



SHIPPING AND THE LAW IN THE RECENT AND CURRENT MARKETS 2014
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**AN UPDATE ON THE WORKS OF THE COMITÉ MARITIME INTERNATIONAL AND
THE CONVENTION ON FOREIGN JUDICIAL SALE OF SHIPS AND ITS RECOGNITION**

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1. The CMI, Leader in the unification of maritime law

The CMI has the object of contributing by all appropriate means and activities to the unification of maritime law.

Unification, which is essential to uniformity, is usually achieved by way of international conventions or other instruments such as guidelines.

The most efficient mechanism to realize uniformity is constituted by international conventions and the CMI has always given its contribution to the drafting of the various conventions on maritime law.

There is a new born baby in the world of maritime conventions, which comes from drafters of the CMI, as often happens with maritime conventions. However, before talking of this new baby, let us see how we stand with regard to a recent Convention, the Rotterdam Rules.

A couple of decades ago, given the proliferation of the regimes governing carriage of goods by sea in force in the maritime world, the CMI thought that some reform was required. With that in mind the CMI then started considering whether it was preferable to proceed with a modernization of either the Hague-Visby Rules or the Hamburg Rules or to attend in the preparation of an entirely new set of uniform rules.

2. The Rotterdam Rules

A complete reform of the existing uniform rules received better support and, after years of hard work, the exercise was completed. A convention, named “United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea” was

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then submitted to the General Assembly of the United Nations, which approved it on 11 December 2008 and authorised that the Convention be opened for signature in a ceremony in Rotterdam on 23 September 2009. It also recommended that the Convention be known as the “Rotterdam Rules”.

On 23 September 2009 the Rules were signed by 16 States, with another nine States signing it subsequently. As of today, the Rules have been ratified by only three States, Congo, Spain and Togo. However they need 20 ratifications to enter into force.

Never in the history of the attempts of unification or at least harmonisation of private maritime law has a convention excited people so much as this one.

In the industry, the category within which there have been stronger reactions, both negative and positive, is that of forwarding agents. In Europe, the reaction has been negative, whereas in the United States it has been extremely positive.

Although States are slow in their ratification of the Rotterdam Rules, there have been some developments.

In fact the United States completed its “inter-agency review” which is one of the important steps for the subsequent ratification, and it should have a significant impact on the world’s major trading countries.

The Transmittal Package was then passed to Secretary of State and finally sent to the White House. The Senate is now to consider ratification with a 2/3 majority.

As to Europe, some countries, including the Netherlands, Norway, Denmark and Poland, are preparing for the ratification process, although their ratification might depend greatly on the U.S. ratification.

With regard to Africa, the Economic and Monetary Community of Central Africa incorporated most of the provisions of the Rotterdam Rules in its Code of Merchant Marine. The Rotterdam Rules are therefore working as a kind of model law before their entry into force as it was the case for the 1999 Arrest Convention.

In the meantime there was a campaign of the President of the CMI in the shipping press to promote the incorporation of the Rules by a clause Paramount in contracts of carriage. However the incorporation by clause Paramount will require the support of the International Group and to that end the CMI needs cooperation from the International Group and the International Chamber of Shipping to gather support for the clause Paramount route.

The CMI has been in communication with individual Clubs and the International Group, however it seems that there is no urgency in the Clubs to see the Rotterdam Rules to come into force.

3. The CMI Convention on Judicial Sale¹

Let us now talk about the new born baby, the CMI draft Convention on judicial sale.

This draft Convention was approved by the Conference of the CMI held in Hamburg the 17 June 2014. The proposal for adoption of the instrument was made by China and seconded by Australia/New Zealand. Put to the vote, there were 24 acceptances, from the NMLAs of Argentina, Australia/New Zealand, Belgium, Canada, China, Democratic Republic of Korea, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Malta, Netherlands, Nigeria, Norway, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States and abstentions from Brazil and Poland. There were no votes against.

There is another convention containing certain rules related to judicial sales of ships. That is the 1993 Convention on Maritime Liens and Mortgages which, albeit in force, has been ratified only by a few traditional maritime countries² and therefore cannot be said to have been widely adopted.

The need of a convention on judicial sale lies mainly on the fact that the title obtained by the buyer of the ship sold in execution of a judicial sale must be recognized in jurisdictions different from that of registration of the ship or of that where the judicial sale takes place.

