

ผนวก ข.

INTERNATIONAL CONVENTION CONCERNING THE REGIME OF NAVIGABLE WATERWAYS OF INTERNATIONAL CONCERN BARCELONA, 20.4.1921

Albania, Austria, Belgium, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Costa Rica, Cuba, Denmark, the British Empire (with New Zealand and India), Spain, Estonia, Finland, France, Greece, Guatemala, Haiti, Honduras, Italy, Japan, Latvia, Lithuania, Luxemburg, Norway, Panama, Paraguay, the Netherlands, Persia, Poland, Portugal, Romania, the Serb-Croat-Slovene State, Sweden, Switzerland, Czecho-Slovakia, Uruguay, and Venezuela:

Desirous of carrying further the development as regards the international regime of navigation on internal waterways, which began more than a century ago, and which has been solemnly affirmed in numerous treaties,

Considering that General Conventions to which other Powers may accede at a later date constitute the best method of realising the purpose of Article 23(e) of the Covenant of the League of Nations,

Recognising in particular that a fresh confirmation of the principle of Freedom of Navigation in a Statute elaborated by forty-one States belonging to the different portions of the world constitutes a new and significant stage towards the establishment of co-operation among States without in any way prejudicing their rights of sovereignty or authority, Having accepted the invitation of the League of Nations to take part in a Conference

at Barcelona which met on March 10, 1921, and having taken note of the Final Act of such

Conference,

Anxious to bring into force forthwith the provisions of the Statute relating to the Regime of Navigable Waterways of International Concern which has there been adopted,

Wishing to conclude a Convention for this purpose, the High Contracting Parties have appointed Plenipotentiaries

who, after communicating their full powers, found in good and due form, have agreed

as follows:

Article 1

The High Contracting Parties declare that they accept the Statute on the Regime of Navigable Waterways of International Concern annexed hereto, adopted by the Barcelona Conference on April 19, 1921.

This Statute will be deemed to constitute an integral part of the present Convention. Consequently, they hereby declare that they accept the obligations and undertakings of the said Statute in conformity with the terms and in accordance with the conditions set out therein.

Article 2

The present Convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles on June 28, 1919, or out of the provisions of the other corresponding Treaties, in so far as they concern the Powers which have signed, or which benefit by, such Treaties.

Article 3

The present Convention, of which the French and English texts are both authentic, shall bear this day's date and shall be open for signature until December 1, 1921.

Article 4

The present Convention is subject to ratification. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who will notify the receipt of them to the other Members of the League and to States admitted to sign the Convention.

The instruments of ratification shall be deposited in the archives of the Secretariat.

In order to comply with the provisions of Article 18 of the Covenant of the League of Nations, the Secretary-General will register the present Convention upon the deposit of the first ratification.

Article 5

Members of the League of Nations which have not signed the present Convention before December 1, 1921, may accede to it.

The same applies to States not Members of the League to which the Council of the League may decide officially to communicate the present Convention.

Accession will be notified to the Secretary-General of the League, who will inform all Powers concerned of the accession and of the date on which it was notified.

Article 6

The present Convention will not come into force until it has been ratified by five

Powers. The date of its coming into force shall be the ninetieth day after the receipt of the

Secretary-General of the League of Nations of the fifth ratification. Thereafter the present Convention will take effect in the case of each Party ninety days after the receipt of its ratification or of the notification of its accession.

Upon the coming into force of the present Convention, the Secretary-General will address a certified copy of it to the Powers not Members of the League which are bound under the Treaties of Peace to accede to it.

Article 7

A special record shall be kept by the Secretary-General of the League of Nations,

showing which of the Parties have signed, ratified, acceded to or denounced the present Convention. This record shall be open to the Members of the League at all times; it shall be published as often as possible in accordance with the directions of the Council.

Article 8

Subject to the provisions of Article 2 of the present Convention, the latter may be denounced by any Party thereto after the expiration of five years from the date when it came into force in respect of that Party. Denunciation shall be effected by notification in writing addressed to the Secretary-General of the League of Nations. Copies of such notification shall be transmitted forthwith by him to all the other Parties, informing 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 Power. It shall not, in the absence of an agreement to the contrary, prejudice engagements entered into before the denunciation relating to a programme of works.

Article 9

A request for the revision of the present Convention may be made at any time by one third of the High Contracting Parties.

