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Draft explanatory note on the Convention on the international effects of judicial sales of ships – Part III*

Note by the Secretariat

Contents

* Part I may be found in document A/CN.9/1110. Part II may be found in document A/CN.9/1110/Add.1.

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II. Article-by-article remarks (*continued*)

H. Article 7. Action by registrar

1. Actions to be taken (articles 7(1) and 7(2))

1. 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), 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 article 7(1). Article 7(2) prescribes additional action to be taken if the ship is subject to a bareboat charter arrangement.

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

3. With regard to article 7(1), 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 subparagraph (c), no action would be required to delete the ship from the register under subparagraph (b). The non-cumulative nature of the actions prescribed is suggested by a combination of the words “at the request of the purchaser or subsequent purchaser” and the words “as the case may be” in the chapeau of article 7(1), and by the use of the word “or” at the end of subparagraph (c). However, the word “or” is not intended to imply that the competent authority can choose which action to take. In other words, once triggered, the prescribed actions are to be taken if applicable and to the extent applicable.

References to preparatory work

Document	*Reference*
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

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

4. As noted above (see A/CN.9/1110, para. 46), 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, subparagraph (a) of article 7(1) implements the effect of the judicial sale with respect to mortgages, hypothèques and registered charges.

References to preparatory work

Document	*Reference*
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 30–31

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

5. As noted above (see A/CN.9/1110, para. 46), 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 that other State unless the previous registration is deleted. By requiring action to delete the ship from the register and issue a certificate of deletion, subparagraph (b) of article 7(1) implements the effect of the judicial sale with respect to transfer of 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 (regardless of whether it is a State Party). In particular, subparagraph (c) provides no assistance, as it applies only to ships that are to remain registered in the State of registration for the time being (i.e. the State in whose registry of ships or equivalent registry the ship was registered at the time of judicial sale) and not in any other State. In other words, additional formalities for the "new" registration remain to be taken outside the convention.

6. Recalling the differences in registration practice between States, the convention acknowledges that the procedure for deregistering a ship might be known in the State of registration by a term other than "deletion".

References to preparatory work

Document	*Reference*
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

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

7. 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, subparagraph (c) of article 7(1) implements the effect of the judicial sale with respect to transfer of 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),[1] article 91 of the United Nations Convention on the Law of the Sea (1982), and other domestic laws.[2]

8. Subparagraph (c) extends to action taken to register the ship in the name of the "subsequent purchaser" which, by virtue of the definition in article 2(j), 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 registrar of verifying the regularity of dealings concerning ships entered in the register, on the other hand.

[1] United Nations, *Treaty Series*, vol. 450, No. 6465.
[2] United Nations, *Treaty Series*, vol. 1833, No. 31363.

References to preparatory work

Document	*Reference*
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

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

9. Subparagraph (d) of article 7(1) 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 subparagraphs (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

Document	*Reference*
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

(e) Deleting bareboat charter registration (article 7(2))

10. 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, article 15(1)(b) makes it clear that the convention does not affect the ability of the bareboat charterer (as lessee) to assert that right in a personal claim against the former shipowner (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). Article 7(2) 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.

11. Recalling the differences in practice between States (see para. 67), the convention acknowledges that 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

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

2. Competent authority

12. The actions prescribed in articles 7(1) and 7(2) are taken either by the registrar or by another competent authority of the State of registration (in the case of article 7(1)) or the State of bareboat charter-in registration (in the case of article 7(2)). Competence to take any of the prescribed actions is a matter for the law of the State of registration, 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(3). Specifically:

(a) The authority competent to take action under subparagraph (a) of article 7(1) will typically be the registrar for the register referred to in article 4(3)(b);

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

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

References to preparatory work

Document	*Reference*
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

3. Procedure for taking action

13. 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 article 7(1), 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 on article 5(5), those regulations and procedures cannot be applied to require additional information to establish the matters certified in the certificate of judicial sale.

14. 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 article 7(1) 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".

15. 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 article 7(1) 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. Article 7(1) does not prevent the competent authority from taking action under article 7(1) on its own motion, e.g. a registrar 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 subparagraph (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.

16. Typically, it is only the actions prescribed in subparagraph (c) and (d) that the competent authority will take at the request of the subsequent purchaser. 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

Document	*Reference*
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

4. Translation and copy of the certificate of judicial sale (articles 7(3) and 7(4))

17. The certificate of judicial sale is issued in the language of the issuing authority in the State of judicial sale. Article 7(3) allows the competent authority to request production of a certified translation of the certificate. While article 7(3) does not define "certified translation", in the context of the procedures provided for in articles 7(1) and 7(2), 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.