It is then of enormous practical importance that the buyer be able to obtain a certificate of deletion from the previous registry and thereby be able to register the ship in a new registry of his choice.

Such points are covered by the 1993 MLM Convention under art. 11. However the issue regarding judicial sales of ships is a rather comprehensive one, which means that in addition to the points already considered in the 1993 MLC Convention, a number of other points were necessary to be dealt with by an international convention. The CMI then deemed it desirable to have a particular international convention to set forth only principles or rules in the matter of judicial sales, without mixing other matters such as liens and mortgages.

¹ The views expressed hereafter are not always necessarily reflecting the views of the CMI.

² Albania, Benin, Ecuador, Estonia, Lithuania, Nigeria, Monaco, Peru, Russian Federation, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Serbia, Spain, Syria, Tunisia, Ukraine and Vanuatu.

Given that judicial sale is somewhat dealt with already in the 1993 MLC Convention, the relationship between such Convention and the CMI Hamburg draft is to be considered. Reference is therefore to be made to art. 30 of the Vienna Convention on the Law of Treaties that so provides in its para. 4:

When the parties to the later treaty do not include all the parties to the earlier one:

- a) As between States Parties to both treaties the same rule applies as in paragraph 3³;
- b) As between a State party to both treaties and a State party to only one of the treaties, the treaty which both States are parties govern their mutual rights and obligations.

A comparison can now be made between the 1993 MLM Convention and the Hamburg Draft.

3.1. Scope of application

HAMBURG DRAFT	1993 MLM CONVENTION
<p>Art. 2 so provides: <i>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.</i></p>	<p>Art.13 so provides: <i>1. Unless otherwise provided in this Convention, its provisions shall apply to all seagoing vessels registered in a State Party or in a State which is not a State Party, provided that the latter's vessels are subject to the jurisdiction of the State Party.</i> <i>2. Nothing in this Convention shall create any rights in, or enable any rights to be enforced against, any vessel owned or operated by a State and used only on Government non-commercial service</i></p>

While the 1993 MLM Convention adopts the connecting factor based on the nationality of the ships and on the jurisdiction of a State Party, the Hamburg Draft does not indicate any connecting factor and does not indicate its scope of application. However it would appear that the intended scope of application is worldwide, and is not limited to States Parties. That is confirmed by art. 9-Reservation, that so provides:

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

It may be suggested that so wide a general scope of application could create problems. If, for example, the judicial sale takes place in a non-party State in which the notice set out in art. 3 is not required and the sale were challenged in a State Party, should the court of that latter State refuse jurisdiction pursuant to art. 7(3)? Or if the sale takes place in a State party and is successfully challenged in a non-party State, would that decision be recognized?

³ Pursuant to which "the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty".

3.2. Notice requirements

HAMBURG DRAFT	1993 MLM CONVENTION
<p>Art. 3 so provides: <i>Notice of Judicial Sale</i></p> <p>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:</p> <p>(a) The Registrar of the Ship's register in the State of Registration;</p> <p>(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;</p> <p>(c) All holders of any Maritime Lien, provided that the Competent Authority conducting the Judicial Sale has received notice of their respective claims; and</p> <p>(d) The Owner of the Ship.</p> <p>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.</p> <p>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:</p> <p>(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);</p> <p>(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</p> <p>(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.</p> <p>4. The notice specified in paragraph 3 of this</p>	<p>Art. 11 so provides: <i>Notice of forced sale</i></p> <p>1. Prior to the forced sale of a vessel in a State Party, the competent authority in such State Party shall ensure that notice in accordance with this article is provided to:</p> <p>(a) The authority in charge of the register in the State of registration;</p> <p>(b) All holders of registered mortgages, "hypothèques" or charges which have not been issued to bearer;</p> <p>(c) All holders of registered mortgages, "hypothèques" or charges issued to bearer and all holders of the maritime liens set out in article 4, provided that the competent authority conducting the forced sale receives notice of their respective claims; and</p> <p>(d) The registered owner of the vessel.</p> <p>2. Such notice shall be provided at least 30 days prior to the forced sale and shall contain either:</p> <p>(a) The time and place of the forced sale and such particulars concerning the forced sale or the proceedings leading to the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice; or,</p> <p>(b) If the time and place of the forced sale cannot be determined with certainty, the approximate time and anticipated place of the forced sale and such particulars concerning the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice.</p> <p>If notice is provided in accordance with subparagraph (b), additional notice of the actual time and place of the forced sale shall be provided when known but, in any event, not less than seven days prior to the forced sale.</p> <p>3. The notice specified in paragraph 2 of this article shall be in writing and either given by registered mail, or given by any electronic or other appropriate means which provide confirmation of receipt, to the persons interested as specified in paragraph 1, if known. In addition, the notice shall be given by press announcement in the State where the forced sale is conducted and, if deemed appropriate by the authority conducting the forced sale, in other publications.</p>