IN FAITH WHEREOF the above-named Plenipotentiaries have signed the present Convention.

DONE at Barcelona the twentieth day of April one thousand nine hundred and twenty-one, in a single copy which shall remain deposited in the archives of the League of Nations.

STATUTE ON THE REGIME OF NAVIGABLE WATERWAYS OF

INTERNATIONAL CONCERN BARCELONA, 20.4.1921

Article 1

In the application of the Statute, the following are declared to be navigable waterways of international concern :

1. All parts which are naturally navigable to and from the sea of a waterway which in its course, naturally navigable to and from the sea, separates or traverses different States, and also any part of any other waterway naturally navigable to and from the sea, which connects with the sea a waterway naturally navigable which separates or traverses different States.

It is understood that:

(a) Transhipment from one vessel to another is not excluded by the words "navigable to and from the sea";

(b) Any natural waterway or part of a natural waterway is termed "naturally navigable" if now used for ordinary commercial navigation, or capable by reason of its natural conditions of being so used; by "ordinary commercial navigation" is to be understood navigation which, in view of the economic condition of the riparian countries, is commercial and normally practicable;

(c) Tributaries are to be considered as separate waterways;

(d) Lateral canals constructed in order to remedy the defects of a waterway included in the above definition are assimilated thereto;

(e) The different States separated or traversed by a navigable waterway of international concern, including its tributaries of international concern, are deemed to be "riparian States."

2. Waterways, or parts of waterways, whether natural or artificial, expressly declared to be placed under the regime of the General Convention regarding navigable waterways of international concern either in unilateral Acts of the States under whose sovereignty or authority these waterways or parts of waterways are situated, or in agreements made with the consent, in particular, of such States.

Article 2

For the purpose of Articles 5, 10, 12 and 14 of this Statute, the following shall form a special category of navigable waterways of international concern:

(a) Navigable waterways for which there are international Commissions upon which non-riparian States are represented;

(b) Navigable waterways which may hereafter be placed in this category, either in pursuance of unilateral Acts of the States under whose sovereignty or authority they are situated, or in pursuance of agreements made with the consent, in particular, of such States.

Article 3

Subject to the provisions contained in Articles 5 and 17, each of the Contracting States shall accord free exercise of navigation to the vessels flying the flag of any one of the other Contracting States on those parts of navigable waterways specified above which may be situated under its sovereignty or authority.

Article 4

In the exercise of navigation referred to above, the nationals, property and flags of all Contracting States shall be treated in all respects on a footing of perfect equality. No distinction shall be made between the nationals, the property and the flags of the different riparian States, including the riparian State exercising sovereignty or authority over the portion of the navigable waterway in question: similarly, no distinction shall be made between the nationals, the property and the flags of riparian and non-riparian States. It is understood, in consequence, that no exclusive right of navigation shall be accorded on such navigable waterways to companies or to private persons.

No distinctions shall be made in the said exercise, by reason of the point of departure or of destination, or of the direction of the traffic.

Article 5

As an exception to the two preceding Articles, and in the absence of any Convention or obligation to the contrary:

1. A riparian State has the right of reserving for its own flag the transport of passengers and goods loaded at one port situated under its sovereignty or authority and unloaded at another port also situated under its sovereignty or authority. A State which does not reserve the above-mentioned transport to its own flag may, nevertheless, refuse the benefit of equality of treatment with regard to such transport to a co-riparian which does reserve it.

On the navigable waterways referred to in Article 2, the Act of Navigation shall only allow to riparian States the right of reserving the local transport of passengers or of goods which are of national origin or are nationalised. In every case, however, in which greater freedom of navigation may have been already established, in a previous Act of Navigation, this freedom shall not be reduced.

2. When a natural system of navigable waterways of international concern which does not include waterways of the kind referred to in Article 2 separates or traverses two States only, the latter have the right to reserve to their flags by mutual agreement the transport of passengers and goods loaded at one port of this system and unloaded at another port of the same system, unless this transport takes place between two ports which are not situated under the sovereignty or authority of the same State in the course of a voyage, effected without transshipment on the territory of either of the said States, involving a sea-passage or passage over a navigable waterway of international concern which does not belong to the said system.

