in that category took priority over a preferred maritime mortgage. Since 1983 those acts state that only those maritime liens included in Art. 2 of the 1926 Convention which are recognized by Art. 205 para. 1 of the Code of Private Maritime Law take priority over a preferred maritime mortgage.

The Supreme Court of Greece (Areios Pagos) in its decisions (913/1975, 229/1983 (plenary) and 1055/1983) held that Art. 2 of the 1926 Convention cited by the acts above was to be dealt with as a fact. Thus, the party to the proceedings asserting such a maritime lien had also to prove the existence and the content of the maritime liens which took priority over a preferred mortgage. That was so because the 1926 Convention was not ratified by Greece by a law and the content of Art. 2 was never published together with the acts above in the Official Gazette. This is a matter of general interest, i.e. whether an international convention which has been signed by a state but not ratified by law, is in force in that state and therefore should be applied by courts automatically. The answer is to the negative. This is especially so in case the convention itself requires that the signatories ratify it according to the procedure described in their constitution.

Further, as it is known, due to the system of incorporation of an international convention into the English legal system, English courts do not apply the original text of the convention but the text as included in the incorporating law. As a result, the international convention is seen as a factum (*I.M. Sinclair*, The Principles of Treaty Interpretation and Their Application by the English Courts, ICLQ 1963, at p. 508 et seq.).

⁴ 22 states signed the 1967 Convention while 23 states abstained (see Procès-Verbaux etc. de la Conférence Diplomatique de Bruxelles de 1967, at p. 384 et seq.). Up until now the following states have ratified that convention: Denmark, Finland, Norway, and Sweden. Morocco and Syria have acceded to it. It is not yet in force. However, it has been quite influential in the drafting of maritime legislation of Argentina (see Arts. 471-473 of L 20094 on the Law of Navigation), of Germany (see Art. 754 of the HGB as amended in 1980) as well as the northern European states of Denmark, Norway, Sweden and Finland.

on a new international convention on the same subject. The outcome of those efforts was the International Convention on Maritime Liens and Mortgages, which was signed in Geneva, 6th of May in 1993. That Convention was signed by 57 countries and until now 11 countries have ratified or acceded to it. It came into force in 5 September 2004. The scope and the application of its content will be the subject of the present paper.

2. Subjective Scope

As is known, the provisions of any international convention are applicable to the states which are members to such convention. Thus, the provisions of the Convention are applicable to the states parties to that Convention. The provisions of the Convention apply when the rights deriving from a registered mortgage or a maritime lien are exercised within the jurisdiction of a member state on a ship whether that ship flies the flag of a state party or not, as long as it is subject to the jurisdiction of a member state.

States could express their consent to be bound by that Convention by signing it from 1 September 1993 to 31 August 1994 at the Headquarters of the United Nations, New York (a) without reservation as to ratification, acceptance or approval according to national law (Art. 18 para. 2a); or (b) by signing it subject to ratification, acceptance or approval, followed by ratification, acceptance or approval according to national law (Art. 18 para. 2b); or by accession according to national law (Art. 18 para. 2c). Ratification, acceptance, approval or accession are to be effected by the deposit of an instrument to that effect with the Secretary-General of the United Nations (Arts. 17 and 18 para. 3). Up until now the following 11 states have become parties to that Convention: Ecuador, Estonia, Monaco, Nigeria, the Russian Federation, Saint Vincent and Grenadines, Spain, the Syrian Arab Republic, Tunisia, Ukraine and Vanuatu.

3. Objective Scope

A. The wording of the provisions of Arts. 1, 13 para. 1 and 16 of the Convention makes clear that the objective scope of the application of the Convention depends on the definition of the terms “ship” and “seagoing vessel”.

(a) The Convention does not define the term “ship”. However, the fact that the purpose of the Convention is the unification of the substantive law regarding mortgages and maritime liens leads to the conclusion that the term “ship” is used in a broader meaning i.e. in its technical or scientific meaning. If the Convention was applicable only on vessels which are considered as “ships” by the respective legislation of the forum, which allows them to fly its flag, the international unification of law would not be served. Thus, the

Annex III

Convention is applicable to every vessel which navigates for the carriage of persons, goods, fishing, towage, salvage, recreation, scientific research or other reasons. The Convention does not apply to permanent or temporary installations as well as floating structures, such as floating drills, refineries, tanks and storage facilities for the storing of fuel or gas, which remain stable when they are in use.

