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**SOME ASPECTS OF INTERNATIONAL LEGAL
REGIME SHIP MORTGAGES**

Annotation

The purpose of this article is to allocate the main characteristics of the modern international legal regulation of ship mortgage using as a way to enforce the obligations in the sphere of merchant shipping. According to this, the author conducted a comparative analysis of the legal norms of correspondent international conventions.

Key words and expressions: navigation, analysis, mortgage, marine ship, Convention.

International commercial navigation has always been and remains one of the necessary components of the effective functioning of the world economy. However, its stable development and realization at the level that would satisfy the needs of international trade depends on the effective legal regulation not only at the national level but also at international level. It should help to improve the conditions for financing the construction of ships and increase of national merchant fleets.

As you know, updating and increase of the existing merchant fleet is impossible without efficient credit system of shipbuilding. The presence of effective ways to enforce credit obligations is one of the most important elements of such system. In the article the author tries to analyze some aspects of international legal regulation of such method of maritime obligations' enforcement as ship mortgage, and to establish certain regularities of its development. Realization of this task should promote the

comparative legal analysis of regulations of the three international conventions, which regulate the mortgage relations with the use of sea crafts. The investigation of this issue were devoted the works of such scientists, experts and practitioners in the field of maritime law as S.Babkin, I.Barinova, A.Brylev, G.Ivanov, A.Calpin, A.Pentsov, A.Shashorin, A.Shemiakin, P.Falileev and others.

Ship mortgage is traditionally one of the most important tools, which serves the development of shipowners' crediting as providing mechanism, whose effectiveness is stipulated by the following circumstances:

1) a ship is a very valuable property, which allows to return considerably large credits with its help;

2) a ship is the property, which is constantly maintained, which makes the most effective its mortgage (i.e. the mortgage of property with its saving in the possession of mortgager), but not such mortgage, which stipulates the deposit with assignation of property to the possession of mortgager.

3) the rights on ships must be registered in special registers, which with the help of proper legal regulation allows to make the mortgage public [1, c.21].

Crediting of shipowners becomes international, which is clear, taking into account the international character of merchant shipping industry as transport service. Bearing in mind the attractiveness of credits' returning supplied by the shipowners, with the help of ship mortgage

and rather obvious dependence of the mortgage's efficiency on the system of legal regulations that govern it, the reasons of development and adoption of the International Convention on Maritime Liens and Mortgages 1993 (hereinafter - the Convention of 1993) are understandable.

The Convention's aim is unification of the national mortgage law, which regulates ships' mortgage in three main areas:

1) the introduction of the list of maritime liens for all the states - participants, as well as the establishment of common conditions and sequence of their realization;

2) the formation of certain minimum guarantees of the rights of ships mortgagers in all the states - participants of the Convention (the minimum demands for the publicity of mortgages, unequivocal recognition of the registered mortgage of things effect, fixation of legal consequences of the forced ship sale and others);

3) the establishment of the common for the legislations of the states - participants sequence of satisfaction supplied by the mortgages, maritime liens, the right of retention and not supplied by the mentioned ways demands of the creditors to shipowners [1, c.22].

It is this convention is a core of international legal regime for ship mortgages in our time. However, it is not the only attempt for unification of legal approaches of different countries to regulate these relationships. The need for such unification was recognized by the international community long ago, as evidenced

by International Convention for the Unification of certain legal norms concerning maritime liens and mortgages (hereinafter - the Convention of 1926) passed in Brussels on 10 April 1926. The signing of this convention actually took up one of the most important tasks in the field of private international law relating to pledges, mortgages and encumbrances - the task of resolving the question of pledges', mortgages' or other encumbrances' recognition that have arisen from the law of one country in the law of another [2, 181]. However, its conclusion did not resolve all the questions that appeared in the sphere of rights' realization by maritime mortgages and maritime liens. The need to improve the international legal management of these relationships led to the passing of new International Convention on the Unification of certain legal norms concerning maritime liens and mortgages, signed in Brussels on 27 May 1967 (hereinafter - the Convention of 1967.) Both of these conventions have been prepared by the International Maritime Committee. Unfortunately, the Convention of 1967 has never entered into force but it influenced significantly on the development of international legal norms, which regulate relations with the use of ships. Many of its regulations were reproduced in the Convention of 1993.

