

# 国际海事条约汇编

A COLLECTION OF  
INTERNATIONAL MARITIME TREATIES

第五卷

大连海事大学出版社

# 国际海事条约汇编

A COLLECTION OF  
INTERNATIONAL MARITIME TREATIES

國際海運法卷

交通部 ~~海運司~~ 外事司 编

胡正良 朱建新 王編

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## 内 容 提 要

本卷收集了有关国有船舶豁免、偷渡、船舶登记、班轮公会、国际海事组织、制止海上非法行为、内陆国船旗、过境、可航水道、海港及海洋法的公约、议定书等共 18 个国际条约。

## 前 言

随着改革开放的进一步深化,我国对外贸易和海洋运输事业的迅速发展,广大从事航运、外贸、保险、海事法律工作人员及有关的科教人员,迫切需要了解并掌握有关的海事条约。为此,交通部外事司在本司译校和保存的有关条约的基础上,与大连海运学院一起,参照交通部船舶检验局、安全监督局、救助打捞局、中国远洋运输公司、中国交通通信中心等单位翻译、出版的有关国际海事条约中文文本,做了修改和增补,编译了《国际海事条约汇编》。

《汇编》共收集了由国际海事组织、联合国贸易与发展会议、国际劳工组织、联合国国际贸易法委员会、国际海事委员会等国际组织制定的与海事有关的一百多个国际公约、议定书、规则及其修正案。《汇编》共分为七卷:第一卷至第三卷收集海上安全公约,第四卷收集海洋环境保护条约,第五卷和第六卷收集海事法规条约,第七卷收集船员就业、地位和福利待遇条约,全书约有 900 万字。为便于查阅和援引,《汇编》采用中英文对照,是国内首次出版的海事条约大全。

我国既是一个有庞大商船队的航运国家,又是一个有漫长海岸线的众多港口的国家。我国参加了许多与海事有关的国际组织并接受了三十多个国际公约和议定书。在制定有关船舶建造和检验发证、船舶航行安全、保护海洋环境、船员培训和考试、航运法规、保险、海事审判和仲裁等方面的标准时,直接引用或参照了有关国际海事条约的规定。最近,国际海事组织通过了关于依据有关国际海事条约,加强船旗国和港口国管理的若干决议。我国的有关部门,尤其是港务监督机关、船舶检验部门和航运公司需要采取进一步的措施,切实执行有关国际海事条约的规定。我国的船员亦有必要增加对国际海事条约的了解。我们相信,随着交通行业对外交流和合作的发展以及法制建设步伐的加快,《汇编》将为国内有关法规的制定工作提供一个参照系,并将在促进有关法规的实施中发挥应有的作用。

编辑委员会

1992 年 8 月

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## 第五卷编者说明

本卷收集了有关国有船舶豁免、偷渡、船舶登记、班轮公会、国际海事组织和国际海事委员会、制止海上非法行为、海底电缆保护、无海岸国家船旗、过境自由、国际可航水道、海港及海洋法的十八个公约、议定书、章程和宣言的中英文本。

在本卷中,《1974年班轮公会行动守则公约》、《1988年制止危及海上航行安全非法行为公约》、《1988年制止危及大陆架固定平台安全非法行为议定书》和《1982年联合国海洋法公约》的中文采用了各自的正式中文本,仅在个别地方作了必要的编辑性修改。为了便于读者对照使用,每一条约中文的章、节、条、款、目等的编号均与英文相同。

本卷由胡正良、朱建新担任主编,刘晶、郭萍、汪淳、祝默泉、傅廷忠和姜长华参加了部分编译工作,并由胡正良定稿。

由于编审工作时间仓促,加上编者水平有限,书中定有疏漏和错误,敬请读者批评指正。

编 者

1994年2月

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# 1. 1926 年统一国有船舶豁免的某些规定的国际公约\*

德国总统、比利时国王……\*\*

认识到通过共同协议确立有关国家所有船舶豁免的某些统一规定是合乎需要的,决定为此缔结一项公约,并指派为此目的、经正式授权的全权代表,协议如下:

## 第 1 条

国家所有或经营的海船、国家所有的货物、国家所有船舶所载运的货物和旅客,以及拥有或经营这种船舶和拥有这种货物的国家,在有关这种船舶的经营或者有关这种货物的运输的索赔方面,应当受到与适用于私有船舶、货物和设备的相同责任和义务原则的约束。

## 第 2 条

就这种责任和义务而言,有关法院管辖权、诉讼权利和程序方面的规则,应与适用于私人所有的商船、私人货物及其所有人的规则相同。

## 第 3 条

(1) 上述两条规定不适用于军用船舶、政府所有的游艇、巡逻船、医疗船、辅助船、供给船,以及国家所有或经营的、且在诉因发生时完全为政府所用而非用于商业目的的其他船舶。对这些船舶不得通过任何法律程序进行扣留、扣押或滞留,亦不得对其提起对物诉讼。

