REPLY FROM THE NEDERLANDSE VERENIGING VOOR ZEE- EN VERVOERSRECHT (NVZV) (DUTCH MARITIME AND TRANSPORT LAW ASSOCIATION) TO THE LETTER TO PRESIDENTS OF 11 MAY 2015 ON THE "COMPELLING NEED" FOR NEW CONVENTION ON FOREIGN JUDICIAL SALES OF SHIPS AND THEIR RECOGNITION

Has there in your jurisdiction been litigation and/or administrative confusion resulting in delay and/or expense by reason of:
— Non-recognition in your jurisdiction of a judicial sale conducted elsewhere

Netherlands: Going back to the late 1950's, we only know of one reported judgment dealing with the recognition in the Netherlands of a judicial sale conducted elsewhere.

In the matter of the Katerina (ex Hidir Selek) (*S&S* 2007/108) former owner Eta Petrol Akaryakit Ticareti Ve Nakliyati A.S. ('ETA') effected an attachment on the Katerina for *rei vindicatio,* claiming that the judicial sale of the vessel in China at the request of the mortgagee bank Hamburgische Landesbank had not been conducted in a normal and fair manner, and claiming that the buyer at the judicial sale, Esquire Management Co., was not a buyer in good faith as it would have had knowledge of the unfair process. ETA was not able to convince the court that the judicial sale was held with a gross misappreciation of the applicable rules, which would bar the recognition of the judicial sale. Chinese law was held applicable to the consequences of the judicial sale, Esquire was held to be the new owner of the vessel under Chinese law, and the attachment was lifted.

From a publication in a Dutch legal journal (M. Mouthaan, A.I.M. van Mierlo & A.H. Geerling, 'Buitenlandse executie van een Nederlandse zeeschip (art. 8:195 BW)', WPNR 2012/6956) we know of another matter involving the judicial sale outside of the Netherlands of a vessel registered in the Netherlands, and flying the Dutch flag. The article contains a case study which is based on an actual case. However, since the matter was in reality settled out of court, actual vessel name and enforcement jurisdiction have not been disclosed. We have been informed that in essence the actual case involved a judicial sale of the ship by the first rank mortgagee. The second rank mortgagee resisted that its mortgage be struck from the Dutch ship register arguing that the judicial sale was not recognized in the Netherlands.

Has there in your jurisdiction been litigation and/or administrative confusion resulting in delay and/or expense by reason of:
— Non-recognition elsewhere of a judicial sale conducted in your jurisdiction?

Netherlands: Going back to the late 1950's, we only know of one reported judgment dealing with the recognition elsewhere of a judicial sale conducted in the Netherlands.

In the matter of the Mnimosiny (ex Zarate) (*S&S* 1983/35) the vessel, entered in the Argentine ship register and owned by Navimar S.A. of Buenos Aires, was judicially sold in the Netherlands. Some eight months later buyer Mnimosiny attached the proceeds of the judicial sale, and asked the court to rescind the judicial sale claiming breach of contract as the Argentine ship register had been unwilling to delete the vessel from the register. The Dutch court, however, lifted the attachment as (1) buyer Mnimosiny had had unhindered use of the vessel, as (2) legal proceedings dealing with judicial sales would always take some time before the ship is truly free of encumbrances and the buyer can have the ship deleted from the register, and (3) as the vessel was in the end deleted from the Argentine register.

We have heard of a matter involving the attachment in 2013 in Sousse, Tunisia, of the vessel Amber (ex Ocean Vita) – registered in Malta and judicially sold in the Netherlands on 8 November 2011 - for a claim of a Turkish repair yard against the vessel's former owners. We have no knowledge of the current status of proceedings in Tunisia, or elsewhere for that matter. We do not know either whether the recognition of the judicial sale was ever truly put into question.

We have heard of problems with the deregistration of an Italian ship following a judicial sale in the Netherlands in the 1980's or 1990's because social security contributions had not been paid. We understand the ship was nevertheless registered in Cyprus on the basis of Dutch court documents and an opinion. Whether the remain Italian registration ever gave rise to problems is not known.