(b) The Convention excluded from the meaning of the term “ship”, those ships which navigate in inland waters (lakes and rivers). That becomes obvious when the English and French versions of the text of Arts. 1, 13 and 16 of the Convention are examined, where the terms “seagoing ships” and “navire de mer” are used. The exclusion of ships of inland navigation from the scope of the Convention raises the issue: by which criterion is that distinction between such ships and seagoing ships to be made?⁵ Internationally, there is no uniform view on that issue. According to the view advocated especially in France, the criterion of distinction should be the nature of the waters where a ship navigates. Thus, if a ship is destined⁶ or usually navigates at sea then it is considered as a seagoing ship.⁷ If, on the other hand, the ship is destined or usually navigates inland waters, it is an inland waters ship. The application of that criterion, however, presupposes that the geographic limits of both the sea and inland waters are well defined. Further, the existence and operation of ships navigating at both kinds of waters creates uncertainty as to the application of the criterion above. That is the reason why others use as criterion the particular building features of each ship. However, that criterion does not lead to safe results either. This is so because, from a technical point of view, a number of ships navigating at great lakes or rivers have no difference from the ships navigating at sea. The same applies to the criterion regarding the risks a ship faces. Thus, the risks which a seagoing ship faces do not differ substantially from the risks faced by a ship navigating at inland waters. If anything, collisions and groundings occur more often at inland water (river) navigation than at sea. In order to promote certainty, *G. Berlingieri*⁸ supports the criterion of ship registration. Thus, he argues that seagoing ships are those which are registered as such, whereas ships of inland water navigation are those which are registered in the relevant

⁵ With regard to the various criteria of distinction see *L.M. Martin*, *L'abandon du navire et du fret en droit français* (1957).

⁶ See *G. Ripert*, ?, at p. 132? *P. Chauveau*, p. 108? *Autran*, *Code international de l'assistance et du sauvetage* (1902), at p. 235.

⁷ See *Smeesters/Winkelmolen I*, at p. 9. *Schaps/Abraham*, *Das Seerecht in der Bundesrepublik Deutschland I* (1959), at p. 231, take into consideration the ordinary navigation. As *G. Berlingieri* notes (*Salvataggio e assistenza marittima in acque interne ed aerea*, *Dir. Mar.* 1967, at p. 32 fn. 88), the wording does not coincide with the previous ones.

⁸ *Ibid.*

Implementation and Interpretation of International Conventions

books regarding inland water navigation. However, the application of such a criterion does not reflect reality. This is so because there are ships which are registered as inland water navigation ships but operate equally, if not more, at sea. Thus, the Convention would not apply to such ships.

B. Furthermore, the Convention applies both on ships which are registered in a state party to the Convention and on ships registered in a non-party state provided that they are subject to the jurisdiction of a party state.

(a) The Convention relates its applicability to the registration of the ship (Arts. 1, 13 para. 1 and 16). Each state has the right to define the conditions under which it grants its nationality to ships and allows them to register in its register and fly its flag.⁹ If registration cannot be immediately effected, the competent administrative authority of the state in question grants its nationality to the ship by issuing a temporary nationality certificate. Each ship which has been registered or issued a temporary certificate of nationality lawfully flies the respective state's flag. The Convention applies also to those ships which have not been registered but for which a temporary certificate of nationality has been issued.

(b) However, it may be that a ship is registered in one state and be allowed to fly the flag of another state. In modern times, the phenomenon of dual registration is frequent.¹⁰

In order for the ship to fly the flag of the state which the bareboat charterer or the charterer by demise has chosen, the state, where the ship has been initially registered, temporarily limits its jurisdiction mainly to issues which have to do with the rights on the ship. The state, which the charterer chooses, assumes jurisdiction over issues regarding the commercial management and operation of the ship, the security and its crew. That explains why, as far as maritime liens and mortgages are concerned, the Convention (Art. 11) gives the lead to the state where the ship is registered

⁹ See IAC 8 January 1960 *Recueil* 1960 p. 356? *L. Luchini/M. Voelckel*, *Droit de la mer* (1966), at p. 38.