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.

The provision in art. 3(2) of the Hamburg Draft on Bareboat Charter registration regarding the notice to the registrar of the State in which the ship is temporarily registered corresponds to the following provision in art. 16(e) of the 1993 MLM Convention, in which temporary change of flag is regulated:

(e) The notice referred to in article 11 shall be given also to the competent authority on charge of the vessel's record in the State whose flag the vessel is permitted to fly temporarily.

Save some particulars that are not significant, there do not appear to be differences between the two provisions and consequently a conflict between them does not exist.

3.3. Effect of the judicial sale

HAMBURG DRAFT	1993 MLM CONVENTION
<p>Art. 4 so provides: <i>Effect of Judicial Sale</i></p> <p><i>1. Subject to:</i></p> <p><i>(a) the Ship being physically within the jurisdiction of the State of Judicial Sale, at the time of the Judicial Sale; and</i></p> <p><i>(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</i></p>	<p>Art. 12 so provides: <i>Effects of forced sale</i></p> <p><i>1. In the event of the forced sale of the vessel in a State Party, all registered mortgages, "hypothèques" or charges, except those assumed by the purchaser with the consent of the holders, and all liens and other encumbrances of whatsoever nature, shall cease to attach to the vessel, provided that:</i></p> <p><i>(a) At the time of the sale, the vessel is in the area of the jurisdiction of such State; and</i></p> <p><i>(b) The sale has been effected in accordance with the law of the said State and the provisions of</i></p>

<p><i>cease to attach to the Ship and Clean Title to the Ship shall be acquired by the Purchaser.</i></p> <p><i>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.</i></p>	<p><i>article 11 and this article.</i></p> <p><i>2. The costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel shall be paid first out of the proceeds of sale. Such costs and expenses include, inter alia , the costs for the upkeep of the vessel and the crew as well as wages, other sums and costs referred to in article 4, paragraph 1(a), incurred from the time of arrest or seizure. The balance of the proceeds shall be distributed in accordance with the provisions of this Convention, to the extent necessary to satisfy the respective claims. Upon satisfaction of all claimants, the residue of the proceeds, if any, shall be paid to the owner and it shall be freely transferable.</i></p> <p><i>3. A State Party may provide in its law that, in the event of the forced sale of a stranded or sunken vessel following its removal by a public authority in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall be paid out of the proceeds of the sale, before all other claims secured by a maritime lien on the vessel.</i></p>
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While in the 1993 MLM Convention the transfer of title to the ship to the buyer is implied in the subsequent statement in para. 5 that the ship is registered in the name of the purchaser, in the Hamburg Draft there is an express provision to that effect. The provisions on the extinction of the encumbrances are similar, but those in the 1993 MLM Convention are wider in scope, since reference is made to “registered mortgages, hypothèques and charges” and to “liens and other encumbrances of whatsoever nature”, whilst in the Hamburg Draft reference is made to “any mortgage/hypothèque or charge”.

The subsequent statement in the Hamburg Draft that the sale does not entail the extinction of the claims against the seller in respect of the outstanding amount of such claims has no corresponding provision in the 1993 MLM Convention, and on the other side this is also the situation in respect of the provisions of the 1993 MLM Convention in respect of the distribution amongst the creditors of the proceeds of sale.