Similarly we have heard of problems with the deregistration in Switzerland of an inland navigation vessel, believed to be named Basilea, which was auctioned by a civil law notary in the Netherlands. Deregistration was apparently finally secured on the basis of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters concluded in Lugano on 16 September 1988.

From the Dutch Caribbean (Aruba, Bonaire, Curaçao, Saba, St. Eustatius, St. Maarten) it is reported that there may be difficulties with registration of the new owner on the basis of the mere judgment and protocol of adjudication provided by the courts in the Dutch Caribbean. The problem is normally solved by an opinion that the judicial sale has the effect of giving clean title to the buyer at the judicial sale.

It would also be useful to know how many Judicial Sales have taken place in your jurisdiction over the last five years.

Netherlands: Under Dutch law judicial sales may be conducted before a court (only possible for foreign flagged sea-going ships), a civil law notary, or a bailiff (only small sea-going ships/unregistered inland navigation ships).

We have been unable to obtain figures over the full last five years.

We reported earlier to the IWG that we estimated having dealt with 15-18 judicial sales before a court in 2014. Most (80-90%) of these sales concerned vessels with a foreign registration before the Rotterdam District Court.

In addition, a civil law notary dealing with most auctions of Dutch registered ships reported 13 judicial sales of his own (of which 5 concerned non-Dutch vessels) in 2014, and he assumed a further 5 vessels were sold through other means (internet auctions).

Additional information obtained from the Rotterdam District Court showed that the court dealt with 24 cases in 2013, leading to 22 judicial sales. In 2014 the court dealt with 17 cases, leading to 13 judicial sales.

The Rotterdam District Court also informed us that they sometimes hear of worries about the recognition of a Dutch judicial sale abroad, and about foreign judicial sales being questioned here. However, the court is not aware of any judicial sale not being recognized, here or elsewhere.

From the Dutch Caribbean (Aruba, Bonaire, Curaçao, Saba, St. Eustatius, St. Maarten) it is reported that an average of 8-10 judicial sales take place per year, most of which on Aruba.

Final note

Netherlands: The Netherlands is not a party to the International Convention on Maritime Liens and Mortgages, concluded in Geneva on 6 May 1993, which contains provisions (articles 11 and 12) on forced sale of vessels. To add, the Netherlands is not a party to the International Convention on Maritime Liens and Mortgages, concluded in Brussels on 27 May 1967 which contains similar provisions. These conventions were not ratified by the Netherlands mainly because of dissatisfaction with the provisions on the ranking of liens and mortgages. We are not aware of any real issue in favour of ratification or to the contrary, with regard to the provisions in the conventions dealing with recognition of judicial sales.

The Netherlands is a party to the Convention on the registration of inland navigation vessels (with annexed protocols), concluded in Geneva on 25 January 1965, and has applied its principles to both inland navigation and sea-going vessels by incorporation in Dutch statute law. The 1965 Convention has two annexed protocols, the second of which deals with 'attachment and forced sale of inland navigation vessels', and contains particular provisions about the recognition of the foreign judicial sale of vessels. The Netherlands, however, is not a party to this Protocol Nr 2. The legislative history (dating back to 1974) of the act approving the ratification of the 1965 Convention shows the Dutch government suggested parliament not to ratify Protocol Nr 2 as it would require significant changes to Dutch statute law, while ratifying Protocol Nr 2 was thought to have little benefit. A wait-and-see attitude was preferred by the government: if unification of the law would make ratification of Protocol Nr 2 advisable at some point in time, changes to Dutch statute law could be taken into consideration. It was thought the relevance of Protocol Nr 2 was linked to the number of other countries ratifying it. Our information suggests Protocol Nr 2 to the 1965 Convention is in force in Austria, Belarus, Croatia, France, Luxemburg,

Montenegro, and Serbia. We are not aware of any movement in the Netherlands towards ratifying Protocol Nr 2.

Rotterdam, 16 September 2015

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