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PREFACE

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Peter LAURIJSSEN (**)

On 7 December 2022, the General Assembly of the United Nations adopted the Convention on the International Effects of Judicial Sales of Ships. At the time of writing, the Chinese Ministry of Transport, Ministry of Commerce and the Beijing Municipal Government are looking for a suitable date in September 2023 to host the signing ceremony of the Convention, which shall be known as the Beijing Convention⁽¹⁾. The signing ceremony will be the culmination of a process that started in 2007 when Professor Henry Li of the China Maritime Law Association presented a paper to the Executive Council of the Comité Maritime International (CMI) drawing attention to problems arising around the world from the failure in recognising the free and unencumbered title given to purchasers of vessels in judicial sales and proposing that an International Working Group (IWG) within the CMI conduct a preliminary study of the issues in relation to the Judicial Sale of Ships. The proceedings of the CMI's IWG on judicial sales eventually led to the adoption of the so-called Beijing Draft by the Assembly of the CMI in 2014⁽²⁾. The United Nations Commission on International Trade Law (UNCITRAL) was approached to pick up the gauntlet and turn the Beijing Draft into an international instrument, as UNCITRAL was considered to be the most appropriate forum to resolve issues involving pernicious effects on cross-border trade posed by the lack of uniformity surrounding the international effects of judicial sales of ships.

It is a fact indeed that the lack of uniformity and the ensuing legal uncertainty give rise to obstacles in international trade. The absence of an international instrument dealing with the transborder effects of judicial sales leads to uncertainty in relation to the clean title which a judicial sale is supposed to confer upon the purchaser of a vessel in a judicial sale. This often leads to issues or even to deadlock situations when purchasers are trying to deregister the ship in its original flag state or to register it in the register of their choice. Moreover, purchasers risk facing claims or even the arrest of the ship for claims predating the judicial sale if states fail to give proper effect to the free and unencumbered title conferred by the state

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⁽¹⁾ Report of Working Group VI (Judicial Sale of Ships) on the work of its fortieth session (New York, 7-11 February 2022) (A/CN.9/1095), 14.

⁽²⁾ Since 2007 the topic of judicial sales has been discussed at subsequent meetings of the CMI and a draft international instrument was prepared at numerous meetings including the Beijing Conference in 2012, the Dublin meeting of 2013 and the Hamburg Conference of 2014 where the draft instrument was completed, and approved. The proposal for approval of the final text of the draft international instrument was made by the China Maritime Law Association at the CMI Assembly in Hamburg in 2014. The draft international instrument is commonly referred to as the CMI's 2014 Beijing Draft.

of judicial sale, which would have sold the vessel clean of all pre-existing encumbrances and liens. These obstacles, risks and the resulting losses and costs create substantial uncertainty and loss of confidence by potential buyers and their financiers in the judicial sale market and lead to reduced sale proceeds for such ships to the detriment of the vessel's creditors, including the crew, shipping financiers and suppliers of maritime services. Widely publicised disputes and litigation predating the CMI and UNCITRAL projects, demonstrated that the aforementioned obstacles to international trade are not merely theoretical⁽³⁾. The recent decision of the Maltese Court of Appeal in the case of the "Bright Star" will be discussed extensively elsewhere in this publication⁽⁴⁾. UNCITRAL's Beijing Convention will therefore clearly fill a lacuna in international shipping and global trade.

In their contribution titled *Commentary on the Beijing Convention on the International Effects of Judicial Sales of Ships*, editors Ann Fenech and Peter Laurijssen, together with maritime law experts Stuart Hetherington, Alexander von Ziegler, Henry Li, Tomataka Fujita, Frank Nolan and Jan Erik Poetschke, will discuss the most important features of the Convention's 23 Articles. These 8 co-authors were members of the CMI's IWG on Judicial Sales of Ships and actively contributed to the genesis of the Convention within UNCITRAL Working Group VI (Judicial Sale of Ships). Their expert views provide good insight into the principal provisions and mechanisms of the Convention.

The text of the Convention in the six official UN languages is followed by UNCITRAL's Explanatory Note. The Explanatory Note is a document prepared by the UNCITRAL Secretariat reflecting the deliberations of Working Group VI (Judicial Sale of Ships) and text of the draft Convention as approved. As such it gives useful guidance and insight into the philosophy and mechanisms of the Convention.

The need for the Convention and the support of the Convention by the shipping industry are highlighted in contributions by a number of professional organisations representing amongst others the ship owning community, shipping financiers, flag states and the judiciary.

The Convention provides the harmonisation, legal certainty and fairness that the stakeholders have sought, whilst at the same time retaining State sovereignty over the conduct of judicial sales in their territories. As the Honourable Neil McKerracher KC, says of the Convention: "... it does not seek or purport to erode any signatory State's sovereignty. To the contrary it leaves both the substantive and

(3) Examples include The "Galaxias" (1988) LMLN No. 240, 2; The "Emre II" (1989) 2 Lloyd's Rep 182, 185; The "Cerro Colorado" (1993) 1 Lloyd's Rep 58, 61; The "Sam Dragon" (2012) IEHC 240; The "Phoenix" (2014) 1 Lloyd's Rep 449; The "Pelamis No. 68", Federal Court of Australia No. NSD379/2017 (quoted by Stuart HETHERINGTON at the Malta Colloquium on Recognition of Judicial Sale of Ships at Valletta on 27 February 2018).

(4) Ann Fenech nominee v Jebmed Srl, The "Bright Star" (Malta) 2023 App. Civ. 846/18/2. For an extensive discussion, see *Commentary on the Beijing Convention on the International Effects of Judicial Sales of Ships* by Ann FENECH et al. elsewhere in this issue.

procedural elements of a judicial sale in the hands of the country effecting it to do so in accordance with its own laws and procedures”⁽⁵⁾).

Considering its scope, we believe this publication may well be considered as the ‘bible’ of the Beijing Convention. We hope that it will be of use to practitioners, scholars and public authorities who are active in the industry.

⁽⁵⁾ Neil McKERRACHER, *Judicial support for the Beijing Convention on the International Effects of Judicial Sales of Ships*, p. 203 in this issue.

Commentary on the Beijing Convention on the International Effects of Judicial Sales of Ships

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1. Introduction and the “Bright Star”

It was Prof. Henry Li of the China Maritime Law Association and a member of the Executive Council of the CMI who in 2007 drew our attention to the challenges being faced by ship owners in instances when following their purchase of a ship in a judicial sale, the free and unencumbered title in the hands of the new purchaser is challenged. We had the opportunity then of examining the various real problems that arise when this occurs. The problems varied from the old creditors of ships sold in a judicial sale continuing to chase the ship in the hands of the new owners, sometimes even succeeding in arresting that vessel, to the vessel’s previous flag registry refusing to delete the vessel’s old registration or the vessel’s previous liens and mortgages. These problems which cause very severe disruption to the maritime activity of the new purchaser and new financier and disruption to international

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trade generally, in themselves also constitute serious disincentives to potential purchasers who may be interested and paying top market values for ships in judicial sales. They increase the risks for potential financiers of such vessels, leading to uncertainty and a lack of trust in the market of judicial sales. This atmosphere reduces the interest in judicial sales and with a reduction of interest we have a depressed market in judicial sales with the likelihood that ships sold do not fetch their best prices leading to low purchase prices insufficient to cover the vessel's debts. Something had to be done about it.

As explained in the Preface to this publication, this led to the finalization by the CMI International Working Group in 2014 of what became known as the ***“Beijing draft convention on the international recognition of judicial sales”*** which was eventually considered and developed by Working Group VI (Judicial Sale of Ships) at UNCITRAL leading to the adoption of the Convention on the International Effects of Judicial Sales of Ships, by the United Nations General Assembly on 7 December 2022.

There have been several cases which highlight the problems and challenges which arise when the free and unencumbered title is not given its full and proper effect, however these are not a thing of the past and they continue and will continue to happen until the Convention on the International Effects of Judicial Sales of Ships is ratified by as many countries as possible.

There can be no better case to underline the need for the Convention, than the very recent case of the *Bright Star* which was decided by the Court of Appeal in Malta on 12 January 2023⁽¹⁾ and which confirmed the judgment of the first court delivered on 27 May 2021⁽²⁾.

On 9 January 2018, Bluefin Marine Ltd purchased the vessel Trading Fabrizia for the sum of US\$10,300,000 in a judicial sale by auction in Jamaica. The vessel had been arrested in Jamaica by the mortgagee Jebmed Srl (“Jebmed”) which was followed by the vessel’s judicial sale by auction in Jamaica. The vessel was renamed by her new owners as Bright Star. Subsequent to the sale the Jamaican courts ordered the sum of US\$3,000,000 to be reserved in favour of Jebmed.

Six months later, on 19 June 2018 the vessel was under charter passing through the Mediterranean en route from Kavkaz to Venezuela fully loaded with a cargo of wheat. She stopped off Malta to pick up bunkers and was immediately arrested by Jebmed, the old mortgagee of the vessel prior to her sale in Jamaica. It is most ironic how this ship was arrested in Malta by the old mortgagee only a few weeks prior to the start of the fifty-first session of the Commission at UNCITRAL⁽³⁾ which had agreed to take on the project of the Convention. Once it was understood that she was arrested by the old mortgagee efforts were made to encourage the mortgagee to withdraw this arrest since this was contrary to Maltese law.

⁽¹⁾ Ann Fenech nominee v Jebmed Srl - The Bright Star (Malta) 2023 App. Civ 846/18/2.

⁽²⁾ Ann Fenech nominee v Jebmed Srl - The Bright Star (Malta) 2021 846/2918.

⁽³⁾ Report of the United Nations Commission on International Trade Law fifty-first session A/73/17.

Maltese law was and is very clear indeed, with article 37 (D) of the Merchant Shipping Act, stating that:

“Provided further that where a ship has been sold pursuant to an order or with the approval of a competent court within whose jurisdiction the vessel was at the time of the sale, the interest of the mortgagees as well as of any other creditor in the ship shall pass on to the proceeds of the sale of the ship.”

Regrettably Jebmed remained unpersuaded and the attempt to get Jebmed to withdraw its illegal arrest failed. Jebmed believed it was entitled to arrest the ship. In fact, the vessel Bright Star should never have been arrested by the vessel's old mortgagee following the sale of the Bright Star free and unencumbered six months previously. Jebmed should have proceeded with seeking payment from the sale price in Jamaica out of which the sum of US\$3,000,000 initially, later reduced to US\$1,000,000, had been reserved for its claim.

The owners of the Bright Star with a ship under charter full of wheat, had to immediately deal with the losses associated with a disruption in the charter and immediately mobilize assistance to ensure that the vessel could continue on its journey as promptly as possible and without undue delay. The owners therefore had no option but to put up security in cash to the tune of Euro 778,000, in order to have the vessel immediately released from arrest and argue later. The security replacing the vessel had to be put up in cash because Jebmed had refused to accept a letter of undertaking from the vessel's P & I Club Steamship Mutual who had of course from the moment of the arrest gotten involved lending their support and guidance. In the meantime the charterers of the vessel were getting rather concerned about the delay caused to the voyage with potential claims looming.

The financiers of the vessel on their part, who had financed the purchase of the vessel in the judicial sale in Jamaica, were also very worried about this turn of events, given that when they had agreed to finance this ship, it was on the understanding and on the basis of an opinion obtained from the Admiralty Marshal in Jamaica that the vessel was being sold free and unencumbered and that the law of the vessel's registry then which was Malta, fully accepted the transfer of the free and unencumbered title to the purchaser and provided that the interests of old mortgagees or creditors would cease to attach to the vessel under new ownership and that their interests would pass on to the proceeds. Thus they financed the vessel in the belief that all previous debts would fall and that it was they, the new financiers, who held the only mortgage against the vessel.

The illegal arrest of the Bright Star was the start of nothing short of a judicial saga lasting until 12 January 2023 when the Court of Appeal handed down its final judgement.

This five year period witnessed no less than 73 judicial proceedings and several tens of thousands in costs. They started with the owners of the Bright Star invoking summary proceedings which failed and so they had to commence a full blown action on the merits requesting the court to declare the arrest illegal and seeking damages. Running parallel to this main action were the various attempts being

made by the defendant to withdraw the funds deposited in Court as security for the claim. These attempts failed however not without a very substantial effort, multiple proceedings and without owners incurring substantial expense.

The defendant's main line of defence was that the mortgagee had an executive title according to Maltese law which permitted such a creditor to proceed directly with the immediate enforcement of that title against the proceeds. In Jamaica the notion of executive title did not exist and consequently all creditors in conformity with the law of Jamaica had to go through the motions of, first, having their title against the proceeds of the sale confirmed prior to enforcement. It had been observed that notwithstanding this, the Court in Jamaica had in any event, reserved US\$3,000,000 from the proceeds for the eventual settlement of Jebmed's claim which amount had subsequently been reduced to US\$1,000,000.

On 27 May 2021 the Court declared the arrest illegal and ordered Jebmed to pay damages. The Court declared that:

"It is the Court's view that the proviso to article 37 D(1) ie that part which considers the consequence of the sale "with the approval of a competent court within whose jurisdiction the vessel was at the time of the sale" is clear enough to remove all doubt. There is no indication in the acts of this case that the sale was not ordered by a competent Court. The Jamaican Court conducted the sale process in terms of Jamaican law and in the process of recognizing the existence of a mortgage in favour of the defendant company, it reserved a sum of money from the proceeds to satisfy Jebmed's credit once it proved its claim linked to the mortgage as required by Jamaican law.

There is nothing in Maltese law which nullifies the effects of article 37D (1) to what has just been stated. Although the introductory part of article 37D(1) states that a mortgage continues to attach to the vessel until it is discharged, the said article imposes exceptions to this general rule including the sale pursuant to an order or with the approval of the Court as in this case. However this does not mean that the creditor loses his privileged right, rather his privileged rights are transferred from the ship to the proceeds of the sale. This means that whatever the sum constituting the proceeds may be, where there are various creditors expecting payment from those proceeds, the rules relating to the ranking of creditors come into play. According to Jamaican law Jebmed enjoyed the second highest preference by virtue of the mortgage once this claim was proved according to the laws of Jamaica.

The Court considers that if this principle is hindered in its application it will constitute a big hindrance to international maritime trade which may stop entirely the transfer of ships pursuant to an order or with the approval of the Court if the title which is transferred in the sale is considered dubious, and notwithstanding the fact that as occurred in Jamaica the vessel was sold "free of all mortgages, liens and encumbrances."

Jebmed filed an appeal. The Court of Appeal handed down its final judgment on 12 January 2023 and confirmed the findings of the first court. In doing so it stated:

“17. The law states that the interests of the creditors, in the case of the judicial sale of a vessel, “shall pass on to the proceeds of the sale,” and this means that the interests of the creditor over the vessel ends and passes onto the proceeds. The words “shall pass on” or “passes” can only mean that they pass from one interest to the other and this independently of whether the foreign jurisdiction considers the debt held by the creditor certain, liquid and due.

...

19. Maltese law clearly wants to remove any burden imposed on the vessel, in fact sub-articles (2) and (3) of the above mentioned 37D provide that even a privilege or a civil mortgage registered over a vessel are removed if the vessel is sold by judicial sale. This article in its essence states that if the vessel is sold under the authority or by order of the Court, there will be a sale of this kind and who purchases the vessel will have the comfort of knowing that no other creditor can come and snatch the vessel, but can satisfy his credit from the proceeds of the sale.”

In confirming the judgment of the first court, the Court of Appeal referred to the *Acrux*⁽⁴⁾, the *Cerro Colorado*⁽⁵⁾, *The Castique v Imrie*⁽⁶⁾. It concluded that:

“26. Therefore and for the above mentioned reasons, decides the appeal of the defendant company Jebmed SRL by denying the same and confirming in its entirety the judgment of the First Court with costs against the defendant company.”⁽⁷⁾

The case of the *Bright Star* highlights the need for the Convention on the International effects of judicial sales of ships. It fills a lacuna and creates much needed legal certainty in international shipping and shipping finance.

In this article, we will discuss what falls within the scope of the Convention and, importantly, what doesn't (chapter 2). The importance of the notice of judicial sale (chapter 3) and the crucial role of the certificate of judicial sale (chapter 4) will subsequently be put to examination. A chapter is dedicated to the provisions dealing with the actions to be taken by the registry upon production of the certificate of judicial sale and the release of the vessel from arrest and the prevention of the arrest of the vessel after a judicial sale, which go to the core of the Convention (chapter 5). The final chapter deals with the avoidance of a judicial sale and the suspension of the effects of a judicial sale (chapter 6).

⁽⁴⁾ (1962) 2 Lloyd's Rep 405.

⁽⁵⁾ (1993) 1 Lloyd's Rep 58.

⁽⁶⁾ (1869) L.R 4 HL 414.

⁽⁷⁾ Judgments in Malta are delivered in Maltese. The extracts quoted have been translated into English.

2. Scope of the Convention:

What is covered by the Convention and What is not?

2.1. “Judicial Sale of a Ship” covered by the Convention

2.1.1 Judicial Sale

The Convention applies to a “judicial sale” of a ship.⁽⁸⁾ “Judicial sale” is defined as “any sale of a ship: (i) which is ordered, approved, or confirmed by a court or other public authority either by way of public auction or by private treaty carried out under the supervision and with the approval of a court; and (ii) for which the proceeds of sale are made available to the creditors.”⁽⁹⁾ Several elements in the definition merit our attention.

2.1.2 Conducted by A Court and other Public Authority

A judicial sale under the Convention should be conducted by a court or other public authority.⁽¹⁰⁾ Since the procedure of a judicial sale takes different forms in different jurisdictions, the Convention allows flexibility to cover possible differences. The involvement by a court or other public authority may be to “order”, “approve” or “confirm” the sale. The manner of the sale may be by public auction or private treaty although the latter should be carried out under the supervision and with the approval of a court.⁽¹¹⁾ A judicial sale initiated by a public authority other than a court such as tax or customs authorities is not automatically excluded from the Convention’s scope as far as it satisfies other requirements, including that the proceeds of sale are made available to the creditors.⁽¹²⁾

2.1.3 Proceeds of Sale Are Made Available to the Creditors

A judicial sale under the Convention should be one by which the proceeds of sale should be made available to the creditors.⁽¹³⁾ There is no restriction for the nature of the claims which are enforced by the judicial sale. During the deliberations in UNCITRAL, some delegates argued that the Convention should limit its scope to the sales enforcing civil or commercial claims⁽¹⁴⁾ or claims against a ship.⁽¹⁵⁾ However, the nature of the claims that triggered the judicial sale is irrelevant from the purchaser’s viewpoint. The definition of judicial sale thus has no restriction for the nature of the claim. It is sufficient that the proceeds of sale are made available to the creditors.

⁽⁸⁾ Article 3(1).

⁽⁹⁾ Article 1(a).

⁽¹⁰⁾ The term public authority is not defined in the Convention. Compared with Article 8, which refers to “a court or other *judicial* authority” (emphasis added), it is clear that “public authority” in Article 1(a) is not limited to judicial authorities but also includes administrative bodies, etc. See Explanatory Note, para. 34.

⁽¹¹⁾ A “public tender” may be part of either a public auction or a private treaty, depending on the legal system of a contracting state. See Explanatory Note, paras. 36 and 37.

⁽¹²⁾ See Explanatory Note, para. 41.

⁽¹³⁾ Article 2(a)(ii).

⁽¹⁴⁾ See 37th Session Report, para. 35.

⁽¹⁵⁾ See 55th Commission Session Report, para. 29

2.1.4 Judicial Sale of a “Ship”

The Convention applies to a judicial sale of a “ship”, which means “any ship or other vessel registered in a registry that is open to public inspection that may be the subject of an arrest or other similar measure capable of leading to a judicial sale under the law of the State of judicial sale.”⁽¹⁶⁾ The key to this definition is the registration and possibility of a judicial sale. Vessels for inland navigation are not excluded from the Convention’s scope as long as they are registered in a registry that is open to public inspection and are subject to a judicial sale.⁽¹⁷⁾ This may cause problems with some States that are party to the Convention on the Registration of Inland Navigation Vessels (1965), which could lead to conflict with the regulations of this Convention. Article 13(1) provides a safeguard for those States as follows: “Nothing in this Convention shall affect the application of the Convention on the Registration of Inland Navigation Vessels (1965) and its Protocol No. 2 concerning Attachment and Forced Sale of Inland Navigation Vessels, including any future amendment to that convention or protocol.”

However, the Convention excludes a certain type of ships from its scope; warships or naval auxiliaries are outside the scope of the Convention.⁽¹⁸⁾ The Convention also does not apply to other vessels owned or operated by a State that are used only on government non-commercial service just prior to the time of judicial sale.⁽¹⁹⁾

2.1.5 Transfer of Clean Title

Judicial sales do not always confer clean title to the purchaser in a number of States. One should note that the above definition of “judicial sale” does not include a transfer of clean title as an indispensable element;⁽²⁰⁾ in other words, the Convention applies to a judicial sale in a contracting state regardless of whether it confers clean title to the purchaser.

Courts in such States where judicial sales do not always convey clean title sometimes cannot know whether clean title is finally transferred in a particular judicial sale when the procedure commences. If the transfer of clean title is included in the definition of judicial sale, such courts should proceed with the procedure of judicial sale without knowing whether the Convention eventually applies or not.⁽²¹⁾ It could cause problems with the application of Article 4, which provides that a notice to the creditor should be sent prior to the judicial sale.

⁽¹⁶⁾ Article 2(b).

⁽¹⁷⁾ See Explanatory Note, para. 45.

⁽¹⁸⁾ Article 3(2). Similar exclusion is found in International Convention on Maritime Liens and Mortgages (1993).

⁽¹⁹⁾ Article 3(2). Similar exclusion is found in International Convention on Maritime Liens and Mortgages (1993).

⁽²⁰⁾ The original Beijing Draft, submitted by CMI, included the element in the definition of a judicial sale. See Beijing Draft, Article 1(h).

⁽²¹⁾ See Explanatory Note, para. 92. The point was repeatedly raised during the UNCITRAL Working Group. See 37th Session Report, paras. 39-45, 38th Session Report, paras. 13-15 and 39th Session Report, para. 43.

The solution adopted under the Convention is as follows:⁽²²⁾ according to Articles 1(a) and 3(1), the Convention applies to all judicial sales of a ship, whether they confer clean title or not. However, substantive provisions of the Convention that govern the situation after the judicial sale is completed apply if and only if the judicial sale conferred clean title to the purchaser in a particular case. Article 5 provides that a certificate of judicial sale is issued when a judicial sale that conferred clean title to the ship is completed, and Article 6 gives international effects of a judicial sale only to those sales to which a certificate pursuant to Article 5 is issued. Articles 7 to 10 presuppose the existence of the certificate that states clean title is transferred to the purchaser. Essentially, all substantive provisions except Article 4 apply only if clean title is transferred through a judicial sale in a particular case.⁽²³⁾

2.2. Geographic Scope of the Convention

2.2.1 Judicial Sale Conducted in a State Party

The Convention applies only to a judicial sale conducted in a State Party.⁽²⁴⁾ A judicial sale conducted in non-contracting States is outside the scope of the Convention. The Convention establishes a “closed regime” that applies only among its State Parties.⁽²⁵⁾ There is no guarantee that judicial sales conducted in non-contracting States comply with the procedural requirements, *inter alia*, the notice requirement under the Convention. Therefore, it is sensible to restrict the Convention’s scope to a judicial sale conducted in contracting States.

However, one should note that the Convention does not prohibit contracting States from giving effect to a judicial sale conducted in non-contracting States if they wish to do so. Article 14 confirms that “nothing in this Convention shall preclude a State from giving effect to a judicial sale of a ship conducted in another State under any other international agreement or under applicable law.”

2.2.2 Ship’s Physical Presence within the State Party

For the Convention to be applied, the ship must be physically within the territory of the State of judicial sale at the time of the sale.⁽²⁶⁾ The requirement is intended to ensure a jurisdictional link between the court of judicial sale and the ship.⁽²⁷⁾

The meaning of the “time of the judicial sale” is not clearly defined in the Convention.⁽²⁸⁾ While the ship must be within the territory at the final stage of the

⁽²²⁾ See 39th Session Report, para. 47.

⁽²³⁾ See Explanatory Note, para. 48.

⁽²⁴⁾ Article 3(a). The location of the register is not relevant, although the Convention may not have much value when the State of registry is not a contracting state. See Explanatory Note, para. 85.

⁽²⁵⁾ See Explanatory Note, para. 84. In contrast, the original Beijing Draft submitted by CMI is based on “open regime,” while it allows the State Parties, by reservation, to restrict the application of the Convention to judicial sales conducted in State Parties. See Beijing Draft Article 9.

⁽²⁶⁾ Article 3(b).

⁽²⁷⁾ See Explanatory Note, para. 87.

⁽²⁸⁾ Although it examined the possibility, the UNCITRAL Working Group finally agreed not to define “time of the judicial sale.” See 37th Session report, paras. 22-24 and 38th Session report, paras. 50-56.

judicial sale, there may be different views as to whether it should remain within the territory from the beginning of the judicial sales process. The issue is left to the law of the State of judicial sale.⁽²⁹⁾

2.3. Issues Not Governed by the Convention

As its title and Article 1 suggest, the Convention governs the international effects of a judicial sale of a ship. However, it should be noted that not all effects of a judicial sale are governed by the Convention; its focus is the transfer of clean title, and other aspects are not touched. Article 15 clarifies this point: for example, the Convention does not address how the proceeds of a judicial sale are distributed among the creditors (Article 15(1)(a)), or whether or how personal claims against the previous shipowner are affected by the judicial sale (Article 15(1)(b)).

Even certain aspects relating to the transfer of clean title to the ship are not governed by the Convention. Article 9 of the Convention provides jurisdiction regarding the avoidance or suspension of the judicial sale, but it does not address the grounds for the avoidance or suspension, or the effect of the decision rendered by the courts designated under Article 9. It is left to applicable law, which is usually the *lex fori* of the court in the judicial sale.⁽³⁰⁾

3. The Notice of Judicial Sale (Article 4)

3.1. Formal requirements and addressees of the notice of judicial sale

Article 4 of the Convention sets out rules and requirements for the notice of judicial sale which must be satisfied in order to qualify the sale for a Certificate of Judicial Sale. The Certificate of Sale is the document which requires a State Party to issue deletion certificates from a prior registry or reregister the vessel, in either case upon request of the purchaser or subsequent purchaser. Also, in the event a vessel is arrested or detained in another State Party after a Judicial Sale based on a claim arising prior to the Judicial Sale, the courts of the State party where such arrest or detention occurs is required to release the vessel upon production of a Certificate of Judicial Sale.

The delegates to UNCITRAL Working Group VI struggled mightily to arrive at the agreed language of Article 4. The many maritime practitioners in the Working Group repeatedly emphasized that the primary purpose of a notice of sale was to drive interest in the vessel and thus to maximize the sale price, usually at auction, for the ultimate benefit of the vessel's creditors. Some pointed out that the commencement of arrest proceedings and delivery of an order of arrest to the master of

⁽²⁹⁾ See Explanatory Note, para. 87.

⁽³⁰⁾ The issue was intensively discussed in the UNCITRAL Working Group, and some delegates strongly stressed that the Convention itself, instead of the domestic law of contracting States, should provide the international effect of the avoidance or suspension of a judicial sale. However, many delegates hesitated to have a lengthy discussion to solve a difficult question, which would arise under only extremely rare cases in most jurisdictions. See 38th Session Report, paras. 57-60 and 40th Session Report, paras. 46-48.

the vessel constituted all the notice to vessel owner interests that was traditionally required. Other traditional modes of notice in vessel judicial sales were publication in local press.

Article 4 begins in paragraph 1 by stating that judicial sales “shall be conducted in accordance with the laws of the State of judicial sale” making clear that the Convention does not interfere with the domestic processes of judicial sales in the States where they are conducted. However, paragraph 1 adds that the State of judicial sale “shall also provide for challenges to the judicial sale prior to its completion...” This language was inserted at the final session of the Working Group after strenuous debate among the delegates. The insertion was ultimately agreed with the understanding that all or most States already have domestic law practices and procedure which would satisfy this requirement and that no new legislative or regulatory action would be required in such cases⁽³¹⁾. An example of an acceptable provision satisfying the Convention language would be the opportunity for challenges to the sale prior to entry of a court’s final order of sale under US law. The Convention itself is silent on what constitutes an acceptable provision. Moreover, it should be borne in mind that such procedures refer to challenges to the provisional sale remedy only and not to the filing, allowance or ranking of claims or the distribution of the proceeds of any such sale. The language of Article 4, paragraph 1 also does not apply to any post-sale challenges, which are addressed in Article 9 and which are allowed only in the State of judicial sale. The delegates were repeatedly reminded that the judicial sale of vessels is a provisional remedy intended to convert the idled vessel, a wasting asset, into cash for eventual distribution to the claimants in the proceeding and, at the same time, to cut off continuing custodial costs for the arrested vessel.

The notice provisions set forth in Article 4 reflect a compromise with some incidental and perhaps unintended benefits. Importantly, the provisions are drafted in such a way that no State is required to implement or enforce heightened notice provisions. Instead, Article 4.2 provides that a certificate of judicial sale “shall only be issued if a notice of judicial sale is given prior to the judicial sale of the ship in accordance with the requirements of paragraphs 3 to 7...” of Article 4.

Paragraph 3 requires notice be given to:

- (a) the ship’s registry, a feature welcomed by some ship registries which have been blind-sided by flag vessels being sold without the registry’s knowledge;
- (b) holders of any mortgage, hypothèque or registered charge, where in each case the register is open to the public and at which copies can be made. The public access to the registry is a requirement of other conventions and domestic laws of many jurisdictions as a fraud preventive requirement for recognition of foreign instruments;

⁽³¹⁾ See Explanatory Note 99 and 100.

- (c) holders of any maritime liens who have notified the court or other public authority conducting the judicial sale. It is understood that this notice requirement would be satisfied by written filing of claims or intervention in the underlying arrest process. The language of paragraph 3 leaves the manner of notice to “the regulations and procedures of the State of judicial sale;”
- (d) the owner of the ship; and
- (e) the bareboat charterer listed in the bareboat charter register and to the bareboat charter registry.

Article 4, paragraph 4 requires that a Convention notice satisfies the laws of the State of judicial sale and also incorporates the items set out in Annex 1 of the Convention, “Minimum information to be contained in the notice of judicial sale.” The requirements set forth in Annex 1 are generally reflections of typical judicial sale requirements under a number of State domestic law requirements and are not burdensome, in any event.

3.2. Publicity of the notice of judicial sale

Article 4, paragraph 5 retains the publication requirement typical of existing domestic law requirements, but refines it helpfully. Paragraph 5(a) refers to press or other publications available in the State of judicial sale, a recognition that every State has a press establishment, but that it is recognized that many specialized publications and general media often flow through many jurisdictions beyond their place of origin or establishment.

Paragraph 5(b) sets out the most novel feature of the notice provision, requiring that the notice be “transmitted to the repository referred to in article 11 for publication.” That repository is the International Maritime Organization (“IMO”). Publication would occur by entry of the individual notice into the IMO’s Global Integrated Shipping Information System (GISIS) or its successor. The advantage of this process will be the creation of a central notice filing location, clearing away many concerns about the adequacy of notice. While the access to insert or change information in GISIS would be restricted to authorized persons, the public will have open access to the posted information.

Article 4, paragraph 6 requires that the notice filed with the reporting be in one of the working languages of the repository or be accompanied by a translation into one of the working languages. In the case of the IMO, it means that notice as filed must be in one of 3 languages: English, Spanish or French.

Article 4, paragraph 7 establishes rules as to the sources of information on which notice providers may rely for determining whom to give notice to. These are specified as follows:

- (a) Information in the register of ships and bareboat charter register as the case may be;

- (b) Information in the registry, where mortgages or hypothèques are registered; and
- (c) Information on maritime lien claims filed with the court or other public authority responsible for conducting or supervising the judicial sale.

These provisions of Article 4 provide useful bright line rules for the notice provider's reliance. Even though the notice requirements themselves exceed the minimal standards set out in many existing domestic laws, they are not exorbitant. It is not difficult to foresee that the combination of this list of notification recipients and the public access to the repository could lead to greater uniformity in this aspect of judicial sales and itself reduce frivolous challenges to foreclosure sales.

4. The Certificate of Judicial Sale (Article 5)

The key to the functioning of the Beijing Convention on the Judicial Sale of Ships⁽³²⁾ is the certification of a judicial sale that conferred clean title to the ship by way of a certificate of judicial sale according to Article 5. The Convention can develop its full legal effect by the presentation of such a Certificate whose minimum contents are described in an Appendix to the Convention.

4.1. The purpose of the certificate

The purpose of the certificate of judicial sale is to provide documentary evidence that the judicial sale which has been carried out has conferred clean title to the ship⁽³³⁾. The prerequisite is that pursuant to the law of the State of judicial sale, i.e. the place where the judicial sale is conducted, which pursuant to Article 3 (1) (a) of the Beijing Convention is the place where the ship is physically located⁽³⁴⁾, the purchaser acquired clean title⁽³⁵⁾ to the ship. By virtue of Article 5 (5) the certificate of judicial sale shall be sufficient evidence of the matters contained therein.

The certificate of judicial sale is no document of title. It does not replace the order or decision of the authority conducting the judicial sale under the law of the State of judicial sale whereby the purchaser acquires ownership of the ship. Such an order or decision is a prerequisite to issuing the certificate of judicial sale. Accordingly, the certificate of judicial sale is not comparable to Bills of Lading, whereby ownership of the goods can be transferred by endorsement of the Bill of Lading.

The certificate of judicial sale secures the international effects of the judicial sale described in Article 6 of the Beijing Convention that clean title to the ship has been conferred on the purchaser and that this effect shall be accepted in every other State Party to the Beijing Convention.

⁽³²⁾ This name has been recommended by the UN General Assembly on 7 Dec. 2022; see A/RES/77/100. In this Chapter the reference will be to "Beijing Convention".

⁽³³⁾ Evidentiary value was emphasized by the Working Group, see report 29 Dec 2020 A/CN.9/1047/Rev.1 para 74.

⁽³⁴⁾ There was broad agreement on the requirement of physical presence, see Working Group report 15 Nov 2021, A/CN.9/1089 para 93.

⁽³⁵⁾ Article 2 (c) Beijing Convention defines "clean title".

4.2. Time of issuance of the certificate

From the purpose of the certificate of judicial sale it is apparent that the certificate shall only be issued after completion of a judicial sale. There have been lengthy discussions as to the extent to which it is necessary to define or describe a completion of a judicial sale in the Beijing Convention. In order to have the full benefit of the certificate it has been the common understanding that it should only be issued at that point in time, where the certificate of judicial sale can no longer be challenged, withdrawn or is no longer subject to ordinary review. Otherwise, it would create a lot of additional problems to reset all steps which may have been carried out in the meantime by the use of the certificate of judicial sale. Due to the various different interpretations about a completion of a judicial sale pursuant to the domestic laws, it has been decided not to include an additional condition dealing with the finality of a judicial sale procedure. It has been considered that this may interfere with the domestic laws and therefore this question has been left to the law of the State of judicial sale, who, in accordance with its regulations and procedures, shall issue the certificate of judicial sale to the purchaser⁽³⁶⁾.

4.3. Authority to issue the Certificate

Comparable to the discussion about the time of issuance was the debate on the authority, who shall issue the certificate of judicial sale. Article 5 Beijing Convention refers to either the court or other public authority that conducted the judicial sale, or other competent authority of the State of judicial sale. This is a compromise reflecting the fact that the various jurisdictions have different competent authorities handling a judicial sale, not necessarily always a Court.⁽³⁷⁾ This is another example that the Beijing Convention does not intend to change the domestic procedural rules in a State of judicial sale. The designation of the issuing authority shall remain a matter of the law of the State of judicial sale and the competence may be conferred to a single or multiple authorities. It has however to be a public authority.⁽³⁸⁾ The Beijing Convention seeks to establish a harmonised regime for giving international effect to judicial sales while preserving domestic law governing the procedure of judicial sales and the circumstances in which judicial sales confer clean title.

4.4. Form and Content of the Certificate

The contents of the certificate of judicial sale are described in Article 5 (2) (a)-(k) of the Beijing Convention. With regard to the form Article 5 (2) refers to a model of a certificate contained in Annex II to the Beijing Convention. Next to a statement that the ship was sold in accordance with the requirements of the law of the State of

⁽³⁶⁾ See the initial discussions in the Working Group VI report 24 May 2019, para 41-47; A/CN.9/973; see also about the additional condition of finality the Working Group VI reports 02 Dec 2019, para 90; A7CN.9/1007; 29 Dec 2020, para 66-67; A/CN.9/1047/Rev.1.

⁽³⁷⁾ See Working Group VI report 24 May 2019, para 82-84; A/CN.9/973.

⁽³⁸⁾ See Working Group VI report 02 Dec 2019, para 91; A7CN.9/1007, report 15 Nov 2021 A/CN.9/1089 para 98-99.

judicial sale and the requirements of the Beijing Convention (which basically means the compliance with the provision of a notice of the judicial sale according to Article 4 Beijing Convention), a statement is made that the judicial sale has conferred clean title to the ship on the purchaser, names the State of judicial sale, identifies the authority issuing the certificate and the name of the court or other public authority that conducted the judicial sale, including the date of sale, and obviously, the object, i.e. name of the ship, her registry or equivalent registry, the IMO number and, last but not least, the owner of the ship immediately prior to the judicial sale and the name and address of the purchaser. The certificate of judicial sale shall mention the date and place of issuance and shall bear a signature or stamp of the authority issuing the certificate or other confirmation of authenticity. The information required under Article 5 (2) of the Beijing Convention corresponds with the form in Annex II.

According to Article 5 (6) the certificate of judicial sale may be issued in the form of an electronic record, provided the information contained therein is accessible so as to be usable for subsequent reference, a reliable method is used to identify the authority issuing the certificate and to detect any alteration to the record after the time it was generated.

The idea of a model certificate is not new to conventions. The international working group of the CMI, who proposed in its draft a reference to a model certificate, had the practitioners in mind like ship registries, judges, banks, mortgagees, investors etc. The concept of such specimen is known from the Brussels-I-Council Regulation (EC) No 44/2001 of 22 December 2000 (see Article 54 +58, Annex 5) wherein the enforceability of court decisions is confirmed. A further specimen of a certificate can be found in Regulation (EC) No 805/2004 of EU Parliament and Council of 21.04.2004 (see Article 9, Annex I; Article 24, Annex II) for a European Enforcement order for uncontested claims. The Regulation (EC) No 1896/2006 of EU Parliament and Council of 12.12.2006 (see Annex 7) provides for a specimen for European orders for payment procedures. Last but not least, the shipping practice is used to working with specimens as can be seen from various publications and standard contracts issued by BIMCO.

4.5. Effect following from the Certificate

With the production of a certificate of judicial sale the further procedure to deal with the ship subject to a judicial sale is facilitated in terms of de-registration and registration (Article 7, Action by registry) and the prohibition of arrest pursuant to Article 8. The contents of the certificate shall be accepted by the authorities to which it is presented. Such authorities may not request additional information, for example, to identify the ship, to establish that the ship was sold by judicial sale, that the sale was conducted in accordance with the law of the State of judicial sale or that the purchaser has acquired clean title. Persons who wish to acquire title to the vessel from the purchaser named in the certificate of judicial sale can rely on its contents. These persons are referred to as “subsequent purchasers” by definition of Article 2 (j). The purchaser or the subsequent purchaser can use the certificate of judicial sale for registrations purposes. The certificate can support the request for:

- (a) deletion of the ship in the ships register, where the vessel is registered at the time of the judicial sale, and
- (b) new registration of a ship in either the same or any other ship register. With regard to a new registration it should however be noted that the certificate does not substitute the additional requirements of registration of the ships register. The Beijing Convention does not interfere with the administrative procedures and local requirements of the ships register. It is understood that a subsequent purchaser would need to prove that it became the new owner of the ship and that it qualifies for registration in the State of the ships register according to the rules and procedures applying in that new state of registration. It is commonly accepted that a certificate of judicial sale alone does not substitute the further conditions required by the state of the ships registry for a new registration of the vessel. There are additional requirements to be complied with such as condition of the vessel, classification of the vessel, insurances, safe manning etc.

The certificate of judicial sale is not in all circumstances conclusive or irrefutable evidence. The authority can consider other information as to the matters certified. In the proceedings mentioned in Article 9 and 10 of the Beijing Convention, a court in the State of judicial sale or in a State Party to the Beijing Convention can also consider information outside the certificate. These are proceedings to either set aside the effect of the judicial sale by invoking the public policy ground (Article 10 of the Beijing Convention) or proceedings to avoid or suspend the effects of the judicial sale or to challenge the issuance of a certificate of judicial sale (Article 9 of the Beijing Convention).

Article 9 will be looked into in chapter 6 below. It is important to underline that the exception to the exclusive jurisdiction of the court of judicial sale contained in Article 10 can only be applied by the courts of another State Party, when giving effect to the clean title is “manifestly contrary to the public policy of that other State Party”. The bar for what is manifestly contrary to public policy is very high indeed as expertly explained in nos. 212 and following of UNCITRAL’s Explanatory Note also reproduced in this publication. Suffice it to underline here that the terms “manifestly contrary to the public policy” must be interpreted most strictly . *Exceptio est strictissimae interpretationis.*

4.6. The Certificate in a nutshell

Next to the notice of judicial sale pursuant to Article 4 of the Beijing Convention the certificate of judicial sale is the most visible product of the Beijing Convention. It shall safeguard and harmonize the further actions required to give full effect to a judicial sale conducted in a State Party to the Beijing Convention. There is no obligation for states, which are no State Party to the Beijing Convention, to accept the certificate of judicial sale, but the certificate of judicial sale nevertheless will constitute reliable evidence about the completion of a judicial sale that conferred clean title to the ship on a purchaser under the law of the State of judicial sale. It will facilitate the ship registration procedure and prohibits the arrest of the ship in

State Parties to the Beijing Convention for claims which have arisen prior to the judicial sale. The new owner producing the certificate to the authority is protected from the ship arrests resulting from claims which occurred prior to the judicial sale.

5. Judicial Sale completed and Certificate issued. Now what? (Articles 7 and 8)

Once the judicial sale has been completed and the certificate of judicial sale has been issued in accordance with Article 5, the purchaser of the vessel will wish to delete the vessel from its old register and register her in the register of its choice. In this chapter, we will be looking into Article 7 (Action by registry), dealing with the action to be taken by the registry in State Parties. Upon registration of the vessel in the purchaser's register of choice, the purchaser will wish to operate and trade the vessel without interference by lien holders, ship financiers and other creditors holding claims pre-dating the vessel's judicial sale. This is covered by Article 8 (No arrest of the ship).

5.1. Action by registry

Article 7 (1) contains a list of actions to be taken by the registries of State Parties. These actions are among the main objectives of the Convention. Indeed, when looking at the final paragraph of the Preamble to the Convention, we read that the Convention's purpose is *inter alia* to "give international effects to judicial sales of ships sold free and clear of any mortgage or hypothèque and of any charge, *including for ship registration purposes*". Article 7 could be read as containing a number of conditions for the registry in the State Party concerned to take certain actions.

The first condition is that the registry should be approached by the purchaser or subsequent purchaser of the ship. The subsequent purchaser has been defined in Article 2 (Definitions) as the person who purchases the ship from the purchaser named in the certificate of judicial sale referred to in Article 5 (Certificate of judicial sale). A further condition is that the purchaser should submit the certificate of judicial sale to the registry in question. The third condition is that any action required to be taken by the registry shall be subject to the rules and regulations of the State Party (registry) but always without prejudice to Article 6 (International effects of a judicial sale). Reference is made to these rules and regulations mainly with flag States' requirements, such as a genuine link between the owner and the flag State in mind.

Subject to these conditions, the registry of a State Party shall take the following actions:

- (a) Delete from the register any mortgage or hypothèque and any registered charge attached to the ship that had been registered before completion of the judicial sale. It goes without saying that this action pertains to the ship's old registry, i.e. the register the ship was registered in at the time of the judicial sale.
- (b) Delete the ship from the register and issue a certificate of deletion for the purpose of new registration. So, after the ship has been cleansed of all

registered encumbrances in her old registry, the ship as such is also deleted from the registry.

- (c) Register the ship in the name of the purchaser, provided that the ship and the person in whose name the ship is to be registered meet the requirements of the law of the State of registration. Here the ship's new registry, i.e. the purchaser's registry of choice upon acquiring the ship in a judicial sale, is concerned. In connection herewith reference can be made to the third condition referred to above and contained in the chapeau of Article 7 (1), i.e. the rules and regulations of the relevant State Party. A good example, as mentioned above, is the requirement of a genuine link between the ship owner and the flag state.
- (d) Final action required from the registry is to update the register with "*any other relevant particulars in the certificate of judicial sale*". These may consist of any of the particulars as listed in the model certificate of judicial sale as contained in Annex II to the Convention.

Article 7 (2) refers to the situation where the vessel has a dual registration, i.e. in her primary register and in an underlying bareboat registry. Here too, the purchaser or, as the case may be, the subsequent purchaser is to approach the registry in the State Party in which the ship was granted bareboat registration, whereupon that registry shall delete the ship from the bareboat registry and issue a certificate of deletion.

It is to be noted that there is a public policy exception to the requirements of Articles 7 (1) and 7 (2), namely if a court in the State of the registry, whether it is the old or the new registry, determines under Article 10 (Circumstances in which judicial sale has no international effect) that the effect of the judicial sale under Article 6 (International effects of a judicial sale) would be manifestly contrary to the public policy of that State. Consequently, only such a court decision can prevent the registry from taking the action or actions required from it.

Article 7 (3) and 7 (4) deal with rather formal requirements in respect of the certificate of judicial sale. If the certificate is not issued in an official language of the registry, the registry may request the purchaser to produce a certified translation into such an official language (Article 7 (3)). The registry may also request the purchaser to produce a certified copy of the certificate (Article 7 (4)).

5.2. No arrest of the ship

The provisions of Article 8 (No arrest of the ship) aim to prevent the arrest of a ship which has been sold in a judicial sale for claims predating the judicial sale. As for Article 7 (Action by registry), we can refer to the Preamble of the Convention, where it is clarified that one of its core objectives is to ensure adequate legal protection for purchasers of ships sold in a judicial sale. The Preamble continues to state that international trade is crucial in promoting friendly relations among States and that shipping plays a crucial role in international trade and transportation, wherefore high value assets such as ships should not be immobilised and arrested for claims predating the judicial sale.

It is from this perspective that Article 8 (1) provides that if an application is brought before a court in a State Party to arrest a ship for a claim arising prior to a judicial sale of the ship, the court shall upon production of the certificate of judicial sale, dismiss the application.

Likewise, Article 8 (2) stipulates that if a ship is arrested by order of a court in a State Party for a claim arising prior to an earlier judicial sale of the ship, the court shall upon production of the certificate of judicial sale, order the release of the ship.

Just like the registry under Article 7 (Action by registry), the court where an application for arrest of a ship is brought or which is requested to order the release, may under Article 8 request the production of a certified translation of the certificate of judicial sale in the event it was not issued in an official language of the court.

The public policy exception discussed in the light of Article 7 (Action by registry) may play a role here as well: the court may indeed refuse to dismiss the application for arrest and may refuse to order the release of the ship if such dismissal or order would be manifestly contrary to the public policy of the State Party in which the court is located.

6. Jurisdiction to avoid and suspend judicial sale (Article 9)

In this final chapter, we will cast an eye on Article 9 (Jurisdiction to avoid and suspend judicial sale), which deals with the avoidance of a judicial sale and the suspension of its effects.

The avoidance of a judicial sale and the suspension of the effects of a judicial sale are exceptional matters and are to be interpreted and applied restrictively. *Exceptio est strictissimae interpretationis*. The overriding principle is and remains that judicial sales conducted in accordance with the provisions of this Convention should produce the international effects provided for in the Convention.

Jurisdiction to hear any claim or application to avoid a judicial sale or to suspend its effects, is vested exclusively in the courts of the State of judicial sale. This extends to any claim or application to challenge the issuance of the certificate of judicial sale.

