

# YEARBOOK 2020 ANNUAIRE







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*H.E. Judge Thomas A. Mensah*

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**H.E. Judge Thomas A. Mensah**  
**12 May 1932 – 7 April 2020**



It is with deep sadness that we report the death of His Excellency Judge Thomas A. Mensah, who passed away peacefully in his home in London on Tuesday 7<sup>th</sup> April 2020 after a period of illness.

Judge Mensah, or Tom as he was affectionately called, was a giant in the Maritime Law field, holding many different positions during the course of a long and distinguished career.

He held degrees from the University of Ghana, the University of London, and in 1964 was awarded the SJD by Yale University Law School.

Early on in his prestigious career, in 1968 he joined the International Maritime Organization (IMO) and, from 1988 until his departure in 1990, served as its Assistant Secretary-General and Director, Legal Affairs and External Relations Division. During his time at IMO he, along with Professor Francesco Berlingieri, Dr Louis Mbanefo and Professor David Attard, were members of an international Committee formed by IMO to draft the first syllabus for the newly established International Maritime Law Institute (IMLI) in Malta. Judge Mensah was awarded the prestigious International Maritime Prize 2012 for his significant contribution to the work of IMO.

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*H.E. Judge Thomas A. Mensah*

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After leaving IMO, Judge Mensah held a variety of prestigious positions. These included his appointment as Special Advisor on Environmental Law and Institutions for the United Nations Environmental Programme in Nairobi; Professor of Law and Director of the Law of the Sea Institute at the University of Hawaii; holder of the Cleveringa Chair at the University of Leiden in the Netherlands; High Commissioner of Ghana to the Republic of South Africa from 1995 to 1996; and Member of the International Tribunal for the Law of the Sea from 1996 to 2005. As the inaugural President of the Tribunal, he helped to guide the Tribunal in its early years.

Following his departure from the Tribunal Judge Mensah served as Judge *ad hoc* before the Tribunal in the *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, *The ARA Libertad Case (Argentina v Ghana)*, *Provisional Measures* and the *Dispute concerning delimitation of the maritime boundary between Ghana and Cote d'Ivoire in the Atlantic Ocean (Ghana/Cote d'Ivoire)*.

Apart from his links to CMI, Judge Mensah was a Member of the Institut de Droit International, a Member of the Standing Committee on Maritime Arbitration at the International Chamber of Commerce in Paris, a Member of the Advisory Council of the British Institute of International and Comparative law and a Member of the Advisory Board of the Seafarers' Rights International, a centre established on World Maritime Day (23 September 2010) dedicated to the advancement of seafarers' rights and interests worldwide. He was also the author of numerous articles and papers in the field of Public International Law, Law of the Sea and International Environmental Law.

Tom Mensah was also the most warm- hearted, gentle and kindest of individuals, as well as a loyal and dear friend and mentor to so many. He was always ready with a smile and assistance whenever this was asked of him. A devoted family man, he and his lovely wife Akosua played host to visitors from all over the world and especially to extended family members from Ghana.

The maritime world will most surely miss him. I know that I will.

Rosalie Balkin

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*William Andrew O'Neil*

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**William Andrew O'Neil**  
**6 June 1927 – 29 October 2020**



Former IMO Secretary-General, the Hon. William “Bill” O’Neil, passed away on 29th October, 2020, aged 93, at his home in the United Kingdom.

In the course of his fourteen-year tenure as IMO Secretary-General (1990-2004), Mr O’Neil made an enormous contribution to the creation, implementation and unification of international maritime law, which was recognized by CMI through the conferral on him of CMI Membership *Honoris Causa*, an honour conferred on only a very few.

Under his stewardship, IMO adopted a number of mandatory treaties and codes designed to improve the safety and security of international shipping, notably the introduction of the mandatory International Safety Management (ISM) Code and the key revisions to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1998. Following the tragic sinking of the *Estonia* ro-ro ferry, he established a team of experts to look into the safety of ro-ro ferries which led to significant improvements in maritime safety standards.

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William Andrew O'Neil

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Following the unprecedented attacks to the Twin Towers in New York City on 11 September 2001, Mr O'Neil quickly mobilised action through the IMO Council which culminated in the adoption of the International Ship and Port Facility Security (ISPS) Code, an entirely new regime for the security of ships both at sea and in ports, as well as the adoption, though the Legal Committee, of two Protocols in 2005 relating to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol regarding the Safety of Fixed Platforms on the Continental Shelf. These new legal instruments provided, *inter alia*, for search and seizure powers of suspect ships and those on board as well as conferring international jurisdiction for the subsequent prosecution of suspected terrorists, wherever in the world they might be.

On the environment front, under Mr O'Neil's watch, a new Annex VI to MARPOL on Prevention of Air Pollution from Ships was adopted, the first international treaty of its kind, as well as revisions to phase out single hull tankers. He was also a driving force behind the adoption in 2004 of the Convention for the Control and Management of Ships' Ballast Water and Sediments, aimed at reducing and controlling harmful aquatic organisms that are present in ships' ballast water, which can contaminate other regions of the world, threatening biodiversity and leading to untold economic damage.

Also, under his watch, IMO also adopted (again through the Legal Committee) Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention, which substantially upgraded the levels of compensation for victims of oil pollution incidents at sea and which widened the scope of application of the original treaties. Encouraged by him, these two Protocols entered into force in 1996, a remarkably short period in the context of international conventions.

Mr O'Neil was also an active supporter of both the World Maritime University (WMU) of which he was Chancellor and the International Maritime Law Institute (IMLI) of which he was Chairman of the Governing Board. In so doing, he recognized that the many graduates of the programmes offered by these two training institutions, which cater largely (but no longer exclusively) to graduates in developing countries, could undoubtedly play a key role in enabling their administrations to adopt and implement the more than 50 extant IMO treaties and codes, thereby promoting their uniform international application. This has proven to be the case, with several graduates of both institutions attaining high positions in their respective countries and returning to IMO as

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*William Andrew O'Neil*

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members or leaders of their delegations.

Those of you who have visited IMO Headquarters in London will know well the striking statue he commissioned as a tribute to the human element in shipping and specifically to the role of those at the heart of international shipping—the seafarers.

Our CMI Secretary-General, Rosalie Balkin, whom he appointed in 1998 as Director of the Legal Affairs and External Relations Division of IMO, and who worked closely with Mr O'Neil in that capacity until his retirement and I extend our heartfelt sympathy and condolences as well as those of the CMI Assembly and Executive Council, to Mr O'Neil's wife Olga and to his children.

His passing is a huge loss to the international maritime community and to CMI. He will be sorely missed.

Rosalie Balkin



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PART I

**Organization of  
the CMI**

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**CONSTITUTION**

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**PART I - GENERAL****Article 1  
Name and Object**

The name of this organisation is “Comité Maritime International”, which may be abbreviated to “CMI”. The name of the organisation may be used in full or in its abbreviated form. It is a non-governmental not-for-profit international organisation established in Antwerp in 1897, the object of which is to contribute by all appropriate means and activities to the unification of maritime law in all its aspects. To this end it shall promote the establishment of national associations of maritime law and shall co-operate with other international organisations.

**Article 2  
Existence and Statutory Seat**

The Comité Maritime International is incorporated in Belgium as an Association internationale sans but lucratif (AISBL) / Internationale Vereniging zonder Winstoogmerk (IVZW) under the Belgian Act of 27 June 1921 as later amended. It has been granted juridical personality by Royal Decree of 9 November 2003. Its statutory seat is at Ernest Van Dijckkaai 8, 2000 Antwerpen. Its statutory seat may be changed within Belgium by decision of the Executive Council.

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## PART II - MEMBERSHIP AND LIABILITY OF MEMBERS

### **Article 3** **Voting Members**

- (a) Subject to Article 28, the voting Members of the Comité Maritime International are national (or multinational) Associations of Maritime Law elected to membership by the Assembly, the object of which Associations must conform to that of the CMI and the membership of which must be fully open to persons (individuals or bodies having juridical personality in accordance with their national law and custom) who either are involved in maritime activities or are specialists in maritime law. Member Associations must be democratically constituted and governed, and must endeavour to present a balanced view of the interests represented in their Association.
- (b) Where in a State there is no national Association of Maritime Law in existence, and an organisation in that State applies for membership of the CMI, the Assembly may accept such organisation as a Member of the CMI if it is satisfied that the object of such organisation, or one of its objects, is the unification of maritime law in all its aspects. Whenever reference is made in this Constitution to Member Associations, it will be deemed to include any organisation admitted as a Member pursuant to this Article.
- (c) Only one organisation in each State shall be eligible for membership, unless the Assembly otherwise decides. A multinational Association is eligible for membership only if there is no Member Association in any of its constituent States.
- (d) Where a national (or multinational) Member Association does not possess juridical personality according to the law of the country where it is established, the members of such Member Association who are individuals or bodies having juridical personality in accordance with their national law and custom, acting together in accordance with their national law, shall be deemed to constitute that Member Association for purposes of its membership of the CMI.

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- (e) National (or multinational) Member Associations of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

#### **Article 4**

#### **Titulary Members**

Individual members of Member Associations may be elected by the Assembly as Titulary Members of the Comité Maritime International upon the proposal of the Association concerned, endorsed by the Executive Council. Individual persons may also be elected by the Assembly as Titulary Members upon the proposal of the Executive Council. Titulary Membership is of an honorary nature and shall be decided having regard to the contributions of the candidates to the work of the CMI and/or to their services rendered in legal or maritime affairs in furtherance of international uniformity of maritime law or related commercial practice. Titulary Members presently or formerly belonging to an Association which is no longer a member of the CMI may remain individual Titulary Members at large pending the formation of a new Member Association in their State.

Titulary Members of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

#### **Article 5**

#### **Provisional Members**

Nationals of States where there is no Member Association in existence and who have demonstrated an interest in the object of the Comité Maritime International may upon the proposal of the Executive Council be elected as Provisional Members by the Assembly. A primary objective of Provisional Membership is to facilitate the organisation and establishment of new Member national or regional Associations of Maritime Law. Provisional Membership is not normally intended to be permanent, and the status of each Provisional Member will be reviewed at three-year intervals. However, individuals who have been Provisional Members for not less than five years may upon the proposal of the Executive Council be elected by the Assembly as Titulary Members, to the maximum number of three such Titulary Members from any one State. Provisional Members of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

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**Article 6**  
**Members Honoris Causa**

The Assembly may elect to Membership honoris causa any individual person who has rendered exceptional service to the Comité Maritime International or in the attainment of its object, with all of the rights and privileges of a Titulary Member. Members honoris causa may be designated as honorary officers of the CMI if so proposed by the Executive Council. Members honoris causa shall not be attributed to any Member Association or State but shall be individual members of the CMI as a whole.

Members honoris causa of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

**Article 7**  
**Consultative Members**

International organisations which are interested in the object of the Comité Maritime International may be elected by the Assembly as Consultative Members.

Consultative Members of the CMI are identified in a list published on the CMI Website or as may otherwise be determined by the Executive Council.

**Article 8**  
**Expulsion of Members**

- (a) Members may be expelled from the Comité Maritime International by reason of:
- i. default in payment of subscriptions;
  - ii. conduct obstructive to the object of the CMI; or
  - iii. conduct likely to bring the CMI or its work into disrepute.

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- (b)
  - i. A motion to expel a Member may be made by:
    - (a) any Member Association or Titulary Member of the CMI; or
    - (b) the Executive Council.
  - ii. Such motion shall be made in writing and shall set forth the reason(s) for the motion.
  - iii. Such motion must be filed with the Secretary-General or Administrator, and shall be copied to the Member in question.
- (c) A motion to expel made under Article 8(b)(i)(a) shall be forwarded to the Executive Council for first consideration.
  - i. If such motion is approved by the Executive Council, it shall be forwarded to the Assembly for consideration pursuant to Article 11(b).
  - ii. If such motion is not approved by the Executive Council, the motion may nevertheless be laid before the Assembly by the Member Association or Titulary Member at its meeting next following the meeting of the Executive Council at which the motion was considered.
- (d) A motion to expel shall not be debated in or acted upon by the Assembly until at least ninety (90) days have elapsed since the original motion was copied to the Member in question. If less than ninety (90) days have elapsed, consideration of the motion shall be deferred to the next succeeding Assembly.
- (e)
  - i. The Member in question may offer a written response to the motion to expel, and/or may address the Assembly for a reasonable period in debate upon the motion.
  - ii. In the case of a motion to expel which is based upon default in payment under Article 8(a)(i), actual payment in full of all arrears currently owed by the Member in question shall constitute a complete defence to the motion, and upon acknowledgment of payment by the Treasurer the motion shall be deemed withdrawn.



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(f)

- i. In the case of a motion to expel which is based upon default in payment under Article 8(a)(i), expulsion shall require the affirmative vote of a simple majority of the Member Associations present, entitled to vote, and voting.
- ii. In the case of a motion to expel which is based upon Article 8(a)(ii) and (iii), expulsion shall require the affirmative vote of a two-thirds majority of the Member Associations present, entitled to vote, and voting.

**Article 9****Limitation of Liability of Members**

The liability of Members for obligations of the Comité Maritime International shall be limited to the amounts of their subscriptions paid or currently due and payable to the CMI.

**PART III –ASSEMBLY****Article 10****Composition of the Assembly**

The Assembly shall consist of all Members of the Comité Maritime International, the members of the Executive Council and the Immediate Past President.

As approved by the Executive Council, the President may invite Observers to attend all or parts of the meetings of the Assembly.

**Article 11****Functions of the Assembly**

The functions of the Assembly are:

- (a) To elect the Officers of the Comité Maritime International;
- (b) To elect Members of and to suspend or expel Members from the CMI;

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- (c) To fix the amounts of subscriptions payable by Members to the CMI;
- (d) To elect auditors;
- (e) To consider and, if thought fit, approve the accounts and the budget;
- (f) To consider reports of the Executive Council and to take decisions on the activities of the CMI, including the location for the holding of meetings, and in particular, meetings of the Assembly;
- (g) To approve the convening of, and ultimately approve resolutions adopted by, International Conferences;
- (h) To adopt Rules of Procedure not inconsistent with the provisions of this Constitution and make such additional Rules of Procedure as may be necessary when so doing to take account of any transitional issues that arise; and
- (i) To amend this Constitution pursuant to Article 14.

**Article 12****Meetings and Quorum of the Assembly**

The Assembly shall meet annually on a date and at a place decided by the Executive Council. The Assembly shall also meet at any other time, for a specified purpose, if requested by the President, by ten of its Member Associations or by the Vice-Presidents. At least six weeks' notice shall be given of such meetings.

At any meeting of the Assembly, the presence of not less than five Member Associations entitled to vote shall constitute a lawful quorum.

**Article 13****Agenda and Voting of the Assembly**

Matters to be dealt with by the Assembly, including election to vacant offices, shall be set out in the agenda accompanying the notice of the meeting. Decisions may be taken on matters not set out in the agenda, other than amendments to this Constitution, provided no Member Association represented in the Assembly objects to such procedure.

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Members *honoris causa* and Titulary, Provisional and Consultative Members shall enjoy the rights of presence and voice, but only Member Associations in good standing shall have the right to vote.

Each Member Association present in the Assembly and entitled to vote shall have one vote. The right to vote cannot be delegated or exercised by proxy. The vote of a Member Association shall be cast by its president, or by another of its members duly authorised by that Member Association.

Unless otherwise provided in this Constitution and subject to Article 8(f) (ii) and Article 14, all decisions of the Assembly shall be taken by a simple majority of Member Associations present, entitled to vote, and voting. However, amendments to any Rules of Procedure adopted pursuant to Article 11(h) shall require the affirmative vote of a two-thirds majority of all Member Associations present, entitled to vote, and voting.

### **Article 14**

#### **Amendments to the Constitution**

Amendments to the Constitution shall be made in writing and shall be transmitted to all National Associations at least six weeks prior to the annual meeting of the Assembly at which the proposed amendments will be considered.

Amendments to the Constitution shall require the affirmative vote of a two-thirds majority of all Member Associations present, entitled to vote, and voting. Their effectiveness and entry into force shall be subject to Belgian law.

## **PART IV - OFFICERS**

### **Article 15**

#### **Designation**

The Officers of the Comité Maritime International shall be the governing body of the CMI within the meaning of the Belgian Act of 27 June 1921 as later amended and shall consist of the following members who are the directors of the CMI within the meaning of the Act:

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- (a) The President,
- (b) Two Vice-Presidents,
- (c) The Secretary-General,
- (d) The Treasurer (and Head Office Director)  
(hereafter “The Treasurer”),
- (e) The Administrator (if an individual), and
- (f) Up to eight Executive Councillors.

### **Article 16** **President**

The President of the Comité Maritime International shall preside over the Assembly, the Executive Council, and the International Conferences convened by the CMI. He or she shall be an ex-officio member of any Committee, International Sub-Committee or Working Group appointed by the Executive Council.

With the assistance of the Secretary-General and the Administrator he or she shall carry out the decisions of the Assembly and of the Executive Council, supervise the work of the International Sub-Committees and Working Groups, and represent the CMI externally.

The President shall have authority to conclude and execute agreements on behalf of the CMI, and to delegate this authority to other officers of the CMI.

The President shall have authority to institute legal action in the name and on behalf of the CMI, and to delegate such authority to other officers of the CMI. In case of the impeachment of the President or other circumstances in which the President is prevented from acting and urgent measures are required, five officers together may decide to institute such legal action provided notice is given to the other members of the Executive Council. The five officers taking such decision shall not take any further measures by themselves unless required by the urgency of the situation.

In general, the duty of the President shall be to ensure the continuity and the development of the work of the CMI.

The President shall be elected for a term of three years and shall be eligible for re-election for one additional term.

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**Article 17**  
**Vice-Presidents**

There shall be two Vice-Presidents of the Comité Maritime International, whose principal duty shall be to advise the President and the Executive Council, and whose other duties shall be assigned by the Executive Council.

The Vice-Presidents, in order of their seniority as officers of the CMI, shall substitute for the President when the President is absent or is unable to act.

Each Vice-President shall be elected for a term of three years and shall be eligible for re-election for one additional term.

**Article 18**  
**Secretary-General**

The Secretary-General shall undertake and be responsible for the tasks and duties assigned to him or her from time to time by the President or the Executive Council.

The Secretary-General shall have particular responsibility for organisation of the intellectual and social content, and all non-administrative preparations for International Conferences, Colloquia, Symposia and Seminars convened by the Comité Maritime International.

The Secretary-General shall liaise with appropriate international bodies, especially Consultative Members of the CMI and may represent the CMI at any forum when so requested by the President or the Executive Council.

The Secretary-General shall be elected for a term of three years and shall be eligible for re-election without limitation upon the number of terms.

**Article 19**  
**Treasurer**

The Treasurer shall undertake and be responsible for the tasks and duties assigned to him/her from time to time by the President or the Executive Council.

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In particular, the Treasurer shall:

- (a) be responsible for the funds of the Comité Maritime International, and shall collect and disburse, or authorise disbursement of, funds as directed by the Executive Council, in accordance with protocols prescribed from time to time by the Executive Council;
- (b) maintain adequate accounting records for the CMI;
- (c) prepare financial statements for the preceding calendar year in accordance with current International Accounting Standards, and shall prepare proposed budgets for the current and next succeeding calendar years;
- (d) submit financial statements and the proposed budgets for review by the auditors and the Audit Committee appointed by the Executive Council, and following any revisions, present them for review by the Executive Council and approval by the Assembly not later than the first meeting of the Executive Council in the calendar year next following the year to which the financial statements relate.
- (e) at the request of the Executive Council, open such bank accounts and other financial facilities, such as credit cards, as are necessary to facilitate the financial operations of the CMI, and take all steps necessary to manage the finances of the CMI including arranging the deposit of funds and payment of accounts.

In his/her capacity as Head Office Director, the Treasurer shall be:

- (a) the line manager of the Administrative Assistant in Antwerp in relation to his/her office duties and in general to oversee the day by day business of the Secretariat of the CMI.
- (b) authorised to give, and be responsible for, all formal and informal notifications of amendments to the Constitution of the CMI; official notifications of the appointment and termination of officers of the Executive Council; and all other notifications required by the laws of Belgium from time to time. And in this regard, the Treasurer shall appoint and liaise with a practising Belgian lawyer to ensure compliance with all formal and legislative prerequisites in relation to the Executive Council, the Assembly, and the CMI in general.

The Treasurer shall be elected for a term of three years, and shall be eligible for re-election without limitation upon the number of terms.

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**Article 20**  
**Administrator**

The Administrator shall undertake and be responsible for the tasks and duties assigned to him or her from time to time by the President or the Executive Council.

The Administrator shall have particular responsibility for the formal administrative preparations for meetings of the Comité Maritime International, and to that end, shall:

- (a) give official notice of all meetings of the Assembly and the Executive Council, of International Conferences, Symposia, Colloquia and Seminars, and of all meetings of Committees, International Sub-Committees and Working Groups;
- (b) circulate the agendas, minutes and reports of such meetings;
- (c) make all necessary administrative arrangements for such meetings (such as the liaison with the host Maritime Law Association for the booking of venues and associated social activities);
- (d) take such actions, either directly or by appropriate delegation, as are necessary to give effect to administrative decisions of the Assembly, the Executive Council, and the President;
- (e) circulate such reports and/or documents as may be requested by the President, the Secretary-General or the Treasurer, or as may be approved by the Executive Council; and
- (f) keep current and ensure publication of the lists of Members pursuant to Articles 3, 4, 5, 6 and 7.

The Administrator may represent the CMI at any forum when so requested by the President or the Executive Council.

The Administrator may be an individual or a body having juridical personality. If a body having juridical personality, the Administrator shall be represented on the Executive Council by one natural individual person. If an individual, the Administrator may also serve, if elected to that office, as Treasurer of the CMI.

The Administrator, if an individual, shall be elected for a term of three years and shall be eligible for re-election without limitation upon the number of terms. If a body having juridical personality, the Administrator shall be appointed by the Assembly upon the recommendation of the Executive Council, and shall serve until a successor is appointed.

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## PART V - EXECUTIVE COUNCIL

### **Article 21**

#### **Composition, criteria for election and terms of office of the Executive Council**

The Executive Council shall comprise the Officers of the Comité Maritime International as described in Article 15.

Executive Councillors shall be elected by the Assembly upon individual merit, also having due regard to balanced representation of the legal systems and geographical areas of the world characterised by the Member Associations.

Each elected Executive Councillor shall be elected to his or her specific office in the Executive Council for a term of three years and shall be eligible for re-election for one additional term to each such office, except that (as provided in Articles 18, 19 and 20) there shall be no such limit on the number of re-elections of the Secretary-General, Administrator or Treasurer.

### **Article 22**

#### **Functions of the Executive Council**

The functions of the Executive Council are:

- (a) To receive and review reports concerning contact with:
  - i. The Member Associations,
  - ii. The CMI Charitable Trust, and
  - iii. International organisations;
- (b) To review documents and/or studies intended for:
  - i. The Assembly,
  - ii. The Member Associations, relating to the work of the Comité Maritime International or otherwise advising them of developments, and
  - iii. International organisations, informing them of the views of the CMI on relevant subjects;



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- (c) To initiate new work within the object of the CMI, to establish Standing Committees, International Sub-Committees and Working Groups to undertake such work, to appoint Chairs, Deputy Chairs and Rapporteurs for such bodies, and to supervise their work; reports of such Committees, Sub-Committees and Working Groups shall be submitted to the Executive Council and/or the Assembly as requested by the President;
- (d) To initiate and to appoint persons to carry out by other methods any particular work appropriate to further the object of the CMI; reports of such persons shall be submitted to the Executive Council and/or the Assembly as requested by the President;
- (e) To encourage and facilitate the recruitment of new members of the CMI;
- (f) To oversee the finances of the CMI and to appoint an Audit Committee;
- (g) To make interim appointments, if necessary, to the offices of Secretary-General, Treasurer and Administrator;
- (h) To nominate, for election by the Assembly, independent auditors of the annual financial statements prepared by the Treasurer and/or the accounts of the CMI, and to make interim appointments of such auditors if necessary;
- (i) To review and approve proposals for publications of the CMI;
- (j) To set the dates and places of its own meetings and, subject to Article 11, of the meetings of the Assembly, and of Seminars, Symposia and Colloquia convened by the CMI;
- (k) To propose the agenda of meetings of the Assembly and of International Conferences, and to decide its own agenda and those of Seminars, Symposia and Colloquia convened by the CMI;
- (l) To carry into effect the decisions of the Assembly;
- (m) To report to the Assembly on the work done and on the initiatives adopted.
- (n) To pay an honorarium to the Secretary-General, Administrator and Treasurer if it considers it appropriate to do so.

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**Article 23****Meetings and Quorum of the Executive Council**

The Executive Council shall meet at least twice annually; it may when necessary meet by electronic means, but shall meet in person at least once annually unless prevented by circumstances beyond its control.

The Executive Council may, however, take decisions when circumstances so require without a meeting having been convened, provided that all its members are fully informed and a majority respond affirmatively in writing.

Any actions taken without a meeting shall be ratified when the Executive Council next meets. At any meeting of the Executive Council seven members, including the President or a Vice-President and at least three Executive Councillors, shall constitute a lawful quorum. All decisions shall be taken by a simple majority vote. The President or, in his absence, the senior Vice-President in attendance shall have a casting vote where the votes are otherwise equally divided.

**Article 24****Immediate Past President**

The Immediate Past President of the Comité Maritime International shall have the option to attend all meetings of the Executive Council, and at his or her discretion shall advise the President and the Executive Council. His or her expenses in so attending shall be met in the same way as those of Executive Councillors.

**PART VI - NOMINATING PROCEDURES****Article 25****Nominating Committee**

A Nominating Committee shall be established for the purpose of nominating individuals for election to any office of the Comité Maritime International.

The Nominating Committee shall consist of:

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*Constitution*


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- (a) A Chair, who shall have a casting vote where the votes are otherwise equally divided, and who shall be appointed by the Executive Council;
- (b) The President and Immediate Past President of the CMI (provided that a Past President may resign from the Nominating Committee at any time upon giving written notice to the President);
- (c) Two members proposed by Member Associations through the procedures of the Nominating Committee, *mutatis mutandis*, and thereafter nominated by the Nominating Committee for election by the Assembly;
- (d) One further member appointed by the Executive Council.

Notwithstanding the foregoing paragraph, no person who is a candidate for office may serve as a member of the Nominating Committee during consideration of nominations to the office for which he or she is a candidate.

All members of the Nominating Committee other than the President and Immediate Past President (who respectively shall hold office *ex officio*) shall hold office for a term of three years and shall be eligible for re-appointment or re-election for one additional term.

## **Article 26**

### **Nomination Procedures**

On behalf of the Nominating Committee, the Chair shall determine first:

- (a) whether any officers eligible for re-election are available to serve for an additional term in which event he or she shall obtain a statement from such officers as to the contributions they have made to the Executive Council or the Nominating Committee during their term(s);
- (b) whether Member Associations wish to propose candidates for possible nomination by the Nominating Committee as an Executive Councillor, or other Officer or, where applicable, to serve on the Nominating Committee.

The Chair shall then notify the Member Associations and seek their views concerning the candidates for nomination. The Nominating Committee shall then make nominations taking such views into account.

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*Constitution*

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Following the decisions of the Nominating Committee, the Chair shall forward its nominations to the Administrator in ample time for distribution not less than six weeks before the annual meeting of the Assembly at which nominees are to be elected.

Member Associations may make nominations for election to any office independently of the Nominating Committee, provided such nominations are forwarded to the Administrator in writing not less than 15 working days before the annual meeting of the Assembly at which nominees are to be elected. In the absence of any such nominations from Member Associations, the only nominations for election by the Assembly shall be the nominations of the Nominating Committee.

The Executive Council may make nominations to the Nominating Committee for election by the Assembly to the offices of Secretary-General, Treasurer and/or Administrator. Such nominations shall be forwarded to the Chair of the Nominating Committee at least fourteen weeks before the annual meeting of the Assembly at which nominees are to be elected.

## PART VII - INTERNATIONAL CONFERENCES

### Article 27

#### **Composition and Voting**

The Comité Maritime International shall meet in International Conference at places approved by the Assembly, for the purpose of discussing and adopting resolutions upon subjects on an agenda approved by the Executive Council.

The International Conference shall be composed of all Members of the CMI and such Observers as are approved by the Executive Council.

Each Member Association which has the right to vote may be represented by its delegates present and by Titulary Members present who are members of that Association. Each Consultative Member may be represented by three delegates. Each Observer may be represented by one delegate only.

Each Member Association present and entitled to vote shall have one vote in an International Conference; no other Member and no Officer of the CMI shall have the right to vote in such capacity.

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*Constitution*

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The right to vote cannot be delegated or exercised by proxy.

The resolutions of International Conferences shall be adopted by a simple majority of the Member Associations present, entitled to vote, and voting.

Clerical mistakes, or errors arising from an accidental mistake, omission or oversight, or an amendment to provide for any matter which should have been but was not dealt with at an International Conference can be corrected by a resolution at a subsequent Assembly meeting.

## PART VIII – FINANCE

### **Article 28**

#### **Arrears of Subscriptions**

A Member Association remaining in arrears of payment of its subscription for more than one year from the end of the calendar year for which the subscription is due shall be in default and shall not be entitled to vote until such default is cured.

Members liable to pay subscriptions and who remain in arrears of payment for two or more years from the end of the calendar year for which the subscription is due shall, unless the Executive Council decides otherwise, receive no publications or other rights and benefits of membership until such default is cured.

Failure to make full payment of subscriptions owed for three or more calendar years shall be sufficient cause for expulsion of the Member in default. A Member expelled by the Assembly solely for failure to make payment of subscriptions may be reinstated by vote of the Executive Council following payment of arrears, subject to ratification by the Assembly. The Assembly may authorise the President and/or Treasurer to negotiate the amount and payment of arrears with Members in default, subject to approval of any such agreement by the Executive Council.

Subscriptions received from a Member in default shall, unless otherwise provided in a negotiated and approved agreement, be applied to reduce arrears in chronological order, beginning with the earliest calendar year of default.

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*Constitution*

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**Article 29****Fees and Expenses**

The Secretary-General, Administrator and Treasurer shall receive such honoraria as may be determined by the Executive Council and the auditors shall receive such fee as may be approved by the Executive Council.

Members of the Executive Council, the Immediate Past President, and Chairs of Standing Committees, Chairs and Rapporteurs of International Sub-Committees and Working Groups, when travelling on behalf of the Comité Maritime International, shall be entitled to reimbursement of travelling expenses, as directed by the President or the Executive Council.

The President or the Executive Council may also authorise the reimbursement of other expenses incurred on behalf of the Comité Maritime International.

## PART IX – FINAL PROVISIONS

**Article 30****Liability**

The Comité Maritime International shall not be liable for the acts or omissions of its Members. The liability of the CMI shall be limited to its assets.

**Article 31****Dissolution and Procedure for Liquidation**

The Assembly may, upon written motion received by the Administrator not less than six months prior to a regular or extraordinary meeting, vote to dissolve the Comité Maritime International. At such meeting a quorum of not less than one-half of the Member Associations entitled to vote shall be required in order to take a vote on the proposed dissolution. Dissolution shall require the affirmative vote of a three-fourths majority of all Member Associations present, entitled to vote, and voting. Upon a vote in favour of dissolution, liquidation shall take place in accordance with the laws of Belgium. Following the discharge of all outstanding liabilities and the payment of all reasonable expenses of liquidation, the

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*Constitution*

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net assets of the CMI, if any, shall devolve to the CMI Charitable Trust, a registered charity established under the laws of the United Kingdom.

**Article 32**  
**Governing Law**

Any issue not resolved by reference to this Constitution shall be resolved by reference to Belgian law.

**Article 33**  
**Entry into Force**

This Constitution shall enter into force on the tenth day following its publication in the Annexes du Moniteur belge.

## **RULES OF PROCEDURE**

1996, as amended 2017

### **Rule 1 Right of Presence**

In the Assembly, only Members of the Comité Maritime International as defined in Article 3(a) of the Constitution, members of the Executive Council as provided in Article 10, the Immediate Past President and Observers invited pursuant to Article 10 may be present as of right.

At International Conferences, only Members of the CMI as defined in Article 3 of the Constitution (including non-delegate members of national Member Associations), Officers of the CMI as defined in Article 15, the Immediate Past President and Observers invited pursuant to Article 27 may be present as of right.

Observers may, however, be excluded during consideration of certain items of the agenda if the President so determines.

All other persons must seek the leave of the President in order to attend any part of the proceedings.

### **Rule 2 Right of Voice**

Only Members of the Comité Maritime International as defined in Article 3 of the Constitution, members of the Executive Council and the Immediate Past President may speak as of right; all others must seek the leave of the President before speaking. In the case of a Member Association, only a listed delegate may speak for that Member; with the leave of the President such delegate may yield the floor to another member of that Member Association for the purpose of addressing a particular and specified matter.



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*Rules of Procedure*

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**Rule 3**  
**Points of Order**

During the debate of any proposal or motion any Member or Officer of the Comite Maritime International having the right of voice under Rule 2 may rise to a point of order and the point of order shall immediately be ruled upon by the President. No one rising to a point of order shall speak on the substance of the matter under discussion.

All rulings of the President on matters of procedure shall be final unless immediately appealed and overruled by motion duly made, seconded and carried.

**Rule 4**  
**Voting**

For the purpose of application of Article 13 of the Constitution, the phrase “Member Association present, entitled to vote, and voting” shall mean Member Associations whose right to vote has not been suspended pursuant to Articles 14 or 28, whose voting delegate is present at the time the vote is taken, and whose delegate casts an affirmative or negative vote. Member Associations abstaining from voting or casting an invalid vote shall be considered as not voting.

Voting shall normally be by show of hands. However, the President may order or any Member Association present and entitled to vote may request a roll-call vote, which shall be taken in the alphabetical order of the names of the Member Associations as listed in the current CMI Yearbook.

If a vote is equally divided, the proposal or motion shall be deemed rejected.

Notwithstanding the foregoing, all contested elections of Officers shall be decided by a secret written ballot in each category. Four ballots shall be taken if necessary. If the vote is equally divided on the fourth ballot, the election shall be decided by drawing lots.

If no nominations for an office are made in addition to the nomination(s) of the Nominating Committee pursuant to Article 26, then the candidate(s) nominated by the Nominating Committee may be declared by the President to be elected to that office by acclamation. If the Nominating Committee nominates more candidates than there are

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*Rules of Procedure*

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vacancies for any office, then the Assembly shall conduct an election in accordance with the procedures of this Rule.

**Rule 5**  
**Amendments to Proposals**

An amendment shall be voted upon before the proposal to which it relates is put to the vote, and if the amendment is carried the proposal shall then be voted upon in its amended form.

If two or more amendments are moved to a proposal, the first vote shall be taken on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all amendments have been put to the vote.

**Rule 6**  
**Secretary and Minutes**

The Secretary-General or, in his absence, an Officer of the Comité Maritime International appointed by the President, shall act as secretary and shall take note of the proceedings and prepare minutes of Assembly meetings. Minutes of the Assembly shall be published on the CMI website (where practical) in the two official languages of the CMI, English and French, and in the CMI News Letter and/or otherwise distributed in writing to Member Associations.

**Rule 7**  
**Amendment of these Rules**

Amendments to these Rules of Procedure may be adopted by the Assembly. Proposed amendments must be in writing and circulated to all Member Associations at least six weeks before the annual meeting of the Assembly at which the proposed amendments will be considered.

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*Rules of Procedure*

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**Rule 8****Application and Prevailing Authority**

These Rules shall apply not only to meetings of the Assembly and International Conferences, but shall also constitute, *mutatis mutandis*, the Rules of Procedure for meetings of the Executive Council, International Sub-Committees, or any other group convened by the Comité Maritime International.

In the event of an apparent conflict between any of these Rules and any provision of the Constitution, the Constitutional provision shall prevail. Any amendment to the Constitution having an effect upon the matters covered by these Rules shall be deemed as necessary to have amended these Rules *mutatis mutandis*, pending formal amendment of the Rules of Procedure in accordance with Rule 7.

**Rule 9****Carry-over of terms when electoral process is changed**

Where the Assembly amends the Constitution by changing the manner in which the members of a Committee or body of the Comité Maritime International are to be elected, the Assembly may by resolution agree to permit the terms of office of members of such Committee or body, who were elected under the previous process specified under this Constitution, to be extended until the next Assembly meeting, and for such persons to carry out their functions on that Committee or body until their terms expire at the subsequent Assembly meeting.

## **GUIDELINES FOR PROPOSING THE ELECTION OF TITULARY AND PROVISIONAL MEMBERS**

1999<sup>1</sup>

### *Titulary Members*

No person shall be proposed for election as a Titulary Member of the Comité Maritime International without supporting documentation establishing in detail the qualifications of the candidate in accordance with Article 3 (I)(c) of the Constitution. The Administrator shall receive any proposals for Titulary Membership, with such documentation, not less than sixty (60) days prior to the meeting of the Assembly at which the proposal is to be considered

Contributions to the work of the Comité may include active participation as a voting Delegate to two or more International Conferences or Assemblies of the CMI, service on a CMI Working Group or International Sub-Committee, delivery of a paper at a seminar or colloquium conducted by the CMI, or other comparable activity which has made a direct contribution to the CMI's work. Services rendered in furtherance of international uniformity may include those rendered primarily in or to another international organization, or published writing that tends to promote uniformity of maritime law or related commercial practice. Services otherwise rendered to or work within a Member Association must be clearly shown to have made a significant contribution to work undertaken by the Comité or to furtherance of international uniformity of maritime law or related commercial practice.

### *Provisional Members*

Candidates for Provisional Membership must not merely express an interest in the object of the CMI, but must have demonstrated such interest by relevant published writings, by activity promoting uniformity of maritime law and/or related commercial practice, or by presenting a plan for the organization and establishment of a new Member Association.

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<sup>1</sup> Adopted in New York, 8th May 1999, pursuant to Article 3 (I)(c) and (d) of the Constitution.

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*Guidelines for Proposing the Election of Titulary and Provisional Members*

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*Periodic Review*

Every three years, not less than sixty (60) days prior to the meeting of the Assembly, each Provisional Member shall be required to submit a concise report to the Secretary-General of the CMI concerning the activities organized or undertaken by that Provisional Member during the reporting period in pursuance of the object of the Comité Maritime International.

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*Headquarters and Offices*

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*Officers*

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*Administrative Assistant Antwerp***Evelien PEETERS**

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*Honorary Officers*

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## STANDING COMMITTEES

**[As constituted during Virtual EXCO meeting November 2020]**

**Note: In terms of Art 16 of the CMI Constitution, the President is ex officio a member of all Committees and Working Groups.**

### **Carriage of Goods by Sea (including Rotterdam Rules)**

Tomotaka FUJITA [Japan] *Chair*  
Michael STURLEY [USA]

*Rapporteur*

Stuart BEARE [UK]

Philippe DELEBECQUE  
[France]

Vincent DE ORCHIS [USA]

Miriam GOLDBY [Malta/UK]

Hannu HONKA [Finland]

Kofi MBIAH [Ghana]

Mario RICCOMAGNO [Italy]

Gertjan VAN DER ZIEL  
[Netherlands]

José VICENTE GUZMAN  
[Colombia]

### **General Average**

Jörn GRONINGER [Germany]  
*Chair*

Richard CORNAH [UK- IUMI]

Daniella DE LINT [Netherlands]

Jörn GRONINGER [Germany]

Michael HARVEY [UK]

Kiran KHOSLA [UK - ICS]

Jiro KUBO [Japan]

Sveinung MÅKESTAD  
[Norway]

Jonathan SPENCER [USA]

Esteban VIVANCO [Argentina]

### **General Average Interest Rates (YAR 2004)**

Bent NIELSEN [Denmark]  
*Chair*

Taco VAN DER VALK

[Netherlands] *Rapporteur*

Andrew TAYLOR [UK]

### **Marine Insurance**

Joseph GRASSO [USA] *Chair*

Sarah DERRINGTON

[Australia] *Rapporteur*

Andreas BACH [Switzerland]

Pierangelo CELLE [Italy]

Shelley CHAPELSKI [Canada]

Charles FERNANDEZ [UK]

Jiro KUBO [Japan]

Hernan LOPEZ SAAVEDRA  
[Argentina]

Dieter SCHWAMPE [Germany]

Jonathan SPENCER [USA]

Rhidian THOMAS [UK]

Pengnan WANG [China]

### **CMI Young Lawyers**

Robert HOEPEL [Netherlands]  
*Chair*

Taco VAN DER VALK

[Netherlands] *EXCO rep*

Lorenzo FABRO [Italy]

Javier FRANCO-ZARATE  
[Colombia]

Mišo MUDRIĆ [Croatia]

Massimiliano MUSI [Italy]

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*Standing Committees*


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Evangeline QUEK [Hong Kong/  
China]  
Violeta RADOVICH  
[Argentina]  
Harold SONDERGARD  
[Denmark]  
Ioannis TIMAGENIS [Greece]

**Collection of Outstanding  
Contributions**

John O'CONNOR [Canada]  
*Chair*  
Peter VERSTUYFT [Belgium]  
Benoit GOEMANS [Belgium]  
Aurelio FERNANDEZE-  
CONCHESO [Venezuela]

**Constitution Committee**

Jean Francois PETERS  
[Belgium] *Chair*  
Benoit GOEMANS [Belgium]  
John HARE [South Africa]  
John O'CONNOR [Canada]  
Patrice REMBAUVILLE-  
NICOLLE [France]

**Implementation of  
International Conventions  
and Promotion of Maritime  
Conventions**

Deucalion REDIADIS [Greece]  
*Chair*  
Maria BORG BARTHET [UK,  
Malta]  
*Rapporteur: Implementation*  
Peter LAURIJSSEN [Belgium]  
*Rapporteur: Promotion*  
Dimitri CHRISTODOULOU  
[Greece] *Rapporteur*  
José M. ALCANTARA [Spain]  
Rosalie BALKIN [Australia]  
Giorgio BERLINGIERI [Italy]

Vincent FOLEY [USA]  
Nicholas GASKELL [UK]  
Benoit GOEMANS [Belgium]  
Patrick HOLLOWAY [South  
Africa]  
Luke Chidi ILOGU [Nigeria]  
Måns JACOBSSON [Sweden]  
Kiran KHOSLA [UK]  
Elizabeth SALAS [Colombia]  
Leven SIANO [Brasil]

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Stephen GIRVIN [Singapore]  
*Chair*  
Lawrence TEH [Singapore]  
Taco VAN DER VALK  
[Netherlands]  
Alexander VON ZIEGLER  
[Switzerland]  
Katerina VUSKOVIC [Peru]

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Taco VAN DER VALK  
[Netherlands] *Chair*  
Chris GIASCHI [Canada]

**CMI Archives**

Jean-Francois PETERS  
[Belgium] *Chair*  
Rosalie BALKIN [Australia –  
New Zealand]  
Evelien PEETERS [Belgium]

**Audit Committee**

Måns JACOBSSON [Sweden]  
*Chair*  
Peter CULLEN [Canada]  
Luc GRELLET [France]  
Andrew TAYLOR [UK]

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*Standing Committees*


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**Nominating Committee**

Andrew TAYLOR [UK] *Chair*  
 Stuart HETHERINGTON  
 [Australia] *Ex Officio*,  
*Art. 25 Constitution*  
 Giorgio BERLINGIERI [Italy]  
 Henry HAI LI [China]  
 Jorge RADOVICH [Argentina]

**Planning Committee**

Rosalie BALKIN [Australia-  
 New Zealand] *Chair*  
 José Modesto APOLO TERAN  
 [Ecuador]  
 Giorgio BERLINGIERI [Italy]  
 Blythe DALY [USA]  
 Tomotaka FUJITA [Japan]  
 In Hyeon KIM [S Korea]  
 Dihuang SONG [China]  
 Michael STURLEY [USA]  
 Edmund SWEETMAN [Ireland/  
 Spain]

**Ad Hoc Committee: The  
Future of the CMI**

Stephen KNUDTZON  
 [Norway] *Chair*  
 Jesus CASAS [Spain]  
 Edmund SWEETMAN [Ireland/  
 Spain]  
 Taco VAN DER VALK  
 [Netherlands]

**Ad Hoc Committee;  
COVID-19**

Ann FENECH [Malta]  
 John MARKIANOS  
 DANILOLOS [Greece]  
 Lawrence TEH [Singapore]

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## PART II

# **The Work of the CMI**

## **JUDICIAL SALE OF SHIPS**

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**Judicial Sale of Ships: Proposed Draft Instrument Prepared**  
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- XI. Intervention of CMI at IMO Legal Committee, 107<sup>th</sup> Session (LEG107) - 1<sup>st</sup> December 2020**  
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- XII. UN General Assembly Document A/CN.9/1047/Rev.1 Report of Working Group VI (Judicial Sale of Ships) on the Work of its Thirty-Seventh Session (Vienna, 14-18 December 2020)**

## I. JUDICIAL SALE OF SHIPS UPDATE

### Ann Fenech

The 2017 – 2108 Year Book contained a synopsis of the efforts made by the CMI to bring the Beijing Draft on the International Recognition of Judicial Sales to the attention of an international body composed of state representatives in a position to deliberate and agree on an international convention.

By way of resume, it was at the 50<sup>th</sup> Session of the General Assembly of the United Nations Commission on International Trade Law (UNCITRAL) held between the 3<sup>rd</sup> and the 21<sup>st</sup> of July 2017 that the “*Commission thanked CMI for its proposal and noted the importance of the issues raised. It decided not to refer the proposal to a working group at present time but agreed that UNICTRAL through its secretariat, and States would support and participate in a colloquium to be initiated by CMI to discuss and advance the proposal. The Commission agreed to revisit the matter at a future session.*”<sup>2</sup>

It was agreed that a Colloquium would be held in Malta in February 2018, a joint effort between the CMI, the Malta Maritime Law Association and Transport Malta, which was a resounding success attracting some 150 delegates from all over the world representing a cross section of the maritime community. The deliberations, the papers presented and intense discussions provided much fertile ground for a detailed proposal to be made by Switzerland to UNCITRAL on “*Possible future work on cross-border issues related to the judicial sale of ships*”. The proposal which presented the Beijing Draft provided a detailed synopsis of the support given at the Malta Colloquium by the attending ship owners, financiers, ship registries, ship suppliers, port authorities and representatives for organisations like BIMCO and ITF, for the need of certainty

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2 Report of the United Nations Commission on International Trade Law – 50<sup>th</sup> Session – General Assembly official records A/72/17

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*I. Judicial Sale of Ships Update, by Ann Fenech*

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required and demanded by international trade when a vessel is sold in a judicial sale free and unencumbered and the absolute need to give effect to such a free and unencumbered title.

Details of the Malta Colloquium and the Swiss Proposal are contained in the 2017-2018 year book.

Since the publication of the above documents in our 2017-2018 Year Book, our project on Judicial sales has taken a life of its own. This is hugely gratifying to the CMI men and women who worked tirelessly on the Beijing Draft and those who then took the project to UNCITRAL and look at where we are today!

The proposal of Switzerland was accepted as part of the Agenda at the UNCITRAL Fifty First session of the General Assembly. There were several other proposals for future work for UNCITRAL deliberated by the General Assembly at that meeting held in New York between the 15<sup>th</sup> of June and 13<sup>th</sup> July. Switzerland's delegate and CMI executive committee member Prof. von Zeigler presented the proposal and Stuart Hetherington President of CMI and Ann Fenech executive council member of CMI presented different aspects of this issue highlighting the absolute need for unification in this important area of international trade. It was with a huge sense of satisfaction and great relief that the proposal garnered support from a number of important State delegations leading the Commission to decide that this was a topic which would be added to the work programme of the Commission, deciding that whichever working group would be finishing its current work load would take on the project of Judicial Sales.

It was subsequently decided by UNCITRAL that the project would be allocated to Working Group VI.

Thus "Judicial sale of ships" was on the agenda for the 35<sup>th</sup> Session of Working Group VI when it met in New York between the 13<sup>th</sup> and 17<sup>th</sup> of May 2019. Working Paper A/CN.9/WG.VI/WP.82 which was a Note prepared by the Secretariat ahead of the 35<sup>th</sup> session commented that "*the Working Group may wish to use the*

*Beijing Draft as the basis for discussion at its thirty fifth session.”*

It was my great privilege as CMI co-ordinator for the project at UNCITRAL to work with Alex von Zeigler, the representative of Switzerland in the explanation of each and every clause contained in the Beijing Draft to the State delegates who were interested in knowing more about ships and shipping, the notions behind arresting vessels, judicial sales, the financing of vessels, the importance of clean title on purchase and a host of other matters.

The outcome of the 35<sup>th</sup> session was the Annotated First Revision of the Beijing Draft which was to be further deliberated at the 36<sup>th</sup> session of Working Group V1 held in Vienna between the 18<sup>th</sup> and 22<sup>nd</sup> November 2019. The CMI working committee on Judicial Sales worked tirelessly ahead of that meeting in encouraging State delegations through the national maritime law associations to embrace and include shipping specialists in their delegations. There was also a deep consideration of the 1<sup>st</sup> revision with the CMI working committee preparing what it called the “*Vienna Notes*” ahead of the Vienna December meeting to offer some views on important issues which would be coming up for discussion.

At the Vienna meeting there was a marked increase in the participation of State delegations as well as representatives of important NGO’s with a maritime focus and other NGO’s interested in this subject matter, which on this occasion also included numerous maritime practitioners also members of CMI. This helped enormously in the development of some very stimulating debate on the various clauses and assisted in further refining the articles contained in the original Beijing Draft. Throughout this exercise reference remained to the CMI “Beijing Draft.”

Shortly after the Vienna meeting the Secretariat prepared and circulated the Annotated Second Revision of the Beijing Draft. Credit must be given to the Secretariat for its ability to sift through all the several hundred interventions during the meeting and to capture so accurately the gist and thrust of the interventions relating to which there had been agreement expressed by the majority of delegations in the room.



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*I. Judicial Sale of Ships Update, by Ann Fenech*

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The 2<sup>nd</sup> revision of the Beijing Draft was circulated in advance of the 37<sup>th</sup> session of Working Group V1 scheduled to take place in New York in April 2020. Again the CMI international working group worked tirelessly in keeping the national maritime law associations informed of the latest revision and in putting together a further set of notes to assist with the deliberations in New York. Unfortunately the New York meeting had to be postponed due to the Covid Pandemic.

As a result of the on going effect of the Pandemic, the 37<sup>th</sup> session of Working Group V1 took place in Vienna by virtue of a virtual platform between the 14<sup>th</sup> and 18<sup>th</sup> December 2020. The meeting which took place over an entire week was most successful notwithstanding the fact that it was held between 11 am and 5 pm central European time which was very challenging indeed for several delegations from Asia and the Americas. It should be noted that there was much participation and support from numerous State delegations and NGO's with a great number of CMI members forming part of State delegations. Great progress was registered and agreement reached on numerous issues including broad consensus on the fact that the instrument would best take the form of a Convention rather than a model law, and that the IMO Global Integrated Shipping Information System (GISIS) platform should be used as the repository of both the notice of judicial sale and the certificates of judicial sale. This effectively means that any person interested in knowing whether or not a vessel is about to be sold in a judicial sale would have access to the information on a 24/7 basis thereby immediately eliminating any challenges associated with the service of notification on various parties in a judicial sale. The working group expressed its appreciation to the IMO secretariat for its cooperation in exploring the matter and asked the Secretariat to continue working with the IMO secretariat to map out a proposed arrangement. Perhaps it should also be mentioned at this juncture that this matter was also raised at the IMO LEG 107 held the week before where the CMI wholeheartedly supported the idea of utilising the already established IMO GISIS platform.

The progress registered in the deliberation of the draft

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*Judicial Sale of Ships*

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convention was such that the Chair of the Working Group Prof. Beate Czerwenka expressed the view that given the progress that it had made, the Working Group should be in a position to complete a final draft of the instrument in 2021 which would then be circulated to governments for comments before being submitted to the Commission for approval and transmittal to the General Assembly for adoption in the second half of 2022. We now await the annotated third revision of the Beijing Draft for discussion at the 38<sup>th</sup> session of Working Group VI still scheduled to take place in New York between the 19<sup>th</sup> and 23<sup>rd</sup> April 2021.

This has so far proven to be an extremely interesting and stimulating exercise which will hopefully lead to a Convention on the International effects of Judicial Sales in the near future. It continues to underline the important role which CMI plays in the unification of international maritime law.

**II. UN GENERAL ASSEMBLY DOCUMENT  
A/CN.9/WG.VI/WP.81  
PROPOSALS OF THE COMITE MARITIME  
INTERNATIONAL (CMI) AND OF  
SWITZERLAND FOR POSSIBLE FUTURE  
WORK ON CROSS-BORDER ISSUES  
RELATED TO THE JUDICIAL SALE OF SHIPS**

United Nations

*A/CN.9/WG.VI/WP.81***General Assembly**

Distr.: Limited  
14 February 2019

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**United Nations Commission on  
International Trade Law**  
**Working Group VI (Judicial Sale of Ships)**  
**Thirty-fifth session**  
New York, 13–17 May 2019

**Proposals of the Comité Maritime International (CMI) and  
of Switzerland for possible future work on cross-border  
issues related to the judicial sale of ships**

**Note by the Secretariat**

1. In preparation for the fiftieth session of the Commission (Vienna, 3–21 July 2017), the Comité Maritime International (CMI) submitted a proposal (the “CMI proposal”) for possible future work on cross-border issues related to the judicial sale of ships (A/CN.9/923). For the convenience of the Working Group, the text of the CMI proposal is reproduced as annex I to this note.
2. At its fifty-first session (New York, 25 June–13 July 2018), the Commission considered a follow-up proposal from the Government of Switzerland (A/CN.9/944/Rev.1), which included the outcomes and conclusions of a high-level Colloquium on the topic that was held in Valletta, Malta, on 27 February 2018. The text of that proposal is reproduced as annex II to this note.

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*Judicial Sale of Ships*

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A/CN.9/WG.VI/WP.81

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**Annex I****Proposal of the Comité Maritime International for possible future work on cross-border issues related to the Judicial sale of ships****1. Introduction**

The Comité Maritime International (CMI) has been in existence since 1897 when it was formed by a number of far sighted representatives in both government and business who were dedicated to seeking to achieve uniformity in international law in relation to shipping. The object of CMI, as enunciated in Article 1 of its Constitution, is:

“... to contribute by all appropriate means and activities to the unification of maritime law in all its aspects. To this end it shall promote the establishment of national associations of maritime law and shall cooperate with other international organizations.”

There are over 50 National Maritime Law Associations (NMLAs) around the world who are members of CMI.

**2. Background to the Judicial Sales project**

Following on a paper given by Professor Henry Li of China in 2007 which drew attention to problems arising around the world from the failure to give recognition to judgments in other jurisdictions when ordering the sale of ships, the Executive Council of CMI proposed that an International Working Group (IWG) conduct a preliminary study of the issues in relation to the Judicial Sale of Ships.

**3. The draft international instrument**

The work which has been done by CMI commenced with a detailed Questionnaire being sent to the Maritime Law Association members of CMI, the results of which were discussed at a Colloquium held in October 2010 in Buenos Aires. Members of IWG summarized the responses which had been received at that time from 19 Maritime Law Associations. Since then at subsequent meetings of CMI, 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 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 proposal was supported by 24 acceptances with two abstentions and no vote against. The 24 acceptances comprised the national Maritime Law Associations of Argentina, Australia, Belgium, Canada, China, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Malta, the Netherlands, New Zealand, Nigeria, Norway, the Republic of Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The two abstentions were the national Maritime Law Associations of Brazil and Poland. Throughout its preparation it received widespread support from delegations.

It was felt that a simple, largely procedural, international instrument addressing the recognition of foreign Judicial sales would fill a gap left open by the International Convention on Maritime Liens and Mortgages, 1993, the International Convention Relating to the Arrest of Sea-Going Ships, 1952 and the International Convention on the Arrest of Ships, 1999, and meet the commercial needs of the industry.

