Register of Texts of CONVENTIONS AND OTHER INSTRUMENTS CONCERNING INTERNATIONAL TRADE LAW

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Register of texts

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Introduction

The United Nations Commission on International Trade Law (UNCITRAL) has decided to establish a compilation of texts of conventions and similar instruments dealing with certain areas of the law of international trade. The present publication is the second volume issued pursuant to the Commission's decisions. [1]

The first volume of the *Register of Texts of Conventions and Other Instruments concerning International Trade Law* was published in 1971. [2] That volume included texts of conventions and similar instruments in the fields of two of the four priority topics in the Commission's programme: international sale of goods and international payments.

At its fourth session, in 1971, the Commission decided to request the Secretary-General to publish a second volume of the *Register* dealing with the remaining priority topics of the Commission's work programme: international commercial arbitration and international legislation on shipping.

Pursuant to a decision taken by the Commission, the *Register* sets forth the texts of international instruments that are in a final form and includes brief summaries of international instruments that are in the course of drafting.

The data on signatures, ratifications, reservations and declarations were received for the most part from those Governments or international organizations which exercise the depositary functions with respect to the instrument in question. Data relating to Conventions for which the Secretary-General is the depositary were taken from the following publication: " *Multilateral Treaties in respect of which the Secretary-General performs depositary functions* ". [3]

Like the first volume of the *Register,* the second volume is published in four languages: English, French, Spanish and Russian. Where no official translation exists, unofficial translations are reproduced. In this connexion the Secretary-General expresses his gratitude to the Government of the Union of Soviet Socialist Republics for providing the Secretariat with many translations for the second volume. The Secretary-General is also grateful to the Latin-American Free Trade Association for its permission to include translations of several instruments and also to the authors who have kindly permitted the use of their translations; the names of these authors are mentioned in foot-notes to the respective translations.

It is hoped that this publication will be useful in commercial practice and will assist in achieving the goal stated by the General Assembly when it established UNCITRAL, namely, the unification and harmonization of the law of international trade.

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[1] Report of UNCITRAL on the work of its first session, *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16* (A/7216), and UNCITRAL Yearbook, vol. I: 1968-1970; part two, I,A, para. 60; report of UNCITRAL on the work of its second session, *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 18* (A/7618), and UNCITRAL Yearbook, vol. I: 1968-1970, part two, II,A, para. 141; report of UNCITRAL on the work of its fourth session, *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 17* (A/8417), and UNCITRAL Yearbook, vol. II: 1971, part one, II,A, para. 131.

[2] United Nations publication, Sales No.: 71.V.3.

[3] The data reproduced in the present volume generally reflect the situation as of 15 June 1972.

Chapter I

INTERNATIONAL COMMERCIAL ARBITRATION

1. CONVENTIONS AND SIMILAR INSTRUMENTS

TREATY CONCERNING THE UNION OF SOUTH AMERICAN STATES IN RESPECT OF PROCEDURAL LAW [1]

Signed at Montevideo, 11 January 1889

[*Translation* [2]]

TITLE I

General Principles

Article 1

Trials and their incidents, of whatsoever nature, shall be conducted in accordance with the procedural law of the State in whose territory the trials are held.

Article 2

Proofs shall be admitted and weighed according to the law applicable to the juridical act which forms the subject-matter of the proceedings.

Those proofs are excluded which, by their character, are not authorized by the law of the place where the trial is held.

TITLE II

Of legalization

Article 3

Judgements or homologated awards rendered in regard to civil and commercial matters, public indentures and other authentic documents executed by functionaries of a State, and letters requisitorial or rogatory shall have effect in the other signatory States, in accordance with this Treaty, provided that they are duly legalized.

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[1] The Treaty has entered into force.

The following States have deposited their ratifications (r) or accessions (a) with the Government of Uruguay: Argentina (r), Bolivia (r), Colombia (a), Paraguay (r), Peru (r), Uruguay (r).

The following States have signed the Treaty: Brazil, Chile.

(*Source:* Organization of American States, *Treaty Series*, No. 9.)

[2] Translation prepared by the Secretariat of the United Nations.

Article 4

The legalization shall be considered as executed in due form when it is carried out in accordance with the laws of the country from which the document in question issues, and when that document has been authenticated by the diplomatic or consular agent accredited to the said country or locality by the Government of the State in whose territory the execution is requested.

TITLE III

OF THE ENFORCEMENT OF LETTERS REQUISITORIAL, JUDGEMENTS AND ARBITRAL AWARDS

Article 5

Judgements and arbitral awards rendered in civil and commercial matters in one of the signatory States shall have in the territory of the other signatories the same force as in the country where they were pronounced, provided that they comply with the following requirements:

(*a*) The judgement or arbitral award must have been rendered by a tribunal competent in the international sphere;

(*b*) It must have a final character, or the authority of *res judicata,* in the State where it was rendered;

(*c*) The party against whom it was pronounced must have been legally summoned, and either represented or declared in default, in conformity with the law of the country in which the trial was held;

(*d*) It must not conflict with the laws governing public order in the country of its enforcement.

Article 6

The documents indispensable in order to request enforcement of a judgement or arbitral award are the following:

(*a*) A complete copy of the judgement or arbitral award;

(*b*) A copy of the documents necessary to show that the parties have been summoned;

(*c*) An authenticated copy of the order which declares that the judgement or award in question is final, or has the authority of *res judicata,* together with an authenticated copy of the laws upon which that order is based.

Article 7

The manner of the enforcement of a judgement or arbitral award, and any judicial proceedings to which its enforcement may give rise, shall be determined by the procedural law of the State in which enforcement is requested.

Article 8

Procedural acts of a non-contentious nature, such as inventories, the reading of wills, appraisals, and the like, which have been carried out in one State shall have in the other States the same force as if they had taken place in the territory of the latter, provided that they meet all of the requirements set forth in the preceding articles.

Article 9

Letters requisitorial and letters rogatory which have as their object the issuance of notices, the taking of depositions, or the execution of any other judicial measure, shall be complied with in the signatory States, provided that the said letters meet the conditions laid down by the laws of the State in which their execution is requested.

Article 10

When the letter requisitorial or letter rogatory refers to attachments, appraisals, inventories or any preventive measure, the judge to whom it is addressed shall make the necessary provisions for the appointment of experts, appraisers, receivers, and, in general, for everything conducive to the better discharge of the commission involved.

Article 11

Letters requisitorial or rogatory shall be acted upon according to the laws of the country in which their execution is requested.

Article 12

Persons interested in the execution of letters requisitorial and letters rogatory may appoint agents and shall be responsible for expenses incurred by such agents or in resultant proceedings.

GENERAL PROVISIONS

Article 13

The simultaneous ratification of this Treaty by all of the signatory States is not necessary in order to bring it into operation. The States which approve it shall communicate their approval to the Governments of the Argentine Republic and the Oriental Republic of Uruguay, so that the latter may notify the other contracting States to that effect. This procedure shall take the place of an exchange.

Article 14

When the exchange has been made in the form indicated by the preceding article, this Treaty shall be effective from that time forth indefinitely.

Article 15

If any of the signatory States should deem it advisable to withdraw its adherence to the Treaty or introduce changes into the said instrument, it shall so advise the other signatories; but the withdrawal shall not take effect until two years after the date of denunciation, during which time an effort to reach a new accord shall be made.

Article 16

Article 13 applies also to States which have not attended this Congress but which wish to adhere to the present Treaty.

In witness whereof the plenipotentiaries of the aforesaid States sign and seal this instrument, in six copies, at Montevideo, on the eleventh day of January eighteen hundred and eighty-nine.

PROTOCOL ON ARBITRATION CLAUSES [1]

Signed at Geneva, 24 September 1923

League of Nations, *Treaty Series*, vol. XXVII, p. 158, No. 678 (1924)

The undersigned, being duly authorised, declare that they accept, on behalf of the countries which they represent, the following provisions:

(1) Each of the Contracting States recognises the validity of an agreement whether relating to existing or future differences between parties subject respectively to the

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[1] The Protocol entered into force on 28 July 1924.

The following States have deposited their ratifications (r), accessions (a), or notifications of succession (s) with the Secretary-General of the League of Nations (United Nations):

Albania	(r)	—	29 August 1924
Austria		—	25 January 1928
Belgium	(r)	—	23 September 1924
Brazil	(r)	—	5 February 1932
Czechoslovakia	(r)	—	18 September 1931
Denmark	(r)	—	6 April 1925
Estonia	(r)	—	16 May 1929
Finland	(r)	—	10 July 1924
France	(r)	—	7 June 1928
Germany	(r)	—	5 November 1924
Greece	(r)	—	26 May 1926
India	(r)	—	23 October 1937
Iraq	(a)	—	12 March 1926
Ireland	(r)	—	11 March 1957
Israel	(r)	—	13 December 1951
Italy *(excluding Colonies)*	(r)	—	28 July 1924
Japan	(r)	—	4 June 1928
Chosen, Taiwan, Karafuto, the leased territory of Kwantung, and the territories in respect of which Japan exercises a mandate	(a)	—	26 February 1929
Luxembourg	(r)	—	15 September 1930
Malta	(s)	—	16 August 1966
Mauritius	(s)	—	18 July 1969
Monaco	(r)	—	8 February 1927
Netherlands *(including the Netherlands Indies, Surinam and Curaçao)*	(r)	—	6 August 1925
New Zealand	(r)	—	9 June 1926
Norway	(r)	—	2 September 1927
Poland	(r)	—	26 June 1931
Portugal	(r)	—	10 December 1930
Romania	(r)	—	12 March 1925
Spain	(r)	—	29 July 1926
Sweden	(r)	—	8 August 1929
Switzerland	(r)	—	14 May 1928
Thailand	(r)	—	3 September 1930
United Kingdom of Great Britain and Northern Ireland	(r)	—	27 September 1924
Southern Rhodesia	(a)	—	18 December 1924

(Continued on next page.)

jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations, in order that the other Contracting States may be so informed.

(2) The arbitral procedure, including the constitution of the arbitral tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.

(3) Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

(4) The tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom Article 1 applies and including an Arbitration Agreement whether referring to present or future differences which is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals, in case the agreement or the arbitration cannot proceed or becomes inoperative.

(5) The present Protocol, which shall remain open for signature by all States, shall be ratified. The ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the Signatory States.

(Continued)	*Newfoundland*	(a)	—	22 June	1925
	British Guiana, British Honduras, Ceylon, Falkland Islands and Dependencies, Gambia (Colony and Protectorate), Gold Coast (including Ashanti and the Northern Territories of the Gold Coast and Togoland), Gibraltar, Jamaica (Turks and Caicos Islands and Cayman Islands), Kenya (Colony and Protectorate), Leeward Islands, Malta, Mauritius, Northern Rhodesia, Palestine (excluding Trans-Jordan), Trans-Jordan, Windward Islands (Grenada, St. Lucia, St. Vincent), Zanzibar	(a)	—	12 March	1926
	Tanganyika	(a)	—	17 June	1926
	St. Helena	(a)	—	29 July	1926
	Uganda	(a)	—	28 June	1929
	Bahamas	(a)	—	23 January	1931
	Burma (excluding the Karenni States under His Majesty's suzerainty)	(a)	—	19 October	1938
	Hong Kong	(a)	—	10 February	1965
	Yugoslavia	(r)	—	13 March	1959

The following States have signed the Protocol: Bolivia, Chile, El Salvador, Latvia, Liechtenstein, Lithuania, Nicaragua, Panama, Paraguay, Peru, Republic of Korea, Uganda, Uruguay.

(6) The present Protocol will come into force as soon as two ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

(7) The present Protocol may be denounced by any Contracting State on giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other Signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

(8) The Contracting States may declare that their acceptance of the present Protocol does not include any or all of the undermentioned territories: that is to say, their colonies, overseas possessions or territories, protectorates or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all Signatory States. They will take effect one month after the notification by the Secretary-General to all Signatory States.

The Contracting States may also denounce the Protocol separately on behalf of any of the territories referred to above. Article 7 applies to such denunciation.

A certified copy of the present Protocol will be transmitted by the Secretary-General to all the Contracting States.

Done at Geneva on the twenty-fourth day of September, one thousand nine hundred and twenty-three, in a single copy, of which the French and English texts are both authentic, and which will be kept in the archives of the Secretariat of the League.

Reservations and declarations

Belgium

Reserves the right to limit the obligation mentioned in the first paragraph of article 1 to contracts which are considered as commercial under its national law.

Brazil

Subject to the condition that the arbitral agreement or the arbitration clause mentioned in article 1 of this Protocol should be limited to contracts which are considered as commercial by the Brazilian legislation.

Czechoslovakia

The Czechoslovak Republic will regard itself as being bound only in relation to States which will have ratified the Convention of September 26th, 1927, on the Execution of Foreign Arbitral Awards, and the Czechoslovak Republic does not intend by this signature to invalidate in any way the bilateral treaties concluded by it which regulate the questions referred to in the present Protocol by provisions going beyond the provisions of the Protocol.

Denmark

Under Danish law, arbitral awards made by an Arbitral Tribunal do not immediately become operative; it is necessary in each case, in order to make an award operative, to apply to the ordinary courts of law. In the course of the proceedings, however, the arbitral award will generally be accepted by such courts without further examination as a basis of the final judgements in the affair.

Estonia

Limits, in accordance with article 1, paragraph 2, of this Protocol, the obligation mentioned in paragraph 1 of the said article to contracts which are considered as commercial under its national law.

France

Reserves the right to limit the obligation mentioned in paragraph 2 of article 1 to contracts which are considered as commercial under its own national law. Its acceptance of the present Protocol does not include the Colonies, Overseas Possessions or Protectorates or Territories in respect of which France exercises a mandate.

India

Is not binding as regards the enforcement of the provisions of this Protocol upon the territories in India of any Prince or Chief under the suzerainty of His Majesty.

India reserves the right to limit the obligation mentioned in the first paragraph of article 1 to contracts which are considered as commercial under its national law.

Latvia (at time of signature)

Reserves the right to limit the obligation mentioned in paragraph 2 of article 1 to contracts which are considered as commercial under its national law.

Liechtenstein (at time of signature)

Subject to the following reservation:

Agreements which are the subject of a special contract, or of clauses embodied in other contracts, attributing competence to a foreign tribunal, if they are concluded between nationals and foreigners or between nationals in the country, shall henceforth be valid only when they have been drawn up in due legal form.

This provision shall apply also to stipulations in articles of association, deeds of partnership and similar instruments and also to agreements for the submission of a dispute to an arbitral tribunal sitting in a foreign country.

Any agreement which submits to a foreign tribunal or to an arbitral tribunal a dispute relating to insurance contracts shall be null and void if the person insured is domiciled in the country or if the interest insured is situated in the country.

It shall be the duty of the tribunal to ensure as a matter of routine that this provision is observed even during procedure for distraint or during bankruptcy proceedings.

Luxembourg

Reserves the right to limit the obligation mentioned in the first paragraph of article 1 to contracts which are considered as commercial under its national law.

Monaco

Reserves the right to limit its obligation to contracts which are considered as commercial under its national law.

Netherlands

The Government of the Netherlands declares its opinion that the recognition in principle of the validity of arbitration clauses in no way affects either the restrictive provisions at present existing under Netherlands law or the right to introduce other restrictions in the future.

Poland

Under reservation that, in conformity with paragraph 2 of article 1, the undertaking contemplated in the said article will apply only to contracts which are declared as commercial in accordance with national Polish law.

Portugal

(1) In accordance with the second paragraph of article 1, the Portuguese Government reserves the right to limit the obligation mentioned in the first paragraph of article 1 to contracts which are considered as commercial under its national law.

(2) According to the terms of the first paragraph of article 8 the Portuguese Government declares that its acceptance of the present Protocol does not include its Colonies.

Romania

Subject to the reservation that the Royal Government may in all circumstances limit the obligation mentioned in article 1, paragraph 2, to contracts which are considered as commercial under its national law.

Spain

Reserves the right to limit the obligation mentioned in article 1, paragraph 2, to contracts which are considered as commercial under its national law.

Its acceptance of the present Protocol does not include the Spanish Possessions in Africa, or the territories of the Spanish Protectorate in Morocco.

United Kingdom of Great Britain and Northern Ireland

Applies only to Great Britain and Northern Ireland, and consequently does not include any of the Colonies, Overseas Possessions or Protectorates under His Britannic Majesty's sovereignty or authority or any territory in respect of which His Majesty's Government exercises a mandate.

Burma

His Majesty reserves the right to limit the obligations mentioned in the first paragraph of article 1 to contracts which are considered commercial under the law of Burma.

CONVENTION FOR THE EXECUTION OF FOREIGN ARBITRAL AWARDS [1]

Signed at Geneva, 26 September 1927

League of Nations, *Treaty Series*, vol. XCII, p. 302 (1929-1930)

Article 1

In the territories of any High Contracting Party to which the present Convention applies, an arbitral award made in pursuance of an agreement whether relating to existing or future differences (hereinafter called " a submission to arbitration ") covered by the Protocol on Arbitration Clauses, opened at Geneva on September 24, 1923, shall be

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[1] The Convention entered into force on 25 July 1929.

The following States have deposited their ratifications (r), accessions (a), or notifications of succession (s) with the Secretary-General of the League of Nations (United Nations):

Austria	(r)	—	18 July	1930
Belgium	(r)	—	27 April	1929
Belgian Congo, Territory of Ruanda-Urundi	(a)	—	5 June	1930
Czechoslovakia	(r)	—	18 September	1931
Denmark	(r)	—	25 April	1929
Estonia	(r)	—	16 May	1929
Finland	(r)	—	30 July	1931
France	(r)	—	13 May	1931
Germany	(r)	—	1 September	1930
Greece	(r)	—	15 January	1932
India	(r)	—	23 October	1937
Ireland	(r)	—	10 June	1957
Israel	(r)	—	27 February	1952
Italy	(r)	—	12 November	1930
Japan	(r)	—	11 July	1952
Luxembourg	(r)	—	15 September	1930
Malta	(s)	—	16 August	1966
Mauritius	(s)	—	18 July	1969
Netherlands				
for the Kingdom in Europe	(r)	—	12 August	1931
for the Netherlands Indies, Surinam and Curaçao	(a)	—	28 January	1933
New Zealand (*Western Samoa* included)	(r)	—	9 April	1929
Portugal	(r)	—	10 December	1930
Romania	(r)	—	22 June	1931
Spain	(r)	—	15 January	1930
Sweden	(r)	—	8 August	1929
Switzerland	(r)	—	25 September	1930
Thailand	(r)	—	7 July	1931
United Kingdom of Great Britain and Northern Ireland	(r)	—	2 July	1930
Newfoundland	(a)	—	7 January	1931
Bahamas, British Guiana, British Honduras, Falkland Islands, Gibraltar, Gold Coast [(a) Colony, (b) Ashanti, (c)				

(Continued on next page.)

recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present Convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

To obtain such recognition or enforcement, it shall, further, be necessary:

(*a*) That the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

(*b*) That the subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;

(*c*) That the award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(*d*) That the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to *opposition, appel* or *pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(*e*) That the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

Article 2

Even if the conditions laid down in Article 1 hereof are fulfilled, recognition and enforcement of the award shall be refused if the Court is satisfied:

(*a*) That the award has been annulled in the country in which it was made;

(*b*) That the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;

(*c*) That the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

(Continued)

Northern Territories, (d) Togoland under British Mandate] Jamaica (including Turks and Caicos Islands and Cayman Islands), Kenya, Palestine (excluding Trans-Jordan), Tanganyika Territory, Uganda Protectorate, Windward Islands (Grenada, St. Lucia, St. Vincent), Zanzibar	(a)	—	26 May	1931
Mauritius	(a)	—	13 July	1931
Northern Rhodesia	(a)	—	13 July	1931
Leeward Islands (Antigua, Dominica, Montserrat, St. Christopher-Nevis, Virgin Islands)	(a)	—	9 March	1932
Malta	(a)	—	11 October	1934
Burma (excluding the Karenni States under His Majesty's suzerainty)	(a)	—	19 October	1938
Hong Kong	(a)	—	10 February	1965
Yugoslavia	(r)	—	13 March	1959

The following States have signed the Convention: Bolivia, Nicaragua, Peru, Republic of Korea, Uganda.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it think fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

Article 3

If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in Article 1 (*a*) and (*c*), and Article 2 (*b*) and (*c*), entitling him to contest the validity of the award in a Court of Law, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

Article 4

The party relying upon an award or claiming its enforcement must supply, in particular:

(1) The original award or a copy thereof duly authenticated, according to the requirements of the law of the country in which it was made;

(2) Documentary or other evidence to prove that the award has become final, in the sense defined in Article 1 (*d*), in the country in which it was made;

(3) When necessary, documentary or other evidence to prove that the conditions laid down in Article 1, paragraph 1 and paragraph 2 (*a*) and (*c*), have been fulfilled.

A translation of the award and of the other documents mentioned in the Article into the official language of the country where the award is sought to be relied upon may be demanded. Such translation must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

Article 5

The provisions of the above Articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

Article 6

The present Convention applies only to arbitral awards made after the coming-into-force of the Protocol on Arbitration Clauses, opened at Geneva on September 24, 1923.

Article 7

The present Convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those Members of the League of Nations and non-Member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories.

Article 8

The present Convention shall come into force three months after it shall have been ratified on behalf of two High Contracting Parties. Thereafter, it shall take effect, in

the case of each High Contracting Party, three months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

Article 9

The present Convention may be denounced on behalf of any Member of the League or non-Member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy thereof, certified to be in conformity with the notification, to all the other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, *ipso facto,* the denunciation of the present Convention.

Article 10

The present Convention does not apply to the Colonies, Protectorates or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this Convention to one or more of such Colonies, Protectorates or territories to which the Protocol on Arbitration Clauses, opened at Geneva on September 24, 1923, applies, can be affected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect three months after the deposit thereof.

The High Contracting Parties can at any time denounce the Convention for all or any of the Colonies, Protectorates or territories referred to above. Article 9 hereof applies to such denunciation.

Article 11

A certified copy of the present Convention shall be transmitted by the Secretary-General of the League of Nations to every Member of the League of Nations and to every non-Member State which signs the same.

In faith whereof the above-named Plenipotentiaries have signed the present Convention.

Done at Geneva, on the twenty-sixth day of September one thousand nine hundred and twenty-seven, in a single copy, of which the English and French texts are both authentic, and which will be kept in the archives of the League of Nations.

Reservations and declarations

Belgium

Reserves the right to limit the obligation mentioned in article 1 to contracts which are considered commercial under its national law.

Czechoslovakia

The Czechoslovak Republic does not intend to invalidate in any way the bilateral treaties concluded by it with various States, which regulate the questions referred to in the present Convention by provisions going beyond the provisions of the Convention.

Denmark

Under Danish law, arbitral awards made by an Arbitral Tribunal do not immediately become operative; it is necessary in each case, in order to make an award operative, to apply to the ordinary Courts of Law. In the course of the proceedings, however, the arbitral award will generally be accepted by such Courts without further examination as a basis for the final judgement in the affair.

Estonia

Reserves the right to limit the obligation mentioned in article 1 to contracts which are considered commercial under its national law.

France

Reserves the right to limit the obligation mentioned in article 1 to contracts which are considered commercial under its national law.

Greece

The Hellenic Government reserves the right to limit the obligation mentioned in article 1 to contracts which are considered as commercial under its national law.

India

Is not binding as regards the enforcement of the provisions of this Convention upon the territories in India of any Prince or Chief under the suzerainty of His Majesty.

India reserves the right to limit the obligation mentioned in article 1 to contracts which are considered as commercial under its national law.

Luxembourg

Reserves the right to limit the obligation mentioned in article 1 to contracts which are considered as commercial under its national law.

Portugal

(1) The Portuguese Government reserves the right to limit the obligation mentioned in article 1 to contracts which are considered commercial under its national law.

(2) The Portuguese Government declares, according to the terms of article 10, that the present Convention does not apply to its Colonies.

Romania

Reserves the right to limit the obligation mentioned in article 1 to contracts which are considered commercial under its national law.

United Kingdom of Great Britain and Northern Ireland

Burma

His Majesty reserves the right to limit the obligations mentioned in article 1 to contracts which are considered commercial under the law of Burma.

BUSTAMANTE CODE

(Convention on Private International Law) [1]

Signed at Havana, 20 February 1928

[*Excerpts*]

League of Nations, *Treaty Series,* vol. LXXXVI, p. 246, No. 1950 (1929)

...

OBLIGATIONS AND CONTRACTS

...

CHAPTER XI. COMPROMISE AND ARBITRATION

Article 210

Provisions forbidding compromise or arbitration of certain matters are territorial.

Article 211

The extent and effects of the arbitration and the authority of *res judicata* of the compromise also depend upon the territorial law.

...

EXECUTION OF JUDGMENTS RENDERED BY FOREIGN COURTS

CHAPTER I. CIVIL MATTERS

Article 423

Every civil or contentious administrative judgment rendered in one of the contracting States shall have force and may be executed in the others if it combines the following conditions:

(1) That the judge of the court which has rendered it have competence to take cognizance of the matter and to pass judgment upon it, in accordance with the rules of this Code.

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[1] For entry into force, signatures and ratifications see *Register of Texts of Conventions and Other Instruments concerning International Trade Law,* vol. I, p. 151.

(2) That the parties have been summoned for the trial either personally or through their legal representative.

(3) That the judgment does not conflict with the public policy or the public laws of the country in which its execution is sought.

(4) That it is executory in the State in which it was rendered.

(5) That it be authoritatively translated by an official functionary or interpreter of the State in which it is to be executed, if the language employed in the latter is different.

(6) That the document in which it is contained fulfils the requirements necessary in order to be considered as authentic in the State from which it proceeds, and those which the legislation of the State in which the execution of the judgment is sought requires for authenticity.

Article 424

The execution of the judgment should be requested from a competent judge or tribunal in order to carry it into effect, after complying with the formalities required by the internal legislation.

Article 425

In the case referred to in the preceding article, every recourse against the judicial resolution granted by the laws of that State in respect to final judgments rendered in a declarative action of greater import shall be granted.

Article 426

The judge or tribunal from whom the execution is requested shall, before decreeing or denying it, and for a term of twenty days, hear the party against whom it is directed as well as the prosecuting attorney.

Article 427

The summons of the party who should be heard shall be made by means of letters requisitorial or letters rogatory, in accordance with the provisions of this Code if he has his domicile in a foreign country and lacks sufficient representation in the country, or in the form established by the local law if he has his domicile in the requested State.

Article 428

After the term fixed for appearance by the judge or the court, the case shall be proceeded with whether or not the party summoned has appeared.

Article 429

If the execution is denied, the judgment shall be returned to the party who presented it.

Article 430

When the execution of judgment is granted, the former shall be subject to the procedure determined by the law of the judge or the court for its own judgments.

Article 431

Final judgments rendered by a contracting State which by reason of their pronouncements are not to be executed shall have in the other States the effects of *res judicata* if they fulfill the conditions provided for that purpose by this Code, except those relating to their execution.

Article 432

The procedure and effects regulated in the preceding articles shall be applied in the contracting States to awards made in any of them by arbitrators or friendly compositors, whenever the case to which they refer can be the subject of a compromise in accordance with the legislation of the country where the execution is requested.

Article 433

The same procedure shall be also applied in respect to civil judgments rendered in any of the contracting States by an international tribunal when referring to private persons or interests.

CHAPTER II. ACTS OF VOLUNTARY JURISDICTION

Article 434

The provisions made in acts of voluntary jurisdiction regarding commercial matters by judges or tribunals of a contracting State or by its consular agents shall be executed in the others in accordance with the procedure and the manner indicated in the preceding article.

Article 435

The resolutions adopted in acts of voluntary jurisdiction in civil matters in a contracting State shall be accepted by the others if they fulfill the conditions required by this Code for the validity of documents executed in a foreign country and were rendered by a competent judge or tribunal, and they shall in consequence have extraterritorial validity.

...

Reservations and declarations

See also *Register of Texts of Conventions and Other Instruments concerning International Trade Law*, vol. I, p. 152

Venezuela

Venezuela reserves acceptance of articles 423 to 435.

TREATY ON INTERNATIONAL PROCEDURAL LAW[1]

Signed at Montevideo, 19 March 1940

[*Excerpt—Translation*[2]]

TITLE III

OF THE ENFORCEMENT OF LETTERS REQUISITORIAL, JUDGMENTS, AND ARBITRAL AWARDS

Article 5

Judgments and arbitral awards rendered in civil and commercial matters in one of the signatory States shall have in the territory of the other signatories, the same force as in the country where they were pronounced, provided that they comply with the following requirements:

(*a*) They must have been rendered by a tribunal competent in the international sphere;

(*b*) They must have a final character, or the authority of *res judicata,* in the State where they were rendered;

(*c*) The party against whom they were pronounced must have been legally summoned, and either represented or declared in default, in conformity with the law of the country in which the trial was held;

(*d*) They must not conflict with public order in the country of their enforcement.

Civil judgments rendered in any signatory State by an international tribunal, and relating to private persons or interests, are included under the provisions of this article.

Article 6

The documents indispensable in order to request enforcement of a judgment or arbitral award, are the following:

(*a*) A complete copy of the judgment or arbitral award;

(*b*) A copy of the documents necessary to show that paragraph (*c*) of the preceding article has been complied with;

(*c*) An authenticated copy of the order which declares that the judgment or award in question is final, or has the authority of *res judicata,* together with an authenticated copy of the laws upon which that order is based.

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[1] The Treaty has entered into force.
The following States have deposited their ratifications with the Government of Uruguay: Argentina, Paraguay, Uruguay.
The following States have signed the Treaty: Bolivia, Brazil, Colombia, Peru. (*Source:* Organization of American States, *Treaty Series,* No. 9.)

[2] *American Journal of International Law,* vol. 37, 1943, Suppl. p. 116.
Translators J. Irizzary y Puente and Gwladys L. Williams. Reproduced with permission.

Article 7

The execution of the aforesaid judgments and arbitral awards, including the judgments of international tribunals mentioned in the last paragraph of Article 5, must be requested of the competent judges or tribunals, who, upon hearing the State's Attorney, and after receiving proof that those judgments or awards meet the requirements of the said article, shall order enforcement through the proper channels, in conformity with the corresponding provisions of the local law of procedure.

In any case, upon request of the State's Attorney, or even independently of such a request, the party against whom enforcement is sought for the judgment or arbitral award in question, may be heard, without taking any other measures of defence.

Article 8

The judge from whom the enforcement of a foreign sentence is requested, acting upon petition of one of the parties or even *ex officio,* without entering into additional proceedings, may take all the measures which are necessary to ensure the effectiveness of that sentence, conformably with the provisions of the law of the local tribunal regarding sequestrations, inhibitions, attachments or other preventive measures.

Article 9

When the case calls solely for the establishment of the fact that a given judgment or award has the authority of *res judicata,* such judgment or award should be offered in judicial proceedings, supported by the documents to which Article 6 refers, at the proper time and in accordance with the local law; and the judges or tribunals shall pass upon the merit thereof in the sentence which they pronounce, after ascertaining in a hearing of the State's Attorney that the requisites laid down in Article 5 have been met.

Article 10

Procedural acts of a non-contentious nature, such as inventories, the reading of wills, appraisals, and the like, which have been carried out in one State, shall have in the others the same force as if they had taken place in the territory of the latter, provided that they meet all of the requirements set forth in the preceding articles.

Article 11

Letters requisitorial and letters rogatory, which have as their object the issuance of notices, the taking of depositions, or the execution of any other judicial measure, shall be complied with in the signatory States, provided that the said letters meet the requirements laid down in this treaty. Likewise, such letters must be prepared in the language of the State which issues them, and must be accompanied by a duly certified translation in the language of the State to which they are addressed. Rogatory commissions in civil or criminal matters, transmitted through the diplomatic agents—or, in their absence, the consular agents—of the country which issues the letter, will not require legalization of signature.

Article 12

When the letter requisitorial or letter rogatory refers to attachments, appraisals, inventories or any preventive measure, the judge to whom it is addressed shall make the necessary provisions for the appointment of experts, appraisers, receivers, and in general, for everything conducive to the better discharge of the commission involved.

Article 13

Letters requisitorial or rogatory shall be acted upon according to the laws of the country which is asked to execute them. If they relate to attachment, the propriety of that measure shall be governed and determined by the laws and the judges of the place where the proceedings are held.

The process and form of attachment, and the exemption from attachment of the property designated with that end in view, shall be governed by the laws and ordered by the judges of the place where the said property is located.

In order to execute the judgment rendered in the proceedings in which it was ordered that property located in another territory be attached, the procedure indicated in Articles 7 and 8 of this treaty shall be followed.

Article 14

When attachment proceedings have been instituted, the person affected by this measure may allege before the judge to whom the letter requisitorial was addressed, the pertinent third-party claim, with the sole purpose of having that claim communicated to the judge of origin. When the latter has been notified of the interposition of the third-party claim, he shall suspend the principal proceedings for a term not to exceed sixty days so that the third-party claimant may assert his rights. The third-party claim shall be examined by the judge of the principal proceedings, in conformity with the laws of his locality. Any third-party claimant who appears before the court after the expiration of the sixty-day term must accept the existing status of the case.

If the third-party claim urged is based upon ownership or upon real rights over the property attached, it shall be passed upon by the judges in accordance with the laws of the country where the said property is located.

Article 15

Persons interested in the execution of letters requisitorial and letters rogatory may appoint agents, shall be responsible for expenses incurred in the exercise of the agents, powers or in the resultant proceedings.

...

Reservations

Argentina (at time of signature)

As to Article 11—The Delegation understands that when a request for issuance of letters requisitorial is opposed, before the judge to whom the request is made, by pleas based upon pendency of action or upon incompetence of jurisdiction but which nevertheless attribute cognizance of the case to tribunals of the State to which the said judge belongs, the latter, in defense of his own jurisdiction, may refuse absolutely or in part to carry out the request.

Brazil (at time of signature)

As to Article 5—It understands that the provisions of Articles 776 and 778 of the Brazilian Code of Procedure are excepted from the effects of Article 5.

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS [1]

Done at New York, 10 June 1958

United Nations, *Treaty Series*, vol. 330, p. 38 No. 4739 (1959)

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether

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[1] The Convention entered into force on 7 June 1959.

The following States have deposited their ratifications (r) or accessions (a) with the Secretary-General of the United Nations:

Austria	(a)	— 2 May	1961
Botswana	(a)	— 20 December	1971
Bulgaria	(r)	— 10 October	1961
Byelorussian SSR	(r)	— 15 November	1960
Central African Republic	(a)	— 15 October	1962
Ceylon	(r)	— 9 April	1962
Czechoslovakia	(r)	— 10 July	1959
Ecuador	(r)	— 3 January	1962
Egypt	(a)	— 9 March	1959
Federal Republic of Germany	(r)	— 30 June	1961
Finland	(r)	— 19 January	1962
France	(r)	— 26 June	1959
Ghana	(a)	— 9 April	1968
Greece	(a)	— 16 July	1962
Hungary	(a)	— 5 March	1962
India	(r)	— 13 July	1960
Israel	(r)	— 5 January	1959
Italy	(a)	— 31 January	1969
Japan	(a)	— 20 June	1961
Khmer Republic	(a)	— 5 January	1960
Madagascar	(a)	— 16 July	1962
Mexico	(a)	— 14 April	1971
Morocco	(a)	— 12 February	1959
Netherlands	(r)	— 24 April	1964
Niger	(a)	— 14 October	1964
Nigeria	(a)	— 17 March	1970
Norway	(a)	— 14 March	1961
Philippines	(r)	— 6 July	1967
Poland	(r)	— 3 October	1961
Romania	(a)	— 13 September	1961
Sweden	(r)	— 20 January	1972
Switzerland	(r)	— 1 June	1965
Syrian Arab Republic	(a)	— 9 March	1959
Thailand	(a)	— 21 December	1959
Trinidad and Tobago	(a)	— 14 February	1966
Tunisia	(a)	— 17 July	1967
Ukrainian SSR	(r)	— 10 October	1960

(Continued on next page.)

physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term " arbitral awards " shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term " agreement in writing " shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(*a*) The duly authenticated original award or a duly certified copy thereof;

(*b*) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such

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(*Cont.*) Union of Soviet Socialist Republics (r) — 24 August 1960
United Republic of Tanzania (a) — 13 October 1964
United States of America (a) — 30 September 1970

The following States have signed the Convention: Argentina, Belgium, Costa Rica, El Salvador, Jordan, Luxembourg, Monaco, Pakistan.

language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(*a*) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(*b*) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(*c*) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(*d*) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(*e*) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(*a*) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(*b*) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1) (*e*), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between

Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

(*a*) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(*b*) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(*c*) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

(*a*) Signatures and ratifications in accordance with article VIII;

(*b*) Accessions in accordance with article IX;

(*c*) Declarations and notifications under articles I, X and XI;

(*d*) The date upon which this Convention enters into force in accordance with article XII;

(*e*) Denunciations and notifications in accordance with article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

Reservations and declarations

Argentina

Subject to the declaration contained in the Final Act:

The said declaration reads as follows: " If another Contracting Party extends the application of the Convention to territories which fall within the sovereignty of the Argentine Republic, the rights of the Argentine Republic shall in no way be affected by that extension. "

Austria

The Republic of Austria will apply the Convention, in accordance with the first sentence of article I (3) thereof, only to the recognition and enforcement of arbitral awards made in the territory of another Contracting State.

Botswana

The Republic of Botswana will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered commercial under Botswana law.

The Republic of Botswana will apply the Convention to the Recognition and Enforcement of Awards made in the territory of another Contracting State.

Bulgaria

Bulgaria will apply the Convention to recognition and enforcement of awards made in the territory of another contracting State. With regard to awards made in the territory of non-contracting States it will apply the Convention only to the extent to which these States grant reciprocal treatment.

Byelorussian Soviet Socialist Republic

The Byelorussian Soviet Socialist Republic will apply the provisions of this Convention in respect to arbitral awards made in the territories of non-contracting States only to the extent to which they grant reciprocal treatment.

Central African Republic

Referring to the possibility offered by paragraph 3 of article I of the Convention, the Central African Republic declares that it will apply the Convention on the basis of reciprocity, to the recognition and enforcement of awards made only in the territory of another contracting State; it further declares that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under its national law.

Czechoslovakia

Czechoslovakia will apply the Convention to recognition and enforcement of awards made in the territory of another contracting State. With regard to awards made in the territory of non-contracting States it will apply the Convention only to the extent to which these States grant reciprocal treatment.

Ecuador

Ecuador, on a basis of reciprocity, will apply the Convention to the recognition and enforcement of arbitral awards made in the territory of another contracting State only if such awards have been made with respect to differences arising out of legal relationships which are regarded as commercial under Ecuadorian law.

Federal Republic of Germany

(1) The Convention . . . will also apply to *Land* Berlin as from the day on which the Convention enters into force for the Federal Republic of Germany; [1]

With respect to paragraph 1 of article I, and in accordance with paragraph 3 of article I of the Convention, the Federal Republic of Germany will apply the Convention only to the recognition and enforcement of awards made in the territory of another Contracting State.

France

In a notification made on ratification the Government of France declared that the Convention shall extend to all the territories of the French Republic.

Referring to the possibility offered by paragraph 3 of Article I of the Convention, France declares that it will apply the Convention on the basis of reciprocity, to the recognition and enforcement of awards made only in the territory of another contracting State; it further declares that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under its national law.

Hungary

. . . the Hungarian People's Republic shall apply the Convention to the recognition and enforcement of such awards only as have been made in the territory of one of the other Contracting States and are dealing with differences arising in respect of a legal relationship considered by the Hungarian law as a commercial relationship.

India

In accordance with Article I of the Convention, the Government of India declare that they will apply the Convention to the recognition and enforcement of awards made only in the territory of a State, party to this Convention. They further declare that they will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the Law of India.

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[1] With reference to the above-mentioned statement, communications have been addressed to the Secretary-General by the Governments of Albania, Bulgaria, the Byelorussian SSR, Cuba, Czechoslovakia, Poland, Romania, the Ukrainian SSR, and the Union of Soviet Socialist Republics, on the one hand, and by the Governments of the Federal Republic of Germany, France, the United Kingdom of Great Britain and Northern Ireland and the United States of America, on the other hand.