¹⁰ The beginnings of this phenomenon are found in the 1951 German law on the nationality of ships. That law was drafted in a time when there was difficulty in the financing of the building of ships in Germany. German shipowners frequently registered their ships at the register of the state of the bareboat charterer who had the right to buy the ship after the lapse of a certain time period. (See *Kroger* in the 1987 ICC Symposium on «Bareboat Charter Registration – Legal issues and Commercial benefits», the minutes and papers of which were published in 1988). To the same effect is the French provision of Art. 3 Law 300 of 29 April 1975 [See. *E. du Pontavice*, *Le statut des navires* (1976), at n. 19]. Italy has also allowed the registration in its register of ships in the name of the charterer (see *F. Berlingieri*, *The New Italian Law on Temporary Registration of Bareboat Chartered Vessels*, *JMLC* 1990, at p. 199 et seq.? *Polic Curcic*, *Registration of ships under bareboat charter with particular reference to dual registration*, *Dir. Mar.* 1989, 415).

Annex III

before it changes flag.

For the application of the Convention it is not necessary that the ship flies the flag of another state party. The fact that the ship is registered or flies the flag of the state where the maritime lien or mortgage are to be exercised does not present a problem. That interpretation of the Convention serves the purpose of the unification of the law regarding maritime liens and mortgages. Thus, the Convention applies also in the case where the mortgage or maritime lien which is exercised derive from wholly domestic relations namely relations without *éléments d'extranéité*.¹¹

(c) Further, the Convention applies in the case where the ship to which the mortgage and the maritime liens refer to, is not registered in a state party to the Convention. The Convention applies also to ships not registered in states parties as long as the courts of a state party have jurisdiction on the exercise of mortgages and maritime liens on such ships. That is an issue dealt with by the international civil procedure law of the forum.

C. Furthermore, no provision of the Convention creates any rights in, or enables any rights to be enforced against, any vessel owned or operated by a state and used only on government non-commercial service (Art. 13 para. 2). Unlike the 1967 Convention on maritime liens and mortgages (Art. 12 para. 2), the 1993 Convention does not specifically exempt from the scope of its application the ships which are chartered by the state for use on government non-commercial service. Thus, an argument could be made that the Convention applies to such ships. Such an interpretation, however, would not be in harmony with the 1926 Convention on the immunity of state ships. This is so because according to Art. 3 para. 1 of that Convention, as clarified by para. 1 of the Protocol of 24 May 1934, Art. 1 of the 1926 Convention which equals state ships to private ships does not apply on war ships, state yachts, supervision ships, hospital-ships, supply ships and other ships which either belong to the state or have been time chartered or voyage chartered or operated by a third party, provided that at the time when the claim is born or the arrest or charges are sought are used exclusively for the provision of services of governmental and not commercial nature. The same provision states that the above ships may not be subject to actions *in rem*, arrests or any other charges. However, claimants whose claims were born out of collisions or other accidents at sea, salvage or general average as well as repairs supplies or other contracts related to the ship can pursue their claims before the

¹¹ See *José Maria Alcantara*, A short Primer on the International Convention on Maritime Liens and Mortgages -1993 *Journal of Maritime Law and Commerce*, vol. 27 at p. 219 et seq; *Gérard Auchter*, La Convention internationale de 1993 sur les privilèges et hypothèques maritimes, D.M.F. 1993 p. ets., 675 ets.

Implementation and Interpretation of International Conventions

competent courts of the state which owns or operates or charters the ship used in government service. In such a case the state may not claim immunity.

(a) War ships and other state ships used for the provision of administrative services fall in the category of state ships used for government and not commercial service.

War ships form the most important category of ships in public service. Although their definition does not present difficulties, it has to be done according to public international law.

The Hague Convention (VII) of 1907 relating to the conversion of merchant ships into war-ships (Arts. 1-4) defines as a war-ships all ships belonging to the navy of a state, bearing the external marks which distinguish the war-ships of their nationality, their commanders are in the service of the State, duly commissioned by the competent authorities and their names figure on the list of the officers of the fighting fleet and their crew are subject to military discipline. Similar definitions exist in the following international conventions: (i) the Geneva Convention of 29 April 1958 on the open sea (Art. 8 para. 2), (ii) the Brussels Convention of 25 May 1962 on the responsibility of operators of nuclear ships (Art. 1 para. 11), (iii) the Washington Convention of 7 September 1977 on the permanent neutrality of the Panama canal (Annex A) and (iv) the UN Convention on the Law of the Sea of 10 December 1982 (Art. 29). If no provision is made to the contrary, as for example it is made in Arts. 9 and 13 of the International Convention of Montreux of 20 July 1936 on the regime regarding straits, the definition of war-ship also includes auxiliary ships of the navy.