Reciprocally, the courts of a State Party shall decline jurisdiction in respect of any claim or application to avoid a judicial sale of a ship conducted in another State Party that confers clean title to the ship or to suspend its effects.

It is important that court decisions avoiding or suspending the effects of a judicial sale for which a certificate has been issued, should be made public, considering that third parties may be relying on the certificate as made available by the repository, i.e. on the GISIS system of the IMO. Therefore, Article 9 (3) requires that the State of the judicial sale shall require the decision of a court that avoids or suspends the effects of a judicial sale for which a certificate has been issued, should be transmitted promptly to the repository referred to in Article 11 (Repository) for publication.

Sources:

37 th Session Report	A/CN.9/1047/Rev.1 - Report of Working Group VI (Judicial Sale of Ships) on the work of its thirty-seventh session
38 th Session Report	A/CN.9/1053 - Report of Working Group VI (Judicial Sale of Ships) on the work of its thirty-eighth session
39 th Session Report	A/CN.9/1089 - Report of Working Group VI (Judicial Sale of Ships) on the work of its thirty-ninth session
40 th Session Report	A/CN.9/1095 - Report of Working Group VI (Judicial Sale of Ships) on the work of its fortieth session
55 th Commission Session Report	A/77/17 - Report of the United Nations Commission on International Trade Law Fifty-fifth session
Beijing Draft	A/CN.9/WG.VI/WP.82 - Judicial Sale of Ships: Proposed Draft Instrument Prepared by the Comité Maritime International
Convention	The United Nations Convention on the International Effects of Judicial Sales of Ships, 2022
Explanatory Note	“Explanatory note” in United Nations Convention on the International Effects of Judicial Sales of Ships with Explanatory Note prepared by the UNCITRAL Secretariat, United Nations, 2023, pp. 14-74

Resolution adopted by the General Assembly on 7 December 2022

[on the report of the Sixth Committee (A/77/413, para. 11)]

77/100. United Nations Convention on the International Effects of Judicial Sales of Ships

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Mindful of the crucial role of shipping in international trade and transportation, of the high economic value of ships used in both seagoing and inland navigation, and of the function of judicial sales as a means to enforce claims,

Considering that adequate legal protection for purchasers may positively impact the price realized at judicial sales of ships, to the benefit of both shipowners and creditors, including lienholders and ship financiers,

Wishing, for that purpose, to establish uniform rules that promote the dissemination of information on prospective judicial sales to interested parties and give international effects to judicial sales of ships sold free and clear of any mortgage or hypothèque and of any charge, including for ship registration purposes,

Convinced that the adoption of a convention on the international effects of judicial sales of ships that is acceptable to States with different legal, social and economic systems would complement the existing international legal framework on shipping and navigation and contribute to the development of harmonious international economic relations,

Noting that the preparation of the draft convention on the international effects of judicial sales of ships was the subject of due deliberation in the Commission and that the draft convention benefited from consultations with Governments and interested intergovernmental and international non-governmental organizations,

Taking note of the decision of the Commission at its fifty-fifth session to submit the draft convention to the General Assembly for its consideration,⁽¹⁾

Taking note with satisfaction of the draft convention approved by the Commission,⁽²⁾

⁽¹⁾ *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 17 (A/77/17), para. 99.*

⁽²⁾ *Ibid.*, annex I.

Expressing its appreciation to the Government of China for its offer to host a signing ceremony for the Convention in Beijing,

1. *Commends* the United Nations Commission on International Trade Law for preparing the draft convention on the international effects of judicial sales of ships;
2. *Adopts* the United Nations Convention on the International Effects of Judicial Sales of Ships, contained in the annex to the present resolution;
3. *Authorizes* a ceremony for the opening for signature of the Convention to be held as soon as practicable in 2023 in Beijing, upon which occasion the Convention will be open for signature, and recommends that the Convention be known as the “Beijing Convention on the Judicial Sale of Ships”;
4. *Calls upon* those Governments and regional economic integration organizations that wish to strengthen the international legal framework for shipping and navigation to consider becoming a party to the Convention.

47th plenary meeting

7 December 2022

Annex

United Nations Convention on the International Effects of Judicial Sales of Ships

The States Parties to this Convention,

Reaffirming their belief that international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

Mindful of the crucial role of shipping in international trade and transportation, of the high economic value of ships used in both seagoing and inland navigation, and of the function of judicial sales as a means to enforce claims,

Considering that adequate legal protection for purchasers may positively impact the price realized at judicial sales of ships, to the benefit of both shipowners and creditors, including lienholders and ship financiers,

Wishing, for that purpose, to establish uniform rules that promote the dissemination of information on prospective judicial sales to interested parties and give international effects to judicial sales of ships sold free and clear of any mortgage or *hypothèque* and of any charge, including for ship registration purposes,

Have agreed as follows:

Article 1

Purpose

This Convention governs the international effects of a judicial sale of a ship that confers clean title on the purchaser.

Article 2

Definitions

For the purposes of this Convention:

- a) “Judicial sale” of a ship means any sale of a ship:
 - i) Which is ordered, approved or confirmed by a court or other public authority either by way of public auction or by private treaty carried out under the supervision and with the approval of a court; and
 - ii) For which the proceeds of sale are made available to the creditors;
- b) “Ship” means any ship or other vessel registered in a register that is open to public inspection that may be the subject of an arrest or other similar measure capable of leading to a judicial sale under the law of the State of judicial sale;
- c) “Clean title” means title free and clear of any mortgage or *hypothèque* and of any charge;
- d) “Mortgage or *hypothèque*” means any mortgage or *hypothèque* that is effected on a ship and registered in the State in whose register of ships or equivalent register the ship is registered;
- e) “Charge” means any right whatsoever and howsoever arising which may be asserted against a ship, whether by means of arrest, attachment or otherwise, and includes a maritime lien, lien, encumbrance, right of use or right of retention but does not include a mortgage or *hypothèque*;
- f) “Registered charge” means any charge that is registered in the register of ships or equivalent register in which the ship is registered or in any different register in which mortgages or *hypothèques* are registered;
- g) “Maritime lien” means any charge that is recognized as a maritime lien or *privilège maritime* on a ship under applicable law;
- h) “Owner” of a ship means any person registered as the owner of the ship in the register of ships or equivalent register in which the ship is registered;
- i) “Purchaser” means any person to whom the ship is sold in the judicial sale;
- j) “Subsequent purchaser” means the person who purchases the ship from the purchaser named in the certificate of judicial sale referred to in article 5;
- k) “State of judicial sale” means the State in which the judicial sale of a ship is conducted.

Article 3

Scope of application

1. This Convention applies only to a judicial sale of a ship if:
 - a) The judicial sale is conducted in a State Party; and
 - b) The ship is physically within the territory of the State of judicial sale at the time of that sale.
2. This Convention shall not apply to warships or naval auxiliaries, or other vessels owned or operated by a State and used, immediately prior to the time of judicial sale, only on government non-commercial service.

Article 4

Notice of judicial sale

1. The judicial sale shall be conducted in accordance with the law of the State of judicial sale, which shall also provide procedures for challenging the judicial sale prior to its completion and determine the time of the sale for the purposes of this Convention.
2. Notwithstanding paragraph 1, a certificate of judicial sale under article 5 shall only be issued if a notice of judicial sale is given prior to the judicial sale of the ship in accordance with the requirements of paragraphs 3 to 7.
3. The notice of judicial sale shall be given to:
 - a) The registry of ships or equivalent registry with which the ship is registered;
 - b) All holders of any mortgage or *hypothèque* and of any registered charge, provided that the register in which it is registered, and any instrument required to be registered under the law of the State of registration, are open to public inspection, and that extracts from the register and copies of such instruments are obtainable from the registry;
 - c) All holders of any maritime lien, provided that they have notified the court or other public authority conducting the judicial sale of the claim secured by the maritime lien in accordance with the regulations and procedures of the State of judicial sale;
 - d) The owner of the ship for the time being; and
 - e) If the ship is granted bareboat charter registration:
 - i) The person registered as the bareboat charterer of the ship in the bareboat charter register; and
 - ii) The bareboat charter registry.
4. The notice of judicial sale shall be given in accordance with the law of the State of judicial sale, and shall contain, as a minimum, the information mentioned in annex I.

5. The notice of judicial sale shall also be:

- a) Published by announcement in the press or other publication available in the State of judicial sale; and
- b) Transmitted to the repository referred to in article 11 for publication.

6. For the purpose of communicating the notice to the repository, if the notice of judicial sale is not in a working language of the repository, it shall be accompanied by a translation of the information mentioned in annex I into any such working language.

7. In determining the identity or address of any person to whom the notice of judicial sale is to be given, it is sufficient to rely on:

- a) Information set forth in the register of ships or equivalent register in which the ship is registered or in the bareboat charter register;
- b) Information set forth in the register in which the mortgage or *hypothèque* or the registered charge is registered, if different to the register of ships or equivalent register; and
- c) Information notified under paragraph 3, subparagraph (c).

Article 5

Certificate of judicial sale

1. Upon completion of a judicial sale that conferred clean title to the ship under the law of the State of judicial sale and was conducted in accordance with the requirements of that law and the requirements of this Convention, the court or other public authority that conducted the judicial sale or other competent authority of the State of judicial sale shall, in accordance with its regulations and procedures, issue a certificate of judicial sale to the purchaser.

2. The certificate of judicial sale shall be substantially in the form of the model contained in annex II and contain:

- a) A statement that the ship was sold in accordance with the requirements of the law of the State of judicial sale and the requirements of this Convention;
- b) A statement that the judicial sale has conferred clean title to the ship on the purchaser;
- c) The name of the State of judicial sale;
- d) The name, address and the contact details of the authority issuing the certificate;
- e) The name of the court or other public authority that conducted the judicial sale and the date of the sale;
- f) The name of the ship and registry of ships or equivalent registry with which the ship is registered;
- g) The IMO number of the ship or, if not available, other information capable of identifying the ship;

- h) The name and address of residence or principal place of business of the owner of the ship immediately prior to the judicial sale;
- i) The name and address of residence or principal place of business of the purchaser;
- j) The place and date of issuance of the certificate; and
- k) The signature or stamp of the authority issuing the certificate or other confirmation of authenticity of the certificate.

3. The State of judicial sale shall require the certificate of judicial sale to be transmitted promptly to the repository referred to in article 11 for publication.

4. The certificate of judicial sale and any translation thereof shall be exempt from legalization or similar formality.

5. Without prejudice to articles 9 and 10, the certificate of judicial sale shall be sufficient evidence of the matters contained therein.

6. The certificate of judicial sale may be in the form of an electronic record provided that:

- a) The information contained therein is accessible so as to be usable for subsequent reference;
- b) A reliable method is used to identify the authority issuing the certificate; and
- c) A reliable method is used to detect any alteration to the record after the time it was generated, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display.

7. A certificate of judicial sale shall not be rejected on the sole ground that it is in electronic form.

Article 6

International effects of a judicial sale

A judicial sale for which a certificate of judicial sale referred to in article 5 has been issued shall have the effect in every other State Party of conferring clean title to the ship on the purchaser.

Article 7

Action by the registry

1. At the request of the purchaser or subsequent purchaser and upon production of the certificate of judicial sale referred to in article 5, the registry or other competent authority of a State Party shall, as the case may be and in accordance with its regulations and procedures, but without prejudice to article 6:

- a) Delete from the register any mortgage or *hypothèque* and any registered charge attached to the ship that had been registered before completion of the judicial sale;
- b) Delete the ship from the register and issue a certificate of deletion for the purpose of new registration;
- c) Register the ship in the name of the purchaser or subsequent purchaser, provided further that the ship and the person in whose name the ship is to be registered meet the requirements of the law of the State of registration;
- d) Update the register with any other relevant particulars in the certificate of judicial sale.

2. At the request of the purchaser or subsequent purchaser and upon production of the certificate of judicial sale referred to in article 5, the registry or other competent authority of a State Party in which the ship was granted bareboat charter registration shall delete the ship from the bareboat charter register and issue a certificate of deletion.

3. If the certificate of judicial sale is not issued in an official language of the registry or other competent authority, the registry or other competent authority may request the purchaser or subsequent purchaser to produce a certified translation into such an official language.

4. The registry or other competent authority may also request the purchaser or subsequent purchaser to produce a certified copy of the certificate of judicial sale for its records.

5. Paragraphs 1 and 2 do not apply if a court in the State of the registry or of the other competent authority determines under article 10 that the effect of the judicial sale under article 6 would be manifestly contrary to the public policy of that State.

Article 8

No arrest of the ship

1. If an application is brought before a court or other judicial authority in a State Party to arrest a ship or to take any other similar measure against a ship for a claim arising prior to a judicial sale of the ship, the court or other judicial authority shall, upon production of the certificate of judicial sale referred to in article 5, dismiss the application.

2. If a ship is arrested or a similar measure is taken against a ship by order of a court or other judicial authority in a State Party for a claim arising prior to a judicial sale of the ship, the court or other judicial authority shall, upon production of the certificate of judicial sale referred to in article 5, order the release of the ship.

3. If the certificate of judicial sale is not issued in an official language of the court or other judicial authority, the court or other judicial authority may request the person producing the certificate to produce a certified translation into such an official language.

4. Paragraphs 1 and 2 do not apply if the court or other judicial authority determines that dismissing the application or ordering the release of the ship, as the case may be, would be manifestly contrary to the public policy of that State.

Article 9

Jurisdiction to avoid and suspend judicial sale

1. The courts of the State of judicial sale shall have exclusive jurisdiction to hear any claim or application to avoid a judicial sale of a ship conducted in that State that confers clean title to the ship or to suspend its effects, which shall extend to any claim or application to challenge the issuance of the certificate of judicial sale referred to in article 5.

2. The courts of a State Party shall decline jurisdiction in respect of any claim or application to avoid a judicial sale of a ship conducted in another State Party that confers clean title to the ship or to suspend its effects.

3. The State of judicial sale shall require the decision of a court that avoids or suspends the effects of a judicial sale for which a certificate has been issued in accordance with article 5, paragraph 1, to be transmitted promptly to the repository referred to in article 11 for publication.

Article 10

Circumstances in which judicial sale has no international effect

A judicial sale of a ship shall not have the effect provided in article 6 in a State Party other than the State of judicial sale if a court in the other State Party determines that the effect would be manifestly contrary to the public policy of that other State Party.

Article 11

Repository

1. The repository shall be the Secretary-General of the International Maritime Organization or an institution named by the United Nations Commission on International Trade Law.

2. Upon receipt of a notice of judicial sale transmitted under article 4, paragraph 5, certificate of judicial sale transmitted under article 5, paragraph 3, or decision transmitted under article 9, paragraph 3, the repository shall make it available to the public in a timely manner, in the form and in the language in which it is received.

3. The repository may also receive a notice of judicial sale emanating from a State that has ratified, accepted, approved or acceded to this Convention and for which the Convention has not yet entered into force and may make it available to the public.

Article 12

Communication between authorities of States Parties

1. For the purposes of this Convention, the authorities of a State Party shall be authorized to correspond directly with the authorities of any other State Party.
2. Nothing in this article shall affect the application of any international agreement on judicial assistance in respect of civil and commercial matters that may exist between States Parties.

Article 13

Relationship with other international conventions

1. Nothing in this Convention shall affect the application of the Convention on the Registration of Inland Navigation Vessels (1965) and its Protocol No. 2 concerning Attachment and Forced Sale of Inland Navigation Vessels, including any future amendment to that convention or protocol.
2. Without prejudice to article 4, paragraph 4, as between States Parties to this Convention that are also parties to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965), the notice of judicial sale may be transmitted abroad using channels other than those provided for in that convention.

Article 14

Other bases for giving international effect

Nothing in this Convention shall preclude a State from giving effect to a judicial sale of a ship conducted in another State under any other international agreement or under applicable law.

Article 15

Matters not governed by this Convention

1. Nothing in this Convention shall affect:
 - a) The procedure for or priority in the distribution of proceeds of a judicial sale; or
 - b) Any personal claim against a person who owned or had proprietary rights in the ship prior to the judicial sale.
2. Moreover, this Convention shall not govern the effects, under applicable law, of a decision by a court exercising jurisdiction under article 9, paragraph 1.

Article 16

Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 17

Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention is open for accession by all States that are not signatories as from the date it is open for signature.
4. Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.

Article 18

Participation by regional economic integration organizations

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a State Party, to the extent that that organization has competence over matters governed by this Convention. For the purposes of articles 21 and 22, an instrument deposited by a regional economic integration organization shall not be counted in addition to the instruments deposited by its member States.
2. The regional economic integration organization shall make a declaration specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
3. Any reference to a “State”, “States”, “State Party” or “States Parties” in this Convention applies equally to a regional economic integration organization where the context so requires.
4. This Convention shall not affect the application of rules of a regional economic integration organization, whether adopted before or after this Convention:
 - a) In relation to the transmission of a notice of judicial sale between member States of such an organization; or
 - b) In relation to the jurisdictional rules applicable between member States of such an organization.

Article 19

Non-unified legal systems

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may declare that this Convention shall extend to all its territorial units or only to one or more of them.

2. Declarations under this article shall state expressly the territorial units to which this Convention extends.

3. If a State makes no declaration under paragraph 1, this Convention shall extend to all territorial units of that State.

4. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention:

- a) Any reference to the law, regulations or procedures of the State shall be construed as referring, where appropriate, to the law, regulations or procedures in force in the relevant territorial unit;
- b) Any reference to the authority of the State shall be construed as referring, where appropriate, to the authority in the relevant territorial unit.

Article 20

Procedure and effects of declarations

1. Declarations under article 18, paragraph 2, and article 19, paragraph 1, shall be made at the time of signature, ratification, acceptance, approval or accession. Declarations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and their confirmations shall be in writing and formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned.

4. Any State that makes a declaration under article 18, paragraph 2, and article 19, paragraph 1, may modify or withdraw it at any time by a formal notification in writing addressed to the depositary. The modification or withdrawal shall take effect 180 days after the date of the receipt of the notification by the depositary. If the depositary receives the notification of the modification or withdrawal before entry into force of this Convention in respect of the State concerned, the modification or withdrawal shall take effect simultaneously with the entry into force of this Convention in respect of that State.

Article 21

Entry into force

1. This Convention shall enter into force 180 days after the date of the deposit of the third instrument of ratification, acceptance, approval or accession.

2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention shall enter into force in respect of that State 180 days after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

3. This Convention shall apply only to judicial sales ordered or approved after its entry into force in respect of the State of judicial sale.

Article 22

Amendment

1. Any State Party may propose an amendment to this Convention by submitting it to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within 120 days from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

2. The conference of States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus are exhausted and no consensus is reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the conference. For the purposes of this paragraph, the vote of a regional economic integration organization shall not be counted.

3. An adopted amendment shall be submitted by the depositary to all States Parties for ratification, acceptance or approval.

4. An adopted amendment shall enter into force 180 days after the date of deposit of the third instrument of ratification, acceptance or approval. When an amendment enters into force, it shall be binding on those States Parties that have expressed consent to be bound by it.

5. When a State Party ratifies, accepts or approves an amendment following the deposit of the third instrument of ratification, acceptance or approval, the amendment shall enter into force in respect of that State Party 180 days after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 23

Denunciation

1. A State Party may denounce this Convention by a formal notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.

2. The denunciation shall take effect 365 days after the date of the receipt of the notification by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the date of the receipt of the notification by the depositary. This Convention shall continue to apply to a judicial sale for which a certificate of judicial sale referred to in article 5 has been issued before the denunciation takes effect.

DONE in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

Annex I

Minimum information to be contained in the notice of judicial sale

1. Statement that the notice of judicial sale is given for the purposes of the United Nations Convention on the International Effects of Judicial Sales of Ships
2. Name of State of judicial sale
3. Court or other public authority ordering, approving or confirming the judicial sale
4. Reference number or other identifier for the judicial sale procedure
5. Name of ship
6. Registry
7. IMO number
8. (*If IMO number not available*) Other information capable of identifying the ship
9. Name of the owner
10. Address of residence or principal place of business of the owner
11. (*If judicial sale by public auction*) Anticipated date, time and place of public auction
12. (*If judicial sale by private treaty*) Any relevant details, including time period, for the judicial sale as ordered by the court or other public authority
13. Statement either confirming that the judicial sale will confer clean title to the ship, or, if it is not known whether the judicial sale will confer clean title, a statement of the circumstances under which the judicial sale would not confer clean title
14. Other information required by the law of the State of judicial sale, in particular any information deemed necessary to protect the interests of the person receiving the notice

Annex II

Model certificate of judicial sale

Issued in accordance with the provisions of article 5 of the United Nations Convention on the International Effects of Judicial Sales of Ships

This is to certify that:

(a) The ship described below was sold by way of judicial sale in accordance with the requirements of the law of the State of judicial sale and the requirements of the United Nations Convention on the International Effects of Judicial Sales of Ships; and

(b) The judicial sale has conferred clean title to the ship on the purchaser.

1. State of judicial sale

2. Authority issuing this certificate

2.1 Name

2.2 Address

2.3 Telephone/fax/email,
if available

3. Judicial sale

3.1 Name of court or other
public authority that
conducted the judicial sale

3.2 Date of the judicial sale

4. Ship

4.1 Name

4.2 Registry

4.3 IMO number

4.4 *(If IMO number
not available)* *(Please attach any photos to the certificate)*
Other information capable
of identifying the ship

5. Owner immediately prior to the judicial sale

5.1 Name

5.2 Address of residence or
principal place of business

6. Purchaser

6.1 Name

6.2 Address of residence or
principal place of business

At
(place)

on
(date)

.....
Signature and/or stamp of issuing
authority or other confirmation
of authenticity of the certificate

Convention des Nations Unies sur les effets internationaux des ventes judiciaires de navires

FR

Les États parties à la présente Convention,

Réaffirmant leur conviction que le commerce international sur la base de l'égalité et des avantages mutuels constitue un élément important dans la promotion de relations amicales entre les États,

Conscients que le transport maritime joue un rôle crucial dans le commerce et le transport internationaux, que les navires utilisés tant pour la navigation maritime que pour la navigation intérieure ont une grande valeur économique, et que les ventes judiciaires sont un moyen de recouvrer les créances,

Considérant qu'une protection juridique adéquate des acquéreurs peut avoir des effets positifs sur le prix tiré des ventes judiciaires de navires, dans l'intérêt à la fois des propriétaires de navires et des créanciers, notamment des titulaires de privilèges et des parties finançant l'acquisition de navires,

Souhaitant, à cette fin, établir des règles uniformes qui favorisent la diffusion d'informations sur les futures ventes judiciaires auprès des parties intéressées et confèrent des effets internationaux aux ventes judiciaires de navires vendus libres et francs de toute hypothèque ou de tout *mortgage* et de tout droit, notamment aux fins de l'immatriculation des navires,

Sont convenus de ce qui suit:

Article premier

Objet

La présente Convention régit les effets internationaux de la vente judiciaire d'un navire qui confère à l'acquéreur un titre libre de tout droit.

Article 2

Définitions

Aux fins de la présente Convention:

- a) Le terme «vente judiciaire» d'un navire désigne toute vente d'un navire:
 - i) Qui est ordonnée, approuvée ou confirmée par un tribunal ou une autre autorité publique soit par voie d'enchères publiques soit au moyen d'une transaction de gré à gré menée sous le contrôle d'un tribunal et avec l'approbation de celui-ci; et
 - ii) Pour laquelle le produit de la vente est offert aux créanciers;
- b) Le terme «navire» désigne tout navire ou autre bâtiment immatriculé dans un registre consultable par le public qui est susceptible de faire

l'objet d'une saisie conservatoire ou d'une autre mesure similaire pouvant entraîner une vente judiciaire en vertu de la loi de l'État de la vente judiciaire;

- c) Le terme «titre libre de tout droit» désigne un titre de propriété libre et franc de toute hypothèque ou de tout *mortgage* et de tout droit;
- d) Le terme «hypothèque ou *mortgage*» désigne toute hypothèque ou tout *mortgage* pris sur un navire et inscrit dans l'État où se trouve le registre des navires ou registre équivalent dans lequel le navire est immatriculé;
- e) Le terme «droit» désigne tout droit, de quelque nature ou origine qu'il soit, qu'il est possible de faire valoir sur un navire, par voie de saisie conservatoire ou exécutoire ou par tout autre moyen, et qui comprend les privilèges maritimes ou autres privilèges, les charges, les droits d'utilisation ou de rétention, mais n'inclut pas les hypothèques ou *mortgages*;
- f) Le terme «droit inscrit» désigne tout droit qui est inscrit dans le registre des navires ou registre équivalent dans lequel le navire est immatriculé ou dans tout autre registre dans lequel sont inscrits les hypothèques ou *mortgages*;
- g) Le terme «privilège maritime» désigne tout droit reconnu comme un privilège maritime sur un navire en vertu de la loi applicable;
- h) Le terme «propriétaire» d'un navire désigne toute personne inscrite à titre de propriétaire du navire dans le registre des navires ou registre équivalent dans lequel le navire est immatriculé;
- i) Le terme «acquéreur» désigne toute personne à laquelle le navire est vendu dans le cadre de la vente judiciaire;
- j) Le terme «acquéreur subséquent» désigne la personne qui acquiert le navire auprès de l'acquéreur dont le nom figure dans le certificat de vente judiciaire visé à l'article 5;
- k) Le terme «État de la vente judiciaire» désigne l'État dans lequel la vente judiciaire d'un navire est réalisée.

Article 3

Champ d'application

1. La présente Convention s'applique à la vente judiciaire d'un navire uniquement si:

- a) La vente judiciaire est réalisée dans un État partie; et
- b) Au moment de ladite vente, le navire se trouve physiquement sur le territoire de l'État de la vente judiciaire.

2. La présente Convention ne s'applique pas aux navires de guerre ou navires auxiliaires, ou aux autres bâtiments appartenant à un État ou exploités par lui et exclusivement affectés, immédiatement avant la vente judiciaire, à un service public non commercial.

Article 4

Notification de la vente judiciaire

1. La vente judiciaire est réalisée conformément à la loi de l'État de la vente judiciaire, laquelle prévoit également des procédures pour contester la vente avant sa conclusion et détermine également le moment de la vente aux fins de la présente Convention.

2. Nonobstant le paragraphe 1, le certificat de vente judiciaire visé à l'article 5 n'est délivré que si une notification de la vente judiciaire du navire est adressée avant cette vente conformément aux exigences énoncées aux paragraphes 3 à 7.

3. La notification de la vente judiciaire est adressée:

- a) À l'entité chargée du registre des navires ou registre équivalent dans lequel le navire est immatriculé;
- b) À tout titulaire d'une hypothèque ou d'un *mortgage* ou d'un droit inscrit, sous réserve que le registre où ceux-ci sont inscrits, ainsi que tout instrument devant être inscrit conformément à la loi de l'État d'immatriculation, soient consultables par le public, et que des extraits du registre et des copies de ces instruments puissent être obtenus auprès du registre;
- c) À tout titulaire d'un privilège maritime, sous réserve qu'il ait notifié au tribunal ou à toute autre autorité publique réalisant la vente judiciaire la créance garantie par le privilège maritime conformément aux règlements et procédures de l'État de la vente judiciaire;
- d) À la personne qui est alors propriétaire du navire; et
- e) Si le navire est inscrit au registre des affrètements coque nue:
 - i) À la personne inscrite comme affrèteur coque nue du navire dans le registre des affrètements coque nue; et
 - ii) Au registre des affrètements coque nue.

4. La notification de la vente judiciaire est donnée conformément à la loi de l'État de la vente judiciaire et contient, au minimum, les informations mentionnées à l'annexe I.

5. La notification de la vente judiciaire est également:

- a) Publiée par voie d'annonce dans la presse ou une autre publication disponible dans l'État de la vente judiciaire; et

- b) Transmise à la personne responsable du répertoire visée à l'article 11 pour publication.

6. Aux fins de la communication de la notification à la personne responsable du répertoire, si la notification de la vente judiciaire n'est pas rédigée dans une langue de travail de la personne responsable du répertoire, elle est accompagnée d'une traduction des informations mentionnées à l'annexe I dans l'une de ces langues de travail.

7. Pour déterminer l'identité ou l'adresse de toute personne à qui la notification de la vente judiciaire doit être donnée, il suffit de se fonder sur:

- a) Les informations figurant dans le registre des navires ou registre équivalent dans lequel est immatriculé le navire ou dans le registre des affrètements coque nue;
- b) Les informations figurant dans le registre où sont inscrits l'hypothèque ou le *mortgage* ou le droit inscrit, s'il est distinct du registre des navires ou registre équivalent; et
- c) Les informations notifiées conformément à l'alinéa c) du paragraphe 3.

Article 5

Certificat de vente judiciaire

1. Après la conclusion d'une vente judiciaire qui a conféré un titre libre de tout droit sur le navire en vertu de la loi de l'État de la vente judiciaire et qui a été réalisée conformément aux exigences de cette loi et aux exigences de la présente Convention, le tribunal ou une autre autorité publique qui a réalisé la vente judiciaire ou une autre autorité compétente de l'État de la vente judiciaire, conformément à ses règlements et procédures, délivre à l'acquéreur un certificat de vente judiciaire.

2. Le certificat de vente judiciaire suit pour l'essentiel le modèle figurant à l'annexe II et contient:

- a) Une déclaration indiquant que le navire a été vendu conformément aux exigences de la loi de l'État de la vente judiciaire et aux exigences de la présente Convention;
- b) Une déclaration indiquant que la vente judiciaire a conféré à l'acquéreur un titre libre de tout droit sur le navire;
- c) Le nom de l'État de la vente judiciaire;
- d) Le nom, l'adresse et les coordonnées de l'autorité qui délivre le certificat;
- e) Le nom du tribunal ou d'une autre autorité publique qui a réalisé la vente judiciaire et la date de la vente;

- f) Le nom du navire et du registre des navires ou registre équivalent dans lequel le navire est immatriculé;
- g) Le numéro OMI du navire ou, si celui-ci n'est pas disponible, d'autres informations permettant d'identifier le navire;
- h) Le nom et l'adresse du lieu de résidence ou de l'établissement principal de la personne qui était propriétaire du navire immédiatement avant la vente judiciaire;
- i) Le nom et l'adresse du lieu de résidence ou de l'établissement principal de l'acquéreur;
- j) Le lieu et la date de délivrance du certificat; et
- k) La signature ou le cachet de l'autorité qui délivre le certificat ou un autre élément propre à établir l'authenticité du certificat.

3. L'État de la vente judiciaire exige que le certificat de vente judiciaire soit transmis dans les meilleurs délais à la personne responsable du répertoire visée à l'article 11 pour publication.

4. Le certificat de vente judiciaire et toute traduction de ce certificat est dispensé de légalisation ou de toute formalité similaire.

5. Sans préjudice des articles 9 et 10, le certificat de vente judiciaire constitue une preuve suffisante des éléments qu'il contient.

6. Le certificat de vente judiciaire peut se présenter sous la forme d'un document électronique à condition:

- a) Que l'information que contient ce document soit accessible pour être consultée ultérieurement;
- b) Qu'une méthode fiable soit utilisée pour identifier l'autorité qui délivre le certificat; et
- c) Qu'une méthode fiable soit utilisée pour détecter toute altération du document électronique après sa création, exception faite de l'ajout de tout endossement et de toute modification intervenant dans le cours normal de la communication, de la conservation et de l'affichage.

7. Un certificat de vente judiciaire ne peut être rejeté au seul motif qu'il est sous forme électronique.

Article 6

Effets internationaux d'une vente judiciaire

Une vente judiciaire pour laquelle un certificat de vente judiciaire visé à l'article 5 a été délivré a pour effet de conférer à l'acquéreur un titre libre de tout droit sur le navire dans tout autre État partie.

Article 7

Mesures à prendre par l'entité chargée du registre

1. À la demande de l'acquéreur ou de l'acquéreur subséquent et sur production du certificat de vente judiciaire visé à l'article 5, l'entité chargée du registre ou une autre autorité compétente d'un État partie, selon le cas et conformément à ses règlements et procédures, mais sans préjudice de l'article 6:

- a) Radie du registre toute hypothèque ou tout *mortgage* et tout droit inscrit grevant le navire qui avaient été inscrits avant la conclusion de la vente judiciaire;
- b) Radie le navire du registre et délivre un certificat de radiation pour qu'une nouvelle immatriculation soit prise;
- c) Immatricule le navire au nom de l'acquéreur ou de l'acquéreur subséquent, à condition également que le navire et la personne au nom de laquelle il doit être immatriculé respectent les exigences de la loi de l'État d'immatriculation;
- d) Actualise le registre en s'appuyant sur toute autre indication pertinente figurant dans le certificat de vente judiciaire.

2. À la demande de l'acquéreur ou de l'acquéreur subséquent et sur production du certificat de vente judiciaire visé à l'article 5, l'entité chargée du registre ou une autre autorité compétente d'un État partie où le navire est inscrit au registre des affrètements coque nue radie le navire du registre des affrètements coque nue et délivre un certificat de radiation.

3. Si le certificat de vente judiciaire n'est pas délivré dans une langue officielle de l'entité chargée du registre ou d'une autre autorité compétente, cette dernière peut demander à l'acquéreur ou à l'acquéreur subséquent de produire une traduction certifiée dans une telle langue officielle.

4. Le l'entité chargée du registre ou une autre autorité compétente peut également demander à l'acquéreur ou à l'acquéreur subséquent de produire une copie certifiée conforme du certificat de vente judiciaire pour ses archives.

5. Les paragraphes 1 et 2 ne s'appliquent pas si un tribunal dans l'État de l'entité chargée du registre ou d'une autre autorité compétente décide, en vertu de l'article 10, que les effets de la vente judiciaire prévus à l'article 6 seraient manifestement contraires à l'ordre public de cet État.

Article 8

Impossibilité de saisir le navire à titre conservatoire

1. Si un tribunal ou une autre autorité judiciaire d'un État partie est saisi d'une demande tendant au prononcé de la saisie conservatoire ou de toute autre mesure similaire à l'encontre d'un navire au titre d'une créance née avant une vente judiciaire de ce navire, ce tribunal ou cette autorité, sur production du certificat de vente judiciaire visé à l'article 5, rejette la demande.

2. Si un navire fait l'objet d'une saisie conservatoire ou d'une mesure similaire ordonnée par un tribunal ou une autre autorité judiciaire d'un État partie au titre d'une créance née avant une vente judiciaire du navire, ce tribunal ou cette autorité, sur production du certificat de vente judiciaire visé à l'article 5, ordonne la mainlevée de la saisie ou de la mesure.

3. Si le certificat de vente judiciaire n'est pas délivré dans une langue officielle du tribunal ou d'une autre autorité judiciaire, ce dernier ou cette dernière peut demander à la personne qui produit le certificat de produire une traduction certifiée dans une telle langue officielle.

4. Les paragraphes 1 et 2 ne s'appliquent pas si le tribunal ou une autre autorité judiciaire décide que le rejet de la demande ou l'ordonnance de mainlevée, selon le cas, serait manifestement contraire à l'ordre public de cet État.

Article 9

Compétence pour annuler et suspendre une vente judiciaire

1. Les tribunaux de l'État de la vente judiciaire ont une compétence exclusive pour connaître de toute demande visant à annuler la vente judiciaire d'un navire réalisée dans cet État qui confère un titre libre de tout droit sur le navire ou à en suspendre les effets, compétence qui s'étend à toute demande visant à contester la délivrance du certificat de vente judiciaire visé à l'article 5.

2. Les tribunaux d'un État partie déclinent leur compétence en ce qui concerne toute demande visant à annuler la vente judiciaire d'un navire réalisée dans un autre État partie qui confère un titre libre de tout droit sur le navire ou à en suspendre les effets.

3. L'État de la vente judiciaire exige que la décision d'un tribunal prononçant l'annulation ou la suspension des effets d'une vente judiciaire pour laquelle un certificat a été délivré conformément au paragraphe 1 de l'article 5 soit transmise dans les meilleurs délais à la personne responsable du répertoire visée à l'article 11 pour publication.

Article 10

Causes privant d'effet international une vente judiciaire

La vente judiciaire d'un navire ne produit pas les effets prévus à l'article 6 dans un État partie autre que l'État de la vente judiciaire si un tribunal de l'autre État partie décide que ces effets seraient manifestement contraires à l'ordre public de cet autre État partie.

Article 11

Répertoire

1. La personne responsable du répertoire est le Secrétaire général de l'Organisation maritime internationale ou une institution désignée par la Commission des Nations Unies pour le droit commercial international.

2. Dès réception d'une notification de vente judiciaire transmise conformément au paragraphe 5 de l'article 4, d'un certificat de vente judiciaire transmis conformément au paragraphe 3 de l'article 5 ou d'une décision transmise conformément au paragraphe 3 de l'article 9, la personne responsable du répertoire les met à la disposition du public en temps utile, sous la forme et dans la langue dans lesquelles elle les reçoit.

3. La personne responsable du répertoire peut également recevoir une notification de vente judiciaire émanant d'un État qui a ratifié, accepté ou approuvé la présente Convention, ou qui y a adhéré, et à l'égard duquel celle-ci n'est pas encore entrée en vigueur, et peut la mettre à la disposition du public.

Article 12

Communication entre autorités des États Parties

1. Aux fins de la présente Convention, les autorités des États Parties sont habilitées à correspondre directement entre elles.

2. Aucune disposition du présent article ne porte atteinte à l'application des accords internationaux d'entraide judiciaire en matière civile et commerciale qui peuvent exister entre les États parties.

Article 13

Relation avec d'autres conventions internationales

1. Aucune disposition de la présente Convention ne porte atteinte à l'application de la Convention relative à l'immatriculation des bateaux de navigation intérieure (1965) et de son protocole n° 2 relatif à la saisie conservatoire et à l'exécution forcée concernant les bateaux de navigation intérieure, y compris tout futur amendement à cette convention ou à ce protocole.

2. Sans préjudice du paragraphe 4 de l'article 4, entre les États parties à la présente Convention qui sont également parties à la Convention relative à la signification et à la notification à l'étranger des actes judiciaires et extrajudiciaires en matière civile ou commerciale (1965), la notification de la vente judiciaire peut être transmise à l'étranger par des voies autres que celles prévues dans cette convention.

Article 14

Autres fondements pour conférer des effets internationaux

Aucune disposition de la présente Convention n'empêche un État de donner effet à une vente judiciaire d'un navire réalisée dans un autre État en vertu d'un autre accord international ou de la loi applicable.

Article 15

Questions non régies par la Convention

1. Aucune disposition de la présente Convention n'a d'incidence sur:
 - a) La procédure de répartition du produit d'une vente judiciaire ou l'ordre de priorité de cette répartition; ou
 - b) Une créance personnelle à l'encontre d'une personne qui était propriétaire du navire ou qui détenait des droits de propriété sur celui-ci avant la vente judiciaire.
2. En outre, la présente Convention ne régit pas les effets, prévus par la loi applicable, d'une décision rendue par un tribunal exerçant sa compétence en vertu du paragraphe 1 de l'article 9.

Article 16

Dépositaire

Le Secrétaire général de l'Organisation des Nations Unies est désigné comme dépositaire de la présente Convention.

Article 17

Signature, ratification, acceptation, approbation, adhésion

1. La présente Convention sera ouverte à la signature de tous les États.
2. La présente Convention est sujette à ratification, acceptation ou approbation par les États signataires.
3. La présente Convention est ouverte à l'adhésion de tous les États qui ne sont pas signataires à partir de la date à laquelle elle est ouverte à la signature.
4. Les instruments de ratification, d'acceptation, d'approbation ou d'adhésion sont déposés auprès du dépositaire.

Article 18

Participation d'organisations régionales d'intégration économique

1. Une organisation régionale d'intégration économique constituée d'États souverains et ayant compétence pour certaines questions régies par la présente Convention peut, elle aussi, signer, ratifier, accepter ou approuver la présente Convention ou y adhérer. En pareil cas, elle a les droits et les obligations d'un État partie, dans la mesure où elle a compétence pour les questions régies par la présente Convention. Aux fins des articles 21 et 22, un instrument déposé par une organisation régionale d'intégration économique n'est pas compté en plus de ceux déposés par ses États membres.
2. L'organisation régionale d'intégration économique effectue une déclaration précisant les questions régies par la présente Convention pour lesquelles ses États

membres lui ont transféré compétence. Elle notifie dans les meilleurs délais au dépositaire toute modification de la répartition des compétences précisée dans la déclaration effectuée au titre du présent paragraphe, y compris les nouveaux transferts de compétence.

3. Toute référence à «État», «États», «État partie» ou «États parties» dans la présente Convention s'applique également à une organisation régionale d'intégration économique, lorsque le contexte le requiert.

4. La présente Convention ne porte pas atteinte à l'application des règles d'une organisation régionale d'intégration économique, que ces règles aient été adoptées avant ou après la présente Convention:

- a) En ce qui a trait à la transmission d'une notification de vente judiciaire entre les États membres d'une telle organisation; ou
- b) En ce qui a trait aux règles de compétence applicables entre les États membres d'une telle organisation.

Article 19

Systèmes juridiques non unifiés

1. S'il comprend deux unités territoriales ou plus dans lesquelles des systèmes de droit différents s'appliquent aux questions traitées dans la présente Convention, un État peut déclarer que la présente Convention s'applique à l'ensemble de ses unités territoriales ou seulement à une ou plusieurs d'entre elles.

2. Les déclarations faites en vertu du présent article désignent expressément les unités territoriales auxquelles la Convention s'applique.

3. Si un État ne fait pas de déclaration en vertu du paragraphe 1, la présente Convention s'applique à toutes les unités territoriales de cet État.

4. Au regard d'un État comprenant deux unités territoriales ou plus dans lesquelles des systèmes de droit différents s'appliquent aux questions traitées dans la présente Convention:

- a) Toute référence à la loi, aux règlements ou aux procédures de l'État vise, le cas échéant, la loi, les règlements ou les procédures en vigueur dans l'unité territoriale considérée;
- b) Toute référence à l'autorité de l'État vise, le cas échéant, l'autorité de l'unité territoriale considérée.

Article 20

Procédure et effets des déclarations

1. Les déclarations visées au paragraphe 2 de l'article 18 et au paragraphe 1 de l'article 19 sont faites au moment de la signature, de la ratification, de l'acceptation, de l'approbation ou de l'adhésion. Les déclarations faites lors de la signature sont sujettes à confirmation lors de la ratification, de l'acceptation ou de l'approbation.

2. Les déclarations et leur confirmation sont faites par écrit et formellement notifiées au depositaire.

3. Les déclarations prennent effet à la date de l'entrée en vigueur de la présente Convention à l'égard de l'État concerné.

4. Tout État qui fait une déclaration en vertu du paragraphe 2 de l'article 18 et du paragraphe 1 de l'article 19 peut à tout moment la modifier ou la retirer par notification formelle adressée par écrit au depositaire. La modification ou le retrait prend effet 180 jours après la date de réception de la notification par le depositaire. Si le depositaire reçoit la notification de modification ou de retrait avant l'entrée en vigueur de la présente Convention à l'égard de l'État concerné, la modification ou le retrait prend effet à la date de l'entrée en vigueur de la présente Convention à l'égard de cet État.

Article 21

Entrée en vigueur

1. La présente Convention entre en vigueur 180 jours après la date de dépôt du troisième instrument de ratification, d'acceptation, d'approbation ou d'adhésion.

2. Lorsqu'un État ratifie, accepte ou approuve la présente Convention, ou y adhère, après le dépôt du troisième instrument de ratification, d'acceptation, d'approbation ou d'adhésion, la présente Convention entre en vigueur à l'égard de cet État 180 jours après la date de dépôt de son instrument de ratification, d'acceptation, d'approbation ou d'adhésion.

3. La présente Convention ne s'applique qu'aux ventes judiciaires ordonnées ou approuvées après son entrée en vigueur à l'égard de l'État de la vente judiciaire.

Article 22

Amendement

1. Tout État partie peut proposer un amendement à la présente Convention en le soumettant au Secrétaire général de l'Organisation des Nations Unies. Celui-ci communique alors la proposition d'amendement aux États parties, en leur demandant de lui faire savoir s'ils sont favorables à la convocation d'une conférence des États parties en vue de l'examen de la proposition et de sa mise aux voix. Si, dans les 120 jours qui suivent la date de cette communication, un tiers au moins des États Parties se prononcent en faveur de la tenue d'une telle conférence, le Secrétaire général convoque la conférence sous les auspices de l'Organisation des Nations Unies.

2. La conférence des États parties n'épargne aucun effort pour parvenir à un consensus sur tout amendement. Si tous les efforts en ce sens sont épuisés sans qu'un consensus soit trouvé, il faut, en dernier recours, pour que l'amendement soit adopté, un vote à la majorité des deux tiers des États parties présents à la

conférence et exprimant leur vote. Aux fins du présent paragraphe, le vote d'une organisation régionale d'intégration économique n'est pas compté.

3. Un amendement adopté est soumis par le dépositaire à la ratification, à l'acceptation ou à l'approbation de tous les États parties.

4. Un amendement adopté entre en vigueur 180 jours après la date de dépôt du troisième instrument de ratification, d'acceptation ou d'approbation. Un amendement entré en vigueur a force obligatoire à l'égard des États parties qui ont exprimé leur consentement à être liés par lui.

5. Lorsqu'un État Partie ratifie, accepte ou approuve un amendement après le dépôt du troisième instrument de ratification, d'acceptation ou d'approbation, cet amendement entre en vigueur à l'égard de cet État partie 180 jours après la date de dépôt de son instrument de ratification, d'acceptation ou d'approbation.

Article 23

Dénunciation

1. Un État partie peut dénoncer la présente Convention par une notification formelle adressée par écrit au dépositaire. La dénonciation peut se limiter à certaines unités territoriales d'un système juridique non unifié auxquelles s'applique la présente Convention.

2. La dénonciation prend effet 365 jours après la date de réception de la notification par le dépositaire. Lorsqu'une période plus longue pour la prise d'effet de la dénonciation est précisée dans la notification, la dénonciation prend effet à l'expiration de la période en question après la date de réception de la notification par le dépositaire. La présente Convention continue de s'appliquer à une vente judiciaire pour laquelle un certificat de vente judiciaire visé à l'article 5 a été délivré avant que la dénonciation n'ait pris effet.

FAIT en un seul original, dont les textes anglais, arabe, chinois, espagnol, français et russe font également foi.

Annexe I

Informations minimales devant figurer dans la notification de la vente judiciaire

1. Déclaration indiquant que la notification de la vente judiciaire est adressée aux fins de la Convention des Nations Unies sur les effets internationaux des ventes judiciaires de navires
2. Nom de l'État de la vente judiciaire
3. Tribunal ou autre autorité publique ordonnant, approuvant ou confirmant la vente judiciaire
4. Numéro de référence ou autre identifiant de la procédure de vente judiciaire
5. Nom du navire
6. Registre
7. Numéro OMI
8. *(En l'absence de numéro OMI)* Autres informations permettant d'identifier le navire
9. Nom du propriétaire
10. Adresse du lieu de résidence ou de l'établissement principal du propriétaire
11. *(Dans le cas d'une vente judiciaire par voie d'enchères publiques)* Date, heure et lieu prévus des enchères publiques
12. *(Dans le cas d'une vente judiciaire au moyen d'une transaction de gré à gré)* Toute information pertinente concernant la vente judiciaire, notamment le délai, conformément à la décision du tribunal ou d'une autre autorité publique
13. Déclaration confirmant que la vente judiciaire confèrera un titre libre de tout droit sur le navire ou, si l'on ne sait pas si la vente judiciaire confèrera un titre libre de tout droit, déclaration précisant les circonstances dans lesquelles la vente judiciaire ne confèrerait pas un tel titre
14. Autres informations requises par la loi de l'État de la vente judiciaire, notamment toute information jugée nécessaire pour protéger les intérêts de la personne recevant la notification

Annexe II

Modèle de certificat de vente judiciaire

Délivré conformément aux dispositions de l'article 5 de la Convention des Nations Unies sur les effets internationaux des ventes judiciaires de navires

Il est certifié que:

- a) Le navire décrit ci-dessous a été vendu par voie de vente judiciaire conformément aux exigences prévues par la loi de l'État de la vente judiciaire et aux exigences de la Convention des Nations Unies sur les effets internationaux des ventes judiciaires de navires; et
- b) La vente judiciaire a conféré à l'acquéreur un titre libre de tout droit sur le navire.