Article 6

Each of the Contracting States maintains its existing right, on the navigable waterways or parts of navigable waterways referred to in Article 1 and situated under its sovereignty or authority, to enact the stipulations and to take the measures necessary for policing the

territory and for applying the laws and regulations relating to customs, public health, precautions against the diseases of animals and plants, emigration or immigration, and to the import or export of prohibited goods, it being understood that such stipulations and measures must be reasonable, must be applied on a footing of absolute equality between the nationals, property and flags of any one of the Contracting States, including the State which is their author, and must not without good reason impede the freedom of navigation.

Article 7

No dues of any kind may be levied anywhere on the course or at the mouth of a navigable waterway of international concern, other than dues in the nature of payment for services rendered and intended solely to cover in an equitable manner the expenses of maintaining and improving the navigability of the waterway and its approaches, or to meet expenditure incurred in the interest of navigation. These dues shall be fixed in accordance with such expenses, and the tariff of dues shall be posted in the ports. These dues shall be levied in such a manner as to render unnecessary a detailed examination of the cargo, except in cases of suspected fraud or infringement of regulations, and so as to facilitate international traffic as much as possible, both as regards their rates and the method of their application.

Article 8

The transit of vessels and of passengers and goods on navigable waterways of international concern shall, so far as customs formalities are concerned, be governed by the conditions laid down in the Statute of Barcelona on Freedom of Transit. Whenever transit takes place without transshipment the following additional provisions shall be applicable:

(a) When both banks of a waterway of international concern are within one and the same State, the customs formalities imposed on goods in transit after they have been declared and subjected to a summary inspection shall be limited to placing them under seal or padlock or in the custody of customs officers.

(b) When a navigable waterway of international concern forms the frontier between two States, vessels, passengers and goods in transit shall while "en route" be exempt from any customs formality, except in cases in which there are valid reasons of a practical character for carrying out customs formalities at a place on the part of the river which forms the frontier, and this can be done without interfering with navigation facilities.

The transit of vessels and passengers, as well as the transit of goods without transshipment, on navigable waterways of international concern, must not give rise to the levying of any duties whatsoever, whether prohibited by the Statute of Barcelona on Freedom of Transit or authorised by Article 3 of that Statute. It is nevertheless understood that vessels in transit may be made responsible for the board and lodging of any customs officers who are strictly required for supervision.

Article 9

Subject to the provisions of Articles 5 and 17, the nationals, property and flags of all the Contracting States shall, in all ports situated on a navigable waterway of international concern, enjoy, in all that concerns the use of the port, including port dues and charges, a treatment equal to that accorded to the nationals, property and flag of the riparian State under whose sovereignty or authority the port is situated. It is understood that the property to which the present paragraph relates is property originating in, coming from or destined for, one or other of the Contracting States.

The equipment of ports situated on a navigable waterway of international concern, and the facilities afforded in these ports to navigation, must not be withheld from public use to an extent beyond what is reasonable and fully compatible with the free exercise of navigation.

In the application of customs or other analogous duties, local octroi or consumption duties, or incidental charges, levied on the occasion of the importation or exportation of goods through the aforesaid ports, no difference shall be made by reason of the flag of the vessel on which the transport has been or is to be accomplished, whether this flag be the national flag or that of any of the Contracting States.

The State under whose sovereignty or authority a port is situated may withdraw the benefits of the preceding paragraph from any vessel if it is proved that the owner of the vessel discriminates systematically against the nationals of that State, including companies controlled by such nationals.

In the absence of special circumstances justifying an exception on the ground of economic necessities, the customs duties must not be higher than those levied on the other customs frontiers of the State interested, on goods of the same kind, source and destination. All facilities accorded by the Contracting States to the importation or exportation of goods by other land or water routes, or in other ports, shall be equally accorded to importation or exportation under the same conditions over the navigable waterway and through the ports referred to above.

Article 10

1. Each riparian State is bound, on the one hand, to refrain from all measures likely to prejudice the navigability of the waterway, or to reduce the facilities for navigation, and

on the other hand, to take as rapidly as possible all necessary steps for removing any obstacles and dangers which may occur to navigation.

2. If such navigation necessitates regular upkeep of the waterway, each of the riparian States is bound as towards the others to take such steps and to execute such works on its territory as are necessary for the purpose as quickly as possible, taking account at all times of the conditions of navigation, as well as of the economic state of the regions served by the navigable waterway.

In the absence of an agreement to the contrary, any riparian State will have the right, on valid reason being shown, to demand from the other riparians a reasonable contribution towards the cost of upkeep.

