

United Nations Convention on the International Effects of Judicial Sales of Ships:

with Explanatory Note prepared
by the UNCITRAL Secretariat



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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

United Nations Convention
on the International Effects
of Judicial Sales of Ships:
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Resolution adopted by the General Assembly

77/100. United Nations Convention on the International Effects of Judicial Sales of Ships

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Mindful of the crucial role of shipping in international trade and transportation, of the high economic value of ships used in both seagoing and inland navigation, and of the function of judicial sales as a means to enforce claims,

Considering that adequate legal protection for purchasers may positively impact the price realized at judicial sales of ships, to the benefit of both shipowners and creditors, including lienholders and ship financiers,

Wishing, for that purpose, to establish uniform rules that promote the dissemination of information on prospective judicial sales to interested parties and give international effects to judicial sales of ships sold free and clear of any mortgage or *hypothèque* and of any charge, including for ship registration purposes,

Convinced that the adoption of a convention on the international effects of judicial sales of ships that is acceptable to States with different legal, social and economic systems would complement the existing international legal framework on shipping and navigation and contribute to the development of harmonious international economic relations,

Noting that the preparation of the draft convention on the international effects of judicial sales of ships was the subject of due deliberation in the Commission and that the draft convention benefited from consultations with Governments and interested intergovernmental and international non-governmental organizations,

Taking note of the decision of the Commission at its fifty-fifth session to submit the draft convention to the General Assembly for its consideration,¹

Taking note with satisfaction of the draft convention approved by the Commission,²

Expressing its appreciation to the Government of China for its offer to host a signing ceremony for the Convention in Beijing,

1. *Commends* the United Nations Commission on International Trade Law for preparing the draft convention on the international effects of judicial sales of ships;

2. *Adopts* the United Nations Convention on the International Effects of Judicial Sales of Ships, contained in the annex to the present resolution;

3. *Authorizes* a ceremony for the opening for signature of the Convention to be held as soon as practicable in 2023 in Beijing, upon which occasion the Convention will be open for signature, and recommends that the Convention be known as the “Beijing Convention on the Judicial Sale of Ships”;

4. *Calls upon* those Governments and regional economic integration organizations that wish to strengthen the international legal framework for shipping and navigation to consider becoming a party to the Convention.

*47th plenary meeting
7 December 2022*

¹ *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 17 (A/77/17)*, para. 99.

² *Ibid.*, annex I.

United Nations Convention on the International Effects of Judicial Sales of Ships

The States Parties to this Convention,

Reaffirming their belief that international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

Mindful of the crucial role of shipping in international trade and transportation, of the high economic value of ships used in both seagoing and inland navigation, and of the function of judicial sales as a means to enforce claims,

Considering that adequate legal protection for purchasers may positively impact the price realized at judicial sales of ships, to the benefit of both shipowners and creditors, including lienholders and ship financiers,

Wishing, for that purpose, to establish uniform rules that promote the dissemination of information on prospective judicial sales to interested parties and give international effects to judicial sales of ships sold free and clear of any mortgage or *hypothèque* and of any charge, including for ship registration purposes,

Have agreed as follows:

Article 1

Purpose

This Convention governs the international effects of a judicial sale of a ship that confers clean title on the purchaser.

Article 2

Definitions

For the purposes of this Convention:

- (a) “Judicial sale” of a ship means any sale of a ship:
 - (i) Which is ordered, approved or confirmed by a court or other public authority either by way of public auction or by private

treaty carried out under the supervision and with the approval of a court; and

(ii) For which the proceeds of sale are made available to the creditors;

(b) “Ship” means any ship or other vessel registered in a register that is open to public inspection 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;

(c) “Clean title” means title free and clear of any mortgage or *hypothèque* and of any charge;

(d) “Mortgage or *hypothèque*” means any mortgage or *hypothèque* that is effected on a ship and registered in the State in whose register of ships or equivalent register the ship is registered;

(e) “Charge” means any right whatsoever and howsoever arising which may be asserted against a ship, whether by means of arrest, attachment or otherwise, and includes a maritime lien, lien, encumbrance, right of use or right of retention but does not include a mortgage or *hypothèque*;

(f) “Registered charge” means any charge that is registered in the register of ships or equivalent register in which the ship is registered or in any different register in which mortgages or *hypothèques* are registered;

(g) “Maritime lien” means any charge that is recognized as a maritime lien or *privilege maritime* on a ship under applicable law;

(h) “Owner” of a ship means any person registered as the owner of the ship in the register of ships or equivalent register in which the ship is registered;

(i) “Purchaser” means any person to whom the ship is sold in the judicial sale;

(j) “Subsequent purchaser” means the person who purchases the ship from the purchaser named in the certificate of judicial sale referred to in article 5;

(k) “State of judicial sale” means the State in which the judicial sale of a ship is conducted.

Article 3

Scope of application

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

(a) The judicial sale is conducted in a State Party; and

(b) The ship is physically within the territory of the State of judicial sale at the time of that sale.

2. This Convention shall not apply to warships or naval auxiliaries, or other vessels owned or operated by a State and used, immediately prior to the time of judicial sale, only on government non-commercial service.

Article 4

Notice of judicial sale

1. The judicial sale shall be conducted in accordance with the law of the State of judicial sale, which shall also provide procedures for challenging the judicial sale prior to its completion and determine the time of the sale for the purposes of this Convention.

2. Notwithstanding paragraph 1, a certificate of judicial sale under article 5 shall only be issued if a notice of judicial sale is given prior to the judicial sale of the ship in accordance with the requirements of paragraphs 3 to 7.

3. The notice of judicial sale shall be given to:

(a) The registry of ships or equivalent registry with which the ship is registered;

(b) All holders of any mortgage or *hypothèque* and of any registered charge, provided that the register in which it is registered, and any instrument required to be registered under the law of the State of registration, are open to public inspection, and that extracts from the register and copies of such instruments are obtainable from the registry;

(c) All holders of any maritime lien, provided that they have notified the court or other public authority conducting the judicial sale of the claim secured by the maritime lien in accordance with the regulations and procedures of the State of judicial sale;

(d) The owner of the ship for the time being; and

(e) If the ship is granted bareboat charter registration:

(i) The person registered as the bareboat charterer of the ship in the bareboat charter register; and

(ii) The bareboat charter registry.

4. The notice of judicial sale shall be given in accordance with the law of the State of judicial sale, and shall contain, as a minimum, the information mentioned in annex I.

5. The notice of judicial sale shall also be:

(a) Published by announcement in the press or other publication available in the State of judicial sale; and

(b) Transmitted to the repository referred to in article 11 for publication.

6. For the purpose of communicating the notice to the repository, if the notice of judicial sale is not in a working language of the repository, it shall be accompanied by a translation of the information mentioned in annex I into any such working language.

7. In determining the identity or address of any person to whom the notice of judicial sale is to be given, it is sufficient to rely on:

(a) Information set forth in the register of ships or equivalent register in which the ship is registered or in the bareboat charter register;

(b) Information set forth in the register in which the mortgage or *hypothèque* or the registered charge is registered, if different to the register of ships or equivalent register; and

(c) Information notified under paragraph 3, subparagraph (c).

Article 5

Certificate of judicial sale

1. Upon completion of a judicial sale that conferred clean title to the ship under the law of the State of judicial sale and was conducted in accordance with the requirements of that law and the requirements of this Convention, the court or other public authority that conducted the judicial sale or other competent authority of the State of judicial sale shall, in accordance with its regulations and procedures, issue a certificate of judicial sale to the purchaser.

2. The certificate of judicial sale shall be substantially in the form of the model contained in annex II and contain:

(a) A statement that the ship was sold in accordance with the requirements of the law of the State of judicial sale and the requirements of this Convention;

(b) A statement that the judicial sale has conferred clean title to the ship on the purchaser;

(c) The name of the State of judicial sale;

(d) The name, address and the contact details of the authority issuing the certificate;

(e) The name of the court or other public authority that conducted the judicial sale and the date of the sale;

(f) The name of the ship and registry of ships or equivalent registry with which the ship is registered;

(g) The IMO number of the ship or, if not available, other information capable of identifying the ship;

(h) The name and address of residence or principal place of business of the owner of the ship immediately prior to the judicial sale;

(i) The name and address of residence or principal place of business of the purchaser;

(j) The place and date of issuance of the certificate; and

(k) The signature or stamp of the authority issuing the certificate or other confirmation of authenticity of the certificate.

3. The State of judicial sale shall require the certificate of judicial sale to be transmitted promptly to the repository referred to in article 11 for publication.

4. The certificate of judicial sale and any translation thereof shall be exempt from legalization or similar formality.

5. Without prejudice to articles 9 and 10, the certificate of judicial sale shall be sufficient evidence of the matters contained therein.

6. The certificate of judicial sale may be in the form of an electronic record provided that:

(a) The information contained therein is accessible so as to be usable for subsequent reference;

(b) A reliable method is used to identify the authority issuing the certificate; and

(c) A reliable method is used to detect any alteration to the record after the time it was generated, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display.

7. A certificate of judicial sale shall not be rejected on the sole ground that it is in electronic form.

Article 6

International effects of a judicial sale

A judicial sale for which a certificate of judicial sale referred to in article 5 has been issued shall have the effect in every other State Party of conferring clean title to the ship on the purchaser.

Article 7

Action by the registry

1. At the request of the purchaser or subsequent purchaser and upon production of the certificate of judicial sale referred to in article 5, the registry or other competent authority of a State Party shall, as the case may be and in accordance with its regulations and procedures, but without prejudice to article 6:

(a) Delete from the register any mortgage or *hypothèque* and any registered charge attached to the ship that had been registered before completion of the judicial sale;

(b) Delete the ship from the register and issue a certificate of deletion for the purpose of new registration;

(c) Register the ship in the name of the purchaser or subsequent purchaser, provided further that the ship and the person in whose name the ship is to be registered meet the requirements of the law of the State of registration;

(d) Update the register with any other relevant particulars in the certificate of judicial sale.

2. At the request of the purchaser or subsequent purchaser and upon production of the certificate of judicial sale referred to in article 5, the registry or other competent authority of a State Party in which the ship was granted bareboat charter registration shall delete the ship from the bareboat charter register and issue a certificate of deletion.

3. If the certificate of judicial sale is not issued in an official language of the registry or other competent authority, the registry or other competent authority may

request the purchaser or subsequent purchaser to produce a certified translation into such an official language.

4. The registry or other competent authority may also request the purchaser or subsequent purchaser to produce a certified copy of the certificate of judicial sale for its records.

5. Paragraphs 1 and 2 do not apply if a court in the State of the registry or of the other competent authority determines under article 10 that the effect of the judicial sale under article 6 would be manifestly contrary to the public policy of that State.

Article 8

No arrest of the ship

1. If an application is brought before a court or other judicial authority in a State Party to arrest a ship or to take any other similar measure against a ship for a claim arising prior to a judicial sale of the ship, the court or other judicial authority shall, upon production of the certificate of judicial sale referred to in article 5, dismiss the application.

2. If a ship is arrested or a similar measure is taken against a ship by order of a court or other judicial authority in a State Party for a claim arising prior to a judicial sale of the ship, the court or other judicial authority shall, upon production of the certificate of judicial sale referred to in article 5, order the release of the ship.

3. If the certificate of judicial sale is not issued in an official language of the court or other judicial authority, the court or other judicial authority may request the person producing the certificate to produce a certified translation into such an official language.

4. Paragraphs 1 and 2 do not apply if the court or other judicial authority determines that dismissing the application or ordering the release of the ship, as the case may be, would be manifestly contrary to the public policy of that State.

Article 9

Jurisdiction to avoid and suspend judicial sale

1. The courts of the State of judicial sale shall have exclusive jurisdiction to hear any claim or application to avoid a judicial sale of a ship conducted in that State that

confers clean title to the ship or to suspend its effects, which shall extend to any claim or application to challenge the issuance of the certificate of judicial sale referred to in article 5.

2. The courts of a State Party shall decline jurisdiction in respect of any claim or application to avoid a judicial sale of a ship conducted in another State Party that confers clean title to the ship or to suspend its effects.

3. The State of judicial sale shall require the decision of a court that avoids or suspends the effects of a judicial sale for which a certificate has been issued in accordance with article 5, paragraph 1, to be transmitted promptly to the repository referred to in article 11 for publication.

Article 10

Circumstances in which judicial sale has no international effect

A judicial sale of a ship shall not have the effect provided in article 6 in a State Party other than the State of judicial sale if a court in the other State Party determines that the effect would be manifestly contrary to the public policy of that other State Party.

Article 11

Repository

1. The repository shall be the Secretary-General of the International Maritime Organization or an institution named by the United Nations Commission on International Trade Law.

2. Upon receipt of a notice of judicial sale transmitted under article 4, paragraph 5, certificate of judicial sale transmitted under article 5, paragraph 3, or decision transmitted under article 9, paragraph 3, the repository shall make it available to the public in a timely manner, in the form and in the language in which it is received.

3. The repository may also receive a notice of judicial sale emanating from a State that has ratified, accepted, approved or acceded to this Convention and for which the Convention has not yet entered into force and may make it available to the public.

Article 12

Communication between authorities of States Parties

1. For the purposes of this Convention, the authorities of a State Party shall be authorized to correspond directly with the authorities of any other State Party.
2. Nothing in this article shall affect the application of any international agreement on judicial assistance in respect of civil and commercial matters that may exist between States Parties.

Article 13

Relationship with other international conventions

1. Nothing in this Convention shall affect the application of the Convention on the Registration of Inland Navigation Vessels (1965) and its Protocol No. 2 concerning Attachment and Forced Sale of Inland Navigation Vessels, including any future amendment to that convention or protocol.
2. Without prejudice to article 4, paragraph 4, as between States Parties to this Convention that are also parties to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965), the notice of judicial sale may be transmitted abroad using channels other than those provided for in that convention.

Article 14

Other bases for giving international effect

Nothing in this Convention shall preclude a State from giving effect to a judicial sale of a ship conducted in another State under any other international agreement or under applicable law.

Article 15

Matters not governed by this Convention

1. Nothing in this Convention shall affect:
 - (a) The procedure for or priority in the distribution of proceeds of a judicial sale;
or
 - (b) Any personal claim against a person who owned or had proprietary rights in the ship prior to the judicial sale.
2. Moreover, this Convention shall not govern the effects, under applicable law, of a decision by a court exercising jurisdiction under article 9, paragraph 1.

Article 16

Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 17

Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention is open for accession by all States that are not signatories as from the date it is open for signature.
4. Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.

Article 18

Participation by regional economic integration organizations

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a State Party, to the extent that that organization has competence over matters governed by this Convention. For the purposes of articles 21 and 22, an instrument deposited by a regional economic integration organization shall not be counted in addition to the instruments deposited by its member States.
2. The regional economic integration organization shall make a declaration specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
3. Any reference to a “State”, “States”, “State Party” or “States Parties” in this Convention applies equally to a regional economic integration organization where the context so requires.
4. This Convention shall not affect the application of rules of a regional economic integration organization, whether adopted before or after this Convention:
 - (a) In relation to the transmission of a notice of judicial sale between member States of such an organization; or
 - (b) In relation to the jurisdictional rules applicable between member States of such an organization.

Article 19

Non-unified legal systems

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may declare that this Convention shall extend to all its territorial units or only to one or more of them.

2. Declarations under this article shall state expressly the territorial units to which this Convention extends.

3. If a State makes no declaration under paragraph 1, this Convention shall extend to all territorial units of that State.

4. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention:

(a) Any reference to the law, regulations or procedures of the State shall be construed as referring, where appropriate, to the law, regulations or procedures in force in the relevant territorial unit;

(b) Any reference to the authority of the State shall be construed as referring, where appropriate, to the authority in the relevant territorial unit.

Article 20

Procedure and effects of declarations

1. Declarations under article 18, paragraph 2, and article 19, paragraph 1, shall be made at the time of signature, ratification, acceptance, approval or accession. Declarations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and their confirmations shall be in writing and formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned.

4. Any State that makes a declaration under article 18, paragraph 2, and article 19, paragraph 1, may modify or withdraw it at any time by a formal notification in writing addressed to the depositary. The modification or withdrawal shall take effect 180 days after the date of the receipt of the notification by the depositary. If the depositary receives the notification of the modification or withdrawal before entry into force of this Convention in respect of the State concerned, the modification or withdrawal shall take effect simultaneously with the entry into force of this Convention in respect of that State.

Article 21

Entry into force

1. This Convention shall enter into force 180 days after the date of the deposit of the third instrument of ratification, acceptance, approval or accession.
2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention shall enter into force in respect of that State 180 days after the date of the deposit of its instrument of ratification, acceptance, approval or accession.
3. This Convention shall apply only to judicial sales ordered or approved after its entry into force in respect of the State of judicial sale.

Article 22

Amendment

1. Any State Party may propose an amendment to this Convention by submitting it to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within 120 days from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.
2. The conference of States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus are exhausted and no consensus is reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the conference. For the purposes of this paragraph, the vote of a regional economic integration organization shall not be counted.
3. An adopted amendment shall be submitted by the depositary to all States Parties for ratification, acceptance or approval.
4. An adopted amendment shall enter into force 180 days after the date of deposit of the third instrument of ratification, acceptance or approval. When an amendment enters into force, it shall be binding on those States Parties that have expressed consent to be bound by it.

5. When a State Party ratifies, accepts or approves an amendment following the deposit of the third instrument of ratification, acceptance or approval, the amendment shall enter into force in respect of that State Party 180 days after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 23

Denunciation

1. A State Party may denounce this Convention by a formal notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.

2. The denunciation shall take effect 365 days after the date of the receipt of the notification by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the date of the receipt of the notification by the depositary. This Convention shall continue to apply to a judicial sale for which a certificate of judicial sale referred to in article 5 has been issued before the denunciation takes effect.

DONE in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

Annex I

Minimum information to be contained in the notice of judicial sale

1. Statement that the notice of judicial sale is given for the purposes of the United Nations Convention on the International Effects of Judicial Sales of Ships
2. Name of State of judicial sale
3. Court or other public authority ordering, approving or confirming the judicial sale
4. Reference number or other identifier for the judicial sale procedure
5. Name of ship
6. Registry
7. IMO number
8. *(If IMO number not available)* Other information capable of identifying the ship
9. Name of the owner
10. Address of residence or principal place of business of the owner
11. *(If judicial sale by public auction)* Anticipated date, time and place of public auction
12. *(If judicial sale by private treaty)* Any relevant details, including time period, for the judicial sale as ordered by the court or other public authority
13. Statement either confirming that the judicial sale will confer clean title to the ship, or, if it is not known whether the judicial sale will confer clean title, a statement of the circumstances under which the judicial sale would not confer clean title
14. Other information required by the law of the State of judicial sale, in particular any information deemed necessary to protect the interests of the person receiving the notice

Annex II

Model certificate of judicial sale

Issued in accordance with the provisions of article 5 of the United Nations Convention on the International Effects of Judicial Sales of Ships

This is to certify that:

(a) The ship described below was sold by way of judicial sale in accordance with the requirements of the law of the State of judicial sale and the requirements of the United Nations Convention on the International Effects of Judicial Sales of Ships; and

(b) The judicial sale has conferred clean title to the ship on the purchaser.

1. **State of judicial sale**

2. **Authority issuing this certificate**

2.1 Name

2.2 Address

2.3 Telephone/fax/email,
if available

3. **Judicial sale**

3.1 Name of court or other public
authority that conducted the
judicial sale

3.2 Date of the judicial sale

4. **Ship**

4.1 Name

4.2 Registry

4.3 IMO number

4.4 *(If IMO number not available)* *(Please attach any photos to the certificate)*
Other information capable of
identifying the ship

5. Owner immediately prior to the judicial sale

5.1 Name

5.2 Address of residence or principal place of business

6. Purchaser

6.1 Name

6.2 Address of residence or principal place of business

At **On**
(place) (date)

.....
Signature and/or stamp of issuing authority or other
confirmation of authenticity of the certificate

Explanatory note*

I. Overview of the Convention

A. Objective

1. 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.

2. While the international community has achieved significant progress in harmonizing rules on the arrest of ships,¹ much less progress has been achieved in harmonizing rules on the judicial sale of ships.² 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 (i.e. it extinguishes all rights and interests that were previously attached to the ship, including mortgages and maritime liens). It also remains for each State to prescribe the rules governing the legal effect within its jurisdiction of foreign judicial sales.

3. The United Nations Convention on the International Effects of Judicial Sales of Ships (hereinafter “Convention”) harmonizes the latter rules. Put in another way,

*The present explanatory note was prepared by the secretariat of the United Nations Commission on International Trade Law (UNCITRAL) for information purposes. It is not an official commentary on the Convention. A draft of the explanatory note (A/CN.9/1110, A/CN.9/1110/Add.1 and A/CN.9/1110/Add.2) was presented to the fifty-fifth session of UNCITRAL, which requested the secretariat to publish the text of the explanatory note (with updates to reflect the deliberations during the session) together with the text of the convention: *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 17 (A/77/17)*, para. 98.

¹ See, e.g., the International Convention Relating to the Arrest of Seagoing Ships (1952), United Nations, *Treaty Series*, vol. 439, No. 6330, and International Convention on Arrest of Ships (1999), United Nations, *Treaty Series*, vol. 2797, No. 49196 (hereinafter the “Arrests Conventions”).