1. État de la vente judiciaire

2. Autorité délivrant le présent certificat

2.1 Nom

2.2 Adresse

2.3 Téléphone/télécopie/
courriel, si connus

3. Vente judiciaire

3.1 Nom du tribunal ou de toute
autre autorité publique ayant
réalisé la vente judiciaire

3.2 Date de la vente judiciaire

4. Navire

4.1 Nom

4.2 Registre

4.3 Numéro de l'Organisation
maritime internationale
(OMI)

4.4 *(En l'absence de numéro
OMI) Autres informations (Veuillez joindre toutes photos au certificat)*
permettant d'identifier
le navire

5. Personne propriétaire immédiatement avant la vente judiciaire

5.1 Nom

5.2 Adresse du lieu de
résidence ou de
l'établissement principal

6. Acquéreur

6.1 Nom

6.2 Adresse du lieu de
résidence ou de
l'établissement principalÀ le
(lieu) (date).....
Signature et/ou cachet de l'autorité
de délivrance ou un autre élément
propre à l'authenticité du certificat

Convención de las Naciones Unidas sobre los Efectos Internacionales de las Ventas Judiciales de Buques

Los Estados partes en la presente Convención,

Reafirmando su convicción de que el comercio internacional basado en la igualdad y el mutuo provecho constituye un elemento importante para el fomento de las relaciones de amistad entre los Estados,

Teniendo presentes el papel fundamental de la actividad naviera en el comercio y el transporte internacionales, el alto valor económico de los buques utilizados tanto en la navegación marítima como en la navegación interior, y la función que desempeñan las ventas judiciales como medio de ejecutar créditos,

Considerando que una adecuada protección jurídica de los compradores puede repercutir positivamente en el precio que se obtiene en las ventas judiciales de buques, tanto en beneficio de los propietarios de buques como de los acreedores, incluidos los beneficiarios de privilegios marítimos y los financiadores de buques,

Deseando, con ese fin, establecer normas uniformes que promuevan la difusión de información sobre ventas judiciales previstas a partes interesadas y atribuyan efectos internacionales a las ventas judiciales de buques vendidos libres y exentos de cualquier hipoteca o *mortgage* y de cualquier carga, incluso a los efectos de la inscripción registral de los buques,

Han convenido en lo siguiente:

Artículo 1

Fin

La presente Convención rige los efectos internacionales de las ventas judiciales de buques que confieran un título de propiedad limpio al comprador.

Artículo 2

Definiciones

1. A los efectos de la presente Convención:

- a) Por “venta judicial” de un buque se entenderá toda venta de un buque:
 - i) que sea ordenada, aprobada o ratificada por un órgano judicial u otra autoridad pública y que se lleve a cabo ya sea en subasta pública, o por acuerdo de partes bajo la supervisión y con la aprobación de un órgano judicial, y
 - ii) cuyo producto se ponga a disposición de los acreedores;
- b) Por “buque” se entenderá todo buque u otro tipo de embarcación que esté inscrito en un registro de acceso público y que pueda ser objeto de un embargo preventivo o de cualquier otra medida similar que pueda

dar lugar a una venta judicial de conformidad con la ley del Estado de la venta judicial;

- c) Por “título de propiedad limpio” se entenderá la propiedad libre y exenta de cualquier hipoteca o *mortgage* y de cualquier carga;
- d) Por “hipoteca o *mortgage*” se entenderá toda hipoteca o *mortgage* constituida sobre un buque que esté inscrita en el Estado en cuyo registro de buques o registro equivalente esté inscrito el buque;
- e) Por “carga” se entenderá todo derecho de cualquier naturaleza u origen que pueda hacerse valer contra un buque, ya sea mediante embargo preventivo, secuestro o cualquier otra vía, y que abarca los privilegios marítimos, los privilegios, los gravámenes, los derechos de uso y los derechos de retención, pero no incluye las hipotecas o *mortgages*;
- f) Por “carga inscrita” se entenderá toda carga que esté inscrita en el registro de buques o registro equivalente en que esté inscrito el buque o en cualquier otro registro en el que se inscriban las hipotecas o *mortgages*;
- g) Por “privilegio marítimo” se entenderá toda carga que la ley aplicable reconozca como privilegio marítimo o *maritime lien* sobre un buque;
- h) Por “propietario” de un buque se entenderá la persona inscrita como propietaria del buque en el registro de buques o registro equivalente en que esté inscrito el buque;
- i) Por “comprador” se entenderá la persona a quien se venda el buque en la venta judicial;
- j) Por “comprador posterior” se entenderá la persona que compre el buque a quien figure como comprador en el certificado de venta judicial mencionado en el artículo 5;
- k) Por “Estado de la venta judicial” se entenderá el Estado en que se lleve a cabo la venta judicial de un buque.

Artículo 3

Ámbito de aplicación

1. La presente Convención será aplicable a la venta judicial de un buque únicamente:

- a) si la venta judicial se lleva a cabo en un Estado parte, y
- b) si el buque se encuentra físicamente dentro del territorio del Estado de la venta judicial en el momento de esa venta.

2. La presente Convención no será aplicable a los buques de guerra ni a sus buques auxiliares, ni a otros buques de propiedad de un Estado o explotados por un Estado que, inmediatamente antes del momento de la venta judicial, fueran utilizados exclusivamente para un servicio público no comercial.

Artículo 4

Notificación de la venta judicial

1. La venta judicial se llevará a cabo de conformidad con la ley del Estado de la venta judicial, la que también establecerá procedimientos para impugnar la venta judicial antes de su finalización y determinará el momento de la venta a los efectos de la presente Convención.

2. No obstante lo dispuesto en el párrafo 1, solo podrá expedirse un certificado de venta judicial de conformidad con el artículo 5 si antes de la venta judicial del buque esta fue notificada de acuerdo con los requisitos establecidos en los párrafos 3 a 7.

3. La venta judicial se notificará:

- a) al registro de buques o registro equivalente en que esté inscrito el buque;
- b) a todos los beneficiarios de hipotecas o *mortgages* y de cargas inscritas, a condición de que el registro en el que estén inscritas y los instrumentos que deban inscribirse de conformidad con la ley del Estado de matrícula sean de acceso público, y siempre que sea posible obtener del registro extractos de la información registral y copias de esos instrumentos;
- c) a todos los titulares de privilegios marítimos, a condición de que hayan notificado al órgano judicial u otra autoridad pública que lleve a cabo la venta judicial la existencia del crédito garantizado por el privilegio marítimo de conformidad con las reglamentaciones y procedimientos del Estado de la venta judicial;
- d) a quien sea el propietario del buque en ese momento, y
- e) si se hubiera inscrito un contrato de arrendamiento a casco desnudo del buque:
 - i) a la persona inscrita como arrendatario a casco desnudo del buque en el registro de arrendamientos a casco desnudo, y
 - ii) al registro de arrendamientos a casco desnudo.

4. La notificación de la venta judicial se practicará de conformidad con la ley del Estado de la venta judicial y contendrá, como mínimo, la información mencionada en el anexo I.

5. Además, la notificación de la venta judicial:

- a) se publicará mediante edictos en la prensa o en otras publicaciones disponibles en el Estado de la venta judicial, y
- b) se transmitirá al archivo mencionado en el artículo 11 para su publicación.

6. A los efectos de comunicar la notificación de la venta judicial al archivo, si dicha notificación no está en ninguno de los idiomas de trabajo del archivo, deberá

ir acompañada de una traducción de la información mencionada en el anexo I a uno de esos idiomas de trabajo.

7. A fin de determinar la identidad o la dirección de las personas a quienes deba notificarse la venta judicial, bastará con utilizar:

- a) la información que conste en el registro de buques o registro equivalente en que esté inscrito el buque, o en el registro de arrendamientos a casco desnudo;
- b) la información que conste en el registro en que esté inscrita la hipoteca o *mortgage* o la carga inscrita, si es un registro distinto del registro de buques o registro equivalente, y
- c) la información notificada de conformidad con el párrafo 3, apartado c).

Artículo 5

Certificado de venta judicial

1. Una vez finalizada una venta judicial que haya conferido un título de propiedad limpio sobre el buque con arreglo a la ley del Estado de la venta judicial y que se haya llevado a cabo de conformidad con los requisitos exigidos por dicha ley y los requisitos establecidos en la presente Convención, el órgano judicial u otra autoridad pública que haya llevado a cabo la venta judicial u otra autoridad competente del Estado de la venta judicial expedirá, de conformidad con sus reglamentaciones y procedimientos, un certificado de venta judicial al comprador.

2. El certificado de venta judicial deberá ajustarse, en esencia, al modelo que figura en el anexo II, y contendrá:

- a) la declaración de que el buque fue vendido de conformidad con los requisitos exigidos por la ley del Estado de la venta judicial y los requisitos establecidos en la presente Convención;
- b) la declaración de que la venta judicial confirió al comprador un título de propiedad limpio sobre el buque;
- c) el nombre del Estado de la venta judicial;
- d) el nombre, la dirección y los datos de contacto de la autoridad que expide el certificado;
- e) el nombre del órgano judicial u otra autoridad pública que llevó a cabo la venta judicial y la fecha de la venta;
- f) el nombre del buque y el registro de buques o registro equivalente en que esté inscrito el buque;
- g) el número de la OMI o, si no se dispusiera de ese dato, otra información que permita identificar el buque;

- h) el nombre y la dirección de residencia o establecimiento principal de la persona que era el propietario del buque inmediatamente antes de la venta judicial;
- i) el nombre y la dirección de residencia o establecimiento principal del comprador;
- j) el lugar y la fecha de expedición del certificado, y
- k) la firma o el sello de la autoridad que expide el certificado u otra confirmación de la autenticidad del certificado.

3. El Estado de la venta judicial exigirá que el certificado de venta judicial se transmita con prontitud al archivo mencionado en el artículo 11 para su publicación.

4. Tanto el certificado de venta judicial como cualquier traducción de este estarán exentos del requisito de legalización u otra formalidad similar.

5. Sin perjuicio de lo dispuesto en los artículos 9 y 10, el certificado de venta judicial será prueba suficiente de los asuntos consignados en él.

6. El certificado de venta judicial podrá expedirse en forma de documento electrónico a condición de que:

- a) la información consignada en él sea accesible para su ulterior consulta;
- b) se utilice un método fiable para identificar a la autoridad que expide el certificado, y
- c) se utilice un método fiable para detectar cualquier alteración que haya podido sufrir el documento electrónico con posterioridad al momento en que fue generado, que no consista en la adición de algún endoso o algún cambio sobrevenido en el curso normal de su transmisión, archivo o presentación.

7. No se rechazará un certificado de venta judicial por la sola razón de que esté en formato electrónico.

Artículo 6

Efectos internacionales de una venta judicial

Toda venta judicial respecto de la cual se haya expedido el certificado de venta judicial a que se refiere el artículo 5 tendrá por efecto, en los demás Estados partes, conferir al comprador un título de propiedad limpio sobre el buque.

Artículo 7

Actuación del registro

1. A solicitud del comprador o comprador posterior, y cuando se le exhiba el certificado de venta judicial a que se refiere el artículo 5, el registro u otra autoridad competente de un Estado parte procederá de la siguiente manera, según el caso y de conformidad con sus reglamentaciones y procedimientos, sin perjuicio de lo dispuesto en el artículo 6:

- a) cancelará la inscripción de todas las hipotecas o *mortgages* y cargas inscritas que graven el buque y que se hayan inscrito antes de finalizada la venta judicial;
- b) cancelará la inscripción del buque del registro y expedirá un certificado de cancelación de la inscripción a los efectos de la nueva inscripción;
- c) inscribirá el buque a nombre del comprador o comprador posterior, a condición de que el buque y la persona a cuyo nombre se haya de inscribir el buque reúnan los requisitos exigidos por la ley del Estado de matrícula;
- d) actualizará la información inscrita en el registro añadiendo cualquier otro dato pertinente que conste en el certificado de venta judicial.

2. A solicitud del comprador o comprador posterior, y cuando se le exhiba el certificado de venta judicial a que se refiere el artículo 5, el registro u otra autoridad competente de un Estado parte en el que se haya inscrito un arrendamiento a casco desnudo del buque cancelará la inscripción del buque en el registro de arrendamientos a casco desnudo y expedirá un certificado de cancelación de la inscripción.

3. Si el certificado de venta judicial no ha sido expedido en un idioma oficial del registro u otra autoridad competente, el registro u otra autoridad competente podrá solicitar al comprador o comprador posterior que presente una traducción certificada a dicho idioma oficial.

4. El registro u otra autoridad competente también podrá solicitar al comprador o comprador posterior que presente una copia autenticada del certificado de venta judicial para incorporarla a sus archivos.

5. Los párrafos 1 y 2 no serán aplicables si un órgano judicial del Estado del registro u otra autoridad competente determina, de conformidad con el artículo 10, que el efecto de la venta judicial previsto en el artículo 6 sería manifiestamente contrario al orden público de ese Estado.

Artículo 8

Denegación o levantamiento del embargo preventivo del buque

1. Si se solicita el embargo preventivo de un buque o cualquier otra medida similar contra un buque ante un tribunal u otra autoridad judicial de un Estado parte en virtud de un crédito nacido antes de una venta judicial del buque, el tribunal u otra autoridad judicial desestimará la solicitud si se le exhibe el certificado de venta judicial a que se refiere el artículo 5.

2. Si se traba un embargo preventivo sobre un buque o se adopta una medida similar contra un buque por orden de un tribunal u otra autoridad judicial de un Estado parte en virtud de un crédito nacido antes de una venta judicial del buque, el tribunal u otra autoridad judicial ordenará el levantamiento de la medida que pese sobre el buque si se le exhibe el certificado de venta judicial a que se refiere el artículo 5.

3. Si el certificado de venta judicial no ha sido expedido en un idioma oficial del tribunal u otra autoridad judicial, el tribunal u otra autoridad judicial podrá solicitar a la persona que exhiba el certificado que presente una traducción certificada a dicho idioma oficial.

4. Los párrafos 1 y 2 no serán aplicables si el tribunal u otra autoridad judicial determina que la desestimación de la solicitud o la orden de levantamiento de la medida que pesa sobre el buque, según el caso, sería manifiestamente contraria al orden público de ese Estado.

Artículo 9

Competencia para anular y suspender la venta judicial

1. Los órganos judiciales del Estado de la venta judicial tendrán competencia exclusiva para conocer de cualquier demanda o solicitud de anulación de una venta judicial de un buque realizada en dicho Estado que confiera un título de propiedad limpio sobre el buque, o de suspensión de sus efectos, y dicha competencia se hará extensiva a toda demanda o solicitud de impugnación de la expedición del certificado de venta judicial a que se refiere el artículo 5.

2. Los órganos judiciales de un Estado parte se declararán incompetentes para conocer de toda demanda o solicitud de anulación de una venta judicial de un buque realizada en otro Estado parte que confiera un título de propiedad limpio sobre el buque, o de suspensión de sus efectos.

3. El Estado de la venta judicial exigirá que toda resolución de un órgano judicial por la que se anulen o suspendan los efectos de una venta judicial respecto de la cual se haya expedido un certificado de conformidad con el artículo 5, párrafo 1, se transmita con prontitud al archivo mencionado en el artículo 11 para su publicación.

Artículo 10

Circunstancias en que la venta judicial no surte efectos internacionales

La venta judicial de un buque no surtirá el efecto previsto en el artículo 6 en un Estado parte que no sea el Estado de la venta judicial si un órgano judicial de ese otro Estado parte determina que el efecto sería manifiestamente contrario al orden público de ese otro Estado parte.

Artículo 11

Archivo

1. El archivo estará a cargo del Secretario General de la Organización Marítima Internacional o de una institución designada por la Comisión de las Naciones Unidas para el Derecho Mercantil Internacional.

2. Tras recibir una notificación de venta judicial transmitida en virtud del artículo 4, párrafo 5, un certificado de venta judicial transmitido en virtud del artículo 5, párrafo 3, o una resolución transmitida en virtud del artículo 9, párrafo 3, el archivo los pondrá a disposición del público oportunamente, en la forma y en el idioma en que se hayan recibido.

3. El archivo también podrá recibir una notificación de venta judicial procedente de un Estado que haya ratificado, aceptado o aprobado la presente Convención o se haya adherido a ella y para el cual la Convención todavía no haya entrado en vigor y podrá ponerla a disposición del público.

Artículo 12

Comunicación entre autoridades de los Estados partes

1. A los efectos de la presente Convención, las autoridades de un Estado parte estarán facultadas para comunicarse directamente con las autoridades de cualquier otro Estado parte.

2. Nada de lo dispuesto en el presente artículo afectará a la aplicación de los acuerdos internacionales sobre asistencia judicial en materia civil y comercial que puedan existir entre los Estados partes.

Artículo 13

Relación con otros tratados internacionales

1. Nada de lo dispuesto en la presente Convención afectará a la aplicación de la Convención relativa a la Matriculación de Buques de Navegación Interior (1965) y su Protocolo núm. 2 relativo al Embargo y la Venta Forzosa de Buques destinados a la Navegación Interior, incluida cualquier enmienda futura de la Convención o el Protocolo citados.

2. Sin perjuicio de lo dispuesto en el artículo 4, párrafo 4, entre los Estados partes en la presente Convención que también sean partes en el Convenio sobre la Notificación o Traslado en el Extranjero de Documentos Judiciales y Extrajudiciales en Materia Civil o Comercial (1965), la notificación de la venta judicial podrá transmitirse al extranjero por vías distintas de las previstas en ese convenio.

Artículo 14

Otros fundamentos para atribuir efectos internacionales

Nada de lo dispuesto en la presente Convención impedirá que un Estado parte atribuya efectos a la venta judicial de un buque realizada en otro Estado de conformidad con cualquier otro acuerdo internacional o con arreglo a la ley aplicable.

Artículo 15

Materias que no se rigen por la presente Convención

1. Nada de lo dispuesto en la presente Convención afectará:
 - a) al procedimiento de distribución del producto de una venta judicial o al orden de prelación en esa distribución, ni
 - b) a los créditos personales que puedan existir contra una persona que haya sido propietaria del buque o haya tenido derechos reales sobre este antes de la venta judicial.

2. La presente Convención tampoco regirá los efectos que, conforme a la ley aplicable, emanen de una resolución dictada por un órgano judicial en ejercicio de la competencia que le confiere el artículo 9, párrafo 1.

Artículo 16

Depositario

Se designa depositario de la presente Convención al Secretario General de las Naciones Unidas.

Artículo 17

Firma, ratificación, aceptación, aprobación, adhesión

1. La presente Convención estará abierta a la firma de todos los Estados.
2. La presente Convención estará sujeta a ratificación, aceptación o aprobación por los Estados signatarios.
3. La presente Convención estará abierta a la adhesión de todos los Estados que no sean signatarios a partir de la fecha en que quede abierta a la firma.
4. Los instrumentos de ratificación, aceptación, aprobación o adhesión se depositarán en poder del depositario.

Artículo 18

Participación de organizaciones regionales de integración económica

1. Toda organización regional de integración económica que esté constituida por Estados soberanos y tenga competencia en determinadas materias que se rigen por la presente Convención podrá igualmente firmar, ratificar, aceptar o aprobar esta Convención o adherirse a ella. La organización regional de integración económica tendrá, en ese caso, los derechos y obligaciones de un Estado parte en la medida en que tenga competencia en las materias que se rigen por la presente Convención. A los efectos de los artículos 21 y 22, los instrumentos depositados por organizaciones regionales de integración económica no se contarán además de los instrumentos depositados por sus Estados miembros.

2. La organización regional de integración económica deberá hacer una declaración en la que se especifiquen las materias que se rigen por la presente Convención respecto de las cuales sus Estados miembros hayan transferido competencia a esa organización. La organización regional de integración económica notificará con prontitud al depositario cualquier cambio que se haya producido en la distribución de competencias indicada en la declaración prevista en el presente párrafo, mencionando asimismo toda competencia nueva que le haya sido transferida.

3. Toda referencia que se haga en la presente Convención a “Estado”, “Estados”, “Estado parte” o “Estados partes” será igualmente aplicable a una organización regional de integración económica cuando el contexto así lo requiera.

4. La presente Convención no afectará a la aplicación de las normas de una organización regional de integración económica, independiente de que se hayan adoptado antes o después de la presente Convención:

- a) en relación con la transmisión de una notificación de venta judicial entre los Estados miembros de esa organización, o
- b) en relación con las normas jurisdiccionales aplicables entre los Estados miembros de esa organización.

Artículo 19

Ordenamientos jurídicos no unificados

1. Todo Estado integrado por dos o más unidades territoriales en las que sea aplicable un régimen jurídico distinto en relación con las materias objeto de la presente Convención podrá declarar que la presente Convención será aplicable a todas sus unidades territoriales o solo a una o varias de ellas.

2. En las declaraciones a que se refiere el presente artículo se hará constar expresamente a qué unidades territoriales será aplicable la presente Convención.

3. Si un Estado no hace ninguna declaración conforme al párrafo 1, la presente Convención será aplicable a todas las unidades territoriales de ese Estado.

4. Si un Estado está integrado por dos o más unidades territoriales en las que sea aplicable un régimen jurídico distinto en relación con las materias objeto de la presente Convención:

- a) toda referencia a las leyes, reglamentaciones o procedimientos del Estado se interpretará, cuando proceda, como una referencia a las leyes, reglamentaciones o procedimientos en vigor en la unidad territorial pertinente;
- b) toda referencia a la autoridad del Estado se interpretará, cuando proceda, como una referencia a la autoridad de la unidad territorial pertinente.

Artículo 20

Procedimiento y efectos de las declaraciones

1. Las declaraciones a que se refieren el artículo 18, párrafo 2, y el artículo 19, párrafo 1, se harán en el momento de la firma, ratificación, aceptación, aprobación o adhesión. Las declaraciones que se hagan en el momento de la firma deberán ser confirmadas en el momento de la ratificación, aceptación o aprobación.

2. Las declaraciones y sus confirmaciones se harán por escrito y se notificarán oficialmente al depositario.

3. Toda declaración surtirá efecto simultáneamente con la entrada en vigor de la presente Convención respecto del Estado en cuestión.

4. Todo Estado que haga una declaración con arreglo al artículo 18, párrafo 2, y al artículo 19, párrafo 1, podrá modificarla o retirarla en cualquier momento mediante una notificación oficial dirigida por escrito al depositario. La modificación o el retiro surtirá efecto 180 días después de la fecha de recepción de la notificación por el depositario. Si el depositario recibe la notificación de la modificación o del retiro antes de la entrada en vigor de la presente Convención respecto del Estado en cuestión, la modificación o el retiro surtirán efecto simultáneamente con la entrada en vigor de la presente Convención respecto de dicho Estado.

Artículo 21

Entrada en vigor

1. La presente Convención entrará en vigor 180 días después de la fecha de depósito del tercer instrumento de ratificación, aceptación, aprobación o adhesión.

2. Cuando un Estado ratifique, acepte o apruebe la presente Convención o se adhiera a ella después de que se haya depositado el tercer instrumento de ratificación, aceptación, aprobación o adhesión, la presente Convención entrará en vigor respecto de dicho Estado 180 días después de la fecha en que este haya depositado su instrumento de ratificación, aceptación, aprobación o adhesión.

3. La presente Convención será aplicable únicamente a las ventas judiciales ordenadas o aprobadas después de su entrada en vigor respecto del Estado de la venta judicial.

Artículo 22

Enmienda

1. Cualquier Estado parte podrá proponer una enmienda de la presente Convención presentándola al Secretario General de las Naciones Unidas. Tras recibir la enmienda propuesta, el Secretario General la comunicará a los Estados partes con la solicitud de que indiquen si están a favor de que se celebre una conferencia de los Estados partes con el fin de examinar la propuesta y someterla a votación. Si dentro de los 120 días siguientes a la fecha de esa comunicación, al menos un tercio de los

Estados partes se declara a favor de celebrar esa conferencia, el Secretario General convocará la conferencia con el auspicio de las Naciones Unidas.

2. La conferencia de los Estados partes hará todo lo posible por lograr el consenso sobre cada enmienda. Si se agotaran todos los esfuerzos por llegar a un consenso, sin lograrlo, para adoptar la enmienda se requerirá, como último recurso, una mayoría de dos tercios de los votos de los Estados partes que estén presentes y emitan su voto en la conferencia. A los efectos de lo dispuesto en el presente párrafo, no se contarán los votos de las organizaciones regionales de integración económica.

3. El depositario remitirá las enmiendas adoptadas a todos los Estados partes para su ratificación, aceptación o aprobación.

4. Las enmiendas adoptadas entrarán en vigor 180 días después de la fecha de depósito del tercer instrumento de ratificación, aceptación o aprobación. Cuando una enmienda entre en vigor, será vinculante para los Estados partes que hayan expresado su consentimiento en quedar obligados por ella.

5. Cuando un Estado parte ratifique, acepte o apruebe una enmienda tras el depósito del tercer instrumento de ratificación, aceptación o aprobación, la enmienda entrará en vigor respecto de ese Estado parte 180 días después de la fecha en que este haya depositado su instrumento de ratificación, aceptación o aprobación.

Artículo 23

Denuncia

1. Todo Estado parte podrá denunciar la presente Convención mediante una notificación oficial dirigida por escrito al depositario. La denuncia podrá limitarse a determinadas unidades territoriales de un ordenamiento jurídico no unificado a las que sea aplicable la presente Convención.

2. La denuncia surtirá efecto 365 días después de la fecha de recepción de la notificación por el depositario. Cuando en la notificación se establezca un plazo más largo, la denuncia surtirá efecto cuando venza ese plazo más largo, contado a partir de la fecha en que el depositario haya recibido la notificación. La presente Convención seguirá siendo aplicable a las ventas judiciales respecto de las cuales se haya expedido un certificado de venta judicial conforme al artículo 5 antes de que la denuncia surta efecto.

HECHA en un solo original, cuyos textos en árabe, chino, español, francés, inglés y ruso son igualmente auténticos.

Anexo I

Información mínima que debe contener la notificación de la venta judicial

1. Declaración de que la venta judicial se notifica a los efectos de la Convención de las Naciones Unidas sobre los Efectos Internacionales de las Ventas Judiciales de Buques
2. Nombre del Estado de la venta judicial
3. Órgano judicial u otra autoridad pública que ordenará, aprobará o ratificará la venta judicial
4. Número de referencia u otro identificador del procedimiento de venta judicial
5. Nombre del buque
6. Registro
7. Número de la OMI
8. *(Si no se dispone del número de la OMI)* Otra información que permita identificar el buque
9. Nombre del propietario
10. Dirección de residencia o establecimiento principal del propietario
11. *(En el caso de venta judicial en subasta pública)* Fecha y hora y lugar previstos de la subasta pública
12. *(En el caso de venta judicial por acuerdo de partes)* Cualquier detalle pertinente, incluido el plazo para la venta judicial que haya fijado el órgano judicial u otra autoridad pública
13. Declaración por la que se confirme que la venta judicial conferirá un título de propiedad limpio sobre el buque o, si no se sabe si la venta judicial conferirá un título de propiedad limpio, declaración en la que se indiquen las circunstancias en que la venta judicial no conferirá un título de propiedad limpio
14. Otra información que exija la ley del Estado de la venta judicial, en particular cualquier información que se considere necesaria para proteger los intereses de la persona que recibe la notificación

Anexo II

Modelo de certificado de venta judicial

Expedido de conformidad con lo dispuesto en el artículo 5 de la Convención de las Naciones Unidas sobre los Efectos Internacionales de las Ventas Judiciales de Buques

Por el presente se certifica:

- a) que el buque que se describe a continuación fue vendido judicialmente de conformidad con los requisitos exigidos por la ley del Estado de la venta judicial y los requisitos establecidos en la Convención de las Naciones Unidas sobre los Efectos Internacionales de las Ventas Judiciales de Buques, y
- b) que la venta judicial confirió al comprador un título de propiedad limpio sobre el buque.

1. Estado de la venta judicial

2. Autoridad que expide el presente certificado

2.1 Nombre

2.2 Dirección

2.3 Teléfono/fax/correo electrónico, en su caso

3. Venta judicial

3.1 Nombre del órgano judicial u otra autoridad pública que llevó a cabo la venta judicial

3.2 Fecha de la venta judicial

4. Buque

4.1 Nombre

4.2 Registro

4.3 Número de la OMI

4.4 *(Si no se dispone del número de la OMI)* *(Sírvase adjuntar al certificado las fotos de que se disponga)*
Otra información que permita identificar el buque

5. Propietario del buque inmediatamente antes de la venta judicial

5.1 Nombre

5.2 Dirección de residencia o establecimiento principal

6. Comprador

6.1 Nombre

6.2 Dirección de residencia o
establecimiento principal

En **el**
(lugar) (fecha)

.....
Firma y/o sello de la autoridad
expedidora u otra confirmación
de la autenticidad del certificado

Конвенция Организации Объединенных Наций о международных последствиях продажи судов на основании судебного решения

Государства – участники настоящей Конвенции,

вновь подтверждая свою убежденность в том, что международная торговля на основе равенства и взаимной выгоды является важным элементом в деле содействия развитию дружественных отношений между государствами,

сознавая важную роль судоходства в международной торговле и перевозках, высокую экономическую ценность судов, используемых как в морском, так и во внутреннем судоходстве, и функцию продажи на основании судебного решения как одного из средств обеспечения исполнения требований,

учитывая, что адекватная правовая защита покупателей может положительно сказаться на цене судов, реализуемых в рамках продажи на основании судебного решения, к взаимной выгоде судовладельцев и кредиторов, включая залогодержателей и организации, финансирующие строительство и приобретение судов,

желая с этой целью установить единообразные правила, способствующие распространению информации о предстоящей продаже на основании судебного решения среди заинтересованных сторон и определяющие международные последствия продажи судов на основании судебного решения, при которой судно продается свободным от любой ипотеки (“mortgage” или “hypothèque”) и любого обременения, в том числе для целей регистрации судна,

согласились о нижеследующем:

Статья 1

Цель

Настоящая Конвенция регулирует международные последствия продажи судна на основании судебного решения, в результате которой покупатель приобретает необремененное право собственности.

Статья 2

Определения

Для целей настоящей Конвенции:

- а) «продажа на основании судебного решения» означает любую продажу судна:
 - i) которая предписана, одобрена или подтверждена судом или другим публичным органом при помощи либо проведения

публичного аукциона, либо выполнения частноправового договора под надзором суда и при его одобрении; и

- ii) поступления от которой передаются в распоряжение кредиторов;
- b) «судно» означает любое судно или другое транспортное средство, которое зарегистрировано в регистре, открытом для публичного ознакомления, и может стать предметом ареста или другой аналогичной меры, которая может привести к продаже на основании судебного решения в соответствии с законодательством государства продажи на основании судебного решения;
- c) «необремененное право собственности» означает право собственности, свободное от любой ипотеки (“mortgage” или “hypothèque”) и любого обременения;
- d) «ипотека» (“mortgage” или “hypothèque”) означает любую ипотеку (“mortgage” или “hypothèque”), которая предоставлена на судно и зарегистрирована в государстве, в судовом или эквивалентном реестре которого зарегистрировано это судно;
- e) «обременение» означает любое возникшее право, которое может быть любым образом и любым путем предъявлено в отношении судна – будь то посредством ареста, наложения запрета или посредством иных средств, – и включает морской залог, залог, залоговое обязательство, право использования или право удержания, однако не включает ипотеку (“mortgage” или “hypothèque”);
- f) «зарегистрированное обременение» означает любое обременение, которое зарегистрировано в судовом или эквивалентном реестре, в котором зарегистрировано судно или в любом другом реестре, в котором регистрируются ипотеки (“mortgages” или “hypothèques”);
- g) «морской залог» означает любое обременение, которое признается морским залогом или морским привилегированным требованием в отношении судна по применимому законодательству;
- h) «владелец» судна означает любое лицо, зарегистрированное в качестве владельца судна в судовом или эквивалентном реестре, в котором зарегистрировано это судно;
- i) «покупатель» означает любое лицо, которому было продано судно в результате продажи на основании судебного решения;
- j) «последующий покупатель» означает лицо, покупающее судно у покупателя, указанного в сертификате о продаже на основании судебного решения, упомянутом в статье 5;
- k) «государство продажи на основании судебного решения» означает государство, в котором проводится продажа судна на основании судебного решения.

Статья 3

Сфера применения

1. Настоящая Конвенция применяется только к продаже судна на основании судебного решения, если:

- а) продажа на основании судебного решения проводится в государстве-участнике; и
- б) судно физически находится в пределах территории государства продажи на основании судебного решения в момент такой продажи.

2. Настоящая Конвенция не применяется к военным кораблям или военно-вспомогательным судам, или другим судам, принадлежащим государству или эксплуатируемым им и используемым в момент продажи на основании судебного решения или непосредственно перед ней исключительно на правительственной некоммерческой службе.

Статья 4

Уведомление о продаже на основании судебного решения

1. Продажа на основании судебного решения осуществляется в соответствии с законодательством государства продажи на основании судебного решения, которое также устанавливает процедуры оспаривания продажи на основании судебного решения до ее завершения и определяет момент продажи для целей настоящей Конвенции.

2. Независимо от пункта 1, сертификат о продаже на основании судебного решения согласно статье 5 выдается лишь в случае, если перед продажей судна на основании судебного решения направляется уведомление о продаже на основании судебного решения в соответствии с требованиями пунктов 3–7.

3. Уведомление о продаже на основании судебного решения направляется:

- а) в регистр судов или эквивалентный регистр, в котором зарегистрировано судно;
- б) всем держателям любой ипотеки (“mortgage” или “hypothèque”) и любого зарегистрированного обременения при условии, что реестр, в котором они зарегистрированы, и любой документ, который должен быть зарегистрирован в соответствии с законодательством государства регистрации, открыты для публичного ознакомления и что в регистре можно получить выдержки из этого реестра и копии таких документов;
- в) всем держателям любого морского залога при условии, что они уведомили суд или другой публичный орган, который проводит продажу на основании судебного решения, о требовании, обеспеченном таким морским залогом в соответствии с правилами и процедурами государства продажи на основании судебного решения;

- d) владельцу судна, которым он являлся в этот момент; и
- e) если судну предоставлена регистрация бербоут-чартера, то:
 - i) лицу, зарегистрированному в качестве фрахтователя судна по бербоут-чартеру в реестре бербоут-чартеров; и
 - ii) в регистр бербоут-чартеров.

4. Уведомление о продаже на основании судебного решения направляется в соответствии с законодательством государства продажи на основании судебного решения и содержит, как минимум, информацию, указанную в приложении I.

5. Уведомление о продаже на основании судебного решения также:

- a) публикуется посредством сообщения в печати или другом издании, доступном в государстве продажи на основании судебного решения; и
- b) передается в хранилище, указанное в статье 11, для опубликования.

6. Для целей передачи уведомления в хранилище, если уведомление о продаже на основании судебного решения составлено не на рабочем языке хранилища, оно сопровождается переводом информации, упомянутой в приложении I, на такой рабочий язык.

7. При определении идентификационных данных или адреса любого лица, которому должно быть направлено уведомление о продаже на основании судебного решения, достаточно опираться на:

- a) информацию, указанную в судовом или эквивалентном реестре, в котором зарегистрировано судно, или в реестре бербоут-чартеров;
- b) информацию, указанную в реестре, в котором зарегистрирована ипотека (“mortgage” или “hypothèque”) или зарегистрированное обременение, если он не является судовым или эквивалентным реестром; и
- c) информацию, сопровождаемую согласно подпункту c) пункта 3.

Статья 5

Сертификат о продаже на основании судебного решения

1. По завершении процедуры продажи на основании судебного решения, в результате которой предоставляется необремененное право собственности на судно согласно законодательству государства продажи на основании судебного решения и которая проводится с соблюдением требований этого законодательства и требований настоящей Конвенции, суд или другой публичный орган, проводивший продажу на основании судебного решения, либо иной компетентный орган государства продажи на основании судебного решения, в

соответствии со своими правилами и процедурами, выдает покупателю сертификат о продаже на основании судебного решения.

2. Сертификат о продаже на основании судебного решения выдается главным образом в форме образца, приведенного в приложении II, и содержит следующее:

- a) заявление о том, что судно было продано в соответствии с требованиями законодательства государства продажи на основании судебного решения и требованиями настоящей Конвенции;
- b) заявление о том, что в результате продажи на основании судебного решения покупатель приобретает необремененное право собственности на судно;
- c) название государства продажи на основании судебного решения;
- d) наименование, адрес и контактные данные органа, выдающего сертификат;
- e) название суда или другого публичного органа, проводившего продажу на основании судебного решения, и дата продажи;
- f) название судна и судового или эквивалентного регистра, в котором зарегистрировано судно;
- g) номер ИМО судна или, если таковой не присвоен, другая информация, позволяющая идентифицировать судно;
- h) имя/наименование и адрес постоянного места нахождения или адрес основного коммерческого предприятия владельца судна в момент, непосредственно предшествующий продаже на основании судебного решения;
- i) имя/наименование и адрес постоянного места нахождения или адрес основного коммерческого предприятия покупателя;
- j) место и дата выдачи сертификата; и
- k) подпись или печать органа, выдавшего сертификат, или другое подтверждение подлинности сертификата.

3. Государство продажи на основании судебного решения требует, чтобы сертификат о продаже на основании судебного решения незамедлительно передавался в хранилище, указанное в статье 11, для опубликования.

4. Сертификат о продаже на основании судебного решения и любой его перевод освобождается от легализации или аналогичной формальности.

5. Без ущерба для статей 9 и 10 сертификат о продаже на основании судебного решения представляет собой достаточное доказательство содержащихся в нем сведений.

6. Сертификат о продаже на основании судебного решения может быть выдан в форме электронной записи при условии, что:

- a) содержащаяся в нем информация является доступной для ее последующего использования;
- b) использован надежный способ для идентификации органа, выдающего сертификат; и
- c) использован надежный способ для обнаружения любых изменений, внесенных в эту запись после ее создания, без учета добавления любых индоссаментов и любых изменений, происходящих в обычном процессе передачи, хранения и демонстрации.

7. Сертификат о продаже на основании судебного решения не может быть отклонен на том лишь основании, что он составлен в электронной форме.

Статья 6

Международные последствия продажи на основании судебного решения

Продажа на основании судебного решения, в связи с которой был выдан сертификат о продаже на основании судебного решения, упомянутый в статье 5, имеет в качестве последствия в каждом другом государстве-участнике предоставление покупателю необремененного права собственности на судно.

Статья 7

Действия регистра

1. По просьбе покупателя или последующего покупателя и по предъявлении сертификата о продаже на основании судебного решения, упомянутого в статье 5, регистр или другой компетентный орган государства-участника, в зависимости от обстоятельств и в соответствии с его правилами и процедурами, но без ущерба для статьи 6:

- a) удаляет из реестра пометку о любой ипотеке (“mortgage” или “hypothèque”) и любом зарегистрированном обременении, действующем в отношении судна, которые были зарегистрированы до завершения продажи на основании судебного решения;
- b) удаляет судно из реестра и выдает сертификат об удалении для целей новой регистрации;
- c) регистрирует судно на имя покупателя или последующего покупателя при условии, что это судно и лицо, на чье имя оно должно быть зарегистрировано, отвечают требованиям государства регистрации;
- d) обновляет реестр, включая любые другие соответствующие сведения, содержащиеся в сертификате о продаже на основании судебного решения.

2. По просьбе покупателя или последующего покупателя и по предъявлении сертификата о продаже на основании судебного решения, упомянутого

в статье 5, регистр или другой компетентный орган государства-участника, в котором в отношении судна была проведена регистрация бербоут-чартера, удаляет судно из реестра бербоут-чартеров и выдает сертификат об удалении.

3. Если сертификат о продаже на основании судебного решения выдан не на официальном языке регистра или другого компетентного органа, то регистр или другой компетентный орган может просить покупателя или последующего покупателя, предъявляющего сертификат, представить заверенный перевод на такой официальный язык.

4. Регистр или другой компетентный орган может также просить покупателя или последующего покупателя представить заверенную копию сертификата о продаже на основании судебного решения для внесения в свои записи.

5. Пункты 1 и 2 не применяются, если суд в государстве регистра или другого компетентного органа определяет в соответствии со статьей 10, что последствия продажи на основании судебного решения в соответствии со статьей 6 будут явно противоречить публичному порядку этого государства.

Статья 8

Недопустимость ареста судна

1. Если в суд или другой судебный орган государства-участника подается ходатайство об аресте судна или о принятии любой другой аналогичной меры в отношении судна в связи с требованием, возникшем до продажи судна на основании судебного решения, то суд или другой судебный орган по предъявлении сертификата о продаже на основании судебного решения, упомянутого в статье 5, отклоняет такое ходатайство.

2. Если судно арестовано или принята аналогичная мера в отношении судна по распоряжению суда или другого судебного органа в государстве-участнике в связи с требованием, возникшим до продажи судна на основании судебного решения, то суд или другой судебный орган по предъявлении сертификата о продаже на основании судебного решения, упомянутого в статье 5, распоряжается о высвобождении судна.

3. Если сертификат о продаже на основании судебного решения выдается не на официальном языке суда или другого судебного органа, то суд или другой судебный орган может просить лицо, предъявляющее сертификат, представить заверенный перевод на такой официальный язык.

4. Пункты 1 и 2 не применяются, если суд или другой судебный орган определяет, что отклонение ходатайства или распоряжение о высвобождении судна, где это уместно, будет явно противоречить публичному порядку этого государства.

Статья 9

Юрисдикция в вопросах расторжения и приостановления продажи на основании судебного решения

1. Суды государства продажи на основании судебного решения обладают исключительной юрисдикцией для рассмотрения любых требований или ходатайств о расторжении продажи судна на основании судебного решения, которая проводится в этом государстве и в результате которой предоставляется необремененное право собственности, или о приостановлении ее последствий, и такая юрисдикция распространяется на любые требования или ходатайства об оспаривании выдачи сертификата о продаже на основании судебного решения, упомянутого в статье 5.

2. Суды государства-участника отказываются от юрисдикции в отношении любых требований или ходатайств о расторжении продажи судна на основании судебного решения, которая проводится в другом государстве-участнике и в результате которой предоставляется необремененное право собственности, или о приостановлении ее последствий.

3. Государство продажи на основании судебного решения требует, чтобы решение суда о расторжении или приостановлении последствий продажи на основании судебного решения, в связи с которой был выдан сертификат в соответствии с пунктом 1 статьи 5, незамедлительно передавалось в хранилище, указанное в статье 11, для опубликования.

Статья 10

Обстоятельства, при которых продажа на основании судебного решения не имеет международных последствий

Продажа судна на основании судебного решения не имеет последствий, предусмотренных в статье 6, в государстве-участнике, ином чем государство продажи на основании судебного решения, если суд в этом ином государстве-участнике определяет, что такие последствия будут явно противоречить публичному порядку такого иного государства-участника.

Статья 11

Хранилище

1. Хранилищем является Генеральный секретарь Международной морской организации или иное учреждение, названное Комиссией Организации Объединенных Наций по праву международной торговли.

2. После получения уведомления о продаже на основании судебного решения, переданного в соответствии с пунктом 5 статьи 4, сертификата о продаже на основании судебного решения, переданного в соответствии с пунктом 3 статьи 5, или решения, переданного в соответствии с пунктом 3 статьи 9,

хранилище своевременно предоставляет открытый доступ к ним в той форме и на том языке, как они были получены.

3. Хранилище может также получать уведомления о продаже на основании судебного решения от государств, которые ратифицировали, приняли, одобрили Конвенцию или присоединились к ней и для которых Конвенция еще не вступила в силу, и может предоставлять к ним открытый доступ.

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Статья 12

Сношения между органами государств-участников

1. Для целей настоящей Конвенции органам государства-участника разрешается поддерживать прямые контакты с органами любых других государств-участников.

2. Ничто в настоящей статье не затрагивает применения любого международного соглашения о судебной помощи по гражданским и коммерческим вопросам, которое может действовать между государствами-участниками.

Статья 13

Связь с другими международными конвенциями

1. Ничто в настоящей Конвенции не затрагивает применения Конвенции о регистрации судов внутреннего плавания (1965 год) и ее Протокола № 2 о наложении на суда внутреннего плавания ареста для обеспечения гражданского иска и о принудительном исполнении, включая любые будущие поправки к этой конвенции или этому протоколу.

2. Без ущерба для пункта 4 статьи 4 в отношениях между государствами – участниками настоящей Конвенции, которые также являются участниками Конвенции о вручении за границей судебных и внесудебных документов по гражданским или торговым делам (1965 год), уведомление о судебной продаже может быть передано за границу с использованием иных каналов, чем те, которые предусмотрены в этой конвенции.

Статья 14

Другие основания для придания международной силы

Ничто в настоящей Конвенции не препятствует государству-участнику придавать силу продаже судна на основании судебного решения, проведенной в другом государстве, в соответствии с любым другим международным соглашением либо применимым законодательством.

Статья 15

Вопросы, не регулируемые настоящей Конвенцией

1. Ничто в настоящей Конвенции не затрагивает:

- а) процедуру или приоритет при распределении поступлений от продажи на основании судебного решения; или
- б) какие-либо личные требования в отношении лица, которое владело судном или имело право собственности на судно до продажи на основании судебного решения.

2. Кроме того, настоящая Конвенция не регулирует предусматриваемые применимым законодательством последствия вынесения решения судом, осуществляющим юрисдикцию согласно пункту 1 статьи 9.

Статья 16

Депозитарий

Депозитарием настоящей Конвенции назначается Генеральный секретарь Организации Объединенных Наций.

Статья 17

Подписание, ратификация, принятие, утверждение, присоединение

1. Настоящая Конвенция открыта для подписания всеми государствами.
2. Настоящая Конвенция подлежит ратификации, принятию или утверждению подписавшими ее государствами.
3. Настоящая Конвенция открыта для присоединения всех не подписавших ее государств со дня ее открытия для подписания.
4. Ратификационные грамоты или документы о принятии, утверждении или присоединении сдаются на хранение депозитарию.

Статья 18

Участие региональных организаций экономической интеграции

1. Региональная организация экономической интеграции, учрежденная суверенными государствами и обладающая компетенцией в отношении некоторых вопросов, регулируемых настоящей Конвенцией, может также подписать, ратифицировать, принять или утвердить настоящую Конвенцию или присоединиться к ней. В этом случае региональная организация экономической интеграции имеет права и несет обязательства государства-участника в той мере, в какой эта организация обладает компетенцией в отношении вопросов, регулируемых настоящей Конвенцией. Для целей статей 21 и 22 документ, сданный на хранение региональной организацией экономической интеграции, не учитывается в дополнение к документам, сданным на хранение ее государствами-членами.

2. Региональная организация экономической интеграции делает заявление с указанием вопросов, которые регулируются настоящей Конвенцией и в отношении которых этой организации передана компетенция ее государ-

ствами- членами. Региональная организация экономической интеграции незамедлительно уведомляет депозитария о любых изменениях в распределении компетенции, указанном в заявлении, сделанном в соответствии с настоящим пунктом, в том числе о новых передачах компетенции.

3. Любая ссылка на «государство», «государства», «государство-участник» или «государства-участники» в настоящей Конвенции относится в равной степени к региональной организации экономической интеграции, когда этого требует контекст.

4. Настоящая Конвенция не затрагивает применения правил региональной организации экономической интеграции, являющейся участницей настоящей Конвенции, независимо от того, были ли они приняты до или после настоящей Конвенции:

- а) в отношении передачи уведомления о продаже на основании судебного решения между государствами – членами такой организации; или
- б) в отношении юрисдикционных правил, применяемых в отношениях между государствами – членами такой организации.

Статья 19

Множественность правовых систем

1. Если государство имеет две или более территориальные единицы, в которых применяются различные системы права по вопросам, являющимся предметом регулирования настоящей Конвенции, то оно может заявить о том, что действие настоящей Конвенции распространяется на все его территориальные единицы или только на одну или несколько из них.

2. Заявления, сделанные согласно настоящей статье, содержат прямое указание территориальных единиц, на которые распространяется действие Конвенции.