The Governments of Albania, Bulgaria, the Byelorussian SSR, Cuba, Czechoslovakia, Poland, Romania, the Ukrainian SSR and the Union of Soviet Socialist Republics have informed the Secretary-General that they consider the above-mentioned statement as having no legal force on the ground that West Berlin is not, and never has been a State territory of the Federal Republic of Germany and that, consequently, the Government of the Federal Republic of Germany is in no way competent to assume any obligations in respect of West Berlin or to extend to it the application of international agreements, including the Convention in question.

The Governments of the Federal Republic of Germany, France, the United Kingdom of Great Britain and Northern Ireland and the United States of America have informed the Secretary-General that, in the Declaration on Berlin of 5 May, 1955, which accords with instruments that previously entered into force, the Allied Kommandatura as the supreme authority in Berlin had authorized the Berlin authorities to assure the representation abroad of the interests of Berlin and its inhabitants under suitable arrangements, and that the arrangements made in accordance with the said authorization permitted the Federal Republic of Germany to extend to Berlin the international agreements which the Federal Republic concludes, provided that the final decision in every case of such an extension was left to the Allied Kommandatura and that internal Berlin action was required to make any such agreement applicable as domestic law in Berlin. For these reasons they consider the objections referred to in the preceding paragraph as unfounded.

Japan

. . . it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State.

Madagascar

The Malagasy Republic declares that it will apply the Convention on the basis of reciprocity, to the recognition and enforcement of awards made only in the territory of another contracting State; it further declares that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under its national law.

Morocco

The Government of His Majesty the King of Morocco will only apply the Convention to the recognition and enforcement of awards made only in the territory of another contracting State.

Netherlands

The instrument of ratification stipulates that the Convention is ratified for the Kingdom of Europe, Surinam and the Netherlands Antilles.

Referring to paragraph 3 of article I of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Government of the Kingdom declares that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State.

Nigeria

In accordance with paragraph 3 of article I of the Convention, the Federal Military Government of the Federal Republic of Nigeria declares that it will apply the Convention on the basis of reciprocity to the recognition and enforcement of awards made only in the territory of a State party to this Convention and to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the laws of the Federal Republic of Nigeria.

Norway

1. We will apply the Convention only to the recognition and enforcement of awards made in the territory of one of the Contracting States.

2. We will not apply the Convention to differences where the subject matter of the proceedings is immovable property situated in Norway, or a right in or to such property.

Philippines (at time of signature)

The Philippines delegation signs *ad referendum* this Convention with the reservation that it does so on the basis of reciprocity and declares that the Philippines will apply the Convention to the recognition and enforcement of awards made only in the territory of another contracting State pursuant to article I, paragraph 3 of the Convention.

(at time of ratification)

. . . the Philippines, on the basis of reciprocity, will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State and only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Poland

With reservation as mentioned in article I, paragraph 3.

Romania

The Romanian People's Republic will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under its legislation.

The Romanian People's Republic will apply the Convention to the recognition and enforcement of awards made in the territory of another Contracting State. As regards awards made in the territory of certain non-contracting States, the Romanian People's Republic will apply the Convention only on the basis of reciprocity established by joint agreement between the parties.

Switzerland

Referring to the possibility offered by paragraph 3 of article I, Switzerland will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State.

Trinidad and Tobago

In accordance with article I of the Convention, the Government of Trinidad and Tobago declares that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. The Government of Trinidad and Tobago further declares that it will apply the Convention only to differences arising out of legal relationships, whether contracted or not, which are considered as commercial under the Law of Trinidad and Tobago.

Tunisia

. . . with the reservations provided for in article I, paragraph 3, of the Convention, that is to say, the Tunisian State will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State and only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under Tunisian law.

Ukrainian Soviet Socialist Republic

The Ukrainian Soviet Socialist Republic will apply the provisions of this Convention in respect to arbitral awards made in the territories of non-contracting States only to the extent to which they grant reciprocal treatment.

Union of Soviet Socialist Republics

The Union of Soviet Socialist Republics will apply the provisions of this Convention in respect to arbitral awards made in the territories of non-contracting States only to the extent to which they grant reciprocal treatment.

United Republic of Tanzania

The Government of the United Republic of Tanganyika and Zanzibar will apply the Convention, in accordance with the first sentence of article I (3) thereof, only to the recognition and enforcement of awards made in the territory of another Contracting State.

United States of America

The United States of America will apply the Convention, on the basis of reciprocity, to the recognition and enforcement of only those awards made in the territory of another Contracting State.

The United States of America will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the United States.

In a communication received on 3 November 1970, the Government of the United States of America notified the Secretary-General that the Convention shall apply to all of the territories for the international relations of which the United States of America is responsible.

EUROPEAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION [1]

Done at Geneva, 21 April 1961

United Nations, *Treaty Series,* vol. 484, p. 364 No. 7041 (1963-1964)

The undersigned, duly authorized,

Convened under the auspices of the Economic Commission for Europe of the United Nations,

Having noted that on 10th June 1958 at the United Nations Conference on International Commercial Arbitration has been signed in New York a Convention on the Recognition and Enforcement of Foreign Arbitral Awards,

Desirous of promoting the development of European trade by, as far as possible, removing certain difficulties that may impede the organization and operation of international commercial arbitration in relations between physical or legal persons of different European countries,

Have agreed on the following provisions:

Article I

Scope of the Convention

1. This Convention shall apply:

(*a*) to arbitration agreements concluded for the purpose of settling disputes arising from international trade between physical or legal persons having, when concluding the agreement, their habitual place of residence or their seat in different Contracting States;

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[1] The Convention entered into force on 7 January 1964, with the exception of paragraphs 3 to 7 of Article IV which entered into force on 18 October 1965.

The following States have deposited their ratifications (r) or accessions (a) with the Secretary-General of the United Nations.

Austria	(r)	—	6 March 1964
Bulgaria	(r)	—	13 May 1964
Byelorussian SSR	(r)	—	14 October 1963
Cuba	(a)	—	1 September 1965
Czechoslovakia	(r)	—	13 November 1963
Federal Republic of Germany	(r)	—	27 October 1964
France	(r)	—	16 December 1966
Hungary	(r)	—	9 October 1963
Italy	(r)	—	3 August 1970
Poland	(r)	—	15 September 1964
Romania	(r)	—	16 August 1963
Ukrainian SSR	(r)	—	18 March 1963
Union of Soviet Socialist Republics	(r)	—	27 June 1962
Upper Volta	(a)	—	26 January 1965
Yugoslavia	(r)	—	25 September 1963

The following States have signed the Convention: Belgium, Denmark, Finland, Spain, Turkey.

(*b*) to arbitral procedures and awards based on agreements referred to in paragraph 1 (*a*) above.

2. For the purpose of this Convention,

(*a*) the term " arbitration agreement " shall mean either an arbitral clause in a contract or an arbitration agreement, the contract or arbitration agreement being signed by the parties, or contained in an exchange of letters, telegrams, or in a communication by teleprinter and, in relations between States whose laws do not require that an arbitration agreement be made in writing, any arbitration agreement concluded in the form authorized by these laws;

(*b*) the term " arbitration " shall mean not only settlement by arbitrators appointed for each case (*ad hoc* arbitration) but also by permanent arbitral institutions;

(*c*) the term " seat " shall mean the place of the situation of the establishment that has made the arbitration agreement.

Article II

Right of legal persons of public law to resort to arbitration

1. In the cases referred to in Article I, paragraph 1, of this Convention, legal persons considered by the law which is applicable to them as " legal persons of public law " have the right to conclude valid arbitration agreements.

2. On signing, ratifying or acceding to this Convention any State shall be entitled to declare that it limits the above faculty to such conditions as may be stated in its declaration.

Article III

Right of foreign nationals to be designated as arbitrators

In arbitration covered by this Convention, foreign nationals may be designated as arbitrators.

Article IV

Organization of the arbitration

1. The parties to an arbitration agreement shall be free to submit their disputes:

(*a*) to a permanent arbitral institution; in this case, the arbitration proceedings shall be held in conformity with the rules of the said institution;

(*b*) to an *ad hoc* arbitral procedure; in this case, they shall be free *inter alia*

(i) to appoint arbitrators or to establish means for their appointment in the event of an actual dispute;

(ii) to determine the place of arbitration; and

(iii) to lay down the procedure to be followed by the arbitrators.

2. Where the parties have agreed to submit any disputes to an *ad hoc* arbitration, and where within thirty days of the notification of the request for arbitration to the respondent one of the parties fails to appoint his arbitrator, the latter shall, unless otherwise provided, be appointed at the request of the other party by the President of the competent Chamber of Commerce of the country of the defaulting party's habitual place of residence or seat at the time of the introduction of the request for arbitration. This

paragraph shall also apply to the replacement of the arbitrator(s) appointed by one of the parties or by the President of the Chamber of Commerce above referred to.

3. Where the parties have agreed to submit any disputes to an *ad hoc* arbitration by one or more arbitrators and the arbitration agreement contains no indication regarding the organization of the arbitration, as mentioned in paragraph 1 of this article, the necessary steps shall be taken by the arbitrator(s) already appointed, unless the parties are able to agree thereon and without prejudice to the case referred to in paragraph 2 above. Where the parties cannot agree on the appointment of the sole arbitrator or where the arbitrators appointed cannot agree on the measures to be taken, the claimant shall apply for the necessary action, where the place of arbitration has been agreed upon by the parties, at his option to the President of the Chamber of Commerce of the place of arbitration agreed upon or to the President of the competent Chamber of Commerce of the respondent's habitual place of residence or seat at the time of the introduction of the request for arbitration. Where such a place has not been agreed upon, the claimant shall be entitled at his option to apply for the necessary action either to the President of the competent Chamber of Commerce of the country of the respondent's habitual place of residence or seat at the time of the introduction of the request for arbitration, or to the Special Committee whose composition and procedure are specified in the Annex to this Convention. Where the claimant fails to exercise the rights given to him under this paragraph the respondent or the arbitrator(s) shall be entitled to do so.

4. When seized of a request the President or the Special Committee shall be entitled as need be:

(*a*) to appoint the sole arbitrator, presiding arbitrator, umpire, or referee;

(*b*) to replace the arbitrator(s) appointed under any procedure other than that referred to in paragraph 2 above;

(*c*) to determine the place of arbitration, provided that the arbitrator(s) may fix another place of arbitration;

(*d*) to establish directly or by reference to the rules and statutes of a permanent arbitral institution the rules of procedure to be followed by the arbitrator(s), provided that the arbitrators have not established these rules themselves in the absence of any agreement thereon between the parties.

5. Where the parties have agreed to submit their disputes to a permanent arbitral institution without determining the institution in question and cannot agree thereon, the claimant may request the determination of such institution in conformity with the procedure referred to in paragraph 3 above.

6. Where the arbitration agreement does not specify the mode of arbitration (arbitration by a permanent arbitral institution or an *ad hoc* arbitration) to which the parties have agreed to submit their dispute, and where the parties cannot agree thereon, the claimant shall be entitled to have recourse in this case to the procedure referred to in paragraph 3 above to determine the question. The President of the competent Chamber of Commerce or the Special Committee, shall be entitled either to refer the parties to a permanent arbitral institution or to request the parties to appoint their arbitrators within such time-limits as the President of the competent Chamber of Commerce or the Special Committee may have fixed and to agree within such time-limits on the necessary measures for the functioning of the arbitration. In the latter case, the provisions of paragraphs 2, 3 and 4 of this Article shall apply.

7. Where within a period of sixty days from the moment when he was requested to fulfil one of the functions set out in paragraphs 2, 3, 4, 5 and 6 of this Article, the President of the Chamber of Commerce designated by virtue of these paragraphs has not

fulfilled one of these functions, the party requesting shall be entitled to ask the Special Committee to do so.

Article V

PLEA AS TO ARBITRAL JURISDICTION

1. The party which intends to raise a plea as to the arbitrator's jurisdiction based on the fact that the arbitration agreement was either non-existent or null and void or had lapsed shall do so during the arbitration proceedings, not later than the delivery of its statement of claim or defence relating to the substance of the dispute; those based on the fact that an arbitrator has exceeded his terms of reference shall be raised during the arbitration proceedings as soon as the question on which the arbitrator is alleged to have no jurisdiction is raised during the arbitral procedure. Where the delay in raising the plea is due to a cause which the arbitrator deems justified, the arbitrator shall declare the plea admissible.

2. Pleas to the jurisdiction referred to in paragraph 1 above that have not been raised during the time-limits there referred to, may not be entered either during a subsequent stage of the arbitral proceedings where they are pleas left to the sole discretion of the parties under the law applicable by the arbitrator, or during subsequent court proceedings concerning the substance or the enforcement of the award where such pleas are left to the discretion of the parties under the rule of conflict of the court seized of the substance of the dispute or the enforcement of the award. The arbitrator's decision on the delay in raising the plea, will, however, be subject to judicial control.

3. Subject to any subsequent judicial control provided for under the *lex fori,* the arbitrator whose jurisdiction is called in question shall be entitled to proceed with the arbitration, to rule on his own jurisdiction and to decide upon the existence or the validity of the arbitration agreement or of the contract of which the agreement forms part.

Article VI

JURISDICTION OF COURTS OF LAW

1. A plea as to the jurisdiction of the court made before the court seized by either party to the arbitration agreement, on the basis of the fact that an arbitration agreement exists shall, under penalty of estoppel, be presented by the respondent before or at the same time as the presentation of his substantial defence, depending upon whether the law of the court seized regards this plea as one of procedure or of substance.

2. In taking a decision concerning the existence or the validity of an arbitration agreement, courts of Contracting States shall examine the validity of such agreement with reference to the capacity of the parties, under the law applicable to them, and with reference to other questions

(*a*) under the law to which the parties have subjected their arbitration agreement;

(*b*) failing any indication thereon, under the law of the country in which the award is to be made;

(*c*) failing any indication as to the law to which the parties have subjected the agreement, and where at the time when the question is raised in court the country in which the award is to be made cannot be determined, under the competent law by virtue of the rules of conflict of the court seized of the dispute.

The courts may also refuse recognition of the arbitration agreement if under the law of their country the dispute is not capable of settlement by arbitration.

3. Where either party to an arbitration agreement has initiated arbitration proceedings before any resort is had to a court, courts of Contracting States subsequently asked to deal with the same subject-matter between the same parties or with the question whether the arbitration agreement was non-existent or null and void or had lapsed, shall stay their ruling on the arbitrator's jurisdiction until the arbitral award is made, unless they have good and substantial reasons to the contrary.

4. A request for interim measures or measures of conservation addressed to a judicial authority shall not be deemed incompatible with the arbitration agreement, or regarded as a submission of the substance of the case to the court.

Article VII

APPLICABLE LAW

1. The parties shall be free to determine, by agreement, the law to be applied by the arbitrators to the substance of the dispute. Failing any indication by the parties as to the applicable law, the arbitrators shall apply the proper law under the rule of conflict that the arbitrators deem applicable. In both cases the arbitrators shall take account of the terms of the contract and trade usages.

2. The arbitrators shall act as *amiables compositeurs* if the parties so decide and if they may do so under the law applicable to the arbitration.

Article VIII

REASONS FOR THE AWARD

The parties shall be presumed to have agreed that reasons shall be given for the award unless they

(*a*) either expressly declare that reasons shall not be given; or

(*b*) have assented to an arbitral procedure under which it is not customary to give reasons for awards, provided that in this case neither party requests before the end of the hearing, or if there has not been a hearing then before the making of the award, that reasons be given.

Article IX

SETTING ASIDE OF THE ARBITRAL AWARD

1. The setting aside in a Contracting State of an arbitral award covered by this Convention shall only constitute a ground for the refusal of recognition or enforcement in another Contracting State where such setting aside took place in a State in which, or under the law of which, the award has been made and for one of the following reasons:

(*a*) the parties to the arbitration agreement were under the law applicable to them, under some incapacity or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made, or

(*b*) the party requesting the setting aside of the award was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(*c*) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond

the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration need not be set aside;

(*d*) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or failing such agreement, with the provisions of Article IV of this Convention.

2. In relations between Contracting States that are also parties to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10th June 1958, paragraph 1 of this Article limits the application of Article V (1) (*e*) of the New York Convention solely to the cases of setting aside set out under paragraph 1 above.

Article X

Final Clauses

1. This Convention is open for signature or accession by countries members of the Economic Commission for Europe and countries admitted to the Commission in a consultative capacity under paragraph 8 of the Commission's terms of reference.

2. Such countries as may participate in certain activities of the Economic Commission for Europe in accordance with paragraph 11 of the Commission's terms of reference may become Contracting Parties to this Convention by acceding thereto after its entry into force.

3. The Convention shall be open for signature until 31 December 1961 inclusive. Thereafter, it shall be open for accession.

4. This Convention shall be ratified.

5. Ratification or accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.

6. When signing, ratifying or acceding to this Convention, the Contracting Parties shall communicate to the Secretary-General of the United Nations a list of the Chambers of Commerce or other institutions in their country who will exercise the functions conferred by virtue of Article IV of this Convention on Presidents of the competent Chambers of Commerce. [1]

7. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning arbitration entered into by Contracting States.

8. This Convention shall come into force on the ninetieth day after five of the countries referred to in paragraph 1 above have deposited their instruments of ratification or accession. For any country ratifying or acceding to it later this Convention shall enter into force on the ninetieth day after the said country has deposited its instrument of ratification or accession.

9. Any Contracting Party may denounce this Convention by so notifying the Secretary-General of the United Nations. Denunciation shall take effect twelve months after the date of receipt by the Secretary-General of the notification of denunciation.

10. If, after the entry into force of this Convention, the number of Contracting Parties is reduced, as a result of denunciations, to less than five, the Convention shall cease to be in force from the date on which the last of such denunciations takes effect.

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[1] For the list of these Chambers of Commerce or other institutions communicated to the Secretary-General, see p. 42 below.

11. The Secretary-General of the United Nations shall notify the countries referred to in paragraph 1, and the countries which have become Contracting Parties under paragraph 2 above, of

(*a*) declarations made under Article II, paragraph 2;

(*b*) ratifications and accessions under paragraphs 1 and 2 above;

(*c*) communications received in pursuance of paragraph 6 above;

(*d*) the dates of entry into force of this Convention in accordance with paragraph 8 above;

(*e*) denunciations under paragraph 9 above;

(*f*) the termination of this Convention in accordance with paragraph 10 above.

12. After 31 December 1961, the original of this Convention shall be deposited with the Secretary-General of the United Nations, who shall transmit certified true copies to each of the countries mentioned in paragraphs 1 and 2 above.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Geneva, this twenty-first day of April, one thousand nine hundred and sixty-one, in a single copy in the English, French and Russian languages, each text being equally authentic.

ANNEX

COMPOSITION AND PROCEDURE OF THE SPECIAL COMMITTEE REFERRED TO IN ARTICLE IV OF THE CONVENTION

1. The Special Committee referred to in Article IV of the Convention shall consist of two regular members and a Chairman. One of the regular members shall be elected by the Chambers of Commerce or other institutions designated, under Article X, paragraph 6, of the Convention, by States in which at the time when the Convention is open to signature National Committees of the International Chamber of Commerce exist, and which at the time of the election are parties to the Convention. The other member shall be elected by the Chambers of Commerce or other institutions designated, under Article X, paragraph 6, of the Convention, by States in which at the time when the Convention is open to signature no National Committees of the International Chamber of Commerce exist and which at the time of the election are parties to the Convention.

2. The persons who are to act as Chairman of the Special Committee pursuant to paragraph 7 of this Annex shall also be elected in like manner by the Chambers of Commerce or other institutions referred to in paragraph 1 of this Annex.

3. The Chambers of Commerce or other institutions referred to in paragraph 1 of this Annex shall elect alternates at the same time and in the same manner as they elect the Chairman and other regular members, in case of the temporary inability of the Chairman or regular members to act. In the event of the permanent inability to act or of the resignation of a Chairman or of a regular member, then the alternate elected to replace him shall become, as the case may be, the Chairman or regular member, and the group of Chambers of Commerce or other institutions which had elected the alternate who has become Chairman or regular member shall elect another alternate.

4. The first elections to the Committee shall be held within ninety days from the date of the deposit of the fifth instrument of ratification or accession. Chambers of Commerce and other institutions designated by Signatory States who are not yet parties to the Convention shall also be entitled to take part in these elections. If however it should not be possible to hold elections within the prescribed period, the entry into force of paragraphs 3 to 7 of Article IV of the Convention shall be postponed until elections are held as provided for above.

5. Subject to the provisions of paragraph 7 below, the members of the Special Committee shall be elected for a term of four years. New elections shall be held within the first six months of the fourth year following the previous elections. Nevertheless, if a new procedure for the election of the members of the Special Committee has not produced results, the members previously elected shall continue to exercise their functions until the election of new members.

6. The results of the elections of the members of the Special Committee shall be communicated to the Secretary-General of the United Nations who shall notify the States referred to in Article X, paragraph 1, of the Convention and the States which have become Contracting Parties under Article X, paragraph 2. The Secretary-General shall likewise notify the said States of any postponement and of the entry into force of paragraphs 3 to 7 of Article IV of the Convention in pursuance of paragraph 4 of this Annex.

7. The persons elected to the office of Chairman shall exercise their functions in rotation, each during a period of two years. The question which of these two persons shall act as Chairman during the first two-year period after the entry into force of the Convention shall be decided by the drawing of lots. The office of Chairman shall thereafter be vested, for each successive two-year period, in the person elected Chairman by the group of countries other than that by which the Chairman exercising his functions during the immediately preceding two-year period was elected.

8. The reference to the Special Committee of one of the requests referred to in paragraphs 3 to 7 of the aforesaid Article IV shall be addressed to the Executive Secretary of the Economic Commission for Europe. The Executive Secretary shall in the first instance lay the request before the member of the Special Committee elected by the group of countries other than that by which the Chairman holding office at the time of the introduction of the request was elected. The proposal of the member applied to in the first instance shall be communicated by the Executive Secretary to the other member of the Committee and, if that other member agrees to this proposal, it shall be deemed to be the Committee's ruling and shall be communicated as such by the Executive Secretary to the person who made the request.

9. If the two members of the Special Committee applied to by the Executive Secretary are unable to agree on a ruling by correspondence, the Executive Secretary of the Economic Commission for Europe shall convene a meeting of the said Committee at Geneva in an attempt to secure a unanimous decision on the request. In the absence of unanimity, the Committee's decision shall be given by a majority vote and shall be communicated by the Executive Secretary to the person who made the request.

10. The expenses connected with the Special Committee's action shall be advanced by the person requesting such action but shall be considered as costs in the cause.

Declaration

Federal Republic of Germany

A note accompanying the instrument of ratification contains a statement that the Convention " shall also apply to *Land* Berlin as from the day on which the Convention enters into force for the Federal Republic of Germany ".

With reference to the above-mentioned statement, communications have been addressed to the Secretary-General by the Governments of Albania, Bulgaria, the Byelorussian SSR, Cuba, Czechoslovakia, Poland, Romania, the Ukrainian SSR, and the Union of Soviet Socialist Republics, on the one hand, and by the Governments of the Federal Republic of Germany, France, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, on the other hand. For the nature of these communications, see p. 30, foot-note 1.

LIST OF CHAMBERS OF COMMERCE OR OTHER INSTITUTIONS COMMUNICATED TO THE SECRETARY-GENERAL PURSUANT TO ARTICLE X, PARAGRAPH 6

Austria. The President of the " Bundeskammer der Gewerblichen Wirtschaft ", Wien 1., Stubenring 12.

Bulgaria. The President of the Chamber of Commerce of the People's Republic of Bulgaria, 11-A Boulevard Stamboliiski, Sofia.

Byelorussian Soviet Socialist Republic. The All-Union Chamber of Commerce.

Cuba. The Chamber of Commerce of the Republic of Cuba and its President.

Czechoslovakia. The Chamber of Commerce of the Czechoslovak Socialist Republic, through its President.

Federal Republic of Germany. Deutsche Ausschuss für Schiedsgerichtswesen (German Arbitration Commission), through its Chairman, Bonn, Markt 26-32.

France. The President of the Assembly of Presidents of Chambers of Commerce and of Industry, who will also be an elector to the Special Committee. The first Vice-President of that Assembly will act as his alternate. The offices of the President of the Assembly are at 27, avenue de Friedland, Paris (8e).

Hungary. The President of the Hungarian Chamber of Commerce.

Italy. Associazione Italiana per l'Arbitrato (Italian Association for Arbitration).

Poland. The President of the Polish Chamber of External Trade, Polska Izba Handlu Zagranicznego (Polish Chamber of External Trade), 4 Trebacka Street, Warsaw.

Romania. The Chamber of Commerce of the Romanian People's Republic, through its Chairman.

Turkey. The Union of Turkish Chambers of Commerce, Industry and Commodity Exchanges. Mr. Berin Beydag, its Secretary-General, will participate in the meeting for the election of the members of the Special Committee.

Ukrainian Soviet Socialist Republic. The All-Union Chamber of Commerce.

Union of Soviet Socialist Republics. The All-Union Chamber of Commerce.

Upper Volta. The Chamber of Commerce of the Upper Volta at Ouagadougou.

Yugoslavia. The President of the Foreign Trade Arbitration of the Federal Economic Chamber, Knez Mihajlova 10, Belgrade.

AGREEMENT RELATING TO APPLICATION OF THE EUROPEAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION [1]

Done at Paris, 17 December 1962

United Nations, *Treaty Series,* vol. 523, p. 94, No. 7555 (1965)

The signatory Governments of the member States of the Council of Europe,

Considering that a European Convention on International Commercial Arbitration was opened for signature at Geneva on 21st April 1961;

Considering, however, that certain measures relating to the organisation of the arbitration, provided for in Article IV of the Convention, are not to be recommended except in the case of disputes between physical or legal persons having, on the one hand, their habitual place of residence or seat in Contracting States where, according to the terms of the Annex to the Convention, there exist National Committees of the International Chamber of Commerce, and, on the other, in States where no such Committees exist;

Considering that under the terms of paragraph 7 of Article X of the said Convention the provisions of that Convention shall not affect the validity of multilateral or bilateral agreements concerning arbitration entered into by States which are Parties thereto;

Without prejudice to the intervention of a Convention relating to a uniform law on arbitration now being drawn up within the Council of Europe,

Have agreed as follows:

Article 1

In relations between physical or legal persons whose habitual residence or seat is in States Parties to the present Agreement, paragraphs 2 to 7 of Article IV of the European Convention on International Commercial Arbitration, opened for signature at Geneva on 21st April 1961, are replaced by the following provision:

" If the arbitral Agreement contains no indication regarding the measures referred to in paragraph 1 of Article IV of the European Convention on International Commercial Arbitration as a whole, or some of these measures, any difficulties arising with regard to the constitution or functioning of the arbitral tribunal shall be submitted to the decision of the competent authority at the request of the party instituting proceedings. "

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[1] The Agreement entered into force on 25 January 1965.

The following States have deposited their ratifications with the Secretary-General of the Council of Europe:

Austria	—	28 February 1964
Federal Republic of Germany	—	19 October 1964
France	—	31 November 1966

The following State has signed the Agreement: Belgium.

Article 2

1. This Agreement shall be open for signature by the member States of the Council of Europe. It shall be ratified or accepted. Instruments of ratification or acceptance shall be deposited with the Secretary-General of the Council of Europe.

2. Subject to the provisions of Article 4, this Agreement shall come into force thirty days after the date of deposit of the second instrument of ratification or acceptance.

3. Subject to the provisions of Article 4, in respect of any signatory Government ratifying or accepting it subsequently, the Agreement shall come into force thirty days after the date of deposit of its instrument of ratification or acceptance.

Article 3

1. After the entry into force of this Agreement, the Committee of Ministers of the Council of Europe may invite any State which is not a member of the Council and in which there exists a National Committee of the International Chamber of Commerce to accede to this Agreement.

2. Accession shall be effected by the deposit with the Secretary-General of the Council of Europe of an instrument of accession, which shall take effect, subject to the provisions of Article 4, thirty days after the date of its deposit.

Article 4

The entry into force of this Agreement in respect of any State after ratification, acceptance or accession in accordance with the terms of Articles 2 and 3 shall be conditional upon the entry into force of the European Convention on International Commercial Arbitration in respect of that State.

Article 5

Any Contracting Party may, in so far as it is concerned, denounce this Agreement by giving notice to the Secretary-General of the Council of Europe. Denunciation shall take effect six months after the date of receipt by the Secretary-General of the Council of such notification.

Article 6

The Secretary-General of the Council of Europe shall notify member States of the Council and the Government of any State which has acceded to this Agreement of:

(*a*) any signature;

(*b*) the deposit of any instrument of ratification, acceptance or accession;

(*c*) any date of entry into force;

(*d*) any notification received in pursuance of the provisions of Article 5.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Agreement.

DONE at Paris, this 17th day of December 1962 in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the signatory and acceding Governments.

Declaration

Federal Republic of Germany

Upon deposit of the instrument of ratification, the Government of the Federal Republic of Germany declared that the Agreement will also apply to *Land* Berlin as from the date of its entry into force for the Federal Republic of Germany.

CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES [1]

Done at Washington, 18 March 1965

United Nations, *Treaty Series,* vol. 575, p. 160, No. 8359 (1966)

The Contracting States,

Considering the need for international cooperation for economic development, and the role of private international investment therein;

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[1] The Convention entered into force on 14 October 1966.

A publication of the International Bank for Reconstruction and Development reports that the following ratifications have been deposited with the Bank: *

Afghanistan	—	25 June	1968
Austria	—	25 May	1971
Belgium	—	27 August	1970
Botswana	—	15 January	1970
Burundi	—	5 November	1969
Cameroon	—	3 January	1967
Central African Republic	—	23 February	1966
Ceylon	—	12 October	1967
Chad	—	29 August	1966
Congo	—	23 June	1966
Cyprus	—	25 November	1966
Dahomey	—	6 September	1966
Denmark	—	24 April	1968
Egypt	—	3 May	1972
Federal Republic of Germany	—	18 April	1969
Finland	—	9 January	1969
France	—	21 August	1967
Gabon	—	4 April	1966
Ghana	—	13 July	1966
Greece	—	21 April	1969
Guinea	—	4 November	1968
Guyana	—	11 July	1969
Iceland	—	25 July	1966
Indonesia	—	28 September	1968
Italy	—	29 March	1971
Ivory Coast	—	16 February	1966
Jamaica	—	9 September	1966
Japan	—	17 August	1967
Kenya	—	3 January	1967
Lesotho	—	8 July	1969
Liberia	—	16 June	1970
Luxembourg	—	30 July	1970
Madagascar	—	6 September	1966
Malawi	—	23 August	1966
Malaysia	—	8 August	1966
Mauritania	—	11 January	1966
Mauritius	—	2 June	1969
Morocco	—	11 May	1967
Nepal	—	7 January	1969

(Continued on next page.)

Bearing in mind the possibility that from time to time disputes may arise in connection with such investment between Contracting States and nationals of other Contracting States;

Recognizing that while such disputes would usually be subject to national legal processes, international methods of settlement may be appropriate in certain cases;

Attaching particular importance to the availability of facilities for international conciliation or arbitration to which Contracting States and nationals of other Contracting States may submit such disputes if they so desire;

Desiring to establish such facilities under the auspices of the International Bank for Reconstruction and Development;

Recognizing that mutual consent by the parties to submit such disputes to conciliation or to arbitration through such facilities constitutes a binding agreement which requires in particular that due consideration be given to any recommendation of conciliators, and that any arbitral award be complied with; and

Declaring that no Contracting State shall by the mere fact of its ratification, acceptance or approval of this Convention and without its consent be deemed to be under any obligation to submit any particular dispute to conciliation or arbitration,

Have agreed as follows:

(Continued.)

Netherlands	—	14 September 1966
Niger	—	14 November 1966
Nigeria	—	23 August 1965
Norway	—	16 August 1967
Pakistan	—	15 September 1966
Republic of China	—	10 December 1968
Republic of Korea	—	21 February 1967
Senegal	—	21 April 1967
Sierra Leone	—	2 August 1966
Singapore	—	14 October 1968
Somalia	—	29 February 1968
Swaziland	—	14 June 1971
Sweden	—	29 December 1966
Switzerland	—	15 May 1968
Togo	—	11 August 1967
Trinidad and Tobago	—	3 January 1967
Tunisia	—	22 June 1966
Uganda	—	7 June 1966
United Kingdom of Great Britain and Northern Ireland	—	19 December 1966
United States of America	—	10 June 1966
Upper Volta	—	29 August 1966
Yugoslavia	—	21 March 1967
Zaire	—	29 April 1970
Zambia	—	17 June 1970

The following have signed the Convention: Ethiopia, Ireland, New Zealand, Sudan.

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* In connexion with this list, attention may be directed to General Assembly resolution 2758 (XXVI) of 25 October 1971.

CHAPTER I

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

SECTION 1. ESTABLISHMENT AND ORGANIZATION

Article 1

(1) There is hereby established the International Centre for Settlement of Investment Disputes (hereinafter called the Centre).

(2) The purpose of the Centre shall be to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States in accordance with the provisions of this Convention.

Article 2

The seat of the Centre shall be at the principal office of the International Bank for Reconstruction and Development (hereinafter called the Bank). The seat may be moved to another place by decision of the Administrative Council adopted by a majority of two-thirds of its members.

Article 3

The Centre shall have an Administrative Council and a Secretariat and shall maintain a Panel of Conciliators and a Panel of Arbitrators.

SECTION 2. THE ADMINISTRATIVE COUNCIL

Article 4

(1) The Administrative Council shall be composed of one representative of each Contracting State. An alternate may act as representative in case of his principal's absence from a meeting or inability to act.

(2) In the absence of a contrary designation, each governor and alternate governor of the Bank appointed by a Contracting State shall be *ex officio* its representative and its alternate respectively.

Article 5

The President of the Bank shall be *ex officio* Chairman of the Administrative Council (hereinafter called the Chairman) but shall have no vote. During his absence or inability to act and during any vacancy in the office of President of the Bank, the person for the time being acting as President shall act as Chairman of the Administrative Council.

Article 6

(1) Without prejudice to the powers and functions vested in it by other provisions of this Convention, the Administrative Council shall:

(*a*) adopt the administrative and financial regulations of the Centre;

(*b*) adopt the rules of procedure for the institution of conciliation and arbitration proceedings;

(*c*) adopt the rules of procedure for conciliation and arbitration proceedings (hereinafter called the Conciliation Rules and the Arbitration Rules);

(*d*) approve arrangements with the Bank for the use of the Bank's administrative facilities and services;

(*e*) determine the conditions of service of the Secretary-General and of any Deputy Secretary-General;

(*f*) adopt the annual budget of revenues and expenditures of the Centre;

(*g*) approve the annual report on the operation of the Centre.

The decisions referred to in sub-paragraphs (*a*), (*b*), (*c*) and (*f*) above shall be adopted by a majority of two-thirds of the members of the Administrative Council.

(2) The Administrative Council may appoint such committees as it considers necessary.

(3) The Administrative Council shall also exercise such other powers and perform such other functions as it shall determine to be necessary for the implementation of the provisions of this Convention.

Article 7

(1) The Administrative Council shall hold an annual meeting and such other meetings as may be determined by the Council, or convened by the Chairman, or convened by the Secretary-General at the request of not less than five members of the Council.

(2) Each member of the Administrative Council shall have one vote and, except as otherwise herein provided, all matters before the Council shall be decided by a majority of the votes cast.

(3) A quorum for any meeting of the Administrative Council shall be a majority of its members.

(4) The Administrative Council may establish, by a majority of two-thirds of its members, a procedure whereby the Chairman may seek a vote of the Council without convening a meeting of the Council. The vote shall be considered valid only if the majority of the members of the Council cast their votes within the time limit fixed by the said procedure.

Article 8

Members of the Administrative Council and the Chairman shall serve without remuneration from the Centre.

SECTION 3. THE SECRETARIAT

Article 9

The Secretariat shall consist of a Secretary-General, one or more Deputy Secretaries-General and staff.

Article 10

(1) The Secretary-General and any Deputy Secretary-General shall be elected by the Administrative Council by a majority of two-thirds of its members upon the nomination of the Chairman for a term of service not exceeding six years and shall be eligible for re-election. After consulting the members of the Administrative Council, the Chairman shall propose one or more candidates for each such office.

(2) The offices of Secretary-General and Deputy Secretary-General shall be incompatible with the exercise of any political function. Neither the Secretary-General nor any Deputy Secretary-General may hold any other employment or engage in any other occupation except with the approval of the Administrative Council.

(3) During the Secretary-General's absence or inability to act, and during any vacancy of the office of Secretary-General, the Deputy Secretary-General shall act as Secretary-General. If there shall be more than one Deputy Secretary-General, the Administrative Council shall determine in advance the order in which they shall act as Secretary-General.

Article 11

The Secretary-General shall be the legal representative and the principal officer of the Centre and shall be responsible for its administration, including the appointment of staff, in accordance with the provisions of this Convention and the rules adopted by the Administrative Council. He shall perform the function of registrar and shall have the power to authenticate arbitral awards rendered pursuant to this Convention, and to certify copies thereof.

Section 4. The Panels

Article 12

The Panel of Conciliators and the Panel of Arbitrators shall each consist of qualified persons, designated as hereinafter provided, who are willing to serve thereon.

Article 13

(1) Each Contracting State may designate to each Panel four persons who may but need not be its nationals.

(2) The Chairman may designate ten persons to each Panel. The persons so designated to a Panel shall each have a different nationality.

Article 14

(1) Persons designated to serve on the Panels shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. Competence in the field of law shall be of particular importance in the case of persons on the Panel of Arbitrators.

(2) The Chairman, in designating persons to serve on the Panels, shall in addition pay due regard to the importance of assuring representation on the Panels of the principal legal systems of the world and of the main forms of economic activity.

Article 15

(1) Panel members shall serve for renewable periods of six years.

(2) In case of death or resignation of a member of a Panel, the authority which designated the member shall have the right to designate another person to serve for the remainder of that member's term.

(3) Panel members shall continue in office until their successors have been designated.

Article 16

(1) A person may serve on both Panels.

(2) If a person shall have been designated to serve on the same Panel by more than one Contracting State, or by one or more Contracting States and the Chairman, he shall be deemed to have been designated by the authority which first designated him or, if one such authority is the State of which he is a national, by that State.

(3) All designations shall be notified to the Secretary-General and shall take effect from the date on which the notification is received.

Section 5. Financing the Centre

Article 17

If the expenditure of the Centre cannot be met out of charges for the use of its facilities, or out of other receipts, the excess shall be borne by Contracting States which are members of the Bank in proportion to their respective subscriptions to the capital stock of the Bank, and by Contracting States which are not members of the Bank in accordance with rules adopted by the Administrative Council.

Section 6. Status, Immunities and Privileges

Article 18

The Centre shall have full international legal personality. The legal capacity of the Centre shall include the capacity:

(*a*) to contract;

(*b*) to acquire and dispose of movable and immovable property;

(*c*) to institute legal proceedings.

Article 19

To enable the Centre to fulfil its functions, it shall enjoy in the territories of each Contracting State the immunities and privileges set forth in this Section.

Article 20

The Centre, its property and assets shall enjoy immunity from all legal process, except when the Centre waives this immunity.

Article 21

The Chairman, the members of the Administrative Council, persons acting as conciliators or arbitrators or members of a Committee appointed pursuant to paragraph (3) of Article 52, and the officers and employees of the Secretariat

(*a*) shall enjoy immunity from legal process with respect to acts performed by them in the exercise of their functions, except when the Centre waives this immunity;

(*b*) not being local nationals, shall enjoy the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling

facilities as are accorded by Contracting States to the representatives, officials and employees of comparable rank of other Contracting States.

Article 22

The provisions of Article 21 shall apply to persons appearing in proceedings under this Convention as parties, agents, counsel, advocates, witnesses or experts; provided, however, that sub-paragraph (*b*) thereof shall apply only in connection with their travel to and from, and their stay at, the place where the proceedings are held.

Article 23

(1) The archives of the Centre shall be inviolable, wherever they may be.