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*II. UN General Assembly Document A/CN.9/WG.VI/WP.81*


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**4. The prevalence of Judicial Sales**

While there has been no exhaustive compilation of data on the number of ships sold by way of Judicial sale, the data from four significant maritime jurisdictions in Asia (Republic of Korea, China, Singapore and Japan) show that, during the period 2010–2014, more than 480 ships were sold by way of Judicial sale per year in those countries. It follows that the number of ship sales that would benefit from the certainty provided by the draft international instrument would run to many hundreds of ships a year.

It is apparent that many hundreds of ships are sold each year through some competent form of Judicial sale. The underlying cause or causes of a Judicial sale may be numerous, but usually include the non-payment of debts due and owing by the ship owner.

**5. Clean Title; Reflagging**

Purchasers, 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).

It is important to highlight the important legal principle that flows from a Judicial sale that once a ship is sold by way of a Judicial sale, the ship should, with only very limited exceptions, no longer be subject to arrest for any claim arising prior to its Judicial sale. If purchasers and their financiers lose confidence in the predictability of obtaining a clean title and being able to re-flag the vessel after acquiring a ship from a Judicial sale the process becomes less attractive and effective to the detriment of the purchaser and other creditors of the ship owner whose vessel is to be sold by way of Judicial sale.

The purchase of vessels is generally financed by a ship mortgage from a bank where the bank's main security for repayment is the ship itself. The international instrument, once it has received widespread support, will permit banks to provide ship finance with greater confidence that the ship will realize its full market value at a Judicial sale and not the reduced value realisable where there is the risk, as at present, that the ship may be subsequently arrested for claims predating the Judicial sale, and by reason of a general loss of confidence in the sanctity of the process.

**6. Judicial Pronouncements**

**In the English case “Acrux”<sup>1</sup> Mr. Justice Hewson confirmed that Courts must recognize: “proper sales by competent Courts of Admiralty, or prize, abroad — it is part of the comity of nations as well as a contribution to the general well-being of international maritime trade”.<sup>2</sup>**

The study by CMI also drew to light a number of Judicial pronouncements from various jurisdictions that highlighted difficulties that parties had experienced in having a foreign Judicial sale of a ship recognized by another court. In one Canadian decision the court went so far as to say that the matter could only be repaired by an international instrument regulating the Judicial sale of ships and their enforcement. Apart from the reported cases there are many unreported cases and cases which do not go to full hearings of which the maritime legal community is aware.

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<sup>1</sup> [1962] Vol. 1, *Lloyds Law Reports* at p. 405.

<sup>2</sup> *Ibid.*, at p. 409.

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Most importantly, the judiciaries of many countries have observed that the need to recognize Judicial sales by foreign, competent courts forms part of the comity of nations and contributes to the general well-being of international trade.

There is currently no international instrument that addresses the recognition of Judicial sales. Nor is there any instrument that adequately protects purchasers from prior claims and which addresses the de-registration on re-flagging and re-registration of ships from and to national registries.

As there is currently no international instrument dealing with the recognition of foreign Judicial sales of ships it can be said, with some confidence, that in this regard maritime transportation is neither secure nor efficient and hinders rather than promotes global trade and the world economy. The need for intervention by intergovernmental and international organizations has been clearly recognized both Judicially and by national and international maritime bodies. The recognition of foreign Judicial ship sales is fundamental to international maritime law.

The difficulties that arise when one country will not recognize an order for the Judicial sale of a ship in another country has been succinctly summarized as follows:

- (1) It is an affront to the Court and the State ordering the sale;
- (2) It represents a refusal by that country to abide by the decisions of a Court in another country, and an exception to a rule honoured by most nations in the world;
- (3) If other countries, or other debtors, decided to follow this bad example, it could create confusion in the area which can be effectively controlled only with the good faith of all seafaring nations.<sup>3</sup>

The recognition of Judicial sales at an international level has also been highlighted in the Canadian case of the ship "Galaxias"<sup>4</sup> where the Court noted that:

- (1) While a purchaser on a Judicial sale will take a clean title free and clear of all encumbrances according to the laws of Canada and notwithstanding that it is clear that Canadian Courts desire and expect that the Courts and Governments of other nations will respect its orders and judgments, particularly in the area of maritime law, however this was not an area over which a national jurisdiction exercises control, nor is it appropriate that it attempt to do so;

- (2) International regulation of the Judicial sales was necessary; and

- (3) In order to promote the free flow of maritime traffic, countries have, generally speaking, agreed to apply a uniform set of admiralty rules and laws. This would not, however, prevent any country from legally completely ignoring or setting aside any normally accepted practice or any law which is universally recognized in admiralty matters or even a rule of law which that country might previously have adopted by treaty. This is precisely what territorial jurisdiction means, and, until there exists some world authority with a superior globally enforceable overriding jurisdiction this is what we all must live with.<sup>5</sup>

In commenting on judicial orders for the sales of ships that did not ensure the passing of clean title, the same Court noted that admiralty lawyers and all lay people in the shipping world, involved in any way in the purchase and sale of ships, will invariably feel that this would greatly reduce the amounts which can be obtained from court sales of vessels and render some ships completely unsaleable. The legitimate claims of many local and foreign creditors would thus be defeated by the resulting low bids made at the auction conducted by the court seized of the case.

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<sup>3</sup> Associate Chief Justice Noel in *Vrac Mar Inc. v Demetries Karamanlis et al* [1972] FC 430 at p. 434 (Canada).

<sup>4</sup> (1988) LMLN 240, being a judgment of the Federal Court of Canada.

<sup>5</sup> *Ibid.* at p. 11 of the judgment.

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*II. UN General Assembly Document A/CN.9/WG.VI/WP.81*


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In order for the recognition of foreign Judicial ship sales to be uniformly accepted by way of an international instrument, the intervention of UNCITRAL would be of considerable benefit to the international maritime community.

Necessary and sufficient protection should be provided to purchasers of ships at Judicial sales by limiting the remedies available to interested parties to challenge the validity of the Judicial sale and the subsequent transfer of the ownership in the ship.

#### **7. Other Conventions**

The International Convention on Maritime Liens and Mortgages, 1993 has not been successful as it contains controversial provisions which do not solve the problems of the recognition of foreign Judicial sales, and the wording with respect to recognition is more in the nature of denying recognition, rather than granting recognition of the Judicial sale. However, wherever possible, the draft international instrument has been prepared so that its provisions do not conflict with those set out in the Maritime Liens and Mortgages Convention.

While the International Convention Relating to the Arrest of Sea-going Ships, 1952 seeks to regulate the claims that can be enforced by the arrest of a vessel, it does not provide for the Judicial sale of a ship.

The International Convention on the Arrest of Ships, 1999 mentions the Judicial or forced sale of ships, but only in the context of its article 3.3, allowing, as an exception to the general rule, the arrest of a ship owned by a person not liable for the claim.

#### **8. International Maritime Organization (IMO)**

CMI first approached the IMO Legal Committee in view of its past involvement with the Maritime Liens and Mortgages Conventions, and made an information presentation to the IMO Legal Committee in 2015 with a view to making a formal request twelve months later that it add this work to its agenda.

A further presentation was made in June 2016. Two sponsors were required for that work and in the lead up to the IMO Legal Committee meeting in 2016, China and the Republic of Korea agreed to sponsor this work. The IMO Legal Committee did not accept the proposal for the inclusion of this work on its agenda. It was, however, left open for the matter to be raised again at a later date.

The views expressed by delegates at the time included: while it was felt that this was an important subject of interest to the Committee some considered it to be a matter of private and commercial law and did, therefore, not fall within the remit of the Committee; some delegations appeared not to want to take on new work, although other delegations highlighted that they accepted foreign Judicial sales of ships in their national legislation and that it entailed a lot of benefits, in particular because it provided certainty towards stakeholders; others pointed out that it was also an important issue from the perspective of the port industry, as arrests of vessels can negatively affect efficient port operations.

#### **9. Hague Conference on Private International Law (HCCH)**

After the IMO Legal Committee had declined to take on this project, CMI approached the Hague Conference, which was working on its project entitled the Recognition and Enforcement of Foreign Judgments. Representatives of CMI attended the recent meeting of the Special Commission on the Recognition and Enforcement of Foreign Judgments of HCCH, held between 16 and 24 February 2017 at which a presentation was made on behalf of CMI to suggest that the CMI's draft Instrument on the Judicial Sale of Ships could be accommodated within that work. It was decided, however, by that Commission, not to proceed down that route. CMI was therefore invited to present an information paper to the Council of HCCH on 15 March 2017 so that consideration could be given at the HCCH Council meeting in 2018 to add this project to its work programme as a new stand-alone topic. Opinions were expressed by some delegations at that time to the effect that such an esoteric and industry-specific topic

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might be better suited to UNCITRAL and others preferred not to take on new work until the current programme was concluded. The matter is, presently, to be revisited at the Hague Conference's Council meeting in 2018.

#### **10. Conclusion**

The failure of States to recognize the Judicial Sale of a ship in another jurisdiction reduces confidence in the international maritime community in the system of Judicial sales. They will only be supported, and proper values for ships fetched, if the prospective purchasers can be confident of receiving the vessel with a clean title, free of any encumbrances and capable of being deleted from its old registry and registered in a new register of the purchaser's choice. Thereafter, the purchaser must also be able to trade the ship without it being subject to arrest in respect of any claim arising prior to its Judicial sale.

CMI has experience working with UNCITRAL, most recently, on the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2008 (the "Rotterdam Rules"). Members of Maritime Law Associations were appointed to national delegations and were able to assist in the work of UNCITRAL in the development of those Rules, which CMI had initially drafted. CMI does not expect UNCITRAL to rubber stamp its draft international instrument. CMI takes comfort in UNCITRAL's "universal" coverage in terms of the States participating in negotiations; and the fact that it is a specialist organization on private international law that is experienced in working on standards in the area of commercial and international trade law.

CMI is therefore requesting UNCITRAL to add this topic to its work programme. If UNCITRAL decides to add this topic to its work programme (either on its own or in conjunction with another body), CMI will not pursue its requests to IMO or HCCH to pursue this work.



**Annex II****Proposal of the Government of Switzerland for possible future work on cross-border issues related to the judicial sale of ships****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.<sup>6</sup> 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.<sup>7</sup>

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”.<sup>8</sup> 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”.<sup>9</sup> The Commission agreed to revisit the matter at a future session.<sup>10</sup>

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 Association, 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)”.<sup>11</sup>

<sup>6</sup> *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 456–465.

<sup>7</sup> *Ibid.*, para. 464.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*, para. 465.

<sup>10</sup> *Ibid.*

<sup>11</sup> See para. 5, A/CN.9/923.

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**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 (ICS), 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 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.<sup>12</sup>

**(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

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<sup>12</sup> 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."

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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 to 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 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 of 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.

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**(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 shipbuilders 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 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

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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.

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# III. UN GENERAL ASSEMBLY DOCUMENT A/CN.9/WG.VI/WP.82 JUDICIAL SALE OF SHIPS: PROPOSED DRAFT INSTRUMENT PREPARED BY THE COMITE MARITIME INTERNATIONAL

United Nations

A/CN.9/WG.VI/WP.82

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Thirty-fifth session  
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## **Judicial Sale of Ships: Proposed Draft Instrument Prepared by the Comité Maritime International**

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## I. Introduction

1. In preparation for the fiftieth session of the Commission (Vienna, 3–21 July 2017), the Comité Maritime International (CMI) submitted a proposal (the “CMI proposal”) for possible future work on cross-border issues related to the judicial sale of ships (A/CN.9/923). The CMI proposal outlined certain problems associated with the non-recognition in one State of judgments ordering the sale of a ship that emanated from another State.<sup>1</sup> In particular, the CMI proposal noted that a failure to recognize the clean title acquired by the purchaser under the law of the State of sale led to difficulties in deregistering the ship from its presale registry and gave rise to the risk of subsequent arrest of the ship for presale claims.

2. The CMI proposal expressed the view that these problems could be addressed by a simple, largely procedural, international instrument. To this end, it referred to a draft convention on the recognition of foreign judicial sales of ships, which was approved by the CMI Assembly in 2014. The text of the draft convention, known as the “Beijing Draft”, is reproduced in the annex to this note.

3. At a high-level colloquium held in Valletta, Malta, on 27 February 2018, the CMI proposal received support from a cross section of the international maritime industry, including representatives of the Baltic and International Maritime Council (BIMCO), the International Transport Workers Federation (ITF) and the Federation of National Associations of Ship Brokers and Agents (FONASBA), as well as ship financiers, shipowners, bunker suppliers, ship repairers, harbour authorities and ship registries.

4. For the fifty-first session of the Commission (New York, 25 June–13 July 2018), a follow-up proposal from the Government of Switzerland included the outcomes and conclusions of the colloquium. It noted that there was consensus among delegates and panellists that the Beijing Draft would provide a helpful reference if work were to be taken up on the topic by UNCITRAL. It also stated that the work of CMI in developing the Beijing Draft “provides a useful starting point to further UNCITRAL work, providing guidance for a working group and indicating the direction that might be taken” (A/CN.9/944/Rev.1).

5. Consistently with this proposal, the Working Group may wish to use the Beijing Draft as a basis for discussions at its thirty-fifth session.

## II. About the Beijing Draft

6. The Beijing Draft was prepared by an international working group (IWG) established by the Executive Council of CMI, in consultation with the various national maritime law associations that are members of CMI.

7. The IWG was established following discussion of the topic of the judicial sale of ships at the CMI Athens Conference in October 2008.<sup>2</sup> On the basis of preliminary research, including a survey of law and practice in various jurisdictions on the basis of a questionnaire completed by national maritime law associations,<sup>3</sup> the Executive Council mandated the IWG to prepare a draft instrument modelled on the “structure and logic” of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”).<sup>4</sup> The IWG prepared text for the draft

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<sup>1</sup> For the convenience of the Working Group, the text of the CMI proposal is reproduced in A/CN.9/WG.VI/WP.81.

<sup>2</sup> The discussion at the Athens Conference was based on a paper presented by Henry Hai Li entitled “A Brief Discussion on Judicial Sale of Ships”, *CMI Yearbook 2009* (Antwerp, 2009), p. 342.

<sup>3</sup> For a synopsis of responses to the questionnaire, see Francesco Berlingieri, “Synopsis of the Replies from the Maritime Law Associations”, *CMI Yearbook 2010* (Antwerp, 2011), p. 247.

<sup>4</sup> *Report of the International Working Group on the Preparation of the Proposed Draft International Convention on Recognition of Foreign Judicial Sales of Ships*, p. 3, available on

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instrument over two rounds of consultations with national maritime law associations.<sup>5</sup> The text was presented to the CMI Beijing Conference in October 2012,<sup>6</sup> where, after three days of discussion, a draft instrument was drawn up. This draft, together with commentary prepared by the IWG,<sup>7</sup> was circulated to the national maritime law associations for further comment. A revised draft, together with revised commentary and a final report of the IWG, was then presented to the CMI Hamburg Conference in June 2014 for approval.<sup>8</sup>

8. In addition to the Beijing Draft and commentary, several papers have been produced in the context of the CMI project that discuss various legal aspects of the judicial sale of ships. These papers are available on the “Judicial Sale of Ships” page of the CMI website, <https://comitemaritime.org/work/judicial-sale-of-ships/>, as well as being published in the CMI Yearbook.

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the “Judicial Sale of Ships” page of the CMI website, <https://comitemaritime.org/work/judicial-sale-of-ships/>.

<sup>5</sup> For a synopsis of comments received from national maritime law associations during the second round of consultations, see Andrew Robinson, “Concise Summary of Various Commentaries Received relating to the 2nd Draft Instrument”, *CMI Yearbook 2013* (Antwerp, 2013), p. 132. Individual responses from some national maritime law associations are available on the “Judicial Sale of Ships” page of the CMI website, <https://comitemaritime.org/work/judicial-sale-of-ships/>.

<sup>6</sup> “A Proposed Draft International Convention on Recognition of Foreign Judicial Sales of Ships (known as the “Beijing Draft”), Done at Beijing on 19 October 2012”, *CMI Yearbook 2013*, p. 213.

<sup>7</sup> “Commentary on the Beijing Draft a Proposed Draft International Convention on Recognition of Foreign Judicial Sales of Ships”, *CMI Yearbook 2013*, p. 220.

<sup>8</sup> The revised draft, revised commentary and final report are available on the “Judicial Sale of Ships” page of the CMI website, <https://comitemaritime.org/work/judicial-sale-of-ships/>.



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**Annex****Draft International Convention on Foreign Judicial Sales of Ships and their Recognition**

The States Parties to the present Convention,

RECOGNIZING that the needs of the maritime industry and ship finance require that the Judicial Sale of Ships is maintained as an effective way of securing and enforcing maritime claims and the enforcement of judgments or arbitral awards or other enforceable documents against the Owners of Ships;

CONCERNED that any uncertainty for the prospective Purchaser regarding the international Recognition of a Judicial Sale of a Ship and the deletion or transfer of registry may have an adverse effect upon the price realized by a Ship sold at a Judicial Sale to the detriment of interested parties;

CONVINCED that necessary and sufficient protection should be provided to Purchasers of Ships at Judicial Sales by limiting the remedies available to interested parties to challenge the validity of the Judicial Sale and the subsequent transfers of the ownership in the Ship;

CONSIDERING that once a Ship is sold by way of a Judicial Sale, the Ship should in principle no longer be subject to arrest for any claim arising prior to its Judicial Sale;

CONSIDERING further that the objective of Recognition of the Judicial Sale of Ships requires that, to the extent possible, uniform rules are adopted with regard to the notice to be given of the Judicial Sale, the legal effects of that sale and the deregistration or registration of the Ship.

HAVE AGREED as follows:

*Article 1. Definitions*

For the purposes of this Convention:

- (a) "Certificate" means the original duly issued document, or a certified copy thereof, as provided for in article 5;
- (b) "Charge" includes any charge, Maritime Lien, lien, encumbrance, claim, arrest, attachment, right of retention or any other rights whatsoever and howsoever arising which may be asserted against the Ship;
- (c) "Clean Title" means a title free and clear of any Mortgage/Hypothèque or Charge unless assumed by any Purchaser;
- (d) "Competent Authority" means any Person, Court or authority empowered under the law of the State of Judicial Sale to sell or transfer or order to be sold or transferred, by a Judicial Sale, a Ship with Clean Title;
- (e) "Court" means any judicial body established under the law of the State in which it is located and empowered to determine the matters covered by this Convention;
- (f) "Day" means calendar day;
- (g) "Interested Person" means the Owner of a Ship immediately prior to its Judicial Sale or the holder of a registered Mortgage/Hypothèque or Registered Charge attached to the Ship immediately prior to its Judicial Sale;
- (h) "Judicial Sale" means any sale of a Ship by a Competent Authority by way of public auction or private treaty or any other appropriate ways provided for by the law of the State of Judicial Sale by which Clean Title to the Ship is acquired by the Purchaser and the proceeds of sale are made available to the creditors;

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(i) “Maritime Lien” means any claim recognized as a maritime lien or privilège maritime on a Ship by the law applicable in accordance with the private international law rules of the State of Judicial Sale;

(j) “Mortgage/Hypothèque” means any mortgage or hypothèque effected on a Ship in the State of Registration and recognized as such by the law applicable in accordance with the private international law rules of the State of Judicial Sale;

(k) “Owner” means any Person registered in the register of ships of the State of Registration as the owner of the Ship;

(l) “Person” means any individual or partnership or any public or private body, whether corporate or not, including a state or any of its constituent subdivisions;

(m) “Purchaser” means any Person who acquires ownership in a Ship or who is intended to acquire ownership in a Ship pursuant to a Judicial Sale;

(n) “Recognition” means that the effect of the Judicial Sale of a Ship shall be accepted by a State party to be the same as it is in the State of Judicial Sale;

(o) “Registered Charge” means any Charge entered in the registry of the Ship that is the subject of the Judicial Sale;

(p) “Registrar” means the registrar or equivalent official in the State of Registration or the State of Bareboat Charter Registration, as the context requires;

(q) “Ship” means any ship or other vessel capable of being an object of a Judicial Sale under the law of the State of Judicial Sale;

(r) “State of Registration” means the State in whose register of ships ownership of a Ship is registered at the time of its Judicial Sale;

(s) “State of Judicial Sale” means the state in which the Ship is sold by way of Judicial Sale;

(t) “State of Bareboat Charter Registration” means the State which granted registration and the right to fly temporarily its flag to a Ship bareboat chartered-in by a charterer in the said State for the period of the relevant charter;

(u) “Subsequent Purchaser” means any Person to whom ownership of a Ship has been transferred through a Purchaser;

(v) “Unsatisfied Personal Obligation” means the amount of a creditor’s claim against any Person personally liable on an obligation, which remains unpaid after application of such creditor’s share of proceeds actually received following and as a result of a Judicial Sale.

*Article 2. Scope of application*

This Convention shall apply to the conditions in which a Judicial Sale taking place in one State shall be sufficient for recognition in another State.

*Article 3. Notice of Judicial Sale*

1. Prior to a Judicial Sale, the following notices, where applicable, shall be given, in accordance with the law of the State of Judicial Sale, either by the Competent Authority in the State of Judicial Sale or by one or more parties to the proceedings resulting in such Judicial Sale, as the case may be, to:

(a) The Registrar of the Ship’s register in the State of Registration;

(b) All holders of any registered Mortgage/Hypothèque or Registered Charge provided that these are recorded in a ship registry in a State of Registration which is open to public inspection, and that extracts from the register and copies of such instruments are obtainable from the registrar;

(c) All holders of any Maritime Lien, provided that the Competent Authority conducting the Judicial Sale has received notice of their respective claims; and

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- (d) The Owner of the Ship.
- 2. If the Ship subject to Judicial Sale is flying the flag of a State of Bareboat Charter Registration, the notice required by paragraph 1 of this article shall also be given to the Registrar of the Ship's register in such State.
- 3. The notice required by paragraphs 1 and 2 of this article shall be given at least 30 Days prior to the Judicial Sale and shall contain, as a minimum, the following information:
  - (a) The name of the Ship, the IMO number (if assigned) and the name of the Owner and the bareboat charterer (if any), as appearing in the registry records (if any) in the State of Registration (if any) and the State of Bareboat Charter Registration (if any);
  - (b) The time and place of the Judicial Sale; or if the time and place of the Judicial Sale cannot be determined with certainty, the approximate time and anticipated place of the Judicial Sale which shall be followed by additional notice of the actual time and place of the Judicial Sale when known but, in any event, not less than 7 Days prior to the Judicial Sale; and
  - (c) Such particulars concerning the Judicial Sale or the proceedings leading to the Judicial Sale as the Competent Authority conducting the proceedings shall determine are sufficient to protect the interests of Persons entitled to notice.
- 4. The notice specified in paragraph 3 of this article shall be in writing, and given in such a way not to frustrate or significantly delay the proceedings concerning the Judicial Sale:
  - (a) Either by sending it by registered mail or by courier or by any electronic or other appropriate means to the Persons as specified in paragraphs 1 and 2; and
  - (b) By press announcement published in the State of Judicial Sale and in other publications published or circulated elsewhere if required by the law of the State of Judicial Sale.
- 5. Nothing in this article shall prevent a State Party from complying with any other international convention or instrument to which it is a party and to which it consented to be bound before the date of entry into force of the present Convention.
- 6. In determining the identity or address of any Person to whom notice is required to be given other parties and the Competent Authority may rely exclusively on information set forth in the register in the State of Registration and if applicable in the State of Bareboat Registration or as may be available pursuant to article 3(1)(c).
- 7. Notice may be given under this article by any method agreed to by a Person to whom notice is required to be given.

*Article 4. Effect of Judicial Sale*

- 1. Subject to:
  - (a) The Ship being physically within the jurisdiction of the State of Judicial Sale, at the time of the Judicial Sale; and
  - (b) The Judicial Sale having been conducted in accordance with the law of the State of Judicial Sale and the provisions of this Convention,
 any title to and all rights and interests in the Ship existing prior to its Judicial Sale shall be extinguished and any Mortgage/Hypothèque or Charge, except as assumed by the Purchaser, shall cease to attach to the Ship and Clean Title to the Ship shall be acquired by the Purchaser.
- 2. Notwithstanding the provisions of the preceding paragraph, no Judicial Sale or deletion pursuant to paragraph 1 of article 6 shall extinguish any rights including, without limitation, any claim for Unsatisfied Personal Obligation, except to the extent satisfied by the proceeds of the Judicial Sale.

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

1. When a Ship is sold by way of Judicial Sale and the conditions required by the law of the State of Judicial Sale and by this Convention have been met, the Competent Authority shall, at the request of the Purchaser, issue a Certificate to the Purchaser recording that:

(a) The Ship has been sold to the Purchaser in accordance with the law of the said State and the provisions of this Convention free of any Mortgage/Hypothèque or Charge, except as assumed by the Purchaser; and

(b) Any title to and all rights and interests existing in the Ship prior to its Judicial Sale are extinguished.

2. The Certificate shall be issued substantially in the form of the annexed model and shall contain the following minimum particulars:

(a) The State of Judicial Sale;

(b) The name, address and, unless not available, the contact details of the Competent Authority issuing the Certificate;

(c) The place and date when Clean Title was acquired by the Purchaser;

(d) The name, IMO number, or distinctive number or letters, and port of registry of the Ship;

(e) The name, address or residence or principal place of business and contact details, if available, of the Owner(s);

(f) The name, address or residence or principal place of business and contact details of the Purchaser;

(g) Any Mortgage/Hypothèque or Charge assumed by the Purchaser;

(h) The place and date of issuance of the Certificate; and

(i) The signature, stamp or other confirmation of authenticity of the Certificate.

*Article 6. Deregistration and registration of the Ship*

1. Upon production by a Purchaser or Subsequent Purchaser of a Certificate issued in accordance with article 5, the Registrar of the Ship's registry where the Ship was registered prior to its Judicial Sale shall delete any registered Mortgage/Hypothèque or Registered Charge, except as assumed by the Purchaser, and either register the Ship in the name of the Purchaser or Subsequent Purchaser, or delete the Ship from the register and issue a certificate of deregistration for the purpose of new registration, as the Purchaser may direct.

2. If the Ship was flying the flag of a State of Bareboat Charter Registration at the time of the Judicial Sale, upon production by a Purchaser or Subsequent Purchaser of a Certificate issued in accordance with article 5, the Registrar of the Ship's registry in such State shall delete the Ship from the register and issue a certificate to the effect that the permission for the Ship to register in and fly temporarily the flag of the State has been withdrawn.

3. If the Certificate referred to in article 5 is not issued in an official language of the State in which the above-mentioned register is located, the Registrar may request the Purchaser or Subsequent Purchaser to submit a duly certified translation of the Certificate into such language.

4. The Registrar may also request the Purchaser or Subsequent Purchaser to submit a duly certified copy of the said Certificate for its records.

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*Article 7. Recognition of Judicial Sale*

1. Subject to the provisions of article 8, the Court of a State Party shall, on the application of a Purchaser or Subsequent Purchaser, recognize a Judicial Sale conducted in any other State for which a Certificate has been issued in accordance with article 5, as having the effect:

(a) That Clean Title has been acquired by the Purchaser and any title to and all the rights and interests in the Ship existing prior to its Judicial Sale have been extinguished; and

(b) That the Ship has been sold free of any Mortgage/Hypothèque or Charge, except as assumed by the Purchaser.

2. Where a Ship which was sold by way of a Judicial Sale is sought to be arrested or is arrested by order of a Court in a State Party for a claim that had arisen prior to the Judicial Sale, the Court shall dismiss, set aside or reject the application for arrest or release the Ship from arrest upon production by the Purchaser or Subsequent Purchaser of a Certificate issued in accordance with article 5, unless the arresting party is an Interested Person and furnishes proof evidencing existence of any of the circumstances provided for in article 8.

3. Where a Ship is sold by way of Judicial Sale in a State, any legal proceeding challenging the Judicial Sale shall be brought only before a competent Court of the State of Judicial Sale and no Court other than a competent Court of the State of Judicial Sale shall have jurisdiction to entertain any action challenging the Judicial Sale.

4. No Person other than an Interested Person shall be entitled to take any action challenging a Judicial Sale before a competent Court of the State of Judicial Sale, and no such competent Court shall exercise its jurisdiction over any claim challenging a Judicial Sale unless it is made by an Interested Person. No remedies shall be exercised either against the Ship the subject of the Judicial Sale or against any *bona fide* Purchaser or Subsequent Purchaser of that Ship.

5. In the absence of proof that a circumstance referred to in article 8 exists, a Certificate issued in accordance with article 5 shall constitute conclusive evidence that the Judicial Sale has taken place and has the effect provided for in article 4, but shall not be conclusive evidence in any proceeding to establish the rights of any Person in any other respect.

*Article 8. Circumstances in which Recognition may be suspended or refused*

Recognition of a Judicial Sale may be suspended or refused only in the circumstances provided for in the following paragraphs:

(a) Recognition of a Judicial Sale may be refused by a Court of a State Party, at the request of an Interested Person if that Interested Person furnishes to the Court proof that at the time of the Judicial Sale, the Ship was not physically within the jurisdiction of the State of Judicial Sale.

(b) Recognition of a Judicial Sale may be:

(i) Suspended by a Court of a State Party, at the request of an Interested Person, if that Interested Person furnishes to the Court proof that a legal proceeding pursuant to paragraph 3 of article 7 has been commenced on notice to the Purchaser or Subsequent Purchaser and that the competent Court of the State of Judicial Sale has suspended the effect of the Judicial Sale; or

(ii) Refused by a Court of a State Party, at the request of an Interested Person, if that Interested Person furnishes to the Court proof that the competent Court of the State of Judicial Sale in a judgment or similar judicial document no longer subject to appeal has subsequently nullified the Judicial Sale and its effects,

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either after suspension or without suspension of the legal effect of the Judicial Sale.

(c) Recognition of a Judicial Sale may also be refused if the Court in a State Party in which Recognition is sought finds that Recognition of the Judicial Sale would be manifestly contrary to the public policy of that State Party.

*Article 9. Reservation*

State parties may by reservation restrict application of this Convention to recognition of Judicial Sales conducted in State Parties.

*Article 10. Relations with other International Instruments*

Nothing in this Convention shall derogate from any other basis for the Recognition of Judicial Sales under any other bilateral or multilateral Convention, Instrument or agreement or principle of comity.

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**ANNEX TO THE DRAFT INTERNATIONAL CONVENTION ON FOREIGN  
JUDICIAL SALES OF SHIPS AND THEIR RECOGNITION**
**Certificate**

*Issued in accordance with the provisions of article 5 of the International Convention  
on Foreign Judicial Sales of Ships and their Recognition*

This is to certify that the Ship described below has been sold by way of Judicial Sale and all conditions required by the law of the State of Judicial Sale and by the International Convention on Foreign Judicial Sales of Ships and their Recognition (the "Convention") have been met, and that Clean Title as defined by the Convention has been transferred to the named Purchaser and any title to and all rights and interests in the Ship existing prior to the Judicial Sale are extinguished and any Mortgage or Charge, except as assumed by the Purchaser, shall cease to attach to the Ship.

1. **State of Judicial Sale** .....
2. **Competent Authority issuing this Certificate**
  - 2.1 Name .....
  - 2.2 Address .....
  - 2.3 Telephone/fax/email, if  
available .....
  - 2.4 Place and date Clean Title  
acquired by Purchaser .....
3. **Ship**
  - 3.1 Name .....
  - 3.2 IMO number or Distinctive  
number or letters .....
  - 3.3 Place of issuance of the  
distinctive number or  
letters .....
  - 3.4 Port of registry .....
4. **Owner(s)**
  - 4.1 Name .....
  - 4.2 Address or residence or  
principal place of business .....
  - 4.3 Telephone/fax/email .....
5. **Purchaser**
  - 5.1 Name .....
  - 5.2 Address or residence or  
principal place of business .....

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5.3 Telephone/fax/email .....

**6. Holder of the Assumed Mortgage/Hypothèque or Charge**

6.1 Name .....

6.2 Address or residence or  
principal place of business .....

6.3 Telephone/fax/email .....

6.4 Maximum amount of each  
Mortgage/Hypothèque or  
Charge assumed by the  
Purchaser (if available) .....

At.....  
(place)

On .....  
(date)

.....  
Signature and/or stamp

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*IV. UN General Assembly Document A/CN.9/973*

# IV. UN GENERAL ASSEMBLY DOCUMENT A/CN.9/973 REPORT OF (UNCITRAL) WORKING GROUP VI (JUDICIAL SALE OF SHIPS) ON THE WORK OF ITS THIRTY-FIFTH SESSION (NEW YORK, 13-17 MAY 2019)

United Nations

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General Assembly

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International Trade Law  
Fifty-second session  
Vienna, 8–19 July 2019

## Report of Working Group VI (Judicial Sale of Ships) on the work of its thirty-fifth session (New York, 13–17 May 2019)

### I. Introduction

1. At its thirty-fifth session, the Working Group considered for the first time the topic of the judicial sale of ships. This followed a decision by the Commission, at its fifty-first session (New York, 25 June – 13 July 2018), to add the topic to the work programme of the Commission, and for the topic to be allocated to the first available working group.<sup>1</sup> Having subsequently completed its work on a practice guide to the Model Law on Secured Transactions at its thirty-fourth session, the topic was allocated to the Working Group.
2. Background information on the decision to add the topic to the work programme of the Commission may be found in working paper A/CN.9/WG.VI/WP.80, paragraphs 5–11.

### II. Organization of the session

3. The Working Group, composed of all States members of the Commission, held its thirty-fifth session in New York from 13 to 17 May 2019. The session was attended by representatives of the following States members of the Working Group: Argentina, Austria, Brazil, Bulgaria, Burundi, Canada, China, Colombia, Côte d'Ivoire, Czechia, Denmark, France, Germany, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Italy, Japan, Kuwait, Lesotho, Libya, Panama, Philippines, Republic of Korea, Romania, Russian Federation, Sierra Leone, Singapore, Spain, Sri Lanka, Switzerland, Thailand, Turkey and United States of America.
4. The session was also attended by observers from the following States: Bahrain, Belgium, Cabo Verde, Cambodia, Central African Republic, Costa Rica, Croatia, Democratic Republic of the Congo, Dominican Republic, Finland, Ghana, Iraq, Madagascar, Malta, Netherlands and Sudan.
5. The session was also attended by observers from the Holy See and the European Union.

<sup>1</sup> *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17), para. 252.*



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6. The session was also attended by observers from the following international organizations:

*International non-governmental organizations:* Alumni Association of the Willem C. Vis International Commercial Arbitration Moot (MAA), Comité Maritime International (CMI), Grupo Latinoamericano de Abogados para el Derecho del Comercio Internacional (GRULACI), International Association of Judges (IAJ), International Bar Association (IBA), International Chamber of Shipping (ICS), International Law Institute (ILI), International Union of Maritime Insurance (IUMI), New York City Bar Association and the Law Institute for Asia and the Pacific (LAWASIA).

7. The Working Group elected the following officers:

*Chairperson:* Ms. Beate CZERWENKA (Germany)

*Rapporteur:* Mr. Djegnine TCHETCHE (Côte d'Ivoire)

8. The Working Group had before it the following documents: (a) annotated provisional agenda (A/CN.9/WG.VI/ WP.80); (b) a note by the Secretariat containing the proposals of the CMI and of Switzerland for possible future work on cross-border issues related to the judicial sale of ships (A/CN.9/WG.VI/ WP.81); and (c) a note by the Secretariat containing the proposed draft instrument prepared by the CMI (A/CN.9/WG.VI/ WP.82).

9. The Working Group adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Note by the Secretariat on the Judicial Sale of Ships.
5. Adoption of the report.

### III. Deliberations and decisions

10. The Working Group proceeded with its consideration of the topic on the basis of the documents listed in paragraph 8 above. The deliberations and decisions of the Working Group on the topic are found in chapter IV of this report.

## IV. Note by the Secretariat on the Judicial Sale of Ships

### A. Preliminary considerations

11. The Working Group agreed to begin its deliberations by considering the need for an international instrument relating to the judicial sale of ships, in view of existing national laws and existing international instruments, as well as the scope of the problems to be addressed.

12. The proposals of the CMI and of Switzerland were introduced to highlight the gap in the current legal framework. It was noted that the lack of legal certainty as to the acquisition of clean title (i.e., title free of all encumbrances) and the inability of the purchaser to deregister the ship following a judicial sale had a negative effect on the price that the ship could attract in the market (whether by public auction or private treaty). Conversely, it was suggested that a legal instrument providing for the acquisition of clean title and obliging the registrar to deregister the ship at the election of the purchaser would lead to a higher sale price, which would in turn lead to greater proceeds to be distributed among creditors.

13. It was noted that the lack of legal certainty as to those two aspects of the judicial sale was of concern not only to shipowners, but also to financiers, maritime service

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providers, and crew, since a lower purchase price resulted in the lower recovery of their claims against the selling shipowner. It was also explained that this uncertainty had a negative effect on international trade and on maritime insurance coverage.

14. It was noted that the draft convention on the recognition of foreign judicial sales of ships, which was approved by the CMI Assembly in 2014 (the “Beijing Draft”), had been prepared by an international working group in consultation with national maritime law associations and consultative members of the CMI. Successive drafts of the text were prepared over several years on the basis of a survey on law and practice in various jurisdictions. It was further noted that the Beijing Draft was drafted with the input of a broad collection of stakeholders in the maritime industry from a broad geographical reach.

15. On the need for an international instrument, it was noted that clean title afforded by a judicial sale was already recognized under several national laws, and that many jurisdictions already recognized the effects of foreign judicial sales, for instance on the basis of comity. However, no uniform legal regime existed. Indeed, although provisions on the forced sale of ships were contained in the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages (1967) (“MLMC 1967”) and the International Convention on Maritime Liens and Mortgages (1993) (“MLMC 1993”), these conventions had not been widely accepted. It was also noted that current issues related to the judicial sale of ships arose not only in the context of the enforcement of a maritime lien or mortgage, and that there might be other claims that led to the judicial sale of a ship, such as loss of or damage to cargo. Furthermore, it was emphasized that the issue was not only of recognizing the acquisition of clean title but also of the deregistration of the ship at the election of the purchaser.

16. It was suggested that more data on the scale and the scope of the problems to be addressed by the Working Group would be useful in terms of the number of cases in which a foreign judicial sale had not been recognized and the reasons for such non-recognition. In response, several court cases from a variety of jurisdictions were described, including ongoing proceedings. However, it was also stated that the number of cases would not be indicative of the economic impact because the legal uncertainty in general had a far-reaching impact on the market as a whole. It was recalled that the Commission’s decision to add judicial sale of ships to the work programme was based upon the proposal of Switzerland, which had in turn reported on the views expressed by stakeholders at the Malta colloquium that an instrument was needed to address the issues that they faced in practice.

17. After discussion, there was broad agreement that the judicial sale of ships gave rise to various important practical problems, as described in document A/CN.9/WG.VI/ WP.81, and that the Working Group would further discuss how those problems could be effectively addressed by an international instrument.

18. It was noted that the Beijing Draft focused on the acquisition of clean title and deregistration. The Working Group considered whether the instrument should address additional issues, namely: (a) forced sales that were carried out by authorities other than courts; (b) private sales; (c) conflict of laws issues, including the law applicable to the judicial sale; (d) notice requirements for the judicial sale and other procedural matters; (e) how the proceeds of sale were distributed; (f) remedies for the wrongful or abusive re-arrest of a ship following a judicial sale; and (g) the interaction between the instrument and other international agreements.

19. With regard to (a), it was noted that some national laws provided for authorities to carry out a forced sale in tax, administrative and criminal matters, among others. Some reservations were expressed as to addressing these types of sales. It was suggested that the instrument should only apply to forced sales where the proceeds were to be paid out to creditors, and not to the State treasury. It was also suggested that the draft instrument should require States to designate competent authorities to facilitate the task of the authorities in the State where recognition and deregistration was sought.

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20. With regard to (b), it was generally agreed that the instrument should not apply to “purely” private sales, but that it could apply to private sales that were ordered or supervised by a court or other competent authority.

21. With regard to (c), the distinction was emphasized between the judicial sale on the one hand, and the decision on the merits of the claim giving rise to the judicial sale on the other hand. It was suggested that the instrument should not deal with jurisdiction or applicable law issues relating to the claim giving rise to the judicial sale. At the same time, a question was raised whether it was possible to dissociate the judicial sale entirely from the decision on the merits.

22. With regard to (d) and (e), it was noted that these issues were ordinarily a matter for the law of the country where the judicial sale took place. At the same time, it was emphasized that notice provisions were important to ensure fairness for all interested parties and to provide assurances to the registrar that was asked to deregister a ship following a judicial sale. It was also noted that, in some States, the law on the priority of claims was not well developed.

23. With regard to (f), it was noted that the wrongful arrest of ships was an issue beyond the context of the judicial sales, and that the Working Group should focus on issues specific to the judicial sale of ships.

24. With regard to (g), particular attention was drawn to ongoing work at the Hague Conference on Private International Law on a draft convention on the recognition and enforcement of foreign judgments in civil or commercial matters. In this regard, it was noted that, although some maritime matters were expressly excluded from the scope of the current draft of the convention, judicial sales of ships were not, and that the draft explanatory report stated that maritime liens and mortgages were included in the scope of the draft convention.<sup>2</sup> At the same time, it was noted that the draft convention only applied to a “judgment”, which was defined in article 3(1)(b) of the current draft to cover only a decision on the merits. In this regard, the distinction between the judicial sale of ships and the decision of the merits of the claim giving rise to the judicial sale (see para. 21 above) was reiterated. It was further noted that the draft convention contained provisions dealing with interaction with future instruments. It was suggested that coordination between the two projects was desirable. In response, reference was made to the very advanced stage of that project and to the fact that maritime liens and mortgages were already included in the scope of the Convention on Choice of Court Agreements (2005) (“Choice of Court Convention”).

25. After discussion, there was broad agreement that the Working Group should initially focus on the issues of clean title and deregistration, and that the Beijing Draft would provide a useful basis for discussion. It was agreed that it would be premature for the Working Group to consider the form of any eventual instrument.

## **B. Proposed draft instrument prepared by the Comité Maritime International**

26. The Working Group agreed to proceed to consider the main issues addressed in the Beijing Draft, namely the effects of a judicial sale, the procedural requirements therefor, and the definitions and scope of the draft instrument, without prejudice to the form that such an instrument might take.

### **1. Article 4. Effect of judicial sale**

27. The Working Group heard how article 4 of the Beijing Draft built upon article 12(1) of the MLMC 1993 and laid down two conditions for a judicial sale to

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<sup>2</sup> Preliminary Document No. 1 of December 2018 for the Twenty-Second Diplomatic Session of the Hague Conference on Private International Law, available at <https://assets.hcch.net/docs/7d2ac3f7-e8c6-4ef3-807c-15f112aa483d.pdf>, para. 49.

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have the effect set forth in the draft instrument, namely (a) that the ship be located within the geographic territory of the State of judicial sale, and (b) that the sale comply with the procedural requirements of the law of that State and those of the Beijing Draft.

28. It was noted that the physical location of the ship within the territory of the State of judicial sale was not required in all jurisdictions. It was explained that the word “physically” was inserted into the Beijing Draft to convey the ability of the competent authority to exercise physical control over the ship. A question was raised as to whether the ship must remain in the territory during the entire judicial sale procedure. A suggestion was made to define “time of the Judicial Sale” as it appeared in articles 4(1)(a) and 8(a) to refer to the moment at which the competent authority ordered the sale of the ship.

29. It was noted that the condition in article 4(1)(b) of the Beijing Draft reinforced the view expressed earlier (see para. 21 above) that the instrument did not deal with conflict of law issues. In particular, it was reiterated that the distribution of proceeds and the priority of claims would be resolved by the competent authority applying the law of the State of judicial sale (including the applicable substantive law determined in accordance with its conflict of law rules).

30. At the same time, it was noted that the Beijing Draft did address some procedural matters, as indicated by the condition in article 4(1)(b) that the judicial sale be conducted in accordance with the provisions in the Beijing Draft. A query was raised whether the Beijing Draft imposed minimum standards, or whether it superseded national law, which might impose higher standards (e.g., notice periods longer than those required by article 3). Although it was generally felt that the Beijing Draft imposed minimum standards, it was suggested that the Working Group further consider what would occur in the event of a conflict with national law.

31. It was noted that the definition of a “judicial sale” in article 1(h) already dealt with the legal effect of the sale (insofar as it referred to the acquisition of clean title as an element of the judicial sale), and incorporated a requirement that proceeds be made available to creditors. It was felt that the Working Group should consider the definition of judicial sale more closely (see paras. 89 to 91 below) and determine whether these elements of the judicial sale should be contained in the definition or moved to the substantive provisions of the draft instrument. A suggestion was made to include a provision that expressly excluded the distribution of proceeds from the scope of the instrument.

32. A general point was raised that excepting rights and interests that were “assumed by the Purchaser” from the clean title acquired under the Beijing Draft might be problematic. The example was given of a purchaser who assumed a registered mortgage then sought to reregister the ship and transfer the mortgage to the new registry. It was observed that the Beijing Draft did not provide for the registered mortgagee to consent to the transfer, nor oblige the registrar to deregister the mortgage. It was queried whether, in practice, purchasers in a judicial sale did assume existing mortgages/hypothèques or charges; if not, it was suggested that the exception relating to rights and interests “assumed by the Purchaser”, not only in article 4 but also in other provisions of the Beijing Draft, be deleted.

33. A suggestion was made that article 4(1) should expressly state that the extinguishment of prior rights and interests did not apply to property that was often collateralized with the ship, such as cargo.

34. The Working Group heard that, while the intent of article 4(1) would be to extinguish prior rights and interests in the ship, article 4(2) was intended to preserve *in personam* claims against the former shipowner. It was felt that, to ensure that this objective was maintained, the draft could clarify that “any rights”, as it appeared in article 4(2), referred to personal rights. The Working Group also discussed whether article 4(1) would have the effect of terminating a bareboat charter. It was noted that article 4(1) was not concerned with contractual rights. Reference was made to

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article 11(1) of the MLMC 1967, which provided that, for the purpose of the effects of a forced sale, “[n]o charter party or contract for the use of the vessel shall be deemed a lien or encumbrance”.

35. It was noted that, in some jurisdictions, a judicial sale did not have the effect of extinguishing all rights and interests in the property being sold. For instance, it was noted that the law may preserve the rights of a registered leaseholder, or provide for the continued registration of unsatisfied creditors despite a judicial sale. It was noted that these judicial sales could be considered beyond scope as they did not result in the acquisition of clean title, and therefore fell outside the definition of “Judicial Sale” in article 1(h). The view was expressed that the instrument should not apply to these judicial sales.

36. Various suggestions were made for accommodating these judicial sales in an international instrument. One suggestion was that the scope of application of the instrument be limited to judicial sales in international cases, for instance in cases where the seller and purchaser had their residence in different States. It was noted that this limitation could lead to an uneven playing field between foreign and domestic purchasers, as only the former would benefit from the recognition regime under the instrument, and this would affect the market price for the ship. The point was also made that it was difficult to conceive of judicial sales as purely domestic given the international nature of shipping.

37. Another suggestion was that the instrument provide for the issuance of a “qualified” certificate that specified the existence of the preserved right, and then confer on the registrar a discretion whether to deregister the ship following the judicial sale. Some reservations were expressed about introducing a qualified title into the instrument. Yet another suggestion was that the exception in article 4(1) of the Beijing Draft (that the effect of the judicial sale was subject to any rights and interests that were “assumed by the Purchaser”) be expanded so as to apply to rights and interests that were preserved under the law of the State of judicial sale. Some doubt was raised about the feasibility of such a solution.

38. It was added that, if such judicial sales were accommodated in an international instrument, a State should still be obliged to recognize clean title acquired in its flagged ships resulting from judicial sales conducted abroad. It was observed that foreign judicial sales that extinguished certain rights that were considered mandatory laws of the State where recognition was sought might trigger the public policy ground for refusal in article 8(c) of the Beijing Draft (for further discussion of this ground for refusal, see para. 62 below).

39. It was pointed out that the central effect of a judicial sale was to transfer ownership of the ship to the purchaser, but that this was not clearly stated in article 4. In response, it was noted that both articles 5 and the form of the certificate in the annex to the Beijing Draft assumed the transfer of title to the purchaser, which was effected through registration under article 5.

40. It was noted that the draft did not contain an exception for State-owned ships. While it was stated that maritime conventions did not ordinarily exclude ships owned in whole or in part by a State that were engaged in civil or commercial activity, it was suggested that some States might nonetheless have an interest in excluding these ships from the recognition regime.

## 2. Article 5. Issuance of a certificate of judicial sale

41. It was explained that article 5(1) was modelled on article 12(5) of the MLMC 1993. The Working Group agreed in principle with the utility of a provision dealing with the issuance of a certificate of judicial sale by the competent authority.

42. A question was raised as to whether the competent authority was authorized to certify the acquisition of clean title, as required by paragraph (b) and the second part of paragraph (a), given that the acquisition of clean title already flowed from article 4(1) of the Beijing Draft. It was suggested that the competent authority be

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required instead to certify (a) that the ship was sold in accordance with the law of the State of judicial sale and the provisions of the instrument (as presently provided for in the first part of paragraph (a) of article 5(1) of the Beijing Draft), and (b) that the ship was physically within the jurisdiction of the State of judicial sale at the time of judicial sale (reflecting the condition in article 4(1)(a) of the Beijing Draft). In response, it was observed that it was not unusual to require a competent authority to certify legal effects, as evidenced by article 12(5) of the MLMC 1993, which provided for the competent authority to certify the acquisition of clean title.

43. It was noted that the drafting of paragraphs (a) and (b) of article 5(1) might be further considered. In that regard, it was suggested that both paragraphs covered the acquisition of clean title, which was a defined term in article 1. It was queried whether paragraph (b) should also be subject to the exception of rights and interests that were “assumed by the Purchaser” (see para. 32 above).

44. A number of suggestions were made to clarify or expand the particulars to be contained in the certificate, as specified in article 5(2). First, it was suggested that paragraph (e) be amended to clarify that the “owner” was the shipowner prior to the judicial sale. Second, it was suggested that the certificate contain the contact details for the competent authority, to allow the registrar to confirm the authenticity of the certificate. Third, it was suggested that the certificate specify the creditors whose interests were satisfied or extinguished by the judicial sale. It was noted in response that this requirement might delay the issuance of the certificate, as details of all creditors might not be known until sometime after the judicial sale, especially when actions on the merits were decided after the judicial sale, and that the purchaser might wish to obtain the certificate (e.g., for the purposes of deregistration) before this time. Fourth, it was suggested that the certificate specify the sale price. A question was raised as to the need for the inclusion of this particular, and whether problems might arise in view of the conclusive effect of the certificate pursuant to article 7(5). Finally, it was suggested that the reference to “other confirmation of authenticity of the Certificate” in paragraph (i) could be clarified.

45. A query was raised as to whether the certificate could or should be subject to legalization. It was noted that, at first glance, the certificate would be a “public document” within the meaning of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (1961) (“Apostille Convention”), and would therefore be eligible for issuance of an Apostille under that Convention. It was further noted that, in line with more recent trends in conventions concluded by the Hague Conference on Private International Law, the Working Group could consider including a provision that removed any requirement of legalization or similar requirement (such as the issuance of an Apostille).<sup>3</sup>

46. A suggestion was made that, in order to maximize the utility of the certificate, the instrument should require the competent authority to submit certificates to a centralized repository to be established under the draft instrument. Some reservation was expressed as to the potential cost of such a mechanism. As an alternative, it was suggested that the instrument include a requirement, like that in article 7 of the Apostille Convention, that the competent authority maintain a publicly accessible record of certificates issued.

47. It was observed that, if the instrument were to take the form of a convention, and the convention applied to the recognition of judicial sales conducted in a non-State party, the competent authority in that State would not be bound by article 5 to issue a certificate of judicial sale. It was added that this might, in practice, limit the ability of the judicial sale to be recognized (as both articles 6 and 7 depended on the issuance of a certificate “in accordance with article 5”). In response, it was noted that there was nothing in the Beijing Draft that prevented a non-State party from legislating a requirement (under national law) for its competent authorities to issue a

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<sup>3</sup> See, for example, article 18 of the Choice of Court Convention.

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certificate in accordance with article 5, which would allow the judicial sale to benefit from the recognition regime under the Beijing Draft.

**3. Article 6. Deregistration and registration of the ship**

48. It was explained that draft article 6 was modelled on article 12(5) of the MLMC 1993, and included an additional provision for instances where the ship was temporarily flying the flag of a State of bareboat charter registration. It was noted that the ship would need to be deregistered from both the bareboat charter registry as well as from the registry where the ship was registered prior to its sale. The point was made that, in such instances, the purchaser would want to be provided with more than one certificate by the competent authority of the State of judicial sale.

**4. Article 7. Recognition of judicial sale**

49. The Working Group heard that the MLMC 1993 did not contain a provision on the recognition of judicial sale like that found in article 7 of the Beijing Draft. This prompted a preliminary question as to the need for a separate provision on recognition. It was noted that article 4 of the Beijing Draft already dealt with the effect of the judicial sale, which would have to be respected by all States adopting the instrument. The Working Group considered at some length the relationship between articles 4 and 7. The Working Group agreed that further consideration was needed as to what it meant to “recognize” a judicial sale, and how recognition manifested itself in various contexts. It was noted that one instance was the obligation to deregister the ship, as provided for in article 6. The Working Group noted a suggestion that article 7(1) be recast to refer to an obligation not to deny the legal effect of the judicial sale (as opposed to an obligation to recognize the judicial sale), and agreed that such an alternative formulation deserved to be reflected in a revised version of the draft article.

50. Turning to the text of article 7, a question was raised as to whether compliance with the notice requirements in article 3 of the Beijing Draft should be a condition for the recognition of the judicial sale under article 7(1).

51. With regard to article 7(3), some support was expressed for retaining a provision that channelled exclusive competence to the courts of the State of judicial sale to hear challenges to the judicial sale. It was questioned whether the courts of other States should also have competence, such as the State of residence of the purchaser or the State of registration. In response, it was observed that this would lead to multiple courts in different jurisdictions being seized of such a matter at the same time, leading to delay and further uncertainty. It was also observed that the provision should accommodate the fact that, in some jurisdictions, competence for these matters was vested not in courts but in other authorities and that the review of the judicial sale should be left to the law of the State of judicial sale. A query was also raised as to whether this provision superseded an exclusive choice of court agreement between the relevant parties. After discussion, it was decided that further consideration should be given to the issue of exclusive competence.

52. A question was raised as to the enforceability of article 7(3). In this regard, it was noted that, if the instrument were to take the form of a convention, article 7(3) would apply not only to a judicial sale that was conducted in a non-State party, but also to a judicial sale that might not satisfy the conditions in article 4(1), specifically the condition regarding the physical location of the ship at the time of the judicial sale. It was agreed that article 7(3) could be redrafted so as to limit the judicial sales to which it applied.

53. The view was also expressed that, if the instrument were to take the form of a convention, the recognition regime under article 7 should apply only to judicial sales conducted in a State party, although possibly with the option for a State party to extend the recognition regime to a non-State party, whether by way of declaration or under its national law. It was added that, if the instrument were to take the form of a model law, further thought would be needed as to how to imbed reciprocity in the



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recognition regime (for other issues arising from the application to non-State parties, see para. 47 above).

54. A suggestion was made to provide a time limit in which the judicial sale could be challenged. While there was some support for this suggestion, there was also a concern expressed that this kind of provision would encroach too much on the procedural law of each State, and that it might be difficult to reach consensus on the length of time. It was noted that a time limit had been proposed in an earlier version of the Beijing Draft, but the international working group of the CMI had decided ultimately not to include such a provision.