3. Если государство не делает никакого заявления в соответствии с пунктом 1, то действие настоящей Конвенции распространяется на все территориальные единицы этого государства.

4. Если государство имеет две или более территориальные единицы, в которых применяются различные системы права по вопросам, являющимся предметом регулирования настоящей Конвенции, то:

- а) любая ссылка на закон, правила или процедуры государства толкуется как ссылка, в соответствующих случаях, на закон, правила или процедуры, действующие в соответствующей территориальной единице;
- б) любая ссылка на орган государства толкуется как ссылка, в соответствующих случаях, на орган, находящийся в соответствующей территориальной единице.

Статья 20

Процедура и последствия заявлений

1. Заявления в соответствии с пунктом 2 статьи 18, и пунктом 1 статьи 19 делаются в момент подписания, ратификации, принятия, утверждения или присоединения. Заявления, сделанные в момент подписания, подлежат подтверждению при ратификации, принятии или утверждении.

2. Заявления и их подтверждения делаются в письменной форме и официально доводятся до сведения депозитария.

3. Заявление вступает в силу одновременно со вступлением в силу настоящей Конвенции в отношении соответствующего государства.

4. Любое государство, сделавшее заявление в соответствии с пунктом 2 статьи 18 и пунктом 1 статьи 19, может в любое время изменить это заявление или отказаться от него путем официального уведомления в письменной форме на имя депозитария. Такое изменение или такой отказ вступает в силу по истечении 180 дней с даты получения этого уведомления депозитарием. Если депозитарий получает уведомление об изменении или отказе до вступления настоящей Конвенции в силу в отношении соответствующего государства, то такое изменение или такой отказ вступают в силу одновременно со вступлением в силу настоящей Конвенции в отношении соответствующего государства.

Статья 21

Вступление в силу

1. Настоящая Конвенция вступает в силу через 180 дней после даты сдачи на хранение третьей ратификационной грамоты или документа о принятии, утверждении или присоединении.

2. Если государство ратифицирует, принимает или утверждает настоящую Конвенцию или присоединяется к ней после сдачи на хранение третьей ратификационной грамоты или документа о принятии, утверждении или присоединении, то настоящая Конвенция вступает в силу в отношении этого государства через 180 дней после даты сдачи на хранение его ратификационной грамоты или документа о принятии, утверждении или присоединении.

3. Настоящая Конвенция применяется только к продаже на основании судебного решения, предписанной или одобренной после ее вступления в силу в отношении государства продажи на основании судебного решения.

Статья 22

Внесение поправок

1. Любое государство-участник может предложить поправку к настоящей Конвенции путем представления ее Генеральному секретарю Организации Объединенных Наций. После получения предлагаемой поправки Генераль-

ный секретарь препровождает ее государствам-участникам вместе с просьбой высказать свое мнение относительно целесообразности проведения конференции государств-участников для цели рассмотрения данного предложения и проведения по нему голосования. В случае если в течение 120 дней начиная с даты препровождения такой поправки по меньшей мере одна треть государств-участников выскажется за проведение такой конференции, то Генеральный секретарь созывает эту конференцию под эгидой Организации Объединенных Наций.

2. Конференция государств-участников прилагает всяческие усилия для достижения консенсуса по каждой поправке. Если все усилия по достижению консенсуса были исчерпаны и никакого консенсуса не достигнуто, то для принятия поправки в качестве последнего средства потребуются большинство в две трети голосов государств-участников из числа присутствующих и голосующих на конференции. Для целей настоящего пункта голос организации региональной экономической интеграции не учитывается.

3. Принятая поправка представляется депозитарием всем государствам-участникам для ратификации, принятия или утверждения.

4. Настоящая Конвенция вступает в силу через 180 дней после даты сдачи на хранение третьей ратификационной грамоты или документа о принятии, утверждении или присоединении. Когда поправка вступает в силу, она становится обязательной для тех государств-участников, которые выразили согласие на ее обязательный характер.

5. Когда государство-участник ратифицирует, принимает или утверждает поправку после сдачи на хранение третьей ратификационной грамоты или документа о принятии или утверждении, то поправка вступает в силу в отношении этого государства-участника через 180 дней после даты сдачи на хранение его ратификационной грамоты или документа о принятии или утверждении.

Статья 23

Денонсация

1. Государство-участник может денонсировать настоящую Конвенцию путем официального уведомления в письменной форме на имя депозитария. Денонсация может ограничиваться определенными территориальными единицами в множественных правовых системах, к которым применяется настоящая Конвенция.

2. Денонсация вступает в силу через 365 дней после даты получения уведомления депозитарием. Если в уведомлении указан более длительный срок для вступления денонсации в силу, то денонсация вступает в силу по истечении такого более длительного срока после даты получения уведомления депозитарием. Настоящая Конвенция продолжает применяться к продаже на основании судебного решения, в связи с которой был выдан сертификат о про-

даже на основании судебного решения, упомянутый в статье 5, до вступления денонсации в силу.

СОВЕРШЕНО в единственном подлинном экземпляре, тексты которого на английском, арабском, испанском, китайском, русском и французском языках являются равно аутентичными.

RU

Приложение I

Минимальная информация, которая должна содержаться в уведомлении о продаже на основании судебного решения

1. Заявление о том, что уведомление о продаже на основании судебного решения направляется для целей Конвенции Организации Объединенных Наций о международных последствиях продажи судов на основании судебного решения
2. Государство продажи на основании судебного решения
3. Суд или другой публичный орган, предписавший, одоббивший или подтвердивший продажу на основании судебного решения
4. Номер или другой идентификатор процедуры продажи на основании судебного решения
5. Название судна
6. Регистр
7. Номер ИМО
8. *(Если номер ИМО не присвоен)* Другая информация, позволяющая идентифицировать судно
9. Имя/наименование владельца
10. Адрес постоянного места нахождения или адрес основного коммерческого предприятия владельца
11. *(В случае продажи на основании судебного решения на публичном аукционе)* Предполагаемая дата, время и место публичного аукциона
12. *(В случае продажи на основании судебного решения по частноправовому договору)* Любые соответствующие детали, включая срок продажи на основании судебного решения, предписанный судом или другим публичным органом
13. Заявление, либо подтверждающее, что в результате продажи на основании судебного решения будет предоставлено необремененное право собственности на судно, либо, если неизвестно, будет ли в результате продажи на основании судебного решения предоставлено необремененное право, заявление об обстоятельствах, при которых продажа на основании судебного решения не позволит предоставить необремененное право собственности
14. Прочая информация, требуемая в соответствии с законодательством государства продажи на основании судебного решения, в частности любая информация, которая считается необходимой для защиты интересов лица, получившего уведомление

Приложение II

Образец сертификата о продаже на основании судебного решения

Выдан в соответствии с положениями статьи 5 Конвенции Организации Объединенных Наций о международных последствиях продажи судов на основании судебного решения

Настоящим удостоверяется, что:

- а) указанное ниже судно было продано посредством продажи на основании судебного решения в соответствии с требованиями законодательства государства продажи на основании судебного решения и требованиями Конвенции Организации Объединенных Наций о международных последствиях продажи судов на основании судебного решения; и
- б) в результате продажи на основании судебного решения покупателю предоставлено необремененное право собственности на судно.

1. Государство продажи на основании судебного решения

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2. Орган, выдавший настоящий сертификат

- 2.1 Наименование
- 2.2 Адрес
- 2.3 Телефон/факс/эл. почта, в случае наличия

3. Продажа на основании судебного решения

- 3.1 Название суда или другого публичного органа, проводившего продажу на основании судебного решения
- 3.2 Дата проведения продажи на основании судебного решения

4. Судно

- 4.1 Название
- 4.2 Регистр
- 4.3 Номер ИМО
- 4.4 (Если судну не присвоен номер ИМО) Другая информация, позволяющая идентифицировать судно
(Просьба приложить любые фотографии к настоящему сертификату)

- 5. Владелец непосредственно перед продажей на основании судебного решения**
- 5.1 Имя/Наименование
- 5.2 Адрес постоянного места нахождения
или адрес основного коммерческого
предприятия
- 6. Покупатель**
- 6.1 Имя/Наименование
- 6.2 Адрес постоянного места нахождения
или адрес основного коммерческого
предприятия
-
- (место) (дата)

.....

Подпись и/или печать органа,
выдавшего сертификат,
или другое подтверждение
подлинности сертификата

联合国船舶司法出售国际效力公约

本公约缔约国，

重申 其相信平等互利基础上的国际贸易是促进各国间友好关系的一个重要因素，

铭记 航运在国际贸易和运输中的关键作用、海上和内河航行所使用船舶的巨大经济价值以及司法出售作为实现请求权的一种手段的功能，

考虑到 向购买人提供充分的法律保护可以对船舶司法出售中的变现价格产生惠及船舶所有人及包括担保权利人和船舶融资人在内的债权人的积极影响，

希望 为此目的拟订统一规则，促进向相关当事人传送关于拟实施的司法出售的信息，以及包括为船舶登记等目的赋予出售后不附带任何抵押权或其同种权利和任何对船权的船舶司法出售以国际效力，

兹商定如下：

第 1 条

目的

本公约规范赋予购买人清洁物权的船舶司法出售的国际效力。

第 2 条

定义

在本公约中：

1. 船舶的“司法出售”系指符合下列条件的对船舶的任何出售：
 - (1) 该出售由法院或其他公共机构命令、核准或确认，并以公开拍卖或由法院监督和核准的非公开协议的方式实施；以及
 - (2) 该出售所得款项供有关债权人分配；
2. “船舶”系指在可供公开查询的船舶登记簿登记的任何船舶或其他船艇，并可以成为根据司法出售国法律能够导致被司法出售的扣押或其他类似措施的客体；
3. “清洁物权”系指不附带任何抵押权或其同种权利和任何对船权的物权；
4. “抵押权或其同种权利”系指设立于船舶之上并在船舶登记簿或登记该船舶的同等登记簿所在国进行了登记的任何抵押权或其同种权利；
5. “对船权”系指各种类型和多种方式产生的可以通过扣押、查封或其他手段对船舶主张的任何权利，其中包括船舶优先权、担保性权利、物上负担、使用权或留置权，但不包括抵押权或其同种权利；

6. “已登记的对船权”系指在船舶登记簿或登记该船舶的同等登记簿或另设的登记抵押权或其同种权利的任何登记簿登记的任何对船权；
7. “船舶优先权”系指根据可适用的法律被认定为附于船舶之上的优先权或其同种权利的任何对船权；
8. 船舶“所有人”系指在船舶登记簿或登记该船舶的同等登记簿被登记为该船舶的所有人的任何人；
9. “购买人”系指在司法出售中船舶被出售给其的任何人；
10. “后续购买人”系指从第 5 条所述的司法出售证书记载的购买人购买船舶的人；
11. “司法出售国”系指在其境内实施船舶司法出售的国家。

第 3 条 适用范围

1. 本公约仅适用于符合下列条件的船舶司法出售：
 - (1) 司法出售是在一个缔约国内实施的；以及
 - (2) 在出售之时船舶实际处于司法出售国的领土内。
2. 本公约不适用于军舰或海军辅助舰艇或由一国拥有或经营的并在临近司法出售前仅用于政府非商业服务的其他船舶。

第 4 条 司法出售通知书

1. 司法出售应当根据司法出售国的法律实施，该法律也应当载有司法出售完成之前质疑司法出售的程序并确定本公约中的出售时间。
2. 虽有第 1 款的规定，但第 5 条下的司法出售证书只应当在根据第 3 款至第 7 款的规定在船舶司法出售之前发出司法出售通知书的前提下方可签发。
3. 司法出售通知书应当发送给：
 - (1) 船舶登记机关或登记该船舶的同等登记机关；
 - (2) 所有抵押权或其同种权利以及已登记的对船权的享有人，前提是登记该权利的登记簿以及根据登记国法律需要登记的任何文书均可开放供公众查询，并且登记簿的摘要和登记文书的副本可从登记机关获取；
 - (3) 所有船舶优先权人，前提是他们已经根据司法出售国的规则和程序就受船舶优先权担保的请求权通知了实施司法出售的法院或其他公共机构；
 - (4) 当时的船舶所有人；及
 - (5) 在该船舶获准光船租赁登记的情况下：

- ① 在光船租赁登记簿登记为该船舶的光船承租人的人；及
 - ② 光船租赁登记机关。
4. 司法出售通知书应当根据司法出售国法律发出，并应当至少包含附件一述及的信息。
5. 司法出售通知书还应当：
- (1) 在司法出售国可获得的报刊或其他出版物上予以公告发布；及
 - (2) 发送给第 11 条所述的存放处以供公布。
6. 就向存放处发送通知书而言，如果司法出售通知书并非以存放处工作语文编写，则应当附有附件一所述信息的任何一种工作语文的译本。
7. 在确定需向其发送司法出售通知书的任何人的身份或地址时，下列各项为可依赖的充分信息：
- (1) 船舶登记簿或登记该船舶的同等登记簿或对船舶进行光船租赁登记的登记簿所记载的信息；
 - (2) 登记抵押权或其同种权利或已登记的对船权的登记簿所记载的信息，条件是该信息有别于船舶登记簿或同等登记簿所载信息；及
 - (3) 根据第 3 款第(3)项通知的信息。

第 5 条

司法出售证书

1. 在根据司法出售国法律赋予船舶清洁物权的司法出售完成后，并且该司法出售的实施符合该法律的要求和本公约的要求，实施司法出售的法院或其他公共机构或司法出售国的其他主管机构应当根据其规则和程序，向购买人签发司法出售证书。
2. 司法出售证书应当充分采用附件二所载范本的格式并记载以下事项：
- (1) 关于该船舶的出售符合司法出售国法律要求和本公约要求的说明；
 - (2) 关于司法出售已赋予购买人对该船舶的清洁物权的说明；
 - (3) 司法出售国的名称；
 - (4) 证书签发机构的名称、地址以及联系方式；
 - (5) 实施司法出售的法院或其他公共机构的名称及出售日期；
 - (6) 船舶和船舶登记机关或登记该船舶的同等登记机关的名称；
 - (7) 该船舶的国际海事组织编号，或在无法提供该编号时能够识别该船舶的其他信息；
 - (8) 临近司法出售前的船舶所有人的名称及住所或主要营业地地址；
 - (9) 购买人的名称及住所或主要营业地地址；

- (10) 证书的签发地点和日期；及
 - (11) 证书签发机构的签名或盖章或以其他方式对证书真实性的确认。
3. 司法出售国应当要求将司法出售证书迅速发送给第 11 条所述的存放处予以公布。
4. 司法出售证书和证书的任何译本应当免于认证或类似手续。
5. 在不影响第 9 条和第 10 条的情况下，司法出售证书是其所载事项的充分证据。
6. 司法出售证书可采用电子记录的形式，前提是：
- (1) 其所含信息可以调取以供后续查询使用；
 - (2) 使用了一种可靠方法来识别证书签发机构；及
 - (3) 使用了一种可靠方法来甄别除附加任何背书以及正常通信、存储和显示过程中产生的任何改动之外在电子记录生成后对电子记录的任何更改。
7. 司法出售证书不得仅以其系电子形式为由而被拒绝。

第 6 条

司法出售的国际效力

已签发第 5 条所述的司法出售证书的司法出售应当在每一其他缔约国具有赋予购买人对船舶清洁物权的效力。

第 7 条

登记机关的行动

1. 经购买人或后续购买人的请求并出示第 5 条所述的司法出售证书，缔约国的登记机关或其他主管机构应当在不违反第 6 条的前提下根据其规则和程序，视不同情况：
- (1) 从登记簿中注销在司法出售完成前已经登记的附着于该船舶的任何抵押权或其同种权利和任何已登记的对船权；
 - (2) 从登记簿中注销该船舶，并签发注销证书以办理新的登记；
 - (3) 将该船舶登记在购买人或后续购买人的名下，前提是该船舶和拟把船舶登记在其名下的人符合登记国法律的要求；
 - (4) 根据司法出售证书记载的任何其他相关事项对登记簿进行更新。
2. 经购买人或后续购买人请求并出示第 5 条所述的司法出售证书，准予该船舶光船租赁登记的缔约国的登记机关或其他主管机构应当从光船租赁登记簿中注销该船舶，并签发注销证书。
3. 如果司法出售证书并非以登记机关或其他主管机构官方语文签发，登记机关或其他主管机构可以要求购买人或后续购买人出示经核证的该官方语文的译本。

4. 登记机关或其他主管机构还可要求购买人或后续购买人提交司法出售证书经核证的副本供其存档。

5. 如果登记机关或其他主管机构所在国的法院根据第 10 条认定第 6 条下的司法出售效力明显违反该国公共政策，则第 1 款和第 2 款不适用。

第 8 条

不得扣船

1. 如果因在船舶司法出售前产生的请求权而向缔约国法院或其他司法机构申请扣押船舶或对船舶采取任何其他类似措施，经出示第 5 条所述的司法出售证书，法院或其他司法机构应当驳回该申请。

2. 如果船舶因在船舶司法出售前产生的请求权而被缔约国法院或其他司法机构命令扣押或采取类似措施，经出示第 5 条所述的司法出售证书，法院或其他司法机构应当命令解除对该船舶的扣押。

3. 如果司法出售证书并非以法院或其他司法机构的官方语文签发，法院或其他司法机构可以要求证书出示人出示经核证的该官方语文的译本。

4. 如果法院或其他司法机构视不同情况认定驳回申请或命令解除对船舶的扣押将明显违反该国公共政策，则第 1 款和第 2 款不适用。

第 9 条

对撤销和中止司法出售的管辖权

1. 司法出售国的法院拥有对于审理撤销在其境内实施并赋予船舶清洁物权的船舶司法出售或中止其效力的任何请求或申请的专属管辖权，此项管辖权延伸适用于就质疑第 5 条所述司法出售证书的签发所提出的任何请求或申请。

2. 缔约国法院应当拒绝就撤销在另一缔约国实施的赋予船舶清洁物权的船舶司法出售或中止其效力的任何请求或申请行使管辖权。

3. 司法出售国应当要求，把撤销已根据第 5 条第 1 款签发证书的司法出售或中止其效力的法院决定迅速发送给第 11 条所述存放处以供公布。

第 10 条

司法出售不具国际效力的情形

船舶司法出售在司法出售国以外的另一缔约国将不具有第 6 条规定的效力，条件是该缔约国法院认定该效力将明显违反该国的公共政策。

第 11 条

存放处

1. 存放处应当为国际海事组织秘书长或由联合国国际贸易法委员会指定的某一机构。

2. 在收到根据第 4 条第 5 款发送的司法出售通知书、根据第 5 条第 3 款发送的司法出售证书或根据第 9 条第 3 款发送的决定书后，存放处应当以及时的方式按照收到时的格式和语文予以公布。

3. 存放处还可以接收虽已批准、接受、核准或加入本公约但本公约尚未对其生效的国家发来的司法出售通知书并可予以公布。

第 12 条

缔约国主管机构之间的联系

1. 为本公约之目的，缔约国的主管机构应当被授权直接与任何其他缔约国的主管机构进行通信联系。

2. 本条规定概不影响缔约国之间可能存在的有关民商事司法协助的任何国际协定的适用。

第 13 条

与其他国际公约的关系

1. 本公约的规定概不影响《内河航行船舶登记公约》(1965 年)及其《关于扣押和强制出售内河航行船舶的第 2 号议定书》的适用，包括对该公约或议定书的任何后续修订书。

2. 在不影响第 4 条第 4 款的情况下，也已加入《关于向国外送达民事或商事司法文书和司法外文书公约》(1965 年)的本公约缔约国可使用该公约所规定的途径以外的其他途径向国外发送司法出售通知书。

第 14 条

赋予国际效力的其他依据

本公约的规定概不排除一国根据任何其他国际协定或可适用的法律赋予在另一国实施的船舶司法出售以效力。

第 15 条

不受本公约规范的事项

1. 本公约的规定概不影响：

- (1) 司法出售所得款项分配的程序或优先顺序；或
- (2) 向司法出售前拥有船舶或对船舶享有所有权权利的人提出的任何对人请求权。

2. 此外，本公约不规范根据第 9 条第 1 款行使管辖权的法院作出的决定在可适用的法律下的效力。

第 16 条

保存人

兹指定联合国秘书长为本公约保存人。

第 17 条

签署、批准、接受、核准、加入

1. 本公约开放供各国签署。
2. 本公约须经签署国批准、接受或核准。
3. 本公约自开放供签署之日起向未签署本公约的所有国家开放以供加入。
4. 批准书、接受书、核准书或加入书应当交存保存人。

第 18 条

区域经济一体化组织的参与

1. 由主权国家组成并对本公约规范的某些事项拥有权限的区域经济一体化组织同样可以签署、批准、接受、核准或加入本公约。在所述情况下，如果区域经济一体化组织对本公约所规范事项拥有权限，该组织享有的权利和承担的义务应当与缔约国相同。就第 21 条和第 22 条而言，由区域经济一体化组织交存的文书不应被额外计入由其成员国交存的文书。

2. 区域经济一体化组织应当作出声明，列明权限已由其成员国转移给该组织的受本公约规范的具体事项。根据本款作出声明后，如果权限的分配发生包括权限又有新的转移等任何变化，区域经济一体化组织应当迅速通知保存人。

3. 在本公约中，凡提及“一国”、“各国”、“缔约国”或“各缔约国”之处，根据需要同等适用于区域经济一体化组织。

4. 本公约不影响区域经济一体化组织在本公约之前或者之后通过的有关下列事项的规则的适用：

- (1) 涉及司法出售通知书在此类组织成员国之间的传送；或
- (2) 涉及可在此类组织成员国之间适用的管辖权规则。

第 19 条

非统一法律制度

1. 如果一国在本公约所涉事项上拥有适用不同法律制度的两个或多个领土单位，该国可以声明本公约延伸适用于其全部领土单位或仅适用于其中某个或某些领土单位。

2. 根据本条所作声明应当载明适用本公约的领土单位。

3. 如果一国未根据第 1 款作出任何声明，本公约应当适用于该国的全部领土单位。

4. 如果一国在本公约所涉事项上拥有适用不同法律制度的两个或多个领土单位：

- (1) 凡述及该国法律、规则或程序之处，应当视情况被解释为是指相关领土单位生效的法律、规则或程序；
- (2) 凡述及该国主管机构之处，应当视情况被解释为是指相关领土单位的主管机构。

第 20 条

声明的程序和效力

1. 根据第 18 条第 2 款和第 19 条第 1 款所作声明，应当在签署、批准、接受、核准或加入之时作出。对签署之时所作的声明，须在批准、接受或核准之时予以确认。

2. 声明及其确认应当以书面形式作出，并正式通知保存人。

3. 声明在本公约对相关国家生效之时同时生效。

4. 根据第 18 条第 2 款和第 19 条第 1 款作出声明的任何国家均可随时以书面形式正式通知保存人修改或撤回其声明。所作修改或撤回应当在保存人收到通知之日起 180 天后生效。如果保存人在本公约对相关国家生效前收到修改或撤回的通知书，该修改或撤回应当在本公约对该国生效之时同时生效。

第 21 条

生效

1. 本公约于第三份批准书、接受书、核准书或加入书交存之日起 180 天后生效。

2. 当一国在第三份批准书、接受书、核准书或加入书交存之后批准、接受、核准或加入本公约，本公约于该国交存批准书、接受书、核准书或加入书之日起 180 天后对其生效。

3. 本公约仅适用于在其对司法出售国生效后命令或核准的司法出售。

第 22 条

修订

1. 任何缔约国均可向联合国秘书长提交修订案以建议对本公约进行修订。秘书长应当立即将所提修订案转发各缔约国，提请其就其是否赞成召开缔约国会议以对该修订提案进行审议和表决发表意见。自转发之日起 120 天内，如果有不少于三分之一的缔约国赞成召开这一会议，秘书长应当在联合国主持下召开会议。

2. 缔约国会议应当尽一切努力就每项修订案达成一致。如果竭尽一切努力而仍未能协商一致，作为最后手段，该修订案须有出席会议并参加表

决的缔约国的三分之二多数票赞成方可通过。就本款而言，区域经济一体化组织的投票不应被计入在内。

3. 获得通过的修订案应当由保存人提交给所有缔约国批准、接受或核准。

4. 获得通过的修订案应当在第三份批准书、接受书或核准书交存之日起 180 天后生效。修订案一经生效，即应当对已经表示同意受其约束的缔约国具有约束力。

5. 对于在第三份批准书、接受书或核准书交存后批准、接受或核准修订案的缔约国，该修订案应当于该缔约国交存批准书、接受书或核准书之日起 180 天后对其生效。

第 23 条

退约

1. 缔约国可以书面形式正式通知保存人宣布其退出本公约。退约可仅限于适用本公约的、非统一法律制度的某领土单位。

2. 退约于保存人收到通知之日起 365 天后生效。通知中申明退约生效需更长期限的，退约于保存人收到通知之日后该更长期限期满时生效。本公约将继续适用于退约生效前已经签发了第 5 条所述司法出售证书的司法出售。

本公约正本一份，阿拉伯文、中文、英文、法文、俄文和西班牙文文本同为作准文本。

船舶司法出售国际效力公约附件一

司法出售通知书所应包含的基本信息

1. 关于为《联合国船舶司法出售国际效力公约》的目的发送司法出售通知书的说明
2. 司法出售国的名称
3. 命令、核准或确认司法出售的法院或其他公共机构
4. 司法出售程序的参考编号或其他识别符号
5. 船舶的名称
6. 登记机关
7. 国际海事组织编号
8. (在无法提供国际海事组织编号时)能够识别该船舶的其他信息
9. 所有人的名称
10. 所有人住所或主要营业地地址
11. (在以公开拍卖进行司法出售时)公开拍卖的预定日期、时间和地点
12. (在以非公开协议进行司法出售时)由法院或其他公共机构命令的司法出售的时限等全部有关事项
13. 确认司法出售赋予船舶清洁物权的说明或在司法出售是否赋予清洁物权不确定时就司法出售不赋予清洁物权情况的说明
14. 司法出售国法律要求的其他信息，特别是被视为系保护通知书接收人利益所必需的任何信息

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根据《联合国船舶司法出售国际效力公约》第 5 条的规定签发
兹证明：

- (1) 下述船舶已通过符合司法出售国法律要求和《联合国船舶司法出售国际效力公约》要求的司法出售方式售出；并且
- (2) 司法出售已赋予购买人对该船舶的清洁物权。

- 在 (地点) 于 (日期)

签发机构的签名和/或盖章或以其他方式对证书真实性的确认

اتفاقية الأمم المتحدة المتعلقة بالآثار الدولية للبيع القضائي للسفن

إن الدول الأطراف في هذه الاتفاقية،

إن تؤكد من جديد اقتناعها بأن التجارة الدولية القائمة على المساواة والمنفعة المتبادلة عنصر مهم في تعزيز العلاقات الودية بين الدول،

وإن تضع في اعتبارها الدور الحاسم الذي يؤديه النقل البحري في التجارة والنقل الدوليين، والقيمة الاقتصادية الكبيرة للسفن المستخدمة في الملاحة البحرية والداخلية على السواء، والوظيفة التي تؤديها البيوع القضائية بوصفها وسيلة لإنفاذ المطالبات،

وإن ترى أن توفير الحماية القانونية الكافية للمشتريين قد يؤثر إيجاباً في السعر المتحصل عليه في البيوع القضائية للسفن، بما يعود بالنفع على مالكي السفن والدائنين على السواء، بمن في ذلك حائزو الامتيازات البحرية وممولو السفن،

وإن ترغب، لهذا الغرض، في إرساء قواعد موحدة تشجع على تعميم المعلومات عن البيوع القضائية المرتقبة على الأطراف المهمة وتمنح آثاراً دولية للبيع القضائي للسفن المباعة خالية ومتحللة من أي رهن أو رهن غير حيازي ومن أي التزام، لأغراض منها تسجيل السفن،

اتفقت على ما يلي:

المادة 1

الغرض من الاتفاقية

تحكم هذه الاتفاقية الآثار الدولية المترتبة على بيع قضائي لسفينة يمنح المشتري حق ملكية خالصاً.

المادة 2

التعريف

لأغراض هذه الاتفاقية:

(أ) "البيع القضائي" للسفينة يعني أي عملية بيع لسفينة:

'1' تأمر بها أو تقرها أو تؤكدتها محكمة أو سلطة عمومية أخرى إما عن طريق مزاد علني أو باتفاق خاص يتم تحت إشراف محكمة وبموافقتها؛

'2' تتاح فيها عائدات البيع للدائنين؛

(ب) "السفينة" تعني أي سفن أو مراكب أخرى مسجلة في سجل متاح لاطلاع الجمهور قد تكون

خاضعة للحجز أو لتبوير مماثل يمكن أن يفرض إلى بيع قضائي بموجب قانون دولة البيع القضائي؛

(ج) "حق الملكية الخالص" يعني حق الملكية متحلاً وخالياً من أي رهن أو رهن غير حيازي ومن أي التزام؛

(د) "الرهن أو الرهن غير الحيازي" يعني أي رهن أو رهن غير حيازي واقع على السفينة ومسجل في الدولة التي تكون السفينة مسجلة في سجل السفن لديها أو في سجل مكافئ؛

(هـ) "الالتزام" يعني أي حق، أياً كانت ماهيته وكيفية نشأته، يمكن المطالبة به تجاه السفينة، سواء عن طريق الحجز أو الحجز التحفظي أو غير ذلك، وهو يشمل الامتياز البحري والامتياز غير البحري والقيّد العيني وحق الانتفاع وحق الاحتفاظ بالحيازة ولكن لا يشمل الرهن أو الرهن غير الحيازي؛

(و) "الالتزام المسجل" يعني أي التزام مسجل في هيئة سجل السفن أو هيئة سجل مكافئة تكون السفينة مسجلة فيها أو أي سجل آخر تسجل فيه الرهون أو الرهون غير الحيازية؛

(ز) "الامتياز البحري" يعني أي التزام معترف به على أنه امتياز بحري على سفينة بموجب القانون المنطبق؛

(ح) "مالك" السفينة يعني أي شخص مسجل بوصفه مالك السفينة في سجل السفن أو سجل مكافئ تكون السفينة مسجلة فيه؛

(ط) "المشتري" يعني أي شخص تباع له السفينة من خلال البيع القضائي؛

(ي) "المشتري اللاحق" يعني الشخص الذي يشتري السفينة من المشتري المذكور في شهادة البيع القضائي المشار إليها في المادة 5؛

(ك) "دولة البيع القضائي" تعني الدولة التي يجري فيها البيع القضائي للسفينة.

المادة 3

نطاق الانطباق

1 - تنطبق هذه الاتفاقية فقط على بيع قضائي لسفينة إذا:

(أ) أجري البيع القضائي في دولة طرف؛ و

(ب) كانت السفينة موجودة مادياً داخل إقليم دولة البيع القضائي في وقت ذلك البيع.

2 - لا تنطبق هذه الاتفاقية على السفن الحربية أو القطع البحرية المساعدة ولا على السفن الأخرى التي تملكها أو تشغلها دولة وتكون مستخدمة، فوراً قبل وقت البيع القضائي، في الخدمة الحكومية غير التجارية دون غيرها.

المادة 4

الإشعار بالبيع القضائي

1 - يجري البيع القضائي وفقا لقانون دولة البيع القضائي، الذي يتعين أيضا أن يتضمن إجراءات للطعن في البيع القضائي قبل إتمامه وأن يحدد وقت البيع لأغراض هذه الاتفاقية.

2 - بصرف النظر عن الفقرة 1، لا تصدر شهادة بيع قضائي بموجب المادة 5 إلا إذا وُجه إشعار بالبيع القضائي قبل البيع القضائي للسفينة وفقا للمتطلبات الواردة في الفقرات 3 إلى 7.

3 - يوجه الإشعار بالبيع القضائي إلى الجهات التالية:

(أ) هيئة سجل السفن أو هيئة سجل مكافئة تكون السفينة مسجلة فيها؛

(ب) جميع حائزي أي رهن أو رهن غير حيازي وأي التزام مسجل، شريطة أن يكون السجل الذي قُيد فيه، هو وأي صك يلزم تسجيله بموجب قانون دولة التسجيل، متاحا لاطلاع الجمهور وأن يكون من الممكن الحصول على مستخرجات من السجل ونسخ من هذه الصكوك من هيئة السجل؛

(ج) جميع حائزي أي امتياز بحري، شريطة أن يكونوا قد أشعروا المحكمة أو السلطة العمومية الأخرى التي تجري البيع القضائي بالمطالبة التي يضمنها الامتياز البحري وفقا لأنظمة وإجراءات دولة البيع القضائي؛

(د) مالك السفينة في ذلك الحين؛

(هـ) إذا منحت السفينة تسجيل مشاركة تأجير سفينة غير مجهزة:

'1' الشخص المسجل بوصفه مستأجر السفينة غير المجهزة في سجل مشاركة تأجير السفن غير المجهزة؛

'2' هيئة سجل مشاركة تأجير السفن غير المجهزة.

4 - يوجه الإشعار بالبيع القضائي وفقا لقانون دولة البيع القضائي ويتضمن، كحد أدنى، المعلومات المذكورة في المرفق الأول.

5 - بالإضافة إلى ما تقدم، فإن الإشعار بالبيع القضائي:

(أ) يُنشر بإعلان في الصحف أو منشور آخر متاح في دولة البيع القضائي؛

(ب) يحال إلى جهة الإيداع المشار إليها في المادة 11 لغرض النشر.

6 - لغرض إبلاغ الإشعار إلى جهة الإيداع، إذا لم يكن الإشعار بالبيع القضائي بلغة عمل جهة الإيداع، أرفق بترجمة للمعلومات المذكورة في المرفق الأول إلى لغة العمل تلك، أيا كانت.

7 - عند تحديد هوية أو عنوان أي شخص يلزم توجيه الإشعار بالبيع القضائي إليه، يكفي الاعتماد على ما يلي:

(أ) المعلومات الواردة في سجل السفن أو سجل مكافئ تكون السفينة مسجلة فيه أو في سجل مشاركة تأجير السفن غير المجهزة؛

(ب) المعلومات المحددة في السجل الذي سُجل فيه الرهن أو الرهن غير الحيادي أو الالتزام المسجل، إذا كان مختلفاً عن سجل السفن أو السجل المكافئ؛

(ج) المعلومات المشعر بها بموجب الفقرة الفرعية (ج) من الفقرة 3.

المادة 5

شهادة البيع القضائي

1 - عند إتمام بيع قضائي منح حق ملكية خالصا للسفينة بموجب قانون دولة البيع القضائي وأجري وفقاً لمتطلبات ذلك القانون ومتطلبات هذه الاتفاقية، تصدر المحكمة أو السلطة العمومية الأخرى التي أجرت البيع القضائي، أو أي سلطة مختصة أخرى في دولة البيع القضائي، وفقاً لأنظمتها وإجراءاتها، شهادة بالبيع القضائي إلى المشتري.

2 - تتبع شهادة البيع القضائي بصورة أساسية شكل النموذج الوارد في المرفق الثاني، وتحتوي على ما يلي:

(أ) بيان يفيد بأن السفينة بيعت وفقاً لمتطلبات قانون دولة البيع القضائي ومتطلبات هذه الاتفاقية؛

(ب) بيان يفيد بأن البيع القضائي منح المشتري حق ملكية السفينة خالصاً؛

(ج) اسم دولة البيع القضائي؛

(د) اسم السلطة المصدرة للشهادة وعنوانها وبيانات الاتصال بها؛

(هـ) اسم المحكمة أو السلطة العمومية الأخرى التي أجرت البيع القضائي وتاريخ البيع؛

(و) اسم السفينة وهيئة سجل السفن أو هيئة السجل المكافئة التي تكون السفينة مسجلة فيها؛

(ز) رقم تسجيل السفينة لدى المنظمة البحرية الدولية أو، إن لم يتوافر ذلك، أي معلومات أخرى يمكن من خلالها تحديد هوية السفينة؛

(ح) اسم مالك السفينة قبل البيع القضائي مباشرة وعنوان محل إقامته أو مكان عمله الرئيسي؛

(ط) اسم المشتري وعنوان محل إقامته أو مكان عمله الرئيسي؛

(ي) مكان وتاريخ إصدار الشهادة؛

(ك) توقيع أو ختم السلطة المصدرة للشهادة أو أي تأكيد آخر لصحة الشهادة.

- 3 - توجب دولة البيع القضائي إحالة شهادة البيع القضائي على وجه السرعة إلى جهة الإيداع المشار إليها في المادة 11 لغرض النشر.
- 4 - تعفى شهادة البيع القضائي وأي ترجمة لها من التصديق القانوني أو أي متطلبات شكلية مماثلة.
- 5 - دون المساس بالمادتين 9 و 10، تكون شهادة البيع القضائي دليلاً كافياً على المسائل المتضمنة فيها.
- 6 - يجوز أن تتخذ شهادة البيع القضائي شكل سجل إلكتروني شريطة ما يلي:
 - (أ) تيسر الوصول إلى المعلومات الواردة فيه على نحو يتيح الرجوع إليها لاحقاً؛
 - (ب) استخدام طريقة موثوقة لتحديد هوية السلطة المصدرة للشهادة؛
 - (ج) استخدام طريقة موثوقة لتبين أي تحوير في السجل بعد وقت إنشائه، بخلاف إضافة أي مصادقة وأي تغيير يطرأ في السياق المعتاد للإرسال والتخزين والعرض.
- 7 - لا يجوز رفض شهادة البيع القضائي لمجرد كونها في شكل إلكتروني.

المادة 6

الآثار الدولية للبيع القضائي

يكون للبيع القضائي الذي تصدر بشأنه شهادة البيع القضائي المشار إليها في المادة 5 أثر في سائر الدول الأطراف يُمنح بموجبها مشتري السفينة حق ملكية خالصاً.

المادة 7

الإجراء الذي تتخذه هيئة السجل

- 1 - بناء على طلب المشتري أو المشتري اللاحق وعندما تقدّم شهادة البيع القضائي المشار إليها في المادة 5، يتعين على هيئة السجل أو سلطة مختصة أخرى في الدولة الطرف، حسب الحالة ووفقاً لأنظمتها وإجراءاتها، لكن دون المساس بالمادة 6:
 - (أ) أن تشطب من السجل أي رهن أو رهن غير حيازي وأي التزام مسجل مقرر على السفينة كان قد سُجل قبل إتمام البيع القضائي؛
 - (ب) أن تشطب السفينة من السجل وتصدر شهادة بشطب التسجيل لغرض التسجيل الجديد؛
 - (ج) أن تسجل السفينة باسم المشتري أو المشتري اللاحق بشرط آخر هو استيفاء السفينة والشخص الذي ستسجل السفينة باسمه متطلبات قانون دولة التسجيل؛
 - (د) أن تستكمل بيانات السجل بإدراج أي تفاصيل أخرى ذات صلة ترد في شهادة البيع القضائي.

- 2 - بناء على طلب المشتري أو المشتري اللاحق وعندما تقدّم شهادة البيع القضائي المشار إليها في المادة 5، يتعين على هيئة السجل أو سلطة مختصة أخرى في دولة طرف منحت فيها السفينة تسجيل

مشاركة تأجير سفينة غير مجهزة شطب السفينة من سجل مشاركة تأجير السفن غير المجهزة وإصدار شهادة بذلك الشطب.

3 - إذا لم تصدر شهادة البيع القضائي باللغة الرسمية لهيئة السجل أو سلطة مختصة أخرى، جاز لهيئة السجل أو السلطة المختصة الأخرى الطلب إلى المشتري أو المشتري اللاحق تقديم ترجمة مصدقة إلى هذه اللغة الرسمية.

4 - يجوز لهيئة السجل أو سلطة مختصة أخرى أيضا الطلب إلى المشتري أو المشتري اللاحق تقديم نسخة مصدقة من شهادة البيع القضائي لحفظها في سجلاتها.

5 - لا تنطبق الفقرتان 1 و 2 إذا قررت محكمة في دولة هيئة السجل أو سلطة مختصة أخرى بموجب المادة 10 أن أثر البيع القضائي بموجب المادة 6 سيكون على نحو يبين مخالفا للنظام العام لتلك الدولة.

المادة 8

الامتناع عن حجز السفينة

1 - إذا قُدم إلى محكمة أو سلطة قضائية أخرى في دولة طرف طلب يُلتزم فيه حجز سفينة أو اتخاذ أي تدبير مماثل آخر ضد سفينة بناء على مطالبة نشأت قبل بيع قضائي للسفينة، رفضت المحكمة أو السلطة القضائية الأخرى ذلك الطلب في حال قُدمت إليها شهادة البيع القضائي المشار إليها في المادة 5.

2 - إذا حُجزت سفينة أو اتخذ تدبير مماثل ضدها بأمر صادر عن محكمة أو سلطة قضائية أخرى في دولة طرف بناء على مطالبة نشأت قبل بيع قضائي للسفينة، أمرت المحكمة أو السلطة القضائية الأخرى برفع الحجز عن السفينة في حال قُدمت إليها شهادة البيع القضائي المشار إليها في المادة 5.

3 - إذا كانت شهادة البيع القضائي صادرة بغير اللغة الرسمية للمحكمة أو سلطة قضائية أخرى، جاز للمحكمة أو السلطة القضائية الأخرى الطلب إلى مقدم الشهادة تقديم ترجمة مصدقة إلى هذه اللغة الرسمية.

4 - لا تنطبق الفقرتان 1 و 2 إذا قررت المحكمة أو سلطة قضائية أخرى أن رفض طلب أو أمر رفع الحجز عن السفينة، حسب الحالة، سيكون على نحو يبين مخالفا للنظام العام لتلك الدولة.

المادة 9

اختصاص إبطال البيع القضائي وتعليق العمل به

1 - يكون لمحاكم دولة البيع القضائي الاختصاص الحصري بالنظر في أي دعوى أو طلب لإبطال بيع قضائي لسفينة جرى في تلك الدولة بمنح حق ملكية خالصا للسفينة أو لتعليق آثاره، ويشمل ذلك أي دعوى أو طلب للطعن في إصدار شهادة البيع القضائي المشار إليها في المادة 5.

2 - تقضي محاكم الدولة الطرف بعدم اختصاصها بالنظر في أي دعوى أو طلب لإبطال بيع قضائي لسفينة جرى في دولة طرف أخرى بمنح حق ملكية خالصا أو لتعليق آثاره.

- 3 - توجب دولة البيع القضائي أن يحال على وجه السرعة إلى جهة الإيداع المشار إليها في المادة 11 لغرض النشر قرار المحكمة بإبطال بيع قضائي لسفينة صدرت بشأنه شهادة وفقا للفقرة 1 من المادة 5 أو تعليق آثاره.

المادة 10

الظروف التي لا يكون فيها للبيع القضائي أثر دولي

لا يكون للبيع القضائي للسفينة الأثر الذي تنص المادة 6 على ترتيبه في دولة طرف أخرى غير دولة البيع القضائي إذا قررت محكمة في تلك الدولة الطرف الأخرى أن الأثر سيكون على نحو بَيّن مخالفا للنظام العام لتلك الدولة الطرف الأخرى.

المادة 11

جهة الإيداع

- 1 - تكون جهة الإيداع هي الأمين العام للمنظمة البحرية الدولية أو مؤسسة أخرى تسميها لجنة الأمم المتحدة للقانون التجاري الدولي.
- 2 - عند استلام إشعار ببيع قضائي محال بموجب الفقرة 5 من المادة 4 أو شهادة بيع قضائي محالة بموجب الفقرة 3 من المادة 5 أو قرار محال بموجب الفقرة 3 من المادة 9، تنتج جهة الإيداع الإشعار أو الشهادة أو القرار للجمهور في الوقت المناسب وفي الشكل واللغة اللذين ورد أو وردت بهما.
- 3 - يجوز لجهة الإيداع أيضا استلام إشعار ببيع قضائي منشؤه دولة صدّقت على هذه الاتفاقية أو قبلتها أو أقرتها أو انضمت إليها ولم يبدأ نفاذ الاتفاقية فيما يخصها بعد، وإتاحته للجمهور.

المادة 12

الاتصال بين سلطات الدول الأطراف

- 1 - لأغراض الاتفاقية، يؤذن لسلطات الدولة الطرف بأن تتراسل مباشرة مع سلطات أي دولة طرف أخرى.
- 2 - ليس في هذه المادة ما يمس بتطبيق أي اتفاق دولي بشأن المساعدة القضائية فيما يتصل بالمسائل المدنية والتجارية قد يكون قائما بين الدول الأطراف.

المادة 13

العلاقة بالاتفاقيات الدولية الأخرى

- 1 - ليس في هذه الاتفاقية ما يمس بتطبيق اتفاقية تسجيل سفن الملاحة الداخلية (1965) وبروتوكولها رقم 2 المتعلق بتوقيع الحجز التحفظي والبيع الجبري على سفن الملاحة الداخلية، بما في ذلك أي تعديل يُدخل في المستقبل على تلك الاتفاقية أو ذلك البروتوكول.

2 - دون المساس بالفقرة 4 من المادة 4، وكما هو الحال بين الدول الأطراف في هذه الاتفاقية التي هي أيضا أطراف في الاتفاقية المتعلقة بتبليغ الوثائق القضائية وغير القضائية إلى الخارج في المسائل المدنية والتجارية (1965)، يجوز إحالة الإشعار بالبيع القضائي إلى الخارج باستخدام قنوات أخرى غير تلك المنصوص عليها في تلك الاتفاقية.

المادة 14

الأسس الأخرى لمنح البيع القضائي أثرا دوليا

ليس في هذه الاتفاقية ما يمنح دولة طرفا من أن تمنح أثرا لبيع قضائي لسفينة أجري في دولة أخرى بموجب أي اتفاق دولي آخر أو بموجب القانون المنطبق.

المادة 15

المسائل التي لا تحكمها هذه الاتفاقية

1 - ليس في هذه الاتفاقية ما يمس بما يلي:

(أ) إجراء توزيع عائدات البيع القضائي أو أولوية توزيعها؛ أو

(ب) أي مطالبة شخصية تقام ضد شخص كان يملك السفينة أو يملك حقوق ملكية فيها قبل البيع القضائي.

2 - علاوة على ذلك، لا تحكم هذه الاتفاقية الآثار المترتبة، بموجب القانون المنطبق، على قرار محكمة تمارس اختصاصها بموجب الفقرة 1 من المادة 9.

المادة 16

الوديع

يُعَيِّن الأمين العام للأمم المتحدة وديعا لهذه الاتفاقية.

المادة 17

التوقيع والتصديق والقبول والإقرار والانضمام

1 - يُفْتَح باب التوقيع على هذه الاتفاقية أمام جميع الدول.

2 - تخضع هذه الاتفاقية للتصديق أو القبول أو الإقرار من جانب الدول الموقعة عليها.

3 - يُفْتَح باب الانضمام إلى هذه الاتفاقية أمام جميع الدول غير الموقعة عليها اعتبارا من تاريخ فتح باب التوقيع عليها.

4 - تودع صكوك التصديق أو القبول أو الإقرار أو الانضمام لدى الوديع.

المادة 18

مشاركة منظمات التكامل الاقتصادي الإقليمية

1 - يجوز لأي منظمة تكامل اقتصادي إقليمية، مؤلفة من دول ذات سيادة ولها اختصاص بمسائل معينة تحكمها هذه الاتفاقية أن تقوم، بالمثل، بالتوقيع على هذه الاتفاقية أو التصديق عليها أو قبولها أو إقرارها أو الانضمام إليها. ويكون لمنظمة التكامل الاقتصادي الإقليمية في تلك الحالة ما لدولة طرف من حقوق ويكون عليها ما على تلك الدولة الطرف من التزامات في حدود ما تختص به تلك المنظمة من مسائل تحكمها هذه الاتفاقية. ولأغراض المادتين 21 و 22، لا يُحتسب أي صك تودعه منظمة تكامل اقتصادي إقليمية إلى جانب الصكوك التي تودعها الدول الأعضاء فيها.

2 - تقدم منظمة التكامل الاقتصادي الإقليمية إعلاناً تحدد فيه المسائل التي تحكمها هذه الاتفاقية والتي أحيل الاختصاص بشأنها إلى تلك المنظمة من جانب الدول الأعضاء فيها. وتسارع منظمة التكامل الاقتصادي الإقليمية بإبلاغ الوديع بأي تغييرات تطرأ على توزيع الاختصاصات المذكورة في الإعلان المقدم بموجب هذه الفقرة، بما في ذلك ما يستجد من إحالات لتلك الاختصاصات.