² Efforts to harmonize rules on the recognition and enforcement of maritime liens and mortgages have addressed judicial sales. See, e.g., article 9 of the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages (1926), League of Nations, *Treaty Series*, vol. CXX, No. 2765, and articles 11 and 12 of the International Convention on Maritime Liens and Mortgages (1993), United Nations, *Treaty Series*, vol. 2276, No. 40538.

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. By ensuring legal certainty as to the title that the purchaser acquires in the ship as it navigates internationally, the Convention is designed to maximize the price that the ship is able to attract in the market and the proceeds available for distribution among creditors, and to promote international trade.

B. Outline

4. The basic rule of the Convention is that a judicial sale conducted in one State Party which has the effect of conferring clean title on the purchaser has the same effect in every other State Party (article 6). The basic rule is subject only to a public policy exception (article 10).

5. The Convention regime prescribes additional rules which establish how a judicial sale is given effect after completion. The first is a requirement that the ship registry deregister the ship or transfer registration at the request of the purchaser (article 7). The second is a prohibition on arresting the ship for a claim arising from a pre-existing right or interest (i.e. a right or interest extinguished by the sale) (article 8). The third is the conferral of exclusive jurisdiction on the courts of the State of judicial sale to hear a challenge to the judicial sale (article 9).

6. To support the operation of the regime and to safeguard the rights of parties with an interest in the ship, the Convention provides for the issuance of two instruments: a notice of judicial sale (article 4) and a certificate of judicial sale (article 5). It also establishes an online repository of those instruments which is freely accessible to any interested person or entity (article 11).

7. The Convention regime is “closed”, in the sense that it applies only among States Parties (article 3). Yet it is “not exclusive”, in the sense that it does not displace other bases for giving effect to judicial sales (article 14).

C. Drafting history

8. The Convention was prepared by the United Nations Commission on International Trade Law (UNCITRAL) between 2019 and 2022.

9. The project originated in a proposal by the Comité Maritime International (CMI) to the fiftieth session of the Commission (Vienna, 3–21 July 2017) for possible future work on cross-border issues related to the judicial sale of ships

(A/CN.9/923). The proposal 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 (1958)³ could provide a solution to those problems by enabling clean title to vessels to be recognized across borders. While swift resolution of the questions raised by the proposal was encouraged, it was agreed within the Commission that additional information in respect of the breadth of the problem would be useful.⁴

10. The Commission therefore requested the CMI to develop and advance the proposal by holding a colloquium so as to provide additional information to the Commission and allow it to take an informed decision in due course. The Commission further agreed that UNCITRAL, through its secretariat, and States would support and participate in the colloquium and to revisit the matter at a future session.⁵ To that end, following a request from the Government of Malta, the UNCITRAL secretariat extended a formal invitation to all member and observer States of UNCITRAL to participate in a high-level technical colloquium in respect of the cross-border judicial sale of ships.

11. The colloquium, which took place in February 2018, resulted in a number of findings. It was agreed that the “lack of legal certainty in relation to the clean title which a judicial sale is intended to confer on a buyer” led to problems in the de-registration process in the country of the former flag.⁶ It was also agreed that the lack of legal certainty created obstacles in respect of the clearance of all former encumbrances and liens, which in turn created a risk of costly and lengthy proceedings, thereby interrupting trade and shipping. Finally, there was broad agreement that the gap could be filled from a legal perspective by providing an instrument on the recognition of judicial sales of ships.

12. At its fifty-first session (New York, 25 June–13 July 2018), the Commission considered a proposal from the Government of Switzerland on possible future work on cross-border issues related to the judicial sale of ships (A/CN.9/944/Rev.1). The proposal summarized the outcomes and conclusions of the colloquium and requested that UNCITRAL undertake work to develop an international instrument on foreign judicial sales of ships and their recognition.

13. In support of the proposal, it was noted within the Commission that the lack of recognition of the judicial sale of ships had the potential to affect many areas of international trade and commerce, not simply the shipping industry, with several

³ United Nations, *Treaty Series*, vol. 330, No. 4739.

⁴ *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)*, paras. 456–465.

⁵ *Ibid.*, paras. 464–465.

⁶ See A/CN.9/944/Rev.1, p. 5.

examples of that impact being provided. In support of work being undertaken by UNCITRAL, various parallels were drawn between the work being undertaken on recognition of insolvency-related judgments and a possible instrument on the judicial sale of ships.⁷

14. The Commission considered the proposal together with other suggestions for future work in the context of its deliberations on its work programme at its fifty-first session. After discussion, it was agreed that the topic of judicial sale of ships should be added to the work programme of the Commission.

15. At its thirty-fifth session (New York, 13–17 May 2019), Working Group VI considered the topic for the first time ([A/CN.9/973](#)), and decided that the draft convention on the recognition of foreign judicial sales of ships, prepared by the CMI and approved by the CMI Assembly in 2014 (known as the “Beijing Draft”), would provide a useful basis for discussion (*ibid.*, para. 25). At its fifty-second session (Vienna, 8–19 July 2019), the Commission expressed its satisfaction with the progress made by the Working Group.⁸

16. At its thirty-sixth session (Vienna, 18–22 November 2019), the Working Group continued its work on the basis of a first revision of the Beijing Draft ([A/CN.9/WG.VI/WP.84](#)), which had been prepared by the Secretariat to incorporate the deliberations and decisions of the Working Group at its thirty-fifth session ([A/CN.9/1007](#)). The Working Group considered several key provisions of the first revision (*ibid.*, paras. 11–98) and expressed a preliminary view that the instrument should take the form of a convention, while agreeing that a final decision on the matter should be made at a future session (*ibid.*, para. 99). At the resumed fifty-third session of the Commission (Vienna, 14–18 September 2020), support was expressed for the instrument taking the form of a convention, with the observation being made that only a convention was capable of ensuring the level of uniformity needed to affirm the international effects of judicial sales of ships.⁹ The Commission confirmed that the Working Group should continue its work to prepare an international instrument on the topic.¹⁰

17. At its thirty-seventh session (Vienna, 14–18 December 2020), the Working Group continued its work on the basis of a second revision of the Beijing Draft ([A/CN.9/WG.VI/WP.87](#)), which had been prepared by the Secretariat to incorporate the deliberations and decisions of the Working Group at its thirty-sixth session ([A/CN.9/1047/Rev.1](#)). The Working Group proceeded with an article-by-article consideration of the second revision (*ibid.*, paras. 19–109) and agreed to

⁷ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 243.

⁸ *Ibid.*, *Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 189.

⁹ *Ibid.*, *Seventy-fifth Session, Supplement No. 17 (A/75/17)*, part two, para. 47.

¹⁰ *Ibid.*, para. 51(f).

continue working on the assumption that the instrument would take the form of a convention (*ibid.*, para. 15). At its thirty-eighth session (New York, 19–23 April 2021), the Working Group considered several outstanding issues from its thirty-seventh session on the basis of a third revision of the Beijing Draft ([A/CN.9/WG.VI/WP.90](#)), as well as proposals relating to the grounds for avoidance and to defining the time of judicial sale ([A/CN.9/1053](#)). At the fifty-fourth session of the Commission (Vienna, 28 June–16 July 2021), satisfaction was expressed with the progress made by the Working Group.¹¹

18. At its thirty-ninth session (Vienna, 18–22 October 2021), the Working Group proceeded with a further article-by-article review of the draft convention on the basis of a fourth revision of the Beijing Draft ([A/CN.9/WG.VI/WP.92](#)), and made progress in its consideration of several open issues, including (a) dealing with clean title sales, (b) the content and function of the notice requirements for judicial sales benefiting from the recognition regime under the draft convention, (c) the content and issuance of the certificate of judicial sale, and (d) the functioning of the proposed repository mechanism ([A/CN.9/1089](#)).

19. At its fortieth session (New York 7–11 February 2022), the Working Group completed a further article-by-article review of the substantive provisions of a draft convention and considered the preamble and final clauses of the draft convention on the basis of a fifth revision of the “Beijing Draft” that had been prepared by the Secretariat ([A/CN.9/WG.VI/WP.94](#)). The Working Group requested the Secretariat to revise the draft convention to reflect its deliberations and decisions during the session, and to transmit the revised draft to the Commission for consideration and possible approval at its fifty-fifth session ([A/CN.9/1095](#)). The Working Group also requested the Secretariat to circulate the revised draft to all Governments and relevant international organizations for comment, and to compile the comments received for the consideration of the Commission.

20. At its fifty-fifth session (New York, 27 June–15 July 2022), the Commission considered the revised draft ([A/CN.9/1108](#)) and a compilation of comments submitted by States and international organizations ([A/CN.9/1109](#), [A/CN.9/1109/Add.1](#), [A/CN.9/1109/Add.2](#) and [A/CN.9/1109/Add.3](#)). The Commission finalized the text and, on 30 June 2022, approved the draft convention and submitted it to the General Assembly for adoption.¹² The General Assembly adopted the Convention on 7 December 2022 by its resolution 77/100.

¹¹ *Ibid.*, *Seventy-sixth Session, Supplement No. 17 (A/76/17)*, para. 211.

¹² *Ibid.*, *Seventy-seventh Session, Supplement No. 17 (A/77/17)*, paras. 24–99.

II. Article-by-article remarks

Preamble

21. The preamble recites the objective of the Convention and the considerations that led to its conclusion. It also recalls the connection between the Convention and the work of UNCITRAL, under whose auspices the Convention was prepared.

22. The first paragraph is common to many legislative texts prepared by UNCITRAL. Together with the second paragraph, it situates the Convention within the mandate of UNCITRAL to promote the “progressive harmonization and unification of the law of international trade”.¹³ The third paragraph reflects the belief of the drafters that the Convention will contribute to maximizing the price that a ship attracts in the market, and the proceeds available for distribution among creditors, by ensuring legal certainty as to the title that the purchaser acquires in the ship as it navigates internationally. The fourth paragraph reflects the objective of the Convention to establish a harmonized regime for giving international effect to judicial sales. It also alludes to the safeguards in the Convention that are aimed at protecting the rights of parties with an interest in the ship, including lienholders and ship financiers.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095 , para. 92
Report of the fifty-fifth session of UNCITRAL	A/77/17 , paras. 94–97

Article 1. Purpose

23. Article 1 declares – in positive terms – the basic operation of the Convention. It contrasts with article 3, which delimits its substantive and geographic scope of application.

24. Article 1 makes it clear that the Convention is concerned only with the “effects” of a judicial sale and thus not with the conduct of the judicial sale itself.

¹³ General Assembly resolution 2205 (XXI), section I.

This is confirmed in article 4, paragraph 1, although the provisions of the Convention dealing with the notice of judicial sale may have an “indirect” impact on the procedure of the judicial sale (see remarks below on article 4, paragraph 1).

25. Article 1 makes it clear that the Convention is concerned only with the effects of “judicial sales” and thus not with the effects of judgments in respect of such sales (e.g. decisions of a court ordering, approving or confirming a judicial sale). This is confirmed in article 6 (see remarks below on article 6).

26. Article 1 also makes it clear that the Convention is concerned only with judicial sales that (already) confer “clean title”. Unlike the International Convention on Maritime Liens and Mortgages (1993),¹⁴ the Convention does not address the question as to whether a judicial sale confers clean title, which is left to the law of the State of judicial sale. In some legal systems, a judicial sale within the meaning of the Convention will always confer clean title, whereas in other legal systems, it will not (see remarks below on the definition of “clean title” in article 2). Because article 3 does not address clean title as a matter of substantive scope, the Convention leaves it to its substantive provisions – notably article 6 – to limit its regime to judicial sales that confer clean title.

27. Article 1 refers to the “international” effects of a judicial sale to reflect the title and focus of the Convention. The reference does not mean that the Convention cannot apply, on its terms, in “domestic” cases. For instance, a certificate of judicial sale may be issued under article 5 for a ship registered in the State of judicial sale, and the certificate may be produced to the authorities of that State to trigger action on registration under article 7 or the prohibition of arrest under article 8.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 34, 48
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 19–20
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 11, 40–42, 46–47
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 45, 94
Report of the fifty-fifth session of UNCITRAL	A/77/17 , paras. 28–29
Note by the Secretariat on the interaction between a future instrument on the judicial sale of ships and selected HCCH Conventions	A/CN.9/WG.VI/WP.85 , paras. 3–7

¹⁴ See note 2 above.

Article 2. Definitions

General

28. Article 2 defines key terms that are used in the Convention. The definitions are not presented in alphabetical order, but rather in order of the prominence of the defined term to the operation of the Convention and its relationship with other defined terms. Accordingly, article 2 starts by defining the meaning of a “judicial sale” of a “ship” that confers “clean title”, before defining the component elements of clean title (i.e. “mortgage or *hypothèque*” and “charge”, as well as “registered charge” and “maritime lien” that are particular types of charges), followed by selected parties involved in the judicial sale (i.e. “owner”, “purchaser” and “subsequent purchaser”).

29. Consistent with other legislative texts prepared by UNCITRAL, the use of a term in the singular includes the plural. This rule is particularly applicable for provisions that refer to the parties involved in the judicial sale.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 45, 94
Cover note by the Secretariat to the fifth revision of the Beijing Draft	A/CN.9/WG.VI/WP.94 , para. 6

Definition of “judicial sale”

30. The term “judicial sale of a ship” is used throughout the Convention. The term defines the scope of application of the Convention and is the focus of its substantive provisions. The Convention defines separately the terms “judicial sale” and “ship”.

31. A judicial sale is a device used in many legal systems to allow a creditor to seek the assistance of a court or other public authority to force the disposal of an encumbered asset in order to liquidate the asset and satisfy the creditor’s right to payment of a monetary sum through access to the proceeds of sale. In effect, the judicial sale converts a claim against the asset into a claim against the proceeds, according to applicable priority rules.

32. The definition of “judicial sale” recognizes two key features of judicial sales:

(a) The first feature is that, despite differences in procedure among legal systems, a judicial sale is conducted with the involvement of a court. This feature is reflected in subparagraph (i) of the definition;

(b) The second feature is that a judicial sale is essentially a device that supports the enforcement of private rights. This feature is reflected in subparagraph (ii) of the definition.

Subparagraph (i)

33. Subparagraph (i) recognizes that a judicial sale may be conducted under the authority of either a court or other public authority. The Convention does not itself confer that authority, which is commonly sourced from the laws of civil or admiralty procedure of the State of judicial sale. Jurisdiction with respect to judicial sales may be conferred on a single court or on multiple courts; the Convention does not interfere with a State's internal allocation of jurisdiction.

34. The term "other public authority" is not defined in the Convention. It is not limited to a judicial authority (cf. article 8, in which the term "court" is used in apposition to "judicial authority"), even if international practice indicates that judicial sales are usually conducted under the authority of a court.¹⁵ Accordingly, a sale does not fail to satisfy subparagraph (i) merely because it is conducted under the authority of a public authority that does not exercise exclusively adjudicative functions. In particular, subparagraph (i) is not intended to narrow the meaning of "judicial sale" beyond the "forced sales" that are addressed in articles 11 and 12 of the International Convention on Maritime Liens and Mortgages (1993).¹⁶ However, the nature of the authority and the functions that it exercises may be indicative of a sale that does not satisfy subparagraph (ii).

35. Subparagraph (i) recognizes that a judicial sale is "ordered, approved or confirmed" by the relevant authority. Those words are designed to accommodate the different procedures for judicial sales among legal systems, according to which the relevant authority may be required to intervene at different stages of the proceedings (e.g. in some legal systems, a judicial sale is not subject to confirmation).

36. Nevertheless, the judicial sale must be carried out either by "public auction" or by "private treaty".¹⁷ The Convention does not prescribe how either type of sale is carried out, which is left to the law of the State of judicial sale.¹⁸ International practice indicates that public auction is the more common – and in some legal systems

¹⁵ A 2010 survey carried out by the CMI on the judicial sale of ships indicated that judicial sales in the jurisdictions surveyed were always conducted either by a court or under the control or supervision of a court: see synopsis of replies to question 1.4 in the CMI Yearbook 2010 (Antwerp, 2011), pp. 267–271.

¹⁶ See note 2 above.

¹⁷ In earlier drafts of the convention, "judicial sale" was defined to include a sale carried out by "any other way provided for by the law of the State of judicial sale".

¹⁸ Some elements of each type of sale can be gleaned from items 11 and 12 of annex I to the Convention.

the only – means by which a judicial sale is carried out.¹⁹ In some legal systems, the judicial sale may involve a call for sealed bids as part of a public tender. The term “public auction” in subparagraph (i) is intended to cover those types of sales (in which case, the reference to the “anticipated date, time and place of public auction” in item 11 of annex I to the Convention is understood to refer to the anticipated date, time and place of “submission of bids”).

37. A judicial sale by “private treaty” is not the same as a private sale negotiated between the owner (or mortgagee) and prospective purchaser, but rather a sale that is carried out “under the supervision and with the approval of a court”. For that reason, it is sometimes referred to as a “hybrid sale”, although terminology differs among those legal systems in which private treaty sales are carried out. In some cases, a private treaty sale may result from a public tender process that is ordered by the court, while in other legal systems, the sale may result from direct arrangements between the mortgagee and prospective purchaser.

38. A public auction is typically held by a judicial officer or other person appointed by the court. In legal systems that recognize private treaty sales, that officer or appointed person may also intermediate in the sale process (e.g. by holding the public tender). The term “other public authority” in subparagraph (i) (and in item 3 of annex I and item 3.1 of annex II to the Convention) does not refer to the officer or appointed person that holds the public auction or public tender. Moreover, if the judicial sale proceedings are commenced on the basis of an enforceable title issued by another authority (e.g. a judgment or arbitral award), the term “other public authority” does not refer to that other authority. Accordingly, a sale does not fail to satisfy subparagraph (i) merely because the enforceable title is not issued by a “public authority”.

39. In some legal systems, a judicial sale may be ordered and conducted prior to final determination of the claim on the basis of which the judicial sale proceedings were commenced. The definition of judicial sale is intended to accommodate such sales.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , paras. 20, 90–91
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 16, 18
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 31–33

¹⁹ See synopsis of replies to question 1.5 in the CMI Yearbook 2010 (Antwerp, 2011), pp. 271–276.

<i>Document</i>	<i>Reference</i>
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 18–23
Report of the fifty-fifth session of UNCITRAL	A/77/17 , paras. 30–33

Subparagraph (ii)

40. Subparagraph (ii) is designed to distinguish forced sales for which the proceeds form part of government revenue, as may be the case in sales of ships that are seized in the enforcement of public law, such as tax, customs or criminal law.

41. The Convention does not define the term “creditor”. Typically, the term includes a person with a right to payment of a monetary sum that is secured by mortgage, maritime lien or other charge that is attached to the ship (i.e. the mortgagee or holder of the maritime lien or charge). Although a judicial sale is essentially a device that supports the enforcement of private rights, a sale does not fail to satisfy subparagraph (ii) merely because a public authority has a claim against the proceeds. For example, a maritime lien within the meaning of the Convention may secure a claim by a port authority for unpaid port dues. Moreover, a sale does not fail to satisfy subparagraph (ii) merely because it follows seizure of the ship by a public authority (e.g. seizure by tax or customs authorities).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , paras. 19, 89–90
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 35–39
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 30, 34–35
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 49–50

Definition of “ship”

42. As noted above (para. 30), the term “judicial sale of a ship” defines the scope of application of the Convention and is the focus of its substantive provisions. If the definition of “judicial sale” delimits that term by reference to the rights and procedures involved in the forced disposal of an asset, the definition of “ship” further delimits the term by reference to the type of asset involved.

43. The concept of a “ship” at law differs between legal systems and depends on the context in which it is used. The term “ship” has evaded international attempts to

define its intrinsic features,²⁰ and the Convention does not attempt to formulate such a definition. The definition of “ship” is designed to be broad and does not seek to delimit the types of vessels to which the Convention applies.

44. The definition does not defer to the meaning of “ship” under the law of a particular State. Accordingly, the term should be given an autonomous meaning in accordance with the rules of treaty interpretation. Nevertheless, the requirement for a vessel to be “registered” and the requirement for the vessel to be “subject of an arrest or other similar measure capable of leading to a judicial sale under the law of the State of judicial sale” suggests that, in practice, only a vessel that falls within the meaning of the law of both the State of judicial sale and the State of registration will be a “ship” for the purposes of the Convention.

45. Unlike other maritime law conventions, the Convention does not draw a distinction between “seagoing vessels” and “inland navigation vessels”, and the term “ship” is intended to cover both types of vessels. Nevertheless, the requirement for the vessel to be “registered” and for the register to be “open to public inspection” means that, in practice, some inland navigation vessels will fall outside the definition of “ship”. Moreover, an inland navigation vessel may fall outside the Convention regime altogether by virtue of article 13, paragraph 1.

46. The term “ship” is not limited to vessels used for commercial navigation and therefore would typically cover pleasure craft (e.g. yachts and recreational boats), provided that the other requirements of the definition are satisfied. Note, however, that paragraph 2 of article 3 excludes from scope warships and certain other State-owned or operated vessels that may be used for non-commercial navigation.

47. The Convention acknowledges that different types of vessels within the meaning of “ship” may be entered in different registers (e.g. registers for pleasure craft, registers for inland navigation vessels, registers for seagoing vessels) and therefore does not assume the existence of a single register of ships in each State. This is confirmed by the definition of “owner” and other provisions of the Convention which recognize that the ship may be registered in the “register of ships” or “equivalent register”. Accordingly, a vessel does not fall outside the meaning of the term “ship” merely because of the identity of the register of ships.

