**COMMENTARY ON THE BEIJING DRAFT AS AMENDED IN DUBLIN**

**OF A PROPOSED DRAFT INTERNATIONAL CONVENTION ON RECOGNITION**

**OF FOREIGN JUDICIAL SALES OF SHIPS**

**by CMI IWG on Recognition of Foreign Judicial Sales of Ships**

**General Comments:**

1. Integrated in this Commentary are comments made in the main text of the Commentary of the CMI International Working Group to the Beijing Draft in relation to provisions which have remained materially unchanged in the Beijing Draft as amended in Dublin. The integrated comments from the Beijing Draft are inverted and placed between brackets ([…]) in order to distinguish them from new comments with regard to the Dublin amendments to the Beijing Draft. Below the Beijing Draft as amended in Dublin shall be referred to as the “Draft Convention”.
2. Minor changes effected at Dublin throughout the Beijing Draft concern the use of Capitals for the first letters of defined terms in the Beijing Draft, e.g. “Ship” and “Judicial Sale” and so on. These changes are too numerous and too insignificant to be spelled out or commented on in detail. Also four newly defined terms were added to the list of definitions in Article 1, i.e. “Registrar” (Paragraph 16), “State of Judicial Sale” (Paragraph 19) and “State of Bareboat Charter Registration” (Paragraph 20).

**Specific Comments:**

**Preamble**

[*During the discussions of the International Sub-Committee (“ISC”) and the meeting of the CMI International Working Group (“IWG”) at the CMI Conference in Beijing in October 2012, it was decided to include a preamble in the Beijing Draft in which certain guiding principles and considerations of the drafters are expressed as an aid to the future uniform interpretation of the proposed Draft Convention by Courts, practitioners and legal scholars. Already in the Commentary to the 2nd Draft, p. 1-2, a total of eight principles or points were listed which had been borne in mind in the preparation of the 2nd Draft. In the Beijing Draft five of these have been (slightly) reformulated and elevated to the preamble of the Draft Convention.*

*Although not expressly mentioned among the considerations stated in the preamble, it may be added that the drafters were also concerned to avoid as many conflicts as possible with other international conventions, in particular the Maritime Liens & Mortgage Conventions of 1926/1967/1993 (“MLM”) and the Arrest Conventions of 1952/1999.*]

1. At Dublin, several changes were made to express more accurately the intentions of the drafters. At the beginning and the end new paragraphs were added stating: “The States Parties to the Present Convention” (1st paragraph) and “HAVE AGREED as follows:” (8th paragraph) were added. Further in the 2nd paragraph “CONSIDERING” was replaced by “RECOGNIZING”. In the 4th paragraph it was considered more precise to replace “CONSIDERING” by “CONVINCED” and “channeling” by “limiting” (before “the remedies”). In the 6th paragraph “CONSIDERING” was replaced by “BELIEVING” and the words “is regular or effective” (after “whether a Judicial Sale”) were changed into “is valid”.
2. Several minor changes were effected in the formulation of considerations included in the preamble, without (significantly) changing their meaning. In the 3rd paragraph the word “of” was removed after “enforcing”, and the word “the” was inserted before “enforcement of judgments”. Also in the 3rd paragraph the word “foreign” (before “Judicial Sale of Ships”) was removed as it was considered superfluous in view of the use of the word “international” (before “Recognition”) immediately before.
3. The most significant change in the Preamble effected at Dublin is the introduction of a new 7th paragraph, which expresses the conviction of the drafters that in order to achieve the objective of recognition of judicial sales of ships, it is necessary to give “to the extent possible”, uniform substantive rules with regard to the notice to be given of the judicial sale, the legal effects of that sale and of the re-registration or registration of the ship. The possibility to do so is however not unlimited in view of the existence of the Maritime Liens & Mortgage Convention 1993 in particular.

**Article 1 Definitions**

*[1. The earlier proposed definition of “Charge” has been changed in order to make it as encompassing as possible with regard to any private law claims or rights in relation to the ship but with the exception of Mortgages and hypothèques which are defined elsewhere.]*

