

1961 INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO CARRIAGE OF PASSENGERS BY SEA AND PROTOCOL

Adopted in Brussels, Belgium on 29 April 1961

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THE HIGH CONTRACTING PARTIES,

HAVING RECOGNISED the desirability of determining by agreement certain uniform rules relating to the carriage of passengers by sea,

HAVE RESOLVED to conclude a Convention for this purpose, and to this [end] have agreed as follows:

ARTICLE 1

In this Convention, the following terms shall have the meanings hereby assigned to them:

- a) "Carrier" includes any of the following persons who enter into a contract of carriage: the ship owner, the charterer or the operator of the ship;
- b) "Contract of carriage" means a contract made by or on behalf of a carrier to carry passengers, but does not include a charter party;
- c) "Passenger" means only a person carried in a ship under a contract of carriage;
- d) "Ship" means only seagoing ship;
- e) "Carriage" covers the period while a passenger is on board the ship, and in the course of embarking or disembarking; but does not include any period while the passenger is in a marine station or on a quay or other port installation. In addition, "carriage" includes transport by water from land to ship or vice-versa, if the cost is included in the fare, or if the vessel used for this auxiliary transport has been put at the disposal of the passenger by the carrier;
- f) "International carriage" means any carriage in which according to the contract of carriage the place of departure and the place of destination are situated either in a single State if there is an intermediate port of call in another State, or in two different States;
- g) "Contracting State" means a State whose ratification or adherence to this Convention has become effective and whose denunciation thereof has not become effective.

ARTICLE 2

This Convention shall apply to any international carriage if either the ship flies the flag of a Contracting State or if, according to the contract of carriage, either the place of departure or the place of destination is in a Contracting State.

ARTICLE 3

- (1) Where a carrier is the owner of the carrying ship he shall exercise due diligence, and shall ensure that his servants and agents, acting within the scope of their employment, exercise due diligence to make and keep the ship seaworthy and properly manned, equipped and supplied at the beginning of the carriage, and at all times during the carriage and in all other respects to secure the safety of the passengers.
- (2) Where a carrier is not the owner of the carrying ship, he shall ensure that the ship owner or operator, as the case may be, and their servants and agents acting within the scope of their employment exercise due diligence in the respects set out in paragraph (1) of this Article.

ARTICLE 4

- (1) The carrier shall be liable for damage suffered as a result of the death of, or personal injury to a passenger if the incident which causes the damage so suffered occurs in the course of carriage and is due to the fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.
- (2) The fault or neglect of the carrier, his servants and agents shall be presumed, unless the contrary is proved, if the death or personal injury arises from or in connection with shipwreck, collision, stranding, explosion or fire.
- (3) Except as provided in paragraph (2) of this Article, the burden of proving the fault or neglect of the carrier, his servants or agents shall be on the claimant.

ARTICLE 5

If the carrier proves that the death of, or personal injury to the passenger was caused or contributed to by the fault or neglect of the passenger, the Court may exonerate the carrier wholly or partly from his liability in accordance with the provisions of its own law.

ARTICLE 6

- (1) The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 250,000 francs, each franc consisting of 65.5 milligrams of gold of millesimal fineness 900. The sum awarded may be converted into national currencies in round figures. Conversion of this sum into national currencies other than gold shall be made according to the gold value of such currencies at the date of payment.
- (2) Where in accordance with the law of the Court seized of the case damages are awarded in the form of periodical income payments, the equivalent capital value of these payments shall not exceed the said limit.
- (3) Nevertheless the national legislation of any High Contracting Party may fix as far as the carriers who are subjects of such State are concerned a higher per capita limit of liability.
- (4) The carrier and the passenger may also agree by special contract to a higher per capita limit of liability.
- (5) Any legal costs awarded and taxed by a Court in an action for damages shall not be included in the limits of liability prescribed in this Article.

- (6) The limits of liability prescribed in this Article shall apply to the aggregate of the claims put forward by or on behalf of any one passenger, his personal representatives, heirs or dependents on any distinct occasion.

ARTICLE 7

The carrier shall not be entitled to the benefit of the limitation of liability provided for in Article 6, if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage or recklessly and with knowledge that damage would probably result.

ARTICLE 8

The provisions of this Convention shall not modify the rights or duties of the carrier, provided for in international Conventions relating to the limitation of liability of owners of sea going ships or in any national law relating to such limitation.

ARTICLE 9

Any contractual provision concluded before the occurrence which caused the damage, purporting to relieve the carrier of his liability towards the passenger or his personal representatives, heirs or dependents or to prescribe a lower limit than that fixed in this Convention, as well as any such provision purporting to shift the burden of proof which rests on the carrier, or to require disputes to be submitted to any particular jurisdiction or to arbitration, shall be null and void, but the nullity of that provision shall not render void the contract which shall remain subject to the provisions of this Convention.

