

**REPORT OF THE INTERNATIONAL WORKING GROUP
ON THE PREPARATION OF THE PROPOSED DRAFT INTERNATIONAL
CONVENTION ON RECOGNITION OF FOREIGN JUDICIAL SALES OF SHIPS**

FOR CONSIDERATION BY THE DELEGATES TO THE CMI CONFERENCE: HAMBURG 2014

TABLE OF CONTENTS

- 1 Introduction
- 2 Background
- 3 The CMI Questionnaire
- 4 The First Draft Instrument
- 5 The Second Draft Instrument
- 6 The Beijing Draft
- 7 The Revised Beijing Draft
- 8 Conclusion

The following documents are attached to this report.

- A The CMI Questionnaire
- B The First Draft Instrument and its Commentary
- C The Second Draft Instrument and its Commentary
- D The Beijing Draft and its Commentary
- E The Revised Beijing Draft and its Commentary
- F The Report by the IWG on the Proceedings of the CMI ISC Meeting in Dublin

1 Introduction

In May 2007, at a meeting of the CMI Executive Council (“EXCO”) in Dubrovnik, while discussing the topics for the CMI Athens Conference in 2008, it was proposed that

a preliminary study on the issues in relation to judicial sales of ships might be worthy to be conducted for the purpose of exploring future possible topics/projects for the CMI and it may be an interesting topic for the Athens Conference. Later, it was decided by EXCO that the topic “judicial sales of ships” would be included in the substantive program of the Athens Conference and that the discussion papers would be prepared by Henry Hai Li and Benoit Goemans.

In October 2008, during the Athens Conference, there was a one hour session on judicial sales of ships, at which a paper entitled “A Brief Discussion on Judicial Sales of Ships” was presented by Henry Hai Li, and a short speech on the issues in relation to sales of ships was delivered by Benoit Goemans. During the floor discussion, interest in this subject was expressed by a number of delegates and proposals were put forward to the effect that the CMI should do something further on this subject. In addition, quite a few delegates showed their interest to participate in the CMI’s future work on this subject. After the Athens Conference, it was decided by EXCO to establish an international working group on judicial sales of ships (“IWG”) to investigate the problems in relation to judicial sales of ships, in particular, (i) issues in respect of international recognition of foreign judicial sales of ships, and (ii) the necessity and feasibility of producing an international instrument on this subject. The members of the IWG are Henry Hai Li (China), Jonathan Lux (UK), Andrew Robinson (South Africa), Frank Smeele (the Netherlands), Luis Mbanefo (Nigeria), Benoit Goemans (Belgium), Klaus Ramming (Germany), Aurelio Fernandez (Venezuela), Francis Nolan (USA), William Sharpe (Canada) and Lawrence Teh (Singapore).

In May 2009, the IWG started work by conducting research into the relevant laws and practices in various jurisdictions, and with collecting, summarising and analysing information and/or materials concerning cases in a number of jurisdictions in relation to recognition of foreign judicial sales of ships, so as to identify the issues to be covered by the future questionnaire.

In September 2009, while attending the Signing Ceremony of the Rotterdam Rules, the IWG met in Rotterdam and discussed the issues to be covered by the future questionnaire. After several months hard work, a draft questionnaire was submitted by the IWG to EXCO for comments and/or approval and for circulation among the national maritime law associations (“NMLAs”).

In May 2010, after necessary amendment by the IWG, in accordance with the comments and proposals of EXCO, the finalised CMI Questionnaire in respect of Recognition of Foreign Judicial Sales of Ships (“CMI Questionnaire”) was circulated to the NMLAs for comments and answers. Twenty three replies to the CMI Questionnaire were received from the NMLAs or the CMI Titulary Members. During the CMI Colloquium at Buenos Aires in October 2010, there was a half day session on judicial sales of ships, discussing in detail the five groups of questions contained in the CMI Questionnaire and the twenty three replies received before the Colloquium .

After the Buenos Aires Colloquium, EXCO approved the IWG’s report and granted a mandate to the IWG to continue its work, in particular, to prepare a draft instrument laying down the standard or basic requirements for the recognition of foreign judicial sales of ships, taking the structure and logic of the 1958 New York Convention on Recognition of Foreign Arbitral Awards as the model.