²⁰For instance, neither the International Convention Relating to the Arrest of Seagoing Ships (1952), International Convention on Maritime Liens and Mortgages (1993) or International Convention on Arrest of Ships (1999) defines the term “ship”.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 22, 28–32
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 26–28
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 30–31
Note by the Secretariat accompanying the second revision of the Beijing Draft	A/CN.9/WG.VI/WP.87/Add.1 , paras. 4–9

Definition of “clean title”

48. The concept of “clean title” is key to the basic rule of the Convention (i.e. that a judicial sale conducted in one State Party which has the effect of conferring clean title on the purchaser has the same effect in every other State Party). This is operationalized by article 6 (pursuant to which only a judicial sale for which a certificate of judicial sale issued has international effect) and article 5, paragraph 1 (pursuant to which only a judicial sale that confers clean title is issued with a certificate).

49. The concept of “title” refers to property rights in the ship that are vested in the purchaser. That title is “clean” if all other property rights in the ship that were vested in another person immediately prior to the judicial sale (i.e. encumbrances, rights “in re aliena”) are extinguished, and if all pre-existing mortgages, *hypothèques* or charges cease to attach to the ship. A sale does not fail to confer “clean title” merely because it does not extinguish a pre-existing right that is not a “charge” (e.g. a right of use that cannot be asserted against the ship).

50. As noted above (para. 26), whether a judicial sale confers clean title is a matter for the law of the State of judicial sale. In some legal systems, a judicial sale will only extinguish pre-existing property rights in the ship that are vested in lower-ranking creditors according to applicable priority rules (i.e. it will not extinguish property rights that have priority over the right of the creditor who commenced judicial sale proceedings). A sale that preserves pre-existing property rights does not confer “clean title” within the meaning of the Convention.

51. In some legal systems, title only becomes effective (in the sense of being opposable against others) once additional formalities are taken (e.g. registering the ship in the name of the purchaser). As the Convention does not address the transfer of ownership, whether a judicial sale confers “clean title” within the meaning of the Convention does not depend on whether those additional formalities are taken.

52. The Convention is concerned with clean title “to the ship”, and not with property rights in assets which are not comprised in the “ship”. As noted above (para. 44),

the term “ship” should be given an autonomous meaning in accordance with the rules of treaty interpretation.

53. Unlike the International Convention on Maritime Liens and Mortgages (1993),²¹ the Convention does not provide for the preservation of pre-existing mortgages or *hypothèques* or of charges that are “assumed by the purchaser”. If, under the law of the State of judicial sale, a pre-existing mortgage, *hypothèque* or charge remains attached to the ship, there is no conferral of “clean title” within the meaning of the Convention, and therefore the basic rule of the Convention does not apply. Conversely, whether or not the judicial sale extinguishes rights other than property rights in the ship (e.g. personal rights that may be enforced by a claim brought against the former shipowner) has no bearing on whether clean title has been conferred. This is reinforced by article 15, paragraph 1 (b).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 33, 81
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 15, 49
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 37–38

Definition of “mortgage or hypothèque”

54. The term “mortgage or *hypothèque*” is one component of the definition of “clean title”. It is also used (a) to designate the persons to whom the notice of judicial sale is to be given under article 4 (i.e. “all holders of any mortgage or *hypothèque*” referred to article 4, paragraph 3 (b)), and (b) to designate the actions to be taken under article 7 (i.e. action to delete “any mortgage or *hypothèque* ... attached to the ship” referred to in article 7, paragraph 1 (a)).

55. Mortgages and *hypothèques* are essentially two different devices that create property rights in a ship to secure payment of a monetary sum. The security rights that each device creates differ between legal systems, and international efforts to harmonize rules on the recognition and enforcement of mortgages and *hypothèques* have not sought to define those rights. Moreover, either device may be unknown to the law in some legal systems (e.g. mortgages are more commonly associated with common law legal systems, while *hypothèques* are more commonly associated with civil law legal systems). Despite those differences, both a mortgage and a *hypothèque* attach to the ship and may be enforced by judicial sale regardless of change in shipowner.

²¹ See note 2 above.

56. The Convention does not attempt to define “mortgage or *hypothèque*” by reference to their intrinsic features nor does the definition defer to devices recognized as such under the law of a particular State (cf. definition of “maritime lien”). Instead, it is sufficient for the purposes of the Convention for the term “mortgage or *hypothèque*” to be defined by reference to the fact of registration in the State of registration (e.g. entry in the register of ships or separate register of security interests), which will produce the same result regardless of the State in which the issue of the existence of a “mortgage or *hypothèque*” arises. In practice, that issue will arise in the State of judicial sale (i.e. in determining the persons to whom the notice of judicial sale is to be given) and in the State of registration (i.e. in identifying the registry to take action to delete the mortgage or *hypothèque*). In both cases, the fact of registration delimits the scope of the term in a manner that is both suitable and workable.

57. The Convention acknowledges that a mortgage or *hypothèque* may be registered in a different register to the register in which the ship is registered. For example, a State may maintain a separate register of security interests in which ship mortgages are registered. This is confirmed by the definition of “registered charge” and other provisions of the Convention (e.g. article 4, paragraph 7 (b)), and accommodated by the reference in article 7 to action taken by a registry or “other competent authority”.

58. The Convention refers to “mortgage or *hypothèque*” as a single defined term, rather than defining “mortgage” to include a *hypothèque* or applying the same definition to either “mortgage” and “*hypothèque*” as two defined (yet synonymous) terms. Referring to “mortgage or *hypothèque*” as a single defined term acknowledges that, in some languages, it may be sufficient to refer to a single device.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 21, 97
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053 , paras. 45–48
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 16–17

Definition of “charge”

59. The term “charge” is the other component of the definition of “clean title”. It is also the basis for designating two types of charges – maritime liens and registered charges – whose holders are entitled to notification of the judicial sale under article 4. Singling out maritime liens and registered charges reflects their special treatment in other maritime law conventions.

60. The definition of charge is broad and is designed to cover any property right in the ship. The concept of charge is not limited by how it is denominated (as indicated by the non-exclusive list set out in the definition) or by how it may be asserted against the ship (e.g. by arrest or attachment). While a mortgage or *hypothèque* (and the rights it creates) would typically fall within the definition of “charge”, the definition expressly excludes those devices to reflect their separate treatment in other maritime law conventions.

61. Unlike the definition of “maritime lien” (a particular type of charge), the definition of “charge” does not defer to charges recognized as such under the law of a particular State. As the basic rule of the Convention is for a judicial sale that confers clean title in one State Party to confer clean title in every other State Party, and as clean title involves extinguishing all “charges”, it is neither necessary nor appropriate for the definition to involve a conflict of law analysis. Accordingly, a pre-existing charge recognized under the law of a State Party other than the State of judicial sale will not continue to attach to the ship merely because the particular type of charge is unknown to the law of the State of judicial sale.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , paras. 78–80
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 12–14
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053 , paras. 39–42
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , para. 13

Definition of “registered charge”

62. As noted above (para. 59), a “registered charge” is a special type of “charge” within the meaning of the Convention. The term is used (a) to designate the persons to whom the notice of judicial sale is to be given under article 4 (i.e. “all holders of ... any registered charge” referred to in article 4, paragraph 3(b)), and (b) to designate the actions to be taken under article 7 (i.e. action to delete “any registered charge attached to the ship” referred to in article 7, paragraph 1 (a)). As such, a registered charge is treated like a mortgage or *hypothèque* for the purposes of the Convention.

63. The definition of “registered charge” is formulated differently to the definition of “mortgage or *hypothèque*” so that it does not cover charges that are registered in any register, but only (a) the register in which the ship is registered, or (b) any other register in which mortgages or *hypothèques* are registered. Delimiting the scope of the term by reference to those registers is designed to ensure a greater

connection between the registered charge and the ship registry or court of judicial sale (or other public authority conducting the judicial sale), and thus make the requirements of the Convention regarding notification and deletion more workable (see remarks below on article 4, paragraph 3 (b)).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, para. 43
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 28–29

Definition of “maritime lien”

64. As noted above (para. 59), a “maritime lien” is a special type of “charge” within the meaning of the Convention. The term is used to designate the persons to whom the notice of judicial sale is to be given under article 4 (i.e. “all holders of any maritime lien” referred to in article 4, paragraph 3 (c)).

65. A maritime lien is a device that is peculiar to maritime law. In essence, it is a right to payment of a monetary sum that is secured against a ship in connection with which the right arises, whether by services provided to it, or by loss caused by it, regardless of change in ownership or operation of the ship. Unlike a “registered charge”, a maritime lien is not subject to registration. Unlike a “mortgage or *hypothèque*”, it is not subject to any formality or expression of consent on the part of the owner or operator of the ship at the time of its creation.

66. Despite international efforts to harmonize the circumstances in which a maritime lien arises (e.g. the types of services provided to, and types of losses caused by, the ship), maritime liens differ between legal systems. Accordingly, the law of one State may create a maritime lien in circumstances that do not give rise to a maritime lien under the law of another State. This is particularly relevant in international shipping, where maritime liens could potentially attach to a ship under the law of the various States through which the ship navigates, giving rise to conflict of law issues.

67. The definition of “maritime lien” accepts the status quo, and thus defers to the law applicable in the State in which the issue of the existence of a maritime lien arises, including its conflict of law rules. In practice, that issue will arise in the State of judicial sale (i.e. in identifying the persons to whom the notice of judicial sale is to be given (i.e. “all holders of any maritime lien”)). By deferring to applicable law, the Convention makes it clear that the term “maritime lien” should not be given an autonomous meaning.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 19–20
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053 , para. 44
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , para. 14

Definition of “owner”

68. The term “owner” is used to designate the persons to whom the notice of judicial sale is to be given under article 4 (i.e. “the owner of the ship for the time being” referred to in article 4, paragraph 3 (d)). Certain particulars of the owner are also part of the minimum information to be contained in the notice of judicial sale (article 4, paragraph 4) and the certificate of judicial sale (article 5, paragraph 2 (h)). In all cases, the term “owner” refers to the owner prior to judicial sale, in contrast to the “purchaser”.

69. Determining ownership of a ship at law differs between legal systems. For the purposes of the Convention, it is not necessary to resort to a conflict of law analysis to identify the “owner”. Instead, it is sufficient for the term “owner” to be defined by reference to the fact of registration (or recordation) as the owner in the register in which the ship is registered (or entered). This may be more than one person.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , para. 22
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , para. 24
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 40

Definition of “purchaser”

70. The term “purchaser” is used to designate the person to whom the judicial sale confers clean title to the ship, as well as the person entitled to request action on registration under article 7. Certain particulars of the purchaser are also part of the minimum information to be contained in the certificate of judicial sale (article 5, paragraph 2 (i)). As with the term “owner” (see para. 69 above), more than one person may be a “purchaser”.

71. As noted above (para. 69), determining ownership of a ship at law, including passage and opposability of title, differs between legal systems. As the Convention

does not address the transfer of ownership, it is not necessary for the definition of “purchaser” to involve a conflict of law analysis or to refer to ownership. Instead, it is sufficient for the purposes of the Convention for the term “purchaser” to be defined by reference to the fact that the ship was disposed to the purchaser.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 25–27
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , para. 27

Definition of “subsequent purchaser”

72. The term “subsequent purchaser” is used only to designate the persons entitled to request action on registration under article 7. For a discussion on accommodating subsequent purchasers, see remarks below on article 7.

73. While the ship may be disposed to another person in a variety of ways, the definition of “subsequent purchaser” covers only persons who have “purchased” the ship.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 34–38
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 18–21

Definition of “State of judicial sale”

74. The term “State of judicial sale” is used throughout the Convention. The definition is not limited to States Parties; however, by virtue of paragraph 1 (a) of article 3, the term is effectively used in the Convention to refer only to States Parties.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , para. 33
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , para. 33

Other terms not defined

“Bareboat charter registration”

75. Several provisions of the Convention refer to the “bareboat charterer”, “bareboat charter registration” and the “bareboat charter registry”. None of those terms is defined in the Convention. The United Nations Convention on Conditions for Registration of Ships (1986)²² defines a “bareboat charter” as a “contract for the lease of a ship, for a stipulated period of time, by virtue of which the lessee has complete possession and control of the ship, including the right to appoint the master and crew of the ship, for the duration of the lease”. The lessee is referred to as the “bareboat charterer”.

76. The practice of bareboat charter registration is recognized under the law of many States. There are two aspects of bareboat charter registration. The first aspect is the practice whereby a State permits its registered ship to fly a foreign flag. This practice is commonly referred to as “flagging out” or “bareboat charter-out” registration. The second aspect is the practice whereby a State permits a foreign-registered ship to fly its flag temporarily (i.e. for the period of the charter). This practice is commonly referred to as “flagging in”, or “bareboat charter-in” registration. In some States, the law provides only for bareboat charter-in registration. The law in other States does not provide for either aspect of bareboat charter registration.

77. The procedures to give effect to bareboat charter registration differ between States. The United Nations Convention on Conditions for Registration of Ships (1986) seeks to harmonize some of the procedures and terminology relating to bareboat charter-in registration among States that recognize the practice. The Convention does not seek to contribute to those harmonization efforts. It does, however, seek to refer to procedures and use terminology consistent with other maritime law conventions. The Convention does not require a State Party to recognize the practice of bareboat charter registration under its law.

Reference to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , para. 63

“Person”

78. The term “person” is used in the Convention primarily to define the “owner” and “purchaser” of a ship. Consistent with other legislative texts prepared by UNCITRAL, the Convention does not define the term, which should be

²²The text of the convention is contained in TD/RS/CONF/23.

understood broadly to encompass both legal and natural persons, as well as States and State entities.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 23–24
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, paras. 25–26

“Register” and “registry”

79. In provisions concerning registration, the Convention seeks to use terminology that is consistent with other maritime law conventions. Accordingly, the Convention uses the terms “register” and “registry” as follows:

- (a) The term “register” refers to the record in which particulars of a ship, mortgage, *hypothèque* or (registered) charge are recorded; and
- (b) The term “registry” refers to the entity which maintains the register.

80. The Convention uses the term “register of ships” but does not define the term. It does, however, distinguish the “register of ships” from an “equivalent register” in which a ship is registered. The reference to “register of ships” and “equivalent register” acknowledges the broad definition of the term “ship”, which, further to the remarks on that definition above (para. 47), covers vessels that are entered in registers other than what might be named or commonly regarded as the “register of ships”.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 22
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 95, 104
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 52

“State of registration”

81. Several provisions of the Convention refer to the “State of registration”. Paragraph 3 (b) of article 4 uses the term to refer to the State in which the mortgage, *hypothèque* or registered charge is registered, while paragraph 1 (c) of article 7 uses the term to refer to the State in which the ship is registered. By virtue of the definitions of “mortgage or *hypothèque*” and of “registered charge”, these are one and the same State.

“Time of judicial sale”

82. Several provisions of the Convention refer to the time of judicial sale. The Convention purposefully does not define the time of judicial sale but instead defers to the law of the State of judicial sale on that issue (see further remarks on article 4, paragraph 1).

Article 3. Scope of application

83. Article 3 delimits the scope of the Convention. Paragraph 1 prescribes certain judicial sales to which the Convention does not apply by reference to (a) whether the State of judicial sale is party to the Convention (the “geographic scope”), and (b) whether the ship is physically present within the territory of the State of judicial sale at the time of the sale (the “physical presence requirement”). Paragraph 2 deals with State-owned or operated vessels.

Geographic scope (article 3, paragraph 1 (a))

84. By virtue of paragraph 1 (a) of article 3, the Convention establishes a “closed” regime that applies only among States Parties. Nothing in the Convention prevents a State from giving effect – under its domestic law – to judicial sales conducted in a non-State party on terms similar to those provided for under the Convention.

85. A judicial sale of a ship does not fall outside the scope of application merely because the ship is registered in a State that is not party to the Convention. Of course, that State would not be bound by the Convention, as a matter of international law, to give effect to the judicial sale or to take action on the registration of the ship upon presentation of the certificate of judicial sale issued under article 5 of the Convention, which would limit the protections that the Convention could provide to the sale.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , paras. 47, 52–53
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 16–18
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053 , para. 49
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 32, 39–42
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 34

*Physical presence requirement
(article 3, paragraph 1 (b))*

86. The physical presence requirement in paragraph 1 (b) of article 3 recognizes that, in practice, the judicial sale of a ship is typically preceded by the arrest of the ship which, under the harmonized rules established in the Arrests Conventions,²³ can only occur in the territory of the State in which the arrest is judicially authorized. The requirement does not apply at the time of arrest but “at the time of the sale”.

87. The purpose of the physical presence requirement is to ensure a jurisdictional link between the court (or other public authority) under whose authority the judicial sale was conducted and the ship. The Convention purposefully does not define the time of judicial sale but instead defers to the law of the State of judicial sale on that issue (see article 4, paragraph 1). Nonetheless, the words “at the time of the sale” in paragraph 1 (b) of article 3 need to be understood in the context of the Convention, in particular the definition of “judicial sale” (article 2) and article 4, paragraph 2, which acknowledges that notification of a judicial sale occurs “prior to the judicial sale”. Just as the procedure for a judicial sale differs between legal systems, so does the time at which the court of judicial sale (or other public authority) exercises jurisdiction over the ship. Some legal systems may consider jurisdiction to be exercised over a period (e.g. from the commencement to the conclusion of the judicial sale proceedings), while other legal systems may consider jurisdiction to be exercised at a particular time (e.g. when the court orders, approves or confirms the disposal of the ship to the purchaser, or upon completion of the judicial sale). In all cases, paragraph 1 (b) of article 3 requires the physical presence of the ship at the final stage of the judicial sale procedure, when the ship is awarded to the successful purchaser.

88. The physical presence requirement is not intended to prevent existing practices by which (a) proceedings for the arrest of a ship or other proceedings leading to a judicial sale can be commenced before the ship enters territorial waters, or (b) the ship is released from arrest pending its judicial sale.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, para. 28
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, paras. 50, 83
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 22–25, 82
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, paras. 50–56
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 34–35

²³ See note 1 above.

*Exclusion of State-owned or operated vessels
(article 3, paragraph 2)*

89. Like the International Convention on Maritime Liens and Mortgages (1993),²⁴ the Convention excludes State-owned or operated vessels from scope. The wording of paragraph 2 of article 3 is based on article 16, paragraph 2, of the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004).²⁵

90. In addition to warships and naval auxiliaries, the exclusion in paragraph 2 of article 3 applies to State-owned or operated vessels that are used, “immediately prior to” the time of judicial sale, only on government non-commercial service. Referring to a time immediately prior to the time of sale is designed to ensure that the exclusion is given full effect in practice. Specifically, it acknowledges that, by the time of the sale itself, the ship would be within the jurisdiction of the court of judicial sale (or other public authority conducting the sale) and thus not capable of being used “only on government non-commercial service”.

91. The exclusion in paragraph 2 may find little application in practice given that (a) such vessels are already immune from arrest under the harmonized rules established in the Arrests Conventions,²⁶ and (b) the definition of “ship” requires the relevant vessel to be capable of being “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”.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , para. 40
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 40–42
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , para. 46
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , para. 48

Matters of substantive scope not addressed in article 3

Clean title sales

92. As noted above (para. 26), the Convention leaves it to the substantive provisions to limit its scope to judicial sales that confer clean title. This approach

²⁴ See note 2 above.

²⁵ The text of the convention is contained in the annex to [A/RES/59/38](#).

²⁶ See note 1 above.

acknowledges that, for some jurisdictions, the notice requirements in article 4 are applicable at a time in the judicial sale proceedings at which it is not yet known whether the sale will result in the conferral of clean title. It also avoids potential difficulties of introducing a requirement to ascertain the content of foreign law (i.e. whether a judicial sale confers clean title) in order to determine the substantive scope of the Convention.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , paras. 35–38, 92–93
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , para. 43
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 36, 39–45
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053 , paras. 13–15
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 43–47

Forced sales in the enforcement of tax, customs or criminal law

93. Concerns were expressed during the preparation of the Convention about applying its regime to the sale of ships that are seized in the enforcement of public law, such as tax, customs or criminal law. However, it was felt that it would not be appropriate to address those concerns by excluding such sales from scope, particularly given that, in some jurisdictions, a ship so seized could still be sold by judicial sale with proceeds made available to creditors. Instead, those concerns are addressed in the definition of “judicial sale”, particularly the requirement in subparagraph (ii) for the proceeds of sale to be made available to creditors (see remarks above on article 2, paragraph (a)).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , paras. 18–19, 79, 90
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 35–39
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 30, 34–35
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 49–50

Article 4. Notice of judicial sale

Purpose and function of the notice requirements (article 4, paragraphs 1 and 2)

94. Notification of a judicial sale is only one aspect of the judicial sale procedure, but one that is particularly important in safeguarding the interests of creditors, who might otherwise not be party to the proceedings giving rise to the judicial sale. Judicial sale procedures differ significantly between jurisdictions, not only in terms of competent authorities and notification requirements, but also in terms of the circumstances in which a judicial sale procedure starts and ends, and the various stages of the procedure in between (see remarks above on subparagraph (i) of the definition of “judicial sale” in article 2). The Convention is not designed to harmonize the procedure for judicial sales. This is confirmed by paragraph 1 of article 4, which leaves matters related to the conduct of the judicial sale to the law of the State of judicial sale.