18. Article 7(4) 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 articles 7(1) and 7(2). If requested, the production of the certified copy supplements, but does not substitute, the production of the certificate of judicial sale itself. While article 7(4) does not define "certified copy", as with certified translations under article 7(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).

19. By virtue of article 5(4), the competent authority may not request evidence of legalization or the production of an "Apostille".

References to preparatory work

Document	*Reference*
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

Document	*Reference*
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

5. Refusal to take action

20. The competent authority is not required to take any actions prescribed in articles 7(1) or 7(2) if a court in the State of registration (in the case of article 7(1)) or the State of bareboat charter-in registration (in the case of article 7(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, article 7(5) is designed to provide an additional signpost to the registrar or other competent authority. It acknowledges that a request for the registrar or other competent authority to take action under article 7 may trigger a challenge invoking the public policy exception. The registrar or other 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 the registrar be expected to take any actions prescribed in articles 7(1) or 7(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

Document	*Reference*
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

I. Article 8. No arrest of ship

1. General rule (articles 8(1) and 8(2))

21. 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. Articles 8(1) and 8(2) give effect to that principle.

22. Article 8(1) deals with the case in which an arrest is applied for, while article 8(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 the 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 if it is conducted in another State Party.

23. 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(b) (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.

24. Both paragraphs refer to arrest for a "claim" arising prior to an earlier judicial sale of the ship. 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.

25. Both paragraphs refer to action by a court or "other judicial authority". This terminology is designed to further align article 8 with the Arrests Convention. Consistent with the Arrests Convention 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

Document	*Reference*
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

2. Translation of the certificate of judicial sale

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

3. Refusal to take action

27. The court or other judicial authority is not required to take action to prohibit the arrest of the ship under articles 8(1) or 8(2) if it determines that that action would be manifestly contrary to the public policy of the State. Article 8(4) differs from article 7(5) 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. Article 8(4) 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 on article 10 (including regarding the meaning of "determination" and "manifestly contrary").

References to preparatory work

Document	*Reference*
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

J. Article 9. Jurisdiction to avoid and suspend judicial sale

1. Exclusive jurisdiction (articles 9(1) and 9(2))

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

29. 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),[3] 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. Article 9(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. Article 9(1) applies only to 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). In some jurisdictions, such other remedy 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 article 9(1).

30. 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, article 9(1) 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 article 9(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.

31. 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. Nevertheless, the exceptional nature of avoidance in practice belies the importance of article 9 in the overall operation of the convention regime. In particular, by virtue of article 9, the validity of a certificate of judicial sale and the conditions for issuance are scrutinized exclusively by the State of judicial sale.

[3] United Nations, *Treaty Series*, vol. 1489, No. 25567.

References to preparatory work

Document	*Reference*
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

2. Effects of avoidance and suspension (articles 9(3) and 15(2))

32. The effects of a judgment avoiding a judicial sale in exercise of jurisdiction conferred under article 9(1) 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 article 15(2).

33. 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 article 5(3), article 9(3) 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 on article 11 below.

References to preparatory work

Document	*Reference*
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

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

1. Function of article 10

34. 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

Document	*Reference*
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

2. Public policy exception

35. 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(1)(c) of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019),[4] 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 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".

36. 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.

37. 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 occasions by the sale, the procurement of the sale by fraud committed by the purchaser, and conducting the judicial sale in a manner that violates fundamental principles of due process. As noted above (see A/CN.9/1110/Add.1, para. 5), 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.

[4] Kingdom of the Netherlands, *Treaty Series*, 2019, No. 13672.

References to preparatory work

Document	*Reference*
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

3. Determination

38. 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 a "determination" that the effect of the foreign judicial sale "would be" manifestly contrary to public policy. The word "determination" 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 would be sufficient.

References to preparatory work

Document	*Reference*
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

L. Article 11. Repository

1. Purpose of the repository mechanism

39. 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.

2. Identity of the repository (article 11(1))

40. Article 11(1) designates the Secretary-General of the International Maritime Organization (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.

3. Function of the repository (article 11(2))

41. 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, article 11(2) 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 article 4(3) 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.

42. 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 article 11(2) that the repository publish each instrument "in the form and in the language in which it is received".

43. 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.

4. Transitional application (article 11(3))

44. Article 11(3) 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)[5]) for which the convention has not yet entered into force. This provision supports the transitional application of the convention. See further remarks on article 22(3).