1. In the definition of “Certificate” in Article 1, paragraph 1, the word “authorized” was replaced by “issued” and in that of “Charge” in Article 1, paragraph 2, the word “*privilège*” was changed into *“privilège maritime*” in order to bring this term in line with terminology used in the definition of “Maritime Lien” in Article 1, paragraph 9. Although the defined term “Charge” includes “any charge, maritime lien, lien, *privilège maritime*, encumbrance, claim, arrest, attachment, right of retention or notice of interest whatsoever and howsoever arising in relation to the Ship.”, it was decided to retain the perhaps superfluous words “all Maritime Liens and other liens, and all encumbrances of whatsoever nature and howsoever arising” in Article 4, paragraph 1, Article 5, paragraph 1 (a) and Article 7, paragraph 1 (b), in order to stress the comprehensive nature of the Clean Title obtained by the Purchaser or Subsequent Purchaser of a Ship at a Judicial Sale. After all, Clean Title is one of the fundamental objectives of the Draft Convention.
2. In the definition of “Clean Title” in Article 1, paragraph 3, the words “a title” was added immediately before “free and clear”. Further the term “*hypothèques*” was removed since it was deemed superfluous, since “*hypothèques*” is already included in the definition of “Mortgage” in Article 1, paragraph 10. For the same reason, “*hypothèque(s)*” was also removed from the definitions on other terms in Article 1 and from the substantive provisions in Article 3, paragraph 1 (b), Article 4, Article 6, paragraph 1 and Article 7, paragraph 1 (ii).
3. The words “and any other encumbrances of whatsoever nature and howsoever arising” were added to the definition of “Clean Title” in Article 1, paragraph 3, in order to give this term the widest possible scope. However, in order to avoid confusion, it was deemed necessary to add the clarification “(unless such mortgages and charges have been assumed by any Purchaser or Subsequent Purchaser)” to Article 1, paragraph 3.

*[2. The earlier proposed definition of “Court” has been changed and a new definition of “Competent Authority” has been added in the 3rd Proposed Draft to reflect the fact that under the national laws of some countries, ship auctions and sales do not (necessarily) take place under the authority or direction of a Court or judicial body, but (also) under that of other Persons empowered to do so by the laws of the State where the ship auction/sale takes place.]*

1. Parts of the definition of “Competent Authority” in Article 1, paragraph 4 were reformulated to arrive at a more concise wording. In particular, the superfluous words “which is” were deleted after ‘authority” and the phrase “state in which the judicial sale takes place” was replaced by the newly defined term “State of Judicial Sale”. Further, the word order of the phrase “to order, sell or transfer a ship” was changed to the more comprehensive formulation “to sell or transfer or order to be sold or transferred, by a Judicial Sale, a Ship”. Finally, the long and superfluous phrase “free and clear of any and all mortgages, “*hypothèques*” or Charges, and all maritime and other liens and other encumbrances of whatsoever nature and howsoever arising” was replaced by the newly defined term “Clean Title”.
2. To prevent confusion with existing legal concepts under national law (in particular under the law of California), the defined term “Deficiency Amount” in Article 1 paragraph 7 was replaced by the neutral term “Unsatisfied Personal Obligation”, without any substantial change in the definition itself being made. As a result, the definitions followed thereafter are re-numbered accordingly. See also below the revision to Article 4, paragraph 2.

*[3. In the 3rd proposed Draft a further reduction of the categories of Interested Persons entitled to challenge Judicial Sales is achieved by replacing “holder of a …. Charge” with “holder of a … Registered Charge”. (with added emphasis). The term “Registered Charge” is defined in Article 1, paragraph 16.]*

1. In the definition of “Interested Person” in Article 1, paragraph 7 it was deemed more clear and precise to replace “prior” by “immediately prior” on two occasions.

*[4. The earlier proposed definition of “Judicial Sale of Ship” has been changed to “Judicial Sale” and an effort has been made to only use this term consistently throughout the 3rd Proposed Draft. The definition has also been extended in the 3rd proposed Draft in order to include also Judicial Sales effected by a Competent Authority.]*

1. In the definition of “Judicial Sale” in Article 1, paragraph 8, the words “accomplished” and “or under the control of a Court in a State” were deemed superfluous and removed. Also the word “sale” was replaced by the defined term “Judicial Sale”.
2. In the definition of “Mortgage” in Article 1, paragraph 10, the words, “state in which the Ship is sold by way of Judicial Sale” was replaced by the newly defined term, “State of Judicial Sale”.

*[5. A definition of the key concept of “Recognition” has been added in order to clarify that it means the extension of the legal effects of a Judicial Sale from the State of origin to the State of Recognition.]*

1. In the definition of “Recognition” in Article 1, paragraph 14, the phrase “a Judicial Sale of a Ship has the same effect” was reformulated and changed into “the effect of the Judicial Sale of a Ship shall be the same”. Further, the words “state in which that judicial sale was effected” were replaced by the newly defined term “State of Judicial Sale”.
2. In the definition of “Registered Charge” in Article 1, paragraph 15, the words “or interest” were omitted since it was deemed to be covered already by the words “(any) notice of interest whatsoever” in the definition of “Charge” in Article 1, paragraph 2. Further the words “that is” were added after “the Ship”.
3. Article 1, paragraph 16 introduces a newly defined term, “Registrar”, i.e. “the registrar or equivalent official in the State of Registration or the State of Bareboat Charter Registration, as the context requires”. It is upon this Registrar that the obligations defined in Article 6, paragraphs 1 to 4 rest.

