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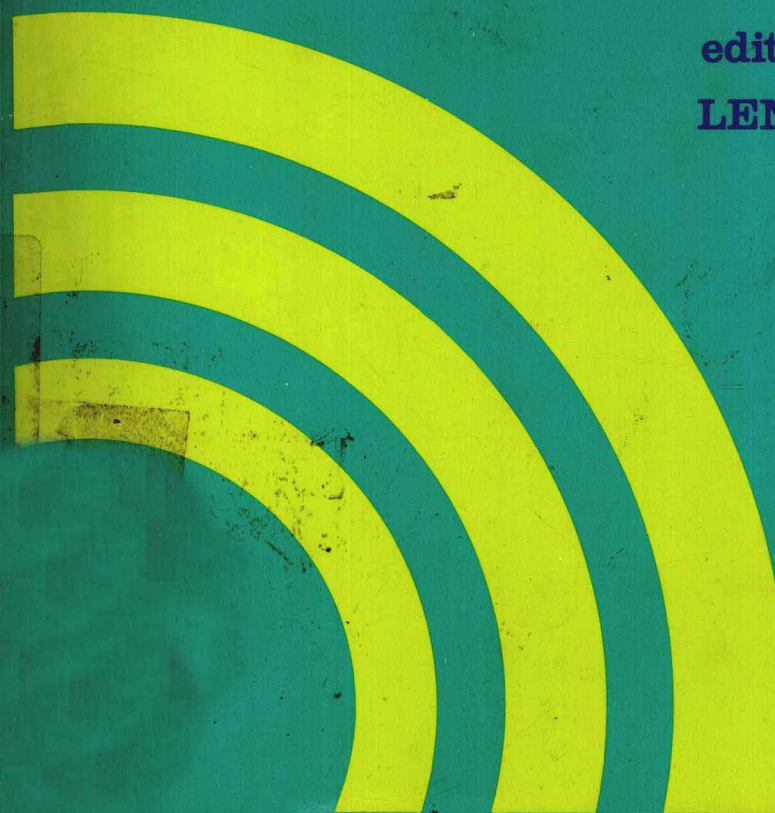
Volume III-B

**Registration of Vessels
Mortgages on Vessels**

Pakistan-Yugoslavia

edited by

LENNART HAGBERG



Kluwer

Handbook on Maritime Law

Volume III – B

Registration of Vessels

Mortgages on Vessels

PAKISTAN–YUGOSLAVIA

Edited by

LENNART HAGBERG

Written by

Members of the Committee on Maritime and Transport Law
of the Section on Business Law
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Editor's Note

The final parts of the *Handbook on Maritime Law* produced by the Committee on Maritime and Transport Law of the Section of Business Law of the International Bar Association are now published. It follows that the work undertaken by the Committee has been brought to its conclusion although revised editions or supplements are not excluded.

The purpose of the *Handbook* remains the same. The aim is to give the practising lawyer an overall view, which will prepare him for the requirements of the colleague he will consult or instruct in a foreign country. In comparison with Volumes I and II the present volumes cover a wider selection of maritime countries and each contribution is far more ambitious and detailed in its scope. However, our aim has not been to publish a full study of comparative law nor to give answers to all practical questions which may arise. It is still recommended to consult a local lawyer. In particular, it must be borne in mind that the slightest error in the documentation for a mortgage may lead to a disastrous result at exactly the moment when the cover of a valid mortgage is needed, that is, when the rights of the mortgagee must be enforced against the vessel.

In order to assist the reader my layout for the new volumes, in the form of the questionnaire which I sent out to all the contributors, is published in the Editor's Introduction. I should like to give some explanation.

In order to register a mortgage the ship must first be registered. Consequently in most countries the same register is used for the registration of ships and the registration of mortgages on those ships. It follows that, when dealing with the formalities required for the registration of mortgages, very often reference can be made to the corresponding parts for the registration of vessels. Against this background it was decided not to divide the volumes according to different subjects but to use the method of a dictionary: i.e. to publish each contribution country by country in alphabetical order covering all the five topics used as headlines in the questionnaire.

When drawing up the headlines and also when editing the contributions received I have put the emphasis on the practical and everyday use of the *Handbook*.

With respect to the registration of vessels three particular topics are covered: The types of vessel which may be registered; the qualifications for ownership (this is particularly interesting for those countries which

have what is usually called an open register; and finally, the paperwork required to obtain registration. Of course some thought has also been given to the legal effects of the registration of a vessel, in particular to the protection of people who bona fide rely on the particulars as to ownership of a registered vessel.