3 - أي إشارة إلى "دولة" أو "دول" أو "دولة طرف" أو "دول أطراف" في هذه الاتفاقية تنطبق بالمثل على أي منظمة تكامل اقتصادي إقليمية، حيثما اقتضى السياق ذلك.

4 - لا تمس هذه الاتفاقية بتطبيق قواعد منظمة تكامل اقتصادي إقليمية، سواء اعتمدت تلك القواعد قبل هذه الاتفاقية أو بعدها:

(أ) فيما يتعلق بإحالة إشعار بيع قضائي بين الدول الأعضاء في تلك المنظمة؛ أو

(ب) فيما يتعلق بالقواعد الخاصة بالولاية القضائية المنطبقة بين الدول الأعضاء في تلك المنظمة.

المادة 19

النظم القانونية غير الموحدة

1 - إذا كان لدولة وحدتان إقليميتان أو أكثر تطبق فيها نظم قانونية مختلفة فيما يتعلق بالمسائل التي تتناولها هذه الاتفاقية، جاز لها أن تعلن أن هذه الاتفاقية تسري في جميع وحداتها الإقليمية أو على واحدة فقط أو أكثر من تلك الوحدات.

2 - تُذكر في الإعلانات الصادرة بموجب هذه المادة صراحة الوحدات الإقليمية التي تسري فيها هذه الاتفاقية.

3 - إذا لم تصدر الدولة إعلاناً بموجب الفقرة 1، سرت هذه الاتفاقية في جميع الوحدات الإقليمية لتلك الدولة.

4 - إذا كان لدولة وحدتان إقليميتان أو أكثر تطبق فيها نظم قانونية مختلفة فيما يتعلق بالمسائل التي تتناولها هذه الاتفاقية:

- (أ) فُسرت أي إشارة إلى القانون أو الأنظمة أو الإجراءات في تلك الدولة على أنها تشير، عند الاقتضاء، إلى القانون الساري أو الأنظمة أو الإجراءات السارية في الوحدة الإقليمية المعنية؛
- (ب) فُسرت أي إشارة إلى السلطة في تلك الدولة على أنها تشير، عند الاقتضاء، إلى السلطة في الوحدة الإقليمية المعنية.

المادة 20

إجراءات إصدار الإعلانات وسريان مفعولها

- 1 - تصدر الإعلانات بموجب الفقرة 2 من المادة 18 والفقرة 1 من المادة 19 وقت التوقيع أو التصديق أو القبول أو الإقرار أو الانضمام. وتخضع الإعلانات التي تصدر وقت التوقيع للتأكيد عند التصديق أو القبول أو الإقرار.
- 2 - تكون الإعلانات وتأكيداتها مكتوبة وتبلغ إلى الوديع رسمياً.
- 3 - يسري مفعول الإعلان بالتزامن مع بدء نفاذ هذه الاتفاقية فيما يخص الدولة المعنية.
- 4 - يجوز لأي دولة تصدر إعلاناً بموجب الفقرة 2 من المادة 18 والفقرة 1 من المادة 19 أن تغيره أو تسحبه في أي وقت بإشعار رسمي مكتوب يوجه إلى الوديع. ويسري مفعول التغيير أو السحب بعد انقضاء 180 يوماً على تاريخ تلقي الوديع ذلك الإشعار. وإذا تلقى الوديع الإشعار بالسحب أو التغيير قبل بدء نفاذ هذه الاتفاقية فيما يخص الدولة المعنية، سرى مفعول التغيير أو السحب بالتزامن مع بدء نفاذ هذه الاتفاقية فيما يخص تلك الدولة.

المادة 21

بدء النفاذ

- 1 - يبدأ نفاذ هذه الاتفاقية بعد انقضاء 180 يوماً على تاريخ إيداع الصك الثالث من صكوك التصديق أو القبول أو الإقرار أو الانضمام.
- 2 - إذا صدقت دولة على هذه الاتفاقية أو قبلتها أو أقرتها أو انضمت إليها بعد إيداع الصك الثالث من صكوك التصديق أو القبول أو الإقرار أو الانضمام، بدأ نفاذ هذه الاتفاقية فيما يخص تلك الدولة بعد انقضاء 180 يوماً من تاريخ إيداع صك التصديق أو القبول أو الإقرار أو الانضمام.
- 3 - لا تنطبق هذه الاتفاقية سوى على البيوع القضائية التي يؤمر بها أو تُقر بعد بدء نفاذ الاتفاقية فيما يخص دولة البيع القضائي.

المادة 22

التعديل

1 - يجوز لأي دولة طرف أن تقترح تعديلاً لهذه الاتفاقية بتقديمه إلى الأمين العام للأمم المتحدة. ويقوم الأمين العام عندئذ بإبلاغ الدول الأطراف بالتعديل المقترح طالبا إليها أن تبين ما إذا كانت تحبذ فكرة عقد مؤتمر للدول الأطراف كي ينظر في الاقتراح ويصوت عليه. فإذا أبدى ثلث الدول الأطراف على الأقل، في غضون 120 يوما من تاريخ الإبلاغ بالتعديل المقترح، تحبيذه عقد مؤتمر من هذا القبيل، عقد الأمين العام ذلك المؤتمر تحت رعاية الأمم المتحدة.

2 - يبذل مؤتمر الدول الأطراف قصارى جهده للتوصل إلى توافق في الآراء بشأن كل تعديل. وإذا ما استُنفدت كل الجهود الزامية إلى تحقيق توافق الآراء دون التوصل إلى ذلك التوافق، لزم، كحل أخير لاعتماد التعديل، توافر أغلبية الثلثين من أصوات الدول الأطراف الحاضرة والمصوتة في المؤتمر. ولأغراض هذه الفقرة، لا يحتسب صوت أي منظمة تكامل اقتصادي إقليمية.

3 - يعرض الوديع التعديل المعتمد على جميع الدول الأطراف لكي تصدق عليه أو تقبله أو تقره.

4 - يبدأ نفاذ التعديل المعتمد بعد انقضاء 180 يوما على تاريخ إيداع الصك الثالث من صكوك التصديق أو القبول أو الإقرار. ويصبح التعديل، عند بدء نفاذه، ملزماً للدول الأطراف التي أبدت موافقتها على الالتزام به.

5 - عندما تصدق دولة طرف على تعديل أو تقبله أو تقره بعد إيداع الصك الثالث من صكوك التصديق أو القبول أو الإقرار، يبدأ نفاذ ذلك التعديل فيما يخص تلك الدولة الطرف بعد انقضاء 180 يوما على تاريخ إيداع صك التصديق أو القبول أو الإقرار.

المادة 23

الانسحاب

1 - يجوز لدولة طرف أن تعلن انسحابها من هذه الاتفاقية بإشعار رسمي يوجه إلى الوديع كتابة. ويجوز أن يقتصر الانسحاب على بعض الوحدات الإقليمية ذات النظم القانونية غير الموحدة التي تنطبق فيها هذه الاتفاقية.

2 - يسري مفعول الانسحاب بعد انقضاء 365 يوما على تاريخ تلقي الوديع إشعاراً به. وإذا حددت في الإشعار فترة أطول لبدء نفاذ الانسحاب، سرى مفعول الانسحاب عند انقضاء تلك الفترة الأطول من تاريخ تلقي الوديع ذلك الإشعار. ويستمر انطباق هذه الاتفاقية على البيع القضائي، الذي صدرت بشأنه شهادة البيع القضائي المشار إليها في المادة 5، قبل بدء سريان مفعول الانسحاب.

حررت هذه الاتفاقية في أصل واحد تتساوى في الحجية نصوصه الإسبانية والإنكليزية والروسية والصينية والعربية والفرنسية.

المرفق الأول

الحد الأدنى من المعلومات التي يجب أن يتضمنها الإشعار بالبيع القضائي

- 1 - بيان يفيد بأن الإشعار بالبيع القضائي صادر لأغراض اتفاقية الأمم المتحدة المتعلقة بالآثار الدولية للبيع القضائي للسفن
- 2 - اسم دولة البيع القضائي
- 3 - المحكمة أو السلطة العمومية الأخرى التي أمرت بالبيع القضائي أو أقرته أو أكدته
- 4 - رقم مرجعي أو معرف آخر لإجراء البيع القضائي
- 5 - اسم السفينة
- 6 - هيئة السجل
- 7 - رقم التسجيل لدى المنظمة البحرية الدولية
- 8 - (في حال عدم وجود رقم تسجيل لدى المنظمة البحرية الدولية) أي معلومات أخرى يمكن من خلالها تحديد هوية السفينة
- 9 - اسم المالك
- 10 - عنوان محل إقامة المالك أو محل إقامته أو مكان عمله الرئيسي
- 11 - (إذا كان البيع القضائي عن طريق مزاد علني) التاريخ والموعود والمكان المتوقع للمزاد العلني
- 12 - (إذا كان البيع القضائي باتفاق خاص) أي تفاصيل ذات صلة بالبيع القضائي، بما فيها المهلة الزمنية، تأمر بها المحكمة أو سلطة عمومية أخرى
- 13 - بيان إما يؤكد أن البيع القضائي سيمنح حق ملكية خالصا للسفينة، أو إذا لم يكن معروفا ما إذا كان البيع القضائي سيمنح حق ملكية خالصا، بيان يوضح الظروف التي لن يمنح فيها البيع القضائي حق ملكية خال
- 14 - المعلومات الأخرى التي يقتضيها قانون دولة البيع القضائي، لا سيما أي معلومات تعتبر ضرورية لحماية مصالح الشخص الذي يتلقى الإشعار

المرفق الثاني

نموذج شهادة بيع قضائي

صادرة وفقا لأحكام المادة 5 من اتفاقية الأمم المتحدة المتعلقة بالآثار الدولية للبيع القضائي للسفن

هذه شهادة بما يلي:

- (أ) أن السفينة الوارد وصفها أدناه بيعت بيعا قضائيا وفقا لمتطلبات قانون دولة البيع القضائي ومتطلبات اتفاقية الأمم المتحدة المتعلقة بالآثار الدولية للبيع القضائي للسفن؛
- (ب) أن البيع القضائي منح المشتري حق ملكية السفينة خالصا.

1 -	دولة البيع القضائي
2 -	السلطة المصدرة لهذه الشهادة
1-2	الاسم
2-2	العنوان
3-2	رقم الهاتف/الفاكس/البريد الإلكتروني، إن وجد
3 -	البيع القضائي
1-3	اسم المحكمة أو السلطة العمومية الأخرى التي أجرت البيع القضائي
2-3	تاريخ البيع القضائي
4 -	السفينة
1-4	الاسم
2-4	هيئة السجل
3-4	رقم التسجيل لدى المنظمة البحرية الدولية
4-4	(في حال عدم وجود رقم تسجيل لدى المنظمة البحرية الدولية) أي معلومات أخرى يمكن من خلالها تحديد هوية السفينة
5 -	المالك قبل البيع القضائي مباشرة
1-5	الاسم

2-5 عنوان محل الإقامة أو مكان العمل الرئيسي

6 - المشتري

1-6 الاسم

2-6 عنوان محل الإقامة أو مكان العمل الرئيسي

بتاريخ:

صدرت في:

(التاريخ)

(المكان)

AR

توقيع و/أو ختم السلطة المصدرة أو
تأكيد آخر لصحة الشهادة

Explanatory Note to the United Nations Convention on the International Effects of the Judicial Sales of Ships⁽¹⁾

I. OVERVIEW OF THE CONVENTION

A. Objective

1. In many States, courts have the authority to order the sale of a ship to satisfy a legal claim. Such a claim is typically brought against the ship or shipowner to foreclose a ship mortgage (in the event of default in repayment) or to enforce a maritime lien against the ship. The judicial sale procedure is typically preceded by the arrest of the ship.

2. While the international community has achieved significant progress in harmonizing rules on the arrest of ships,⁽²⁾ much less progress has been achieved in harmonizing rules on the judicial sale of ships.⁽³⁾ As such, it remains for each State to prescribe the rules governing the procedure and legal effect of judicial sales ordered by its courts, although in many States the judicial sale has the legal effect of conferring “clean title” on the purchaser (i.e. it extinguishes all rights and interests that were previously attached to the ship, including mortgages and maritime liens). It also remains for each State to prescribe the rules governing the legal effect within its jurisdiction of foreign judicial sales.

3. The United Nations Convention on the International Effects of Judicial Sales of Ships (hereinafter “Convention”) harmonizes the latter rules. Put in another way, the Convention establishes a harmonized regime for giving international effect to judicial sales, while preserving domestic law governing the procedure of judicial sales and the circumstances in which judicial sales confer clean title. By ensuring

⁽¹⁾ Explanatory Note to the United Nations Convention on the International Effects of the Judicial Sales of Ships, © United Nations. Reproduced with permission of the United Nations. The Explanatory Note was being finalized at the time of printing of this publication. When finalized, the official version of the Explanatory Note will be found on the website of the United Nations Commission on International Trade Law website (<https://uncitral.un.org/>). The present explanatory note was prepared by the secretariat of the United Nations Commission on International Trade Law (UNCITRAL) for information purposes. It is not an official commentary on the Convention. A draft of the explanatory note (A/CN.9/1110, A/CN.9/1110/Add.1 and A/CN.9/1110/Add.2) was presented to the fifty-fifth session of UNCITRAL, which requested the secretariat to publish the text of the explanatory note (with updates to reflect the deliberations during the session) together with the text of the convention: *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 17 (A/77/17)*, para. 98.

⁽²⁾ See, e.g., the International Convention Relating to the Arrest of Seagoing Ships (1952), United Nations, *Treaty Series*, vol. 439, No. 6330, and International Convention on Arrest of Ships (1999), United Nations, *Treaty Series*, vol. 2797, No. 49196 (hereinafter the “Arrests Conventions”).

⁽³⁾ Efforts to harmonize rules on the recognition and enforcement of maritime liens and mortgages have addressed judicial sales. See, e.g., article 9 of the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages (1926), League of Nations, *Treaty Series*, vol. CXX, No. 2765, and articles 11 and 12 of the International Convention on Maritime Liens and Mortgages (1993), United Nations, *Treaty Series*, vol. 2276, No. 40538.

legal certainty as to the title that the purchaser acquires in the ship as it navigates internationally, the Convention is designed to maximize the price that the ship is able to attract in the market and the proceeds available for distribution among creditors, and to promote international trade.

B. Outline

4. The basic rule of the Convention is that a judicial sale conducted in one State Party which has the effect of conferring clean title on the purchaser has the same effect in every other State Party (article 6). The basic rule is subject only to a public policy exception (article 10).

5. The Convention regime prescribes additional rules which establish how a judicial sale is given effect after completion. The first is a requirement that the ship registry deregister the ship or transfer registration at the request of the purchaser (article 7). The second is a prohibition on arresting the ship for a claim arising from a pre-existing right or interest (i.e. a right or interest extinguished by the sale) (article 8). The third is the conferral of exclusive jurisdiction on the courts of the State of judicial sale to hear a challenge to the judicial sale (article 9).

6. To support the operation of the regime and to safeguard the rights of parties with an interest in the ship, the Convention provides for the issuance of two instruments - a notice of judicial sale (article 4) and a certificate of judicial sale (article 5). It also establishes an online repository of those instruments which is freely accessible to any interested person or entity (article 11).

7. The Convention regime is “closed”, in the sense that it applies only among States Parties (article 3). Yet it is “not exclusive”, in the sense that it does not displace other bases for giving effect to judicial sales (article 14).

C. Drafting history

8. The Convention was prepared by the United Nations Commission on International Trade Law (UNCITRAL) between 2019 and 2022.

9. The project originated in a proposal by the Comité Maritime International (CMI) to the fiftieth session of the Commission (Vienna, 321 July 2017) for possible future work on cross-border issues related to the judicial sale of ships (A/CN.9/923). The proposal drew attention to problems arising around the world from the failure to give recognition to foreign judgments ordering the sale of ships. It was stated that a short, self-contained instrument along the lines of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)⁽⁴⁾ could provide a solution to those problems by enabling clean title to vessels to be recognized across borders. While swift resolution of the questions raised by the proposal was encouraged, it was agreed within the Commission that additional information in respect of the breadth of the problem would be useful.⁽⁵⁾

⁽⁴⁾ United Nations, *Treaty Series*, vol. 330, No. 4739.

⁽⁵⁾ *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 456465.

10. The Commission therefore requested the CMI to develop and advance the proposal by holding a colloquium so as to provide additional information to the Commission and allow it to take an informed decision in due course. The Commission further agreed that UNCITRAL, through its secretariat, and States would support and participate in the Colloquium and to revisit the matter at a future session.⁽⁶⁾ To that end, following a request from the Government of Malta, the UNCITRAL secretariat extended a formal invitation to all member and observer States of UNCITRAL to participate in a high-level technical colloquium in respect of the cross-border judicial sale of ships.

11. The colloquium, which took place in February 2018, resulted in a number of findings. It was agreed that the “lack of legal certainty in relation to the clean title which a judicial sale is intended to confer on a buyer” led to problems in the de-registration process in the country of the former flag.⁽⁷⁾ It was also agreed that the lack of legal certainty created obstacles in respect of the clearance of all former encumbrances and liens, which in turn created a risk of costly and lengthy proceedings, thereby interrupting trade and shipping. Finally, there was broad agreement that the gap could be filled from a legal perspective by providing an instrument on the recognition of judicial sales of ships.

12. At its fifty-first session (New York, 25 June-13 July 2018), the Commission considered a proposal from the Government of Switzerland on possible future work on cross-border issues related to the judicial sale of ships (A/CN.9/944/Rev.1). The proposal summarized the outcomes and conclusions of the colloquium and requested that UNCITRAL undertake work to develop an international instrument on foreign judicial sales of ships and their recognition.

13. In support of the proposal, it was noted within the Commission that the lack of recognition of the judicial sale of ships had the potential to affect many areas of international trade and commerce, not simply the shipping industry, with several examples of that impact being provided. In support of work being undertaken by UNCITRAL, various parallels were drawn between the work being undertaken on recognition of insolvency-related judgments and a possible instrument on the judicial sale of ships.⁽⁸⁾

14. The Commission considered the proposal together with other suggestions for future work in the context of its deliberations on its work programme at its fifty-first session. After discussion, it was agreed that the topic of judicial sale of ships should be added to the work programme of the Commission.

15. At its thirty-fifth session (New York, 13-17 May 2019), Working Group VI considered the topic for the first time (A/CN.9/973), and decided that the draft convention on the recognition of foreign judicial sales of ships, prepared by the CMI and approved by the CMI Assembly in Beijing in 2014 (known as the “Beijing Draft”), would provide a useful basis for discussion (*ibid.*, para. 25). At its fifty-

⁽⁶⁾ *Ibid.*, para. 464465.

⁽⁷⁾ See A/CN.9/944/Rev.1, p. 5.

⁽⁸⁾ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 243.

second session (Vienna, 8-19 July 2019), the Commission expressed its satisfaction with the progress made by the Working Group.⁽⁹⁾

16. At its thirty-sixth session (Vienna, 18-22 November 2019), the Working Group continued its work on the basis of a first revision of the Beijing Draft (A/CN.9/WG.VI/WP.84), which had been prepared by the Secretariat to incorporate the deliberations and decisions of the Working Group at its thirty-fifth session (A/CN.9/1007). The Working Group considered several key provisions of the first revision (*ibid.*, paras. 11-98) and expressed a preliminary view that the instrument should take the form of a convention, while agreeing that a final decision on the matter should be made at a future session (*ibid.*, para. 99). At the resumed fifty-third session of the Commission (Vienna, 14-18 September 2020), support was expressed for the instrument taking the form of a convention, with the observation being made that only a convention was capable of ensuring the level of uniformity needed to affirm the international effects of judicial sales of ships.⁽¹⁰⁾ The Commission confirmed that the Working Group should continue its work to prepare an international instrument on the topic.⁽¹¹⁾

17. At its thirty-seventh session (Vienna, 14-18 December 2020), the Working Group continued its work on the basis of a second revision of the Beijing Draft (A/CN.9/WG.VI/WP.87), which had been prepared by the Secretariat to incorporate the deliberations and decisions of the Working Group at its thirty-sixth session (A/CN.9/1047/Rev.1). The Working Group proceeded with an article-by-article consideration of the second revision (*ibid.*, paras. 19-109) and agreed to continue working on the assumption that the instrument would take the form of a convention (*ibid.*, para. 15). At its thirty-eighth session (New York, 19-23 April 2021), the Working Group considered several outstanding issues from its thirty-seventh session on the basis of a third revision of the Beijing Draft (A/CN.9/WG.VI/WP.90), as well as proposals relating to the grounds for avoidance and to defining the time of judicial sale (A/CN.9/1053). At the fifty-fourth session of the Commission (Vienna, 28 June-16 July 2021), satisfaction was expressed with the progress made by the Working Group.⁽¹²⁾

18. At its thirty-ninth session (Vienna, 18-22 October 2021), the Working Group proceeded with a further article-by-article review of the draft convention on the basis of a fourth revision of the Beijing Draft (A/CN.9/WG.VI/WP.92), and made progress in its consideration of several open issues, including (a) dealing with clean title sales, (b) the content and function of the notice requirements for judicial sales benefiting from the recognition regime under the draft convention, (c) the content and issuance of the certificate of judicial sale, and (d) the functioning of the proposed repository mechanism (A/CN.9/1089).

19. At its fortieth session (New York 7-11 February 2022), the Working Group completed a further article-by-article review of the substantive provisions of a draft

⁽⁹⁾ *Ibid.*, *Seventy-fourth Session, Supplement No. 17* (A/74/17), para. 189.

⁽¹⁰⁾ *Ibid.*, *Seventy-fifth Session, Supplement No. 17* (A/75/17), part two, para. 47.

⁽¹¹⁾ *Ibid.*, para. 51(f).

⁽¹²⁾ *Ibid.*, *Seventy-sixth Session, Supplement No. 17* (A/76/17), para. 211.

convention and considered the preamble and final clauses of the draft convention on the basis of a fifth revision of the “Beijing Draft” that had been prepared by the Secretariat (A/CN.9/WG.VI/WP.94). The Working Group requested the Secretariat to revise the draft convention to reflect its deliberations and decisions during the session, and to transmit the revised draft to the Commission for consideration and possible approval at its fifty-fifth session (A/CN.9/1095). The Working Group also requested the Secretariat to circulate the revised draft to all Governments and relevant international organizations for comment, and to compile the comments received for the consideration of the Commission.

20. At its fifty-fifth session (New York, 27 June-15 July 2022), the Commission considered the revised draft (A/CN.9/1108) and a compilation of comments submitted by States and international organizations (A/CN.9/1109, A/CN.9/1109/Add.1, A/CN.9/1109/Add.2 and A/CN.9/1109/Add.3). The Commission finalized the text and, on 30 June 2022, approved the draft convention and submitted it to the General Assembly for adoption.⁽¹³⁾ The General Assembly adopted the Convention on 7 December 2022 by its resolution 77/100.

II. ARTICLE-BY-ARTICLE REMARKS

A. Preamble

21. The preamble recites the objective of the Convention and the considerations that led to its conclusion. It also recalls the connection between the Convention and the work of UNCITRAL, under whose auspices the Convention was prepared.

22. The first paragraph is common to many legislative texts prepared by UNCITRAL. Together with the second paragraph, it situates the Convention within the mandate of UNCITRAL to promote the “progressive harmonization and unification of the law of international trade”.⁽¹⁴⁾ The third paragraph reflects the belief of the drafters that the Convention will contribute to maximizing the price that a ship attracts in the market, and the proceeds available for distribution among creditors, by ensuring legal certainty as to the title that the purchaser acquires in the ship as it navigates internationally. The fourth paragraph reflects the objective of the Convention to establish a harmonized regime for giving international effect to judicial sales. It also alludes to the safeguards in the Convention that are aimed at protecting the rights of parties with an interest in the ship, including lienholders and ship financiers.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 92
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 94-97

⁽¹³⁾ Ibid., *Seventy-seventh Session, Supplement No. 17* (A/77/17), paras. 24-99.

⁽¹⁴⁾ General Assembly resolution 2205 (XXI), section I.

B. Article 1. Purpose

23. Article 1 declares - in positive terms - the basic operation of the Convention. It contrasts with article 3, which delimits its substantive and geographic scope of application.

24. Article 1 makes it clear that the Convention is concerned only with the “effects” of a judicial sale and thus not with the conduct of the judicial sale itself. This is confirmed in article 4, paragraph 1, although the provisions of the Convention dealing with the notice of judicial sale may have an “indirect” impact on the procedure of the judicial sale (see remarks below on article 4, paragraph 1).

25. Article 1 makes it clear that the Convention is concerned only with the effects of “judicial sales” and thus not with the effects of judgments in respect of such sales (e.g. decisions of a court ordering, approving or confirming a judicial sale). This is confirmed in article 6 (see remarks below on article 6).

26. Article 1 also makes it clear that the Convention is concerned only with judicial sales that (already) confer “clean title”. Unlike the International Convention on Maritime Liens and Mortgages (1993),⁽¹⁵⁾ the Convention does not address the question as to whether a judicial sale confers clean title, which is left to the law of the State of judicial sale. In some legal systems, a judicial sale within the meaning of the Convention will always confer clean title, whereas in other legal systems, it will not (see remarks below on the definition of “clean title” in article 2). Because article 3 does not address clean title as a matter of substantive scope, the Convention leaves it to its substantive provisions - notably article 6 - to limit its regime to judicial sales that confer clean title.

27. Article 1 refers to the “international” effects of a judicial sale to reflect the title and focus of the Convention. The reference does not mean that the Convention cannot apply, on its terms, in “domestic” cases. For instance, a certificate of judicial sale may be issued under article 5 for a ship registered in the State of judicial sale, and the certificate may be produced to the authorities of that State to trigger action on registration under article 7 or the prohibition of arrest under article 8.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 34 and 48
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 19-20
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 11, 40-42, 46-47
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 45, 94

⁽¹⁵⁾ See note 2 above.

<i>Document</i>	<i>Reference</i>
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 28-29
Note by the Secretariat on the interaction between a future instrument on the judicial sale of ships and selected HCCH Conventions	A/CN.9/WG.VI/WP.85, paras. 3-7

C. Article 2. Definitions

1. General

28. Article 2 defines key terms that are used in the Convention. The definitions are not presented in alphabetical order, but rather in order of the prominence of the defined term to the operation of the Convention and its relationship with other defined terms. Accordingly, article 2 starts by defining the meaning of a “judicial sale” of a “ship” that confers “clean title”, before defining the component elements of clean title (i.e. “mortgage or *hypothèque*” and “charge”, as well as “registered charge” and “maritime lien” that are particular types of charges), followed by selected parties involved in the judicial sale (i.e. “owner”, “purchaser” and “subsequent purchaser”).

29. Consistent with other legislative texts prepared by UNCITRAL, the use of a term in the singular includes the plural. This rule is particularly applicable for provisions that refer to the parties involved in the judicial sale.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 45, 94
Cover note by the Secretariat to the fifth revision of the Beijing Draft	A/CN.9/WG.VI/WP.94, para. 6

2. Definition of “judicial sale”

30. The term “judicial sale of a ship” is used throughout the Convention. The term defines the scope of application of the Convention and is the focus of its substantive provisions. The Convention defines separately the terms “judicial sale” and “ship”.

31. A judicial sale is a device used in many legal systems to allow a creditor to seek the assistance of a court or other public authority to force the disposal of an encumbered asset in order to liquidate the asset and satisfy the creditor’s right to payment of a monetary sum through access to the proceeds of sale. In effect, the judicial sale converts a claim against the asset into a claim against the proceeds, according to applicable priority rules.

32. The definition of “judicial sale” recognizes two key features of judicial sales:

- (a) The first feature is that, despite differences in procedure among legal systems, a judicial sale is conducted with the involvement of a court. This feature is reflected in subparagraph (i) of the definition;
- (b) The second feature is that a judicial sale is essentially a device that supports the enforcement of private rights. This feature is reflected in subparagraph (ii) of the definition.

(a) Subparagraph (i)

33. Subparagraph (i) recognizes that a judicial sale may be conducted under the authority of either a court or other public authority. The Convention does not itself confer that authority, which is commonly sourced from the laws of civil or admiralty procedure of the State of judicial sale. Jurisdiction with respect to judicial sales may be conferred on a single court or on multiple courts; the Convention does not interfere with a State’s internal allocation of jurisdiction.

34. The term “other public authority” is not defined in the Convention. It is not limited to a judicial authority (cf. article 8, in which the term “court” is used in apposition to “judicial authority”), even if international practice indicates that judicial sales are usually conducted under the authority of a court.⁽¹⁶⁾ Accordingly, a sale does not fail to satisfy subparagraph (i) merely because it is conducted under the authority of a public authority that does not exercise exclusively adjudicative functions. In particular, subparagraph (i) is not intended to narrow the meaning of “judicial sale” beyond the “forced sales” that are addressed in articles 11 and 12 of the International Convention on Maritime Liens and Mortgages (1993).⁽¹⁷⁾ However, the nature of the authority and the functions that it exercises may be indicative of a sale that does not satisfy subparagraph (ii).

35. Subparagraph (i) recognizes that a judicial sale is “ordered, approved or confirmed” by the relevant authority. Those words are designed to accommodate the different procedures for judicial sales among legal systems, according to which the relevant authority may be required to intervene at different stages of the proceedings (e.g. in some legal systems, a judicial sale is not subject to confirmation).

36. Nevertheless, the judicial sale must be carried out either by “public auction” or by “private treaty”.⁽¹⁸⁾ The Convention does not prescribe how either type of sale is carried out, which is left to the law of the State of judicial sale.⁽¹⁹⁾ International practice indicates that public auction is the more common - and in some

⁽¹⁶⁾ A 2010 survey carried out by the CMI on the judicial sale of ships indicated that judicial sales in the jurisdictions surveyed were always conducted either by a court or under the control or supervision of a court: see synopsis of replies to question 1.4 in the CMI Yearbook 2010 (Antwerp, 2011), pp. 267-271.

⁽¹⁷⁾ See note 2 above.

⁽¹⁸⁾ In earlier drafts of the convention, “judicial sale” was defined to include a sale carried out by “any other way provided for by the law of the State of judicial sale”.

⁽¹⁹⁾ Some elements of each type of sale can be gleaned from items 11 and 12 of annex I to the Convention.

legal systems the only - means by which a judicial sale is carried out.⁽²⁰⁾ In some legal systems, the judicial sale may involve a call for sealed bids as part of a public tender. The term “public auction” in subparagraph (i) is intended to cover those types of sales (in which case, the reference to the “anticipated date, time and place of public auction” in item 11 of annex I to the Convention is understood to refer to the anticipated date, time and place of “submission of bids”).

37. A judicial sale by “private treaty” is not the same as a private sale negotiated between the owner (or mortgagee) and prospective purchaser, but rather a sale that is carried out “under the supervision and with the approval of a court”. For that reason, it is sometimes referred to as a “hybrid sale”, although terminology differs among those legal systems in which private treaty sales are carried out. In some cases, a private treaty sale may result from a public tender process that is ordered by the court, while in other legal systems, the sale may result from direct arrangements between the mortgagee and prospective purchaser.

38. A public auction is typically held by a judicial officer or other person appointed by the court. In legal systems that recognize private treaty sales, that officer or appointed person may also intermediate in the sale process (e.g. by holding the public tender). The term “other public authority” in subparagraph (i) (and in item 3 of annex I and item 3.1 of annex II to the Convention) does not refer to the officer or appointed person that holds the public auction or public tender. Moreover, if the judicial sale proceedings are commenced on the basis of an enforceable title issued by another authority (e.g. a judgment or arbitral award), the term “other public authority” does not refer that other authority. Accordingly, a sale does not fail to satisfy subparagraph (i) merely because the enforceable title is not issued by a “public authority”.

39. In some legal systems, a judicial sale may be ordered and conducted prior to final determination of the claim on the basis of which the judicial sale proceedings were commenced. The definition of judicial sale is intended to accommodate such sales.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 20 and 90-91
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 16 and 18
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 31-33
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 18-23
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 30-33

⁽²⁰⁾ See synopsis of replies to question 1.5 in the CMI Yearbook 2010 (Antwerp, 2011), pp. 271-276.

(b) Subparagraph (ii)

40. Subparagraph (ii) is designed to distinguish forced sales for which the proceeds form part of government revenue, as may be the case in sales of ships that are seized in the enforcement of public law, such as tax, customs or criminal law.

41. The Convention does not define the term “creditor”. Typically, the term includes a person with a right to payment of a monetary sum that is secured by mortgage, maritime lien or other charge that is attached to the ship (i.e. the mortgagee or holder of the maritime lien or charge). Although a judicial sale is essentially a device that supports the enforcement of private rights, a sale does not fail to satisfy subparagraph (ii) merely because a public authority has a claim against the proceeds. For example, a maritime lien within the meaning of the Convention may secure a claim by a port authority for unpaid port dues. Moreover, a sale does not fail to satisfy subparagraph (ii) merely because it follows seizure of the ship by a public authority (e.g. seizure by tax or customs authorities).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 19, 89-90
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 35-39
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 30, 34-35
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 49-50

3. Definition of “ship”

42. As noted above (para. 30), the term “judicial sale of a ship” defines the scope of application of the Convention and is the focus of its substantive provisions. If the definition of “judicial sale” delimits that term by reference to the rights and procedures involved in the forced disposal of an asset, the definition of “ship” further delimits the term by reference to the type of asset involved.

43. The concept of a “ship” at law differs between legal systems and depends on the context in which it is used. The term “ship” has evaded international attempts to define its intrinsic features,⁽²¹⁾ and the Convention does not attempt to formulate such a definition. The definition of “ship” is designed to be broad and does not seek to delimit the types of vessels to which the Convention applies.

⁽²¹⁾ For instance, neither the International Convention Relating to the Arrest of Seagoing Ships (1952), International Convention on Maritime Liens and Mortgages (1993) or International Convention on Arrest of Ships (1999) defines the term “ship”.

44. The definition does not defer to the meaning of “ship” under the law of a particular State. Accordingly, the term should be given an autonomous meaning in accordance with the rules of treaty interpretation. Nevertheless, the requirement for a vessel to be “registered” and the requirement for the vessel to be “subject of an arrest or other similar measure capable of leading to a judicial sale under the law of the State of judicial sale” suggests that, in practice, only a vessel that falls within the meaning of the law of both the State of judicial sale and the State of registration will be a “ship” for the purposes of the Convention.

45. Unlike other maritime law conventions, the Convention does not draw a distinction between “seagoing vessels” and “inland navigation vessels”, and the term “ship” is intended to cover both types of vessels. Nevertheless, the requirement for the vessel to be “registered” and for the register to be “open to public inspection” means that, in practice, some inland navigation vessels will fall outside the definition of “ship”. Moreover, an inland navigation vessel may fall outside the Convention regime altogether by virtue of article 13, paragraph 1.

46. The term “ship” is not limited to vessels used for commercial navigation and therefore would typically cover pleasure craft (e.g. yachts and recreational boats), provided that the other requirements of the definition are satisfied. Note, however, that paragraph 2 of article 3 excludes from scope warships and certain other State-owned or operated vessels that may be used for non-commercial navigation.

47. The Convention acknowledges that different types of vessels within the meaning of “ship” may be entered in different registers (e.g. registers for pleasure craft, registers for inland navigation vessels, registers for seagoing vessels) and therefore does not assume the existence of a single register of ships in each State. This is confirmed by the definition of “owner” and other provisions of the Convention which recognize that the ship may be registered in the “register of ships” or “equivalent register”. Accordingly, a vessel does not fall outside the meaning of the term “ship” merely because of the identity of the register of ships.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 22, 28-32
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 26-28
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 30-31
Note by the Secretariat accompanying the second revision of the Beijing Draft	A/CN.9/WG.VI/WP.87/Add. 1, paras. 4-9

4. Definition of “clean title”

48. The concept of “clean title” is key to the basic rule of the Convention (i.e. that a judicial sale conducted in one State Party which has the effect of conferring clean title on the purchaser has the same effect in every other State Party). This is operationalized by article 6 (pursuant to which only a judicial sale for which a certificate of judicial sale issued has international effect) and article 5, paragraph 1 (pursuant to which only a judicial sale that confers clean title is issued with a certificate).

49. The concept of “title” refers to property rights in the ship that are vested in the purchaser. That title is “clean” if all other property rights in the ship that were vested in another person immediately prior to the judicial sale (i.e. encumbrances, rights “in re aliena”) are extinguished, and if all pre-existing mortgages, *hypothèques* or charges cease to attach to the ship. A sale does not fail to confer “clean title” merely because it does not extinguish a pre-existing right that is not a “charge” (e.g. a right of use that cannot be asserted against the ship).

50. As noted above (para. 26), whether a judicial sale confers clean title is a matter for the law of the State of judicial sale. In some legal systems, a judicial sale will only extinguish pre-existing property rights in the ship that are vested in lower-ranking creditors according to applicable priority rules (i.e. it will not extinguish property rights that have priority over the right of the creditor who commenced judicial sale proceedings). A sale that preserves pre-existing property rights does not confer “clean title” within the meaning of the Convention.

51. In some legal systems, title only becomes effective (in the sense of being opposable against others) once additional formalities are taken (e.g. registering the ship in the name of the purchaser). As the Convention does not address the transfer of ownership, whether a judicial sale confers “clean title” within the meaning of the Convention does not depend on whether those additional formalities are taken.

52. The Convention is concerned with clean title “to the ship”, and not with property rights in assets which are not comprised in the “ship”. As noted above (para. 44), the term “ship” should be given an autonomous meaning in accordance with the rules of treaty interpretation.

53. Unlike the International Convention on Maritime Liens and Mortgages (1993),⁽²²⁾ the Convention does not provide for the preservation of pre-existing mortgages or *hypothèques* or of charges that are “assumed by the purchaser”. If, under the law of the State of judicial sale, a pre-existing mortgage, *hypothèque* or charge remains attached to the ship, there is no conferral of “clean title” within the meaning of the Convention, and therefore the basic rule of the Convention does not apply. Conversely, whether or not the judicial sale extinguishes rights other than property rights in the ship (e.g. personal rights that may be enforced by a claim brought against the former shipowner) has no bearing on whether clean title has been conferred. This is reinforced by article 15, paragraph 1 (b).

⁽²²⁾ See note 2 above.

References to preparatory work

Document	Reference
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 33, 81
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 15, 49
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 37-38

5. Definition of “mortgage or hypothèque”

54. The term “mortgage or *hypothèque*” is one component of the definition of “clean title”. It is also used (a) to designate the persons to whom the notice of judicial sale is to be given under article 4 (i.e. “all holders of any mortgage or *hypothèque*” referred to article 4, paragraph 3 (b)), and (b) to designate the actions to be taken under article 7 (i.e. action to delete “any mortgage or *hypothèque* ... attached to the ship” referred to in article 7, paragraph 1 (a)).

55. Mortgages and *hypothèques* are essentially two different devices that create property rights in a ship to secure payment of a monetary sum. The security rights that each device creates differ between legal systems, and international efforts to harmonize rules on the recognition and enforcement of mortgages and *hypothèques* have not sought to define those rights. Moreover, either device may be unknown to the law in some legal systems (e.g. mortgages are more commonly associated with common law legal systems, while *hypothèques* are more commonly associated with civil law legal systems). Despite those differences, both a mortgage and a *hypothèque* attach to the ship and may be enforced by judicial sale regardless of change in shipowner.

56. The Convention does not attempt to define “mortgage or *hypothèque*” by reference to their intrinsic features nor does the definition defer to devices recognized as such under the law of a particular State (cf. definition of “maritime lien”). Instead, it is sufficient for the purposes of the Convention for the term “mortgage or *hypothèque*” to be defined by reference to the fact of registration in the State of registration (e.g. entry in the register of ships or separate register of security interests), which will produce the same result regardless of the State in which the issue of the existence of a “mortgage or *hypothèque*” arises. In practice, that issue will arise in the State of judicial sale (i.e. in determining the persons to whom the notice of judicial sale is to be given) and in the State of registration (i.e. in identifying the registry to take action to delete the mortgage or *hypothèque*). In both cases, the fact of registration delimits the scope of the term in a manner that is both suitable and workable.

57. The Convention acknowledges that a mortgage or *hypothèque* may be registered in a different register to the register in which the ship is registered. For example, a State may maintain a separate register of security interests in which

ship mortgages are registered. This is confirmed by the definition of “registered charge” and other provisions of the Convention (e.g. article 4, paragraph 7 (b)), and accommodated by the reference in article 7 to action taken by a registry or “other competent authority”.

58. The Convention refers to “mortgage or *hypothèque*” as a single defined term, rather than defining “mortgage” to include a *hypothèque* or applying the same definition to either “mortgage” and “*hypothèque*” as two defined (yet synonymous) terms. Referring to “mortgage or *hypothèque*” as a single defined term acknowledges that, in some languages, it may be sufficient to refer to a single device.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 21 and 97
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, paras. 45-48
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 16-17

6. Definition of “charge”

59. The term “charge” is the other component of the definition of “clean title”. It is also the basis for designating two types of charges - maritime liens and registered charges - whose holders are entitled to notification of the judicial sale under article 4. Singling out maritime liens and registered charges reflects their special treatment in other maritime law conventions.

60. The definition of charge is broad and is designed to cover any property right in the ship. The concept of charge is not limited by how it is denominated (as indicated by the non-exclusive list set out in the definition) or by how it may be asserted against the ship (e.g. by arrest or attachment). While a mortgage or *hypothèque* (and the rights it creates) would typically fall within the definition of “charge”, the definition expressly excludes those devices to reflect their separate treatment in other maritime law conventions.

61. Unlike the definition of “maritime lien” (a particular type of charge), the definition of “charge” does not defer to charges recognized as such under the law of a particular State. As the basic rule of the Convention is for a judicial sale that confers clean title in one State Party to confer clean title in every other State Party, and as clean title involves extinguishing all “charges”, it is neither necessary nor appropriate for the definition to involve a conflict of law analysis. Accordingly, a pre-existing charge recognized under the law of a State Party other than the State of judicial sale will not continue to attach to the ship merely because the particular type of charge is unknown to the law of the State of judicial sale.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 78-80
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 12-14
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, paras. 39-42
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, para. 13

7. Definition of “registered charge”

62. As noted above (para. 59), a “registered charge” is a special type of “charge” within the meaning of the Convention. The term is used (a) to designate the persons to whom the notice of judicial sale is to be given under article 4 (i.e. “all holders of ... any registered charge” referred to in article 4, paragraph 3(b)), and (b) to designate the actions to be taken under article 7 (i.e. action to delete “any registered charge attached to the ship” referred to in article 7, paragraph 1 (a)). As such, a registered charge is treated like a mortgage or *hypothèque* for the purposes of the Convention.

63. The definition of “registered charge” is formulated differently to the definition of “mortgage or *hypothèque*” so that it does not cover charges that are registered in any register, but only (a) the register in which the ship is registered, or (b) any other register in which mortgages or *hypothèques* are registered. Delimiting the scope of the term by reference to those registers is designed to ensure a greater connection between the registered charge and the ship registry or court of judicial sale (or other public authority conducting the judicial sale), and thus make the requirements of the Convention regarding notification and deletion more workable (see remarks below on article 4, paragraph 3 (b)).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, para. 43
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 28-29

8. Definition of “maritime lien”

64. As noted above (para. 59), a “maritime lien” is a special type of “charge” within the meaning of the Convention. The term is used to designate the persons to

whom the notice of judicial sale is to be given under article 4 (i.e. “all holders of any maritime lien” referred to in article 4, paragraph 3 (c)).

65. A maritime lien is a device that is peculiar to maritime law. In essence, it is a right to payment of a monetary sum that is secured against a ship in connection with which the right arises, whether by services provided to it, or by loss caused by it, regardless of change in ownership or operation of the ship. Unlike a “registered charge”, a maritime lien is not subject to registration. Unlike a “mortgage or *hypothèque*”, it is not subject to any formality or expression of consent on the part of the owner or operator of the ship at the time of its creation.

66. Despite international efforts to harmonize the circumstances in which a maritime lien arises (e.g. the types of services provided to, and types of losses caused by, the ship), maritime liens differ between legal systems. Accordingly, the law of one State may create a maritime lien in circumstances that do not give rise to a maritime lien under the law of another State. This is particularly relevant in international shipping, where maritime liens could potentially attach to a ship under the law of the various States through which the ship navigates, giving rise to conflict of law issues.

67. The definition of “maritime lien” accepts the status quo, and thus defers to the law applicable in the State in which the issue of the existence of a maritime lien arises, including its conflict of law rules. In practice, that issue will arise in the State of judicial sale (i.e. in identifying the persons to whom the notice of judicial sale is to be given (i.e. “all holders of any maritime lien”). By deferring to applicable law, the Convention makes it clear that the term “maritime lien” should not be given an autonomous meaning.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 19-20
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, para. 44
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, para. 14

9. Definition of “owner”

68. The term “owner” is used to designate the persons to whom the notice of judicial sale is to be given under article 4 (i.e. “the owner of the ship for the time being” referred to in article 4, paragraph 3 (d)). Certain particulars of the owner are also part of the minimum information to be contained in the notice of judicial sale (article 4, paragraph 4) and the certificate of judicial sale (article 5, paragraph 2 (h)). In all cases, the term “owner” refers to the owner prior to judicial sale, in contrast to the “purchaser”.

69. Determining ownership of a ship at law differs between legal systems. For the purposes of the Convention, it is not necessary to resort to a conflict of law analysis to identify the “owner”. Instead, it is sufficient for the term “owner” to be defined by reference to the fact of registration (or recordation) as the owner in the register in which the ship is registered (or entered). This may be more than one person.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 22
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, para. 24
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 40

10. Definition of “purchaser”

70. The term “purchaser” is used to designate the person to whom the judicial sale confers clean title to the ship, as well as the person entitled to request action on registration under article 7. Certain particulars of the purchaser are also part of the minimum information to be contained in the certificate of judicial sale (article 5, paragraph 2 (i)). As with the term “owner” (see para. 69 above), more than one person may be a “purchaser”.

71. As noted above (para. 69), determining ownership of a ship at law, including passage and opposability of title, differs between legal systems. As the Convention does not address the transfer of ownership, it is not necessary for the definition of “purchaser” to involve a conflict of law analysis or to refer to ownership. Instead, it is sufficient for the purposes of the Convention for the term “purchaser” to be defined by reference to the fact that the ship was disposed to the purchaser.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 25-27
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, para. 27

11. Definition of “subsequent purchaser”

72. The term “subsequent purchaser” is used only to designate the persons entitled to request action on registration under article 7. For a discussion on accommodating subsequent purchasers, see remarks below on article 7.

73. While the ship may be disposed to another person in a variety of ways, the definition of “subsequent purchaser” covers only persons who have “purchased” the ship.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 34-38
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 18-21

12. Definition of “State of judicial sale”

74. The term “State of judicial sale” is used throughout the Convention. The definition is not limited to States Parties; however, by virtue of paragraph 1 (a) of article 3, the term is effectively used in the Convention to refer only to States Parties.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 33
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, para. 33

13. Other terms not defined

(a) “Bareboat charter registration”

75. Several provisions of the Convention refer to the “bareboat charterer”, “bareboat charter registration” and the “bareboat charter registry”. None of those terms is defined in the Convention. The United Nations Convention on Conditions for Registration of Ships (1986)⁽²³⁾ defines a “bareboat charter” as a “contract for the lease of a ship, for a stipulated period of time, by virtue of which the lessee has complete possession and control of the ship, including the right to appoint the master and crew of the ship, for the duration of the lease”. The lessee is referred to as the “bareboat charterer”.

76. The practice of bareboat charter registration is recognized under the law of many States. There are two aspects of bareboat charter registration. The first aspect is the practice whereby a State permits its registered ship to fly a foreign flag. This practice is commonly referred to as “flagging out” or “bareboat charter-out” registration. The second aspect is the practice whereby a State permits a foreign-registered ship to fly its flag temporarily (i.e. for the period of the charter). This practice

⁽²³⁾ The text of the convention is contained TD/RS/CONF/23.

is commonly referred to as “flagging in”, or “bareboat charter-in” registration. In some States, the law provides only for bareboat charter-in registration. The law in other States does not provide for either aspect of bareboat charter registration.