*[6. The earlier proposed definition of “State of Registration” has been changed in order to express more clearly that it refers to the State where the ship is entered in the Ownership register, rather than that of any bareboat charter register in which the ship may also be entered.]*

1. Article 1, paragraph 19 introduces a newly defined term “State of Judicial Sale”, i.e. “the state in which the Ship is sold by way of a Judicial Sale”. As a result, the definitions on other terms in Article 1, as well as the substantive provisions in Article 3, paragraphs 1, and 4 (b), Article 4, paragraph 1 (a) and (b), Article 5, paragraph 1, Article 7, paragraphs 3 and 4, and Article 8, paragraph 2 (a) and (b) could be made more concise.
2. Article 1, paragraph 20 introduces a newly defined term “State of Bareboat Charter Registration”, i.e. “the state which granted registration and the right to fly temporarily its flag to a Ship bareboat chartered-in by a charterer in the said state for the period of that charter”. This concept is relevant for the definition of Registrar in Article 1, paragraph 16, for the Notice of Judicial Sale to be given pursuant to Article 3, paragraph 2 and 3 (a), and for the Deregistration and Registration of the Ship pursuant to Article 6, paragraph 2. Finally, towards the end of the paragraph the word “that” before charter was replaced by “the relevant”.

*[7. The earlier proposed definition of “Subsequent Purchaser” was deemed not to cover all possible situations and therefore it has been changed to: “any Person to whom property in a Ship has been transferred through a Purchaser.”]*

**Article 2 Scope of Application**

*[8. The 3rd Proposed Draft in Article 2 clarifies that the proposed Convention applies to the Recognition in States Party of Judicial Sales that have taken place in another State Party. (with added emphasis). Arguably this was already implied in the wording of Article 2 of the 2nd Working Draft, but it was deemed to cause no harm to make the implied express. An extension of the scope of application of the Proposed Convention was achieved by the elimination of Article 9 Restricted Recognition in the 2nd Working Draft which in its 1st sentence allowed contracting States at the time of signing, ratifying or acceding the option to restrict Recognition of Judicial Sales to ships flying the flag of contracting States.]*

19. In Article 2, the phrase “taking place in the territory of another state party” was shortened to “taking place in another state party”.

**Article 3 Notice of Judicial Sale**

*[9. Although the objective to avoid conflict with the MLM 1993 was retained by the IWG, it was deemed necessary to change the addressee of the norm set in paragraph 1 of Article 3 that sufficient notice of the intended Judicial Sale of a ship shall be given to the Interested Persons there listed. In Article 11 MLM 1993 and Article 3 paragraph 1 2nd Working Draft this obligation is imposed upon the Competent Authority, respectively the Court in the State where the Judicial Sale is to take place. However, as the subject matter of the 3rd Proposed Beijing Draft is the Recognition of Foreign Judicial Sales of Ships, it was thought to be more appropriate to clarify that there is an obligation on the part of contracting States to recognize foreign Judicial Sales only if the required notices have been given prior to the Judicial Sale. To this end the wording of Article 3 paragraph 1 3rd Proposed Beijing Draft was changed as follows: “No State is required to recognize a Judicial Sale in another State unless the party seeking Recognition establishes that the following notices, where applicable, have been provided prior to such Judicial Sale either by the Competent Authority in such State or by one or more parties to the procee­dings resulting in such Judicial Sale, in accordance with the laws of such State …”.*

*10. Furthermore, the order in which the Persons to whom notice must be given are listed in Article 3 paragraph 1 from (a) up to (d) inclusive as earlier proposed, was changed to bring it in conformity with that in Article 11 paragraph 1 MLM 1993.]*