To remedy the deficiencies, which were in the way of signing the previous convention, the Convention of 1993 was processed in the most authoritative international organizations dealing with maritime law. After passing by

the Conference of International Maritime Committee of the project of Convention 1967 and its transfer to the International Maritime Organization (IMO) and UN Conference on Trade and Development (ЮНКТАД) working on a revision of Convention of 1967, these two organizations decided to establish a working group - the Joint Intergovernmental Group of Experts on Maritime liens, mortgages and related questions. This was done in accordance with resolution 6 (XI) of the working group on legislation of international shipping ЮНКТАД passed by the Council on Trade and Development at its thirty-second session, in accordance with the recommendation of the Legal Committee passed by the IMO at its fifty-sixth session.

The mandate of the Joint Intergovernmental Group of Experts adopted by the two bodies was created for examination of the problem of maritime liens and mortgages including the possible consideration of:

a) regulations of the Convention for Unification of Certain Rules relating to ship mortgages and maritime liens in connection with compulsory implementation of the rights by them;

b) model of legislative act on maritime liens in connection with compulsory implementation of the rights by them;

c) ability of international registration of maritime liens and ship mortgages [3, c.83].

As you can see from the final project of the Convention, adopted in 1993, not all of these tasks were fulfilled, but developed regulations,

particularly on the compulsory implementation of the rights and ship mortgages, proved to be adequate for the needs of modern international navigation, as evidenced by the signing and inuring into force of the Convention in 2004. In 2009 the Convention was finally adopted by 13 states including Vanuatu, Ecuador, Estonia, Spain, Lithuania, Monaco, Nigeria, Peru, Russia, San Vincent and the Grenadines, Syria, Tunisia and Ukraine. Unfortunately, among the original signatories of the Convention at the conference in Geneva on April 19. – May 7., 1993, almost nobody assented its inuring into legal force through ratification or through other relevant procedures. Among these states there are such powerful maritime states as China, Norway, Denmark, Germany, Sweden and others [4].

Ukraine acceded to the Convention of 1993 through the ratification on February 27., 2003. As a consequence, it is its regulations should be reflected in national legislation. It is interesting to trace the evolution of the basic rules of the Convention of 1993 in comparison with those rules, which were fixed by the Conventions of 1926 and 1967.

The main purpose of the unification in 1926 was international recognition of «pledges, mortgages or other similar encumbrances on the ship, which had been duly enacted in accordance with laws of the state - participant of the Convention, to which belonged the ship [5]. As you can see, the last phrase is rather vague, since it is unclear which ships belong to the particular state. Then the Conventions of 1967

and 1993 fixed more clearly that it was talked about ships registered in the states - participants of the convention.

Another shortcoming of the Convention 1926 is its limited scope. Thus, Art.14 of the Convention fixed that its regulations can be applied in every state - participant in cases when a ship on which the claim arose, belongs to this state, as well as in any other cases foreseen by national laws. However, this principle does not limit the right of the state-participants not to apply the regulations of the Convention in the interest of citizens of the states, which are not participants of the Convention. Of course, this rule narrows the range of subjects covered by the Convention of 1926.

This shortcoming was removed in the development of the Convention of 1967, Art.12 of which fixed that the Convention could be applied to any seagoing craft registered in the state - participant of the Convention or in the state that isn't its participant, if another is not foreseen by the rules of the convention [6]. The same rule was borrowed by the Convention of 1993 with more precise definition that the ship registered in the state, which is not a participant of the Convention, should be under the jurisdiction of the state - participant [7].

The regulations of all of these conventions consistently support the concept of limited or functional immunity of the state crafts. Thus, Article 15 of the Convention of 1926 fixes that the regulations of the Convention are not applied to the military ships as well as to the government

ships, which are used exclusively for public service. This rule was concretized by the Article 12 of the Convention of 1967. According to it, no rights can arise out concerning or against or be instituted against the owned ship or ship that is operated or chartered by the state and is used for public non-commercial service. Art.13 of the Convention of 1993 almost literally reproduces this rule, with the difference that it has even more details of public service, which can use ships protected by the state immunity. It is not any non-profit public service but only non-profit government service [7].

It should be mentioned that the regulations of the Convention of 1926 do not give clear definition and regulation to the relations of mortgage ships. Mostly they are focused on the regulation of relations connected with the realization of the rights of the maritime liens as they relate to the pledges and mortgages. However, an important point, already reflected in the Convention of 1926, became the consolidation of demands for registration of mortgages in the public register or in the port of ship registration or in the central office of the state - participant. The Conventions of 1967 and 1993, in addition to this, formulated the need for publicity for such a registry, that is, its openness to the general public for the availability of lifts and copies of it. Furthermore, the Conventions set the minimum list of information to be kept in a registry.