Thus, in the category of war-ships fall the ships belonging to the armed forces of a state whether they are battle-ships or auxiliary ships.

(b) The category of state ships which are used in public service other than war-ships, includes ships of other administrative services whether independent or not, which are destined to cover important needs of the state and do not operate according to market criteria. They are operated by means of public authority and their running cost is covered in a greater or smaller degree by the state budget. Such are the ships of the agency against economic crime, the ships of the coast guard (patrol ships), the ships belonging to the lighthouse agency, the ships belonging to public schools of training of cadets for the merchant marine, hospital- ships, ships conducting oceanographic research or preparing charts, the ships of the fire department and the auxiliary ships of the navy, in case one would consider as war-ships only the battle-ships.

The category of state ships used in commerce or industry includes those ships belonging to or operated either by public authorities which the state has made independent without, however, attributing to them juristic personality,

Annex III

or by public juristic persons (of public law or private law) which the state establishes in order to organize more efficiently the economic activity in those sectors of economic activity when private enterprise is not able to. Those public services and public juristic persons act by market standards and methods and they seek the optimum economic result of their actions. That is the reason why those activities do not lose their commercial nature and remain within the sphere of private law from a conceptual, methodological and regulatory point of view. This is especially so in the case of public juristic persons of private law. The choice of such a juristic form implies the state's intention to include their relations and the services they provide to private law.

Thus, ships used by the public authorities or the juristic persons above for the provision of services of commercial or industrial nature, do not differ from the ships operated by private enterprises. Those ships fall into the scope of the Convention. That way the advantages sought for in their operation by the public authorities and juristic persons above become evident. From what has been said so far, it becomes clear that the court's decision is influenced by the underlying policies of the national substantive law of the forum.

Furthermore, unlike the 1926 Convention, the 1993 Convention makes no reference to maritime liens on freight nor on the accessories of the ship and freight (see Art. 4 *a contrario*; similar is the provision of the 1967 Convention). However, national law may provide for maritime liens on freight.¹²

Further, the Convention is mute on the issue whether maritime liens on the insurance indemnity may be exercised, thus leaving the matter to national legislation. However, given the fact that conflicting views have been expressed regarding that issue, this may give rise to conflicts of national laws.

4. Regulatory framework

The regulatory framework of the Convention does not provide for wholly original provisions, since it reproduces in a considerable degree the provisions of the 1967 Convention. Its provisions are complicated and include rules of private international law. That is an obstacle to the international unification of the substantive law regarding the rights falling within the scope of the Convention.

A. Art. 1 of the Convention is a basic rule of private (maritime) international law. The relation it regulates is certain rights *in rem*

¹² See *W. Muller*, *Remarques critiques sur la convention internationale du 27 mai pour l'unification des certaines règles relatives sur les privileges et hypothèques maritimes*, DMF 1969, at p. 306 et seq.

(hypothèque, mortgage, and other registrable charges). The connecting element of those rights is the fact that they have to be registered in the appropriate book of the state where the ship is registered. The applicable law is the substantive law of that state. The registration and the deletion from the register of the ship and those rights as well as the results they bring are regulated by the substantive law of that state. In case no other provision is made in the Convention, such law regulates the creation, transfer, extinction, any amendments to their content and the exercise of the rights above. In the category of rights *in rem* - other than hypothèque and the Anglo-Saxon institution of mortgage – which have to be registered in a special book, falls the pledge which is especially established on small ships without transfer of possession to the creditor or a third party. Previously, in certain states, Greece being among them, the Anglo-Saxon institution of mortgage was held to be against national public order because of the extensive rights given to the creditor. In modern times, however, such thoughts lost ground and the institution presents no obstacle for the ratification of the Convention. The Convention provides that: “the register and any instruments required to be deposited with the registrar ... are open to public inspection and that extracts ... are obtainable from the registrar”. In this respect the Convention does not follow the 1986 international convention on ships’ registration, which allows the inspection of the registry only by those persons having a legitimate interest to such an inspection. In certain jurisdictions, the information above is considered as personal data of the shipowner. Thus, a legitimate interest is required for their inspection.