55. It was noted that article 7(4) had the effect of denying standing of certain classes of affected persons to challenge a judicial sale before the courts of the State of judicial sale. Specifically, it was noted that the term “Interested Person”, as defined in article 1(g) of the Beijing Draft, did not encompass holders of a maritime lien, such as a lien for unpaid wages (for further discussion of this definition, see paras. 86 to 87 below). While some support was expressed for retaining article 7(4), there was strong support for the concern that, in many jurisdictions, denying the right to challenge (or appeal) a judicial sale could be seen as a restriction on the constitutional right to access to justice. At the same time, it was observed that access to justice was not an absolute right in all jurisdictions, and could be subject to restrictions that were proportionate to a legitimate objective. In this regard, a query was raised as to what interest a holder of a maritime lien might have in challenging the judicial sale itself, as opposed to an interest in the distribution of proceeds. It was also noted that article 7(4) did not prevent a person other than an “Interested Person” from seeking other remedies against the purchaser, such as proceedings in tort for fraud. A suggestion was made that the classes of persons with standing to challenge a judicial sale be those classes of persons to which notice of the judicial sale was to be given under article 3 of the Beijing Draft (which included holders of a maritime lien). There was a suggestion that, in considering an expansion to the definition of the term “Interested Person”, it was important that article 7(4) provide finite circumstances in which a judicial sale could be challenged.

56. It was suggested that provisions on challenging a judicial sale should not be included with provisions on recognizing the judicial sale. Two further distinctions were emphasized, namely (a) the distinction between challenging the judicial sale and challenging the distribution of the proceeds of sale, and (b) the distinction between challenging the judicial sale and challenging the deregistration of the ship. It was further recalled (see para. 34 above) that the Beijing Draft did not affect *in personam* claims that an affected person might have against the former shipowner.

57. It was suggested that the concept of “bona fide” purchaser (as it appeared in article 7(4)) be clarified. It was also suggested that the instrument include a language requirement for a certificate of judicial sale that was used for the purposes of recognition proceedings under article 7(1). It was noted that this could be modelled on the requirement in article 6(3).

58. Finally, it was felt that the drafting of article 7, particularly articles 7(3) and 7(4) could be redrafted to avoid repetition.

## 5. Article 8. Circumstances in which recognition may be suspended or refused

59. The Working Group heard that the MLMC 1993 did not contain a provision on the grounds for refusing or suspending the recognition of judicial sale like that found in article 8 of the Beijing Draft. It was explained that, if a ground for refusal applied, the obligations under article 7, including the obligation in article 7(2) for a court to dismiss an application for the re-arrest of the ship, were not engaged. A question was raised as to the effect of the grounds for refusal on the deregistration of the ship under article 6.

60. A question was also raised as to what would occur when a certificate was not accepted as being issued in accordance with article 5 of the Beijing Draft. It was

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generally felt that a decision not to accept the certificate in one State would not bind the court of another State. It was also stated that the non-acceptance of the certificate would not in fact invalidate the sale, as the certificate was merely evidence of the sale conferring the purchaser with clean title, as provided in article 7(5).

61. A more fundamental question was raised as to whether it was appropriate to refer to a refusal to recognize a judicial sale as this presupposed that the judicial sale already had legal effect. After discussion, the Working Group agreed that the form and substance of the grounds for refusal would ultimately depend on how the effect of judicial sales was reflected in the instrument. It was nevertheless felt that there would be instances in which the effects of a sale should be suspended or denied and that these should be reflected in the instrument. A practical example was given in which the previous owner would contest the judicial sale in the State of judicial sale and, during that process, would want to ensure that the ship was not deregistered in another State.

62. Turning to the text of article 8, it was suggested that article 8(b)(ii) not refer to “appeal”, as this term might not cover all forms of redress that might be available in the State of judicial sale to review an unlawful decision. It was also suggested that the term “manifestly” be deleted from article 8(c) out of concern that it was too vague. In response, it was explained that the term was designed to avoid an overly abusive or expansive application of the public policy ground. It was also noted that the concept of being “manifestly” contrary to public policy was found in recent instruments on the recognition of foreign judgments, including the Choice of Court Convention. There was general agreement in the Working Group to retain a ground for refusal based on public policy.

63. Several suggestions were made to expand the list of grounds for refusal based on those found under national law or international instruments relating to the recognition of foreign judgments. First, it was suggested that the instrument could include a ground based on fraud, which could cover both substantive and procedural fraud. There was broad support for the inclusion of this ground. At the same time, there was some concern about including the ground, and the point was made that the focus of the inquiry into fraud would need to be the judicial sale itself and not the subsequent distribution of proceeds of sale. It was suggested that this would necessarily imply some wrongdoing on the part of the purchaser. Second, it was suggested that the instrument include a ground based on failure to give notice to affected parties in accordance with article 3. There was equally broad support for the inclusion of this ground.

64. A further suggestion was made that the instrument should allow a court to refuse recognition of a judicial sale that was conducted while insolvency proceedings in respect of the shipowner were pending in another State. There was some opposition to this suggestion with the view expressed that the coordination of cross-border insolvency proceedings was a matter outside the scope of the draft instrument, and that, even in countries that had adopted laws favourable to international cooperation, such as laws based on the Model Law on Cross-Border Insolvency,<sup>4</sup> the court in the State of judicial sale would only be required to defer to the foreign insolvency proceeding after its recognition in that State.

65. A concern was raised about conflating the grounds for refusal to recognize a foreign decision on the merits and the grounds for refusal to recognize a foreign judicial sale. It was observed that a situation could arise where a decision on the merits of the claim giving rise to the judicial sale would not be recognized (under national law or international conventions) but the judicial sale would be recognized under the Beijing Draft. It was suggested that the Working Group consider this situation further.

66. Another concern was raised about opening the grounds for refusal too far beyond the conditions set out in the instrument itself, which could risk undermining the effectiveness of the recognition regime. In this regard, the alternative was

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<sup>4</sup> United Nations publication, Sales No. E.14.V.2.

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suggested for article 8 to refer to the failure to fulfil the conditions in paragraphs (a) and (b) of article 4(1) (i.e., that the ship was not physically within the jurisdiction of the State of judicial sale at the time of the judicial sale, and/or that the judicial sale was not conducted in accordance with the law of that State or the provisions of the instrument). There was some support for this suggestion.

#### **6. Article 3. Notice of judicial sale**

67. The Working Group heard that article 3 of the Beijing Draft was based on article 11 of the MLMC 1993 with modifications and additions to address issues encountered in practice. It was explained that article 3 sought to strike a balance between fairness and efficiency. It was acknowledged that notice of a judicial sale raised fundamental issues of due process for affected parties. Nevertheless, the difficulty in identifying and reaching affected parties, including holders of maritime liens, was recognized. It was also reiterated that delays in the judicial sale had a detrimental impact on the value of the ship and the crew onboard.

68. The view was restated that the notification requirements in article 3 should be linked to the grounds for refusal in article 8 (see para. 63 above). The importance was noted of drafting notification requirements that were adapted to the judicial sale itself (as opposed to the proceedings giving rise to the judicial sale, or proceedings related to the distribution of proceeds of sale) and drafted in a way that did not expose the recognition of judicial sale to unnecessary challenge.

69. The Working Group heard that, unlike the MLMC 1993, article 3(1) provided for notices to be given not only by the competent authority, but also by “one or more parties to the proceedings resulting in such Judicial Sale”. A concern was raised that, together with article 5, the instrument would require the competent authority to certify that the party complied with the notification requirements.

70. Questions were raised as to how article 3(1)(c) would be implemented. It was stated that it would be impractical to require courts to reach out to potential holders of maritime liens. It was explained that the purpose of the draft instrument would be defeated if article 3 were to be read as providing holders of maritime liens with a right to stop the judicial sale. The notification contemplated in article 3 was instead intended to alert them about an impending judicial sale, after which they would have the opportunity to make a claim on the proceeds of sale in the State of judicial sale. It was agreed that a stronger delineation between a judicial sale and the distribution of proceeds would be necessary in the draft instrument, as a concern was raised that there could be an involuntary extension of the draft instrument to the proceeds of sale (see also discussion about proceeds of sale in para. 22 above).

71. It was noted that article 3(4) did not include the requirement in article 11(3) of the MLMC 1993 that electronic means of notification provide confirmation of receipt. It was observed that many States had enacted legislation based on the Model Law on Electronic Commerce,<sup>5</sup> which provided that a message was received when it was capable of being retrieved in the email system of the addressee. Moreover, it was observed that, in practice, no electronic communication system provided that functionality. Since the absence of an acknowledgment might create a presumption that the message was never sent, the Working Group agreed that it was preferable not to include the requirement.

72. It was suggested that article 3(5) of the Beijing Draft be deleted in favour of a general provision governing the interaction with other international instruments. With regard to notification, it was observed that many States were party to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965) (“Service Convention”), which potentially applied to the service of notices provided for in article 3. The Secretariat was requested to analyse the relationship between the Service Convention and the draft instrument (see also

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<sup>5</sup> United Nations publication, Sales No. E.99.V.4.

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para. 45 above on the relationship between the draft instrument and the Apostille Convention).

73. In response to a suggestion that the registrar in the State of registration be required to publicize the notice, it was observed that a more useful method to give notice of the judicial sale could include publication in maritime periodicals, which would reach creditors beyond both the State of registration and State of judicial sale. In any case, it was observed that most categories of holders of maritime liens, having made the commercial decision to allow the ship to exit their jurisdiction, would therefore have an interest in tracking the ship and being informed of any arrest or suit. In that connection, the Working Group was reminded of an earlier suggestion that the draft instrument establish a centralized repository of certificates of judicial sales (see para. 46 above), and agreed that such a mechanism could also maintain a record of notices of judicial sales that was publicly available online.

74. It was suggested that the registrar should receive notice before other affected parties. Among other things this would allow the registrar to provide information needed for the competent authority to notify the other affected parties. In response, it was suggested that no differentiation in the notice period would be necessary as the other parties would still need to be provided 30 days' notice, and that different standards within an instrument could lead to confusion. As an alternative, it was suggested that the instrument contain a provision similar to article 14 of the MLMC 1993 providing for cooperation between authorities.

75. The view was expressed that the notification period in article 3 was too short. A suggestion was made to consider "working day" in lieu of "calendar day", which appeared in the definition of "Day" in article 1(f), although it was noted that it would be difficult to account for all working days across jurisdictions. A concern was also raised that the seven-day notification requirement in advance of the judicial sale in article 3(3)(b) might have the effect of superseding the 30-day notice requirement in the chapeau of article 3(3). The Working Group was reminded that article 3 established minimum standards for notification (see para. 30 above) and that, for notice to be effective, both the requirements in the draft instrument and the requirements of the law of the State of judicial sale would need to be observed. It was reiterated that States would not be precluded from providing a higher standard than that in article 3 of the Beijing Draft.

## 7. Article 1. Definitions

76. As a general comment, it was suggested that the Beijing Draft be revised with a view to minimizing the number of definitions. It was also suggested to consider instances in which a defined term was used in a particular provision, and to elaborate the definition of that term in the text of that provision instead of in a separate provision on definitions.

### (a) "Certificate"

77. It was observed that the term "Certificate" was defined in article 1(a) to include a certified copy of the certificate referred to in article 5, whereas article 6(4) distinguished "Certificate" and a "duly certified copy" thereof. It was added that this inconsistency was a matter of drafting.

### (b) "Charge"

78. It was suggested that the definition of the term "Charge" in article 1(b) could be redrafted to remove duplication. It was noted that the definition in the Beijing Draft differed from the term used in the MLMC 1993, particularly insofar as the latter distinguished "charge" from maritime liens and likened them to mortgages and hypothèques.

79. It was explained that the term "Charge" was intended to cover all kinds of private rights and interests that could be enforced in rem. There was general

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agreement that the term “arrest” be deleted from the definition since the arrest of a ship was a procedural remedy rather than a right. It was suggested that the effect of a judicial sale on any additional arrest would be better addressed in a substantive provision. There was also a concern that the reference to arrest could imply that the term “Charge” covered the seizure of goods in tax or criminal procedures, which would then have the effect, pursuant to article 4, of extinguishing the power of authorities to seize a ship following its judicial sale. It was suggested that this concern might be addressed by excluding from scope forced sales for which the proceeds were not to be paid out to creditors (see para. 19 above). Alternatively, a suggestion was made to limit the scope of application of the instrument to civil and commercial matters.

80. It was suggested, for the sake of clarity, that the definition of “Charge” be inverted such that it start with a general definition of a charge as any right that might be asserted against the ship, then continue to list specific examples. It was noted that not all the examples listed in the original (English) version of the Beijing Draft were readily translatable into other languages.

**(c) “Clean Title”**

81. It was suggested that the definition of the term “Clean Title” omit the words “unless assumed by any Purchaser”, on the basis that any residual rights should be addressed in article 4 (see further discussion at para. 32 above).

**(d) “Competent Authority”**

82. The Working Group engaged in detailed discussions on the definition of the term “Competent Authority”. As a preliminary remark, it was observed that the term was used in the Beijing Draft potentially to refer to three different authorities, namely (a) the authority ordering the judicial sale, (b) the authority conducting the judicial sale, and (c) the authority issuing the certificate of judicial sale. On that basis, it was then suggested that the definition in article 1(d) was not apt to describe all of these authorities.

83. Some concern was raised about using the term “Person”, as defined in article 1(l), to define the term “Competent Authority”. While it was accepted that the instrument needed to respect the variety of authorities engaged in judicial sales within national legal systems, the concern was expressed that the inclusion of “Person” in the definition of “Competent Authority” could potentially allow for the recognition of judicial sales by individuals. It was suggested that the term “Person” be deleted from the definition or its scope be narrowed. It was also suggested that the term “authority” could be defined to refer to public bodies or persons vested with public authority, such as notaries.

84. A further suggestion was made that, if the instrument were to take the form of a convention, a mechanism could be set up by which a State joining the convention would be required to notify the depositary of the authorities competent in its jurisdiction for the purposes of the convention (which could include different authorities for the purposes of different provisions of the instrument). At the same time, it was noted that this mechanism, while not uncommon in international legal cooperation conventions, might impose a particular burden on federal States.

**(e) “Court”**

85. Several concerns were expressed with the definition of the term “Court”. First, the view was expressed that the instrument should not interfere with a State’s internal organization of its courts. Second, it was observed that it was not always the role of a court to “determine the matters covered” by the Beijing Draft. After discussion, the Working Group agreed to delete the definition, while noting that this did not in any way deny the role of courts in the judicial sale of ships.

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**(f) “Interested Person”**

86. It was recalled that the definition of “Interested Person” in article 1(g) had been discussed by the Working Group in its consideration of article 7(4) (see para. 55 above). It was noted that the term was used in articles 7 and 8 to define the classes of persons with standing to challenge the judicial sale and to challenge its recognition abroad. The view was expressed that it was not necessary to offer a definition of “Interested Person” as it might affect the right to access to justice. In that context, reference was made to the concerns expressed when article 7(4) was discussed (see para. 55 above). A suggestion was therefore made to delete article 7(4) or, in the alternative, to include holders of maritime liens in this definition.

87. The suggestion was reiterated that the definition of “Interested Person” be expanded to include the classes of persons to which notice of the judicial sale was to be given under article 3, which would include holders of maritime liens (see para. 55 above). On the one hand, it was noted that, if a particular class of persons was to be notified of a judicial sale, it was difficult to justify denying that class standing to challenge the sale. On the other hand, it was reiterated that, while additional classes such as holders of maritime liens might have an interest in the proceedings giving rise to the judicial sale, as well as the distribution of proceeds of that sale, it was doubtful that they had a legitimate interest in challenging the judicial sale. It was explained that, while an earlier version of the Beijing Draft had included holders of maritime liens within the definition of “Interested Person”, this was subsequently removed for this reason.

88. The Working Group agreed to consider expanding the definition to include a holder of a maritime lien that had filed its claim to the court, and to place the additions to the definition in brackets for review at a subsequent session. It was further suggested that the definition of “Interested Person” be deleted entirely and that the instrument instead identify appropriate classes of persons in the relevant provisions.

**(g) “Judicial sale”**

89. The Working Group recalled earlier observations that the current definition of “judicial sale” incorporated two substantive elements: (1) the conferral of clean title, and (2) distribution of proceeds to creditors (see para. 31 above). It was generally accepted that these elements were worth considering in the context of a provision on scope or in the provisions regarding the legal effect of judicial sales.

90. Further to earlier discussions on the definition of “Competent Authority” (see para. 83 above), it was suggested that the term “judicial sale” might imply that the instrument did not apply to sales ordered or conducted by non-judicial bodies. It was added that, in order for the instrument to have broad appeal among States, it should respect differences between States as to how the sales were carried out. It was observed that the MLMC 1993 used the term “forced sale”, but there was concern that this term could imply that the instrument applied to forced sales in tax, administrative and criminal matters (see further discussion at para. 19 above).

91. There was support for the view that the starting point for the instrument was that it apply to sales by courts. There was some reservation to applying the instrument to sales by non-judicial bodies given differences in the procedure leading to the sale. There was also support for the view that the definition of “Judicial Sale” refer to sales that were “ordered” or “confirmed” by a court. It was suggested that a further element for the definition be that the sale result from a claim asserted against the ship (and not against the shipowner *in personam*). The point was made that the definition should be drafted so as not to exclude sales *pendente lite* (i.e., prior to final judgment in the proceedings giving rise to the judicial sale).

**8. Article 2. Scope**

92. The Working Group considered whether the instrument should apply to judicial sales for which clean title was conferred on the purchaser under national law, or

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whether it should apply more broadly to mandate that all judicial sales confer clean title. It was reiterated (see para. 37 above) that the instrument could accommodate so-called “qualified” judicial sales by which some rights and interests in the ship were preserved following the judicial sale. For States under whose national law a judicial sale did not have the effect of extinguishing all rights and interests, it might not be possible to specify in advance the types of sales that would result in the conferral of clean title, as this was dependent on the claims made in the proceedings giving rise to the judicial sale on a case-by-case basis.

93. The Working Group asked the Secretariat to prepare a revised text that reflected each of these options. When considering options, the Working Group was encouraged not to lose sight of the fundamental objective of the instrument to facilitate the deregistration of the ship by way of the certificate of judicial sale.

94. It was proposed that the Working Group focus its work on an instrument that conferred jurisdiction for judicial sales on the State of registration. That State would have best knowledge of the ship and the registered mortgages/hypothèques and charges attached to the ship. In response, it was observed that the proposal would effect a significant change in the focus of the Beijing Draft, and constitute a fundamental departure from how judicial sales were carried out in practice.

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**V. UN GENERAL ASSEMBLY DOCUMENT  
A/CN.9/WG.VI/WP.84  
DRAFT INSTRUMENT ON THE JUDICIAL  
SALE OF SHIPS: ANNOTATED FIRST  
REVISION OF THE BEIJING DRAFT**

United Nations

A/CN.9/WG.VI/WP.84

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**Draft Instrument on the Judicial Sale of Ships:  
Annotated First Revision of the Beijing Draft**

**Note by the Secretariat****Contents**

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**I. Introduction**

1. At its thirty-fifth session (New York, 13–17 May 2019), the Working Group considered a draft convention prepared by the Comité Maritime International (CMI) on the recognition of foreign judicial sales of ships, known as the “Beijing Draft” (see A/CN.9/WG.VI/WP.82). The Working Group decided that the Beijing Draft provided a useful basis for its deliberations on the topic of the judicial sale of ships (A/CN.9/973, para. 25).

2. The annex to this document contains an annotated first revision of the Beijing Draft, which has been prepared by the Secretariat to incorporate the discussions and decisions of the Working Group at its thirty-fifth session, and which is presented for consideration by the Working Group at its thirty-sixth session.

**II. Issues for consideration by the Working Group****1. Some fundamental questions****(a) Form of the instrument**

3. The Beijing Draft is in the form of a treaty. At its thirty-fifth session, the Working Group agreed that it would be premature to consider the form of any eventual instrument (e.g., treaty or model law) (A/CN.9/973, para. 25). In keeping with that decision, the first revision follows the form and structure of the Beijing Draft considered by the Working Group at its thirty-fifth session, but includes, in *italicized text*, drafting options for a model law to help the Working Group visualize such an alternative.

**(b) Geographic scope**

4. No decision has been taken as to whether the instrument, if it takes the form of a treaty, will apply to judicial sales conducted in a non-State Party. The Beijing Draft applies to the recognition of judicial sales conducted in *any* State, although article 9 of the Beijing Draft allows States Parties to make a reservation limiting the scope of the treaty to judicial sales conducted in a State Party. While the geographic scope of the instrument has not been considered in detail by the Working Group, some doubts have already been expressed about applying the recognition regime to judicial sales conducted in a non-State Party, assuming that the instrument were to take the form of a treaty (A/CN.9/973, paras. 47, 52–53). The first revision is drafted on the basis that, in the form of a treaty, the recognition regime only applies between States Parties.

**(c) Substantive scope**

5. No decision has been taken on whether the recognition regime under the instrument applies only to judicial sales for which clean title has (already) been conferred on the purchaser under the national law of the State of judicial sale (“option A”), or whether it applies more broadly to mandate that all judicial sales confer clean title (“option B”) (see A/CN.9/973, para. 92). As requested by the Working Group (A/CN.9/973, para. 93), the first revision reflects both options (see articles 2(2), 4 and 6 and accompanying footnotes).

**(d) “Qualified” judicial sales**

6. No decision has been taken as to whether the instrument should accommodate so-called “qualified” judicial sales (i.e., sales for which clean title is not conferred on the purchaser under the national law of the State of judicial sale). As suggested at the thirty-fifth session of the Working Group (A/CN.9/973, para. 92), the first revision includes drafting options to accommodate such sales (see articles 4(2), 5(2)(h), 7(2), 8(3) and accompanying footnotes).

7. Some reservations have been expressed about introducing a qualified title into the instrument (A/CN.9/973, para. 37), including the impact it might have on the value

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of the certificate of judicial sale issued under article 5 and the effectiveness of the recognition regime under the instrument. It has been noted that, when considering “qualified” sales, the Working Group should not lose sight of the fundamental objective of the instrument to facilitate the deregistration of the ship by way of the certificate of judicial sale (A/CN.9/973, para. 93).

## 2. Other issues for consideration

8. In addition to the issues identified in the annotations to the first revision, the Working Group may wish to consider the following issues (without any order of priority):

(a) *Reference to “recognition”*: A query has been raised as to whether it is necessary for the instrument to provide for the *recognition* of a foreign judicial sale if it already provides for the sale to have *effect* beyond the State of judicial sale (A/CN.9/973, para. 49). It has been suggested that the instrument be cast in terms of “effects” rather than “recognition” (ibid.). The substantive provisions of the first revision have been prepared to avoid the term “recognition”. For ease of reference, the annotations continue to use the expression “State of recognition” and “recognition regime” to describe particular aspects of the draft instrument;

(b) *References to “clean title”*: The Working Group has agreed that the initial focus of its work should be on clean title and deregistration (A/CN.9/973, para. 25). The concept of “clean title” is not used in the International Convention on Maritime Liens and Mortgages (1993) (“MLMC 1993”). The Working Group may wish to consider whether reference to this concept in a future instrument is redundant given that the substance of “clean title”, as defined in article 1(b) of the first revision, is already covered in the substantive provisions of the instrument (see article 4);

(c) *Minimizing the number of definitions*: It has been suggested that the Working Group should work to minimize the number of definitions in the instrument (A/CN.9/973, para. 76). In line with this suggestion, some of the terms for which a definition is provided in article 1 of the Beijing Draft are defined in the first revision in the provisions in which they are used. In some cases, defining the term this way has obviated the need to use the defined term. This is the case, for example, with the term “competent authority”. Moreover, some definitions have become redundant or unnecessary in the first revision. This is the case, for example, with the term “day” (which is understood to refer to calendar day, A/CN.9/973, para. 75) and “recognition”. The Working Group has agreed not to define the term “court” (see A/CN.9/973, para. 85). The Working Group may wish to consider whether it is necessary to retain definitions for “person” (UNCITRAL instruments tend not to define this term), “purchaser” and “subsequent purchaser”, which are still defined terms in article 1 of the first revision. It may also wish to consider the need to qualify the definition of the term “ship” in article 1(i) of the first revision by reference to whether the ship is “capable of being subject of a judicial sale under the law of the State of judicial sale”;

(d) *The definition of “maritime lien”*: The definition of “maritime lien” has not yet been considered by the Working Group. The term is used (a) to define the term “charge” (article 1) (which in turn is used to define the term “clean title”), (b) to define the classes of persons to whom the notice of judicial sale is to be given, i.e., holders of maritime liens (article 3), and (c) to define the classes of persons with standing to challenge a judicial sale in the State of judicial sale, i.e., holders of maritime liens (article 9). It has been explained that defining the term “maritime lien” by reference to those that are “recognized... by the law applicable in accordance with the private international law rules of the State of judicial sale” allows the term to encompass a list of maritime liens that is more expansive than that contained in article 4 of the MLMC 1993, which are recognized by all States Parties to the MLMC 1993: see William M. Sharpe, “Towards an International Instrument for Recognition of Judicial Sales of Ships - Policy Aspects”, CMI Yearbook 2013

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(Antwerp, 2013), p. 175. It is equally conceivable that the applicable law will recognize fewer maritime liens than those listed in article 4 of the MLMC 1993;

(e) *The definition of “mortgage”*: The definition of “mortgage” has not yet been considered by the Working Group. The term is used (a) to define the term “clean title”, i.e., free of any pre-existing mortgage (article 1), (b) to define the classes of persons to whom the notice of judicial sale is to be given, i.e., holders of registered mortgages (article 3), (c) to define the pre-existing rights or interests that are preserved despite the judicial sale, i.e., a mortgage remaining attached to the ship (article 4), (d) to define the obligations of the registrar in the State of registration, i.e., to delete any registered mortgage except any preserved registered mortgage (article 7), (e) to define the obligations of the courts in the State of registration, i.e., not to arrest the ship except for a claim relating to any preserved mortgage (article 8), and (f) to define the classes of persons with standing to challenge a judicial sale in the State of judicial sale, i.e., holders of registered mortgages (article 9). The Working Group may wish to consider whether, for each of these uses, it is appropriate for the term “mortgage” to mean a mortgage that is “recognized as such by the law applicable in accordance with the private international law rules of the State of judicial sale”, particularly when the term is used to define an obligation that is addressed to States other than the State of judicial sale (e.g., the obligations in articles 7, 8 and 9);

(f) *Preservation of mortgages and charges “assumed by the purchaser”*: Like the Beijing Draft considered by the Working Group at its thirty-fifth session, the first revision makes provision for preserving mortgages and charges that are “assumed by the purchaser” (see articles 4(1), 5(2)(g) and 7(2)(a)). It has been suggested that, if purchasers do not assume existing mortgages or charges in practice, such provision be deleted (A/CN.9/973, para. 32). Provision for preserving mortgages and charges that are “assumed by the purchaser” is made in the MLMC 1993. Similar provision is made in articles VII(4) and VIII of the Convention on the International Recognition of Rights in Aircraft (1948);

(g) *Effect of judicial sale on ownership*: It has been noted that, by conferring clean title to the purchaser, the instrument has the effect of transferring ownership of the ship (A/CN.9/973, para. 39). The instrument thus pre-empts national law (including private international law rules) by which ownership of the ship may be otherwise determined (e.g., by reference to the registry of ships in which the ship is registered);

(h) *Interaction between notice requirements in the instrument and notice requirements under the national law of the State of judicial sale*: Like in the Beijing Draft considered by the Working Group at its thirty-fifth session, the notification requirements in article 3 of the first revision apply regardless of whether the sale is ultimately sought to be recognized abroad. The general view of the Working Group is that the notice requirements establish minimum standards and therefore do not supersede any additional notice requirements under national law (A/CN.9/973, para. 30). Nevertheless, the Working Group may wish to consider the interaction between the notice requirements in the instrument and those under national law, and what would occur in the event of a conflict between the two (*ibid.*). One matter that would be governed by national law is the identity of the notice giver. In this regard, the first revision does not reproduce the prescription in article 3(1) of the Beijing Draft that notice may be given either by the “competent authority” (presumably the authority conducting the judicial sale or judicial officers) or by “one or more parties to the proceedings resulting in [the] judicial sale”. Another matter that would be governed by national law is the modalities for giving notice to a legal person;

(i) *Identification of registry and registrar*: In some States, the registry of ships is separate to the registry of ship mortgages and charges (e.g., the latter might be part of a general registry of security interests). This separation is acknowledged in the United Nations Convention on Conditions for Registration of Ships (1986) (article 11(2)), as well as in the UNCITRAL Model Law on Secured Transactions:

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Guide to Enactment (para. 28). In the first revision, the term “registry” refers to the registry of ships and the registry of ship mortgages or charges, and the term “registrar” refers to the person appointed in the State of registration to administer those registries, whether those registries are different or one and the same;

(j) *Compliance with requirement of the law of the State of judicial sale as condition for issuing certificate of judicial sale*: Like the Beijing Draft considered by the Working Group at its thirty-fifth session, article 5(1) of the first revision provides that the certificate of judicial sale is issued if the conditions required by the law of the State of judicial sale have been met. The Working Group may wish to consider the need for this condition, noting that it does not appear in the corresponding provision of the MLMC 1993 (article 12(5)). A question may be raised as to whether this condition exposes the judicial sale to unwarranted challenge in the State of judicial sale (particularly if the authority issuing the certificate is not the same as the authority that conducted the judicial sale) or in the State of recognition. If, however, the intention of this condition is to allow the State of judicial sale to specify procedures for applying for a certificate (including costs), the Working Group may wish to consider reformulating the paragraph to make this clear;

(k) *Publication of notices and certificates in a centralized repository*: The Working Group has agreed that a centralized online repository could be used to publish notices and certificates of judicial sales (A/CN.9/973, paras. 46 and 73). At the same time, some reservation has been expressed as to the potential cost of such a mechanism (A/CN.9/973, para. 46). Article 12 of the first revision, which is operationalized by cross-references in articles 3(4)(b) and 5(3), is drafted on the basis of article 8 of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (which establishes a Transparency Registry that is maintained by the Secretariat). International registries or similar notification schemes are established under other international instruments, such as the Convention on International Interests in Mobile Equipment (“Cape Town Convention”) and the Protocol thereto on Matters Specific to Aircraft Equipment (which establishes an international registry of interests in aircraft equipment, operated by Aviareto Ltd under contract with the International Civil Aviation Organization), the International Convention for the Safety of Life at Sea (“SOLAS”) (which provides in regulation XI-1/3 for the adoption of IMO ship identification number scheme, operated by IHS Maritime & Trade under an arrangement with the International Maritime Organization), and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (“Anti-Dumping Agreement”) (which establishes a scheme for the notification of anti-dumping actions, administered by the secretariat of the World Trade Organization). If the Working Group wishes to retain the repository mechanism, which presupposes that the instrument will take the form of a treaty, it may wish to consider (a) which organization is well suited to perform the repository function, (b) whether the mechanism obviates the need to give notice to some of the persons entitled to notice under article 3, and (c) whether a timeframe should be provided for giving the notice of judicial sale to the repository (see article 3(4) of the first revision);

(l) *Listing particulars for the certificate of judicial sale*: Like the Beijing Draft considered by the Working Group at its thirty-fifth session, article 5(2) of the first revision lists the minimum particulars to be contained in the certificate of judicial sale (article 5(2)) while requiring the certificate to be substantially in the form of the annexed model. As the model also specifies the listed particulars, the Working Group may wish to consider the need to list the particulars in article 5(2);

(m) *Certified copies and translations of the certificate of judicial sale*: Like the Beijing Draft considered by the Working Group at its thirty-fifth session, the first revision provides for the certification of copies and translations of the certificate of judicial sale. A similar requirement (for arbitral awards) is contained in article IV(1) and (2) of the Convention on the Recognition and Enforcement of Foreign Arbitral Award (1958) (“New York Convention”), although, unlike the New York Convention, the first revision only provides for production of certified copies and translations *upon request*. No requirement for certification of copies or translations is contained in more

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recent UNCITRAL instruments such as the Model Law on International Commercial Arbitration (see article 35(2)) and the United Nations Convention on International Settlement Agreements resulting from Mediation (2018) (“Singapore Convention”) (see article 4(3)). The Working Group may wish to consider whether it is necessary to retain the certification requirement and, if so, to clarify the authorities that are competent to certify copies and translations. The Working Group may also wish to consider whether it is sufficient for the purposes of articles 7 and 8 that a (certified) copy of the certificate be produced, rather than the original. This option might be useful where the purchaser seeks simultaneously to deregister the ship in the State of registration and the State of bareboat charter registration, a scenario already discussed by the Working Group (A/CN.9/973, para. 48).

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**Annex****First Revision of the Beijing Draft**

[The States Parties to the present Convention,

RECOGNIZING that the needs of the maritime industry and ship finance require that the judicial sale of ships is maintained as an effective way of securing and enforcing maritime claims and the enforcement of judgments or arbitral awards or other enforceable documents against the owners of ships;

CONCERNED that any uncertainty for the prospective purchaser regarding the international recognition of a judicial sale of a ship and the deletion or transfer of registry may have an adverse effect upon the price realized by a ship sold at a judicial sale to the detriment of interested parties;

CONVINCED that necessary and sufficient protection should be provided to purchasers of ships at judicial sales by limiting the remedies available to interested parties to challenge the validity of the judicial sale and the subsequent transfers of the ownership in the ship;

CONSIDERING that once a ship is sold by way of a judicial sale, the ship should in principle no longer be subject to arrest for any claim arising prior to its judicial sale;

CONSIDERING further that the objective of recognition of the judicial sale of ships requires that, to the extent possible, uniform rules are adopted with regard to the notice to be given of the judicial sale, the legal effects of that sale and the deregistration or registration of the ship;

HAVE AGREED as follows:]<sup>1</sup>

*Article 1. Definitions*

For the purposes of this Convention [law]:

(a) “Charge” means any right whatsoever and howsoever arising which may be asserted against a ship, including a maritime lien, lien, encumbrance, attachment, right of use or right of retention;<sup>2</sup>

(b) “Clean title” means title free and clear of any mortgage or charge[, except as assumed by any purchaser];<sup>3</sup>

(c) “Judicial sale” of a ship means any sale of a ship ordered or carried out by a court or other authority by way of public auction or private treaty or any other way provided for by the law of the State of judicial sale;<sup>4</sup>

<sup>1</sup> *Preamble*: This first revision of the Beijing Draft reproduces the preamble contained in the Beijing Draft. Preambles are a usual feature of UNCITRAL instruments in the form of treaties. They also feature in some UNCITRAL model laws (see, e.g., UNCITRAL Model Law on Cross-Border Insolvency and the more recent Model Law on Recognition and Enforcement of Insolvency-Related Judgments), although in a different form. On the form of the instrument, see paragraph 3 of the cover note.

<sup>2</sup> *Definitions – “charge”*: It has been explained that the term “charge” is intended to cover all kinds of private rights and interests that could be enforced in rem (A/CN.9/973, para. 79). The definition has been revised to open with the general definition, followed by specific examples, and to remove the reference to “arrest” as such an example (see A/CN.9/973, paras. 79 and 80).

<sup>3</sup> *Definitions – “clean title”*: It has been suggested that the definition of “clean title” omit reference to mortgages and charges that are “assumed by [the] purchaser” on the basis that the preservation of these mortgages and charges should be addressed in the substantive provisions (A/CN.9/973, para. 81). On references to “clean title”, see paragraph 8(b) of the cover note.

<sup>4</sup> *Definitions – “judicial sale”*: The definition of “judicial sale” in the Beijing Draft contains two additional elements, namely (a) that the judicial sale confers clean title, and (b) that the proceeds of sale are made available to the creditors. The Working Group has accepted that these two elements should be considered in the context of the provision on the substantive scope of the instrument (see article 2), or the provisions regarding the legal effects of the judicial sale (see

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(d) “Maritime lien” means any claim recognized as a maritime lien or *privilege maritime* on a ship by the law applicable in accordance with the private international law rules of the State of judicial sale;

(e) “Mortgage” means any mortgage or *hypothèque* that is:

(i) effected on a ship in the State in whose registry of ships the ship is registered; and

(ii) recognized as such by the law applicable in accordance with the private international law rules of the State of judicial sale;

(f) “Owner” of a ship means any person registered as the owner of the ship in the registry of ships in which the ship is registered;

(g) “Person” means any individual or partnership or any public or private body, whether corporate or not, including a state or any of its constituent subdivisions;<sup>5</sup>

(h) “Purchaser” means any person who acquires ownership in a ship or who is intended to acquire ownership in a ship pursuant to a judicial sale of the ship;

(i) “Ship” means any ship or other vessel [capable of being subject of a judicial sale under the law of the State of judicial sale];

(j) “State of judicial sale” means the State in which the judicial sale of a ship is conducted;

(k) “Subsequent purchaser” means any person to whom ownership of a ship has been transferred through a purchaser.

*Article 2. Scope of application*

1. This Convention [law] shall apply to a judicial sale of a ship other than:

(a) a judicial sale in tax, administrative or criminal proceedings;<sup>6</sup>

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article 4) (A/CN.9/973, para. 89). Accordingly, these elements have been removed from the definition in this first revision and are dealt with in articles 2 and 4. The Beijing Draft refers to sales “by” a “competent authority”. Some support has been expressed for the view that the starting point for the instrument is that it applies to sales by *courts* (A/CN.9/973, para. 91). Support has also been expressed for the view that the definition of “judicial sale” refer to sales “ordered” or “confirmed” by a court (*ibid.*). The definition in this first revision has been revised to reflect these views.

<sup>5</sup> *Definitions – “person”*: This definition reproduces the definition of “person” in the Beijing Draft, which in turn mirrors that in article 1(3) of the International Convention on the Arrest of Ships (1999) (“Arrest Convention 1999”). The definition has not yet been considered by the Working Group, although the breadth of the definition was noted at the thirty-fifth session in discussions on the definition of “competent authority” (A/CN.9/973, para. 83). On the need for defining the term “person”, see paragraph 8(c) of the cover note.

<sup>6</sup> *Substantive scope – exclusion of tax, administrative and criminal matters*: A concern has been expressed about applying the recognition regime to forced sales in tax, administrative and criminal matters (A/CN.9/973, paras. 19 and 90). One option to address this concern is to exclude these matters expressly from the substantive scope of the instrument. A second option, already suggested to the Working Group (A/CN.9/973, para. 79), is to limit the scope to civil and commercial matters, a device commonly used to define the scope of conventions concluded by the Hague Conference on Private International Law (in which case, as noted in document A/CN.9/WG.VI/WP.85, the judicial sale would presumably take the character of the proceedings giving rise to the judicial sale). A third option, also suggested at the thirty-fifth session, is to exclude from scope judicial sales for which the proceeds are not to be paid out to creditors (*ibid.*). Subparagraph (a) reflects the first option. The Working Group may wish to consider whether the second and third options provide any desirable additional limitation on scope. In this regard, it may wish to note that article 1(1) of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019) (“Judgments Convention”) states that the Convention applies “in civil or commercial matters”, while also expressly excluding “revenue, customs or administrative matters”.

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(b) a judicial sale of a ship owned or operated by a State which, at the time the proceedings leading to the judicial sale were instituted, was used only for government non-commercial purposes.<sup>7</sup>

[2. This Convention shall only apply to a judicial sale of a ship by which all mortgages and charges[, except those assumed by the purchaser,] cease to attach to the ship.]<sup>8</sup>

*Article 3. Notice of judicial sale<sup>9</sup>*

1. Prior to a judicial sale of a ship, a notice of the sale shall be given to:

(a) The registrar of the registry of ships in which the ship is registered;

(b) All holders of any registered mortgage or registered charge, provided that the registry in which it is registered, and any instrument required to be registered with the registrar under the law of the State of the registry, are open to public inspection, and that extracts from the registry and copies of such instruments are obtainable from the registrar;

(c) All holders of any maritime lien, provided that the court or other authority ordering the judicial sale has received notice of the claim secured by the maritime lien;<sup>10</sup>

(d) The owner of the ship; and

(e) The registrar of the registry of ships in any State in which the ship is granted bareboat charter registration.

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<sup>7</sup> *Substantive scope – exclusion of State-owned ships*: It has been suggested that the recognition regime in the instrument not apply to State-owned ships (A/CN.9/973, para. 40). It is common for treaties dealing with maritime matters to exclude ships that are owned or operated by States, while also limiting this exclusion to ships that are used exclusively for government non-commercial purposes. Subparagraph (b) is based on a recent formulation of this limited exclusion that is found in article 16 of the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004). Earlier examples may be found in article 3 of the Convention for the Unification of Certain Rules concerning the Immunity of State-owned Vessels (1926), article 96 of the United Nations Convention on the Law of the Sea (1982), article 13(2) of the MLMC 1993, and article 8(2) of the Arrest Convention 1999.

<sup>8</sup> *Substantive scope – “option A”*: This paragraph reflects option A described in the cover note (para. 5). In case of a model law, this limitation would be included in the provision governing the effects of a foreign judicial sale, i.e., article 6 of this first revision.

<sup>9</sup> *Notice requirements – general*: Article 3 of this first revision is based on article 3 of the Beijing Draft, with amendments to reflect the discussions at the thirty-fifth session of the Working Group (A/CN.9/973, paras. 67–75). Article 3(1) does not reproduce the requirement in article 3(1) of the Beijing Draft that the notice of judicial sale be given “in accordance with the law of the State of judicial sale”. Such a requirement is not contained in the corresponding provision of the MLMC 1993 (article 11). Article 3(3) of this first revision, which is based on article 3(4) of the Beijing Draft, has been revised following work done by the Secretariat on the interaction between the instrument and the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965) (“Service Convention”) (see footnote 15).

<sup>10</sup> *Notice requirements – holder of maritime lien*: Paragraph (c) is a recast of article 3(1)(c) of the Beijing Draft, which requires the notice of claim to be received by the “competent authority conducting the judicial sale”. A query has been raised as to how this provision would operate in practice (A/CN.9/973, para. 70), noting that courts may not have procedures to receive ad hoc notices from holders of maritime liens. Article 3(1)(c) of the Beijing Draft is based on article 11(1)(c) of the MLMC 1993, which deals with the judicial sale of ships in the context of a broader regime for the recognition and enforcement of maritime liens and mortgages. In this context, the claim (i.e., the claim secured by the maritime lien) would ordinarily be notified in the proceedings involving the enforcement of a maritime lien or mortgage (i.e., “the proceedings leading to the judicial sale”, to use terminology already used in the Beijing Draft), and thus to the court which ultimately orders the judicial sale. The present provision seeks to clarify this.



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2. The notice required by paragraph 1 shall be given at least 30 days prior to the judicial sale and shall contain, as a minimum, the following information:

(a) The name of the ship, the IMO number (if assigned), and the names of the owner of the ship and the bareboat charterer (if any), as appearing in the registry of ships in which the ship is registered or granted bareboat charter registration;

(b) The time and place of the judicial sale or, if the time and place of the judicial sale cannot be determined with certainty, the approximate time and anticipated place of the judicial sale, provided that an additional notice of the actual time and place of the judicial sale shall be provided when known but, in any event, not less than seven days prior to the judicial sale;<sup>11</sup> and

(c) Such particulars concerning the judicial sale or the proceedings leading to the judicial sale as the court or other authority conducting the judicial sale determines are sufficient to protect the interests of persons entitled to notice.

3. The notice shall be in writing and shall be given [in such a way not to frustrate or significantly delay the proceedings concerning the judicial sale]<sup>12</sup>:

(a) by registered mail or by courier;

(b) by any electronic [or other appropriate] means<sup>13</sup>;

(c) by any means agreed to by the person to whom the notice is to be given<sup>14</sup>;  
or

(d) by any means provided under an applicable treaty.<sup>15</sup>

4. The notice shall also be:

(a) published by press announcement in the State of judicial sale [*this State*] and in other publications published or circulated elsewhere, if required by the law of the State of judicial sale [*this State*];<sup>16</sup> and

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<sup>11</sup> *Notice requirements – time and place of judicial sale unknown*: This subparagraph reproduces article 3(3)(b) of the Beijing Draft, which is based on article 11(2) of the MLMC 1993. A concern has been raised that the proviso for a seven-day notice period in the event that the time and place of the judicial sale cannot be determined with certainty might, in practice, supersede the default 30-day notice period (A/CN.9/973, para. 75). This proviso is contained in the MLMC 1993. The Working Group may wish to consider whether the proviso should be contained in a separate provision in line with the drafting of the MLMC 1993.

<sup>12</sup> *Notice requirements – frustration or significant delay*: Given that this first revision, like the Beijing Draft considered by the Working Group at its thirty-fifth session, sets a time limit for giving notice, which is measured back from the judicial sale to the time that the notice is given, the Working Group may wish to consider the need to include the words “in such a way not to frustrate or significantly delay the proceedings concerning the judicial sale”. These words would be significant if the time limit was measured back to the time that the notice was sent.

<sup>13</sup> *Notice requirements – giving notice by “other appropriate means”*: This wording comes from article 11(3) of the MLMC 1993. The Working Group may wish to consider whether the reference to “other appropriate means” of giving notice is necessary and, if so, what means of giving notice fall within the scope of “other appropriate means”.

<sup>14</sup> *Notice requirement – giving notice by “means agreed to by the person”*: Subparagraph (c) is a recast of article 3(7) of the Beijing Draft.

<sup>15</sup> *Notice requirements – interaction with the Service Convention*: The Beijing Draft contains a provision allowing recourse to other treaties dealing with notification (article 3(5)). It has been suggested that this provision be deleted in favour of a general provision governing the interaction with other international instruments (A/CN.9/973, para. 72) (see article 14). In this regard, it has been noted that the Service Convention potentially applies to notices given under article 3. The interaction with the Service Convention is considered in document A/CN.9/WG.VI/WP.85, and article 3(3) of this first revision has been redrafted to facilitate that interaction. Subparagraph (d) of article 3(3) draws from article 3(5) of the Beijing Draft and allows the notice of judicial sale to be given either under the means of transmission prescribed in subparagraphs (a) to (c) or through the channels of transmission provided in the Service Convention. This reflects the third option presented in document A/CN.9/WG.VI/WP.85.

<sup>16</sup> *Notice requirements – publication in newspaper*: This subparagraph is a recast of article 3(4)(b) of the Beijing Draft. It has been separated from the other provisions of article 3(4) of the Beijing

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(b) given to the repository referred to in article 12.

5. In determining the identity or address of any person to whom notice is to be given, reliance may be placed exclusively on:

(a) information set forth in the registry of ships in which the ship is registered or granted bareboat charter registration;

(b) information set forth in the registry in which the mortgage or charge referred to in paragraph 1, subparagraph (b) is registered, if different to the registry of ships; and

(c) information contained in the notice referred to in paragraph 1, subparagraph (c).

*Article 4. Effects of judicial sale in the State of judicial sale [in this State]<sup>17</sup>*

1. In the event of a judicial sale of a ship in a State Party [*this State*], all mortgages and charges[, except those assumed by the purchaser,] shall cease to attach to the ship [and clean title to the ship shall be acquired by the Purchaser], provided that:

(a) The ship was physically within the jurisdiction of the State of judicial sale [*this State*] at the time of the sale; and

(b) The judicial sale was conducted in accordance with the law of the State of judicial sale [*this State*]<sup>18</sup> and the notice requirements in article 3.<sup>19</sup>

[2. Notwithstanding paragraph 1, a charge shall not cease to attach to the ship in the event of the judicial sale if it is of a kind declared by the State of judicial sale in accordance with article [X] [*Notwithstanding paragraph 1, the following charges shall not cease to attach to the ship: [...].*]<sup>20</sup>

3. A judicial sale of a ship shall not affect any personal claim against the person who owned the ship prior to the judicial sale to the extent that the claim is not satisfied by the proceeds of the judicial sale.<sup>21</sup>

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Draft (now article 3(3) of this first revision) on the basis that (a) those other provisions deal with the *means* by which the notice is given to the persons entitled to notice, and that (b) it complements the suggested provision for the publication of the notice in a centralized repository, which is also provided for in paragraph 4 of this first revision. On the publication of notices in a centralized repository generally, see paragraph 8(k) of the cover note. The Working Group may wish to consider whether a timeframe should also be provided for publishing the notice by press announcement and giving the notice to the repository.

<sup>17</sup> *Effects of judicial sale in the State of judicial sale – “option B”*: Article 4 reflects option B described in paragraph 5 of the cover note.

<sup>18</sup> *Effects of judicial sale in the State of judicial sale – compliance with national law as a condition*: In both the Beijing Draft (article 4(1)(b)) and the MLMC 1993 (article 12(1)(b)), compliance with the national law of the State of judicial sale is a condition for conferring clean title. The Working Group may wish to consider whether this condition is necessary, particularly in light of article 9.

<sup>19</sup> *Effects of judicial sale in the State of judicial sale – drafting of article 4(1)*: Paragraph 1 is a recast of article 4(1) of the Beijing Draft. The recast follows more closely the language and structure of article 12(1) of the MLMC 1993.

<sup>20</sup> *Effects of judicial sale in the State of judicial sale – “qualified” judicial sales*: This paragraph – together with articles 5(2)(h), 7(2) and 8(3) – has been included for the consideration of the Working Group, recalling that no decision has been taken as to whether “qualified” judicial sales should be accommodated in the instrument. In treaty form, this first revision accommodates “qualified” judicial sales by a declaration mechanism (see, e.g., article 19 of the United Nations Convention on the Use of Electronic Communications in International Contracts (2005)). Only charges declared by the State of judicial sale would remain attached to the ship. If “qualified” judicial sales are to be accommodated by the option presented, an article can be included in the final provisions of the treaty setting out the mechanism for making declarations.

<sup>21</sup> *Effects of judicial sale – preservation of in personam claims against former shipowner*: This paragraph is a recast of article 4(2) of the Beijing Draft based on the discussions at the thirty-fifth session (A/CN.9/973, para. 34). It seeks to incorporate the definition of “unsatisfied personal obligation”, a term defined in the Beijing Draft that is only used in article 4(2) of the Beijing Draft.

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*Article 5. Certificate of judicial sale*<sup>22</sup>

1. When a ship is sold by way of judicial sale [and the conditions required by the law of the State of judicial sale and by this Convention [*this State*] have been met], the authority designated by the State of judicial sale<sup>23</sup> [*specified by this State as competent*] shall, at the request of the purchaser, issue a certificate of judicial sale to the purchaser recording that the ship has been sold to the purchaser in accordance with the law of the State of judicial sale [*this State*] and the notice requirements in article 3 free of any mortgage or charge[, except as assumed by the purchaser].<sup>24</sup>
2. The certificate of judicial sale shall be issued substantially in the form of the annexed model [and shall contain the following minimum particulars:
  - (a) The name of the State of judicial sale [*this State*];
  - (b) The name, address and the contact details of the authority issuing the certificate;
  - (c) The place and date [when clean title was acquired by the purchaser];<sup>25</sup>
  - (d) The name, IMO number, or distinctive number or letters, and port of registry of the ship;
  - (e) The name, address or residence or principal place of business and contact details, if available, of the owner(s) immediately prior to the judicial sale;
  - (f) The name, address or residence or principal place of business and contact details of the purchaser;
  - [(g) Any mortgage or charge assumed by the purchaser;]
  - [(h) Any mortgage or charge that remains attached to the ship by virtue of paragraph 2 of article 4;]<sup>26</sup>
  - (i) The purchase price;<sup>27</sup>

<sup>22</sup> *Certificate of judicial sale – general*: The Working Group has agreed in principle with the utility of a provision dealing with the issuance of certificates of judicial sale (A/CN.9/973, para. 41).

<sup>23</sup> *Certificate of judicial sale – issuing authority*: It has been pointed out that the authority issuing the certificate of judicial sale might be different to the authority that orders or conducts the judicial sale (A/CN.9/973, para. 82). It has also been suggested that, if the instrument takes the form of a convention, a mechanism could be set up by which a State joining the convention would be required to notify the depositary of the authorities competent in its jurisdiction for the purposes of the convention (which could include different authorities for the purposes of different provisions of the instrument) (A/CN.9/973, para. 84). If the instrument takes the form of a model law, it could prompt the enacting State to make this designation in the text of the enacting law.

<sup>24</sup> *Certificate of judicial sale – certification of clean title*: Article 5(1) of the Beijing Draft provides that the certificate of judicial sale must certify (a) that the ship was sold in accordance with the law of the State of judicial sale and the provisions of the instrument free of any mortgage or charge, except as assumed by the Purchaser, and (b) that any title to and all rights and interests existing in the ship prior to its judicial sale are extinguished. It has been observed that both these elements cover the same thing (i.e., the acquisition of clean title), and that (b) should also be subject to the preservation of mortgages and charges that are assumed by the purchaser (A/CN.9/973, para. 43). This first revision has been prepared in line with these observations. On the preservation of mortgages and charges “assumed by the purchaser”, see paragraph 8(f) of the cover note.

<sup>25</sup> *Certificate of judicial sale – specification of place and date of acquisition of clean title*: As clean title is acquired in the event of a judicial sale, the Working Group may wish to consider whether this particular should instead refer to the place and date of the judicial sale.

<sup>26</sup> *Certificate of judicial sale – “qualified” judicial sales*: This subparagraph – together with articles 4(2), 7(2) and 8(3) – has been included for the consideration of the Working Group, recalling that no decision has been taken as to whether “qualified” judicial sales should be accommodated in the instrument.

<sup>27</sup> *Certificate of judicial sale – specification of purchase price*: It has been suggested that the certificate specify the purchase price (A/CN.9/973, para. 44).

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- (j) The place and date of issuance of the certificate; and
  - (k) The signature, stamp or other confirmation of authenticity of the certificate.]
3. The authority shall promptly communicate the certificate to the repository referred to in article 12.
4. The authority shall:
- (a) maintain a record of certificates issued, including the particulars of the judicial sale; and
  - (b) at the request of the registrar or court referred to in articles 7 and 8, verify whether the particulars in the certificate produced correspond with particulars included in the record.<sup>28</sup>
5. Subject to article 10, the certificate of judicial sale [*a certificate of judicial sale issued by a competent authority in another State which substantially satisfies the provisions of this article*] shall constitute conclusive evidence of the particulars therein.<sup>29</sup>

*Article 6. Effects of [foreign] judicial sale outside the State of judicial sale  
[in this State]<sup>30</sup>*

The effects of a judicial sale of a ship provided in article 4 [*conducted in another State which substantially satisfies the provisions of this law*] shall extend to all States Parties [*this State*].<sup>31</sup>

<sup>28</sup> *Certificate of judicial sale – verification*: The Working Group has agreed that a centralized online repository could be used to publish certificates of judicial sales (A/CN.9/973, paras. 46 and 73) (see article 12). It has been suggested that, as an alternative to establishing a centralized repository, the instrument could require the issuing authority to maintain a publicly accessible record of certificates issued, similar to the requirement in article 7 of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (1961) (“Apostille Convention”) (A/CN.9/973, para. 46). Paragraph 4 presents an option for this alternative.

<sup>29</sup> *Certificate of judicial sale – evidentiary value*: This paragraph is a recast of article 7(5) of the Beijing Draft, which finds no precedent in the MLMC 1993. The extent of the evidentiary value of the certificate is closely linked to the content of the certificate, as prescribed in article 5. It has been questioned whether the authority issuing the certificate can certify the *foreign* legal effect of the judicial sale, as this effect derives from the instrument (article 6) and not the certificate (A/CN.9/973, para. 42). This raises a related question as to whether the evidentiary value of the certificate can extend to that effect, or whether it should instead extend to the conditions for giving a judicial sale that effect under this instrument, i.e., the conditions listed in article 4(1). However, it has also been observed that it is not unusual to require a competent authority to certify the *domestic* legal effect of the sale i.e. that, under the law of the State of judicial sale, the judicial sale has conferred clean title on the purchaser (ibid.).

<sup>30</sup> *Effects of judicial sale outside the State of judicial sale – “option B”*: Together with article 4, article 6 reflects option B described in paragraph 5 of the cover note. To reflect option A alone, article 2(2) could be retained (for a treaty), article 4 could be omitted, and article 6 could be redrafted as follows: “A judicial sale of a ship conducted in a State Party shall have the effect in all States Parties that all mortgages and charges[, except those assumed by the purchaser,] cease to attach to the ship, provided that [*insert conditions (a) and (b) of article 4(1)*]”. If the Working Group wished to accommodate so-called “qualified” judicial sales in option A, article 2(2) could be omitted and article 6 could be expanded to give effect to a foreign judicial sale by which, in accordance with the law of the State of judicial sale, a mortgage or charge remains attached to the ship, provided also that the mortgage or charge is specified in the certificate of judicial sale.