(2) With regard to its official communications, the Centre shall be accorded by each Contracting State treatment not less favourable than that accorded to other international organizations.

Article 24

(1) The Centre, its assets, property and income, and its operations and transactions authorized by this Convention shall be exempt from all taxation and customs duties. The Centre shall also be exempt from liability for the collection or payment of any taxes or customs duties.

(2) Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Centre to the Chairman or members of the Administrative Council, or on or in respect of salaries, expense allowances or other emoluments paid by the Centre to officials or employees of the Secretariat.

(3) No tax shall be levied on or in respect of fees or expense allowances received by persons acting as conciliators, or arbitrators, or members of a Committee appointed pursuant to paragraph (3) of Article 52, in proceedings under this Convention, if the sole jurisdictional basis for such tax is the location of the Centre or the place where such proceedings are conducted or the place where such fees or allowances are paid.

CHAPTER II

JURISDICTION OF THE CENTRE

Article 25

(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

(2) " National of another Contracting State " means:

(*a*) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, but does

not include any person who on either date also had the nationality of the Contracting State party to the dispute; and

(*b*) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.

(3) Consent by a constituent subdivision or agency of a Contracting State shall require the approval of that State unless that State notifies the Centre that no such approval is required.

(4) Any Contracting State may, at the time of ratification, acceptance or approval of this Convention or at any time thereafter, notify the Centre of the class or classes of disputes which it would or would not consider submitting to the jurisdiction of the Centre. The Secretary-General shall forthwith transmit such notification to all Contracting States. Such notification shall not constitute the consent required by paragraph (1).

Article 26

Consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy. A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention.

Article 27

(1) No Contracting State shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its nationals and another Contracting State shall have consented to submit or shall have submitted to arbitration under this Convention, unless such other Contracting State shall have failed to abide by and comply with the award rendered in such dispute.

(2) Diplomatic protection, for the purposes of paragraph (1), shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

CHAPTER III

CONCILIATION

SECTION 1. REQUEST FOR CONCILIATION

Article 28

(1) Any Contracting State or any national of a Contracting State wishing to institute conciliation proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.

(2) The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to conciliation in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.

(3) The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

Section 2. Constitution of the Conciliation Commission

Article 29

(1) The Conciliation Commission (hereinafter called the Commission) shall be constituted as soon as possible after registration of a request pursuant to Article 28.

(2) (*a*) The Commission shall consist of a sole conciliator or any uneven number of conciliators appointed as the parties shall agree.

(*b*) Where the parties do not agree upon the number of conciliators and the method of their appointment, the Commission shall consist of three conciliators, one conciliator appointed by each party and the third, who shall be the president of the Commission, appointed by agreement of the parties.

Article 30

If the Commission shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 28, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the conciliator or conciliators not yet appointed.

Article 31

(1) Conciliators may be appointed from outside the Panel of Conciliators, except in the case of appointments by the Chairman pursuant to Article 30.

(2) Conciliators appointed from outside the Panel of Conciliators shall possess the qualities stated in paragraph (1) of Article 14.

Section 3. Conciliation Proceedings

Article 32

(1) The Commission shall be the judge of its own competence.

(2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Commission, shall be considered by the Commission which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

Article 33

Any conciliation proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Conciliation Rules in effect on the date on which the parties consented to conciliation. If any question of procedure arises which is not covered by this Section or the Conciliation Rules or any rules agreed by the parties, the Commission shall decide the question.

Article 34

(1) It shall be the duty of the Commission to clarify the issues in dispute between the parties and to endeavour to bring about agreement between them upon mutually acceptable terms. To that end, the Commission may at any stage of the proceedings and from time to time recommend terms of settlement to the parties. The parties shall cooperate in good faith with the Commission in order to enable the Commission to carry out its functions, and shall give their most serious consideration to its recommendations.

(2) If the parties reach agreement, the Commission shall draw up a report noting the issues in dispute and recording that the parties have reached agreement. If, at any stage of the proceedings, it appears to the Commission that there is no likelihood of agreement between the parties, it shall close the proceedings and shall draw up a report noting the submission of the dispute and recording the failure of the parties to reach agreement. If one party fails to appear or participate in the proceedings, the Commission shall close the proceedings and shall draw up a report noting that party's failure to appear or participate.

Article 35

Except as the parties to the dispute shall otherwise agree, neither party to a conciliation proceeding shall be entitled in any other proceeding, whether before arbitrators or in a court of law or otherwise, to invoke or rely on any views expressed or statements or admissions or offers of settlement made by the other party in the conciliation proceedings, or the report or any recommendations made by the Commission.

CHAPTER IV

ARBITRATION

SECTION 1. REQUEST FOR ARBITRATION

Article 36

(1) Any Contracting State or any national of a Contracting State wishing to institute arbitration proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.

(2) The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to arbitration in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.

(3) The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

SECTION 2. CONSTITUTION OF THE TRIBUNAL

Article 37

(1) The Arbitral Tribunal (hereinafter called the Tribunal) shall be constituted as soon as possible after registration of a request pursuant to Article 36.

(2) (*a*) The Tribunal shall consist of a sole arbitrator or any uneven number of arbitrators appointed as the parties shall agree.

(*b*) Where the parties do not agree upon the number of arbitrators and the method of their appointment, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third, who shall be the president of the Tribunal, appointed by agreement of the parties.

Article 38

If the Tribunal shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 36, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the arbitrator or arbitrators not yet appointed. Arbitrators appointed by the Chairman pursuant to this Article shall not be nationals of the Contracting State party to the dispute or of the Contracting State whose national is a party to the dispute.

Article 39

The majority of the arbitrators shall be nationals of States other than the Contracting State party to the dispute and the Contracting State whose national is a party to the dispute; provided, however, that the foregoing provisions of this Article shall not apply if the sole arbitrator or each individual member of the Tribunal has been appointed by agreement of the parties.

Article 40

(1) Arbitrators may be appointed from outside the Panel of Arbitrators, except in the case of appointments by the Chairman pursuant to Article 38.

(2) Arbitrators appointed from outside the Panel of Arbitrators shall possess the qualities stated in paragraph (1) of Article 14.

SECTION 3. POWERS AND FUNCTIONS OF THE TRIBUNAL

Article 41

(1) The Tribunal shall be the judge of its own competence.

(2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Tribunal, shall be considered by the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

Article 42

(1) The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable.

(2) The Tribunal may not bring in a finding of *non liquet* on the ground of silence or obscurity of the law.

(3) The provisions of paragraphs (1) and (2) shall not prejudice the power of the Tribunal to decide a dispute *ex aequo et bono* if the parties so agree.

Article 43

Except as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings,

(*a*) call upon the parties to produce documents or other evidence, and

(*b*) visit the scene connected with the dispute, and conduct such inquiries there as it may deem appropriate.

Article 44

Any arbitration proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Arbitration Rules in effect on the date on which the parties consented to arbitration. If any question of procedure arises which is not covered by this Section or the Arbitration Rules or any rules agreed by the parties, the Tribunal shall decide the question.

Article 45

(1) Failure of a party to appear or to present his case shall not be deemed an admission of the other party's assertions.

(2) If a party fails to appear or to present his case at any stage of the proceedings the other party may request the Tribunal to deal with the questions submitted to it and to render an award. Before rendering an award, the Tribunal shall notify, and grant a period of grace to, the party failing to appear or to present its case, unless it is satisfied that the party does not intend to do so.

Article 46

Except as the parties otherwise agree, the Tribunal shall, if requested by a party, determine any incidental or additional claims or counter-claims arising directly out of the subject-matter of the dispute provided that they are within the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre.

Article 47

Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party.

SECTION 4. THE AWARD

Article 48

(1) The Tribunal shall decide questions by a majority of the votes of all its members.

(2) The award of the Tribunal shall be in writing and shall be signed by the members of the Tribunal who voted for it.

(3) The award shall deal with every question submitted to the Tribunal, and shall state the reasons upon which it is based.

(4) Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent.

(5) The Centre shall not publish the award without the consent of the parties.

Article 49

(1) The Secretary-General shall promptly dispatch certified copies of the award to the parties. The award shall be deemed to have been rendered on the date on which the certified copies were dispatched.

(2) The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. The periods of time provided for under paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which the decision was rendered.

SECTION 5. INTERPRETATION, REVISION AND ANNULMENT OF THE AWARD

Article 50

(1) If any dispute shall arise between the parties as to the meaning or scope of an award, either party may request interpretation of the award by an application in writing addressed to the Secretary-General.

(2) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter. The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision.

Article 51

(1) Either party may request revision of the award by an application in writing addressed to the Secretary-General on the ground of discovery of some fact of such a nature as decisively to affect the award, provided that when the award was rendered that fact was unknown to the Tribunal and to the applicant and that the applicant's ignorance of that fact was not due to negligence.

(2) The application shall be made within 90 days after the discovery of such fact and in any event within three years after the date on which the award was rendered.

(3) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter.

(4) The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Tribunal rules on such request.

Article 52

(1) Either party may request annulment of the award by an application in writing addressed to the Secretary-General on one or more of the following grounds:

(*a*) that the Tribunal was not properly constituted;

(*b*) that the Tribunal has manifestly exceeded its powers;

(*c*) that there was corruption on the part of a member of the Tribunal;

(*d*) that there has been a serious departure from a fundamental rule of procedure;

or

(*e*) that the award has failed to state the reasons on which it is based.

(2) The application shall be made within 120 days after the date on which the award was rendered except that when annulment is requested on the ground of corruption such application shall be made within 120 days after discovery of the corruption and in any event within three years after the date on which the award was rendered.

(3) On receipt of the request the Chairman shall forthwith appoint from the Panel of Arbitrators an *ad hoc* Committee of three persons. None of the members of the Committee shall have been a member of the Tribunal which rendered the award, shall be of the same nationality as any such member, shall be a national of the State party to the dispute or of the State whose national is a party to the dispute, shall have been designated to the Panel of Arbitrators by either of those States, or shall have acted as a conciliator in the same dispute. The Committee shall have the authority to annul the award or any part thereof on any of the grounds set forth in paragraph (1).

(4) The provisions of Articles 41-45, 48, 49, 53 and 54, and of Chapters VI and VII shall apply *mutatis mutandis* to proceedings before the Committee.

(5) The Committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request.

(6) If the award is annulled the dispute shall, at the request of either party, be submitted to a new Tribunal constituted in accordance with Section 2 of this Chapter.

Section 6. Recognition and Enforcement of the Award

Article 53

(1) The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention.

(2) For the purposes of this Section, " award " shall include any decision interpreting, revising or annulling such award pursuant to Articles 50, 51 or 52.

Article 54

(1) Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.

(2) A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.

(3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.

Article 55

Nothing in Article 54 shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution.

CHAPTER V

REPLACEMENT AND DISQUALIFICATION OF CONCILIATORS AND ARBITRATORS

Article 56

(1) After a Commission or a Tribunal has been constituted and proceedings have begun, its composition shall remain unchanged; provided, however, that if a conciliator or an arbitrator should die, become incapacitated, or resign, the resulting vacancy shall be filled in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.

(2) A member of a Commission or Tribunal shall continue to serve in that capacity notwithstanding that he shall have ceased to be a member of the Panel.

(3) If a conciliator or arbitrator appointed by a party shall have resigned without the consent of the Commission or Tribunal of which he was a member, the Chairman shall appoint a person from the appropriate Panel to fill the resulting vacancy.

Article 57

A party may propose to a Commission or Tribunal the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required by paragraph (1) of Article 14. A party to arbitration proceedings may, in addition, propose the disqualification of an arbitrator on the ground that he was ineligible for appointment to the Tribunal under Section 2 of Chapter IV.

Article 58

The decision on any proposal to disqualify a conciliator or arbitrator shall be taken by the other members of the Commission or Tribunal as the case may be, provided that where those members are equally divided, or in the case of a proposal to disqualify a sole conciliator or arbitrator, or a majority of the conciliators or arbitrators, the Chairman shall take that decision. If it is decided that the proposal is well-founded the conciliator or arbitrator to whom the decision relates shall be replaced in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.

CHAPTER VI

COST OF PROCEEDINGS

Article 59

The charges payable by the parties for the use of the facilities of the Centre shall be determined by the Secretary-General in accordance with the regulations adopted by the Administrative Council.

Article 60

(1) Each Commission and each Tribunal shall determine the fees and expenses of its members within limits established from time to time by the Administrative Council and after consultation with Secretary-General.

(2) Nothing in paragraph (1) of this Article shall preclude the parties from agreeing in advance with the Commission or Tribunal concerned upon the fees and expenses of its members.

Article 61

(1) In the case of conciliation proceedings the fees and expenses of members of the Commission as well as the charges for the use of the facilities of the Centre, shall be borne equally by the parties. Each party shall bear any other expenses it incurs in connection with the proceedings.

(2) In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.

CHAPTER VII

PLACE OF PROCEEDINGS

Article 62

Conciliation and arbitration proceedings shall be held at the seat of the Centre except as hereinafter provided.

Article 63

Conciliation and arbitration proceedings may be held, if the parties so agree,

(*a*) at the seat of the Permanent Court of Arbitration or of any other appropriate institution, whether private or public, with which the Centre may make arrangements for that purpose; or

(*b*) at any other place approved by the Commission or Tribunal after consultation with the Secretary-General.

CHAPTER VIII

DISPUTES BETWEEN CONTRACTING STATES

Article 64

Any dispute arising between Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation shall be referred to the International Court of Justice by the application of any party to such dispute, unless the States concerned agree to another method of settlement.

CHAPTER IX

AMENDMENT

Article 65

Any Contracting State may propose amendment of this Convention. The text of a proposed amendment shall be communicated to the Secretary-General not less than 90 days prior to the meeting of the Administrative Council at which such amendment is to be considered and shall forthwith be transmitted by him to all the members of the Administrative Council.

Article 66

(1) If the Administrative Council shall so decide by a majority of two-thirds of its members, the proposed amendment shall be circulated to all Contracting States for ratification, acceptance or approval. Each amendment shall enter into force 30 days after dispatch by the depositary of this Convention of a notification to Contracting States that all Contracting States have ratified, accepted or approved the amendment.

(2) No amendment shall affect the rights and obligations under this Convention of any Contracting State or of any of its constituent subdivisions or agencies, or of any national of such State arising out of consent to the jurisdiction of the Centre given before the date of entry into force of the amendment.

CHAPTER X

FINAL PROVISIONS

Article 67

This Convention shall be open for signature on behalf of States members of the Bank. It shall also be open for signature on behalf of any other State which is a party to the Statute of the International Court of Justice and which the Administrative Council, by a vote of two-thirds of its members, shall have invited to sign the Convention.

Article 68

(1) This Convention shall be subject to ratification, acceptance or approval by the signatory States in accordance with their respective constitutional procedures.

(2) This Convention shall enter into force 30 days after the date of deposit of the twentieth instrument of ratification, acceptance or approval. It shall enter into force for each State which subsequently deposits its instrument of ratification, acceptance or approval 30 days after the date of such deposit.

Article 69

Each Contracting State shall take such legislative or other measures as may be necessary for making the provisions of this Convention effective in its territories.

Article 70

This Convention shall apply to all territories for whose international relations a Contracting State is responsible, except those which are excluded by such State by written notice to the depositary of this Convention either at the time of ratification, acceptance or approval or subsequently.

Article 71

Any Contracting State may denounce this Convention by written notice to the depositary of this Convention. The denunciation shall take effect six months after receipt of such notice.

Article 72

Notice by a Contracting State pursuant to Articles 70 or 71 shall not affect the rights or obligations under this Convention of that State or of any of its constituent subdivisions or agencies or of any national of that State arising out of consent to the jurisdiction of the Centre given by one of them before such notice was received by the depositary.

Article 73

Instruments of ratification, acceptance or approval of this Convention and of amendments thereto shall be deposited with the Bank which shall act as the depositary of this Convention. The depositary shall transmit certified copies of this Convention to States members of the Bank and to any other State invited to sign the Convention.

Article 74

The depositary shall register this Convention with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

Article 75

The depositary shall notify all signatory States of the following:

(*a*) signatures in accordance with Article 67;

(*b*) deposits of instruments of ratification, acceptance and approval in accordance with Article 73;

(*c*) the date on which this Convention enters into force in accordance with Article 68;

(*d*) exclusions from territorial application pursuant to Article 70;

(*e*) the date on which any amendment of this Convention enters into force, in accordance with Article 66; and

(*f*) denunciations in accordance with Article 71.

DONE at Washington in the English, French and Spanish languages, all three texts being equally authentic, in a single copy which shall remain deposited in the archives of the International Bank for Reconstruction and Development, which has indicated by its signature below its agreement to fulfil the functions with which it is charged under this Convention.

Reservations and declarations

Denmark

Denmark excluded, by a notification received on May 15, 1968, the Faroe Islands; by a notification received on October 30, 1968, Denmark extended the application of the Convention to the Faroe Islands as of January 1, 1969.

Federal Republic of Germany

Upon deposit of the instrument of ratification, the Federal Republic of Germany declared that the Convention would also apply to the *Land* Berlin.

Netherlands

On depositing its instrument of ratification, the Netherlands restricted the application of the Convention to the Kingdom of Europe; by a notification received on May 22, 1970, the Netherlands withdrew that restriction and thus extended the application of the Convention to Surinam and the Netherlands Antilles.

United Kingdom of Great Britain and Northern Ireland

The United Kingdom excluded, at the time it ratified the Convention: Channel Islands, Isle of Man, Southern Rhodesia, Brunei, Aden, Protectorate of South Arabia, Kamaran, Kuria Muria Islands, Perim. The United Kingdom ceased being responsible for the international relations of Kamaran and of the Protectorate of South Arabia on November 28, 1967, and for those of Aden, Kuria Muria Islands and Perim on November 30, 1967. By a communication received on December 10, 1968, the United Kingdom withdrew the exclusion with respect to the Bailiwick of Guernsey, which forms part of the Channel Islands.

Until Fiji attained its independence on October 10, 1970, Mauritius on March 12, 1968 and Swaziland on September 6, 1968, each was covered by the ratification of the United Kingdom. On June 4, 1970 the United Kingdom relinquished responsibility for the international affairs of the Kingdom of Tonga.

EUROPEAN CONVENTION PROVIDING A UNIFORM LAW ON ARBITRATION [1]

Done at Strasbourg, 20 January 1966

European Treaty Series, No. 56

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity among its Members, in particular by the adoption of common rules in the legal field,

Convinced that the unification of national laws would make for a more effective settlement of private law disputes by arbitration and would facilitate commercial relations between the member countries of the Council of Europe;

Considering it desirable to adopt to this end a uniform law on arbitration in civil and commercial matters,

Have agreed as follows:

Article 1

1. Each Contracting Party undertakes to incorporate in its law, within six months of the date of entry into force of this Convention in respect of that Party, the provisions of the uniform law contained in Annex I to this Convention.

2. Each Contracting Party has the right, in its law, to supplement the uniform law by provisions designed to regulate questions for which no solutions are provided, on condition that such provisions are not incompatible with the uniform law.

3. Each Contracting Party has the right to provide in its law, in respect of specific matters, that disputes may not be referred to arbitration or may be submitted to arbitration according to rules other than those laid down in the uniform law.

4. Each Contracting Party has the right to declare, at the time of signature of this Convention or at the time of deposit of its instrument of ratification, acceptance or accession, that it will apply the uniform law only to disputes arising out of legal relationships which are considered as commercial under its national law.

Article 2

Each Contracting Party undertakes not to maintain or introduce into its law provisions excluding aliens from being arbitrators.

Article 3

Each Contracting Party shall, for the purposes of the provisions of the uniform law, define " judicial authority ", " competent authority " and, if need be, " registry of the court ".

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[1] The Convention has not entered into force.
The Secretary General of the Council of Europe exercises the depositary function.
The following States have signed the Convention: Austria, Belgium.

Article 4

Each Contracting Party retains the right to determine the conditions to be fulfilled by persons who may represent or assist the parties before the arbitral tribunal and, to that end, to amend the provisions of paragraph 4 of Article 16 of the uniform law.

Article 5

Each Contracting Party may:

1. regard notification within the meaning of paragraph 1 of Article 28 of the uniform law as implying either notification as provided for in paragraph 1 of Article 23 of the uniform law, or service, and, in particular, service by one party on another party;

2. regard notification under paragraphs 1 and 3 of Article 30 of the uniform law as implying either notification by the authority which has opposed the enforcement formula to the award or service, and, in particular, service by one party on another party.

The Contracting Party may, if need be, replace the words " give notice to ", " notified " and " notification " by the appropriate technical terms.

It shall inform the Secretary General of the Council of Europe of its choice.

Article 6

Each Contracting Party may provide that the enforcement formula within the meaning of paragraph 1 of Article 29, Article 30 and paragraph 1 of Article 31 of the uniform law shall consist of an authorisation to enforce or of any other legal process which, under its law, enables an award to be enforced.

Article 7

Each Contracting Party shall have the right, in its law, to make provision for and to regulate the provisional enforcement of arbitral awards which are still appealable before arbitrators.

Article 8

1. Each Contracting Party may, when signing this Convention or depositing its instrument of ratification, acceptance or accession, declare that it avails itself of one or more of the reservations set forth in Annex II to this Convention. No other reservation shall be admissible.

2. Each Contracting Party may, at any time, by means of a notification addressed to the Secretary General of the Council of Europe, withdraw, wholly or in part, a reservation made by it under the preceding paragraph; the notification shall take effect on the date of its receipt.

Article 9

The provisions of the present Convention shall not affect the application of bilateral or multilateral conventions on arbitration which have been or may be concluded. This is subject to the right available to a Contracting Party under Annex III to the present Convention.

Article 10

1. Each Contracting Party shall communicate to the Secretary General of the Council of Europe the texts which, in implementation of this Convention, will govern arbitration after the entry into force of the Convention in respect of that Party.

2. The Secretary General shall transmit these texts to the other member States of the Council of Europe and to any State acceding to this Convention.

Article 11

1. This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.

2. This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.

3. In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

Article 12

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede thereto.

2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession, which shall take effect three months after the date of its deposit.

Article 13

1. Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.

2. Any Contracting Party may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 14 of this Convention.

Article 14

1. This Convention shall remain in force indefinitely.

2. Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

3. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

Article 15

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention of:

(*a*) any signature;

(*b*) any deposit of an instrument of ratification, acceptance or accession;

(*c*) any date of entry into force of this Convention in accordance with the provisions of Articles 11 and 12;

(*d*) any reservation made in pursuance of the provisions of paragraph 1 of Article 8;

(*e*) the withdrawal of any reservation made in pursuance of the provisions of paragraph 2 of Article 8;

(*f*) any communication received in pursuance of the provisions of Articles 5 and 10;

(*g*) any declaration received in pursuance of the provisions of Article 13;

(*h*) any notification received in pursuance of the provisions of Article 14 and the date on which the denunciation takes effect;

(*i*) any declaration or notification received in pursuance of the provisions of Annex III.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at Strasbourg, this 20th day of January 1966, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory Governments.

ANNEX I

UNIFORM LAW

Article 1

Any dispute which has arisen or may arise out of a specific legal relationship and in respect of which it is permissible to compromise may be the subject of an arbitration agreement.

Article 2

1. An arbitration agreement shall be constituted by an instrument in writing signed by the parties or by other documents binding on the parties and showing their intention to have recourse to arbitration.

2. If, in an arbitration agreement, the parties have referred to a particular arbitration procedure, that procedure shall be deemed to be included in the agreement.

Article 3

An arbitration agreement shall not be valid if it gives one of the parties thereto a privileged position with regard to the appointment of the arbitrator or arbitrators.

Article 4

1. The judicial authority seized of a dispute which is the subject of an arbitration agreement shall, at the request of either party, declare that it has no jurisdiction, unless, in so far as concerns the dispute, the agreement is not valid or has terminated.

2. An application to the judicial authority for preservation or interim measures shall not be incompatible with an arbitration agreement and shall not imply a renunciation of the agreement.

Article 5

1. The arbitral tribunal shall be composed of an uneven number of arbitrators. There may be a sole arbitrator.

2. If the arbitration agreement provides for an even number of arbitrators, an additional arbitrator shall be appointed.

3. If the parties have not settled the number of arbitrators in the arbitration agreement and do not agree on the number, the arbitral tribunal shall be composed of three arbitrators.

Article 6

The parties may, either in the arbitration agreement or subsequently thereto, appoint the sole arbitrator or the arbitrators or entrust the appointment to a third person. If the parties have not appointed the arbitrators and have not agreed on a method of appointment, each party shall when the dispute arises, appoint an arbitrator or an equal number of arbitrators, as the case may be.

Article 7

1. The party who intends bringing a dispute before an arbitral tribunal shall give notice to the other party. The notice shall refer to the arbitration agreement and specify the subject-matter of the dispute, unless the arbitration agreement already does so.

2. If there is more than one arbitrator, and if the parties are entitled to appoint them, the notice shall specify the arbitrator or arbitrators appointed by the party invoking the arbitration agreement; the other party shall be invited, in the notice, to appoint the arbitrator or arbitrators whom he is entitled to appoint.

3. If a third person has been entrusted with the appointment of a sole arbitrator or of arbitrators and has not done so, he also shall be given notice in accordance with paragraph 1 and invited to make the appointment.

4. The appointment of an arbitrator may not be withdrawn after notification of the appointment.

Article 8

1. If the party or third person to whom notice has been given in accordance with Article 7 has not, within a period of one month from the notice, appointed the arbitrator or arbitrators whom the party or third person is entitled to appoint, the judicial authority shall make the nomination at the request of either party.

2. If the parties have agreed that there shall be a sole arbitrator and they have not appointed him by mutual consent within a period of one month from the notice under Article 7, the judicial authority shall make the nomination at the request of either party.

Article 9

1. Where the arbitrators appointed or nominated in accordance with the foregoing provisions are even in number, they shall nominate another arbitrator to be president of the arbitral tribunal. If they do not agree and if the parties have not provided otherwise, the judicial authority shall make the necessary nomination at the request of either party. The judicial authority may be seized after the expiration of a period of one month from the acceptance of his office by the last arbitrator or as soon as the failure to agree is established.

2. Where the arbitrators appointed are uneven in number they shall nominate one of themselves to be president of the arbitral tribunal, unless the parties have agreed on another method of appointment. If the arbitrators do not agree, the judicial authority seized under paragraph 1 shall make the necessary nomination.

Article 10

1. If an arbitrator dies or cannot for a reason of law or of fact perform his office, or if he refuses to accept it or does not carry it out, or if his office is terminated by mutual agreement of the parties, he shall be replaced in accordance with the rules governing his appointment or nomination. However, if the arbitrator or arbitrators are named in the arbitration agreement the agreement shall terminate *ipso jure*.

2. A disagreement arising out of any case envisaged in paragraph 1 shall be brought before the judicial authority on the application of one of the parties. If the judicial authority decides

that there are grounds for replacing the arbitrator, it shall nominate his successor, taking into account the intention of the parties, as appearing from the arbitration agreement.

3. The parties may derogate from the provisions of the Article.

Article 11

Unless the parties have agreed otherwise, neither the arbitration agreement nor the office of arbitrator shall be terminated by the death of one of the parties.

Article 12

1. Arbitrators may be challenged on the same grounds as judges.

2. A party may not challenge an arbitrator appointed by him except on a ground of which the party becomes aware after the appointment.

Article 13

1. The challenge shall, as soon as the challenger becomes aware of the ground of challenge, be brought to the notice of the arbitrators and, where applicable, of the third person who has, in pursuance of the arbitration agreement, appointed the arbitrator challenged. The arbitrators shall thereupon suspend further proceedings.

2. If, within a period of ten days of the notice of the challenge being given to him, the arbitrator challenged has not resigned, the arbitral tribunal shall so notify the challenger. The challenger shall, on pain of being barred, bring the matter before the judicial authority within a period of ten days from receiving such notification. Otherwise, the proceedings before the arbitrators shall be resumed *ipso jure*.

3. If the arbitrator resigns or if the challenge is upheld by the judicial authority, the arbitrator shall be replaced in accordance with the rules governing his appointment or nomination. However, if he has been named in the arbitration agreement, the agreement shall terminate *ipso jure*. The parties may derogate from the provisions of this paragraph.

Article 14

1. The parties may in the arbitration agreement exclude certain categories of persons from being arbitrators.

2. If such an exclusion has been disregarded with respect to the composition of the arbitral tribunal, the irregularity shall be invoked in accordance with the provisions of Article 13.

Article 15

1. Without prejudice to the provisions of Article 16, the parties may decide on the rules of the arbitral procedure and on the place of arbitration. If the parties do not indicate their intention before the first arbitrator has accepted his office, the decision shall be a matter for the arbitrators.

2. The president of the arbitral tribunal shall regulate the hearings and conduct the proceedings.

Article 16

1. The arbitral tribunal shall give each party an opportunity of substantiating his claims and of presenting his case.

2. The arbitral tribunal shall make an award after oral proceedings. The parties may validly be summoned by registered letter, unless they have agreed upon any other method of summons. The parties may appear in person.

3. The procedure shall be in writing where the parties have so provided or in so far as they have waived oral proceedings.

4. Each party shall have the right to be represented by an advocate or by a duly accredited representative. Each party may be assisted by any person of his choice.

Article 17

If, without legitimate cause, a party properly summoned does not appear or does not present his case within the period fixed, the arbitral tribunal may, unless the other party requests an adjournment, investigate the matter in dispute and make an award.

Article 18

1. The arbitral tribunal may rule in respect of its own jurisdiction and, for this purpose, may examine the validity of the arbitration agreement.

2. A ruling that the contract is invalid shall not entail *ipso jure* the nullity of the arbitration agreement contained in it.

3. The arbitral tribunal's ruling that it has jurisdiction may not be contested before the judicial authority except at the same time as the award on the main issue and by the same procedure. The judicial authority may at the request of one of the parties decide whether a ruling that the arbitral tribunal has no jurisdiction is well founded.

4. The appointment of an arbitrator by a party shall not deprive that party of his rights to challenge the jurisdiction of the arbitral tribunal.

Article 19

1. The parties may, up to the time of acceptance of office by the first arbitrator, settle the period within which the award is to be made or provide for a method according to which the period is to be settled.

2. If the parties have not prescribed a period or a method of prescribing a period, if the arbitral tribunal delays in making the award and if a period of six months has elapsed from the date on which all the arbitrators accepted office in respect of the dispute submitted to arbitration, the judicial authority may, at the request of one of the parties, stipulate a period for the arbitral tribunal.

3. The office of arbitrator shall terminate if the award is not made within the relevant period unless that period is extended by agreement between the parties.

4. Where arbitrators are named in the arbitration agreement and the award is not made within the relevant period, the arbitration agreement shall terminate *ipso jure*, unless the parties have agreed otherwise.

Article 20

Except where otherwise stipulated, an arbitral tribunal may make a final award in the form of one or more awards.

Article 21

Except where otherwise stipulated, arbitrators shall make their awards in accordance with the rules of law.

Article 22

1. An award shall be made after a deliberation in which all the arbitrators shall take part. The award shall be made by an absolute majority of votes, unless the parties have agreed on another majority.

2. The parties may also agree that, when a majority cannot be obtained, the president of the arbitral tribunal shall have a casting vote.

3. Except where otherwise stipulated, if the arbitrators are to award a sum of money, and a majority cannot be obtained for any particular sum, the votes for the highest sum shall be counted as votes for the next highest sum until a majority is obtained.

4. An award shall be set down in writing and signed by the arbitrators. If one or more of the arbitrators are unable or unwilling to sign, the fact shall be recorded in the award. However, the award shall bear a number of signatures which is at least equal to a majority of the arbitrators.

5. An award shall, in addition to the operative part, contain the following particulars:

(*a*) the names and permanent addresses of the arbitrators;

(*b*) the names and permanent addresses of the parties;

(*c*) the subject-matter of the dispute;

(*d*) the date on which the award was made;

(*e*) the place of arbitration and the place where the award was made.

6. The reasons for an award shall be stated.

Article 23

1. The president of the arbitral tribunal shall give notice to each party of the award by sending him a copy thereof, signed in accordance with paragraph 4 of Article 22.

2. The president of the arbitral tribunal shall deposit the original of the award with the registry of the court having jurisdiction; he shall inform the parties of the deposit.

Article 24

Unless the award is contrary to *ordre public* or the dispute was not capable of settlement by arbitration, an arbitral award has the authority of *res judicata* when it has been notified in accordance with paragraph 1 of Article 23 and may no longer be contested before arbitrators.

Article 25

1. An arbitral award may be contested before a judicial authority only by way of an application to set aside and may be set aside only in the cases mentioned in this Article.

2. An arbitral award may be set aside:

(*a*) if it is contrary to *ordre public*;

(*b*) if the dispute was not capable of settlement by arbitration;

(*c*) if there is no valid arbitration agreement;

(*d*) if the arbitral tribunal has exceeded its jurisdiction or its powers;

(*e*) if the arbitral tribunal has omitted to make an award in respect of one or more points of the dispute and if the points omitted cannot be separated from the points in respect of which an award has been made;

(*f*) if the award was made by an arbitral tribunal irregularly constituted;

(*g*) if the parties have not been given an opportunity of substantiating their claims and presenting their case, or if there has been disregard of any other obligatory rule of the arbitral procedure, in so far as such disregard has had an influence on the arbitral award;

(*h*) if the formalities prescribed in paragraph 4 of Article 22 have not been fulfilled;

(*i*) if the reasons for the award have not been stated;

(*j*) if the award contains conflicting provisions.

3. An award may also be set aside:

(*a*) if it was obtained by fraud;

(*b*) if it is based on evidence that has been declared false by a judicial decision having the force of *res judicata* or on evidence recognised as false;

(*c*) if, after it was made, there has been discovered a document or other piece of evidence which would have had a decisive influence on the award and which was withheld through the act of the other party.

4. A case mentioned in sub-paragraph (*c*), (*d*) or (*f*) of paragraph 2 shall be deemed not to constitute a ground for setting aside an award where the party availing himself of it had knowledge of it during the arbitration proceedings and did not invoke it at the time.

5. Grounds for the challenge and exclusion of arbitrators provided for under Articles 12 and 14 shall not constitute grounds for setting aside within the meaning of paragraph 2 (*f*) of this Article, even when they become known only after the award is made.

Article 26

If there are grounds for setting aside any part of an award, that part shall be set aside only if it can be separated from the other parts of the award.

Article 27

1. The grounds for setting aside an arbitral award shall, on pain of being barred, be put forward by the party concerned in one and the same proceedings, except, however, in the case of a ground for setting aside provided for in paragraph 3 of Article 25 where the ground is not known until later.

2. An application to set aside an award shall be admissible only where the award may no longer be contested before arbitrators.

Article 28

1. An application to set aside an award, based on one of the grounds provided for in paragraph 2 (*c*) to (*j*), of Article 25 shall, on pain of being barred, be made within a period of three months from the date on which the award was notified. However, that period shall begin to run only from the date on which the award is no longer capable of contestation before arbitrators.

2. The defendant in an application to set aside an award may apply, in the same proceedings, for the award to be set aside, even if the period laid down in paragraph 1 has expired.

3. An application to set aside an award, based on one of the grounds provided for in paragraph 3 of Article 25, shall be made within a period of three months from either the date of the discovery of the fraud, document or other piece of evidence, or the date on which the evidence was declared false or recognised as false, provided that a period of five years from the date on which the award was notified in accordance with paragraph 1 of Article 23 has not expired.

4. The judicial authority seized of an application to set aside an award shall examine *proprio motu* whether the award is contrary to *ordre public* and whether the dispute was capable of settlement by arbitration.

Article 29

1. An arbitral award may be enforced only when it can no longer be contested before arbitrators and when an enforcement formula has been apposed to it by the competent authority on the application of the interested party.

2. The competent authority shall refuse the application if the award or its enforcement is contrary to *ordre public* or if the dispute was not capable of settlement by arbitration.

3. A decision refusing the application is appealable.

Article 30

1. A decision apposing an enforcement formula to an award shall be notified. The decision is appealable within a period of one month from the date on which the decision is notified.

2. A party exercising this right of appeal who seeks to secure the setting aside of the award without having previously made application for this shall, on pain of being barred, make his application in the same proceedings and within the period prescribed in paragraph 1. A party who, while not exercising the right of appeal provided for in paragraph 1, seeks to secure the setting aside of an award shall, on pain of being barred, make his application for setting aside within the period prescribed in paragraph 1. The application for setting aside envisaged in the present paragraph shall be admissible only if the period prescribed in Article 28 has not expired.

3. The provisions of paragraph 2 of this Article shall apply to the grounds for setting aside an award provided for in paragraph 3 of Article 25 only if such grounds were known at the time of notification of the decision apposing the enforcement formula to the award.

4. Without prejudice to the provisions of paragraph 4 of Article 25, a party exercising the right of appeal provided for in paragraph 1 of this Article may apply for the setting aside of the award if there is no valid arbitration agreement, even if the period prescribed in Article 28 has expired.

5. In the case either of an appeal against the decision apposing an enforcement formula to an award or of an application for an award to be set aside, the judicial authority may, at the request of one of the parties, order the enforcement of the award to be stayed.

6. A decision apposing an enforcement formula to an award shall be without effect to the extent that the arbitral award has been set aside.

Article 31

1. Where, before an arbitral tribunal, a compromise has been entered into between the parties in order to put an end to a dispute of which the tribunal is seized, that compromise may be recorded in an instrument prepared by the arbitral tribunal and signed by the arbitrators as well as by the parties. The instrument shall be subject to the provisions of paragraph 2 of Article 23. The instrument may, on the application of the interested party, have an enforcement formula apposed to it by the competent authority.

2. The competent authority shall refuse the application if the compromise or its enforcement is contrary to *ordre public* or if the dispute was not capable of settlement by arbitration.

3. The decision of the competent authority is appealable.

ANNEX II

Any Contracting Party may declare that it reserves the right:

(*a*) to derogate from the provisions of paragraph 1 of Article 2 of the uniform law, particularly in respect of disputes between defined categories of persons;

(*b*) not to introduce into its law the provisions of paragraph 2 of Article 2 of the uniform law, or to regulate differently the case where the parties have referred to a particular arbitration procedure;

(*c*) to provide in its law that the additional arbitrator provided for in paragraph 2 of Article 5 of the uniform law shall be appointed or nominated only in case of a tie in voting;

(*d*) to provide in its law that, in the cases mentioned in paragraph 1 of Article 10 and in paragraph 4 of Article 19 of the uniform law, the arbitration agreement shall, where the arbitrator or arbitrators are named therein, terminate *ipso jure* only in so far as concerns the dispute submitted to arbitration;

(*e*) not to introduce into its law paragraph 2 of Article 18 of the uniform law or to regulate differently the effects which a ruling that a contract is void may have on the arbitration agreement;

(*f*) to derogate from the provisions of paragraph 5 of Article 25 and, if need be, from those of paragraphs 2 and 3 of Article 13 and of paragraph 2 of Article 14 of the uniform law in so far as, under those provisions, the grounds of challenge or of irregularity in the composition of the arbitral tribunal may not constitute grounds for setting aside the award but must be invoked before the judicial authority during the arbitration proceedings;

(*g*) to provide that it is only after a dispute has arisen that the parties may, in pursuance of Article 21 of the uniform law, exempt the arbitrators from deciding in accordance with the rules of law;

(*h*) not to introduce into its law paragraph 2 of Article 22 of the uniform law, or to regulate differently the case where a majority of votes cannot be obtained;

(*i*) not to introduce into its law the provisions of paragraph 6 of Article 22 and of paragraph 2 (*i*) of Article 25 of the uniform law or to derogate from those provisions;

(*j*) to derogate from the provisions of paragraph 2 of Article 23 of the uniform law;

(*k*) to amend or not to introduce into its law the provisions of Article 24 of the uniform law;

(*l*) to derogate from paragraph 3 (*c*) of Article 25 of the uniform law and, if need be, to replace in paragraph 3 of Article 28 the words " document or other piece of evidence " by different expressions;

(*m*) to restrict in its law the application of paragraph 4 of Article 25 of the uniform law to the case where the arbitral tribunal has been irregularly constituted by reason of being composed of an even number of arbitrators;

(*n*) to derogate from the provisions of Article 30 of the uniform law;

(*o*) not to introduce into its law Article 31 of the uniform law.