3. In the absence of legitimate grounds for opposition by one of the riparian States, including the State territorially interested, based either on the actual conditions of navigability in its territory, or on other interests such as, *inter alia*, the maintenance of the normal-water conditions, requirements for irrigation, the use of water-power, or the necessity for constructing other and more advantageous ways of communication, a riparian State may not refuse to carry out works necessary for the improvement of the navigability which are asked for by another riparian State, if the latter State offers to pay the cost of the works and a fair share of the additional cost of upkeep. It is understood, however, that such works cannot be undertaken so long as the State on the territory of which they are to be carried out objects on the ground of vital interests.

4. In the absence of any agreement to the contrary, a State which is obliged to carry out works of upkeep is entitled to free itself from the obligation, if, with the consent of all the coriparian States, one or more of them agree to carry out the works instead of it; as regards works for improvement, a State which is obliged to carry them out shall be freed

from the obligation, if it authorises the State which made the request to carry them out instead of it. The carrying out of works by States other than the State territorially interested, or the sharing by such States in the cost of works, shall be so arranged as not to prejudice the rights of the State territorially interested as regards the supervision and administrative control over the works, or its sovereignty and authority over the navigable waterway.

5. On the waterways referred to in Article 2, the provisions of the present Article are to be applied subject to the terms of the Treaties, Conventions, or Navigation Acts which determine the powers and responsibilities of the International Commission in respect of works.

Subject to any special provisions in the said Treaties, Conventions, or Navigation Acts, which exist or may be concluded:

(a) Decisions in regard to works will be made by the Commission.

(b) The settlement, under the conditions laid down in Article 22 below, of any dispute which may arise as a result of these decisions, may always be demanded on the grounds that these decisions are ultra vires, or that they infringe international conventions governing navigable waterways. A request for a settlement under the aforesaid conditions based on any other grounds can only be put forward by the State which is territorially interested.

The decisions of this Commission shall be in conformity with the provisions of the present Article.

6. Notwithstanding the provisions of paragraph 1 of this Article, a riparian State may, in the absence of any agreement to the contrary, close a waterway wholly or in part to

navigation, with the consent of all the riparian States or of all the States represented on the International Commission in the case of navigable waterways referred to in Article 2.

As an exceptional case one of the riparian States of a navigable waterway of international concern not referred to in Article 2 may close the waterway to navigation, if the navigation on it is of very small importance, and if the State in question can justify its action on the ground of an economic interest clearly greater than that of navigation. In this case the closing to navigation may only take place after a year's notice and subject to an appeal on the part of any other riparian State under the conditions laid down in Article 22. If necessary, the judgement shall prescribe the conditions under which the closing to navigation may be carried into effect.

7. Should access to the sea be afforded by a navigable waterway of international interest through several branches, all of which are situated in the territory of one and the same State, the provisions of paragraphs 1, 2 and 3 of this Article shall apply only to the principal branches deemed necessary for providing free access to the sea.

Article 11

If on a waterway of international concern one or more of the riparian States are not parties to this Statute, the financial obligations undertaken by each of the Contracting States in pursuance of Article 10 shall not exceed those to which they would have been subject if all the riparian States had been Parties.

Article 12

In the absence of contrary stipulations contained in a special agreement or treaty, for example, existing Conventions concerning customs and police measures and sanitary precautions, the administration of navigable waterways of international concern is

exercised by each of the riparian States under whose sovereignty or authority the navigable waterway is situated. Each of such riparian States has, inter alia, the power and duty of publishing regulations for the navigation of such waterway and of seeing to their execution. These regulations must be framed and applied in such a way as to facilitate the free exercise of navigation under the conditions laid down in this Statute.

The rules of procedure dealing with such matters as ascertaining, prosecuting and punishing navigation offences must be such as to promote as speedy a settlement as possible.

Nevertheless the Contracting States recognise that it is highly desirable that the riparian States should come to an understanding with regard to the administration of the navigable waterway and, in particular, with regard to the adoption of navigation regulations of as uniform a character throughout the whole course of such navigable waterway as the diversity of local circumstances permits.

Public services of towage or other means of haulage may be established in the form of monopolies for the purpose of facilitating the exercise of navigation, subject to the unanimous agreement of the riparian States or the States represented on the International Commission in the case of navigable waterways referred to in Article 2.