77. The procedures to give effect to bareboat charter registration differ between States. The United Nations Convention on Conditions for Registration of Ships (1986) seeks to harmonize some of the procedures and terminology relating to bareboat charter-in registration among States that recognize the practice. The Convention does not seek to contribute to those harmonization efforts. It does, however, seek to refer to procedures and use terminology consistent with other maritime law conventions. The Convention does not require a State Party to recognize the practice of bareboat charter registration under its law.

Reference to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 63

(b) “Person”

78. The term “person” is used in the Convention primarily to define the “owner” and “purchaser” of a ship. Consistent with other legislative texts prepared by UNCITRAL, the Convention does not define the term, which should be understood broadly to encompass both legal and natural persons, as well as States and State entities.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 23-24
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 25-26

(c) “Register” and “registry”

79. In provisions concerning registration, the Convention seeks to use terminology that is consistent with other maritime law conventions. Accordingly, the Convention uses the terms “register” and “registry” as follows:

- (a) The term “register” refers to the record in which particulars of a ship, mortgage, *hypothèque* or (registered) charge are recorded; and
- (b) The term “registry” refers to the entity which maintains the register

80. The Convention uses the term “register of ships” but does not define the term. It does, however, distinguish the “register of ships” from an “equivalent register” in which a ship is registered. The reference to “register of ships” and “equiva-

lent register” acknowledges the broad definition of the term “ship”, which, further to the remarks on that definition above (para. 47), covers vessels that are entered in registers other than what might be named or commonly regarded as the “register of ships”.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 22
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 95 and 104
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 52

(d) “State of registration”

81. Several provisions of the Convention refer to the “State of registration”. Paragraph 3 (b) of article 4 uses the term to refer to the State in which the mortgage, *hypothèque* or registered charge is registered, while paragraph 1 (c) of article 7 uses the term to refer to the State in which the ship is registered. By virtue of the definitions of “mortgage or *hypothèque*” and of “registered charge”, these are one and the same State.

(e) “Time of judicial sale”

82. Several provisions of the Convention refer to the time of judicial sale. The Convention purposefully does not define the time of judicial sale but instead defers to the law of the State of judicial sale on that issue (see further remarks on article 4, paragraph 1).

D. Article 3. Scope of application

83. Article 3 delimits the scope of the Convention. Paragraph 1 prescribes certain judicial sales to which the Convention does not apply by reference to (a) whether the State of judicial sale is party to the Convention (the “geographic scope”), and (b) whether the ship is physically present within the territory of the State of judicial sale at the time of the sale (the “physical presence requirement”). Paragraph 2 deals with State-owned or operated vessels.

1. Geographic scope (article 3, paragraph 1 (a))

84. By virtue of paragraph 1 (a) of article 3, the Convention establishes a “closed” regime that applies only among States Parties. Nothing in the Convention prevents a State from giving effect - under its domestic law - to judicial sales conducted in a non-State party on terms similar to those provided for under the Convention.

85. A judicial sale of a ship does not fall outside the scope of application merely because the ship is registered in a State that is not party to the Convention. Of course, that State would not be bound by the Convention, as a matter of international law, to give effect to the judicial sale or to take action on the registration of the ship upon presentation of the certificate of judicial sale issued under article 5 of the Convention, which would limit the protections that the Convention could provide to the sale.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 47, 52-53
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 16-18
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, para. 49
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 32, 39-42
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 34

2. Physical presence requirement (article 3, paragraph 1 (b))

86. The physical presence requirement in paragraph 1 (b) of article 3 recognizes that, in practice, the judicial sale of a ship is typically preceded by the arrest of the ship which, under the harmonized rules established in the Arrests Conventions,⁽²⁴⁾ can only occur in the territory of the State in which the arrest is judicially authorized. The requirement does not apply at the time of arrest but “at the time of the sale”.

87. The purpose of the physical presence requirement is to ensure a jurisdictional link between the court (or other public authority) under whose authority the judicial sale was conducted and the ship. The Convention purposefully does not define the time of judicial sale but instead defers to the law of the State of judicial sale on that issue (see article 4, paragraph 1). Nonetheless, the words “at the time of the sale” in article paragraph 1 (b) of article 3 need to be understood in the context of the Convention, in particular the definition of “judicial sale” (article 2) and article 4, paragraph 2, which acknowledges that notification of a judicial sale occurs “prior to the judicial sale”. Just as the procedure for a judicial sale differs between legal systems, so does the time at which the court of judicial sale (or other public authority) exercises jurisdiction over the ship. Some legal systems may consider jurisdiction to be exercised over a period (e.g. from the commencement to the conclusion of the judicial sale proceedings), while other legal systems may consider jurisdiction to be exercised at a particular time (e.g. when the court orders, approves or confirms the disposal of the ship to the purchaser, or upon

⁽²⁴⁾ See note 1 above.

completion of the judicial sale). In all cases, paragraph 1 (b) of article 3 requires the physical presence of the ship at the final stage of the judicial sale procedure, when the ship is awarded to the successful purchaser.

88. The physical presence requirement is not intended to prevent existing practices by which (a) proceedings for the arrest of a ship or other proceedings leading to a judicial sale can be commenced before the ship enters territorial waters, or (b) the ship is released from arrest pending its judicial sale.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, para. 28
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 50 and 83
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 22-25, 82
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, paras. 50-56
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 34-35

3. *Exclusion of State-owned or operated vessels (article 3, paragraph 2)*

89. Like the International Convention on Maritime Liens and Mortgages (1993),⁽²⁵⁾ the Convention excludes State-owned or operated vessels from scope. The wording of paragraph 2 of article 3 is based on article 16, paragraph 2, of the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004).⁽²⁶⁾

90. In addition to warships and naval auxiliaries, the exclusion in paragraph 2 of article 3 applies to State-owned or operated vessels that are used, “immediately prior to” the time of judicial sale, only on government non-commercial service. Referring to a time immediately prior to the time of sale is designed to ensure that the exclusion is given full effect in practice. Specifically, it acknowledges that, by the time of the sale itself, the ship would be within the jurisdiction of the court of judicial sale (or other public authority conducting the sale) and thus not capable of being used “only on government non-commercial service”.

91. The exclusion in paragraph 2 may find little application in practice given that (a) such vessels are already immune from arrest under the harmonized rules established in the Arrests Conventions,⁽²⁷⁾ and (b) the definition of “ship” requires the relevant vessel to be capable of being “the subject of an arrest or other similar measure capable of leading to a judicial sale under the law of the State of judicial sale”.

⁽²⁵⁾ See note 2 above.

⁽²⁶⁾ The text of the convention is contained in the annex to A/RES/59/38.

⁽²⁷⁾ See note 1 above.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, para. 40
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 40-42
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, para. 46
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, para. 48

4. Matters of substantive scope not addressed in article 3

(a) Clean title sales

92. As noted above (para. 26), the Convention leaves it to the substantive provisions to limit its scope to judicial sales that confer clean title. This approach acknowledges that, for some jurisdictions, the notice requirements in article 4 are applicable at a time in the judicial sale proceedings at which it is not yet known whether the sale will result in the conferral of clean title. It also avoids potential difficulties of introducing a requirement to ascertain the content of foreign law (i.e. whether a judicial sale confers clean title) in order to determine the substantive scope of the Convention.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 35-38, 92-93
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 43
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 36, 39-45
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, paras. 13-15
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 43-47

(b) Forced sales in the enforcement of tax, customs or criminal law

93. Concerns were expressed during the preparation of the Convention about applying its regime to the sale of ships that are seized in the enforcement of public law, such as tax, customs or criminal law. However, it was felt that it would

not be appropriate to address those concerns by excluding such sales from scope, particularly given that, in some jurisdictions, a ship so seized could still be sold by judicial sale with proceeds made available to creditors. Instead, those concerns are addressed in the definition of “judicial sale”, particularly the requirement in subparagraph (ii) for the proceeds of sale to be made available to creditors (see remarks above on article 2, paragraph (a)).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 18-19, 79, 90
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 35-39
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 30, 34-35
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 49-50

E. Article 4. Notice of judicial sale

***1. Purpose and function of the notice requirements
(article 4, paragraphs 1 and 2)***

94. Notification of a judicial sale is only one aspect of the judicial sale procedure, but one that is particularly important in safeguarding the interests of creditors, who might otherwise not be party to the proceedings giving rise to the judicial sale. Judicial sale procedures differ significantly between jurisdictions, not only in terms of competent authorities and notification requirements, but also in terms of the circumstances in which a judicial sale procedure starts and ends, and the various stages of the procedure in between (see remarks above on subparagraph (i) of the definition of “judicial sale” in article 2). The Convention is not designed to harmonize the procedure for judicial sales. This is confirmed by paragraph 1 of article 4, which leaves matters related to the conduct of the judicial sale to the law of the State of judicial sale.

95. The notice requirements in the remaining paragraphs of article 4 prescribe minimum standards regarding the persons to be notified of the judicial sale (paragraph 3), the content of the notice (paragraph 4), and the public advertisement of the judicial sale (paragraph 5). The notice requirements in the Convention are adapted to the judicial sale itself and not to related proceedings (e.g. proceedings giving rise to the judicial sale or proceedings related to the distribution of proceeds). In that context, while notification attracts potential bidders and can help maximize the eventual proceeds available to creditors, the primary purpose of the notice requirements in the Convention is to alert creditors to the impending sale and eventual distribution of proceeds. The requirements are designed to strike a

fair balance between due process towards creditors and the expediency required in judicial sale proceedings. They acknowledge that creditors and other persons to be notified may have other means at their disposal, including the use of online tools, to track the ship and be informed of its arrest or impending sale.

(a) Relationship with domestic law

96. The notice requirements do not substitute or displace notification requirements under domestic law, including those relating to the service of judicial documents. The distinction between the notice requirements under the Convention and the notification requirements under domestic law, as well as the coexistence of those requirements, is acknowledged in paragraph 4 of article 4 and in paragraph 1 of article 5 of the Convention.

(b) Condition for issuing certificate of judicial sale

97. The notice requirements do not serve as a stand-alone obligation but rather as a condition for the issuance of the certificate of judicial sale under article 5. This is confirmed by paragraph 2 of article 4. Nevertheless, given the central role of the certificate of judicial sale in the Convention regime, compliance with the notice requirements is essential to securing the international effects of a judicial sale. The notice requirements may also have an “indirect” impact on the procedure of the judicial sale, insofar as States might align their procedural law to the notice requirements to ensure that their judicial sales benefit from the Convention regime. This is particularly relevant for States in which the judicial sale is not notified to prescribed classes of persons but rather advertised publicly (e.g. by publishing a notice in the press or maritime periodicals).

98. It follows that a failure to comply with the notice requirement does not constitute a breach of the Convention, but it would prevent the issuance of a certificate of judicial sale. Under the Convention, any claim challenging the validity of a certificate due to a failure to comply with the notice requirements is heard in the State of judicial sale in exercise of the exclusive jurisdiction conferred under article 9. However, it is conceivable that a particularly egregious failure to comply with the notice requirements could give rise to an application invoking the public policy ground under article 10 in another State in which the effect of the judicial sale is sought to be produced.

(c) Procedures for challenging the judicial sale

99. Paragraph 1 of article 4 declares that the law of the State of judicial sale shall “provide procedures for challenging the judicial sale prior to its completion”. That provision is designed to strike a balance between due process towards creditors, by ensuring that they have an opportunity to assert their rights, and the objective of the Convention to leave matters of procedure to domestic law. It does not require a State party to take steps to legislate procedures for challenging a judicial sale if such procedures already exist. Paragraph 1 was drafted on an assumption that the

law in most States would already have procedures in place for challenging a judicial sale. Such procedures are sourced in legislation (e.g. rules of civil procedure) or in case law, and may be invoked at different stages of the judicial sale procedure.

100. Paragraph 1 of article 4 is concerned with challenging a judicial sale prior to its completion, and thus with the availability of remedies that typically have the effect of delaying or calling off the sale before the procedure has reached its final stage. It is not concerned with challenges after completion, and can thus be contrasted with article 9, which is concerned with avoiding the judicial sale or suspending its effect after completion. Moreover, it is not intended to suggest that challenges to a judicial sale should be encouraged as a matter of course. As with article 9, paragraph 1 of article 4 does not deal with standing to bring a challenge, nor does it deal with limitation periods, which remain a matter for the law of the State of judicial sale.

(d) Determining the time of the judicial sale

101. Paragraph 1 of article 4 adds that the law of the State of judicial sale “determine[s] the time of the sale for the purposes of this Convention”. Several provisions of the Convention refer to the time of judicial sale:

- (a) The time of the judicial sale is relevant in determining the scope of the Convention, given that (a) the physical presence requirement in paragraph 1 (b) of article 3 applies “at the time of the sale”, and (b) the exclusion of State-owned or operated vessels in paragraph 2 of article 3 applies by reference to use “immediately prior to the time of judicial sale”;
- (b) Reference to action taken prior to the time of judicial sale is relevant to the application of the notice requirements, given that paragraph 2 of article 4 provides for the notice of judicial sale to be given “prior to the judicial sale”;
- (c) The time of the judicial sale is relevant in determining whether the judicial sale has reached completion, and thus in determining (a) whether the conditions for issuance of the certificate of judicial sale under paragraph 1 of article 5 have been met, and (b) the range of mortgages, *hypothèques* and other registered charges to be deleted from the register under paragraph 1 (a) of article 7.

102. The Convention does not assume that the law of the State of judicial sale makes specific provision for determining the time of a judicial sale. Concepts and principles of broader application under domestic law could guide such a determination.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 22, 30, 67-70

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 55-61
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 49-50
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, paras. 16-17
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 52, 57-59, 73
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 99
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 38-39, 60-63

2. Persons to be notified (article 4, paragraph 3)

103. Paragraph 3 of article 4 prescribes classes of persons to be notified. The application of paragraph 3 is complemented by paragraph 7 of article 4. The law of the State of judicial sale might prescribe additional classes of persons to be notified, e.g. the holder of any unregistered charge, diplomatic or consular agents of the State of registration in the State of judicial sale, or the insolvency representative (e.g. in the event of that the owner is insolvent). Nothing in the Convention displaces those requirements.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 52-53
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, para. 67
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 40

(a) Ship registries (article 4, paragraph 3 (a))

104. Paragraph 3 (a) of article 4 requires notification of the ship registry. As noted above (para. 79), the “registry” is the entity which maintains the register. Paragraph 3 (a) refers not only to the registry maintaining the “register of ships” but also to the registry maintaining an “equivalent register in which the ship is registered”. Reference to “equivalent register” is a consequence of the broad definition of “ship”, which covers different types of vessels that may be registered in different registers under the law of the State of registration (see remarks above on the definition of “ship” in article 2).

105. In some States, the law may not require the ship registry to be notified and the ship registry may not have procedures in place to receive and respond to notices. Moreover, the ship registry may not have an interest in the judicial sale proceedings or in the distribution of proceeds. Nevertheless, the requirement in the Convention to notify the ship registry acknowledges the utility of alerting the ship registry to possible future action on the registration of the ship under article 7.

106. In some States, the law may make special provision for the notification of the registry so that it can (a) provide information that is needed for the court of judicial sale to identify other persons to be notified under that law, or (b) take action required to notify or otherwise advertise the sale. The Convention does not mandate either role for the registry.

107. The requirement to notify the ship registry applies regardless of the location of the registry. Accordingly, paragraph 3 (a) of article 4 requires the notice of judicial sale to be given to the registry even if the State of registration is not party to the Convention (see remarks above on paragraph 1 (a) of article 3) or is the State of judicial sale.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 73-74
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 63
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 57-58

(b) Holders of any mortgage, hypothèque or registered charge (article 4, paragraph 3(b))

108. Paragraph 3 (b) of article 4 requires notification of each holder of a mortgage, *hypothèque* or registered charge attached to the ship, but only if the relevant register (whether it be the register of ships or separate register of security interests) is “open to public inspection”. This precondition is modelled on article 1 of the International Convention on Maritime Liens and Mortgages (1993),⁽²⁸⁾ which defines the conditions for a mortgage, *hypothèque* or registered charges to be recognized and enforceable under the Convention (and thus whose holders are to be notified according to the forced sale regime under article 12 thereof).

109. Public access to the register is a common feature of registry practice both in relation to registers of ships and separate registers of security interests. The practice is reflected in article 6, paragraph 3, of the United Nations Convention on Condi-

⁽²⁸⁾ See note 2 above.

tions for Registration of Ships (1986)²⁹ as well as the Model Registry Provisions of the UNCITRAL Model Law on Secured Transactions.³⁰ The Convention does not elaborate on the depth and breadth of the enquiry required to determine whether a register is “open to public inspection”. A register should not fail to satisfy the precondition merely because the regulations and procedures of the State of registration prescribe a fee or form requirements for requesting an extract from the register or copy of a registrable instrument, or require the person making the request to demonstrate a legitimate interest in accessing the register.

Reference to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, para. 55

(c) Holders of any maritime lien (article 4, paragraph 3 (c))

110. Paragraph 3 (c) of article 4 requires notification of each holder of a maritime lien attached to the ship, but only if (a) the holder has notified the court of judicial sale (or other public authority conducting the judicial sale) of the claim secured by the maritime lien, and (b) the holder has done so “in accordance with the regulations and procedures of the State of judicial sale”.

111. The first precondition is inspired by article 11, paragraph 1 (c), of the International Convention on Maritime Liens and Mortgages (1993)³¹ but differs insofar as it identifies the person that is required to notify the court of judicial sale of the claim secured by the maritime lien. Various procedures exist under domestic law by which a claim may be notified to the court of judicial sale, but not all provide for the claim to be notified by the holder of the maritime lien. In some jurisdictions, the party requesting the judicial sale is required to inform the court of any maritime lien that is known to the party. In several jurisdictions, the procedure for filing a caveat (or caution) with the court against release of the ship after its arrest allows a holder of a maritime lien to notify the court of particulars of its claim. In other jurisdictions, a special procedure exists for a holder (among other holders of unregistered charges) to intervene in the judicial sale proceedings. Nothing in paragraph 3 (c) of article 4 requires the notice to the court to be in any particular form.

112. The second precondition acknowledges that not all jurisdictions have procedures in place for the court to receive notices from the holders of maritime liens, particularly where the holder is not the party requesting the judicial sale. In some jurisdictions, the holder of a maritime lien will only address the court of judicial sale in proceedings related to the distribution of proceeds once the judicial sale is completed. Nothing in paragraph 3 (c) of article 4 requires the State of judicial sale

⁽²⁹⁾ See note 22 above.

⁽³⁰⁾ *UNCITRAL Model Law on Secured Transactions* (2016), United Nations publication, Sales No. E.17.V.1.

⁽³¹⁾ See note 2 above.

to amend its regulations and procedures for conducting judicial sales to accommodate the notification of claims. Moreover, the paragraph does not require the holder of a maritime lien to be notified merely because it has given the court an ad hoc or informal notice that is not provided for under the applicable regulations and procedures.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, para. 70
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 51-54
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 64-66

(d) Shipowners (article 4, paragraph 3 (d))

113. Paragraph 3 (d) of article 4 requires notification of the owner of the ship “for the time being”. By virtue of article 4, paragraph 2, that time is the time at which the judicial sale is notified. As noted above (para. 69), more than one person may be the owner.

<i>Document</i>	<i>Reference</i>
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 40

(e) Bareboat charterers and bareboat charter registries (article 4, paragraph 3 (e))

114. Paragraph 3 (e) of article 4 applies only if the ship has been granted bareboat charter-in registration (i.e. a State other than the State of registration has granted the ship the right to fly its flag). If it applies, subparagraph (i) requires notification of the person registered as the bareboat charterer of the ship in the bareboat charter register, while subparagraph (ii) requires notification of the bareboat charter registry.

115. Paragraph 3 (e) of article 4 acknowledges that the practice of bareboat charter registration differs between States. References to the person “registered”, the “register”, “registration” and the “registry” therefore cover situations in which particulars of the bareboat charter arrangement are recorded in a record other than a “register”. Moreover, that record may not be the same as the register of ships and may be maintained by an entity other than the ship registry of the State of bareboat charter-in registration.

116. Paragraph 3 (e) of article 4 applies regardless of whether the law of the State of judicial sale recognizes the practice of bareboat charter registration.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 63
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, para. 68

3. Content of the notice and methods of notification (article 4, paragraph 4)

117. If paragraph 3 of article 4 requires the notice of judicial sale to be given to prescribed classes of persons, paragraph 4 of article 4 addresses the content of the notice and how it is to be given.

(a) Content of the notice

118. The notice of judicial sale is to contain the minimum information itemized in annex I to the Convention. Recalling that the primary purpose of the notice requirements in the Convention is to alert creditors to the impending sale and eventual distribution of proceeds, the items in annex I are designed to ensure that the notice of judicial sale contains the essential information that a creditor would need to assert its rights. Annex I does not contain a model form, and nothing in the Convention prevents the use of an existing form that is prescribed under the law of the State of judicial sale. Moreover, nothing in the Convention prevents the inclusion of other information in the notice of judicial sale, such as information required by the law of the State of judicial sale.

119. As noted above (para. 38), item 3 of annex I refers to the court (or other public authority) rather than the judicial officer appointed to carry out the public auction (if any). Item 7 refers to the identifier issued under the IMO ship identification number scheme. Item 8 is relevant if no IMO number is issued. Other identifying information referred to in that item could include the name of the shipbuilder, the time and place of shipbuilding, and recent photographs of the ship.

120. Item 11 of annex I is relevant only for a judicial sale carried out by public auction, in which case item 12 is not relevant. Item 11 refers to the anticipated date, time and place of the auction. It thus acknowledges that the date, time or place might not be set at the time of notification or might be subject to change. Unlike the International Convention on Maritime Liens and Mortgages (1993),⁽³²⁾ the Convention does not require a follow-up notice to be given once the date, time and place of the auction are set. Moreover, item 11 is compatible with judicial sales which are carried out using an online platform and open for remote bidding over a period of time. As noted above (para. 36), if the judicial sale is carried out by public tender, the notice is instead to contain the anticipated date, time and place of the submission of bids.

⁽³²⁾ See note 2 above.

121. Item 12 of annex I is relevant only for a judicial sale carried out by private treaty. It acknowledges that, owing to the nature of private treaty sales, only limited information might be available about the sale at the time of notification, as ordered by the supervising court.

122. Item 13 of annex I refers to either a statement confirming that the judicial sale will confer clean title or a statement of the circumstances under which the judicial sale would not confer clean title. The item thus acknowledges that, for some jurisdictions, the notice may be given at a time in the judicial sale proceedings at which it is not yet known whether the sale will result in the conferral of clean title (see para. 92). Item 14 of annex I refers to other information required by the law of the State of judicial sale, in particular information to protect the interests of the person receiving the notice. The item is inspired by article 11, paragraph 2, of the International Convention on Maritime Liens and Mortgages (1993).⁽³³⁾ Depending on the law of the State of judicial sale, such information might include information about challenging the judicial sale or about participating in subsequent proceedings for the distribution of proceeds.

(b) Methods of notification

123. Paragraph 4 of article 4 defers to the law of the State of judicial sale on other matters related to the manner and form of notification. Accordingly, the law of the State of judicial sale determines the notice period, method of notification, form of the notice, and the persons responsible for giving the notice. That law also determines the language of the notice, although paragraph 6 of article 4 prescribes language requirements for the minimum information when transmitting the notice to the repository.

124. With regard to the method of notification, the law of the State of judicial sale might apply standard procedures for the service of judicial documents to the notice of judicial sale. The default method of service under those procedures typically requires the notice of judicial sale to be given personally (e.g. by hand to the person being notified or their representative). If the default method is not possible or feasible (e.g. due to an evasive addressee or in view of the state of the ship and its crew), the procedures might allow the person giving notice to resort to an alternative method of service, by which the notice is given by post or by email or some other form of electronic communication addressed to the person with confirmation of receipt. To that end, the notification requirements in the Convention are formulated in medium-neutral terms and thus accommodate the issuance and transmission of a notice of judicial sale in electronic form. Failing that, the procedures might allow the notice to be given by public announcement. In those circumstances, a judicial sale should not be regarded as failing to comply with the notice requirements under the Convention merely because the notice of judicial sale was not given “to” the person concerned.

125. The Convention is thus less prescriptive than article 11, paragraph 3, of the International Convention on Maritime Liens and Mortgages (1993),⁽³⁴⁾ which

⁽³³⁾ See note 2 above.

⁽³⁴⁾ See note 2 above.

requires a notice of forced sale to be “either given by registered mail or given by any electronic or other appropriate means which provide confirmation of receipt”. Nothing in the Convention requires confirmation of receipt; as noted above (para. 124), any such requirement is a matter for the law of the State of judicial sale, and that law may require the notice to be given personally without the involvement of a postal or email service.

126. With regard to responsibility for giving the notice, the Convention accommodates circumstances in which the law of the State of judicial sale requires the notice to be given by the court of judicial sale (or other public authority conducting the judicial sale), by a judicial officer, or by a party to the proceedings or their representative. Accordingly, a judicial sale does not fail to comply with the notice requirements under the Convention merely because of the identity of the person giving the notice.

127. Consistent with the international nature of shipping, it is anticipated that there may be occasion for the notice of judicial sale to be transmitted outside the State of judicial sale for service in the territory of another State (e.g. the State of registration). Paragraph 4 of article 4 manifests the consent of a State Party to the notice of judicial sale being served in its territory. Accordingly, a judicial sale does not fail to comply with the notice requirements under the Convention merely because the notice of judicial sale is given to a person located in the territory of a State other than the State of judicial sale, and the notice is given in a manner that is not provided for under the law of that place.

128. The transmission of the notice of judicial sale for service abroad may engage the application of a treaty between the State of judicial sale and the other State on judicial assistance in matters relating to the service of judicial documents (see further remarks below on article 13, paragraph 2).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 18, 22, 71, 75
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 64-66
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 59, 61-62
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 73-80
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 102-106
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 38, 44-45

4. Public advertisement (article 4, paragraph 5)

129. The notice of judicial sale is published by announcement in the press or other publication available in the State of judicial sale. It is also transmitted to the repository. Paragraph 5 of article 4 applies in addition to - and not as an alternative to - the requirement in paragraph 3 to notify the prescribed classes of persons. By virtue of paragraph 4 of article 4, the notice that is published and the notice that is transmitted are to contain the information itemized in annex I to the Convention.

(a) Announcement in the press or other publication (article 4, paragraph 5 (a))

130. Paragraph 5 (a) of article 4 is concerned with the fact of publication and not with the modalities for publication, such as the selection of newspaper or periodical by which the notice of judicial sale is to be published. In accordance with paragraph 4 of article 4, those modalities are left to the law of the State of judicial sale.

131. As noted above (see remarks above on article 4, paragraph 1), the notification requirements acknowledge the use of online tools to track ships and provide information on their arrest and impending sale. Like the other notification requirements, paragraph 5 of article 4 is formulated in medium-neutral terms and thus accommodates the publication of the notice in newspapers and other periodicals that are circulated in electronic form. Accordingly, a judicial sale does not fail to comply with the notice requirements under the Convention merely because the notice is published in electronic form.

132. Paragraph 5 (a) of article 4 offers a choice between two options, namely (a) publication by “announcement in the press” and (b) publication by “other publication available in the State of judicial sale”. The first option typically entails placing an advertisement in a newspaper containing the notice of judicial sale, as opposed to posting an announcement to a noticeboard or website of the court of judicial sale or other person responsible for notification. Paragraph 5 (a) does not prescribe any requirements regarding circulation if the first option is chosen. The second option typically entails an advertisement placed in a periodical, including an online journal or newsletter published for the shipping industry. Paragraph 5 (a) requires the publication to be “available in the State of judicial sale” if the second option is chosen. For the purposes of that requirement, it does not matter whether the publication is published in the State of judicial sale or abroad. What matters is whether the publication is “available” in the State of judicial sale, which typically entails the circulation of a paper-based publication or accessibility of an online publication in that State.

133. In keeping with the purpose of the notice requirements to alert creditors to the impending sale and eventual distribution of proceeds, and given the international nature of shipping, it is advisable that, whichever option is chosen, the selected newspaper or periodical should be widely available outside the State of judicial sale.

(b) Transmission of notice to repository (article 4, paragraph 5 (b))

134. Paragraph 5 (b) of article 4 is concerned with the fact of transmission and not with the modalities of transmission, such as the method used and person

responsible for transmitting the notice to the repository. Those modalities are left to the law of the State of judicial sale, in accordance with paragraph 4 of article 4, and the procedures put in place by the repository in performing its functions under article 11. In keeping with the purpose of the notice requirements to alert creditors to the impending sale and eventual distribution of proceeds, what matters is that the content of the notice is received in a format that can be published by the repository (see remarks below on article 11).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 66
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, para. 63
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 82-84, 87-88

**5. Language requirements when transmitting notice to repository
(article 4, paragraph 6)**

135. When transmitted to the repository under paragraph 5 (b) of article 4, the notice of judicial sale is to be accompanied by a translation of the information itemized in annex I to the Convention (i.e. the minimum information to be contained in the notice by virtue of article 4, paragraph 4). The requirement in paragraph 6 of article 4 does not apply when the notice is given under paragraph 3; the words “for the purpose of communicating the notice to the repository” are intended to clarify that it only applies when the notice is transmitted under paragraph 5 (b). Accordingly, a judicial sale does not fail to comply with the notice requirements under the Convention merely because the notice of judicial sale that is given under paragraph 3 is only in the language of the court of judicial sale and without an accompanying translation. Nevertheless, the person giving the notice under paragraph 3 is encouraged to accompany the notice with a translation of the information itemized in annex I to the Convention, particularly because the translation will eventually need to be transmitted to the repository under paragraph 6.

136. Paragraph 6 of article 4 reflects the balance between due process towards creditors and the expediency required in judicial sale proceedings (see remarks above on article 4, paragraph 1). On the one hand, due process demands that information should be communicated in a manner that can be readily understood by the addressee, including in a language that the addressee knows. This is particularly relevant in international shipping, where creditors can be dispersed around the globe and might not know the language of the court of judicial sale. On the other hand, expediency demands that the judicial sale procedure should not be overburdened by the time and cost of translating documents into multiple languages, let alone identifying the language that is known to each person that is to be notified.

It recognizes that most creditors in the international shipping industry are likely to know at least one of the working languages of the repository, which, at the time that the Convention was being prepared, were English, French and Spanish. It also recognizes that the burden of translation will be significantly reduced by focusing on the minimum information itemized in annex I to the Convention. That information is likely to be concise and the translation will already benefit from the text of each item heading already being available in English, French and Spanish, among the other official languages of the United Nations in which the text of the Convention is adopted. Indeed, some of the information, such as the “reference number or other identifier for the sale procedure” may require little or no translation.

137. As with transmitting the notice of judicial sale under paragraph 5 (b), the modalities for transmitting the accompanying translation are left to the law of the State of judicial sale and the procedures of the repository. Paragraph 6 does not require the translation to be certified.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, para. 64
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 69-72
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 100-101
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 42

6. Reliance on registry information (article 4, paragraph 7)

138. While the Convention does not prescribe the method for notification, compliance with paragraph 3 of article 4 typically involves identifying the persons within each prescribed class and determining their name and address. The identity, name and address of holders of any mortgage, *hypothèque* or registered charge, the shipowner and the bareboat charterer are recorded in the register of ships of the State of registration or in any separate register of security interests or bareboat charter-in register. By virtue of the requirement for many of those registers to be open to public inspection, which stems from the definition of “ship” in article 2 and the precondition in paragraph 3 (b) of article 4, the person giving the notice should be in a position to obtain this information from the relevant registry. The identity, name and address of holders of any maritime lien are recorded in the notice given to the court under paragraph 3 (c) of article 4.

139. In that context, the effect of paragraph 7 of article 4 is that the person responsible for notification is not required to consult any other source of information to identify or to determine the accuracy or currency of the name and address of each person to be notified. In so doing, the Convention provides certainty for the

person giving the notice of judicial sale, while avoiding needless challenges to the international effect of a judicial sale based on non-compliance with the notification requirements. Paragraph 7 reflects the principle that the person to be notified should bear the risk of inaccurate information in the register, or in the notice given to the court, as that person has greater control over the accuracy and currency of the information.

140. Nothing in paragraph 7 of article 4 precludes the person giving the notice from using other sources of information, including to comply with domestic law requirements. Moreover, paragraph 7 does not oblige the person to search or inspect the register, nor oblige the relevant registry to provide access to the register (as noted in para. 138 above, the requirement for the register to be open to public inspection stems from other provisions of the Convention). Paragraph 7 also does not oblige the court of judicial sale to provide access to notices received from any holder of a maritime lien, although such a procedure might need to be legally enabled to implement the Convention, particularly in those jurisdictions in which the person giving the notice is not the court of judicial sale. In jurisdictions in which the court of judicial sale or a judicial officer gives the notice, cross-border communication between authorities that is provided for under article 12 may assist the operation of paragraph 7.

141. As noted above (para. 78), the term “person” in the chapeau of paragraph 7 of article 4 should be understood broadly to encompass the ship registry and bare-boat charter registry.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, para. 18
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, para. 63
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 96-98
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 43

F. Article 5. Certificate of judicial sale

1. Purpose of the certificate

142. The certificate of judicial sale plays a central role in the overall operation of the Convention regime. It serves two crucial purposes: first, it secures the international effects of the judicial sale in that (a) its issuance triggers the basic rule in article 6, and (b) its production triggers action on registration under article 7 and the prohibition of arrest under article 8; second, it operationalizes the safeguards under the Convention, which are translated into conditions for the issuance of the certificate under article 5. Nonetheless, the role of the certificate is limited to the purpose of the Convention which, as noted in article 1, is to govern the effects of a

judicial sale that confers clean title. In particular, the Convention does not establish the certificate of judicial sale as a document of title.

143. Article 5 addresses a range of matters relating to the issuance, form, content and legal value of the certificate. It is complemented by article 9, which addresses jurisdiction to review the issuance of the certificate.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, para. 41
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, para. 70
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 46

2. Issuing authority (article 5, paragraph 1)

144. The certificate of judicial sale is issued either (a) by the court or other public authority that conducted the judicial sale, or (b) by another competent authority of the State of judicial sale. Such other authority could be the judicial officer or other person appointed by the court of judicial sale to carry out the public auction, or another authority not involved in conducting the judicial sale. The designation of the issuing authority is a matter for the law of the State of judicial sale. Competence to issue the certificate may be conferred on a single authority or on multiple authorities.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, para. 84
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 91
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 98-99
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 47

3. Procedure for issuance (article 5, paragraph 1)

145. The competent authority issues the certificate of judicial sale to the purchaser “in accordance with its regulations and procedures”. Those regulations and procedures are a matter for the law of the State of judicial sale. In the context of paragraph 1 of article 5, they typically provide for a range of matters relating to procedure, including the time frame for issuance, whether the issuing authority

acts on application (e.g. the certificate is issued at the request of the purchaser) or on its own motion (e.g. the certificate is issued automatically), whether a fee can be charged for issuing the certificate, whether the certificate can be issued to the purchaser’s representative or nominee, and the standard of review required to determine whether the conditions for issuance have been met. The regulations and procedures might also provide for the issuance of multiple certificates for the same judicial sale, as well as the issuance of certificates in paper or electronic form (see remarks below on article 5, paragraph 6).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 90-91
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, paras. 24-25
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, para. 100

4. Conditions for issuance (article 5, paragraph 1)

146. A certificate of judicial sale is issued if the following conditions are met:
- (a) The judicial sale has reached completion;
 - (b) The judicial sale has conferred clean title to the ship under the law of the State of judicial sale;
 - (c) The judicial sale was conducted in accordance with the requirements of the law of the State of judicial sale;
 - (d) The judicial sale was conducted in accordance with the requirements of the Convention.

(a) Condition 1 - completion of the judicial sale

147. The term “completion” gives effect to the principle of finality, according to which the Convention regime should only apply to judicial sales for which the procedure has been concluded and is no longer subject to ordinary review, whether by appeal against an order of the court of judicial sale or otherwise, even if additional formalities remain to be taken (e.g. action under article 7). The Convention purposefully does not define “completion” since terms commonly used to describe finality in the context of judgments, such as “final and conclusive”, “effective and enforceable” and “no longer subject to appeal”, might not find uniform meaning. Instead, consistent with the rule in paragraph 1 of article 4, the Convention defers to the law of the State of judicial sale for determining when a judicial sale has reached completion (e.g. the date of judicial sale, such as the date of the public auction or the date on which the sale is approved or confirmed by the court of judicial sale).

(b) Condition 2 - conferral of clean title

148. Whether or not a judicial sale confers clean title is a matter for the law of the State of judicial sale (see remarks above on the definition of “clean title” in article 2). The conferral of clean title could coincide with the completion of the judicial sale.

(c) Condition 3 - compliance with requirements of the law of the State of judicial sale

149. As noted above (para. 145), the regulations and procedures of the issuing authority determine the standard of review required to determine whether the conditions for issuance have been met. In determining whether condition 3 is met, the Convention does not require the issuing authority to carry out a full review of the judicial sale. Such a requirement would be inconsistent with the principle of finality reflected in condition 1, as well as with the objective of the Convention to leave the procedure of judicial sales to domestic law.

(d) Condition 4 - compliance with requirements of the Convention

150. The final condition for issuance is concerned with compliance with the notice requirements in paragraph 3 and following of article 4.

151. It is conceivable that the condition could encompass a review of whether the judicial sale and the ship correspond with the definitions of those terms in article 2. However, it does not encompass a review of whether the judicial sale falls within the scope of application of the Convention under article 3, as its application necessarily assumes that the Convention applies.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 90
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 65-69
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, paras. 22-23, 26
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 92-97
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 32

5. Form and content of the certificate (article 5, paragraph 2)

152. The certificate of judicial sale is issued substantially in the form of the model contained in annex II to the Convention. A requirement to use a model

form for certificates is not unusual in international conventions and promotes standardization and thus greater acceptance of the certificate when produced abroad. The model contained in annex II sets out the basic layout for the content of the certificate. The requirement for the certificate to be “substantially” in the form of the model emphasizes that the Convention does not mandate a particular design for the certificate nor the use of a particular language for the item headings or for filling in the corresponding blanks. The certificate of judicial sale will typically be issued in the language of the issuing authority and may be issued in multiple languages.

153. The certificate of judicial sale contains the information prescribed in paragraph 2 of article 5, which corresponds to the information itemized in the model. The certification in the headnote of the model corresponds to the information prescribed in paragraphs 2 (a) and 2 (b), which in turn is designed to match the conditions for issuance in article 5, paragraph 1. As noted above (para. 144), the authority referred to in item 2 of the model and paragraph 2 (d) of article 5 (i.e. the issuing authority) may be the same as the authority referred to in item 3.1 of the model and paragraph 2 (e) of article 5 (i.e. the court or other public authority that conducted the judicial sale).

154. Both the model and paragraph 2 (k) of article 5 refer to the inclusion of the signature or stamp of the issuing authority or “other confirmation of authenticity of the certificate”. Confirmation of authenticity provides assurance as to the origin of the certificate (i.e. that it was issued by the issuing authority). The most common device used to confirm authenticity besides a signature or stamp is a seal, but in the case of electronic certificates, other devices are also possible. The Convention does not mandate the use of any device other than a signature or stamp. Moreover, the reference to “other confirmation of authenticity of the certificate” is not intended to suggest any additional formality to authenticate the certificate, such as legalization (see further remarks below on article 5, paragraph 4).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 44-45, 47, 57
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 93
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 71-72
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 103-105
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 109
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 46, 48

6. Transmission of certificate to repository (article 5, paragraph 3)

155. The certificate is issued to the purchaser, who will use it, as need be, to prompt action on registration of the ship under article 7 and to prohibit arrest of the ship under article 8. In addition, the certificate is transmitted to the repository. As with paragraph 5 (b) of article 4, paragraph 3 of article 5 is concerned with the fact of transmission and not with the modalities of transmission, such as the method used and person responsible for transmitting the certificate to the repository. Those modalities are left to the law of the State of judicial sale and the procedures put in place by the repository in performing its functions under article 11 (see remarks below on article 11).

156. In practice, it may be more convenient for a copy of the certificate to be transmitted to the repository. While paragraph 3 of article 5 refers to “the” certificate, it should not be understood as preventing a copy (including an electronic copy) of the certificate from being transmitted to the repository.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 106-107
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 108

7. No legalization (article 5, paragraph 4)

157. Consistent with the international nature of shipping, it is anticipated that the certificate of judicial sale will be produced in a State other than the State in which it is issued. That other State may have a practice of requiring foreign public documents to be legalized. “Legalization” is a term often used for the formality by which a diplomatic or consular agent of the State in which the document is to be produced certifies the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp on the document. Legalization procedures can be cumbersome and time-consuming owing to the involvement of various authorities at different levels in both the State in which the document is issued and the State in which it is to be produced.

158. In the interests of expediency, paragraph 4 of article 5 exempts the certificate of judicial sale from legalization. It also exempts the certificate from any “similar formality” to legalization. The most notable example of such a formality is the addition of a certificate - known as an “Apostille” - issued under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (1961)⁽³⁵⁾ by the State in which the document is issued.

159. The effect of paragraph 4 of article 5 is that the registry or other competent authority may not require a foreign certificate of judicial sale to be legalized or

⁽³⁵⁾ United Nations, *Treaty Series*, vol. 527, No. 7625.

produced with an Apostille as a condition for taking action under article 7, nor may the court or other judicial authority do so as a condition for taking action under article 8. If the authority has doubts about the authenticity of the document produced, it can verify the issuance of the certificate by communicating with the issuing authority using the contact details included for that purpose in the certificate, as provided for in article 12, or compare the certificate with the certificate published by the repository. Nothing in the Convention prevents the authority from rejecting a document purporting to be a certificate issued under the Convention because it is not authentic. However, by virtue of article 9, it is not the role of the authority to ascertain whether the conditions for issuance of a certificate under the Convention have been met or whether the certificate is otherwise valid.

160. The exemption in paragraph 4 of article 5 is extended to “any translation” of the certificate of judicial sale. Under paragraph 3 of article 7 and paragraph 3 of article 8, the authority to which the certificate is submitted may request production of a certified translation. It is conceivable that, if the authority accepts a certified translation done in another State (e.g. in the State of judicial sale), the certified translation itself would be treated as a foreign public document that is subject to legalization. In those circumstances, exempting only the certificate of judicial sale from legalization would not achieve the expediency that paragraph 4 of article 5 pursues. For more on certified translations, see remarks below on article 7, paragraph 3.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, para. 45
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, paras. 33-34
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, para. 108
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 90-91
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 80-82

8. Evidentiary value (article 5, paragraph 5)

161. The production of the certificate of judicial sale triggers action on registration under article 7 and the prohibition of arrest under article 8. For those provisions to be effective, the content of the certificate needs to be accepted by the authorities to which the certificate is produced. In other words, the content of the certificate needs to have evidentiary value.

162. By virtue of paragraph 5 of article 5, the information contained in the certificate of judicial sale is “sufficient evidence” of the matters certified. An authority to which the certificate is produced may not request additional information to identify the ship or to establish that the ship was sold by judicial sale, that the sale

was conducted in accordance with the requirements of the law of the State of judicial sale and the requirements of the Convention, or that the judicial sale conferred clean title to the ship on the purchaser.

163. Paragraph 5 of article 5 does not require the information contained in the certificate of judicial sale to be treated as conclusive or irrefutable evidence. For example, it does not prevent an authority from considering other information as to the matters certified. In particular, it would not prevent a court in the State of judicial sale exercising jurisdiction under article 9 from considering information outside the certificate in hearing an application to avoid the judicial sale or to challenge the issuance of judicial sale certificate, nor would it prevent a court in another State Party from considering information outside the certificate in hearing an application invoking the public policy ground under article 10. This is confirmed by the inclusion of the words “without prejudice to articles 9 and 10” in paragraph 5 of article 5.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 109-112

9. Electronic form (article 5, paragraphs 6 and 7)

164. The certificate of judicial sale may be issued electronically and cannot be rejected merely because it is in electronic form. While paragraph 2 of article 5 is formulated in medium-neutral terms, the Convention makes special provision in paragraphs 6 and 7 of article 5 for the issuance and acceptance of electronic certificates. Those provisions are modelled on rules contained in the United Nations Convention on the Use of Electronic Communications in International Contracts (2005) (hereinafter “Electronic Communications Convention”).⁽³⁶⁾

165. Nothing in the Convention prevents a certificate from being issued in both electronic and paper form for the same judicial sale (i.e. multiple certificates). Nor does it oblige or authorize the competent authority to issue certificates in electronic form. Those matters are left to the regulations and procedures of the issuing authority under the law of the State of judicial sale.

(a) Requirements for electronic certificates (article 5, paragraph 6)

166. Paragraph 6 of article 5 is modelled on the rules in article 9 of the Electronic Communications Convention, which establish functional equivalence between paper-based and electronic communications with respect to legal requirements of recordation, authenticity and integrity. Those requirements are translated into the conditions set out in paragraph 6 (a) to (c), respectively. The term “electronic record” is not defined in the Convention and should be given the same meaning as an “electronic communication” under the Electronic Communications Conven-

⁽³⁶⁾ United Nations, *Treaty Series*, vol. 2898, No. 50525.

tion or an “electronic record” under the UNCITRAL Model Law on Electronic Transferable Records.⁽³⁷⁾ Article 2 of the Model Law defines “electronic record” to mean “information generated, communicated, received or stored by electronic means, including, where appropriate, all information logically associated with or otherwise linked together so as to become part of the record, whether generated contemporaneously or not”.

167. Paragraph 6 (a) requires information contained in an electronic certificate of judicial sale to be “accessible so as to be usable for subsequent reference”. This condition, which is modelled on article 9, paragraph 2, of the Electronic Communications Convention, establishes equivalence for the function of a paper document in recording information in writing (i.e. in a format that can be read and can thus allow the information to be recalled). As stated in the explanatory note on the Electronic Communications Convention, the word “accessible” is intended to imply that information in the form of computer data should be readable and interpretable, and that the software that might be necessary to render such information readable should be retained, while the word “usable” is intended to cover both human use and computer processing.⁽³⁸⁾

168. Paragraph 6 (b) requires the use of a reliable method to identify the issuing authority. While the content of the certificate itself identifies the issuing authority by name, this condition, which is modelled on article 9, paragraph 3, of the Electronic Communications Convention, establishes equivalence for the function of a signature or stamp in confirming the authenticity of a paper document (i.e. that it was issued by the issuing authority). Unlike the Electronic Communications Convention, paragraph 6 (b) does not require the electronic certificate to indicate the authority’s intention in respect of the content of the certificate. In the context of the Convention, identifying the authority issuing the certificate is sufficient both to identify the authority and to associate it with the content of the certificate.

169. Paragraph 6 (c) requires the use of a reliable method to detect any alteration to the electronic record after the time it was generated. This condition establishes equivalence for the function of the original of a paper document in allowing the integrity of the certificate to be confirmed (i.e. whether its content has remained unchanged since being issued). It is modelled on article 9, paragraph 4 (a), read with article 9, paragraph 5, of the Electronic Communications Convention, but has been reformulated to maintain consistency with paragraph 6 (b).

170. Paragraph 6 (b) and (c) require the use of a “reliable method” to fulfil the functions described therein. Whether a method is reliable depends on the circumstances and not on the use of a particular technology. Relevant considerations include international standards and practices. In some jurisdictions, the issuing authority will be required by law to use an approved method to issue electronic cer-

⁽³⁷⁾ *UNCITRAL Model Law on Electronic Transferable Records* (2017), United Nations publication, Sales No. E.17.V.5.

⁽³⁸⁾ *United Nations Convention on the Use of Electronic Communications in International Contracts* (2007), United Nations publication, Sales No. E.07.V.2, para. 146.

tificates, whereas in others, the issuing authority can decide the method to use. In both cases, paragraph 6 provides for the reliability of the method to be determined on a case-by-case basis, which necessarily implies an enquiry after the certificate is issued and only if the issue arises.