<sup>31</sup> *Effects of judicial sale outside the State of judicial sale – recognition of foreign mortgages and charges*: If so-called “qualified” judicial sales are accommodated in the instrument, a question arises as to whether a court in the State of recognition would or should be required to recognize a preserved mortgage or charge that arises under the law of the State of judicial sale, including any maritime lien.

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*Article 7. Deregistration of the ship*<sup>32</sup>

1. The registrar of a State Party [*this State*] shall, upon production of the certificate of judicial sale referred to in article 5 [*or a certificate of judicial sale issued by a competent authority in another State which substantially satisfies the provisions of article 5*]:

- (a) delete any registered mortgage or registered charge attached to the ship; and
- (b) at the direction of the purchaser or subsequent purchaser:
  - (i) register the ship in the name of the purchaser or subsequent purchaser;
  - (ii) delete the ship from the register and issue a certificate of deregistration for the purpose of new registration; or
  - (iii) if the ship was granted bareboat charter registration, issue a certificate to the effect that registration has been withdrawn.

[2. However, the registrar may refuse to take any of the actions specified in paragraph 1 if:

(a) the certificate specifies a registered mortgage or registered charge that is assumed by the purchaser [or remains attached to the ship by virtue of paragraph 2 of article 4 [*under the law of the other State*]]; and

(b) the holder of the registered mortgage or charge has not given its consent to the action.]<sup>33</sup>

3. If the certificate of judicial sale is not issued in an official language of the State Party [*this State*], the registrar may request the production of a [certified] translation into such an official language.

4. The registrar may also request the production of a [certified] copy of the certificate for its records.

*Article 8. No arrest of the ship*<sup>34</sup>

1. If an application is brought before a court in a State Party [*this State*] to arrest a ship for a claim arising prior to the judicial sale of the ship, the court shall, upon production of the certificate of judicial sale referred to in article 5 [*or a certificate of judicial sale issued by a competent authority in another State which substantially satisfies the provisions of article 5*], dismiss the application.

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<sup>32</sup> *Deregistration – general*: The Working Group has agreed that the initial focus of its work should be on clean title and deregistration (A/CN.9/973, para. 25). Article 7 of this first revision is based on article 6 of the Beijing Draft, which in turn builds on article 12(5) of the MLMC 1993 (*ibid.*, para. 48).

<sup>33</sup> *Deregistration – “qualified” judicial sales and other preserved mortgages and charges*: This paragraph – together with articles 4(2), 5(2)(h) and 8(3) – has been included for the consideration of the Working Group, recalling that no decision has been taken as to whether “qualified” judicial sales should be accommodated in the instrument. The Working Group has not considered in detail how the obligation to deregister would apply to “qualified” sales. It has been suggested that, if “qualified” sales are accommodated in the instrument, the registrar should have a discretion whether to deregister the ship (A/CN.9/973, para. 37). It has also been suggested that the instrument might provide for the holders of those mortgages and charges to consent to the deregistration (*cf.*, article 3(1) of the MLMC 1993) (A/CN.9/973, para. 32). If the Working Group decides (a) not to accommodate “qualified” sales in the instrument, and (b) not to make provision for preserving mortgages and charges “assumed by the purchaser”, this paragraph can be omitted.

<sup>34</sup> *No arrest – general*: Article 8 of this first revision is a recast of article 7(2) of the Beijing Draft. The Working Group has so far not considered this provision in detail. Article 7(2) of the Beijing Draft deals both with applications to arrest and with applications to release from arrest. This first revision splits these two provisions into separate paragraphs.

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2. If a ship is arrested by order of a court in a State Party [*this State*] for a claim arising prior to the judicial sale of the ship, the court shall, upon production of the certificate of judicial sale referred to in article 5 [*or a certificate of judicial sale issued by a competent authority in another State which substantially satisfies the provisions of article 5*], order the release of the ship from arrest.

[3. However, the court may refuse to dismiss the application under paragraph 1 or order the release of the ship under paragraph 2 if the claim relates to a mortgage or charge specified in the certificate that was assumed by the purchaser or remains attached to the ship by virtue of paragraph 2 of article 4 [*under the law of the other State*].]<sup>35</sup>

4. If the certificate is not issued in an official language of the State Party [*this State*], the court may request the production of a [certified] translation into such an official language.<sup>36</sup>

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<sup>35</sup> *No arrest – “qualified” judicial sales and other preserved mortgages and charges*: This paragraph – together with articles 4(2), 5(2)(h) and 7(2) – has been included for the consideration of the Working Group, recalling that no decision has been taken as to whether “qualified” judicial sales should be accommodated in the instrument. The Working Group has not considered in detail how the obligation not to arrest would apply to “qualified” sales. Paragraph 3 mirrors article 7(2) of this first revision, which is explained in footnote 33. If the Working Group decides (a) not to accommodate “qualified” sales in the instrument, and (b) not to make provision for preserving mortgages and charges “assumed by the purchaser”, this paragraph can be omitted. Article 8 deals only with the arrest of ships, and not with the recognition and enforcement of the claim secured by the arrest.

<sup>36</sup> *No arrest – translation of certificate of judicial sale*: This paragraph reflects a suggestion made to the Working Group (A/CN.9/973, para. 57) and is modelled on article 7(3) of this first revision.

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*Article 9. Challenge to judicial sale*<sup>37,38,39</sup>

1. The courts<sup>40</sup> of a State Party [*this State*] shall:
  - (a) have exclusive jurisdiction to hear any claim or application to avoid or suspend the effects of a judicial sale of a ship conducted in that State [*this State*];
  - (b) dismiss any such claim or application other than by a person specified in paragraph 4; and
  - (c) dismiss any such claim or application by a person specified in paragraph 4 if the person fails to demonstrate that its rights will suffer irreversible material detriment if the judicial sale is not suspended or avoided, as the case may be.<sup>41</sup>
2. The courts of a State Party [*this State*] shall decline jurisdiction in respect of any claim or application to avoid or suspend the effects of a judicial sale of a ship conducted in another State Party [*another State*].

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<sup>37</sup> *Challenging the judicial sale – general*: Article 9 replaces articles 7(3) and 7(4) of the Beijing Draft, and is thus concerned with (a) international jurisdiction to hear a challenge to the judicial sale (see footnote 38), and (b) standing to challenge the judicial sale (see footnote 39). As has been observed, these provisions do not affect jurisdiction or standing with respect to challenges to the distribution of proceeds from the judicial sale, nor do they affect jurisdiction or standing with respect to *in personam* actions against the purchaser, such as actions in tort (A/CN.9/973, para. 55).

<sup>38</sup> *Challenging the judicial sale – international jurisdiction*: Article 7(3) of the Beijing Draft confers exclusive jurisdiction on the courts of the State of judicial sale. Some support has been expressed for retaining such a provision (A/CN.9/973, para. 51), which is now recast in article 9(1)(a) and article 9(2) of this first revision. These two provisions adopt the same “belts and braces” approach of the Beijing Draft, which mirrors articles 5(1) and 6 of the Convention on Choice of Court Agreements (2005) (“Choice of Court Convention”); article 9(1)(a) confers exclusive jurisdiction on the courts of the State of judicial sale, while article 9(2) denies jurisdiction to the courts of any other State. The Working Group may wish to consider whether the mere conferral of (exclusive) jurisdiction on the courts of the State of judicial sale obligates those courts to exercise jurisdiction, or whether the exercise of that jurisdiction remains a matter of applicable national law (i.e., the law of the forum). The Working Group may also wish to confirm that the grounds for avoiding or suspending the effects of the judicial sale are a matter of the applicable national law.

<sup>39</sup> *Challenging the judicial sale – standing*: Article 7(4) of the Beijing Draft limits standing to challenge a judicial sale to “interested persons”, a term which is defined in article 1(g) of the Beijing Draft to include the owner of the ship immediately prior to the judicial sale, and holders of registered mortgages and registered charges attached to the ship immediately prior to the sale. A concern has been expressed that denying standing to other persons, notably holders of maritime liens, may restrict the constitutional right to access to justice (A/CN.9/973, paras. 55 and 86). Accordingly, it has been suggested either (a) that article 7(4) of the Beijing Draft not be retained, or (b) that the definition of “interested persons” be expanded to include holders of maritime liens (A/CN.9/973, para. 86). The Working Group has agreed to consider expanding the definition to include a holder of a maritime lien which had filed its claim to the court. Article 9(4) of this first revision reflects this position. It also reflects a suggestion that the definition of “interested person” be moved from article 1 to the article in which it is used (A/CN.9/973, para. 88). This has obviated the need to use the term “interested person” in this first revision.

<sup>40</sup> *Challenging the judicial sale – internal competence*: It has been observed that, in some States, competence to hear challenges to a judicial sale is vested not in courts but in other authorities (A/CN.9/973, para. 51). The Working Group may wish to consider whether this can be addressed by replacing the term “courts” with “authorities”.

<sup>41</sup> *Challenging the judicial sale – persons with a legitimate interest*: It has been suggested that, in considering an expansion to the classes of persons with standing to challenge a judicial sale, it is important that the instrument provide finite circumstances in which a judicial sale could be challenged (A/CN.9/973, para. 55). In this regard, it has been observed that it would not be inconsistent with the right to access to justice for standing to be denied to persons not having a legitimate interest in challenging the judicial sale (A/CN.9/973, paras. 55 and 87). Article 9(1)(c) of this first revision establishes a test to define circumstances in which a person specified in article 9(4) will have a legitimate interest in challenging the judicial sale.

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3. Unless the judicial sale of a ship is avoided in the State of judicial sale [*by the competent court*], no remedies shall be exercised either against the ship or against any [*bona fide*] purchaser or subsequent purchaser of the ship.<sup>42</sup>
4. For the purposes of paragraph 1, the persons which may make a claim or application to avoid or suspend the effects of the judicial sale are:
  - (a) the owner of the ship immediately prior to the judicial sale;
  - (b) the holder of a registered mortgage or charge attached to the ship immediately prior to the judicial sale; and
  - (c) any holder of a maritime lien entitled to notice under article 3.<sup>43</sup>

*Article 10. Circumstances in which judicial sale has no effect*<sup>44,45</sup>

1. The effects of a judicial sale of a ship provided in article 4 [*conducted in another State*] shall not extend to another State Party [*this State*] if, on application by a person specified in paragraph 4 of article 9, a court in that other State Party [*this State*] determines that:
  - (a) The ship was not physically within the jurisdiction of the State of judicial sale [*the other State*] at the time of the sale;
  - (b) Extending those effects to that other State Party [*this State*] would be manifestly contrary to the public policy of that other State Party [*this State*]; or
  - (c) The sale was procured by fraud [*committed by the purchaser*].<sup>46</sup>

<sup>42</sup> *Challenging the judicial sale – no further remedies against the purchaser*: Article 9(3) is a recast of the final sentence of article 7(4) of the Beijing Draft. The purpose of that provision is to ensure that necessary and sufficient protection was provided to the purchaser following the judicial sale: see CMI International Working Group, “Commentary on the Beijing Draft: A Proposed Draft International Convention on Recognition of Foreign Judicial Sales of Ships”, CMI Yearbook 2013 (Antwerp, 2013), p. 226. This provision has not yet been discussed in detail by the Working Group, except to query the meaning of “*bona fide*” purchaser (A/CN.9/973, para. 57). The provision is drafted in broad terms (it is not limited in its terms to remedies related to a challenge to the judicial sale or remedies against the ship), and the Working Group may wish to consider whether the provision is necessary and whether it needs to be refined. There appears to be some overlap between this provision and the no arrest provisions in article 8.

<sup>43</sup> See footnote 39.

<sup>44</sup> *Grounds for refusal – general*: Article 10 of this first revision is a recast of article 8 of the Beijing Draft. It refers to grounds for *not giving effect* to a foreign judicial sale, rather than grounds for *refusing to recognize* that sale. This responds to the observation that the concept of ground for refusal presupposes that the judicial sale already has effect in the State of recognition (A/CN.9/973, para. 61), while also dealing with the suggestion that the instrument be cast in terms of “effects” rather than “recognition” (A/CN.9/973, para. 49). Building on this observation, the grounds for refusal have been split into two categories: those that apply to deny a foreign judicial sale ever having effect (article 10(1), see footnote 46) and those that apply to cease the effect of a foreign judicial sale, whether temporarily or permanently (article 10(2), see footnote 47).

<sup>45</sup> *Grounds for refusal – operation*: It has been explained that, where a ground for refusal applies, the obligation to recognize clean title conferred by a foreign judicial sale and the obligation not to arrest are not engaged (A/CN.9/973, para. 59). A question has been raised as to the effect of the grounds on the obligation of deregistration (*ibid.*). This first revision provides that, where a ground for refusal applies, the foreign judicial sale shall have no effect, or cease to have that effect, which disengages not only the obligation to recognize clean title in article 6, but also the obligation to deregister in article 7 and the obligation not to arrest in article 8. A question has also been raised as to the legal consequence in one State of a court in another State determining that a ground for refusal applies (A/CN.9/973, para. 60). Article 10(1) of this first revision is drafted on the basis that the decision will only have legal consequence for the judicial sale in the first State.

<sup>46</sup> *Grounds for refusal – effect of foreign judicial sale denied*: Paragraph 1 is a recast of article 8(a) and article 8(c) of the Beijing Draft. For the public policy ground (article 8(c) of the Beijing Draft), the view has been expressed that the notion of “manifestly contrary” should be interpreted in a similar way to how it is interpreted in other instruments, such as article 9(e) of the Choice of Court Convention, where it is intended to set a high threshold: see Trevor Hartley



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2. A judicial sale of a ship shall cease to have the effects provided in this Convention [*law*] in all States Parties [*in this State*] if:

(a) the sale is avoided in the State of judicial sale by a court exercising jurisdiction under article 9 [*by a competent court of the State in which the sale was conducted*]; and

(b) the judgment of the court avoiding the sale is no longer subject to appeal in that State.

3. The effects of a judicial sale of a ship provided in this Convention [*law*] shall be suspended in all States Parties [*in this State*] if the effects of the sale are suspended in the State of judicial sale by a court exercising jurisdiction under article 9 [*by a competent court of the State in which the sale was conducted*].<sup>47</sup>

*Article 11. No legalization*<sup>48</sup>

The certificate of judicial sale referred to in article 5 [*conducted in another State*] shall be exempt from legalization or similar formality.

*Article 12. Repository*<sup>49</sup>

1. The repository of notices given under article 3 and certificates issued under article 5 shall be the Secretary-General of the United Nations or an institution named by UNCITRAL.

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and Masato Dogauchi, “Explanatory Report”, para. 189 (A/CN.9/973, para. 62). A question has been raised whether giving effect to a foreign judicial sale that extinguishes certain liens that are considered mandatory law of the State of recognition might trigger the public policy ground (A/CN.9/973, para. 38). Broad support has been expressed for including fraud as an additional ground (A/CN.9/973, para. 63), although some concern has been expressed about doing so (ibid.). The Working Group may wish to consider the additional requirement that the fraud be committed by the purchaser.

<sup>47</sup> *Grounds for refusal – effect of foreign judicial sale ceased*: Article 10(2) of this first revision is a recast of article 8(b) of the Beijing Draft. If a foreign judicial sale ceases to have effect pursuant to article 10, the obligations that flow from that effect – notably the obligation to give effect to the sale generally (article 6), the obligation to deregister (article 7) and the obligation not to arrest (article 8) – no longer apply.

<sup>48</sup> *Certificate of judicial sale – no legalization*: A query has been raised as to whether the certificate of judicial sale could or should be subject to legalization (A/CN.9/973, para. 45). “Legalization” refers to the (often time-consuming and costly) procedure whereby the signature/seal/stamp on a public document is certified as authentic by a series of public officials: Hague Conference on Private International Law, *Apostille Handbook: A Handbook on the Practical Operation of the Apostille Convention* (2013), para. 9. The Apostille Convention exempts public documents from legalization and establishes a single procedure to certify authenticity, whereby an Apostille is issued for the document. Article 1(2) of the Apostille Convention defines public documents to include “documents emanating from an authority or an official connected with the courts or tribunals”, as well as “administrative documents”. As already foreshadowed at the thirty-fifth session, the certificate of judicial sale would ordinarily be a public document within the meaning of the Apostille Convention and would thus be exempt from legalization under article 2 of the Convention among the 117 States that are party to that Convention (A/CN.9/973, para. 45). It has also been suggested that the Working Group consider including a provision that removes any requirement of legalization or similar requirement (such as the issuance of an Apostille) for the certificate of judicial sale (ibid.). Article 11 reflects this suggestion. The drafting of this provision is based on similar provisions found in instruments concluded by the Hague Conference on Private International Law, such as article 18 of the Choice of Court Convention. Nothing in the Apostille Convention precludes a State Party from agreeing to dispense with all requirements for certifying the authenticity of certain public documents, a scenario expressly contemplated in article 3(2) of that Convention. The present provision would not preclude the authority addressed from determining that a document purporting to be a certificate of judicial sale is not authentic.

<sup>49</sup> *Publication of notices and certificates in a centralized repository*: See paragraph 8(k) of the cover note.

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2. Upon receipt of a notice or certificate under this Convention, the repository shall promptly make it available to the public.

*Article 13. Communication between States Parties [with other States]*<sup>50</sup>

For the purposes of articles 7 and 8, the authorities of the States Parties shall be authorized to correspond directly between themselves.

*Article 14. Relations with other international instruments*

Nothing in this Convention [law] shall derogate from any other basis for the recognition of a judicial sale of a ship under any other bilateral or multilateral convention, instrument or agreement or principle of comity.<sup>51</sup>

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<sup>50</sup> *Cooperation between authorities*: It has been suggested that the draft instrument contain a provision similar to article 14 of the MLC 1993, which provides for cooperation between authorities (A/CN.9/973, para. 24). This article reflects that suggestion and supplements the communication contemplated in article 5(4)(b).

<sup>51</sup> *Relationship with other treaties and national law*: Article 14 reproduces article 10 of the Beijing Draft with minor amendments. At the thirty-fifth session, there was some discussion about the relationship between the Beijing Draft and the Judgments Convention (A/CN.9/973, para. 24). This issue is considered in document A/CN.9/WG.VI/WP.85. As indicated in footnote 15, the interaction with the Service Convention is also considered in that document. The Working Group may wish to consider simplifying this provision by replacing the words “bilateral or multilateral convention, instrument or agreement or principle of comity” with “treaty”, as well as expanding the provision to preserve the application of national law that is more favourable to the recognition of foreign judicial sales (which may well be based on the principle of comity: e.g., High Court of England and Wales, Admiralty Division, *The “Acrux”*, Judgment, 16 April 1962, *Lloyd’s List Law Reports*, vol. 1 (1962), p. 409).

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**ANNEX TO THE [DRAFT INSTRUMENT ON THE JUDICIAL  
SALE OF SHIPS]**
**Certificate**

*Issued in accordance with the provisions of article 5 of the [draft instrument on the judicial sale of ships]*

This is to certify that the ship described below has been sold by way of judicial sale, that all conditions prescribed in article 4, paragraph 1 of the Convention [*this law*] have been met, and that all mortgages and charges, except those specified below, have ceased to attach to the ship.<sup>52</sup>

- 1. State of judicial sale** .....
- 2. Authority issuing this certificate**
  - 2.1 Name .....
  - 2.2 Address .....
  - 2.3 Telephone/fax/email, if available .....
  - 2.4 Place and date clean title acquired by purchaser<sup>53</sup> .....
- 3. Ship**
  - 3.1 Name .....
  - 3.2 IMO number or distinctive number or letters .....
  - 3.3 Place of issuance of the distinctive number or letters .....
  - 3.4 Port of registry .....
- 4. Owner(s) immediately prior to the judicial sale**
  - 4.1 Name .....
  - 4.2 Address or residence or principal place of business .....
  - 4.3 Telephone/fax/email .....
- 5. Purchaser**
  - 5.1 Name .....

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<sup>52</sup> *Certificate of judicial sale – content and evidentiary value:* This model form is operationalized by article 5(1). As noted in footnote 29, the content of the certificate is closely linked to the extent of its evidentiary value.

<sup>53</sup> See footnote 25.

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5.2 Address or residence or  
principal place of business .....

5.3 Telephone/fax/email .....

**[6. Holder of the mortgage or charge assumed by the purchaser or  
remaining attached to the ship<sup>54</sup>**

6.1 Name .....

6.2 Address or residence or  
principal place of business .....

6.3 Telephone/fax/email .....

6.4 Maximum amount of each  
preserved mortgage or  
charge (if available)] .....

**7. Purchase price<sup>55</sup>** .....

**At** ..... **On** .....  
(place) (date)

.....  
Signature and/or stamp

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<sup>54</sup> See article 5(2)(h) and accompanying footnote.

<sup>55</sup> See article 5(2)(i) and accompanying footnote.

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**VI. UN GENERAL ASSEMBLY DOCUMENT  
A/CN.9/WG.VI/WP.85  
INTERACTION BETWEEN A FUTURE  
INSTRUMENT ON THE JUDICIAL SALE OF  
SHIPS AND SELECTED HCCH CONVENTIONS**

United Nations

A/CN.9/WG.VI/WP.85

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**United Nations Commission on  
International Trade Law  
Working Group VI (Judicial Sale of Ships)  
Thirty-sixth session  
Vienna, 18–22 November 2019**

**Interaction between a future instrument on the judicial  
sale of ships and selected HCCH Conventions**

**Note by the Secretariat**

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**I. Introduction**

1. At its thirty-fifth session, the Working Group considered the interaction between a future instrument on the judicial sale of ships and several Conventions adopted by the Hague Conference on Private International Law (HCCH), namely:

(a) the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019) (“Judgments Convention”);

(b) the Convention on Choice of Court Agreements (2005) (“Choice of Court Convention”); and

(c) the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965) (“Service Convention”).

2. This note analyses how a future instrument might interact with each of these Conventions, using as a reference point the revised Beijing Draft set out in document A/CN.9/WG.VI/WP.84.

**II. Analysis****A. Judgments Convention**

3. The Judgments Convention was concluded on 2 July 2019 and is not yet in force.

4. The Judgments Convention applies to the recognition and enforcement of foreign judgments in civil or commercial matters (article 1).<sup>1</sup> As pointed out at the thirty-fifth session of the Working Group,<sup>2</sup> the recognition regime under the Judgments Convention only applies to a “judgment”, which is defined as “any decision on the merits given by a court” (article 3(1)(b)). Whether the Judgments Convention applies to the recognition of judicial sales, and how it interacts with a future instrument on the recognition of foreign judicial sale of ships, thus depends on whether the subject of the recognition regime under the future instrument can be characterized as a “decision on the merits given by a court”.

5. The revised Beijing Draft provides for the recognition<sup>3</sup> of “judicial sales”, which are defined in article 1(c) to mean sales that are ordered or carried out by a court or other authority. Many judicial sales within the scope of the instrument would therefore be ordered by, or carried out pursuant to, a decision given by a court.<sup>4</sup> It does not follow, however, that the judicial sale itself is a decision on the merits (or the “res judicata”). Rather, the sale is a measure by which the judgment on the merits is enforced.<sup>5</sup> In the revised Beijing Draft, it is the judicial sale, not the underlying decision, that is the subject of recognition.

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<sup>1</sup> As noted in the Working Group, some maritime matters are expressly excluded from the Judgments Convention (article 2(1)(g)), while judicial sales of ships themselves are not (A/CN.9/973, para. 24). As discussed further in paragraph 20 below, the draft explanatory report on the draft Judgments Convention states that maritime liens and mortgages are included in the scope of the draft convention (ibid.). See Francisco Garcimartín and Geneviève Saumier, “Judgments Convention: Revised Draft Explanatory Report”, *Preliminary Document No 1 of December 2018 for the attention of the Twenty-second Session of June–July 2019*, available at <https://assets.hcch.net/docs/7d2ae3f7-e8c6-4ef3-807c-15f112aa483d.pdf>, para. 49. The final explanatory report has not yet been published.

<sup>2</sup> A/CN.9/973, para. 24.

<sup>3</sup> On the use of the term “recognition” in the revised Beijing Draft, see paragraph 8 of document A/CN.9/WG.VI/WP.84.

<sup>4</sup> In some States, the decision may even be contained in the same instrument that decides the merits of the claim giving rise to the judicial sale: see, e.g., Federal Court of Australia, *Norddeutsche Landesbank Girozentrale v. The Ship “Beluga Notification”* (No. 2), Judgment, 10 June 2011 (unreported).

<sup>5</sup> The draft explanatory report on the draft Judgments Convention notes that “enforcement orders, such as garnishee orders or orders for the seizure of property, do not qualify as judgments” on

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6. This characterization is consistent with the distinction emphasized at the thirty-fifth session of the Working Group between the judicial sale on the one hand, and the decision on the merits of the claim giving rise to the judicial sale on the other hand (A/CN.9/973, paras. 21, 24, 68 and 87).<sup>6</sup> It is also consistent with the treatment of foreign judicial sales in several relatively recent court decisions, which have characterized the judicial sale as a foreign event establishing a particular property regime to be given effect as a matter of applicable law, rather than as a foreign decision to be given effect as a matter of the recognition and enforcement of foreign judgments. Specifically:

(a) In a 2013 decision concerning the deregistration in Saint Vincent and the Grenadines of the ship “The Phoenix”, which had been subject to a judicial sale in the Democratic People’s Republic of Korea, the Eastern Caribbean Supreme Court observed that “a foreign judicial sale is to be recognized and given effect qua assignment/transfer of title”.<sup>7</sup> In doing so, the court followed the 1870 decision of House of Lords of the United Kingdom in the case of *Castrique v. Imrie*, which viewed the legal effects in England of a judicial sale in France as an application of the general choice of law rule that personal property disposed of in a manner binding under the *lex situs* is binding everywhere, and not as an application of the rules governing the recognition and enforcement of foreign judgments;<sup>8</sup>

(b) In France, the Court of Cassation stated in a 2005 decision that, for the purposes of giving effect to a judicial sale conducted in Gibraltar of the ship “R One”, the judgment of the Supreme Court of Gibraltar ordering the sale was a legal fact to be taken into account in determining the property rights of the parties, and that it was unnecessary to recognize the judgment under the rules governing the recognition and enforcement of foreign judgments – in that case, the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (1968) (“Brussels Convention”) – to give effect to those rights.<sup>9</sup> In doing so, it upheld the decision of the lower court, which reasoned that the judicial sale was not a “judgment” within the meaning of article 25 of the Brussels Convention but rather a “simple enforcement measure” for the foreign judgment;

(c) In the Netherlands, the Amsterdam District Court held in a 2004 decision that the effects of a judicial sale in China with regard to ownership of the ship “The Katerina” were to be determined as a matter of applicable law without recourse to the rules governing the recognition and enforcement of foreign judgments.<sup>10</sup> The court

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the grounds that they are not decisions “on the merits”: see Garcimartín and Saumier, “Judgments Convention: Revised Draft Explanatory Report” (footnote 1), para. 82.

<sup>6</sup> A similar distinction is observed by Walter Muller in his critique of the recognition regime under the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages (1967): “La reconnaissance internationale d’une exécution forcée contre un navire de mer”, *Droit Maritime Français*, issue 444 (December 1985), p. 719.

<sup>7</sup> Eastern Caribbean Supreme Court, Court of Appeal, *BCEN-Eurobank v. Vostokrybporm Company Limited*, Case No. SVGHCVAP2011/0011, Judgment, 10 June 2013, *Lloyd’s Law Reports*, vol. 1 (2014), p. 409, available at [www.eccourts.org/bcen-eurobank-v-vostokrybporm-company-limited-et-al/](http://www.eccourts.org/bcen-eurobank-v-vostokrybporm-company-limited-et-al/). See also Dicey, *Morris and Collins on the Conflict of Laws*, 15th ed. (London, Sweet & Maxwell, 2012), paras. 14–110.

<sup>8</sup> House of Lords of the United Kingdom, *Castrique v. Imrie*, Judgment, 4 April 1870, *Law Reports: English and Irish Appeal Cases and Claims of Peerage before the House of Lords*, vol. 4 (1869–1870), p. 429.

<sup>9</sup> Court of Cassation of France, *Coopérative du lamanage des Ports de Marseille et du Golfe de Fos v. Cruise Invest One S.A.*, Case No. 02-18.201, Judgment, 4 October 2005, available at [www.courdecassation.fr/jurisprudence\\_2/chambre\\_commerciale\\_574/nbsp\\_arr\\_843.html](http://www.courdecassation.fr/jurisprudence_2/chambre_commerciale_574/nbsp_arr_843.html). See observations on the case by Pierre Bonassies in *Droit Maritime Français*, issue 666 (January 2006), p. 47. See also critique of the decision by Horatia Muir Watt in *Revue Critique de Droit International Privé*, vol. 95 (2006), p. 405.

<sup>10</sup> Amsterdam District Court, *Esquire Management Co. v. ETA Petrol Akaryakıt Ticaret ve Nakliyat A.S.*, Case No. KG04/912P, Judgment, 7 May 2004. See commentary in Lief Bleyen, *Judicial Sales of Ships: A Comparative Study* (Springer, 2016), p. 95. A similar approach is taken in Germany: see Karl Kreuzer, *Münchener Kommentar zum Bürgerlichen Gesetzbuch*, 3rd ed. (1998), Band 10, Anhang I, paras. 157–158.

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concluded that, “since the judicial sale took place in China under Chinese law, the effects of that sale regarding the property of the ship are determined in accordance with Chinese law”;<sup>11</sup>

(d) In South Africa, the Western Cape High Court held in a 2003 decision that the recognition of clean title in the ship “The Aksu”, conferred by judicial sale in Denmark, was a matter for the application of the choice of law rules – i.e., the rule that the law governing the transfer of moveable property (including ships) is the *lex situs* – without recourse to the rules governing the recognition and enforcement of foreign judgments.<sup>12</sup>

7. It follows from the foregoing analysis that the subject of recognition in the revised Beijing Draft (i.e., the judicial sale) is not a “decision on the merits” within the meaning of the Judgments Convention, and therefore that the future instrument will not enter into the scope of application of the Judgments Convention. In saying this, it is important to acknowledge that this characterization of a foreign judicial sale as distinct from the foreign judgment is not generally reflected in the preparatory work of the Comité Maritime International on the Beijing Draft, where much of the commentary on the recognition of foreign judicial sales proceeds on the basis that giving effect to clean title conferred by the foreign sale is a matter of the recognition and enforcement of foreign judgments.<sup>13</sup>

## B. Choice of Court Convention

8. The Choice of Court Convention is currently in force in 31 States and the European Union.

9. At the thirty-fifth session, a query was raised as to the relationship between the Choice of Convention and a provision (in article 7(3) of the Beijing Draft and article 9(1) of the revised Beijing Draft) conferring exclusive jurisdiction on the courts of a State to hear challenges to a judicial sale that is ordered or carried out by a court in that State (A/CN.9/973, para. 51). The Choice of Court Convention aims at ensuring the effectiveness of exclusive choice of court agreements, which are defined as agreements concluded between two or more parties “for the purposes of deciding disputes which have arisen or may arise in connection with a particular legal relationship” (article 3(a)). It does this by, among other things, conferring exclusive jurisdiction on the court designated in the choice of court agreement (article 5), and denying jurisdiction to any other court (article 6). In this context, the relationship of the revised Beijing Draft with the Choice of Court Convention depends on whether a challenge to a judicial sale can be the subject of a choice of court agreement.

10. The Choice of Court Convention is concerned with original (first instance) jurisdiction and not with appellate jurisdiction. In other words, it deals with jurisdiction to “decide a dispute” between the parties (article 5), not jurisdiction to hear a challenge (or appeal) to the decision of the designated court.<sup>14</sup> The revised

<sup>11</sup> Ibid. “De slotsom van het voorgaande is dat, nu de veiling in China volgens Chinees recht heeft plaatsgevonden, op de gevolgen van die veiling ten aanzien van de eigendom van het schip Chinees recht van toepassing is”.

<sup>12</sup> High Court, Cape of Good Hope Provincial Division, *Bridge Oil Limited v. Fund Constituting the Proceeds of the Sale of the MV “Mega S” (formerly the MV “Aksu”)*, Case No. AC 58/2002, Judgment, 12 June 2003, *South African Law Reports*, vol. 3 (2007), p. 202, available at [www.saflii.org/za/cases/ZAWCHC/2003/24.html](http://www.saflii.org/za/cases/ZAWCHC/2003/24.html).

<sup>13</sup> See, e.g., Frank Smeele, “Recognition of the Legal Effects of Foreign Judicial Sales of Ships”, CMI Yearbook 2010 (Antwerp, 2011), available at <https://comitemaritime.org/wp-content/uploads/2018/06/Yearbook-2010.pdf>, p. 225.

<sup>14</sup> The explanatory report on the Choice of Court Convention notes, in discussing the scope of the Convention, that “[i]t was not intended that the Convention would affect the procedural law of Contracting States”. It then goes on to specify that “national law decides whether, and in what circumstances, appeals and similar remedies exist”: see Trevor Hartley and Masato Dogauchi, “Explanatory Report”, available at <https://assets.hcch.net/upload/exp137final.pdf>, paras. 88 and 92.



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Beijing Draft does not deal with original jurisdiction to decide the kinds of disputes that lead to the judicial sale of a ship (e.g., proceedings to enforce a maritime lien or mortgage).<sup>15</sup> Rather, the starting point for the revised Beijing Draft, like the draft considered by the Working Group at its thirty-fifth session, is that a court in the State of judicial sale has *already* exercised jurisdiction in such proceedings and has proceeded to order or carry out the judicial sale.<sup>16</sup> The revised Beijing Draft deals only with appellate jurisdiction (i.e., jurisdiction to hear a challenge to the judicial sale).

11. It follows that a challenge to a judicial sale cannot be the subject of a choice of court agreement within the meaning of the Choice of Court Convention, and therefore that the Convention does not apply to such a challenge. Put in another way, the conferral of exclusive jurisdiction under a future instrument on the courts of the State of judicial sale to hear a challenge to a judicial sale does not interfere with jurisdiction conferred under the Choice of Court Convention.

### C. Service Convention

12. The Service Convention is currently in force in 74 States.

13. The Service Convention makes provision for the transmission of documents between Contracting States for service abroad. It does not make provision for substantive rules relating to the actual service of documents; rather, it is the law of the forum (i.e., the State from which the documents are transmitted) that determines whether or not a document is to be transmitted for service abroad.<sup>17</sup> As such, the Service Convention applies “where there is occasion to transmit” a document (article 1(1)). The scope of the Convention is further circumscribed in that it applies only in “civil or commercial matters”, provided that the document is a “judicial or extrajudicial document” (article 1(1)).

14. The revised Beijing Draft, like the draft considered by the Working Group at its thirty-fifth session, not only establishes substantive rules relating to the giving of the notice of judicial sale (i.e., what is to be given and to whom) (article 3(1)-(2)), but also prescribes the means of transmitting the notice to the addressee (i.e., how it is to be given) (article 3(3)). At the thirty-fifth session of the Working Group, it was observed that the Service Convention potentially applies to the service of a notice of judicial sale under a future instrument (A/CN.9/973, para. 72). Whether the Service Convention applies depends on whether (a) the instrument provides occasion to transmit a document for service abroad, (b) the document is a judicial or extrajudicial document, and (c) the judicial sale can be characterized as a civil or commercial matter. If the Service Convention applies, the question then becomes whether the means of transmitting the notice prescribed in the revised Beijing Draft are compatible with the channels of transmission under the Service Convention.

#### 1. Applicability of the Service Convention

##### (a) Occasion to transmit a document for service abroad

15. Article 3 of the revised Beijing Draft provides for a notice of judicial sale to be “given” to specified persons. The Service Convention does not define the term

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<sup>15</sup> Indeed, it has been suggested to the Working Group that a future instrument should not deal with jurisdiction in such proceedings: A/CN.9/973, para. 21.

<sup>16</sup> Original jurisdiction may be conferred under national law or under other applicable law. In this regard, it is conceivable that the Choice of Court Convention might apply to the proceedings leading to the judicial sale (e.g., where there is a choice of court agreement between the shipowner and the mortgagee). As noted in paragraph 20 below, the explanatory report to the Choice of Court Convention notes that, while “marine pollution, limitation of liability for maritime claims, general average, and emergency towage and salvage” are expressly excluded from scope (article 2(2)(g)), “[o]ther maritime (shipping) matters” are included, such as “marine insurance, non-emergency towage and salvage, shipbuilding, ship mortgages and liens”.

<sup>17</sup> *Practical Handbook on the Operation of the Service Convention*, 4th ed. (2016), p. XLV.

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“service”, although the Permanent Bureau of the HCCH has stated that it “generally refers to the delivery of judicial and/or extrajudicial documents to the addressee”.<sup>18</sup> On this interpretation, it is likely that the process of giving the notice of judicial sale constitutes “service” within the meaning of the Service Convention. Moreover, it is highly likely that some of the persons to whom the notice is to be given will be present outside the State of judicial sale. It follows that there will be judicial sales in which there is occasion to transmit the notice for service abroad.

16. Article 3(4) of the revised Beijing Draft provides for the notice to be published by press announcement in the State of judicial sale and possibly with wider circulation, as well as for the notice to be given to a centralized repository for publication online. It seems unlikely that submission of the notice to a printing house or the centralized repository for publication constitutes transmission for service abroad.

**(b) Judicial or extrajudicial document**

17. The Service Convention does not define the concept of “judicial and extrajudicial document”. In practice, this concept includes instruments of contentious or non-contentious jurisdiction, or instruments of enforcement.<sup>19</sup> The notice of judicial sale is a document that is issued in the context of, and relates directly to, a measure of enforcement (i.e., the judicial sale) that is ordered or conducted by a court. As such, it is reasonable to characterize the notice as a “judicial document” within the meaning of the Service Convention.

**(c) Civil or commercial matters**

18. As a measure of enforcement, a judicial sale would ordinarily take the character of the proceedings giving rise to the judicial sale, which typically involve the adjudication of maritime claims (e.g., claims of the kind recognized in article 1(1) of the International Convention relating to the Arrest of Seagoing Ships (1952)). Significantly, the revised Beijing Draft excludes from scope judicial sales in tax, administrative and criminal proceedings (article 2(1)(a)).

19. While the Service Convention does not define the term “civil or commercial matters”, it seems clear that maritime claims can be characterized as such. Maritime claims ordinarily involve the vindication of private rights as between parties at least one of which is acting in the context of commercial or private maritime (shipping) operations. This conclusion is reflected in practice, where the term is interpreted liberally,<sup>20</sup> and where the Service Convention is used to serve documents in relation to maritime claims.<sup>21</sup>

20. This conclusion is supported by reference to how the term “civil or commercial matters” has been interpreted in other conventions concluded by the HCCH. As noted in document A/CN.9/WG.VI/WP.84, the term “civil or commercial matters” is used to define the scope of the Judgments Convention and Choice of Court Convention. The explanatory report to the Choice of Court Convention notes that, while “marine pollution, limitation of liability for maritime claims, general average, and emergency towage and salvage” are expressly excluded from scope (article 2(2)(g)), “[o]ther maritime (shipping) matters” are included, such as “marine insurance, non-emergency towage and salvage, shipbuilding, ship mortgages and liens”.<sup>22</sup> While caution should

<sup>18</sup> Ibid., para. 23.

<sup>19</sup> Ibid., para. 77.

<sup>20</sup> Ibid., paras. 58–69.

<sup>21</sup> Recent (unreported) decisions of the Federal Court of Australia ordering service under the Service Convention in maritime matters include: *Beluga Shipping GmbH & Co v. Suzlon Energy Ltd* (No. 5), 4 March 2011; *Thompson v. RCL Cruises*, 6 December 2013; and *Dollar Sweets Company Pty Ltd v. Peaceline (Shipping) GmbH*, 14 March 2014.

<sup>22</sup> Hartley and Dogauchi, “Explanatory Report” (see footnote 14), para. 59. See also Garcimartín and Saumier, “Judgments Convention: Revised Draft Explanatory Report” (footnote 1), para. 49.

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be exercised when importing the meaning of a term from one convention to another,<sup>23</sup> there is nothing in the object and purpose of the Service Convention to suggest that the term should be given a narrower meaning in that Convention.

**(d) Preliminary conclusion**

21. It follows from the foregoing analysis that the Service Convention would ordinarily apply to the service abroad of a notice of judicial sale under the revised Beijing Draft.

**2. Compatibility with the Service Convention**

22. Where it applies, the Service Convention provides one main channel of transmission (through a central authority designated by the State in which the document is to be served (article 5)) and several alternative channels of transmission (through diplomatic and consular agents (articles 8 and 9), the postal channel (article 10(a)), and through judicial officers (articles 10(b) and 10(c)). Conversely, the revised Beijing Draft prescribes the following means of transmitting the notice of judicial sale (article 3(3)):

- (a) registered mail or courier;
- (b) any electronic or other appropriate means; and
- (c) any means agreed to by the person to whom the notice is to be given.

23. The first means of transmission is compatible with the Service Convention, so far as it falls within the scope of the postal channel provided in article 10(a). In this regard, the practice of the Service Convention suggests that private couriers are equivalent to postal services and therefore within scope.<sup>24</sup> Importantly, however, the Service Convention allows a Contracting State to object to the use of the postal channel (as well as the use of judicial officers), and approximately 40 per cent of the Contracting States have done so for the time being. For giving notices in these States, the first means of transmission would not be compatible with the Service Convention.

24. For the second means of transmission, a preliminary question arises as to whether giving a notice by electronic means involves the transmission of the notice abroad, and therefore whether the Service Convention even applies (see para. 5 above). Drafted in the 1960s, it is understandable that the drafters of the Service Convention did not contemplate service by electronic means, let alone attempt to ascribe a physical location to such service. If a “functional equivalence” approach is taken to the interpretation of the Service Convention, it is arguable that giving a notice by electronic means to a person located outside the State involves transmission of the notice abroad, and therefore that the Convention applies. A similar approach is adopted in article 15(4) of the UNCITRAL Model Law on Electronic Commerce, which, although not applicable on its terms to data messages dispatched in the context of litigation, provides that a data message is deemed to be received at the place where the addressee has its place of business. But even if giving the notice by email involves transmission abroad, it is not clear that such transmission falls within any of the channels provided in the Service Convention. While the Permanent Bureau and some commentators posit that, on a “functional equivalence” approach, the postal channel in article 10(a) may include email or other forms of information technology,<sup>25</sup> other

<sup>23</sup> A special commission convoked by the HCCH in 2003 to review the practical operation of the Service Convention cautioned that “the meaning of ‘civil and commercial’ appearing in other instruments should not be relied on for interpretation without considering the object and purpose of such other instruments”: *Conclusions and Recommendations adopted by the Special Commission on the Practical Operation of the Hague Apostille, Evidence and Service Conventions (28 October to 4 November 2003)*, para. 72, available at <https://assets.hcch.net/docs/0edbc4f7-675b-4b7b-8e1c-2c1998655a3e.pdf>.

<sup>24</sup> *Practical Handbook on the Operation of the Service Convention* (see footnote 17), para. 255.

<sup>25</sup> *Ibid.*, Annex 8, para. 35; David P. Stewart and Anna Conley, “E-mail Service on Foreign Defendants: Time for an International Approach?”, *Georgetown Journal of International Law*, vol. 38, No. 4 (2007), p. 799.

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commentators question this result,<sup>26</sup> and States are divided on the issue.<sup>27</sup> Overall, it is questionable that the second means of transmission is compatible with the Service Convention, even if it is limited to service by electronic means, and even in those States that have not objected to the use of the postal channel.

25. For the third means of transmission, the Service Convention does not allow for the party being served to agree to a particular means of service other than the channels of transmission in the Service Convention. Accordingly, unless the agreed means are within one of the channels of transmission provided in the Service Convention, this means of transmission is not compatible with the Service Convention.

26. From the foregoing analysis, it is clear that the means of transmission prescribed in the revised Beijing Draft are not entirely compatible with the channels of transmission provided in the Service Convention.

### 3. Options for the Working Group

27. In light of this conclusion, the Working Group may wish to consider how the future instrument can operate in a manner that is compatible with the Service Convention.

28. One option is for the future instrument to defer to the channels of transmission provided in the Service Convention (where it applies) by not prescribing the means for transmitting the notice of judicial sale. As such, it will be up to the law of the State of judicial sale to determine which channel of transmission to use. It is questionable whether this option will achieve the efficiency desired by the revised Beijing Draft, as explained at the thirty-fifth session (A/CN.9/973, para. 67). While the HCCH has reported that 75 per cent of service requests received under the main channel are executed in less than two months,<sup>28</sup> this is longer than what can be expected under the means prescribed in the revised Beijing Draft. Moreover, if the notices must be given at least 30 days prior to the judicial sale, differences in execution times will likely make it difficult at that time to schedule the judicial sale, which in turn will invoke the option, in article 3(2)(b) of the revised Beijing Draft, for the place and time of the sale to be notified in as little as seven days prior to the judicial sale. This may rouse the concern, raised at the thirty-fifth session, that this option might have the effect of superseding the default 30-day notice requirement (A/CN.9/973, para. 75).

29. A second option is for the future instrument, assuming it takes the form of a treaty, to rely on article 25 of the Service Convention. This provides that the Service Convention “shall not derogate from Conventions containing provisions on the matters governed by this Convention to which the Contracting States are, or shall become, Parties”. This “give way” clause ensures that, even if the future instrument prescribes means for transmitting the judicial notice that are not compatible with the channels of transmission provided in the Service Convention, the former prevails.

30. A third option, which builds on the second option, is for the future instrument not only to prescribe the means for transmitting the judicial notice, but also to allow the notice to be given using the channels of transmission provided in the Service Convention.

<sup>26</sup> See, e.g., Richard Hawkins, “Dysfunctional Equivalence: The New Approach to Defining ‘Postal Channels’ under the Hague Service Convention” *UCLA Law Review*, vol. 55 (2007), p. 29.

<sup>27</sup> *Practical Handbook on the Operation of the Service Convention* (see footnote 17), Annex 8, para. 35.

<sup>28</sup> *Ibid.*, para. 200. Presumably some of the additional channels – namely the postal channels and use of judicial officers – allow for expedited services. However, as noted above (para. 23), these channels are not available in the approximately 40 per cent of Contracting States which have objected to their use.

### **III. Conclusion**

31. In its present form, the draft instrument on judicial sales does not enter the scope of application of the Judgments Convention or the Choice of Court Convention.

32. Conversely, the Service Convention is applicable to giving the notice of judicial sale. The provisions of the revised Beijing Draft prescribing the means for transmitting the notice of judicial sale for service abroad are not entirely compatible with the channels of transmission provided in the Service Convention. There are a number of options available to the Working Group to ensure that a future instrument operates in a manner that is compatible with the Service Convention.

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**VII. UN GENERAL ASSEMBLY DOCUMENT  
A/CN.9/1007  
REPORT OF WORKING GROUP VI (JUDICIAL  
SALE OF SHIPS) ON THE WORK OF ITS  
THIRTY-SIXTH SESSION (VIENNA, 18-22  
NOVEMBER 2019)**

United Nations

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Fifty-third session  
New York, 6–17 July 2020

**Report of Working Group VI (Judicial Sale of Ships) on the  
work of its thirty-sixth session  
(Vienna, 18–22 November 2019)**

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### I. Introduction

1. At its thirty-sixth session, the Working Group continued its work preparing an international instrument on the judicial sale of ships in accordance with a decision taken by the Commission at its fifty-second session (Vienna, 8–19 July 2019).<sup>1</sup> This was the second session at which the topic had been considered. At its thirty-fifth session (New York, 13–17 May 2019), the Working Group considered the topic on the basis of a draft convention prepared by the Comité Maritime International (known as the “Beijing Draft”).

2. Background information on the project may be found in document A/CN.9/WG.VI/ WP.83, paragraphs 5–7.

### II. Organization of the session

3. The thirty-sixth session of the Working Group was held in Vienna from 18 to 22 November 2019. The session was attended by representatives of the following States members of the Working Group: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Burundi, Canada, Chile, China, Croatia, Czechia, Dominican Republic, Ecuador, Finland, France, Germany, Hungary, India, Indonesia, Iran (Islamic Republic of), Italy, Japan, Malaysia, Mexico, Nigeria, Peru, Poland, Republic of Korea, Russian Federation, Singapore, Spain, Sri Lanka, Switzerland, Thailand, Ukraine, United States of America, Venezuela (Bolivarian Republic of) and Viet Nam.

4. The session was also attended by observers from the following States: Bolivia (Plurinational State of), Bulgaria, Burkina Faso, Cyprus, El Salvador, Greece, Kuwait, Malta, Morocco, Panama, Saudi Arabia, Slovenia and Uruguay.

5. The session was also attended by observers from the European Union (EU).

6. The session was also attended by observers from the following international organizations:

(a) *United Nations System*: International Maritime Organization (IMO);

(b) *Intergovernmental organizations*: Gulf Cooperation Council (GCC), World Maritime University (WMU);

(c) *Non-governmental organizations*: Baltic and International Maritime Council (BIMCO), China Council for the Promotion of International Trade (CCPIT), Comité Maritime International (CMI), International and Comparative Law Research Center (ICLRC), International Association of Judges (IAJ), International Bar Association (IBA), International Chamber of Shipping (ICS), International Law Institute (ILI), International Transport Workers’ Federation (ITF), Moot Alumni Association (MAA) and the Law Association for Asia and the Pacific (LAWASIA).

7. The Working Group elected the following officers:

*Chairperson*: Ms. Beate CZERWENKA (Germany)

*Rapporteur*: Mr. Vikum DE ABREW (Sri Lanka)

8. The Working Group had before it the following documents: (a) annotated provisional agenda (A/CN.9/WG.VI/ WP.83); (b) an annotated first revision of the Beijing Draft (A/CN.9/WG.VI/ WP.84); and (c) a note prepared by the Secretariat on the interaction between a future instrument and selected conventions adopted by the Hague Conference on Private International Law (A/CN.9/WG.VI/ WP.85).

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<sup>1</sup> *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17), para. 192(f).*

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9. The Working Group adopted the following agenda:
  1. Opening of the session.
  2. Election of officers.
  3. Adoption of the agenda.
  4. Future instrument on the judicial sale of ships.
  5. Adoption of the report.

### III. Deliberations and decisions

10. The deliberations and decisions of the Working Group are found in chapter IV of this report.

### IV. Future instrument on the judicial sale of ships

#### A. Article 1. Definitions

11. The Working Group agreed to commence its consideration of the first revision of the Beijing Draft by reading through the definitions contained in article 1. It was recalled that some of the definitions had not been considered by the Working Group at its thirty-fifth session and remained substantively unchanged from the Beijing Draft.

##### 1. "Charge"

12. It was noted that the Working Group had agreed at its thirty-fifth session to delete "arrest" from the definition on the grounds that it was a remedy and not a right (A/CN.9/973, para. 79). There was support for including reference to a "right to arrest" in the definition, noting that such a right should be understood in many jurisdictions since both the International Convention Relating to the Arrest of Seagoing Ships (1952) and the International Convention on Arrest of Ships (1999) ("Arrest Convention 1999") referred to the arrest of ships in respect of maritime claims. However, concerns were expressed as to the need to distinguish between a charge and the rights and obligations that may arise from it. In response, it suggested that the definition should focus on rights that gave rise to the right to arrest, as well as to a right of attachment or right of retention.

13. A suggestion was made that the definition should only include rights that were "legitimate". The prevailing view was that the question of legitimacy was outside the scope of the instrument and thus a matter for the State of judicial sale. Another suggestion was to limit the definition to rights of a civil or commercial nature. In response, it was stated that this was a matter of substantive scope that was addressed in article 2(1). It was further observed that article 4(3) expressly excluded from scope – and thus from the conferral of clean title – any personal claim against the shipowner. The Working Group agreed that the term "charge" should be given a broad meaning.

14. It was noted that the term "encumbrance" in the definition might be understood to include a mortgage, and therefore that the term "charge" covered mortgages. To avoid overlap between definitions, it was suggested that the definition of charge expressly exclude "mortgages", for instance by adding the words "other than a mortgage as defined in subparagraph (e)". It was noted that mortgages and charges were treated separately in the draft instrument, mirroring the separate treatment in the International Convention on Maritime Liens and Mortgages (1993) ("MLMC 1993"). The Working Group agreed to proceed on the understanding that the term "charge", as used in the instrument, did not include a mortgage.



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**2. “Clean title”**

15. It was suggested that the text in square brackets (i.e., “except as assumed by any purchaser”) should be omitted, or alternatively that the text should only apply to a mortgage, not a charge. The Working Group agreed to delete the text from the definition, noting that the preservation of mortgages and charges would be addressed later in a discussion of the substantive provisions of the draft, notably article 4 (for further discussion on the definition, see para. 49 below).

**3. “Judicial sale”**

16. A view was expressed that the term “other authority” could produce ambiguity. The Working Group agreed with the suggestion that a judicial sale could only be ordered or carried out by an authority exercising judicial power or a public authority. It was further observed that, in some jurisdictions, a judicial sale was “approved” by the relevant authority. After discussion, the Working Group agreed to add a reference to the approval of judicial sales.

17. Although it was noted that article 2 of the first revision expressly excluded judicial sales in tax, administrative or criminal proceedings, a suggestion was made that this limitation should be contained in the definition of judicial sale.

18. In response to questions as to its meaning, it was explained that a sale by “private treaty” was not a private sale, but rather a sale that was carried out under the supervision and with the approval of a court. It was added that sale by private treaty was recognized in several jurisdictions and that reference to this method of judicial sale should be retained. It was suggested that the definition should be revised to reflect this explanation (for further discussion on the definition in the context of discussions on article 2(1)(a), see paras. 35–39 below).

**4. “Maritime lien”**

19. A question was raised as to the need to refer in the definition to rules of private international law of the State of judicial sale. In response, it was observed that such a prescription was needed for the court of judicial sale to delimit the maritime lienholders entitled to notice under article 3. The reference to rules of private international law also served to clarify that the court should not automatically exclude maritime liens not recognized under the law of the State of judicial sale, but should rather determine the existence of such liens in the light of their own governing law. At the same time, it was noted that, for the purposes of clean title and thus the definition of “charge”, it was neither necessary nor desirable to limit maritime liens to those recognized in accordance with the rules of private international law of the State of judicial sale. It was added that, in that context, the term “maritime lien” should be given a broad meaning. To address the dual use of the term in the draft instrument, it was suggested that the reference to the rules of private international law of the State of judicial sale should be omitted from the definition of “maritime lien” and instead inserted in article 3(1)(c).

20. The Working Group agreed to defer further discussion of the definition of “maritime lien” to its discussion of the substantive provisions in which the term is used.

**5. “Mortgage”**

21. A suggestion was made that the word “effected” should be replaced or supplemented with “registered” or “recorded” as it was felt that the current definition lacked the important element of registration. After discussion, the Working Group agreed to include the words “and registered or recorded” after the words “effected on a ship” and to defer further discussion of the definition to its discussion of article 3 for similar reasons to deferring the discussion of the definition of “maritime lien”.

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**6. “Owner”**

22. It was noted that the definition might exclude the owner of smaller vessels such as fishing trawlers that were not registered in a registry of ships. At the same time, it was acknowledged that those vessels were entered in some form of registry, and the suggestion was thus made to include the words “or an equivalent registry” after the words “registry of ships”. A suggestion was also made to specify that the “owner” referred only to the person who was the owner of the ship prior to the time of completion of the judicial sale. It was noted that, if this suggestion was accepted, the words “immediately prior to the judicial sale” in article 5(2)(e) and article 9(4)(a) would become redundant.

**7. “Person”**

23. There was some support to delete the definition, as most legal systems considered “person” to refer to both natural and legal persons. It was also noted that UNCITRAL texts did not ordinarily define the term “person” and that there did not seem to be a compelling reason for departing from that practice in the present instrument. An alternative view was expressed that a definition would provide clarity in legal systems and languages where the term “person” was understood to refer only to natural persons.

