

1952 年海船假扣押國際公約

1952 年 5 月 10 日訂於布魯塞爾，1956 年 2 月 24 日生效

International Convention Relating to The Arrest of Seagoing Ships,

Signed At Brussels, On May 10, 1952, Entered into enforce Feb 24, 1956

1952 Arrest

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:

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 connection with the operation of any ship ,
 - (c) salvage ,
 - (d) agreement relating to the use or hire of any ship whether by charterparty or otherwise,
 - (e) agreement relating to the carriage of goods in any ship whether by charterparty 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

各締約國
承認海船假扣押事件有統一規定之必要。
經決定為此目的，同意訂立公約如下：

第 1 條

本公約下列名詞之意義，規定如下：

- (1) 海事求償係指因下列一款或數款事由所發生之求償：
 - (a)任一船舶因碰撞所致之損害。
 - (b)任一船舶或在其操作所致之生命喪失或身體傷害。
 - (c)海難救助。
 - (d)不論有無租傭契約，有關任一船舶使用或租用之契約。
 - (e)不論有無租傭契約，有關任一船舶運送貨物之契約。
 - (f)任一船舶所載運貨物包括行李所發生之滅失或毀損。
 - (g)共同海損。
 - (h)船長為支付繼續航海上必要費用，以船舶抵借所生之債務。
 - (i)拖帶費。
 - (j)引水費。
 - (k)因船舶維持或行駛所需而供給之物品或材料。
 - (l)船舶之建造、修理或裝備或船塢之欠費。
 - (m)船長、船副或船員之薪津。
 - (n)船長開支，包括託運人、租傭船人或代理人代替船舶或船舶所有人所支付之一切費用。
 - (o)有關船舶產權或所有權之爭議。
 - (p)船舶共有人間對其所有權、占有、使用或其營運所得所生之爭議。
 - (q)船舶之抵押或質押。
- (2) 假扣押係指依司法程序，為保全海事

secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment.

- (3) "Person" includes individuals, 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 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), (r) 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

求償，而對一船舶加以扣留之謂。然不包括因執行或滿足某判決而對船舶所為之扣押。

- (3) 人係指個人、政府、政府所屬單位、及公務機關。
- (4) 請求權人係指對海事上主張有求償權利之人。

第 2 條

於任一締約國管轄境內，得因任何海事求償，對懸掛任一締約國國旗之船舶予以假扣押，然不應包括任何其他求償。對政府、政府所屬單位，公務機關、船塢或港務當局依其國內法規所賦予得對船舶為假扣押、扣留、或阻止出航之權利或權力，不因本公約而有所擴張或限制。

第 3 條

- (1) 除本條第 4 項及第 10 條規定外，請求權人對於海事求償所發生之特定船舶，或海事求償發生時同一所有人之其他船舶，均得予以假扣押，既使被假扣押之船舶完成開航準備，亦得為之。但第 1 條第 1 項(i)(o)(r)(q)各款所生之求償，除海事求償發生之船舶外，不得假扣押其他船舶。
- (2) 船舶股份同為一人或數人所有時，則此等船舶應視為同一所有人所有。
- (3) 任何締約國一個或數管轄境內，同一請求權人基於同一海事求償，對某船舶所進行之假扣押或為保釋金與其他擔保品之提供，均不得重複為之。如其船舶於某管轄境內被扣押，或交付保釋金與提供擔保品，以獲得釋放，或免於威脅性之假扣押者，同一請求權人，基於同一海事求償，如聲請再度假扣押該船或同一所有人之其他船舶時，該締約國法院或其他適當司法機關應不予受理，並將該船舶予以放行。然請求權人能證明聲請再度假扣押前，其保釋金或擔保品已經返還，或有持續假扣押之其他理由，且為法院或其他適當司法機關認為充分者，不在此限。
- (4) 在光船租船之情形下，有關該船所生之海事求償，應由承租人負責，而非由該船之登記船舶所有人負責。請求權人得依本公約之規定，將該船或屬於承租人所有之其他船舶予以假扣押。然該船所有人之其他船舶，不得為假扣押。
本項規定，除該船之登記所有人外，

which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

對於該船有關之海事求償任一案件應行負責之人，均適用之。

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.

第 4 條

船舶之假扣押，僅能由假扣押締約國之法院或適當司法機關之權力下為之。

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 (i) (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.

第 5 條

法院或其他適當司法機關於其管轄境內為船舶假扣押者，除本公約第 1 條第 1 項 (i)(o)(p) 各款所生之海事求償外，得於提供充分保釋金或其他擔保品之後，始予釋放。於此情況，船舶占有人於提供充分保釋金或其他擔保品後，法院或其他適當司法機關得准其繼續營運其船舶，否則於假扣押期間，該船之作業，得由執行假扣押之法院或其他適當司法機關處理之。如雙方對於保釋或其他擔保品是否充分無法達成協議，其本質及數額由法院或其他適當司法機關裁定之。

提供擔保請求船舶釋放之聲請，不得解釋為責任之承認，或船舶所有人放棄其法定責任限制之利益。

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.