With the mandate given by EXCO, the IWG spent several months in drafting, discussing, revising and finalising the document entitled “Draft Instrument on the Recognition of Foreign Judicial Sales of Ships” (the “First Draft”), which was circulated to the NMLAs by the CMI President on 8 August 2011.

In September 2011, an international sub-committee (“ISC”) meeting was convened in Oslo, and the basic principles, the structure and the proposed articles of the First Draft were discussed in detail. The discussion at the meeting was very successful and productive. The IWG was requested to further consider the written comments from the

NMLAs and the CMI Titulary Members, and to revise and improve the First Draft in accordance with the decisions and consensus at the ISC meeting in Oslo.

In May 2012, the CMI President by his letter dated 2 May 2012 circulated the Second Draft and its Commentary produced by the IWG to the NMLAs for their comments and proposals. In the letter, the President requested that comments and proposals on the Second Draft should be sent back to the IWG by 31 July 2012, so as to give the IWG necessary and sufficient time to consider and analyse the replies from the NMLAs and to make preparation for the work scheduled to be done at the CMI Conference in Beijing.

In October 2012, during the CMI Beijing Conference the delegates spent some three days discussing the Second Draft article by article. Before the concluding day, the IWG, in the light of the comments and consensus achieved during the discussions, produced a document entitled “A Proposed Draft International Convention on Recognition of the Foreign Judicial Sales of Ships”, known as the “Beijing Draft”, which was presented to the delegates attending the last session of the ISC Meeting in Beijing for voting and adoption. Because several NMLAs’ delegates wished an opportunity to make comments and a number of delegates indicated that they did not have the necessary mandate from their respective associations to vote on the newly produced document, it was later decided that a commentary on the Beijing Draft should be produced by the IWG after the Conference for circulation with the Beijing Draft to the NMLAs for further consideration and comments.

In March 2013, the CMI President by his letter dated 25 March 2013 circulated the Beijing Draft and its Commentary to the NMLAs. It was expected that comments on the Beijing Draft would be provided to the IWG by the end of July 2013 so that there be necessary time for the IWG to consider the comments and make preparation for the ISC Meeting to be convened in Dublin.

The ISC Meeting was convened in Dublin as scheduled on 28 and 29 September 2013.

Twelve written submissions by the NMLAs (many were received just prior to the commencement of the ISC Meeting) were presented at the Meeting and discussions on related issues followed. At the end of the meeting, it was agreed, among other things, that the IWG would endeavor to prepare a Final Report on this project, which would include a final wording of the proposed draft convention and a suitable commentary, and that the final draft would be discussed and voted at the next CMI Conference in Hamburg in 2014.

2 Background

Vessels are arrested from time to time for one reason or another in different jurisdictions. And, some of them are sold by way of judicial sale either for enforcement of judgment or arbitral award or for preservation of maritime claims without a final and enforceable judgment or arbitral award. It is a fact that a number of problems, in particular the recognition of judicial sales of ships by a foreign court, have been encountered by the international shipping industry, thus solutions to these problems need to be explored and adopted.

Based on the belief that “[I]n view of the forced sale being the normal manner whereby mortgages and hypothecs as well as maritime liens are enforced, provisions on forced sale of ships found a proper place in a convention on maritime liens and mortgages,”¹ provisions on “notice of forced sale” and “effects of forced sale” are included in both the 1967 and the 1993 Conventions on Maritime Liens and Mortgage. Unfortunately, neither of them has been widely accepted. On the other hand, judicial sale of a ship is not only the normal manner for enforcement of maritime liens and mortgages or hypothecs on ships, but also can be adopted for enforcement of a wide range of other types of claims not covered by these Conventions, such as those for cargo damage and unpaid supplies. In addition, it should be emphasised that the subject covering the issues

¹ See UN ESCAP, Guide-lines for Maritime Legislations, p. 262.

in relation to judicial sales of ships is a rather comprehensive one, which means that apart from the issues in respect of the notice and the effects of judicial sales, a number of other issues are also necessary to be dealt with by an international convention. In other words, it is desirable to have a particular international convention to set forth those principles or rules which should be followed by the maritime countries in which a judicial sale of a ship is effected or to be recognised. Having realised the potential necessity and feasibility, the CMI launched this project in relation to judicial sales of ships, being the first attempt by the CMI to unify the rules in this area of maritime law.