1. At the Dublin meeting of the IWG, various changes have been effected in Article 3. These changes involve a reformulation of paragraph 1, the insertion of new paragraphs 2, 4 and 5, and the renumbering and reformulation of paragraph 3 (previously paragraph 2). The aim of these changes is to (further) clarify the meaning, nature and purpose of the requirement of (prior) Notice of Judicial Sale in Article 3.
2. Rather than imposing procedural rules about what constitutes proper Notice of Judicial Sale upon national legislators in states party where Judicial Sales take place, Article 3, paragraph 1 limits the scope of application of the rules regarding Recognition of Judicial Sales (Article 7) and Circumstances in which Recognition may be Suspended or Refused (Article 8) in this Draft Convention, to cases where Notice of Judicial Sale in accordance with Article 3, paragraphs 1 up to 4 inclusive has been given. Failing such notice there is no obligation under the Draft Convention for a Court in a state party to recognize a Judicial Sale in another state party.
3. However, as is implied by the addition of the words “by this Convention” after “A state party is not required” in paragraph 1 of Article 3, and is expressed more comprehensively in Article 9 Relation with other International Instruments, “Nothing in this Convention shall derogate any other basis for the Recognition of Judicial Sales under any other bilateral or multilateral Convention, Instrument or agreement or principle of comity.” For member states of the European Union, such an alternative basis for Recognition of Judicial Sales exists in the Council Regulation (EC) No 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Brussels-I), which, as from 15 January 2015 will be replaced by the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels-I recast).
4. Other – minor – changes in paragraph 1 of Article 3 involve the addition of “conducted” after the first mentioned “Judicial Sale” and the removal of the superfluous “the party seeking Recognition establishes” after “unless” and the word “state” is replaced twice by “state party”. Furthermore, in Article 3, paragraph 1 (b) “*hypothèques*” is removed and the words “such state” are replaced twice by “State of Judicial Sale”, in line with the consistent use of the defined terms in Article 1 (see above).
5. Another amendment to the Draft Convention effected at the Dublin meeting of the IWG, concerns the situation where the Ship subject to a Judicial Sale flies the flag of a State of Bareboat Charter Registration. Also in that case it is deemed desirable that a Judicial Sale in a state party shall lead to the deletion of the Ship from Bareboat Charter Registration in another state party. To achieve this end, not only a new paragraph 2 in Article 6 was needed (see below), but also the insertion of a new paragraph 2 in Article 3 to the effect that “the notice required by paragraph 1 of this Article shall also be given to the Registrar of the Ship’s register in such state” and further the addition of the phrase “and the State of Bareboat Charter Registration (if any)” after “the State of Registration (if any)” in Article 3, paragraph 3 (a).

At the Dublin meeting of the IWG a solution was found for the issue concerning the way in which (prior) notice in writing shall be given of the Judicial Sale pursuant to Article 3. In short, this solution involved the deletion of the words placed in brackets [“which provide confirmation of receipt”] immediately after “appropriate means” in Article 3, paragraph 4 (a), the insertion in Article 3, paragraph 4 of the words “as expediently as possible and not in a way to frustrate or significantly delay the (proceedings concerning) the Judicial Sale”, and the inclusion of a new paragraph 5 to the effect that “nothing in this Article shall prevent a state party from complying with any other international convention or instrument to which it is a party and to which it consented to be bound before the date of entry into force of the present Convention”. Below this solution will be explained further. First however, it is helpful to recall the relevant provisions in the Draft Convention and the Maritime Liens & Mortgages (MLM) Convention 1993.