The Convention of 1926 demonstrates the basic principles of sequence in claims settlement of various holders of different ship

encumbrances. In particular, Article 3 of the Convention of 1926 fixed that the pledge, mortgage or other ship encumbrance have a lower rank than maritime liens listed in the Convention. National legislation can guarantee other liens, however, it is not competent to change the sequence of claims meeting for liens, mortgages, other encumbrances of the same kind and maritime liens listed by the Convention. This principle is reflected in the norms of the Conventions of 1967 and 1993.

Regarding the sequence of claims meeting on ship mortgages between themselves, according to the Art. 2 of the Convention of 1993, these moments are defined by the law of the state - the registration of mortgages taking into account the regulations of the Convention.

The Convention of 1926 stipulates that its regulations should not be treated as such, which affect in any way the competence of courts, procedures or methods of court enforcement action fixed by national law. However, the task of further unification of the law in the sphere of the secured ship encumbrances required to compile some aspects of practice of different countries in compulsory penalty on the subject of encumbrance. The objectivity of this requirement is difficult to argue, because the international nature of relations associated with the operation of the ship, gives rise to the wide range of subjects in different countries, which may have claims secured by the same ship. So, in the process of foreclosure on the ship, according

to the particular state law, all these subjects must have certain procedural guarantees of their rights.

The Convention of 1967 contains Articles 10, 11, which fixed the rules for the forced sale of the encumbered ship, in particular, defining the term of the last information given to all the interested subjects about the date of its implementation. Art. 10 contains the list of the subjects that must be sent the message. Art. 11 concretizes the procedure and conditions for repayment of existing ship encumbrances after its forced sale and details the order of claims settlement concerning the ship at the cost of the means from the sale.

One of the benefits of the Convention is that it enables the forced rights implementation according to the mortgages established and registered in accordance with the laws of the country, which is not a participant of the Convention, if such mortgages were installed and registered without a breach of the Convention and if forced implementation of them is required by the country - participant of the Convention, it expanded significantly the application of the Convention of 1967 compared with the Convention in 1926, the application of which is limited only by participating countries. Unfortunately, as already was noted, the Convention of 1967 had never entered into force, and, consequently, these progressive regulations could not find its realization in the merchant shipping for a long time.

The situation changed with the adoption of the Convention of 1993, art. 11 and art. 12 of which develop the relevant rules of the Convention of 1967. Art. 11 defines the demands of the previous reports of forced sale of the ship to meet the requirements of the holders of maritime liens, mortgages and other encumbrances of the ship. According to it, to implement the forced sale of the ship in the state – participant of the Convention, the authorized body in this state should ensure that the information about the sale was sent to:

- a) the authority, which is responsible for the register in the state of ship registration;
- b) all the holders of the registered liens, mortgages or encumbrances that were not issued to the bearer;
- c) all the holders of registered liens, mortgages or encumbrances issued to the bearer, and all the holders of maritime liens fixed in Art. 4 of the Convention, provided that the competent authority, which is responsible for the sale, will receive the relevant requirements of such encumbrances;
- d) the registered owner of the ship [7].

This information must be sent at least 30 days prior to the forced sale and have a written form that would guarantee the getting of confirmation about the received information.

No less important significance for unification of the realization of the encumbered ships in the countries - participants of the Convention is Article 12, which defines the legal consequences of the forced sale. According to

its regulations, after the sale of the ship in the country - participant of the Convention, all registered pledges, mortgage or encumbrance, except those that have been taken by the buyer of the ship with the consent of its holder, all the liens and other encumbrances of any kind, stop to act at the following conditions:

a) at the time of the sale the ship was under jurisdiction of the state - participant of the Convention;

b) the sale was carried out in accordance with the law of that state and regulations of art. 11 and art. 12 of the Convention.

By following these conditions the competent authority should at the request of the buyer, certificate, which fixes that the ship was sold exempted from any registered liens, mortgages or encumbrances except those that were taken by the buyer of the ship with the consent of the holders, all liens and other encumbrances of any kind. By issuing such a certificate the registration body of the ship should delete all the

registered pledges, mortgages or encumbrances from the registry, except for those that have been taken by the buyer of the ship with the consent of the holders and register the ship in the name of the buyer or issue a certificate of registration cancellation for the new registration of the ship if it is necessary.

Thus, we can emphasize the significant contribution that was made in the unification of legal regulations regarding the recognition and implementation of rights by maritime liens and mortgages with the adoption of the International Convention on Maritime liens and mortgages in 1993. Unfortunately, not all maritime countries expressed the willingness to join it but the fact that it entered into force in 11 years after its signature indicates its necessity and effectiveness in settlement of the mentioned sphere of relationships in the field of merchant shipping. So, we hope for the further expanding of the circle of states – participants of this Convention in the future.

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