3 The CMI Questionnaire

Following the CMI's tradition, the IWG started its work by preparation of a questionnaire to be circulated to the NMLAs for answers and comments. It was envisaged that the questionnaire would help the IWG to carry out its investigation of the problems in relation to judicial sales of ships, in particular, (i) issues in respect of international recognition of foreign judicial sales of ships; and (ii) the necessity and feasibility of producing an international instrument on this subject.

After the establishment of the IWG, the members of the IWG spent considerable time in collecting, summarising and analysing the information and materials concerning cases in a number of jurisdictions in relation to recognition of foreign judicial sales of ships. After discussions within the IWG, a draft questionnaire on judicial sales of ships was formulated and submitted on 5 May 2010 to EXCO for comments and approval. EXCO proposed a number of changes or revisions on the contents of the draft questionnaire. For example, Mr. Giorgio Berlingieri made a very lengthy and constructive proposal on the draft questionnaire, and Mr. Andrew Taylor reworded some of the text to make the questionnaire much clearer in the English language. The thirty questions contained in the final questionnaire are divided into five groups. And, each of the five groups has a heading that indicates the core issue of the questions of that group. The headings of the five groups are respectively as follows:

1. The concept of judicial sales of ships
2. The key procedural elements of judicial sales of ships
3. The effects of judicial sales of ships
4. Recognition of legal effects of foreign judicial sales of ships
5. The necessity and feasibility to have an international instrument on recognition of foreign judicial sales of ships

For more details of the questionnaire, please see the attached CMI Questionnaire. It is perhaps worth mentioning that while preparing the questionnaire, the following points were noted by the IWG, namely

- (1) Being aware of the fact that in many jurisdictions judicial sale is termed differently, such as forced sale or court sale, etc. and that judicial sales of ships may be initiated or conducted for various purposes, such as to enforce a maritime lien or mortgage on a ship, to enforce an effective judgment or arbitral award, or to preserve a maritime claim where the ship is a wasting asset, it was expected that the answers to the questions contained in the first group would help the IWG to produce a proper definition of judicial sales of ships for the purpose of this project and/or for the future international instrument.
- (2) With regard to the procedure, it was observed that judicial sales of ships may be conducted in different kinds of actions and the relevant procedures may vary from country to country. The second group of questions was thus designed to gather as much information as possible about the most common elements or the basic characteristics of the procedures for judicial sales of ships, so as to help the IWG to determine the necessary procedural elements that a judicial sale of a ship should have for international recognition.
- (3) As the legal effects or consequences that a judicial sale of a ship may bring about may not be the same in different jurisdictions, the questions in the third group were prepared to identify the most common legal effects or consequences that a judicial sale of a ship may bring about in different jurisdictions.
- (4) As a judicial sale of a ship accomplished in one country may or may not be

recognised in another country for one reason or another, it was hoped that the answers to the fourth group of questions would help the IWG to have a better understanding of the real picture and the prevailing practices in different countries with respect to recognition of foreign judicial sales of ships.

- (5) Bearing in mind that the International Convention on Maritime Liens and Mortgages 1993 has come into force and that provisions concerning notice and the effects of forced sale are contained therein, the IWG believed it would be sensible to request the views from the NMLAs with regard to the necessity and feasibility of having a separate international instrument, such as a convention, to deal with the issues concerning recognition of foreign judicial sales of ships. This is the core issue covered by the last group of questions in the CMI Questionnaire.