ANNEX III

1. Each Contracting Party may, at the time of signature of the present Convention or when depositing its instrument of ratification, acceptance or accession, declare that, in case of conflict between the provisions of the uniform law contained in Annex I and those of other international conventions, which it may specify, it will apply the provisions of the uniform law to arbitrations between physical or legal persons having, when concluding the arbitration agreement, their habitual place of residence or their seat in the territories of different States which are Parties to the present Convention and which have made a like declaration.

Each Contracting Party may make the declaration after the entry into force of the present Convention in respect of that Party, in which case the declaration will take effect six months after notification thereof has been addressed to the Secretary General of the Council of Europe.

2. A declaration made in pursuance of the preceding paragraph may be withdrawn at any time by notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect six months after the notification.

GENERAL CONDITIONS OF DELIVERY OF GOODS BETWEEN ORGANIZATIONS OF THE MEMBER COUNTRIES OF THE COUNCIL FOR MUTUAL ECONOMIC ASSISTANCE (GENERAL CONDITIONS OF DELIVERY, 1968)

CHAPTER XV: ARBITRATION, PARAGRAPHS 90 AND 91

See *Register of Texts of Conventions and Other Instruments concerning International Trade Law*, vol. I, p. 99.

2. UNIFORM RULES

RULES OF CONCILIATION AND ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE

Publications of the International Chamber of Commerce (ICC), brochure c h, 1 June 1955

SECTION A

OPTIONAL CONCILIATION

Article 1

ADMINISTRATIVE COMMISSION FOR CONCILIATION. — CONCILIATION COMMITTEE

1. Any business dispute of an international character may be the subject of a request for settlement by amicable arrangement through the medium of the Administrative Commission for Conciliation established at the International Chamber of Commerce.

Each National Committee may nominate from one to three members to the Commission, from among its nationals resident in Paris; they shall be appointed for a term of two years by the President of the International Chamber of Commerce.

2. For each dispute, a Conciliation Committee of three members shall be set up by the President of the International Chamber of Commerce.

The Committee shall be composed of two conciliators, who shall be as far as possible of the nationalities of the applicant and of the other party, and of a Chairman of a nationality other than that of the parties involved, chosen in principle from the Administrative Commission for Conciliation.

Article 2

REQUEST FOR CONCILIATION

The party making a request for conciliation shall apply to International Headquarters of the International Chamber of Commerce through his National Committee or direct; in the latter case, the Secretary General shall inform the National Committee concerned of the application.

The request shall consist of a statement of the case from the point of view of the said party and shall be accompanied by copies of relevant papers and documents as well as by the deposit laid down in the appended schedule for the expenses incurred by International Headquarters in the conciliation proceedings.

Article 3

STEPS TO BE TAKEN BY THE CONCILIATION COMMITTEE

1. Upon receipt of any such request and of the relevant papers and documents and of the deposit, the Secretary General of the International Chamber of Commerce shall inform the other party or parties to the dispute direct or through his or their National Committee or Committees and shall invite him or them to accept an attempt at conciliation and in that event to submit to the Conciliation Committee a statement of the case in writing with copies of relevant papers and documents as well as the deposit laid down in the appended schedule for expenses incurred by International Headquarters in the conciliation proceedings.

2. The Committee shall acquaint itself with the details of the case and procure any information required for this purpose by communicating with the parties to the dispute direct or through their National Committees, and shall hear the parties if possible.

3. The parties may appear in person before the Committee or be represented by duly accredited agents. They may also be assisted by counsel or solicitors.

Article 4

TERMS OF SETTLEMENT

1. After having examined the case and having heard the parties if possible, the Conciliation Committee shall submit terms of settlement to the parties.

2. Should a settlement result, the Conciliation Committee shall draw up and sign a record of the settlement.

3. When the parties do not appear in person or are not represented by duly accredited agents, the Committee shall communicate the terms of settlement to the Chairmen of the National Committees concerned and shall request them to endeavour to persuade the parties to accept the settlement proposed by the Committee.

Article 5

RIGHTS OF THE PARTIES WHEN SETTLEMENT IS NOT REACHED

1. Should a settlement not result, the parties shall be at liberty to refer their dispute to arbitration or to bring an action at law should they so desire, unless they are bound by an arbitration clause.

2. Nothing that has transpired in connection with the proceedings before the Conciliation Commission shall in any way affect the legal rights of any of the parties to the dispute whether in an arbitration or in a Court of law.

No person having sat on a Conciliation Committee for the settlement of a dispute may be appointed arbitrator for the same dispute.

SECTION B

ARBITRATION

I. *COURT OF ARBITRATION AND ARBITRATORS*

Article 6

COURT OF ARBITRATION

1. The International Chamber of Commerce has a Court of Arbitration, the members of which are appointed by the Council of the International Chamber. The function of the Court is to provide means for settlement by arbitration of business disputes of an international character.

2. The Court shall meet in principle once a month.

When a decision is urgently required in the interval between two sessions of the Court, the Chairman of the Court shall act on the Court's behalf and inform it of his action at the next session.

3. The Secretariat of the Court of Arbitration shall be at the Headquarters of the International Chamber of Commerce.

Article 7

CHOICE OF ARBITRATORS

1. The Court of Arbitration does not itself settle disputes. Except when otherwise stipulated, it appoints or confirms the nomination of arbitrators in accordance with the following provisions:

2. If the parties have agreed to the settlement of a dispute by a sole arbitrator, they may nominate him by common agreement for confirmation by the Court. Failing agreement between the parties within a period of thirty days from the notification of the request for arbitration to the opposite party the arbitrator shall be appointed by the Court.

If reference is to be to three arbitrators, each of the parties shall nominate—in the request for arbitration and in the reply to the request—an arbitrator for confirmation by the Court of Arbitration, which shall appoint the third arbitrator. Should one of the parties abstain from nominating his arbitrator, the Court itself shall appoint him. The third arbitrator shall be chairman of the arbitral tribunal.

If the parties fail to agree on the number of arbitrators, the Court shall appoint a sole arbitrator, unless one of the parties requests that the case be submitted to three arbitrators and the dispute appears to the Court important enough to warrant the appointment of three arbitrators. In this case, the rules of the preceding paragraph shall apply and the parties shall be allowed a period of fifteen days in which to nominate their arbitrators.

3. When the Court has to appoint one or more arbitrators, it shall choose the National Committee or Committees from which it shall request nominations. Sole arbitrators and third arbitrators must be nationals of countries other than those of the parties.

4. Should an arbitrator be challenged by one of the parties, the decision of the Court of Arbitration, which shall be the sole judge of the grounds of challenge, shall be final.

5. If an arbitrator should die or be prevented for any reason from carrying out his duties, or if he should resign or leave his duties unfulfilled, the party who nominated him, or the Court if it appointed him, shall nominate another arbitrator in his stead. If the party does not nominate his arbitrator within the period allotted by the Secretariat, the Court shall itself appoint him.

II. *INITIATING ARBITRATION*

Article 8

REQUEST FOR ARBITRATION

1. A party or parties desiring to have recourse to arbitration by the International Chamber of Commerce shall make his or their request in writing to the Secretariat of the Court, through their National Committee or direct; in the latter case, the Secretariat shall inform the National Committee concerned of the request.

2. The request for arbitration shall contain:

(*a*) Names in full of the parties and their addresses;

(*b*) Statement of the claimant's case;

(*c*) Originals (or copies certified true by the claimant) of all contracts, more especially of the document evidencing the arbitral agreement, and of correspondence having passed between the parties, and any other documents or information relied upon;

(*d*) All relevant particulars of the number of arbitrators and their choice in accordance with the provisions of Article 7 above.

3. The Secretariat shall send the defendant copy of the request and the documents attached, for reply.

Article 9

REPLY TO THE REQUEST

1. Within thirty days of the date of receipt by the defendant of the documents sent by the Secretariat under the provisions of the third sub-paragraph of Article 8, the defendant must reply to the proposals made to him concerning the number of arbitrators and their choice. He must at the same time and within the same period furnish a statement of the case in answer and any proposals he may wish to make, accompanied by all documents and information in support.

2. Copy of the reply and of the appended documents, if any, shall be communicated to the claimant for information.

Article 10

COUNTER-CLAIMS

1. When the defendant puts forward a counter-claim, he must do so within the period laid down for the reply to the claim. The other party may, within thirty days from notification of this counter-claim, submit a statement in reply.

2. Copy of this statement and of appended documents, if any, shall be communicated to the other party for information.

Article 11

WRITTEN STATEMENTS OF CASE

1. All written statements submitted by the parties and all appended documents must be supplied in triplicate.

2. Where there is more than one arbitrator or more than one opposing party, the Secretariat may require such number of further copies to be furnished as it may prescribe.

Article 12

ABSENCE OF ARBITRATION CLAUSE

When there is no arbitration clause between the parties or when there is an arbitration clause in which the International Chamber of Commerce is not specified, if the defendant does not reply within the period laid down in Article 9, 1° above, or declines arbitration by the International Chamber of Commerce, the applicant shall be informed that the case cannot be referred to arbitration by the Chamber.

*Article 13**

EFFECT OF THE ARBITRAL AGREEMENT

1. When the parties agree to submit their case to arbitration by the International Chamber of Commerce, they shall be deemed to submit to arbitration in accordance with the present Rules.

2. Should one of the parties refuse or fail to submit to arbitration, the arbitration shall be proceeded with, such refusal or absence notwithstanding.

3. If one of the parties raises one or more pleas as to the existence or validity of the arbitration clause, and the Court of Arbitration has satisfied itself of the *prima facie* existence of such a clause, the Court may, without prejudice to the admissibility or the merits of such pleas, order that the arbitration shall proceed. In this case, any decision as to the arbitrator's jurisdiction shall lie with the arbitrator himself.

4. Unless otherwise stipulated, the arbitrator shall not cease to have jurisdiction by reason of an allegation that the contract is null and void or non-existent. If he upholds the validity of the arbitration clause, he shall continue to have jurisdiction to determine the respective rights of the parties and to make declarations relative to their claims and pleas even though the contract should be null and void or non-existent.

5. The parties may, in case of urgency, whether prior to or during the proceedings before the arbitrator, apply to any competent judicial authority for interim measures of protection, without thereby contravening the arbitration clause binding them. Any such application, and any measures taken by the judicial authority shall be brought without delay to the notice of the Court of Arbitration or, when necessary, of the arbitrator.

Article 14

SUBMISSION OF THE CASE TO THE ARBITRATOR

1. The Secretariat must submit the case to the arbitrator immediately on receipt of the defendant's reply to the request for arbitration, or, as the case may be, of the

* In the following articles, the word " arbitrator " should be taken to mean " arbitrator or arbitrators ".

claimant's reply, if any, to the counter-claim, and in any event must submit the case to the arbitrator at the latest on the expiry of the periods laid down in Articles 9 and 10 above for submitting the statements referred to therein.

2. However, the Secretariat may, before passing the case on to the arbitrator, require the parties, or one of them, to pay the International Chamber of Commerce such sum as it may deem necessary for the costs of the arbitration in accordance with the appended schedule.

Article 15

NOTIFICATIONS AND/OR COMMUNICATIONS FROM THE SECRETARIAT

All notifications and communications from the Secretariat shall be deemed to have been well and duly made if delivered by hand against acknowledgement or sent by registered post to the address given, or, if no address has been given, to the Chamber of Commerce or other body to which the addressee belongs. However, in countries where special provisions of law exist requiring the observance of particular formalities in the case of notifications concerning arbitration, such formalities shall be observed.

Notification or communication shall be deemed to have been made when it is received either by the party itself or by its representative, or when it should have been so received, if well and duly made.

III. *PROCEEDINGS BEFORE THE ARBITRATOR*

Article 16

RULES GOVERNING THE PROCEEDINGS

The rules by which the arbitration proceedings shall be governed shall be these Rules and, in the event of no provision being made in these Rules, those of the law of procedure chosen by the parties or, failing such choice, those of the law of the country in which the arbitrator holds the proceedings.

Article 17

NOTIFICATIONS AND/OR COMMUNICATIONS FROM THE ARBITRATOR

The provisions of Article 15 above relating to notifications and/or communications from the Secretariat also apply to notifications and communications from the arbitrator.

Article 18

COUNTRY WHERE ARBITRATION PROCEEDINGS TAKE PLACE

The proceedings before the arbitrator shall take place in the country determined by the Court of Arbitration, unless the parties shall have agreed in advance upon the place of arbitration.

Article 19

ARBITRATOR'S TERMS OF REFERENCE

1. Before beginning the hearing of the case, the arbitrator shall draw up, on the documents or in the presence of the parties, a statement defining his terms of reference which shall include the following:

(*a*) Names in full of the parties;

(*b*) Addresses of the parties to which all notifications and communications shall be made during the arbitration;

(*c*) Brief statement of the parties' claims;

(*d*) Terms of reference, statement of the case, indication of the points at issue to be determined;

(*e*) Name in full of the arbitrator with his address, etc.;

(*f*) Place of the arbitration proceedings;

(*g*) All other matters required in order that the award when made shall be enforceable at law, or which in the opinion of the Court of Arbitration and the arbitrator, it is desirable to specify.

2. The statement referred to in paragraph 1 above must be signed by the parties and by the arbitrator, who shall submit it to the Court of Arbitration for approval.

If one of the parties refuses to join in the drawing up of the aforesaid statement, or refuses to sign it, although such party is bound by a clause stipulating arbitration by the International Chamber of Commerce, the award shall be made notwithstanding, after the expiry of a period granted by the Court to the arbitrator for obtaining the signature of the party concerned.

3. The Court of Arbitration shall not give the arbitrator power to act as " amiable compositeur " unless the parties agree thereto, and provided that it will not in any way interfere with the legal enforcement of the award.

Article 20

HEARING OF THE CASE BY THE ARBITRATOR

The arbitrator shall, within as short a period as possible, ascertain the facts relating to the case. He shall have the power to hear witnesses. He may also appoint one or more technical or legally qualified experts and request them to report on technical or legal issues, provided that their terms of reference are laid down in advance.

Article 21

1. The arbitrator may decide on the basis of the relevant documents, unless one of the parties requests a hearing.

2. At the request of one of the parties, or, if need be, on his own initiative, the arbitrator giving reasonable notice, shall summon the parties to appear before him at a specified place and time, and shall inform the Secretariat thereof.

3. If the parties, or any one of them having been duly summoned, fail to appear before the arbitrator, the latter, after satisfying himself that the summons was duly served upon the party or parties, and that they are absent without valid excuse, shall have the power nevertheless to proceed with the arbitration, inquiring into the merits of the case and deciding it as if all parties were present.

4. The hearings shall be private.

5. The parties may appear in person before the arbitrator or be represented by duly accredited agents. They may also be assisted by counsel or solicitors.

6. New claims or counter-claims submitted to the arbitrator must be formulated by the parties in writing. Unless the party against which a new claim has been submitted agrees, the arbitrator may only take cognizance of it if it is within the limits of his terms of reference as laid down in the statement referred to in Article 19.

IV. *ARBITRAL AWARD*

Article 22

SETTLEMENT BY THE PARTIES

Should the parties reach an agreement before the arbitrator, this shall be recorded in the form of an arbitral award made by consent of the parties.

Article 23

TIME-LIMIT OF AWARDS

1. The arbitrator must make the award within sixty days from the date on which he signed the statement referred to in Article 19.

2. The Court may extend this period if it considers it necessary.

Article 24

AWARDS BY THREE ARBITRATORS

When three arbitrators have been appointed, the award is given on a majority decision. Failing a majority, the Chairman of the arbitral tribunal alone shall make the award.

Article 25

DECISION REGARDING COSTS OF THE ARBITRATION

1. The arbitrator's award shall deal with the question of the costs of the arbitration and shall direct who is to pay costs and all matters relating thereto, or in what manner the costs are to be divided between the parties.

2. The arbitrator's fees and the administrative costs laid down by the Court of Arbitration in accordance with the schedule appended to the present Rules, the fees of experts and any travelling expenses incurred by the arbitrator shall be included in the arbitration costs.

Article 26

AWARD TO BE PASSED BY THE COURT OF ARBITRATION

Before completing the award, the arbitrator shall submit the same to the Court of Arbitration. The Court may lay down modifications as to its form and, if need be, draw the arbitrator's attention even to points connected with the merits of the case, but with due regard to the arbitrator's liberty of decision. No award shall under any circumstances be issued until approved as to its form by the Court of Arbitration.

Article 27

PRONOUNCEMENT OF THE AWARD

The arbitral award shall be deemed to be made at the place of the arbitration proceedings and on the date of signature by the arbitrator.

Article 28

NOTIFYING THE PARTIES OF THE AWARD

1. When an award has been made, the Secretariat shall communicate the arbitrator's signed text to the parties, provided the arbitration costs have been fully paid to the International Chamber of Commerce by the parties or by one of them.

2. Additional copies certified true by the Secretary General of the Court shall be available to the parties at all times on request, but to no one else.

Article 29

IRREVOCABILITY AND ENFORCEABILITY OF THE AWARD

1. The arbitral award shall be final.

2. By submitting their dispute to ICC arbitration, the parties undertake to carry out the subsequent award without delay and waive their right to any form of appeal, in so far as such waiver may be valid.

Article 30

DEPOSIT OF THE AWARD

1. All awards made in accordance with the present Rules shall be deposited with the Secretariat.

2. The arbitrator and the Secretariat shall give the parties every assistance in legally filing the award.

Article 31

GENERAL RULE

In any circumstances not specifically provided for above, the Court of Arbitration and the arbitrator shall act on the basis of these Rules and make their best efforts for the award to be enforceable at law.

RULES OF THE INTERNATIONAL COURT OF ARBITRATION FOR MARINE AND INLAND NAVIGATION AT GDYNIA, 1960

Text provided by the Polish Chamber of Foreign Trade

GENERAL PROVISIONS

COMPETENCY

§ 1

1. The Court of Arbitration for Marine and Inland Navigation decides upon issues that may arise from all affairs of marine and inland navigation.

2. These are, in particular, issues arising from:

—Charter parties and bills of lading,
—Contract on handling goods,
—Broker and forwarding contracts,
—Insurance policies,
—Collisions of ships and assistance, inasmuch as a sea-going or inland vessel is involved,
—Salvage,
—Damages of port accommodations and equipment,
—General average.

3. The Court of Arbitration is not competent for labour issues.

§ 2

The competency of the Court is justified:

(*a*) if the parties have agreed so in writing, or

(*b*) if the demandant in his statement of claim has submitted to the competency of the Court and the defendant, upon interrogation of the Court of Arbitration, has agreed to its competency in writing, or

(*c*) if the competency is provided by international agreement.

§ 3

The seat of the Court of Arbitration and the place of the trial

1. The residence of the Court of Arbitration is Gdynia.

2. The venue is, as a rule, Gdynia.

3. The parties may agree that the venue be Berlin, Prague, or Warsaw. Upon request of one of the parties and upon hearing the other parties, the president may dispose that the proceedings take place and the decision be made in another place.

§ 4

Organisation

The Court of Arbitration comprises:
the presiding council
the president
the arbitration commission and
the secretary.

PRESIDING COUNCIL

§ 5

1. The presiding council consists of the members nominated by the chambers concerned. Each chamber nominates one member and one proxy.

2. The office of the president is held by each member for one year in alternating sequence, or if the member is prevented, by proxy.

§ 6

The duties of the Presiding Council are:

(*a*) to decide on enrolments in the list of arbitrators and upon possible deletion of the arbitrators enrolled, the right of application for enrolment or disenrolment of the arbitrators being reserved each time to the chairman of the chamber concerned;

(*b*) to nominate the secretary of the Court of Arbitration;

(*c*) to alter the order of costs or fees for arbitrators, in case this should be necessary.

§ 7

Unless otherwise stipulated, resolutions of the presiding council are effective only if they are made unanimously.

§ 8

President

1. The president has the duty to take all measures necessary to carry through the arbitrations, unless they are reserved to the presiding council or to the secretary; in particular it is his task:

(*a*) to nominate a substitute arbitrator, if one party refuses or omits to nominate arbitrators within the fixed time, or if the arbitrators are in disagreement as to the person of the president (§ 16);

(*b*) to decide upon the reasons of refusal of an arbitrator by one party (§ 17);

(*c*) to decide upon the reasons of a demurrer to action, because of incompetency of the Court of Arbitration;

(*d*) to determine the venue and to decide according to § 3, subsection 3.

2. In cases of (*c*) and (*d*) the president may submit the question for decision to the presiding council, which will decide upon it by bare majority.

§ 9

Arbitrator

1. An assessor arbitrator can be only one who is enrolled in the list of arbitrators.

2. As chairmen of an arbitration commission also the members of the presiding council and their proxies may act. If the president is made chairman, his permanent proxy will be commissioned with the taking of all measures mentioned in § 8.

3. Moreover, the chairman may be a person who is not enrolled in the list of arbitrators. However, such a person must give notice, in writing, within a fixed period determined by the secretary of the Court of arbitration that he accepts the office and submits to these Rules of the Court of Arbitration. Otherwise the election or nomination (§ 12, subsection 2 and § 16, subsection 3) is held to have not been made; now only one of the enrolled arbitrators can still be elected to this office.

4. By the suggestions of the chairmen of the chambers concerned at least 30 arbitrators confirmed by the president are enrolled in the list of arbitrators. The number of confirmed arbitrators selected by suggestion of the chairmen of the individual chambers should be equal.

5. Only such persons should be enrolled in the list of arbitrators who by their experience and their special knowledge in the field of marine and inland navigation, of insurance affairs and law are particularly suited for the office of an arbitrator.

6. The arbitrator is independent and does not take any orders. He is to do the duties of his office impartially according to his best knowledge and conscience and is obliged to be discreet. He does not advocate the interests of any one party.

§ 10

Arbitration Commission

1. The trials are held by the arbitration commissions, who also decide upon the issues.

2. The arbitration commission comprises three members, each party selecting one arbitrator from the list of arbitrators, and the arbitrators nominated by the parties, in turn, elect their chairman.

§ 11

Secretary

It is the duty of the secretary to act, according to the Rules of the Arbitration Court, in such a manner that a proper course of the proceedings be ensured. In particular he keeps the list of arbitrators, receives the memorandums, leads the conciliatory proceedings, and is responsible for the service.

RULES OF THE PROCEEDINGS

§ 12

Action

1. An action must be directed to the Court of Arbitration.

2. It should contain:

(*a*) The names of the parties, stating their residence or establishment;

(*b*) The petition of the demandant, giving reasons for his claims, as well as the statement of the value of the object at issue;

(*c*) The statement of the reason for competency.

3. The plaint should, moreover, contain the evidence. The text of an agreement between the parties should be enclosed (copy or photostatic copy).

4. The plaint and all documents should be submitted with such a number of copies as corresponds to the number of accused parties plus three copies for the Court of Arbitration.

§ 13

Statement of Defence and Nomination of Arbitrators

1. The secretary of the Court of Arbitration passes the plaint to the accused party requesting the latter to submit the statement of defence within a period to be determined by the secretary, beginning with the date of service and being not shorter than two weeks.

2. At the same time the Rules of the Court of Arbitration and its list of arbitrators are sent to the parties with the request to nominate—within a period to be determined by the secretary and to be not shorter than two weeks—an arbitrator and, provided for the case he is prevented from doing his duty, a substitute arbitrator.

§ 14

Conciliatory Proceedings

1. By application of the demandant and unless the defendant contradicts, any contentious suit can be preceded by conciliatory proceedings aiming at an arrangement of the parties.

2. The fixing of the date and leading of the conciliatory proceedings are the duty of the secretary of the Court of Arbitration.

3. If no arrangement of the parties can be reached in the conciliatory proceedings, the contentious proceedings are started upon request of the demandant, and the arbitration commission is constituted.

4. If the demandant does not apply for starting the contentious proceedings within one year, the action is held to be withdrawn.

§ 15

Fixing the Date of the Contentious Proceedings

The date of the contentious proceedings is fixed by the chairman of the arbitration commission. The secretary of the Court of Arbitration informs the other arbitrators of it and summons the parties.

§ 16

Nominating a Substitute Arbitrator

1. If the defendant does not nominate an arbitrator upon reception of the request pursuant to § 13 subsection 2, the president of the Court of Arbitration will nominate an arbitrator for the defendant.

2. The nomination of a substitute arbitrator for the demandant through the president is made only if the demandant asks the Court of Arbitration to do so. The action is held

to be withdrawn if the demandant does not nominate an arbitrator, or does not apply to the Court to do so.

3. If the arbitrators cannot agree within 2 weeks as to the person of their chairman, the latter is nominated by the president.

4. If an arbitrator cannot follow the summons or if he causes a considerable delay of the proceedings, the president of the Court of Arbitration, upon request of one of the parties, orders that the substitute arbitrator takes his place. If no substitute arbitrator is nominated, if he cannot follow the summons for any reason, the president will nominate the arbitrator.

§ 17

Challenge of an Arbitrator or Refusal

1. An arbitrator has to reject the office if he feels himself prejudiced, or if a reason for challenge is applicable to him according to the Rules of Supreme Court valid for the venue and the decision.

2. An arbitrator can be challenged by a party, if it can be proved conclusively that he has not only an impartial interest in the result of the arbitration, or if a reason for challenge according to subsection 1 applies to him.

3. If the other party does not agree with the challenge, the president of the Court of Arbitration, upon request of a party, decides upon the arguments for the challenge.

4. For the nomination of a substitute arbitrator in the cases mentioned in subsections 1-3 § 16 applies.

CARRYING THROUGH THE PROCEEDINGS

§ 18

It is the duty of the chairman to lead the contentious proceedings. He has to prepare the proceedings so that the case, if possible, can be decided in one sitting. Furthermore he is reponsible for the proper reasons of all resolutions and decisions of the arbitration commission.

§ 19

1. The defendant party can bring in a cross action in the course of the arbitration proceedings.

2. Unless otherwise agreed upon by the parties, the same arbitration commission which carries through the main proceedings also decides upon the cross action.

§ 20

1. The proceedings are public.

2. Upon request of one of the parties the case is tried in camera.

3. Also the arbitration commission is entitled to exclude the public *ex officio*.

4. The members of the presiding council and the secretary are entitled in any case to be present when the cases are heard.

§ 21

1. The proceedings are oral.
Upon request of the parties the oral proceedings can be abstained from.

2. The parties must be given the opportunity to present and urge everything essential and from a legal point of view, which they think suitable for defending their rights.

3. The parties may also be represented by proxy.

§ 22

If one of the parties, despite proper summoning, is not present at the oral hearing, the proceedings are not hampered hereby.

§ 23

It is the matter of the parties to furnish the necessary proof. The arbitration commission decides according to its own opinion on the evidence and may also, by itself, hear witnesses and experts, get information, and bring in other evidence, inasmuch as they think it essential for the decision of the issue.

On the conciliatory and contentious proceedings minutes are to be taken, which have to be signed in the case of the conciliatory proceedings by the secretary, in the case of the contentious proceedings by the arbitrators.

§ 24

Minutes shall be taken of the conciliatory and the contentious proceedings. They shall be signed in the conciliatory proceedings by the Secretary and in the contentious proceedings by the arbitrators.

§ 25

1. The bare majority is sufficient for all decisions of the arbitration commission to come into force. If the arbitrators have three different opinions as to the sums to be awarded by the commission, the vote for the next lower sum is added to the vote for the highest sum.

2. The arbitration commission negotiates and votes in camera and in absence of the parties.

3. The members of the presiding council and the secretary can take part in the negotiations, but have no vote.

§ 26

1. A writ has been served properly, when its reception is confirmed. If a service in this way is impossible, it can be done by registered mail to the addresses given by the parties.

2. Upon request and to the account of the demandant, or *ex officio*, the service can be effected also otherwise.

§ 27

Upon all further questions of the proceedings the arbitration commission will decide. This must be done in due consideration of the Rules of the Supreme Court applicable at the venue.

§ 28

Substantive Law to be Applied

The arbitration commission applies the laws of the state, which is most closely connected with the issue and regards, when doing so, above all the party will. It follows the principles of good faith and the commercial, marine and mariners' customs and habits concerning the issue, inasmuch as the laws to be applied allow of it.

THE ARBITRATION

§ 29

1. The arbitration should, as a rule, be pronounced upon conclusion of the last oral proceedings and has to be confirmed and proved in writing and be sent to the parties within a period to be fixed by the arbitration commission, which should—as a rule—not exceed two weeks. In special cases the pronouncement can be desisted from by decision of the arbitration commission.

2. The arbitration has to contain in any case the names of the parties, of the arbitrators, the decision inclusive that on the charges of the proceedings (33, subsection 3), the specification, and the reasons for the decision.

3. The original and all copies of the arbitration must on principle, be furnished with the signatures of the arbitrators and of the chairman of the arbitration commission, as well as with the secretary's signature and the stamp of the Court of Arbitration. The secretary sends every party a copy of the arbitration.

§ 30

The award is final. Appeal or complaints are impossible.

§ 31

Sanctions

In case a party does not spontaneously submit to the arbitrament, the presiding council of the Court of Arbitration, upon request of the other party and with agreement of the arbitration commission which has made the decision, can decree that non-observance is made known to other arbitration courts, exchange courts, and similar institutions at home and abroad, which are determined by the presiding council of the Court of Application. The application for taking these measures cannot be made earlier than three months after the award has been sent to the parties (§ 26). Before making the application, the opposing party must be notified.

CHARGES OF THE CASE

§ 32

1. The charges of the case are determined by the Order of Charges of the Court of Arbitration.

2. The Court of Arbitration starts an action only after the corresponding fee or the fixed earnest money has been paid.

3. The earnest money (charges in advance) have to be fixed in the currency of the country where the proceedings take place and the decision is passed.

§ 33

1. The basic fee for the proceedings has to be paid by demandant. If the basic fee is not paid within the time fixed by the secretary of the Court of Arbitration, the action is held to be withdrawn.

2. Advance charges have to be paid by the party responsible for the costs.

3. The arbitration commission decides in the arbitrament, in how far one party has to repay to the other party the fees and charges paid by the latter. If both parties have been awarded only part of their claims, the arbitration commission may pronounce the division or mutual cancelling of the costs (fees and charges). The fee for the conciliatory proceedings amounts to 1/5 of the basic fee.

§ 34

Arbitrators' Fee

For their activities the arbitrators are paid a fee by the Court of Arbitration according to the fee tariff.

* * *

The Rules of the Court of Arbitration have been acknowledged in this form on occasion of the constitution of the International Court of Arbitration for Marine and Inland Navigation at Gdynia by

the Československá Obchodni Komora
the Kammer für Außenhandel der
Deutschen Demokratischen Republik, and
the Polska Izba Handlu Zagranicznego on June 17th, 1959

ORDER OF COSTS OF THE INTERNATIONAL COURT OF ARBITRATION FOR MARINE AND INLAND NAVIGATION AT GDYNIA

§ 1

Duty to Pay Fees and Charges

1. For the proceedings of the Court of Arbitration fees and charges must be paid.

2. That party is obliged to pay the fees and the earnest, who undertakes an action with which a fee or charges are connected.

3. If an action, which involves charges, is started *ex officio* or upon request of both parties, the latter have to pay equal shares of the charges in advance.

4. Fees and charges are collected by the cash of the Court of Arbitration.

5. The Court of Arbitration does not answer applications for starting an action unless the corresponding fee or earnest has been paid in due time. The time fixed is 2 weeks. It begins with the writ of summons or with the pronouncement during the proceedings. The time can be prolonged.

FEES

§ 2

The height of the fee is determined by the value at issue. The latter is the sum asserted in the plaint. If the latter contains a claim not expressed in money, the value at issue should be stated in the plaint. The secretary of the Court of Arbitration—and, upon constitution of the arbitration commission, the chairman of that commission—may increase the value at issue stated by one of the parties, in case the documents show that it is estimated too low.

§ 3

1. When an action (cross action) is brought, the basic fee is raised. If conciliatory proceedings are applied for, the Court of Arbitration raises a fee amounting to 20 % of the basic fee. If no agreement is reached in the conciliatory proceedings and if the demandant applies for starting the contentious proceedings, he has to pay further 80 % of the basic fee.

2. If a third party enters the proceedings (intervention), a fee amounting to 50 % of the basic fee is raised.

§ 4

The basic fee is:

with a value at issue of up to zl 50,000	—	= zl 1,500
with further zl 100,000	—	2 ½ %
with further zl 350,000	—	2 %
with further zl 500,000	—	1 ½ %
with further zl 1,000,000	—	1 %
for further amounts	—	½ %

however, not more than zl 100,000.

§ 5

The secretary of the Court and, upon constitution of the arbitration commission, the chairman of the latter, *ex officio* orders the repayment of the fee

(*a*) 90 % of it, if the plaint or the application is withdrawn prior to its service to the defendant;

(*b*) 70 % of it in case the plaint or the application is withdrawn after service to the defendant, however, not later than before the proceedings are started;

(*c*) 50 % of it in case the plaint is withdrawn or fully acknowledged after the proceedings have started, however, before the first sitting is ended;

(*d*) 50 % of it in case an arrangement is reached in the first sitting.

§ 6

Payment of Charges

1. In addition to the fees all charges have to be paid, e.g.:

(*a*) travelling costs and diets of the arbitrators, of the organs of the Court of Arbitration, of the experts, interpreters, and witnesses;

(*b*) fees for experts and interpreters;

(*c*) charges resulting from the transport and storage of objects (material evidence, etc.);

(*d*) costs resulting from necessary publications;

(*e*) fees which have to be or have been paid by the Court of Arbitration to other courts or authorities.

2. The charges must be paid in the currency of the country where the proceedings take place and the decision is passed.

RULES FOR INTERNATIONAL COMMERCIAL ARBITRATION AND STANDARDS FOR CONCILIATION OF THE UNITED NATIONS ECONOMIC COMMISSION FOR ASIA AND THE FAR EAST

Published by the Centre for Commercial Arbitration, United Nations Economic Commission for Asia and the Far East (United Nations publication, 1966)

ECAFE RULES FOR INTERNATIONAL COMMERCIAL ARBITRATION

Article I

GENERAL

1. (*a*) The ECAFE Rules for International Commercial Arbitration (hereinafter called " the ECAFE Rules ") are applicable to the arbitration of disputes arising from the international trade of the ECAFE region.

(*b*) Disputes arising from international trade would include disputes arising out of contracts concerning industrial, financial, engineering services or related subjects involving residents of different countries.

(*c*) Disputes arising from the international trade of the ECAFE region would include the following:

(i) Disputes arising out of contracts between residents of different countries within the region,

(ii) Disputes arising out of contracts between residents of different countries within and outside the region,

(iii) Disputes arising out of contracts between residents of different countries outside the region in cases where the contract involved performance in the region or where other factors were related to the region.

2. The ECAFE Rules shall apply in cases where parties have agreed that disputes which have arisen or which may arise out of a contract made between them shall be referred to arbitration under the ECAFE Rules. The agreement of parties to resort to arbitration under the ECAFE Rules may be included in their contract or, if not so included, may be concluded separately by the parties after a dispute has arisen.

3. Disputes referable to arbitration under the ECAFE Rules may include those to which a government or state trading agency is a party.

4. The ECAFE Centre for Commercial Arbitration (hereinafter called " the ECAFE Centre ") shall not itself hear and determine disputes.

Article II

APPOINTMENT OF ARBITRATORS

1. The parties may select an arbitral institution to hear and determine their dispute, or if they so choose, select a sole arbitrator or an arbitral tribunal.

2. The parties shall be free to choose arbitrators of any nationality or any arbitral institution they consider appropriate.

3. Unless the parties have in their original agreement or later by stipulation selected an arbitral institution to hear and determine their dispute or appointed their arbitrator/s or an appointing authority, the party who wishes to resort to arbitration shall notify the other party to that effect and propose:

(*a*) the appointment of a sole arbitrator, or

(*b*) the appointment of three arbitrators, each party appointing an arbitrator and the two arbitrators thus appointed choosing the presiding arbitrator, or

(*c*) the designation of a specific arbitral institution which would apply the ECAFE Rules in the arbitration of the dispute, or

(*d*) the designation of a specific person or institution who would appoint a sole arbitrator or a presiding arbitrator or such an arbitral institution.

4. For the appointment of the arbitrator/s, or, alternatively, for the selection of an appointing authority, consideration may be given to the lists of arbitrators and the lists of appointing authorities maintained by the ECAFE Centre.

5. If within a period of forty-five days, a sole arbitrator has not been appointed or an arbitral institution has not been designated or, in the case of a three-man arbitration, either of the two arbitrators to be appointed by the parties or the presiding arbitrator have not been appointed, the matter shall be referred to the Special Committee established in accordance with Article V below which shall make the necessary appointment or designation. Alternatively, the Special Committee may at its discretion select an authority to make the necessary appointment or designation.

Article III

Removal, death or incapacity of the arbitrator

1. Either party may challenge an arbitrator where circumstances exist that cause justifiable doubts as to his impartiality or independence. Such challenges shall be passed on in the first instance by the arbitrator concerned.

2. Should the challenge be rejected by the arbitrator an appeal may be made to the ECAFE Centre which shall for this purpose utilize the Special Committee established in accordance with Article V below to determine whether or not the challenge is justified. The decision of the Special Committee shall be final.

3. Where a challenge is sustained, a substitute arbitrator shall be appointed by the person or authority originally empowered to appoint the arbitrator. If the appointment is not made within a period of thirty days after the sustaining of the challenge, the matter shall be referred to the Special Committee established in accordance with Article V below which shall make the necessary appointment or designate an authority to make the necessary appointment.

4. In the event of the death or incapacity of an arbitrator, a substitute arbitrator shall be appointed in accordance with the procedure set out in paragraph 3 above.

Article IV

The place of arbitration

1. Where the parties have not agreed in their contract or later by stipulation on the place of arbitration or where the arbitrator/s appointed by the parties has/have not

determined the place, the parties shall endeavour to reach agreement as to the place of arbitration by taking into consideration the following among other relevant factors:

(*a*) the convenience of the parties;

(*b*) the location of the goods and relevant documents;

(*c*) the availability of witnesses, surveys and of pre-investigation reports;

(*d*) the recognition and enforcement of the arbitration agreement and the award; and

(*e*) the advantages, if any, of the arbitration being held in the country of the respondent.

2. If the parties are still unable to agree on a place of arbitration or on any other procedure for its determination they shall have recourse for the determination of a place of arbitration to the Special Committee established in accordance with Article V below. In such case the Special Committee shall, in making its determination as to the place of arbitration, take into consideration the factors listed above in paragraph 1.

Article V

The special committee of ECAFE

The Special Committee of ECAFE shall be composed of seven persons selected by the Executive Secretary of ECAFE from among all the representatives on the Economic Commission for Asia and the Far East. The Special Committee will be constituted when required for each case and the Executive Secretary will use his discretion in selecting its members, taking into account all relevant factors in the particular case.

Article VI

The conduct of arbitral proceedings

1. The arbitrator/s shall, subject to these rules, conduct the arbitration in such manner as he/they consider appropriate provided that the parties shall have the right to present their cases and shall be treated with absolute equality.

2. All documents submitted or information given by one party to the arbitrator/s shall be transmitted at the same time to the other party.

3. The arbitrator/s shall be entitled to decide on the existence and validity of the arbitration agreement, to determine his/their own competence and jurisdiction and to interpret these Rules.

4. The arbitrator/s shall determine the period within which the respondent shall be required to deliver in writing his defence. The respondent shall be entitled to make within the same period a counterclaim arising out of the same arbitration agreement.

5. Proceedings shall normally be conducted on the basis of documents, in view of the distances that usually separate the places of residence of parties engaged in the international trade of the ECAFE region. However, if the parties so agree or should the arbitrator/s so decide, the arbitrator/s may also have oral hearings.

6. The arbitrator/s shall be entitled to take any interim measure of protection which he/they deems/deem necessary in respect of the subject matter of the dispute.

7. The arbitrator/s shall be entitled to fees and shall be entitled to require security for the costs of the arbitration proceeding and his/their fees.

8. The parties shall have the right to be represented or assisted at the hearing by persons of their choice.

9. In the case of an arbitral tribunal, decisions shall be made by a majority of votes. Failing a majority, the decision of the presiding arbitrator shall be the decision of the tribunal.