95. The notice requirements in the remaining paragraphs of article 4 prescribe minimum standards regarding the persons to be notified of the judicial sale (paragraph 3), the content of the notice (paragraph 4), and the public advertisement of the judicial sale (paragraph 5). The notice requirements in the Convention are adapted to the judicial sale itself and not to related proceedings (e.g. proceedings giving rise to the judicial sale or proceedings related to the distribution of proceeds). In that context, while notification attracts potential bidders and can help maximize the eventual proceeds available to creditors, the primary purpose of the notice requirements in the Convention is to alert creditors to the impending sale and eventual distribution of proceeds. The requirements are designed to strike a fair balance between due process towards creditors and the expediency required in judicial sale proceedings. They acknowledge that creditors and other persons to be notified may have other means at their disposal, including the use of online tools, to track the ship and be informed of its arrest or impending sale.

Relationship with domestic law

96. The notice requirements do not substitute or displace notification requirements under domestic law, including those relating to the service of judicial documents. The distinction between the notice requirements under the Convention and the notification requirements under domestic law, as well as the coexistence of those requirements, is acknowledged in paragraph 4 of article 4 and in paragraph 1 of article 5 of the Convention.

Condition for issuing certificate of judicial sale

97. The notice requirements do not serve as a stand-alone obligation but rather as a condition for the issuance of the certificate of judicial sale under article 5. This is confirmed by paragraph 2 of article 4. Nevertheless, given the central role of the certificate of judicial sale in the Convention regime, compliance with the notice requirements is essential to securing the international effects of a judicial sale. The notice requirements may also have an “indirect” impact on the procedure of the judicial sale, insofar as States might align their procedural law to the notice requirements to ensure that their judicial sales benefit from the Convention regime. This is particularly relevant for States in which the judicial sale is not notified to prescribed classes of persons but rather advertised publicly (e.g. by publishing a notice in the press or maritime periodicals).

98. It follows that a failure to comply with the notice requirements does not constitute a breach of the Convention, but it would prevent the issuance of a certificate of judicial sale. Under the Convention, any claim challenging the validity of a certificate due to a failure to comply with the notice requirements is heard in the State of judicial sale in exercise of the exclusive jurisdiction conferred under article 9. However, it is conceivable that a particularly egregious failure to comply with the notice requirements could give rise to an application invoking the public policy ground under article 10 in another State in which the effect of the judicial sale is sought to be produced.

Procedures for challenging the judicial sale

99. Paragraph 1 of article 4 declares that the law of the State of judicial sale shall “provide procedures for challenging the judicial sale prior to its completion”. That provision is designed to strike a balance between due process towards creditors, by ensuring that they have an opportunity to assert their rights, and the objective of the Convention to leave matters of procedure to domestic law. It does not require a State party to take steps to legislate procedures for challenging a judicial sale if such procedures already exist. Paragraph 1 was drafted on an assumption that the law in most States would already have procedures in place for challenging a judicial sale. Such procedures are sourced in legislation (e.g. rules of civil procedure) or in case law, and may be invoked at different stages of the judicial sale procedure.

100. Paragraph 1 of article 4 is concerned with challenging a judicial sale prior to its completion, and thus with the availability of remedies that typically have the effect of delaying or calling off the sale before the procedure has reached its final stage. It is not concerned with challenges after completion, and can thus be contrasted with article 9, which is concerned with avoiding the judicial sale or suspending its effect after completion. Moreover, it is not intended to suggest that challenges

to a judicial sale should be encouraged as a matter of course. As with article 9, paragraph 1 of article 4 does not deal with standing to bring a challenge, nor does it deal with limitation periods, which remain a matter for the law of the State of judicial sale.

Determining the time of the judicial sale

101. Paragraph 1 of article 4 adds that the law of the State of judicial sale “determine[s] the time of the sale for the purposes of this Convention”. Several provisions of the Convention refer to the time of judicial sale:

(a) The time of the judicial sale is relevant in determining the scope of the Convention, given that (a) the physical presence requirement in paragraph 1 (b) of article 3 applies “at the time of the sale”, and (b) the exclusion of State-owned or operated vessels in paragraph 2 of article 3 applies by reference to use “immediately prior to the time of judicial sale”;

(b) Reference to action taken prior to the time of judicial sale is relevant to the application of the notice requirements, given that paragraph 2 of article 4 provides for the notice of judicial sale to be given “prior to the judicial sale”;

(c) The time of the judicial sale is relevant in determining whether the judicial sale has reached completion, and thus in determining (a) whether the conditions for issuance of the certificate of judicial sale under paragraph 1 of article 5 have been met, and (b) the range of mortgages, *hypothèques* and other registered charges to be deleted from the register under paragraph 1 (a) of article 7.

102. The Convention does not assume that the law of the State of judicial sale makes specific provision for determining the time of a judicial sale. Concepts and principles of broader application under domestic law could guide such a determination.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , paras. 22, 30, 67–70
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 55–61
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 49–50
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053 , paras. 16–17
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 52, 57–59, 73
Report of the fortieth session of Working Group VI	A/CN.9/1095 , para. 99
Report of the fifty-fifth session of UNCITRAL	A/77/17 , paras. 38–39, 60–63

Persons to be notified (article 4, paragraph 3)

103. Paragraph 3 of article 4 prescribes classes of persons to be notified. The application of paragraph 3 is complemented by paragraph 7 of article 4. The law of the State of judicial sale might prescribe additional classes of persons to be notified, for example the holder of any unregistered charge, diplomatic or consular agents of the State of registration in the State of judicial sale, or the insolvency representative (e.g. in the event of that the owner is insolvent). Nothing in the Convention displaces those requirements.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 52–53
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , para. 67
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 40

Ship registries (article 4, paragraph 3 (a))

104. Paragraph 3 (a) of article 4 requires notification of the ship registry. As noted above (para. 79), the “registry” is the entity which maintains the register. Paragraph 3 (a) refers not only to the registry maintaining the “register of ships” but also to the registry maintaining an “equivalent register in which the ship is registered”. Reference to “equivalent register” is a consequence of the broad definition of “ship”, which covers different types of vessels that may be registered in different registers under the law of the State of registration (see remarks above on the definition of “ship” in article 2).

105. In some States, the law may not require the ship registry to be notified and the ship registry may not have procedures in place to receive and respond to notices. Moreover, the ship registry may not have an interest in the judicial sale proceedings or in the distribution of proceeds. Nevertheless, the requirement in the Convention to notify the ship registry acknowledges the utility of alerting the ship registry to possible future action on the registration of the ship under article 7.

106. In some States, the law may make special provision for the notification of the registry so that it can (a) provide information that is needed for the court of judicial sale to identify other persons to be notified under that law, or (b) take action required to notify or otherwise advertise the sale. The Convention does not mandate either role for the registry.

107. The requirement to notify the ship registry applies regardless of the location of the registry. Accordingly, paragraph 3 (a) of article 4 requires the notice of judicial

sale to be given to the registry even if the State of registration is not party to the Convention (see remarks above on paragraph 1 (a) of article 3) or is the State of judicial sale.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973, paras. 73–74
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 63
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 57–58

Holders of any mortgage, hypothèque or registered charge (article 4, paragraph 3(b))

108. Paragraph 3 (b) of article 4 requires notification of each holder of a mortgage, *hypothèque* or registered charge attached to the ship, but only if the relevant register (whether it be the register of ships or separate register of security interests) is “open to public inspection”. The wording of this precondition is drawn directly from article 1 of the International Convention on Maritime Liens and Mortgages (1993),²⁷ which defines the conditions for a mortgage, *hypothèque* or registered charges to be recognized and enforceable under that convention (and thus whose holders are to be notified according to the forced sale regime under article 12 thereof). Although the wording is the same, the present Convention is not concerned with the recognition of foreign mortgages, hypothèques or charges; the precondition in paragraph 3 (b) of article 4 should be understood in the context of the Convention and in view of the primary purpose of the notice requirements to alert creditors to the impending sale and eventual distribution of proceeds (as noted in para. 95 above).

109. Public access to the register is a common feature of registry practice both in relation to registers of ships and separate registers of security interests. The practice is reflected in article 6, paragraph 3, of the United Nations Convention on Conditions for Registration of Ships (1986)²⁸ as well as the Model Registry Provisions of the UNCITRAL Model Law on Secured Transactions.²⁹ The Convention does not elaborate on the depth and breadth of the enquiry required to determine whether a register is “open to public inspection”. As elaborated in the International Convention on Maritime Liens and Mortgages (1993), registers “open to public inspection” include those that issue extracts from the register (e.g., a record of the particulars of any mortgage, *hypothèque* or registered charge effected on a ship) and those that provide

²⁷ See note 2 above.

²⁸ See note 22 above.

²⁹ UNCITRAL Model Law on Secured Transactions (2016), United Nations publication, Sales No. E.17.V.1.

copies of those instruments. Paragraph 3 (b) of article 4 does not presuppose that such extracts and copies have in fact been obtained, nor does it prescribe the persons by whom such extracts and copies are obtainable. It should thus not be understood as waiving the requirement to notify a holder of a mortgage, *hypothèque* or registered charge for a particular judicial sale merely because the relevant registry only issues extracts and not copies (or vice versa). Moreover, a register should not fail to satisfy the precondition merely because the regulations and procedures of the State of registration prescribe a fee or form requirements for requesting an extract from the register or copy of a registrable instrument, or require the person making the request to demonstrate a legitimate interest in accessing the register.

Reference to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, para. 55
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053, para. 48

Holders of any maritime lien (article 4, paragraph 3 (c))

110. Paragraph 3 (c) of article 4 requires notification of each holder of a maritime lien attached to the ship, but only if (a) the holder has notified the court of judicial sale (or other public authority conducting the judicial sale) of the claim secured by the maritime lien, and (b) the holder has done so “in accordance with the regulations and procedures of the State of judicial sale”.

111. The first precondition is inspired by article 11, paragraph 1 (c), of the International Convention on Maritime Liens and Mortgages (1993)³⁰ but differs insofar as it identifies the person that is required to notify the court of judicial sale of the claim secured by the maritime lien. Various procedures exist under domestic law by which a claim may be notified to the court of judicial sale, but not all provide for the claim to be notified by the holder of the maritime lien. In some jurisdictions, the party requesting the judicial sale is required to inform the court of any maritime lien that is known to the party. In several jurisdictions, the procedure for filing a caveat (or caution) with the court against release of the ship after its arrest allows a holder of a maritime lien to notify the court of particulars of its claim. In other jurisdictions, a special procedure exists for a holder (among other holders of unregistered charges) to intervene in the judicial sale proceedings. Nothing in paragraph 3 (c) of article 4 requires the notice to the court to be in any particular form.

112. The second precondition acknowledges that not all jurisdictions have procedures in place for the court to receive notices from the holders of maritime liens, particularly where the holder is not the party requesting the judicial sale. In some jurisdictions, the holder of a maritime lien will only address the court of judicial

³⁰ See note 2 above.

sale in proceedings related to the distribution of proceeds once the judicial sale is completed. Nothing in paragraph 3 (c) of article 4 requires the State of judicial sale to amend its regulations and procedures for conducting judicial sales to accommodate the notification of claims. Moreover, the paragraph does not require the holder of a maritime lien to be notified merely because it has given the court an ad hoc or informal notice that is not provided for under the applicable regulations and procedures.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , para. 70
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 51–54
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 64–66

Shipowners (article 4, paragraph 3 (d))

113. Paragraph 3 (d) of article 4 requires notification of the owner of the ship “for the time being”. By virtue of article 4, paragraph 2, that time is the time at which the judicial sale is notified. As noted above (para. 69), more than one person may be the owner.

Reference to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 40

Bareboat charterers and bareboat charter registries (article 4, paragraph 3 (e))

114. Paragraph 3 (e) of article 4 applies only if the ship has been granted bareboat charter-in registration (i.e. a State other than the State of registration has granted the ship the right to fly its flag). If it applies, subparagraph (i) requires notification of the person registered as the bareboat charterer of the ship in the bareboat charter register, while subparagraph (ii) requires notification of the bareboat charter registry.

115. Paragraph 3 (e) of article 4 acknowledges that the practice of bareboat charter registration differs between States. References to the person “registered”, the “register”, “registration” and the “registry” therefore cover situations in which particulars of the bareboat charter arrangement are recorded in a record other than a “register”. Moreover, that record may not be the same as the register of ships and may be maintained by an entity other than the ship registry of the State of bareboat charter-in registration.

116. Paragraph 3 (e) of article 4 applies regardless of whether the law of the State of judicial sale recognizes the practice of bareboat charter registration.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 63
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089, para. 68

*Content of the notice and methods of notification
(article 4, paragraph 4)*

117. If paragraph 3 of article 4 requires the notice of judicial sale to be given to prescribed classes of persons, paragraph 4 of article 4 addresses the content of the notice and how it is to be given.

Content of the notice

118. The notice of judicial sale is to contain the minimum information itemized in annex I to the Convention. Recalling that the primary purpose of the notice requirements in the Convention is to alert creditors to the impending sale and eventual distribution of proceeds, the items in annex I are designed to ensure that the notice of judicial sale contains the essential information that a creditor would need to assert its rights. Annex I does not contain a model form, and nothing in the Convention prevents the use of an existing form that is prescribed under the law of the State of judicial sale. Moreover, nothing in the Convention prevents the inclusion of other information in the notice of judicial sale, such as information required by the law of the State of judicial sale.

119. As noted above (para. 38), item 3 of annex I refers to the court (or other public authority) rather than the judicial officer appointed to carry out the public auction (if any). Item 7 refers to the identifier issued under the IMO ship identification number scheme. Item 8 is relevant if no IMO number is issued. Other identifying information referred to in that item could include the name of the shipbuilder, the time and place of shipbuilding, and recent photographs of the ship.

120. Item 11 of annex I is relevant only for a judicial sale carried out by public auction, in which case item 12 is not relevant. Item 11 refers to the anticipated date, time and place of the auction. It thus acknowledges that the date, time or place might not be set at the time of notification or might be subject to change. Unlike the International Convention on Maritime Liens and Mortgages (1993),³¹ the Convention does not

³¹ See note 2 above.

require a follow-up notice to be given once the date, time and place of the auction are set. Moreover, item 11 is compatible with judicial sales which are carried out using an online platform and open for remote bidding over a period of time. As noted above (para. 36), if the judicial sale is carried out by public tender, the notice is instead to contain the anticipated date, time and place of the submission of bids.

121. Item 12 of annex I is relevant only for a judicial sale carried out by private treaty. It acknowledges that, owing to the nature of private treaty sales, only limited information might be available about the sale at the time of notification, as ordered by the supervising court.

122. Item 13 of annex I refers to either a statement confirming that the judicial sale will confer clean title or a statement of the circumstances under which the judicial sale would not confer clean title. The item thus acknowledges that, for some jurisdictions, the notice may be given at a time in the judicial sale proceedings at which it is not yet known whether the sale will result in the conferral of clean title (see para. 92). Item 14 of annex I refers to other information required by the law of the State of judicial sale, in particular information to protect the interests of the person receiving the notice. The item is inspired by article 11, paragraph 2, of the International Convention on Maritime Liens and Mortgages (1993).³² Depending on the law of the State of judicial sale, such information might include information about challenging the judicial sale or about participating in subsequent proceedings for the distribution of proceeds.

Methods of notification

123. Paragraph 4 of article 4 defers to the law of the State of judicial sale on other matters related to the manner and form of notification. Accordingly, the law of the State of judicial sale determines the notice period, method of notification, form of the notice, and the persons responsible for giving the notice. That law also determines the language of the notice, although paragraph 6 of article 4 prescribes language requirements for the minimum information when transmitting the notice to the repository.

124. With regard to the method of notification, the law of the State of judicial sale might apply standard procedures for the service of judicial documents to the notice of judicial sale. The default method of service under those procedures typically requires the notice of judicial sale to be given personally (e.g. by hand to the person being notified or their representative). If the default method is not possible or feasible (e.g. due to an evasive addressee or in view of the state of the ship and its crew), the procedures might allow the person giving notice to resort to an alternative method of service, by which the notice is given by post or by email or some other form of electronic

³² See note 2 above.

communication addressed to the person with confirmation of receipt. To that end, the notification requirements in the Convention are formulated in medium-neutral terms and thus accommodate the issuance and transmission of a notice of judicial sale in electronic form. Failing that, the procedures might allow the notice to be given by public announcement. In those circumstances, a judicial sale should not be regarded as failing to comply with the notice requirements under the Convention merely because the notice of judicial sale was not given “to” the person concerned.

125. The Convention is thus less prescriptive than article 11, paragraph 3, of the International Convention on Maritime Liens and Mortgages (1993),³³ which requires a notice of forced sale to be “either given by registered mail or given by any electronic or other appropriate means which provide confirmation of receipt”. Nothing in the Convention requires confirmation of receipt; as noted above (para. 124), any such requirement is a matter for the law of the State of judicial sale, and that law may require the notice to be given personally without the involvement of a postal or email service.

126. With regard to responsibility for giving the notice, the Convention accommodates circumstances in which the law of the State of judicial sale requires the notice to be given by the court of judicial sale (or other public authority conducting the judicial sale), by a judicial officer, or by a party to the proceedings or their representative. Accordingly, a judicial sale does not fail to comply with the notice requirements under the Convention merely because of the identity of the person giving the notice.

127. Consistent with the international nature of shipping, it is anticipated that there may be occasion for the notice of judicial sale to be transmitted outside the State of judicial sale for service in the territory of another State (e.g. the State of registration). Paragraph 4 of article 4 manifests the consent of a State Party to the notice of judicial sale being served in its territory. Accordingly, a judicial sale does not fail to comply with the notice requirements under the Convention merely because the notice of judicial sale is given to a person located in the territory of a State other than the State of judicial sale, and the notice is given in a manner that is not provided for under the law of that place.

128. The transmission of the notice of judicial sale for service abroad may engage the application of a treaty between the State of judicial sale and the other State on judicial assistance in matters relating to the service of judicial documents (see further remarks below on article 13, paragraph 2).

³³ See note 2 above.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , paras. 18, 22, 71, 75
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 64–66
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 59, 61–62
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 73–80
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 102–106
Report of the fifty-fifth session of UNCITRAL	A/77/17 , paras. 38, 44–45

Public advertisement (article 4, paragraph 5)

129. The notice of judicial sale is published by announcement in the press or other publication available in the State of judicial sale. It is also transmitted to the repository. Paragraph 5 of article 4 applies in addition to – and not as an alternative to – the requirement in paragraph 3 to notify the prescribed classes of persons. By virtue of paragraph 4 of article 4, the notice that is published and the notice that is transmitted are to contain the information itemized in annex I to the Convention.

Announcement in the press or other publication (article 4, paragraph 5 (a))

130. Paragraph 5 (a) of article 4 is concerned with the fact of publication and not with the modalities for publication, such as the selection of newspaper or periodical by which the notice of judicial sale is to be published. In accordance with paragraph 4 of article 4, those modalities are left to the law of the State of judicial sale.

131. As noted above (see remarks above on article 4, paragraph 1), the notification requirements acknowledge the use of online tools to track ships and provide information on their arrest and impending sale. Like the other notification requirements, paragraph 5 of article 4 is formulated in medium-neutral terms and thus accommodates the publication of the notice in newspapers and other periodicals that are circulated in electronic form. Accordingly, a judicial sale does not fail to comply with the notice requirements under the Convention merely because the notice is published in electronic form.

132. Paragraph 5 (a) of article 4 offers a choice between two options, namely (a) publication by “announcement in the press” and (b) publication by “other publication available in the State of judicial sale”. The first option typically entails placing an advertisement in a newspaper containing the notice of judicial sale, as opposed to posting an announcement to a noticeboard or website of the court of judicial sale or

other person responsible for notification. Paragraph 5 (a) does not prescribe any requirements regarding circulation if the first option is chosen. The second option typically entails an advertisement placed in a periodical, including an online journal or newsletter published for the shipping industry. Paragraph 5 (a) requires the publication to be “available in the State of judicial sale” if the second option is chosen. For the purposes of that requirement, it does not matter whether the publication is published in the State of judicial sale or abroad. What matters is whether the publication is “available” in the State of judicial sale, which typically entails the circulation of a paper-based publication or accessibility of an online publication in that State.

133. In keeping with the purpose of the notice requirements to alert creditors to the impending sale and eventual distribution of proceeds, and given the international nature of shipping, it is advisable that, whichever option is chosen, the selected newspaper or periodical should be widely available outside the State of judicial sale.

Transmission of notice to repository (article 4, paragraph 5 (b))

134. Paragraph 5 (b) of article 4 is concerned with the fact of transmission and not with the modalities of transmission, such as the method used and person responsible for transmitting the notice to the repository. Those modalities are left to the law of the State of judicial sale, in accordance with paragraph 4 of article 4, and the procedures put in place by the repository in performing its functions under article 11. In keeping with the purpose of the notice requirements to alert creditors to the impending sale and eventual distribution of proceeds, what matters is that the content of the notice is received in a format that can be published by the repository (see remarks below on article 11).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , para. 66
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , para. 63
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 82–84, 87–88

Language requirements when transmitting notice to repository (article 4, paragraph 6)

135. When transmitted to the repository under paragraph 5 (b) of article 4, the notice of judicial sale is to be accompanied by a translation of the information itemized in annex I to the Convention (i.e. the minimum information to be contained in the notice by virtue of article 4, paragraph 4). The requirement in paragraph 6 of article 4 does not apply when the notice is given under paragraph 3; the words “for

the purpose of communicating the notice to the repository” are intended to clarify that it only applies when the notice is transmitted under paragraph 5 (b). Accordingly, a judicial sale does not fail to comply with the notice requirements under the Convention merely because the notice of judicial sale that is given under paragraph 3 is only in the language of the court of judicial sale and without an accompanying translation. Nevertheless, the person giving the notice under paragraph 3 is encouraged to accompany the notice with a translation of the information itemized in annex I to the Convention, particularly because the translation will eventually need to be transmitted to the repository under paragraph 6.

