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REMARKS ON THE INTERNATIONAL CONVENTION REGARDING THE REGISTRATION OF INLAND NAVIGATION VESSELS

Good afternoon,
In this presentation, I will try to give you an overview of the Convention on the registration of inland navigation vessels and highlight some aspects for which a revision could be opportune.
The Convention was concluded in Geneva in 1965, on the initiative of the International Institute for the Unification of Private Law (IIUPL), which had hoped for a convention on rights *in rem* over vessels. It entered into force on 24th June 1982, in accordance with its Article 17(1), which established that the convention would come into force after five countries had deposited their instruments of ratification or accession.

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Currently, the Convention has seven signatories and nine parties.

Participant	Signature	Ratification, Accession(a), Succession(d)
AUSTRIA	18 Jun 1965	26 Aug 1977
BELARUS		30 Aug 2006 a
BELGIUM	31 Dec 1965	
CROATIA		31 Jul 2002 d
FRANCE	31 Dec 1965	13 Jun 1972
GERMANY	5 Nov 1965	
LUXEMBOURG	14 Dec 1965	26 Mar 1982
MONTENEGRO		23 Oct 2006 d
NETHERLANDS	30 Dec 1965	14 Nov 1974
SERBIA		12 Mar 2001 d
SWITZERLAND	28 Dec 1965	14 Jan 1976

Now, what is the aim of this convention?
To unify the administrative law on registration in order to unify the private law on rights *in rem* in the vessel, attachment and forced sale of the vessel.
The convention is composed of 25 Articles which govern the registration of vessels and of two Protocols; Protocol n. 1 concerning rights *in rem* in the vessel (ownership, usufruct and mortgages; liens) and Protocol n. 2 concerning attachment and forced sale of the vessel.
As I only have thirty minutes available, I will only talk about the convention and its Protocol n. 2, on the understanding that you can download my complete presentation from the website of my Law firm www.grimaldistudiolegale.com.
Before getting to the heart of the Convention, it is opportune to note that for the purposes of this convention:
- The term "**vessel**" includes hydroplanes, ferryboats, dredges, cranes, elevators and all other floating appliances or plants of a similar nature.

- The expression "**owner**" of the vessel used in the convention must be interpreted according to the national law of the Contracting Party in one of whose registers the vessel is registered.

That said, and coming to the subject of the registration of inland navigation vessels, it is to be noted that the convention establishes specific obligations for the Contracting Parties. Specifically, they are obliged to:

1. adopt registers for the registration of inland navigation vessels;
2. ensure their conformity to the provisions of the convention

and

3. determine, each Contracting Party, the conditions governing and the obligations arising from registration in its registers insofar as those conditions and obligations are not laid down in the convention.

The Contracting Parties, therefore, must keep a register and, in doing so, observe the rules which are necessary to ensure that rights in rem are published in a uniform manner in all Contracting States.

So, let's have a look at the conditions established in the convention for the registration of inland navigation vessels in the register of the Contracting Parties.

Under Article 3, a Contracting Party may not allow a vessel to be registered in its registers unless at least one of the following conditions is fulfilled:

(a) the place from which the operation of the vessel is *habitually directed* must be situated in the territory of the said Contracting Party;

(b) where the owner of the vessel is *an individual*, he must be a national of, or habitually resident in, the territory of the said Contracting Party;

(c) where the owner of the vessel is a *body corporate* or a *commercial company*, its registered office or principal place of business management must be situated in the territory of the said Contracting Party.

Moreover, it is to be noted that if the vessel is jointly-owned, the requirements sub b) and c) are not considered fulfilled unless the individuals or bodies corporate fulfilling these conditions hold at least a half-share in the ownership of the vessel.

Now, today these requirements do not seem completely correct with regard to the individual, where they force him to elect his habitual residence. In fact, taking into account that the actual purpose of this provision is to allow the registration only for subjects who elect the centre of their business in the territory of a Contracting Party, it would seem more correct to speak of election of *domicile* or of appointment of a *representative person*. In other words, the place of habitual residence does not necessarily or automatically coincide with the actual place of business; that's why the use of the term *domicile* or the appointment of a *representative person* seem preferable. In this regard, I highlight that the term "domicile" is already used; precisely, in article 8 of the Convention and in article 7 of its Protocol n. 1. Therefore, a conceptual difference between

"habitual residence" and "domicile" already exists; what is missing is their definition in the convention and in its Protocol and, therefore, it would be opportune to fill this gap.
Furthermore, this amendment could encourage individuals to register their vessels in one of the Contracting Parties, because in this way, they would not have to move their habitual residence there. Consequently, this could also facilitate the development of international trade.
Similarly, a review of the requirement related to commercial companies could be opportune. In this case, the requirement of “registered office” or “principal place of business” could be replaced with that of “representative person”.
Naturally, in both cases, the individual and the commercial companies should give concrete evidence of their ownership of more than half-share in the vessel.

