



COMITE MARITIME INTERNATIONAL

PRESIDENT

President's Speech at the Second Signing Ceremony of the Convention on the International Effects of Judicial Sales of Ships – Verdala Castle, Malta

Wednesday, 19th June 2024

Madame President, Hon. Chief Justice, Excellencies, Justices, ladies and gentlemen,

On behalf of the Comité Maritime International (CMI), may I welcome you to this celebration of the 2nd Signing Ceremony of the Convention on the International Effects of Judicial Sales of Ships. This Convention will bring stability and certainty to the shipping world, responsible for the carriage of 90% of world trade.

However, one may well ask, what exactly does the judicial sale of a ship have to do with world trade? A great deal. Regrettably, there are instances when owners are unable to pay their creditors and, notwithstanding all the goodwill in the world, they are left with no option but to arrest that vessel, commence proceedings, obtain a judgment, and if the creditor remains in default, get the vessel sold in a judicial sale.

When such ships are sold in judicial sales, they are normally sold free and unencumbered. This is crucial because no potential buyer and no financier will be remotely interested in buying such a ship unless it is cleaned of all its past debts on the sale. This ensures that the vessels are sold for the best price, thus offering creditors, including crew who are often left languishing on board these ships, the best chances of getting paid and repatriated to their families.

The problem arises when, after a bona fide purchaser pays top dollar for a vessel in a judicial sale, sold free and unencumbered, charters the vessel to third parties, starts to carry cargoes from one country to another, he has his ship fully laden stopped and arrested mid-voyage by an illegal arrest instituted by the vessel's old creditors. There is even greater uncertainty and instability in the marine finance markets when, following the financing and purchase of a vessel free and unencumbered, the new owner is unable to obtain the deletion of the old owner and register his new ownership, and the new financier is unable to obtain the deletion of the old mortgage and register his new one. These events have occurred, and when they do, they destabilize international shipping and international trade.

This situation had to be resolved – Enter the CMI.

The unification of international maritime law is the very raison d'être of the CMI since its inception in 1897 and has been the drafter of the vast majority of international maritime conventions.

Conscious of this very serious challenge, Prof. Henry Li brought the matter to the attention of the CMI, and the CMI finalized the Draft Convention on the International Recognition of Judicial Sales

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of Ships precisely to unify international maritime law in this regard and ensure that such purchases are given proper effect.

In 2017, the CMI approached UNCITRAL, which suggested first the holding of an international colloquium for the industry. Depending on the outcome of that colloquium, UNCITRAL would decide. The Colloquium was held in Malta in February 2018, and we had over 150 persons from over 60 countries from the international maritime industry. There was overwhelming support for this Convention.

The conclusions of the Malta colloquium were presented by Switzerland at the Fifty-First Commission session in New York, and the Commission agreed to add the project to its work programme, eventually assigning it to Working Group V1 under the expert chairmanship of Prof. Beate Czerwenka.

The first meeting of Working Group V1 was held in New York in June 2019, and not even Covid shortly thereafter stopped Working Group V1 from pursuing its goal, which was to finalize a Convention as soon as practicable. With a great degree of satisfaction, the Commission approved the Draft Convention on the International Effects of Judicial Sales of Ships at its Fifty-Fifth session in June 2022. In December 2022, the General Assembly of the United Nations adopted the Convention and authorized a signing ceremony in Beijing.

The remarkably short period of time from the first meeting of the Working Group to the Convention's adoption – just over 3 years – was the result of a great deal of hard work on the part of many. As CMI, our main task was to explain the *raison d'être* behind each and every article in the draft. There were several discussions to be had and concerns to be addressed, and further thoughts and ideas were introduced into the text of the convention.

None of this would have been possible had it not been for the deep sense of collective willingness amongst the delegates to conclude a good convention and an inspiring spirit of understanding and compromise for the good of the international maritime industry.

I would, however, like to single out Angele Sears De Bono from the EU Commission, with whom we worked solidly to ensure that any potential stumbling blocks were overcome.

Special gratitude goes to the Secretariat at UNCITRAL, whose diligence in the entire project was truly impressive. Particularly, José Angelo Estrella Faria, Principal Legal Officer and Head, Legislative Branch International Trade Law Division - Office of Legal Affairs. Mr. Estrella Faria's role was crucial to the successful conclusion of our discussions, frequently finding solutions that had eluded several state delegations. When we would be on the verge of losing hope that a solution could be found, Mr. Estrella Faria would, with his deep knowledge and experience, come up with a solution acceptable to all.