Article 13

Treaties, conventions or agreements in force relating to navigable waterways, concluded by the Contracting States before the coming into force of this Statute, are not, as a consequence of its coming into force, abrogated so far as concerns the States signatories to those treaties.

Nevertheless the Contracting States undertake not to apply among themselves any provisions of such treaties, conventions or agreements which may conflict with the rules of the present Statute.

Article 14

If any of the special agreements or treaties referred to in Article 12 has entrusted or shall hereafter entrust certain functions to an international Commission which includes representatives of States other than the riparian States, it shall be the duty of such Commission subject to the provisions of Article 10, to have exclusive regard to the interests of navigation, and it shall be deemed to be one of the organisations referred to in Article 24 of the Covenant of the League of Nations. Consequently, it will exchange all useful information directly with the League and its organisations, and will submit an annual report to the League.

The powers and duties of the Commissions referred to in the preceding paragraph shall be laid down in the Act of Navigation of each navigable waterway and shall at least include the following :

- (a) the Commission shall be entitled to draw up such navigation regulations as it thinks necessary itself to draw up, and all other navigation regulations shall be communicated to it;
- (b) it shall indicate to the riparian States the action advisable for the upkeep of works and the maintenance of navigability;
- (c) it shall be furnished by each of the riparian States with official information as to all schemes for the improvement of the waterway;

(d) it shall be entitled, in cases in which the Act of Navigation does not include a special regulation with regard to the levying of dues, to approve of the levying of such dues and charges in accordance with the provisions of Article 7 of this Statute.

Article 15

This Statute does not prescribe the rights and duties of belligerents and neutrals in time of war. The Statute shall, however, continue in force in time of war so far as such rights and duties permit.

Article 16

This Statute does not impose upon a Contracting State any obligation conflicting with its rights and duties as a Member of the League of Nations.

Article 17

In the absence of any agreement to the contrary to which the State territorially interested is or may be a party, this Statute has no reference to the navigation of vessels of war or of vessels performing police or administrative functions, or, in general, exercising any kind of public authority.

Article 18

Each of the Contracting States undertakes not to grant either by agreement or in any other way, to a non-Contracting State, treatment with regard to navigation over a navigable waterway of international concern which, as between Contracting States, would be contrary to the provisions of this Statute.

Article 19

The measures of a general or particular character which a Contracting State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country may, in exceptional cases and for a period as short as possible, involve a deviation from the provisions of the above Articles; it being understood that the principle of the freedom of navigation and especially communication between the riparian States and the sea, must be maintained to the utmost possible extent.

Article 20

This Statute does not entail in any way the withdrawal of existing greater facilities granted to the free exercise of navigation on any navigable waterway of international concern, under conditions consistent with the principle of equality laid down in this Statute, as regards the nationals, the goods and the flags of all the Contracting States; nor does it entail the prohibition of such grant of greater facilities in the future.

Article 21

In conformity with Article 23(e) of the Covenant of the League of Nations, any Contracting State which can establish a good case against the application of any provision of this Statute in some or all of its territory on the ground of the grave economic situation arising out of the acts of devastation perpetrated on its soil during the war 1914-1918, shall be deemed to be relieved temporarily of the obligations arising from the application of such provision, it being understood that the principle of freedom of navigation must be observed as far as possible.

Article 22

Without prejudice to the provisions of paragraph 5 of Article 10, any dispute between States as to the interpretation of application of this Statute which is not settled directly between them shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly to submit such disputes for an opinion to anybody established by the League of Nations as the advisory and technical organizations of the Member of the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for free navigation which existed before the act or occurrence which gave rise to the dispute.

Article 23

A navigable waterway shall not be considered as of international concern on the sole ground that it traverses or delimits zones or enclaves, the extent and population of which are small as compared with those of the territories which it traverses, and which form detached portions or establishments belonging to a State other than that to which the said river belongs, with this exception, throughout its navigable course.

Article 24

This Statute shall not be applicable to a navigable waterway of international concern which has only two riparian States and which separates, for a considerable distance, a Contracting State from a non-Contracting State whose Government is not recognised by the former at the time of the signing of this Statute, until an agreement has been concluded between them establishing, for the waterway in question, an administrative and customs regime which affords suitable safeguards to the Contracting State.

Article 25

It is understood that this Statute must not be interpreted as regulating in any way rights and obligations inter se of territories forming part, or placed under the protection, of the same sovereign State, whether or not these territories are individually Members of the League of Nations.