136. Paragraph 6 of article 4 reflects the balance between due process towards creditors and the expediency required in judicial sale proceedings (see remarks above on article 4, paragraph 1). On the one hand, due process demands that information should be communicated in a manner that can be readily understood by the addressee, including in a language that the addressee knows. This is particularly relevant in international shipping, where creditors can be dispersed around the globe and might not know the language of the court of judicial sale. On the other hand, expediency demands that the judicial sale procedure should not be overburdened by the time and cost of translating documents into multiple languages, let alone identifying the language that is known to each person that is to be notified. It recognizes that most creditors in the international shipping industry are likely to know at least one of the working languages of the repository, which, at the time that the Convention was being prepared, were English, French and Spanish. It also recognizes that the burden of translation will be significantly reduced by focusing on the minimum information itemized in annex I to the Convention. That information is likely to be concise and the translation will already benefit from the text of each item heading being available in English, French and Spanish, among the other official languages of the United Nations in which the text of the Convention is adopted. Indeed, some of the information, such as the “reference number or other identifier for the sale procedure” may require little or no translation.

137. As with transmitting the notice of judicial sale under paragraph 5 (b), the modalities for transmitting the accompanying translation are left to the law of the State of judicial sale and the procedures of the repository. Paragraph 6 does not require the translation to be certified.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , para. 64
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 69–72
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 100–101
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 42

Reliance on registry information (article 4, paragraph 7)

138. While the Convention does not prescribe the method for notification, compliance with paragraph 3 of article 4 typically involves identifying the persons within each prescribed class and determining their name and address. The identity, name and address of holders of any mortgage, *hypothèque* or registered charge, the ship-owner and the bareboat charterer are recorded in the register of ships of the State of registration or in any separate register of security interests or bareboat charter-in register. By virtue of the requirement for many of those registers to be open to public inspection, which stems from the definition of “ship” in article 2 and the precondition in paragraph 3 (b) of article 4, the person giving the notice should be in a position to obtain this information from the relevant registry. The identity, name and address of holders of any maritime lien are recorded in the notice given to the court under paragraph 3 (c) of article 4.

139. In that context, the effect of paragraph 7 of article 4 is that the person responsible for notification is not required to consult any other source of information to identify or to determine the accuracy or currency of the name and address of each person to be notified. In so doing, the Convention provides certainty for the person giving the notice of judicial sale, while avoiding needless challenges to the international effect of a judicial sale based on non-compliance with the notification requirements. Paragraph 7 reflects the principle that the person to be notified should bear the risk of inaccurate information in the register, or in the notice given to the court, as that person has greater control over the accuracy and currency of the information.

140. Nothing in paragraph 7 of article 4 precludes the person giving the notice from using other sources of information, including to comply with domestic law requirements. Moreover, paragraph 7 does not oblige the person to search or inspect the register, nor oblige the relevant registry to provide access to the register (as noted in para. 138 above, the requirement for the register to be open to public inspection stems from other provisions of the Convention). Paragraph 7 also does not oblige the court of judicial sale to provide access to notices received from any holder of a maritime lien, although such a procedure might need to be legally enabled to implement the Convention, particularly in those jurisdictions in which the person giving the notice is not the court of judicial sale. In jurisdictions in which the court of judicial sale or a judicial officer gives the notice, cross-border communication between authorities that is provided for under article 12 may assist the operation of paragraph 7.

141. As noted above (para. 78), the term “person” in the chapeau of paragraph 7 of article 4 should be understood broadly to encompass the ship registry and bareboat charter registry.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053 , para. 18
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , para. 63
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 96–98
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 43

Article 5. Certificate of judicial sale*Purpose of the certificate*

142. The certificate of judicial sale plays a central role in the overall operation of the Convention regime. It serves two crucial purposes: first, it secures the international effects of the judicial sale in that (a) its issuance triggers the basic rule in article 6, and (b) its production triggers action on registration under article 7 and the prohibition of arrest under article 8; second, it operationalizes the safeguards under the Convention, which are translated into conditions for the issuance of the certificate under article 5. Nonetheless, the role of the certificate is limited to the purpose of the Convention which, as noted in article 1, is to govern the effects of a judicial sale that confers clean title. In particular, the Convention does not establish the certificate of judicial sale as a document of title.

143. Article 5 addresses a range of matters relating to the issuance, form, content and legal value of the certificate. It is complemented by article 9, which addresses jurisdiction to review the issuance of the certificate.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , para. 41
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , para. 70
Report of the fortieth session of Working Group VI	A/CN.9/1095 , para. 46

Issuing authority (article 5, paragraph 1)

144. The certificate of judicial sale is issued either (a) by the court or other public authority that conducted the judicial sale, or (b) by another competent authority of the State of judicial sale. Such other authority could be the judicial officer or other person appointed by the court of judicial sale to carry out the public auction, or

another authority not involved in conducting the judicial sale. The designation of the issuing authority is a matter for the law of the State of judicial sale. Competence to issue the certificate may be conferred on a single authority or on multiple authorities.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , para. 84
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , para. 91
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 98–99
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 47

Procedure for issuance (article 5, paragraph 1)

145. The competent authority issues the certificate of judicial sale to the purchaser “in accordance with its regulations and procedures”. Those regulations and procedures are a matter for the law of the State of judicial sale. In the context of paragraph 1 of article 5, they typically provide for a range of matters relating to procedure, including the time frame for issuance, whether the issuing authority acts on application (e.g. the certificate is issued at the request of the purchaser) or on its own motion (e.g. the certificate is issued automatically), whether a fee can be charged for issuing the certificate, whether the certificate can be issued to the purchaser’s representative or nominee, and the standard of review required to determine whether the conditions for issuance have been met. The regulations and procedures might also provide for the issuance of multiple certificates for the same judicial sale, as well as the issuance of certificates in paper or electronic form (see remarks below on article 5, paragraph 6).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 90–91
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053 , paras. 24–25
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , para. 100

Conditions for issuance (article 5, paragraph 1)

146. A certificate of judicial sale is issued if the following conditions are met:

- (a) The judicial sale has reached completion;
- (b) The judicial sale has conferred clean title to the ship under the law of the State of judicial sale;
- (c) The judicial sale was conducted in accordance with the requirements of the law of the State of judicial sale;
- (d) The judicial sale was conducted in accordance with the requirements of the Convention.

Condition 1 – completion of the judicial sale

147. The term “completion” gives effect to the principle of finality, according to which the Convention regime should only apply to judicial sales for which the procedure has been concluded and is no longer subject to ordinary review, whether by appeal against an order of the court of judicial sale or otherwise, even if additional formalities remain to be taken (e.g. action under article 7). The Convention purposefully does not define “completion” since terms commonly used to describe finality in the context of judgments, such as “final and conclusive”, “effective and enforceable” and “no longer subject to appeal”, might not find uniform meaning. Instead, consistent with the rule in paragraph 1 of article 4, the Convention defers to the law of the State of judicial sale for determining when a judicial sale has reached completion (e.g. the date of judicial sale, such as the date of the public auction or the date on which the sale is approved or confirmed by the court of judicial sale).

Condition 2 – conferral of clean title

148. Whether or not a judicial sale confers clean title is a matter for the law of the State of judicial sale (see remarks above on the definition of “clean title” in article 2). The conferral of clean title could coincide with the completion of the judicial sale.

Condition 3 – compliance with requirements of the law of the State of judicial sale

149. As noted above (para. 145), the regulations and procedures of the issuing authority determine the standard of review required to determine whether the conditions for issuance have been met. In determining whether condition 3 is met, the Convention does not require the issuing authority to carry out a full review of the judicial sale. Such a requirement would be inconsistent with the principle of finality reflected in condition 1, as well as with the objective of the Convention to leave the procedure of judicial sales to domestic law.

Condition 4 – compliance with requirements of the Convention

150. The final condition for issuance is concerned with compliance with the notice requirements in paragraph 3 and following of article 4.

151. It is conceivable that the condition could encompass a review of whether the judicial sale and the ship correspond with the definitions of those terms in article 2. However, it does not encompass a review of whether the judicial sale falls within the scope of application of the Convention under article 3, as its application necessarily assumes that the Convention applies.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , para. 90
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 65–69
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053 , paras. 22–23, 26
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 92–97
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 32

Form and content of the certificate (article 5, paragraph 2)

152. The certificate of judicial sale is issued substantially in the form of the model contained in annex II to the Convention. A requirement to use a model form for certificates is not unusual in international conventions and promotes standardization and thus greater acceptance of the certificate when produced abroad. The model contained in annex II sets out the basic layout for the content of the certificate. The requirement for the certificate to be “substantially” in the form of the model emphasizes that the Convention does not mandate a particular design for the certificate nor the use of a particular language for the item headings or for filling in the corresponding blanks. The certificate of judicial sale will typically be issued in the language of the issuing authority and may be issued in multiple languages.

153. The certificate of judicial sale contains the information prescribed in paragraph 2 of article 5, which corresponds to the information itemized in the model. The certification in the headnote of the model corresponds to the information prescribed in paragraphs 2 (a) and 2 (b), which in turn is designed to match the conditions for issuance in article 5, paragraph 1. As noted above (para. 144), the authority referred to in item 2 of the model and paragraph 2 (d) of article 5 (i.e. the issuing authority) may be the same as the authority referred to in item 3.1 of the model and paragraph 2 (e) of article 5 (i.e. the court or other public authority that conducted the judicial sale).

154. Both the model and paragraph 2 (k) of article 5 refer to the inclusion of the signature or stamp of the issuing authority or “other confirmation of authenticity of the certificate”. Confirmation of authenticity provides assurance as to the origin of the certificate (i.e. that it was issued by the issuing authority). The most common device used to confirm authenticity besides a signature or stamp is a seal, but in the case of electronic certificates, other devices are also possible. The Convention does not mandate the use of any device other than a signature or stamp. Moreover, the reference to “other confirmation of authenticity of the certificate” is not intended to suggest any additional formality to authenticate the certificate, such as legalization (see further remarks below on article 5, paragraph 4).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , paras. 44–45, 47, 57
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , para. 93
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 71–72
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 103–105
Report of the fortieth session of Working Group VI	A/CN.9/1095 , para. 109
Report of the fifty-fifth session of UNCITRAL	A/77/17 , paras. 46, 48

Transmission of certificate to repository (article 5, paragraph 3)

155. The certificate is issued to the purchaser, who will use it, as need be, to prompt action on registration of the ship under article 7 and to prohibit arrest of the ship under article 8. In addition, the certificate is transmitted to the repository. As with paragraph 5 (b) of article 4, paragraph 3 of article 5 is concerned with the fact of transmission and not with the modalities of transmission, such as the method used and person responsible for transmitting the certificate to the repository. Those modalities are left to the law of the State of judicial sale and the procedures put in place by the repository in performing its functions under article 11 (see remarks below on article 11).

156. In practice, it may be more convenient for a copy of the certificate to be transmitted to the repository. While paragraph 3 of article 5 refers to “the” certificate, it should not be understood as preventing a copy (including an electronic copy) of the certificate from being transmitted to the repository.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 106–107
Report of the fortieth session of Working Group VI	A/CN.9/1095 , para. 108

No legalization (article 5, paragraph 4)

157. Consistent with the international nature of shipping, it is anticipated that the certificate of judicial sale will be produced in a State other than the State in which it is issued. That other State may have a practice of requiring foreign public documents to be legalized. “Legalization” is a term often used for the formality by which a diplomatic or consular agent of the State in which the document is to be produced certifies the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp on the document. Legalization procedures can be cumbersome and time-consuming owing to the involvement of various authorities at different levels in both the State in which the document is issued and the State in which it is to be produced.

158. In the interests of expediency, paragraph 4 of article 5 exempts the certificate of judicial sale from legalization. It also exempts the certificate from any “similar formality” to legalization. The most notable example of such a formality is the addition of a certificate – known as an “Apostille” – issued under the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (1961)³⁴ by the State in which the document is issued.

159. The effect of paragraph 4 of article 5 is that the registry or other competent authority may not require a foreign certificate of judicial sale to be legalized or produced with an Apostille as a condition for taking action under article 7, nor may the court or other judicial authority do so as a condition for taking action under article 8. If the authority has doubts about the authenticity of the document produced, it can verify the issuance of the certificate by communicating with the issuing authority using the contact details included for that purpose in the certificate, as provided for in article 12, or compare the certificate with the certificate published by the repository. Nothing in the Convention prevents the authority from rejecting a document purporting to be a certificate issued under the Convention because it is not authentic. However, by virtue of article 9, it is not the role of the authority to ascertain whether the conditions for issuance of a certificate under the Convention have been met or whether the certificate is otherwise valid.

³⁴United Nations, *Treaty Series*, vol. 527, No. 7625.

160. The exemption in paragraph 4 of article 5 is extended to “any translation” of the certificate of judicial sale. Under paragraph 3 of article 7 and paragraph 3 of article 8, the authority to which the certificate is submitted may request production of a certified translation. It is conceivable that, if the authority accepts a certified translation done in another State (e.g. in the State of judicial sale), the certified translation itself would be treated as a foreign public document that is subject to legalization. In those circumstances, exempting only the certificate of judicial sale from legalization would not achieve the expediency that paragraph 4 of article 5 pursues. For more on certified translations, see remarks below on article 7, paragraph 3.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , para. 45
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053 , paras. 33–34
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , para. 108
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 90–91
Report of the fifty-fifth session of UNCITRAL	A/77/17 , paras. 80–82

Evidentiary value (article 5, paragraph 5)

161. The production of the certificate of judicial sale triggers action on registration under article 7 and the prohibition of arrest under article 8. For those provisions to be effective, the content of the certificate needs to be accepted by the authorities to which the certificate is produced. In other words, the content of the certificate needs to have evidentiary value.

162. By virtue of paragraph 5 of article 5, the information contained in the certificate of judicial sale is “sufficient evidence” of the matters certified. An authority to which the certificate is produced may not request additional information to identify the ship or to establish that the ship was sold by judicial sale, that the sale was conducted in accordance with the requirements of the law of the State of judicial sale and the requirements of the Convention, or that the judicial sale conferred clean title to the ship on the purchaser.

163. Paragraph 5 of article 5 does not require the information contained in the certificate of judicial sale to be treated as conclusive or irrefutable evidence. For example, it does not prevent an authority from considering other information as to the matters certified. In particular, it would not prevent a court in the State of judicial sale exercising jurisdiction under article 9 from considering information outside the certificate in hearing an application to avoid the judicial sale or to challenge the

issuance of judicial sale certificate, nor would it prevent a court in another State Party from considering information outside the certificate in hearing an application invoking the public policy ground under article 10. This is confirmed by the inclusion of the words “without prejudice to articles 9 and 10” in paragraph 5 of article 5.

Reference to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 109–112

Electronic form (article 5, paragraphs 6 and 7)

164. The certificate of judicial sale may be issued electronically and cannot be rejected merely because it is in electronic form. While paragraph 2 of article 5 is formulated in medium-neutral terms, the Convention makes special provision in paragraphs 6 and 7 of article 5 for the issuance and acceptance of electronic certificates. Those provisions are modelled on rules contained in the United Nations Convention on the Use of Electronic Communications in International Contracts (2005) (hereinafter “Electronic Communications Convention”).³⁵

165. Nothing in the Convention prevents a certificate from being issued in both electronic and paper form for the same judicial sale (i.e. multiple certificates). Nor does it oblige or authorize the competent authority to issue certificates in electronic form. Those matters are left to the regulations and procedures of the issuing authority under the law of the State of judicial sale.

Requirements for electronic certificates (article 5, paragraph 6)

166. Paragraph 6 of article 5 is modelled on the rules in article 9 of the Electronic Communications Convention, which establish functional equivalence between paper-based and electronic communications with respect to legal requirements of recordation, authenticity and integrity. Those requirements are translated into the conditions set out in paragraph 6 (a) to (c), respectively. The term “electronic record” is not defined in the Convention and should be given the same meaning as an “electronic communication” under the Electronic Communications Convention or an “electronic record” under the UNCITRAL Model Law on Electronic Transferable Records.³⁶ Article 2 of the Model Law defines “electronic record” to

³⁵United Nations, *Treaty Series*, vol. 2898, No. 50525.

³⁶UNCITRAL *Model Law on Electronic Transferable Records* (2017), United Nations publication, Sales No. E.17.V.5.

mean “information generated, communicated, received or stored by electronic means, including, where appropriate, all information logically associated with or otherwise linked together so as to become part of the record, whether generated contemporaneously or not”.

167. Paragraph 6 (a) requires information contained in an electronic certificate of judicial sale to be “accessible so as to be usable for subsequent reference”. This condition, which is modelled on article 9, paragraph 2, of the Electronic Communications Convention, establishes equivalence for the function of a paper document in recording information in writing (i.e. in a format that can be read and can thus allow the information to be recalled). As stated in the explanatory note on the Electronic Communications Convention, the word “accessible” is intended to imply that information in the form of computer data should be readable and interpretable, and that the software that might be necessary to render such information readable should be retained, while the word “usable” is intended to cover both human use and computer processing.³⁷

168. Paragraph 6 (b) requires the use of a reliable method to identify the issuing authority. While the content of the certificate itself identifies the issuing authority by name, this condition, which is modelled on article 9, paragraph 3, of the Electronic Communications Convention, establishes equivalence for the function of a signature or stamp in confirming the authenticity of a paper document (i.e. that it was issued by the issuing authority). Unlike the Electronic Communications Convention, paragraph 6 (b) does not require the electronic certificate to indicate the authority’s intention in respect of the content of the certificate. In the context of the Convention, identifying the authority issuing the certificate is sufficient both to identify the authority and to associate it with the content of the certificate.

169. Paragraph 6 (c) requires the use of a reliable method to detect any alteration to the electronic record after the time it was generated. This condition establishes equivalence for the function of the original of a paper document in allowing the integrity of the certificate to be confirmed (i.e. whether its content has remained unchanged since being issued). It is modelled on article 9, paragraph 4 (a), read with article 9, paragraph 5, of the Electronic Communications Convention, but has been reformulated to maintain consistency with paragraph 6 (b).

170. Paragraph 6 (b) and (c) require the use of a “reliable method” to fulfil the functions described therein. Whether a method is reliable depends on the circumstances and not on the use of a particular technology. Relevant considerations include international standards and practices. In some jurisdictions, the issuing authority will be required by law to use an approved method to issue electronic

³⁷ *United Nations Convention on the Use of Electronic Communications in International Contracts* (2007), United Nations publication, Sales No. E.07.V.2, para. 146.

certificates, whereas in others, the issuing authority can decide the method to use. In both cases, paragraph 6 provides for the reliability of the method to be determined on a case-by-case basis, which necessarily implies an enquiry after the certificate is issued and only if the issue arises.

Acceptance of electronic certificates (article 5, paragraph 7)

171. If the requirements of paragraph 6 of article 5 are satisfied, the electronic certificate is a certificate of judicial sale for the purposes of the Convention and must be accepted as such. For additional certainty, paragraph 7 of article 5 reinforces that principle by providing that an electronic certificate cannot be rejected merely because it is in electronic form. It is modelled on article 8, paragraph 1, of the Electronic Communications Convention, which embodies the principle of non-discrimination against the use of electronic means. Nothing in paragraph 7 of article 5 obliges a court or other authority of a State Party to give effect to an electronic record purporting to be a certificate of judicial sale issued under the Convention if the court finds that the record does not comply with the requirements of paragraph 6.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , para. 92
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , para. 75
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053 , paras. 35–38
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 12–14

Article 6. International effects of a judicial sale

172. Article 6 contains the basic rule of the Convention: a judicial sale conducted in one State Party which has the effect of conferring clean title on the purchaser has the same effect in every other State Party. Article 6 is triggered by the issuance of a certificate for the judicial sale under article 5. It requires no special procedure to give effect to the foreign judicial sale, such as confirmation by a competent court in the State in which the effects are sought to be produced. The judicial sale produces its effects automatically, i.e. by operation of law.

173. Article 6 is concerned with the effect of the foreign judicial sale in “conferring clean title”. Giving effect to the conferral of clean title will most commonly be manifested in action taken on the registration of the ship under article 7 and action on the prohibition of arrest of the ship under article 8. However, the operation of

article 6 may be manifested in other ways (e.g. in the event of a dispute concerning ownership in the ship).

174. Article 6 and other provisions of the Convention purposefully refer to “giving effect” to a foreign judicial sale and not to the “recognition” of that sale. As noted in the remarks on article 1, the Convention is concerned with the effects of judicial sales and not with the recognition of judgments. The Convention is only concerned with the sale as a legal fact produced under the aegis of a foreign legal system. It is a device that enforces private rights; where those private rights are adjudged by a court on the merits of a claim (e.g. against the shipowner), the judicial sale becomes the measure by which the judgment is enforced. To emphasize that it is not concerned with the recognition and enforcement of foreign judgments, the Convention avoids the term “recognition”. Similarly, the Convention contains no provision addressing its interaction with treaties on the recognition and enforcement of foreign judgments (cf. article 13), nor does it contain a provision preserving bases for recognizing foreign judgments under domestic law (cf. article 14).