24. It was noted that the definition included States, and that removing the definition should not have the consequence of excluding States from the scope of the term “person”. In response, it was noted that the reference to States in article 2(1)(b) militated against such a conclusion. After discussion, the Working Group agreed to retain the definition as drafted.

**8. “Purchaser”**

25. A query was raised as to the reason why the definition referred to a purchaser “who is intended to acquire ownership” in the ship. It was explained that those words might accommodate those legal systems where ownership in the ship did not pass at the judicial sale itself, but rather upon registration of the purchaser as the new owner. While it was felt that the instrument should be sensitive to differences between legal systems, the view was expressed that the Working Group should devise a definition of purchaser that did not refer to ownership, noting that the instrument was not concerned with regulating transfer of ownership, and that the reference to ownership did not assist in interpreting the term “purchaser” as it was used in the draft. Instead, the instrument should define purchaser by reference to the judicial sale.

26. One suggestion put forward was to define the purchaser as the person who “acquired” the ship in a judicial sale. While there was some support for this suggestion, it was observed that, for some languages and perhaps some legal systems, the concept of “acquisition” might imply a transfer of ownership, in which case the concept might need further clarification. Another suggestion was to define the purchaser as the successful buyer, although some doubts were expressed as to the utility of this suggestion. Yet another suggestion was to define the purchaser as the person who signed the contract of sale or to whom the ship was “adjudicated” in the judicial sale. After discussion, a further view was expressed that there was no real need to define the term “purchaser” as used in the draft, and therefore that the definition should be deleted.

27. The Working Group agreed to put the definition in square brackets to indicate its possible deletion, and asked that the Secretariat propose text for a definition for future consideration that did not refer to ownership. It was suggested that similar amendments could be reflected in the definition of “subsequent purchaser”, and in such a way as to cover not only the first subsequent purchaser, but also later purchasers.

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**9. “Ship”**

28. It was observed that the law in one State might recognize a broader range of objects as ships than the law in another State. The example was given of oil rigs and pontoons. A suggestion was made that the object only be defined as a “ship” if it was so characterized in both the State of judicial sale and the State of registration. The importance of the determination of the State of registration was emphasized, although it was suggested that the concept did not need to be reflected in the definition but rather in the substantive provisions. Alternatively, it was suggested that only the characterization of the State of judicial sale mattered, and that this was the effect of the text in square brackets (that the ship was “capable of being subject of a judicial sale under the law of the State of judicial sale”). Support was expressed for retaining this text. After discussion, the Working Group agreed to remove the square brackets from the definition. At the same time, it was suggested that a revised draft could clarify the meaning of the text.

29. It was suggested that the definition should be amended so that the instrument would only apply to the judicial sale of ships used for commercial navigation. In response, it was observed that this would exclude pleasure craft, which the Working Group might wish to include within the scope of the instrument. The view was also expressed that the current definition covered ships that were under construction. After discussion, the Working Group agreed not to limit the definition to ships used for commercial navigation.

30. A query was raised as to whether the instrument applied only to the judicial sale of seagoing vessels, or whether it also applied to vessels used for inland navigation. While some assumed that the instrument would not apply to the latter, others expressed support for including the latter within scope.

31. It was noted that, if it did apply to vessels used for inland navigation, the instrument might overlap with the Convention on the Registration of Inland Navigation Vessels (1965), in particular its Protocol No. 2 Concerning Attachment and Forced Sale of Inland Navigation Vessels. The Working Group asked the Secretariat to analyse the relationship between that convention and a future instrument and to present its findings for consideration by the Working Group at its thirty-seventh session.

32. It was noted that several existing treaties, including treaties concluded under the auspices of the International Maritime Organization, included definitions of “ship”. A note of caution was sounded about applying those definitions without considering the object and purpose of those treaties.

**10. “State of judicial sale”**

33. While a view was expressed that a definition might not be necessary, the Working Group agreed to retain the definition as drafted.

**B. Article 2. Scope of application****1. General**

34. As a general comment, it was suggested that article 2(1) should revert to article 2 of the original Beijing Draft, which explained that the instrument not only governed judicial sales, but also their effects abroad, including deregistration. In response, it was felt that, as a provision on the substantive scope of the instrument, article 2(1) should aim to identify instances in which the instrument would apply or not, and that the current draft served this function. It was added that such a provision should not function as a statement of object and purpose, which might find its place in the preamble. It was therefore agreed that article 2 should retain its current format.

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**2. Paragraph 1(a)**

35. It was recalled that the definition of “judicial sale” in the original Beijing Draft contained an additional element to the effect that the proceeds of sale should be made available to the creditors. It was further recalled that, at its thirty-fifth session, the Working Group had agreed to consider that additional element in the context of a provision on substantive scope (A/CN.9/973, para. 89). Paragraph 1(a) was the outcome of those deliberations.

36. Broad support was expressed for including a provision along the lines of paragraph 1(a). It was emphasized that the provision should be carefully drafted to avoid uncertainty. It was suggested that the paragraph should refer to “purposes” rather than “proceedings”. In response, it was suggested that a focus on purpose could lead to greater uncertainty because a judicial sale – or the proceedings giving rise to the judicial sale – might serve multiple purposes.

37. It was noted that, as there were some doubts as to the contours of the expressions “tax”, “administrative” and “criminal”, paragraph 1(a) did not sufficiently address the deliberations at the thirty-fifth session. It was observed that there was still merit in expressly limiting the scope of the instrument to judicial sales for which the proceeds were made available to the creditors. While some queried the need for this additional limitation, the Working Group agreed to reincorporate the element into the definition of “judicial sale”. As such, it was foreshadowed that further consideration might need to be given to the notion of “creditor”. It was added that, in some legal systems, State authorities could be regarded as creditors.

38. With regards to the interaction between paragraph 1(a) and the revised definition of “judicial sale”, it was suggested that the Working Group should recognize a distinction between tax proceedings and proceedings for which the tax authorities were creditors. In this regard, it was noted that the identity of a creditor as a tax authority should not be determinative of the character of the proceedings.

39. The Working Group agreed to retain paragraph 1(a), subject to including additional drafting options to address the concerns expressed during the discussion.

**3. Paragraph 1(b)**

40. It was suggested that paragraph 1(b) should be revised to make reference to warships. In this regard, it was suggested to align the wording more closely with article 16(2) of the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004) (“Jurisdictional Immunities Convention”). Reference was also made to articles 32 and 95 of United Nations Convention on the Law of the Sea (1982) (“UNCLOS”). In response, it was noted that the reference to ships used “for government non-commercial purposes” probably covered warships already.

41. Alternatively, it was suggested that paragraph 1(b) was unnecessary and could be omitted entirely. In this regard, it was observed that, because ships used only for government non-commercial purposes were immune from arrest (as reflected in article 8(2) of the Arrest Convention 1999), and because a judicial sale ordinarily followed arrest, there would be no occasion for such a ship to be the subject of a judicial sale.

42. Finally, a view was expressed that the instrument should exclude from scope all ships owned or operated by a State, and therefore that article 2(1)(b) should not include the qualification that the ship was used for government non-commercial purposes. After discussion, the Working Group agreed to retain the qualification, and to include a reference to warships in line with the Jurisdictional Immunities Convention and UNCLOS.



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**C. Article 2(2) and Article 4. Effects of judicial sale in the State of judicial sale**

43. There was wide agreement to limit the scope of the instrument to judicial sales that (already) provided clean title under the domestic law of the State of judicial sale (i.e., “option A” described in para. 5 of document A/CN.9/WG.VI/WP.84). It was observed that, as a consequence, judicial sales for which clean title was *not* conferred on the purchaser under the law of the State of judicial sale would fall *outside* the scope of the instrument. In this regard, it was noted that, in some jurisdictions, the rights of bareboat charterers survived a judicial sale; but even in these jurisdictions, most judicial sales would result in the conferral of clean title. As such, it was emphasized that a provision limiting the scope of the instrument should allow an assessment of whether a judicial sale fell within scope to be carried out on a case-by-case basis.

44. It was observed that, if article 2(2) were retained, significant changes would need to be made to the draft to reflect the position that the instrument did not regulate the conduct or effects of the judicial sale in the State of judicial sale.

45. In this regard, it was observed that it was not necessary for the instrument to accommodate so-called “qualified” judicial sales (as described in paras. 6–7 of document A/CN.9/WG.VI/WP.84). Accordingly, the Working Group agreed to omit article 4(2). It was noted that consequential amendments would need to be made to other provisions in the draft that sought to accommodate such sales. It was further observed that it was not necessary for the instrument to accommodate the preservation of mortgages and charges “assumed by the purchaser”. Accordingly, the Working Group agreed to omit the text in square brackets (i.e., “except those assumed by the purchaser”) in article 2(2), as well as all other similar instances throughout the draft (in addition to the omission already proposed in the definition of “clean title”).

46. The Working Group further agreed that article 4(1) should not be retained in its present form insofar as it established a substantive obligation with regard to the domestic effect of the judicial sale. At the same time, it was observed that subparagraphs (a) and (b) of article 4(1) contained important safeguards that should be featured in the recognition regime under the instrument. Accordingly, a proposal was made to transform these safeguards into conditions for giving effect to the judicial sale abroad, which would then be incorporated into article 6. The Working Group agreed for article 6 to be revised along the following lines:

A judicial sale which, under the law of the State of judicial sale, confers clean title to the ship on the purchaser shall have the same effect in all States Parties, provided that [*conditions in subparagraphs (a) and (b) of article 4(1) are satisfied*].

47. The point was made that this revision would render article 2(2) redundant. It was thus proposed to omit article 2(2). Alternatively, it was suggested that, for the two provisions to co-exist, article 6 could refer to a judicial sale “to which this [instrument] applies”. After discussion, the Working Group agreed to retain article 2(2) as amended (see para. 45 above) and to keep the text in square brackets for further consideration.

48. It was suggested that there might be merit in including, as an alternative to current article 2(2), a provision that declared – in positive terms – that the object and purpose of the instrument was to provide for the effects, in all States Parties, of judicial sales of ships that conferred clean title on the purchaser. It was added that such a provision would ordinarily feature at the start of the instrument. There was general agreement for inserting such a provision.

49. A number of other amendments were suggested to the text to reflect its limited scope of application. First, it was suggested that article 5 should be revised to ensure that the certificate of judicial sale contained a clear statement that the judicial sale conferred clean title (for further discussion on article 5, see paras. 90–95 below).

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Second, it was suggested that the definition of clean title might need to be revisited to ensure that it accurately covered all effects contemplated in the original Beijing Draft.

50. A question was raised about the condition in article 4(1)(a) that the ship be “physically within the jurisdiction of the State of judicial sale”. It was noted that, under article 92 of UNCLOS, exclusive jurisdiction was conferred on the flag State when the ship was on the high seas, and that, therefore, the word “physically” would not restrict the application of the flag State jurisdiction. In response, it was observed that, as a matter of historical practice in maritime matters, the physical presence of the ship in the territory of the State was required in order to arrest and sell the ship. A strong preference was voiced for not expanding jurisdiction beyond physical presence in the territory of the State in the context of the present instrument.

51. It was noted that, by incorporating article 4(1) into article 6 and omitting article 4(2), only article 4(3) remained. It was observed that article 4(3) declared that the instrument did not affect any *in personam* claim against the former shipowner that might exist under domestic law, and did not create any *in personam* claim if such a claim did not exist or had been extinguished under domestic law.

52. There was some support for the view that, because the instrument no longer regulated the effects of the judicial sale in the State of judicial sale (see para. 43 above), article 4(3) no longer had any substantive effect. The prevailing view, however, was that it could be useful to retain the provision. In particular, it was noted that the provision would provide comfort to the financial industry by confirming that the conferral of clean title under the instrument would not affect enforcement proceedings against a debtor. It was suggested that the provision was more closely related to the scope of the draft instrument and could be moved to article 2, but there was also support for retaining it closer to the current article 4.

53. It was generally felt that the words “to the extent that the claim is not satisfied by the proceeds of the judicial sale” were no longer necessary and could cause confusion. Moreover, it was felt that the provision could be cast in more neutral terms and confirm that the instrument also did not affect the distribution of proceeds or the priority of creditors.

54. After discussion, the Working Group agreed that article 4(3) should be revised along the following lines:

“Nothing in this convention shall affect the procedure for or priority in the distribution of proceeds of a judicial sale or any personal claim against the person who owned the ship prior to the judicial sale.”

## **D. Article 3. Notice of judicial sale**

### **1. Function of the notice requirements**

55. The Working Group acknowledged that, in limiting the scope of a future instrument so as not to regulate the conduct or effect of the judicial sale in the State of judicial sale, a question arose as to the function that the notice requirements served. While some support was expressed for omitting article 3 entirely, on the grounds that giving notice concerned the conduct of judicial sales, the prevailing view was that the instrument should still establish some minimum standards. It was reiterated that the notice requirements should strike a balance between fairness and efficiency (see A/CN.9/973, para. 67). In this regard, it was observed that receiving notice of a judicial sale was important not only for ship owners and creditors, but also crew members. At the same time, it was queried what interest those parties would have in the judicial sale itself, as opposed to the distribution of the proceeds of sale.

56. It was recalled that, if the condition in article 4(1)(b) was incorporated into article 6 as earlier agreed (see para. 46 above), the notice requirements would function as a condition for giving effect to the judicial sale abroad (i.e., giving the judicial sale

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“international effect”). This was because article 4(1)(b) required, among other things, that the judicial sale be conducted “in accordance with ... the notice requirements in article 3”. Some hesitation was expressed with that understanding, as it would allow or require the authorities of the foreign State to scrutinize the range of activities contemplated in article 3, most of which would have taken place outside that State. In particular, it was noted that this would impose an unrealistic burden on foreign registrars, which could in turn undermine the effectiveness of the recognition regime under the instrument.

57. Several alternative options were put forward for discussion. One suggestion was that the notice requirements could function as a condition for issuing the certificate of judicial sale. As such, failure to comply with the notice requirements would not invalidate the sale in the State of judicial sale, but would deny the judicial sale the benefit of the recognition regime under the instrument.

58. Another suggestion was that the notice requirements could function as a ground for refusal to give “international effect” to a judicial sale, and therefore be incorporated into or otherwise linked to article 10. It was noted that, as such, a failure to comply with the notice requirements would not invalidate the judicial sale in the State of judicial sale. A concern was expressed that this suggestion might allow the “international effect” of a judicial sale to be denied on a technicality arising from a failure to comply strictly with the notice requirements. In response, it was suggested that this concern might be assuaged somewhat by “streamlining” the content of the notice requirements. In this regard, it was widely felt that one of the most important elements of the notice requirements was the identification of persons to whom notice was to be given, as addressed in article 3(1).

59. A third suggestion was that the notice requirements could function as a ground for avoiding the judicial sale in the State of judicial sale, and therefore should be incorporated or otherwise linked to article 9. While some support was expressed for this suggestion, it was noted that there could be difficulties in harmonizing these grounds.

60. Yet another suggestion was that the notice requirements could function as a stand-alone provision, in the sense that the instrument would not prescribe any legal effect for non-compliance. It was observed that it would be up to the domestic law of each State to determine any such effect. In this regard, it was added that, to the extent that non-compliance gave rise to a claim to avoid the judicial sale, the threshold requirement in article 9(1)(c) to bring the claim would still apply.

61. The Working Group decided to consider these options further in its consideration of article 9.

## 2. Content of the notice requirements

62. The Working Group heard several specific suggestions to amend the content of the notice requirements.

63. With regards to article 3(1), it was suggested to merge subparagraphs (a) and (e), although it was explained that the registry of ships in which the ship was granted bareboat charter registration would be different from the registry of ships in which ownership and mortgages were registered. It was also suggested to add bareboat charterers because they would not be holders of a registered charge in some jurisdictions. The Working Group heard that, in several jurisdictions, the registrar of the registry of ships was not given notice.

64. With regards to article 3(2), it was noted that many States had no notice period and that imposing a 30-day minimum notice period would affect the way that judicial sales were conducted in those States. It was observed that the notice period was taken from the MLMC 1993 and the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages (1967) before it, and that technological advancements since then, notably the use of electronic communications, rendered such a period excessive. It was suggested that the notice

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requirements should allow for some flexibility in the notice period, particularly in cases where the ship was deteriorating or facing a natural disaster. The view was expressed that, in some jurisdictions, it would be difficult for the executive or legislative branch of government to impose requirements on the judicial branch of government as to how it conducted its proceedings.

65. With regards to article 3(3), a question was raised as to the meaning of the words “in such a way not to frustrate or significantly delay the proceedings concerning the judicial sale”. It was suggested that, given the timeframes involved, it might not be appropriate to use the channels of transmission provided in the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965). It was also suggested that the means for transmitting the notice should not be exhaustively listed in article 3(3), such that means other than those listed could be used.

66. Many were of the view that the matters covered in articles 3(2) and (3) should be left to domestic law. As a compromise, it was suggested that these matters could be addressed by way of guidance notes set out in a model notice form annexed to the instrument. It was also suggested that, if it was not possible to give notice to all the persons listed in article 3(1), the judicial sale could still comply with the notice requirements if the notice was published in accordance with article 3(4).

### 3. Centralized repository

67. It was recalled that the Working Group had agreed at its thirty-fifth session that a centralized online repository could be used to publish notices of judicial sales (A/CN.9/973, para. 73), and that drafting suggestions for this mechanism were set out in articles 3(4)(a) and 12 of the first revision. It was suggested that publishing the notice with the repository could obviate the need for including notice requirements in the instrument. While some support was given to this suggestion, reservations were expressed as to the potential cost of maintaining such a mechanism (see A/CN.9/973, para. 46). A question was also raised as to which organizations were well-suited to perform the repository function (see A/CN.9/WG.VI/WP.84, para. 8(k)). It was suggested that the Secretariat could look further into options for possible repositories, including related financial implications.

## E. Article 9. Challenge to judicial sale in the State of judicial sale

### 1. Meaning and implications of avoiding a judicial sale

68. It was noted that avoiding a judicial sale would render the sale null and void, and thus restore the parties to their position prior to the sale. It was noted that, in some jurisdictions, the remedy of avoiding a judicial sale was not available. Other remedies, such as in tort for fraud, would still be available against a wrongdoer in respect of the sale (see A/CN.9/973, para. 55). Yet other remedies might be available to delay or call off the sale.

69. It was widely acknowledged that it would be difficult, if not impossible, to restore the parties to their position before the sale once the sale had been concluded, particularly after the ship had been reregistered or the proceeds of sale had been distributed.

### 2. Object and purpose of article 9

70. It was noted that article 9 served not only to confer exclusive jurisdiction on the courts of the State of judicial sale, but also to limit the standing of potential claimants and the circumstances in which they could bring their claim. There was widespread support for the view that article 9 should function only as an exclusive jurisdiction provision, and that the instrument should leave all other matters to the domestic law of the State of judicial sale. It was added that this approach was consistent with the decision taken earlier by the Working Group for the instrument not to regulate the



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conduct or effects of the judicial sale in the State of judicial sale (see paras. 43–44 above). It followed that the requirements for conducting the judicial sale, such as notice requirements, as well as remedies for non-compliance and standing to obtain those remedies, would be governed by the law of the State of judicial sale.

71. A different view was that there were advantages in the Working Group harmonizing some of these other matters, and thus that article 9 could serve as a “multi-purpose” provision. In this regard, it was observed that rules on challenging the judicial sale could enhance legal certainty and provide additional safeguards for more vulnerable parties, such as crew members. In response, it was cautioned that it might be difficult for the Working Group to reach consensus on these matters.

### 3. Content of article 9

72. The Working Group heard several specific suggestions to amend the content of article 9. It was suggested that the heading to article 9 could be changed to better reflect its focus on avoidance.

73. With regards to paragraph 1(a), it was suggested that the scope of exclusive jurisdiction should be expanded to cover other actions relating to the judicial sale, including challenges to the validity of the certificate of judicial sale. It was also noted that, in its current form, paragraph 1(a) could be read as referring to avoidance of the effects of the judicial sale, rather than avoidance of the sale itself, and a question was raised as to the meaning of avoiding those effects.

74. With regards to paragraph 1(c), some questions were raised as to the meaning of the term “irreversible material detriment”, which did not appear in other international instruments. It was suggested that this standard could be clarified. It was also suggested that two additional preconditions should be imposed on the claimant: (1) that there was no other remedy available; and (2) that the claimant did not contribute to the detriment (e.g., by electing not to appear in the proceedings resulting in the judicial sale).

75. It was suggested that paragraph 3 should be deleted entirely on the basis that the instrument was not concerned with *in personam* claims, which might involve some form of attachment or other remedy being exercised against the ship.

76. With regards to paragraph 4, it was suggested that the list of persons with standing to challenge the judicial sale should not be exhaustive. It was also suggested that the draft could clarify that only the holder of a “registered” charge had standing to challenge the judicial sale.

77. Finally, it was suggested that, in order to protect a good faith purchaser, the instrument should prescribe a time limit for challenging the judicial sale, although some doubts were raised as to the merits of doing so.

### 4. Conclusion

78. After discussion, the Working Group agreed that article 9 should serve only as an exclusive jurisdiction clause and should therefore only retain paragraphs 1(a) and 2. It was further agreed that the scope of exclusive jurisdiction should cover challenges to the validity of the certificate of judicial sale.

## F. Article 10. Circumstances in which judicial sale has no “international effect”

79. Broad support was expressed for retaining a provision in the instrument that provided grounds for refusing to give “international effect” to a judicial sale. It was clarified that article 10 was addressed to States other than the State of judicial sale, and that the *res judicata* effect of a decision that a ground for refusal applied would not, by virtue of the instrument, extend to any other State (including the State of judicial sale) (see also A/CN.9/973, para. 60).

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80. It was noted that the State in which a challenge to the “international effect” of the judicial sale could be brought was left open. While there was support for this approach, there was also support for giving special consideration to States in which a challenge was most likely, namely the State of registration, when formulating the grounds for refusal.

81. It was noted that the grounds for refusal were addressed to courts. Some concern was expressed that the local court at the port of registry might not have the competence to assess the public policy ground in paragraph 1(b). As for the grounds in paragraphs 1(a) and 1(c), it was noted that it might be difficult to apply those grounds for want of evidence, and that the State of judicial sale would be better placed to determine (respectively) whether the ship was physically located in that State, or whether fraud had been committed by the purchaser. It was added that the current chapeau of article 10(1) appeared to allow the court seized to apply domestic rules allowing it to decline jurisdiction in favour of a more appropriate court.

82. It was emphasized that the grounds for refusal needed to balance the rights of creditors against the rights of a good faith purchaser. In this regard, there was some support for introducing a time limit for challenging the “international effect” of the judicial sale. Alternatively, it was suggested that a challenge should be barred once a ship had been deregistered (or reregistered) as at that moment any registered mortgages and registered charges would have been deleted. In response, it was felt that such a time limit might not be necessary in practice, as there was little occasion to challenge the “international effect” of the judicial sale once the ship had been deregistered (or reregistered).

83. While there was general support for including in the instrument a rule that the ship should be physically within the State of judicial sale, it was questioned whether that rule should serve as a ground for refusal (article 10(1)(a)), or whether it was better placed in article 6 as a condition for giving the judicial sale “international effect” in the first place. In response, there was support for retaining it as a ground for refusal.

84. There was general agreement to retain a ground for refusal based on public policy (article 10(1)(b)) (cf. A/CN.9/973, para. 62). It was noted that public policy was a vague notion that varied from jurisdiction to jurisdiction. Concern was expressed that the ground could expose the judicial sale to unwarranted challenge and be used to harass good faith purchasers. In response, it was noted that the words “manifestly contrary” set a high threshold. It was also noted that the public policy ground was a common feature in conventions establishing recognition regimes, and that including the ground would assist in gaining acceptance of the instrument.

85. It was recalled that non-compliance with the notice requirements (currently in article 3) could serve as a ground for refusal (see para. 58 above). Concern was again expressed at this suggestion. It was added that, if failure to notify should serve as a ground for refusal, the ground should be formulated in terms similar to those found in article X(1)(b) of the International Convention on Civil Liability for Oil Pollution Damage (1969) (i.e., failure to give “reasonable notice and a fair opportunity to present [a] case”). It was also added that a serious failure to notify could be tantamount to a denial of due process and trigger the public policy ground, and that the explanatory notes to the instrument could make this clear. After discussion, the prevailing view was that a failure to notify should not serve as a stand-alone ground for refusal.

86. It was noted that fraud could also trigger the public policy ground and that, therefore, a separate ground for refusal based on fraud (article 10(1)(c)) could be omitted. In response, it was suggested that there was merit in retaining fraud as a separate ground as it was less vague than public policy. Attention was drawn to the fact that, in the first revision, it was proposed that the ground should be limited to fraud “committed by the purchaser”. There was general support for the view that this text should be retained.

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87. It was noted that only the persons listed in article 9(4) had standing to invoke the grounds for refusal. As the Working Group had decided to omit article 9(4) (see para. 78 above), it was suggested that a list should be incorporated into article 10. There was also a suggestion to include “and for as long as” after the word “if” in article 10(3).

88. There was some support for the view that the grounds for refusal should be minimized, and that public policy should serve as the sole ground for refusal. It was observed that a greater number of grounds for refusal increased the risk of the ship being subsequently arrested in a State that refused to recognize the judicial sale, which in turn could lead to a new judicial sale and multiple certificates of judicial sale for the same ship.

89. Bearing in mind the suggestion for the Working Group to give special consideration to States in which a challenge was most likely, a proposal was put forward for the grounds for refusal to be linked and adapted to the obligations imposed on States other than the State of judicial sale, namely the obligation to deregister (article 7) and the obligation not to arrest (article 8). Specifically, it was proposed that only the public policy ground should apply to the obligation not to arrest, while the full “suite” of grounds – whatever they may be – should apply to the obligation to deregister. Broad support was given to exploring this proposal further, and the Secretariat was invited to propose drafting options to give it effect. It was noted that the Secretariat should formulate these options bearing in mind that registrars were not in a position to apply the public policy ground. It was also recalled that making findings of fact to support the other grounds for refusal would impose a considerable burden on registrars (cf. para. 56 above). It was added that the procedure for applying the grounds for review would be a matter for domestic law.

#### **G. Article 5. Certificate of judicial sale**

90. It was suggested that the instrument should specify a time period for issuing the certificate of judicial sale (for example, upon completion of sale, upon delivery of the ship, or upon expiry of appeal period). The prevailing view was to leave this matter to the law of the State of judicial sale.

91. The Working Group agreed to remove the first set of square brackets in paragraph 1 and to require the issuing authority to be a public authority (see also para. 16 above).

92. The Working Group agreed to ask the Secretariat to consider the implications of allowing certificates to be issued in electronic form.

93. It was observed that the particulars in paragraph 2 should be clear and kept to a minimum. It was agreed that the “default” identifier in subparagraph (d) should be the IMO number. Where not available, paragraph 2 could refer to other information capable of identifying a ship, such as the shipbuilder, time and place of the shipbuilding, licence number, and recent photographs. While there was support for deleting subparagraph (i), the Working Group agreed to place it in square brackets for future discussion.

94. It was queried whether the centralized repository would deal with certificates in multiples languages or whether it should require the certificates to be filed in a specific language.

95. It was suggested that paragraph 5 should not be subject to article 10, but rather to the invalidation of the certificate pursuant to the avoidance of the judicial sale. It was stated that this issue could be considered further in the context of revision made to the grounds for refusal.

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**H. Article 7. Deregistration of the ship**

96. The Working Group agreed that the title of article 7 should be revised to better reflect its scope, and that bareboat charter registration should be dealt with in a separate paragraph with more appropriate terminology. The Working Group agreed that the order of actions in points (i) and (ii) of paragraph 1(b) should be reversed.

97. It was suggested that paragraph 1 should refer to the registrar “of ships”. A point was made that the registry of ships could be separate from the registry of ship mortgages and charges. The Working Group agreed that article 7 did not supersede domestic law and procedure relating to the registration of ships and that the draft could state that the registrar would act “in accordance with normal procedural requirements”. In this regard, it was noted that domestic law might limit the classes of persons who may be registered as owner.

98. On paragraph 3, it was queried whether the translation needed to be certified. It was suggested that the text could clarify that the issuing authority was not required to prepare the translation.

**I. Form of the instrument**

99. There was wide support within the Working Group for continuing working on the assumption that the draft instrument would eventually take the form of a convention. The Working Group also agreed to make a final decision at a future session.

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# VIII. UN GENERAL ASSEMBLY DOCUMENT A/CN.9/WG.VI/WP.87 DRAFT INSTRUMENT ON THE JUDICIAL SALE OF SHIPS: ANNOTATED SECOND REVISION OF THE BEIJING DRAFT

United Nations

A/CN.9/WG.VI/WP.87

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**United Nations Commission on  
International Trade Law**  
**Working Group VI (Judicial Sale of Ships)**  
**Thirty-seventh session**  
New York, 20–24 April 2020

## **Draft Instrument on the Judicial Sale of Ships: Annotated Second Revision of the Beijing Draft**

### **Note by the Secretariat**

1. At its thirty-fifth session (New York, 13–17 May 2019), the Working Group considered a draft convention prepared by the Comité Maritime International (CMI) on the recognition of foreign judicial sales of ships, known as the “Beijing Draft” (see [A/CN.9/WG.VI/WP.82](#)). The Working Group decided that the Beijing Draft provided a useful basis for its deliberations on the topic of the judicial sale of ships ([A/CN.9/973](#), para. 25).
2. The Working Group proceeded its deliberations at its thirty-sixth session (Vienna, 18–22 November 2019) on the basis of a first revision of the Beijing Draft, which had been prepared by the Secretariat to incorporate the discussions and decisions of the Working Group at its thirty-fifth session (see [A/CN.9/WG.VI/WP.84](#)).
3. The annex to this document contains an annotated second revision of the Beijing Draft (“second revision” or “present draft”), which has been prepared by the Secretariat to incorporate the discussions and decisions of the Working Group at its thirty sixth session. The Working Group may wish to use the second revision as a basis for its deliberations at its thirty seventh session. The Secretariat has also prepared document [A/CN.9/WG.VI/WP.87/Add.1](#) to accompany the second revision (“accompanying note”), which highlights some overarching issues for consideration by the Working Group.



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**Annex****Second Revision of the Beijing Draft***The State Parties to this Convention,*

*Recognizing* that the needs of the maritime industry and ship finance require that the judicial sale of ships is maintained as an effective way of securing and enforcing maritime claims and the enforcement of judgments or arbitral awards or other enforceable documents against the owners of ships,

*Concerned* that any uncertainty for the prospective purchaser regarding the international recognition of a judicial sale of a ship and the deletion or transfer of registry may have an adverse effect upon the price realized by a ship sold at a judicial sale to the detriment of interested parties,

*Convinced* that necessary and sufficient protection should be provided to purchasers of ships at judicial sales by limiting the remedies available to interested parties to challenge the validity of the judicial sale and the subsequent transfers of the ownership in the ship,

*Considering* that once a ship is sold by way of a judicial sale, the ship should in principle no longer be subject to arrest for any claim arising prior to its judicial sale,

*Considering further* that the objective of recognition of the judicial sale of ships requires that, to the extent possible, uniform rules are adopted with regard to the notice to be given of the judicial sale, the legal effects of that sale and the deregistration or registration of the ship,

*Have agreed* as follows:<sup>1</sup>

*Article 1. Purpose*

This Convention sets forth the conditions under which the judicial sale of a ship conducted in one State Party shall have effects in another State Party, including for purposes of registration and deregistration of ships.<sup>2</sup>

*Article 2. Definitions*

For the purposes of this Convention:

(a) “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;<sup>3</sup>

<sup>1</sup> *Preamble*: This second revision of the Beijing Draft reproduces the preamble contained in the Beijing Draft. Preambles are a usual feature of UNCITRAL instruments in the form of treaties. They also feature in some UNCITRAL model laws (see, e.g., Model Law on Cross-Border Insolvency (United Nations publication, Sales No. E.14.V.2) and the more recent Model Law on Recognition and Enforcement of Insolvency-Related Judgments (United Nations publication, Sales No. E.19.V.8), although in a different form. On the form of the instrument, see paragraph 2 of the accompanying note.

<sup>2</sup> *Purpose provision*: The Working Group agreed to insert a provision, at the start of the instrument, which declares – in positive terms – the object and purpose of the instrument (A/CN.9/1007, para. 48). A similar provision was originally provided in article 2 of the Beijing Draft under the title “scope of application”. At the thirty-sixth session, it was felt that a provision on the substantive scope of the instrument scope (article 3 of the current draft) should not function as a statement of object and purpose (ibid., para. 34).

<sup>3</sup> *Definitions – “charge”*: Although the Working Group had agreed at its thirty-fifth session to delete “arrest” from the definition on the grounds that it was a remedy and not a right (A/CN.9/973, para. 79), at the thirty-sixth session there was support for including reference to a “right to arrest” in the definition, noting that such a right should be understood in many jurisdictions since both the International Convention Relating to the Arrest of Seagoing Ships (1952) (United Nations, *Treaty Series*, vol. 439, No. 6330) and the International Convention on



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(b) “Clean title” [to a ship means that any title to or rights and interests in the ship existing prior to its judicial sale have been extinguished and that any charge or mortgage have ceased to attach to the Ship] [means title free and clear of any mortgage or charge];<sup>4</sup>

(c) “Judicial sale” of a ship means any sale of a ship:

(i) Which is ordered, approved or carried out by a court or other public authority by way of public auction or private treaty carried out under the supervision and with the approval of a court, or any other way provided for by the law of the State of judicial sale; and

(ii) For which the proceeds of sale are made available to the creditors;<sup>5</sup>

(d) “Maritime lien” means any claim recognized as a maritime lien or privilège maritime on a ship under applicable law;<sup>6</sup>

(e) “Mortgage” means any mortgage or hypothèque that is:<sup>7</sup>

Arrest of Ships (1999) (United Nations, *Treaty Series*, vol. 2797, No. 49196) referred to the arrest of ships in respect of maritime claims. However, concerns were expressed as to the need to distinguish between a charge and the rights and obligations that may arise from it. In response, it was suggested that the definition should focus on rights that gave rise to the right to arrest or right of attachment (A/CN.9/1007, para. 12). The Working Group also agreed to proceed on the understanding that the term “charge”, as used in the instrument, did not include mortgages (ibid., para. 14).

<sup>4</sup> *Definitions – “clean title”*: The Working Group has agreed to omit reference to mortgages and charges that are “assumed by [the] purchaser” (A/CN.9/1007, para. 15). The two options in square brackets are proposed as alternatives for the Working Group to choose from in view of the suggestion that the definition of clean title might need to be revisited to ensure that it accurately covers all effects contemplated in the original Beijing Draft (ibid., para. 49). In this regard, article 1(c) of the original Beijing Draft defines clean title in the terms of the second option. Similar terminology is used in the Convention on the International Recognition of Rights in Aircraft (1948) (United Nations, *Treaty Series*, vol. 310, No. 4492), which refers in article VIII to the forced sale of an aircraft effecting the transfer of property in the aircraft “free from all rights”. But the original Beijing Draft also provides, in article 4(1), that the effect of a judicial sale is not only to confer clean title, but also, in terms similar to the first option, to extinguish “any title to and all rights and interests in the ship existing prior to its judicial sale” and for “any mortgage/hypothèque or charge” to cease to attach to the ship. Similar provision is made in article 5 (on the statement contained in the certificate of judicial sale regarding the effect of the judicial sale) and article 7(1)(a) (on the “recognition” of the effects of the judicial sale abroad) of the original Beijing Draft. If the Working Group prefers the first option, it may wish to consider how the title, rights and interest referred to in that option relate to the notion of “charge” as defined in article 1(a).

<sup>5</sup> *Definitions – “judicial sale”*: The Working Group has agreed to add a reference to the “approval” of judicial sales in the definition and to specify that any “other authority” must be a “public” authority (A/CN.9/1007, para. 16). The Working Group has also agreed to insert a clarification that a sale by “private treaty” was not a private sale, but rather a sale that is carried out under the supervision and with the approval of a court (ibid., para. 18). The Working Group has further agreed to restore the reference contained in the original Beijing Draft to the availability of the proceeds of sale for distribution to the creditors (ibid., para. 37).

<sup>6</sup> *Definitions – “maritime lien”*: At the thirty-sixth session of the Working Group, it was suggested that the term “maritime lien” should not always be limited to those maritime liens that are recognized “by the law applicable in accordance with the private international law rules of the State of judicial sale” (A/CN.9/1007, para. 19, emphasis added). A suggestion has been made that, while such a limitation should be retained for the purposes of defining the persons entitled to notice (article 4(1)(c) of the present draft), it is neither necessary nor desirable to do so for the purposes of defining the “clean title” conferred by a judicial sale. The Secretariat suggests that this “dual use” might be addressed in all instances of the draft instrument by defining the term “maritime lien” by reference to those maritime liens that are recognized “under applicable law”, and invites the Working Group to consider the revised definition as drafted in the present draft.

<sup>7</sup> *Definitions – “mortgage”*: The Working Group agreed to include the words “and registered or recorded” after the words “effected on a ship” and to defer further discussion of the definition to the substantive provisions in which the term “mortgage” is used (A/CN.9/1007, para. 21). In this regard, the term is used to define “clean title” (article 2(b)), the persons entitled to notice (article 4(1)(b)), the obligations of the registrar (article 7(1)(a)), and the persons with standing to bring an action under article 10 (article 10(2)). The Working Group may wish to consider

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- (i) Effected on a ship and registered or recorded in the State in whose registry of ships or equivalent registry the ship is registered; and
- (ii) Recognized as such by the law applicable in accordance with the private international law rules of the State of judicial sale;
- (f) “Owner” of a ship means any person registered as the owner of the ship in the registry of ships or an equivalent registry in which the ship is registered;<sup>8</sup>
- (g) “Person” means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions;
- [(h) “Purchaser” means any person to whom the ship is sold in the judicial sale];<sup>9</sup>
- (i) “Ship” means any ship or other vessel 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;<sup>10</sup>
- (j) “State of judicial sale” means the State in which the judicial sale of a ship is conducted;
- (k) “Subsequent purchaser” means any person who purchases the ship previously sold to a purchaser in the judicial sale.<sup>11</sup>

*Article 3. Scope of application*

1. This Convention applies only to a judicial sale of a ship if:
  - (a) The ship was physically within the jurisdiction of the State of judicial sale at the time of the sale; and
  - (b) Under the law of that State, the judicial sale confers clean title to the ship on the purchaser.<sup>12</sup>

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whether, for each of these uses, it is appropriate to limit the term “mortgage” to those “recognized as such by the law applicable in accordance with the private international law rules of the State of judicial sale”, particularly when the term is used to define an obligation that is addressed to States other than the State of judicial sale.

<sup>8</sup> *Definitions – “owner”*: It has been noted that smaller vessels such as fishing trawlers might not be registered in a registry of ships but in some other form of registry (A/CN.9/1007, para. 22). The words “or an equivalent registry” have been inserted into the definition to reflect this possibility.

<sup>9</sup> *Definitions – “purchaser”*: The Working Group has agreed to put the definition in square brackets to indicate its possible deletion and has asked the Secretariat to propose text for a definition for future consideration that did not refer to ownership (A/CN.9/1007, para. 27). The present draft of the definition responds to that request.

<sup>10</sup> *Definitions – “ship”*: The Working Group has agreed to retain the requirement that a ship should be “capable of being subject of a judicial sale under the law of the State of judicial sale” and has requested the Secretariat to clarify the meaning of that phrase (A/CN.9/1007, para. 28). The Working Group may wish to consider whether the revised definition, which focuses on whether the ship is amenable to arrest under the law of the State of judicial sale, may make it unnecessary to specify that the arrest is “capable of leading to a judicial sale”. For more on the types of ships covered by the draft instrument, see paragraphs 4 to 9 of the accompanying note.

<sup>11</sup> *Definitions – “subsequent purchaser”*: This definition has been aligned to the definition of “purchaser”, as requested by the Working Group, and is designed to cover not only the first subsequent purchaser but also later purchasers (A/CN.9/1007, para. 27).

<sup>12</sup> *Substantive scope – judicial sales within scope*: There is wide agreement to limit the scope of the instrument to judicial sales that (already) provide clean title under the domestic law of the State of judicial sale (A/CN.9/1007, para. 43). Article 3(1)(b) is drafted so as to allow an assessment of whether a judicial sale falls within the scope of application of the instrument to be carried out on a case-by-case basis (ibid., para. 43). There is general support for including a rule that the ship should be physically present within the State of judicial sale (ibid., para. 83). The Secretariat invites the Working Group to consider functionalizing this rule as a limitation on the scope of the instrument and has proposed the insertion of article 3(1)(a) accordingly. For an explanation of this proposal, see paragraphs 19 to 22 of the accompanying note.



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2. This Convention shall not apply to:

[(a) The judicial sale of a ship following a seizure or confiscation of the ship by tax, customs or other law enforcement authorities;]<sup>13</sup>

(b) Warships or naval auxiliaries, or other vessels owned or operated by a State and used, for the time being, only on government non-commercial service.<sup>14</sup>

Article 4. Notice of judicial sale<sup>15</sup>

1. Prior to a judicial sale of a ship,<sup>16</sup> a notice of the sale shall be given to:<sup>17</sup>

(a) The registrar of the registry of ships or equivalent registry in which the ship is registered;

(b) All holders of any mortgage or registered charge, provided that the registry in which it is registered, and any instrument required to be registered with the registrar under the law of the State of the registry, are open to public inspection, and that extracts from the registry and copies of such instruments are obtainable from the registrar;

(c) All holders of any maritime lien, provided that the court or other authority ordering the judicial sale has received notice of the claim secured by the maritime lien;

(d) The owner of the ship for the time being;

(e) The person registered as the bareboat charterer of the ship in the registry of ships in which the ship is registered; and

<sup>13</sup> *Substantive scope – exclusion of sales by tax, customs and other law enforcement authorities*: A provision excluding judicial sales “in tax, administrative or criminal proceedings” was introduced in the first revision to the Beijing Draft to address concerns expressed at the thirty-fifth session of the Working Group about applying the recognition regime to forced sales in tax, administrative and criminal matters (A/CN.9/973, paras. 19 and 90). Another option, also suggested at the thirty-fifth session, was to exclude from the scope of the draft instrument those judicial sales for which the proceeds were not to be paid out to creditors (ibid.). Although the rationale for the proposed exclusion was not explicitly articulated at the time, it seems that the underlying concern was to avoid interference with acts of public authorities exercising enforcement powers such as seizure or confiscation. The Working Group has agreed to retain subparagraph (a) (A/CN.9/1007, para. 39) and, at the same time, to amend the definition of “judicial sale” to limit it to those sales for which the proceeds are made available to the creditors (see footnote 5). The Working Group may wish to consider whether the exclusion is still needed in the light of the amended definition of judicial sale and, if so, whether the revised wording in paragraph 2(a) adequately clarifies its scope.

<sup>14</sup> *Substantive scope – exclusion of State-owned ships*: This provision has been reformulated to align it more closely with the wording of article 16 of the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004) and articles 95 and 96 of the United Nations Convention on the Law of the Sea (1982) (United Nations, *Treaty Series*, vol. 1833, No. 31363) (A/CN.9/1007, paras. 40–42).

<sup>15</sup> *Notice requirements – general*: Article 3 of the first revision has been renumbered as article 4 in the present draft. The provision has been revised to reflect discussions at the thirty-sixth session (A/CN.9/1007, paras. 55–67), in particular the view expressed by many delegations that the matters covered in articles 3(2) and (3) of the first revision should be left to domestic law but could still be addressed by way of guidance notes set out in a model notice form annexed to the instrument (ibid., para. 66). These paragraphs have been deleted and incorporated in the body of the model notice contained in appendix I and the footnotes thereto, as appropriate.

<sup>16</sup> *Notice requirements – applicability to judicial sales within scope*: By virtue of article 3(1), the present draft applies only to judicial sales that provide clean title under the domestic law of the State of judicial sale. Unlike other requirements in the draft instrument, the notice requirements apply prior to the judicial sale being conducted. The Working Group may wish to confirm whether, at this point in time, it will be known – in all cases – that the judicial sale will result in the conferral of clean title.

<sup>17</sup> *Notice requirements – persons to be notified*: The list of persons to be notified of the judicial sale remains essentially unchanged from the original Beijing Draft, and has not been determined by the Working Group. It has been suggested to add bareboat charterers because they are not holders of a registered charge in some jurisdictions (A/CN.9/1007, para. 63).

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- (f) The registrar of the registry of ships in any State in which the ship is granted bareboat charter registration.
- 2. The notice required by paragraph 1 shall be given in accordance with the law of the State of judicial sale,<sup>18</sup> and shall contain, as a minimum, the information mentioned in the model contained in Appendix I to this Convention.
- 3. The notice shall also be:
  - (a) Published by press announcement in the State of judicial sale and in other publications published or circulated elsewhere, if required by the law of the State of judicial sale; and
  - (b) Transmitted to the repository referred to in article 12 for publication.
- 4. In determining the identity or address of any person to whom the notice is to be given, reliance may be placed exclusively on:
  - (a) Information set forth in the registry of ships or equivalent registry in which the ship is registered or the registry of ships in which it is granted bareboat charter registration;
  - (b) Information set forth in the registry in which the mortgage or charge referred to in paragraph 1, subparagraph (b) is registered or recorded, if different to the registry of ships or equivalent registry; and
  - (c) Information contained in the notice referred to in paragraph 1, subparagraph (c).

*Article 5. Certificate of judicial sale*

- 1. When a ship is sold by way of judicial sale that is conducted in accordance with the law of the State of judicial sale and the notice requirements in article 4,<sup>19</sup> the public authority designated by the State of judicial sale<sup>20</sup> shall, at the request of the

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<sup>18</sup> *Notice requirements – domestic law*: paragraph 2 reinstates the requirement in article 3(1) of the original Beijing Draft that the notice of judicial sale should be given “in accordance with the law of the State of judicial sale”, in line with the view that the matters covered in articles 3(2) and (3) should be left to domestic law (A/CN.9/1007, para. 66).

<sup>19</sup> *Certificate of judicial sale – compliance with “conditions required by the law of the State of judicial sale”*: In the first revision, a question was raised as to the need for, and meaning of, the requirement in the introductory words of article 5(1) that a judicial sale should meet “the conditions required by the law of the State of judicial sale” (A/CN.9/WG.VI/WP.84, para. 8(j)). On the question of need, it was noted that this requirement might expose the judicial sale to unwarranted challenge in the State of judicial sale (particularly if the authority issuing the certificate was not the same as the authority that conducted the judicial sale). On the question of meaning, it was noted that, if the intention of the requirement was to allow the State of judicial sale to specify procedures for applying for a certificate (including costs), the Working Group might wish to consider reformulating the requirement to make this clear. In the first revision, the requirement was put in square brackets to indicate its possible deletion. At its thirty-sixth session, the Working Group agreed to remove the square brackets on the basis that the requirement was needed (A/CN.9/1007, para. 91), but did not address its meaning. It seems to the Secretariat that the requirement is primarily concerned with compliance with the requirements of conducting a judicial sale, and not with allowing the State of judicial sale to specify procedures for applying for a certificate. The introductory words of article 5(1) of the present draft have been revised accordingly, mirroring the wording in article 6(1)(b). If the Working Group considers it desirable to allow the State of judicial sale to specify procedures for applying for the certificate, the words “in accordance with its regulations and procedures”, which have also been added to article 7(1), have been added for consideration.

<sup>20</sup> *Certificate of judicial sale – issuing authority*: It has been pointed out that the authority issuing the certificate of judicial sale might be different to the authority that orders or conducts the judicial sale (A/CN.9/973, para. 82). It has also been suggested that, if the instrument takes the form of a convention, a mechanism could be set up by which a State joining the convention would be required to notify the depositary of the authorities competent in its jurisdiction for the purposes of the convention (which could include different authorities for the purposes of different provisions of the instrument) (ibid., para. 84).

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purchaser, and in accordance with its regulations and procedures, issue a certificate of judicial sale to the purchaser recording that:

(a) The ship was sold in accordance with the law of the State of judicial sale and the notice requirements in article 4;

(b) The ship was physically within the jurisdiction of the State of judicial sale at the time of the sale; and

(c) The purchaser acquired clean title to the ship.<sup>21</sup>

2. The certificate of judicial sale shall be issued substantially in the form of the model contained in Appendix II and shall contain the following minimum additional particulars:

(a) The name of the State of judicial sale;

(b) The name, address and the contact details of the authority issuing the certificate;

(c) The place and date of the judicial sale;

(d) The name and [port of registry]<sup>22</sup> of the ship;

(e) The IMO number of the ship or, if not available, other information capable of identifying the ship, such as the shipbuilder, time and place of shipbuilding, distinctive number or letters, and recent photographs;<sup>23</sup>

(f) The name, address or residence or principal place of business and contact details, if available, of the owner(s) of the ship immediately prior to the judicial sale;

(g) The name, address or residence or principal place of business and contact details of the purchaser;

[(h) The purchase price;]<sup>24</sup>

(i) The place and date of issuance of the certificate; and

(j) The signature, stamp or other confirmation of authenticity of the certificate.

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<sup>21</sup> *Certificate of judicial sale – matters being certified*: The Working group has agreed to delete all references to preservation of mortgages and charges “assumed by the purchaser” throughout the draft (A/CN.9/1007, para. 45). Paragraph 1 has been amended accordingly. Paragraph 1 has also been amended to reflect the suggestion that the certificate should contain a clear statement that the judicial sale conferred clean title (ibid., para. 49). It is worth recalling that, by virtue of article 3(1), article 5 applies only to judicial sales that confer clean title under the domestic law of the State of judicial sale. As explained in paragraph 21 of the accompanying note, paragraph 1 has further been amended to require the certificate to contain a statement that the ship was physically within the jurisdiction of the State of judicial sale at the time of the sale.

<sup>22</sup> *Certificate of judicial sale – port of registry*: The original Beijing Draft, as well as the first revision, calls for the certificate of judicial sale to specify the port of registry of the ship. Nowhere else is the port of registry referred to in the draft instrument. The Working Group may wish to consider whether the reference should instead be to “the registry of ships or equivalent registry in which the ship is registered”, which mirrors the wording used in article 2(e).

<sup>23</sup> *Certificate of judicial sale – identification of ship*: The Working Group has agreed that the “default” identifier for the ship should be the IMO number and that, if not available, the certificate should specify other information capable of identifying a ship, such as the shipbuilder, time and place of the shipbuilding, licence number, and recent photographs (A/CN.9/1007, para. 93). Item (e) of paragraph 2 and the corresponding sections of the model certificate of judicial sale contained in Appendix 2 have been updated accordingly. It is assumed that the existing reference to “distinctive number or letters” includes licence number.

<sup>24</sup> *Certificate of judicial sale – specification of purchase price*: The suggestion that the certificate should specify the purchase price was made at the thirty-fifth session of the Working Group (A/CN.9/973, para. 44). While there was support for deleting this provision at its thirty-sixth session, the Working Group agreed to place it in square brackets for future discussion (A/CN.9/1007, para. 93).

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3. The authority shall promptly communicate the certificate to the repository referred to in article 12.
4. The authority shall:
  - (a) Maintain a record of certificates issued, including the particulars of the judicial sale; and
  - (b) At the request of the registrar or court referred to in articles 7 and 8, verify whether the particulars in the certificate produced correspond with particulars included in the record.<sup>25</sup>
5. [Subject to articles 7(5), 8(4) and 10,] the certificate of judicial sale shall constitute conclusive evidence of the particulars therein, including the matters required to be recorded by article 5(1).<sup>26</sup>
6. A certificate of judicial sale shall [have no effect][cease to have effect] under this Convention if the sale has been avoided in the State of judicial sale by a court exercising jurisdiction under article 9 by a judgment that is no longer subject to appeal in that State.<sup>27</sup>

*Article 6. International effects of a judicial sale*<sup>28</sup>

1. A judicial sale to which this Convention applies that is conducted in one State Party shall have the effect in every other State Party of conferring clean title to the ship on the purchaser<sup>29</sup>[, provided that:
  - (a) The ship was physically within the jurisdiction of the State of judicial sale at the time of the sale; and

<sup>25</sup> *Certificate of judicial sale – verification*: The Working Group has agreed that a centralized online repository could be used to publish certificates of judicial sales (A/CN.9/973, paras. 46 and 73) (see article 12 and paragraph 10 of the accompanying note). It has been suggested that, as an alternative to establishing a centralized repository, the instrument could require the issuing authority to maintain a publicly accessible record of certificates issued, similar to the requirement in article 7 of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (1961) (United Nations, *Treaty Series*, vol. 527, No. 7625) (“Apostille Convention”) (A/CN.9/973, para. 46). Paragraph 4 implements this alternative. If the Working Group agrees to implement a repository mechanism, paragraph 4 can be omitted.

<sup>26</sup> *Certificate of judicial sale – evidentiary value*: In the original Beijing Draft and its first revision, the conclusive effect of the certificate of judicial sale was subject to the grounds for refusing to give international effect to the judicial sale (as currently set out in articles 7(5), 8(4) and 10). The Working Group may wish to consider the suggestion that the conclusive effect of the certificate of judicial sale should instead be subject to the invalidation of the certificate pursuant to the avoidance of the judicial sale in the State of judicial sale, as contemplated in article 9 (A/CN.9/1007, para. 95). Alternatively, the Working Group may wish to consider deleting this qualification altogether, since in most legal systems official acts cease to have legal effect once they are invalidated by a court, so that the possibility of the eventual invalidation of the certificate of judicial sale does not need to be expressly preserved by this draft instrument.

<sup>27</sup> *Certificate of judicial sale – no effect*: Paragraph 6 is new and mirrors article 9(3). It is based on the premise that, if a judicial sale is avoided in the State of judicial sale, the certificate of judicial sale will cease to be valid under the law of that State and should therefore cease to produce effects under the instrument, namely the triggering of the obligation to register/deregister (article 7) and the obligation not to arrest (article 8). The current provision is drafted on the assumption that, as the avoidance of the sale and non-appealability of the avoidance decisions are questions of fact, it is not necessary for a court to determine their existence. The same assumption underlies existing article 9(3). If the Working Group agrees to retain this provision, it may wish to consider stating in articles 7 and 8 that the obligation to register/deregister and the obligation not to arrest (respectively) are “subject to article 5(6)”.

<sup>28</sup> *International effects of judicial sale – general*: The international effect of a judicial sale is subject to the application of the grounds for refusal in article 10. The Working Group may wish to consider stating that article 6 is “subject to article 10”.

<sup>29</sup> *International effects of judicial sale – conditions*: Subparagraphs (a) and (b) of article 6(1) reflect the agreement of the Working Group to incorporate the former conditions for conferring clean title, which were contained in article 4 of the first revision (A/CN.9/1007, para. 46). This effectively leaves it to the State in which the international effect of the judicial sale is asserted to

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- (b) The judicial sale was conducted in accordance with the law of the State of judicial sale and the notice requirements in article 4.]
- 2. 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 the ship prior to the judicial sale.<sup>30</sup>

*Article 7. Action by registrar*<sup>31</sup>

- 1. The competent registrar [or registrars]<sup>32</sup> of a State Party shall, upon production of the certificate of judicial sale referred to in article 5 and in accordance with its regulations and procedures:
  - (a) Delete any mortgage or registered charge attached to the ship; and
  - (b) At the direction of the purchaser or subsequent purchaser:
    - (i) Delete the ship from the register and issue a certificate of deregistration for the purpose of new registration; or
    - (ii) Register the ship in the name of the purchaser or subsequent purchaser.
- 2. If the ship was granted bareboat charter registration in a State Party, the competent registrar of that State shall, upon production of the certificate of judicial sale referred to in article 5, delete the ship from the register and issue a certificate of deletion.<sup>33</sup>
- 3. If the certificate of judicial sale is not issued in an official language of the registrar, the registrar may request the person producing the certificate to produce a [certified] translation into such an official language.