1. Under Article 11, paragraph 3 MLM, the (prior) “notice specified in paragraph 2 of this article shall be in writing and either be given by registered mail, or given by any electronic or other appropriate means which provide confirmation of receipt” (with added stress-IWG). As follows from Article 11, paragraph 1 MLM, this formal requirement applies in the context of “the forced sale of a vessel in a State Party” and is binding upon “the competent authority” in the state party to the MLM Convention, where the forced sale takes place. Pursuant to Article 12, paragraph 1 (b) MLM, observance of the provisions regarding (prior) Notice of forced sale in Article 11 MLM is a condition precedent to the forced sale of the vessel having the desired legal effect of providing Clean Title to the purchaser, or in the words of Article 12, paragraph 1 MLM: “In the event of the forced sale of the vessel in a State Party, all registered mortgages, “*hypothèques*” or charges, except those assumed by the purchaser with the consent of the holders, and all liens and other encumbrances of whatsoever nature, shall cease to attach to the vessel”.
2. During and after the meeting of the IWG in Beijing in October 2012, there was concern that a deletion in Article 3, paragraph 1 of the Draft Convention of the words placed in brackets “[which provide confirmation of receipt]” might place states party to both MLM and the Draft Convention in breach of their obligations under the MLM Convention 1993. On the other hand, however, it was feared that the objective of the Draft Convention might be defeated if lack of receipt of the prior notice were to invalidate the Judicial Sale or at least its recognition in other states party to the Draft Convention.
3. However, upon closer reflection the IWG concluded that the above concern is unfounded. It is true that the deletion of the words in brackets “[which provide confirmation of receipt]” in the Draft Convention would create a difference between the Draft Convention and the MLM Convention 1993. However, it does not follow that a state party to both Conventions is brought into a conflict of loyalties or in a position where the only way to fulfil its obligations under the one Convention would be to breach its obligations under the other Convention or vice versa. In other words, despite the difference, it is believed that the obligations of a state party to both the MLM Convention 1993 and the Draft Convention at the same time can be reconciled as will be elaborated further below.
4. Under Article 3, paragraph 1 of the Draft Convention, the requirement of (prior) Notice of Judicial Sale is a condition precedent to the obligation of a state party to *recognize* a Judicial Sale accomplished in another state party to the Draft Convention. However there is nothing in the Draft Convention that prevents a State of Judicial Sale from imposing the above requirement “which provide confirmation of receipt” as an additional procedural safeguard pursuant to its domestic procedural law or further to an obligation under (other) international conventions. This latter possibility is even expressly recognized in the above cited new paragraph 5 to Article 3.
5. By contrast, Article 11, paragraph 1 MLM, obliges the competent authority in the state party where the forced sale takes place to ensure that notice in accordance with Article 11 MLM is given, which pursuant to Article 12, paragraph 1 MLM is a condition precedent to the forced sale of a vessel having the legal effect of providing Clean Title to the purchaser. Although the MLM Convention 1993 does not expressly deal with the recognition in a state party of a forced sale taking place in another state party, such recognition may perhaps be implied from the rule about the effect of the forced sale in Article 12, paragraph 1 MLM. However, it is clear that Judicial Sales taking place in non-contracting states do not fall within the scope of application of the MLM Convention 1993.
6. It follows from the above that in the event that in a state party to both the Draft Convention and the MLM Convention 1993 Recognition is asked of a Judicial Sale that occurred in a state party to both the Draft Convention and the MLM Convention 1993, it is likely that the requirement of (prior) Notice of forced sale in accordance with Article 11 MLM was observed, in which case there is no problem. In the alternative, it follows from Article 12, paragraph 1 MLM that the forced sale in question does not have the effects of forced sale (i.e. to provide the Purchaser with Clean Title) even in the state where the forced sale took place, in which case if necessary it is open to an interested party pursuant to Article 7, paragraph 3 Draft Convention to mount a challenge of the forced sale before the competent Court of the State of Judicial Sale. Once such a challenge is under way, a Court in a state party of the Draft Convention where recognition of that Judicial Sale (or forced sale in the terminology of the MLM Convention 1993) is sought, may suspend Recognition of the Judicial Sale pursuant to Article 8, paragraph 2 of the Draft Convention.

**Article 4 Effect of Judicial Sale**

*[12. The exact meaning of the earlier proposed wording of Article 4 (a) in the 2nd Working Draft “the ship being in the area of the jurisdiction of the State …” (with added emphasis) was deemed somewhat obscure and therefore was replaced in the 3rd proposed Draft by: “the ship being within the jurisdiction of the State …” (with added emphasis). Furthermore it was deemed necessary to make the clarification in Article 4 last sentence more all-embracing by including also the “deletion pursuant to Article 6-1” and by replacing the reference to “any in personam claim for any Deficiency Amount” by “any remedies other than those enforceable against the ship the subject of the Judicial Sale.”]*