但是,在下列情况下,索赔人有权向拥有或经营这种船舶的国家的适当法院提起诉讼:

- (i) 有关碰撞或其他航行事故的请求;
- (ii) 有关救助或救助性质的;或有关共同海损的请求;
- (iii) 有关修理、供应或有关该船的其他合同的请求。

该国无权依据豁免权进行抗辩。

(2) 上述规定亦适用于任何前述船舶所载运的国家所有的货物。

(3) 对为政府所用而非用于商业目的的商船所载运的国家所有的货物,不得通过任何法律程序进行扣留、扣押或滞留,亦不得对其提起对物诉讼。

但是,有关碰撞和航行事故的请求,有关救助或救助性质的或共同海损的请求,以及有关这些货物的合同方面的请求,可向根据第 2 条具有管辖权的法院提出。

\* 简介:

本公约于 1926 年 4 月 10 日在布鲁塞尔召开的会议上通过。参加本公约的国家有:比利时、巴西、智利、丹麦、爱沙尼亚、法国、德国、英国、匈牙利、意大利、利比亚、马尔加什、荷兰、挪威、葡萄牙、瑞典、阿根廷、希腊、瑞士、叙利亚、土耳其、乌拉圭、扎伊尔等。

\*\* 注:其他缔约国元首名单略

#### 第 4 条

国家有权援用私有船舶及其所有人所能适用的各种抗辩、时效和责任限制。

如有必要采用或修改有关这种抗辩、时效和责任限制方面的规定,以使其适用于第 3 条所述的军用船舶或国家所有的船舶,则应在此后为此目的缔结一项特殊公约。在此期间,可以通过与本公约精神和原则相一致的国内立法的办法以实现此目的。

#### 第 5 条

如在第 3 条所适用的任何诉讼中,法院认为对于船舶或货物是否为政府所用而非属于商业性质具有怀疑,则由船舶或货物所属的缔约国外交代表签署并通过受诉法院和法庭所属国政府提交给法庭的证书,应作为上述船舶或货物属于第 3 条规定范围的绝对证据,但其作用仅限于解除依司法程序进行的任何扣留、扣押或滞留。

#### 第 6 条

本公约的各项规定应在各缔约国适用。但是,各缔约国没有义务将本公约的利益扩大适用于非缔约国及其国民,但有权以互惠为条件作任何此种扩大适用。

本公约的任何规定,都不得妨碍缔约国,通过其自己的法律,规定其国民向本国法院提起诉讼的权利。

#### 第 7 条

在战时,每一缔约国可通过向其他缔约国提出声明,保留中止适用本公约的权利,使该国所有或经营的船舶及其所有的货物不受外国法院的扣留、扣押或滞留。

但是,索赔人有权根据第 2 条和第 3 条向具有管辖权的适当法院提起诉讼。

#### 第 8 条

本公约的任何规定,都不影响各缔约国采取为保持中立的权利和义务所必需的任何措施的权利。

#### 第 9 条

自本公约签署之日起不超过两年的时间届满后,比利时政府应通知已声明准备批准本公约的各缔约国政府,以决定应否使本公约生效。批准书应在上述各国政府间通过协议规定的日期交存比利时政府。第一批批准书的交存应载人由各缔约国代表和比利时外交部长签字的官方记录内。

此后每一批准书的交存,应将书面通知连同批准书一并寄交比利时政府。

比利时政府应立即通过外交途径,将有关第一批批准书交存的经核证无误的官方记录副本、前款所述的通知,以及随同通知书一并寄交的批准书,分送已签署或加入本公约的各国。在前款所规定的情况下,比利时政府应同时说明它收到通知书的日期。

## 第 10 条

非本公约的签字国,不论其有无出席布鲁塞尔国际会议,均可加入本公约。

要求加入的国家,应将其意图书面通知比利时政府,同时递交加入书。该加入书应存放于比利时政府档案库。

比利时政府应立即将通知书和加入书的核证无误的副本,分送已签署或加入本公约的所有国家,并说明其收到通知书的日期。

## 第 11 条

各缔约国可以在签署本公约、交存批准书或加入书时,声明其接受本公约并不适用于在其主权或权力之下的任何一个或所有自治领、殖民地、占领地、保护领地或海外属地。被其原声明排除在外的任何自治领、殖民地、占领地、保护领地或海外属地,可随后以各自的名义单独加入本公约。处于其主权或权力之下的各个或任何一个自治领、殖民地、占领地、保护领地或海外属地亦可按照本公约的规定,单独退出本公约。