Article VII

THE AWARD

1. The arbitral award shall be made within a period of nine months after the appointment of the presiding arbitrator or the sole arbitrator as the case may be. This period may be extended by agreement between the parties or by the arbitrator/s should he/they consider such an extension essential.

2. The arbitrator/s may, subject to the provisions of paragraph 1 above, make interim, interlocutory or partial awards.

3. In the case of an arbitral tribunal the award shall be made by a majority of votes. Failing a majority the presiding arbitrator alone shall make the award.

4. (*a*) The award shall be based upon the law determined by the parties to be applicable to the substance of the dispute. Failing any indication by the parties as to the applicable law, the arbitrator/s shall apply the law he/they consider/s applicable in accordance with the rules of conflict of laws. In both cases the arbitrator/s shall take account of the terms of the contract and trade usages.

(*b*) The arbitrator/s shall, decide *ex aequo et bono* (*amiables compositeurs*) if the parties authorize the arbitrator/s to do so, and if he/they may do so under the law applicable to the arbitration.

5. The award shall be made in writing and shall be signed by the arbitrator/s. In the case of an arbitral tribunal, the signature of the majority, or if no majority is obtainable, that of the presiding arbitrator, shall suffice, provided the award states the reason for the absence of the signatures of the other arbitrators.

6. Authentic copies of the award shall be communicated to the parties by the sole arbitrator or the presiding arbitrator.

7. Unless otherwise agreed between the parties, the costs of the arbitration shall be fixed in the award. In general costs shall be borne by the unsuccessful party, but the arbitrator/s may, at his/their discretion, apportion the costs between the parties.

Article VIII

MISCELLANEOUS PROVISIONS

1. *Settlement.* In case the parties agree on a settlement of the dispute during the arbitration proceeding, the settlement shall be recorded by the arbitrator/s in the form of an arbitral award made on agreed terms.

2. *Interpretation of the Award.* Within a period of thirty days after the making of the award either party may, with notice to the other party, request the arbitrator/s for an authentic interpretation of the award. Such interpretation shall be given within one month of the date of the request and shall be communicated to both parties by the arbitrator/s.

3. *Correction of the Award.* Within a period of thirty days after the making of the award, the arbitrator/s shall correct any error in computation, any clerical or typographical error, or any other error of a similar nature in the award.

4. *Circumstances Not Otherwise Provided For.* In circumstances not specifically provided for in the preceding rules, the arbitrator/s shall follow the procedure most in conformity with the spirit of the ECAFE Rules.

ECAFE STANDARDS FOR CONCILIATION

1. ECAFE shall invite each of the main Chambers of Commerce of the region through their respective Governments to set up a panel of businessmen, both nationals and foreign residents, of high standing and good repute, who agree to sit on Conciliation Committees, upon the request of parties.

2. Parties between whom a difference has arisen may agree to try to settle it by conciliation. Then each party is to appoint one conciliator, and the conciliators thus appointed shall appoint another conciliator who will preside over the Conciliation Committee.

3. Each of the parties may choose one conciliator from the nationals of his country included in the panel of the Chamber of Commerce located in the place agreed upon for conciliation. In that case, it is desirable that the chairman of the Conciliation Committee be a national of a country other than those of the parties.

4. The duty of the Conciliation Committee shall be to seek a friendly and speedy solution of the difference. The Committee shall hear the parties or their representatives. The parties or their representatives may be assisted by counsel or solicitors. In the latter case, it is desirable that the party who intends to be so assisted should inform the other party of his intention beforehand.

5. If both parties cannot appear in person or be represented, the Committee shall acquaint itself with the details of the case through the written statements sent by each party.

6. Each party is at liberty to accept or to reject the terms of settlement proposed by the Committee.

7. Should a settlement not result, the parties shall be at liberty to refer their dispute to arbitration or, if they are not bound by an arbitration clause, to bring an action at law.

8. Nothing that has transpired in connexion with the proceedings before the Committee shall in any way affect the legal rights of any of the parties to the dispute, whether in an arbitration or in a court of law.

9. No person having sat on a Conciliation Committee for the settlement of a dispute may be appointed arbitrator for the same dispute, unless the parties agree to the contrary.

10. If the parties agree to choose a single conciliator acceptable to them, there is no objection to their doing so.

ARBITRATION RULES OF THE UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

Prepared by an *Ad hoc* Working Party on Arbitration of the Committee on the Development of Trade, United Nations Economic Commission for Europe. (United Nations, document E/ECE/625/Rev.1; E/ECE/TRADE 81/Rev.1, 20 January 1966)

I.—GENERAL PROVISIONS

Article 1

Where parties provide that disputes arising or to arise out of a contract made between them shall be referred to arbitration under the Economic Commission for Europe's Arbitration Rules (hereinafter called " the Rules "), then such disputes shall be settled in manner and upon the terms and conditions hereinafter mentioned, subject to such modification as the two parties can by consent make in those terms and conditions. [1]

Article 2

For the purposes of applying the present Rules the " Appointing Authority " of the place of arbitration or of the country where the respondent has his habitual place of residence or seat shall be the Chambers of Commerce or other institutions set out in the Annex.

II.—ARBITRATORS

A. Designation

Article 3

The party having recourse to arbitration (called " the claimant ") shall, by registered letter, referring to the arbitration agreement, give notice of the dispute to the other party (called " the respondent ").

Such notice shall also call upon the respondent to reach agreement with the claimant on the appointment of an arbitrator or arbitrators and propose to him either

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[1] *Model form of arbitration clause*

Any dispute arising out of, or relating to this contract, which the parties have not been able to settle amicably shall be finally settled by arbitration, in accordance with the ECE's Arbitration Rules which the parties declare to be known to them.

Recommended additional provisions:

1. The place of arbitration shall be .....
2. The Appointing Authority for the appointment of an arbitrator or arbitrators shall be .....

(*a*) the appointment of a sole arbitrator, with the name and address of the arbitrator proposed by the claimant, or

(*b*) the appointment of three arbitrators, each party appointing an arbitrator and the two arbitrators thus appointed choosing the presiding arbitrator, with the name and address of the arbitrator appointed by the claimant, or

(*c*) the appointment of a specific arbitral institution which shall be charged with the settlement of the dispute in accordance with its own rules.

Article 4

Where the parties have not within thirty days from the date of receipt by the respondent of the notice given by the claimant agreed on the choice of a sole arbitrator or an arbitral institution or if within forty-five days arbitrators or a presiding arbitrator have not been appointed, the claimant shall have the right to apply to the Appointing Authority designated in the arbitration agreement, and where none is so designated, then to the Appointing Authority of the place of arbitration if that is fixed by such agreement.

The Appointing Authority shall, if the parties confirm their agreement thereto in writing, appoint

(*a*) a sole arbitrator, or

(*b*) an arbitral institution, which shall be charged with the settlement of the dispute in accordance with its own rules.

Failing agreement by the parties on the appointment of a sole arbitrator or an arbitral institution, the Appointing Authority shall invite the parties each to appoint an arbitrator, the arbitrators so appointed choosing another arbitrator as presiding arbitrator.

If within a period of thirty days from the date of despatch of the Appointing Authority's invitation one of the parties fails to appoint an arbitrator or should the arbitrators appointed by the parties fail within a period of forty-five days to agree on the choice of the presiding arbitrator, the Appointing Authority will *ex officio* proceed to such appointment.

Article 5

If the arbitration agreement does not fix either the Appointing Authority or the place of arbitration, then, for the effective performance of the acts referred to in Article 4, the claimant shall have the option of applying either

(*a*) to the Appointing Authority of the country where the respondent has his habitual residence or his seat, or

(*b*) to the Special Committee set up under Article IV of the European Convention on International Commercial Arbitration of 21 April 1961.

If the parties have their habitual residence or seat in countries where there exists a National Committee of the International Chamber of Commerce, the claimant can also apply to the court of arbitration of the International Chamber of Commerce.

B. Removal

Article 6

Either party may challenge an arbitrator, presiding arbitrator, or a sole arbitrator where any circumstance exists capable of casting justifiable doubts on his impartiality or independence. Any such challenge must be made to the Arbitral Tribunal as soon as the party desiring to challenge is aware of the existence of such circumstance, and in any

case before the award is made. Should the challenge be sustained or the Arbitrator retire, a substitute arbitrator, a substitute presiding arbitrator, or a substitute sole arbitrator as the case may be, shall be appointed by the person(s) originally empowered under the Rules to appoint the arbitrator, presiding arbitrator or sole arbitrator.

Article 7

The person(s) appointing a substitute arbitrator, a substitute presiding arbitrator, or a substitute sole arbitrator shall give notice in writing to the arbitrators and to the other party—or to the parties alone where the substitute sole arbitrator is appointed by the Appointing Authority—as to the substitute arbitrator's, the substitute presiding arbitrator's or the substitute sole arbitrator's appointment, name and address, within a period of thirty days of the sustaining of the challenge or the retirement of the Arbitrator.

Article 8

Should the person, or persons, required to appoint a substitute arbitrator, a substitute presiding arbitrator or a substitute sole arbitrator fail to give notice in the manner and within the time-limit above referred to, the appointment shall be made by the Appointing Authority. The Appointing Authority in this Article and in Articles 10, 11 and 12 shall be the Appointing Authority referred to in Article 4 or the institution specified under Article 5.

C. Death or incapacity of the arbitrator

Article 9

Should an arbitrator appointed by either party, or on behalf of such party, die or become incapable of acting, the other arbitrators shall give notice to the person originally empowered to appoint an arbitrator under the Rules, requiring him within a period of thirty days to appoint a substitute arbitrator, and to give notice in writing to the arbitrators and to the other party of the appointment, name and address of the substitute arbitrator.

Article 10

Should a sole arbitrator die or become incapable of acting, then at the request of either party the Appointing Authority shall call upon the parties to appoint within a period of thirty days a substitute sole arbitrator.

Article 11

Should a presiding arbitrator die or become incapable of acting, the other arbitrators shall within a period of thirty days appoint a substitute presiding arbitrator and give notice in writing to the parties and the Appointing Authority of his appointment, name and address.

Article 12

Should the person(s) called upon to appoint a substitute arbitrator, a substitute presiding arbitrator or a substitute sole arbitrator, as the case may be, under the provisions of Articles 9, 10 or 11 of the Rules, fail to carry out in such manner and within the period mentioned in Articles 9, 10 or 11 of the Rules, as the case may be, the steps laid down in those Articles, then the arbitrators in the case of Article 9, or either party in the case

of Articles 10 and 11, shall request the Appointing Authority to appoint a substitute arbitrator, a substitute presiding arbitrator or a substitute sole arbitrator, as the case may be.

Article 13

Where a substitute arbitrator or a substitute presiding arbitrator is appointed under the provisions of Articles 6-9 and 11-12 of the Rules, after the hearing has commenced, it shall be the duty of the arbitrators at the request of the substitute to recommence such hearing *ab initio*.

III.—THE PLACE OF ARBITRATION

Article 14

Unless the parties agree on the place where the arbitration is to be held, such place shall be determined by the arbitrators.

IV.—THE PROCEDURE OF ARBITRATION

A. Statement of claims and documents

Article 15

Within such period as shall be determined by the arbitrators, the claimant shall supply them with such number of copies of the written statement of claim as they may require, containing the following particulars:

(*a*) the names, addresses and occupations of the parties;

(*b*) a summary statement of facts;

(*c*) the points in issue and what is claimed;

(*d*) particulars of witnesses (if any) whom it is desired to call upon to give evidence, it being understood that other witnesses can be called upon during the proceedings.

The statement of claim shall be accompanied in original or copies by the agreement in writing and all relevant documents. A schedule of documents shall also be supplied.

Article 16

A copy of every document (including the statement of claim) sent to the arbitrators by the claimant shall be sent to the respondent at the same time.

B. Pleas as to the arbitrators' jurisdiction

Article 17

The party which intends to raise a plea as to the arbitrators' jurisdiction based on the fact that the arbitration agreement was either non-existent or null and void or had lapsed shall do so not later than the delivery of its statement of claim or defence relating to the substance of the dispute; those based on the fact that arbitrators have exceeded

their terms of reference shall be raised as soon as the question on which the arbitrators are alleged to have no jurisdiction is raised. Where the delay in raising the plea is due to a cause which the arbitrators deem justified, the arbitrators shall declare the plea admissible.

Article 18

Subject to any control provided for under the law applicable to the arbitral proceedings, the arbitrators whose jurisdiction is called in question shall be entitled to proceed with the arbitration, to rule on their own jurisdiction and to decide upon the existence or the validity of the arbitration agreement or of the contract of which the agreement forms part.

C. The defence counter-claim and rejoinder

Article 19

The arbitrators shall determine the period within which the respondent shall be required to deliver in writing his defence. The respondent shall be entitled to make within the same period a counter-claim arising out of the same arbitration agreement.

Article 20

The provisions of Articles 15 and 16 of the Rules apply *mutatis mutandis* to any defence or counter-claim.

Article 21

Should the claimant intend to make a rejoinder to the defence or the counter-claim, the arbitrators shall determine the period within which such rejoinder shall be made. The same provision shall apply to any reply to the rejoinder that the respondent may wish to make.

D. General procedural provisions

Article 22

In the absence of a contrary provision in the Rules, the arbitrators shall be entitled to conduct the arbitration in such manner as they think fit. The arbitrators shall in every case give the parties a fair hearing on the basis of absolute equality.

Article 23

Provided that the parties agree, the arbitrators shall be entitled to render an award on documentary evidence without an oral hearing.

Article 24

The arbitrators shall be entitled to assess the evidence by all means at their disposal and to decide upon what proof they intend to admit and to appoint experts. At any time during the arbitral procedure the arbitrators shall be entitled to require the parties to produce supplementary documents or exhibits within such period as they shall determine.

Article 25

The parties may agree to extend the various time-limits laid down in the Rules for the various acts that they are required to perform. In the absence of such agreement the arbitrators shall be entitled to extend the time-limits, provided that the delay of the party in question is justified.

Article 26

The language of the proceedings shall be determined by the arbitrators. They will take the steps necessary to provide for the translation of documents and the interpretation at the hearing into languages understood by the parties.

E. Measures of conservation and security for costs

Article 27

Subject to any legal provisions to the contrary, the arbitrators are authorized by the parties to take any measure of conservation of the goods forming the subject matter in dispute, such as the ordering of their deposit with a third party, the opening of a banker's credit or the sale of perishable goods.

Article 28

The arbitrators shall be entitled to require security for the costs of the arbitration proceedings.

F. The hearing

Article 29

The proceedings shall be held in camera unless both parties request that they be held in public.

Article 30

Either party shall be entitled to appear in the arbitration by a duly accredited agent. Either party shall also be entitled to be assisted by persons of his choice.

Article 31

Should either party fail to appear at a hearing properly convened without showing sufficient cause, the arbitrators shall be entitled to proceed with the arbitration in its absence.

Should either party without sufficient cause fail to submit documentary evidence when the arbitrators have been requested to render their award on the basis of such evidence without an oral hearing, then the arbitrators shall be entitled to render their award on the evidence before them.

Article 32

New claims or counter-claims submitted to the arbitrators must be formulated by the parties in writing. Unless the party against which such new claim or counter-claim has been submitted agrees, the arbitrators may only take cognizance of it if it is within

the limits of their terms of reference. To such new claims or counter-claims the provisions of Articles 15, 16 and 19 shall *mutatis mutandis* apply.

G. The Award

Article 33

Where the arbitral tribunal consists of two arbitrators and a presiding arbitrator, the award shall be made by a majority of votes. Failing a majority, the presiding arbitrator alone shall make the award.

Article 34

The arbitral award shall be made within nine months of the appointment of the presiding arbitrator or the sole arbitrator, as the case may be.

Article 35

The time-limit within which the arbitral award must be made may be extended by agreement between the parties. The time-limit in question may also be extended by the arbitrators to the extent that such extension is justified by reason of the replacement of an arbitrator, the necessity of hearing witnesses, the taking of expert opinion or any other valid reason.

Article 36

The arbitrators shall be entitled to make interim, interlocutory or partial awards, and they shall also be entitled to make an award on agreed terms.

Article 37

The arbitrators shall be entitled to render their award in a country other than that where the arbitral proceedings preceding the issue of an award have taken place in conformity with the provisions of Article 14.

Article 38

Subject to the provisions of Article 39 of the Rules, the arbitrators' award shall be based upon the law as determined by the parties for the substance of the dispute. Failing any indication by the parties as to the applicable law, the arbitrators shall apply the proper law under the rule of conflict that the arbitrators deem applicable. In both cases the arbitrators shall take account of the terms of the contract and trade usages.

Article 39

The arbitrators shall act as *amiables compositeurs* if the parties so decide and if they may do so under the law applicable to the arbitration.

Article 40

The parties shall be presumed to have agreed that reasons shall be given for the award unless they—

(*a*) either expressly declare that reasons shall not be given, or

(*b*) have assented to an arbitration under which it is not customary to give reasons for awards, provided that in this case neither party requests before the end of the hearing, or if there has not been a hearing then before the making of the award, that reasons be given.

Article 41

Awards shall be communicated to the parties by registered letter.

Article 42

By submitting to these Rules the parties undertake to carry out the award without delay and, subject to any legal provisions to the contrary, renounce any right of appeal either before another arbitral institution or before a court of law unless otherwise expressly stipulated.

H. Costs

Article 43

The arbitrators shall determine in every case the costs payable.

In general, costs shall be borne by the unsuccessful party. However, the arbitrators shall be entitled to apportion the costs.

ANNEX

List of Chambers of Commerce and other institutions which may be required to act as "appointing authority"

Austria

Bundeskammer der Gewerblichen Wirtschaft (Federal Economic Chamber), Stubenring 12, Wien 1

Belgium

Comité belge de la Chambre de commerce internationale (Fédération nationale des Chambres de commerce et de l'industrie de Belgique; Fédération des industries belges) [1]

Belgian Committee of the International Chamber of Commerce (National Federation of Belgian Chambers of Commerce and Industry; Federation of Belgian Industries) [1]

8 rue des Sols, Bruxelles 1

Bulgaria

Chamber of Commerce of Bulgaria, 11A Boulevard Stamboliiski, Sofia

[1] The claimant who wishes to apply to the Belgian Competent Authority should address his request to the Belgian Committee of the International Chamber of Commerce (8 rue des Sols, Bruxelles), which will forward the request to either of the two bodies, shown above in parenthesis, according to their respective jurisdiction.

Byelorussian SSR

Vsesoyuznaya torgovaya palata (All-Union Chamber of Commerce), Kuybysheva Street 6, Moscow

Cuba

Chamber of Commerce of the Republic of Cuba, Havana

Czechoslovakia

Chamber of Commerce of Czechoslovakia, Ul. 28 Rijna, No. 13, Praha 1

Denmark

Danish National Committee of the International Chamber of Commerce, Børsen, Copenhagen K

Federal Republic of Germany

Deutscher Ausschuss für Schiedsgerichtswesen, Adenauerallee 148, 53 Bonn

Finland

Arbitration Board of the Central Chamber of Commerce, Keskuskauppakamari, Helsinki

France

Présidence de l'Assemblée des Présidents des Chambres de commerce et d'industrie (Board of the Assembly of Presidents of the Chambers of Commerce and Industry), 27 avenue de Friedland, Paris VIII[e]

Greece

Athens Chamber of Commerce and Industry, 8 Amerikis Street, Athens

Hungary

Chamber of Commerce of Hungary, Rosenberg Hazaspar Utca 17, Budapest V

Ireland

Association of Chambers of Commerce of Ireland, Commercial Buildings, Dame Street, Dublin 2

Italy

Associazione Italiana per l'Arbitrato (Italian Association of Arbitration), Via Quintino Sella 69, Roma

Malta

Chamber of Commerce, Exchange Buildings, Kingsway, Valletta

Netherlands [1]

Chamber of Commerce and Industry of Amsterdam, Damrak 62A, Amsterdam
Chamber of Commerce and Industry of Rotterdam, Beursgebouw, Coolsingel 58, Rotterdam
The Netherlands Institute of Arbitration, Delftsevaart 26, Rotterdam

[1] At claimant's choice.

Norway

Norwegian Section of the International Chamber of Commerce, Oslo Börs, Oslo 1

Poland

Polish Chamber for External Trade, 4 Trebacka, Warszawa

Romania

Chamber of Commerce of Romania, 22 Bd. N. Balcesco, Bucuresti

Spain

Consejo Superior de Camaras de Comercio, Industria y Navegacion (Supreme Board of Chambers of Commerce, Industry and Navigation), Avda. de José Antonio 15, Madrid 14

Sweden

Stockholm Chamber of Commerce, V. Trädgardsgatan 9, Stockholm

Switzerland

Alliance des Chambres de commerce suisses (Union of Swiss Chambers of Commerce) c/o Chambre de commerce et d'industrie de Genève, 8 rue Petitot, Genève

Turkey

Union of Turkish Chambers of Commerce, Industry and Commodity Exchanges, Ankara

Ukrainian SSR

Vsesoyuznaya torgovaya palata (All-Union Chamber of Commerce), Kuybysheva Street 6, Moscow

Union of Soviet Socialist Republics

Vsesoyuznaya torgovaya palata (All-Union Chamber of Commerce), Kuybysheva Street 6, Moscow

United Kingdom

Association of British Chambers of Commerce, 68 Queen Street, London EC4

Upper Volta

Chamber of Commerce of Upper Volta, Ouagadougou

Yugoslavia

Court of Foreign Trade Arbitration of the Yugoslav Federal Economic Chamber, Knez Mihajlova 10, Belgrade

The institution which may be required to act as the " Appointing Authority " in Eastern Germany is as follows:

Chamber of Foreign Trade of the GDR, 108 Berlin, Unter den Linden 40

RULES OF PROCEDURE OF THE INTER-AMERICAN COMMERCIAL ARBITRATION COMMISSION

In effect 1 April 1969

(Document AAA-19-2M-6/69 of the Inter-American Arbitration Commission)

I. Rules a part of the Arbitration Agreement

1. *Agreement of Parties*—The parties shall be deemed to have made these Rules a part of their arbitration agreement whenever, in the Submission or other written agreement, they have provided for arbitration by the Inter-American Commercial Arbitration Commission or under its Rules. These Rules and any amendment thereof shall apply in the form obtaining at the time the arbitration is initiated.

II. Tribunals

2. *Name of Tribunal*—Any Tribunal constituted by the parties for the settlement of their dispute under these Rules, shall be called the Inter-American Commercial Arbitration Tribunal, hereinafter referred to as Tribunal.

3. *Administrator*—When parties agree to arbitrate under these Rules or provide for arbitration by the Inter-American Commercial Arbitration Commission and an arbitration is initiated thereunder, they thereby constitute the Commission the Administrator of the arbitration. The authority and obligations of the Administrator are limited in the manner prescribed in the agreement of the parties and in these Rules.

4. *Executive Duties*—The duties of the Commission may be carried out through such officers of the Commission or such Clerks, Committees or Agents as the Commission may direct, and the Commission may designate the notary wherever the prevailing law requires the intervention of such official.

5. *Panels of Arbitrators*—The Commission shall establish and maintain Panels of Arbitrators and shall appoint Arbitrators therefrom in the manner prescribed in these Rules, and such Arbitrators shall hereinafter be referred to as " Panel Arbitrators ".

6. *Office of Tribunal*—The general office of a Tribunal is the headquarters of the Commission, or such agency as it may designate.

III. Initiation of the arbitration

7. *Initiation under an Arbitration Provision in a Contract*—Any party to a contract containing a clause providing for arbitration by the Commission or under its Rules, or any party to a contract containing a general arbitration clause, when the parties have agreed by stipulation or otherwise, to arbitrate under the Rules of the Commission, may commence an arbitration in the following manner:

(*a*) By such party giving written notice to the other party of intention to arbitrate (Demand), which notice shall contain a statement setting forth the nature of the dispute, the amount involved if any, the remedy sought; and

(*b*) By filing with the Administrator at any of its offices two copies of said notice, together with two copies of the contract or such parts thereof as relate to the dispute, including the arbitration provisions. The Administrator shall give notice of such filing to the other party.

The party upon whom the demand for arbitration is made may, if he so desires, file an answering statement with the Administrator within thirty days after notice from the Administrator, in which event he shall also send a copy of his answer to the other party. If no answer is filed within the stated time, it will be assumed that the claim made is denied. Failure to file an answer shall not operate to delay the arbitration.

After the filing of the claim, and answer if any, if either party desires to make any new or different claim such claim shall be made in writing and filed with the Commission and a copy thereof mailed to the other party who shall have a period of thirty days from the date of such mailing within which to file an answer with the Commission.

However, after the Arbitrator is appointed no new or different claim may be submitted to him except with the consent of the Arbitrator and all other parties.

8. *Initiation under a Submission*—Parties to any existing dispute may commence an arbitration under these Rules by filing at any office of the Commission two copies of a written agreement to arbitrate under these Rules (Submission), signed by the parties, and containing a statement of the matter in dispute, the amount of money involved if any, and the remedy sought.

9. *Administrative Fee*—The Initial Fee in the amount prescribed in the Schedule in Rule IX shall be paid to the Commission by each of the parties at the time of initiating the arbitration.

10. *Fixing of Locality*—The parties may mutually agree on the locality where the arbitration is to be held. If the locality is not designated in the contract or Submission, or if within fifteen days from the date of filing the Demand or Submission, the parties do not notify the Commission of such designation, it shall have power to determine the locality and its decision shall be final and binding on both parties. In the event, however, that any party requests that the hearing be held in a specific locale and the other party files no objection thereto within fifteen days after notice of the request, the locale shall be that requested by the party.

IV. Appointment of arbitrator

11. *Qualifications*—No person shall serve as an Arbitrator in any arbitration if he has any financial or personal interest in the result of the arbitration, unless the parties, in writing, waive such disqualification.

12. *Appointment from Panels*—If the parties have not appointed an Arbitrator and have not provided any other method of appointment, the Arbitrator shall be appointed in the following manner: Immediately after the filing of the Submission or copy of a Demand, as required under Rule III, the Commission shall submit simultaneously to each party to the dispute, an identical list of names of persons chosen from the Panels. Each party to the dispute shall have fifteen days from the date of the mailing of such lists in which to examine said list, cross off any names to which he objects and number the remaining names indicating the order of his preference, and return the list to the Commission. When any party or both parties fail to return the list within the time specified all persons

named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference if any, the Commission shall endeavor to obtain the acceptance of an Arbitrator to serve. If the parties fail to agree upon any of the persons named or if those named decline or are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Commission shall have power to make the appointment from other members of the Panels without the submission of any additional lists.

13. *Direct Appointment by Parties*—If the Submission or other agreement of the parties names an Arbitrator or specifies any direct method by which an Arbitrator is to be appointed, that designation or method shall be followed. These rules recognize as valid any method for the appointment of the Arbitrators mutually chosen by the parties, that is in conformity with the governing arbitration law. The notice of appointment, with name and address of such Arbitrator, shall be filed with the Commission by the appointing party. Upon the request of any such appointing party, the Commission shall submit a list of members of the Panels from which the party may, if he so desires, make the appointment.

If the Submission or other agreement specifies a period of time within which an Arbitrator shall be appointed, and any party fails to make such appointment within that period, the Commission shall have power to make the appointment.

If no period of time is specified in the Submission or other agreement, the Commission shall notify the parties to make the appointment and if within thirty days thereafter such Arbitrator has not been so appointed, the Commission shall then have power to make the appointment.

14. *Appointment of Additional Arbitrator by Named Arbitrators*—If the parties have named their Arbitrators or either or both of them have been named as provided in Section 13, and have authorized such Arbitrators to appoint an additional Arbitrator within a specified time and no appointment is made within such time or any agreed extension thereof, the parties, under these Rules, authorize the Commission to appoint such additional Arbitrator who shall act as Chairman.

If no period of time is specified by the parties within which such Arbitrators are to appoint an additional Arbitrator, a period of fifteen days from the date of the appointment of the named Arbitrator last appointed, shall be allowed for their appointment of the additional Arbitrator. In the event of their failure to make the appointment within such fifteen days, the parties, under these Rules, authorize the Commission to appoint such additional Arbitrator who shall act under the agreement with the same force and effect as if he had been appointed by the named Arbitrators and he shall act as Chairman.

If the parties have agreed that their named Arbitrators shall appoint the additional Arbitrator from the Panels, the Commission shall furnish to the named Arbitrators, in the manner prescribed in Section 12, a list selected from the Panels and the appointment of the additional Arbitrator shall be made as prescribed in such Section.

15. *Designation of Number of Arbitrators*—If the arbitration agreement does not specify the number of Arbitrators, the dispute shall be heard and determined by one Arbitrator, unless the Commission in its discretion specifically directs that a greater number of Arbitrators be appointed, provided that the number of Arbitrators shall be uneven.

16. *Notice of Appointment to Arbitrator*—Notice of the appointment of the Arbitrator, whether appointed by the parties or by the Commission, shall be mailed to the Arbitrator by the Commission and the signed acceptance of the Arbitrator shall be filed with the Commission prior to the opening of the first hearing. Together with such notice to the Arbitrator, the Commission shall enclose a copy of the Rules and call attention to the requirements of Sections 11 and 17 of these Rules.

17. *Disclosures by Arbitrator of Disqualification*—At the time of receiving his notice of appointment, the prospective Arbitrator shall disclose any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial Arbitrator. Upon receipt of such information, the Commission shall immediately disclose it to the parties who, if willing to proceed under the circumstances disclosed, shall, in writing, so advise the Commission. If either party declines to waive the presumptive disqualification, the vacancy thus created shall be filled in the same manner as the original appointment was made.

18. *Vacancies*—If any Arbitrator should resign, die, withdraw, refuse or be unable or disqualified to perform the duties of his office, the Commission shall, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in the same manner as the original appointment was made and the matter shall be reheard by the new Arbitrator.

V. Procedure for oral hearing

19. *Time and Place*—The Commission shall fix the time and place for each hearing. The Commission shall mail at least thirty days prior thereto notice thereof to each party, unless the parties by mutual agreement waive such notice or modify the terms thereof.

20. *Representation by Counsel*—Any party may be represented by counsel. A party intending to be so represented shall notify the other party and file a copy of such notice with the Commission at least three days prior to the date set for the hearing at which counsel is first to appear. When the initiation of an arbitration is made by counsel, or the reply of the other party is by counsel, such notice is deemed to have been given.

21. *Taking of a Stenographic Record*—The Commission shall make the necessary arrangements for the taking of a stenographic record of the testimony whenever such record is requested by one or more parties. The requesting party or parties shall deposit the estimated cost of such record with the Commission.

22. *Interpreters and Translators*—The Commission shall make the necessary arrangements for the services of an interpreter or translator upon the request of one or more of the parties who shall deposit the cost of such service with the Commission.

23. *Attendance at Hearings*—Persons having a direct interest in the arbitration are entitled to attend hearings. It shall be discretionary with the Arbitrator to determine the propriety of the attendance of any other persons. The Arbitrator shall have the power to require the retirement of any witness or witnesses during the testimony of other witnesses.

24. *Adjournments*—The Arbitrator for good cause shown may take adjournments upon the request of a party or upon his own initiative and shall take such adjournment when all of the parties agree thereto.

25. *Oaths*—Before proceeding with the first hearing, or with the examination of the file as provided under Rule VI, each Arbitrator may take an oath of office, and if required by law, shall do so. The Arbitrator shall require witnesses to testify under oath administered by any duly qualified person when required by law.

26. *Majority Decision*—Whenever there is more than one Arbitrator, all decisions of the Arbitrators may be by majority vote. The award may also be made by majority vote unless the concurrence of all is expressly required by the arbitration agreement or by law.

27. *Order of Proceeding*—A hearing shall be opened by the filing of the oath of the Arbitrator, where required, and by the recording of a Minute. The Minute shall set forth the place, time and date of the hearing, the presence of the Arbitrator and parties, and counsel if any, and the receipt by the Arbitrator of the Submission or of the statement of the claim, and answer if any.

Exhibits, when offered by either party, may be received in evidence by the Arbitrator, and when so received shall be numbered and made part of the record.

The complaining party or his counsel shall then present his claim and proofs and his witnesses who shall submit to questions or other examination. The defending party or his counsel shall then present his defense and proofs, and his witnesses who shall submit to questions or other examination. The Arbitrator may in his discretion vary this procedure but shall afford full and equal opportunity to all parties for the presentation of any material or relevant proofs.

28. *Arbitration in the Absence of a Party*—Unless the law provides to the contrary, the arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The Arbitrator shall require the other party to submit such evidence as he may require for the making of an award.

29. *Evidence*—The parties may offer such evidence as they desire and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute. When the Arbitrator is authorized by law to subpoena witnesses or documents, he may do so upon his own initiative or upon the request of any party. The Arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the Arbitrators and of all the parties except where any of the parties is absent in default or has waived his right to be present.

30. *Evidence by Affidavit and Filing of Documents*—The Arbitrator may receive and consider the evidence of witnesses by affidavit, but may give it only such weight as he deems it entitled to after consideration of any objections made to its admission.

All documents not filed with the Arbitrator at the hearing but which are arranged at the hearing or subsequently by agreement of the parties to be submitted, shall be filed with the Commission for transmission to the Arbitrator. All parties shall be afforded opportunity to examine such documents.

31. *Inspection or Investigation*—Whenever the Arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall direct the Tribunal Clerk to advise the parties of his intention to make an inspection or investigation. The Arbitrator shall set the time and the Tribunal Clerk shall notify the parties thereof. Any party who so desires may be present at such inspection or investigation. In the event that the parties, or any of them, are not present at the inspection or investigation, the Arbitrator shall make a verbal or written report to the parties and afford an opportunity for the receipt of comment or testimony in relation thereto.

32. *Conservation of Property*—The Arbitrator may issue such orders as may be deemed necessary to safeguard the subject matter of the arbitration, without prejudice to the rights of the parties or to the final determination of the dispute.

33. *Closing of Hearings*—The Arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the Arbitrator shall declare the hearings closed and a Minute thereof shall be recorded. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the Arbitrator for the receipt of the briefs. If documents are to be filed as provided in Section 31 and the date set for their receipt is later than that set for the receipt of briefs, then such later date shall be the date of closing the hearing. The time limit within which the Arbitrator is required to make his award shall commence to run, in the absence of other agreement by the parties, upon the closing of the hearings.

34. *Reopening of Hearings*—The hearings may be reopened by the Arbitrator on his own motion, or upon application of a party for good cause shown, at any time before

the award is made, except if the reopening of the hearings would prevent the making of the award within the specific time agreed upon by the parties in the contract out of which the controversy has arisen, unless the parties agree upon the extension of such time limit. When no specific date is fixed in the contract the Arbitrator may reopen the hearings, and the Arbitrator shall have 30 days from the closing of the reopened hearings within which to make an award.

VI. Procedure for other than oral hearings

35. *Waiver of Oral Hearing*—The parties by written agreement may submit their dispute to arbitration by other than oral hearing. The arbitration shall be conducted under these Rules except such provisions thereof as are inconsistent with this Rule.

If no method is specified by the parties, the Commission shall notify the parties to present their proofs in the following manner: The parties shall submit to the Commission their respective contentions in writing, including a statement of facts duly sworn to, together with such other proofs as they may wish to submit. These statements and proofs may be accompanied by written arguments or briefs. All documents shall be submitted within thirty days from the date of the notice to file such statement and proofs in such number of copies as the Commission may request. It shall forthwith transmit to each party a copy of the statement and proofs submitted by the other party. Each party may reply to the other's statement and proofs, but upon the failure of any party to make such a reply within a period of thirty days after the mailing of such documents to him, he shall be deemed to have waived the right to reply.

If, after such due notice, a party fails to present his contentions in writing, a statement of the facts or proofs within the said period of thirty days, he shall be deemed in default and the Commission shall proceed with its determination of the controversy. The Commission, however, may open the default for sufficient cause at any time prior to the filing of the award.

The Commission shall then transmit all proofs and documents to the Arbitrator who shall have been appointed in any manner provided for in Rule IV. The Arbitrator shall have ten days from the date of their delivery to him within which to request a party or parties to produce additional proof. The Commission shall notify the parties of such request and the party or parties shall submit such additional proof within fifteen days from the date of the receipt of such notice. The Commission, upon receipt thereof, shall forthwith transmit to each party a copy of the additional statement and proofs submitted by the other party. Each party may make a reply to such statement and proofs but upon the failure of any party to make such a reply within a period of fifteen days after the receipt by him of such documents, he shall be deemed to have waived the right to reply.

Upon mailing or delivery to the Arbitrator of all documents submitted as provided above, the arbitration shall be deemed closed and the time limit within which the Arbitrator shall make his award shall begin to run.

VII. Special provisions

36. *Adjustments and Voluntary Settlement*—The agreement to arbitrate under these Rules shall not preclude any of the parties before resorting to arbitration from having recourse to inquiries and impartial investigation or from amicably adjusting their controversy.

The Commission, at any stage of the dispute, may in its discretion communicate with the parties for the purpose of obtaining a negotiated or voluntary settlement of the

controversy. The Commission may further make or authorize inquiries into the facts for the purpose of facilitating a settlement of the controversy or making recommendations to the parties. The Commission may use its good offices for the above purposes without charge to the parties and in the interest of good inter-American relations.

37. *Waiver of Rules*—Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object.

38. *Extensions of Time*—The parties may modify any period of time by mutual agreement. The Commission for good cause may extend any period of time established by these Rules, except the time for making the award. The Commission shall notify the parties of any such extension of time.

39. *Serving of Notices*—Each party to a Submission or other agreement which provides for arbitration under these Rules shall be deemed to have consented and shall consent that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these Rules and for the entry of judgment on an award made thereunder may be served upon such party (*a*) by registered mail addressed to such party or his representative at his last known address or (*b*) by personal service on such party or his representative within or without the State wherein the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted such party.

VIII. The Award

40. *Time*—The award shall be rendered promptly and, unless otherwise agreed by the parties, or specified by law, not later than thirty days from the date of closing the hearings, or if oral hearings have been waived, then from the date of transmitting the final statements and proofs to the Arbitrator.

41. *Form*—The award shall be in writing and shall be signed either by the sole Arbitrator or by a majority if there be more than one. It shall be executed in the manner required by law.

42. *Scope*—The arbitrator in his award may grant any remedy or relief which he deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract. The Arbitrator, in his award, may assess the arbitration fees and expenses in favor of any party or of the Commission.

43. *Award upon Settlement*—If the parties settle their dispute during the course of the arbitration, the Arbitrator, upon their request, may set forth the terms of the agreed settlement in an award in his discretion.

44. *Delivery of Award to Parties*—Parties shall accept as legal delivery of the award (*a*) the placing of the award or a true copy thereof in the registered mail by the Commission, addressed to such party at his last known address or to his attorney, or (*b*) personal service of the award, or (*c*) the filing of the award in any manner which may be prescribed by law.

45. *Release of Documents for Judicial Proceedings*—The Commission shall, upon the written request of a party, furnish to such party at his expense, certified facsimilies of any papers in the Commission's possession that may be required in judicial proceedings relating to the arbitration.

46. *Notice of Compliance*—The Commission, for the purpose of closing the record, may request either party to notify it of compliance with the award or of a voluntary settlement by the parties.

IX. Fees and expenses

47. *Schedule of Administrative Fees*—An administrative fee in the amount prescribed in the following schedule shall be paid to the Administrator by each of the parties at the time of initiating the arbitration. When a matter is withdrawn or settled subsequent to the filing of a demand for arbitration or of a submission agreement, the administrative fee is not returnable.

Where Amount involved is disclosed : —

Initial Fee:

1 ½ % *for each party* of the amount involved up to $ 10,000; the minimum fee *for each party*, no part of which is refundable, is $ 25;

plus 1 % *for each party* of the amount involved in excess of $ 10,000 to $ 25,000;

plus ½ % *for each party* of the amount involved in excess of $ 25,000 to $ 100,000;

plus 1/4 % *for each party* of the amount involved in excess of $ 100,000 to $ 200,000;

plus 1/10 % *for each party* of the amount involved in excess of $ 200,000.