As mentioned above, the CMI Questionnaire was sent to the NMLAs on 17 May 2010 and replies were to be sent to the CMI by the end of July 2010, so as to ensure that the IWG may have sufficient time to summarise and analyse the replies and to make necessary preparation for the discussion at the CMI Colloquium in Buenos Aires. Replies to the Questionnaire were received well before the Colloquium from 18 NMLAs, including the NMLAs of Argentina, Belgium, Brazil, Canada, China, Denmark, Dominica, France, Germany, Italy, Malta, Nigeria, Norway, Singapore, South Africa, Sweden, USA, and Venezuela. In addition, a reply to the Questionnaire was also received from a CMI Titulary member in Spain² and, before the Colloquium, four additional replies were received from the NMLAs of Japan, Slovenia, Croatia and Australia and New Zealand. The IWG wishes to thank those who have made the efforts and contributions in replying to the CMI Questionnaire.

At the CMI Colloquium in Buenos Aires, there was a half day session on judicial sales of ships. The session was chaired by Henry Hai Li and Jonathan Lux, and the session started with the presentations of five papers prepared by five members of the IWG, each

² This titulary member is Prof. José Maria Alcantara.

dealing with one of the five groups of questions contained in the CMI Questionnaire. Mr. Aurelio Fernández-Concheso dealt with the first group of questions, Mr. Benoit Goemans with the second group, Mr. Louis Mbanefo with the third group, Mr. Frank Smeele with the fourth group, and Mr. Andrew Robinson with the fifth group. After the presentation of the five papers, floor discussion followed, and many constructive comments and proposals were received from the delegates attending the session. The contributions of the delegates were very helpful to the IWG in preparing its report to be submitted to EXCO after the Colloquium.

It was reported by the IWG to EXCO that the members of the IWG reached agreement on the following views

- that issues with respect to the recognition of the judicial sale arise;
- that as far as the procedures are concerned in a number of countries there is a fair amount of uniformity on the main points;
- that the specific question of the duty to delete the registration after a judicial sale also needs attention in particular;
- that approximately half of the national MLAs which have responded to the Questionnaire see the need for an instrument;
- that the other half feel no immediate need, partly because the matter has already been dealt with in the 1993 Convention on Maritime Liens and Mortgages; however, the IWG considered that the 1993 Convention was not successful as it contains controversial provisions which do not solve the problems of the recognition of foreign judicial sales, and the wording with respect to recognition is more of the nature of denying recognition, rather than granting recognition of the Judicial Sale;
- that while issues arise with respect to the Judicial Sale, there is less controversy as to the need for recognising foreign judicial sales, and it is considered unlikely to face serious opposition of an international

instrument identifies the standard or basic requirements for the recognition of foreign judicial sales of ships;

- that the IWG on the Recognition of Judicial Sale of Ships should continue its work aiming to produce a preliminary draft international instrument, taking the structure and the logic of the 1958 New York Convention on Recognition of Foreign Arbitral Awards as the model;
- that such preliminary draft should be submitted to EXCO for approval and then to be circulated to NMLAs to seek comments;
- that the preliminary draft should be finalised at the CMI Conference in Beijing in 2012, and for that purpose a full-day session on this topic would be needed; and
- that the finalised draft instrument should proceed in the traditional CMI way, or through any other way EXCO may consider appropriate, to become a convention.

In addition, it was also stated in the report that, based upon the summary and analysis of the twenty three replies to the CMI Questionnaire then received, the discussion at the Colloquium, and the views expressed by the members of the IWG at its meeting, the IWG asked for a mandate from EXCO for the IWG to continue its work along the lines outlined by the above views expressed by the members of the IWG at its meeting.

4 The First Draft Instrument

In December 2012, the President of the CMI informed the Chairman of the IWG that the CMI EXCO had granted a mandate to the IWG to continue its work (“Mandate”). In the Mandate among other things the following points were made clear:-

- (i) The IWG should continue its work to prepare a preliminary draft of an international instrument laying down the standard or basic requirements for the recognition of foreign judicial sales of ships, taking the structure and the logic of the 1958 New York Convention on Recognition of Foreign Arbitral Awards as the model;

- (ii) The draft should be sent to all NMLAs with a request to appoint delegates to an International Sub-Committee (the “ISC”);
- (iii) There should be a meeting of the ISC chaired by Henry Li and with Jonathan Lux as Rapporteur in order to consider the draft;
- (iv) The IWG should circulate the revised draft to all NMLAs together with a report of the ISC meeting;
- (v) There may be subsequent meetings and subsequent drafts as the circumstances require, the first meeting being “physical” whereas subsequent meetings may, to the extent practical, be virtual, the ISC being encouraged to consider the appointment of a small drafting group with instructions to amend the original draft on the basis of the discussions in the ISC.