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scrutinize whether these conditions have been satisfied. As noted in paragraph 19 of the accompanying note, the Working Group may wish to consider whether it is more effective for these conditions to be scrutinized by the State of judicial sale, through amendments to the process of issuing the certificate of judicial sale in article 5, and thus whether subparagraphs (a) and (b) should be omitted.

<sup>30</sup> *Effects of judicial sale – preservation of in personam claims*: Some support has been expressed for the view that, because the draft instrument no longer regulates the effects of the judicial sale in the State of judicial sale, the preservation of *in personam* claims against a former shipowner no longer has any substantive effect. The prevailing view, however, is that it could be useful to retain the provision (A/CN.9/1007, para. 52). The Working Group may wish to consider further the suggestion that this provision should be moved to article 3 (on scope of application) (ibid.).

<sup>31</sup> *Action by registrar – title of provision*: In the first revision, article 7 was entitled “deregistration of the ship”. The Working Group has agreed that the title should be revised to better reflect its scope (A/CN.9/1007, para. 96).

<sup>32</sup> *Action by registrar – identification of registrar*: Article 7(1) is addressed to the registrar in both the State of judicial sale (e.g., if the ship is registered there) and any other State Party to the Convention. The Working Group has noted that the registry of ships may be separate from the registry of ship mortgages and charges (A/CN.9/1007, para. 97; see also A/CN.9/WG.VI/WP.84, para. 8(i)). The word “competent” has been inserted before “registrar” to clarify that there may be more than one relevant registrar in a particular State. The Working Group may wish to consider whether this could be further clarified by inserting the words “or registrars”.

<sup>33</sup> *Action by registrar – bareboat charter registration*: The Working Group has agreed that bareboat charter registration should be dealt with in a separate paragraph with more appropriate terminology (A/CN.9/1007, para. 96). With regard to terminology, article 12(5) of the United Nations Convention on Conditions for Registration of Ships refers to the “deletion” of the bareboat charter-in registration. Article 7(2) is addressed solely to the bareboat charter-in registrar (i.e., the registrar in the State of bareboat charter registration). The bareboat charter-out registrar (i.e., the registrar in the former flag State) is addressed by article 7(1). The Working Group may wish to consider whether any additional action by the bareboat charter-out registrar should be prescribed.

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4. The registrar may also request the production of a [certified] copy of the certificate for its records.

5. Notwithstanding article 6, paragraphs 1 and 2 do not apply to a registrar of a State Party other than the State of judicial sale if a competent court in that other State determines[, on application by a person specified in article 10, paragraph 2,] that:<sup>34</sup>

[(a) The ship was not physically within the jurisdiction of the State of judicial sale at the time of the sale;]<sup>35</sup>

[(b) The sale was procured by fraud committed by the purchaser; or]<sup>36</sup>

(c) The action by the registrar would be manifestly contrary to the public policy of that other State.

*Article 8. No arrest of the ship*<sup>37</sup>

1. If an application is brought before a court in a State Party to arrest a ship or to take any other similar measure against a ship<sup>38</sup> for a claim arising prior to an earlier judicial sale of the ship, the court 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 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 referred to in article 5, order the release of the ship.

3. If the certificate is not issued in an official language of the court, the court may request the person producing the certificate to produce a [certified] translation into such an official language.

4. Notwithstanding article 6, paragraphs 1 and 2 do not apply to a court of a State Party other than the State of judicial sale if the court determines that dismissing the

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<sup>34</sup> *Action by registrar – grounds for refusal to take action:* A proposal has been made to link and adapt the grounds for refusal to the obligations imposed on States other than the State of judicial sale, namely the obligation to register/deregister (article 7) and the obligation not to arrest (article 8). Specifically, it has been proposed that only the public policy ground should apply to the obligation not to arrest, while the full “suite” of grounds – whatever they may be – should apply to the obligation to register/deregister (A/CN.9/1007, para. 89). Broad support has been given to exploring this proposal further, and the Secretariat has been asked to formulate those options, bearing in mind that registrars are not in a position to apply the public policy ground. It has also been noted that making findings of fact to support the other grounds for refusal imposes a considerable burden on registrars (ibid.). Paragraph 5 has been inserted to give effect to this proposal with respect to the obligation to register/deregister. It reproduces the grounds for refusal in article 10(1) and is formulated on the assumption that a determination on the existence of grounds for refusal should ultimately be made by a court having competence over the acts of the registrar. It is also formulated on the assumption that standing to bring an action before the competent court will be limited to the same classes of persons with standing to bring an action under article 10. The accompanying note (para. 25) invites the Working Group to pay particular attention to the interaction between articles 7(5), 8(4) and 10 in its consideration of the present draft. The Working Group may also wish to consider whether article 10 should be placed immediately after article 6.

<sup>35</sup> See footnote 46 below.

<sup>36</sup> See footnote 47 below.

<sup>37</sup> *No arrest – general:* Article 8 is a recast of article 7(2) of the Beijing Draft. The Working Group has so far not considered this provision in detail. Article 7(2) of the Beijing Draft deals both with applications to arrest and with applications to release from arrest. The current version splits these two provisions into separate paragraphs. The Working Group may wish to consider whether article 8 would apply, in all cases, to the arrest of the ship as a protective measure pending determination of the existence of a ground for refusal under article 10.

<sup>38</sup> *No arrest – meaning of “arrest”:* Paragraphs 1 and 2 of Article 8 has been modified to refer to arrest and any other “similar measure”. This wording is found in the definition of “ship” in article 2(i) and acknowledges – like in the definition of “charge” – that a measure to detain or restrict the removal a ship may not be referred to as an “arrest” in the State seized.

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application or ordering the release of the ship, as the case may be, would be manifestly contrary to the public policy of that State.<sup>39</sup>

*Article 9. Jurisdiction to avoid and suspend judicial sale*<sup>40,41</sup>

1. The courts<sup>42</sup> 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 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.<sup>43</sup>
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 or to suspend its effects.
3. A judicial sale of a ship shall [not have][cease to have] the effect provided in article 6 in a State Party if the sale is avoided in the State of judicial sale by a court exercising jurisdiction under paragraph 1 by a judgment that is no longer subject to appeal in that State.
4. The effects of a judicial sale of a ship provided in this Convention shall be suspended in a State Party if, and for as long as,<sup>44</sup> the effects of the sale are suspended in the State of judicial sale by a court exercising jurisdiction under paragraph 1.

<sup>39</sup> *No arrest – grounds for refusal to take action*: Paragraph 4 has been inserted to give effect to the proposal outlined in footnote 34 above with respect to the obligation not to arrest. Unlike article 7(5), it does not limit standing to raise the public policy ground on the basis that the proceedings before the court in which such a ground would be raised will have already commenced. If the Working Group wishes to apply the full “suite” of grounds to the obligation not to arrest, paragraph 4 could be replaced by a provision similar to article 7(5).

<sup>40</sup> *Avoidance and suspension of judicial sale – international jurisdiction*: Article 9 is addressed to the State of judicial sale. Widespread support has been expressed for the view that article 9 “should function only as an exclusive jurisdiction provision, and that the instrument should leave all other matters to the domestic law of the State of judicial sale” (A/CN.9/1007, para. 70). Article 9 is focussed on exclusive jurisdiction to avoid or suspend the judicial sale. The Working Group has agreed that the scope of exclusive jurisdiction should also cover “challenges to the validity of the certificate of judicial sale” (ibid., para. 78). As has been observed (A/CN.9/973, para. 55), article 9 does not affect jurisdiction with respect to the distribution of proceeds from the judicial sale, or jurisdiction with respect to *in personam* actions against the purchaser, such as actions in tort. The heading to article 9 has been amended to better reflect this focus, as has been suggested (A/CN.9/1007, para. 72). The wording has also been updated to clarify that the provision is concerned with the avoidance of the judicial sale, as understood by the Working Group (ibid., para. 68) and not the avoidance of the effects of the judicial sale. Mindful of not distracting the focus of article 9 from exclusive jurisdiction, the Working Group may wish to consider whether it is appropriate to relocate the provisions on the effects of avoidance and suspension on the international effect of the judicial sale from article 10 (as reflected in the first revision) to article 9 (as reflected in the present draft).

<sup>41</sup> *Avoidance and suspension of judicial sale – grounds for avoidance and suspension*: The Working Group may wish to confirm that the grounds for avoiding or suspending the effects of the judicial sale are a matter of the applicable domestic law, as has been suggested (A/CN.9/1007, paras. 59 and 70).

<sup>42</sup> *Avoidance and suspension of judicial sale – internal competence*: It has been observed that, in some States, competence to hear challenges to a judicial sale is vested not in courts but in other authorities (A/CN.9/973, para. 51). The Working Group may wish to consider whether this can be addressed by replacing the term “courts” with “authorities”. The Working Group may also wish to confirm that article 9 does not affect the internal allocation of jurisdiction among the courts of the State Party, which remains a matter of its domestic law.

<sup>43</sup> *Avoidance and suspension of judicial sale – standing*: The first revision of the Beijing Draft limited standing to bring an action to avoid or suspend a judicial sale. Widespread support has been expressed for the view that article 9 should leave questions of standing to the domestic law of the State of judicial sale (A/CN.9/1007, para. 70).

<sup>44</sup> *Grounds for refusal – international effect of judicial sale ceased*: The word “and for as long as” have been inserted as has been suggested (A/CN.9/1007, para. 87).

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*Article 10. Circumstances in which judicial sale has no international effect*<sup>45</sup>

1. A judicial sale of a ship shall not have the effect provided in article 6 in a State Party other than State of judicial sale if [, on application by a person specified in paragraph 2.] a court in that other State Party determines that:

[(a) The ship was not physically within the jurisdiction of the State of judicial sale at the time of the sale;]<sup>46</sup>

[(b) The sale was procured by fraud committed by the purchaser; or]<sup>47</sup>

(c) That effect would be manifestly contrary to the public policy of that other State Party.<sup>48</sup>

[2. The persons which may make a claim or application referred to paragraph 1 and article 7, paragraph 5 are:

(a) The owner of the ship immediately prior to the judicial sale;

(b) The holder of a mortgage or registered charge attached to the ship immediately prior to the judicial sale; and

(c) Any holder of a maritime lien entitled to notice under article 4.]<sup>49</sup>

*Article 11. Additional provisions relating to the certificate of judicial sale*

1. The certificate of judicial sale referred to in article 5 shall be exempt from legalization or similar formality.<sup>50</sup>

<sup>45</sup> *Grounds for refusal – general*: Article 10 is addressed to States other than the State of judicial sale (A/CN.9/1007, para. 79). The view has been expressed that the res judicata effect of a decision in one State that a ground for refusal applied would not, by virtue of the instrument, extend to any other State (including the State of judicial sale) (ibid.), and that the procedure for applying the grounds for refusal would be a matter for the domestic law of the State addressed (ibid., para. 89).

<sup>46</sup> *Grounds for refusal – physical presence of ship*: While it has already been questioned whether the requirement of physical presence should serve as a ground for refusal, general support was expressed at the thirty-sixth session for retaining it as such (A/CN.9/1007, para. 83). In light of the explanations in paragraph 21 of the accompanying note and consequential amendment to articles 3(1) and 5(1) in the present draft, the Working Group may wish to consider whether it is still desirable to retain this ground for refusal.

<sup>47</sup> *Grounds for refusal – fraud committed by the purchaser*: It has been suggested that there is merit in retaining fraud as a separate ground for refusal. In this regard, there is general support for requiring the fraud to be committed by the purchaser (A/CN.9/1007, para. 86). At the same time, it has been observed that the State of judicial sale would be better placed to determine whether fraud was committed by the purchaser in exercising its exclusive jurisdiction under article 9 (ibid., para. 81). The Working Group may wish to consider whether it is desirable to retain this ground for refusal.

<sup>48</sup> *Grounds for refusal – public policy*: There is general agreement to retain a ground for refusal based on public policy (A/CN.9/1007, para. 84).

<sup>49</sup> *Grounds for refusal – standing*: It has been suggested that the list of the persons with standing to bring an action to avoid or suspend a judicial sale in the State of judicial sale, which appeared in article 9(4) of the first revision, should be incorporated into article 10 (A/CN.9/1007, para. 87). In the present draft, this list applies to limit standing to bring an action under article 10(1) but also under article 7(5) by virtue of a cross-reference to article 10(2) in each of those provisions. The Working group may wish to consider whether this outcome is appropriate considering that paragraph 1(a) refers to a condition necessary for the judicial sale to have international effects pursuant to article 6, whereas in some legal systems courts may be able to apply the grounds in subparagraphs 1(a) or 1(b) without an application to that effect by an interested party. A possible scenario could be, for instance, where a purchaser seeks an injunction against a registrar who declined to act upon a certificate and the court dismisses the application on the basis of article 10(1).

<sup>50</sup> *Certificate of judicial sale – no legalization*: As already has been foreshadowed (A/CN.9/973, para. 45), the certificate of judicial sale would ordinarily be a public document within the meaning of the Apostille Convention and would thus be exempt from legalization under article 2 of the Convention among the over 100 States that are party to that Convention (see further analysis in A/CN.9/WG.VI/WP.84, footnote 48). It has been suggested that the Working Group should consider including a provision that removes any requirement of legalization or similar requirement (such as the issuance of an Apostille) for the certificate of judicial sale (ibid.).



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2. The certificate of judicial sale may be in the form of an electronic communication provided that:
  - (a) The information contained therein is accessible so as to be usable for subsequent reference;
  - (b) A method is used to identify the authority issuing the certificate and to indicate its intention in respect of the information contained therein;
  - (c) A method is used to detect any alteration to the electronic communication 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; and
  - (d) The method referred to in subparagraphs (b) and (c) is:
    - (i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances;
    - (ii) Proven in fact to have fulfilled the functions described in those subparagraphs, by itself or together with further evidence.<sup>51</sup>
3. A certificate of judicial sale shall not be rejected on the sole ground that it is in electronic form.

*Article 12. Repository*<sup>52</sup>

1. The repository of notices given under article 4 and certificates issued under article 5 shall be the Secretary-General of the United Nations or an institution named by UNCITRAL.
2. Upon receipt of a notice or certificate under this Convention, the repository shall promptly make it available to the public.

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Article 11(1) reflects this suggestion and has not yet been considered by the Working Group. The drafting of this provision is based on similar provisions found in instruments concluded by the Hague Conference on Private International Law, such as article 18 of the Convention on Choice of Court Agreements (United Nations, *Treaty Series*, No. 53483). Nothing in the Apostille Convention precludes a State Party from agreeing to dispense with all requirements for certifying the authenticity of certain public documents, a scenario expressly contemplated in article 3(2) of that Convention. The present provision would not preclude the authority addressed from determining that a document purporting to be a certificate of judicial sale is not authentic.

<sup>51</sup> *Certificate of judicial sale – issuance in electronic form*: The Working Group has asked the Secretariat to consider the implications of allowing a certificate of judicial sale to be issued in electronic form (A/CN.9/1007, para. 92). UNCITRAL has developed a number of legislative texts that enable the legal recognition of documents issued in electronic form, most relevantly the Model Law on Electronic Commerce (1996) (United Nations publication, Sales No. E.99.V.4) and the United Nations Convention of the Use of Electronic Communications in International Contracts (2005) (United Nations, *Treaty Series*, vol. 2898, No. 50525) (“ECC”). While these texts are predominantly addressed to business-to-business communications, the functional equivalence rules that they establish could equally be applied to communications involving public authorities. Article 11(2) has been drafted by the Secretariat for consideration by the Working Group. It is a combination of the functional equivalence provisions for the requirement of a document or communication to be in writing (cf. ECC article 9(2)), the requirement that a document or communication be signed (cf. ECC article 9(3)) and the requirement that a document or communication be available in original form (cf. ECC article 9(4)(a)). Article 11(2) establishes minimum requirements for the legal recognition of certificates of judicial sale issued in electronic form; it does not prevent the law or procedures of the issuing authority from specifying additional requirements for the certificates it issues.

<sup>52</sup> *Publication of notices and certificates in a centralized repository*: See paragraphs 10 to 16 of the accompanying note.

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*Article 13. Communication between Parties*<sup>53</sup>

For the purposes of articles 7 and 8, the authorities of a State Party shall be authorized to correspond directly with the authorities of any other State Party.

*Article 14. Relations with other international instruments*

1. Nothing in this Convention shall derogate from any other basis for the recognition of a judicial sale of a ship under any other bilateral or multilateral convention, instrument or agreement or principle of comity.<sup>54</sup>
2. [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.]<sup>55</sup>

*Article 15. Depositary*<sup>56</sup>

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

*Article 16. Signature, ratification, acceptance, approval, accession*

1. This Convention is open for signature by all States in [city], [on][from] [date/date range], and thereafter at United Nations Headquarters in New York.
2. This Convention is subject to ratification, acceptance or approval by the signatories.
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 17. 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 Party to the Convention, to the extent that that organization has competence over matters governed by this Convention. Where the number of States Parties is relevant in this Convention, the regional economic integration organization shall not count as a State Party in addition to its member States that are Parties to the Convention.

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<sup>53</sup> *Cooperation between authorities*: It has been suggested that the draft instrument contain a provision similar to article 14 of the International Convention on Maritime Liens and Mortgages (1993) (United Nations, *Treaty Series*, vol. 2276, No. 40538) ("MLMC 1993"), which provides for cooperation between authorities (A/CN.9/973, para. 74). This article reflects that suggestion and supplements the communication contemplated in article 5(4)(b).

<sup>54</sup> *Relationship with other treaties and national law*: Article 14 reproduces article 10 of the Beijing Draft with minor amendments. The provision was not considered by the Working Group at its thirty-sixth session. At the thirty-fifth session, there was some discussion about the relationship between the Beijing Draft and the Judgments Convention (A/CN.9/973, para. 24). This issue is considered in document A/CN.9/WG.VI/WP.85. The Working Group may wish to consider simplifying this provision by replacing the words "bilateral or multilateral convention, instrument or agreement or principle of comity" with "treaty", as well as expanding the provision to preserve the application of national law that is more favourable to the recognition of foreign judicial sales (which may well be based on the principle of comity).

<sup>55</sup> *Relationship with the Geneva Convention*: See paragraphs 7 to 9 of the accompanying note.

<sup>56</sup> *Final clauses*: The final clauses in articles 15 to 20 are drawn from the United Nations Convention on International Settlement Agreements Resulting from Mediation (2018), the most recent treaty prepared by UNCITRAL.

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2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary 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” or “States” in this Convention applies equally to a regional economic integration organization where the context so requires.

*Article 18. Non-unified legal systems*

1. If a Party to the Convention 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, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3. If a Party to the Convention 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 or rule of procedure of a State shall be construed as referring, where appropriate, to the law or rule of procedure in force in the relevant territorial unit;

(b) Any reference to the place of business in a State shall be construed as referring, where appropriate, to the place of business in the relevant territorial unit;

(c) Any reference to the competent authority of the State shall be construed as referring, where appropriate, to the competent authority in the relevant territorial unit.

4. If a Party to the Convention makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

*Article 19. Entry into force*

1. This Convention shall enter into force six months after 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 six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession. The Convention shall enter into force for a territorial unit to which this Convention has been extended in accordance with article 18 six months after the notification of the declaration referred to in that article.

*Article 20. Amendment*

1. Any Party to the Convention may propose an amendment to the present 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 Parties to the Convention for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

2. The conference of Parties to the Convention shall make every effort to achieve consensus on each amendment. If all efforts at consensus are exhausted and no

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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.

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 six months 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 to the Convention that have expressed consent to be bound by it.

5. When a Party to the Convention 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 Party to the Convention six months after the date of the deposit of its instrument of ratification, acceptance or approval.

*Article 21. Denunciations*

1. A Party to the Convention 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 12 months after the notification is received 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 notification is received by the depositary. [The Convention shall continue to apply to judicial sales conducted before the denunciation takes effect.]

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

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**Appendix I to the [draft instrument on the judicial sale of ships]****Notice of Judicial Sale<sup>57</sup>**

*Issued in accordance with the provisions of article 4 of the [draft instrument on the judicial sale of ships]*

In accordance with ..... [relevant provisions of the State's rules of civil procedure governing notices of judicial sales], notice is hereby given that by order of ..... [name of court or other public authority conducting the sale and such particulars concerning the sale or the proceedings leading to the judicial sale as the court or other authority determines are sufficient to protect the interests of persons entitled to notice under article 4]

**on** ..... [date/month/year], **at** ..... [hour] **at** ..... [place] [If the time and place of the judicial sale cannot be determined with certainty, the approximate time and anticipated place of the judicial sale, provided that an additional notice of the actual time and place of the judicial sale shall be provided when known but, in any event, not less than seven days prior to the judicial sale.]<sup>58</sup>

**the ship** ..... [description by name of the ship, the IMO number (if assigned), or, where not available other information capable of identifying the ship, such as the shipbuilder, time and place of the shipbuilding, licence number, and recent photographs]

**physically present at** ..... [location of the ship]

**owned by** ..... [names of the owner of the ship immediately prior to the judicial sale and the bareboat charterer (if any), as appearing in the registry of ships in which the ship is registered or granted bareboat charter registration]

will be **sold by way of judicial sale** free and clear of all mortgages and charges [to the highest bidder at or above the amount as set by the [court or other authority conducting the sale] subject to the terms and conditions set out below.]

**Terms of the sale:** [such terms and conditions as apply to judicial sales conducted in the Party to the Convention, for instance: disclaimers of warranties or liabilities by the court or other authority; requirements and procedures for registration or admission to bid at the sale; payment conditions; finality of sales; consequences of

<sup>57</sup> *Notice of judicial sale – notice period:* Article 4(1) requires notice to be given prior to the judicial sale. The time between the giving of notice and the actual sale should allow the interested parties to make the necessary arrangements to bid if they so wish. While 30 days, as provided for in article 11(2) of the MLMC 1993, would generally constitute an adequate period, the court or other authority conducting the judicial sale may have the discretion to provide a shorter notice period (for instance where the ship faces deterioration). The notice shall be in writing in the manner customarily used by the courts of the State of judicial sale for similar purposes, which may include, (a) registered mail or courier; (b) electronic means; or (c) any other manner agreed to by the person to whom the notice is to be given.

<sup>58</sup> *Notice of judicial sale – time and place of judicial sale unknown:* This alternative was provided in article 3(3)(b) of the original Beijing Draft, which is based on article 11(2) of the MLMC 1993. A concern has been raised that the proviso for a seven-day notice period in the event that the time and place of the judicial sale cannot be determined with certainty might, in practice, supersede the default 30-day notice period (A/CN.9/973, para. 75). This proviso is contained in the MLMC 1993. The Working Group may wish to consider whether the proviso should be contained in a separate provision in line with the drafting of the MLMC 1993.

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*failure to pay; persons excluded from bidding (e.g. under anticorruption, anti-money-laundering or similar regulations)]*.<sup>59</sup>

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<sup>59</sup> *Notice of judicial sale – terms of sale*: The present draft leaves these matters, which include modalities for payment, to the domestic law of the State of judicial sale. Failure to comply with these terms may give rise to legal challenge in the State of judicial sale before a court exercising jurisdiction under article 9. In certain circumstances, it may also give rise to the ground for refusal in article 10(1)(b) by which the international effects of the judicial sale may be denied if the sale was procured by fraud committed by the purchaser.

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**Appendix II to the [draft instrument on the judicial sale of ships]****Certificate of judicial sale**

*Issued in accordance with the provisions of article 5 of the [draft instrument on the judicial sale of ships]*

This is to certify that:

(a) The ship described below was sold by way of judicial sale in accordance with the law of the State of judicial sale and the notice requirements in article 4 of the Convention;

(b) The ship was physically within the jurisdiction of the State of judicial sale at the time of the sale; and

(c) The purchaser acquired clean title to the ship [and any title to and all rights and interests in the ship existing prior to the judicial sale were extinguished and all pre-existing mortgages and charges ceased to attach to the ship].<sup>60</sup>

- 1. State of judicial sale** .....
- 2. Authority issuing this certificate**
  - 2.1 Name .....
  - 2.2 Address .....
  - 2.3 Telephone/fax/email, if available .....
  - 2.4 Place and date of judicial sale .....
- 3. Ship**
  - 3.1 Name .....
  - 3.2 IMO number .....
  - 3.4 Port of registry .....
  - 3.5 Other information capable of identifying the ship, such as the shipbuilder, time and place of the shipbuilding, distinctive number or letters, and recent photographs, if available ..... *(Please attach any photos to the certificate)*
- 4. Owner(s) immediately prior to the judicial sale**
  - 4.1 Name .....
  - 4.2 Address or residence or principal place of business .....
  - 4.3 Telephone/fax/email .....

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<sup>60</sup> See article 2(b) and accompanying footnote.

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## 5. Purchaser

5.1 Name .....

5.2 Address or residence or principal place of business .....

5.3 Telephone/fax/email .....

[6. Purchase price]<sup>61</sup> .....

At.....  
(place)

On .....  
(date)

.....  
Signature and/or stamp

<sup>61</sup> See article 5(2)(h) and accompanying footnote.



**IX. UN GENERAL ASSEMBLY DOCUMENT  
A/CN.9/WG.VI/WP.87/ADD.1  
NOTE ACCOMPANYING THE SECOND  
REVISION OF THE BEIJING DRAFT**

United Nations

A/CN.9/WG.VI/WP.87/Add.1

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Working Group VI (Judicial Sale of Ships)  
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**Note Accompanying the Second Revision of the Beijing  
Draft**

**Note by the Secretariat**

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## I. Introduction

1. This note accompanies the second revision of the Beijing Draft contained in document [A/CN.9/WG.VI/WP.87](#) and highlights some overarching issues for consideration by the Working Group at its thirty-seventh session.

## II. Issues for consideration

### A. Form of the instrument

2. The Beijing Draft was originally conceived as a treaty. At the thirty-sixth session of the Working Group, there was wide support for continuing working on the assumption that the draft instrument would eventually take the form of a convention, but the Working Group also agreed to take a final decision on this issue at a future session ([A/CN.9/1007](#), para. 99). The second revision is presented in the form of a treaty and includes draft final clauses. At its thirty-seventh session, the Working Group may wish to take a final decision on the form of the instrument.

### B. Geographic scope

3. No decision has been taken as to whether the instrument, if it takes the form of a treaty, will apply to judicial sales conducted in a State that is not party to the Convention. While the geographic scope of the instrument has not been considered in detail by the Working Group, some doubts have already been expressed about applying the recognition regime to such sales ([A/CN.9/973](#), paras. 47, 52–53). The second revision is drafted on the basis that the recognition regime only applies between States Parties (see, e.g., new article 1). At its thirty-seventh session, the Working Group may wish to express its agreement with this approach.

### C. Types of ships covered

4. A query has been raised within the Working Group as to whether the instrument applies only to the judicial sale of seagoing vessels, or whether it also applies to vessels used for inland navigation. While some have assumed that the instrument does not apply to the latter, others have expressed support for including the latter within scope. It has been noted that, if it does apply to vessels used for inland navigation, the instrument might overlap with the Convention on the Registration of Inland Navigation Vessels (1965) (“Geneva Convention”), in particular its Protocol No. 2 Concerning Attachment and Forced Sale of Inland Navigation Vessels.<sup>1</sup> The Working Group has asked the Secretariat to analyse the relationship between the Geneva Convention and a future instrument and to present its findings for consideration by the Working Group at its thirty-seventh session ([A/CN.9/1007](#), paras. 30–31).

#### 1. Maritime treaties applying to seagoing vessels

5. The qualification of a ship or vessel as “seagoing” is made in several international maritime treaties to which the Working Group has referred in its discussions so far. For instance:

(a) International Convention Relating to the Arrest of Seagoing Ships (1952)<sup>2</sup> – the title of the Convention indicates that it applies to “seagoing” ships, although the terms of the Convention do not define the term “ship” nor expressly exclude inland navigation vessels from scope. Ultimately a matter of treaty interpretation, it has been

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<sup>1</sup> United Nations, *Treaty Series*, vol. 1281, No. 21114.

<sup>2</sup> United Nations, *Treaty Series*, vol. 439, No. 6330.

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argued that the Convention applies to both seagoing ships and inland navigation vessels;<sup>3</sup>

(b) International Convention on Arrest of Ships (1999)<sup>4</sup> (“Arrest Convention 1999”) – while also not defining the term “ship”, this Convention allows States to exclude its application to “ships which are not seagoing” (article 10(1)(a)). It also allows States to make a declaration that certain rules provided for in a “treaty on navigation on inland waterways” prevail over corresponding rules set out in the Convention (article 10(2));

(c) International Convention on Maritime Liens and Mortgages (1993)<sup>5</sup> – article 13 of this Convention states that, unless otherwise provided, its provisions shall apply to “all seagoing vessels”.

6. In none of these treaties is the term “seagoing” ship or vessel defined. It has been argued that, in the context of the Arrest Convention 1999, the term depends on the use or purpose of the ship rather than its capabilities, such that a ship intended for navigation on inland waterways is not “seagoing” even if it is capable of navigation on the sea, and a ship intended for navigation on the sea is still “seagoing” even if it happens to navigate on inland waterways.<sup>6</sup> At the same time, attempts to define the term in international maritime treaties have been unsuccessful.<sup>7</sup> Indeed, the decision was taken by the International Working Group of the Comité Maritime International (CMI) not to limit the Beijing Draft to the judicial sale of “seagoing” ships on the basis that it might “create unnecessary conflicting interpretations”.<sup>8</sup> But while there may be difficulties in agreeing on what a seagoing vessel is, there seems to be general agreement on the following two propositions: first, that seagoing vessels and vessels used for inland navigation are mutually exclusive; and second, that the term “ship”, without further qualification, does not necessarily exclude vessels used for inland navigation.

## 2. Geneva Convention and its Protocol No. 2

7. The Geneva Convention is currently in force in nine States,<sup>9</sup> and is open to accession only by members of the United Nations Economic Commission for Europe (UNECE) under whose auspices it was concluded, as well as States admitted to UNECE with a consultative status. Of the States for which it is in force, seven have accepted Protocol No. 2, which applies to the “attachment” (including arrest) and “forced sale” (including judicial sale) of “any vessel used in inland navigation”. Specifically, Protocol No. 2 deals with various matters related to judicial sales that are addressed in the draft instrument, namely notice requirements (article 21), the international effects of a judicial sale (article 19), and deregistration and registration of a ship following its judicial sale (article 22).

8. If the Working Group were to agree to include inland navigation vessels in the draft instrument – or at least not exclude them expressly – it would appear that there would indeed be some overlap between the draft instrument and Protocol No. 2. This is particularly so because:

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<sup>3</sup> Francesco Berlingieri, *Berlingieri on Arrest of Ships: A Commentary on the 1952 and 1999 Arrest Conventions* (3rd ed., London, 2000), § 1.34.

<sup>4</sup> United Nations, *Treaty Series*, vol. 2797, No. 49196.

<sup>5</sup> United Nations, *Treaty Series*, vol. 2276, No. 40538.

<sup>6</sup> Berlingieri, § II.18.

<sup>7</sup> See, e.g., the preparatory work for the Convention on Limitation of Liability for Maritime Claims (1976) as published in CMI, *The Travaux Préparatoires of the LLMC Convention, 1976 and of the Protocol of 1996* (Antwerp, 2000), pp. 41–46.

<sup>8</sup> CMI International Working Group, “Commentary on the 2nd Draft of the Instrument on International Recognition of Foreign Judicial Sale of Ships”, CMI Yearbook 2011–2012 (Antwerp, 2012), p. 127.

<sup>9</sup> Austria, Belarus, Croatia, France, Luxembourg, Montenegro, Netherlands, Serbia and Switzerland.

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(a) The definition of “ship” in article 2(i) of the present draft does not require the vessel to be “seagoing” (recalling the finding above that the term “ship” does not necessarily exclude inland navigation vessels); and

(b) The present draft acknowledges that the ship may be registered in the registry of ships or an “equivalent registry”, which could be interpreted to include a registry in which inland navigation vessels are registered (noting that the Geneva Convention requires each State Party to keep a specific registry for inland navigation vessels (article 2(1)), while at the same time prohibiting the registration of the vessel in any other registry, including its registry of ships (article 3(3))).

9. Accordingly, the Working Group may wish to consider preserving the application of the Geneva Convention and its Protocol No. 2 among the States Parties thereto. Appropriate provision to that effect has been added to article 14 of the second revision for consideration by the Working Group.

#### **D. Centralized online repository**

10. The Working Group has agreed that a centralized online repository could be used to publish notices and certificates of judicial sales (A/CN.9/973, paras. 46 and 73). The repository mechanism is established by article 12 of the second revision, which remains substantively unamended from the first revision, and is operationalized by cross-references in articles 4(3)(b) and 5(3).

11. The Working Group has asked the Secretariat to “look further into options for possible repositories, including related financial implications” (A/CN.9/1007, para. 67). While this work is ongoing, a preliminary report is set out below. The Secretariat will provide the Working Group with a further report (including on the discussions with the International Maritime Organization (IMO) referred to in para. 16 below) at the thirty-seventh session.

##### **1. Existing models**

###### **(a) Transparency Registry**

12. The Transparency Registry is a central online repository for the publication of information and documents in treaty-based investor-state arbitration. The repository is established under the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (“Rules on Transparency”). The Secretary-General of the United Nations carries out the repository function through the UNCITRAL secretariat.<sup>10</sup>

13. The operation of the Transparency Registry entails personnel costs and costs associated with the establishment and ongoing maintenance of the online platform.<sup>11</sup> To date, these costs have been funded entirely by voluntary contributions from the European Commission and the Fund for International Development of the Organization of the Petroleum Exporting Countries (OFID).<sup>12</sup> The Transparency Registry is accessible online at [www.uncitral.org/transparency-registry/registry/index.aspx](http://www.uncitral.org/transparency-registry/registry/index.aspx).

###### **(b) Other international repositories**

14. As previously reported to the Working Group,<sup>13</sup> international registries and similar notification schemes are established under other international instruments, including:

(a) *International Registry for Aircraft Objects* – established under the Convention on International Interests in Mobile Equipment (2001) and the Protocol thereto on Matters Specific to Aircraft Equipment (“Aircraft Protocol”), the registry

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<sup>10</sup> Rules on Transparency, article 8.

<sup>11</sup> A/CN.9/791, paras. 6–8.

<sup>12</sup> See A/CN.9/979, para. 15.

<sup>13</sup> A/CN.9/WG.VI/WP.84, para. 8(k).

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is used primarily to register international interests in aircraft objects. The registrar function is carried out by Aviareto Limited – a company registered in Ireland – under contract with the International Civil Aviation Organization, which serves as “supervisory authority” under the Aircraft Protocol. At the fifty-second session of the Commission (Vienna, 8-19 July 2019), it was reported that the registry now hosts over one million registrations.<sup>14</sup> Registration of an international interest serves not only to give notice to third parties, but also to enable the creditor to preserve the priority of its registered interest against subsequently registered interests and unregistered interests. As such, registration serves not only an informative function, but also a legal function. The regulations issued under the Aircraft Protocol provide for fees to be levied for registry searches and certificates. The registry is accessible online at [www.internationalregistry.aero](http://www.internationalregistry.aero);

(b) *Anti-dumping notification scheme* – at the thirty-fifth session, the Working Group was informed of the notification scheme under World Trade Organization (WTO) instruments with respect to trade remedies adopted by WTO Members, such as anti-dumping measures. The Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994<sup>15</sup> establishes the Committee on Anti-Dumping Practices<sup>16</sup> and obliges WTO Members, among other things, to submit reports to the Committee every six months on anti-dumping actions.<sup>17</sup> The scheme is administered by the WTO secretariat, which publishes the reports on the WTO website;

(c) *IMO ship identification number scheme* – adopted by the International Maritime Organization (IMO) under regulation XI-1/3 of the International Convention for the Safety of Life at Sea (SOLAS), the scheme provides for the issuance of unique IMO numbers to a wide range of ships, including all ships of at least 100 gross tonnage and passenger ships and certain fishing vessels of less than 100 gross tonnage.<sup>18</sup> The scheme is operated by IHS Maritime & Trade (formerly Lloyd’s Register, now IHS Markit) under an arrangement with the IMO, and comprises a global maritime database to support the issuance and verification of IMO numbers. The database is accessible online as a module within the IMO’s Global Integrated Shipping Information System (GISIS): <https://gisis.imo.org>.

## 2. Use of the GISIS platform

15. The GISIS platform is maintained by the IMO and currently comprises 26 public modules that provide access to a wide range of information supplied to the IMO secretariat by national maritime administrations under various IMO instruments, as well as information supplied under inter-agency arrangements.<sup>19</sup> The Secretariat is currently in discussions with the IMO secretariat to explore options for the IMO to host a possible online repository under the draft instrument as an additional GISIS module. Preliminary discussions indicate that this arrangement would need to be approved by the IMO Council.

16. Use of the GISIS platform to host the online repository could offer a range of benefits, including visibility among stakeholders in the maritime industry. Moreover, leveraging off an existing online platform would help to reduce the costs of operating the repository. These costs depend in large part on the range of information to be

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<sup>14</sup> *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 229.

<sup>15</sup> United Nations, *Treaty Series*, vol. 1868, No. 31874, p. 201.

<sup>16</sup> *Ibid.*, article 16.1.

<sup>17</sup> *Ibid.*, article 16.4.

<sup>18</sup> The scheme is only mandatory for passenger ships of at least 100 gross tonnage and cargo ships of at least 300 gross tonnage: regulation XI-1/3, para. 1. For all other ships, the scheme is voluntary.

<sup>19</sup> For instance, one GISIS module comprises an inter-agency platform for information sharing on unsafe migration by sea, which was jointly set up with the International Organization for Migration (IOM) and the United Nations Office on Drugs and Crime (UNODC) and launched on 6 July 2015.

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hosted (i.e., certificates and notices of judicial sale) and the number of judicial sales covered by the eventual instrument. In this regard, the Secretariat is unaware of any studies of the worldwide prevalence of judicial sales. The CMI has previously estimated that hundreds of judicial sales are conducted globally each year;<sup>20</sup> however, the number of judicial sales covered by the repository will likely be significantly lower, at least to begin with, given that only judicial sales conducted within a State Party are covered.

### E. Certified copies and translations of the certificate

17. The second revision retains a certification requirement for copies and translations of the certificate of judicial sale. A similar requirement (for arbitral awards) is contained in article IV(1) and (2) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)<sup>21</sup> (“New York Convention”), although, unlike the New York Convention, the second revision only provides for production of certified copies and translations *upon request*. No certification requirement is contained in more recent UNCITRAL texts such as the Model Law on International Commercial Arbitration<sup>22</sup> (article 35(2)) and the United Nations Convention on International Settlement Agreements Resulting from Mediation (2018) (article 4(3)).

18. The Working Group may wish to consider whether it is necessary to retain the certification requirement. The Working Group may also wish to consider whether it is sufficient for the purposes of articles 7 and 8 that a (certified) copy of the certificate be produced, rather than the original. This option might be useful where the purchaser seeks simultaneously to deregister the ship in the State of registration and the State of bareboat charter registration, a scenario already discussed by the Working Group (A/CN.9/973, para. 48).

### F. Conditions for giving international effect

19. At its thirty-sixth session, the Working Group agreed to limit the scope of the instrument to judicial sales that (already) provide clean title under the domestic law of the State of judicial sale (A/CN.9/1007, para. 43). At the same time, it was observed that the conditions contained in article 4(1) of the first revision for conferring clean title contained important safeguards that should be featured in the recognition regime under the instrument. It was therefore proposed to transform those conditions into conditions for giving international effect to the judicial sale, which is provided for in article 6 of the present draft (*ibid.*, para. 46). Those conditions are: (a) that the ship was physically within the jurisdiction of the State of judicial sale at the time of the sale (“condition 1”); (b) that the judicial sale was conducted in accordance with the law of the State of judicial sale (“condition 2”); and (c) that the judicial sale was conducted in accordance with the notice requirements contained in the draft instrument (“condition 3”).

20. Some hesitation has been expressed with condition 3, on the basis that it would allow or require the authorities of a State other than the State of judicial sale to scrutinize the range of activities contemplated in (now) article 4, most of which would have taken place outside that other State (A/CN.9/1007, para. 56). In particular, it has been noted that this would impose an unrealistic burden on the registrar in that other State, which could in turn undermine the effectiveness of the recognition regime under the instrument (*ibid.*). The same could be said for condition 1 (which would require the determination of facts more readily established in the State of judicial sale,

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<sup>20</sup> See A/CN.9/WG.VI/WP.81, p. 3.

<sup>21</sup> United Nations, *Treaty Series*, vol. 330, No. 4739.

<sup>22</sup> United Nations publication, Sales No. E.08.V.4.

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as already alluded to by the Working Group: *A/CN.9/1007*, para. 81) and condition 2 (which would require an assessment of foreign law).

21. The Working Group may wish to consider whether it is more effective for these conditions to be scrutinized by the authorities in the *State of judicial sale*, and thus whether they should be omitted from article 6. To assist the Working Group visualize this alternative:

(a) The chapeau of article 5(1) of the present draft has been amended to incorporate conditions 2 and 3, thereby requiring the issuing authority to scrutinize the conditions when deciding to issue the certificate of judicial sale. Article 5(1) already required the issuing authority to certify that these conditions had been satisfied; and

(b) Article 5(1)(b) of the present draft has been inserted to incorporate condition 1, thereby requiring the issuing authority to certify that the condition has been satisfied. Article 3(1) of the present draft has also been amended to limit the scope of the instrument to judicial sales of ships that satisfy condition 1.

22. Pursuant to article 9(1) of the present draft, any challenge to the issuance of the certificate of judicial sale would fall within the exclusive jurisdiction of the courts of the State of judicial sale. Moreover, pursuant to article 5(5) of the present draft, the particulars in the certificate of judicial sale, including those certifying that the conditions have been satisfied, enjoy conclusive effect in a State other than the State of judicial sale.

## G. Function of the notice requirements

23. The second revision reduces the *content* of the notice requirements, reflecting the discussions at the thirty-sixth session of the Working Group. One unresolved issue is the *function* that the notice requirements serve. In the present draft, the (reduced) notice requirements function as a condition for giving international effect to a judicial sale, in the sense that the effect of a judicial sale of conferring clean title will not be extended abroad unless the judicial sale is carried out in compliance with the notice requirements. As noted above (para. 20), some hesitation has been expressed with the notice requirements serving such a function. The following alternative options have been put forward:

(a) The notice requirements could serve as a *condition for issuing the certificate of judicial sale*. As such, a failure to comply with the notice requirements would not give ground for avoiding the sale but would give ground for challenging the validity of the certificate, and thus the ability of the sale to benefit from the recognition regime under the instrument (*A/CN.9/1007*, para. 57);

(b) The notice requirements could serve as a *ground for refusal to give international effect to the judicial sale*. As such, a judicial sale that failed to comply with the notice requirements would not have international effect in a State other than the State of judicial sale if a court in that State determines that the ground for refusal applies (as provided in article 10);

(c) The notice requirements could serve as a *ground for avoiding the judicial sale*. As such, a judicial sale that failed to comply with the notice requirements would not have, or cease to have, international effect if the sale is avoided by a court in the State of judicial sale exercising jurisdiction under article 9 (as provided for in article 9(3));

(d) The notice requirements could serve as a *stand-alone provision*. As such, the instrument would not prescribe any legal effect for a failure to comply with the notice requirements; instead, it would be a matter for the domestic law of each State to prescribe the legal consequences of that failure.

24. While the Working Group has already expressed misgivings about alternative option (b) (*A/CN.9/1007*, paras. 58 and 85) and alternative option (c) (*A/CN.9/1007*,

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paras. 59 and 70), it has not expressed a view on alternative options (a) and (d). Alternative option (a) could be implemented by moving the reference to compliance with notice requirements from article 6(1)(b) to the chapeau of article 5(1), as implemented in the present draft. Alternative option (d) could be implemented by deleting the reference in article 6(1)(b) altogether.

## **H. Operation of the grounds for refusal**

25. The second revision gives effect to the proposal made at the thirty-sixth session of the Working Group to link and adapt the grounds for refusing to give international effect to a judicial sale, set out in article 10, to the obligations imposed on States other than the State of judicial sale, namely the obligation to register/deregister (article 7) and the obligation not to arrest (article 8). A question remains as to the residual operation of article 10, which applies to deny the basic rule in article 6 that a judicial sale conferring clean title under the law of the State of judicial sale will have that effect in all other States Parties. Accordingly, the Working Group may wish to pay particular attention to the interaction between articles 7(5), 8(4) and 10 in its consideration of the second revision.

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**X. UN GENERAL ASSEMBLY DOCUMENT  
A/CN.9/WG.VI/WP.88  
SYNTHESIS OF COMMENTS SUBMITTED ON  
THE SECOND REVISION OF THE BEIJING  
DRAFT**

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**United Nations Commission on  
International Trade Law  
Working Group VI (Judicial Sale of Ships)  
Thirty-seventh session  
Vienna, 14–18 December 2020**

**Synthesis of comments submitted on the second revision of  
the Beijing Draft**

**Note by the Secretariat**

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## I. Introduction

1. To facilitate the progress of work of Working Group VI during the COVID-19 pandemic, the Secretariat invited States, intergovernmental organizations and invited international non-governmental organizations to submit comments on the second revision of the Beijing Draft (A/CN.9/WG.VI/WP.87) as well as on the overarching issues identified in the accompanying note (A/CN.9/WG.VI/WP.87/Add.1).

2. This note synthesizes the comments submitted by the following States and international organizations:

(a) *States*: Canada, China, El Salvador, European Union and its member States (referred to collectively as the EU),<sup>1</sup> Lebanon, Mexico, and United States of America (US);

(b) *International organizations*: Comité Maritime International (CMI), International Association of Judges (IAJ) jointly with the Law Association for Asia and the Pacific (LAWASIA), and International Chamber of Shipping (ICS) in coordination with the Baltic and International Maritime Council (BIMCO).

## II. Synthesis of comments on overarching issues identified in the accompanying note

### A. Form of the instrument<sup>2</sup>

3. The accompanying note invites the Working Group to take a final decision on the form of the instrument at the thirty-seventh session. All submissions commenting on this issue support the instrument taking the form of a treaty.<sup>3</sup>

### B. Geographic scope<sup>4</sup>

4. The accompanying note invites the Working Group to express its agreement to apply the recognition regime only to judicial sales conducted in a State that is party to the treaty (if the instrument takes the form of a treaty). Most submissions express a preference for a “closed” regime, in the sense that the instrument only applies to judicial sales conducted in a State party.<sup>5</sup> One of these submissions notes that a closed regime will encourage wider acceptance of the instrument.<sup>6</sup>

5. One submission expresses a preference for an “open” regime, in the sense that the instrument applies to judicial sales conducted in any State irrespective of whether it is a party or not, with the option for States to apply the instrument only to judicial sales conducted in a State party.<sup>7</sup> It notes that an open regime will promote the objective of legal certainty, and that applying the instrument to judicial sales in a non-State party may still affect the interests of stakeholders (e.g., shipowners, financiers and maritime lienholders) which are nationals of a State party.

### C. Types of ships covered<sup>8</sup>

6. The accompanying note analyses the relationship between a future instrument and Protocol No. 2 to the Convention on the Registration of Inland Navigation Vessels

<sup>1</sup> Two EU member States – Germany and Malta – also submitted separate comments.

<sup>2</sup> See paragraph 2 of the accompanying note.

<sup>3</sup> Canada, China, EU, Malta, CMI, IAJ/LAWASIA, ICS/BIMCO.

<sup>4</sup> See paragraph 3 of the accompanying note and articles 1 and 6(1) of the second revision.

<sup>5</sup> Canada, EU, Malta, CMI, IAJ/LAWASIA, ICS.

<sup>6</sup> Malta.

<sup>7</sup> China.

<sup>8</sup> See paragraphs 4–9 of the accompanying note and article 2(i) of the second revision.

(1965) ("Geneva Convention"). It finds that, if inland navigation vessels are included within the scope of the draft instrument, there would be some overlap between the draft instrument and Protocol No. 2. It invites the Working Group to consider preserving the application of Protocol No. 2. The second revision makes provision to that effect in article 14(2).

7. Most submissions commenting on this issue support retaining article 14(2).<sup>9</sup> Several submissions express a preference for including inland navigation vessels within the scope of the instrument.<sup>10</sup> One submission notes that whether the judicial sale of an inland navigation vessel is within scope should ultimately be a matter for the law of the State of judicial sale.<sup>11</sup> This follows from the definition of "ship" in article 2(i) of the second revision, which extends to a vessel "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". One submission recommends further analysis as to whether the instrument should apply only to seagoing vessels.<sup>12</sup>

#### **D. Centralized online repository<sup>13</sup>**

8. The accompanying note presents a preliminary report of work carried out by the Secretariat in looking into options for possible hosts for a centralized online repository of notices and certificates of judicial sale. It notes that the Secretariat is in discussions with the International Maritime Organization (IMO) secretariat to explore options for the IMO to host the repository as an additional module within the Global Integrated Shipping Information System (GISIS).

9. All submissions commenting on this issue support establishing a centralized online repository and hosting it within GISIS under arrangement with the IMO.<sup>14</sup> One submission observes that the repository may obviate the need to provide for the presentation of certified copies of the certificate of judicial sale.<sup>15</sup> Another submission queries the legal value of certificates published in the repository.<sup>16</sup> The Secretariat notes that a certificate published in the repository may satisfy the requirements of an electronic certificate in article 11(2) of the second revision, in which case that certificate could be treated as *the* certificate.

#### **E. Certified copies and translations of the certificate<sup>17</sup>**

10. The accompanying note invites the Working Group to consider whether it is necessary to retain certification requirements for copies and translations of the certificate of judicial sale. Two submissions support retaining the certification requirement for translations produced pursuant to articles 7(3) and 8(3) of the second revision.<sup>18</sup> One submission supports retaining the certification requirement for copies produced at the request of the registrar pursuant to article 7(4),<sup>19</sup> while another submission observes that this requirement may be obviated by the establishment of

<sup>9</sup> China, EU, Malta, CMI, IAJ/LAWASIA, ICS/BIMCO.

<sup>10</sup> China, Malta, ICS/BIMCO.

<sup>11</sup> CMI. One submission adds that inland navigation vessels are expressly excluded from the legislative regime for the arrest and judicial sale of ships in Australia: IAJ/LAWASIA.

<sup>12</sup> Germany.

<sup>13</sup> See paragraphs 10–16 of the accompanying note and articles 4(3)(b), 5(3) and 12 of the second revision.

<sup>14</sup> China, Malta, ICS/BIMCO.

<sup>15</sup> China.

<sup>16</sup> ICS/BIMCO.

<sup>17</sup> See paragraphs 17–18 of the accompanying note and articles 7(3), 7(4) and 8(3) of the second revision.

<sup>18</sup> China, ICS/BIMCO.

<sup>19</sup> ICS/BIMCO.

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the centralized online repository (see para. 9 above).<sup>20</sup> Two submissions suggest that a certified copy of the certificate could be presented in lieu of the certificate itself.<sup>21</sup>

## F. Conditions for giving international effect<sup>22</sup>

11. The accompanying note summarizes the three conditions in article 6 of the second revision for giving international effect to the judicial sale, namely (a) that the ship was physically within the jurisdiction of the State of judicial sale at the time of the sale ("condition 1"), (b) that the judicial sale was conducted in accordance with the law of the State of judicial sale ("condition 2"), and (c) that the judicial sale was conducted in accordance with the notice requirements contained in the draft instrument ("condition 3"). The note invites the Working Group to consider whether it is more effective for these conditions to be scrutinized by the authorities in the State of judicial sale and thus omitted from article 6.

12. All submissions commenting on this issue support omitting the three conditions from article 6.<sup>23</sup> However, one submission points out that a State other than the State of judicial sale still has a role in scrutinizing condition 1, which serves as a ground for refusal (article 10(1)(a)) and defines the scope of application of the instrument (article 3(1)(a)).<sup>24</sup> The submission expresses the view that condition 1 should continue to serve these functions (see synthesis of comments on the operation of the grounds for refusal and on article 3 in paras. 15 and 32, respectively).

## G. Function of the notice requirements<sup>25</sup>

13. The accompanying note invites the Working Group to consider what function the notice requirements in article 4 of the second revision should serve. In particular, it invites the Working Group to consider whether the notice requirements should serve as a condition for issuing the judicial sale, as currently provided in article 5(1) of the second revision, or as a stand-alone provision. All submissions commenting on the issue support the notice requirements serving as a condition for issuing the certificate of judicial sale.<sup>26</sup>

## H. Operation of the grounds for refusal<sup>27</sup>

14. The accompanying note invites the Working Group to pay particular attention to the interaction between articles 7(5), 8(4) and 10 in its consideration of the second revision. It recalls the proposal made at the thirty-sixth session to "link and adapt" the grounds for refusal in article 10 to the obligations imposed on States other than the State of judicial sale, namely the obligation to register/deregister (article 7) and the obligation not to arrest (article 8). Broad support has been given in the Working Group to exploring this proposal further,<sup>28</sup> which is implemented in articles 7(5) and 8(4) of the second revision. One submission suggests that articles 7(5) and 8(4) should be referred to in the body of the instrument.<sup>29</sup>

<sup>20</sup> China.

<sup>21</sup> Malta, US.

<sup>22</sup> See paragraphs 19–22 of the accompanying note and article 6 of the second revision.

<sup>23</sup> China, Malta, US.

<sup>24</sup> China.

<sup>25</sup> See paragraphs 23–24 of the accompanying note and articles 4, 5(1) and 6(1)(b) of the second revision.

<sup>26</sup> China, ICS/BIMCO.

<sup>27</sup> See paragraph 25 of the accompanying note and articles 7(5), 8(4) and 10 of the second revision.

<sup>28</sup> A/CN.9/1007, para. 89.

<sup>29</sup> Lebanon.



**1. Accepted grounds for refusal**

15. The grounds for refusal in article 10 of the second revision are (a) that the ship was not physically within the jurisdiction of the State of judicial sale at the time of the sale ("ground 1"),<sup>30</sup> (b) that the sale was procured by fraud committed by the purchaser ("ground 2"), and (c) that the judicial sale having effect in the State addressed would be manifestly contrary to the public policy of that State ("ground 3"). Footnotes 46 and 47 of the second revision invite the Working Group to consider whether it is desirable to retain grounds 1 and 2. One submission supports retaining all of the grounds,<sup>31</sup> while three submissions support omitting grounds 1 and 2.<sup>32</sup> and one suggests omitting only ground 1.<sup>33</sup> With respect to ground 1, two submissions observe that it is redundant as it already serves to define the scope of application of the instrument (article 3(1)(a)).<sup>34</sup> With respect to ground 2, one submission suggests that it should be amended so as to apply to fraud committed by the purchaser in procuring the certificate of judicial sale rather than in procuring the sale itself. It adds that such a fraud might be committed if the purchaser requested a certificate knowing that the matters being certified (as listed in article 5(1)) were not present.<sup>35</sup> Another submission observes that ground 2 is redundant as it restates the general principle that "fraud vitiates everything".<sup>36</sup> The Secretariat notes that applying this ground for refusal in the State addressed would not vitiate the judicial sale in the State of judicial sale.<sup>37</sup>

**2. Interaction between articles 7(5), 8(4) and 10**

16. Three submissions address this issue. One submission suggests that both articles 7(5) and 8(4) should provide for the same grounds for refusal to apply.<sup>38</sup> With respect to the obligation to register/deregister, a second submission suggests that article 7(5) should be reformulated to cross-refer to article 10, such that the obligation would not apply if the judicial sale is determined to have no effect in the State pursuant to article 10.<sup>39</sup> The full "suite" of grounds – whatever they may be – would still apply. A third submission makes a similar suggestion with respect to the obligation not to arrest, adding that article 8(4) could expressly acknowledge that either the court addressed or another court of the State could have jurisdiction to determine whether a ground for refusal exists.<sup>40</sup> The submission expresses the view that the full "suite" of grounds – not just the ground 3 (the public policy ground) – should apply to the obligation not to arrest.