That said, it is to be noted that where a vessel fulfils such conditions that, under the national laws applicable, it is registrable in the registers of more than one Contracting Party, it may not be registered in the registers of more than one such Party, and the owner has the right to choose the country in which the vessel is to be registered. Therefore, this rule prohibits double registration, with the aim of avoiding conflict of registration of a right *in rem* in the vessel, attachment and forced sale measures.
Finally, no Contracting Party may require registration in its registers of a vessel which fulfils the conditions for registration laid down in its laws if the said vessel is registered in a country which is not a Contracting Party and, in that country, fulfils any of the conditions stipulated in article 3, paragraph 1, of the convention. Nevertheless, each Contracting Party has the right to require individuals who are its nationals, and bodies corporate and commercial companies which have their registered office in its territory, to register in its registers vessels in which they own more than a half-share, if their habitual residence or, in the case of bodies corporate or commercial companies, their principal place of business management is in its territory. In this regard, it is to be noted that where my proposal of amending Article 3 was shared, this provision should be amended in the same terms to make the disciplines consistent.
Moving on to the Protocols annexed to the Convention, it is firstly to be noted that any country may, at the time of signing the convention or depositing its instruments of ratification or accession, or at any subsequent time, declare that it accepts Protocol n. 1 concerning rights *in rem* in inland navigation vessels; at the time of such declaration, or at any subsequent time, it may declare that it also accepts Protocol No. 2 on attachment and forced sale of inland navigation vessels.
As I said at the beginning, Protocol n.1 applies to rights in rem in any vessel used in inland navigation, even if it is under construction, has run aground or has sunk, which is registered in a register of a Contracting Party.
The only rights *in rem* of which a vessel can be the object are ownership, usufruct, mortgages and liens. The term “ownership” covers “bare ownership” (nue-propriété), which could certainly have been mentioned, but it would have served little purpose and would have involved certain difficulties in application for countries such as Germany, where the term was not used.

After these general provisions, the Protocol dedicates Chapter II to ownership, usufruct and mortgages, and first of all establishes that Contracting Parties arrange for the entry of the rights of ownership, usufruct or mortgage in a vessel in the register in which that vessel is registered.
Rights of ownership, usufruct or mortgage entered in a register of one of the Contracting Parties must be recognised in the territory of the other Contracting Parties in the manner specified in chapter II of this Protocol.
With regard to ranking, whenever the order of priority of the rights *in rem* has to be settled, the said order is that of the entries in the register. The order of priority of the rights *in* rem is, therefore, determined by the date of receipt of transcription requests.
Following this, the Protocol stipulates some rules regarding mortgages. Let's have a look at them.
The mortgage may not be registered if the application does not specify at least the following elements:
(a) the amount of the mortgage and, if the interest is added to that amount, the rate of interest;
(b) the name and the address or domicile of the mortgagee;
(c) the circumstances in which payments become due, or a reference to the document, deposited with the registration office, which determines these circumstances.

A mortgage extends to all objects permanently attached to the vessel by virtue of the purpose they serve and belonging to the owner of the vessel; nevertheless, the law of the country of registration may permit agreements between the parties which provide otherwise.
It is to be noted that the rules relating to the above rights *in rem*, except those determined by this Protocol and those applying to the transfer of ownership or to the extinction of other rights *in rem* by a forced sale, are determined by the law of the country of registration.
Regarding usufruct, no specific rules are established in the Protocol. This right *in rem* is, therefore, disciplined by the law of the country of registration.
Lastly, Chapter II stipulates that the rules relating to the above rights *in rem*, except those determined by this Protocol and those applying to the transfer of ownership or to the extinction of other rights in rem by a forced sale, are determined by the law of the country of registration.
Chapter III of the Protocol regards liens.
According to Article 11, the following claims are protected by a lien on the vessel ranking ahead of mortgages:
(a) In the case of attachment, claims regarding the cost of upkeep after attachment, including repairs necessary for the maintenance of the vessel;
(b) Claims arising from contracts of employment of the master or any other person employed in the service of the vessel, on the understanding that in the case of salaries, wages or other remuneration, a lien exists only with regard to the amount due for a period not exceeding six months. In this regard, it is interesting to note that this Article speaks of "master" but, instead of "crew", refers to persons employed in the service of the vessel. The use of the expression "*any other person employed in the service of the vessel*" was considered preferable as it covers all persons who, without being part of the crew, are engaged in navigational activities, including the

pilots. Thus, the use of this expression avoids the uncertainties which could have resulted from differences in the definition of the term “crew” in municipal law.
(c) Claims regarding assistance, salvage or the vessel's contributions under the rules of general average.