The fee is based upon the amount of the claim as disclosed when the arbitration is initiated, and such fee is payable by each party. If, however, a claim in a larger amount is disclosed in the answer or in any amendments of the claim or answer filed later, an additional fee in accord with the above schedule shall be paid by the claimant for such larger amount.

Where Amount involved is not disclosed:—

Initial Fee for each party (Fees *for both parties* to be advanced by the filing party): $ 100.00 Subject (*a*) to adjustment with the Administrator, or (*b*) subject to adjustment in accordance with preceding schedule if an amount is subsequently disclosed.

Hearing Fees:—

The hearing fee payable before each hearing is:
$ 30.00 or 50 % of Initial Fee—whichever is lower amount.

Adjournment Fee:—

$ 10.00 payable only by party causing adjournment of hearing duly called by notice or as the Arbitrator may direct.

Overtime Fee:—

$ 2.00 per hour payable by each party (chargeable after 6: 00 P.M. weekdays or 12 noon Saturdays).

Apportionment of Fees:—

The Arbitrator may award to either party and against the other, an amount equal to the fee, or any part thereof, which was paid by such party to the Administrator.

The Administrator, in the event of proved extreme hardship on the part of any party, may waive the established fees or any portion thereof.

48. *Fee When Oral Hearings are Waived*—Fee where all Oral Hearings are waived under Section 35 shall be the Initial Fee as determined under Section 47 hereof.

49. *Expenses*—The expenses of witnesses for either side shall be paid by the party producing such witnesses.

The total cost of the stenographic record, if any is made, and all transcript thereof, shall be prorated equally among all parties ordering copies, unless they shall otherwise agree among themselves.

All other expenses of the arbitration including required traveling and other expenses of the Arbitrator and Commission, and the expenses of any witness or the cost of any proofs produced at the direct request of the Arbitrator, shall be borne equally by the parties

unless they agree otherwise, or unless the Arbitrator in his Award assesses such expenses or any part thereof against any specified party or parties.

The Arbitrator may award to the Commission any expenses advanced or incurred by it and any fees due and remaining unpaid by any party responsible therefor.

50. *Arbitrator's Fee*—If the parties desire to compensate the Arbitrator but do not agree upon the rate or amount of the compensation, it shall be fixed by the Commission.

Any arrangements for the compensation of a panel arbitrator shall be made through the Commission and not directly by him with the parties.

51. *Deposits*—The Commission may require the parties to deposit in advance with the Commission such sums of money as it deems necessary to defray the expenses of the arbitration, including the Arbitrator's fee if any, and shall render an accounting to the parties and return any unexpended balance.

X. Interpretation and application of rules

52. *Interpretation and Application of Rules*—The Arbitrator shall interpret and apply these Rules in so far as they relate to his powers and duties. When there is more than one Arbitrator and a difference arises among them concerning the meaning or application of any such Rules it shall be decided by majority vote. If that is unobtainable either an Arbitrator or a party may refer the question to the Commission for final decision. All other Rules shall be interpreted and applied by the Commission.

3. DRAFT CONVENTIONS AND SIMILAR INSTRUMENTS

RULES ON INTERNATIONAL COMMERCIAL ARBITRATION (COPENHAGEN RULES)

Formulated by the International Law Association, 1950. *Report on the Forty-fourth conference of the International Law Association,* Copenhagen 1950, p. 271 (Text in English and French)

The Rules deal with the initiation of arbitration proceedings, the composition of the arbitral tribunal, the formal requirements for submission to arbitration, the place where the arbitration is to be held, and the procedure to be followed. The Rules also concern the content and form of the award, majority voting by the Tribunal, the period within which the Tribunal must give the award, the costs of arbitration, the secrecy to be observed by the arbitrators, the finality of the award, and possible revisions by the arbitrators of their award.

DRAFT UNIFORM LAW ON INTER-AMERICAN COMMERCIAL ARBITRATION

Approved by the Inter-American Council of Jurists at Mexico City, 1956. Organization of American States (OAS), *Official Records,* OEA/Ser.1/VI.1, CIJ-91, p. 52 (English); p. 54 (Spanish)

[The Council recommended that the American Republics adopt the Draft to the extent practicable, in such form as they consider desirable within their several jurisdictions.]

The Draft includes provisions on the validity, effectiveness and enforcement of arbitration clauses. Other articles concern the composition of the arbitration tribunal, its procedure, types of arbitration, the finality of the award, and grounds for setting aside the award.

DRAFT UNIFORM LAW ON ARBITRATION IN RESPECT OF INTERNATIONAL RELATIONS OF PRIVATE LAW

Prepared by the International Institute for the Unification of Private Law and amended by the Legal Committee of the Consultative Assembly of the Council of Europe. UNIDROIT, *Yearbook,* 1957, p. 134 (text in English and French)

In addition to provisions defining its scope, the Draft includes articles relating to the arbitration agreement. Several articles relate to the enforcement of the agreement and the composition of the Arbitral Tribunal. Other articles relate to the Procedure of the Arbitral Tribunal, the vote as to the Award and the formal requirements of the Award. The Draft also deals with the enforcement and setting aside of the Award, the cost and expenses of the arbitration and fees of the arbitrators. Finally the Draft deals with questions such as which court is competent in connexion with the appointment and removal of the arbitrators and the enforcement of the Award.

ARBITRATION IN PRIVATE INTERNATIONAL LAW

Articles adopted at Amsterdam (1957) and Neuchâtel (1959) by the Institute of International Law. *Annuaire* de l'Institut de Droit International (1959), vol. 48 II, p. 372 and p. 394 (text in French and English)

General questions considered in the articles include the freedom of parties to decide to submit a dispute to arbitration, and the place of arbitration. Other subjects include the capacity of parties to submit a dispute to arbitration, the validity of an arbitral clause, the possible application to the arbitral agreement of law different from that applied to the dispute itself, the form of an arbitral agreement, the contractual relations between the parties and the arbitrators, the composition of the arbitral tribunal, the procedure to be followed by the tribunal, the competence of the tribunal to determine whether the agreement is void, and the law applicable to the substance of the dispute. The articles also deal with the effect of the award, the law applicable to appeal procedures and to reducing the award to a judgement, and international recognition and enforcement.

DRAFT CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION

Prepared by the Inter-American Juridical Committee, 5 October 1967. Organization of American States (OAS), *Official Records,* OEA/Ser.1/VI.1, CIJ-91, p. 42 (English); p. 51 (Spanish)

In five articles the draft deals with the validity of the arbitration clauses, appointment of arbitrators, the procedure of the arbitration tribunal, the effect of the arbitral award, and the cases in which a party can oppose in court the enforcement of the award.

Chapter II

INTERNATIONAL LEGISLATION ON SHIPPING

1. CONVENTIONS AND SIMILAR INSTRUMENTS

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW WITH RESPECT TO COLLISIONS BETWEEN VESSELS [1]

Signed at Brussels, 23 September 1910

[*Translation* [2]]

Article 1

Where a collision occurs between sea-going vessels or between sea-going vessels and vessels of inland navigation, the compensation due for damages caused to the vessels, or to any things or persons on board thereof, shall be settled in accordance with the following provisions, in whatever waters the collision takes place.

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[1] The Convention entered into force on 1 March 1913.

The Government of Belgium reports that the following ratifications (r), accessions (a) or notifications of succession (s) have been deposited with it:

Argentina	(a)	—	28 February 1922
Australia	(a)	—	9 September 1930
Norfolk Island	(a)	—	1 February 1913
Papua	(a)	—	1 February 1913
Austria	(r)	—	1 February 1913
Barbados	(a)	—	1 February 1913
Belgium	(r)	—	1 February 1913
Brazil	(r)	—	31 December 1913
Canada	(a)	—	25 September 1914
Ceylon	(a)	—	1 February 1913
Cyprus	(a)	—	1 February 1913
Danzig	(a)	—	2 June 1922
Denmark	(r)	—	18 June 1913
East Africa	(a)	—	1 February 1913
Egypt	(a)	—	29 November 1943
Estonia	(a)	—	15 May 1929
Federated Malay States (Perak, Selangor, Negri Sembilan and Pahang)	(a)	—	1 February 1913
Fiji	(a)	—	10 October 1970
Finland	(a)	—	17 July 1923
France	(r)	—	1 February 1913
Gambia	(a)	—	1 February 1913
Germany *	(r)	—	1 February 1913
Ghana	(a)	—	1 February 1913
Greece	(r)	—	29 September 1913

(Continued on next page.)

[2] Great Britain *Treaty Series 1913*, p. 41 (No. 4).

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* Reinstated as from 1 November 1953 between, on the one hand, the Federal Republic of Germany and, on the other hand, the Allied Powers except Hungary, Poland, Uruguay, New Zealand, Romania, and the USSR.

Article 2

If the collision is accidental, if it is caused by *force majeure,* or if the cause of the collision is left in doubt, the damages are borne by those who have suffered them.

This provision is applicable notwithstanding the fact that the vessels, or any one of them, may be at anchor (or otherwise made fast) at the time of the casualty.

(Continued)

Guyana	(a)	—	1 February	1913
Haiti	(a)	—	18 August	1951
Hungary	(r)	—	1 February	1913
India	(a)	—	1 February	1913
Ireland	(r)	—	1 February	1913
Iran	(a)	—	26 April	1966
Italy	(r)	—	2 June	1913
Colonies	(a)	—	9 November	1934
Jamaica	(a)	—	1 February	1913
Japan	(r)	—	12 January	1914
Latvia	(a)	—	2 August	1932
Madagascar	(s)	—	13 July	1965
Malta	(a)	—	1 February	1913
Mauritius	(a)	—	1 February	1913
Mexico	(r)	—	1 February	1913
Netherlands	(r)	—	1 February	1913
New Zealand	(a)	—	1 February	1913
Newfoundland	(a)	—	11 March	1914
Nicaragua	(r)	—	18 July	1913
Nigeria	(a)	—	1 February	1913
Norway	(r)	—	12 November	1913
Paraguay	(a)	—	22 November	1967
Poland	(a)	—	2 June	1922
Portugal	(r)	—	25 July	1913
Colonies	(a)	—	20 July	1914
Romania	(r)	—	1 February	1913
Sierra Leone	(a)	—	1 February	1913
Somalia	(a)	—	1 February	1913
Spain	(a)	—	17 November	1923
Sweden	(r)	—	12 November	1913
Switzerland	(a)	—	28 May	1954
Trinidad and Tobago	(a)	—	1 February	1913
Turkey	(a)	—	4 July	1955
United Kingdom of Great Britain and Northern Ireland	(r)	—	1 February	1913
Bahamas, Bermuda, British Honduras, Falkland Islands and Dependencies, Gibraltar, Gilbert and Ellice Islands, Hong Kong	(a)	—	1 February	1913
Turks and Caicos Islands and the Cayman Islands, Leeward Islands (Antigua, Dominica, Montserrat, St. Christopher-Nevis, Virgin Islands)	(a)	—	1 February	1913
St. Helena, Solomon Islands, Seychelles, Straits Settlements (including Labuan)	(a)	—	1 February	1913
Wei Hai Wei, Windward Islands (Grenada, St. Lucia, St. Vincent)	(a)	—	1 February	1913
Union of Soviet Socialist Republics	(a)	—	10 July	1936
Uruguay	(a)	—	21 July	1915
Yugoslavia	(a)	—	31 December	1931
Zaire	(a)	—	17 July	1967

Ratifications, accessions and notification of succession are set out as furnished by the Government of Belgium.

The following have signed the Convention: Chile, Cuba, United States of America.

Article 3

If the collision is caused by the fault of one of the vessels, liability to make good the damages attaches to the one which has committed the fault.

Article 4

If two or more vessels are in fault the liability of each vessel is in proportion to the degree of the faults respectively committed. Provided that if, having regard to the circumstances, it is not possible to establish the degree of the respective faults, or if it appears that the faults are equal, the liability is apportioned equally.

The damages caused, either to the vessels or to their cargoes or to the effects or other property of the crews, passengers, or other persons on board, are borne by the vessels in fault in the above proportions, and even to third parties a vessel is not liable for more than such proportion of such damages.

In respect of damages caused by death or personal injuries, the vessels in fault are jointly as well as severally liable to third parties, without prejudice however to the right of the vessel which has paid a larger part than that which, in accordance with the provisions of the first paragraph of this Article, she ought ultimately to bear, to obtain a contribution from the other vessel or vessels in fault.

It is left to the law of each country to determine, as regards such right to obtain contribution, the meaning and effect of any contract or provision of law which limits the liabitity of the owners of a vessel towards persons on board.

Article 5

The liability imposed by the preceding Articles attaches in cases where the collision is caused by the fault of a pilot, even when the pilot is carried by compulsion of law.

Article 6

The right of action for the recovery of damages resulting from a collision is not conditional upon the entering of a protest or the fulfilment of any other special formality.

All legal presumptions of fault in regard to liability for collision are abolished.

Article 7

Actions for the recovery of damages are barred after an interval of two years from the date of the casualty.

The period within which an action must be instituted for enforcing the right to obtain contribution permitted by paragraph 3 of Article 4, is one year from the date of payment.

The grounds upon which the said periods of limitation may be suspended or interrupted are determined by the law of the court where the case is tried.

The High Contracting Parties reserve to themselves the right to provide, by legislation in their respective countries, that the said periods shall be extended in cases where it has not been possible to arrest the defendant vessel in the territorial waters of the State in which the plaintiff has his domicile or principal place of business.

Article 8

After a collision, the master of each of the vessels, in collision is bound, so far as he can do so without serious danger to his vessel, her crew and her passengers, to render assistance to the other vessel, her crew and her passengers.

He is likewise bound so far as possible to make known to the other vessel the name of his vessel and the port to which she belongs, and also the names of the ports from which she comes and to which she is bound.

A breach of the above provisions does not of itself impose any liability on the owner of a vessel.

Article 9

The High Contracting Parties whose legislation does not forbid infringements of the preceding Article bind themselves to take or to propose to their respective Legislatures the measures necessary for the prevention of such infringements.

The High Contracting Parties will communicate to one another as soon as possible the laws or regulations which have already been or may be hereafter promulgated in their States for giving effect to the above undertaking.

Article 10

Without prejudice to any Conventions which may hereafter be made, the provisions of this Convention do not affect in any way the law in force in each country with regard to the limitation of shipowners' liability, nor do they alter the legal obligations arising from contracts of carriage or from any other contracts.

Article 11

This Convention does not apply to ships of war or to Government ships appropriated exclusively to a public service.

Article 12

The provisions of this Convention shall be applied as regards all persons interested when all the vessels concerned in any action belong to States of the High Contracting Parties, and in any other cases for which the national laws provide.

Provided always that:

1. As regards persons interested who belong to a non-contracting State, the application of the above provisions may be made by each of the contracting States conditional upon reciprocity.

2. Where all the persons interested belong to the same State as the court trying the case, the provisions of the national law and not of the Convention are applicable.

Article 13

This Convention extends to the making good of damages which a vessel has caused to another vessel, or to goods or persons on board either vessel, either by the execution or non-execution of a manœuvre or by the non-observance of the regulations, even if no collision had actually taken place.

Article 14

Any one of the High Contracting Parties shall have the right, three years after this Convention comes into force, to call for a fresh conference with a view to possible amendments therein, and particularly with a view to extend, if possible, the sphere of its application.

Any Power exercising this right must notify its intention to the other Powers, through the Belgian Government, which will make arrangements for convening the conference within six months.

Article 15

States which have not signed the present Convention are allowed to accede thereto at their request. Such accession shall be notified through the diplomatic channel to the Belgian Government, and by the latter to each of the Governments of the other Contracting Parties; it shall become effective one month after the despatch of such notification by the Belgian Government.

Article 16

The present Convention shall be ratified.

After an interval of at most one year from the date on which the Convention is signed, the Belgian Government shall enter into communication with the Governments of the High Contracting Parties which have declared themselves prepared to ratify it, with a view to decide whether it should be put into force.

The ratifications shall, if so decided, be deposited forthwith at Brussels, and the Convention shall come into force a month after such deposit.

The Protocol shall remain open another year in favour of the States represented at the Brussels Conference. After this interval they can only accede to it in conformity with the provisions of Article 15.

Article 17

In the case of one or other of the High Contracting Parties denouncing this Convention, such denunciation shall not take effect until a year after the day on which it has been notified to the Belgian Government, and the Convention shall remain in force as between the other contracting Parties.

Additional Article

Notwithstanding anything in the provisions of Article 16, it is agreed that it shall not be obligatory to give effect to the provisions of Article 5, establishing liability in cases where a collision is caused by the fault of a pilot carried by compulsion of law, until the High Contracting Parties shall have arrived at an agreement on the subject of the limitation of liability of shipowners.

IN WITNESS WHEREOF, the Plenipotentiaries of the respective High Contracting Parties have signed this Convention and have affixed thereto their seals.

DONE at Brussels, in a single copy, September 23, 1910.

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO BILLS OF LADING [1]

Signed at Brussels, 25 August 1924

[*Translation* [2]]

Article 1

In this convention the following words are employed with the meanings set out below:

(*a*) " Carrier " includes the owner of the vessel or the charterer who enters into a contract of carriage with a shipper.

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[1] The Convention entered into force on 2 June 1931.

The Government of Belgium reports that the following ratifications (r), accessions (a) or notifications of succession (s) have been deposited with it:

Algeria	(a)	— 13 April	1964
Argentina	(a)	— 19 April	1961
Australia	(a)	— 4 July	1955
Papua and *Norfolk Island*	(a)	— 4 July	1955
Nauru and *New Guinea*	(a)	— 4 July	1955
Barbados	(a)	— 2 December	1930
Cameroon	(a)	— 2 December	1930
Ceylon	(a)	— 2 December	1930
Cyprus	(a)	— 2 December	1930
Denmark	(a)	— 1 July	1938
Egypt	(a)	— 29 November	1943
Fiji	(a)	— 10 October	1970
Finland	(a)	— 1 July	1939
France	(r)	— 4 January	1937
Gambia	(a)	— 2 December	1930
Germany *	(r)	— 1 July	1939
Ghana	(a)	— 2 December	1930
Guyana	(a)	— 2 December	1930
Hungary	(r)	— 2 June	1930
Iran	(a)	— 26 April	1966
Ireland	(a)	— 30 January	1962
Israel	(a)	— 5 September	1959
Italy	(r)	— 7 October	1938
Ivory Coast	(a)	— 15 December	1961
Jamaica	(a)	— 2 December	1930
Japan	(r)	— 1 July	1957
Kenya	(a)	— 2 December	1930
Kuwait	(a)	— 25 July	1969
Madagascar	(a)	— 13 July	1965

(Continued on next page.)

[2] Translation taken from the *Treaty Information Bulletin No. 17, 1931,* of the Department of State of the United States of America, as reproduced in League of Nations, *Treaty Series,* vol. CXX, p. 157.

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* Reinstated as from 1 November 1953 between, on the one hand, the Federal Republic of Germany and, on the other hand, the Allied Powers except Hungary, Poland, Uruguay, New Zealand, Romania and the USSR.

(*b*) " Contract of carriage " applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea; it also applies to any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such instrument regulates the relations between a carrier and a holder of the same.

(*c*) " Goods " includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

(*d*) " Ship " means any vessel used for the carriage of goods by sea.

(*e*) " Carriage of goods " covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

Article 2

Subject to the provisions of Article 6, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and

(Continued)

Malay States (Federated and Non-Federated) **	(a)	—	2 December	1930
Mauritius	(s)	—	24 August	1970
Monaco	(a)	—	15 May	1931
Netherlands	(a)	—	18 August	1956
Norway	(a)	—	1 July	1938
Paraguay	(a)	—	22 November	1967
Peru	(a)	—	29 October	1964
Poland	(r)	—	26 October	1936
Portugal	(a)	—	24 December	1931
Overseas Territories	(a)	—	2 February	1952
Romania	(r)	—	4 August	1937
Spain	(r)	—	2 June	1930
Sweden	(a)	—	1 July	1938
Switzerland	(a)	—	28 May	1954
Turkey	(a)	—	4 July	1955
United Kingdom of Great Britain and Northern Ireland	(r)	—	2 June	1930
Bahamas, Bermuda, British Honduras, Falkland Islands and Dependencies, Gilbert and Ellice Islands, Gibraltar, Hong Kong, Turks and Caicos Islands and Cayman Islands, Leeward Islands, (Antigua, Dominica, Montserrat, St. Christopher-Nevis, Virgin Islands), Seychelles, Straits Settlements, (Solomon Islands, Tonga), Windward Islands (Grenada, St. Lucia, St. Vincent)	(a)	—	2 December	1930
Ascension, St. Helena	(a)	—	3 November	1931
United Republic of Tanzania	(a)	—	3 December	1962
United States of America	(r)	—	29 June	1937
Yugoslavia	(r)	—	17 April	1959
Zaire	(a)	—	17 July	1967

Ratifications, accessions and notification of succession are set out as furnished by the Government of Belgium.

The following have signed the Convention: Chile, Estonia.

** By notification of 7 February 1957, registered on 11 February 1957, the United Kingdom extended the application of the Convention to the following Malay States: Kedah, Kelantan, Trengganu, and Perlis, which since 1 February 1948 formed the *Federation of Malaya* with the other Malay States, Negri Sembilan, Pahang, Perak, Selangor and Johore.

discharge of such goods shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

Article 3

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:

(*a*) Make the ship seaworthy;

(*b*) Properly man, equip, and supply the ship;

(*c*) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation.

2. Subject to the provisions of Article 4, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

3. After receiving the goods into his charge, the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:

(*a*) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;

(*b*) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;

(*c*) The apparent order and condition of the goods.

Provided that no carrier, master, or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable grounds for suspecting not accurately to represent the goods actually received or which he has had no reasonable means of checking.

4. Such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (*a*), (*b*) and (*c*).

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

If the loss or damage is not apparent, the notice must be given within three days of the delivery.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded, the bill of lading to be issued by the carrier, master, or agent of the carrier to the shipper shall, if the shipper so demands, be a " shipped " bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the " shipped " bill of lading. At the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article 3, it shall for the purpose of this article be deemed to constitute a " shipped " bill of lading.

8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault, or failure in the duties and obligations provided in this article, or lessening such liability otherwise than as provided in this convention, shall be null and void and of no effect. A benefit of insurance in favor of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

Article 4

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy and to secure that the ship is properly manned, equipped, and supplied and to make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage, and preservation in accordance with the provisions of paragraph 1 of article 3. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(*a*) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.

(*b*) Fire, unless caused by the actual fault or privity of the carrier.

(*c*) Perils, dangers, and accidents of the sea or other navigable waters.

(*d*) Act of God.

(*e*) Act of war.

(*f*) Act of public enemies.

(*g*) Arrest or restraint of princes, rulers, or people or seizure under legal process.

(*h*) Quarantine restrictions.

(*i*) Act or omission of the shipper or owner of the goods, his agent, or representative.

(*j*) Strikes or lock-outs or stoppage or restraint of labor from whatever cause, whether partial or general.

(*k*) Riots and civil commotions.

(*l*) Saving or attempting to save life or property at sea.

(*m*) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods.

(*n*) Insufficiency of packing.

(*o*) Insufficiency or inadequacy of marks.

(*p*) Latent defects not discoverable by due diligence.

(*q*) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of

proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents, or his servants.

4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding 100 pounds sterling per package or unit or the equivalent of that sum in other currency unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be *prima facie* evidence but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master, or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive, or dangerous nature to the shipment whereof the carrier, master, or agent of the carrier has not consented with knowledge of their nature and character may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

Article 5

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities, or to increase any of his responsibilities and liabilities under this convention provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of this convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of this convention. Nothing in these rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

Article 6

Notwithstanding the provisions of the preceding articles, a carrier, master, or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or concerning his obligation as to seaworthiness so far as this stipulation is not contrary

to public policy, or concerning the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care, and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect:

Provided that this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms, and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

Article 7

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement stipulation, condition, reservation, or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from, the ship on which the goods are carried by sea.

Article 8

The provisions of this convention shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of seagoing vessels.

Article 9

The monetary units mentioned in this convention are to be taken to be gold value.

Those contracting states in which the pound sterling is not a monetary unit reserve to themselves the right of translating the sums indicated in this convention in terms of pound sterling into terms of their own monetary system in round figures.

The national laws may reserve to the debtor the right of discharging his debt in national currency according to the rate of exchange prevailing on the day of the arrival of the ship at the port of discharge of the goods concerned.

Article 10

The provisions of this convention shall apply to all bills of lading issued in any of the contracting States.

Article 11

After an interval of not more than two years from the day on which the convention is signed, the Belgian Government shall place itself in communication with the governments of the high contracting parties which have declared themselves prepared to ratify the convention, with a view to deciding whether it shall be put into force. The ratifications shall be deposited at Brussels at a date to be fixed by agreement among the said governments. The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the representatives of the powers which take part therein and by the Belgian Minister for Foreign Affairs.

The subsequent deposits 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 *procès-verbal* relating to the first deposit of ratifications, of the notifications referred to in the previous paragraph, and also of the instruments of ratification accompanying them, shall be immediately sent by the Belgian Government through the diplomatic channel to the powers who have signed this convention or who have acceded to it. In the cases contemplated in the preceding paragraph the said Government shall inform them at the same time of the date on which it received the notification.

Article 12

Non-signatory States may accede to the present convention whether or not they have been represented at the International Conference at Brussels.

A State which desires to accede shall notify its intention in writing to the Belgian Government, forwarding to it the document of accession, which shall be deposited in the archives of the said Government.

The Belgian Government shall immediately forward to all the States which have signed or acceded to the convention a duly certified copy of the notification and of the act of accession, mentioning the date on which it received the notification.

Article 13

The high contracting parties may at the time of signature, ratification, or accession declare that their acceptance of the present convention does not include any or all of the self-governing dominions, or of the colonies, overseas possessions, protectorates, or territories under their sovereignty or authority, and they may subsequently accede separately on behalf of any self-governing dominion, colony, overseas possession, protectorate, or territory excluded in their declaration. They may also denounce the convention separately in accordance with its provisions in respect of any self-governing dominion, or any colony, overseas possession, protectorate, or territory under their sovereignty or authority.

Article 14

The present convention shall take effect, in the case of the States which have taken part in the first deposit of ratifications, one year after the date of the *procès-verbal* recording such deposit. As respects the States which ratify subsequently or which accede, and also in cases in which the convention is subsequently put into effect in accordance with Article 13, it shall take effect six months after the notifications specified in paragraph 2 of Article 11, and paragraph 2 of Article 12, have been received by the Belgian Government.

Article 15

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 of the notification to all the other States informing them of the date on which it was received.

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

Article 16

Any one of the contracting States shall have the right to call for a fresh conference with a view to considering possible amendments.

A State which would exercise this right should notify its intention to the other States through the Belgian Government, which would make arrangements for convening the conference.

Done at Brussels, in a single copy, August 25, 1924.

Protocol of signature

In proceeding to the signature of the International Convention for the unification of certain rules in regard to bills of lading, the undersigned Plenipotentiaries have agreed on the present Protocol which shall have the same force and the same scope as if these provisions were inserted in the text of the Convention to which they relate.

The high contracting parties may give effect to this convention either by giving it the force of law or by including in their national legislation in a form appropriate to that legislation, the rules adopted under this convention.

They may reserve the right:

(1) To prescribe that in the cases referred to in paragraph 2 (*c*) to (*p*) of Article 4, the holder of a bill of lading shall be entitled to establish responsibility for loss or damage arising from the personal fault of the carrier or the fault of his servants which are not covered by paragraph (*a*).

(2) To apply Article 6 in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that article.

Done at Brussels, in a single copy, August 25, 1924.

Reservations and declarations

Australia

. . . Now therefore, I, Sir William Joseph Slim, the Governor-General in and over the Commonwealth of Australia acting with the advice of the Federal Executive Council and in the exercise of all powers me thereunto enabling do by these presents accede in the name and on behalf of Her Majesty in respect of the Commonwealth of Australia and the Territories of Papua and Norfolk Island and the Trust Territories of New Guinea and Nauru to the Convention aforesaid subject to the following reservations, namely:

(*a*) The Commonwealth of Australia reserves the right to exclude from the operation of legislation passed to give effect to the Convention the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the States of Australia.

(*b*) The Commonwealth of Australia reserves the right to apply article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that article.

Belgium

In proceeding to the deposit of the ratifications of His Majesty the King of the Belgians, the Belgian Minister for Foreign Affairs declared, in accordance with the provisions of article 13

of the Convention, that these ratifications extend only to Belgium and do not apply to the Belgian Congo and Ruanda-Urundi, Territories under mandate.

Denmark

. . . This accession is subject to the proviso that the other Contracting States do not object to the application of the provisions of the Convention being limited in the following manner with regard to Denmark:

(1) Under the Danish Navigation Law of 7 May 1937 bills of lading and similar documents may continue to be made out, for national coasting trade, in accordance with the provisions of that Law without the provisions of the Convention being applied to them or to the legal relationship which is thereby established between the carrier and the holder of the document.

(2) Maritime carriage between Denmark and other Nordic States, whose navigation laws contain similar provisions, shall be considered as equivalent to national coasting trade for the purposes mentioned in paragraph (1)—if a provision to that effect is decreed pursuant to the last paragraph of article 122 of the Danish Navigation Law.

(3) The provisions of the International Conventions on the Transport of Passengers and Baggage by Rail and on the Traffic of Goods by Rail, signed at Rome on 23 November 1933, shall not be affected by this Convention.

Egypt

. . . We have resolved hereby to accede to the said Convention and undertake to co-operate in its application.

Egypt, is, however, of the opinion that the Convention does not in any part apply to national coasting trade. Consequently, it reserves to itself the right freely to regulate the national coasting trade by its own law.

In witness whereof . . .

France

. . . In proceeding to this deposit, the Ambassador of France at Brussels declares, in accordance with article 13 of the above-mentioned Convention, that the French Government's acceptance of the Convention does not include any of the colonies, overseas possessions, protectorates or territories under its sovereignty or authority.

Ireland

. . . subject to the following declarations and reservations:

1. In relation to the carriage of goods by sea in ships carrying goods from any port in Ireland to any other port in Ireland or to a port in the United Kingdom, Ireland will apply Article 6 of the Convention as though the Article referred to goods of any class instead of to particular goods, and as though the proviso in the third paragraph of the said Article were omitted;

2. Ireland does not accept the provisions of the first paragraph of article 9 of the Convention.

Ivory Coast

The Government of the Republic of the Ivory Coast, in acceding to the said Convention, specifies that:

(1) For the application of article 9 of the Convention, concerning the value of the monetary units used, the limit of liability shall be equal to the exchange value in CFA francs, one gold pound being equal to two pounds sterling in notes, at the rate of exchange prevailing at the arrival of the ship at the port of discharge.

(2) It reserves the right to regulate, by specific provisions of national law, the system of limitation of liability to be applied to maritime carriage between two ports in the Republic of the Ivory Coast.

Japan (at time of signature)

Subject to the reservations formulated in the note relative to this treaty and appended to my letter dated 25 August 1925 to H.E. the Minister for Foreign Affairs of Belgium.

At the moment of proceeding to the signature of the International Convention for the Unification of Certain Rules Relating to Bills of Lading, the undersigned, Plenipotentiary of Japan, makes the following reservations:

(*a*) To article 4:

Japan reserves to itself until further notice the acceptance of the provisions in (*a*) of paragraph 2 of article 4.

(*b*) Japan is of the opinion that the Convention does not in any part apply to national coasting trade: consequently there should be no occasion to make it the object of provisions in the Protocol. However, if it be not so, Japan reserves to itself the right freely to regulate the national coasting trade by its own law.

(at time of ratification)

. . . The Government of Japan declares:

(1) That it reserves to itself the application of the first paragraph of article 9 of the Convention;

(2) That it maintains reservation (*b*) formulated in the note annexed to the letter of the Ambassador of Japan to the Minister for Foreign Affairs of Belgium, of 25 August 1925, concerning the right freely to regulate the national coasting trade by its own law; and

(3) That it withdraws reservation (*a*) in the above-mentioned note, concerning the provisions in (*a*) of paragraph 2 of article 4 of the Convention.

Kuwait

. . . subject to the following reservation: The maximum amount for liability for any loss or damage to or in connexion with goods referred to in article 4, paragraph 5, to be raised to £ 250 instead of £ 100.

This reservation was rejected by France and Norway.

In a note of 30 March 1971, received by the Belgian Government on 30 April 1971, the Government of Kuwait declares that the amount of " £ 250 " should be replaced by " 250 Kuwait Dinars " *

Netherlands

. . . Desiring to exercise the option of accession reserved to non-signatory States under article 12 of the International Convention for the Unification of Certain Rules Relating to Bills of Lading, with Protocol of Signature, concluded at Brussels on 25 August 1924, we have resolved hereby definitively to accede, in respect of the Kingdom in Europe, to the said Convention, with Protocol of Signature, and undertake to co-operate in its application, while reserving the right by legal enactment:

(1) To prescribe that in the cases referred to in paragraph 2 (*c*) to (*p*) of article 4 of the Convention, the holder of a bill of lading shall be entitled to establish responsibility for loss or damage arising from the personal fault of the carrier or the fault of his servants which are not covered by paragraph (*a*);

(2) To apply article 6 in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that article; and subject to the following:

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* The reservation made by Kuwait has been rejected by France and Norway.

(1) accession to the Convention is subject to the exclusion of the first paragraph of article 9 of the Convention;

(2) Netherlands law may limit the possibilities of furnishing evidence to the contrary against the bill of lading.

In witness whereof . . .

Norway

. . . The accession of Norway to the International Convention for the Unification of Certain Rules Relating to Bills of Lading, signed at Brussels on 25 August 1924, and to the Protocol of Signature annexed thereto, is subject to the proviso that the other Contracting States do not object to the application of the provisions of the Convention being limited in the following manner with regard to Norway:

(1) Under the Norwegian Navigation Law of 7 May 1937 bills of lading and similar documents may continue to be made out, for national coasting trade, in accordance with the provisions of that law without the provisions of the Convention being applied to them or to the legal relationship which is thereby established between the carrier and the holder of the document.

(2) Maritime carriage between Norway and other Nordic States, whose navigation laws contain similar provisions, shall be considered as equivalent to national coasting trade for the purposes mentioned in paragraph (1)—if a provision to that effect is decreed pursuant to the last paragraph of article 122 of the Norwegian Navigation Law.

(3) The provisions of the International Conventions on the Transport of Passengers and Baggage by Rail and on the Traffic of Goods by Rail, signed at Rome on 23 November 1933, shall not be affected by this Convention.

Switzerland

. . . In accordance with the second paragraph of the Protocol of Signature, the federal authorities reserve the right to give effect to this international act by including in Swiss legislation, in a form appropriate to that legislation, the rules adopted under this Convention.

United Kingdom of Great Britain and Northern Ireland (at time of signature)

. . . I declare that His Britannic Majesty's Government adopt the last reservation in the additional Protocol of the Bills of Lading Convention. I further declare that my signature applies only to Great Britain and Northern Ireland. I reserve the right of each of the British Dominions, Colonies, Overseas Possessions and Protectorates, and of each of the territories over which His Britannic Majesty exercises a mandate to accede to this Convention under article 13.

(at time of ratification)

. . . In accordance with article 13 of the above-named Convention, I declare that the acceptance of the Convention given by His Britannic Majesty in the instrument of ratification deposited this day extends only to the United Kingdom of Great Britain and Northern Ireland and does not apply to any of His Majesty's Colonies or Protectorates, or territories under suzerainty or mandate.

United Republic of Tanzania

The Government of the Republic of Tanganyika has requested the Government of Belgium to circulate the following remarks concerning Tanganyika's relation to the International Convention for the unification of certain rules of Law relating to Bills of Lading, done at Brussels, August 25th, 1924.

Tanganyika acceded to the Convention by instrument dated November 16th 1962. As the Convention had been applied to the territory of Tanganyika prior to its independence, Tanganyika was given the opportunity to declare that it considered the Convention in force as to its territory from the date of independence, rather than having to wait the normal six-month

period provided for in article 11 of the Convention. While Tanganyika availed itself of this opportunity of having the Convention in force from the day of its independence, by virtue of the instrument of November 16th, 1962, this in no way should be considered as indicating that Tanganyika considered itself bound by the United Kingdom accession to the Convention which had applied to the territory of Tanganyika prior to independence. It is the position of Tanganyika that it has adhered to the Convention of its own volition and did not inherit, or consider itself in any way bound, by the obligations of the Government of the United Kingdom vis-à-vis the Convention.

United States of America

. . .

and whereas, the Senate of the United States of America by their resolution of April 1 (legislative day March 13), 1935 (two-thirds of the Senators present concurring therein), did advise and consent to the ratification of the said Convention and Protocol of Signature thereto, " with the understanding, to be made a part of such ratification, that, notwithstanding the provisions of article 4, section 5, and the first paragraph of article 9 of the Convention, neither the carrier nor the ship shall in any event be or become liable within the jurisdiction of the United States of America for any loss or damage to or in connection with goods in an amount exceeding $ 500.00, lawful money of the United States of America, per package or unit unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading ".

And whereas, the Senate of the United States of America by their resolution of May 6, 1937 (two-thirds of the Senators present concurring therein), did add to and make a part of their aforesaid resolution of April 1, 1935, the following understanding:

That should any conflict arise between the provisions of the Convention and the provisions of the Act of April 16, 1936, known as the " Carriage of Goods by Sea Act ", the provisions of said Act shall prevail:

Now, therefore, be it known that I, Franklin D. Roosevelt, President of the United States of America, having seen and considered the said Convention and Protocol of Signature, do hereby, in pursuance of the aforesaid advice and consent of the Senate, ratify and confirm the same and every article and clause thereof, subject to the two understandings herein above recited and made part of this ratification.

In testimony whereof, . . .

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO THE LIMITATION OF THE LIABILITY OF OWNERS OF SEAGOING VESSELS [1]

Signed at Brussels, 25 August 1924

[*Translation* [2]]

Article 1

The liability of the owner of a seagoing vessel is limited to an amount equal to the value of the vessel, the freight, and the accessories of the vessel, in respect of:

(1) Compensation due to third parties by reason of damage caused, whether on land or on water, by the acts or faults of the master, crew, pilot, or any other person in the service of the vessel;

(2) Compensation due by reason of damage caused either to cargo delivered to the master to be transported, or to any goods and property on board;

(3) Obligations arising out of bills of lading;

(4) Compensation due by reason of a fault of navigation ccmmitted in the execution of a contract;

(5) Any obligation to remove the wreck of a sunken vessel, and any obligations connected therewith;

(6) Any remuneration for assistance and salvage;

(7) Any contribution of the shipowner in general average;

(8) Obligations arising out of contracts entered into or transactions carried out by the master, acting within the scope of his authority, away from the vessel's home port,

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[1] The Convention entered into force on 2 June 1931.

The Government of Belgium reports that the following ratifications (r), accessions (a) or notifications of succession (s) have been deposited with it:

Belgium	(r)	2 June	1930
Brazil	(r)	28 April	1931
Dominican Republic	(a)	23 July	1958
France	(r)	23 August	1935
Hungary	(r)	2 June	1930
Madagascar	(s)	13 July	1965
Monaco	(a)	15 May	1931
Poland	(r)	26 October	1936
Portugal	(r)	2 June	1930
Spain	(r)	2 June	1930
Turkey	(a)	4 July	1955

Ratifications, accessions and notification of succession are set out as furnished by the Government of Belgium.

The following have signed the Convention: Argentina, Chile, Denmark, Estonia, Italy, Japan, Latvia, Norway, Romania, United Kingdom of Great Britain and Northern Ireland, Sweden, Yugoslavia.

[2] Translation taken from the *Treaty Information Bulletin No. 20, 1931,* of the Department of State of the United States of America as reproduced in League of Nations, *Treaty Series,* vol. CXX, p. 125.

where such contracts or transactions are necessary for the preservation of the vessel or the continuation of the voyage, provided that the necessity is not caused by any insufficiency or deficiency of equipment or stores at the beginning of the voyage.

Provided that, as regards the cases mentioned in Nos. 1, 2, 3, 4, and 5, the liability referred to in the preceding provisions shall not exceed an aggregate sum equal to 8 pounds sterling per ton of the vessel's tonnage.