The signing ceremony of the Convention was held in Beijing in September 2023 with 15 States signing the Convention: China, Burkina Faso, Comoros, El Salvador, Grenada, Honduras, Kiribati, Liberia, Sao Tome & Principe, Saudi Arabia, Senegal, Sierra Leone, Singapore, Syria, and Switzerland. Since the EU internal processes had not yet been completed, no EU Member state was able to sign the Convention then.

A few weeks later, Tanzania and Ecuador signed the Convention, bringing it up to 17 signatories.

The EU promptly finalized its processes enabling signature by EU Member States in December 2023, and in fact, on the 14th of March 2024, the EU itself signed the Convention in New York under the Presidency of Belgium, with Belgium signing the Convention at the same time. This has brought the signatories to 18 states and the EU.

In May, Luxembourg signed the Convention in New York, bringing signatories to 19 states.

In the meantime, the idea of having a celebratory event in Malta started to garner traction, and this morphed into one where perhaps states, particularly EU member states, would be given the opportunity to sign the convention in an EU Member state, Malta.

This Convention is important for Malta as it is for every maritime nation worldwide, within or outside of the EU. Malta is a significant maritime nation, with every aspect of the maritime spectrum represented and active in Malta, ranging from towage to ship repair, from pilotage to transshipment, from yachting to cruise line operation, from bunkering to the provision of significant maritime services, to the largest flag in Europe with over 100 million tons. All of this, coupled with our strategic position in the center of the Mediterranean, means that our courts deal with a significant number of maritime cases which often lead to judicial sales. It is thus very important for Malta and indeed every maritime nation that when a vessel is sold in our States free and unencumbered, that sale is given international effect. It is important for buyers and financiers of those ships to be able to travel the world's oceans with certainty and without fear, and to have the comfort they deserve. It is important for buyers and financiers of ships in judicial sales outside those States to know that they can call at those States without the fear of rearrest.

We are therefore particularly grateful to the UN Treaty Section for kindly agreeing to bring the Treaty Book out of the UN building in New York to enable us to have a signing opportunity here in Malta. We understand this to be an exceptional event.

This convention, ladies and gentlemen, has only 11 substantive articles. We believe that its success lies in its simplicity.

The convention provides that notification of the judicial sale must be given to a number of parties. Importantly, however, it provides that the notice of judicial sale and the certificate of judicial sale must be sent to the Repository identified as the IMO, which will place the notice and certificate in a special module on its GISIS platform so that anyone with any smartphone from anywhere in the world can find out if a vessel is about to be sold in a judicial sale and take any appropriate action they wish to take. We are very grateful indeed to the International Maritime Organization for having agreed to be such an important part of our Convention and provide this invaluable service.

The Convention ensures that, provided the notification provisions are followed, vessels sold free and unencumbered in judicial sales in state parties cannot be re-arrested by previous creditors or must be immediately released if they are, on the production of the certificate of judicial sale; it ensures that registrars of ships MUST delete previous owners and register the ships in the name of the new owners if so required, and must delete previous mortgages and register the new mortgages if so required on the production of a certificate of judicial sale.

Ladies and gentlemen, today we are about to witness another 7 countries becoming signatories to this Convention. This is truly special, bringing the total number of signatory states to 26.

The next step, however, is ratification. The Convention needs 3 ratifying states to come into force. We all know that the true value of a Convention is in the number of states that ratify it. El Salvador has already done so.

Therefore, the question now after today is how and when can EU Member States ratify the Convention. As a representative of the international maritime industry, allow me, Mr. Sonnenshein, to underline how important it is for the EU to promptly embark on the finalization and conclusion of the next processes to enable EU Member States to ratify the Convention as soon as possible. International shipping is already facing monumental challenges, and the European Maritime Industry looks to the Commission for support.

The importance of this Convention cannot be underestimated, with numerous maritime financial institutions already making it publicly known that they will only finance vessels in Judicial Sales registered with flag states parties to the Convention or sold in state parties to the Convention. Signing today, we have Malta, the largest flag in Europe, and Cyprus, the 2nd largest. This Convention is important to us.

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The Convention on the International Effects of Judicial Sales of Ships is like a brand-new 27 thousand TEU containership. Her construction drawings and plans are the Draft by CMI, she was built by a robust shipyard—UNCITRAL, she is now fully loaded. Enable us to discharge her at her discharge port by providing a speedy ratification process.

Thank you.