Now**,** it is to be noted that where a claim is protected by a lien under Article 11 of this Protocol, the lien shall extend to the interest on the claim and to the costs incurred in obtaining a writ of execution.
The liens listed in Article 11 of the Protocol also extend to:
(a) All objects permanently attached to the vessel by virtue of the purpose they serve and belonging to its owner;
(b) Compensation payable related to the loss of the vessel or any unrepaired material damage to the vessel, including that portion of payment for assistance, salvage or refloating or compensation for general average which represents unrepaired material damage, even after transfer or pledging of such compensation or payment. Nevertheless, such compensation does not include compensation payable by virtue of an insurance policy on the vessel covering loss or damage.

Moreover, the Protocol gives the Contracting Parties the following faculties:
1. Any Contracting Party may provide in its legislation that, in the event of a forced sale in its territory, the liens listed in Article 11 of the Protocol shall extend to freight charges.
2. Any Contracting Party may provide in its legislation that, in the case of forced sale of a vessel, legal costs incurred with a view to the sale shall be paid out of the proceeds of the sale before these are distributed to the creditors, including the beneficiaries of liens or mortgages. The legal costs in question may include custody charges and the cost of distributing the proceeds of the sale, but not costs incurred in obtaining a writ of execution.
3. Any Contracting Party may provide in its legislation that in the case of the sale of a vessel which has run aground, is disabled or has sunk and which the public authorities have had removed in the public interest, the costs of removal shall be paid out of the proceeds of the sale of the vessel, ranking ahead of the claims of creditors, including the beneficiaries of liens or mortgages.
4. Each Contracting Party may provide in its legislation that claims other than those listed in Article 11 of the Protocol shall be protected by a lien on the vessel ranking ahead of mortgages, under the conditions stipulated in Article 13. In any case, the claims protected by lien listed in Article 11 of the Protocol rank ahead of those not referred to there**.**

Regarding order of priority, the claims protected by lien listed in article 11 of the Protocol rank in the order in which they are listed; those mentioned in article 11, sub-paragraph *(c),* rank in the reverse order of the dates on which they arose; if the proceeds for distribution are insufficient, they are divided *pro rata* among creditors whose claims are of the same rank.

Regarding extinction, the liens listed in Article 11 of the Protocol are extinguished at the end of one year if the beneficiary of the lien has not exercised his rights through the courts. This period

runs from the date on which payment of the claim becomes due. In the case of claims regarding assistance or salvage, however, it runs from the date on which the operations are completed.
Upon extinction of the claim, the lien is likewise extinguished.
Lastly, each Contracting Party shall determine the circumstances in which the registration of a vessel registered in its registers may or must be cancelled. Nevertheless, if the vessel has been the subject of entries in favour of third parties, the registration may only be cancelled if none of the beneficiaries of these entries oppose it.
Conversely, Article 18 leaves discipline of the following aspects to the law of the country of registration:
(a) In the case of a voluntary sale of the vessel, the conditions and formalities observable for the extinction of the liens listed in article 11 of the Protocol;
(b) The scope, respective ranks and extinction of the liens other than those referred to in article 11;
(c) Any other matters concerning the liens referred to in article 11 or article 13 which are not governed by the Protocol.

We will now move on to PROTOCOL n. 2, which governs the attachment and forced sale of inland navigation vessels.
Firstly, it is to be noted that, according to its general provisions:
- **Contracting Parties** means those of the Contracting Parties to the Convention on the Registration of Inland Navigation Vessels which are bound by this Protocol;
- **Attachment** means any emergency measure authorised in accordance with article 10 of this Protocol to ensure, subject to the provisions of article 18 of the same Protocol, the physical arrest of a vessel in order to safeguard the enforcement of a claim or of any other right appertaining to the applicant;
- **Forced sale** means any measure provided for under the law of a Contracting Party with a view to the sale of a vessel to satisfy a claim or any other right appertaining to the applicant; this term covers distraint and forced sale.