17. Returning to the obligation to register/deregister, the third submission also suggests that article 7(5) should be reformulated to provide that the registrar may refuse to take action if (a) the certificate of judicial sale is avoided or cancelled, or (b) the certificate of judicial sale is declared to be of no effect by a court with jurisdiction over the registrar. On (a), the second revision does not provide for the avoidance or cancellation of the certificate of judicial sale per se, but does provide for the certificate to cease to have effect – and thus cease to trigger the obligation to register/deregister – if the sale is avoided under article 9 (article 5(6)).<sup>41</sup> On (b), the second revision does not provide for a court in a State other than the State of judicial

<sup>30</sup> As noted above (para. 12), in the second revision, this ground for refusal also serves to define the scope of application of the instrument (article 3(1)(a)) while also serving as a condition for giving international effect to the judicial sale (article 6(1)(a)).

<sup>31</sup> China.

<sup>32</sup> Lebanon, CMI, ICS/BIMCO.

<sup>33</sup> US.

<sup>34</sup> Lebanon, US.

<sup>35</sup> US.

<sup>36</sup> Lebanon.

<sup>37</sup> A/CN.9/1007, para. 79.

<sup>38</sup> Germany.

<sup>39</sup> US.

<sup>40</sup> China.

<sup>41</sup> See footnote 27 of the second revision.

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sale to scrutinize the certificate of judicial sale, which is a matter within the exclusive jurisdiction of the courts of the State of judicial sale (article 9(1)).

### I. Other issues

18. A number of submissions lend their support for the overall structure of the recognition regime under the draft instrument.<sup>42</sup> Two submissions re-emphasize the need for the instrument to strike a fair balance between the rights of existing creditors and the rights of the purchaser in a judicial sale.<sup>43</sup> These two submissions also re-emphasize the importance of the notice requirements in safeguarding due process with respect to the judicial sale and in ensuring that affected parties have the opportunity to assert their rights.<sup>44</sup> Another submission highlights the need to protect maritime lienholders.<sup>45</sup> The Secretariat notes that the Working Group has decided that, besides establishing minimum standards for notification, the instrument should not regulate the conduct of the judicial sale in the State of judicial sale or the proceedings leading to the judicial sale.<sup>46</sup>

## III. Synthesis of article-by-article comments on the second revision

### A. Article 1 – Purpose<sup>47</sup>

19. One submission suggests that article 1 should be deleted, adding that, if anything, a declaration of purpose could be included in the preamble.<sup>48</sup> It also observes that the purpose of the instrument is not just to set forth the “conditions” under which a judicial sale conducted in one State Party has effects in another State Party.

20. There was general agreement at the thirty-sixth session of the Working Group to insert a provision, at the start of the instrument, which declares – in positive terms – the object and purpose of the instrument. If the Working Group wishes to retain article 1, it may wish to consider replacing “conditions” with “circumstances”.

### B. Article 2 – Definitions

#### 1. Definition of “clean title” (article 2(b))<sup>49</sup>

21. The second revision presents two alternative options in square brackets for the definition of “clean title”. Some submissions express a preference for the first option,<sup>50</sup> while others express a preference for the second option.<sup>51</sup>

22. With respect to the first option, one submission suggests that the definition should be amended to specify that the rights and interests are “proprietary” in nature.<sup>52</sup> It adds that this amendment would mean that *jus in re aliena* (i.e., rights in a thing belonging to another, which would include a maritime lien and other rights within the meaning of “charge” as defined in article 2(a)) is not part of the “rights and interests in the ship” that are extinguished by the acquisition of clean title.

<sup>42</sup> El Salvador, CMI, IAJ/LAWASIA, ICS/BIMCO.

<sup>43</sup> Mexico, ICS/BIMCO. See A/CN.9/973, para. 67, and A/CN.9/1007, paras. 55 and 82.

<sup>44</sup> See A/CN.9/973, paras. 22 and 67, and A/CN.9/1007, para. 85.

<sup>45</sup> Germany.

<sup>46</sup> A/CN.9/1007, paras. 43 and 44.

<sup>47</sup> See footnote 2 of the second revision.

<sup>48</sup> China.

<sup>49</sup> See footnote 4 of the second revision.

<sup>50</sup> US, IAJ/LAWASIA.

<sup>51</sup> China, Lebanon, Mexico.

<sup>52</sup> China.

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23. With respect to the second option, one submission suggests that the reference to “any mortgage or charge” is too narrow and should be replaced with a reference to “encumbrances”.<sup>53</sup>

**2. Definition of “judicial sale” (article 2(c))<sup>54</sup>**

24. A suggestion was made at the thirty-sixth session of the Working Group to revise the definition of “judicial sale” to clarify that a sale by “private treaty” is not a private sale but rather a sale that is carried out under the supervision and with the approval of a court. One submission suggests that this clarification is unnecessary and that the words “carried out under the supervision and with the approval of a court” should be omitted.<sup>55</sup>

25. Another submission suggests that subparagraph (i) of the definition should be amended to refer to judicial sales also being “confirmed” by a court or other public authority.<sup>56</sup> It also suggests that subparagraph (ii) of the definition should be amended to specify that the creditors to which the proceeds of the sale are made available are those which are “entitled [to the proceeds] under applicable law of the State of judicial sale”.

**3. Definition of “maritime lien” (article 2(d))<sup>57</sup>**

26. Two submissions support defining the term “maritime lien” by reference to the law applicable in the State of judicial sale.<sup>58</sup> This effectively reverts to the definition in the original Beijing Draft.<sup>59</sup> At the thirty-sixth session, it was noted that the term “maritime lien” had a dual use in the instrument (insofar as it (a) prescribes the class of persons to whom the notice of judicial sale is to be given and (b) defines the “clean title” to be recognized in a State other than the State of judicial sale). As such, it was suggested that it was neither necessary nor desirable to limit the definition of maritime lien by reference to the law applicable in the State of judicial sale. The definition in the second revision seeks to address this dual use by defining the term “maritime lien” by reference to the “applicable law” without reference to a particular State. One submission supports this wording.<sup>60</sup>

**4. Definition of “mortgage” (article 2(e))<sup>61</sup>**

27. Like “maritime lien”, the term “mortgage” is used in the second revision to define action in the State of judicial sale (e.g., the class of persons to whom the notice of judicial sale is to be given) and action in a State other than the State of judicial sale (e.g., the “clean title” to be recognized and the action to be taken by the registrar). Footnote 7 of the second revision invites the Working Group to consider whether, for each of these uses, it is appropriate for subparagraph (ii) of the definition to limit a “mortgage” to one that is “recognized as such by the law applicable in accordance with the private international law rules of the State of judicial sale”.

28. One submission supports defining the term “mortgage” by reference to the “applicable law” without reference to a particular State, like in the definition of “maritime lien”.<sup>62</sup> Another submission supports omitting subparagraph (ii) altogether, adding that this is consistent with the approach taken to the recognition of mortgages in the International Convention on Maritime Liens and Mortgages (1993) (MLMC

<sup>53</sup> Mexico.

<sup>54</sup> See footnote 5 of the second revision.

<sup>55</sup> China.

<sup>56</sup> US.

<sup>57</sup> See footnote 6 of the second revision.

<sup>58</sup> US, IAJ/LAWASIA.

<sup>59</sup> A/CN.9/WG.VI/WP.82, article 1(i).

<sup>60</sup> Germany.

<sup>61</sup> See footnote 7 of the second revision.

<sup>62</sup> Germany.



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1993)<sup>63</sup> and avoids a potential conflict with subparagraph (i) of the definition.<sup>64</sup> The submission also supports omitting reference in subparagraph (i) to the mortgage being “recorded” (in addition to being “registered”). At the thirty-sixth session, the Working Group agreed to include a reference to the mortgage being “registered or recorded”. The Secretariat notes that the MLMC 1993 refers to mortgages being “registered” but not recorded, while article 11(2) of the United Nations Convention on Conditions for Registration of Ships (“Ship Registration Convention”)<sup>65</sup> refers to *particulars* of a mortgage being “recorded”.

**5. Definition of “owner” (article 2(f))<sup>66</sup>**

29. One submission suggests qualifying that the equivalent registry by reference to which the owner of the ship is determined is a “public” registry.<sup>67</sup>

**6. Definition of “purchaser” (article 2(h))<sup>68</sup>**

30. The second revision puts the definition of “purchaser” in square brackets to indicate its possible deletion. Two submissions support retaining the definition,<sup>69</sup> with one adding that the definition should accord with the definition of “clean title”.<sup>70</sup>

**7. New definition of “authority”**

31. One submission suggests defining the term “authority”.<sup>71</sup> This term is used (a) to circumscribe the bodies conducting a judicial sale for the purposes of the definition of “judicial sale” (i.e., sales ordered, approved or carried out by public authority), (b) to define certain judicial sales excluded from scope (i.e., sales involving “tax, customs or other law enforcement authorities”), (c) to circumscribe the bodies issuing a certificate of judicial sale (i.e., a public authority designated by the State of judicial sale), and (d) to identify the bodies authorized to correspond directly under article 13. The Working Group has previously heard proposals to define the term “authority”.<sup>72</sup>

**C. Article 3 – Scope of application**

32. One submission suggests amending article 3(1) to specify that the instrument applies only to judicial sales for which the proceeds are made available to creditors.<sup>73</sup> The Working Group has previously considered using the provision on scope of application to do so, with agreement reached at the thirty-sixth session to use the definition of “judicial sale” instead,<sup>74</sup> as reflected in article 2(c) of the second revision.

33. The second revision puts the exclusion of sales by tax, customs and other law enforcement authorities in article 3(2)(a) in square brackets. Footnote 13 invites the Working Group to consider whether the exclusion is still needed in the light of the amended definition of judicial sale (specifically subparagraph (ii) thereof). One submission expresses the view that the exclusion is not needed.<sup>75</sup> Another submission expresses the view that the exclusion is needed,<sup>76</sup> while yet another suggests that the

<sup>63</sup> United Nations, *Treaty Series*, vol. 2276, No. 40538.

<sup>64</sup> China.

<sup>65</sup> *International Legal Materials*, vol. 26, No. 5 (1987), p. 1229.

<sup>66</sup> See footnote 8 of the second revision.

<sup>67</sup> US.

<sup>68</sup> See footnote 9 of the second revision.

<sup>69</sup> China, Lebanon.

<sup>70</sup> Lebanon.

<sup>71</sup> China.

<sup>72</sup> See A/CN.9/973, para 83.

<sup>73</sup> Lebanon.

<sup>74</sup> See A/CN.9/973, paras 31 and 89, and A/CN.9/1007, para. 37.

<sup>75</sup> China.

<sup>76</sup> IAJ/LAWASIA.



exclusion should be applied to sales that are “for purposes other than protection of creditors”.<sup>77</sup> Neither of these suggestions expresses a view as to whether the exclusion is covered by the definition of judicial sale.

34. One submission expresses the view that the exclusion of State-owned ships in article 3(2)(b) should be incorporated into the definition of ship in article 2(i).<sup>78</sup>

#### **D. Article 4 – Notice of judicial sale<sup>79</sup>**

##### **1. Applicability to judicial sales within scope<sup>80</sup>**

35. Footnote 16 of the second revision invites the Working Group to confirm whether, at the point when notice is given (i.e., prior to the judicial sale), it will always be known that the judicial sale will result in the conferral of clean title, and therefore that the judicial sale is within the scope of application of the instrument. One submission notes that, under the domestic law of the relevant State, judicial sales always confer clean title on the eventual purchaser.<sup>81</sup>

##### **2. Persons to be notified (article 4(1))<sup>82</sup>**

###### **(a) Ship registrars (article 4(1)(a))**

36. One submission notes that a ship may be registered in multiple registries in a State (e.g., a federal registry and a state/provincial registry) and suggests that subparagraph (a) should be amended to provide for the notice to be given to the registrar of each of these registries.<sup>83</sup>

37. Another submission notes the need for the Working Group to consider the scope of notification of the ship registrar and its effects.<sup>84</sup> In doing so, the Working Group may wish to recall that:

(a) the second revision does not codify the notice requirements for a judicial sale but does establish certain minimum standards for notification, including for the contents of the notice of judicial sale (article 4(2) and Appendix I);

(b) the *function* of the notice requirements is still a matter to be resolved by the Working Group (as discussed in paragraph 13 above);

(c) a distinction has been emphasized on several occasions within the Working Group between proceedings for the judicial sale on the one hand and proceedings for the claim giving rise to the judicial sale and proceedings for the distribution of proceeds on the other hand,<sup>85</sup> with the point being made that the notice requirements should be adapted to the proceedings for the judicial sale;<sup>86</sup>

(d) the point has also been made on several occasions that the *objective* of the notice requirements is to strike a balance between fairness and efficiency.<sup>87</sup>

<sup>77</sup> US.

<sup>78</sup> China.

<sup>79</sup> See also discussion above under the heading “function of the notice requirements”. No comments were received on the model notice contained in Appendix I of the second revision.

<sup>80</sup> See footnote 16 of the second revision.

<sup>81</sup> China.

<sup>82</sup> See footnote 17 of the second revision.

<sup>83</sup> IAJ/LAWASIA.

<sup>84</sup> Mexico. See also synthesis of comments in paragraph 40 below.

<sup>85</sup> See A/CN.9/973, paras. 21, 24 and 56, and A/CN.9/1007, para. 55.

<sup>86</sup> See A/CN.9/973, para. 68.

<sup>87</sup> See A/CN.9/973, para. 67, and A/CN.9/1007, para. 55.

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**(b) Holders of mortgages and registered charges (article 4(1)(b)) and holders of maritime liens (article 4(1)(c))**

38. One submission stresses the importance of ensuring that all creditors have the opportunity to assert their rights in the ship.<sup>88</sup> Another submission suggests that the draft instrument should provide for the notice of judicial sale to be given to all holders of unregistered charges (not just holders of maritime liens).<sup>89</sup> Questions have previously been raised within the Working Group as to the feasibility of identifying and reaching all creditors.<sup>90</sup> At the same time, as noted in footnote 17 of the second revision, the list of persons to be notified of the judicial sale has not been determined by the Working Group.

**(c) Bareboat charterers and bareboat charter-in registrars (articles 4(1)(e) and (f))**

39. One submission suggests that, if the ship is under bareboat charter, it might be more reliable to give notice to the master of the ship rather than to the bareboat charterer and bareboat charter-in registrar.<sup>91</sup>

**3. Optional notification of registrars**

40. At its thirty-sixth session, the Working Group heard that, in several jurisdictions, the ship registrar is not given notice of the judicial sale.<sup>92</sup> One submission suggests that giving the notice to ship registrars and bareboat charter-in registrars should be optional, and therefore that article 4(1) should be amended to provide that the notice of judicial sale “may” be given to them.<sup>93</sup> The submission notes that ship registrars do not have any property interests in the ship being sold and may not appear in the proceedings. It also notes that those registrars may not have procedures in place to receive and process notices of judicial sale and may not be willing therefore to receive them. The Secretariat notes that a number of proposals have previously been put to – but so far not taken up by – the Working Group for the ship registrar to play a more active role in the notification process.<sup>94</sup>

**4. Publication of notice (article 4(3)(a))**

41. One submission suggests that the notice of judicial sale should also be published in the State of registration (i.e., the State in whose registry of ships the ship is registered), observing that many encumbrances on the ship are likely to be registered in that jurisdiction.<sup>95</sup>

**5. Reliance on registry information (article 4(4))**

42. One submission observes that the kinds of information listed in article 4(4) may be subject to personal data protection laws in some States.<sup>96</sup> The Secretariat notes that this observation may also be relevant to information exchanged under article 13. It also notes that article 4(4) does not require the registrar to disclose or provide access to registry information, which is subject to domestic law and other international law regimes (e.g., article 1(b) of the MLMC 1993 and article 6(3) of the Ship Registration Convention (which is not yet in force)).

<sup>88</sup> Mexico.

<sup>89</sup> China.

<sup>90</sup> See A/CN.9/973, para. 67.

<sup>91</sup> US.

<sup>92</sup> See A/CN.9/1007, para. 63.

<sup>93</sup> China.

<sup>94</sup> See A/CN.9/973, paras. 73 and 74.

<sup>95</sup> Mexico.

<sup>96</sup> Mexico.

**E. Article 5 – Certificate of judicial sale****1. Conditions for issuance (article 5(1))**

43. In the second revision, the conditions for the issuance of the certificate of judicial sale are (a) that the sale be conducted in accordance with the law of the State of judicial sale, (b) that the sale be conducted in accordance with the notice requirements in article 4, (c) that the certificate be issued at the request of the purchaser, and (d) that the certificate be issued in accordance with the regulations and procedures of the issuing authority. As noted in footnote 20 of the second revision, the Secretariat has included condition (d) for consideration by the Working Group as a means to allow the State of judicial sale to specify the procedures for applying for a certificate.

44. Two submissions support the inclusion of condition (d).<sup>97</sup> Another submission expresses the view that the certificate of judicial sale should only be issued if the rights of creditors have been respected.<sup>98</sup> That submission also suggests that condition (c) should be omitted and replaced with a condition that the certificate be issued by the issuing authority of its own motion.

45. Several submissions suggest the inclusion of an additional condition that the certificate only be issued if the judicial sale is no longer subject to challenge.<sup>99</sup> These submissions observe that the issuance of the certificate triggers a series of serious and irreversible effects, and that the subsequent invalidation of the certificate would lead to complications. This suggestion has implications for article 5(6) and the final clause of article 9(1). It also raises the question as to whether the international effects of a judicial sale pursuant to article 6 should be postponed until after the time period for challenging the judicial sale has lapsed.

**2. Contents of the certificate (article 5(2))<sup>100</sup>**

46. Footnote 22 of the second revision invites the Working Group to consider whether article 5(2)(d) should be amended to replace “port of registry” with “registry of ships or equivalent registry in which the ship is registered”. Four submissions support this amendment.<sup>101</sup>

47. The specification of the purchase price in article 5(2)(h) of the second revision is in square brackets following the discussion of the Working Group at its thirty-sixth session. Two submissions support retaining this provision.<sup>102</sup> Another submission observes that, while specification of the purchase price may help to identify fraud, it will not always reflect the full consideration provided by the purchaser (which might include the assumption of other costs or liabilities).<sup>103</sup> The submission suggests that article 5(2)(h) should be amended accordingly. A further submission supports omitting the provision, adding that specifying the purchase price in the certificate of judicial sale might affect the market price for the ship in a subsequent sale.<sup>104</sup>

**3. Verification of the certificate (article 5(4))**

48. Article 5(4) of the second revision requires the issuing authority to maintain a record of certificates issued and to verify whether particulars in a produced certificate correspond with particulars included in the record. Footnote 25 notes that, if a

<sup>97</sup> China, EU.

<sup>98</sup> Mexico. The Secretariat recalls the decision of the Working Group not to regulate the conduct of the judicial sale in the State of judicial sale or the proceedings leading to the judicial sale (see para. 18 above).

<sup>99</sup> Germany, CMI, IAJ/LAWASIA, ICS/BIMCO.

<sup>100</sup> No comments were received on the model certificate contained in Appendix I of the second revision.

<sup>101</sup> China, EU, Lebanon, IAJ/LAWASIA.

<sup>102</sup> China, IAJ/LAWASIA.

<sup>103</sup> US.

<sup>104</sup> Lebanon.

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centralized online repository is established, article 5(4) can be omitted. One submission notes that, if article 5(4) is retained, the draft instrument will need to make more specific provision regarding the record of certificates.

**4. Evidentiary value of certificate (article 5(5))**

49. Article 5(5) of the second revision, which gives the certificate of judicial sale conclusive effect, is expressed to be subject to the operation of the grounds for refusal set out in articles 7(5), 8(4) and 10. Footnote 26 invites the Working Group to consider whether the qualification should be deleted. Three submissions support deleting the qualification.<sup>105</sup> One submission supports omitting article 5(5) altogether.<sup>106</sup>

**5. Issuance of certificate during appeal period (article 5(6))**

50. The second revision presents alternative wording in square brackets for article 5(6). Two submissions support the second wording (that the certificate shall “cease to have effect” if the judicial sale is avoided).<sup>107</sup> One of the submissions adds that, as such, any action taken on the certificate would remain legally valid even if the judicial sale were subsequently avoided.<sup>108</sup> The other submission invites the Working Group to consider how to preserve the function of the certificate in evidencing finality without undermining the rights under article 9.<sup>109</sup>

**F. Article 6 – International effects of a judicial sale**

51. Most comments submitted on article 6 relate to the conditions for giving international effect, which are synthesized above (paras. 11–12).

**1. Title of article 6 and connection with article 10**

52. One submission invites the Working Group to consider amending the title of article 6 to better reflect that its scope is concerned with extending the effects of the judicial sale to States other than the State of judicial sale.<sup>110</sup> For similar reasons, the submission also invites the Working Group to consider amending the title of article 10, adding that, as the effect of a decision in one State to apply a ground for refusal would not, by virtue of the instrument, extend to any other State,<sup>111</sup> it is erroneous to say that such a decision would cause the judicial sale not to have “international effect”. The Working Group may wish to consider “effects of judicial sale in other States parties” as an alternative title for article 6 and “circumstances in which judicial sale has no effect in other States parties” as an alternative title for article 10.

53. Continuing with the connection between articles 6 and 10, the submission picks up the invitation to the Working Group in footnote 28 of the second revision and suggests that article 6(1) should be amended to state that it is “subject to article 10”. Footnote 34 also invites the Working Group to consider whether article 10 should be placed immediately after article 6. One submission suggests that, since articles 6, 9(3), 9(4), and 10 all deal with the international effects of a judicial sale, they should be combined.<sup>112</sup>

**2. Preservation of *in personam* claims (article 6(2)(b))**

54. Footnote 30 of the second revision invites the Working Group to consider a suggestion to move article 6(2)(b) to the provision on scope of application (article 3).

<sup>105</sup> China, Lebanon, IAJ/LAWASIA.

<sup>106</sup> US.

<sup>107</sup> China, US.

<sup>108</sup> China.

<sup>109</sup> US.

<sup>110</sup> China.

<sup>111</sup> A/CN.9/1007, para. 79.

<sup>112</sup> Germany.



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Two submissions support this suggestion.<sup>113</sup> Another submission does not support it on the basis that article 6(2)(b) concerns the effect of the judicial sale rather than the scope of application of the instrument.<sup>114</sup> The submission also suggests that the term “personal claim”, as used in article 6(2)(b), should be replaced in the English version of the second revision with “*in personam* claim” so as to avoid confusion and to facilitate translation.

55. Another submission suggests that article 6(2)(b) should extend to the preservation of *in personam* claims against the bareboat charterer of the ship prior to the judicial sale on the basis that some domestic laws may recognize the bareboat charterer as the owner of the ship.<sup>115</sup>

**G. Article 7 – Action by registrar**

56. Most comments submitted on article 7 relate to the production of certified copies and translations of the certificate of judicial sale and the operation of the grounds for refusal, which are synthesized above (paras. 10 and 14–17, respectively).

57. Footnote 32 of the second revision invites the Working Group to consider whether the words “or registrars” in square brackets in the chapeau of article 7(1) should be retained to further clarify that there may be more than one relevant registrar in the State addressed. One submission expresses the view that the existing reference to “competent registrar” is sufficient and that no further clarification is necessary.<sup>116</sup> Another submission supports retaining the words.<sup>117</sup>

58. Two submissions comment on the conditions for the registrar taking action under article 7. One submission suggests that article 7(1) should specify that the registrar take action not only upon production of the certificate of judicial sale but also “on application of the purchaser or subsequent purchaser”.<sup>118</sup> This suggestion recalls the position in the original Beijing Draft, which required the certificate of judicial sale to be produced “by a purchaser or subsequent purchaser”.<sup>119</sup> The submission also suggests that the actions listed in article 7(1)(b) should be taken “on application” rather than “at the direction” of the purchaser.

59. A second submission expresses the view that action by the registrar should *precede* the judicial sale in order for the judicial sale to confer clean title.<sup>120</sup> This view may imply a departure from the sequencing envisaged in the Beijing Draft as well as in the MLMC 1993.

**H. Article 8 – No arrest of the ship**

60. Footnote 37 invites the Working Group to consider whether article 8 would apply to the arrest of a ship as a protective measure pending determination of the existence of a ground for refusal under article 10. One submission<sup>121</sup> expresses the

<sup>113</sup> Germany, IAJ/LAWASIA.

<sup>114</sup> China. The Secretariat notes that the Working Group has decided that the instrument should not regulate the effects of the judicial sale in the State of judicial sale: A/CN.9/1007, paras. 43 and 44.

<sup>115</sup> IAJ/LAWASIA. The Secretariat understands that there has been some debate in the past in some common law jurisdictions as to whether a bareboat charterer is an “owner” or “beneficial owner” under admiralty legislation, with the prevailing view that it is not: see, e.g., Court of Appeal of Singapore, *The “Permina 3001”*, Judgment, 25 July 1977, *Lloyd’s Law Reports*, vol. 1 (1979), p. 329; High Court of England and Wales, Queen’s Bench Division, *The “Father Thames”*, Judgment, 30 March 1979, *Lloyd’s Law Reports*, vol. 2 (1979), pp. 366–367.

<sup>116</sup> China.

<sup>117</sup> IAJ/LAWASIA.

<sup>118</sup> China.

<sup>119</sup> A/CN.9/WG.VI/WP.82, articles 6(1) and 6(2).

<sup>120</sup> Mexico.

<sup>121</sup> China.

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view that such a scenario would not give rise to a right to arrest under either the International Convention Relating to the Arrest of Seagoing Ships (1952)<sup>122</sup> or the International Convention on Arrest of Ships (1999).<sup>123</sup> Another submission suggests that the draft instrument should provide for the ship to be arrested in this scenario.<sup>124</sup>

61. One submission notes that article 8 is inconsistent with the domestic law of the submitting State, which only allows a court to release a ship if the matter is resolved or if security is provided.<sup>125</sup>

62. Other comments submitted on article 7 relate to the production of certified translations of the certificate of judicial sale and the operation of the grounds for refusal, which are synthesized above (paras. 10 and 14–17, respectively).

### **I. Article 9 – Jurisdiction to avoid and suspend judicial sale**

63. One submission expresses the view that further in-depth analysis and discussions should be devoted to article 9 to provide additional clarity as to its scope.<sup>126</sup>

64. One submission suggests that the obligation to decline jurisdiction in article 9(2) should not apply in respect of a claim or application to suspend the effects of a foreign judicial sale.<sup>127</sup> The Secretariat notes that the original Beijing Draft did not deal with exclusive jurisdiction to suspend and the Working Group has not considered the issue of suspension in detail. If articles 9(1) and 9(2) are concerned with suspending the effects of the judicial sale in the State of judicial sale, it is questionable whether a case would ever arise in which a court in another State would seek to suspend those effects.

65. Footnote 40 of the second revision notes that articles 9(3) and 9(4) have been moved from article 10 and invites the Working Group to consider the appropriateness of the move. Unlike article 9(1) and 9(2), articles 9(3) and 9(4) are not concerned with exclusive jurisdiction and deal with the effects of the judicial sale in a State other than the State of judicial sale. One submission expresses the view that article 9 should be focussed on exclusive jurisdiction.<sup>128</sup>

66. Footnote 41 invites the Working Group to confirm that the grounds for avoidance or suspension are a matter for the law applicable in the State of judicial sale. Two submissions support this position.<sup>129</sup> Footnote 42 invites the Working Group to consider amending article 9 by replacing the term “courts” with “authorities”. One submission supports this amendment.<sup>130</sup>

### **J. Article 10 – Circumstances in which judicial sale has no international effect**

67. Many comments submitted on article 10 relate to the accepted grounds for refusal and to the interaction with articles 7(5) and 8(4), which are synthesized above (paras. 14–17).

68. One submission suggests that the chapeau of article 10 should be amended to provide that the judicial sale shall “cease to have effect” if a ground for refusal applies.<sup>131</sup> It adds that the amendment would mean that any action taken on the

<sup>122</sup> United Nations, *Treaty Series*, vol. 439, No. 6330.

<sup>123</sup> United Nations, *Treaty Series*, vol. 2797, No. 49196.

<sup>124</sup> Lebanon.

<sup>125</sup> Mexico.

<sup>126</sup> EU.

<sup>127</sup> US.

<sup>128</sup> China.

<sup>129</sup> China, CMI.

<sup>130</sup> China.

<sup>131</sup> China.

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certificate of judicial sale in the State addressed would remain legally valid even if a court in that State subsequently determined that a ground for refusal applied.

69. Footnote 49 of the second revision invites the Working Group to consider whether the instrument should limit standing to apply for a determination that a ground for refusal applies. One submission expresses support for this approach and thus supports retaining article 10(2) and the text in square brackets in article 10(1).<sup>132</sup>

70. Another submission notes that, before a ground for refusal can be applied, the procedural formalities of the State addressed must be complied with and all persons with a right in the ship must be called before the court of judicial sale.<sup>133</sup>

**K. Article 11 – Additional provisions relating to the certificate of judicial sale**

71. One submission expresses support for article 11 in view of the establishment of a centralized online repository under article 12.<sup>134</sup> Another submission supports the view expressed in footnote 50 that the “no legalization” rule in article 11(1) would not preclude a determination that a document purporting to be a certificate of judicial is not authentic.<sup>135</sup>

**L. Article 12 – Repository**

72. Comments submitted on the establishment of a centralized online repository are synthesized above (paras. 8–9).

**M. Article 13 – Communication between parties**

73. One submission expresses the view that the title of article 13 should be amended to replace “Parties” with “authorities”.<sup>136</sup>

**N. Article 14 – Relations with other international instruments**

74. Footnote 54 of the second revision invites the Working Group to consider amendments designed to simplify and expand article 14(1). Two submissions express support for these amendments.<sup>137</sup> Comments submitted on article 14(2) are synthesized above (paras. 6–7).

<sup>132</sup> China.

<sup>133</sup> Mexico.

<sup>134</sup> China.

<sup>135</sup> IAJ/LAWASIA.

<sup>136</sup> China.

<sup>137</sup> China, IAJ/LAWASIA.

## **XI. INTERVENTION OF CMI AT IMO LEGAL COMMITTEE, 107<sup>th</sup> SESSION (LEG 107) – 1<sup>st</sup> DECEMBER 2020**

**Ann Fenech**

Thank you Chair. On behalf of the CMI I would like to thank you for the time to address this meeting in connection with the Draft Instrument on the International Effects of Judicial Sales, currently being deliberated by Working Group V1 of the United Nations Committee on International Trade Law.

As a number of the distinguished delegates here may already know and recall, the CMI had for many years worked on a draft convention – The Beijing Draft - on the international recognition of judicial sales which stemmed from the absolute need to ensure that when, following an arrest, a vessel is sold in a judicial sale to a third party, that third party purchases the vessel free and unencumbered so that he may use the vessel freely as an integral link in the chain of international trade without any fear that the vessel's old creditors could interfere with his free use of the vessel.

The instrument is being debated by Working Group V1 at UNCITRAL and considerable progress has been made over the past 18 months from when the Beijing Draft was first deliberated in New York in May 2019. UNCITRAL Working Group VI has met twice to discuss the form and substance of the instrument, and will meet again virtually in two weeks. The current draft is in the form of a treaty and reflects the deliberations of those two meetings and has retained the essential elements of the CMI draft. Two of these elements are the notice of judicial sale, which is served or published prior to the judicial sale, and the certificate of judicial sale, which is issued after the judicial sale to facilitate recognition of the judicial sale abroad.

It was felt by the Working Group that it would be most beneficial for there to be a centralised Repository to receive copies of both the notices as well as the certificates of judicial sales. The idea of having a centralised repository would certainly assist flag Registries, mortgagees, prospective buyers, creditors of the vessels, maritime industry participants, and courts,



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to check whether any of the vessels they have an interest in are A. About to be sold and/ or B. Whether a sale has actually taken place.

Since then, the UNCITRAL secretariat has been looking into options for possible hosts for the online repository, and we understand that it has made enquiries with the IMO secretariat about hosting the repository as an additional module within the Global Integrated Shipping Information System (GISIS). As the UNCITRAL secretariat noted in a report to the Working Group for its forthcoming meeting, using the GISIS platform could offer a range of benefits, including visibility within the maritime industry, as well as the ability to use an existing platform thus reducing operating costs.

It is to be noted that numerous States have expressed support for exploring the possibility of the IMO hosting the repository within the GISIS platform maintained by the IMO as an additional module.

I wish to clarify that we are here not talking about a **Depository** for the International Convention, that will be taken care of by UNCITRAL of course, but a **Repository** limited to hosting the notice and certificate of judicial sale. After all we are talking about ship identified by their IMO number and we cannot think of a more appropriate host for such a repository.

The CMI wholly supports this idea and is of the firm view that this would be a perfect opportunity for two UN organs such as the International maritime organisation, and the United Nations Commission for International Trade Law to provide a solution to a matter which has such important ramifications and effects on international shipping and international trade.

**XII. UN GENERAL ASSEMBLY DOCUMENT  
A/CN.9/1047/REV.1  
REPORT OF WORKING GROUP VI (JUDICIAL  
SALE OF SHIPS) ON THE WORK OF ITS 37<sup>th</sup>  
SESSION (VIENNA, 14-18 DECEMBER 2020)**

United Nations

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**Report of Working Group VI (Judicial Sale of Ships)  
on the work of its thirty-seventh session  
(Vienna, 14–18 December 2020)**

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## I. Introduction

1. At its thirty-seventh session, the Working Group continued its work preparing an international instrument on the judicial sale of ships in accordance with a decision taken by the Commission at its resumed fifty-third session (Vienna, 14–18 September 2020).<sup>1</sup> This was the third session at which the topic was considered. Further information on the earlier work of the Working Group on the topic may be found in [A/CN.9/WG.VI/ WP.86/Rev.1](#), paragraphs 4–6.

## II. Organization of the session

2. The thirty-seventh session of the Working Group was held in Vienna from 14 to 18 December 2020. The session was held in accordance with the decision on the format, officers and methods of work of the UNCITRAL working groups during the coronavirus disease (COVID-19) pandemic, as adopted by States members on 19 August 2020 and contained in [A/CN.9/1038](#). Arrangements were made to allow delegations to participate in person and remotely.

3. The session was attended by representatives of the following States members of the Working Group: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Croatia, Czechia, Dominican Republic, France, Germany, Hungary, India, Indonesia, Iran (Islamic Republic of), Italy, Japan, Libya, Malaysia, Mexico, Pakistan, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Singapore, Spain, Sri Lanka, Switzerland, Thailand, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of) and Viet Nam.

4. The session was attended by observers from the following States: Angola, Bolivia (Plurinational State of), Bulgaria, Cyprus, Denmark, Egypt, El Salvador, Eswatini, Greece, Guatemala, Liberia, Luxembourg, Madagascar, Malta, Netherlands, Nicaragua, Portugal, Saudi Arabia, Slovenia and Sudan.

5. The session was attended by observers from the Holy See and the European Union (EU).

6. The session was attended by observers from the following international organizations:

(a) *United Nations System*: International Maritime Organization (IMO) and World Maritime University (WMU);

(b) *Intergovernmental organizations*: Andean Community (CAN);

(c) *Non-governmental organizations*: Alumni Association of the Willem C. Vis International Commercial Arbitration Moot (MAA), Baltic and International Maritime Council (BIMCO), Comité Maritime International (CMI), Instituto Iberoamericano de Derecho Marítimo (IIDM), International and Comparative Law Research Center (ICLRC), International Association of Judges (IAJ), International Bar Association (IBA), International Chamber of Shipping (ICS), International Transport Workers' Federation (ITF), International Union of Marine Insurance (IUMI), Law Association for Asia and the Pacific (LAWASIA) and New York City Bar (NYCBAR).

7. In accordance with the decision adopted by States members of UNCITRAL (see para. 2 above), the following persons continued their office:

*Chairperson*: Ms. Beate CZERWENKA (Germany)

*Rapporteur*: Mr. Vikum DE ABREW (Sri Lanka)

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<sup>1</sup> *Official Records of the General Assembly, Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 51(f).

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8. The Working Group had before it the following documents:
  - (a) An annotated provisional agenda (A/CN.9/WG.VI/WP.86/Rev.1);
  - (b) An annotated second revision of the Beijing Draft<sup>2</sup> prepared by the Secretariat to incorporate the discussions and decisions of the Working Group at its thirty-sixth session (A/CN.9/WG.VI/WP.87) ("second revision");
  - (c) A note prepared by the Secretariat to accompany the second revision highlighting some overarching issues for consideration (A/CN.9/WG.VI/WP.87/Add.1) ("accompanying note");
  - (d) A note prepared by the Secretariat synthesizing comments submitted by States and international organizations on the second revision and the accompanying note in response to an invitation of the Secretariat to facilitate the progress of work during the COVID-19 pandemic (A/CN.9/WG.VI/WP.88) ("synthesis").
9. The Working Group adopted the following agenda:
  1. Opening of the session.
  2. Adoption of the agenda.
  3. Future instrument on the judicial sale of ships.

### III. Deliberations and decisions

10. The deliberations and decisions of the Working Group on the topic are found in chapter IV below.

11. While acknowledging the challenges of maintaining the progress of its work during the COVID-19 pandemic, a view was expressed that, given the progress that it had made in its last two sessions, the Working Group should be in a position to complete a final draft of the instrument in 2021, which would then be circulated to governments for comments before being submitted to the Commission for approval and transmittal to the General Assembly for adoption in the second half of 2022. It was also noted that, in view of the widely-supported working assumption that the instrument would eventually take the form of a convention (A/CN.9/1007, para. 99; see also paras. 14–15 below), it would not be helpful for the Working Group to advance the draft instrument before the next session by way of informal consultations. It was added that it might nevertheless be helpful for certain outstanding issues to be discussed among delegations, particularly if the COVID-19 pandemic were to present difficulties for holding the next session.

12. The Working Group was reminded that, in accordance with the decision adopted by States members of UNCITRAL (see para. 2 above), the Chairperson and Rapporteur would prepare a summary reflecting the deliberations and any conclusions reached during the session. Having reviewed the draft summary circulated by the Chairperson and the Rapporteur, the Working Group agreed to adopt it for transmission to the Commission as its own report.

### IV. Future instrument on the judicial sale of ships

13. The Working Group agreed to proceed with an article-by-article consideration of the second revision, mindful of the overarching issues highlighted in the accompanying note and the comments and proposals reflected in the synthesis. It agreed to defer consideration of the definitions in article 2 until after consideration of the other substantive provisions in articles 1 to 14, noting that certain definitions might need to be considered in conjunction with those other provisions. Before

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<sup>2</sup> In this document, the term "Beijing Draft" or "original Beijing Draft" refers to the draft convention on the recognition of foreign judicial sales of ships, prepared by CMI and approved by the CMI Assembly in 2014, the text of which is set out in A/CN.9/WG.VI/WP.82.

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turning to article 1, the Working Group was invited to express views on the form of the instrument and its geographic scope.

### **A. Form of the instrument**

14. The Working Group considered whether the instrument should take the form of a convention. While one delegation expressed doubts as to the need for a convention (recalling similar views expressed in [A/75/17](#), para. 47), the prevailing view was that only a binding international instrument, whereby States would undertake to recognize the acquisition of clean title and oblige the registrar to deregister the ship at the election of the purchaser, could ensure the required degree of uniformity, transparency and legal certainty. It was reiterated that only a convention could guarantee the international effects of judicial sales and sufficiently protect potential purchasers. This, in turn, would improve the terms of sale, leading to a sale price that better reflected the value of the ship and eventually greater proceeds for distribution among creditors.

15. Noting that the Beijing Draft was originally conceived as a convention, the Working Group agreed to continue working on the assumption that the future instrument on judicial sale of ships would take the form of a convention.

### **B. Geographic scope**

16. The Working Group considered whether, in the form of a convention, the instrument should apply to judicial sales conducted in a non-State party. Doubts were expressed about applying the recognition regime to such sales, with a preference expressed for a “closed” regime, in the sense that the recognition regime under the convention only applied between States parties.

17. A view was expressed that the draft convention should give States the option to declare that they would apply the convention to judicial sales conducted in a non-State party. The prevailing view, however, was that a State party would, in any event, retain the ability to treat such sales outside the convention regime in substantially the same manner under its domestic law. While noting that the practicalities of recognizing sales outside the convention regime could benefit from further discussion, it was pointed out that the second revision created no obstacles in that regard.

18. After discussion, the Working Group decided that the recognition regime under an eventual convention should only apply between States parties.

### **C. Article 1. Purpose**

19. Support was expressed for retaining a stand-alone purpose provision. The Working Group was reminded of the observation that the purpose of the draft convention was not merely to set forth the “conditions” under which a judicial sale conducted in one State party had effects in another State party ([A/CN.9/WG.VI/WP.88](#), para. 21). It was added that the wording of the provision should avoid any implication that a State party was not able to recognize judicial sales outside the convention regime or that the convention governed the procedure for judicial sales.

20. The Working Group agreed to retain article 1 and to redraft it along the following lines:

“This Convention governs the effects, in a State Party, of the judicial sale of a ship conducted in another State Party.”

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**D. Article 3. Scope of application**

21. Support was expressed for retaining the two limitations on scope set out in article 3(1).

**1. Time of the judicial sale**

22. Diverging views were expressed as to the meaning of words “at the time of the [judicial] sale” in article 3(1)(a). It was noted that, in some States, the ship might be allowed by the court to continue sailing pending the actual judicial sale. One view was that the ship needed to be physically located in the territory of the State of judicial sale from the start to the end of the judicial sale procedure. Another view was that the ship only needed to be physically located in the territory at the end of the procedure, particularly given that, under the law of some States, the procedure leading to the judicial sale could be started before the ship entered the territory of the State. It was added that, in any case, the words in article 3(1)(a) needed to be understood in the context of the definition of “judicial sale” in article 2(c) and the notice requirements in article 4.

23. It was proposed that the words should be placed in square brackets to indicate the need for further consideration. Another proposal was to specify that the time of sale was the moment at which the purchaser acquired the right to purchase the ship, which might entail defining the term “sale”. Yet another proposal was to remove the words entirely. As an alternative solution for the moment at which the physical presence of the ship should be required, it was proposed by one delegation that a condition should be inserted in article 3 that the ship be physically present “at the time at which the judicial sale proceedings are instituted before the court”.

24. After discussion, there was general agreement in the Working Group that the words in article 3(1)(a) required the physical presence of the ship at the final stage of the procedure when the ship was actually awarded to the successful purchaser. The Working Group noted, however, that it would be difficult to define that moment with greater specificity, given the differences among States in the procedure leading to a judicial sale. Considering that the definition in article 2(c) could already prove sufficient, the Working Group decided not to amend article 3(1)(a). It was suggested that the concerns could be addressed in any explanatory notes that might be drafted to accompany the eventual convention.

**2. Physical presence “within the jurisdiction”**

25. It was observed that the reference in article 3(1)(a) of the English version to a ship being “within the jurisdiction” of a State could be understood as referring to the jurisdiction of a flag State under the United Nations Convention on the Law of the Sea (1982),<sup>3</sup> which could, in certain circumstances, be exercised extraterritorially, and that the word “physically” would not restrict the application of the flag State jurisdiction beyond the territory, including the territorial sea, of such a State (see A/CN.9/1007, para. 50). It was noted that the reference to “territory” in other language versions of the draft might be preferable to avoid misunderstanding.

**3. Definition of “ship”**

26. Noting that article 3(1) limited the scope of the instrument to the judicial sale of a “ship”, the Working Group turned its attention to the definition of “ship” in article 2(i). It was recognized that that definition was broad and could be interpreted to include pleasure craft (see A/CN.9/1007, para. 29) and inland navigation vessels (ibid., para. 30). Support was expressed for retaining the definition of “ship” in its present form.

27. It was proposed that, if the definition were to include inland navigation vessels, a provision could be inserted allowing a State party to reserve the right to exclude the

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<sup>3</sup> United Nations, *Treaty Series*, vol. 1833, No. 31363.

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application of the convention to inland navigation vessels. In response, it was felt that, at this stage, it would be premature for the Working Group to consider such a provision.

28. The view was expressed that the inclusion of inland navigation vessels within scope was not a concern in itself, but rather the inclusion of vessels that were not registered in a public registry. It was added that attempting to differentiate seagoing vessels and inland navigation vessels would be challenging and not appropriate for the kind of instrument that the Working Group was developing. It was proposed that this concern could be addressed by amending the definition of “ship” by inserting the word “registered” before “ship” and before “vessel”. It was noted that the draft convention was solely concerned with ships that were capable of registration and of being encumbered by registrable charges or mortgages. At the same time, it was noted that a reference to “registered” ships might give rise to questions as to the appropriate nature of such a registry (e.g. private or public), which could lead to unnecessary complications in the interpretation of the definition. It was added that the draft convention already made reference to “registration” and “deregistration” and that, as a matter of interpretation, any issue that might arise in relation to unregistered ships could be addressed within the existing definition. After discussion, the Working Group agreed (a) to amend the definition by inserting, after the word “that”, the words “is registered in a registry that is open to public inspection and”, (b) to put those words in square brackets, and (c) to revert to the matter at a later stage.

#### **4. Preserving the application of the Geneva Convention and its Protocol No. 2**

29. While a proposal was made to delete article 14(2), the prevailing view was that article 14(2) was a useful provision for those States that were party to Protocol No. 2 to the Convention on the Registration of Inland Navigation Vessels (1965),<sup>4</sup> which dealt with the judicial sale of inland navigation vessels (see [A/CN.9/WG.VI/WP.87/Add.1](#), para. 7). The Working Group agreed that article 14(2) should be retained in its present form.

#### **5. Definition of “judicial sale” and article 3(2)(a)**

30. There was broad agreement that article 3(2)(a) should be deleted and that the exclusion of sales following seizure by tax, customs and other law enforcement authorities should be addressed in the definition of “judicial sale” in article 2(c) (see para. 34 below). At the same time, it was cautioned that the instrument should avoid addressing matters of substantive scope in the definitions provision.

31. The Working Group was reminded of the proposal to amend subparagraph (i) of the definition of “judicial sale” to refer to judicial sales being “confirmed” by a court or other public authority ([A/CN.9/WG.VI/WP.88](#), para. 28). No views were expressed during the session on that proposal.

32. It was proposed that the term “public authority” in subparagraph (i) should be clarified. The view was expressed that a judicial sale conducted by a public authority should only fall within the definition if the authority was exercising judicial power or if it was acting under the supervision of a court. It was felt that a requirement that the public authority be empowered under the law of the State of judicial sale to conduct the sale would not be sufficient. No concrete drafting proposal was submitted at the time. Another proposal put forward was to require a sale conducted by a public authority to be approved by a court. In response, it was noted that the identity of the authority conducting the sale was not so much a concern as the distribution of the proceeds of the sale to creditors. Bearing in mind that subparagraph (ii) of the definition already limited judicial sales to those for which the proceeds were made available to creditors, the Working Group decided that the term “public authority” did not require any further clarification for the time being.

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<sup>4</sup> Ibid., vol. 1281, No. 21114.

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33. A question was raised as to the meaning of the words “or any other way provided for by the law of the State of judicial sale” in subparagraph (i). It was explained that those words were drawn from the definition in the original Beijing Draft, where they referred to the ways by which the ship was sold other than by public auction or private treaty (not the ways by which the sale was conducted other than by order or approval of a court or other public authority). A question was raised as to whether, in practice, ships were ever sold other than by public auction or private treaty. While it was noted that, in some States, the procedure for the sale of wrecks (which include ships that are sunken or stranded, or that may be expected to sink or to strand) connected to the establishment of the Nairobi International Convention on the Removal of Wrecks (2007)<sup>5</sup> might offer an example of a different procedure, it was equally noted that wrecks would fall outside the scope of the instrument. After discussion, the Working Group agreed to delete the words.

34. It was noted that the requirement in subparagraph (ii) of the definition of “judicial sale” that the proceeds of sale be made available to creditors sufficiently addressed the concerns that article 3(2)(a) sought to address. It was added that, in some States, the law provided for a judicial sale involving the conferral of clean title and the distribution of proceeds to creditors to be conducted after the seizure of a ship by tax or customs authorities, and that such sales should not be excluded from scope.

35. It was proposed that the term “creditor” in subparagraph (ii) should be clarified. It was also proposed to amend the definition to require the judicial sale to be conducted for the purposes of recovering a civil or commercial claim. In response to both proposals, it was cautioned that the instrument should not exclude sales merely because a public authority, such as a port authority, was a creditor. After discussion, the Working Group agreed that the definition of “judicial sale” should not be qualified either by reference to the types of creditor or the types of claim that gave rise to the judicial sale.

## 6. Clean title

36. Noting that article 3(1)(b) limited the application of the draft convention to judicial sales that conferred clean title, the Working Group considered (a) the definition of “clean title” and (b) its role in defining the scope of application.

### (a) Definition

37. At the outset, the Working Group noted that there was no substantive difference between the two alternative options presented for the definition of “clean title” in article 2(b). Some preference was expressed for the first option as it spelled out clearly all elements of the notion of “clean title”. It was added that, if the first option were retained, it should be amended to specify that the rights and interests were “proprietary” in nature. That amendment would mean that *jus in re aliena* (i.e. rights in a thing belonging to another), which would include maritime liens and other rights within the meaning of “charge” as defined in article 2(a), were not part of the “rights and interests in the ship” that were extinguished by the acquisition of clean title.

38. The prevailing view within the Working Group favoured the second option, which was felt to be clearer, more concise, and better aligned with the terminology used in the draft convention. However, bearing in mind the comments made in connection with the first option, the Working Group agreed that there might be a need to consider further adjustments to the definition of “charge” in article 2(a).

### (b) Role of clean title in defining the scope of application

39. The Working Group was informed that, while in some States it was known at the start of a judicial sale procedure that the sale would result in the conferral of clean title on the purchaser, in other States that was not always the case. It was added that, if the eventual convention applied only to a judicial sale that conferred clean title to

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<sup>5</sup> IMO, document LEG/CONF.16/19.



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the ship, it would be difficult for those other States to discharge their obligations under article 4, which required notice to be given “prior to a judicial sale”. The Working Group engaged in a detailed discussion of that issue, during which a variety of views and proposals were put forward.

40. Pursuant to one view, the existing text of article 3(1)(b) and the chapeau of article 4(1) posed no practical problems.

41. A second view considered that the notice requirements should apply regardless of whether, at the relevant time, it was known that the sale would result in the conferral of clean title. It was proposed that this could be clarified by amending the chapeau of article 4(1) to provide that the requirement to give notice applied whether or not the judicial sale conferred clean title. Some concerns were expressed about the desirability and workability of that amendment.

42. According to a third view, the notice requirements should serve not as a stand-alone requirement but only as a condition for issuing the certificate of judicial sale. It was proposed that article 4 could be reformulated accordingly. It was emphasized that such a proposal was not designed to minimize the importance of the notice requirements for the convention regime.

43. A fourth view held that the conferral of clean title should serve as a condition for giving a judicial sale international effects rather than to define the scope of application. Accordingly, it was proposed that clean title should be dealt with in article 6(1) rather than in article 3(1)(b). In response, the prevailing view was that clean title should continue to define the scope of application.

44. After discussion, the Working Group agreed to retain article 3(1)(b) in its present form and to revisit its drafting at a later stage. It was further agreed that, for the time being, the Working Group would proceed on the common understanding that the draft convention applied to judicial sales conducted in States where the law empowered the court to confer clean title (see A/CN.9/1007, para. 43), regardless of the eventual outcome of a concrete case, and that this “abstract” approach to the role of clean title in defining the scope of application should be borne in mind when considering the remaining provisions of the second revision.

45. A question was raised as to whether article 3(1)(b) required a State – other than the State of judicial sale, in which the international effects of a judicial sale were sought to be produced – to enquire whether, under the law of the State of judicial sale, the sale conferred clean title. In response, there was broad agreement that the certificate of judicial sale issued under article 5, which was required to contain a statement that the judicial sale conferred clean title, and which was given conclusive effect, would obviate the need for such an enquiry.

## **7. Exclusion of State-owned ships**

46. It was observed that the definition of “ship” in the second revision effectively excluded State-owned ships as such ships would not be “the subject of an arrest or other similar measure capable of leading to a judicial sale”. It was therefore proposed that article 3(2)(b) should be omitted. In response, it was said that, in any case, it would still be helpful to deal with the exclusion of State-owned ships in the scope provision. It was added that, if article 3(2)(b) were retained, it should be amended to specify the relevant time. In that regard, it was proposed that the words “for the time being” should be replaced with “at the time of judicial sale”. The Working Group agreed to retain article 3(2)(b) and to amend it as proposed.

## **8. Preservation of *in personam* claims, etc.**

47. The Working Group considered whether article 6(2) should be moved to article 3. Diverging views were expressed. One view was that article 6(2) should remain in its current position as it addressed matters that were related more than anything to the effects of the judicial sale. Another view was that article 6(2)(a) could be moved. Yet another view was that article 6(2) was concerned with identifying

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matters that were not governed by the draft convention and thus should be set out in a separate provision. It was highlighted that article 6(2) conveyed an important message and therefore that its placement in the draft convention needed to be considered carefully.

48. After discussion, the Working Group agreed on the content of article 6(2) and decided to confirm, at a later stage, its proper placement in the draft convention, whether immediately following article 3 or in a latter part of the text.

## **E. Article 4. Notice of judicial sale**

### **1. Function of the notice requirements**

49. The view was reiterated (see para. 42 above) that the notice requirements should serve only as a condition for issuing the certificate of judicial sale, such that a failure to comply with article 4 would not result in a failure of the State of judicial sale to discharge its obligations under an eventual convention, but rather the non-issuance of the certificate of judicial sale under article 5. In response, it was observed that the notice requirements should also serve as a condition for giving international effect to the judicial sale, such that a failure to comply with article 4 would result in the sale not producing international effects under article 6 (see also para. 82 below).

50. The view was expressed that the notice requirements could serve as guidance for the State of judicial sale if the convention were to establish a well-resourced centralized online repository that could handle all notices of judicial sale. In response, it was argued that the notice requirements should be mandatory rather than serve as guidance, and that it was premature for the Working Group to consider the impact of the centralized online repository (discussed in paras. 76–81 below) on the notice requirements.

### **2. Persons to be notified (article 4(1))**

51. The Working Group considered whether items should be added to, or removed from, the list of persons to be notified in article 4(1). The point was made that the list should be guided by reference to the interest that a particular class of persons had in the judicial sale itself, as opposed to the distribution of the proceeds of sale (see A/CN.9/1007, para. 55). On that approach, it was proposed that holders of maritime liens should be removed from the list. The prevailing view, however, was that that class of persons should not be removed. The point was also made that each class of persons should be defined in a simple and clear manner so as to minimize the risk of challenge from a dissatisfied creditor acting in bad faith.

52. Noting that maritime liens were only one type of unregistered charge under the definition of “charge” in article 2(a), the Working Group was reminded of the proposal to add all holders of unregistered charges to the list (A/CN.9/WG.VI/WP.88, para. 45). There was no further support for that proposal.

53. It was noted that judicial sales were commonly conducted in circumstances in which the shipowner was insolvent. It was therefore proposed that the insolvency representative appointed in the relevant insolvency proceedings should be added to the list. In response, it was noted that such addition would be unnecessary since the insolvency administrator would typically be entrusted with the management of the insolvent debtor’s affairs and would therefore already fall within the meaning of “owner of the ship” or “bareboat charterer” for the purposes of paragraphs (d) and (e) of article 4(1). Moreover, domestic insolvency law would ordinarily establish rules for the notification of the insolvency representative, which would be picked up by the requirement in article 4(2) for the notice to be given “in accordance with the law of the State of judicial sale”.

54. The point was made that the courts in some jurisdictions did not have procedures in place to receive ad hoc notices from holders of maritime liens. In those jurisdictions, the courts would only take cognizance of the maritime lien if it were

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asserted in a claim against the ship or against the proceeds of a judicial sale. Several proposals were put forward to accommodate those practices, including a proposal to replace the proviso in article 4(1)(c) with the words “provided that the regulations and procedures of the court or other authority ordering the judicial sale provide for the notification of maritime liens and that notice has been received of the claim secured by the maritime lien”. A further proposal put forward was to require all holders of any maritime lien to make their claims known to the court or other authority ordering the judicial sale. Broad support was expressed for the latter proposal and the Working Group decided to request the Secretariat to redraft article 4(1)(c) along the following lines:

“All holders of any maritime lien, provided that they have made their claims known to the court or other authority ordering the judicial sale.”