Upon receipt of the Mandate, the IWG immediately resumed its work by starting preparation of the preliminary draft instrument in accordance with the requirements contained in the Mandate. With several months hard work, two preliminary drafts were prepared and circulated in June 2011 among the members of the IWG for internal comments and discussion . After analysis and consideration of the comments and proposals by the members of the IWG, a first draft instrument together with a commentary on the draft were produced by the IWG. The first draft instrument is entitled “Instrument on the Recognition of Foreign Judicial Sales of Ships” and contains nine articles with the following headings:-

- Article 1 Definitions
- Article 2 Scope of Application
- Article 3 Notice of Judicial Sale
- Article 4 Effect of Judicial Sale
- Article 5 Issuance of a Certificate of Judicial Sale
- Article 6 Deregistration and Registration of the Ship
- Article 7 Recognition of Judicial Sale
- Article 8 Circumstances in which Recognition may be Refused
- Article 9 Restricted Recognition

For more details of the first draft instrument, please see the attached First Draft Instrument.

The First Draft Instrument and the Commentary were submitted by the IWG on 2 August 2011 to the President of the CMI for approval and circulation to the NMLAs for comments. At the same time, these documents were also circulated among the IWG members for consideration and preparation of the discussion at the future ISC meeting.

On 8 August 2011 the President of the CMI circulated the first draft instrument and its commentary to the NMLAs and the CMI Titulary Members for comments and proposals. The NMLAs were also requested to nominate their delegates to attend the first ISC meeting which took place on 27 September 2011 at the offices of the Norwegian Shipowners' Association, in Oslo.

Before the ISC meeting, comments and proposals on the first draft instrument were received from six NMLAs, viz the NMLAs of Dominica, Italy, Germany, Brazil, Croatia and China, and three Titulary Members, namely Prof. Francesco Berlingieri (Italy), Mr. Jose Maria Alcantara (Spain), and Mr. Michael Marks Cohen (USA). Nominations of delegates to attend the Oslo ISC meeting were also received from a number of NMLAs, including the NMLAs of Italy, Brazil, China, Germany and Japan.

The first ISC meeting in Oslo on the afternoon of 27 September 2011 was chaired by Henry Hai Li and Jonathan Lux as the Rapporteur. More than twenty delegates representing fifteen NMLAs (including the NMLAs of Australia and New Zealand, Belgium, Brazil, Canada, China, Croatia, Germany, Italy, Japan, Malta, the Netherlands, Norway, Singapore, UK, and USA) attended the meeting. The written comments and proposals received before the meeting were presented and discussed. Further discussions were focused on the basic principles, the structure and the necessary articles that the draft instrument should follow or contain with a view to improve the first draft. In addition, provisions of the articles of the first draft were also discussed in detail at the meeting. The meeting was very successful and productive with significant progress being made. During the discussion at the meeting, consensus was achieved on a number of important issues including the following points:-

1. For the purpose of facilitating efficient recognition by a State Party of a foreign judicial sale of a ship, certain minimal necessary requirements for conducting Judicial Sales should be laid down in the Instrument;

