



# COMITE MARITIME INTERNATIONAL

## PRESIDENT

31<sup>st</sup> March 2023

Leg 110/17

Statement by the CMI – Ann Fenech

Madam Chair – thank you

Distinguished delegates, you have before you a paper submitted by CMI and the United Nations Office of Legal Affairs which explains the background, the need for, the work undertaken and, the adoption of the Convention on the international effects of judicial sales of ships by the General Assembly of the United Nations.

This committee may recall that after it had decided to pass, on the CMI Beijing Draft Convention on Judicial sales of ships, the CMI took the project to UNCITRAL. After having organised a successful Colloquium in Malta in 2018 attended by a cross section of the entire

international maritime community resulting in overwhelming support for the convention, UNCITRAL accepted to work on the CMI draft as per the proposal of the Swiss Government. Work started in earnest in December 2019. Working group V1 under the expert chairmanship of Prof. Beate Czerwenka and the guidance of Mr. Jose Angelo Estrella Faria Principal Legal Officer and Head, Legislative Branch International Trade Law Division, Office of legal affairs United Nations, completed its task and approved a final draft after 6 sessions. This led to its adoption by the General Assembly of the United Nations on the 7<sup>th</sup> of December 2022.

What this Convention seeks to address are several real life challenges which include the following:

1. There have been instances when purchasers of vessels in judicial sales free and unencumbered have had their ships wrongly arrested by the vessel's previous creditors.
2. Instances when registrars of the ships sold have been unable to delete the vessel's pre-sale registration.
3. Instances when registrars of ships have had difficulties transferring the registered ownership to the new owners when the new owners wish to retain the flag.
4. Instances when financiers of vessels purchased free and unencumbered in judicial sales have been unable to obtain the deletion of old mortgages or register their new ones.

It is only by seeking to find solutions to these challenges that ships will obtain the best price in judicial sales which in turn will present the best opportunity and chance for creditors of those vessels to have their debts and claims paid.

It is only when these challenges are eliminated that ships can be sold efficiently with confidence ending very usually, months and months of despair for crew left languishing on such vessels.

All of these situations lead to uncertainty and costly disruption to the chain of international trade and international shipping responsible for the carriage of over 90% of world trade.

These scenarios are not a figment of the imagination of maritime lawyers. There have been numerous cases. Only this year in January 2023 the Maltese Court of Appeal confirmed a first court judgement, declaring the arrest of the vessel Bright Star in Malta by an old creditor of the vessel which had been sold in a judicial sale free and unencumbered in Jamaica, as illegal. This ship had been purchased free and unencumbered by Greek owners for 10 million dollars in a perfectly legitimate and transparent judicial sale in Jamaica. Six months later the vessel was arrested by a previous creditor of the vessel who had himself arrested the ship in Jamaica leading to its judicial sale, and for whom the sum of 3 million dollars later reduced to one million had

been reserved for him by the Jamaican court. This arrest in Malta was clearly illegal and clearly intended to put illegitimate pressure on the new bona fide owner, in the hope that he would just pay up.

The vessel was at the time under charter carrying a full cargo of wheat from Kavkas to Venezuela leading to a suspension of the charter and delays in the delivery of the cargo. The owners had to put up security in cash to release the ship and had to go through the motions of commencing a full blown action claiming damages for an illegal arrest. This involved no less than 75 proceedings and took 3 years to be finally decided by the Court of appeal. In the meantime the financiers were hugely concerned with the resurrection of an old mortgagee making such a claim. The expenses in fighting a 3 year battle were substantial not to speak of the time expended by the owners and their club, Steamship Mutual, in managing the claim and fighting the case. This occurrence seriously interfered with the owners right to enjoy his vessel after the purchase of the ship in a judicial sale. It was wrong and unnecessary and it is precisely this situation which this Convention seeks to avoid.

The Convention ladies and gentlemen has 23 articles and its raison d'être is contained in article 6 which states:

*“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 4 provides for the service of the notice of judicial sale on a number of parties, and article 5 provides for the provision of a certificate of judicial sale evidencing that the vessel was sold free and unencumbered. Article 7 provides that registrars of ships must delete ships and mortgages if requested to do so on production of the certificate of judicial sale and vessels cannot be rearrested by previous creditors if the owner provides a certificate of judicial sale.

At this juncture I would like to thank this Legal Committee – which in December 2020 agreed that the IMO would create a module on its GISIS platform to receive both the notices of judicial sale and the certificates of judicial sales. This has given many a degree of comfort in knowing that anyone can at the push of a button find out if a vessel is about to be sold in a judicial sale or whether or not a vessel has indeed been sold. The IMO is in fact the Repository under article 11 of the Convention. Thank you IMO.

The convention will come into force after ratification by 3 member states.

We believe that this convention will provide certainty to ship purchasers and their financiers and instil confidence in the judicial sales market

leading to better prices increasing the pot for distributions amongst creditors.

It is a win-win situation. The CMI encourages states to ratify the convention after the signing ceremony is held in Beijing later on this year. The CMI would like to extend its offer to assist all state administrations who may wish to know more about the convention and its implementation. In fact we are currently involved in organising or participating in a number of road shows precisely for this purpose. One such symposium organised by the CMI, the Ministry of Foreign Affairs in Malta and UNCITRAL will be held in Malta on April 26<sup>th</sup>. I would like to thank the Director, Mr. Fred Kenney for his much appreciated assistance and co-operation during the past 4 years and for accepting to attend this symposium to explain how the IMO repository system will work.

In conclusion the CMI would like to respectfully invite you distinguished delegates, to seriously consider recommending the ratification of this convention to your governments, a Convention which enhances and strengthens properly held and transparent judicial sales in your jurisdictions, instils confidence in such judicial sales and ensures certainty in international maritime trade.

Thank you