A Brief Summary of the Session on Recognition of Foreign Judicial Sales of Ships

By Jonathan Lux

Thank you ladies and gentleman for your contributions and thank you to the speakers.

To try and summarise the matters discussed this afternoon is something of a poisoned chalice. We covered five sets of questions relating to the judicial sales of ships - i.e.:-

1. The concept;

2. The key procedural elements;

3. The effects;

4. Recognition of the legal effects; and

5. Whether there should be a new international instrument on the recognition of foreign judicial sales of ships.

There was a great diversity of views expressed by the 23 NMA's who responded to the Questionnaire, although there was a fair measure of agreement on the key essentials.

The very starting point is difficult: the Convention on Maritime Liens and Mortgages 1993 (the 1993 Convention) talks of forced sales whereas we are now discussing judicial sales. The question raised by Canada is quite correct, and the same question would arise in England - i.e. if an in personam judgment is obtained and the debtor has a vessel within the jurisdiction, application could be made to sell the ship by way of enforcement. Surely, it would not have been intended that this is within the scope of the 'judicial sales' we are discussing.

There is no doubt that there have been problems over the years and there certainly used to be (if not now) problems associated with Turkey. For example, in one case involving Turkish owners and a Turkish flagged vessel, there was a judicial sale in Denmark.

The applicant (a Turkish bunker supplier whose supply to the vessel pre-dated the judicial sale) arrested the vessel in South Africa.

The South African Judge held there was no merit in any of the applicant's submissions and went onto quote from someone who is well known in CMI circles - Professor John Hare. The Judge said:-

> "No clearer reason for recognising the title obtained by the buyer of the ship sold in execution can be given than that stated by Hewson J. in The Acrux (1962) 1LLR 405 quoted by John Hare in Shipping Law and Admiralty Jurisdiction in South Africa at page 111:
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> > "Were such a clean title as given by this Court to be challenged or disturbed, the innocent purchaser would be greatly prejudiced. Not only that, but as a general proposition the maritime interest of the world would suffer. Were it to become established, contrary to general maritime law, that a proper sale of a ship by a competent Court did not give a clean title, those whose business it is to make advances of money in their various ways to enable ships to pursue their lawful occasions would be prejudiced in all cases where it became necessary to sell the ship under proper process of any competent Court. It would be prejudiced for this reason, that no innocent purchaser would be prepared by pay the full market price for the ship, and the resultant fund, if the ship were sold, would be minimised and not represent her true value." "

In summary, its of enormous practical importance that the purchaser be able to obtain a certificate of deletion from the previous registry and thereby be able to register the vessel in a new registry of his choice.

Those NMA's who feel that no new international instrument is required appear to rely on the fact that the 1993 Convention covers the ground in articles 11 and 12. However, only a restricted number of countries have ratified the 1993 Convention and quite a number of countries have substantial objections to that Convention. Therefore, in effect, this is really an additional justification for a new self-contained convention dealing expressly with the recognition of foreign judicial sales. This should be much less controversial than the 1993 Convention and therefore much more widely acceptable.

Ladies and gentlemen, this is a work in progress and we request your support to continue this work.