2. Certain basic effects of Judicial Sales of Ships to be recognised by the State Party should be provided for in the Instrument;
3. Necessary and sufficient protection should be provided to purchasers of ships by way of Judicial Sale so as to ensure that Judicial Sales of Ships may be maintained as an effective means of enforcement of maritime claims and enforcement of judgments or arbitral awards or other enforceable instruments against the owners of ships;
4. Effects of Judicial Sales of Ships, as provided for by the Instrument, should be recognised by all State Parties unless the existence of one of the circumstances provided for by the Instrument, in which recognition may be refused, is proved by an Interested Person, as defined by the Instrument, furnishing valid evidence;
5. As a general rule, once a ship is sold by way of Judicial Sale, the ship shall not be subject to arrest for any claim arising prior to its Judicial Sale;
6. Actions, if any, challenging a Judicial Sale should be allowed to be made by an Interested Person, as defined by the Instrument, only before a competent court as provided for by the Instrument;
7. Since the most convenient forum for assessing whether or not a Judicial Sale is regular or effective should be the court of the State in which the sale took place, therefore it should be accepted that the competent court under the Instrument as having jurisdiction over actions challenging Judicial Sales should be a court of the State in which the Judicial Sale took place, including the court that conducted the sale or its court of appeal. The matter should be decided by the law of the State in which the Judicial Sale took place;
8. Conflicts with other international conventions, in particular the Maritime Liens & Mortgages Conventions of 1926/1967/1993 and the Arrest Conventions of 1952/1999, should be avoided.

It was also decided at the meeting that the IWG should be responsible for the preparation and drafting of a second draft instrument for further discussion at a future ISC meeting.

5 The Second Draft Instrument

Bearing in mind the consensus achieved at the Oslo ISC meeting, the IWG spent some seven months in producing the second draft instrument. For details of the Second Draft, please refer to the attached “Instrument on Recognition of Foreign Judicial Sales of Ships (Second Working Draft)”. For the detailed reasoning leading to the revisions and/or amendments, please see the attached Commentary on the Second Draft Instrument, in particular, the Specific Comments.

The President of the CMI by his letter dated 2 May 2012 circulated the Second Draft and its Commentary to the NMLAs for comments and proposals. In the letter, the NMLAs were invited to provide their comments and proposals on the Second Draft Instrument at latest by 31 July, so as to give the IWG the necessary time to consider and analyse the replies and prepare a third draft instrument for consideration during the sessions devoted to this subject at the CMI 2012 Beijing Conference and, hopefully, adoption by the Plenary on the last day of the Conference.

By 31 July 2012, the IWG had received written submissions containing comments and proposals on the Second Draft Instrument from only three NMLAs, although more written submissions were received from other NMLAs in the following months before the Beijing Conference. The IWG wishes to take this opportunity to express its sincere thanks to the NMLAs which provided their written submissions on the Second Draft Instrument to the IWG, including the NMLAs of Britain, China, Croatia, Dominica, France, Ireland, Japan, Malta, Norway, and USA. Due to the limited time, the IWG endeavored to complete a summary and analysis of the written submissions received but

had no time to produce a third draft instrument before the Beijing Conference, as previously planned.

6 The Beijing Draft

The program of the Beijing Conference allowed more than three days for discussion of judicial sales of ships. The sessions were chaired by Henry Hai Li, and Jonathan Lux together with Andrew Robinson, as Rapporteurs. In addition, many of the IWG members attended the meetings and actively participated in the presentation, discussion, deliberation and drafting work, including Frank Smeele (the Netherlands), William Sharpe (Canada), Francis Nolan (USA), Louis Mbanefo (Nigeria), Lawrence Teh (Singapore), and Benoit Goemans (Belgium). The sessions were well attended by the delegates representing more than 40 NMLAs.

The first session on judicial sales of ships was opened by Henry Hai Li immediately after the Opening Ceremony of the Beijing Conference on the morning of 15 October with introductory speeches delivered by six speakers. The first two speakers, Jan-Erik Pötschke from Germany and Lawrence Teh from Singapore, briefly introduced the law and practice in relation to judicial sales of ships in the civil law and the common law jurisdictions respectively. The second two speakers, William Sharpe from Canada and Frank Smeele from the Netherlands, addressed the issue of policy considerations, which should be taken into account when preparing an international instrument on this subject, one from a common law perspective and the other from a civil law perspective. The fifth speaker, James Zhengliang Hu from China, introduced briefly the law and practice in relation to judicial sales of ships in China, the venue of the Conference. The last but not the least speaker, Andrew Robinson, on behalf of the IWG, presented a Summary and Concise Analysis of the written comments and proposals on the Second Draft received from the NMLAs before the Conference. With these introductory speeches, the delegates were provided with a full picture of the background to this subject and acquired a better understanding of the importance of the work in relation to this project.