第 6 條

對某船舶之假扣押，或因提供保釋金或其他擔保品以求釋放，或免於假扣押所致之損失，在任一案件，應否由請求權人負責之所有問題，悉依假扣押或向其聲請假扣押之締約國法律定之。

關於假扣押船舶之手續，依第四條所為之聲請，以及完成假扣押之一切程序事項，悉依假扣押或向其聲請假扣押之締約國之法律定之。

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;

第 7 條

(1) 依假扣押國之國內法，認假扣押法院有審判權者，或有下列情形之一者，各該法院均有審判該案之權：

- (a) 請求權人有居所或主營業所於假扣押國國內者；
- (b) 海事求償發生於假扣押國國內者；
- (c) 海事求償係發生於申請假扣押之相關船舶航程者；

- (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 September 23, 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 no 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 October 17, 1868.
- (d)海事求償係因船舶碰撞而發生，或在 1910 年 9 月 23 日於布魯塞爾簽訂之船舶碰撞公約第 5 及第 13 條情況下所發生者；
- (e)海事求償係為救助而發生者；
- (f)海事求償係涉及被假扣押船舶之抵押或質押者。
- (2) 如假扣押法院無審判權時，則依第 5 條為求船舶釋放而提供之保釋金或其他擔保品，應特別聲明係為滿足有權法院所為判決之擔保。執行假扣押法院或其他適當司法機關，並應命請求權人於一定期間內，向有權法院提出訴訟。
- (3) 如當事人間於假扣押法院管轄以外，合意定其管轄法院，或協議提付仲裁時，執行假扣押法院或其他適當司法機關應命請求權人於一定期間內進行其程序。
- (4) 於前二項規定情形，如不於規定期間內起訴或進行其程序時，被告得聲請撤銷船舶之假扣押，或為其保釋金與其他擔保品之返還。
- (5) 本條不適用於 1868 年 10 月 17 日修正萊茵河航行公約所規定之事件。

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.
- (1) 本公約之規定，適用於懸掛任何締約國國旗，在任一締約國管轄境內之任一船舶。
- (2) 懸掛非締約國國旗之船舶，於任一締約國管轄境內，因第 1 條列舉之任一海事求償，或依該締約國之法律得為假扣押者，均得予以假扣押。
- (3) 但非締約國之政府或任何人在假扣押時無居所或主營業所於締約國之任何一國境內者，任一締約國有權放棄本公約全部或一部權益。
- (4) 相關締約國對於在其國內有居所或主營業所之任何人而扣押其本國籍船舶之現行法律，不因本公約有所變更或影響。
- (5) 海事求償由原請求權人以外之第三人行使者，不論由於代位、委託、或其他方式，為本公約之目的，請求權人於其國內有居所或主營業所者，該第三人視同請求權人。

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.

第 9 條

除本公約規定外，依受理法院之法律原無訴權者，本公約不得解釋為創設該訴權。如適用海事抵押及優先權公約者，亦不得解釋為創設該公約原無之海事優先權。

第 10 條

締約國於簽署、批准、或加入時，得為下列保留：

- (a) 第 1 條第 1 項第 (o) 及 (p) 款所列舉之海事求償不適用於本公約，而適用其國內法。
- (b) 因第 1 條第 1 項第 (q) 款所生之海事求償有權不適用本公約第 3 條第 1 項關於假扣押船舶之規定。

第 11 條

締約國對於本公約因解釋或適用所生任何爭議，同意交付仲裁。然締約國對其爭議已有同意提交國際法院之承諾者，不在此限。

第 12 條

本公約對出席第九屆外交海事法會議之各國，應隨時任聽簽署。簽署應經由比利時外交部為之。

第 13 條

本公約應予以批准。其批准書存放於比利時外交部，該部並應將此項存放通知各簽署國及加入國。

第 14 條

- (a) 本公約經最初兩國批准，自存放次一批准書之日起六個月後，對該兩國生效。
- (b) 本公約對於每一簽字國之批准，在其次一批准書存放之日起六個月後對該國生效。

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 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 17

Any High Contracting Party shall have the right to denounce this Convention at anytime 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

第 15 條

未出席第九屆外交海事法會議之任一國家，均得加入本公約。

任一國家之加入，應通知比利時外交部，並由其經由外交途徑將其加入轉知所有簽署國及加入國。

本公約自收到通知加入之日起六個月後對該國家生效。但其生效不得在依第 14 條第 1 項生效之前。

第 16 條

任一締約國在本公約對其生效三年後，得隨時提請召開會議修正本公約。

任一締約國實施此項權利時，應通知比利時政府。比政府應於此後六個月內召集會議。

第 17 條

任一締約國在本公約對其生效後之任何時間內，有權聲請退出。此退出自比利時收到退出通知之日起一年後生效。並由比政府經由外交途徑將其通知轉知所有各締約國。

第 18 條

(a)任一締約國得於批准或加入時，或此後任何時間，以書面通知比利時外交部，將本公約之效力，聲請適用於其負責國際關係之任何領域。自比利時外交部收到此項通知之日起六個月後，對其所列地域生效。但不得在本公約對該締約國生效以前。

(b)任一締約國為前(q)項通知者，得於此後隨時通知比利時外交部，本公約對該地域終止其適用。自比利時外交部收到該項通知一年後生效。

(c)比利時外交部對依本條所規定之任何

diplomatic channels all signatory and acceding States of any notification received by it under this Article.

通知，於收到後應經由外交途徑轉知所有簽署國及加入國。

Done in Brussels, on May 10, 1952, in the French and English languages, the two texts being equally authentic Signatories.

1952年5月10日訂於布魯塞爾。用法文及英文繕寫，兩份均具同等效力。