

**REPORT OF THE CMI IWG
ON RECOGNITION OF FOREIGN JUDICIAL SALES OF SHIPS**

Chair: Henry Hai Li

Rapporteur: Jonathan Lux

Andrew Robinson

Prior to the 40th CMI Conference in Beijing during 14-19 October 2012 (the “Beijing Conference” or “Conference”), the Second Working Draft of the Instrument on Recognition of Foreign Judicial Sales of Ships (the “Second Draft”) and the Commentary prepared by the International Working Group (the “IWG”) had been circulated as an attachment to the CMI President’s letter of 2 May 2012 to the national maritime law associations (the “NMLAs”) for their consideration and preparation for the discussion at the Beijing Conference.

The session on Judicial Sales of Ships was opened by Henry Hai Li immediately after the Opening Ceremony of the Beijing Conference on the morning of 15 October with introductory papers from six speakers. The first two speakers, Jan-Erik Pötschke from Germany and Lawrence Teh from Singapore, briefly introduced to the law and practice in relation to judicial sales of ships in civil law and common law jurisdictions respectively. The second two speakers, William Sharpe from Canada and Frank Smeele from the Netherlands, addressed the issue of policy considerations, which should be taken into account when preparing an international instrument on this subject, one from common law perspective and one from civil law perspective. The fifth speaker, James Zhengliang Hu from China, introduced briefly the law and practice in relation to judicial sales of ships in China, the venue of this Conference. The last but not the least speaker, Andrew Robinson, on behalf of the IWG, presented a Summary and Concise Analysis of the comments received before the Conference from the NMLAs relating to the Second Working Draft. With these introductory speeches, the delegates were provided with a full picture of the background of this subject and acquired a better understanding of the importance of this project.

Over the ensuing two days, Henry Li, Jonathan Lux and Andrew Robinson led an article by article discussion of the Second Draft from the beginning to the end. Constructive comments were received from a number of representatives of the attending NMLAs, including the maritime law associations of Argentina, Australia, Belgium, Canada, China, Croatia, Denmark, France, Germany, Greece, Ireland, Italy, Japan, Malta, the Netherlands, Nigeria, Norway, Russia, Singapore, South Africa, South Korea, Spain, Switzerland, Turkey, UK, USA. During the discussion, a number of proposals and/or amendments to the Second Draft were supported by the majority views. These included that a preamble be added to the draft summarizing guiding principles and considerations of the drafters as an aid to the uniform interpretation of the draft or the future convention.

In the afternoon of 18 October, the members of the IWG, including Henry Li, Jonathan Lux, Andrew Robinson, Frank Smeele, William Sharpe, Lawrence Teh, Francis Nolan, Louis N. Mbanefo, and Benoit Goemans, met to consider and discuss the comments received at the sessions during the Conference and those written comments received prior to the Conference with an aim to produce a new draft of the instrument for voting and adoption at the session the next morning before the Conference Plenary Session, which was scheduled to start immediately after. The IWG worked very hard until late at night and successfully worked out a document entitled “A Proposed Draft International Convention on Recognition of Foreign Judicial Sales of Ships” (known as the “Beijing Draft”), taking into account the consensus expressed on the amendments to the Second Draft.

The Beijing Draft was presented to the delegates of the attending NMLAs for voting and adoption at the morning session on 19 October. Several NMLAs’ delegates wished an opportunity to make further comments and a number of NMLAs’ delegates indicated that they did not have the necessary mandate from their respective associations to vote on the newly produced document. Under such circumstances, the IWG, after a short private meeting, proposed to the delegates a report on the sessions on Judicial Sales of Ships to be presented to the Plenary Session of the Conference. The proposed short report by the IWG was approved by the delegates of the attending NMLAs as presented.

Accordingly, the following report was presented by Joanthan Lux on behalf of the IWG to the Plenary Session of the Conference:

“The Sessions on Judicial Sales of Ships

The Second Draft Instrument prepared by the IWG was carefully reviewed and commented on over three days. The IWG prepared a new version, after consideration of deliberations, known as the Beijing Draft. The IWG presented the Beijing Draft to the attending NMLAs on Friday 19 October and it was agreed, without objection, that:

1. The Beijing Draft is a substantially improved document.
2. The IWG will circulate a Commentary on the Beijing Draft to all NMLAs within the next six weeks.
3. Any NMLAs wishing to make written comments shall do so within three months after receiving the Commentary.
4. The IWG will prepare a Final Beijing Draft instrument to be circulated before the next CMI Assembly and to be voted on as presented by the IWG.”

Save that it was agreed with the support of majority views at the Plenary Session to substitute the word “convention” for the word “instrument” in Paragraph 4, and that the stated aim was to attempt to finalise rather than necessarily finalise the “Beijing Draft” in Dublin in 2013, the report was otherwise approved.

It is hoped that after receiving the Commentary on the Beijing Draft, the NMLAs will send their comments on the Beijing Draft, if any, to the CMI or the IWG as early as possible so as to leave sufficient time to the IWG to consider and include their further amendments if widely supported into the final Beijing Draft, and that the delegates attending the Interantional Sub-Committee meeting on this subject to be held in Dublin in September/October 2013 will be given the necessary mandate by their respective associations to vote on the Beijing Draft.