

Celebratory Event
on the
United Nations Convention on the International Effects of
Judicial Sales of Ships
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The Beijing Convention: Overview and expected benefits.

Remarks by

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Ladies and gentlemen,

I should begin by thanking the Ministry for Foreign and
European Affairs and Trade of Malta for the kind invitation to
address you at this celebratory event on the United Nations
Convention on the International Effects of Judicial Sales of

Ships, also known as the Beijing Convention on the Judicial Sale of Ships since fifteen countries signed it at the signing ceremony hosted by the People's Republic of China on 5 September 2023.

I am proud that the United Nations Office of Legal Affairs supported the negotiation and adoption of this convention through the International Trade Law division, which functions as the secretariat to the United Nations Commission on International Trade Law (UNCITRAL).

Of course, this was not the first incursion of UNCITRAL into maritime law. Neither was it the first occasion of cooperation with the Comité Maritime Internationale, also represented at this symposium today, a prestigious institution that played a crucial role in the preparation and negotiation of the Beijing Convention, but our cooperation in this project was a particularly fruitful one, allowing the project to be completed within an unusually short period for an international convention.

We will hear about the Convention from other speakers today but allow me nevertheless to briefly recapitulate its main features.

In many States, courts have the authority to order the sale of a ship to satisfy a legal claim. Such a claim is typically brought against the ship or shipowner to foreclose a ship mortgage (in the event of default in repayment) or to enforce a maritime lien against the ship. The judicial sale procedure is typically preceded by the arrest of the ship.

While the international community has achieved significant progress in harmonizing rules on the arrest of ships, much less progress has been achieved in harmonizing rules on the judicial sale of ships. As such, it remains for each State to prescribe the rules governing the procedure and legal effect of judicial sales ordered by its courts.

Although in many States the judicial sale has the legal effect of conferring "clean title" on the purchaser (that is, it extinguishes all rights and interests that were previously attached to the ship, including mortgages and maritime liens), this is not the rule everywhere. It also remains for each State to prescribe the rules governing the legal effect within its jurisdiction of foreign judicial sales.

The original proposal presented by the CMI to UNCITRAL in 2017 drew attention to problems arising around the world from the failure to give recognition to foreign judgments ordering the sale of ships. It was stated that a short, self-contained instrument along the lines of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 1958 New York Convention) could provide a solution to those problems by enabling clean title to vessels to be recognized across borders.

UNCITRAL showed interest for that proposal and requested the CMI to develop it further. UNCITRAL and the CMI held a colloquium in Malta, in February 2018, involving government officials, academia and representatives of the shipping industry. The conclusions of the colloquium were summarized in an additional proposal submitted to the fifty-first session of UNCITRAL, in 2018, by the governments of Malta and Switzerland. UNCITRAL agreed on the importance and timeliness of the project and assigned it to a working group.

Work proceeded thereafter in five more sessions of the Working Group. The negotiations were open to all Member States of the United Nations and counted with the active participation of delegations with expertise in maritime matters and the input of maritime industry stakeholders. UNCITRAL considered the draft prepared by the Working Group at its fifty-fifth session, in 2022, and the United Nations General Assembly adopted the Convention at the 47th plenary meeting of its 77th session, on 7 December 2022.

The General Assembly authorized the convening of a ceremony for the opening for signature of the Convention in Beijing and recommended that the Convention be known as the “Beijing Convention on the Judicial Sale of Ships”.

The Convention establishes a harmonized regime for giving international effect to judicial sales, while preserving domestic law governing the procedure of judicial sales and the circumstances in which judicial sales confer clean title. The Convention takes a pragmatic approach to address a problem of practical importance by dealing with the key issues for which uniformity is desirable, namely:

- the mandatory notification of judicial sales to interested parties, including ship registry,

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- the introduction of a standard certificate to provide a basis for international recognition,
 - the deregistration or transfer by the ship registry at the request of the purchaser,
 - the prohibition of actions to arrest the ship for claims arising from a pre-existing right or interest,
 - the exclusive jurisdiction of the courts of the State of judicial sale to hear challenges to the judicial sale.

Accordingly, the Convention leaves it for the applicable law to determine:

- the procedure or legal effect of a judicial sale within the State of judicial sale,
- the recognition and relative priority of maritime liens,
- the time of completion of sale and transfer of property, and
- the distribution of proceeds and grounds for avoidance of judicial sales.

Upon completion of the judicial sale – which is determined in accordance with the law of the State of judicial sale – the court that conducted the judicial sale or other competent authority issues a certificate of judicial sale to the purchaser if:

- the judicial sale conferred clean title to the ship under the law of the State of judicial sale and
- the sale was conducted in accordance with the requirements of that law and the requirements of this Convention.

Both requirements give comfort to the purchaser, but especially to the registry or any other person asked to act upon the certificate, that the sales was done in proper order and can have the international effects provided in the Convention.

To increase transparency and uniformity, the Convention introduces a model certificate listing the required minimum information. The certificate of judicial sale must be transmitted promptly to the repository. We are happy that the Secretariat of the International maritime Organization has agreed to discharge the crucial role of repository of notices of

judicial sale, certificates of judicial sale and court decisions annulling or suspending a judicial.

Ladies and gentlemen,

For several years now, international lawyers have noticed a decline in multilateral treaty-making, in terms of a lower rate of both adoption and ratification of multilateral treaties. There are several explanations for this “treaty fatigue”, including recent structural changes in the world political and economic order that emerged after the Second World War and a preference for flexibility in the form of non-binding instruments such as guidelines, declarations or memoranda of understanding.

Of course, treaty-making is a complex and time-consuming process, and States carefully ponder their interest before embarking in international negotiations the outcome of which may at times be unpredictable. Yet, treaty-making remains a central tool of international relations and important treaties are still being negotiated at the United Nations.

The Beijing Convention was completed in record time for an international treaty, and despite the interruptions and delays caused by the pandemic. To a large extent, this was the result of the constructive spirit of participating States and organizations during the negotiations; but it was also a reflection of the narrow and sharply defined scope of the Convention.

We are persuaded that that the Convention will increase legal certainty and predictability for purchasers of ships and contribute to reducing forum shopping and abusive litigation.

The enhanced legal certainty for purchases is likely to result in better prices being paid at judicial sales, leading to higher sales proceeds to satisfy ship and shipowner’s creditors. Let us hope that after the first ratification a few weeks ago and this second round of signatures we may soon see the Convention enter into force to the benefit of world’s trade.

As you can see, many factors contributed to the success of the Convention, but I should like to conclude by acknowledging, on the one hand, the invaluable contribution

of the People's Republic of China, which generously hosted the signing ceremony in Beijing on 5 September 2023 and the experts of the China Maritime Law Association who participated in this process – sometimes joining us remotely in the middle of the night during the pandemic role. I should also stress the leadership role played by Malta, as one of the original proponents of this project at UNCITRAL and place on record our gratitude to the Ministry of Foreign Affairs of Malta which made it possible for us to meet here today and celebrate this important new instrument.

Thank you for your attention.