As mentioned above, the registration of a vessel is a basic requirement for the registration of a mortgage on that vessel. It follows that the centre of gravity of the new volumes is mortgages. Here we are faced with a fundamental problem.

There is no adequate way in which the English word 'mortgage' can be translated into French, nor is there a good English translation of the French word 'hypothèque'. The result is that in the 1967 International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages these two words appear side by side. (Mortgages and 'hypothèques' on seagoing vessels – les hypothèques et 'mortgages' sur les navires.)

The Anglo-Saxon concept of a mortgage appears to be that the mortgagee has the legal title to the vessel although the mortgagor may use his vessel as long as he meets his commitments. The continental concept hypothèque creates a specific lien (privilege, Pfandrecht) on the vessel, but the vessel is still the property of the mortgagor. However, at the end of the day, when the mortgagee has been compelled to enforce his rights to the vessel, what happens is that in most cases the proceeds of the forced sale are distributed amongst the creditors according to a list of priorities irrespective of whether you have the Anglo-Saxon mortgage or the continental hypothèque. I have tried to make the layout of the *Handbook* such that each individual contribution describes exactly what happens when a mortgage on a vessel is enforced because that is the practical question every mortgagee – often a banker – must ask before he gives a loan against the security of mortgages on a vessel. The fine details of legal philosophy behind the institution of the mortgage may not interest him so very much because, quite naturally, his main interest is to have his money back.

In the part dealing with mortgages the paper-work is dealt with first. The aim is to define exactly the requirements for creating a valid charge on the vessel. Then the next question is to specify what such a valid charge attaches in addition to the appurtenances of the ship in the narrow sense of the word. In that context also some thought has been given to the mortgage system of each individual country with the side-effect that a banker will find that, as a security for a loan, he can use a mortgage not only on a ship but also on a camel, an elephant, an ox or other beasts of burden, all being modes of transport according to

the laws of Thailand. Care has been taken to define the priority of the mortgage in respect of other registered mortgages against the same vessel and in respect of other registered encumbrances, maritime liens, possessory liens, etc. These facts are essential for a banker when assessing the commercial value of a registered mortgage. Bluntly speaking, he must know where he stands in the queue when it comes to an enforced sale. Consequently, the system of priorities has been given a prominent place in the part dealing with enforced sales. Of course, the procedure for a forced sale has also been described, stage by stage, and, finally, currency regulations come into the picture. The creditor not only wants to have his money back by way of an enforced sale, he also wants to have his money in free convertible currency to be remitted to his place of business.

Finally, the system of registration of rights in respect of vessels under construction, if any, is described country by country. When dealing with that subject a particular problem arose. For part 5, I used the headline 'Registration of Rights in respect of Vessels under Construction'. As a guideline I used the rules of the 1967 Convention relating to Registration of Rights in respect of Vessels under Construction. The system works well, of course, for those countries which have incorporated that Convention into their national legal systems and also for those countries which have similar systems of registration of vessels under construction. Some countries have no such system. It follows that a notation to this effect is found under the appropriate headline. There are, though, other countries which have no system for registration of rights on vessels under construction, but nonetheless there are systems by which a vessel under construction can be used as security by assignment of the newbuilding contract. For those countries a description of these possibilities will be found and also the principles for ownership of a vessel under construction. For those contributions I have used the original systems of sub-headlines and numbers as far as possible but deleted those which were not applicable. In my view it was better to do this than to keep all the sub-headlines and numbers with the remark under a good deal of them, 'not applicable'.

The Section on Business Law, the Editor or the contributors do not assume any responsibility for the accuracy of the contents of the various articles.

I am glad to mention that I am told by our publishers that Volumes I and II have been a success and that they hope that the new volumes will follow in the footsteps of Volumes I and II.

I should like to express my thanks to all the individual contributors. In particular I am indebted to Dr. Hans-Christian Albrecht of Hamburg, Mr. Edward L. Johnson of New York and Mr. D.O. Hamilton of London, who have given me valuable help and assistance in editing

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the new volumes and in finding contributors. Mr. Hamilton undertook to write a 'pilot article' in respect of the laws of England and Wales. This has enabled the contributors for countries whose legal systems are based on English law, simply to follow his model: for example Australia, Bermuda, Cayman Islands, Cyprus and Scotland.

Editor's Introduction

The following is a reprint of the questionnaire sent out to contributors.

Volumes III – A and III – B will be divided in the following parts:

1. Registration of vessels.
2. Registration of mortgages.
3. Legal effects of a registered mortgage.
4. Enforcement.
5. Registration of rights in respect of vessels under construction.