B. The Convention (Art. 4 para. 1) provides for certain maritime liens applicable in all states parties to the Convention (international maritime liens). Those maritime liens are rights *in rem* because they can be executed against the ship itself, for the satisfaction of certain claims against not only the shipowner but also the charterer by demise, the manager or the operator of the ship (the list is exhaustive).

(a) For many, the inclusion of the manager is arguable.¹³ This is so because the manager acts in the name and for the account of the shipowner. Therefore, whatever liabilities the manager creates during the execution of his duties are liabilities of the shipowner. However, it is possible for the manager to have acted beyond the scope of his powers. In such a case he can be considered as solely liable.

(b) As far as claims secured by a maritime lien are concerned, the Convention provides for maritime liens for the following claims: “social

¹³ See *José Maria Alcantara*, A short Primer on the International Convention on Maritime Liens and Mortgages -1993 *Journal of Maritime Law and Commerce*, vol. 27 p. 219 et seq.

Annex III

insurance contributions payable on behalf of the master, officers and other members of the vessel's complement". In certain jurisdictions social insurance contributions include monthly contributions by the shipowner and the vessel's complement and they are calculated as a percentage on the wages. The shipowner pays to the relevant social security fund not only his own contributions but also the contributions of the vessel's complement which he extracts from their wages. The wording of the specific provision of the Convention may lead to the conclusion that the maritime lien secures only the vessel's complement contributions which the shipowner extracted and kept without paying them to the relevant social security fund. However, it is clear that such a position does not facilitate the ratification of or accession to the Convention. Further, some of the states which have ratified or acceded to the Convention apply its provisions only to the contributions of the vessel's complement and others to the contributions of both the shipowner and the vessel's complement.

(c) Although the Convention (Art. 4 para. 1) states the claims secured by maritime liens, it does not state whether the maritime lien covers only the claim itself or its accessories as well, i.e. whether it covers the principal as well as contractual or default interest, the expenses of the court proceedings for the satisfaction of the claim or other expenses and the extra charges payable by the shipowner because of the late payment of the social insurance contributions to the respective social security fund. The clarification of that issue with a view wholly to secure the claim and its accessories is of great interest for the application of the Convention by the states parties to the Convention.

(d) Maritime liens are not personal liens but objective (*privilegia causae*). That is why, according to the Convention (Art. 10 para. 1) the assignment of a claim secured by a maritime lien leads to the assignment of the maritime lien itself. However, in certain jurisdictions wages (and thus the vessel's complement's wages as well) cannot be attached nor assigned. Therefore, if under the applicable law to the claim from wages such claim may not be assigned then the maritime lien securing such claim may also not be assigned. That, however, does not allow the member of the vessel's crew to discount his claim to a third party such as a mortgagee bank.

D. The need the Convention to gain the widest possible acceptance led to its provision (Art. 6) that states parties to it may establish further maritime liens on a national level (national maritime liens), than the ones already provided for by the Convention (international maritime liens, Art. 4 para. 1). Those national maritime liens secure claims against the shipowner the charterer by demise, manager or operator of the ship as long those national maritime liens

Implementation and Interpretation of International Conventions

: (i) are subject to the same provisions as those contained in Arts. 8, 10 and 12 of the Convention, (ii) are extinguished after the lapse of a short period of time (the lapse of 6 months from the creation of the claim or 60 days from the registration to the Registry of the sale of the ship to a bona fide purchaser) and (iii) the international maritime liens, hypothèques, mortgages or other registrable charges take priority over the national maritime liens. The national maritime liens' ranking inter se is defined by the rules of private international law of the forum (usually those rules provide that the *lex fori* is the applicable law). In any case, the Convention does not seem to exclude from its scope the exercise on a ship of privileges (both general and special) which derive from general provisions, such as the general privilege regarding the wages and other sums due to employees (the employees of the shipowner's offices included). Those privileges, however, rank after the international maritime liens, mortgages and the national maritime liens but before the non-secured claims. The status of that kind of privileges needs to be clarified because it affects, even if marginally, the acceptance of the Convention.

E. The Convention (Art. 2) states that the ranking of hypothèques, mortgages, and other registrable charges inter se is regulated by the law of the state of the ship's Register. That provision creates no issues of enforcement since national legislations, influenced by roman law, follow the rule "*prior in tempore potior in iure*".