Over the ensuing sessions, Henry Li, Jonathan Lux and Andrew Robinson led an article by article discussion and deliberation of the Second Draft from the beginning to the end. Constructive comments were received from a number of representatives of the attending NMLAs, including the NMLAs of Argentina, Australia and New Zealand, Belgium, Canada, China, Croatia, Denmark, France, Germany, Greece, Ireland, Italy, Japan, Malta, the Netherlands, Nigeria, Norway, Russia, Singapore, South Africa, South Korea, Spain, Switzerland, Turkey, UK, and USA. During the discussion, a number of proposals and amendments to the Second Draft were supported by the majority views. These included that a preamble be added to the draft summarising the guiding principles and considerations of the drafters as an aid to the uniform interpretation of the draft or the future convention.

In the afternoon of 18 October, the members of the IWG, including Henry Hai Li, Jonathan Lux, Andrew Robinson, Frank Smeele, William Sharpe, Lawrence Teh, Francis Nolan, Louis N. Mbanefo, and Benoit Goemans, met to consider and discuss the comments received at the sessions during the Conference, and those written comments received prior to the Conference, with the aim to produce a new draft of the instrument for voting and adoption at the session on the next morning before the Conference Plenary Session, which was scheduled to start immediately after. The IWG worked very hard until late at night and successfully produced a document entitled “A Proposed Draft International Convention on Recognition of Foreign Judicial Sales of Ships” (known as the “Beijing Draft”), taking into account the consensus expressed on the amendments to the Second Draft.

The Beijing Draft was presented to the delegates of the attending NMLAs for voting and adoption at the morning session on 19 October. Several NMLAs’ delegates wished an opportunity to make further comments and a number of NMLAs’ delegates indicated that they did not have the necessary mandate from their respective associations to vote on the newly produced document. Under such circumstances, the IWG, after a short

private meeting, proposed to the delegates that a report on the sessions on Judicial Sales of Ships be presented to the Plenary Session of the Conference. The proposed short report by the IWG was approved by the delegates of the attending NMLAs as presented.

Accordingly, the following report was presented by Jonathan Lux on behalf of the IWG to the Plenary Session of the Conference:

“The Sessions on Judicial Sales of Ships

The Second Draft Instrument prepared by the IWG was carefully reviewed and commented on over three days. The IWG prepared a new version, after consideration of deliberations, known as the Beijing Draft. The IWG presented the Beijing Draft to the attending NMLAs on Friday 19 October and it was agreed, without objection, that:

1. The Beijing Draft is a substantially improved document.
2. The IWG will circulate a Commentary on the Beijing Draft to all NMLAs within the next six weeks.
3. Any NMLAs wishing to make written comments shall do so within three months after receiving the Commentary.
4. The IWG will prepare a Final Beijing Draft instrument to be circulated before the next CMI Assembly and to be voted on as presented by the IWG.”

Save that it was agreed with the support of the majority at the Plenary Session to substitute the word “convention” for the word “instrument” in paragraph 4, and that the stated aim was to attempt to finalise rather than necessarily finalise the “Beijing Draft” in Dublin in 2013, the report was otherwise approved.

For details of the Beijing Draft and the detailed reasoning leading to the revision and/or amendments, please see the attached Beijing Draft and the Commentary.

7 The Revised Beijing Draft

After the Beijing Conference, the IWG produced the commentary on the Beijing Draft

and submitted the same to the CMI. The CMI President by his letter dated 25 March 2013 circulated the Beijing Draft and its Commentary to the NMLAs. It was hoped that comments and proposals on the Beijing Draft would be provided to the IWG by the end of July 2013 so that there would be necessary time for the IWG to consider the comments and produce a Final Beijing Draft to be circulated before the next ISC meeting for discussion, approval, and further submission to the CMI Assembly for voting.

By the end of July 2013, however the IWG had received written comments and proposals on the Beijing Draft from only three NMLAs. After discussion, the IWG concluded that it was not appropriate to produce a revised Beijing Draft solely on the basis of the three submissions. More submissions by another two NMLAs were received in August and by a further seven NMLAs in September before the ISC meeting in Dublin.