175. If article 6 is triggered by the issuance of a certificate of judicial sale, it does not deal with the situation in which the certificate is subsequently invalidated by a court exercising jurisdiction under article 9. This is confirmed in paragraph 2 of article 15, which provides that, at most, the question of the international effect of invalidating a certificate of judicial sale is governed by the law applicable in the State in which the issue arises.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , paras. 27, 49
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 46–47
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 82–83, 89
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053 , paras. 19–21

Article 7. Action by the registry

Actions to be taken (article 7, paragraphs 1 and 2)

176. Despite international efforts to harmonize conditions for the registration of ships, including the conclusion of the United Nations Convention on Conditions

for Registration of Ships (1986),³⁸ practice varies between jurisdictions. The Convention does not seek to contribute to those efforts. Rather, it identifies actions to be taken by the competent authorities in the State of registration to realize the effects of a judicial sale, as required by article 6. Those actions are prescribed in paragraph 1 of article 7. Paragraph 2 of article 7 prescribes additional action to be taken if the ship is subject to a bareboat charter arrangement.

177. Paragraphs 1 and 2 of article 7 are triggered by the production of the certificate of judicial sale and therefore only apply after completion of a judicial sale that confers clean title. They also require a request by the purchaser or subsequent purchaser (see remarks in paras. 188–192 below on procedure for taking action). The prescribed actions are required to be taken if the judicial sale is conducted in the State of registration (in the case of article 7, paragraph 1) or the State of bareboat charter-in registration (in the case of article 7, paragraph 2), or in another State Party.

178. With regard to paragraph 1 of article 7, not every sale will require all prescribed actions to be taken. For instance, if action is taken to register the ship in the name of the purchaser under paragraph 1 (c), no action would be required to delete the ship from the register under paragraph 1 (b). The non-cumulative nature of the actions prescribed follows from the requirement for the competent authority to act “at the request of the purchaser or subsequent purchaser” and is reinforced by the addition of the words “as the case may be” in the chapeau of paragraph 1. In other words, the prescribed actions are to be taken if applicable and to the extent applicable.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , para. 48
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , para. 89
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 55

Deleting pre-existing mortgages, hypothèques and registered charges (article 7, paragraph 1 (a))

179. As noted above (para. 49), the conferral of clean title means that all pre-existing mortgages, *hypothèques* and charges cease to attach to the ship. By definition, mortgages, *hypothèques* and registered charges are registered in the State of registration. By requiring action to delete registration, paragraph 1 (a) of article 7

³⁸ See note 22 above.

implements the effect of the judicial sale with respect to mortgages, *hypothèques* and registered charges.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 30–31
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 55

Deleting the ship from the register (article 7, paragraph 1 (b))

180. As noted above (para. 49), the conferral of clean title means that all pre-existing property rights in the ship are extinguished, including the title vested in the previous shipowner. A ship is typically registered in a State in the name of the shipowner and will not be able to be registered in another State unless the previous registration is deleted. By requiring action to delete the ship from the register and issue a certificate of deletion, paragraph 1 (b) of article 7 implements the effect of the judicial sale with respect to title and facilitates the “new” registration of the ship in another State in the event that the purchaser wishes to “reflag” the ship. However, it does not require action to register the ship in that other State, which remains a matter for the law of that State.

181. Recalling the differences in registration practice between States, the procedure for deregistering a ship might be known in the State of registration by a term other than “deletion”.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 96–97
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 32–34

Registering the ship in the name of the purchaser (article 7, paragraph 1(c))

182. Alternatively, the purchaser may wish the ship to remain registered in the State of registration, and wish therefore to be registered as the new owner. By requiring action to register the ship in the name of the purchaser, paragraph 1 (c) of article 7 implements the effect of the judicial sale with respect to title. This is subject, however, to a proviso that “the ship and the person in whose name the ship is to be registered meet the requirements of the law of the State of registration”. This proviso acknowledges that States have different requirements for registering ships, including

requirements stemming from article 5 of the Convention on the High Seas (1958),³⁹ article 91 of the United Nations Convention on the Law of the Sea (1982),⁴⁰ and other domestic laws.

183. Paragraph 1 (c) extends to action taken to register the ship in the name of the “subsequent purchaser” which, by virtue of the definition of that term in article 2, is limited to the first subsequent purchaser. This limited extension reflects a balance between acknowledging the practice whereby a purchaser transfers ownership in the ship to a separate legal entity in order to meet the requirements of the law of the State of registration, on the one hand, and the burden on the registry of verifying the regularity of dealings concerning ships entered in the register, on the other hand.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 96–97
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 32–34

Updating the register (article 7, paragraph 1 (d))

184. Paragraph 1 (d) of article 7 requires additional information on the judicial sale to be recorded in the register of ships or equivalent register in which the ship is registered. It is concerned with updating the register with particulars in the certificate that may not have been recorded in the register pursuant to action taken under paragraph 1 (a) to (c), such as the name of the court of judicial sale and the date of the sale. It is not concerned with updating the register to enter the ship in the register or to record the purchaser as the new owner.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , para. 96
Report of the fortieth session of Working Group VI	A/CN.9/1095 , para. 35

Deleting bareboat charter registration (article 7, paragraph 2)

185. A bareboat charter grants the charterer a right of use over the ship. While the obligation under article 6 requires the State to recognize the extinguishment of any right of use so far as it can be asserted against the ship, paragraph 1 (b) of article 15 makes it clear that the Convention does not affect the ability of the bareboat

³⁹United Nations, *Treaty Series*, vol. 450, No. 6465.

⁴⁰United Nations, *Treaty Series*, vol. 1833, No. 31363.

charterer (as lessee) to assert that right in a personal claim against the former ship-owner (as lessor) for breach of contract. However, the purchaser is not bound to honour the right of use of the bareboat charter (unless of course the purchaser assumes the obligations of the former owner). Paragraph 2 of article 7 implements the effective termination of the bareboat charter arrangement, by which the State of bareboat charter-in registration revokes its permission for the ship to fly its flag.

186. Recalling the differences in practice between States (see para. 77), the procedure for terminating the bareboat charter registration might be known in the State of bareboat charter-in registration by a term other than “deletion”.

Reference to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007, para. 96

Competent authority

187. The actions prescribed in paragraphs 1 and 2 of article 7 are taken either by the registry or by another competent authority of the State of registration (in the case of article 7, paragraph 1) or the State of bareboat charter-in registration (in the case of article 7, paragraph 2). Competence to take any of the prescribed actions is a matter for the law of that State, which may confer competence on a single authority or multiple authorities, including by function of geographic location (e.g. port of registration) or type of register (e.g. register of ships, register of security interests, bareboat charter register). Nevertheless, the Convention assumes an alignment between the authorities taking action under article 7 and the registers and registries referred to in article 4, paragraph 3. Specifically:

(a) The authority competent to take action under paragraph 1 (a) of article 7 will typically be the registry that maintains the register referred to in paragraph 3 (b) of article 4;

(b) The authority competent to take action under paragraph 1 (b) and (c) of article 7 will typically be the registry referred to in paragraph 3 (a) of article 4; and

(c) The authority competent to take action under paragraph 2 of article 7 will typically be the bareboat charter registry referred to in paragraph 3 (e), subparagraph (ii), of article 4.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , para. 97
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , para. 90
Report of the fortieth session of Working Group VI	A/CN.9/1095 , para. 22

Procedure for taking action

188. The competent authority takes action “in accordance with its regulations and procedures”. Those regulations and procedures are a matter for the law of the State of registration. In the context of paragraph 1 of article 7, they typically provide for a range of matters relating to procedure, including how documents are to be produced and whether a fee can be charged for the action taken. However, as noted in the remarks above on paragraph 5 of article 5, those regulations and procedures cannot be applied to require additional information to establish the matters certified in the certificate of judicial sale.

189. The regulations and procedures of the competent authority should not be invoked in a manner that is inconsistent with the obligation of the State of registration under article 6 to give effect to the clean title conferred by the judicial sale. A risk of inconsistency can arise, for example, if regulations make action conditional on the purchaser paying outstanding taxes levied against the former shipowner or paying out unsatisfied creditors. The chapeau of paragraph 1 of article 7 therefore provides that the allowance for the competent authority to take action “in accordance with its regulations and procedures” is “without prejudice to article 6”.

190. The regulations and procedures of the competent authority will typically determine whether the authority acts on application (e.g. action is taken at the request of the purchaser) or on its own motion (e.g. action is taken automatically). However, as paragraph 1 of article 7 requires action to be taken “at the request of the purchaser or subsequent purchaser”, the regulations and procedures of the competent authority should not be invoked to deny the purchaser or subsequent purchaser the right to seize the competent authority. Paragraph 1 does not prevent the competent authority from taking action on its own motion, for example a registry in the State of judicial sale taking action on the basis of an order of the court of judicial sale. Nevertheless, action to delete the ship from the register under paragraph 1 (b) implies motivation on the part of the purchaser or subsequent purchaser for that action to be taken. And in any case, it is worth recalling that, in the event of action taken in a State other than the State of judicial sale, article 6 requires no special procedure to give effect to the foreign judicial sale, such as confirmation by a competent court in that State.

191. In practice, it is only the actions prescribed in paragraph 1 (c) and (d) that the competent authority will take at the request of the subsequent purchaser. The regulations and procedures of the competent authority may provide for a person acting as subsequent purchaser to produce documentation (e.g. a bill of sale) establishing that they have purchased the ship from the person named as the purchaser in the certificate of judicial sale, and thus qualifying as “subsequent purchaser” within the meaning of the Convention. For the purposes of paragraph 1 (c), the regulations and procedures may provide for the production of other documentation establishing that the “requirements of the law of the State of registration” are met.

192. Nothing in the Convention prevents the competent authority from taking subsequent action on registration at the request of a purchaser further down the chain of transfers.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , para. 97
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 91–95
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 17, 23–26
Report of the fifty-fifth session of UNCITRAL	A/77/17 , paras. 53–54

Translation and copy of the certificate of judicial sale (article 7, paragraphs 3 and 4)

193. As noted above (para. 152), the certificate of judicial sale will typically be issued in the language of the issuing authority in the State of judicial sale. Paragraph 3 of article 7 allows the competent authority to request production of a certified translation of the certificate. While the term “certified translation” is not defined, in the context of the actions prescribed in paragraphs 1 and 2 of article 7, the requirements for certification should be left to the regulations and procedures of the competent authority, which typically provide for a document bearing an endorsement by a recognized person or entity (e.g. a sworn translator) that the document is an accurate translation. Nothing in the Convention prevents the competent authority from dispensing with the requirement to produce a certified translation (e.g. if the competent authority accepts uncertified translations or no translation at all). It is worth recalling that nothing in the Convention requires the issuing authority to issue a certificate of judicial sale in a particular language.

194. Paragraph 4 of article 7 allows the competent authority to request production of a certified copy of the certificate for its records. This provision acknowledges that a single certificate of judicial sale may need to be produced to multiple

authorities to trigger all of the actions prescribed in paragraphs 1 and 2. If requested, the production of the certified copy supplements, but does not substitute, the production of the certificate of judicial sale itself. While the term “certified copy” is not defined, as with certified translations under paragraph 3, the requirements for certification should be left to the regulations and procedures of the competent authority, which typically provide for a document bearing an endorsement by a recognized person or entity that the document is a true copy. Nothing in the Convention prevents the competent authority from dispensing with the requirement to produce a certified copy (e.g. if the competent authority accepts an uncertified copy or makes a copy itself).

195. By virtue of paragraph 4 of article 5, the competent authority may not request evidence of legalization or the production of an “Apostille” for the certificate or for any translation.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , para. 48
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , para. 98
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , para. 101
Report of the fortieth session of Working Group VI	A/CN.9/1095 , para. 36
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 57

Refusal to take action (article 7, paragraph 5)

196. The competent authority is not required to take any actions prescribed in paragraphs 1 or 2 of article 7 if a court in the State of registration (in the case of article 7, paragraph 1) or the State of bareboat charter-in registration (in the case of article 7, paragraph 2) determines under article 10 that giving effect to the judicial sale would be manifestly contrary to the public policy of that State. As the preclusive effect of such a determination already flows from article 10 itself, paragraph 5 of article 7 is designed to provide an additional signpost to the competent authority. It acknowledges that a request for the competent authority to take action under article 7 may trigger a challenge invoking the public policy exception. The competent authority might not be well-placed to make a public policy determination and should not have the burden of dealing with a public policy challenge, but neither should it be expected to take any actions prescribed in paragraphs 1 or 2 where that would contravene a decision by a competent court. See further remarks on article 10 (including regarding the meaning of “determination” and “manifestly contrary”).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 97–100
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 37–40
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 58

Article 8. No arrest of the ship*General rule (article 8, paragraphs 1 and 2)*

197. The international community has achieved significant progress in harmonizing rules on the arrest of ships. In broad terms, those rules permit a ship to be arrested in respect of a maritime claim only if the person who owns the ship at the time of arrest is the person who owned the ship at the time the claim arose, unless the maritime claim is secured by a maritime lien or is based on a mortgage, *hypothèque* or charge of similar nature. Where the judicial sale not only vests title of the ship in the purchaser, but does so free and clear of any mortgage, *hypothèque* or charge (including maritime lien and registered charge), it follows that the ship should not be subject to arrest for any maritime claim or maritime lien arising prior to the judicial sale. Paragraphs 1 and 2 of article give effect to that principle.

198. Paragraph 1 of article 8 deals with the case in which an arrest is applied for, while paragraph 2 deals with the case in which an arrest has been effected. Like article 7, article 8 is triggered by the production of the certificate of judicial sale and therefore only applies after completion of a judicial sale in a State Party that confers clean title. Moreover, it applies if the judicial sale is conducted in the State in which the arrest is applied for or effected, or in another State Party.

199. Both paragraphs refer to the “arrest” of the ship or any other “similar measure” against the ship. The reference to “similar measure” against the ship is designed to align article 8 with the terminology used in the definition of “ship” in article 2 (which refers to a vessel that “may be the subject of an arrest of other similar measure capable of leading to a judicial sale”) and in the definition of “charge” (which refers to rights being asserted against a ship “whether by means of arrest, attachment or otherwise”). It is not designed to modify the understanding of “arrest” under the Arrests Conventions.⁴¹

⁴¹ See note 1 above.

200. Both paragraphs refer to arrest for a “claim”. The term is not designed to affect the range of claims in respect of which a ship may be arrested under the Arrests Conventions. Nor is it intended to affect any rights or powers of seizure in the enforcement of public law, such as tax, customs or criminal law.

201. Both paragraphs refer to action by a court or “other judicial authority”. This terminology is designed to further align article 8 with the Arrests Conventions. Consistent with the Arrests Conventions and the objective of the Convention, matters of procedure relating to actions taken under article 8 are left to the law of the State in which the arrest has been applied for or effected, as the case may be.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 102–103
Report of the fortieth session of Working Group VI	A/CN.9/1095 , para. 42
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 59

*Translation of the certificate of judicial sale
(article 8, paragraph 3)*

202. In similar terms to paragraph 3 of article 7, paragraph 3 of article 8 allows the court or other judicial authority to request production of a certified translation of the certificate (see further remarks above on article 7, paragraph 3).

Refusal to take action (article 8, paragraph 4)

203. The court or other judicial authority is not required to take action to prohibit the arrest of the ship under paragraphs 1 or 2 of article 8 if it determines that that action would be manifestly contrary to the public policy of the State. Paragraph 4 of article 8 differs from paragraph 5 of article 7 in two respects. First, it refers to the court itself making the public policy determination. Second, it links and adapts the public policy exception to cases in which an arrest is applied for or effected. Paragraph 4 of article 8 does not itself confer jurisdiction on the court or other judicial authority to hear an application invoking the public policy ground, which is left to the law of the State in which the arrest is applied for or effected. Moreover, it does not limit the generality of article 10 (see further remarks below on article 10, including regarding the meaning of “determination” and “manifestly contrary”).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1, paras. 104–106
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 42

Article 9. Jurisdiction to avoid and suspend judicial sale

Exclusive jurisdiction (article 9, paragraphs 1 and 2)

204. Article 9 is concerned solely with jurisdiction to review a judicial sale. Paragraph 1 declares that the courts of the State of judicial sale have exclusive jurisdiction. Paragraph 2 reinforces the exclusivity of that jurisdiction by requiring the courts in every other State Party to decline jurisdiction.

205. Article 9 is concerned specifically with jurisdiction to avoid a judicial sale and jurisdiction to suspend the effects of a judicial sale. The Convention does not define “avoidance” of a judicial sale, which is understood to refer to a judicial remedy that renders the sale null and void and restores the parties to their respective positions prior to the sale. In some jurisdictions, such a remedy might be referred to by a different name. The term “avoidance” is consistent with usage in other treaties dealing with sales, including the United Nations Convention on Contracts for the International Sale of Goods (1980),⁴² and emphasizes that the Convention is concerned with judicial sales and not with judgments in respect of such sales. In yet other jurisdictions, the remedy of avoidance might not exist at all. Paragraph 1 does not require a State Party to make the remedy available, nor does it affect the availability of other remedies available under the law of the State of judicial sale (e.g. remedies in tort). In that regard, remedies may be available at different stages of the judicial sale procedure, including after the sale is ordered but before the auction takes place, after the auction takes place but before it is confirmed, and after the sale has reached completion. Paragraph 1 applies only to a judicial sale that confers clean title and the remedy of avoidance itself assumes that the sale has reached completion. Avoidance can thus be contrasted to other remedies that have the effect of delaying or calling off the sale before the procedure has reached its final stage (i.e. prior to completion), which are addressed in paragraph 1 of article 4. In some jurisdictions, such other remedies may be referred to as “suspending” the sale, which in turn can be contrasted to suspending the effects of a sale once it has reached completion, which is the other remedy referred to in paragraph 1 of article 9.

⁴²United Nations, *Treaty Series*, vol. 1489, No. 25567.

206. While differences exist between jurisdictions, grounds for avoidance may include (a) non-compliance with requirements under domestic law relating to notification and the procedures for holding public auctions or public tenders (including as specified in the decision ordering the sale), (b) approving or confirming a sale at a price below market price, and (c) fraud or other wrongdoing on the part of bidders. Consistent with the objective of the Convention to leave matters of procedure to domestic law, paragraph 1 of article 9 does not deal with grounds for avoidance or with standing to bring a claim or application. In particular, while compliance with the requirements of the Convention is a condition for issuance of the certificate of judicial sale, and the exclusive jurisdiction under paragraph 1 extends to any claim or application to challenge the issuance of the certificate of judicial sale, the Convention does not require the State of judicial sale to make non-compliance a ground for avoidance.

207. In practice, avoidance of a judicial sale is exceedingly rare. It is a remedy of limited availability given the difficulty of unwinding the effects of a judicial sale and restoring the parties to their previous positions once action has been taken on registration under article 7 and the proceeds of sale have been distributed. For many creditors, it is also unlikely to be an adequate remedy, with the possible exception of creditors who put in an unsuccessful bid or who allege that the sale was conducted in a manner that failed to maximize the proceeds. The inclusion of article 9 in the Convention is not intended to suggest that challenges to a judicial sale should be encouraged as a matter of course; rather it is designed to ensure that the validity of a certificate of judicial sale and the conditions for issuance are scrutinized exclusively by the State of judicial sale.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , paras. 51–52, 54–57
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 59, 68–78
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 82, 107, 109
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053 , paras. 29, 57–60
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , para. 45
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 43–47
Report of the fifty-fifth session of UNCITRAL	A/77/17 , paras. 60–63

*Effects of avoidance and suspension
(article 9, paragraph 3; article 15, paragraph 2)*

208. The effects of a judgment avoiding a judicial sale in exercise of jurisdiction conferred under paragraph 1 of article 9 are limited to the State of judicial sale under its domestic law. Nevertheless, the Convention acknowledges that, while exceptional, the avoidance of a judicial sale may have an impact on the Convention regime. For instance, a judicial sale may be avoided, or a certificate of judicial sale invalidated, for reasons that are apt to trigger a challenge on public policy grounds in another State under article 10. The Convention does not seek to find an answer to the international effect of avoidance or suspension, which is left to the law applicable in the State in which the issue arises, as provided for in paragraph 2 of article 15.

209. What the Convention does instead is to require any decision that avoids a judicial sale or suspends the effects thereof to be transmitted to the repository. This only applies to judicial sales for which a certificate has been issued. As with paragraph 3 of article 5, paragraph 3 of article 9 is concerned with the fact of transmission and not with the modalities of transmission, such as the method used and person responsible for transmitting the certificate to the repository. Those modalities are left to the law of the State of judicial sale and the procedures put in place by the repository in performing its functions under article 11 (see remarks below on article 11).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 74, 108
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053 , paras. 27–31
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , para. 113
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 52–54
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 64

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

Function of article 10

210. Article 10 provides the sole exception to the basic rule contained in article 6. While article 9 deals with jurisdiction to hear a challenge to a judicial sale in the State of judicial sale, article 10 deals with the right of any other State Party to refuse the international effects of a judicial sale. The ground for refusal is limited to the

public policy exception and requires a determination of a court. That determination has effect only in that State and does not affect the international effects of the judicial sale in any other State Party. The Convention acknowledges that the public policy exception will be most likely invoked in the States in which action under articles 7 or 8 is sought.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , paras. 59–66
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 58, 79–89
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 84–85, 87–88

Public policy exception

211. Public policy is widely admitted among legal systems as a ground for refusing to recognize or enforce a foreign judgment. While the public policy exception in article 10 has been inspired by recent treaty practice, including article 7, paragraph 1 (c), of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019),⁴³ it is adapted to the international effects of judicial sales (recalling that the Convention is not concerned with the recognition and enforcement of foreign judgments; see remarks above on article 6). Matters of public policy can differ between judicial sales and foreign judgments. But as with foreign judgments, the concept of public policy under article 10 differs between States, which is recognized by the reference to the public policy “of that other State Party”.