It will be decided later on whether the publication of the material as set out above will be in one single volume or divided up into different volumes. For this reason the headlines and the material will be arranged in such a manner that publication can be made in one single volume or a number of volumes from 1 up to 5.

Some countries such as Liberia and Panama have large merchant fleets under their flags but mortgages are very seldom enforced in those countries. There are then other countries with a small number of vessels under their flags but a great volume of visits by foreign vessels. For such countries the possibilities of enforcement are of more interest than questions of registration. Contributors are advised to concentrate on such aspects which are of most practical importance in view of the factual background.

Will contributors in their manuscripts please use double space between the lines and a wide margin to facilitate editing.

Note:

Below are given suggested uniform headlines, in some instances divided into subsections with specific questions to be covered. In some cases a description has been given as to the type of subjects to be covered and examples.

1. Registration of Vessels

1.1. *Type of register.* Central, local, manual, computerised, open to public inspection, opening hours. Is for instance 24 hours' service possible in case of registration of a vessel which is delivered and deleted from a foreign register during normal business hours in that country

which due to the time difference does not coincide with normal business hours in the country where the vessel will be entered into a new register? Is direct communication possible between the national register and a foreign register? Can such a communication be effected through the consular service or the country of registration? Registration fees.

1.2. *Restrictions as to type of vessels which may be registered.* Size, age, purpose, seagoing, inland waterways, foreign built, self-propelled, ability to steer; possibility to register as vessel drilling rigs, etc.

1.3. *Requirements as to who may own a vessel.* Individuals, corporations or other legal entities.

1.4. *Restrictions as to nationality and/or domicile of owners.* Can only nationals of the country of registration own a vessel? Are there restrictions as to the proportion of shares of a vessel which can be owned by foreigners? In the case of a corporation owning a vessel are there any restrictions as to foreign ownership of shares or other financial control of the company? Are there requirements of the type that somebody responsible for the vessel must be domiciled within the country of registration? Distinctions made between ocean-going vessels and vessels only used for coastal traffic (cabotage).

1.5. *Particulars recorded in the register.* Description and technical particulars of vessel, particulars of owners, particulars of document of title by which the registered owners acquired title to the vessel.

1.6. *Documentation required for registration.* Bill of sale or other document of title, certificate of deletion from previous register, full documentation as to the law governing the newbuilding contract/contract of sale to clarify whether builder/seller in case credit of a part of the price has been given to the owner/buyer can regain title to the vessel in case owner/buyer fails to pay instalments due. Will such a possibility prevent registration of the vessel? Is it possible to register a conditional title to the vessel? Possible difference in documentation between a newbuilding and a secondhand vessel.

1.7. *Legal effect of registration.* Does the registration of the title to a vessel constitute title to the vessel? Is registration conclusive evidence? Is registration only prima facie evidence on which a third party can act in good faith? By which type of legal machinery are such questions decided?

1.8. *Requirements for deregistration.* Vessel sold and has ceased to meet the requirements as to nationality for being registered, vessel has been totally lost or declared a constructive total loss. Can a vessel be deregistered without the consent of the registered mortgagees? Is a permission by a governmental agency required in case vessel is sold to a foreign buyer?

1.9. *Errors in the register.* Can errors be corrected? In which way? Should a third party acting in good faith on the particulars given in the register suffer a loss can he hold the governmental agency keeping the register liable?

1.10. *International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages, 27th May 1967.* Has your country ratified the above-mentioned Convention? Have the rules of the Convention been incorporated in national legislation? Although the Convention may not have been ratified have the rules wholly or partly been incorporated in the national legislation?

2. *Registration of Mortgages on Vessels*

2.1. *Register*

2.1.1. TYPE OF REGISTER. Central, local, manual, computerised, the same as the register of ships or separate?

2.1.2. CONTENT OF REGISTER. Does the register or any instrument required to be deposited with the register show the name and address of the person in whose favour the mortgage has been effected or that it has been issued to bearer, the amount secured and other particulars which according to the national law determine the rank in respect of other registered mortgages? Are payments recorded? How is a discharge of a mortgage recorded?

2.1.3. INSPECTION AND SEARCH OF REGISTER. Is the register and any instrument required to be deposited with the register in accordance with national law open to public inspection? Are extracts of the register and copies of such instruments obtainable from the register?