## 第 12 条

本公约对参加第一批批准书交存的国家,应于官方记录上记载交存日期一年后生效。对于随后批准的国家或加入的国家,以及按照第 11 条随后实施本公约的情况下,本公约应于比利时政府收到第 9 条第 2 款和第 10 条第 2 款所述通知书六个月后生效。

## 第 13 条

某一缔约国如欲退出本公约,应向比利时政府书面通知退出。比利时政府应立即将核证无误的通知书副本分送所有其他国家,并同时告知其收到通知书的日期。退出本公约仅对提交通知书的国家有效,并在通知书到达比利时政府一年后生效。

## 第 14 条

每一缔约国都有权为考虑对本公约进行可能的修正而要求召开新的会议。

欲行使此项权利的任何国家,应提前一年将其意图通过比利时政府通知其他国家,由比利时政府负责召集会议。

1926 年 4 月 10 日订于布鲁塞尔,共一份。

## 附加议定书

统一国有船舶豁免的某些规定的国际公约的签字国政府,认识到对公约的某些规定作进一步阐明的必要性,已指派全权代表。各全权代表经互通全权证书,认定全权证书适当,并协议如下:

I. 由于对公约第 3 条所述“由国家经营”一词是否适用于,以及在何种范围内适用于由国家期租或程租的船舶,或者可否解释为适用于这种船舶产生疑问,特为消除这种疑问而声明如下:

“各国租用的船舶,不论是期租还是程租,只要专门从事政府非商业服务,则这种船舶及

其所载货物,都不得成为扣留、扣押或滞留的对象。但是,这种豁免不得妨碍有关当事方在任何其他方面的任何权利或补偿。有关国家的外交代表以公约第 5 条规定的方式提供的证明书,应作为证明该船所从事的服务性质的绝对证据。”

Ⅰ. 对于第 3 条第 1 款规定的例外而言,兹认为,在采取扣留、扣押或滞留措施时,国家所获得或经营的船舶的所有权或经营权,与诉因发生时的所有权或经营权具有相同的法律后果。

在对国家所有或经营的船舶采取扣留、扣押或滞留措施时,如这些船舶专门从事政府非商业性服务,则有关国家可援引本条有利于这些船舶的规定。

Ⅱ. 兹认为,公约第 5 条的各项规定,不得妨碍有关国家的政府根据其国内法规定的程序,在受理诉讼的法院出庭,并向该法院提供第 5 条规定的证书。

Ⅲ. 由于公约在各方面都不影响交战国和中立国的一切权利和义务,公约第 7 条不得以任何方式损害正式成立的对船舶或货物进行扣留的捕获法院的管辖权。

Ⅳ. 兹协议,公约第 2 条中的任何规定,都不得在某一国家作为诉讼一方时,对适用其国内法规定的诉讼程序规则加以任何限制或影响。

Ⅴ. 如发生任何提供证据或出示证明的问题,有关政府认为证据的提供或证明的出示将有损其本国的利益,则该政府可以维护其本国利益为由,拒绝提供此种证据或出示此种证明。

下列署名者,经各自政府正式授权,特签署本附加议定书,以昭信守。本附加议定书应作为与其有关的 1926 年 4 月 10 日签订的公约的组成部分。

1934 年 5 月 24 日订于布鲁塞尔,共一份,应存放于比利时政府档案库。

# **1. INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES CONCERNING THE IMMUNITY OF STATE-OWNED SHIPS, 1926**

The President of the German Reich, His Majesty the King of the Belgians, the President of the Republic of Brazil, the President of the Republic of Chile, His Majesty the King of Denmark and Iceland, His Majesty the King of Spain, the Head of the Estonian State, the President of the French Republic, His Majesty the King of the United Kingdom of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, His Serene Highness the Regent of the Kingdom of Hungary, His Majesty the King of Italy, His Majesty the Emperor of Japan, the President of the Republic of Latvia, the President of the Republic of Mexico, His Majesty the King of Norway, Her Majesty the Queen of the Netherlands, the President of the Republic of Poland, the President of the Portuguese Republic, His Majesty the King of Roumania, His Majesty the King of the Serbs, Croats and Slovenes, and His Majesty the King of Sweden.

Recognising the desirability of establishing 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 plenipotentiaries who, having been duly authorised 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 proceeding 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;

- (i) Claims in respect of collision or other accidents of navigation;
  - (ii) Claims in respect of salvage or in the nature of salvage and in respect of general average;
  - (iii) 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 above-mentioned 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 defence, 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 the State

before whose Courts and Tribunal 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 ships 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 proceedings 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 signed the present Convention, or which have acceded 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 11, it shall take effect six months after the notifications mentioned in Article 9, paragraph 2, and in Article 10, paragraph 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.