1. At the meeting of the IWG in Dublin, several amendments to the wording of Article 4 Effect of Judicial Sale were affected in order to specify as exactly as possible both the essential preconditions to a valid Judicial Sale and the legal consequences effected by such a Judicial Sale. In Article 4, paragraph 1 (a) the word “physically” was inserted immediately before “within the jurisdiction” to stress that for a valid Judicial Sale under the Draft Convention, the Competent Authority in the State of Judicial Sale must (be able to) exercise actual control over the Ship. A similar provision can be found in Article 12, paragraph 1 (a) MLM: “(…) provided that, (a) at the time of the sale, the vessel is in the area of the jurisdiction of such State; (…)”.
2. Both in subsections (a) and (b) of Paragraph 1 of Article 4, the phrase “the state in which the Judicial Sale is accomplished” was replaced by the newly defined term “State of Judicial Sale” (See Article 1, paragraph 20 and above in Paragraph 18). The phrase “all rights, title and interests in the Ship” in Article 4, paragraph 1 was reformulated to the grammatically more correct “any title to and all rights and interests in the Ship” (see also below in Article 5, paragraph 1 (b)). As explained above in paragraph 6 of this Commentary, the words “all Maritime Liens and other liens, and all encumbrances of whatsoever nature and howsoever arising” in Article 4, paragraph 1 after “all other Charges” were retained in order to achieve that also in the definition of the Effect of Judicial Sale the comprehensive nature of the Clean Title obtained by the Purchaser or Subsequent Purchaser of a Ship at a Judicial Sale, is stressed, as Clean Title is after all one of the main objectives of the draft Convention.
3. In Article 4, paragraph 1 on two occasions the words “or Subsequent Purchaser” were inserted immediately after “Purchaser” in recognition of the fact that sometimes the Purchaser at a Judicial Sale will quickly sell on the acquired Ship to a Subsequent Purchaser, who will then may become the party to whom pursuant to the Judicial Sale title to the Ship shall be transferred and who may assume Mortgages or Registered Charges. See also below in Article 6, paragraphs 1, 2 and 3, Article 7, paragraphs 1 (a) and (b) and 2.
4. In Article 4, paragraph 2, immediately after “remedies”, the phrase “including, without limitation, any claims for Unsatisfied Personal Obligations” was inserted to stress even more that the Judicial Sale only serves as a bar to remedies enforceable against the Ship, and does not extinguish remedies against debtors *in personam*. Furthermore, the word “hereof” immediately after “Article 6” was deleted.

**Article 5 Issuance of a Certificate of Judicial Sale**

*[13. Apart from a minor terminological adjustment (“Competent Authority” instead of “Court or Court officer”) the provision remained unchanged.]*

1. At the Dublin meeting of the IWG, Article 5 Issuance of a Certificate of Judicial Sale was substantially revised, with the aim of providing guidance to the Competent Authority in the State of Judicial Sale about which items of information should be included in a Certificate of Judicial Sale to facilitate the Recognition of the Judicial Sale pursuant to Article 7 and the Deregistration from and Registration of the Ship in the Ship’s Register pursuant to Article 6 in states party to the Draft Convention.
2. To this end, a new paragraph 2 was inserted in Article 5 in which the items of information that are to be included in the Certificate of Judicial Sale as a minimum requirement for such Recognition, Deregistration and Registration are summed up comprehensively. The Draft Convention leaves the form and redaction of the Certificate to the Competent Authority in the State of Judicial Sale. For the selection of the required items of information, the IWG based itself on a limited comparison of current court practice in various legal systems and the form of certificate of insurance in the Annex to the Convention on Civil Liability for Oil Pollution Damage, 1992. Furthermore, the previous wording of Article 5 in the Beijing Draft was included in Article 5, paragraph 1 and subparagraphs (1) and (2) were renamed to (a) and (b).
3. A minor change effected in the wording of Article 5, paragraph 1 is the replacement of “the state where the Judicial Sale is made” by “the State of Judicial Sale” in line with the consistent use of the defined terms in the Draft Convention. Also the phrase “all rights, title and interests in the Ship” in Article 5, paragraph 1 (b) was reformulated to the grammatically more correct “any title to and all rights and interests in the Ship” (see also above in Article 4, paragraph 1).
4. However, as explained above in paragraph 6 of this Commentary, the words “all Maritime Liens and other liens, and all encumbrances of whatsoever nature and howsoever arising” in Article 5, paragraph 1 after “all other Charges” were retained in order to achieve that also in the Certificate to be issued by the Competent Authority of the State of Judicial Sale, the comprehensive nature of the Clean Title obtained by the Purchaser or Subsequent Purchaser of a Ship at a Judicial Sale is underlined.

**Article 6 Deregistration and Registration of the Ship**

*[14. The earlier proposed paragraph 4 of Article 6 in the 2nd Working Draft was removed in the 3rd Proposed Beijing Draft in order to ensure that the objective recognized in the third and fifth recital of the preamble of the 3rd proposed Beijing Draft is achieved that all remedies to challenge the validity of the Judicial Sale are channeled towards the competent Court in the State where the Judicial Sale took place.]*