(b) Acceptance of electronic certificates (article 5, paragraph 7)

171. If the requirements of paragraph 6 of article 5 are satisfied, the electronic certificate is a certificate of judicial sale for the purposes of the Convention and must be accepted as such. For additional certainty, paragraph 7 of article 5 reinforces that principle by providing that an electronic certificate cannot be rejected merely because it is in electronic form. It is modelled on article 8, paragraph 1, of the Electronic Communications Convention, which embodies the principle of non-discrimination against the use of electronic means. Nothing in paragraph 7 of article 5 obliges a court or other authority of a State Party to give effect to an electronic record purporting to be a certificate of judicial sale issued under the Convention if the court finds that the record does not comply with the requirements of paragraph 6.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 92
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, para. 75
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, paras. 35-38
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 12-14

G. Article 6. International effects of a judicial sale

172. Article 6 contains the basic rule of the Convention: a judicial sale conducted in one State Party which has the effect of conferring clean title on the purchaser has the same effect in every other State Party. Article 6 is triggered by the issuance of a certificate for the judicial sale under article 5. It requires no special procedure to give effect to the foreign judicial sale, such as confirmation by a competent court in the State in which the effects are sought to be produced. The judicial sale produces its effects automatically, i.e. by operation of law.

173. Article 6 is concerned with the effect of the foreign judicial sale in “conferring clean title”. Giving effect to the conferral of clean title will most commonly be manifested in action taken on the registration of the ship under article 7 and action on the prohibition of arrest of the ship under article 8. However, the operation of article 6 may be manifested in other ways (e.g. in the event of a dispute concerning ownership in the ship).

174. Article 6 and other provisions of the Convention purposefully refer to “giving effect” to a foreign judicial sale and not to the “recognition” of that sale. As noted in the remarks on article 1, the Convention is concerned with the effects of judicial sales and not with the recognition of judgments. The Convention is only concerned with the sale as a legal fact produced under the aegis of a foreign legal system. It is a device that enforces private rights; where those private rights are adjudged by a court on the merits of a claim (e.g. against the shipowner), the judicial sale becomes the measure by which the judgment is enforced. To emphasize that it is not concerned with the recognition and enforcement of foreign judgments, the Convention avoids the term “recognition”. Similarly, the Convention contains no provision addressing its interaction with treaties on the recognition and enforcement of foreign judgments (cf. article 13), nor does it contain a provision preserving bases for recognizing foreign judgments under domestic law (cf. article 14).

175. If article 6 is triggered by the issuance of a certificate of judicial sale, it does not deal with the situation in which the certificate is subsequently invalidated by a court exercising jurisdiction under article 9. This is confirmed in paragraph 2 of article 15, which provides that, at most, the question of the international effect of invalidating a certificate of judicial sale is governed by the law applicable in the State in which the issue arises.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 27, 49
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 46-47
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 82-83, 89
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, paras. 19-21

H. Article 7. Action by the registry

1. Actions to be taken (article 7, paragraphs 1 and 2)

176. Despite international efforts to harmonize conditions for the registration of ships, including the conclusion of the United Nations Convention on Conditions for Registration of Ships (1986),⁽³⁹⁾ practice varies between jurisdictions. The Convention does not seek to contribute to those efforts. Rather, it identifies actions to be taken by the competent authorities in the State of registration to realize the effects of a judicial sale, as required by article 6. Those actions are prescribed in

⁽³⁹⁾ See note 22 above.

paragraph 1 of article 7. Paragraph 2 of article 7 prescribes additional action to be taken if the ship is subject to a bareboat charter arrangement.

177. Paragraphs 1 and 2 of article 7 are triggered by the production of the certificate of judicial sale and therefore only apply after completion of a judicial sale that confers clean title. They also require a request by the purchaser or subsequent purchaser (see remarks in paras. 188-192 below on procedure for taking action). The prescribed actions are required to be taken if the judicial sale is conducted in the State of registration (in the case of article 7, paragraph 1) or the State of bareboat charter-in registration (in the case of article 7, paragraph 2), or in another State Party.

178. With regard to paragraph 1 of article 7, not every sale will require all prescribed actions to be taken. For instance, if action is taken to register the ship in the name of the purchaser under paragraph 1 (c), no action would be required to delete the ship from the register under paragraph 1 (b). The non-cumulative nature of the actions prescribed follows from the requirement for the competent authority to act “at the request of the purchaser or subsequent purchaser” and is reinforced by the addition of the words “as the case may be” in the chapeau of paragraph 1. In other words, the prescribed actions are to be taken if applicable and to the extent applicable.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, para. 48
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, para. 89
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 55

(a) Deleting pre-existing mortgages, hypothèques and registered charges (article 7, paragraph 1 (a))

179. As noted above (para. 49), the conferral of clean title means that all pre-existing mortgages, *hypothèques* and charges cease to attach to the ship. By definition, mortgages, *hypothèques* and registered charges are registered in the State of registration. By requiring action to delete registration, paragraph 1 (a) of article 7 implements the effect of the judicial sale with respect to mortgages, *hypothèques* and registered charges.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 30-31
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 55

(b) Deleting the ship from the register (article 7, paragraph 1 (b))

180. As noted above (para. 48), the conferral of clean title means that all pre-existing property rights in the ship are extinguished, including the title vested in the previous shipowner. A ship is typically registered in a State in the name of the shipowner and will not be able to be registered in that other State unless the previous registration is deleted. By requiring action to delete the ship from the register and issue a certificate of deletion, paragraph 1 (b) of article 7 implements the effect of the judicial sale with respect to title and facilitates the “new” registration of the ship in another State in the event that the purchaser wishes to “reflag” the ship. However, it does not require action to register the ship in that other State, which remains a matter for the law of that State.

181. Recalling the differences in registration practice between States, the procedure for deregistering a ship might be known in the State of registration by a term other than “deletion”.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 96-97
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 32-34

(c) Registering the ship in the name of the purchaser (article 7, paragraph 1(c))

182. Alternatively, the purchaser may wish the ship to remain registered in the State of registration, and wish therefore to be registered as the new owner. By requiring action to register the ship in the name of the purchaser, paragraph 1 (c) of article 7 implements the effect of the judicial sale with respect to title. This is subject, however, to a proviso that “the ship and the person in whose name the ship is to be registered meet the requirements of the law of the State of registration”. This proviso acknowledges that States have different requirements for registering ships, including requirements stemming from article 5 of the Convention on the High Seas (1958),⁽⁴⁰⁾ article 91 of the United Nations Convention on the Law of the Sea (1982),⁽⁴¹⁾ and other domestic laws.

183. Paragraph 1 (c) extends to action taken to register the ship in the name of the “subsequent purchaser” which, by virtue of the definition of that term in article 2, is limited to the first subsequent purchaser. This limited extension reflects a balance between acknowledging the practice whereby a purchaser transfers ownership in the ship to a separate legal entity in order to meet the requirements of the law of the State of registration, on the one hand, and the burden on the registry of verifying the regularity of dealings concerning ships entered in the register, on the other hand.

⁽⁴⁰⁾ United Nations, *Treaty Series*, vol. 450, No. 6465.

⁽⁴¹⁾ United Nations, *Treaty Series*, vol. 1833, No. 31363.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 96-97
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 32-34

(d) Updating the register (article 7, paragraph 1 (d))

184. Paragraph 1 (d) of article 7 requires additional information on the judicial sale to be recorded in the register of ships or equivalent register in which the ship is registered. It is concerned with updating the register with particulars in the certificate that may not have been recorded in the register pursuant to action taken under paragraph 1 (a) to (c), such as the name of the court of judicial sale and the date of the sale. It is not concerned with updating the register to enter the ship in the register or to record the purchaser as the new owner.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, para. 96
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 35

(e) Deleting bareboat charter registration (article 7, paragraph 2)

185. A bareboat charter grants the charterer a right of use over the ship. While the obligation under article 6 requires the State to recognize the extinguishment of any right of use so far as it can be asserted against the ship, paragraph 1 (b) of article 15 makes it clear that the Convention does not affect the ability of the bareboat charterer (as lessee) to assert that right in a personal claim against the former shipowner (as lessor) for breach of contract. However, the purchaser is not bound to honour the right of use of the bareboat charter (unless of course the purchaser assumes the obligations of the former owner). Paragraph 2 of article 7 implements the effective termination of the bareboat charter arrangement, by which the State of bareboat charter-in registration revokes its permission for the ship to fly its flag.

186. Recalling the differences in practice between States (see para. 77), the procedure for terminating the bareboat charter registration might be known in the State of bareboat charter-in registration by a term other than “deletion”.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 96

2. *Competent authority*

187. The actions prescribed in paragraphs 1 and 2 of article 7 are taken either by the registry or by another competent authority of the State of registration (in the case of article 7, paragraph 1) or the State of bareboat charter-in registration (in the case of article 7, paragraph 2). Competence to take any of the prescribed actions is a matter for the law of that State, which may confer competence on a single authority or multiple authorities, including by function of geographic location (e.g. port of registration) or type of register (e.g. register of ships, register of security interests, bareboat charter register). Nevertheless, the Convention assumes an alignment between the authorities taking action under article 7 and the registers and registries referred to in article 4, paragraph 3. Specifically:

- (a) The authority competent to take action under paragraph 1 (a) of article 7 will typically be the registry that maintains the register referred to in paragraph 3 (b) of article 4;
- (b) The authority competent to take action under paragraph 1 (b) and (c) of article 7 will typically be the registry referred to in paragraph 3 (a) of article 4; and
- (c) The authority competent to take action under paragraph 2 of article 7 will typically be the bareboat charter registry referred to in paragraph 3 (e), subparagraph (ii), of article 4.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 97
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, para. 90
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 22

3. *Procedure for taking action*

188. The competent authority takes action “in accordance with its regulations and procedures”. Those regulations and procedures are a matter for the law of the State of registration. In the context of paragraph 1 of article 7, they typically provide for a range of matters relating to procedure, including how documents are to be produced and whether a fee can be charged for the action taken. However, as noted in the remarks above on paragraph 5 of article 5, those regulations and procedures cannot be applied to require additional information to establish the matters certified in the certificate of judicial sale.

189. The regulations and procedures of the competent authority should not be invoked in a manner that is inconsistent with the obligation of the State of registration under article 6 to give effect to the clean title conferred by the judicial sale. A

risk of inconsistency can arise, for example, if regulations make action conditional on the purchaser paying outstanding taxes levied against the former shipowner or paying out unsatisfied creditors. The chapeau of paragraph 1 of article 7 therefore provides that the allowance for the competent authority to take action “in accordance with its regulations and procedures” is “without prejudice to article 6”.

190. The regulations and procedures of the competent authority will typically determine whether the authority acts on application (e.g. action is taken at the request of the purchaser) or on its own motion (e.g. action is taken automatically). However, as paragraph 1 of article 7 requires action to be taken “at the request of the purchaser or subsequent purchaser”, the regulations and procedures of the competent authority should not be invoked to deny the purchaser or subsequent purchaser the right to seize the competent authority. Paragraph 1 does not prevent the competent authority from taking action on its own motion, e.g. a registry in the State of judicial sale taking action on the basis of an order of the court of judicial sale. Nevertheless, action to delete the ship from the register under paragraph 1 (b) implies motivation on the part of the purchaser or subsequent purchaser for that action to be taken. And in any case, it is worth recalling that, in the event of action taken in a State other than the State of judicial sale, article 6 requires no special procedure to give effect to the foreign judicial sale, such as confirmation by a competent court in that State.

191. In practice, it is only the actions prescribed in paragraph 1 (c) and (d) that the competent authority will take at the request of the subsequent purchaser. The regulations and procedures of the competent authority may provide for a person acting as subsequent purchaser to produce documentation (e.g. a bill of sale) establishing that they have purchased the ship from the person named as the purchaser in the certificate of judicial sale, and thus qualifying as “subsequent purchaser” within the meaning of the Convention. For the purposes of paragraph 1 (c), the regulations and procedures may provide for the production of other documentation establishing that the “requirements of the law of the State of registration” are met.

192. Nothing in the Convention prevents the competent authority from taking subsequent action on registration at the request of a purchaser further down the chain of transfers.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 97
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 91-95
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 17, 23-26
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 53-54

4. Translation and copy of the certificate of judicial sale (article 7, paragraphs 3 and 4)

193. As noted above (para. 152), the certificate of judicial sale will typically be issued in the language of the issuing authority in the State of judicial sale. Paragraph 3 of article 7 allows the competent authority to request production of a certified translation of the certificate. While the term “certified translation” is not defined, in the context of the actions prescribed in paragraphs 1 and 2 of article 7, the requirements for certification should be left to the regulations and procedures of the competent authority, which typically provide for a document bearing an endorsement by a recognized person or entity (e.g. a sworn translator) that the document is an accurate translation. Nothing in the Convention prevents the competent authority from dispensing with the requirement to produce a certified translation (e.g. if the competent authority accepts uncertified translations or no translation at all). It is worth recalling that nothing in the Convention requires the issuing authority to issue a certificate of judicial sale in a particular language.

194. Paragraph 4 of article 7 allows the competent authority to request production of a certified copy of the certificate for its records. This provision acknowledges that a single certificate of judicial sale may need to be produced to multiple authorities to trigger all of the actions prescribed in paragraphs 1 and 2. If requested, the production of the certified copy supplements, but does not substitute, the production of the certificate of judicial sale itself. While the term “certified copy” is not defined, as with certified translations under paragraph 3, the requirements for certification should be left to the regulations and procedures of the competent authority, which typically provide for a document bearing an endorsement by a recognized person or entity that the document is a true copy. Nothing in the Convention prevents the competent authority from dispensing with the requirement to produce a certified copy (e.g. if the competent authority accepts an uncertified copy or makes a copy itself).

195. By virtue of paragraph 4 of article 5, the competent authority may not request evidence of legalization or the production of an “Apostille” for the certificate or for any translation.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, para. 48
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 98
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, para. 101
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 36
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 57.

5. Refusal to take action (article 7, paragraph 5)

196. The competent authority is not required to take any actions prescribed in paragraphs 1 or 2 of article 7 if a court in the State of registration (in the case of article 7, paragraph 1) or the State of bareboat charter-in registration (in the case of article 7, paragraph 2) determines under article 10 that giving effect to the judicial sale would be manifestly contrary to the public policy of that State. As the preclusive effect of such a determination already flows from article 10 itself, paragraph 5 of article 7 is designed to provide an additional signpost to the competent authority. It acknowledges that a request for the competent authority to take action under article 7 may trigger a challenge invoking the public policy exception. The competent authority might not be well-placed to make a public policy determination and should not have the burden of dealing with a public policy challenge, but neither should it be expected to take any actions prescribed in paragraphs 1 or 2 where that would contravene a decision by a competent court. See further remarks on article 10 (including regarding the meaning of “determination” and “manifestly contrary”).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 97-100
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 37-40
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 58

I. Article 8. No arrest of the ship

1. General rule (article 8, paragraphs 1 and 2)

197. The international community has achieved significant progress in harmonizing rules on the arrest of ships. In broad terms, those rules permit a ship to be arrested in respect of a maritime claim only if the person who owns the ship at the time of arrest is the person who owned the ship at the time the claim arose, unless the maritime claim is secured by a maritime lien or is based on a mortgage, *hypothèque* or charge of similar nature. Where the judicial sale not only vests title of the ship in the purchaser, but does so free and clear of any mortgage, *hypothèque* or charge (including maritime lien and registered charge), it follows that the ship should not be subject to arrest for any maritime claim or maritime lien arising prior to the judicial sale. Paragraphs 1 and 2 of article give effect to that principle.

198. Paragraph 1 of article 8 deals with the case in which an arrest is applied for, while paragraph 2 deals with the case in which an arrest has been effected. Like article 7, article 8 is triggered by the production of the certificate of judicial sale and therefore only applies after completion of a judicial sale in a State Party that confers clean title. Moreover, it applies if the judicial sale is conducted in the State in which the arrest is applied for or effected, or in another State Party.

199. Both paragraphs refer to the “arrest” of the ship or any other “similar measure” against the ship. The reference to “similar measure” against the ship is designed to align article 8 with the terminology used in the definition of “ship” in article 2 (which refers to a vessel that “may be the subject of an arrest of other similar measure capable of leading to a judicial sale”) and in the definition of “charge” (which refers to rights being asserted against a ship “whether by means of arrest, attachment or otherwise”). It is not designed to modify the understanding of “arrest” under the Arrests Conventions.⁽⁴²⁾

200. Both paragraphs refer to arrest for a “claim”. The term is not designed to affect the range of claims in respect of which a ship may be arrested under the Arrests Conventions. Nor is it intended to affect any rights or powers of seizure in the enforcement of public law, such as tax, customs or criminal law.

201. Both paragraphs refer to action by a court or “other judicial authority”. This terminology is designed to further align article 8 with the Arrests Convention. Consistent with the Arrests Convention and the objective of the Convention, matters of procedure relating to actions taken under article 8 are left to the law of the State in which the arrest has been applied for or effected, as the case may be.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 102-103
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 42
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 59

2. Translation of the certificate of judicial sale (article 8, paragraph 3)

202. In similar terms to paragraph 3 of article 7, paragraph 3 of article 8 allows the court of other judicial authority to request production of a certified translation of the certificate (see further remarks above on article 7, paragraph 3).

3. Refusal to take action (article 8, paragraph 4)

203. The court or other judicial authority is not required to take action to prohibit the arrest of the ship under paragraphs 1 or 2 of article 8 if it determines that that action would be manifestly contrary to the public policy of the State. Paragraph 4 of article 8 differs from paragraph 5 of article 7 in two respects. First, it refers to the court itself making the public policy determination. Second, it links and adapts the public policy exception to cases in which an arrest is applied for or effected. Paragraph 4 of article 8 does not itself confer jurisdiction on the court or other judicial authority to hear an application invoking the public policy ground, which is left to the law of the State in which the arrest is applied for or effected. Moreover, it does

⁽⁴²⁾ See note 1 above.

not limit the generality of article 10 (see further remarks below on article 10, including regarding the meaning of “determination” and “manifestly contrary”).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 104-106
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 42

J. Article 9. Jurisdiction to avoid and suspend judicial sale

1. Exclusive jurisdiction (article 9, paragraphs 1 and 2)

204. Article 9 is concerned solely with jurisdiction to review a judicial sale. Paragraph 1 declares that the courts of the State of judicial sale have exclusive jurisdiction. Paragraph 2 reinforces the exclusivity of that jurisdiction by requiring the courts in every other State Party to decline jurisdiction.

205. Article 9 is concerned specifically with jurisdiction to avoid a judicial sale and jurisdiction to suspend the effects of a judicial sale. The Convention does not define “avoidance” of a judicial sale, which is understood to refer to a judicial remedy that renders the sale null and void and restores the parties to their respective positions prior to the sale. In some jurisdictions, such a remedy might be referred to by a different name. The term “avoidance” is consistent with usage in other treaties dealing with sales, including the United Nations Convention on Contracts for the International Sale of Goods (1980),⁽⁴³⁾ and emphasizes that the Convention is concerned with judicial sales and not with judgments in respect of such sales. In yet other jurisdictions, the remedy of avoidance might not exist at all. Paragraph 1 does not require a State Party to make the remedy available, nor does it affect the availability of other remedies available under the law of the State of judicial sale (e.g. remedies in tort). In that regard, remedies may be available at different stages of the judicial sale procedure, including after the sale is ordered but before the auction takes place, after the auction takes place but before it is confirmed, and after the sale has reached completion. Paragraph 1 applies only to a judicial sale that confers clean title and the remedy of avoidance itself assumes that the sale has reached completion. Avoidance can thus be contrasted to other remedies that have the effect of delaying or calling off the sale before the procedure has reached its final stage (i.e. prior to completion), which are addressed in paragraph 1 of article 4. In some jurisdictions, such other remedies may be referred to as “suspending” the sale, which in turn can be contrasted to suspending the effects of a sale once it has reached completion, which is the other remedy referred to in paragraph 1 of article 9.

206. While differences exist between jurisdictions, grounds for avoidance may include (a) non-compliance with requirements under domestic law relating to notification and the procedures for holding public auctions or public tenders (including

⁽⁴³⁾ United Nations, *Treaty Series*, vol. 1489, No. 25567.

as specified in the decision ordering the sale), (b) approving or confirming a sale at a price below market price, and (c) fraud or other wrongdoing on the part of bidders. Consistent with the objective of the Convention to leave matters of procedure to domestic law, paragraph 1 of article 9 does not deal with grounds for avoidance or with standing to bring a claim or application. In particular, while compliance with the requirements of the Convention is a condition for issuance of the certificate of judicial sale, and the exclusive jurisdiction under paragraph 1 extends to any claim or application to challenge the issuance of the certificate of judicial sale, the Convention does not require the State of judicial sale to make non-compliance a ground for avoidance.

207. In practice, avoidance of a judicial sale is exceedingly rare. It is a remedy of limited availability given the difficulty of unwinding the effects of a judicial sale and restoring the parties to their previous positions once action has been taken on registration under article 7 and the proceeds of sale have been distributed. For many creditors, it is also unlikely to be an adequate remedy, with the possible exception of creditors who put in an unsuccessful bid or who allege that the sale was conducted in a manner that failed to maximize the proceeds. The inclusion of article 9 in the Convention is not intended to suggest that challenges to a judicial sale should be encouraged as a matter of course; rather it is designed to ensure that the validity of a certificate of judicial sale and the conditions for issuance are scrutinized exclusively by the State of judicial sale.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 51-52, 54-57
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 59, 68-78
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 82, 107, 109
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, paras. 29, 57-60
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, para. 45
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 43-47
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 60-63

2. *Effects of avoidance and suspension* **(article 9, paragraph 3; article 15, paragraph 2)**

208. The effects of a judgment avoiding a judicial sale in exercise of jurisdiction conferred under paragraph 1 of article 9 are limited to the State of judicial sale under its domestic law. Nevertheless, the Convention acknowledges that, while

exceptional, the avoidance of a judicial sale may have an impact on the Convention regime. For instance, a judicial sale may be avoided, or a certificate of judicial sale invalidated, for reasons that are apt to trigger a challenge on public policy grounds in another State under article 10. The Convention does not seek to find an answer to the international effect of avoidance or suspension, which is left to the law applicable in the State in which the issue arises, as provided for in paragraph 2 of article 15.

209. What the Convention does instead is to require any decision that avoids a judicial sale or suspends the effects thereof to be transmitted to the repository. This only applies to judicial sales for which a certificate has been issued. As with paragraph 3 of article 5, paragraph 3 of article 9 is concerned with the fact of transmission and not with the modalities of transmission, such as the method used and person responsible for transmitting the certificate to the repository. Those modalities are left to the law of the State of judicial sale and the procedures put in place by the repository in performing its functions under article 11 (see remarks below on article 11).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 74, 108
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, paras. 27-31
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, para. 113
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 52-54
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 64

K. Article 10. Circumstances in which judicial sale has no international effect

1. Function of article 10

210. Article 10 provides the sole exception to the basic rule contained in article 6. While article 9 deals with jurisdiction to hear a challenge to a judicial sale in the State of judicial sale, article 10 deals with the right of any other State Party to refuse the international effects of a judicial sale. The ground for refusal is limited to the public policy exception and requires a determination of a court. That determination has effect only in that State and does not affect the international effects of the judicial sale in any other State Party. The Convention acknowledges that the public policy exception will be most likely invoked in the States in which action under articles 7 or 8 is sought.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 59-66

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 58, 79-89
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 84-85, 87-88

2. *Public policy exception*

211. Public policy is widely admitted among legal systems as a ground for refusing to recognize or enforce a foreign judgment. While the public policy exception in article 10 has been inspired by recent treaty practice, including article 7, paragraph 1 (c), of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019),⁽⁴⁴⁾ it is adapted to the international effects of judicial sales (recalling that the Convention is not concerned with the recognition and enforcement of foreign judgments; see remarks above on article 6). Matters of public policy can differ between judicial sales and foreign judgments. But as with foreign judgments, the concept of public policy under article 10 differs between States, which is recognized by the reference to the public policy “of that other State Party”.

212. Article 10 requires the effect of the judicial sale in the State concerned to be “manifestly contrary” to public policy. This sets a high threshold, which reflects recent treaty practice. The threshold is designed to avoid an abusive or overly expansive application of the public policy exception and requires a compelling reason as to why giving effect to the foreign judicial sale is contrary to an identified matter of public policy. It emphasizes that the public policy is expected to apply only in exceptional cases.

213. In the context of judicial sales, matters of public policy may include the extinguishment of rights that are considered a mandatory rule of the State concerned, the avoidance of the sale in the State of judicial sale, infringement of sovereignty or security occasioned by the sale, the procurement of the sale by fraud committed by the purchaser, and conducting the judicial sale in a manner that violates fundamental principles of due process. As noted above (para. 98), a particularly egregious failure to comply with the notice requirements under the Convention could give rise to an application invoking the public policy ground. However, consistent with recent treaty practice, a simple breach of a mandatory rule would typically not amount to a matter of public policy. Public policy requires the fundamental values of the State concerned to be engaged.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 38, 62

⁽⁴⁴⁾ Kingdom of the Netherlands, *Treaty Series*, 2019, No. 13672.

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 84-86
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 85-86, 107
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, para. 28
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 37, 55
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 65

3. Determination

214. The public policy exception requires the determination of a court. The Convention does not specify the form of that determination or the procedure for invoking the public policy exception. Consistent with the objective of the Convention, those matters are left to the law of the State concerned. Article 10 refers to a “determination” that the effect of the foreign judicial sale “would be” manifestly contrary to public policy. The word “determination” implies a decision based on a consideration of information relevant to matters of public policy. The use of the words “would be” reflects the formulation of the public policy exception in recent treaty practice. It is not intended to suggest that a provisional or conditional assessment by the court, let alone a mere allegation, would be sufficient.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, para. 100
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 39-40

L. Article 11. Repository

1. Purpose of the repository mechanism

215. The Convention establishes a repository mechanism to enhance the operation of the Convention regime by providing public access to instruments that are required to circulate under the Convention. The repository also has the potential to promote the dissemination of information on the judicial sale of ships, thereby raising awareness of the function of judicial sales and supporting research and analysis for the benefit of the global maritime community.

2. Identity of the repository (article 11, paragraph 1)

216. Paragraph 1 of article 11 designates the Secretary-General of the International Maritime Organization (hereinafter “IMO”) as the repository. As an alternative, it designates an institution named by UNCITRAL. This provision, which is based on the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, recognizes that the Convention does not bind IMO and that the assumption of the repository function by the IMO Secretary-General is subject to approval by IMO’s governing bodies.

3. Function of the repository (article 11, paragraph 2)

217. The function of the repository is to receive and publish the notice of judicial sale and certificate of judicial sale, as well as any decisions avoiding a judicial sale or suspending its effects. To that end, paragraph 2 of article 11 requires the repository to publish the instruments in a timely manner upon receipt. All of these instruments emanate from the State of judicial sale and are required to be transmitted to the repository under the Convention. The function of the repository is purely informational, and the publication of instruments has no particular legal effect under the Convention. In particular, the publication of the notice of judicial sale does not substitute the requirement to give the notice under paragraph 3 of article 4, nor does it substitute the requirement to produce the certificate of judicial sale to prompt action on registration of the ship under article 7 or action to prohibit arrest of the ship under article 8.

218. The Convention imposes no requirement on the repository to review or to ensure the accuracy or completeness of instruments transmitted for publication nor any requirement to translate them for publication. This is confirmed by the requirement in paragraph 2 of article 11 that the repository publish each instrument “in the form and in the language in which it is received”.

219. The Convention purposefully does not prescribe how the repository performs its function but rather leaves it to the repository to put in place procedures for the receipt and publication of instruments required to be transmitted under the Convention. The Convention is designed to accommodate the use of an online platform or other online service to receive and publish instruments using automated systems, and for instruments to be transmitted and accessed via an online account or other interactive application.

4. Transitional application (article 11, paragraph 3)

220. Paragraph 3 of article 11 makes provision for the repository to receive and publish notices of judicial sale emanating from a contracting State (within the meaning of article 2 (f) of the Vienna Convention on the Law of Treaties (1969)⁽⁴⁵⁾) for which the Convention has not yet entered into force. This provision supports the

⁽⁴⁵⁾ United Nations, *Treaty Series*, vol. 1155, No. 18232.

transitional application of the Convention (see further remarks below on article 21, paragraph 3).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 46, 73
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 67, 94
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 50, 74, 76-81
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, para. 32
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 85-91
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 49-51, 56-62
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 66

M. Article 12. Communication between authorities of States Parties

221. Paragraph 1 of article 12 provides for the communication between authorities in different States Parties. It is based on article 14 of the International Convention on Maritime Liens and Mortgages (1993)⁽⁴⁶⁾ and provides for communication for the purposes of the Convention as a whole rather than for specific provisions. In particular, it facilitates direct communication between the court of judicial sale (or other public authority conducting the judicial sale) and registries for the purposes of the notice requirements in article 4, and communication between the issuing authority and the competent authority under article 7 with respect to the issuance of the certificate of judicial sale. Paragraph 1 of article 12 is premised on an assumption that, without authorization, the authorities in a particular State might only be able to communicate with foreign authorities via diplomatic channels, which would not be suited to the expediency required in judicial sale proceedings.

222. Paragraph 1 of article 12 authorizes, but does not require, communication. Moreover, it does not limit the use of other channels of communication, including those established under judicial assistance treaties between the States concerned. This is confirmed by paragraph 2 of article 12. Paragraph 2 is not concerned with other mechanisms for giving effect to foreign judicial sales that might exist under such treaties; the application of those other mechanisms is addressed in article 14.

⁽⁴⁶⁾ See note 2 above.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, para. 74
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 64-65
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 67-68

N. Article 13. Relationship with other international conventions

223. According to the general principle stated in article 30, paragraph 3, of the Vienna Convention on the Law of Treaties (1969), a later treaty prevails over an earlier treaty to the extent of any incompatibility between the two. Article 13 addresses cases in which the application of the Convention is incompatible with two treaties identified during the preparation of the Convention. Ultimately, the existence and extent of any incompatibility is a matter of the interpretation of both instruments in a particular case.

224. Paragraph 1 of article 13 addresses the Convention on the Registration of Inland Navigation Vessels (1965) and its Protocol No. 2 Concerning Attachment and Forced Sale of Inland Navigation Vessels (hereinafter “Protocol No. 2”).⁽⁴⁷⁾ That convention is open to members of the United Nations Economic Commission for Europe (UNECE), as well as States admitted to UNECE with a consultative status. Protocol No. 2 governs the attachment (including arrest) and forced sale (including judicial sale) of “any vessel used in inland navigation” (article 2) and makes provision regarding various matters related to judicial sales that are addressed in the Convention, namely notice requirements (article 21), the international effects of a judicial sale (article 19), and action on registration following a judicial sale (article 22). As noted in the remarks on the definition of “ship” above (para. 45), the Convention is applicable to the judicial sale of inland navigation vessels, and thus its provisions are potentially incompatible with the provisions of Protocol No. 2 in a particular case. In the event of such incompatibility, paragraph 1 of article 13 provides for the provisions of the Convention to “give way” to the protocol so that, in accordance with the general principle stated in article 30, paragraph 2, of the Vienna Convention on the Law of Treaties (1969), Protocol No. 2 prevails.

225. Paragraph 2 of article 13 addresses the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (hereinafter “Service Convention”).⁽⁴⁸⁾ The Service Convention makes provision for the transmission of judicial documents emanating from one State for service in another State. If it applies, the Service Convention provides several channels of transmission, although for documents to be served in some States Parties, only transmis-

⁽⁴⁷⁾ United Nations, *Treaty Series*, vol. 1281, No. 21114.

⁽⁴⁸⁾ United Nations, *Treaty Series*, vol. 658, No. 9432.

sion through a central authority or through diplomatic and consular channels is provided. Insofar as the Service Convention provides exclusively for the channels of transmission of judicial documents for service abroad, its provisions are potentially incompatible with the provisions of the Convention that allow for the notice of judicial sale to be given under the law of the State of judicial sale (article 4, paragraph 4). Specifically, the notification times involved in using the channels of transmission available under the Service Convention for giving notice to a person located in a particular State may not be suited to the expediency required in judicial sale proceedings, and the law of the State of judicial sale may provide for the notice to be given using channels other than those provided in the Service Convention. In that case, paragraph 2 of article 13 is designed not to displace the application of the Service Convention entirely but rather to avoid the exclusivity of the channels of transmission provided thereunder. In other words, those channels can be used, but they do not have to be used. States that have enacted legislation to give effect to the Service Convention may need to amend that legislation if they wish for the notice of judicial sale to be given using channels other than those provided in the Service Convention.

226. As noted above (para. 174), the Convention is not concerned with the recognition of foreign judgments and therefore does not address its relationship with treaties such as the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, para. 72
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 31, 65
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 29, 60
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, para. 81
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 71
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 69
Note by the Secretariat on the interaction between a future instrument on the judicial sale of ships and selected HCCH Conventions	A/CN.9/WG.VI/WP.85, paras. 12-30

O. Article 14. Other bases for giving international effect

227. The purpose of article 14 is to clarify that the Convention does not displace other treaties or domestic law that provide a more favourable basis for giving effect

to foreign judicial sales. In the preparation of the Convention, it was acknowledged that foreign judicial sales could be recognized under the International Convention on Maritime Liens and Mortgages (1993),⁽⁴⁹⁾ as well as under domestic law in circumstances not covered by the Convention, including on the basis of comity.

228. Article 14 is not strictly a “give way” clause like paragraph 1 of article 13 because (a) it applies to avoid incompatibility in the first place, (b) it applies to judicial sales conducted in States that are not party to the Convention, as well as judicial sales that fall outside the scope of the Convention, and (c) it addresses the interaction of the Convention with domestic law (in addition to that with other treaties). If, however, the provisions of the Convention are incompatible with the bases under another treaty for giving effect to a foreign judicial in a particular case, article 14 provides for the provisions of the Convention to “give way” to the application of those bases.

229. Article 14 is not concerned with other treaties and domestic law that, in a particular case, would deny giving effect to foreign judicial sales. As such, article 14 would not give way to the application of grounds for refusal under another treaty. In that case, the provisions of the Convention, notably article 6, would apply to their fullest extent, in accordance with the general principle stated in article 30, paragraph 3, of the Vienna Convention on the Law of Treaties (1969). In the case of the incompatibility with domestic law, the general principle stated in articles 26 and 27 of the Vienna Convention on the Law of Treaties (1969) would be engaged.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, para. 17
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 68-70
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 68, 70

P. Article 15. Matters not governed by this Convention

1. Purpose

230. The purpose of article 15 is to clarify that the application of the Convention does not extend to matters (hereinafter “extraneous matters”) that the Convention is not intended to govern, namely (a) the distribution of the proceeds of the judicial sale, (b) personal claims against the former shipowner, and (c) the international effect of a judgment avoiding or suspending a judicial sale or invalidating a certificate of judicial sale. As such, article 15 is designed to provide a clear signpost to creditors that those extraneous matters are governed by other applicable law, namely domestic law. Strictly speaking, article 15 does not deal with exclusions from scope since the substantive provisions of the Convention are not intended to apply to the

⁽⁴⁹⁾ See note 2 above.

extraneous matters in the first place. For that reason, the paragraphs of article 15 are not located in article 3. Nevertheless, given the close connection of the extraneous matters prescribed in article 15 with matters that are governed by the Convention, and the fact that they were raised during the preparation of the Convention, it was felt that, to avoid doubt, an express provision clarifying the application of the Convention to those extraneous matters would be useful.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 47-48
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 72, 75
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 71

2. Distribution of proceeds

231. The availability of proceeds to creditors is a defining feature of a judicial sale within the meaning of the Convention (see remarks above on subparagraph (ii) of the definition of “judicial sale” in article 2). However, unlike the International Convention on Maritime Liens and Mortgages (1993),⁽⁵⁰⁾ the Convention does not regulate how those proceeds are distributed or how claims against the proceeds are prioritized. These matters are governed by the law of the State of judicial sale.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 22, 29
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 53, 54

3. Personal claims against the former shipowner

232. As article 1 makes it clear, the Convention is concerned only with judicial sales that (already) confer clean title. The Convention is not concerned with the effects of a judicial sale on the survival of personal claims against the former shipowner that arise prior to the judicial sale. This includes claims arising under contract or in tort, as well as other personal claims which, but for the judicial sale, could have been enforced by attachment against the ship following a court judgment, or which, by virtue of the judicial sale, could have been enforceable against the proceeds but were not fully satisfied. Paragraph 1 (b) of article 15 clarifies this position. It does not create any claim or revive any claim that was extinguished by the judicial sale.

⁽⁵⁰⁾ See note 2 above.

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233. The reference to “person who owned or had proprietary rights in the ship” as opposed to “owner” is designed to further distinguish matters governed by the Convention, which makes limited provision with respect to the notification of the “owner”, and the preservation of personal claims.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, para. 34
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 51-54
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 47-48
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 73

4. Effects of avoidance and suspension

234. Paragraph 2 of article 15 clarifies that the Convention does not offer an answer to the question, which is expected only ever to arise in exceedingly rare circumstances, as to the international effects of avoidance and suspension of a judicial sale under article 9 (see remarks above on article 9).

5. Other matters not governed by the Convention

235. As already noted in the remarks above on article 1, the Convention does not address the conduct of judicial sales, the recognition of judgments in respect of judicial sales, or whether a judicial sale confers clean title. This is consistent with the objective of the Convention to establish a harmonized regime for giving international effect to judicial sales, while preserving domestic law governing the procedure of judicial sales and the circumstances in which judicial sales confer clean title. A number of other matters connected with judicial sales were raised during the preparation of the Convention, but not included in article 15. Those other matters include the coordination of insolvency proceedings and parallel judicial sale proceedings, as well as remedies for wrongful arrest.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 22, 29-30
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 44, 46, 70-71

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, para. 100
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 52-61

Q. Final clauses

1. General

236. The final clauses of the Convention (articles 16-23) are modelled on other multilateral treaties prepared by UNCITRAL. Time periods specified in the final clauses are measured in days rather than years for greater certainty.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 76
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 86

2. Depositary (article 16)

237. Article 16 designates the Secretary-General of the United Nations as depositary of the Convention. The depositary is entrusted with the custody of the authentic texts of the Convention and of any full powers delivered to the depositary. The depositary also performs a number of administrative services in connection with the Convention, including (a) preparing certified copies of the original text, (b) receiving signatures to the Convention, (c) receiving and keeping custody of any instruments, notifications and communications relating to the Convention, and (d) informing States of instruments, notifications and communications relating to the Convention.

238. The depositary is a different institution and has a different function to the repository established under article 11.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 72

3. Consenting to be bound (article 17)

239. Establishing a harmonized regime for giving international effect to judicial sales is best served by securing broad appeal for the Convention among States. Paragraph 1 of article 17 declares that the Convention is open for signature by “all States”, which is a formula frequently used in multilateral treaties to promote the widest possible participation.

240. The Secretary-General, as depositary, has stated on a number of occasions that it would fall outside his or her competence to determine whether a territory or other such entity would fall within the “all States” formula. Pursuant to a general understanding adopted by the General Assembly on 14 December 1973, in discharging depositary functions relating to a Convention with the “all States” clause, the Secretary-General will follow the practice of the General Assembly and, whenever advisable, will request the opinion of the General Assembly before receiving a signature or an instrument of ratification or accession.⁽⁵¹⁾

241. While some treaties provide that a State may express its consent to be bound by signature alone, the Convention, like most modern multilateral treaties, provides that it is subject to ratification, acceptance or approval by the signatory State. Providing for signature subject to ratification, acceptance or approval allows the State time to seek approval for the Convention at the domestic level and to enact any legislation necessary to implement the Convention internally, prior to undertaking the legal obligations from the Convention at the international level. Upon ratification, the convention legally binds the State.

242. Acceptance or approval of a treaty following signature has the same legal effect as ratification, and the same rules apply. Accession has the same legal effect as ratification, acceptance or approval. However, unlike ratification, acceptance or approval, which must be preceded by signature, accession requires only the deposit of an instrument of accession. Unlike some multilateral treaties, accession to the Convention is not subject to any special conditions. Accession is a means by which a State may become party to a treaty without signing the treaty.

243. The Convention uses the term “State Party” to refer to a State which has consented to be bound by the Convention and for which the Convention is in force (see remarks below on article 21). This is extended to regional economic integration organizations under article 18.

Reference to preparatory work⁽⁵²⁾

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 76
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 73-75

4. REIO clause (article 18)

(a) Meaning of “regional economic integration organization”

244. In addition to “States”, the Convention allows participation by international organizations of a particular type, namely “regional economic integration organiza-

⁽⁵¹⁾ See *United Nations Juridical Yearbook* (1973), United Nations publication, Sales No. E.75.V.1, part two, chap. IV, sect. A.3 (p. 79, note 9), and *United Nations Juridical Yearbook* (1974), United Nations publication, Sales No. E.76.V.1, part two, chap. VI, sect. A.9 (pp. 157-159).

⁽⁵²⁾ As the date of the signing ceremony was not set at the time of adoption by the General Assembly, article 17 makes no reference to the time and place for opening the convention for signature.

tions” (hereinafter “REIOs”). Article 18 acknowledges the growing importance of REIOs, which already participate in a range of trade-related treaties.

245. The Convention does not define “regional economic integration organization”. Nevertheless, article 18 encompasses two key elements: the grouping of States in a certain region for the realization of common purposes, and the transfer of competencies relating to those common purposes from those States to the REIO. Although the notion of an REIO is a flexible one, participation in the Convention is not open to international organizations at large. Most international organizations do not have the power to enact legally binding rules, since that function typically requires the exercise of certain attributes of State sovereignty that only few organizations have received from their member States.

(b) Extent of competence of the REIO

246. Article 18 is not concerned with the internal procedures leading to signature, ratification, acceptance, approval or accession by an REIO. The Convention itself does not require a separate act of authorization by the member States of the REIO and does not answer, in one way or the other, the question as to whether the REIO has the right to consent to be bound by the Convention if none of its member States decides to do so. For the Convention, the extent of treaty powers given to an REIO - and whether it expresses its consent to be bound by ratification, acceptance, approval or accession - is an internal matter concerning the relations between the organization and its own member States. Article 18 does not prescribe the manner in which REIOs and their member States divide competences and powers among themselves.

247. Nonetheless, paragraph 1 of article 18 provides that an REIO may only express its consent to be bound if it “has competence over certain matters governed by this Convention”. Moreover, this competence needs to be demonstrated by a declaration made to the depositary pursuant to paragraph 2 of article 18 specifying the matters governed by the Convention in respect of which competence has been transferred to the REIO by its member States. Article 18 does not provide a basis for consenting to be bound by the Convention if the REIO has no competence on the subject matter covered by the Convention.

248. The REIO does not need to have competence over all the matters governed by the Convention; such competence may be partial or concurrent with its member States. Accordingly, both an REIO and any or all of its member States may become party to the Convention. In recognition of this, paragraph 1 of article 18 provides that an instrument deposited by the REIO is not counted (in addition to those deposited by its member States) for the purposes of the entry into force of the Convention (article 21) or of any adopted amendment (article 22).

249. By expressing its consent to be bound by the Convention, an REIO becomes a party to the Convention in its own right. This is confirmed by paragraph 3 of article 18, which provides that any reference to a “State” or “State Party” in the Convention applies equally, where the context so requires, to an REIO.

(c) Relationship between the Convention and REIO rules

250. Like other recent multilateral treaties prepared by UNCITRAL, paragraph 3 of article 18 contains a “disconnection clause” to regulate the relationship between the Convention and the rules enacted by an REIO. It is intended to cover the member States of the REIO in their mutual relations and not in their relations with other States. On its terms, it applies regardless of whether the REIO participates in the Convention following the procedures established in paragraphs 1 and 2 of article 18.

251. Paragraph 3 of article 18 acknowledges that the rules of an REIO may apply to the transmission of the notice of judicial sale from one member State to another, as well as the allocation of jurisdiction among member States in matters governed by the Convention, and provides that the Convention does not displace the operation of those rules.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 78
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 76-78

5. Non-unified legal systems (article 19)

(a) Mechanism for applying the Convention to territorial units

252. According to the general principle stated in article 29 of the Vienna Convention on the Law of Treaties (1969), a treaty is binding upon each party in respect of its entire territory, unless a different intention appears from the treaty or is otherwise established. Paragraph 1 of article 19 permits a State to declare that the Convention is to extend to all its territorial units or only to one or more of them. Article 20 deals with the timing of that declaration. If no declaration is made, the Convention extends to all territorial units of the State (article 19, paragraph 3).

253. This provision, which is often called the “federal clause”, is particularly relevant to States with a federal system of government under which the constituent states, provinces or other “territorial units” of the State have legislative power over matters governed by the Convention. For some federal States, while the central government retains treaty powers, it does not have the power to enact legislation necessary to implement the Convention in all or some of those territorial units. Paragraph 1 of article 19 addresses this situation by allowing the State to declare that the Convention applies only to those territorial units that have enacted legislation to implement the Convention. Article 20 allows the declaration to be amended at any time, which acknowledges that the State may apply the Convention progressively to its constituent territorial units.

254. Article 19 is not limited to federal States, and may be used by other States with separate territorial units, including autonomous territories and overseas territories. However, as with federal States, a declaration can only be made under paragraph 1 of article 19 if “different systems of law are applicable” in those ter-

ritorial units “in relation to matters dealt with in [the] Convention”. Article 19 is not designed to be used by REIOs.

(b) Interpretation of the Convention in its application to territorial units

255. Paragraph 4 of article 19 establishes rules for interpreting certain terms in the Convention in its application to territorial units of a State Party. It applies regardless of whether the State Party has made a declaration under paragraph 1.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 79-80
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 68, 79

6. Procedure and effects of declarations (article 20)

256. Article 20, which is modelled on article 21 of the Electronic Communications Convention,⁽⁵³⁾ establishes common rules on how declarations under the Convention are made and take effect. The Convention contemplates two types of declaration, which are provided for in paragraph 2 of article 18 (declaration by REIO on transferred competence) and paragraph 1 of article 19 (declaration by State on territorial units), respectively.

257. The second sentence of paragraph 4 of article 20 deals with the situation in which a State makes a declaration on territorial units under paragraph 2 of article 18 and modifies or withdraws the declaration less than 180 days before the Convention enters into force. For ease of administration, the Convention provides that the modification or withdrawal take effect simultaneously with the entry into force of the Convention for that State.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 83-87

8. Entry into force (article 21)

(a) Entry into force generally

258. Multilateral treaties prepared by UNCITRAL have required as few as three and as many as 10 States to express their consent to be bound in order for the treaty to enter into force. Paragraph 1 of article 21 requires three States to express their consent to be bound, which follows the modern trend in commercial law conventions and promotes the application of the Convention as early as possible in those States that seek to apply its provisions to their commerce. By virtue of

⁽⁵³⁾ See note 34 above.

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paragraph 1 of article 18, the instrument of ratification, acceptance, approval or accession of an REIO is not counted. A 180-day period from the date of deposit of the third instrument of ratification, acceptance, approval or accession is provided so as to give States that become parties to the Convention sufficient time to notify all relevant authorities and other interested parties of its impending entry into force.

(b) Entry into force for States consenting after the Convention has entered into force

259. Paragraph 2 of article 21 deals with the entry into force of the Convention for States that express their consent to be bound once the Convention has entered into force. For those States, the Convention provides for a similar 180-day period as is provided under paragraph 1 of article 21 for the third instrument of ratification, acceptance, approval or accession.

(c) Transitional application

260. While judicial sale procedures are typically expedient, it is conceivable - albeit unlikely - that the Convention will enter into force for a State after the procedure has commenced but before completion of the sale. To avoid doubt as to the application of the Convention, paragraph 3 of article 21 provides that the Convention only applies to judicial sales that are “ordered or approved” after entry into force for the State of judicial sale. This reflects paragraph 1 (a) of article 3, which already limits the scope of application of the Convention to judicial sales that are “conducted in a State Party”, and thus in a State for which the Convention is in force (cf. article 2 (g) of the Vienna Convention on the Law of Treaties (1969)). The words “ordered or approved” refer to identifiable actions that are taken with respect to a judicial sale, as reflected in the definition of “judicial sale”, for which the timing can be readily determined. While several provisions of the Convention refer to “conducting” a judicial sale, the operation of those provisions does not depend on pinpointing the time at which, or period during which, a judicial sale is “conducted”.