ARTICLE 10

- (1) Any claim for damages, however founded, may only be made subject to the conditions and the limits set out in this Convention.
- (2) Any claim for damages for personal injury suffered by a passenger may only be made by or on behalf of the passenger.
- (3) In case of the death of the passenger a claim for damages may be made only by the personal representatives, heirs or dependents of the deceased, and only if such persons are permitted to bring an action in accordance with the law of the Court seized of the case.

ARTICLE 11

- (1) In case of personal injury suffered by a passenger, he shall give written notice of such injury to the carrier within fifteen days of the date of disembarkation. If he fails to comply with this requirement, the passenger shall be presumed, in the absence of proof to the contrary, to have disembarked safe and sound.
- (2) Actions for damages arising out of the death or personal injury of a passenger shall be time barred after a period of two years.
- (3) In case of personal injury, the limitation period shall be calculated from the date of the disembarkation of the passenger.
- (4) In the event of death occurring during carriage the limitation period shall be calculated from the date on which the passenger should have disembarked.

- (5) In the event of personal injury which occurs in the course of carriage and results in death after disembarkation the limitation period shall be calculated from the date of death, provided that this period shall not exceed three years from the date of disembarkation.
- (6) The law of the Court seized of the case shall govern rights of suspension and interruption of the limitation periods in this Article; but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation.

ARTICLE 12

- (1) If an action is brought against a servant or agent of a carrier arising out of damages to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier himself is entitled to invoke under this Convention.
- (2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.
- (3) Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of paragraphs (1) and (2) of this Article if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

ARTICLE 13

This Convention shall be applied to commercial carriage within the meaning of Article 1 undertaken by States or Public Authorities.

ARTICLE 14

This Convention shall not affect the provisions of any international Convention or national law which governs liability for nuclear damage.

ARTICLE 15

This Convention shall be open for signature by the States represented at the eleventh session of the Diplomatic Conference on Maritime Law.

ARTICLE 16

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Government.

ARTICLE 17

- (1) This Convention shall come into force between the two States which first ratify it, three months after the date of the deposit of the second instrument of ratification.
- (2) This Convention shall come into force in respect of each signatory State which ratifies it after the deposit of the second instrument of ratification, three months after the date of the deposit of the instrument of ratification of that State.

ARTICLE 18

Any State not represented at the eleventh session of the Diplomatic Conference on Maritime Law may accede to this Convention. The instruments of accession shall be deposited with the Belgian Government. The Convention shall come into force in respect of the acceding State three months after the date of the deposit of the instrument of accession of that State, but not before the date of entry into force of the Convention as established by Article 17, paragraph (1).

ARTICLE 19

Each High Contracting Party shall have the right to denounce this Convention at any time after the coming into force thereof in respect of such High Contracting Party. Nevertheless, this denunciation shall only take effect one year after the date on which notification thereof has been received by the Belgian Government.

ARTICLE 20

- (1) Any High Contracting Party may at the time of its ratification of or accession to this Convention or at any time thereafter declare by written notification to the Belgian Government that the Convention shall extend to any of the countries which have not yet obtained sovereign rights and for whose international relations it is responsible. The Convention shall three months after the date of the receipt of such notification by the Belgian Government, extend to the countries named therein. The United Nations Organisation may apply the provisions of this Article in cases where they are the administering authority for a country or where they are responsible for the international relations of a country.
- (2) The United Nations Organisation or any High Contracting Party which has made a declaration under paragraph (1) of this Article may at any time thereafter declare by notification given to the Belgian Government that the Convention shall cease to extend to such country. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government.

ARTICLE 21

The Belgian Government shall notify the States represented at the eleventh session of the Diplomatic Conference on Maritime Law, and the acceding States to this Convention, of the following:

- (1) The signatures, ratifications and accessions received in accordance with Articles 15, 16 and 18.
- (2) The date on which the present Convention will come into force in accordance with Article 17.
- (3) The notifications with regard [to] the territorial application of the Convention in accordance with Article 20.
- (4) The denunciations received in accordance with Article 19.

ARTICLE 22

Any High Contracting Party may three years after the coming into force of this Convention, in respect of such High Contracting Party or at any time thereafter request that a Conference be convened in order to consider amendments to this Convention. Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which, provided that one third of the High Contracting Parties are in agreement, shall convene the Conference within six months thereafter.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, whose credentials have been duly accepted, have signed this Convention.

DONE at Brussels, this 29th day of April, 1961, in the French and English languages, the two texts being equally authentic, in a single copy, which shall remain deposited in the archives of the Belgian Government, which shall issue certified copies.

PROTOCOL

Any High Contracting Party may at the time of signing, ratifying or acceding to this Convention make the following reservations:

- (1) not to give effect to the Convention in relation to carriage which according to its national law is not considered to be international carriage;
- (2) not to give effect to the Convention when the passenger and the carrier are both subjects of the said Contracting Party;
- (3) to give effect to this Convention either by giving it the force of law or by including the provisions of this Convention in its national legislation in a form appropriate to that legislation.