Regarding the field of application, this Protocol applies to the attachment and to the forced sale of any vessel used in inland navigation, even if it is under construction, has run aground or has sunk, which is registered in a register of a Contracting Party. Conversely, the Protocol does not apply to other procedures not covered by the definitions of *attachment* and *forced sale*, and in particular to injunctions to return the vessel to its place of registration and proceedings likely to result in bankruptcy.
Attachment, distraint and forced sale may be effected only in the country in which the vessel is situated. Subject to the provisions of this Protocol, the procedures are governed by the law of that country. Now, this Protocol stipulates that when a vessel is the object of attachment or of forced sale, an entry to that effect must be made in the register in which the vessel is registered and the applicant and the beneficiaries of earlier entries must be informed of such entry. The same applies when the vessel is released from attachment or the proceedings for the forced sale are dropped.

When the entry is to be made in a register of a Contracting Party other than that in which the vessel has been the object of attachment or forced sale, the application for the entry must be made by the authority or law officer designated under the law of the country where the attachment or forced sale has taken place.

Finally, it is opportune to specify that the Protocol confers no right *in rem* in the vessel by virtue of the authorisation or execution of an attachment or the initiation of forced sale proceedings. However, no right entered in the register after the entry of the attachment or of the forced sale proceedings may be invoked against the person effecting the attachment, the applicant for forced sale or the purchaser in an auction.

Now let's take a look at the specific provisions regarding the attachment of a vessel.

Every attachment of a vessel carried out in the territory of a Contracting Party in accordance with the provisions of this Protocol must be recognised in the territories of all the other Contracting Parties. However, the above does not apply in the territory of a Contracting Party in which a final judicial decision rendered before the issue of the order authorising attachment has rejected the claim for the protection of which the attachment was applied for.

A vessel may be attached only by authorisation of the judicial authority of the country in which the attachment is to take place. Such authorisation is granted only if there is a danger that, unless immediate measures are taken, it may become uncertain whether the applicant can protect the enforcement of his claim or make it much more difficult for him to do so. To this end, the applicant must produce ***prima facie evidence*** of his claim and of the danger of protecting the enforcement of his claim or making it much more difficult for him to do so in absence of immediate judicial precautionary measures. ***Fumus boni iuris*** and ***periculum in mora*** must, therefore, exist. Moreover, the judicial authority may make its authorisation subject to security being furnished by the applicant.

Furthermore, if the circumstances are such that, at the time of submitting his application, the applicant cannot be expected to produce *prima facie* evidence of his claim, the judicial authority may nevertheless authorise attachment subject to security being furnished by the applicant.

The law of the country in which the attachment is authorised governs the cases, the manner and the period in which the applicant must pursue his claim at law.

Subject to the provisions of Articles 15 and 16 of this Protocol, the law of the country in which attachment is authorised determines the cases and the manner in which an authorisation may be withdrawn and a vessel released from attachment. So, let's have a look at what is established by Articles 15 and 16:

- Article 15 stipulates that the judicial authority of the country in which attachment has been authorised shall withdraw that authorisation or release the vessel on the application of any interested party, if a surety or other security is furnished provided that such surety or security is considered sufficient by the said judicial authority.

If an attachment has been authorised to protect the enforcement of a claim in respect of which the debtor could plead limitation of his liability, a surety or other security shall be deemed sufficient if it is at least equal to the amount to which the liability had been or is subsequently limited.

- Article 16 stipulates that if, after the attachment of a vessel had been authorised to protect the enforcement of a certain right, a surety or other security was furnished and the authorisation of attachment was withdrawn or the vessel was released, no subsequent attachment to protect the enforcement of the same right may be authorised in the territories of the Contracting Parties, either of the vessel or of the objects belonging to the owner of the vessel and permanently attached to the vessel by virtue of the purpose they serve, or of any other vessel. Nevertheless, the provision mentioned above shall not apply in the territory of a Contracting Party whose judicial authority considers that in its country the surety or other security furnished does not have or no longer has the same effect as it had in the country where attachment was authorised, at the time when such attachment was withdrawn or the vessel released.

Lastly, it is to be noted that the fact that a surety or other security has been furnished to prevent attachment or to obtain release therefrom can in no event be construed as an acknowledgement of the applicant's right or as a waiver of the benefit of limitation of liability. Moreover, this provision is similar to that present in article 5 of the International convention relating to the arrest of *seagoing ships*, concluded in Brussels in 1952.