The ISC Meeting on judicial sales of ships was held in Dublin as scheduled on 28 and 29 September 2013. The meeting was chaired by Henry Hai Li and Andrew Robinson as Rapporteur, and many members of the IWG attended the meeting and actively participated in the discussion, deliberation and drafting work, including William Sharpe, Frank Smeele, Francis Nolan, Louis N. Mbanefo, Lawrence Teh, and Benoit Goemans. The meeting was attended by more than thirty delegates representing twenty four NMLAs, including the NMLAs of Belgium, Brazil, Canada, China, Croatia, Germany, Greece, Ireland, Italy, Japan, Latvia, Malta, the Netherlands, Nigeria, Singapore, South Africa, South Korea, Spain, Switzerland, Turkey, UK and USA.

At the meeting, the written submissions by the twelve NMLAs were presented, and discussion and deliberation on the issues raised both in those written submissions and from the floor were pursued. Notwithstanding the vigorous debate, consensus was reached on a number of issues at the meeting. The IWG prepared a detailed report on the main concerns and outlined the possible changes that would be made to the Beijing

Draft. This report was delivered on behalf of the IWG by Andrew Robinson at the final meeting of the Symposium, and a copy of which is attached.

At the end of the ISC meeting, it was also agreed among other things that the IWG would endeavor to prepare an overall report on this project, which will include a final wording of the proposed draft convention and a suitable commentary, and that the final draft will be discussed and voted at the next CMI Conference in Hamburg in 2014.

Shortly after the Dublin Symposium a revised draft of the Beijing Draft prepared by Andrew Robinson was circulated amongst the IWG members. Later, the draft commentary prepared by Frank Smeele was also circulated amongst the IWG members. With a few weeks hard work, the IWG completed the final text of the proposed draft convention and the commentary. The IWG would like to express its gratitude to Mr. Måns Jacobsson for his valuable advice and proposals on the revised Beijing Draft from a treaty law perspective both of substance and of treaty style. In addition, the IWG is grateful to Prof. John Hare for his “professor proof-correcting” the draft of this Report. For details of the final text of the proposed draft convention and the commentary, please see the attached revised Beijing Draft and its Commentary.

8 Conclusion

Since 2007 the subject of judicial sales of ships has been maintained as “work in progress” of the CMI, during which the IWG has produced a number of documents, including the CMI Questionnaire, the First Draft Instrument and its Commentary, the Second Draft Instrument and its Commentary, the Beijing Draft and its Commentary, the revised Beijing Draft and its Commentary. It is worth mentioning that the revised Beijing Draft has gone through full discussion and deliberation of three face to face ISC meetings (including a three-day discussion during the Beijing Conference and a two-day discussion in Dublin). It is believed that the revised Beijing Draft is the best reflection of the NMLAs consensus the IWG can produce under current circumstances and with the

resources currently available. It is thus hoped that the revised Beijing Draft, which is attached to this Report, may be accepted at the CMI Conference in Hamburg and that further appropriate actions may be taken by the CMI to promote the revised Beijing Draft to become an international convention.

It should be borne in mind the CMI is not an inter-governmental organisation and is not in a position nor does it have the capacity to adopt an international convention on its own. In other words, before any draft international convention or instrument produced by the CMI can become an international convention, the CMI draft will have to be promoted by an appropriate inter-governmental or international organisation, such as the IMO, UNCITRAL, UNCTAD, or UNIDROIT; or by a country which can be persuaded to convene a diplomatic conference. This means that there could yet be a long road to travel before the revised Beijing Draft becomes an international convention, and it is almost certain that there would be changes when the CMI's draft is taken to a diplomatic conference. Nevertheless, it is suggested that the CMI process over a number of years culminating in the adoption of the final text of a draft convention at the CMI Assembly in Hamburg in June 2014 reflects the needs and wants of the international shipping law community. After considerable groundwork and broad consultation, it is now to be hoped that an appropriate international organisation or a persuaded country will indeed take up the challenge and, with CMI support, promote a new convention that will provide conformity in the law and practice of all states in relation to the judicial sales of ships.

1 February 2014