2.1.4. OPENING HOURS OF REGISTER. Is it possible to arrange for a 24-hour service in case of registration of a vessel and a simultaneous registration of mortgages on the vessel which is delivered to a new owner and deleted from a previous register in a country where the normal business hours do not coincide with the normal business hours of the country of new registration because of time difference? Is direct communication

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between the national register and the foreign register possible? Is it possible to establish such a contract via the consular service of the country of registration? Is it possible to arrange for registration conditional upon production of a deletion certificate from a previous register within a certain fixed time limit?

2.1.5. REGISTRATION OR STAMP FEES. Fees for registration of mortgages. In some countries an ad valorem stamp fee is payable in relation to the amount of the registered mortgage.

2.2. Definition of vessel

2.2.1. TYPE OF VESSEL WHICH MAY BE MORTGAGED. Restrictions as to size, nature and use, e.g. difference made between merchant vessels and pleasure craft. Is it possible to register a mortgage on an object which traditionally is not deemed to be a ship such as an oil drilling rig?

2.3. Type of ship mortgage

2.3.1. DEFINITION OF SHIP MORTGAGE. Does your country have the Anglo-Saxon type of mortgage which broadly speaking is a proprietary right to the vessel or do you have a type of mortgage which broadly speaking confers a preferred right on the vessel (hypothèque, Pfandrecht)?

2.3.2. DIFFERENT TYPES OF SHIP MORTGAGES IF ANY. For specific amounts, maximum amounts, fluctuating amounts, special types of mortgage to secure current accounts, etc.

2.3.3. DIFFERENCE BETWEEN A SHIP MORTGAGE AND A CHATTEL MORTGAGE

2.4. Preconditions for registration of a mortgage

2.4.1. MUST A DEBT EXIST PRIOR TO THE REGISTRATION OF A MORTGAGE? For instance in case of a loan agreement must moneys have been drawn prior to or simultaneous with the registration of a mortgage?

2.4.2. CAN A MORTGAGE BE REGISTERED AS A SECURITY FOR DAMAGES NOT EXISTING AT THE TIME OF REGISTRATION AND NOT POSSIBLE TO ASCERTAIN AS TO AMOUNT AT THAT TIME?

2.4.3. CAN A MORTGAGE BE REGISTERED AS A SECURITY FOR A BANK GIVING A GUARANTEE FOR THE MORTGAGOR'S INDEBTEDNESS OR PERFORMANCE UP TO A CERTAIN MAXIMUM AMOUNT?

2.4.4. IN WHICH CURRENCY OR CURRENCIES CAN A MORTGAGE BE REGISTERED? IS IT POSSIBLE TO CHANGE CURRENCY? HOW IS THAT DONE?

2.4.5. CAN A MORTGAGE BE REGISTERED AS SECURITY FOR REVOLVING DEBTS?

2.4.6. IN WHICH WAY IS A CLAIM FOR INTEREST COVERED BY MORTGAGES?

2.4.7. HOW ARE COSTS FOR ENFORCING A MORTGAGE COVERED UNDER THE MORTGAGE?

2.5. *Documentation required for registration of mortgage.* Only a plain application setting out amount, interest and in whose favour the mortgage is to be registered. Is it necessary to document in full the credit arrangement type of debt for which the mortgage will be a security by, for instance, submitting to the register a copy of the loan agreement with deeds of covenant and other security documents? Must evidence as to ownership of the vessel be produced or is it sufficient that the application is made or consent to it made by the registered owner? What happens when a conditional title to the vessel is registered? Is it necessary to have permission from other mortgagees?

2.6. *Evidence of a duly registered mortgage.* (In which way is registration of a mortgage certified, e.g. by a notation on the documents supplied, by an official certificate, by an extract of the register? In some countries a deed of mortgage is issued by the register to be used in the creation of a valid charge on the vessel.)

2.7. *Who can legally be a mortgagee?* Is the position of a mortgagee reserved for nationals of the country of reservation? Other types of restrictions. Is it possible to hold a mortgage via a trustee or agent in a way which is often used when a consortium of international banks advance moneys to shipowner?

2.8. *In which way is a valid charge created on the vessel?* Does the registration of a mortgage create the valid charge on the vessel or are further steps necessary? For instance in some countries the register issues a deed of mortgage to be used in creating a valid charge on the vessel. Is it necessary to have the mortgage endorsed on the vessel's papers?

3. *Legal Effects of a Registered Mortgage*

3.1. *Legal effects of a valid mortgage on a vessel*

3.1.1. SYSTEM OF PRIORITIES INTER SE OF REGISTERED MORTGAGES. For instance is the day of registration decisive? What happens when several mortgages are registered on the same day? Is there a possibility of subordinating certain mortgages by application to the register?