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## **Compilation of comments on the draft convention on the international effects of judicial sales of ships**

### **Addendum 1**

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## I. Governments (*continued*)

### M. Canada (further comments)<sup>1</sup>

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Canada does not support the addition of Article 20 for the reasons set out below.

Why is article 20, which allows the application of the Hague 1961 *Convention Abolishing the Requirement of Legalisation for Foreign Public Documents* (1961 Convention), the treaty under which apostilles are issued, suggested? According to the report of the fortieth session of Working Group VI, it seems to be in response to concerns expressed by a few States that their registry officials may be unwilling to take action on foreign certificates of judicial sales without assurances of their authenticity.<sup>2</sup> Article 5(4) of the draft Convention clearly exempts certificates of judicial sales from legalization or similar requirements (e.g. the apostille), and this should be the rule. Any suggestion that registry officials would disregard this article and request apostilles for the purpose of confirming the authenticity of the certificates runs contrary to the spirit of the draft Convention and should not be entertained. At any rate, the addition of an apostille to a certificate of judicial sale would not lead to the desired result: an apostille does not provide any assurance as to the authenticity of a document nor certify its content.<sup>3</sup> Apostilles have only the limited effect of certifying the authenticity of the signature and the capacity of the person who signed the public document in question and, if applicable, the identity of the seal or stamp on the document.<sup>4</sup> The addition of an apostille to a certificate of judicial sale could in fact have the undesirable effect of giving credence to a fraudulent certificate of judicial sale.

In our view, the draft UNCITRAL Convention provides an adequate safeguard to help enable registrars and competent authorities to satisfy themselves of the authenticity of the certificates of judicial sales they may receive (articles 5(2), 11(2)). As explained in the draft explanatory note on the Convention on the international effects of judicial sales of ships, “if the authority has doubts about the authenticity of the document produced, it can [...] compare the certificate with the certificate published by the repository.”<sup>5</sup>

Registrars and other competent authorities can rely on certificates of judicial sales published by the repository. This is the case because only authorized account users may submit information to the Global Integrated Shipping Information System (GISIS) (the eventual repository).<sup>6</sup> The web account administrator designated by each International Maritime Organization (IMO) member State is responsible for creating and maintaining IMO Web Accounts for all authorized users.<sup>7</sup> It is reasonable to expect that certificates of judicial sales submitted to GISIS via such authorized users of accounts created by member States will be authentic.

Furthermore, not only does the 1961 Convention not give the desired result of authenticating certificates of judicial sales, its inclusion in the draft UNICTRAL Convention is not consistent with the general trend in modern conventions to exempt public documents from legalisation and similar requirements such as the apostille

<sup>1</sup> Editorial note: these comments supplement the comments of Canada on article 20 that are set out in [A/CN.9/1109/Add.1](#).

<sup>2</sup> [A/CN.9/1095](#), para. 91.

<sup>3</sup> *Apostille Handbook: A Handbook on the Practical Operation of the Apostille Convention* (2013), pp. 9–10.

<sup>4</sup> *Ibid.*

<sup>5</sup> [A/CN.9/1110/Add.1](#), para. 59.

<sup>6</sup> [A/CN.9/1089](#), para. 86; IMO Circular letter No.2892 and Annex – Administration Manual: IMO Web Accounts.

<sup>7</sup> *Ibid.*

(e.g. article 41 of the Hague 2007 *Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*).

In addition, permitting States to require an apostille would lead to different treatment among States party to the Judicial Sales of Ships Convention. This is the case because certificates of judicial sales from States also party to the 1961 Convention would be subject to apostille requirements whereas certificates from other States would not be subject to analogous legalisation requirements as these requirements are prohibited by article 5(4) of the draft Convention. Canada takes note of a suggestion by the Hague Conference on Private International Law in [A/CN.9.1109](#) that would have the effect of allowing legalisation requirements.<sup>8</sup> Canada is not supportive of this suggestion. Although adding the possibility of requiring legalisation for States not party to the 1961 Convention would address the difference in treatment among States, it does not resolve the fact that neither the apostille nor legalisation can provide a guarantee of the authenticity of certificates of judicial sale. The authenticity of these certificates can be adequately verified by consulting the repository.<sup>9</sup>

Finally, allowing a registrar or other competent authority to require an apostille to authenticate the signature/stamp of the authority that issued a certificate of judicial sale before a ship can be registered or deregistered under article 7 may result in delays in the registration or deregistration. Such delays would have a negative impact on shipping in international trade and transportation and would go against one of the Convention's objectives to facilitate international trade. These delays cannot be justified given the limited effects of apostilles.

On the basis that requiring an apostille serves no purpose in this context and could be the source of delays and confusion, Canada strongly urges the Commission to delete the proposed article 20.

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<sup>8</sup> [A/CN.9/1109](#), p. 24.

<sup>9</sup> See footnote 5.