Conversely, the Protocol does not assist with regard to providing uniform rules for ***wrongful attachment*** and for entitlement to damages; in fact, assuming this is its purpose, Article 11 of the Protocol **solely** establishes that the judicial authority may make its authorisation subject to security being furnished by the applicant and that, if the circumstances are such that at the time of submitting his application the applicant cannot be expected to produce *prima facie* evidence of his claim, the judicial authority may nevertheless authorise attachment subject to security being furnished by the applicant.
Now, this matter seems very important, if we consider what happened in 1858 in the case "*Evangelismos*": a vessel navigating in the river Thames at night collided with the British brig "*Hind*" at anchor but continued her course. Boats from the ship at anchor searched for the other vessel, and the day after, they found a vessel in a dock, the Greek brig "*Evangelismos*", which was believed to be the vessel which had collided with the "*Hind*" as she had damage to her bow. The *Evangelismos* was arrested but it was discovered that she was not the vessel which collided with the *Hind*. Thereafter, the owners of the Evangelismos claimed damages for wrongful arrest during a period of nearly three months. However, the claim for wrongful attachment was dismissed on the basis that the attachment was made in the *bona fide* belief that the Evangelismos was the colliding vessel. This was confirmed on appeal by the Privy Council, which held that the identity of the colliding vessel was not proved but there were grounds to believe that the Evangelismos was the one which collided and the owners of the Evangelismos, in order to be entitled to damages, had the burden of proving that the arresting party acted with *mala fides* or *crassa negligentia*.
Apparently, the text of Evangelismos is also applicable in other common law countries. In certain civil law countries, the arresting party is faced with strict liability if the claim fails on the merits and there would be no need to prove bad faith or gross negligence. Therefore, it could be very interesting to investigate how **wrongful attachment** and entitlement to damages are regulated in the various jurisdictions, in perspective of the introduction of uniform rules in the Protocol. For instance, what is the standard for establishing when an arrest is wrongful and entitles to damages? Is the dismissal of the claim sufficient and liability is therefore strict, or is either bad

faith (*mala fides*) or gross negligence (*crassa negligentia*) required, or should only lack of ordinary diligence be proved?
Furthermore, the introduction of uniform rules for ***unjustified attachment*** and entitlement to damages could also be opportune. To this end, an attachment could be considered ***unjustified*** where there is no doubt about the solvency of the debtor as could be the case if he owns many ships.
Now, moving on to the forced sale of a vessel, let's have a look at the specific rules established by the Protocol for it.
The effects produced by a forced sale in the territory of the Contracting Party in which it takes place must be recognised in the territories of all the other Contracting Parties. However, this provision does not apply in the territory of a Contracting Party in which a final judicial decision rendered before the sale has rejected the claim for the protection of which the forced sale was applied for.
That said, the title produced by an applicant for the forced sale of a vessel must satisfy the conditions relating to the sale provided for under the law of the country where the forced sale is to be carried out.
Arrangements among the Contracting Parties are made regarding:
(a) The public announcement of the date and place of the forced sale, and of the time limit within which the interested persons must take legal proceedings, both in the country where proceedings for the forced sale have been initiated and in the country in which the vessel is registered, to enforce any claims which are not protected automatically;
(b) Communication of the contents of the announcement above to the beneficiaries of entries in the register of registration and to the other persons known to be interested.

In this regard, it is to be noted that where the vessel for which forced sale proceedings have been initiated is registered in the register of a Contracting Party other than that where the forced sale is to take place, these bureaucratic requirements must be fulfilled by the authority of the country in which the vessel is registered.
On the forced sale in the territory of a Contracting Party of a vessel registered in the register of another Contracting Party, the office at which the vessel is registered shall, on production of a certified copy of the award to the highest bidder, carry out any alteration or cancellation of entries in the register that may be required as effects produced by the forced sale, and shall inform thereof the beneficiaries of the altered or cancelled entries.
If the registration office refuses, on the basis of article 19 of this Protocol, to register the purchaser's right of ownership, the vessel may, paragraph 1 of articles 4 and 11 of the Convention notwithstanding, be registered in the registers of any other Contracting Party provided that it fulfils the conditions for registration prescribed by the laws of such other Contracting Party.
To conclude, a review of this convention and its Protocols could be opportune for at least three reasons:

1. simplify and update the requirements for the registration of inland navigation vessels.
2. introduce uniform rules with regard to **wrongful** attachment and entitlement to damages, firstly to establish when an attachment can be considered wrongful. In this way, the malicious

choice of the creditor regarding where to attack the vessel could be avoided. In fact, for instance, currently the creditor would probably avoid attacking the vessel in Germany, as in that country the attachment is wrongful when it fails in the merits, irrespective of fault. He would probably prefer to attack the vessel in Belgium, as in that country the defendant must prove fault of the creditor, his damage and causation. Therefore, having uniform rules on this delicate issue could encourage other countries to ratify the convention.

Uniform rules should also be introduced with regard to **unjustified** attachment of the vessel.

3. evaluate whether this convention and its Protocols need to be coordinated with CLNI 2012 convention on the limitation of liability in inland navigation, which entered into force on 1st July 2019.

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