F. The same Article of the Convention provided that "all matters relating to the procedure of enforcement shall be regulated by the law of the State where enforcement takes place". It is noted that the law of such a state must not only regulate the procedure (*modus procedendi*) but also terms and issues which are closely connected to procedure and its implementation although they may not be procedural per se. Such a position is in harmony with the rule of private maritime law whereby *lex fori* regulates issues which are not procedural but which are closely connected to the procedure of execution. In certain jurisdictions, one of those issues is the following: in order to rank in priority, the claimant who has secured his claim through a maritime lien or hypothèque must request the competent public servant in charge of the judicial (forced) sale to do so. The public servant cannot act ex officio and rank the claimant who has not submitted such a request.

G. The Convention does not fully regulate the extinction of maritime liens contained in Art. 4 para. 1.

(a) Art. 9 of the Convention states that those maritime liens shall be extinguished after a period of one year from the discharge of the crew member from the ship or from the fact which gave rise to the claims, secured by the

Annex III

maritime lien. That time period is not subject to suspension or interruption. An exception to the rule above is when, prior to the expiry of such a period, the vessel has been arrested or seized (such an arrest or seizure leading to a forced sale) or when, during the period, the arrest or seizure of the vessel is not permitted by law. In certain jurisdictions (Germany, Greece), if the court deciding on the merits of a case holds in his favour, the claimant, whether secured by a maritime lien or not, who has arrested the ship (“a saisi conservatoirement le navire”), has the right to execute that decision without attaching the ship. That way, which usually is time consuming, the arrest of ships leads to their forced sale.

(b) The Convention does not make clear whether in order for the one-year time period above to be suspended or interrupted, the arrest of ship has to be effected by any claimant or a secured claimant, interested in preserving the maritime lien. If one accepted that the one-year time period could be suspended or interrupted when any claimant arrested the ship, then the position of the mortgagee claimant would be adversely affected. This is so because on the one hand the mortgagee claimant arresting the ship would thus help preserve the maritime liens which rank before his claim and on the other hand if the mortgagee did not pursue the arrest of the ship, he would allow it to escape from its sphere of influence. If one accepted that the one-year time period could be suspended or interrupted when only the secured by a maritime lien claimant arrested the ship then such a claimant would have an incentive to arrest the ship at any cost and in those jurisdictions where the arrest of an arrested ship is not allowed, that would prolong the duration of the maritime lien. We believe that the second view is the correct one.

(c) Further, all registered mortgages, hypothèques, registrable charges, maritime liens and encumbrances of a similar nature shall cease to attach to the vessel after its forced sale provided that during the sale of the ship the latter was within the jurisdiction of a state party to the Convention and the forced sale took place according to the provisions of the law of that state as well as the provisions of Art. 11 of the Convention (Art. 12 para. 1). Thus, it becomes clear that in this matter too, the application of the Convention is heavily influenced by the *lex fori*. Unlike the 1967 convention (Art. 11 para. 1 in fine), in case of a forced sale of a ship, the Convention does not deal with the issue of the existing at the time of the sale charterparties and generally contracts regarding the economic exploitation of the ship. Thus, it is the law of the state where the forced sale takes place that answers the issue whether existing at the time of the forced sale charterparties and generally contracts regarding the economic exploitation of the ship continue to be in force after the forced sale or they cease to be in force. Therefore, charterers and other parties to contracts as well as those wishing to participate in the forced sale

Implementation and Interpretation of International Conventions

are interested in learning the law of the state where the forced sale is to take place.

(d) The fact that the Convention does not mention other reasons of extinction of maritime liens does not mean that the reasons provided for in the applicable national legislation do not apply. Different national legislations provide for reasons of extinction of maritime liens regarding either the secured by the maritime liens claim (such as extinction of the claim because of payment, waiver, confusion etc., time limitations) or the object (such as the purchase of the ship by the claimant, adverse possession, confiscation) or the lien itself (such as resignation from maritime lien). With regard to that issue, the 1976 LLMC Convention Art. 12 para. 1 states that “the fund shall be distributed among the claimants in proportion to their established claims against the fund”. That provision which has its origins in Art. 3 para. 2 of the 1957 International Convention on the limitation of shipowners’ liability, imposes the distribution of the fund among all claimants subject to the limitation proceedings *pro portione*, regardless of whether they are claimants of secured by maritime liens or not.

5. From the above it emerges that a wider analysis of this Convention as well as other international maritime conventions within CMI, would make their uniform interpretation and application in each national law system easier. For this reason, such an effort, as difficult as it may seem, is worth the effort.