

JUDICIAL SALE OF SHIPS



GENERAL SCOPE OF THE INSTRUMENT

The range of a subject covered

The opportunity for doing something

Let's go for a
simple
ratifiable and
functional
instrument



INTERNATIONAL TRADE AND NATIONAL STATES



Friedrich List



*Das National System der
politischen Oekonomie [1841]*

Das nationale System der Politischen Oekonomie

von

Friedrich List

Mit einer historischen und kritischen Einleitung von

K. Th. Heberg

und einer List-Bibliographie von

Dr. Max Hoelzel



1 · 9 · 2 · 5

J. G. Cotta'sche Buchhandlung Nachfolger
Stuttgart und Berlin

LEGAL REGIME

FOR

INTERNATIONAL TRADE

- INTERNATIONAL RULES and NATIONAL (GOVERNING) LAWS
- NATIONAL TRIBUNAL MAY APPLY NATIONAL OR FOREIGN LAW – *LEX FORI* (PROCEDURE) OR *LEX CAUSE* (SUBSTANTIVE LAW) – CHOICE OF LAW RULES
- RECOGNITION AND ENFORCEMENT OF DECISION PASSED BY A FOREIGN TRIBUNAL

- The New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)
- Convention Abolishing The Requirement Of Legalisation For Foreign Public Documents (1961)
- Convention On The Recognition And Enforcement Of Foreign Judgments In Civil And Commercial Matters (1971)
- Convention On Choice Of Court Agreements (2005)
- Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019)

Convention On The Recognition ... (1971)

Article 5

Recognition or enforcement of a decision may ... be refused ... –

(1) if recognition or enforcement of the decision is manifestly incompatible with the **public policy** ... or if the decision resulted from proceedings incompatible with ... due process of law or if, in the circumstances, either party had no adequate opportunity fairly to present his case;

(2) if the decision was obtained by **fraud** in the procedural sense;

(3) if proceedings between the same parties, based on the same facts and having the same purpose – **Non bis in idem**

a) are pending before a court of the State addressed and those proceedings were the first to be instituted, or

b) have resulted in a decision by a court of the State addressed, or

c) have resulted in a decision by a court of another State which would be entitled to recognition and enforcement under the law of the State addressed.

Article 6

a decision rendered **by default** shall neither be recognized nor enforced unless the defaulting party **received notice** of the institution of the proceedings in accordance with the law of the State of origin ...

Convention On The Recognition (2019)

Article 7

Refusal of recognition and enforcement

1. Recognition or enforcement may be refused if –

(a) the (suit) –

(i) was **not notified** o

(ii) was notified ... in a **manner that is incompatible** with fundamental principles of the requested State ...

(b) the judgment was obtained by **fraud**;

(c) recognition or enforcement would be manifestly incompatible with **the public policy** ...;

(d) the proceedings in the court of origin were **contrary to an agreement**, ...;

(e) (**res judicata** in) ... the requested State ; or

(f) (**res judicata** in) ... another State ...

2. Recognition or enforcement may be postponed or refused ... , where

(a) the court of the requested State was seised before the court of origin; and

(b) there is a close connection between the dispute and the requested State.

Non bis in idem

[illegible]

State of Registration



State of Judicial Sale

Certificate of judicial sale

Article 8

Recognition of a Judicial Sale may be suspended or refused ...

Recognition of a Judicial Sale may be

- a) (**suspended**) ... if the Interested Person notifies the registrar or other competent institution that the State of Judicial Sale has published through Repository that ... its competent Court **has suspended** the Judicial Sale and its effects; and
- b) (**refused**) if the Interested Person notifies the registrar or other competent institution that the State of Judicial Sale has published through Repository that its competent court ... has ... **nullified the Judicial Sale** and its effects.

Article 5. Certificate of judicial sale

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 ... by a judgment that is no longer subject to appeal in that State , **which shall be notified through the Repository enabling the Interested parties to refer the competent authorities in the Party states to the fact that Certificate of Judicial Sale is not valid any more [because the sale is suspended or nullified].**

Article 9. Jurisdiction to avoid and suspend judicial sale

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, the effects of the sale are suspended in the State of judicial sale by a court exercising jurisdiction ...

Second Revision of the Beijing Draft

(Vienna, 18–22 November 2019)

Article 10. Circumstances in which judicial sale has no international effect

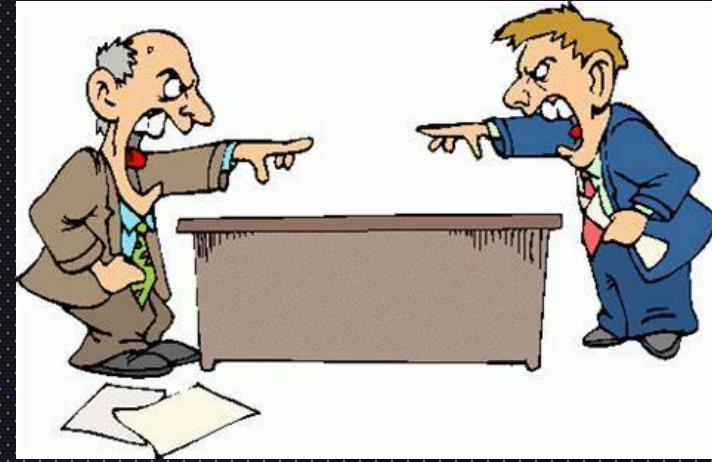
1. A judicial sale of a ship shall not have the effect ... if ...:

(a) The ship was **not physically** within the jurisdiction of the State of judicial sale at the time of the sale;

~~(b) The sale was procured by **fraud** committed by the **purchaser**;
or~~

~~(c) That effect would be **manifestly** contrary to the **public policy** of that other State Party.~~

Disputing the sale



The persons which may make a claim

- (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

Checking, checking, checking

Article

1. A judicial sale
conducted in
another State
purchaser [

(a) The ship
of judicial sale

(b) The judicial
of the State of
article 4.]

