

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES
CONCERNING THE IMMUNITY OF STATE-OWNED SHIPS

(Brussels, April 10th, 1926)

and

ADDITIONAL PROTOCOL TO THIS CONVENTION

(Brussels, May 24th, 1934)

Convention

(Translation)

The President of the German Reich, His Majesty the King of the Belgians,... etc.

Recognizing the desirability of determining by common agreement certain uniform rules concerning the immunity of State-owned ships, have decided to conclude a convention to this effect, and have appointed as their Plenipotentiaries, namely:

(Follows the list of Plenipotentiaries)

Who, having been duly authorized for this purpose have agreed as follows

Article 1

Sea-going ships owned or operated by States, cargoes owned by them, and cargoes and passengers carried on State-owned ships, as well as the States which own or operate such ships and own such cargoes shall be subject, as regards claims in respect of the operation of such ships or in respect of the carriage of such cargoes, to the same rules of liability and the same obligations as those applicable in the case of privately-owned ships, cargoes and equipment.

Article 2

As regards such liabilities and obligations, the rules relating to the jurisdiction of the Courts, rights of actions and procedure shall be the same as for merchant ships belonging to private owners and for private cargoes and their owners.

Article 3

1. The provisions of the two preceding Articles shall not apply to ships of war, State owned yachts, patrol vessels, hospital ships, fleet auxiliaries, supply ships and other vessels owned or operated by a State and employed exclusively at the time when the cause of action arises on Government and non-commercial service, and such ships shall not be subject to seizure, arrest or detention by any legal process, nor to any proceedings *in rem*.

Nevertheless, claimants shall have the right to proceed before the appropriate Courts of the State which owns or operates the ship in the following cases :

1. Claims in respect of collision or other accidents of navigation;
2. Claims in respect of salvage or in the nature of salvage and in respect of general average;
3. Claims in respect of repairs, supplies or other contracts relating to the ship; and the State shall not be entitled to rely upon any immunity as a defence.

+ 2. The same rules shall apply to State-owned cargoes carried on board any of the abovementioned ships.

+ 3. State-owned cargoes carried on board merchant ships for Government and non-commercial purposes shall not be subject to seizure, arrest or detention by any legal process nor any proceedings *in rem*.

Nevertheless, claims in respect of collisions and nautical accidents, claims in respect of salvage or in the nature of salvage and in respect of general average, as well as claims in respect of contracts relating to such cargoes, may be brought before the Court which has jurisdiction in virtue of Article 2.

Article 4

States shall be entitled to rely on all defences, prescriptions and limitations of liability available to privately-owned ships and their owners.

Any necessary adaptation or modification of provisions relating to such defences, prescriptions and limitations of liability for the purpose of making them applicable to ships of war or to the State-owned ships specified in Article 3 shall form the subject of a special Convention to be concluded hereafter. In the meantime, the measures necessary for this purpose may be effected by national legislation in conformity with the spirit and principles of this Convention.

Article 5

If in any proceedings to which Article 3 applies there is, in the opinion of the Court, a doubt on the question of the Government and non-commercial character of the ship or the cargo, a certificate signed by the diplomatic representative of the Contracting State to which the ship or the cargo belongs, communicated to the Court through the Government of this State before whose Courts and Tribunals the case is pending, shall be conclusive evidence that the ship or the cargo falls within the terms of Article 3, but only for the purpose of obtaining the discharge of any seizure, arrest or detention effected by judicial process.

Article 6

The provisions of the present Convention shall be applied in each Contracting State, but without any obligation to extend the benefit thereof to non-contracting States and their nationals, and with the right in making any such extension to impose a condition of reciprocity.

Nothing in the present Convention shall be held to prevent a Contracting State from prescribing by its own laws the rights of its nationals before its own Courts.

Article 7

In time of war each Contracting State reserves to itself the right of suspending the application of the present Convention by a declaration notified to the other Contracting States, to the effect that neither --hips owned or operated by that State, nor cargoes owned by it shall be subject to any arrest, seizure or detention by a foreign Court of Law. But the claimant shall have the right to take proceeding before the appropriate Court in accordance with Articles 2 and 3.

Article 8

Nothing in the present Convention shall prejudice the right of the Contracting States to take any measures necessitated by the rights and duties of neutrality.

Article 9

After the expiration of a period of not more than two years from the date on which the Convention is signed, the Belgian Government shall communicate with the Governments of the High Contracting Parties which have declared themselves ready to ratify it with a view to deciding whether it shall be put into force. Ratifications shall be deposited at Brussels at a date which shall be fixed by agreement between the said Governments. The first deposit of ratifications shall be recorded in a proces-verbal signed by the representatives of the States which are parties to it and by the Belgian Minister for Foreign Affairs.

Each subsequent deposit of ratifications shall be made by means of a written notification addressed to the Belgian Government and accompanied by the instrument of ratification.