3.4. Sale of a ship in the possession of a builder or shiprepairer

1993 MLM CONVENTION
<p>Art. 12(4) so provides:</p> <p><i>4. If at the time of the forced sale the vessel is in the possession of a shipbuilder or of a shiprepairer who under the law of the State Party in which the sale takes place enjoys a right of retention, such shipbuilder or shiprepairer must surrender possession of the vessel to the purchaser but is entitled to obtain satisfaction of his claim out of the proceeds of sale after the satisfaction of the claims of holders of maritime liens mentioned in article 4.</i></p>

This provision is connected with that in art.7, pursuant to which States Parties may grant under their law a right of retention in respect of a ship in the possession of a shipbuilder or of a ship repairer. No equivalent provision exists in the Hamburg draft, unless the termination of the right of retention might be implied in art. 5(1).

3.5. Issuance of a certificate of judicial sale

HAMBURG DRAFT	1993 MLM CONVENTION
<p>Art. 5 so provides:</p> <p>1. <i>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</i></p> <p>(a) <i>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</i></p> <p>(b) <i>any title to and all rights and interests existing in the Ship prior to its Judicial Sale are extinguished.</i></p> <p>2. <i>The Certificate shall be issued substantially in the form of the annexed model and shall contain the following minimum particulars:</i></p> <p>i. <i>The State of Judicial Sale;</i></p> <p>ii. <i>The name, address and, unless not available, the contact details of the Competent Authority issuing the Certificate;</i></p> <p>iii. <i>The place and date when Clean Title was acquired by the Purchaser;</i></p> <p>iv. <i>The name, IMO number, or distinctive number or letters, and port of registry of the Ship;</i></p> <p>v. <i>The name, address or residence or principal place of business and contact details, if available, of the Owner(s);</i></p> <p>vi. <i>The name, address or residence or principal place of business and contact details of the Purchaser;</i></p> <p>vii. <i>Any Mortgage/Hypothèque or Charge assumed by the Purchaser;</i></p> <p>viii. <i>The place and date of issuance of the Certificate; and</i></p> <p>ix. <i>The signature, stamp or other confirmation of authenticity of the Certificate</i></p>	<p>Art. 12(5) so provides:</p> <p>5. <i>When a vessel registered in a State Party has been the object of a forced sale in any State Party, the competent authority shall, at the request of the purchaser, issue a certificate to the effect that the vessel is sold free of all registered mortgages, "hypothèques" or charges, except those assumed by the purchaser, and of all liens and other encumbrances, provided that the requirements set out in paragraph 1 (a) and (b) have been complied with.</i></p> <p>(...)</p>

While art. 12(5) of the 1993 MLM Convention is very concise, art. 5 of the Hamburg Draft, para 1 of which substantially corresponds to the Convention rule, contains in para. 2 a detailed list of the information that must be included in the certificate.

Therefore also in this connection there does not appear to be a conflict between the Convention and the Draft.

3.6. Deletion of the ship from the register and new registration

HAMBURG DRAFT	1993 MLM CONVENTION
<p>Art. 6 so provides: <i>Deregistration and Registration of the Ship</i> 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 abovementioned 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.</p>	<p>Art. 12(5) so provides in its second sentence: <i>Upon production of such certificate, the registrar shall be bound to delete all registered mortgages, "hypothèques" or charges except those assumed by the purchaser, and to register the vessel in the name of the purchaser or to issue a certificate of deregistration for the purpose of new registration, as the case may be</i></p>

The text of art. 6(1) of the Hamburg Draft corresponds to that of the second sentence of art. 12(5) of the 1993 MLM Convention. That of art. 6(2) corresponds to that of art. 16 of the 1993 MLM Convention in which reference is made to the preceding art. 11. The text of art. 6(3) and (4) of the Draft has no equivalent provision in the Convention, but does not alter its meaning.

3.7. Recognition of judicial sale

HAMBURG DRAFT	1993 MLM CONVENTION
<p>Art. 7 so provides: 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</p>	<p>Art. 12(5) so provides: 5. When a vessel registered in a State Party has been the object of a forced sale in any State Party, the competent authority shall, at the request of the</p>

<p><i>Judicial Sale conducted in any other state for which a Certificate has been issued in accordance with Article 5, as having the effect:</i></p> <p><i>(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</i></p> <p><i>(b) that the Ship has been sold free of any Mortgage/Hypothèque or Charge, except as assumed by the Purchaser.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p>	<p><i>purchaser, issue a certificate to the effect that the vessel is sold free of all registered mortgages, "hypothèques" or charges, except those assumed by the purchaser, and of all liens and other encumbrances, provided that the requirements set out in paragraph 1 (a) and (b) have been complied with. Upon production of such certificate, the registrar shall be bound to delete all registered mortgages, "hypothèques" or charges except those assumed by the purchaser, and to register the vessel in the name of the purchaser or to issue a certificate of deregistration for the purpose of new registration, as the case may be.</i></p>
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Art. 7(1) of the Hamburg Draft sets out the same rules set out in art. 12(5) of the 1993 MLM Convention.