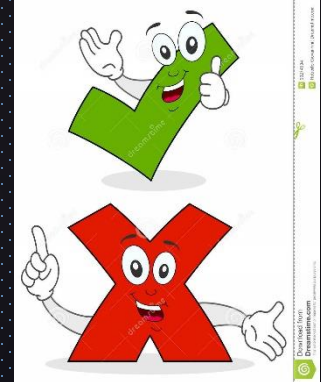


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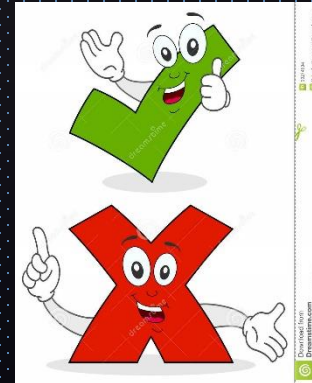


Checking, checking, checking

PROPOSAL

Article 6. International effects of a judicial sale

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 [, **if certified by the Certificate of Judicial sale.**]



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

(b) The judicial sale was conducted **in accordance with the law of the State of judicial sale** and **the notice requirements** in article 4.]

Article 4. Notice of judicial sale

1. Prior to a judicial sale, notice shall be given to:
 - (a) The registry in which the ship is registered;
 - (b) All holders of mortgages provided that the instrument requires registration under the law of the State of the ship, and the instrument is such instruments;
 - (c) All holders of mortgages court or other authority notice of the claim;
 - (d) The owner of the ship;
 - (e) The person in possession of the ship in the registry;
 - (f) The person in possession of the ship in which the ship is registered.



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Article 4. Notice of judicial sale (cont.)

The **notice ...** shall be given in accordance with **the law of the State of judicial Sale, 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.

Where to find information?

Article 4. Notice of judicial sale (cont.)

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 is registered or recorded, if different to the registry of ships or equivalent registry; and
- (c) Information contained in the **notice (of maritime claims)**.





REPOSITORY

Article 12. Repository

1. The repository of notices given under article 4 and certificates issued 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**.

Article 3. Scope of application

1. This Convention applies only to a judicial sale of **a ship** if:

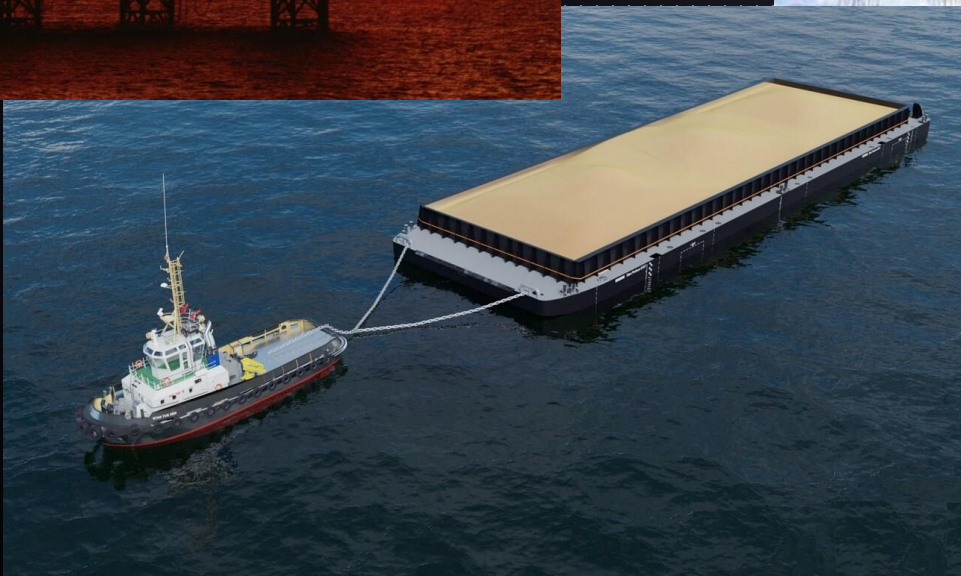
(a) The ship was **physically** within the jurisdiction of the State of judicial sale at the time of the sale; and

(b) Under the law of that State, the judicial sale confers **clean title ...** on the purchaser.

SALE



“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



Article 5. Certificate of judicial sale

The certificate ... contain the following **minimum** ... particulars:

- (d) The name and [**port of registry**] of the ship;



Article 7. Action by registrar

1. The competent registrar ... shall:

- (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.

If the ship has not be registered because she was not subject to registration in the Party State of her owner the registrar of a Party State shall upon application of the purchaser register the ship, if qualified for registration in that Party State, **without request for a certificate of deletion.**

PROPOSAL



Would the Convention be better sellable is applicable only to registered ships or if some categories of technical floating objects are excluded?



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;]

CONCLUSION



CERTIFICATE

NOTIFICATION TROUGH
REPOSITORY

ORDRE PUBLIC

A large industrial ship, likely a tugboat or offshore supply vessel, is shown from a low angle. The hull is black with a red bottom. The superstructure is white with several windows. A large orange and white crane is mounted on the deck. The ship is docked or in a dry dock, with a red structure visible in the background. The sky is cloudy.

THANK YOU
ZADAR