A duly certified copy of the proces-verbal relating to the first deposit of ratifications and the notifications mentioned in the preceding paragraph, as well as the instruments of ratification which accompanied them, shall be sent forthwith by the Belgian Government through the diplomatic channel to the States which have accepted to it. In the cases contemplated in the preceding paragraph the Belgian Government shall state at the same time the date on which it received the notification,

Article 10

Non-signatory States may accede to the present Convention whether or not they were represented at the International Conference at Brussels.

A State which desires to accede shall notify its intention in writing to the Belgian Government, and shall at the same time transmit to that Government the document of accession which shall be deposited in the archives of the Belgian Government.

The Belgian Government shall transmit immediately to all the States which have signed or acceded to the Convention a duly certified copy of the notification and of the instrument of accession, stating the date on which it received the notification.

Article 11

The High Contracting Parties may at the time of signature, deposit of ratification or accession, declare that their acceptance of the present Convention does not apply to any one or more of the self-governing Dominions, colonies, possessions, protectorates or overseas territories under their sovereignty or authority. They may subsequently accede separately in the name of any of such self-governing Dominions, colonies, possessions, protectorates or overseas territories excluded in their original declaration. They may also in accordance with its provisions denounce the present Convention separately in respect of each or any of such self-governing Dominions, colonies, possessions, protectorates or overseas territories under their sovereignty or authority.

Article 12

In the case of States which have taken part in the first deposit of ratifications, the present Convention shall take effect one year after the date of the proces-verbal of that deposit. As regards the States which ratify the Convention subsequently, or which accede to it, as also in cases in which the Convention is subsequently put into force in accordance with Article I 1, it shall take effect six months after the notifications mentioned in Article 9, ¶ 2, and in Article 10, ¶ 2, have been received by the Belgian Government.

Article 13

In the event of one of the Contracting States wishing to denounce the present Convention, the denunciation shall be notified in writing to the Belgian Government, which shall immediately communicate a duly certified copy thereof to all the other States, at the same time informing them of the date on which it was received.

The denunciation shall operate only in respect of the State which has made the notification and be effective one year after the notification has reached the Belgian Government.

Article 14

Each Contracting State shall have the right to call for a new Conference for the purpose of considering possible amendments to the present Convention.

Any State which proposes to exercise this right shall notify its intention one year in advance to the other States through the Belgian Government, which will assume the duty of convening the Conference.

Done at Brussels, in a single copy, April 10th, 1926.

(Follow the signatures)

PROTOCOL

(Translation)

The Governments signatory to the International Convention for the unification of certain rules concerning the immunity of State-owned ships, recognizing the necessity of making clearer certain provisions of the Convention, have appointed the undersigned Plenipotentiaries, who, having communicated their respective full powers found in good and due form, have agreed as follows.

I

Whereas it has been doubted whether, and to what extent, the expression > *Exploites par lui* < in Article 3 of the Convention extends or could be construed as extending to ships chartered by a State, whether for time or voyage, it is hereby declared for the purpose of removing such doubts, as follows :

> Ships on charter to a State, whether for time or voyage, while exclusively engaged on governmental and non-commercial service, and cargoes carried therein, shall not be subject to any arrest, seizure or detention whatsoever, but this immunity shall not prejudice in any other respect any rights or remedies accruing to the parties concerned. A certificate given by a diplomatic representative of the State concerned in manner provided by Article 5 of the Convention shall be conclusive evidence of the nature of the service on which the ship is engaged. <

III

For the purpose of the exception provided by Article 3, \square 1, it is understood that the ownership or operation of a ship acquired or operated by a State at the time :when steps by way of seizure, arrest or detention are taken has the same legal consequences as ownership or operation at the time when the cause of action arises.

That Article may accordingly be invoked by States in favour of ships belonging to or operated by them at the time when steps are taken by way of seizure, arrest or detention, if the ships are engaged exclusively in Government and non-commercial service.

III

It is understood that nothing in the provisions of Article 5 of the Convention prevents Governments interested from themselves appearing before the Court in which the legal proceedings are pending in accordance with the procedure prescribed by the national law, and producing to it the certificate provided for in the said Article.

IV

As the Convention in no respect affects the rights and obligations of belligerents and neutrals, Article 7 does not in any way prejudice the jurisdiction of duly constituted Prize Courts.

V

It is agreed that nothing contained in the provisions of Article 2 of the Convention shall limit or affect in any way the application of rules of procedure prescribed by national law with regard to proceedings to which the State is a Party.

VI

Where any question of the furnishing of evidence or production of documents arises and the Government concerned is of opinion that the furnishing of such evidence or the production of such documents would be detrimental to its national interests, the said Government may decline to furnish such evidence or to produce such documents by pleading the necessity of safeguarding national interests.

In witness whereof the undersigned duly authorized by their Governments have signed the present additional Protocol which shall be considered as forming an integral part of the Convention of the 10th April 1926, to which it relates.

Done at Brussels, May 24th, 1934, in a single copy, which shall remain in the archives of the Belgian Government.

(Follow the signatures)