3.8. Additional rules of the Hamburg Draft on matters not covered by the 1993 MLM Convention

Art. 7(2) sets out a general principle, and an exception to its application. The general principle, pursuant to which a ship sold in a judicial sale in a State Party cannot be arrested in any State Party as security for a claim arisen prior to the judicial sale, is in line with the provision in art. 12(5) of the 1993 MLM Convention. The exception, based on the existence of circumstances in which recognition of the judicial sale by the courts of other States Parties may be suspended or refused, relates to situations not covered by the 1993 MLM Convention. Therefore a conflict is not conceivable.

Art. 7(3) sets out rules on the (exclusive) jurisdiction of the courts of the State in which the judicial sale has been effected in respect of proceedings challenging the judicial sale.

Also in this case no conflict may arise.

Art. 7(4) identifies the persons entitled to take action challenging a judicial sale, such persons (named Interested Persons) being, according to the relevant definition in art. 1(7), “the owner of the 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”. Also in this case no conflict may arise.

Art. 7(5) restricts the right to challenge a judicial sale to the circumstance referred to in art. 8, that will be considered below.

3.9. Suspension or refusal of recognition of a judicial sale

HAMBURG DRAFT

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:

1. *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.*
2. *Recognition of a Judicial Sale may be*
 - a) *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*
 - b) *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, either after suspension or without suspension of the legal effect of the Judicial Sale.*
3. *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.*

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

1. *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.*

This provision is in line with that in art. 12(1) of the 1993 MLM Convention, pursuant to which the mortgages, hypothèques and other charges shall cease to attach to the ship provided at the time of the sale the ship is in the jurisdiction of the State in which the judicial sale takes place.

2. *Recognition of a Judicial Sale may be*

a) *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*

It may not be entirely clear what is meant by suspension of the effect of the judicial sale: on the assumption that the effect is the transfer of title to the ship, that entails that the purchaser has no title and the question arises who would have thereafter control of the ship: on the assumption that the purchaser, who normally would have already paid the purchase price, has obtained delivery of the ship, should the consequence be that he must transfer the custody of the ship to the Court? Possibly this provision ought to be reconsidered and its effect clarified, for otherwise its implementation may be difficult.

b) *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, either after suspension or without suspension of the legal effect of the Judicial Sale.*

The substance of this provision is clear, but it is suggested that the final words “either after suspension or without suspension of the legal effect of the Judicial Sale” are not necessary and perhaps create confusion.

3. *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.*

This is a standard provision in all rules on recognition and enforcement of judgments.

3.10. Concluding remarks

The provisions of the Hamburg Draft are not in conflict with those of the 1993 MLM Convention. Their adoption deserves to be seriously considered for two reasons: first, because they cover a wider area; secondly because, being limited to judicial sale, that is an area of maritime law in respect of which uniformity is highly desirable. A convention incorporating them may therefore raise serious interest in countries that instead have difficulties in implementing the rules of the 1993 MLM Convention on maritime liens

and mortgages. At the same time such new convention would not be an obstacle to a wider ratification of, or accession to, the 1993 MLM Convention.

Therefore, in effect, there is really the need for a new self-contained convention dealing expressly with the recognition of foreign judicial sale.

This should be much less controversial than the 1993 Convention and therefore much more widely acceptable.

The CMI Draft Convention has not been baptized yet. The CMI Assembly of 17 June 2014 adopted a resolution according to which:

The CMI approves the text of the Draft International Convention on Recognition on Foreign Judicial Sales of Ships and Their Recognition (known as the "Beijing Draft") for submission to such appropriate inter-governmental or international organization, as the CMI Executive Council thinks appropriate, for its consideration and adoption. The CMI Executive Council is also requested to consider asking a country to convene a diplomatic conference to consider and adopt the said text.

In due time it may therefore be considered whether to amend the rule on the scope of application and to review the issue of the suspension of the recognition of a judicial sale.