References to preparatory work

Document	*Reference*
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

[5] United Nations, *Treaty Series*, vol. 1155, No. 18232.

M. Article 12. Communication between authorities of States Parties

45. Article 12(1) 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) and provides for communication for the purposes of convention as a whole rather than for specific provisions. In particular, it facilitates 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.

46. Article 12(1) authorizes, but does not require, correspondence. Moreover, 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 article 12(2). Article 12(2) is not designed to preserve 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

Document	*Reference*
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

N. Article 13. Relationship with other international conventions

47. According to the general principle stated in article 30(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.

48. Article 13(1) 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").[6] The 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. 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 present 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 (see A/CN.9/1110, para. 42), the present convention is applicable to the judicial sale of inland navigation vessels, and thus its provision are potentially incompatible with the provisions of Protocol No. 2 in a particular case. In the event of such incompatibility, article 13(1) 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(2) of the Vienna Convention on the Law of Treaties (1969), Protocol No. 2 prevails.

49. Article 13(2) addresses the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (hereinafter "Service

[6] United Nations, *Treaty Series*, vol. 1281, No. 21114.

Convention").[7] 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 present convention that allow for the notice of judicial sale to be given under the law of the State of judicial sale (article 4(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 the 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, article 13(2) 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.

50. As noted above (A/CN.9/1110/Add.1, para. 74), the convention is not concerned with the recognition of foreign judgments and therefore does not address the relationship with treaties such as the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019).

References to preparatory work

Document	*Reference*
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
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

O. Article 14. Other bases for giving international effect

51. 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), as well as under domestic law in circumstances not covered by the convention, including on the basis of comity.

52. Article 14 is not strictly a "give way" clause like article 13(1) 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

[7] United Nations, *Treaty Series*, vol. 658, No. 9432.

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.

53. Article 14 only preserves "bases" for giving effect to foreign judicial sales to clarify that it does not preserve provisions of other treaties and domestic law that, in a particular case, would deny that effect. As such, article 14 would not give way to the application of grounds for refusal under another treaty beyond the public policy exception in article 10 of the present convention. 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(3) of the Vienna Convention on the Law of Treaties (1969). In the case of the 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

Document	*Reference*
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

P. Article 15. Matters not governed by this convention

1. Purpose

54. 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

Document	*Reference*
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

2. Distribution of proceeds

55. The availability of proceeds to creditors is a defining feature of a "judicial sale" within the meaning of the convention (see remarks on article 2(a)(ii)). However, unlike the International Convention on Maritime Liens and Mortgages (1993), 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

Document	*Reference*
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

3. Personal claims against the former shipowner

56. 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 claims which, but for the judicial sale, could have been enforced by attachment against the ship following a court judgment, or claims which, by virtue of the judicial sale, could have been enforceable against the proceeds but were not fully satisfied. Article 15(1)(b) clarifies this position. It does not create any claim or revive any claim that was extinguished by the judicial sale.

57. 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

Document	*Reference*
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

4. Effects of avoidance and suspension

58. Article 15(2) 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 on article 9.

5. Other matters not governed by the convention

59. As already noted in the remarks on article 1, the convention does not address the conduct of judicial sales (as confirmed by article 4(1)), the recognition of judgments in respect of judicial sales, or the legal effect of judicial sales. 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

Document	*Reference*
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

Q. Final clauses

1. General

60. The final clauses of the convention (articles 16–24) are modelled on other multilateral treaties prepared by UNCITRAL.

2. Depositary (article 16)

61. 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.

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

3. Consenting to be bound (article 17)

63. Establishing a harmonized regime for giving international effect to judicial sales is best served by securing broad appeal for the convention among States. Article 17(1) 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.

64. 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 convention 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.[8]

65. While some treaties provide that States may express their consent to be bound by signature alone, the convention, like most modern multilateral treaties, provides

[8] 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 ibid., 1974 (United Nations publication, Sales No. E.76.V.1), part two, chap. VI, sect. A.9 (pp. 157–159).

that it is subject to ratification, acceptance or approval by the signatory States. Providing for signature subject to ratification, acceptance or approval allows States 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 States.

66. 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.

67. 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 on article 22). This is extended to regional economic integration organizations under article 18.

Reference to preparatory work

Document	*Reference*
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 76

4. REIO clause (article 18)

(a) Meaning of "regional economic integration organization"

68. 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.

69. The convention does not define "regional economic integration organization". Nevertheless, article 18 encompasses two key elements: the grouping of States 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 did 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.