Article 2

The limitation of liability laid down in the foregoing article does not apply:

(1) To obligations arising out of acts or faults of the owner of the vessel;

(2) To any of the obligations referred to in No. 8 of article 1, when the owner has expressly authorized or ratified such obligation;

(3) To obligations on the owner arising out of the engagement of the crew and other persons in the service of the vessel.

Where the owner or a part owner of the vessel is at the same time master, he cannot claim limitation of liability for his faults, other than his faults of navigation and the faults of persons in the service of the vessel.

Article 3

An owner who avails himself of the limitation of his liability to the value of the vessel, freight, and accessories of the vessel must prove that value. The valuation of the vessel shall be based upon the condition of the vessel at the points of time hereinafter set out:

1. In cases of collision or other accidents, as regards all claims connected therewith, including contractual claims which have originated up to the time of arrival of the vessel at the first port reached after the accident, and also as regards claims in general average arising out of the accident, the valuation shall be according to the condition of the vessel at the time of her arrival at that first port.

If before that time a fresh accident, distinct from the first accident, has reduced the value of the vessel, any diminution of value so caused shall not be taken into account in considering claims connected with the previous accident.

For accidents occurring during the sojourn of a vessel in port, the valuation shall be according to the condition of the vessel at that port after the accident.

2. If it is a question of claims relating to the cargo, or arising on a bill of lading, not being claims provided for in the preceding paragraphs, the valuation shall be according to the condition of the vessel at the port of destination of the cargo, or at the place where the voyage is broken.

If the cargo is destined to more than one port, and the damage is connected with one and the same cause, the valuation shall be according to the condition of the vessel at the first of those ports.

3. In all the other cases referred to in article 1 the valuation shall be according to the condition of the vessel at the end of the voyage.

Article 4

The freight referred to in article 1, including passage money, is deemed, as respects vessels of every description, to be a lump sum fixed at all events at 10 per cent of the value of the vessel at the commencement of the voyage.

That indemnity is due even though no freight be then earned by the vessel.

Article 5

The accessories referred to in article 1 mean:

(1) Compensation of material damage sustained by the vessel since the beginning of the voyage, and not repaired;

(2) General average contributions in respect of material damage sustained by the vessel since the beginning of the voyage, and not repaired.

Payments on policies of insurance, as well as bounties, subventions, and other national subsidies, are not deemed to be accessories.

Article 6

The various claims connected with a single accident, or in respect of which, in the absence of an accident, the value of a vessel is ascertained at a single port, rank with one another against the amount representing the extent of the owner's liability, regard being had to the order of the liens.

In proceedings with respect to the distribution of this sum the decisions given by the competent courts of the contracting states shall be evidence of a claim.

Article 7

Where death or bodily injury is caused by the acts or faults of the captain, crew, pilot, or any other person in the service of the vessel, the owner of the vessel is liable to the victims or their representatives in an amount exceeding the limit of liability provided for in the preceding articles up to 8 pounds sterling per ton of the vessel's tonnage. The victims of a single accident or their representatives rank together against the sum constituting the extent of liability.

If the victims or their representatives are not fully compensated by this amount, they rank, as regards the balance of their claims, with the other claimants against the amounts mentioned in the preceding articles, regard being had to the order of the liens.

The same limitation of liability applies to passengers as respects the carrying vessel but does not apply to the crew or other persons in the service of that vessel whose right of action in the case of death or bodily injury remains governed by the national law of the vessel.

Article 8

Where a vessel is arrested and security is given for an amount equal to the full limit of liability, it shall accrue to the benefit of all creditors whose claims are subject to this limit.

Where the vessel is subsequently again arrested, the court may order its release, if the owner, while submitting to the jurisdiction of the court, proves that he has already given security for an amount equal to the full limit of his liability, that the security so given is satisfactory, and that the creditor is assured of receiving the benefit thereof.

If the security is given for a smaller amount or if security is required on several successive occasions, the effect will be regulated by agreement between the parties, or by the court, so as to insure that the limit of liability be not exceeded.

If different creditors take proceedings in the courts of different states, the owner may, before each court, require account to be taken of the whole of the claims and debts so as to insure that the limit of liability be not exceeded.

The national laws shall determine questions of procedure and time limits for the purpose of applying the preceding rules.

Article 9

In the event of any action or proceeding being taken on one of the grounds enumerated in article 1, the court may, on the application of the owner of the vessel, order that proceedings against the property of the owner other than the vessel, its freight and accessories shall be stayed for a period sufficient to permit of the sale of the vessel and distribution of the proceeds amongst the creditors.

Article 10

Where the person who operates the vessel without owning it or the principal charterer is liable under one of the heads enumerated in article 1, the provisions of this convention are applicable to him.

Article 11

For the purposes of the provisions of the present convention, " tonnage " is calculated as follows:

In the case of steamers and other mechanically propelled vessels, net tonnage, with the addition of the amount deducted from the gross tonnage on account of engine-room space for the purpose of ascertaining the net tonnage.

In the case of sailing vessels, net tonnage.

Article 12

The provisions of this convention shall be applied in each contracting state in cases in which the ship for which the limit of responsibility is invoked is a national of another contracting state, as well as in any other cases provided for by the national laws.

Nevertheless the principle formulated in the preceding paragraph does not affect the right of the contracting states not to apply the provisions of this convention in favor of the nationals of a non-contracting state.

Article 13

This convention does not apply to vessels of war, nor to government vessels appropriated exclusively to the public service.

Article 14

Nothing in the foregoing provisions shall be deemed to affect in any way the competence of tribunals, modes of procedure, or methods of execution authorized by the national laws.

Article 15

The monetary units mentioned in this convention mean their gold value.

Those contracting states in which the pound sterling is not a monetary unit reserve to themselves the right of translating the sums indicated in this convention in terms of pound sterling into terms of their own monetary system in round figures.

The national laws may reserve to the debtor the right of discharging his debt in national currency according to the rate of exchange prevailing at the dates fixed in article 3.

Article 16

After an interval of not more than two years from the day on which the convention is signed, the Belgian Government shall place itself in communication with the Govern-

ments of the High Contracting Parties which have declared themselves prepared to ratify the convention, with a view to deciding whether it shall be put into force. The ratifications shall be deposited at Brussels at a date to be fixed by agreement among the said Governments. The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the representatives of the powers which take part therein and by the Belgian Minister for Foreign Affairs.

The subsequent deposits 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 *procès-verbal* relating to the first deposit of ratifications, of the notifications referred to in the previous paragraph, and also of the instruments of ratification accompanying them, shall be immediately sent by the Belgian Government through the diplomatic channel to the powers who have signed this convention or who have acceded to it. In the cases contemplated in the preceding paragraph the said Government shall inform them at the same time of the date on which it received the notification.

Article 17

Nonsignatory states may accede to the present convention whether or not they have been represented at the International Conference at Brussels.

A state which desires to accede shall notify its intention in writing to the Belgian Government, forwarding to it the document of accession, which shall be deposited in the archives of the said Government.

The Belgian Government shall immediately forward to all the states which have signed or acceded to the convention a duly certified copy of the notification and of the act of accession, mentioning the date on which it received the notification.

Article 18

The High Contracting Parties may at the time of signature, ratification, or accession declare that their acceptance of the present convention does not include any or all of the self-governing dominions, or of the colonies, overseas possessions, protectorates, or territories under their sovereignty or authority, and they may subsequently accede separately on behalf of any self-governing dominion, colony, overseas possession, protectorate, or territory excluded in their declaration. They may also denounce the convention separately in accordance with its provisions in respect of any self-governing dominion, or any colony, overseas possession, protectorate, or territory under their sovereignty or authority.

Article 19

The present convention shall take effect, in the case of the states which have taken part in the first deposit of ratifications, one year after the date of the *procès-verbal* recording such deposit. As respects the states which ratify subsequently or which accede, and also in cases in which the convention is subsequently put into effect in accordance with article 18, it shall take effect six months after the notifications specified in article 16, paragraph 2, and article 17, paragraph 2, have been received by the Belgian Government.

Article 20

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 of the notification to all the other states informing them of the date on which it was received.

The denunciation shall only operate in respect of the state which made the notification, and on the expiration of one year after the notification has reached the Belgian Government.

Article 21

Any one of the contracting states shall have the right to call for a fresh conference with a view to considering possible amendments.

A state which would exercise this right should give one year advance notice of its intention to the other states through the Belgian Government, which would make arrangements for convening the conference.

Additional Article

The provisions of article 5 of the convention for the unification of certain rules relating to collisions at sea, of September 23, 1910, the operation of which had been put off by virtue of the additional article of that convention become applicable in regard to the states bound by this convention.

Done at Brussels, in a single copy, August 25, 1924.

Protocol of signature

In proceeding to the signature of the international convention for the unification of certain rules relating to the limitation of the liability of owners of seagoing vessels, the undersigned plenipotentiaries adopted the present protocol which will have the same force and the same value as if the provisions were inserted in the text of the convention to which it relates:

I. The High Contracting Parties reserve to themselves the right not to admit the limitation of the liability to the value of the vessel, the accessories and the freight for damages done to works in ports, docks, and navigable ways and for the cost of removing the wreck, or the right only to ratify the treaty on those points on condition of reciprocity.

It is nevertheless agreed that the limitation of liability under the head of those damages will not exceed eight pounds sterling per ton of measurement, except as regards the cost of removing the wreck.

II. The High Contracting Parties reserve to themselves the right to decide that the owner of a vessel that is not used for the carriage of persons and measures not more than three hundred tons is liable as to claims arising from death or bodily injuries, in accordance with the provisions of the convention, but without there being occasion to apply to that liability the provisions of paragraph 1 of article 7.

Done at Brussels, in a single copy, August 25, 1924.

Reservations and declarations

Belgium

In proceeding to the deposit of the ratifications of His Majesty the King of the Belgians, the Belgian Minister for Foreign Affairs declared, in accordance with the provisions of article 18 of the Convention, that these ratifications extend only to Belgium and do not apply to the Belgian Congo and Ruanda-Urundi, Territories under mandate.

Denmark (at time of signature)

In signing, subject to ratification, the International Convention for the Unification of Certain Rules relating to the Limitation of the Liability of Owners of Seagoing Vessels, the Danish Government declares it wishes to avail itself of the option stipulated under No. 1 of the protocol of signature, by virtue of which the limitation of the liability to the value of the vessel, the accessories and the freight for damages done to works in ports, docks, and navigable ways, and for the cost of raising the wreck, shall not be admitted in Denmark toward co-signatory States except on condition of reciprocity.

On the other hand the Danish Government declares it wishes also to avail itself of the reservation stipulated under No. 2 of the said protocol and according to the terms of which the owner of a vessel that is not used for the carriage of persons and measures not more than three hundred tons is liable as to claims arising from death or bodily injuries, in accordance with the provisions of the Convention, but without there being occasion to apply to that liability the provisions of paragraph 1 of article 7.

Italy (at time of signature)

In signing the first convention on maritime law prepared by the conference at Brussels, I must make, on behalf of the Italian Government the following reservation:

With the reservation that the limitation of liability provided by paragraph 3 of article 3 of the convention shall not prejudice the application of the special provisions of Italian law in all that concerns the liability to passengers considered as emigrants.

Japan (at time of signature)

At the time of signing the International Convention for the Unification of Certain Rules relating to the Limitation of the Liability of Owners of Seagoing Vessels, the undersigned, plenipotentiary of Japan makes the following reservations:

(*a*) To article 1:

Japan reserves to itself the right not to admit the limitation of the liability to the value of the vessel, the accessories and the freight for damages done to works in ports, docks, and navigable ways, and for the cost of removing the wreck.

(*b*) To article 7:

Japan reserves to itself the right to decide that the owner of a vessel that is not used for the carriage of persons and measures not more than three hundred tons is liable as to claims arising from death or bodily injuries, in accordance with the provisions of the Convention, but without there being occasion to apply to that liability the provisions of paragraph 1 of article 7.

(*c*) Japan construes the provisions of article 8 and article 14 in the sense that, if under the laws of certain States, a preferential right grows out of an attachment, the fact that the preferential right is exercised shall in no wise prejudice the rights of the other creditors to the sum to be distributed.

United Kingdom of Great Britain and Northern Ireland (at time of signature)

I, the Undersigned, His Britannic Majesty's Ambassador at Brussels, on affixing my signature to the Protocol of Signature of the International Convention for the unification of certain rules of law relating to the limitation of the liability of owners of sea-going vessels, on this the 15th day of November, 1924, hereby make the following Declarations by direction of my Government:

I declare that His Britannic Majesty's Government adopt the reservation to article 1 of the above mentioned Convention which is set forth in the Protocol of Signature (*Protocole de clôture*).

I further declare that my signature applies only to Great Britain and Northern Ireland. I reserve the right of each of the British Dominions, Colonies, Overseas Possessions and Protectorates, and of each of the territories over which His Britannic Majesty exercises a mandate to accede to this Convention under article 18.

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO MARITIME LIENS AND MORTGAGES

Signed at Brussels, 10 April 1926

See *Register of Texts of Conventions and Other Instruments concerning International Trade Law*, vol. I, p. 245

BUSTAMANTE CODE

(Convention on Private International Law) [1]

Signed at Havana, 20 February 1928

League of Nations, *Treaty Series,* vol. LXXXVI, p. 246, No. 1950 (1929)

[*Excerpt*]

MARITIME AND AIR COMMERCE

CHAPTER I. SHIPS AND AIRCRAFT

Article 274

The nationality of ships is proved by the navigation license and the certificate of registration and has the flag as an apparent distinctive symbol.

Article 275

The law of the flag governs the forms of publicity required for the transfer of property in a ship.

Article 276

The power of judicial attachment and sale of a ship, whether or not it is loaded and cleared, should be subject to the law of the place where it is situated.

Article 277

The rights of the creditors after the sale of the ship, and their extinguishment, are regulated by the law of the flag.

Article 278

Maritime hypothecation, privileges, and real guarantees, constituted in accordance with the law of the flag, have extraterritorial effect even in those countries the legislation of which does not recognize nor regulate such hypothecation.

Article 279

The powers and obligations of the master and the liability of the proprietors and ship's husbands for their acts are also subject to the law of the flag.

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[1] For entry into force, signatures and ratifications, see *Register of Texts of Conventions and Other Instruments concerning International Trade Law,* vol. I, p. 151.

Article 280

The recognition of the ship, the request for a pilot, and the sanitary police depend upon the territorial law.

Article 281

The obligations of the officers and seamen and the internal order of the vessel are subject to the law of the flag.

Article 282

The preceding provisions of this chapter are also applicable to aircraft.

Article 283

The rules on nationality of the proprietors of ships and aircraft and ship's husbands, as well as of officers and crew, are of an international public order.

Article 284

Provisions relating to the nationality of ships and aircraft for river, lake, and coastwise commerce, or commerce between certain points of the territory of the contracting States, as well as for fishing and other submarine exploitations in the territorial sea, also are of an international public order.

Chapter II. Special contracts of maritime and aerial commerce

Article 285

The charter party, if not a contract of adhesion, shall be governed by the law of the place of departure of the merchandise.

The acts of execution of the contract shall be subject to the law of the place where they are performed.

Article 286

The powers of the captain in respect to loans on bottomry bond are determined by the law of the flag.

Article 287

The contract of a bottomry bond, except as otherwise provided by agreement, is subject to the law of the place in which the loan is made.

Article 288

In order to determine whether the average is particular or general and the proportion in which the vessel and cargo are to contribute therefor, the law of the flag is applied.

Article 289

A fortuitous collision in territorial waters or in the national air is subject to the law of the flag if common to colliding vessels.

Article 290

In the same case, if the flags are different the law of the place is applied.

Article 291

The same local law is in every case applied to wrongful collisions in territorial waters or in the national air.

Article 292

To a fortuitous or wrongful collision in the open sea or air is applied the law of the flag if all the ships or aircraft carry the same one.

Article 293

If that is not the case, the collision shall be regulated by the flag of the ship or aircraft struck if the collision has been wrongful.

Article 294

In the cases of fortuitous collision on the high sea or in the open air between vessels or aircraft of different flags, each shall bear one half of the sum total of the damage apportioned in accordance with the law of one of them, and the other half apportioned in accordance with the law of the other.

Reservations and declarations

For reservations and declarations, see *Register of Texts of Conventions and Other Instruments concerning International Trade Law,* vol. I, p. 152.

TREATY ON INTERNATIONAL COMMERCIAL NAVIGATION LAW [1]

Signed at Montevideo, 19 March 1940

[*Excerpts—Translation* [2]]

TITLE IV

OF AVERAGE

Article 15

The law corresponding to the nationality of the vessel determines the character of the average.

Article 16

Particular average relative to the vessel is governed by the law of the latter's nationality; that relative to the merchandise shipped, by the law applicable to the contract of charter-party or transport.

The judges or tribunals of the port of discharge, or, in default thereof, those of the port where the discharge should have been made, are competent to try the respective libels.

Article 17

General average is governed by the law in force within the State in whose port its settlement and distribution is made.

All matters relative to the conditions and formalities of the act of general average are excepted, and remain subject to the law of the nationality of the vessel.

Article 18

The settlement and distribution of the general average shall be made in the port of destination of the vessel, or, if the vessel fails to reach that destination, in the port where the discharge is made.

Article 19

The judges or tribunals of the State in whose port the settlement and distribution are effected, are competent to try actions for general average; and any stipulation conferring jurisdiction on the judges or tribunals of another State is void.

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[1] The Convention has entered into force.

The following States have deposited their ratifications with the Government of Uruguay: Argentina, Paraguay, Uruguay.

The following States have signed the Convention: Bolivia, Brazil, Chile, Colombia, Peru. (*Source*: Organization of American States, *Treaty Series, No. 9.*)

[2] *American Journal of International Law*, vol. 37, 1943, Suppl., p. 109. Translators: J. Irrizary y Puente and Gwladys L. Williams. Reproduced with permission.

TITLE VI

OF CHARTER-PARTIES AND TRANSPORT OF MERCHANDISE OR PERSONS

Article 25

Contracts of charter party, and of transport of merchandise or persons, concerned with effecting such transportation between ports of one and the same State, are governed by the laws of that State, regardless of nationality of the vessel involved. Cognizance of actions which may arise falls under the jurisdiction of the judges or tribunals of the said State.

Article 26

When the contracts above mentioned are to be executed in one of the States, they are governed by the law in force in that State, regardless of the place where they were concluded or the nationality of the vessel. The phrase " place of execution " refers to the port where the merchandise is unloaded or the persons are disembarked.

Article 27

In the cases specified in Article 26, the judges or tribunals of the place of execution, or, at the option of complainant, those of the defendant's domicile, shall be competent to try the respective actions; and any stipulation providing otherwise shall be null.

TITLE VII

OF INSURANCE

Article 28

Contracts of insurance are governed by the laws of the State where the insurance company or its branches or agencies are domiciled; and in cases involving branches or agencies they shall be regarded as having their domicile in the place where they operate.

Article 29

Insurance which covers enemy property is valid even when the contract is made by the enemy, except when that contract relates to contraband of war. Payment of indemnities must be postponed until the conclusion of peace.

Article 30

The judges or tribunals of the State where the insurance company is domiciled, or, in the case of branches and agencies, the corresponding judges or tribunals, are competent to try actions based upon the contract of insurance.

When insurance companies, or their branches or agencies, are plaintiffs, they may sue before the judges or tribunals of the place where the insured party is domiciled.

Reservation

Bolivia (at time of signature)

The delegation of Bolivia subscribes to the present treaty in so far as it refers to fluvial, lacustrine and air navigation.

INTERNATIONAL CONVENTION RELATING TO THE ARREST OF SEAGOING SHIPS[1]

Signed at Brussels, 10 May 1952

United Nations, *Treaty Series,* vol. 439, p. 195, No. 6330 (1962)

The High Contracting Parties,

Having recognised the desirability of determining by agreement certain uniform rules of law relating to the arrest of seagoing ships, have decided to conclude a convention, for this purpose and thereto have agreed as follows:

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[1] The Convention entered into force on 24 February 1956.

The Government of Belgium reports that the following ratifications (r), accessions (a) or notifications of succession (s) have been deposited with it:

Algeria	(a)	—	18 August	1964
Belgium	(r)	—	10 April	1961
Cameroon	(a)	—	23 April	1958
Costa Rica	(a)	—	13 July	1955
Egypt	(r)	—	24 August	1955
Fiji	(a)	—	10 October	1970
France	(r)	—	25 May	1957
Overseas Territories	(a)	—	23 April	1958
Greece	(r)	—	27 February	1967
Guyana	(a)	—	29 March	1963
Haiti	(a)	—	4 November	1954
Holy See	(r)	—	10 August	1956
Khmer Republic	(a)	—	12 November	1956
Madagascar	(s)	—	13 July	1965
Mauritius	(a)	—	29 March	1963
Nigeria	(a)	—	7 November	1963
Paraguay	(a)	—	22 November	1967
Portugal	(a)	—	4 May	1957
Spain	(r)	—	8 December	1953
Switzerland	(a)	—	28 May	1954
Syrian Arab Republic	(a)	—	3 February	1972
Togo	(a)	—	23 April	1958
United Kingdom of Great Britain and Northern Ireland	(r)	—	18 March	1959
Sarawak	(a)	—	28 September	1962
Gibraltar, Hong Kong, North Borneo, Seychelles	(a)	—	29 March	1963
British Virgin Islands	(a)	—	29 May	1963
Bermuda	(a)	—	30 May	1963
Antigua, Bahamas, Cayman Islands, Dominica, Grenada, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena, St. Lucia, St. Vincent	(a)	—	12 May	1965
British Honduras, Solomon Islands, Gilbert and Ellice Isles, Turks and Caicos Islands	(a)	—	21 September	1965
Guernsey	(a)	—	8 December	1966
Falkland Islands and Dependencies	(a)	—	17 October	1969

(Continued on next page.)

Article 1

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

(1) " Maritime Claim " means a claim arising out of one or more of the following:

(*a*) damage caused by any ship either in collision or otherwise;

(*b*) loss of life or personal injury caused by any ship or occurring in connexion with the operation of any ship;

(*c*) salvage;

(*d*) agreement relating to the use or hire of any ship whether by charter-party or otherwise;

(*e*) agreement relating to the carriage of goods in any ship whether by charter-party or otherwise;

(*f*) loss of or damage to goods including baggage carried in any ship;

(*g*) general average;

(*h*) bottomry;

(*i*) towage;

(*j*) pilotage;

(*k*) goods or materials wherever supplied to a ship for her operation or maintenance;

(*l*) construction, repair or equipment of any ship or dock charges and dues;

(*m*) wages of Masters, Officers, or crew;

(*n*) Master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;

(*o*) disputes as to the title to or ownership of any ship;

(*p*) disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship;

(*q*) the mortgage or hypothecation of any ship.

(2) " Arrest " means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment.

(3) " Person " includes individuals, partnerships and bodies corporate, Governments, their Departments, and Public Authorities.

(4) " Claimant " means a person who alleges that a maritime claim exists in his favour.

Article 2

A ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any maritime claim, but in respect of no other claim; but nothing in this Convention shall be deemed to extend or restrict any right or powers vested in any Governments or their Departments, Public Authorities, or Dock or Harbour Authorities under their existing domestic laws or regulations to arrest, detain or otherwise prevent the sailing of vessels within their jurisdiction.

Article 3

(1) Subject to the provisions of para (4) of this Article and of Article 10, a claimant may arrest either the particular ship in respect of which the maritime claim arose, or any

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(Continued)

Yugoslavia	(r)	— 25 July	1967
Zaire	(a)	— 17 July	1967

Ratifications, accessions and notification of succession are set out as furnished by the Government of Belgium.

The following have signed the Convention: Brazil, Italy, Lebanon, Monaco, Nicaragua.

other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship, even though the ship arrested be ready to sail; but no ship, other than the particular ship in respect of which the claim arose, may be arrested in respect of any of the maritime claims enumerated in Article 1, (1) (*o*), (*p*) or (*q*).

(2) Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.

(3) A ship shall not be arrested, nor shall bail or other security be given more than once in any one or more of the jurisdictions of any of the Contracting States in respect of the same maritime claim by the same claimant: and, if a ship has been arrested in any one of such jurisdictions, or bail or other security has been given in such jurisdiction either to release the ship or to avoid a threatened arrest, any subsequent arrest of the ship or of any ship in the same ownership by the same claimant for the same maritime claim shall be set aside, and the ship released by the Court or other appropriate judicial authority of that State, unless the claimant can satisfy the Court or other appropriate judicial authority that the bail or other security had been finally released before the subsequent arrest or that there is other good cause for maintaining that arrest.

(4) When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claims.

The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

Article 4

A ship may only be arrested under the authority of a Court or of the appropriate judicial authority of the Contracting State in which the arrest is made.

Article 5

The Court or other appropriate judicial authority within whose jurisdiction the ship has been arrested shall permit the release of the ship upon sufficient bail or other security being furnished, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in Article 1 (1), (*o*) and (*p*). In such cases the Court or other appropriate judicial authority may permit the person in possession of the ship to continue trading the ship, upon such person furnishing sufficient bail or other security, or may otherwise deal with the operation of the ship during the period of the arrest.

In default of agreement between the parties as to the sufficiency of the bail or other security, the Court or other appropriate judicial authority shall determine the nature and amount thereof.

The request to release the ship against such security shall not be construed as an acknowledgment of liability or as a waiver of the benefit of the legal limitation of liability of the owner of the ship.

Article 6

All questions whether in any case the claimant is liable in damages for the arrest of a ship or for the costs of the bail or other security furnished to release or prevent the arrest of a ship, shall be determined by the law of the Contracting State in whose jurisdiction the arrest was made or applied for.

The rules of procedure relating to the arrest of a ship, to the application for obtaining the authority referred to in Article 4, and to all matters of procedure which the arrest may entail, shall be governed by the law of the Contracting State in which the arrest was made or applied for.

Article 7

(1) The Courts of the country in which the arrest was made shall have jurisdiction to determine the case upon its merits if the domestic law of the country in which the arrest is made gives jurisdiction to such Courts, or in any of the following cases namely:

(*a*) if the claimant has his habitual residence or principal place of business in the country in which the arrest was made;

(*b*) if the claim arose in the country in which the arrest was made;

(*c*) if the claim concerns the voyage of the ship during which the arrest was made;

(*d*) if the claim arose out of a collision or in circumstances covered by Article 13 of the International Convention for the unification of certain rules of law with respect to collisions between vessels, signed at Brussels on 23rd September 1910;

(*e*) if the claim is for salvage;

(*f*) if the claim is upon a mortgage or hypothecation of the ship arrested.

(2) If the Court within whose jurisdiction the ship was arrested has not jurisdiction to decide upon the merits, the bail or other security given in accordance with Article 5 to procure the release of the ship shall specifically provide that it is given as security for the satisfaction of any judgment which may eventually be pronounced by a Court having jurisdiction so to decide; and the Court or other appropriate judicial authority of the country in which the arrest is made shall fix the time within which the claimant shall bring an action before a Court having such jurisdiction.

(3) If the parties have agreed to submit the dispute to the jurisdiction of a particular Court other than that within whose jurisdiction the arrest was made or to arbitration, the Court or other appropriate judicial authority within whose jurisdiction the arrest was made may fix the time within which the claimant shall bring proceedings.

(4) If, in any of the cases mentioned in the two preceding paragraphs, the action or proceedings are not brought within the time so fixed, the defendant may apply for the release of the ship or of the bail or other security.

(5) This article shall not apply in cases covered by the provisions of the revised Rhine Navigation Convention of 17 October 1868.

Article 8

(1) The provisions of this Convention shall apply to any vessel flying the flag of a Contracting State in the jurisdiction of any Contracting State.

(2) A ship flying the flag of a non-Contracting State may be arrested in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in Article 1 or of any other claim for which the law of the Contracting State permits arrest.

(3) Nevertheless any Contracting State shall be entitled wholly or partly to exclude from the benefits of this Convention any Government of a non-Contracting State or any person who has not, at the time of the arrest, his habitual residence or principal place of business in one of the Contracting States.

(4) Nothing in this Convention shall modify or affect the rules of law in force in the respective Contracting States relating to the arrest of any ship within the jurisdiction of the State of her flag by a person who has his habitual residence or principal place of business in that State.

(5) When a maritime claim is asserted by a third party other than the original claimant, whether by subrogation, assignment or otherwise, such third party shall, for the purpose of this Convention, be deemed to have the same habitual residence or principal place of business as the original claimant.

Article 9

Nothing in this Convention shall be construed as creating a right of action, which, apart from the provisions of this Convention, would not arise under the law applied by the Court which had seisin of the case, nor as creating any maritime liens which do not exist under such law or under the Convention on Maritime Mortgages and Liens, if the latter is applicable.

Article 10

The High Contracting Parties may at the time of signature, deposit or ratification or accession, reserve

(*a*) the right not to apply this Convention to the arrest of a ship for any of the claims enumerated in paragraphs (*o*) and (*p*) of Article 1, but to apply their domestic laws to such claims;

(*b*) the right not to apply the first paragraph of Article 3 to the arrest of a ship, within their jurisdiction, for claims set out in Article 1, paragraph (*q*).

Article 11

The High Contracting Parties undertake to submit to arbitration any disputes between States arising out of the interpretation or application of this Convention, but this shall be without prejudice to the obligations of those High Contracting Parties who have agreed to submit their disputes to the International Court of Justice.

Article 12

This Convention shall be open for signature by the States represented at the Ninth Diplomatic Conference on Maritime Law. The protocol of signature shall be drawn up through the good offices of the Belgian Ministry of Foreign Affairs.

Article 13

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Ministry of Foreign Affairs which shall notify all signatory and acceding States of the deposit of any such instruments.

Article 14

(*a*) This Convention shall come into force between the two States which first ratify it, six months after the date of the deposit of the second instrument of ratification.

(*b*) This Convention shall come into force in respect of each signatory State which ratifies it after the deposit of the second instrument of ratification six months after the date of the deposit of the instrument of ratification of that State.

Article 15

Any State not represented at the Ninth Diplomatic Conference on Maritime Law may accede to this Convention.

The accession of any State shall be notified to the Belgian Ministry of Foreign Affairs which shall inform through diplomatic channels all signatory and acceding States of such notification.

The Convention shall come into force in respect of the acceding State six months after the date of the receipt of such notification but not before the Convention has come into force in accordance with the provisions of Article 14 (*a*).

Article 16

Any High Contracting Party may three years after 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 the Convention.

Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which shall convene the conference within six months thereafter.

Article 17

Any 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. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government which shall inform through diplomatic channels all the other High Contracting Parties of such notification.

Article 18

(*a*) 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 Ministry of Foreign Affairs that the Convention shall extend to any of the territories for whose international relations it is responsible. The Convention shall six months after the date of the receipt of such notification by the Belgian Ministry of Foreign Affairs extend to the territories named therein, but not before the date of the coming into force of the Convention in respect of such High Contracting Party.

(*b*) A High Contracting Party which has made a declaration under paragraph (*a*) of this Article extending the Convention to any territory for whose international relations it is responsible may at any time thereafter declare by notification given to the Belgian Ministry of Foreign Affairs that the Convention shall cease to extend to such territory and the Convention shall one year after the receipt of the notification by the Belgian Ministry of Foreign Affairs cease to extend thereto.

(*c*) The Belgian Ministry of Foreign Affairs shall inform through diplomatic channels all signatory and acceding States of any notification received by it under this Article.

DONE in Brussels, on May 10, 1952, in the French and English languages, the two texts being equally authentic.

Reservations and declarations

Costa Rica

1. A ship shall not be arrested in application of paragraph 1 of article 3 if it is not the particular vessel in respect of which the claim arose or if it does not belong to the person who, according to the shipping register of the country whose flag it flies, owns the ship in respect of which the claim arose, even if it formerly did belong to that person.

2. Costa Rica does not recognize article 7, paragraph 1 (*a*), (*b*), (*c*), (*d*), (*e*) and (*f*) as binding, since under the law of the Republic the only courts competent to hear cases relating to the substance of a maritime claim are those of the country of domicile of the claimant, except for cases to which article 1, paragraph 1 (*o*), (*p*) and (*q*) refer, and those of the State whose flag the vessel flies.

In ratifying this Convention, the Government of Costa Rica hereby reserves the right to apply its commercial and labour legislation with regard to the arrest of foreign ships which put in at its ports.

Egypt (at time of signature)

At the time of signing the Convention, the Egyptian Plenipotentiary entered the reservations provided for in article 10.

(at time of ratification)

Explicit confirmation of the reservation made at the time of signature.

Khmer Republic

The Royal Government of Cambodia, upon acceding to this Convention, enters the reservations provided for in article 10.

Nigeria

The Government of the Federal Republic of Nigeria reserves the right not to apply any of the provisions of the said Convention to warships or to vessels owned by or in the service of a State.

United Kingdom of Great Britain and Northern Ireland (at time of signature)

Her Majesty's Government in the United Kingdom reserve the right not to apply the provisions of this convention to warships or to vessels owned by or in the service of a State.

(at time of ratification)

. . . subject to the following reservations:

(1) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.

(2) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.

Sarawak

The Government of Sarawak reserve the right not to apply the provisions of this Convention to warships or to vessels owned by or in the service of a State.

British Guiana, Fiji, Gibraltar, Hong Kong, Mauritius, North Borneo, Seychelles

The Governments of British Guiana, Fiji, Gibraltar, Hong Kong, Mauritius, North Borneo and the Seychelles reserve the right not to apply the provisions of this Convention to warships or to vessels owned by or in the service of a State.

British Virgin Islands

The Government of the British Virgin Islands reserve the right not to apply the provisions of this Convention to warships or to vessels owned by or in the service of a State.

Bermuda

The Government of Bermuda reserve the right not to apply the provisions of this Convention to warships or to vessels owned by or in the service of a State.

Antigua, Bahamas, Cayman Islands, Dominica, Grenada, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena, St. Lucia, St. Vincent

The Governments of Antigua, the Cayman Islands, the Bahamas, Dominica, Grenada, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena, St. Lucia, and St. Vincent reserve the right not to apply the provisions of this Convention to warships or to vessels owned by or in the service of a State.

British Honduras, Solomon Islands, Gilbert and Ellice Islands, Turks and Caicos Islands

. . . with reservation of the right not to apply the provisions of this Convention to warships or to vessels owned by or in service of a State.

Guernsey

The Guernsey authorities reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in service of a State.

Falkland Islands and Dependencies

. . . subject to the following reservation: The Falkland Islands and its Dependencies reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.

Yugoslavia

. . . reserving the right, in accordance with article 10 of the said Convention, not to apply the Convention to the arrest of a ship for a claim enumerated in paragraph (*o*) of article 1, but to apply domestic law to such a claim.

INTERNATIONAL CONVENTION ON CERTAIN RULES CONCERNING CIVIL JURISDICTION IN MATTERS OF COLLISION [1]

Signed at Brussels, 10 May 1952

United Nations, *Treaty Series*, vol. 439, p. 219, No. 6331 (1962)

The High Contracting Parties,

Having recognised the advisability of establishing by agreement certain uniform rules relating to civil jurisdiction in matters of collision, have decided to conclude a Convention for this purpose and thereto have agreed as follows:

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[1] The Convention entered into force on 14 September 1955.

The Government of Belgium reports that the following ratifications (r), accessions (a) or notifications of succession (s) have been deposited with it:

Algeria	(a)	—	18 August	1964
Argentina	(a)	—	19 April	1961
Belgium	(r)	—	10 April	1961
Cameroon	(a)	—	23 April	1958
Costa Rica	(a)	—	13 July	1955
Egypt	(r)	—	24 August	1955
Fiji	(a)	—	10 October	1970
France	(r)	—	25 May	1957
Overseas Territories	(a)	—	23 April	1958
Greece	(r)	—	15 March	1965
Guyana	(a)	—	29 March	1963
Holy See	(r)	—	10 August	1956
Khmer Republic	(a)	—	12 November	1956
Madagascar	(s)	—	13 July	1965
Mauritius	(a)	—	29 March	1963
Nigeria	(a)	—	7 November	1963
Paraguay	(a)	—	22 November	1967
Portugal	(r)	—	4 May	1957
Spain	(r)	—	8 December	1953
Switzerland	(a)	—	28 May	1954
Togo	(a)	—	23 April	1958
United Kingdom of Great Britain and Northern Ireland	(r)	—	18 March	1959
Sarawak	(a)	—	28 August	1962
Gibraltar, Hong Kong, North Borneo, Seychelles	(a)	—	29 March	1963
British Virgin Islands	(a)	—	29 May	1963
Bermuda	(a)	—	30 May	1963
Antigua, Bahamas, Cayman Islands, Dominica, Grenada, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena, St. Lucia, St. Vincent	(a)	—	12 May	1965
British Honduras, Gilbert and Ellice Islands, Solomon Islands, Turks and Caicos Islands	(a)	—	21 September	1965
Guernsey	(a)	—	8 December	1966
Falkland Islands and Dependencies	(a)	—	17 October	1969

(Continued on next page.)

Article 1

(1) An action for collision occurring between seagoing vessels, or between seagoing vessels and inland navigation craft, can only be introduced:

(*a*) either before the Court where the defendant has his habitual residence or a place of business;

(*b*) or before the Court of the place where arrest has been effected of the defendant ship or of any other ship belonging to the defendant which can be lawfully arrested, or where arrest could have been effected and bail or other security has been furnished;

(*c*) or before the Court of the place of collision when the collision has occurred within the limits of a port or in inland waters.

(2) It shall be for the Plaintiff to decide in which of the Courts referred to in § 1 of this article the action shall be instituted.

(3) A claimant shall not be allowed to bring a further action against the same defendant on the same facts in another jurisdiction, without discontinuing an action already instituted.

Article 2

The provisions of Article 1 shall not in any way prejudice the right of the parties to bring an action in respect of a collision before a Court they have chosen by agreement or to refer it to arbitration.

Article 3

(1) Counterclaims arising out of the same collision can be brought before the Court having jurisdiction over the principal action in accordance with the provisions of Article 1.

(2) In the event of there being several claimants, any claimant may bring his action before the Court previously seized of an action against the same party arising out of the same collision.

(3) In the case of a collision or collisions in which two or more vessels are involved nothing in this Convention shall prevent any Court seized of an action by reason of the provisions of this Convention, from exercising jurisdiction under its national laws in further actions arising out of the same incident.

Article 4

This Convention shall also apply to an action for damage caused by one ship to another or to the property or persons on board such ships through the carrying out of or the omission to carry out a manœuvre or through non-compliance with regulations even when there has been no actual collision.

Article 5

Nothing contained in this Convention shall modify the rules of law now or hereafter in force in the various contracting States in regard to collisions involving warships or vessels owned by or in the service of a State.

(Continued)

Yugoslavia	(r)	— 14 March	1955
Zaire	(a)	— 17 July	1967

Ratifications, accessions and notification of succession are set out as furnished by the Government of Belgium.

The following have signed the Convention: Brazil, Denmark, Federal Republic of Germany, Italy, Lebanon, Monaco, Nicaragua.

Article 6

This Convention does not affect claims arising from contracts of carriage of from any other contracts.

Article 7

This Convention shall not apply in cases covered by the provisions of the revised Rhine Navigation Convention of 17 October 1868.

Article 8

The provisions of this Convention shall be applied as regards all persons interested when all the vessels concerned in any action belong to States of the High Contracting Parties.

Provided always that:

(1) As regards persons interested who belong to a non-contracting State, the application of the above provisions may be made by each of the contracting States conditional upon reciprocity;

(2) Where all the persons interested belong to the same State as the court trying the case, the provisions of the national law and not of the Convention are applicable.

Article 9

The High Contracting Parties undertake to submit to arbitration any disputes between States arising out of the interpretation or application of this Convention, but this shall be without prejudice to the obligations of those High Contracting Parties who have agreed to submit their disputes to the International Court of Justice.

Article 10

This Convention shall be open for signature by the States represented at the Ninth Diplomatic Conference on Maritime Law. The protocol of signature shall be drawn up through the good offices of the Belgian Ministry of Foreign Affairs.

Article 11

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Ministry of Foreign Affairs which shall notify all signatory and acceding States of the deposit of any such instruments.