55. It was also observed that some States maintained separate registries of security interests for movable property, which might register charges, but not mortgages, against ships. It was observed that, since those registries had no connection either to ship registries or to courts of judicial sale of ships, it would be difficult to implement article 4(1)(b) with respect to those charges. Accordingly, it was proposed to amend the proviso in article 4(1)(b) with the words:

“provided that: (i) such instrument is registered in the registry of ships in which the ship is registered, or equivalent registry; and (ii) the law of the State of the registry provides that such instruments are open to public inspection, and that extracts from the registry and copies of such instruments are obtainable from the registrar”.

In response, a view was expressed that the term “equivalent registry” should be understood to include registries of security interests which were separate from ship registries and in which ship mortgages and charges were registered. It was also noted that article 4(4)(b) already contemplated that charges might be registered in registries other than the registry of ships. After discussion, the Working Group decided to retain article 4(1)(b) in its present form. It was noted that article 4(4) itself did not provide a solution to the difficulties identified regarding the implementation of article 4(1)(b).

56. It was noted that article 11(3) of the International Convention on Maritime Liens and Mortgages (1993)<sup>6</sup> provided for the notice to be given to persons listed in article 11(1) “if known”. It was proposed that a similar qualification should be incorporated into article 4(1).

### 3. Optional notification of registrars

57. The Working Group was reminded of the proposal to restructure article 4(1) to make it optional for the notice of judicial sale to be given to the ship registrar and any bareboat charter-in registrar (A/CN.9/WG.VI/WP.88, para. 47). It was reasoned that ship registrars did not have any property interests in the ship being sold and might not appear in the proceedings. It was added that those registrars might not have procedures in place to receive and process notices of judicial sale and might not be willing therefore to receive them.

58. In response, it was argued that the ship registrar should be notified in all cases. It was added that the notice would alert the registrar to possible future action with respect to the ship under article 7. The Working Group agreed to retain the present structure of article 4(1).

### 4. Application of the law of the State of judicial sale (article 4(2))

59. The Working Group confirmed its understanding that article 4(1) established minimum standards for notification (A/CN.9/1007, para. 55). It was also recalled that article 4(2) represented a compromise agreed by the Working Group at its thirty-sixth

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<sup>6</sup> United Nations, *Treaty Series*, vol. 2276, No. 40538.

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session that the timing and manner of service should be left to the domestic law of the State of judicial sale (A/CN.9/1007, para. 66).

60. The Working Group was reminded that the interaction between the draft convention and the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965)<sup>7</sup> (“Service Convention”) would need to be carefully considered. A concern was expressed that the current reference in article 4(2) to the law of the State of judicial sale could lead to the application of the Service Convention. Specifically, it was noted that, if the eventual convention did not specify the means for transmitting the notice of judicial sale, there was a risk that the “give way” clause in article 25 of the Service Convention – which provided that the Service Convention did not derogate from conventions containing provisions on “matters governed by” it – would not be triggered, and that the domestic law of the State of judicial sale would require recourse to the channels of transmission provided under the Service Convention (see A/CN.9/WG.VI/WP.85, para. 29). It was added that recourse to those channels could lead to notification times that were not suited to the time frames that the judicial sale procedure required (see A/CN.9/1007, para. 65). In response, it was clarified that footnote 57 of the second revision, which provided guidance notes on the means for transmitting the notice, would be retained as an integral part of the model notice form set out in Appendix I to the draft convention, and therefore that the eventual convention would effectively trigger article 25 of the Service Convention.

61. A question was raised as to the relationship between article 4(2), which applied the law of the State of judicial sale to the giving of the notice, and article 4(1), which required the notice to be given to each person listed therein. In that regard, the Working Group confirmed its understanding that the State of judicial sale should always strive for actual delivery of the notice to each person, failing which it could resort, in accordance with its law, to any secondary means by which the person would be deemed to have been notified, such as public announcement. It was highlighted that the convention regime would not work if actual delivery of the notice were required in all cases and that States already had in place mechanisms to address evasive addressees. The Working Group acknowledged, however, that the relationship between article 4(1) and article 4(2) could be further clarified.

62. While the Working Group was invited to elaborate on notice periods, the Working Group confirmed its decision to defer to the law of the State of judicial sale (A/CN.9/1007, para. 66).

## 5. Publication of notice (article 4(3)(a))

63. It was noted that article 4(3)(a) referred to two methods of notification: (1) publication of the notice “by press announcement”; and (2) publication in “other publications”. A question was raised as to whether the proviso in article 4(3)(a) – that the publication be “required by the law of the State of judicial sale” – applied to both methods or only to the second method. Different views were expressed on the interpretation of article 4(3)(a). There was general agreement within the Working Group that, if the proviso applied to both methods, article 4(3)(a) would be redundant, as notification by those methods would already be required by the law of the State of judicial sale pursuant to article 4(2). However, the view was expressed that it would be useful for article 4(3)(a) to be retained if the proviso applied only to the second method. In response, some concern was expressed for including a stand-alone requirement to publish the notice by press announcement given the decreased circulation of traditional forms of media and the tendency towards electronic notification, adding that the draft convention needed to be futureproof. The point was also made that press announcements in the State of judicial sale (i.e. in the “local” press) were of limited effectiveness for notifying creditors in practice, and that the requirement in article 4(3)(a) provided a potential loophole for challenge from a dissatisfied creditor acting in bad faith. Accordingly, it was proposed that

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<sup>7</sup> Ibid., vol. 658, No. 9432.

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article 4(3)(a) should be deleted entirely. It was observed that article 4(3)(a) was contained in the original Beijing Draft and had remained unchanged in substance through two revisions without any objections being raised in the Working Group to its retention. The Working Group agreed to retain article 4(3)(a) for the time being but to amend it to clarify that the proviso only applied to the second method (i.e. publication of the notice in “other publications”).

## 6. Other matters

64. The Working Group was reminded of a proposal for the draft convention to address language requirements for transmission of the notice of judicial sale (A/CN.9/WG.VI/ WP.88, para. 50). The Working Group decided to discuss that issue in conjunction with the establishment of the centralized online repository (see paras. 76–81 below). The view was expressed that compliance with the form requirements of the receiving State regarding notification could also be required.

## F. Article 5. Certificate of judicial sale

### 1. Conditions for issuance (article 5(1))

65. It was recalled that the chapeau of article 5(1) prescribed four conditions for issuing the certificate of judicial sale, namely: (a) that the sale be conducted in accordance with the law of the State of judicial sale, (b) that the sale be conducted in accordance with the notice requirements in article 4, (c) that the certificate be issued at the request of the purchaser, and (d) that the certificate be issued in accordance with the regulations and procedures of the issuing authority. It was noted that the application of article 5(1) was also controlled by article 3(1)(b) and thus limited to judicial sales conferring clean title, and the “abstract” approach to the role of clean title in defining the scope of application was recalled (see para. 44 above).

66. The Working Group was reminded of a proposal to insert an additional condition that the certificate only be issued if the judicial sale was no longer subject to appeal (A/CN.9/WG.VI/ WP.88, para. 55). While there was broad support for the notion that the draft convention assumed the finality of the judicial sale as the basis for issuing the certificate, it was reiterated that the notion of “appeal” was not clear (A/CN.9/973, para. 62) and could cover a variety of forms of redress, many of which might remain available to an aggrieved party for months or even years after the judicial sale. At the same time, the distinction between challenging the judicial sale and challenging the distribution of the proceeds of sale was reiterated (A/CN.9/973, para. 56), with the view added that, at least in one jurisdiction, challenges to a judicial sale that had been confirmed by the court were exceedingly rare. The view was also expressed that finality could be ensured by deferring to the practice and procedure of the issuing authority under the law of the State of judicial sale without the need to insert the proposed additional condition. In a similar vein, it was recalled that the Working Group had previously heard a proposal to condition the issuance of the certificate on the expiry of an appeal period, and that the prevailing view at the time had been to leave the matter to the law of the State of judicial sale (A/CN.9/1007, para. 90).

67. It was noted that, in practical terms, the issue of lack of finality was unlikely to arise if the court or other authority supervising the judicial sale was also the issuing authority for the certificate, as it would normally have to be satisfied of the completion of the procedure. An alternative proposal to address the issue, particularly if the two authorities were not the same, could be to reformulate article 5(1) so as to provide that the purchaser requesting the issuance of a certificate recording the matters listed in article 5(1) was required to produce documentation establishing the finality of the judicial sale. It was explained that a similar provision was contained in article 12(1)(d) of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019)<sup>8</sup> (“Judgments Convention”) as a

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<sup>8</sup> Kingdom of the Netherlands, *Treaty Series*, 2019, No. 13672.

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requirement for seeking recognition or applying for the enforcement of a foreign judgment. At the same time, it was acknowledged that the draft convention was not concerned with the recognition and enforcement of judgments, and that the request for a certificate would be made in the same State as the judicial sale was conducted, albeit to a different authority to the one which supervised the judicial sale.

68. After discussion, the Working Group agreed to ask the Secretariat to propose drafting options for each proposal.

69. A proposal was also put forward to insert an additional condition that the certificate only be issued if the ship was physically within the jurisdiction of the State of judicial sale at the time of the sale. It was added that, as a result of that insertion, the matters being certified – as listed in subparagraphs (a) to (c) of article 5(1) – would also serve as conditions for issuing the certificate. The Working Group agreed in principle with matching those matters to the conditions for issuance and asked the Secretariat to propose text to give effect to that approach.

## **2. Matters being certified (article 5(1)(a)–(c))**

70. The Working Group acknowledged the value of the certificate of judicial sale in securing the international effects of a judicial sale conferring clean title. While one delegation queried the need for the certificate to record the matters listed in article 5(1), there was broad agreement within the Working Group to retain those provisions as they were crucial for enhancing the legal protection of the purchaser. It was noted that, pursuant to article 5(5), the certificate enjoyed conclusive effect, which would in turn relieve foreign registrars and other authorities from having to scrutinize the matters recorded therein, which involved determinations of both law and fact.

## **3. Contents of the certificate (article 5(2))**

71. A question was raised as to the meaning of the “place and date of the judicial sale” in subparagraph (c) of article 5(2). With regard to the “place” of judicial sale, it was noted that subparagraph (a) already required the certificate to specify the State of judicial sale, and the value of specifying a location within that State for the purposes of the draft convention was questioned. As an alternative, it was proposed that the certificate should specify the court or other public authority which approved the sale. With regard to the “date” of the judicial sale, the Working Group recalled its earlier discussions about the time of judicial sale in the context of article 3(1)(a) (see paras. 22–24 above) and again noted the difficulty in defining the time of completion of the sale, which depended on the law of the State of judicial sale. Two proposals were put forward: (1) to leave subparagraph (c) in its present form without clarification, thus leaving it to the issuing authority to determine the place and date of the judicial sale by reference to the law of the State of judicial sale; (2) to amend the subparagraph by inserting a reference to the court or other public authority that approved the sale and a reference to the date on which the sale was approved (e.g. when the court deemed the sale to be completed and effective according to domestic law). After discussion, a prevailing view emerged in favour of the second proposal.

72. The Working Group agreed to amend subparagraph (d) of article 5(2) by replacing “port of registry” with “registry of ships or equivalent registry in which the ship is registered” (see [A/CN.9/WG.VI/WP.88](#), para. 57). The Working Group also agreed to delete subparagraph (h). While one delegation maintained that specifying the purchase price might be useful, the view was reiterated that the purchase price did not always reflect the full consideration provided by the purchaser ([A/CN.9/WG.VI/WP.88](#), para. 58) and was therefore apt to mislead as to the value of the ship.

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**4. Evidentiary value of the certificate (article 5(5))**

73. The value of article 5(5) in giving conclusive effect to the certificate was emphasized. The Working Group agreed to amend article 5(5) by deleting the text in square brackets. It was added that the proviso was unnecessary and, in any case, that the conclusive effect of the certificate was subject to articles 9 and 10.

**5. Effect of the certificate (article 5(6))**

74. It was recalled that the production of the certificate of judicial sale triggered several provisions of the draft convention, notably the obligation of registrars to take action under article 7. While there was some support for deleting article 5(6) on the basis that the avoidance of the certificate was addressed in other provisions of the draft convention, the prevailing view was that it was of practical value concerning the work of the registrar and should be retained. Broad support was expressed for reformulating article 5(6) to clarify that a certificate would be effective unless the judicial sale was avoided by a court in the State of judicial sale. A suggestion to insert a cross reference to article 9 was not taken up. It was also proposed that the repository should be informed of the validity of the certificate after the avoidance of the judicial sale. After discussion, the Working Group decided to retain article 5(6) and asked the Secretariat to propose text to reformulate the provision along the lines discussed.

**6. Incorporation of article 11**

75. The Working Group was reminded that article 11 contained additional provisions on the certificate of judicial sale, and a proposal was put forward to incorporate those provisions into article 5. At the same time, the technical nature of those provisions was emphasized. After discussion, the Working Group agreed to revisit the placement of article 11 at a later stage.

**G. Article 12. Repository**

76. The Working Group took note of the work carried out by the Secretariat to explore options for hosting a centralized online repository of notices and certificates of judicial sale as an additional module within IMO's Global Integrated Shipping Information System (GISIS) (A/CN.9/WG.VI/WP.87/Add.1, paras. 10–16). It was explained that preliminary discussions with the IMO secretariat had proceeded on the basis that the repository would perform a “passive” function of publishing notice and certificates.

77. The Working Group heard that, at its recently held 107th session, the IMO Legal Committee had taken note of those preliminary discussions and invited the IMO secretariat to make the necessary arrangements to host the repository as an additional GISIS module and to report back to the IMO Legal Committee at its next session, which was scheduled for July 2021. It was indicated that the assumption by IMO of the repository function under the draft convention would require the approval of the IMO Legal Committee, which would then need to be endorsed by the IMO Council.

78. The Working Group expressed its appreciation to the IMO secretariat for its cooperation in exploring the issue so far. The Working Group agreed that there could be significant value in establishing a centralized online repository and that IMO was an appropriate host for the repository, noting the visibility of GISIS among stakeholders in the maritime industry.

79. Several preliminary views were exchanged on the operation of the repository under the draft convention. It was stated that the transmission of the notice of judicial sale to the repository for publication should not replace the actual delivery of the notice to each person listed in article 4(1), although it was indicated that it might obviate the need for the stand-alone requirement in article 4(3)(a) to publish the notice by press announcement. It was also stated that, unlike the International Registry for Aircraft Objects established pursuant to article 17(2) of the Convention on

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International Interests in Mobile Equipment (2001)<sup>9</sup> and the Protocol thereto on Matters Specific to Aircraft Equipment,<sup>10</sup> the repository should perform purely an informative function, and therefore that the publication of notices and certificates should have no particular legal effect. It was cautioned that the draft convention should avoid imposing a duty on the repository to ensure the accuracy or completeness of published information, or imposing liability for a failure to publish. Reference was made to resolution A.1029(26) of the IMO Assembly adopted on 26 November 2009 on GISIS.<sup>11</sup>

80. It was suggested that the costs of operating the repository would need to be explored, although it was acknowledged that leveraging an existing platform could help to reduce those costs. It was added that the ability of the repository to support notices and certificates in multiple languages would also need to be explored. It was indicated that an online repository could offer the opportunity to digitize notices and certificates and allow the data from those instruments to be extracted, organized and presented in an accessible manner.

81. The Working Group asked the Secretariat to continue working with the IMO secretariat on the basis that the repository would perform a “passive” function and to map out the proposed arrangement with IMO in further detail, including with regard to matters of cost, language and functionality, for consideration by the Working Group at a later stage.

## **H. Articles 6 and 10. International effects of a judicial sale**

### **1. Conditions for giving international effect (article 6(1))**

82. It was observed that subparagraphs (a) and (b) of article 6(1) prescribed three conditions for giving international effect to a judicial sale, namely: (a) that the ship was physically within the jurisdiction of the State of judicial sale at the time of the sale; (b) that the judicial sale was conducted in accordance with the law of the State of judicial sale; and (c) that the judicial sale was conducted in accordance with the notice requirements in article 4. The view was expressed that those conditions involved matters that were important to the convention regime. At the same time, it was observed that condition (a) already served to define the scope of application of the draft convention and was therefore superfluous. It was also observed that conditions (b) and (c) involved matters that fell within the exclusive jurisdiction of the courts of the State of judicial sale under article 9 and should therefore not be scrutinized by a State other than the State of judicial sale. The point was made that condition (c) did not, of itself, establish a ground for avoiding or suspending a judicial sale, which remained a matter for the domestic law of the State of judicial sale. After discussion, the Working Group agreed to delete conditions (a) and (b).

83. Some proposals were put forward to establish alternative conditions for giving international effect. One proposal was to provide that the judicial sale had international effect unless and until the judicial sale had been avoided under article 9 or a ground for refusal had been applied under article 10. Another proposal, which received some support, was to link international effect to the production of the certificate of judicial sale. It was suggested that the proposal could be implemented by picking up the language of article 5(5) to establish an obligation on States parties to recognize a certificate issued under article 5(1) as providing conclusive evidence of the matters recorded in the certificate, including that the purchaser had acquired clean title to the ship (article 5(1)(c)). The Working Group asked the Secretariat to propose drafting for that alternative formulation for article 6(1). The Working Group recalled its earlier deliberations and conclusions regarding article 6(2) (see paras. 47 and 48 above).

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<sup>9</sup> United Nations, *Treaty Series*, vol. 2307, No. 41143.

<sup>10</sup> *Ibid.*, vol. 2367, No. 41143.

<sup>11</sup> IMO, document A 26/Res.1029 (26 November 2009).



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**2. Accepted grounds for refusing to give international effect (article 10(1))**

84. The Working Group proceeded with consideration of the three grounds for refusal listed in article 10(1).

85. There was broad agreement that the ground in subparagraph (a) (that the ship was not physically within the jurisdiction of the State of judicial sale at the time of the sale) was superfluous as it already served to define the scope of application of the draft convention. At the same time, it was suggested that the ground might still be useful if an erroneously issued certificate was produced. Some support was expressed for retaining the ground in subparagraph (b) (that the sale was procured by fraud committed by the purchaser) with a proposal put forward to expand the ground to cover fraud committed in procuring the certificate of judicial sale. Conversely, it was said that the ground was unnecessary. In that regard, the view was reiterated that fraud would trigger the public policy ground in subparagraph (c) (A/CN.9/1007, para. 86) and would also trigger a ground for avoiding the judicial sale in the State of judicial sale under article 9(1). It was further reiterated that fraud might be difficult to establish in a State other than the State of judicial sale for want of evidence (A/CN.9/1007, para. 81). After discussion, the Working Group agreed to delete subparagraphs (a) and (b).

86. As for the public policy ground, a proposal was put forward to delete the term “manifestly”. The Working Group recalled its earlier discussions about the meaning of that term (A/CN.9/973, para. 62; A/CN.9/1007, para. 84) and was reminded that the term had recently been used in formulating the public policy ground in article 7(1)(c) of the Judgments Convention. At the same time, the point was re-emphasized that the draft convention was not concerned with the recognition and enforcement of judgments, and that there might be good reasons to depart from that formulation. It was reasoned that, if public policy were the only ground for refusal in the draft convention, the threshold for invoking the ground should be lowered. It was noted that this would strike a balance between protecting the judicial sale from unwarranted interference and promoting the eventual convention among States that might otherwise be hesitant to join the convention if the public policy ground were too narrow. After discussion, the Working Group decided to retain subparagraph (c) in its present form for the time being.

**3. Standing to invoke grounds for refusal (article 10(2))**

87. The point was made that reducing the grounds for refusal to the public policy ground reduced the importance of limiting standing to invoke those grounds. Broad support was expressed for the view that standing should be left to the law of the State addressed. The Working Group decided to delete article 10(2) and to amend the chapeau of article 10(1) accordingly.

**4. Combining articles 6 and 10**

88. Some support was expressed for a proposal to combine article 6 and article 10 as separate paragraphs in a single article. Alternatively, a proposal was put forward to amend the chapeau of article 10(1) to refer to the effects of the judicial sale “under this convention”. Neither proposal was taken up.

**I. Article 7. Action by registrar**

89. A preliminary question was put to the Working Group about the connection between giving effect to a judicial sale in article 6(1) and taking action under article 7. It was explained that the registration or deregistration of the ship required by article 7 was one manifestation of the international effect of the judicial sale under the draft convention.

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**1. Registration and deregistration (article 7(1))****(a) Identification of registrar**

90. It was recalled that the action required by article 7 might fall within the competence of more than one registrar in a particular State (A/CN.9/1007, para. 97). It was added that it might also fall within the competence of an authority other than a registrar. It was therefore proposed that article 7(1) should be amended to refer to “competent authorities”. The Working Group agreed to redraft the provision to clarify that it applied to action by multiple registrars and multiple other competent authorities.

**(b) “Regulations and procedures”**

91. It was explained that the requirement to act in accordance with “regulations and procedures” had been inserted to give effect to the agreement of the Working Group not to supersede domestic law and procedure relating to the registration of ships (A/CN.9/1007, para. 97). Concern was expressed that the term might not cover legal requirements relating to the payment of fees or eligibility to be registered as owner. It was proposed to replace the term with a reference to the domestic law of the State addressed.

92. In response, concern was raised that such a reference might allow requirements to be applied that could undermine the convention regime, such as a requirement to pay out unsatisfied creditors or to settle unpaid taxes levied against the former owner. It was noted that such requirements could not be inconsistent with the obligation under article 6 to recognize the clean title of the purchaser. At the same time, it was common practice for registries to recover unpaid tonnage taxes, and that prohibiting that practice might make the eventual convention less attractive to States with large registries. As a compromise, it was proposed that the term “registration requirements” should be used and that an additional provision should be inserted to clarify that the observance of those requirements was without prejudice to the clean title enjoyed by the purchaser.

93. After discussion, the Working Group decided to replace the term “regulations and procedures” with a more general reference to domestic law requirements. At the same time, the Working Group agreed that it could consider at a later stage the desirability of an additional provision to the effect that observance by the registrar of the registration requirements referred to in article 7(1) would not affect the conferral of clean title on the purchaser.

**(c) Application by purchaser**

94. It was observed that, in practice, the purchaser would apply to register or deregister the ship. A proposal was put forward to specify in the chapeau of article 7(1) that the registrar should act on the application of the purchaser. In response, it was noted that the chapeau should make it clear that the application of the purchaser and the production of the certificate of judicial sale were not two separate procedures but rather that the purchaser was required to produce the certificate in its application. The Working Group agreed to amend the chapeau of article 7(1) accordingly. It also asked the Secretariat to review the appropriateness of references in the text to action “upon production” of the certificate.

95. It was also proposed to replace the word “direction” in the chapeau of article 7(1)(b) with “application”. It was noted that, by introducing a requirement for the registrar to act on the application of the purchaser, the chapeau of article 7(1)(b) could be deleted. The Working Group agreed to amend article 7(1)(b) accordingly.

**(d) Additional action by registrar**

96. A proposal was put forward to insert a provision requiring the registrar to update the register with all other particulars in the certificate. The Working Group agreed to that proposal.

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**2. Grounds for refusal (article 7(5))**

97. The Working Group was reminded that article 7(5) implemented a proposal to “link and adapt” the grounds for refusal to the obligation to register or deregister in article 7 and to apply the full “suite” of grounds (A/CN.9/1007, para. 89). Recalling its decision to retain only the public policy ground in article 10(1) (see paras. 85–86 above), the Working Group agreed to delete subparagraphs (a) and (b) in article 7(5).

98. The view was reiterated that registrars were not well placed to apply the public policy ground (A/CN.9/1007, para. 89), although it was pointed out that article 7(5) did not require the registrar to determine whether the ground applied but rather to observe a determination of a competent court that the ground applied. It was also observed that article 7(5)(c) focused the public policy enquiry on the action by the registrar, whereas article 10(1)(c) focused the enquiry on the effect of the judicial sale in the State addressed. It was suggested that the difference in focus might be problematic. It was proposed that article 7(5) should be deleted entirely, or at least amended to refer to a determination by a competent court under article 10(1). An alternative proposal was put forward to reframe article 7(5) to refer not only to the application of a ground for refusal under article 10, but also to the avoidance of the sale under article 9.

99. After discussion, the Working Group agreed to retain article 7(5) but to amend it to refer to a determination under article 10(1). It was added that, while the amended provision might not add much in substance, it could still be a helpful signpost for registrars faced with the production of a certificate of judicial sale and a decision of a competent court refusing to give effect of the judicial sale. The Working Group also agreed to delete the reference to article 6.

100. A question was raised whether a “determination” by a competent court extended to protective measures ordered by the court pending final determination, such as an interim injunction ordering the registrar not to register or deregister the ship. Different views were exchanged on the merits of such an extension, with the Working Group agreeing to consider the question further at a later stage. The attention of the Working Group was drawn to the question as to how the registrar should respond if the ship were subject to certificates from multiple judicial sales (A/CN.9/WG.VI/WP.88, para. 69), although the Working Group did not consider the issue further.

**3. Certified copies and translations of the certificate (article 7(4) and (5))**

101. The Working Group agreed to consider copies and translations in conjunction with article 11.

**J. Article 8. No arrest of the ship****1. Arrest and release (article 8(1) and (2))**

102. It was noted that the original Beijing Draft dealt with applications to arrest and applications to release in a single paragraph, while the second revision split those provisions into separate paragraphs. A proposal was put forward to simplify the drafting by prohibiting the arrest of the ship, as that would also mandate the release of an arrested ship. However, it was felt that expressly addressing both scenarios was helpful.

103. A concern was expressed that the word “claim” in article 8(1) and (2) could be interpreted so as to prohibit the seizure of a ship in connection with law enforcement activities. A question was also raised as to the meaning of “similar measure” in article 8(1) and (2). The Working Group did not consider those issues further.

**2. Grounds for refusal (article 8(4))**

104. Recalling the discussion of article 7(5)(c) (see para. 98 above), it was observed that article 8(4) focused the public policy enquiry on the arrest of the ship, whereas

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article 10(1)(c) focused the enquiry on the effect of the judicial sale in the State addressed. It was proposed that article 8(4) should be deleted entirely. In response, it was noted that it was useful to adapt the public policy ground to the specific scenarios in article 8, and it was therefore suggested to retain article 8(4).

105. An alternative proposal was put forward to reframe article 8(4) to refer not only to the application of the public policy ground, but also to the avoidance of the sale under article 9. In response, it was cautioned that, since article 8(4) was addressed to a State other than the State of judicial sale, an express reference to avoidance in the State of judicial sale might prompt complex arguments relating to the recognition of foreign judgments.

106. After discussion, the Working Group decided to retain article 8(4) in its present form, subject to some simplification of the drafting, such as deleting the reference to article 6 and the words “to a court of a State party other than the State of judicial sale”.

## **K. Article 9. Jurisdiction to avoid and suspend judicial sale**

### **1. Terminology**

107. The Working Group was reminded of the view that avoiding a judicial sale rendered the sale null and void (A/CN.9/1007, para. 68). It was noted that the term “avoid” in the English version of the text might not be understood in English-speaking States where other terms such as “set aside” were more commonly used. It was highlighted that the term “avoid” was used in UNCITRAL texts in reference to the effects of transactions (e.g. sales), whereas the term “set aside” was used in reference to the effects of arbitral awards and judgments. It was added that the use of the term “avoid” would be preferable to emphasize that the draft convention was not concerned with the recognition of foreign judgments. The Working Group decided to retain the term “avoid” for the time being.

### **2. International effect of avoidance**

108. The Working Group considered whether article 9(3) should refer to an avoided judicial sale “not hav[ing]” effect or to it “ceas[ing] to have” effect. The view was expressed that the effects of avoidance should be applied prospectively to avoid reversing actions that might have already been taken upon production of the certificate of judicial sale, notably the deregistration of the ship and deletion of mortgages. It was added that the second option better catered for that approach. In response, it was noted that article 9 was not designed to address all aspects of the avoidance of a judicial sale, and that it was not appropriate for the convention to deal with the issue. It was added that, in any event, it was unlikely that a judicial sale would be avoided after action had been taken to update the register. Broad support was expressed for the matter ultimately being resolved by reference to the law of the State of judicial sale. In that regard, preference was given to the first option as it was sufficiently inclusive of both prospective avoidance and avoidance ab initio. It was added that this could be further clarified in the drafting of article 9(3). The Working Group agreed that the issue could be revisited at a later stage.

### **3. Other issues**

109. No proposals were put forward to amend article 9(1) or (2). A question was raised as to whether a refusal by the courts of the State of judicial sale to exercise jurisdiction under article 9(1) could trigger the public policy ground in article 10, although the Working Group did not discuss the issue. Support was expressed for referring to “authorities” in addition to “courts” in article 9(1) if indeed, in some States, competence to hear challenges to a judicial sale were vested in authorities other than courts (A/CN.9/973, para. 51).

## **PART III**

# **STATUS OF CONVENTIONS**

**(Guidance as to where information can be obtained)**

## **STATUS OF SIGNATURES, RATIFICATIONS, ACCEPTANCES, APPROVALS, ACCESSIONS, RESERVATIONS AND NOTIFICATIONS OF SUCCESSION WITH REGARD TO MARITIME LAW CONVENTIONS**

Since 1951 CMI has published information about the status of maritime law conventions in its CMI Bulletins, and later in its CMI Yearbooks. The information was initially limited to the Brussels' conventions which were the result of the work of CMI itself. But over time information about maritime law conventions produced by IMO and other organizations was also published by CMI. For its information CMI relied on the kind co-operation with the Ministry of Foreign Affairs of Belgium (the depositary of the Brussels' conventions), and the secretariats of the relevant international organizations.

Over the years the Belgian Ministry and the international organizations have proceeded to publish information on the status of conventions on the internet. These internet publications are updated as soon as new information becomes available. Therefore, spending a lot of time on the gathering of the same information for an annual publication in a paper yearbook would now seem to serve a very limited purpose. It was therefore decided to stop publishing the status of conventions in the CMI Yearbook and switch to publication on the CMI website. In order to prevent the unnecessary duplication of information already publicly available (and kept up to date) on the websites of the Belgian Ministry of Foreign Affairs and the international organizations, CMI will now simply provide a list of the relevant maritime law conventions with links to the websites of convention depositaries and international organizations. References to national treaty databases which provide trustworthy information on the status of multilateral conventions are also included.

The conventions are listed under six headings:

- Status of Brussels (CMI) Maritime Law Conventions
- Status of IMO Maritime Law Conventions
- Status of UN and UN/IMO Maritime Law Conventions
- Status of UNESCO Maritime Law Conventions
- Status of UNIDROIT Maritime Law Conventions
- Status of Antarctic Maritime Law Conventions

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*Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions*

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The conventions are listed within these categories in chronological order, but keeping protocols to conventions grouped together with the original convention.

It should be noted that the information provided on the websites referred to may vary in detail and accuracy. Just as in the past, CMI cannot guarantee that all the information is complete and correct. In the end it is advisable to contact the official depositary of each convention. Experience has shown that even then the information provided may be subject to debate.

T. van der Valk  
CMI Publications Editor

## **Status of Brussels (CMI) Maritime Law Conventions**

### International Convention for the Unification of Certain Rules of Law with respect to Collision between Vessels, Brussels, 23 September 1910

Entry into force: 1 March 1913

- the depositary, the Belgian Government:  
<http://diplomatie.belgium.be/sites/default/files/downloads/i1.pdf>
- Netherlands Treaty Database (in English) (*Verdragenbank*):  
<https://verdragenbank.overheid.nl/en/Verdrag/Details/003382>

### Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, Brussels, 23 September 1910

Entry into force: 1 March 1913

- the depositary, the Belgian Government:  
<http://diplomatie.belgium.be/sites/default/files/downloads/i2a.pdf>

Protocol to amend the Convention for the Unification of Certain Rules of law relating to Assistance and Salvage at Sea Signed at Brussels on 23rd September 1910, Brussels, 27 May 1967

Entry into force: 15 August 1977

- the depositary, the Belgian Government:  
<http://diplomatie.belgium.be/sites/default/files/downloads/i2b.pdf>

### International Convention for the Unification of Certain Rules relating to the Limitation of the Liability of Owners of Sea-going Vessels, Brussels, 25 August 1924

Entry into force: 2 June 1931

- the depositary, the Belgian Government:  
<http://diplomatie.belgium.be/sites/default/files/downloads/i3.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/pages/showDetails.aspx?objid=0800000280167705>

### International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, Brussels, 25 August 1924

Entry into force: 2 June 1931

- the depositary, the Belgian Government:  
<http://diplomatie.belgium.be/sites/default/files/downloads/I-4a.pdf>
- the United Nations Treaty Collection:  
<https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801d0f51>
- Netherlands Treaty Database (in English) (*Verdragenbank*):  
<https://verdragenbank.overheid.nl/en/Verdrag/Details/004127>



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*Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions*

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Protocol to amend the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, signed at Brussels on 25th August 1924, Brussels, 23 February 1968

Entry into force: 23 June 1977

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/I-4b.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ea4ab>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/003112>

Protocol amending the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 25 August 1924 as amended by the Protocol of 23 February 1968, Brussels, 21 December 1979

Entry into force: 14 February 1984

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/I-4c.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800d54ea>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/000840>

International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages, Brussels, 10 April 1926

Entry into force: 2 June 1931

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/I-5.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/pages/showDetails.aspx?objid=080000028016775a>

International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, Brussels, 10 April 1926

Entry into force: 8 January 1937

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i6.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/pages/showDetails.aspx?objid=0800000280166914>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/003839>

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*Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions*

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Additional Protocol to the International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, Brussels, 24 May 1934

Entry into force: 8 January 1937

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i6.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/pages/showDetails.aspx?objid=0800000280166914>
- Netherlands Treaty Database (in English) (Verdragenbank): <https://verdragenbank.overheid.nl/en/Verdrag/Details/005942>

International Convention on Certain Rules concerning Civil Jurisdiction in Matters of Collision, Brussels, 10 May 1952

Entry into force: 14 September 1955

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i7.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801338d5>

International Convention for the Unification of Certain Rules Relating to Penal jurisdiction in matters of collision and other incidents of navigation, Brussels, 10 May 1952

Entry into force: 20 November 1955

- the depositary, the Belgian Government: <https://diplomatie.belgium.be/sites/default/files/downloads/i8.pdf>
- the United Nations Treaty Collection: [https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801338c3&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801338c3&clang=_en)

International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, Brussels, 10 May 1952

Entry into force: 24 February 1956

- the depositary, the Belgian Government: [http://diplomatie.belgium.be/sites/default/files/downloads/Zeerecht\\_9.pdf](http://diplomatie.belgium.be/sites/default/files/downloads/Zeerecht_9.pdf)
- the United Nations Treaty Collection: <https://treaties.un.org/pages/showDetails.aspx?objid=08000002801338ba>
- Netherlands Treaty Database (in English) (Verdragenbank): <https://verdragenbank.overheid.nl/en/Verdrag/Details/007235>

International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships, Brussels, 10 October 1957

Entry into force: 31 May 1968

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- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i10a.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ea54a>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/006826>

Protocol amending the International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships dated 10 October 1957, Brussels, 21 December 1979

Entry into force: 6 October 1984

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i10b.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800d549d>

International Convention relating to Stowaways, Brussels, 10 October 1957

Entry into force: not yet in force

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i11.pdf>

International Convention for the Unification of Certain Rules relating to the Carriage of Passengers by Sea, Brussels, 29 April 1961

Entry into force: 4 June 1965

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i12.pdf>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ea435>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/009010>

International Convention on the Liability of Operators of Nuclear Ships, (Brussels, 25 May 1962)

Entry into force: not yet in force

- the depositary, the Belgian Government: <https://diplomatie.belgium.be/sites/default/files/downloads/i13.pdf>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/009108>

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International Convention for the Unification of Certain Rules relating to Carriage of Passenger Luggage by Sea, Brussels, 27 May 1967

Entry into force: not yet in force

- the depositary, the Belgian Government: <https://diplomatie.belgium.be/sites/default/files/downloads/i14.pdf>

Convention relating to Registration of Rights in respect of Vessels under Construction, Brussels, 27 May 1967

Entry into force: not yet in force

- the depositary, the Belgian Government: [http://diplomatie.belgium.be/sites/default/files/downloads/I\\_15.pdf](http://diplomatie.belgium.be/sites/default/files/downloads/I_15.pdf)

International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages, Brussels, 27 May 1967

Entry into force: not yet in force

- the depositary, the Belgian Government: <http://diplomatie.belgium.be/sites/default/files/downloads/i16.pdf>

## **Status of IMO Maritime Law Conventions**

International Convention on Civil Liability for Oil Pollution Damage, Brussels, 29 November 1969

Entry into force: 19 June 1975

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- the United Nations Treaty Collection: [https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801083db&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801083db&clang=_en)
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/003096>

Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969, London, 19 November 1976

Entry into force: 8 April 1981

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- the United Nations Treaty Collection: [https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800e815e&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800e815e&clang=_en)

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- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Treaty/Details/001655>

Protocol of 1984 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, London, 25 May 1984  
Entry into force: not yet in force

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/000115>

Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, London, 27 November 1992

Entry into force: 30 May 1996

- the depositary, the (Secretary General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- the United Nations Treaty Collection: [https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800a5777&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800a5777&clang=_en)
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Treaty/Details/005146>

International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, Brussels, 29 November 1969

Entry into force: 6 May 1975

- the depositary, the (Secretary General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- the United Nations Treaty Collection: [https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801089a9&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801089a9&clang=_en)
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/003095>

Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, London, 2 November 1973

Entry into force: 30 March 1983

- the depositary, the (Secretary General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>

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*Status of Signatures, Ratifications, Acceptance, Approvals, Accessions, Reservations and Notifications of Succession with regard to Maritime Law Conventions*

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- the United Nations Treaty Collection: [https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ddf24&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ddf24&clang=_en)
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/002394>

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Brussels, 18 December 1971

Entry into force: 16 October 1978

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- the United Nations Treaty Collection: [https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800f5af6&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800f5af6&clang=_en)
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/002837>

Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, London, 19 November 1976

Entry into force: 22 November 1994

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- the United Nations Treaty Collection: [https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ad4bc&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ad4bc&clang=_en)
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/001657>

Protocol of 1984 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, London, 25 May 1984

Entry into force: not yet in force

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/000116>

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Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, London, 27 November 1992

Entry into force: 30 May 1995

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- the depositary, the United Nations Treaty Collection: [https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800a599a&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800a599a&clang=_en)
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/012374>

Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, London, 16 May 2003

Entry into force: 3 March 2005

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/010844>

Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, Brussels, 17 December 1971

Entry into force: 15 July 1975

- the depositary, the International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- the United Nations Treaty Collection: <https://treaties.un.org/pages/showDetails.aspx?objid=0800000280107d4b>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/002836>

Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, Athens, 13 December 1974

Entry into force: 28 April 1987

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800cdabb>

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Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, London, 19 November 1976

Entry into force: 30 April 1989

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800c3599&clang=en>

Protocol of 1990 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, London, 29 March 1990

Entry into force: not yet in force

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>

Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, London, 1 November 2002

Entry into force: 23 April 2014

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/011547>

Convention on Limitation of Liability for Maritime Claims, London, 19 November 1976

Entry into force: 1 December 1986

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- the United Nations Treaty Collection: <https://treaties.un.org/pages/showDetails.aspx?objid=08000002800f9404>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/001656>



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Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976, London, 2 May 1996

Entry into force: 13 May 2004

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/007428>

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, Rome, 10 March 1988

Entry into force: 1 March 1992

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- the United Nations Treaty Collection: [https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800b9bd7&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800b9bd7&clang=_en)
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/002231>

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988, Rome, 10 March 1988

Entry into force: 1 March 1992

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- the United Nations Treaty Collection: [https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800b9af3&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800b9af3&clang=_en)
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/002232>

Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, London, 14 October 2005

Entry into force: 28 July 2010

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/011471>

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Protocol of 2005 to the Protocol for the Suppression on Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, London 14 October 2005

Entry into force: 28 July 2010

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/011470>

International Convention on Salvage, 1989, London, 28 April 1989

Entry into force: 14 July 1996

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- the United Nations Treaty Collection: <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800a58b3>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/003805>

International Convention on Oil Pollution Preparedness, Response and Co-operation 1990, London, 30 November 1990

Entry into force: 13 May 1995

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- the United Nations Treaty Collection: [https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800aada6&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800aada6&clang=_en)
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/004459>

Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000, London, 15 March 2000

Entry into force: 14 June 2007

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/009370>

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International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, London, 3 May 1996

Entry into force: not yet in force

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/007429>

Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, London 30 April 2010

Entry into force: not yet in force

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/012292>

International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, London, 23 March 2001

Entry into force: 21 November 2011

- the depositary, the (Secretary-General of the) International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/011005>

Nairobi International Convention on the Removal of Wrecks, Nairobi, 18 May 2007

Entry into force: 14 April 2015

- the depositary, the International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/009962>

## **Status of UN and UN/IMO Maritime Law Conventions**

### United Nations Convention on a Code of Conduct for Liner Conference, Geneva, 6 April 1974

Entry into force: 6 October 1983

- the depositary, the (Secretary-General of the) United Nations: [https://treaties.un.org/Pages/showDetails.aspx?objid=080000028003a445&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=080000028003a445&clang=_en)
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/002264>

### United Nations Convention on the Carriage of Goods by Sea, Hamburg, 31 March 1978

Entry into force: 1 November 1992

- the depositary, the (Secretary-General of the) United Nations: <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280042179>

### United Nations Convention on International Multimodal Transport of Goods, Geneva, 24 May 1980

Entry into force: not yet in force

- the depositary, the (Secretary-General of the) United Nations: [https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280025033&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280025033&clang=_en)

### United Nations Convention on the Law of the Sea, Montego-Bay, 10 December 1982

Entry into force: 16 November 1994

- the depositary, the (Secretary-General of the) United Nations: [https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280043ad5&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280043ad5&clang=_en)
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/000493>

### United Nations Convention on Conditions for Registration of Ships, Geneva, 7 February 1986

Entry into force: not yet in force

- the depositary, the (Secretary-General of the) United Nations: <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004c485>

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United Nations Convention on the Liability of Operators of Transport Terminals in International Trade, Vienna, 19 April 1991

Entry into force: not yet in force

- the depositary, the (Secretary-General of the) United Nations: [https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004b4e0&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004b4e0&clang=_en)

International Convention on Maritime Liens and Mortgages, 1993, Geneva, 6 May 1993

Entry into force: 5 September 2004

- the depositary, the (Secretary-General of the) United Nations: <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004a70a>

International Convention on Arrest of Ships, 1999, Geneva, 12 March 1999

Entry into force: 14 September 2011

- the depositary, the (Secretary-General of the) United Nations: <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028004ce27>
- the International Maritime Organization: <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>

United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly By Sea, New York, 11 December 2008

Entry into force: not yet in force

- the depositary, the (Secretary-General of the) United Nations: <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028021e615>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/010533>

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## **Status of UNESCO Maritime Law Conventions**

UNESCO Convention on the Protection of Underwater Cultural Heritage, Paris, 2 November 2001

Entry into force: 2 January 2009

- the depositary, the (Director-General of the) United Nations Educational, Scientific, Cultural Organization (UNESCO):  
[http://portal.unesco.org/en/ev.php-URL\\_ID=13520&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13520&URL_DO=DO_TOPIC&URL_SECTION=201.html)
- Netherlands Treaty Database (in English) (*Verdragenbank*):  
<https://verdragenbank.overheid.nl/en/Verdrag/Details/010501>

## **Status of UNIDROIT Maritime Law Conventions**

UNIDROIT Convention on International Financial Leasing, Ottawa, 28 May 1988

Entry into force: 1 May 1995

- the depositary, the Government of Canada: -
- the originating organization, the International Institute for the Unification of Private Law (UNIDROIT):  
<https://www.unidroit.org/status-leasing-conv-1988>

## **Status of Antarctic Maritime Law Conventions**

Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty: Liability Arising From Environmental Emergencies, Stockholm, 14 June 2005

Entry into force: not yet in force

- the depositary, the Government of the United States:  
<https://www.state.gov/annex-vi-antarctic-treaty/>
- Netherlands Treaty Database (in English) (*Verdragenbank*): <https://verdragenbank.overheid.nl/en/Verdrag/Details/010766>

## **CONFERENCES OF THE COMITE MARITIME INTERNATIONAL**

### **I. BRUSSELS – 1897**

President: Mr. Auguste

BEERNAERT.

Subjects: Organization of  
the International Maritime  
Committee - Collision  
-Shipowners' Liability.

### **II. ANTWERP – 1898**

President: Mr. Auguste

BEERNAERT.

Subjects: Liability of Owners of  
sea-going vessels.

### **III. LONDON – 1899**

President: Sir Walter

PHILLIMORE.

Subjects: Collisions in which  
both ships are to blame -  
Shipowners' liability.

### **IV. PARIS – 1900**

President: Mr. LYON-CAEN.

Subjects: Assistance, salvage  
and duty to tender assistance -  
Jurisdiction in collision matters.

### **V. HAMBURG – 1902**

President: Dr. Friedrich

SIEVEKING.

Subjects: International Code on  
Collision and Salvage at Sea -  
Jurisdiction in collision matters -  
Conflict of laws as to owner-ship  
of vessels.

### **VI. AMSTERDAM - 1904**

President: Mr. E.N. RAHUSEN.

Subjects: Conflicts of law in  
the matter of Mortgages and  
Liens on ships -Jurisdiction in  
collision matters -Limitation of  
Shipowners' Liability.

### **VII. LIVERPOOL - 1905**

President: Sir William R.

KENNEDY.

Subjects: Limitation of  
Shipowners' Liability - Conflict  
of Laws as to Maritime  
Mortgages and Liens - Brussels  
Diplomatic Conference.

### **VIII. VENICE – 1907**

President: Mr. Alberto

MARGHERI.

Subjects: Limitation of  
Shipowners' Liability -Maritime  
Mortgages and Liens - Conflict  
of law as to Freight.

### **IX. BREMEN – 1909**

President: Dr. Friedrich

SIEVEKING.

Subjects: Conflict of laws as  
to Freight -Compensation in  
respect of personal injuries  
- Publication of Maritime  
Mortgages and Liens.

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## X. PARIS – 1911

President: Mr. Paul GOVARE.

Subjects: Limitation of Shipowners' Liability in the event of loss of life or personal injury -Freight.

## XI. COPENHAGEN – 1913

President: Dr. J.H. KOCH.

Subjects:  
London declaration 1909  
- Safety of Navigation -  
International Code of Affreightment - Insurance of enemy property.

## XII. ANTWERP – 1921

President:

Mr. Louis FRANCK.

Subjects:  
International Conventions relating to Collision and Salvage at sea. -Limitation of Shipowners' Liability -Maritime Mortgages and Liens -Code of Affreightment - Exonerating clauses.

## XIII LONDON – 1922

President:

Sir Henry DUKE.

Subjects:  
Immunity of State-owned ships  
-Maritime Mortgage and Liens.  
-Exonerating clauses in Bills of lading.

## XIV. GOTHENBURG – 1923

President: Mr. Efiel LÖFGREN.

Subjects:  
Compulsory insurance of

passengers -Immunity of State owned ships -International Code of Affreightment - International Convention on Bills of Lading.

## XV. GENOA – 1925

President: Dr. Francesco

BERLINGIERI.

Subjects: Compulsory Insurance of passengers - Immunity of State owned ships - International Code of Affreightment - Maritime Mortgages and Liens.

## XVI. AMSTERDAM – 1927

President: Mr. B.C.J. LODER.

Subjects:  
Compulsory insurance of passengers -Letters of indemnity  
- Ratification of the Brussels Conventions.

## XVII. ANTWERP – 1930

President: Mr. Louis FRANCK.

Subjects:  
Ratification of the Brussels Conventions -Compulsory insurance of passengers  
-Jurisdiction and penal sanctions in matters of collision at sea.

## XVIII. OSLO – 1933

President: Mr. Edvin ALTEN.

Subjects:  
Ratification of the Brussels Conventions -Civil and penal jurisdiction in matters of collision on the high seas - Provisional arrest of ships  
- Limitation of Shipowners' Liability.



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## XIX. PARIS – 1937

President: Mr. Georges RIPERT.

Subjects:

Ratification of the Brussels Conventions -Civil and penal jurisdiction in the event of collision at sea - Arrest of ships - Commentary on the Brussels Conventions - Assistance and Salvage of and by Aircraft at sea.

## XX. ANTWERP – 1947

President: Mr. Albert LILAR.

Subjects:

Ratification of the Brussels Conventions, more especially of the Convention on immunity of State-owned ships -Revision of the Convention on Limitation of the Liability of Owners of sea-going vessels and of the Convention on Bills of Lading - Examination of the three draft conventions adopted at the Paris Conference 1937 - Assistance and Salvage of and by Aircraft at sea -York and Antwerp Rules; rate of interest.

## XXI. AMSTERDAM – 1948

President: Prof. J. OFFERHAUS

Subjects: Ratification of the Brussels International Convention - Revision of the York-Antwerp Rules 1924 - Limitation of Shipowners' Liability (Gold Clauses) -Combined Through Bills of Lading -Revision of the draft Convention on arrest

of ships - Draft of creation of an International Court for Navigation by Sea and by Air.

## XXII. NAPLES – 1951

President: Mr. Amedeo

GIANNINI.

Subjects: Brussels International Conventions -Draft convention relating to Provisional Arrest of Ships - Limitation of the liability of the Owners of Sea-going Vessels and Bills of Lading (Revision of the Gold clauses) - Revision of the Conventions of Maritime Hypothèques and Mortgages - Liability of Carriers by Sea towards Passengers - Penal Jurisdiction in matters of collision at Sea.

## XXIII. MADRID – 1955

President: Mr. Albert LILAR.

Subjects:Limitation of Shipowners' Liability -Liability of Sea Carriers towards passengers - Stowaways - Marginal clauses and letters of indemnity.

## XXIV. RIJEKA – 1959

President: Mr. Albert LILAR

Subjects:

Liability of operators of nuclear ships -Revision of Article X of the International Convention for the Unification of certain Rules of law relating to Bills of Lading - Letters of Indemnity and Marginal clauses. Revision of Article XIV of the International

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Convention for the Unification of certain rules of Law relating to assistance and salvage at sea -International Statute of Ships in Foreign ports - Registry of operations of ships.

XXV. ATHENS – 1962

President: Mr. Albert LILAR

Subjects:

Damages in Matters of Collision -Letters of Indemnity - International Statute of Ships in Foreign Ports -Registry of Ships - Coordination of the Convention of Limitation and on Mortgages -Demurrage and Despatch Money -Liability of Carriers of Luggage.

XXVI. STOCKHOLM - 1963

President: Mr. Albert LILAR

Subjects: Bills of Lading - Passenger Luggage -Ships under construction.

XXVII. NEW YORK – 1965

President: Mr. Albert LILAR

Subjects:

Revision of the Convention on Maritime Liens and Mortgages.

XXVIII. TOKYO – 1969

President: Mr. Albert LILAR

Subjects:

“Torrey Canyon” - Combined Transports -Coordination of International Convention relating to Carriage by Sea of Passengers and their Luggage.

XXIX. ANTWERP – 1972

President: Mr. Albert LILAR

Subjects:

Revision of the Constitution of the International Maritime Committee.

XXX. HAMBURG – 1974

President: Mr. Albert LILAR

Subjects:

Revisions of the York/Antwerp Rules 1950 - Limitation of the Liability of the Owners of Seagoing vessels - The Hague Rules.

XXXI. RIO DE JANEIRO - 1977

President: Prof. Francesco BERLINGIERI

Subjects:

Draft Convention on Jurisdiction, Choice of law and Recognition and enforcement of Judgements in Collision matters. Draft Convention on Off-Shore Mobile Craft.

XXXII. MONTREAL – 1981

President: Prof. Francesco BERLINGIERI

Subjects:

Convention for the unification of certain rules of law relating to assistance and salvage at sea - Carriage of hazardous and noxious substances by sea.

XXXIII. LISBON- 1985

President: Prof. Francesco BERLINGIERI

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Subjects: Convention on Maritime Liens and Mortgages - Convention on Arrest of Ships.

-Classification Societies - Carriage of Goods by Sea - The Future of CMI.

XXXIV. PARIS – 1990

President: Prof. Francesco BERLINGIERI

Subjects:

Uniformity of the Law of Carriage of Goods by Sea in the 1990's - CMI Uniform Rules for Sea Waybills - CMI Rules for Electronic Bills of Lading - Revision of Rule VI of the York-Antwerp Rules 1974.

XXXVII. SINGAPORE – 2001

President: Patrick GRIGGS

Subjects:

Issues of Transport Law - Issues of Marine Insurance - General Average - Implementation of Conventions - Piracy - Passengers Carried by Sea.

XXXV. SYDNEY – 1994

President: Prof. Allan PHILIP

Subjects:

Review of the Law of General Average and York-Antwerp Rules 1974 (as amended 1990) - Draft Convention on Off-Shore Mobile Craft - Assessment of Claims for Pollution Damage - Special Sessions: Third Party Liability - Classification Societies - Marine Insurance: Is the doctrine of Utmost Good Faith out of date?

XXXVIII. VANCOUVER – 2004

President: Patrick GRIGGS

Subjects:

Transport Law - General Average - Places of Refuge for Ships in Distress - Pollution of the Marine Environment - Maritime Security - Marine Insurance – Bareboat Chartered Vessels - Implementation of the Salvage Convention.

XXXVI. ANTWERP – 1997

CENTENARY CONFERENCE

President: Prof. Allan PHILIP

Subjects:

Off-Shore Mobile Craft - Towards a Maritime Liability Convention - EDI - Collision and Salvage - Wreck Removal Convention - Maritime Liens and Mortgages, Arrest of Ships

XXXIX. ATHENS 2008

President: Jean-Serge Rohart

Subjects:

Places of Refuge – Procedural Rules Relating to Limitation of Liability in Maritime Law – UNCITRAL Draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea – Non-technical Measures to Promote Quality Shipping – Implementation and Interpretation of International Conventions – Judicial Sale of

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Ships – Charterer’s Right to Limit Liability – Charterer’s Right to Limit Liability – Wreck Removal Convention 2007 – Draft Convention on Recycling of Ships

**XL. BEIJING 2012**

President: Karl-Johan Gombrii

Subjects:

Judicial Sales of Ships – Salvage Convention 1989 – Rotterdam Rules – York Antwerp Rules 2004 – Offshore Activity – Fair Treatment of Seafarers – Piracy – Maritime Issues for Judges – Marine Insurance – The Western and Eastern Cultural Influences on Maritime Arbitration and its Recent Developments in Asia – Arctic/Antarctic Issues – Cross Border Insolvencies – The Shipbuilding Industry in Asia: Problems and Challenges – Future of the CMI in the Decades to come. – Young Members Session: Arrest of Ships and Judicial Sales of Vessels – Offshore Activities, New Regulations and Contracts – Enforcement on Shipping Companies by Creditors.

**XLI. HAMBURG 2014**

President: Stuart Hetherington

Subjects:

Judicial Sales of Ships – York Antwerp Rules 2004 – Ships in hot water: Ship Financing and Restructuring; Cross Border Insolvencies; Liability

of classification societies; Wrongful arrest of ships; Piracy – Ships in cold water: Arctic Issues – Maritime Miscellany: Ships Emissions; Wreck Removal Convention; Young CMI Panel; MLC 2006 Issues and Implementation.

**XLII. NEW YORK 2016**

President: Stuart Hetherington

Subjects:

General Average – Costa Concordia – Cybercrime in Shipping – Offshore Activities – Pandemic Response – Polar Shipping – Unmanned Ships – Lex Maritima – Ship financing and Security Practices – Refugee Migration at sea – Cross-border insolvencies – Maritime Arbitration – Marine Insurance – Liability for Wrongful Arrest

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