(b) Extent of competence of the REIO

70. Article 18 is not concerned with the internal procedures leading to signature, ratification, acceptance, approval or accession by a regional economic integration organization. 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.

71. Nonetheless, article 18(1) 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 article 18(2) 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.

72. 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, article 18(1) provides that an instrument deposited by the REIO is not counted for the purposes of the entry into force of the convention (article 22) or of any adopted amendment (article 23).

73. 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 article 18(3), which provides that any reference to a "State" or "State Party" in the convention applies equally, where the context so requires, to an REIO.

(c) Relationship between the convention and REIO rules

74. [*To be completed if a disconnection clause is included.*]

Reference to preparatory work

Document	*Reference*
Report of the fortieth session of Working Group VI	A/CN.9/1095, para. 78

5. Non-unified legal systems (article 19)

(a) Mechanism for applying the convention to territorial units

75. 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 to its entire territory, unless a different intention appears from the treaty or is otherwise established. Article 19(1) permits a State to declare that the convention is to extend to all its territorial units or only to one or more of them. [The declaration can only be made at the time of signature, ratification, acceptance, approval or accession.] If no declaration is made the convention extends to all territorial units of the States.

76. 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. Article 19(1) 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 19(2) allows the declaration to be amended at any time, which acknowledges that the State may apply the convention progressively to its constituent territorial units.

77. 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 article 19(1) if "different systems of law are applicable" in those territorial units "in relation to matters dealt with in [the] Convention". Article 19 it is not designed to be used by REIOs.

(b) Interpretation of the convention in its application to territorial units

78. Article 19(5) 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 article 19(1).

Reference to preparatory work

Document	*Reference*
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 79–80

6. [Authentication of certificate of judicial sale (article 20)]

79. [*See cover note to A/CN.9/1108, para. 6*]

7. [Procedure and effects of declarations (article 21)]

80. [*See cover note to A/CN.9/1108, para. 7*]

8. Entry into force (article 22)

(a) Entry into force generally

81. Multilateral treaties prepared by UNCITRAL have required as few as three and as many as 10 States to express their intention to be bound in order for the treaty to enter into force. Article 22(1) requires [three] States, which follows the modern trend in commercial law conventions, which promotes their application as early as possible to those States that seek to apply such rules to their commerce. By virtue of article 18(1), the instrument of ratification, acceptance, approval or accession of an REIO is not counted. A [six-month][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.

(b) Entry into force for States consenting after the convention has entered into force

82. Article 22(2) 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 [six-month][180-day] period as is provided under article 22(1) for the [third] instrument of ratification, acceptance, approval or accession.

83. A similar provision applies for the entry into force of the convention for territorial units to which the convention has been extended under article 19(1). Noting that article 19(1) permits a State to make a declaration extending the convention to a territorial unit before the convention enters into force for the State, the period between notification of the declaration and entry into force of the convention for the State, whether under article 22(1) (if the State is among the first [three] States Parties) or under article 22(2), may be longer than six months. Article 22(2) is not intended to provide for the entry into force of the convention for the territorial unit without the convention being in force for the State.

(c) Transitional application

84. 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, article 22(3) provides that the convention only applies to judicial sales conducted after entry into force for the State of judicial sale. This reflects article 3(1)(a), 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)).

85. The convention does not define the time at which, or period during which, a judicial sale is "conducted". By virtue of article 4(1), this is a matter for the law of the State of judicial sale, under which a sale may be regarded as being "conducted" after notification. To address the case in which the convention enters into force for the State of judicial sale after notification but before the judicial sale is "conducted" – 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 – article 11(3) makes provision for the repository to receive and publish notices of judicial sale emanating from a State before entry into force of the convention for that State.

Reference to preparatory work

Document	*Reference*
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 76, 81–85

9. Amendment (article 23)

86. Article 23 establishes a mechanism for amending the convention. Amendment provisions are common in multilateral treaties, even if they are not commonly invoked. By virtue of article 18(1), the instrument of ratification, acceptance, approval or accession of an REIO is not counted for the purpose of entry into force of any adopted amendment. Article 19 is intended to apply mutatis mutandis to the application of adopted amendments to territorial units for which a declaration has been made under article 19(1).

Reference to preparatory work

Document	*Reference*
Report of the fortieth session of Working Group VI	A/CN.9/1095, paras. 86–88

10. Denunciations (article 24)

87. Article 24(1) 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 article 19(1) allows a State to apply the treaty to a particular territorial unit, article 24(1) allows the State to denounce the treaty for that territorial unit.

88. Under article 24(2), denunciation takes effect [12 months][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 22, 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.