261. To address the case in which the Convention enters into force for a State after notification of a judicial sale (but before the sale is ordered or approved) - and to avoid needless challenges to the international effect of the judicial sale based on non-compliance with the notice requirements, in particular the requirement for the notice of judicial sale to be transmitted to the repository - paragraph 3 of article 11 makes provision for the repository to receive and publish notices of judicial sale emanating from a State that has consented to be bound by the Convention but before its entry into force for that State.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 76, 81-85
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 88-90

9. Amendment (article 22)

262. Article 22 establishes a mechanism for amending the Convention. Amendment provisions are common in multilateral treaties, even if they are not commonly invoked. By virtue of paragraph 1 of article 18, the instrument of ratification, acceptance, approval or accession of an REIO is not counted (in addition to those of its member States) for the purpose of entry into force of any adopted amendment. The application of adopted amendments to territorial units to which the Convention has been extended by declaration is covered by article 19.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 86-88
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 91-92

10. Denunciation (article 23)

263. Paragraph 1 of article 23 allows a State Party to denounce the Convention. Denunciation releases the State from its obligation further to perform the Convention, and thus the Convention ceases to be in force for that State. Just as paragraph 1 of article 19 allows a State to apply the treaty to a particular territorial unit, paragraph 1 of article 23 allows the State to denounce the treaty for a territorial unit.

264. Under paragraph 2 of article 23, denunciation takes effect 365 days after the notification is received by the depositary, unless a longer period is specified. The default period, which is approximately twice the period for entry into force of the Convention under article 21, is intended to give sufficient time to notify authorities and other interested parties in the denouncing State and in other States Parties of the change in the legal regime with respect to the international effect of judicial sales involving that State.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 93

Annex

Table of concordance between the Convention and earlier drafts

<i>Final text</i>	<i>Draft submitted to Commission⁽¹⁾</i>	<i>Fifth revision of the Beijing Draft⁽²⁾</i>	<i>Fourth revision of the Beijing Draft⁽³⁾</i>
Art. 1. Purpose	Art. 1	Art. 1	Art. 1
Art. 2 (a) (definition of “judicial sale”)	Art. 2 (a)	Art. 2 (a)	Art. 2 (c)
Art. 2 (b) (definition of “ship”)	Art. 2 (b)	Art. 2 (b)	Art. 2 (j)
Art. 2 (c) (definition of “clean title”)	Art. 2 (c)	Art. 2 (c)	Art. 2 (b)
Art. 2 (d) (definition of “mortgage or <i>hypothèque</i> ”)	Art. 2 (d)	Art. 2 (d)	Art. 2 (e)
Art. 2 (e) (definition of “charge”)	Art. 2 (e)	Art. 2 (e)	Art. 2 (a)
Art. 2 (f) (definition of “registered charge”)	Art. 2 (f)	Art. 2 (f)	Art. 2 (i)
Art. 2 (g) (definition of “maritime lien”)	Art. 2 (g)	Art. 2 (g)	Art. 2 (d)
Art. 2 (h) (definition of “owner”)	Art. 2 (h)	Art. 2 (h)	Art. 2 (f)
Art. 2 (i) (definition of “purchaser”)	Art. 2 (i)	Art. 2 (i)	Art. 2 (h)
Art. 2 (j) (definition of “subsequent purchaser”)	Art. 2 (j)	Art. 2 (j)	Art. 2 (l)
Art. 2 (k) (definition of “State of judicial sale”)	Art. 2 (k)	Art. 2 (k)	Art. 2 (k)
Art. 3, para. 1 (a) (geographic scope)	Art. 3, para. 1 (a)	Art. 3, para. 1 (a)	Art. 1
Art. 3, para. 1 (b) (physical presence requirement)	Art. 3, para. 1 (b)	Art. 3, para. 1 (b)	Art. 3, para. 1 (a)
Art. 3, para. 2 (exclusion of State-owned or operated vessels)	Art. 3, para. 2	Art. 3, para. 2	Art. 3, para. 2

<i>Third revision of the Beijing Draft⁽⁴⁾</i>	<i>Second revision of the Beijing Draft⁽⁵⁾</i>	<i>First revision of the Beijing Draft⁽⁶⁾</i>	<i>Beijing Draft⁽⁷⁾</i>
Art. 1	Art. 1	-	Art. 2
Art. 2 (c)	Art. 2 (c); see also art. 3, para. 2(a)	Art. 1 (c); see also art. 2, para. 1(a)	Art. 1 (h)
Art. 2 (i)	Art. 2 (i)	Art. 1 (i)	Art. 1 (q)
Art. 2 (b)	Art. 2 (b)	Art. 1 (b)	Art. 1 (c)
Art. 2 (e)	Art. 2 (e)	Art. 1 (e)	Art. 1 (j)
Art. 2 (a)	Art. 2 (a)	Art. 1 (a)	Art. 1 (b)
-	-	-	Art. 1 (o)
Art. 2 (d)	Art. 2 (d)	Art. 1 (d)	Art. 1 (i)
Art. 2 (f)	Art. 2 (f)	Art. 1 (f)	Art. 1 (k)
Art. 2 (h)	Art. 2 (h)	Art. 1 (h)	Art. 1 (l)
Art. 2 (k)	Art. 2 (k)	Art. 1 (k)	Art. 1 (u)
Art. 2 (j)	Art. 2 (j)	Art. 1 (j)	Art. 1 (s)
Art. 1; see also art. 6	Art. 1 (see also art. 6, para. 1 (chapeau))	Art. 4, para. 1 (chapeau)	- (c.f. art. 9)
Art. 3, para. 1 (a)	Art. 3, para. 1 (a) (see also art. 6, para. 1 (a))	Art. 4, para. 1 (a)	Art. 4, para. 1 (a)
Art. 3, para. 2	Art. 3, para. 2 (b)	Art. 2, para. 1 (b)	-

<i>Final text</i>	<i>Draft submitted to Commission⁽¹⁾</i>	<i>Fifth revision of the Beijing Draft⁽²⁾</i>	<i>Fourth revision of the Beijing Draft⁽³⁾</i>
Art. 4, para. 1 (relationship with domestic law; procedures; procedures for challenging the judicial sale)	Art. 4, para. 1	Art. 4, para. 1	Art. 4, para. 1bis
Art. 4, para. 2 (condition for issuing certificate of judicial sale)	Art. 4, para. 2	Art. 4, para. 2	Art. 4, para. 1 (chapeau)
Art. 4, para. 3 (a) (notification of ship registry)	Art. 4, para. 3 (a)	Art. 4, para. 3 (a)	Art. 4, para. 1 (a)
Art. 4, para. 3 (b) (notification of holders of any mortgage, <i>hypothèque</i> or registered charge)	Art. 4, para. 3 (b)	Art. 4, para. 3 (b)	Art. 4, para. 1 (b)
Art. 4, para. 3 (c) (notification of holders of any maritime lien)	Art. 4, para. 3 (c)	Art. 4, para. 3 (c)	Art. 4, para. 1 (c)
Art. 4, para. 3 (d) (notification of shipowner)	Art. 4, para. 3 (d)	Art. 4, para. 3 (d)	Art. 4, para. 1 (d)
Art. 4, para. 3 (e) (notification of bareboat charterers and bareboat charter registries)	Art. 4, para. 3 (e)	Art. 4, para. 3 (e)	Art. 4, para. 1 (e)
Art. 4, para. 4; annex I (content of notice and methods of notification)	Art. 4, para. 4; appendix I	Art. 4, para. 4; appendix I	Art. 4, para. 2; appendix I
Art. 4, para. 5 (a) (publication of announcement in the process or other publication)	Art. 4, para. 5 (a)	Art. 4, para. 5 (a)	Art. 4, para. 3 (a)
Art. 4, para. 5 (b) (transmission of notice to repository)	Art. 4, para. 5 (b)	Art. 4, para. 5 (b)	Art. 4, para. 3 (b)
Art. 4, para. 6 (language requirements when transmitting notice to repository)	Art. 4, para. 6	Art. 4, para. 6	-
Art. 4, para. 7 (reliance on registry information)	Art. 4, para. 7	Art. 4, para. 7	Art. 4, para. 4
Art. 5, para. 1 (issuance of certificate of judicial sale)	Art. 5, para. 1	Art. 5, para. 1 (chapeau)	Art. 5, para. 1 (chapeau)

<i>Third revision of the Beijing Draft⁽⁴⁾</i>	<i>Second revision of the Beijing Draft⁽⁵⁾</i>	<i>First revision of the Beijing Draft⁽⁶⁾</i>	<i>Beijing Draft⁽⁷⁾</i>
-	-	-	-
- (c.f. art. 6)	- (c.f. art. 6, para. 1 (b))	- (c.f. art. 4, para. 1 (b))	- (c.f. art. 4, para. 1 (b))
Art. 4, para. 1 (a)	Art. 4, para. 1 (a)	Art. 3, para. 1 (a)	Art. 3, para. 1 (a)
Art. 4, para. 1 (b)	Art. 4, para. 1 (b)	Art. 3, para. 1 (b)	Art. 3, para. 1 (b)
Art. 4, para. 1 (c)	Art. 4, para. 1 (c)	Art. 3, para. 1 (c)	Art. 3, para. 1 (c)
Art. 4, para. 1 (d)	Art. 4, para. 1 (d)	Art. 3, para. 1 (d)	Art. 3, para. 1 (d)
Art. 4, para. 1 (e) and (f)	Art. 4, para. 1 (e) and (f)	Art. 3, para. 1 (e)	Art. 3, para. 2
Art. 4, para. 2; appendix I	Art. 4, para. 2; appendix I	Art. 3, paras. 2 and 3	Art. 3, paras. 3, 4 (a) and 7; see also art. 3, para. 1 (chapeau)
Art. 4, para. 3 (a)	Art. 4, para. 3 (a)	Art. 3, para. 4 (a)	Art. 3, para. 4 (b)
Art. 4, para. 3 (b)	Art. 4, para. 3 (b)	Art. 3, para. 4 (b)	-
-	-	-	-
Art. 4, para. 4	Art. 4, para. 4	Art. 3, para. 5	Art. 3, para. 6
Art. 5, para. 1 (chapeau)	Art. 5, para. 1 (chapeau)	Art. 5, para. 1 (chapeau)	Art. 5, para. 1 (chapeau)

<i>Final text</i>	<i>Draft submitted to Commission⁽¹⁾</i>	<i>Fifth revision of the Beijing Draft⁽²⁾</i>	<i>Fourth revision of the Beijing Draft⁽³⁾</i>
Art. 5, para. 2; annex II (form and content of certificate)	Art. 5, para. 2; appendix II	Art. 5, para. 1; appendix II	Art. 5, paras. 1 and 2; appendix II
Art. 5, para. 3 (transmission of certificate to repository)	Art. 5, para. 3	Art. 5, para. 2	Art. 5, para. 3
Art. 5, para. 4 (no legalization)	Art. 5, para. 4 (see also art. 20)	Art. 5, para. 3	Art. 5, para. 4
Art. 5, para. 5 (evidentiary value)	Art. 5, para. 5	Art. 5, para. 4	Art. 5, para. 5
Art. 5, paras. 6 and 7 (electronic form)	Art. 5, paras. 6 and 7	Art. 5bis	Art. 5bis
Art. 6 (international effects of a judicial sale)	Art. 6	Art. 6	Art. 6
Art. 7, paras. 1 and 2 (actions to be taken by the registry)	Art. 7, paras. 1 and 2	Art. 7, paras. 1 and 2	Art. 7, paras. 1 and 2
Art. 7, paras. 3 and 4 (translation and copy of the certificate of judicial sale)	Art. 7, paras. 3 and 4	Art. 7, paras. 3 and 4	Art. 7, paras. 3 and 4
Art. 7, para. 5 (refusal to take action)	Art. 7, para. 5	Art. 7, para. 5	Art. 7, para. 5
Art. 8, paras. 1 and 2 (general rule)	Art. 8, paras. 1 and 2	Art. 8, paras. 1 and 2	Art. 8, paras. 1 and 2
Art. 8, para. 3 (translation of the certificate of judicial sale)	Art. 8, para. 3	Art. 8, para. 3	Art. 8, para. 3
Art. 8, para. 4 (refusal to take action)	Art. 8, para. 4	Art. 8, para. 4	Art. 8, para. 4
Art. 9, paras. 1 and 2 (exclusive jurisdiction to avoid and suspend judicial sale)	Art. 9, paras. 1 and 2	Art. 9, paras. 1 and 2	Art. 9, paras. 1 and 2
Art. 9, para. 3 (transmission of avoidance/suspension decision to repository)	Art. 9, para. 3	-	Art. 5, para. 7
Art. 10 (circumstances in which judicial sale has no international effect)	Art. 10	Art. 10	Art. 10

<i>Third revision of the Beijing Draft⁽⁴⁾</i>	<i>Second revision of the Beijing Draft⁽⁵⁾</i>	<i>First revision of the Beijing Draft⁽⁶⁾</i>	<i>Beijing Draft⁽⁷⁾</i>
Art. 5, paras. 1 and 2; appendix II	Art. 5, paras. 1 and 2; appendix II	Art. 5, paras. 1 and 2; annex	Art. 5, paras. 1 and 2; annex
Art. 5, para. 3	Art. 5, para. 3	Art. 5, para. 3	-
Art. 11, para. 1	Art. 11, para. 1	Art. 11	-
Art. 5, para. 5	Art. 5, para. 5	Art. 5, para. 5	Art. 7, para. 5
Art. 11, paras. 2 and 3	Art. 11, paras. 2 and 3	-	-
Art. 6	Art. 6, para. 1	Art. 6	Art. 7, para. 1
Art. 7, paras. 1 and 2	Art. 7, paras. 1 and 2	Art. 7, para. 1	Art. 6, paras. 1 and 2
Art. 7, paras. 3 and 4	Art. 7, paras. 3 and 4	Art. 7, paras. 3 and 4	Art. 6, paras. 3 and 4
Art. 7, para. 5	Art. 7, para. 5	-	-
Art. 8, paras. 1 and 2	Art. 8, paras. 1 and 2	Art. 8, paras. 1 and 2	Art. 7, para. 2
Art. 8, para. 3	Art. 8, para. 3	Art. 8, para. 4	-
Art. 8, para. 4	Art. 8, para. 4	-	-
Art. 9, paras. 1 and 2	Art. 9, paras. 1 and 2	Art. 9, paras. 1 and 2	Art. 7, para. 3
Art. 5, para. 7	-	-	-
Art. 10	Art. 10	Art. 10, para. 1	Art. 8, paras (a) and (c)

<i>Final text</i>	<i>Draft submitted to Commission⁽¹⁾</i>	<i>Fifth revision of the Beijing Draft⁽²⁾</i>	<i>Fourth revision of the Beijing Draft⁽³⁾</i>
Art. 11 (repository)	Art. 11	Art. 11	Art. 11
Art. 12 (communication between authorities of States Parties)	Art. 12	Art. 12	Art. 12
Art. 13 (relationship with other international conventions)	Art. 13	Art. 13, paras. 2 and 4	Art. 13, para. 2
Art. 14 (other bases for giving international effect)	Art. 14	Art. 13, paras. 1 and 3	Art. 13, para. 1
Art. 15, para. 1 (matters not governed by the Convention)	Art. 15, para. 1	Art. 14	Art. 14
Art. 15, para. 2 (effects of avoidance /suspension)	Art. 15, para. 2	Art. 9, para. 5 (c.f. art. 9, paras. 3 and 4)	Art. 9, para. 5 (c.f. art. 5, para. 6 and art. 9, paras. 3 and 4)
Art. 16 (depository)	Art. 16	Art. 15	Art. 15
Art. 17 (consenting to be bound)	Art. 17	Art. 16	Art. 16
Art. 18 (REIO clause)	Art. 18	Art. 17	Art. 17
Art. 19 (non-unified legal systems)	Art. 19	Art. 18	Art. 18
Art. 20 (procedure and effects of declarations)	Art. 21	-	-
Art. 21 (entry into force)	Art. 22	Art. 19	Art. 19
Art. 22 (amendment)	Art. 23	Art. 20	Art. 20
Art. 23 (denunciation)	Art. 24	Art. 21	Art. 21

Footnotes

- (1) A/CN.9/1108, considered by the Commission at its fifty-fifth session (A/77/17, paras. 24-99).
- (2) A/CN.9/WG.VI/WP.94, considered by Working Group VI at its fortieth session (A/CN.9/1095).
- (3) A/CN.9/WG.VI/WP.92, considered by Working Group VI at its thirty-ninth session (A/CN.9/1089).
- (4) A/CN.9/WG.VI/WP.90, considered by Working Group VI at its thirty-eighth session (A/CN.9/1053).
- (5) A/CN.9/WG.VI/WP.87, considered by Working Group VI at its thirty-seventh session (A/CN.9/1047/Rev.1).
- (6) A/CN.9/WG.VI/WP.84, considered by Working Group VI at its thirty-sixth session (A/CN.9/1007).
- (7) A/CN.9/WG.VI/WP.82, considered by Working Group VI at its thirty-fifth session (A/CN.9/973).

<i>Third revision of the Beijing Draft⁽⁴⁾</i>	<i>Second revision of the Beijing Draft⁽⁵⁾</i>	<i>First revision of the Beijing Draft⁽⁶⁾</i>	<i>Beijing Draft⁽⁷⁾</i>
Art. 12	Art. 12	Art. 12	-
Art. 13	Art. 13	Art. 13	-
Art. 14, para. 2	Art. 14, para. 2	-	Art. 3, para. 5
Art. 14, para. 1	Art. 14, para. 1	Art. 14	Art. 10
Art. 14bis	Art. 6, para. 2	Art. 4, para. 3	Art. 4, para. 2
- (c.f. art. 5, para. 6 and art. 9, paras. 3 and 4)	- (c.f. art. 5, para. 6 and art. 9, paras. 3 and 4)	- (c.f. art. 10, paras. 2 and 3)	- (c.f. art. 8, para. (b))
Art. 15	Art. 15	-	-
Art. 16	Art. 16	-	-
Art. 17	Art. 17	-	-
Art. 18	Art. 18	-	-
-	-	-	-
Art. 19	Art. 19	-	-
Art. 20	Art. 20	-	-
Art. 21	Art. 21	-	-

Why ICS Supports the Convention on the International Effects of Judicial Sales of Ships

Leyla PEARSON (*)

As soon as the draft convention was taken up by UNCITRAL, ICS engagement in the discussions was actively supported by our members - the national shipowners associations. This is because ICS is the advocate for international shipowners and operators at meetings of the UN bodies that impact on shipping. BIMCO also supported ICS engagement and asked us to lead. Our position has been co-ordinated with BIMCO throughout the discussions.

As it is quite a niche area, we had to look to our members for assistance and to provide the necessary expertise. We were delighted when the Royal Belgian Shipowners Association put forward Peter Laurijssen (CMB's Legal Director), who had been involved in the project from the early stages as a member of the CMI IWG and Mr Laurijssen represented ICS throughout the UNCITRAL discussions.

The ICS mantra is “global rules for a global industry” and so we were always supportive in principle of the wish to promote greater legal certainty in this area. The ultimate goal being to facilitate continued trading of a ship sold by way of a judicial sale, without disruption.

We were concerned however to ensure that a fair balance was struck between all of the interests involved in a judicial sale.

Shipowners are central to judicial sales of ships in their capacities as the owner of the ship being sold, the purchaser, and often as creditors with claims against the proceeds of sale.

From the outset, the ICS position was aimed at trying to ensure that due process safeguards would be in place for the defaulting shipowner while at the same time the all important legal certainty would be achieved for the purchaser. ICS has considered the final text and concluded that an appropriate balance has been achieved. The convention will promote greater legal certainty by ensuring that a properly held judicial sale of a ship in a State Party, which conferred clean title to the purchaser resulting in a certificate of judicial sale being issued by the State of the judicial sale, would be given full effect in other States Parties. This would be to the benefit of all interests.

ICS is pleased that the General Assembly of the United Nations adopted the Convention on the International Effects of Judicial Sales of Ships on the 7th of December 2022. The ICS Maritime Law Committee has reviewed the final text and concluded that the convention should be supported by ICS and promoted in due course when it is open for ratification following the signing ceremony, which is due to take place in Beijing later this year.

(*) Leyla Pearson, Senior Manager - Legal at International Chamber of Shipping

How ICS will encourage States to ratify the convention

ICS made a statement in support of the new convention at the IMO Legal Committee meeting in March 2023 and encouraged member States to give their careful consideration to ratification at the earliest possible opportunity.

In addition ICS and CMI are partners in a long-standing “ratification campaign” that was initiated by ICS many years ago and which we think could provide a good framework for promotion of the new convention. The ICS Maritime Law Committee has agreed that the new convention should be included in the brochure that accompanies the campaign, when it is next updated.

Once the new convention has been officially adopted and is open for ratification, ICS will be asking its members (the national shipowners associations) to urge their governments to ratify it.

Promotion of widespread ratification of the new convention is something that national shipowners associations and national maritime law associations could take up with their governments together. Many national shipowners associations are actively involved in their national maritime law associations and it could be more powerful to work together and join forces in the promotion of the new convention.

Statement made by BIMCO at the occasion of CMI's 125th anniversary Conference in Antwerp, Belgium

Søren LARSEN(*)

I would like to express my appreciation to the CMI for inviting me – and BIMCO – to join this Conference. The CMI and BIMCO have, since long, had close ties and in many ways shared views on the importance of the unification of international maritime law. It is therefore a great pleasure to be here today to celebrate the 125 years' anniversary of the organisation.

The topic for the International Working Group meeting today being judicial sale of ships, I cannot help remarking how appropriate it is that this impressive anniversary coincides with what will be the end of a long road – the road that led to the Beijing draft – when the UN General Assembly considers the draft Convention for adoption at its next meeting.

As some of you may recall, BIMCO played what I would call a “not insignificant role” in what led UNCITRAL to take on the project when representatives of BIMCO participated in the Malta Colloquium in 2018 and the UNCITRAL meeting soon after. Here – at a critical time when support for the project was somewhat limited – we expressed BIMCO's support to the project. One thing led to the next and the baton was picked up by the International Chamber of Shipping which appointed Peter Laurijssen of CMB, who is also a longstanding member of BIMCO's Documentary Committee, to take part in the negotiations on behalf of the shipping industry. Mr Laurijssen has done a great job and I would like to take this opportunity to also thank him for all the hard work he has done in the past years.

And this brings me to the last, and perhaps most important, point I would like to make today: The reason why we decided to support the development of an international legal framework dealing with the judicial sale of ships is that this matter goes to the very roots of BIMCO and our *raison d'être* as an organisation – and, namely, our long-held view that a truly global industry such as shipping depends on global rules.

When the matter was discussed in Malta, it was against the backdrop of some very significant cases in which judicial sales had not been recognised across borders. Cases, where shipowners – either in their capacity as buyers, sellers or creditors – had had serious problems as a result of non-recognition in one state of a judicial sale in another state. An international legislative instrument had the potential to improve the situation and promote greater legal certainty. This is how BIMCO's

(*) Søren Larsen, Deputy Secretary General at BIMCO

support came about in the first place. Coupled with the close ties we have had with the CMI over the years.

We are now reaching the finishing line on what we consider a well-drafted, broadly acceptable and legally sound international instrument. For the same reason we are confident that the UNCITRAL General Assembly will approve the draft Convention and hope it will very quickly be broadly ratified and gain wide acceptance – and you can count on BIMCO's support in promoting it.

Thank you again for letting me address the International Working Group today. I wish you all a successful Conference and continued celebration of the organisation's first 125 years!

Danish Shipping and the UNCITRAL Convention on the International Effects of Judicial Sales of Ships

Henriette INGVARSDEN (*)

On the 7th of December 2022 the General Assembly of the United Nations has adopted the Convention on the international effects of judicial sales of ships, which shall be known as the Beijing Convention. It has authorised that a signing ceremony be held in Beijing as soon as practicable in 2023. Signing is expected to take place in September this year.

As early as 2018, when UNCITRAL decided to take up the so-called Beijing Draft of the Comité Maritime International (CMI), Danish Shipping has formally expressed its support to the project. It has followed up on the drafting work of UNCITRAL Working Group VI in various international fora, in particular through active participation in the BIMCO Documentary Committee and the Legal Committee of the International Chamber of Shipping (ICS).

Recognising the importance of unification of maritime law to provide legal certainty for shipowners and operators that are trading internationally, Danish Shipping supports the ratification of the Convention. It will do so by advocating its ratification with the authorities in Denmark and international shipping fora.

Danish Shipping is a trade and employer organisation. Half of the members of the organisation own ships registered in Denmark, the other half run their activities in Denmark under other flags of state. Danish Shipping was established in 1884. Since then, it has been working as a collective point for the Danish shipping industry, and today it plays an important and active role in relation to the authorities and decision-makers nationally and internationally. Denmark is currently number 9 on the list of global operator nations with operated tonnage at 61.4 million gross ton. By January 2023, 760 ships fly the Danish flag representing 22.7 million gross ton. This makes Denmark the 11th largest flag state in the world in terms of tonnage under the Danish flag. Containerships account for the largest segment measured in gross tonnage, followed by tankers. However, measured in number of vessels, offshore and specialized vessels account for the largest segment.

As such Danish Shipping supports internationally recognised rules that will strive towards unification and facilitation of international trade in the area of judicial sales of ships. From time to time, shipowners borrow money from the bank and give as security a mortgage on the ship. The value of the security would be reduced if - when it came to be sold from the court - there would be doubts as to whether the buyer would get a title free of encumbrances and debts. Therefore, the international

(*) Henriette Ingvarsdén, Head of Legal Affairs, Politics and Analysis at Danish Shipping

legal effects of a judicial sale of ships as envisaged by the Convention, would be to the benefit of the shipping community. Furthermore, Danish Shipping believes that the Convention establishes the necessary conditions and criteria to make sure that a judicial sale of a ship will be recognised smoothly in another country. Shipping is international in nature and likewise should the recognition of judicial sale of a ship by a foreign country be. To sum up, Danish Shipping sees advantages in harmonised international rules contained in the Convention, as they will facilitate the registering of a ship following a judicial sale, create legal certainty, higher value of the ship and enhancement of the chances of affordable and good ship finance for the parties interested in buying from a judicial sale.

Shipowners are central to judicial sales of ships in their capacities as the owner of the ship being sold, the purchaser, and often as creditors with claims against the proceeds of sale. The ultimate goal being to facilitate continued trading of a ship sold by way of a judicial sale, without disruption. Furthermore, due process safeguards for the defaulting shipowner are provided for, while at the same time the all important legal certainty is achieved for the purchaser. The legal certainty created by the Convention will contribute to a higher sale revenue to the benefit of all creditors of the ship, including not only ship financiers and suppliers but also other shipowners with claims against the defaulting owner. Importantly, the Convention also provides clear guidance to shipping registrars in terms of documents required for the de- and re-registration of ships that have been sold judicially.

All in all, Danish Shipping believes that the Convention as adopted by the UN General Assembly strikes a fair balance between all of the interests involved in a judicial sale.

Judicial support for the Beijing Convention on the International Effects of Judicial Sales of Ships

Neil MCKERRACHER (*)

Since May 2019, through its role as an observer/participant in an UNCITRAL Working Group the International Association of Judges has been supporting this project designed to better facilitate and improve international commercial relationships and to improve mutual respect for the work of courts in various countries. IAJ was represented by the Hon. Justice Neil McKerracher of the Federal Court of Australia at New York for the first meeting and in following meetings during the pandemic by video. The Hon. Mr Justice Brian McGovern then of the Irish Court of Appeal attended the second session in Vienna in November 2019.

The law of Admiralty, internationally, in both common law and civil law countries, has long provided a remedy of arresting ships when shipowners are, potentially, liable to an arresting creditor in a variety of ways. When liability has been established and even if the ship is not released, the arrested ship may be sold by the arresting court or government body. This procedure is common to numerous countries and relies on comity for recognition in other jurisdictions.

A real difficulty can arise in circumstances where a vessel is purchased following a court ordered sale in country A, only to find that the flag State B refuses to transfer the ship from its Register. Secondly, a problem may arise where a court in another State has sold a vessel over which a citizen has taken a mortgage, without first having given notice that there were proceedings underway. Thirdly, as there are risks as to such problems, prices on judicial sales have been conspicuously deflated. Inability to recover full value on a sale can damage, for example, the prospects of a financier recovering all sums due under a mortgage and indeed creditors generally.

The main practical issues and obstacles in the maritime environment were:

- The lack of legal certainty for a buyer in relation to conferring clean title by judicial sale, leading to problems being experienced in the deregistration process in the country of the former flag;
- The obstacle in relation to the recognition of the effects of the judicial sale in respect of the clearance of all former encumbrances and liens;
- The increase of transactional costs in cases of resistance in the enforcement of the ship's sale and the risk of costly proceedings and payments by old creditors attempting to arrest vessels after the judicial sale;

(*) Hon. Neil McKerracher KC former judge of the Federal Court of Australia, former joint national co-ordinator of Admiralty and Maritime practice area and representative of the observer, International Association of Judges

- Factoring of those risks when evaluating the level of bidding in judicial sales, causing a loss on the recoverable assets to the detriment of all creditors (such as crew, financiers, cargoes, ports, agents, bunker suppliers, barge operators, etc.) of the old ship-owner resulting from a less favourable judicial sale due to the lack of certainty in respect of its recognition by courts and authorities; and
- Reduced sales proceeds leading to a downwards trend on the brokers' vessel evaluation and thereby causing a general loss of vessel values in the entire market.

The solutions devised in principle by *Comite Maritime International* (CMI) have been widely supported including by IAJ, The Federal Court of Australia and numerous others, notwithstanding the differences in legal systems – legislatively, judicially and administratively in member countries of the UN. Much debate has ensued to accommodate such differences in a way which will maintain the autonomy of signatory States.

The Draft convention will in very summary form provide the following –

First, the Convention would give all parties interested in the vessel, such as owners and mortgagees, the right to notice that proceedings are underway before any judicial sale can be ordered.

Secondly once a sale has occurred, a certificate will be issued and registered internationally, which other parties to the Convention would have to recognise, in particular, the flag State. This process is designed to ensure that the ship will be sold with a clean title, or at least with a clear statement of any securities remaining against the vessel.

The Convention also provides for a limited number of situations in which the judicial sale can be challenged, for example, if the ship was not physically present in the jurisdiction of the State when the judicial sale was conducted.

However, under the convention, the mode of sale and the distribution of the proceeds of sale will all remain questions to be resolved by each State's own domestic laws and domestic judiciary.

From the judicial perspective, a central fundamental attraction of the instrument is that in achieving its ends in a simple way, it does not seek or purport to erode any signatory State's sovereignty. To the contrary, it leaves both the substantive and the procedural elements of a judicial sale in the hands of the country effecting it to do so in accordance with its own laws and procedures. This is an important element for courts as well as for Governments. The Convention as approved now achieves not only the commercial benefits but also ensures this key benefit.

It has been a privilege to be involved in the initiatives and efforts of CMI and others and to have the benefit of the expertise of the secretariat of UNCITRAL.

Proposal of the Government of Switzerland for possible future work on cross-border issues related to the judicial sale of ships

Alexander VON ZIEGLER (*)

1. Introduction

At its fiftieth session (Vienna, 3 to 21 July 2017), the United Nations Commission on International Trade Law noted the importance of a proposal (A/CN.9/923) of the Comité Maritime International (CMI) drawing attention to problems arising around the world from the failure to give recognition to judgments in other jurisdictions when ordering the sale of ships.⁽¹⁾ While a number of delegations supported the proposal and expressed interest in taking it up, subject to the availability of working group resources and any necessary consultation with other organizations, it was agreed that additional information in respect of the breadth of the problem would be useful.⁽²⁾

It was suggested “that CMI might seek to develop and advance the proposal by holding a Colloquium so as to provide additional information to the Commission and allow it to take an informed decision in due course”.⁽³⁾ The Commission further “agreed that UNCITRAL, through its secretariat, and States would support and participate in a Colloquium to be initiated by CMI to discuss and advance the proposal”.⁽⁴⁾ The Commission agreed to revisit the matter at a future session.⁽⁵⁾

To that end, following a request from the Government of Malta, the UNCITRAL secretariat extended a formal invitation to all Member and Observer States of UNCITRAL to participate in a high-level technical Colloquium in respect of the cross-border judicial sale of ships, as well as the recognition of such sales.

Based on the outcome of the discussions during the Colloquium and based on the support of all represented industries, the government of Switzerland proposes that UNCITRAL consider taking up work on an international instrument to resolve cross-border issues on the recognition of judicial sales of ships.

2. The Colloquium

The Government of Malta, through its Ministry for Transport, Infrastructure and Capital Projects, in collaboration with CMI and the Malta Maritime Law Associa-

(*) Prof. Dr. A. von Ziegler, Partner at Schellenberg Wittmer AG Rechtsanwälte, Zürich; Past-secretary General Comité Maritime International.

⁽¹⁾ *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 456–465.

⁽²⁾ *Ibid.*, para. 464.

⁽³⁾ *Ibid.*

⁽⁴⁾ *Ibid.*, para. 465.

⁽⁵⁾ *Ibid.*

tion, co-hosted the Colloquium on 27 February 2018 at the Chamber of Commerce in Valletta, Malta. Panellists and attendees examined the scope of problems associated with judicial sales of ships, as well as possible solutions.

Participants were requested to elaborate on the proposal submitted by CMI to the Commission stating that “[p]urchasers, and subsequent purchasers, must be able to take clean title to the ship so sold and be able to de-flag the ship from its pre-sale registry and re-flag the ship in the purchaser’s selected registry so as to be able to trade the vessel appropriately without the threat of costly delays and expensive litigation. This, in turn, will enable the purchased ship to trade freely; and ensures that the ship will realize a greater sale price which will benefit all the related parties, including creditors (which could include port authorities and other government instrumentalities that have provided services to a ship owner)”.⁽⁶⁾

3. Participation at the Colloquium

It was noted that the lack of certainty in recognition of judgment affected a broad spectrum of industries and States. The Colloquium had 174 participants, including delegates from 60 countries. Delegates represented Governments, including Governments of flag States; the judiciary; the legal community; a number of specific industries, such as shipowners, banks/financiers, shipbrokers, ship repairers, shipbuilders, bunker suppliers, port and harbour authorities, charterers, tug operators, and ship agents; and a number of International Organizations, such as the Institute of Chartered Shipbrokers, BIMCO and the International Transport Workers Federation (ITF). The Colloquium also received a written submission by the Federation of National Associations of Ship Brokers and Agents. The participants shared how their industries and States were impacted by the lack of harmony among States in recognizing the judicial sale of a ship in another jurisdiction.

A. Shipowners

A prominent shipowner representative identified four of the most important considerations in relation to judicial sales: (1) legal certainty; (2) maximization of the asset value; (3) availability of ship finance; and (4) ease of registration after the sale has taken place. It was stated that the failure to resolve these considerations distorted the ship sale market and caused asset value destruction to the detriment of the industry as a whole.

The presentations by shipowners, both as sellers and potential buyers, made clear that their primary interest was legal certainty, which was demonstrably absent from the current process of judicial sales. If greater certainty in the recognition process could be attained, it was thought to lead to a higher valuation in assets, in both auction and sale values, which would in turn result in greater availability of finance.

It was added that there was an interest of all involved in maritime trade (including cargo interests, trade-financing banks, insurers, and others) that the vessel

⁽⁶⁾ See para. 5, A/CN.9/923.

employed not be stopped by unnecessary arrests instituted by former creditors or owners, despite the fact that the vessel had been sold by judicial sale. It was noted that any transit-interruption would be a nuisance to trade and shipping and would create costs and damages.

There was a clear statement by the shipowners that the situation needed to be clarified by way of an international instrument and that the points drafted by CMI could resolve the issue in a simple and pragmatic way.⁽⁷⁾

B. Financiers/ship financing banks/shipbrokers

The support of many banks, regardless of their location, for an international regime to mitigate risk was emphasized. A leading ship financier, who shared the views of 11 major banks from his jurisdiction, agreed with the need for certainty and highlighted the substantial value of the assets at issue. From the perspective of lenders, it was felt that shipping markets are volatile. In light of these uncertainties, it was said that banks attempt to circumvent the problems by searching for amicable solutions, creating additional costs. Without a reliable international basis for recognition of judicial sales of vessels, it was stated that buyers would need to be satisfied with risks when obtaining the title, which would drive down the sale price.

C. Ship registries

The registrar of the Maltese Flag, which has been the largest flag in Europe for a number of years with over 72 million tons, described the uncertainties that arise from a foreign judicial sale. It was noted that most registries are national systems designed to sell domestic ships in local courts, and the difficulty of having a ship deleted from a register if it had been sold in a foreign jurisdiction was explained. It was stated that circumstances would be greatly improved for all parties by the issuance of an internationally-recognized certificate of judicial sale by the State in which a sale takes place.

It was widely felt that the creation of an instrument that retained a narrow focus on the process leading to recognition (instead of a broad project covering rules on the actual judicial sale) would be a manageable project that would increase the likelihood of having an international instrument adopted efficiently.

D. Legal community

Legal practitioners from common law, civil law, and mixed systems cited numerous cases, particularly cases of abuse of the process of ship arrest, in jurisdictions around the globe to highlight the lacuna in international legislation in regard to the recognition of a judicial sale by a foreign court. There was a clear consensus that

⁽⁷⁾ Several references to the draft instrument were made by participants at the Colloquium. As noted in para. 3 of A/CN.9/923, “the topic has been discussed and a draft international instrument prepared at numerous meetings including the Beijing Conference in 2012, the Dublin meeting of 2013 and the Hamburg Conference of 2014 where a draft instrument was completed, and approved.”

the number of proceedings created unnecessary costs and frictions, thereby further devaluing assets in the commercial world. From their practical experience representing clients from all aspects of the industry, participants shared the same request of filling the legal gap and enabling a friction-free transition from the former registry to the new registry, and to the new shipowner, freeing the sold vessel from all encumbrances she may have had prior to the judicial sale.

Reference was made to the work undertaken by CMI. It was felt that CMI work not only consisted of valuable in-depth studies of the problems and their possible solutions but also demonstrated interest in adopting rules that would be suitable for industries and compliant with different legal traditions.

E. Bunker suppliers/service providers

Typical ship creditors were represented at the Colloquium by bunker suppliers, who are often also bunker barge owners. The creditors highlighted the “need for certainty which in today’s economic climate overshadows any other commercial consideration.” It was noted that the main concern of such creditors is the fact that they operate with very small margins and that any step undertaken outside unified and clear patterns involve economically unjustifiable costs and risks. Support was expressed in favour of a recognition regime at the Colloquium, as a regime would introduce clear and harmonized rules and outweigh the interest in arresting the vessel after a judicial sale in an attempt to obtain funds.

F. Crew interests

It was widely felt that seafarers on board vessels belonging to owners who had defaulted would benefit from a simplified recognition process. It was stated that the crew languish in various ports all over the world, unable to leave the vessel, and have very little by way of provisioning and fuel to keep generators going. It was felt that the longer the proceedings took, the greater the pain for the crew members, who would struggle to be paid and repatriated. The ITF Malta branch, which handles dozens of such cases, expressed its support for an instrument to mitigate the hardships endured by the seafarers and their families during such affairs.

G. Ports/port service providers

The Malta Harbour Master explained how important it was for judicial sale procedures to be as smooth and as quick as possible to assist in the management of the phenomenon of abandoned vessels, which causes havoc in ports and undermines smooth trading operations.

H. Maltese Government

Minister Ian Borg, Minister for Transport, Infrastructure and Capital Projects, explained that as a direct result of being the largest flag in Europe, and being in the

centre of the Mediterranean, Malta heavily focused on the provision of services to the international trading community.

It was noted that Malta has a highly developed, robust and efficient legal regime providing for both judicial sale by auctions and a renowned system of court approved private sales. It was stated that all the industries, the financiers and ship-builders who had mortgages registered in the Maltese Register of ships, as well as the hundreds of service providers, including ship repairers, bunker suppliers, suppliers of provisioning to ships, crew, cargo handling, trans-shipment, and services given to the oil and gas industry, needed the comfort of knowing that that they could resort to judicial sales in Malta, in the event the owner defaulted, and that those sales would be recognized worldwide. This would provide certainty to interested buyers, thereby increasing the value of the vessel during the sale.

Minister Borg thanked CMI for their initiative in bringing together a cross section of the maritime industry with the aim of discussing the pertinent subject. He stated, “Having an international instrument on the recognition of judicial sales of ships is an important step which aims to introduce a substantial degree of stability and uniformity in an important aspect of maritime trade. Malta’s participation in the discussion of this important instrument is imperative.”

4. Possible Solutions and Feasibility

The Colloquium established that the main issues and obstacles witnessed in the trade and maritime environment were:

- The lack of legal certainty in relation to the clean title which a judicial sale is intended to confer on a buyer, leading to problems being experienced in the de-registration process in the country of the former flag;
- The obstacles in relation to the recognition of the effects of the judicial sale in respect of the clearance of all former encumbrances and liens;
- The increase of transactional costs in cases of friction in the enforcement of the ship’s sale and the risk of costly proceedings and payments just for nuisance value by old creditors attempting to arrest vessels after the judicial sale;
- Factoring of those risks when evaluating the level of bidding in judicial sales, causing a loss on the recoverable assets to the detriment of all creditors (such as crew, financiers, cargoes, ports, agents, bunker suppliers, barge operators, etc.) of the old shipowner resulting from a less favourable judicial sale due to the lack of certainty in respect of its recognition by courts and authorities; and
- Reduced sales proceeds leading to a downwards trend on the brokers’ vessel evaluation and thereby causing a general loss of vessel values in the entire market.

Among the delegates and panellists there was consensus that:

- All parties were affected negatively by the gap in legal certainty;

- The gap could be filled from a legal perspective by providing an instrument on recognition on judicial sale of ships;
- A draft instrument that had been prepared by CMI would provide a helpful reference if work were to be taken up on this topic by UNCITRAL;
- UNCITRAL was the appropriate forum to resolve issues involving pernicious effects on cross-border trade. It was noted that UNCITRAL has experience in closely linked issues such as transborder insolvency issues and securities. The working methods of UNCITRAL, which permit close involvement of international industry organizations, would also facilitate the conclusion of an instrument that would be broadly supported across industries.

5. Conclusion

Broad consensus emerged from the Colloquium in support of an international instrument to remedy the problems arising from the lack of harmony among States in recognizing the judicial sale of a ship in another jurisdiction. For that reason, Switzerland proposes that UNCITRAL undertake work to develop an international instrument on foreign judicial sale of ships and their recognition. It is noted that CMI has undertaken significant work on identifying issues and possible solutions on this topic, and that this work has been endorsed by a number of industries and States. That work provides a useful starting point to further UNCITRAL work, providing guidance for a working group and indicating the direction that might be taken.

A good decision by Portugal

Gonçalo SANTOS (*)

Portugal's support for the Convention on the International Effects of Sales of Ships in Law is positive for the Portuguese International Shipping Register.

On 7 December 2022, the United Nations General Assembly adopted the Convention on the International Effects of the Judicial Sale of Ships, which will be known as the Beijing Convention. The signing is expected to take place in September this year.

Contrary to what has happened in other situations, this time Portugal has assumed itself as one of the first states with the intention of ratifying the document, which seems to mean showing that the country is more attentive to major changes and the main international debates in the area of shipping, thus giving the sign of wanting to decisively support an international registry with the dimension and quality of the International Shipping Register of Madeira (MAR), in which the concern to offer a quality service to international shipowners must be central.

The country gave a clear signal to Portuguese flag clients, showing that MAR is at the forefront of legal evolution and innovation in the area of ship registration, and shipping in general, with safety also being one of its focuses.

Shipowners are central to the process of judicial sale of ships, both as owners of the ship to be sold and as buyers, and often as creditors with claims on the proceeds of the sale.

The ultimate objective of the Beijing Convention is to facilitate the continued undisturbed operation of a ship sold by judicial sale.

It also provides adequate procedural safeguards for the owner (debtor/defaultor) of the ship, while creating legal certainty, which is indispensable for the purchaser.

The legal certainty created by the Convention will help judicial sale proceedings to raise more revenue, to the benefit of all creditors of the ship, including not only lenders and suppliers, but also other shipowners with claims against the defaulting owner. Importantly, the Convention also gives clear guidance to those who register ships, with regard to the documents required for decommissioning and re-registration, cancellation and re-registration of the ship.

The Convention, as adopted by the UN General Assembly, establishes a fair balance between all interests involved in a judicial sale and this must also have been the conclusion reached by the Portuguese State.

(*) Gonçalo Santos, Public Relations Officer, EUROPEAN MAR II, Lisbon, Portugal

Recognising the importance of unifying maritime law to provide legal certainty for shipowners and operators operating internationally, Portugal's decision should be supported by all stakeholders and parties involved in MAR.

As three ratifications are sufficient for the Convention to enter into force, this is expected to take place shortly after the signing ceremony in Beijing. Early ratification by Portugal will produce its effects almost immediately.

Letter from Deutsche Bank to the CMI

Hamburg in October 2022

Dr. Ann Fenech,
Co-Chair of the International Working Group
on Judicial Sales – Comité Maritime International (“CMI”)

125th anniversary of the CMI; International Convention
on Foreign Judicial Sales of Ships and their Recognition

Dear Dr. Fenech,

It is my pleasure to write you in above matters.

As you know, I am a senior legal counsel at Deutsche Bank AG and advising on ship financing transactions for more than 24 years. In 2018, I had the honor to participate in the panel of the Malta Colloquium on Recognition of Judicial Sale of Ships, representing a bank’s view on the initiative for an International Convention on Foreign Judicial Sales of Ships and their Recognition.

Unfortunately, I cannot attend in person the CMI Conference in Antwerp this year. Please accept my apologies and this letter as a – although small – contribution on my part.

First of all, I am honored to congratulate the CMI to its 125th anniversary. During its long history, the CMI as a non-governmental not-for-profit international organization has contributed substantially to – i.a. - the unification of maritime law and thus to the maritime industry. Since the maritime industry is the backbone of our world economy the contribution and importance of the CMI cannot be underestimated. Therefore, my sincerest congratulations.

Secondly, I wish to express my deep satisfaction with the outcome of the Malta colloquium in 2018. When I was invited by you to join the panel on 27th February 2018, I did not have to think about it long, because I quickly recognized the importance of the International Convention on Foreign Judicial Sales of Ships and their Recognition. In the world of ship finance this convention is no less than a cornerstone! Since our world has become so small, international conventions setting widely recognized rules are of great importance. What is true under a global perspective is even more true when looking at the shipping industry.

Banks are and will remain indispensable when it comes to shipping and ship finance. But banks have the set-in-stone responsibility to safeguard the funds of their owners and creditors. Since vessels are high value investment objects the reli-

able enforceability of security granted on vessels is of utmost importance. Therefore, a convention which seeks to harmonize judicial sales and caters for the recognition of these sales seems indispensable and in hindsight it is astonishing that it took so long for this important piece of legal work to evolve. Only if the judicial sale of vessels securing financings will be recognized worldwide, buyers will be attracted and willing to pay good prices.

This helps the financing bank, is in the interest of the defaulting owner and – not at least – has a regulatory aspect, since mortgages on vessels are permitted to be booked on the banks' loan books with an equity relieving effect. Such permission is of course highly dependent on the reliable enforceability of such mortgages.

I represent Deutsche Bank in a working group monitoring more than 20 ship registers and ship mortgage regimes all over the world. This working group consists of 10 German banks. When I sat on the 2018 colloquium panel I did so with the support of these banks. I reported on the current status of the convention in our annual meeting last month and received unanimous appreciation.

I can only sincerely congratulate the CMI for having attended to this important piece of legal work. I certainly keep my fingers crossed for the convention to be adopted in the General Assembly of the United Nations in January 2023, a smooth signing ceremony soon thereafter and that the convention will be accepted and ratified worldwide.

Truly yours

Tilman Stein
Director and Senior Legal Counsel of Deutsche Bank