1. At Dublin, several changes were made in the wording of Article 6 Deregistration and Registration of a Ship. The most significant one is the insertion of a new paragraph 2 into Article 6 dealing with the deletion from a Bareboat Charter Register of a Ship that was the object of a Judicial Sale (see also above in paragraph 22 in the commentary to Article 3 of the Draft Convention). As a result of this insertion, paragraphs 2 and 3 of Article 6 in the Beijing Draft were renumbered into paragraphs 3 and 4. Other insertions in Article 6 concerned the words “or Subsequent Purchaser” immediately after “Purchaser” in paragraphs 1, 2, 3 and 4 of Article 6.
2. Further the words “provided for in Article 5” after “Certificate” in Article 6, paragraphs 1 and 2 were replaced by “issued in accordance with Article 5”, and the phrase “as provided for in Article 5 is not made” in Article 6, paragraph 3, by “referred to in Article 5 is not issued”. Also the phrase “or a copy thereof duly certified in accordance with the law of the state in which the judicial Sale has taken place” immediately after “Convention” was removed in Article 6, paragraph 1, as were the words “be bound to” in Article 6, paragraphs 1 and 2, and the word “*hypothèques*” after “all Registered Mortgages” in Article 6, paragraph 1. Finally, in paragraph 4 of Article 6 the word “files” was replaced by “records”.

**Article 7 Recognition of Judicial Sale**

*[15. Apart from some minor linguistic improvements and terminological adjustments the essence and tenor of paragraphs 1, 2 and 3 of Article 7 have remained unchanged in the 3rd Proposed Draft. In line with the clear provision in paragraph 3 of Article 7 in which all remedies against a Judicial Sale are channeled towards the competent Courts in the State where the Judicial Sale took place, not only paragraph 4 of Article 6, but also paragraph 4 of Article 7 in the 2nd Working Draft can be removed in the 3rd Proposed Draft.*

*16. Instead a new paragraph 4 of Article 7 in the 3rd Proposed Draft provides that a Certificate pursuant to Article 5 will have conclusive force of evidence that the Judicial Sale has taken place and has the legal effect provided in Article 4. In this connection is should be noted also that the refusal ground based upon the Certificate produced by the (Subsequent) Purchaser not being authentic previously listed in Article 8 paragraph 1 sub (c) has been removed from Article 8 in the 3rd Proposed Draft. Furthermore an additional sentence at the end of paragraph 5 of Article 7 makes clear that no “remedies shall be exercised either against the Ship the subject of the Judicial Sale or against any bona fide Purchaser of that Ship. All these changes are part of the effort to channel as much as possible all remedies against the Judicial Sale towards the competent Court in the State where the Judicial Sale took place to the exclusion of all Courts in other Contracting States.]*

1. At the IWG meeting at Dublin also several minor changes were made to Article 7. Of a merely editorial nature were the renumbering of paragraph 5 of Article 7 into paragraph 4 and vice versa and the renaming of subparagraphs (i) and (ii) in Article 7, paragraph 1 into (a) and (b). Also in paragraph 1 of Article 7, the words “of Article 8” were inserted after “the provisions”, “each” before “state party” was replaced by “a”, the words “with a Certificate issued” was changed into “for which a Certificate has been issued”. Also the phrase “as provided for by Article 5” in Article 7, paragraphs 1, 2 and 5 was replaced by “in accordance with Article 5”.
2. Furthermore, in subparagraphs (a) and (b) of paragraph 1 of Article 7 the words “or Subsequent Purchaser” were added after “Purchaser”. In subparagraph (a) the phrase “and the right, title and interest of the previous owner enforceable against the Ship” was altered into “any title to and all the rights and interests in the Ship existing prior to its Judicial Sale”. In subparagraph (b) the word “*hypothèques*” after “registered mortgages” was removed, the word “Registered” was added before “Charges” and the second and third mentioning of the word “of” was removed. After the words “Purchaser or Subsequent Purchaser” the phrase “all other Charges” was added.
3. In paragraph 2 of Article 7 the words “dismiss, set aside or” were inserted immediately after “the Court shall” and the word “arising” was replaced by “that had arisen”. In paragraph 3 of Article 7 on two occasions the phrase “a state party in which the Judicial Sale took place” was replaced by the newly defined term “the State of Judicial Sale” (see above paragraph 19 in the Commentary under Article 1).
4. In the new paragraph 4 of Article 7 the phrase “of the State of Judicial Sale” was inserted after the first mentioned “competent court” and the word “such” before the second mentioned “competent court”. Also the superfluous words “as defined by this Convention” after “Interested Person” were deleted. In the new paragraph 5 of Article 7 the words “exists under” before “Article 8” were replaced by “referred to in”, whereas the words “to refuse Recognition of a Judicial Sale” after “this Convention” were removed, and the word “hereof” after Article 4 was replaced by “of this Convention”.

