



Seminar

The New U.N. Convention on the International Effects of Judicial Sales of Ships

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Welcome

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Welcome to all, very nice to meet. As almost all international maritime Conventions, also this one originates from the CMI. It contains a uniform regime to give international effects and legal certainty to judicial sales of ships.

A particular welcome to our Guests from abroad.

It is a privilege to have with us the President of the CMI. With her competence and enthusiasm Ann Fenech has been the driving force to progress with the drafting of the Convention to finally have it adopted by the General Assembly of the United Nations on 7 December 2022.

The European Commission and the European Union had a significant role in the negotiation process. Many thanks to Angele Sears-Debono, Legal and Policy Officer, Directorate General for Justice and Consumers, delegate for the European Commission at UNCITRAL Working Group VI.

Special thanks and much gratitude to José Angelo Estrella Faria, Principal Legal Officer and Head of the Legislative Branch at UNCITRAL.

A welcome and many thanks also to Jan-Erik Potschke, delegate for Germany at UNICTRAL Group VI on Judicial Sales of ships, who is among the speakers together with Lorenzo Schiano di Pepe, a delegate for Italy together with Professor Lucio Ghia who also is with us today.

Many thanks and a welcome to Paola Ivaldi, full Professor of international law at the University of Genoa, which is supporting this Seminar together with the Quarterly Il Diritto Marittimo, and to Stefano Zunarelli, the Chair of the Seminar, a Vice President of the Italian Maritime Law Association and full Professor of maritime law at the University of Bologna.

Many thanks also to Luigi Cocchi, the President of the Bar Association of Genoa. His attendance today marks the importance of the Convention to all the maritime lawyers who will be involved with its application.

Before briefly addressing on the Convention and its history, just a few words regarding the Italian Maritime Law Association, founded the 1 July 1899. It is one of the oldest National Associations of Maritime Law. Only the Belgian, the French and the German Associations were founded before, respectively in 1896, 1897 and 1898, whilst in 1899 also the Associations of the United States of America, of Denmark and of Norway were founded.

The CMI to which belong over 50 National Associations, was founded in 1897.

Since its foundation the CMI has produced so many international instruments which were submitted for review and approval to the Diplomatic Conference of Maritime Law which was convened upon request of the CMI by the Belgian Government, being the CMI a non governmental organization.

In the sixties of the past century the initiative of convening Diplomatic Conferences was taken by the U.N. Organizations such as IMLI, IMO, UNCTAD and UNCITRAL. Any draft convention prepared by the CMI was therefore proposed to one of such Organizations to decide the proper action, namely and in the first instance whether the subject chosen by the CMI was found of interest and whether the relevant U.N. Organization would be prepared to rely on the work done by the CMI and go ahead with it.

This was the case for the Convention on Judicial Sales of Ships. Its draft was submitted to UNCITRAL in 2017 for consideration. UNCITRAL recognized the importance of the subject, noting the problems arising out worldwide from the failure to give proper effect to judicial sales of ships sold free and unencumbered.

UNCITRAL Working Group VI, chaired by Professor Beate Czerwenska of Germany, therefore considered the draft of the Convention in a number of Sessions and in June 2022 recommended its adoption to the U.N. General Assembly.

As said, the Convention was adopted the 7 December 2022, with the General Assembly authorizing the signing ceremony to be held as soon as practicable in 2023 in Beijing and recommending the Convention be known as the “Beijing Convention on the Judicial Sales of Ships”.

But why Beijing? The idea to look at the issue of recognition of foreign judicial sales of ships started at the CMI Conference of Athens in 2008, following a proposal of the Executive Council of the CMI in 2007.

It was acknowledged that several problems had arisen in some jurisdictions in respect of the recognition of judicial sales of ships by foreign Courts, which were not accepting a valid title given by a Court of another Country or which were allowing arrests on ships sold at a judicial auction free from encumbrances in other jurisdictions by claimants of the previous owner.

The CMI therefore considered worth of study an instrument granting legal protection to purchasers and safeguarding the interests of shipowners and creditors. It was felt that the instrument had to provide uniform rules establishing that the clean title acquired by the purchaser is recognized internationally, releasing buyers from prior claims.

A typical subject for the CMI, the object of which is to contribute by all appropriate means and activities to unification of maritime law. In fact this instrument would give stability and certainly to maritime trade and commerce.

In compliance with its usual way of work, the CMI set up an International Working Group to study the issue, chaired by Henri Li of the Chinese MLA, which met repeatedly also in the occasion of events of the CMI in Rotterdam 2009, Buenos Aires 2010, Oslo 2011.

Some discussions took place regarding the fact that the issue of judicial sales of ships was already covered by articles 11 and 12 of the 1993 Geneva Convention on Maritime Liens and Mortgages.

However it was noted that out of 18 (now 21) States parties to that Convention, only a few (Russian Federation, Spain, St. Vincent and the Grenadines) are traditionally maritime countries or have a relevant ship's tonnage.

A possible reason of the little success of the 1993 Convention is that, with the aim of facilitating ships' financing, the number of maritime liens that have priority over mortgages and hypothèques was reduced. However also the 1926 Brussels Convention on Maritime liens and mortgages, which lists quite a number of maritime liens, had no particular success and there are no common law Countries among the State parties. Perhaps the issue of maritime liens and mortgages/hypothecations is particularly controversial and uniformity of the relating legislation is not easy to be achieved.

The CMI therefore considered that the provisions of the 1993 Convention dealing with recognition of judicial sales of ships were of little use and that a specific Convention on judicial sales of ships was needed. The study thus continued, with the CMI devoting particular attention to avoid any conflicts with the 1993 Convention, a United Nations / IMO Convention which, as all other maritime law Conventions, originated from a draft prepared by the CMI.

The final draft of the Convention was approved at the CMI Conference of Beijing in 2012, was refined and amended at the CMI Colloquium in Dublin the following year

and was finally proposed for adoption to the CMI Assembly in Hamburg the 17 June 2014. The proposal made by China and seconded by Australia/New Zealand was accepted and the CMI then proceeded with consultations to find the Convention a home, with UNCITRAL accepting to take this commitment.

After adoption by the UN Assembly, the President of the CMI organized a Symposium in Malta on 26 April 2023 to highlight the importance of its ratification and its expected positive effects on the shipping trade.

It is important to note that this Convention does not dictate new rules. In fact in almost all laws there are provisions relating to acquisition of ownership as a consequence of a judicial sale.

The Convention simply offers certainty to buyers and generally to the shipping industry and grants protection to creditors and the financial industry. It is therefore quite correct to define this Convention as a minimalistic international instrument which does not contain controversial aspects. However it is of the utmost importance and should be welcomed worldwide as it simply ensures international recognition of a legal concept which is not disputed at all.

This is probably the reason why its entry into force is contemplated only after 180 days from the third ratification. It is envisaged that on opening of ratifications after the ceremony of signature at Beijing on 5 September 2023, quite a number of States will immediately proceed with its ratification. It may therefore be expected that the Convention will enter into force by middle of 2024, namely six months after the third ratification.

At the CMI Conference which took place in Montreal a few weeks ago, from 13 to 16 June 2023, the President of the CMI had the brilliant idea of offering the CMI highest cooperation to proceed with ratification.

To that purpose the IWG on Judicial Sales was transformed into a IWG to assist to have the Convention ratified. This was a great decision of the CMI and its President.

We all are grateful to Ann Fenech for the important acceleration given to moving ahead with ratifications. In fact, after a Convention is approved and adopted it needs to be ratified and the CMI's task is also to promote ratification and implementation of the conventions into national legislations.