Article 12

(*a*) This Convention shall come into force between the two States which first ratify it, six months after the date of the deposit of the second instrument of ratification.

(*b*) This Convention shall come into force in respect of each signatory State which ratifies if after the deposit of the second instrument of ratification six months after the date of the deposit of the instrument of ratification of that State.

Article 13

Any State not represented at the Ninth Diplomatic Conference on Maritime Law may accede to this Convention.

The accession of any State shall be notified to the Belgian Ministry of Foreign Affairs which shall inform through diplomatic channels all signatory and acceding States of such notification.

The Convention shall come into force in respect of the acceding State six months after the date of the receipt of such notification but not before the Convention has come into force in accordance with the provisions of Article 12 (*a*).

Article 14

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 the Convention.

Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which shall convene the conference within six months thereafter.

Article 15

Any 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. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government which shall inform through diplomatic channels all the other High Contracting Parties of such notification.

Article 16

(*a*) 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 Ministry of Foreign Affairs that the Convention shall extend to any of the territories for whose international relations it is responsible. The Convention shall six months after the date of the receipt of such notification by the Belgian Ministry of Foreign Affairs extend to the territories named therein, but not before the date of the coming into force of the Convention in respect of such High Contracting Party.

(*b*) A High Contracting Party which has made a declaration under paragraph (*a*) of this Article extending the Convention to any territory for whose international relations it is responsible may at any time thereafter declare by notification given to the Belgian Ministry of Foreign Affairs that the Convention shall cease to extend to such territory and the Convention shall one year after the receipt of the notification by the Belgian Ministry of Foreign Affairs cease to extend thereto.

(*c*) The Belgian Ministry of Foreign Affairs shall inform through diplomatic channels all signatory and acceding States of any notification received by it under this Article.

DONE in Brussels, in a single original in the French and English languages, the two texts being equally authentic, on May 10, 1952.

Reservations and declarations

Costa Rica

The Government of the Republic of Costa Rica, in acceding to this Convention, hereby enters the reservation that a civil action for collision between seagoing vessels, or between seagoing vessels and inland navigation craft, can only be introduced before a Court where the defendant has his habitual residence or a Court of the State whose flag the vessel flies.

Consequently the Republic does not recognize article 1, paragraph 1, sub-paragraphs (*b*) and (*c*) as binding.

In accordance with the Code of Private International Law, approved at the Sixth International Conference of American States, held at Havana, Cuba, the Government of the Republic of Costa Rica, in acceding to this Convention hereby enters the express reservation that in no case will it waive its competence or jurisdiction as regards the application of Costa Rican law with respect to collisions occurring on the high seas or in its territorial waters in which a Costa Rican vessel suffers loss.

Khmer Republic

The Royal Government of Cambodia, in acceding to the Convention, hereby enters the reservation that a civil action for collision occurring between seagoing vessels, or between seagoing vessels and inland navigation craft, can only be introduced before the Court where the defendant has his habitual residence or the Court of the State whose flag the vessel flies.

Consequently, the Royal Government of Cambodia does not recognize article 1, paragraph 1, sub-paragraphs (*b*) and (*c*) as binding.

In acceding to the convention, the Royal Government of Cambodia hereby enters the express reservation that in no case will it waive its competence or jurisdiction as regards the application of Cambodian law with respect to collisions on the high seas or in its territorial waters in which a Cambodian vessel suffers loss.

Yugoslavia (at time of signature)

The Government of the Federal People's Republic of Yugoslavia reserves the right to make a declaration at the time of ratification on the " sister ship " principle provided for in article 1 (*b*) of this Convention.

INTERNATIONAL CONVENTION RELATING TO THE LIMITATION OF THE LIABILITY OF OWNERS OF SEA-GOING SHIPS [1]

Signed at Brussels, 10 October 1957

UNIDROIT, *Yearbook* 1957, p. 303

The High Contracting Parties,

Having recognised the desirability of determining by agreement certain uniform rules relating to the limitation of the liability of owners of sea-going ships;

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[1] The Convention has entered into force on 31 May 1968.

The Government of Belgium reports that the following ratifications (r) or accessions (a) have been deposited with it:

Algeria	(a)	— 18 August	1964
Denmark	(r)	— 1 March	1965
Egypt	(a)	— 7 September	1965
Fiji	(a)	— 10 October	1970
Finland	(r)	— 19 August	1964
France	(r)	— 7 July	1959
Ghana	(a)	— 26 July	1961
Guyana	(a)	— 25 March	1966
Iceland	(a)	— 16 October	1968
India	(r)	— 1 June	1971
Iran	(a)	— 26 April	1966
Israel	(r)	— 30 November	1967
Madagascar	(a)	— 13 July	1965
Mauritius	(a)	— 21 August	1964
Netherlands	(r)	— 10 December	1965
France-United Kingdom *New Hebrides*	(a)	— 8 December	1966
Norway	(r)	— 1 March	1965
Portugal	(r)	— 8 April	1968
Singapore	(a)	— 17 April	1963
Spain	(r)	— 16 July	1959
Sweden	(r)	— 4 July	1964
Switzerland	(r)	— 21 January	1966
Syrian Arab Republic	(a)	— 10 July	1972
United Kingdom of Great Britain and Northern Ireland	(r)	— 18 February	1959
Isle of Man	(a)	— 18 November	1960
Bahamas, Bermuda, British Antarctic Territories, British Honduras, British Virgin Islands, Falkland Islands and Dependencies, Gibraltar, Gilbert and Ellice Islands, Hong Kong, Seychelles, Solomon Islands	(a)	— 21 August	1964
Guernsey and Jersey	(a)	— 21 October	1964
Cayman Islands, Dominica, Grenada, Montserrat, St. Lucia, St. Vincent, Turks and Caicos Islands	(a)	— 4 August	1965
Zaire	(a)	— 17 July	1967

Ratifications and accessions are set out as furnished by the Government of Belgium.

The following have signed the Convention: Belgium, Brazil, Canada, Federal Republic of Germany, Holy See, Italy, Peru, Poland, Yugoslavia.

Have decided to conclude a Convention for this purpose, and thereto have agreed as follows:

Article 1

1. The owner of a sea-going ship may limit his liability in accordance with Article 3 of this Convention in respect of claims arising from any of the following occurrences, unless the occurrence giving rise to the claim resulted from the actual fault or privity of the owner:

(*a*) Loss of life of, or personal injury to, any person being carried in the ship, and loss of, or damage to, any property on board the ship;

(*b*) Loss of life of, or personal injury to, any other person whether on land or on water, loss of or damage to any other property or infringement of any rights caused by the act, neglect or default of any person on board the ship for whose act, neglect or default the owner is responsible or any person not on board the ship for whose act, neglect or default the owner is responsible: provided however that in regard to the act, neglect or default of this last class of person, the owner shall only be entitled to limit his liability when the act, neglect or default is one which occurs in the navigation or the management of the ship or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers;

(*c*) Any obligation or liability imposed by any law relating to the removal of wreck and arising from or in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned (including anything which may be on board such ship) and any obligation or liability arising out of damage caused to harbour works, basins and navigable waterways.

2. In the present Convention the expression " personal claims " means claims resulting from loss of life and personal injury: the expression " property claims " means all other claims set out in paragraph (1) of this Article.

3. An owner shall be entitled to limit his liability in the cases set out in paragraph (1) of this Article even in cases where his liability arises, without proof of negligence on the part of the owner or of persons for whose conduct he is responsible, by reason of his ownership, possession, custody or control of the ship.

4. Nothing in this Article shall apply:

(*a*) to claims for salvage or to claims for contribution in general average;

(*b*) to claims by the Master, by members of the crew, by any servants of the owner on board the ship or by servants of the owner whose duties are connected with the ship, including the claims of their heirs, personal representatives or dependents, if under the law governing the contract of service between the owner and such servants the owner is not entitled to limit his liability in respect of such claims or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 3 of this Convention.

5. If the owner of a ship is entitled to make a claim against a claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.

6. The question upon whom lies the burden of proving whether or not the occurrence giving rise to the claim resulted from the actual fault or privity of the owner shall be determined by the *lex fori.*

7. The act of invoking limitation of liability shall not constitute an admission of liability.

Article 2

1. The limit of liability prescribed by Article 3 of this Convention shall apply to the aggregate of personal claims and property claims which arise on any distinct occasion without regard to any claims which have arisen or may arise on any other distinct occasion.

2. When the aggregate of the claims which arise on any distinct occasion exceeds the limits of liability provided for by Article 3, the total sum representing such limits of liability may be constituted as one distinct limitation fund.

3. The fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

4. After the fund has been constituted, no claimant against the fund shall be entitled to exercise any right against any other assets of the shipowner in respect of his claim against the fund, if the limitation fund is actually available for the benefit of the claimant.

Article 3

1. The amount to which the owner of a ship may limit his liability under Article 1 shall be:

(*a*) Where the occurrence has only given rise to property claims, an aggregate amount of 1,000 francs for each ton of the ship's tonnage;

(*b*) Where the occurrence has only given rise to personal claims, an aggregate amount of 3,100 francs for each ton of the ship's tonnage;

(*c*) Where the occurrence has given rise both to personal claims and property claims an aggregate amount of 3,100 francs for each ton of the ship's tonnage, of which a first portion amounting to 2,100 francs for each ton of the ship's tonnage shall be exclusively appropriated to the payment of personal claims and of which a second portion amounting to 1,000 francs for each ton of the ship's tonnage shall be appropriated to the payment of property claims; provided however that in cases where the first portion is insufficient to pay the personal claims in full, the unpaid balance of such claims shall rank rateably with the property claims for payment against the second portion of the fund.

2. In each portion of the limitation fund the distribution among the claimants shall be made in proportion to the amounts of their established claims.

3. If before the fund is distributed the owner has paid in whole or in part any of the claims set out in Article 1 paragraph 1 he shall *pro tanto* be placed in the same position in relation to the fund as the claimant whose claim he has paid, but only to the extent that the claimant whose claim he has paid would have had a right of recovery against him under the national law of the State where the fund has been constituted.

4. Where the shipowner establishes that he may at a later date be compelled to pay in whole or in part any of the claims set out in Article 1 paragraph 1 the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable the shipowner at such later date to enforce his claim against the fund in the manner set out in the preceding paragraph.

5. For the purpose of ascertaining the limit of an owner's liability in accordance with the provisions of this article the tonnage of a ship of less than 300 tons shall be deemed to be 300 tons.

6. The franc mentioned in this article shall be deemed to refer to a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The amounts mentioned in paragraph 1 of this article shall be converted into the national currency of the State in which limitation is sought on the basis of the value of that currency by reference to the unit defined above at the date on which the shipowner shall have consti-

tuted the limitation fund, made the payment or given a guarantee which under the law of that State is equivalent to such payment.

7. For the purpose of this Convention tonnage shall be calculated as follows:

In the case of steamships or other mechanically propelled ships there shall be taken the net tonnage with the addition of the amount deducted from the gross tonnage on account of engine room space for the purpose of ascertaining the net tonnage.

In the case of all other ships there shall be taken the net tonnage.

Article 4

Without prejudice to the provisions of Article 3, paragraph 2 of this Convention, the rules relating to the constitution and distribution of the limitation fund, if any, and all rules of procedure shall be governed by the national law of the State in which the fund is constituted.

Article 5

1. Whenever a shipowner is entitled to limit his liability under this Convention, and the ship or another ship or other property in the same ownership has been arrested within the jurisdiction of a contracting State or bail or other security has been given to avoid arrest, the Court or other competent authority of such State may order the release of the ship or other property or of the security given if it is established that the shipowner has already given satisfactory bail or security in a sum equal to the full limit of his liability under this Convention and that the bail or other security so given is actually available for the benefit of the claimant in accordance with his rights.

2. Where, in circumstances mentioned in paragraph 1 of this article, bail or other security has already been given:

(*a*) at the port where the accident giving rise to the claim occurred;

(*b*) at the first port of call after the accident if the accident did not occur in a port;

(*c*) at the port of disembarkation or discharge if the claim is a personal claim or relates to damage to cargo;

the Court or other competent authority shall order the release of the ship, bail or other security given, subject to the conditions set forth in paragraph 1 of this article.

3. The provisions of paragraphs 1 and 2 of this article shall apply likewise if the bail or other security already given is in a sum less than the full limit of liability under this Convention, provided that satisfactory bail or other security is given for the balance.

4. When the shipowner has given bail or other security in a sum equal to the full limit of his liability under this Convention such bail or other security shall be available for the payment of all claims arising on a distinct occasion and in respect of which the shipowner may limit his liability.

5. Questions of procedure relating to actions brought under the provisions of this Convention and also the time limit within which such actions shall be brought or prosecuted shall be decided in accordance with the national law of the Contracting State in which the action takes place.

Article 6

1. In this Convention the liability of the shipowner includes the liability of the ship herself.

2. Subject to paragraph 3 of this article, the provisions of this Convention shall apply to the charterer, manager and operator of the ship, and to the master, members

of the crew and other servants of the owner, charterer, manager or operator acting in the course of their employment, in the same way as they apply to an owner himself: Provided that the total limits of liability of the owner and all such other persons in respect of personal claims and property claims arising on a distinct occasion shall not exceed the amounts determined in accordance with Article 3 of the Convention.

3. When actions are brought against the master or against members of the crew such persons may limit their liability even if the occurrence which gives rise to the claims resulted from the actual fault or privity of one or more of such persons. If, however, the master or member of the crew is at the same time the owner, co-owner, charterer, manager or operator of the ship, the provisions of this paragraph shall only apply where the act, neglect or default in question is an act, neglect or default committed by the person in question in his capacity as master or as member of the crew of the ship.

Article 7

This Convention shall apply whenever the owner of a ship, or any other person having by virtue of the provisions of Article 6 hereof the same rights as an owner of a ship, limits or seeks to limit his liability before the Court of a Contracting State or seeks to procure the release of a ship or other property arrested or the bail or other security given within the jurisdiction of any such State.

Nevertheless, each Contracting State shall have the right to exclude, wholly or partially, from the benefits of this Convention any non-Contracting State, or any person who, at the time when he seeks to limit his liability or to secure the release of a ship or other property arrested or the bail or other security in accordance with the provisions of Article 5 hereof, is not ordinarily resident in a Contracting State, or does not have his principal place of business in a Contracting State, or any ship in respect of which limitation of liability or release is sought which does not at the time specified above fly the flag of a Contracting State.

Article 8

Each Contracting State reserves the right to decide what other classes of ship shall be treated in the same manner as sea-going ships for the purpose of this Convention.

Article 9

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

Article 10

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Government which shall notify through diplomatic channels all signatory and acceding States of their deposit.

Article 11

1. This Convention shall come into force six months after the date of deposit of at least ten instruments of ratification, of which at least five by States that have each a tonnage equal or superior to one million gross tons of tonnage.

2. For each signatory State which ratifies the Convention after the date of deposit of the instrument of ratification determining the coming into force such as is stipulated in paragraph 1 of this article, this Convention shall come into force six months after the deposit of their instrument of ratification.

Article 12

Any State not represented at the tenth session of the Diplomatic Conference on Maritime Law may accede to this Convention.

The instruments of accession shall be deposited with the Belgian Government which shall inform through diplomatic channels all signatory and acceding States of the deposit of any such instruments.

The Convention shall come into force in respect of the acceding State six 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 11, paragraph (1).

Article 13

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 which shall inform through diplomatic channels all signatory and acceding States of such notification.

Article 14

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 territories for whose international relations it is responsible. The Convention shall six months after the date of the receipt of such notification by the Belgian Government extend to the territories named therein, but not before the date of the coming into force of the Convention in respect of such High Contracting Party.

2. Any High Contracting Party which has made a declaration under paragraph 1 of this article extending the Convention to any territory for whose international relations it is responsible may at any time thereafter declare by notification given to the Belgian Government that the Convention shall cease to extend to such territory. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government.

3. The Belgian Government shall inform through diplomatic channels all signatory and acceding States of any notification received by it under this article.

Article 15

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 shall convene the conference within six months thereafter.

Article 16

In respect of the relations between States which ratify this Convention or accede to it, this Convention shall replace and abrogate the International Convention for the unification of certain rules concerning the limitation of the liability of the owners of sea-going ships, signed at Brussels on the 25th of August 1924.

In witness whereof the Plenipotentiaries, duly authorized, have signed this Convention.

Done at Brussels, this tenth day of October 1957, 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 of Signature

1. Any State, at the time of signing, ratifying or acceding to this Convention may make any of the reservations set forth in paragraph 2. No other reservation to this Convention shall be admissible.

2. The following are the only reservations admissible:

(*a*) Reservation of the right to exclude the application of Article 1 paragraph 1 (*c*);

(*b*) Reservation of the right to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;

(*c*) Reservation of the right to give effect to this Convention either by giving it force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Reservations and declarations

Denmark (at time of signature)

The Government of Denmark reserves the right:

(1) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;

(2) To give effect to this Convention either by giving it force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Finland (at time of signature)

The Government of Finland reserves the right:

(1) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;

(2) To give effect to this Convention either by giving it force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

(at time of ratification)

Confirmation of the reservations made at the time of signature.

France (at time of signature)

The Government of the French Republic reserves the right:

(1) To exclude the application of article 1, paragraph 1 (*c*);

(2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;

(3) To give effect to this Convention either by giving it force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Ghana

The Government of Ghana in acceding to the Convention reserves the right:

(1) To exclude the application of article 1, paragraph (1) (*c*):

(2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;

(3) To give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Iceland

The Government of Iceland reserves the right:

(1) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;

(2) To give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

India

With the following three reservations provided for in the Protocol of Signature:

(1) To exclude the application of article 1 paragraph 1 (*c*);

(2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;

(3) To give effect to this Convention either by giving it force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Iran (at time of signature)

The Government of Iran reserves the right:

(*a*) To exclude the application of article 1 paragraph 1 (*c*);

(*b*) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;

(*c*) To give effect to this Convention either by giving it force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Israel (at time of signature)

The Government of Israel reserves to itself the right:

(1) To exclude from the scope of the Convention the obligations and liabilities stipulated in article 1 (1) (*c*);

(2) To regulate by provisions of domestic legislation the limitation of liability in respect of ships of less than 300 tons of tonnage.

The Government of Israel reserves to itself the right to give effect to this Convention either by giving it the force of law or by including in its national legislation, in a form appropriate to that legislation, the provisions of the Convention.

(at time of ratification)

Confirmation of the reservations made at the time of signature.

Netherlands (at time of signature)

The Government of the Netherlands reserves the right:

(1) To exclude the application of article 1 paragraph 1 (*c*);

(2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;

(3) To give effect to this Convention either by giving it force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

(at time of ratification)

. . . in accordance with paragraph 2 (*c*) of the Protocol of Signature, we reserve the right to give effect to this Convention by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention. This ratification applies " in respect of the Kingdom in Europe ".

Norway (at time of signature)

The Government of the Kingdom of Norway reserves the right to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.

The Government of the Kingdom of Norway reserves the right to give effect to this Convention either by giving it force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

(at time of ratification)

Confirmation of the reservations made at the time of signature.

Portugal

. . . with the reservations provided for in paragraph 2 (*a*), (*b*) and (*c*) of the Protocol of Signature . . .

Spain (at time of signature)

The Spanish Government reserves the right:

(1) To exclude the application of article 1, paragraph 1 (*c*);

(2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;

(3) To give effect to this Convention either by giving it force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

(at time of ratification)

Confirmation of the reservations made at the time of signature.

Sweden (at time of signature)

The Swedish Government reserves the right:

(1) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;

(2) To give effect to this Convention either by giving it force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

(at time of ratification)

Sweden reserves the right:

(*a*) To exclude the application of article 1, paragraph 1 (*c*);

(*b*) To regulate by specific provisions of Swedish law the system of limitation of liability to be applied to ships of less than 300 tons;

(*c*) To give effect to the Convention by including in the Swedish legislation the provisions of the Convention.

United Kingdom of Great Britain and Northern Ireland (at time of signature)

Subject to the following observations:

(1) In accordance with the provisions of subparagraph (*a*) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland exclude paragraph (1) (*c*) of article 1 from their application of the said Convention.

(2) In accordance with the provisions of subparagraph (*b*) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.

(3) The Government of the United Kingdom of Great Britain and Northern Ireland also reserve the right, in extending the said Convention to any of the territories for whose international relations they are responsible, to make such extension subject to any or all of the reservations set out in paragraph (2) of the said Protocol of Signature.

Furthermore, in accordance with the provisions of subparagraph (*c*) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland declare that the said Convention as such has not been made part of United Kingdom law, but that the appropriate provisions to give effect thereto have been introduced in United Kingdom law.

(at time of ratification)

. . . subject to the same reservations as those made by the United Kingdom on ratification namely the reservations set out in subparagraphs (*a*) and (*b*) of paragraph (2) of the Protocol of Signature.

Guyana

. . . subject to the same reservations as those made by the United Kingdom on ratification, namely the reservations set out in subparagraphs (*a*) and (*b*) of paragraph (2) of the Protocol of Signature.

Singapore

. . . subject to the same reservations as those made by the United Kingdom on ratification, namely the reservations set out in subparagraphs (*a*) and (*b*) of paragraph (2) of the Protocol of Signature.

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO MARITIME LIENS AND MORTGAGES

Signed at Brussels, 27 May 1967

See *Register of Texts of Conventions and Other Instruments concerning International Trade Law*, vol. I, p. 268

PROTOCOL TO AMEND THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RELATING TO BILLS OF LADING SIGNED AT BRUSSELS ON 25 AUGUST 1924 [1]

Signed at Brussels, 23 February 1968

Le Droit Maritime Français, vol. 20, p. 396 (1968)

The Contracting Parties,

Considering that it is desirable to amend the International Convention for the unification of certain rules of law relating to bills of lading, signed at Brussels on 25th August 1924,

Have agreed as follows:

Article 1

1. In Article 3, paragraph 4 shall be added:

" However, proof to the contrary shall not be admissible when the Bill of Lading has been transferred to a third party acting in good faith. "

2. In Article 3, paragraph 6, subparagraph 4 shall be replaced by:

" Subject to paragraph 6 *bis* the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen. "

3. In Article 3, after paragraph 6 shall be added the following paragraph 6 *bis*:

" An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself. "

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[1] The Protocol has not entered into force.

The Government of Belgium reports that the instrument of accession of Singapore has been deposited with it on 25 April 1972.

The following have signed the Protocol:* Argentina, Belgium, Cameroon, Canada, Finland, France, Federal Republic of Germany, Greece, Holy See, Italy, Liberia, Mauritania, Paraguay, Philippines, Poland, Republic of China, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Sweden, Switzerland, Zaire.

* List taken from a publication of the Ministry of Foreign Affairs and Foreign Trade of Belgium. In connexion with this list, attention may be directed to General Assembly resolution 2758 (XXVI) of 25 October 1971.

Article 2

Article 4, paragraph 5 shall be deleted and replaced by the following:

(*a*) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of Frs. 10,000 per package or unit or Frs. 30 per kilo of gross weight of the goods lost or damaged, whichever is the higher.

(*b*) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

(*c*) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the Bill of Lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

(*d*) A franc means a unit consisting of 65.5 milligrammes of gold of millesimal fineness 900'. The date of conversion of the sum awarded into national currencies shall be governed by the law of the Court seized of the case.

(*e*) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph 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.

(*f*) The declaration mentioned in subparagraph (*a*) of this paragraph, if embodied in the Bill of Lading, shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.

(*g*) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in subparagraph (*a*) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.

(*h*) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the Bill of Lading.

Article 3

Between Articles 4 and 5 of the Convention shall be inserted the following Article 4 *bis*:

1. The defences and limits of liability provided for in this Convention shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.

2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.

3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Convention.

4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions 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 4

Article 9 of the Convention shall be replaced by the following:

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

Article 5

Article 10 of the Convention shall be replaced by the following:

" The provisions of this Convention shall apply to every Bill of Lading relating to the carriage of goods between ports in two different States if:

(*a*) the Bill of Lading is issued in a contracting State,

or

(*b*) the carriage is from a port in a contracting State,

or

(*c*) the Contract contained in or evidenced by the Bill of Lading provides that the rules of this Convention or legislation of any State giving effect to them are to govern the contract

whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

Each contracting State shall apply the provisions of this Convention to the Bills of Lading mentioned above.

This Article shall not prevent a Contracting State from applying the Rules of this Convention to Bills of Lading not included in the preceding paragraphs ".

Article 6

As between the Parties to this Protocol the Convention and the Protocol shall be read and interpreted together as one single instrument.

A Party to this Protocol shall have no duty to apply the provisions of this Protocol to Bills of Lading issued in a State which is a Party to the Convention but which is not a Party to this Protocol.

Article 7

As between the Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 15 thereof, shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

Article 8

Any dispute between two or more Contracting Parties concerning the interpretation or application of the Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization

of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

Article 9

1. Each Contracting Party may at the time of signature or ratification of this Protocol or accession thereto, declare that it does not consider itself bound by Article 8 of this Protocol. The other Contracting Parties shall not be bound by this Article with respect to any Contracting Party having made such a reservation.

2. Any Contracting Party having made a reservation in accordance with paragraph 1 may at any time withdraw this reservation by notification to the Belgian Government.

Article 10

This Protocol shall be open for signature by the States which have ratified the Convention or which have adhered thereto before the 23 February 1968, and by any State represented at the twelfth session (1967-1968) of the Diplomatic Conference on Maritime Law.

Article 11

1. This Protocol shall be ratified.

2. Ratification of this Protocol by any State which is not a Party to the Convention shall have the effect of accession to the Convention.

3. The instruments of ratification shall be deposited with the Belgian Government.

Article 12

1. States, Members of the United Nations or members of the specialized agencies of the United Nations, not represented at the twelfth session of the Diplomatic Conference on Maritime Law, may accede to this Protocol.

2. Accession to this Protocol shall have the effect of accession to the Convention.

3. The instruments of accession shall be deposited with the Belgian Government.

Article 13

1. This Protocol shall come into force three months after the date of the deposit of ten instruments of ratification or accession, of which at least five shall have been deposited by States that have each a tonnage equal or superior to one million gross tons of tonnage.

2. For each State which ratifies this Protocol or accedes thereto after the date of deposit of the instrument of ratification or accession determining the coming into force such as is stipulated in § 1 of this Article, this Protocol shall come into force three months after the deposit of its instrument of ratification or accession.

Article 14

1. Any Contracting State may denounce this Protocol by notification to the Belgian Government.

2. This denunciation shall have the effect of denunciation of the Convention.

3. The denunciation shall take effect one year after the date on which the notification has been received by the Belgian Government.

Article 15

1. Any Contracting State may at the time of signature, ratification or accession or at any time thereafter declare by written notification to the Belgian Government which among the territories under its sovereignty or for whose international relations it is responsible, are those to which the present Protocol applies.

The Protocol shall three months after the date of the receipt of such notification by the Belgian Government extend to the territories named therein, but not before the date of the coming into force of the Protocol in respect of such State.

2. This extension also shall apply to the Convention if the latter is not yet applicable to those territories.

3. Any Contracting State which has made a declaration under § 1 of this Article may at any time thereafter declare by notification given to the Belgian Government that the Protocol shall cease to extend to such territory. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government; it also shall apply to the Convention.

Article 16

The Contracting Parties may give effect to this Protocol either by giving it the force of law or by including in their national legislation in a form appropriate to that legislation the rules adopted under this Protocol.

Article 17

The Belgian Government shall notify the States represented at the twelfth session (1967-1968) of the Diplomatic Conference on Maritime Law, the acceding States to this Protocol, and the States Parties to the Convention, of the following:

1. The signatures, ratifications and accessions received in accordance with Articles 10, 11 and 12.

2. The date on which the present Protocol will come into force in accordance with Article 13.

3. The notifications with regard to the territorial application in accordance with Article 15.

4. The denunciations received in accordance with Article 14.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, duly authorised, have signed this Protocol.

DONE at Brussels, this 23rd day of February 1968, in the French and English languages, both texts being equally authentic, in a single copy, which shall remain deposited in the archives of the Belgian Government, which shall issue certified copies.

2. UNIFORM RULES

YORK-ANTWERP RULES 1950

Adopted by the International Maritime Committee and the International Law Association

Report of the Forty-fourth Conference of the International Law Association, held at Copenhagen, 27 August to 2 September 1950, p. 288

RULE OF INTERPRETATION

In the adjustment of general average the following lettered and numbered Rules shall apply to the exclusion of any Law and Practice inconsistent therewith.

Except as provided by the numbered Rules, general average shall be adjusted according to the lettered Rules.

Rule A

There is a general average act, when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

Rule B

General average sacrifices and expenses shall be borne by the different contributing interests on the basis hereinafter provided.

Rule C

Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.

Loss or damage sustained by the ship or cargo through delay, whether on the voyage, or subsequently, such as demurrage, and any indirect loss whatsoever, such as loss of market, shall not be admitted as general average.

Rule D

Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure; but this shall not prejudice any remedies which may be open against that party for such fault.

Rule E

The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.

Rule F

Any extra expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

Rule G

General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.

This rule shall not affect the determination of the place at which the average statement is to be made up.

Rule I

JETTISON OF CARGO

No jettison of cargo shall be made good as general average, unless such cargo is carried in accordance with the recognised custom of the trade.

Rule II

DAMAGE BY JETTISON AND SACRIFICE FOR THE COMMON SAFETY

Damage done to a ship and cargo, or either of them, by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be made good as general average.

Rule III

EXTINGUISHING FIRE ON SHIPBOARD

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average; except that no compensation shall be made for damage to such portions of the ship and bulk cargo, or to such separate packages of cargo, as have been on fire.

Rule IV

CUTTING AWAY WRECK

Loss or damage caused by cutting away the wreck or remains of spars or of other things which have previously been carried away by sea-peril, shall not be made good as general average.

Rule V

Voluntary Stranding

When a ship is intentionally run on shore, and the circumstances are such that if that course were not adopted she would inevitably drive on shore or on rocks, no loss or damage caused to the ship, cargo and freight or any of them by such intentional running on shore shall be made good as general average, but loss or damage incurred in refloating such a ship shall be allowed as general average.

In all other cases where a ship is intentionally run on shore for the common safety, the consequent loss or damage shall be allowed as general average.

Rule VI

Carrying Press of Sail—Damage to or Loss of Sails

Damage to or loss of sails and spars, or either of them, caused by forcing a ship off the ground or by driving her higher up the ground, for the common safety, shall be made good as general average; but where a ship is afloat, no loss or damage caused to the ship, cargo and freight, or any of them, by carrying a press of sail, shall be made good as general average.

Rule VII

Damage to Machinery and Boilers

Damage caused to machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage; but where a ship is afloat no loss or damage caused by working the machinery and boilers, including loss or damage due to compounding of engines or such measures, shall in any circumstances be made good as general average.

Rule VIII

Expenses Lightening a Ship when Ashore, and Consequent Damage

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and reshipping (if incurred), and the loss or damage sustained thereby, shall be admitted as general average.

Rule IX

Ship's Materials and Stores Burnt for Fuel

Ship's materials and stores, or any of them, necessarily burnt for fuel for the common safety at a time of peril, shall be admitted as general average, when and only when an ample supply of fuel had been provided; but the estimated quantity of fuel that would have been consumed, calculated at the price current at the ship's last port of departure at the date of her leaving, shall be credited to the general average.

Rule X

EXPENSES AT PORT OF REFUGE, ETC.

(*a*) When a ship shall have entered a port or place of refuge, or shall have returned to her port or place of loading in consequence of accident, sacrifice, or other extraordinary circumstances, which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be admitted as general average.

When a ship is at any port or place of refuge and is necessarily removed to another port or place because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the second port or place as if it were a port or place of refuge. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.

(*b*) The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge, shall be admitted as general average when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage.

(*c*) Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the cost of reloading and stowing such cargo, fuel or stores on board the ship, together with all storage charges (including insurance, if reasonably incurred) on such cargo, fuel or stores, shall likewise be so admitted. But when the ship is condemned or does not proceed on her original voyage, no storage expenses incurred after the date of the ship's condemnation or of the abandonment of the voyage shall be admitted as general average. In the event of the condemnation of the ship or the abandonment of the voyage before completion of discharge of cargo, storage expenses, as above, shall be admitted as general average up to the date of completion of discharge.

(*d*) If a ship under average be in a port or place at which it is practicable to repair her, so as to enable her to carry on the whole cargo, and if, in order to save expense, either she is towed thence to some other port or place of repair or to her destination, or the cargo or a portion of it is trans-shipped by another ship, or otherwise forwarded, then the extra cost of such towage, trans-shipment and forwarding, or any of them (up to the amount of the extra expense saved) shall be payable by the several parties to the adventure in proportion to the extraordinary expense saved.

Rule XI

WAGES AND MAINTENANCE OF CREW AND OTHER EXPENSES BEARING UP FOR AND IN A PORT OF REFUGE, ETC.

(*a*) Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X (*a*).

(*b*) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the

voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted in general average. When the ship is condemned or does not proceed on her original voyage, the extra period of detention shall be deemed not to extend beyond the date of the ship's condemnation or of the abandonment of the voyage or, if discharge of cargo is not then completed, beyond the date of completion of discharge.

Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

Port charges incurred during the extra period of detention shall likewise be admitted as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

(*c*) For the purpose of this and the other Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms or articles of employment.

(*d*) When overtime is paid to the master, officers or crew for maintenance of the ship or repairs, the cost of which is not allowable in general average, such overtime shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average, had such overtime not been incurred.

Rule XII

Damage to Cargo in Discharging, etc.

Damage to or loss of cargo, fuel or stores caused in the act of handling, discharging, storing, reloading and stowing shall be made good as general average, when and only when the cost of those measures respectively is admitted as general average.

Rule XIII

Deductions from Cost of Repairs

In adjusting claims for general average, repairs to be allowed in general average shall be subject to deductions in respect of " new for old " according to the following rules, where old material or parts are replaced by new.

The deductions to be regulated by the age of the ship from date of original register to the date of accident, except for provisions and stores, insulation, life- and similar boats, gyro compass equipment, wireless direction finding, echo sounding and similar apparatus, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.

No deduction to be made in respect of provisions, stores and gear which have not been in use.

The deductions shall be made from the cost of new material or parts, including labour and establishment charges, but excluding cost of opening up.

Drydock and slipway dues and costs of shifting the ship shall be allowed in full.

No cleaning and painting of bottom to be allowed, if the bottom has not been painted within six months previous to the date of the accident.

A. *Up to 1 year old*

All repairs to be allowed in full, except scaling and cleaning and painting or coating of bottom, from which one-third is to be deducted.

B. *Between 1 and 3 years old*

Deduction off scaling, cleaning and painting bottom as above under Clause A.

One-third to be deducted off sails, rigging, ropes, sheets and hawsers (other than wire and chain), awnings, covers, provisions and stores and painting.

One-sixth to be deducted off woodwork of hull, including hold ceiling, wooden masts, spars and boats, furniture, upholstery, crockery, metal- and glass-wire, wire rigging, wire ropes and wire hawsers, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, chain cables and chains, insulation, auxiliary machinery, steering gear and connections, winches and cranes and connections and electrical machinery and connections other than electric propelling machinery; other repairs to be allowed in full.

Metal sheathing for wooden or composite ships shall be dealt with by allowing in full the cost of a weight equal to the gross weight of metal sheathing stripped off, minus the proceeds of the old metals. Nails, felt and labour metalling are subject to a deduction of one-third.

C. *Between 3 and 6 years old*

Deductions as above under Clause B, except that one-third be deducted off woodwork of hull, including hold ceiling, wooden masts and boats, furniture, upholstery, and one-sixth be deducted off ironwork of masts and spars and all machinery (inclusive of boilers and their mountings).

D. *Between 6 and 10 years old*

Deductions as above under Clause C, except that one-third be deducted off all rigging, ropes, sheets, and hawsers, ironwork of masts and spars, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, insulation, auxiliary machinery, steering gear, winches, cranes and connections and all other machinery (inclusive of boilers and their mountings).

E. *Between 10 and 15 years old*

One-third to be deducted off all renewals, except ironwork of hull and cementing and chain cables, from which one-sixth to be deducted, and anchors, which are allowed in full.

F. *Over 15 years old*

One-third to be deducted off all renewals, except chain cables, from which one-sixth to be deducted, and anchors, which are allowed in full.

Rule XIV

Temporary Repairs

Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average.

Where temporary repairs of accidental damage are effected merely to enable the adventure to be completed, the cost of such repairs shall be admitted as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there.

No deductions " new for old " shall be made from the cost of temporary repairs allowable as general average.

Rule XV

Loss of Freight

Loss of freight arising from damage to or loss of cargo shall be made good as general average, either when caused by a general average act, or when the damage to or loss of cargo is so made good.

Deduction shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

Rule XVI

Amount to be made good for Cargo Lost or Damaged by Sacrifice

The amount to be made good as general average for damage to or loss of goods sacrificed shall be the loss which the owner of the goods has sustained thereby, based on the market values at the last day of discharge of the vessel or at the termination of the adventure where this ends at a place other than the original destination.

Where goods so damaged are sold and the amount of the damage has not been otherwise agreed, the loss to be made good in general average shall be the difference between the net proceeds of sale and the net sound value at the last day of discharge of the vessel or at the termination of the adventure where this ends at a place other than the original destination.

Rule XVII

Contributory Values

The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure, to which values shall be added the amount made good as general average for property sacrificed, if not already included, deduction being made from the shipowner's freight and passage money at risk, of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average.

Passenger's luggage and personal effects not shipped under bill of lading shall not contribute in general average.

Rule XVIII

Damage to Ship

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear when repaired or replaced shall be the actual reasonable cost of repairing or replacing such damage or loss, subject to deduction in accordance with

Rule XIII. When not repaired, the reasonable depreciation shall be allowed, not exceeding the estimated cost of repairs.

Where there is an actual or constructive total loss of the ship the amount to be allowed as general average for damage or loss to the ship caused by a general average act shall be the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the proceeds of sale, if any.

Rule XIX

Undeclared or Wrongfully Declared Cargo

Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.

Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.

Rule XX

Provision of Funds

A commission of 2 per cent, on general average disbursements, other than the wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage, shall be allowed in general average, but when the funds are not provided by any of the contributing interests, the necessary cost of obtaining the funds required by means of a bottomry bond or otherwise, or the loss sustained by owners of goods sold for the purpose, shall be allowed in general average.

The cost of insuring money advanced to pay for general average disbursements shall also be allowed in general average.

Rule XXI

Interest on Losses made good in General Average

Interest shall be allowed on expenditure, sacrifices and allowances charged to general average at the rate of 5 per cent. per annum, until the date of the general average statement, due allowance being made for any interim reimbursement from the contributory interests or from the general average deposit fund.

Rule XXII

Treatment of Cash Deposits

Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges, such deposits shall be paid without any delay into a special account in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of two depositors in a bank to be approved by both. The sum so deposited, together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect of which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

3. DRAFT CONVENTION

DRAFT CONVENTION ON THE INTERNATIONAL COMBINED TRANSPORT OF GOODS (TCM CONVENTION)

Text adopted at the fourth session of the Joint IMCO/ECE Meeting to Study the Draft Convention on the Combined Transport Contract held from 15 to 19 November 1971. IMCO, document CTC IV/18/Rev.1; TRANS/374/Rev.1, Annex II, 24 January 1972 (text in English and French)

The Convention relates to the transport of goods between at least two States by at least two different modes of transport. It applies when the contract for combined transport of goods bears a specific heading stating that it is governed by the Convention; the Combined Transport Document may be either negotiable or non-negotiable. The Convention contains provisions regarding the contents of the Combined Transport Document.

The Convention sets out the obligations the Combined Transport Operator (CTO) undertakes to perform. Furthermore the Convention sets out two schemes of liability for damage, loss of goods or delay. One scheme specifies a system of liability which applies when it cannot be determined in what stage of the combined transport the damage or loss of the goods or delay occurred. The other scheme of liability applies when it can be proved that the loss, damage or delay occurred solely during a particular stage. The latter scheme calls for the application of appropriate international conventions or national laws.

The Convention also contains a provision with respect to prescription and a provision which declares null and void stipulations which would directly or indirectly derogate from the provisions of the Convention.

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