**Article 8 Circumstances in which Recognition may be Refused or Suspended**

*[17. In the 3rd proposed Draft significant changes in the title and contents of Article 8 were effected as compared with the 2nd Working Draft. Where previously Article 8 only knew of grounds for refusal, the new Article 8 creates the possibility of suspension of Recognition by a Court in a contracting State in the case where legal proceedings have commenced to challenge a Judicial Sale before the competent Court in the State where the Judicial Sale occurred and that latter Court has suspended the legal effect of the Judicial Sale. Only after the competent Court in the State where the Judicial Sale occurred has nullified the Judicial Sale and its effects in a judgment no longer subject to appeal, Recognition in other Contracting States may be refused.*

*18. As mentioned before under Article 7 the refusal ground (in Article 8 paragraph 1 (c) 2nd Working Draft) based upon the non-authenticity of the Certificate produced by the (Subsequent) Purchaser was removed as part of the effort to channel all remedies against the Judicial Sale towards the competent Court in the State where the Judicial Sale occurred.*

*19. The other refusal grounds listed in Article 8 in the 2nd Working Draft, i.e. that at the time of the Judicial Sale the ship was not physically within the jurisdiction of that State (Article 8 paragraph 1 (a)) and that Recognition of the Judicial Sale would be contrary to the public policy of that State Party (Article 8 paragraph 2) have remained but are now to be found in Article 8 paragraph 1, and paragraph 3 respectively.]*

1. At Dublin also several – major and minor – changes were made to Article 8. The exclusive and limitative nature of the circumstances in which Recognition may be suspended or refused under Article 8 is underlined by the replacement of the word “only” after “Interested Person” in Article 8, paragraph 2 under (a) and (b) by the phrase at the beginning of Article 8: “Recognition of a Judicial Sale may be suspended or refused only in the circumstances provided for in the following paragraphs:”.
2. In Article 8, paragraph 2 (a) the phrase “on notice to the Purchaser or Subsequent Purchaser” is inserted after “commenced” and under (b) the phrase “of the State of Judicial Sale (whether or not after suspension of the legal effect of the Judicial Sale)” was added after “competent court” in recognition of the possibility that nullification of the Judicial Sale by the competent Court in the State of Judicial sale might take place not only after suspension but also directly. Of significance is further the addition of the word “manifestly” before “contrary to the public policy” in paragraph 3. This change was inspired by Article 34, paragraph 1 Brussels-I and aims to narrow down the scope of the public policy exception under national laws to the Recognition of Judicial Sales.
3. Another substantial change is the deletion of paragraph 4 of Article 8 which previously contained a proposed uniform time bar of three months for challenges of the Judicial Sale by the Interested Person. For some way this time-bar was too long and for others way too short. Also there was concern that this uniform time-bar might intrude too much upon the procedural order in the State of Judicial Sale and unduly complicate ship sale and finance transactions, particularly in the context of giving legal opinions as to clean title. It was observed that in some jurisdictions challenges to judicial sales typically arise during the sale process and are frequently made in the course of applications opposing court approval of judicial sales. Ultimately it was decided to drop paragraph 4 altogether. We should emphasize again the additional sentence at the end of paragraph 4 of Article 7 that “*no remedies shall be exercised either against the Ship the subject of the Judicial Sale or against any bona fide Purchaser of that Ship.”* Therefore the omission of any provision in the draft for a time bar does not adversely affect title to the ship, the rights of *bona fide* purchasers or the giving of legal opinions as to clean title to the ship.
4. Other minor changes effected to Article 8 concern the deletion of the words “or revoked” after “refused” in Article 8, paragraph 1, the replacement of “provided for” by “in accordance with” in Article 8, paragraph 1, the replacement on three occasions of “the (state party)” by “a (state party)” in paragraphs 1 and 2 (a) and (b), the reformulation of “the legal effect of the Judicial Sale” in Article 8, paragraph 2 (a) into “the Judicial Sale and its effects” and the replacement of the last mentioned “Court” in paragraph 1 by “Competent Authority”.

**Article 9 Relations with other International Instruments**

*[20. As Stated above already in the commentary below Article 2, in an effort to somewhat extend the scope of application of the proposed convention, Article 9 on Restricted Recognition in the 2nd Working Draft was deleted. A new Article 9 Relation with other International Instruments was included in order to clarify that: “Nothing in the proposed convention shall derogate from any other basis for the Recognition of Judicial Sales under any bilateral or multilateral Convention, Instrument or agreement or principle of comity.”]*

48. As regards Article 9, although the word “derogate” was proposed to be replaced by the word “affect”, the word “derogate” is maintained by the IWG.

\*-\*-\*-\*-\*