212. Article 10 requires the effect of the judicial sale in the State concerned to be “manifestly contrary” to public policy. This sets a high threshold, which reflects recent treaty practice. The threshold is designed to avoid an abusive or overly expansive application of the public policy exception and requires a compelling reason as to why giving effect to the foreign judicial sale is contrary to an identified matter of public policy. It emphasizes that the public policy is expected to apply only in exceptional cases.

213. In the context of judicial sales, matters of public policy may include the extinguishment of rights that are considered a mandatory rule of the State concerned, the avoidance of the sale in the State of judicial sale, infringement of sovereignty or security occasioned by the sale, the procurement of the sale by fraud committed by the purchaser, and conducting the judicial sale in a manner that violates

⁴³ Kingdom of the Netherlands, *Treaty Series*, 2019, No. 13672.

fundamental principles of due process. As noted above (para. 98), a particularly egregious failure to comply with the notice requirements under the Convention could give rise to an application invoking the public policy ground. However, consistent with recent treaty practice, a simple breach of a mandatory rule would typically not amount to a matter of public policy. Public policy requires the fundamental values of the State concerned to be engaged.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , paras. 38, 62
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 84–86
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 85–86, 107
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053 , para. 28
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 37, 55
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 65

Determination

214. The public policy exception requires the determination of a court. The Convention does not specify the form of that determination or the procedure for invoking the public policy exception. Consistent with the objective of the Convention, those matters are left to the law of the State concerned. Article 10 refers to the court determining that the effect of the foreign judicial sale would be manifestly contrary to public policy. The word “determines” implies a decision based on a consideration of information relevant to matters of public policy. The use of the words “would be” reflects the formulation of the public policy exception in recent treaty practice. It is not intended to suggest that a provisional or conditional assessment by the court, let alone a mere allegation, would be sufficient.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , para. 100
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 39–40

Article 11. Repository

Purpose of the repository mechanism

215. The Convention establishes a repository mechanism to enhance the operation of the Convention regime by providing public access to instruments that are required to circulate under the Convention. The repository also has the potential to promote the dissemination of information on the judicial sale of ships, thereby raising awareness of the function of judicial sales and supporting research and analysis for the benefit of the global maritime community.

Identity of the repository (article 11, paragraph 1)

216. Paragraph 1 of article 11 designates the Secretary-General of the International Maritime Organization (hereinafter “IMO”) as the repository. As an alternative, it designates an institution named by UNCITRAL. This provision, which is based on the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, recognizes that the Convention does not bind IMO and that the assumption of the repository function by the IMO Secretary-General is subject to approval by IMO’s governing bodies.

Function of the repository (article 11, paragraph 2)

217. The function of the repository is to receive and publish the notice of judicial sale and certificate of judicial sale, as well as any decisions avoiding a judicial sale or suspending its effects. To that end, paragraph 2 of article 11 requires the repository to publish the instruments in a timely manner upon receipt. All of these instruments emanate from the State of judicial sale and are required to be transmitted to the repository under the Convention. The function of the repository is purely informational, and the publication of instruments has no particular legal effect under the Convention. In particular, the publication of the notice of judicial sale does not substitute the requirement to give the notice under paragraph 3 of article 4, nor does it substitute the requirement to produce the certificate of judicial sale to prompt action on registration of the ship under article 7 or action to prohibit arrest of the ship under article 8.

218. The Convention imposes no requirement on the repository to review or to ensure the accuracy or completeness of instruments transmitted for publication nor any requirement to translate them for publication. This is confirmed by the requirement in paragraph 2 of article 11 that the repository publish each instrument “in the form and in the language in which it is received”.

219. The Convention purposefully does not prescribe how the repository performs its function but rather leaves it to the repository to put in place procedures for the receipt and publication of instruments required to be transmitted under the Convention. The Convention is designed to accommodate the use of an online platform or other online service to receive and publish instruments using automated systems, and for instruments to be transmitted and accessed via an online account or other interactive application.

Transitional application (article 11, paragraph 3)

220. Paragraph 3 of article 11 makes provision for the repository to receive and publish notices of judicial sale emanating from a contracting State (within the meaning of article 2 (f) of the Vienna Convention on the Law of Treaties (1969)⁴⁴) for which the Convention has not yet entered into force. This provision supports the transitional application of the Convention (see further remarks below on article 21, paragraph 3).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , paras. 46, 73
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 67, 94
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 50, 74, 76–81
Report of the thirty-eighth session of Working Group VI	A/CN.9/1053 , para. 32
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 85–91
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 49–51, 56–62
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 66

Article 12. Communication between authorities of States Parties

221. Paragraph 1 of article 12 provides for the communication between authorities in different States Parties. It is based on article 14 of the International Convention on Maritime Liens and Mortgages (1993)⁴⁵ and provides for communication for the purposes of the Convention as a whole rather than for specific provisions. In

⁴⁴United Nations, *Treaty Series*, vol. 1155, No. 18232.

⁴⁵See note 2 above.

particular, it facilitates direct communication between the court of judicial sale (or other public authority conducting the judicial sale) and registries for the purposes of the notice requirements in article 4, and communication between the issuing authority and the competent authority under article 7 with respect to the issuance of the certificate of judicial sale. Paragraph 1 of article 12 is premised on an assumption that, without authorization, the authorities in a particular State might only be able to communicate with foreign authorities via diplomatic channels, which would not be suited to the expediency required in judicial sale proceedings.

222. Paragraph 1 of article 12 authorizes, but does not require, communication. Moreover, it does not limit the use of other channels of communication, including those established under judicial assistance treaties between the States concerned. This is confirmed by paragraph 2 of article 12. Paragraph 2 is not concerned with other mechanisms for giving effect to foreign judicial sales that might exist under such treaties; the application of those other mechanisms is addressed in article 14.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , para. 74
Report of the fortieth session of Working Group VI	A/CN.9/1095 , para. 64–65
Report of the fifty-fifth session of UNCITRAL	A/77/17 , paras. 67–68

Article 13. Relationship with other international conventions

223. According to the general principle stated in article 30, paragraph 3, of the Vienna Convention on the Law of Treaties (1969), a later treaty prevails over an earlier treaty to the extent of any incompatibility between the two. Article 13 addresses cases in which the application of the Convention is incompatible with two treaties identified during the preparation of the Convention. Ultimately, the existence and extent of any incompatibility is a matter of the interpretation of both instruments in a particular case.

224. Paragraph 1 of article 13 addresses the Convention on the Registration of Inland Navigation Vessels (1965) and its Protocol No. 2 Concerning Attachment and Forced Sale of Inland Navigation Vessels (hereinafter “Protocol No. 2”).⁴⁶ That convention is open to members of the United Nations Economic Commission for Europe (UNECE), as well as States admitted to UNECE with a consultative status.

⁴⁶United Nations, *Treaty Series*, vol. 1281, No. 21114.

Protocol No. 2 governs the attachment (including arrest) and forced sale (including judicial sale) of “any vessel used in inland navigation” (article 2) and makes provision regarding various matters related to judicial sales that are addressed in the Convention, namely notice requirements (article 21), the international effects of a judicial sale (article 19), and action on registration following a judicial sale (article 22). As noted in the remarks on the definition of “ship” above (para. 45), the Convention is applicable to the judicial sale of inland navigation vessels, and thus its provisions are potentially incompatible with the provisions of Protocol No. 2 in a particular case. In the event of such incompatibility, paragraph 1 of article 13 provides for the provisions of the Convention to “give way” to the protocol so that, in accordance with the general principle stated in article 30, paragraph 2, of the Vienna Convention on the Law of Treaties (1969), Protocol No. 2 prevails.

225. Paragraph 2 of article 13 addresses the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (hereinafter “Service Convention”).⁴⁷ The Service Convention makes provision for the transmission of judicial documents emanating from one State for service in another State. If it applies, the Service Convention provides several channels of transmission, although for documents to be served in some States Parties, only transmission through a central authority or through diplomatic and consular channels is provided. Insofar as the Service Convention provides exclusively for the channels of transmission of judicial documents for service abroad, its provisions are potentially incompatible with the provisions of the Convention that allow for the notice of judicial sale to be given under the law of the State of judicial sale (article 4, paragraph 4). Specifically, the notification times involved in using the channels of transmission available under the Service Convention for giving notice to a person located in a particular State may not be suited to the expediency required in judicial sale proceedings, and the law of the State of judicial sale may provide for the notice to be given using channels other than those provided in the Service Convention. In that case, paragraph 2 of article 13 is designed not to displace the application of the Service Convention entirely but rather to avoid the exclusivity of the channels of transmission provided thereunder. In other words, those channels can be used, but they do not have to be used. States that have enacted legislation to give effect to the Service Convention may need to amend that legislation if they wish for the notice of judicial sale to be given using channels other than those provided in the Service Convention.

226. As noted above (para. 174), the Convention is not concerned with the recognition of foreign judgments and therefore does not address its relationship with treaties such as the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019).

⁴⁷ United Nations, *Treaty Series*, vol. 658, No. 9432.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , para. 72
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 31, 65
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 29, 60
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , para. 81
Report of the fortieth session of Working Group VI	A/CN.9/1095 , para. 71
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 69
Note by the Secretariat on the interaction between a future instrument on the judicial sale of ships and selected HCCH Conventions	A/CN.9/WG.VI/WP.85 , paras. 12–30

Article 14. Other bases for giving international effect

227. The purpose of article 14 is to clarify that the Convention does not displace other treaties or domestic law that provide a more favourable basis for giving effect to foreign judicial sales. In the preparation of the Convention, it was acknowledged that foreign judicial sales could be recognized under the International Convention on Maritime Liens and Mortgages (1993),⁴⁸ as well as under domestic law in circumstances not covered by the Convention, including on the basis of comity.

228. Article 14 is not strictly a “give way” clause like paragraph 1 of article 13 because (a) it applies to avoid incompatibility in the first place, (b) it applies to judicial sales conducted in States that are not party to the Convention, as well as judicial sales that fall outside the scope of the Convention, and (c) it addresses the interaction of the Convention with domestic law (in addition to that with other treaties). If, however, the provisions of the Convention are incompatible with the bases under another treaty for giving effect to a foreign judicial in a particular case, article 14 provides for the provisions of the Convention to “give way” to the application of those bases.

229. Article 14 is not concerned with other treaties and domestic law that, in a particular case, would deny giving effect to foreign judicial sales. As such, article 14 would not give way to the application of grounds for refusal under another treaty. In that case, the provisions of the Convention, notably article 6, would apply to their fullest extent, in accordance with the general principle stated in article 30, paragraph 3, of the Vienna Convention on the Law of Treaties (1969). In the case of the

⁴⁸ See note 2 above.

incompatibility with domestic law, the general principle stated in articles 26 and 27 of the Vienna Convention on the Law of Treaties (1969) would be engaged.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , para. 17
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 68–70
Report of the fifty-fifth session of UNCITRAL	A/77/17 , paras. 68, 70

Article 15. Matters not governed by this Convention

Purpose

230. The purpose of article 15 is to clarify that the application of the Convention does not extend to matters (hereinafter “extraneous matters”) that the Convention is not intended to govern, namely (a) the distribution of the proceeds of the judicial sale, (b) personal claims against the former shipowner, and (c) the international effect of a judgment avoiding or suspending a judicial sale or invalidating a certificate of judicial sale. As such, article 15 is designed to provide a clear signpost to creditors that those extraneous matters are governed by other applicable law, namely domestic law. Strictly speaking, article 15 does not deal with exclusions from scope since the substantive provisions of the Convention are not intended to apply to the extraneous matters in the first place. For that reason, the paragraphs of article 15 are not located in article 3. Nevertheless, given the close connection of the extraneous matters prescribed in article 15 with matters that are governed by the Convention, and the fact that they were raised during the preparation of the Convention, it was felt that, to avoid doubt, an express provision clarifying the application of the Convention to those extraneous matters would be useful.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 47–48
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 72, 75
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 71

Distribution of proceeds

231. The availability of proceeds to creditors is a defining feature of a judicial sale within the meaning of the Convention (see remarks above on subparagraph (ii) of the definition of “judicial sale” in article 2). However, unlike the International Convention on Maritime Liens and Mortgages (1993),⁴⁹ the Convention does not regulate how those proceeds are distributed or how claims against the proceeds are prioritized. These matters are governed by the law of the State of judicial sale.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , paras. 22, 29
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 53, 54

Personal claims against the former shipowner

232. As article 1 makes it clear, the Convention is concerned only with judicial sales that (already) confer clean title. The Convention is not concerned with the effects of a judicial sale on the survival of personal claims against the former shipowner that arise prior to the judicial sale. This includes claims arising under contract or in tort, as well as other personal claims which, but for the judicial sale, could have been enforced by attachment against the ship following a court judgment, or which, by virtue of the judicial sale, could have been enforceable against the proceeds but were not fully satisfied. Paragraph 1 (b) of article 15 clarifies this position. It does not create any claim or revive any claim that was extinguished by the judicial sale.

233. The reference to “person who owned or had proprietary rights in the ship” as opposed to “owner” is designed to further distinguish matters governed by the Convention, which makes limited provision with respect to the notification of the “owner”, and the preservation of personal claims.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , para. 34
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 51–54
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , paras. 47–48
Report of the fortieth session of Working Group VI	A/CN.9/1095 , para. 73

⁴⁹ See note 2 above.

Effects of avoidance and suspension

234. Paragraph 2 of article 15 clarifies that the Convention does not offer an answer to the question, which is expected only ever to arise in exceedingly rare circumstances, as to the international effects of avoidance and suspension of a judicial sale under article 9 (see remarks above on article 9).

Other matters not governed by the Convention

235. As already noted in the remarks above on article 1, the Convention does not address the conduct of judicial sales, the recognition of judgments in respect of judicial sales, or whether a judicial sale confers clean title. This is consistent with the objective of the Convention to establish 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. A number of other matters connected with judicial sales were raised during the preparation of the Convention, but not included in article 15. Those other matters include the coordination of insolvency proceedings and parallel judicial sale proceedings, as well as remedies for wrongful arrest.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the thirty-fifth session of Working Group VI	A/CN.9/973 , paras. 22, 29–30
Report of the thirty-sixth session of Working Group VI	A/CN.9/1007 , paras. 44, 46, 70–71
Report of the thirty-seventh session of Working Group VI	A/CN.9/1047/Rev.1 , para. 100
Report of the thirty-ninth session of Working Group VI	A/CN.9/1089 , paras. 52–61

Final clauses

General

236. The final clauses of the Convention (articles 16–23) are modelled on other multilateral treaties prepared by UNCITRAL. Time periods specified in the final clauses are measured in days rather than years for greater certainty.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095 , para. 76
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 86

Depositary (article 16)

237. Article 16 designates the Secretary-General of the United Nations as depositary of the Convention. The depositary is entrusted with the custody of the authentic texts of the Convention and of any full powers delivered to the depositary. The depositary also performs a number of administrative services in connection with the Convention, including (a) preparing certified copies of the original text, (b) receiving signatures to the Convention, (c) receiving and keeping custody of any instruments, notifications and communications relating to the Convention, and (d) informing States of instruments, notifications and communications relating to the Convention.

238. The depositary is a different institution and has a different function to the repository established under article 11.

Reference to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fifty-fifth session of UNCITRAL	A/77/17, para. 72

Consenting to be bound (article 17)

239. Establishing a harmonized regime for giving international effect to judicial sales is best served by securing broad appeal for the Convention among States. Paragraph 1 of article 17 declares that the Convention is open for signature by “all States”, which is a formula frequently used in multilateral treaties to promote the widest possible participation.

240. The Secretary-General, as depositary, has stated on a number of occasions that it would fall outside his or her competence to determine whether a territory or other such entity would fall within the “all States” formula. Pursuant to a general understanding adopted by the General Assembly on 14 December 1973, in discharging depositary functions relating to a treaty with the “all States” clause, the Secretary-General will follow the practice of the General Assembly and, whenever advisable, will request the opinion of the General Assembly before receiving a signature or an instrument of ratification or accession.⁵⁰

⁵⁰ See *United Nations Juridical Yearbook* (1973), United Nations publication, Sales No. E.75.V.1, part two, chap. IV, sect. A.3 (p. 79, note 9), and *United Nations Juridical Yearbook* (1974), United Nations publication, Sales No. E.76.V.1, part two, chap. VI, sect. A.9 (pp. 157–159).

241. While some treaties provide that a State may express its consent to be bound by signature alone, the Convention, like most modern multilateral treaties, provides that it is subject to ratification, acceptance or approval by the signatory State. Providing for signature subject to ratification, acceptance or approval allows the State time to seek approval for the Convention at the domestic level and to enact any legislation necessary to implement the Convention internally, prior to undertaking the legal obligations from the Convention at the international level. Upon ratification, the Convention legally binds the State.

242. Acceptance or approval of a treaty following signature has the same legal effect as ratification, and the same rules apply. Accession has the same legal effect as ratification, acceptance or approval. However, unlike ratification, acceptance or approval, which must be preceded by signature, accession requires only the deposit of an instrument of accession. Unlike some multilateral treaties, accession to the Convention is not subject to any special conditions. Accession is a means by which a State may become party to a treaty without signing the treaty.

243. The Convention uses the term “State Party” to refer to a State which has consented to be bound by the Convention and for which the Convention is in force (see remarks below on article 21). This is extended to regional economic integration organizations under article 18.

*References to preparatory work*⁵¹

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095 , para. 76
Report of the fifty-fifth session of UNCITRAL	A/77/17 , paras. 73–75

REIO clause (article 18)

Meaning of “regional economic integration organization”

244. In addition to “States”, the Convention allows participation by international organizations of a particular type, namely “regional economic integration organizations” (hereinafter “REIOs”). Article 18 acknowledges the growing importance of REIOs, which already participate in a range of trade-related treaties.

245. The Convention does not define “regional economic integration organization”. Nevertheless, article 18 encompasses two key elements: the grouping of States

⁵¹ As the date of the signing ceremony was not set at the time of adoption by the General Assembly, article 17 makes no reference to the time and place for opening the convention for signature.

in a certain region for the realization of common purposes, and the transfer of competencies relating to those common purposes from those States to the REIO. Although the notion of an REIO is a flexible one, participation in the Convention is not open to international organizations at large. Most international organizations do not have the power to enact legally binding rules, since that function typically requires the exercise of certain attributes of State sovereignty that only few organizations have received from their member States.

Extent of competence of the REIO

246. Article 18 is not concerned with the internal procedures leading to signature, ratification, acceptance, approval or accession by an REIO. The Convention itself does not require a separate act of authorization by the member States of the REIO and does not answer, in one way or the other, the question as to whether the REIO has the right to consent to be bound by the Convention if none of its member States decides to do so. For the Convention, the extent of treaty powers given to an REIO – and whether it expresses its consent to be bound by ratification, acceptance, approval or accession – is an internal matter concerning the relations between the organization and its own member States. Article 18 does not prescribe the manner in which REIOs and their member States divide competences and powers among themselves.

247. Nonetheless, paragraph 1 of article 18 provides that an REIO may only express its consent to be bound if it “has competence over certain matters governed by this Convention”. Moreover, this competence needs to be demonstrated by a declaration made to the depositary pursuant to paragraph 2 of article 18 specifying the matters governed by the Convention in respect of which competence has been transferred to the REIO by its member States. Article 18 does not provide a basis for consenting to be bound by the Convention if the REIO has no competence on the subject matter covered by the Convention.

248. The REIO does not need to have competence over all the matters governed by the Convention; such competence may be partial or concurrent with its member States. Accordingly, both an REIO and any or all of its member States may become party to the Convention. In recognition of this, paragraph 1 of article 18 provides that an instrument deposited by the REIO is not counted (in addition to those deposited by its member States) for the purposes of the entry into force of the Convention (article 21) or of any adopted amendment (article 22).

249. By expressing its consent to be bound by the Convention, an REIO becomes a party to the Convention in its own right. This is confirmed by paragraph 3 of article 18, which provides that any reference to a “State” or “State Party” in the Convention applies equally, where the context so requires, to an REIO.

Relationship between the Convention and REIO rules

250. Like other recent multilateral treaties prepared by UNCITRAL, paragraph 4 of article 18 contains a “disconnection clause” to regulate the relationship between the Convention and the rules enacted by an REIO. It is intended to cover the member States of the REIO in their mutual relations and not in their relations with other States. On its terms, it applies regardless of whether the REIO participates in the Convention following the procedures established in paragraphs 1 and 2 of article 18.

251. Paragraph 4 of article 18 acknowledges that the rules of an REIO may apply to the transmission of the notice of judicial sale from one member State to another, as well as the allocation of jurisdiction among member States in matters governed by the Convention, and provides that the Convention does not displace the operation of those rules.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095 , para. 78
Report of the fifty-fifth session of UNCITRAL	A/77/17 , paras. 76–78

Non-unified legal systems (article 19)

Mechanism for applying the Convention to territorial units

252. According to the general principle stated in article 29 of the Vienna Convention on the Law of Treaties (1969), a treaty is binding upon each party in respect of its entire territory, unless a different intention appears from the treaty or is otherwise established. Paragraph 1 of article 19 permits a State to declare that the Convention is to extend to all its territorial units or only to one or more of them. Article 20 deals with the timing of that declaration. If no declaration is made, the Convention extends to all territorial units of the State (article 19, paragraph 3).

253. This provision, which is often called the “federal clause”, is particularly relevant to States with a federal system of government under which the constituent states, provinces or other “territorial units” of the State have legislative power over matters governed by the Convention. For some federal States, while the central government retains treaty powers, it does not have the power to enact legislation necessary to implement the Convention in all or some of those territorial units. Paragraph 1 of article 19 addresses this situation by allowing the State to declare that the Convention applies only to those territorial units that have enacted legislation to

implement the Convention. Article 20 allows the declaration to be amended at any time, which acknowledges that the State may apply the Convention progressively to its constituent territorial units.

254. Article 19 is not limited to federal States, and may be used by other States with separate territorial units, including autonomous territories and overseas territories. However, as with federal States, a declaration can only be made under paragraph 1 of article 19 if “different systems of law are applicable” in those territorial units “in relation to matters dealt with in [the] Convention”. Article 19 is not designed to be used by REIOs.

Interpretation of the Convention in its application to territorial units

255. Paragraph 4 of article 19 establishes rules for interpreting certain terms in the Convention in its application to territorial units of a State Party. It applies regardless of whether the State Party has made a declaration under paragraph 1.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 79–80
Report of the fifty-fifth session of UNCITRAL	A/77/17 , paras. 68, 79

Procedure and effects of declarations (article 20)

256. Article 20, which is modelled on article 21 of the Electronic Communications Convention,⁵² establishes common rules on how declarations under the Convention are made and take effect. The Convention contemplates two types of declaration, which are provided for in paragraph 2 of article 18 (declaration by REIO on transferred competence) and paragraph 1 of article 19 (declaration by State on territorial units), respectively.

257. The second sentence of paragraph 4 of article 20 deals with the situation in which a State makes a declaration on territorial units under paragraph 2 of article 18 and modifies or withdraws the declaration less than 180 days before the Convention enters into force. For ease of administration, the Convention provides that the modification or withdrawal take effect simultaneously with the entry into force of the Convention for that State.

⁵² See note 34 above.

Reference to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fifty-fifth session of UNCITRAL	A/77/17, paras. 83–87

*Entry into force (article 21)**Entry into force generally*

258. Multilateral treaties prepared by UNCITRAL have required as few as three and as many as 10 States to express their consent to be bound in order for the treaty to enter into force. Paragraph 1 of article 21 requires three States to express their consent to be bound, which follows the modern trend in commercial law conventions and promotes the application of the Convention as early as possible in those States that seek to apply its provisions to their commerce. By virtue of paragraph 1 of article 18, the instrument of ratification, acceptance, approval or accession of an REIO is not counted. A 180-day period from the date of deposit of the third instrument of ratification, acceptance, approval or accession is provided so as to give States that become parties to the Convention sufficient time to notify all relevant authorities and other interested parties of its impending entry into force.

Entry into force for States consenting after the Convention has entered into force

259. Paragraph 2 of article 21 deals with the entry into force of the Convention for States that express their consent to be bound once the Convention has entered into force. For those States, the Convention provides for a similar 180-day period as is provided under paragraph 1 of article 21 for the third instrument of ratification, acceptance, approval or accession.

Transitional application

260. While judicial sale procedures are typically expedient, it is conceivable – albeit unlikely – that the Convention will enter into force for a State after the procedure has commenced but before completion of the sale. To avoid doubt as to the application of the Convention, paragraph 3 of article 21 provides that the Convention only applies to judicial sales that are “ordered or approved” after entry into force for the State of judicial sale. This reflects paragraph 1 (a) of article 3, which already limits the scope of application of the Convention to judicial sales that are “conducted in a State Party”, and thus in a State for which the Convention is in force (cf. article 2 (g) of the Vienna Convention on the Law of Treaties (1969)). The words “ordered or approved” refer to identifiable actions that are taken with respect to a judicial sale, as

reflected in the definition of “judicial sale”, for which the timing can be readily determined. While several provisions of the Convention refer to “conducting” a judicial sale, the operation of those provisions does not depend on pinpointing the time at which, or period during which, a judicial sale is “conducted”.

261. To address the case in which the Convention enters into force for a State after notification of a judicial sale (but before the sale is ordered or approved) – and to avoid needless challenges to the international effect of the judicial sale based on non-compliance with the notice requirements, in particular the requirement for the notice of judicial sale to be transmitted to the repository – paragraph 3 of article 11 makes provision for the repository to receive and publish notices of judicial sale emanating from a State that has consented to be bound by the Convention but before its entry into force for that State.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 76, 81–85
Report of the fifty-fifth session of UNCITRAL	A/77/17 , paras. 88–90

Amendment (article 22)

262. Article 22 establishes a mechanism for amending the Convention. Amendment provisions are common in multilateral treaties, even if they are not commonly invoked. By virtue of paragraph 1 of article 18, the instrument of ratification, acceptance, approval or accession of an REIO is not counted (in addition to those of its member States) for the purpose of entry into force of any adopted amendment. The application of adopted amendments to territorial units to which the Convention has been extended by declaration is covered by article 19.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fortieth session of Working Group VI	A/CN.9/1095 , paras. 86–88
Report of the fifty-fifth session of UNCITRAL	A/77/17 , paras. 91–92

Denunciation (article 23)

263. Paragraph 1 of article 23 allows a State Party to denounce the Convention. Denunciation releases the State from its obligation further to perform the Convention,

and thus the Convention ceases to be in force for that State. Just as paragraph 1 of article 19 allows a State to apply the Convention to a particular territorial unit, paragraph 1 of article 23 allows the State to denounce the Convention for a territorial unit.

264. Under paragraph 2 of article 23, denunciation takes effect 365 days after the notification is received by the depositary, unless a longer period is specified. The default period, which is approximately twice the period for entry into force of the Convention under article 21, is intended to give sufficient time to notify authorities and other interested parties in the denouncing State and in other States Parties of the change in the legal regime with respect to the international effect of judicial sales involving that State.

Reference to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fifty-fifth session of UNCITRAL	A/77/17 , para. 93

Annex

Table of concordance between the Convention and earlier drafts

<i>Final text</i>	<i>Draft submitted to Commission^a</i>	<i>Fifth revision of the Beijing Draft^b</i>	<i>Fourth revision of the Beijing Draft^c</i>	<i>Third revision of the Beijing Draft^d</i>	<i>Second revision of the Beijing Draft^e</i>	<i>First revision of the Beijing Draft^f</i>	<i>Beijing Draft^g</i>
Art. 1. Purpose	Art. 1	Art. 1	Art. 1	Art. 1	Art. 1	—	Art. 2
Art. 2 (a) (definition of “judicial sale”)	Art. 2 (a)	Art. 2 (a)	Art. 2 (c)	Art. 2 (c)	Art. 2 (c); see also art. 3, para. 2(a)	Art. 1 (c); see also art. 2, para. 1(a)	Art. 1 (h)
Art. 2 (b) (definition of “ship”)	Art. 2 (b)	Art. 2 (b)	Art. 2 (j)	Art. 2 (i)	Art. 2 (i)	Art. 1 (i)	Art. 1 (q)
Art. 2 (c) (definition of “clean title”)	Art. 2 (c)	Art. 2 (c)	Art. 2 (b)	Art. 2 (b)	Art. 2 (b)	Art. 1 (b)	Art. 1 (c)
Art. 2 (d) (definition of “mortgage or hypothèque”)	Art. 2 (d)	Art. 2 (d)	Art. 2 (e)	Art. 2 (e)	Art. 2 (e)	Art. 1 (e)	Art. 1 (j)
Art. 2 (e) (definition of “charge”)	Art. 2 (e)	Art. 2 (e)	Art. 2 (a)	Art. 2 (a)	Art. 2 (a)	Art. 1 (a)	Art. 1 (b)
Art. 2 (f) (definition of “registered charge”)	Art. 2 (f)	Art. 2 (f)	Art. 2 (i)	—	—	—	Art. 1 (o)
Art. 2 (g) (definition of “maritime lien”)	Art. 2 (g)	Art. 2 (g)	Art. 2 (d)	Art. 2 (d)	Art. 2 (d)	Art. 1 (d)	Art. 1 (i)
Art. 2 (h) (definition of “owner”)	Art. 2 (h)	Art. 2 (h)	Art. 2 (f)	Art. 2 (f)	Art. 2 (f)	Art. 1 (f)	Art. 1 (k)

^a A/CN.9/1108, considered by the Commission at its fifty-fifth session (A/77/17, paras. 24–99).

^b A/CN.9/WG.VI/WP.94, considered by Working Group VI at its fortieth session (A/CN.9/1095).

^c A/CN.9/WG.VI/WP.92, considered by Working Group VI at its thirty-ninth session (A/CN.9/1089).

^d A/CN.9/WG.VI/WP.90, considered by Working Group VI at its thirty-eighth session (A/CN.9/1053).

^e A/CN.9/WG.VI/WP.87, considered by Working Group VI at its thirty-seventh session (A/CN.9/1047/Rev.1).

^f A/CN.9/WG.VI/WP.84, considered by Working Group VI at its thirty-sixth session (A/CN.9/1007).

^g A/CN.9/WG.VI/WP.82, considered by Working Group VI at its thirty-fifth session (A/CN.9/973).

<i>Final text</i>	<i>Draft submitted to Commission^a</i>	<i>Fifth revision of the Beijing Draft^b</i>	<i>Fourth revision of the Beijing Draft^c</i>	<i>Third revision of the Beijing Draft^d</i>	<i>Second revision of the Beijing Draft^e</i>	<i>First revision of the Beijing Draft^f</i>	<i>Beijing Draft^g</i>
Art. 2 (i) (definition of “purchaser”)	Art. 2 (i)	Art. 2 (i)	Art. 2 (h)	Art. 2 (h)	Art. 2 (h)	Art. 1 (h)	Art. 1 (l)
Art. 2 (j) (definition of “subsequent purchaser”)	Art. 2 (j)	Art. 2 (j)	Art. 2 (l)	Art. 2 (k)	Art. 2 (k)	Art. 1 (k)	Art. 1 (u)
Art. 2 (k) (definition of “State of judicial sale”)	Art. 2 (k)	Art. 2 (k)	Art. 2 (k)	Art. 2 (j)	Art. 2 (j)	Art. 1 (j)	Art. 1 (s)
Art. 3, para. 1 (a) (geographic scope)	Art. 3, para. 1 (a)	Art. 3, para. 1 (a)	Art. 1	Art. 1; see also art. 6	Art. 1 (see also art. 6, para. 1 (chapeau))	Art. 4, para. 1 (chapeau)	— (c.f. art. 9)
Art. 3, para. 1 (b) (physical presence requirement)	Art. 3, para. 1 (b)	Art. 3, para. 1 (b)	Art. 3, para. 1 (a)	Art. 3, para. 1 (a)	Art. 3, para. 1 (a) (see also art. 6, para. 1 (a))	Art. 4, para. 1 (a)	Art. 4, para. 1 (a)
Art. 3, para. 2 (exclusion of State-owned or operated vessels)	Art. 3, para. 2	Art. 3, para. 2	Art. 3, para. 2	Art. 3, para. 2	Art. 3, para. 2 (b)	Art. 2, para. 1 (b)	—
Art. 4, para. 1 (relationship with domestic law; procedures; procedures for challenging the judicial sale)	Art. 4, para. 1	Art. 4, para. 1	Art. 4, para. 1 bis	—	—	—	—
Art. 4, para. 2 (condition for issuing certificate of judicial sale)	Art. 4, para. 2	Art. 4, para. 2	Art. 4, para. 1 (chapeau)	— (c.f. art. 6)	— (c.f. art. 6, para. 1 (b))	— (c.f. art. 4, para. 1 (b))	— (c.f. art. 4, para. 1 (b))
Art. 4, para. 3 (a) (notification of ship registry)	Art. 4, para. 3 (a)	Art. 4, para. 3 (a)	Art. 4, para. 1 (a)	Art. 4, para. 1 (a)	Art. 4, para. 1 (a)	Art. 3, para. 1 (a)	Art. 3, para. 1 (a)
Art. 4, para. 3 (b) (notification of holders of any mortgage, <i>hypothèque</i> or registered charge)	Art. 4, para. 3 (b)	Art. 4, para. 3 (b)	Art. 4, para. 1 (b)	Art. 4, para. 1 (b)	Art. 4, para. 1 (b)	Art. 3, para. 1 (b)	Art. 3, para. 1 (b)

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Art. 4, para. 3 (c) (notification of holders of any maritime lien)	Art. 4, para. 3 (c)	Art. 4, para. 3 (c)	Art. 4, para. 1 (c)	Art. 4, para. 1 (c)	Art. 4, para. 1 (c)	Art. 3, para. 1 (c)	Art. 3, para. 1 (c)
Art. 4, para. 3 (d) (notification of shipowner)	Art. 4, para. 3 (d)	Art. 4, para. 3 (d)	Art. 4, para. 1 (d)	Art. 4, para. 1 (d)	Art. 4, para. 1 (d)	Art. 3, para. 1 (d)	Art. 3, para. 1 (d)
Art. 4, para. 3 (e) (notification of bareboat charterers and bareboat charter registries)	Art. 4, para. 3 (e)	Art. 4, para. 3 (e)	Art. 4, para. 1 (e)	Art. 4, para. 1 (e) and (f)	Art. 4, para. 1 (e) and (f)	Art. 3, para. 1 (e)	Art. 3, para. 2
Art. 4, para. 4; annex I (content of notice and methods of notification)	Art. 4, para. 4; appendix I	Art. 4, para. 4; appendix I	Art. 4, para. 2; appendix I	Art. 4, para. 2; appendix I	Art. 4, para. 2; appendix I	Art. 3, paras. 2 and 3	Art. 3, paras. 3, 4 (a) and 7; see also art. 3, para. 1 (chapeau)
Art. 4, para. 5 (a) (publication of announcement in the press or other publication)	Art. 4, para. 5 (a)	Art. 4, para. 5 (a)	Art. 4, para. 3 (a)	Art. 4, para. 3 (a)	Art. 4, para. 3 (a)	Art. 3, para. 4 (a)	Art. 3, para. 4 (b)
Art. 4, para. 5 (b) (transmission of notice to repository)	Art. 4, para. 5 (b)	Art. 4, para. 5 (b)	Art. 4, para. 3 (b)	Art. 4, para. 3 (b)	Art. 4, para. 3 (b)	Art. 3, para. 4 (b)	—
Art. 4, para. 6 (language requirements when transmitting notice to repository)	Art. 4, para. 6	Art. 4, para. 6	—	—	—	—	—
Art. 4, para. 7 (reliance on registry information)	Art. 4, para. 7	Art. 4, para. 7	Art. 4, para. 4	Art. 4, para. 4	Art. 4, para. 4	Art. 3, para. 5	Art. 3, para. 6
Art. 5, para. 1 (issuance of certificate of judicial sale)	Art. 5, para. 1	Art. 5, para. 1 (chapeau)	Art. 5, para. 1 (chapeau)	Art. 5, para. 1 (chapeau)	Art. 5, para. 1 (chapeau)	Art. 5, para. 1 (chapeau)	Art. 5, para. 1 (chapeau)
Art. 5, para. 2; annex II (form and content of certificate)	Art. 5, para. 2; appendix II	Art. 5, para. 1; appendix II	Art. 5, paras. 1 and 2; appendix II	Art. 5, paras. 1 and 2; appendix II	Art. 5, paras. 1 and 2; appendix II	Art. 5, paras. 1 and 2; annex	Art. 5, paras. 1 and 2; annex

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Art. 5, para. 3 (transmission of certificate to repository)	Art. 5, para. 3	Art. 5, para. 2	Art. 5, para. 3	Art. 5, para. 3	Art. 5, para. 3	Art. 5, para. 3	—
Art. 5, para. 4 (no legalization)	Art. 5, para. 4 (see also art. 20)	Art. 5, para. 3	Art. 5, para. 4	Art. 11, para. 1	Art. 11, para. 1	Art. 11	—
Art. 5, para. 5 (evidentiary value)	Art. 5, para. 5	Art. 5, para. 4	Art. 5, para. 5	Art. 5, para. 5	Art. 5, para. 5	Art. 5, para. 5	Art. 7, para. 5
Art. 5, paras. 6 and 7 (electronic form)	Art. 5, paras. 6 and 7	Art. 5bis	Art. 5bis	Art. 11, paras. 2 and 3	Art. 11, paras. 2 and 3	—	—
Art. 6 (international effects of a judicial sale)	Art. 6	Art. 6	Art. 6	Art. 6	Art. 6, para. 1	Art. 6	Art. 7, para. 1
Art. 7, paras. 1 and 2 (actions to be taken by the registry)	Art. 7, paras. 1 and 2	Art. 7, paras. 1 and 2	Art. 7, paras. 1 and 2	Art. 7, paras. 1 and 2	Art. 7, paras. 1 and 2	Art. 7, para. 1	Art. 6, paras. 1 and 2
Art. 7, paras. 3 and 4 (translation and copy of the certificate of judicial sale)	Art. 7, paras. 3 and 4	Art. 7, paras. 3 and 4	Art. 7, paras. 3 and 4	Art. 7, paras. 3 and 4	Art. 7, paras. 3 and 4	Art. 7, paras. 3 and 4	Art. 6, paras. 3 and 4
Art. 7, para. 5 (refusal to take action)	Art. 7, para. 5	Art. 7, para. 5	Art. 7, para. 5	Art. 7, para. 5	Art. 7, para. 5	—	—
Art. 8, paras. 1 and 2 (general rule)	Art. 8, paras. 1 and 2	Art. 8, paras. 1 and 2	Art. 8, paras. 1 and 2	Art. 8, paras. 1 and 2	Art. 8, paras. 1 and 2	Art. 8, paras. 1 and 2	Art. 7, para. 2
Art. 8, para. 3 (translation of the certificate of judicial sale)	Art. 8, para. 3	Art. 8, para. 3	Art. 8, para. 3	Art. 8, para. 3	Art. 8, para. 3	Art. 8, para. 4	—
Art. 8, para. 4 (refusal to take action)	Art. 8, para. 4	Art. 8, para. 4	Art. 8, para. 4	Art. 8, para. 4	Art. 8, para. 4	—	—
Art. 9, paras. 1 and 2 (exclusive jurisdiction to avoid and suspend judicial sale)	Art. 9, paras. 1 and 2	Art. 9, paras. 1 and 2	Art. 9, paras. 1 and 2	Art. 9, paras. 1 and 2	Art. 9, paras. 1 and 2	Art. 9, paras. 1 and 2	Art. 7, para. 3

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Art. 9, para. 3 (transmission of avoidance/suspension decision to repository)	Art. 9, para. 3	—	Art. 5, para. 7	Art. 5, para. 7	—	—	—
Art. 10 (circumstances in which judicial sale has no international effect)	Art. 10	Art. 10	Art. 10	Art. 10	Art. 10	Art. 10, para. 1	Art. 8, paras. (a) and (c)
Art. 11 (repository)	Art. 11	Art. 11	Art. 11	Art. 12	Art. 12	Art. 12	—
Art. 12 (communication between authorities of States Parties)	Art. 12	Art. 12	Art. 12	Art. 13	Art. 13	Art. 13	—
Art. 13 (relationship with other international conventions)	Art. 13	Art. 13, paras. 2 and 4	Art. 13, para. 2	Art. 14, para. 2	Art. 14, para. 2	—	Art. 3, para. 5
Art. 14 (other bases for giving international effect)	Art. 14	Art. 13, paras. 1 and 3	Art. 13, para. 1	Art. 14, para. 1	Art. 14, para. 1	Art. 14	Art. 10
Art. 15, para. 1 (matters not governed by the Convention)	Art. 15, para. 1	Art. 14	Art. 14	Art. 14bis	Art. 6, para. 2	Art. 4, para. 3	Art. 4, para. 2
Art. 15, para. 2 (effects of avoidance/suspension)	Art. 15, para. 2	Art. 9, para. 5 (c.f. art. 9, paras. 3 and 4)	Art. 9, para. 5 (c.f. art. 5, para. 6 and art. 9, paras. 3 and 4)	— (c.f. art. 5, para. 6 and art. 9, paras. 3 and 4)	— (c.f. art. 5, para. 6 and art. 9, paras. 3 and 4)	— (c.f. art. 10, paras. 2 and 3)	— (c.f. art. 8, para. (b))
Art. 16 (depository)	Art. 16	Art. 15	Art. 15	Art. 15	—	—	—
Art. 17 (consenting to be bound)	Art. 17	Art. 16	Art. 16	Art. 16	—	—	—
Art. 18 (REIO clause)	Art. 18	Art. 17	Art. 17	Art. 17	—	—	—
Art. 19 (non-unified legal systems)	Art. 19	Art. 18	Art. 18	Art. 18	—	—	—

<i>Final text</i>	<i>Draft submitted to Commission^a</i>	<i>Fifth revision of the Beijing Draft^b</i>	<i>Fourth revision of the Beijing Draft^c</i>	<i>Third revision of the Beijing Draft^d</i>	<i>Second revision of the Beijing Draft^e</i>	<i>First revision of the Beijing Draft^f</i>	<i>Beijing Draft^g</i>
Art. 20 (procedure and effects of declarations)	Art. 21	—	—	—	—	—	—
Art. 21 (entry into force)	Art. 22	Art. 19	Art. 19	Art. 19	—	—	—
Art. 22 (amendment)	Art. 23	Art. 20	Art. 20	Art. 20	—	—	—
Art. 23 (denunciation)	Art. 24	Art. 21	Art. 21	Art. 21	—	—	—

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