

**THE MARITIME LAW ASSOCIATION  
OF THE UNITED STATES**

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**BRUSSELS CONVENTION, 1938.**

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**Convention for Unification of Rules Relating to Assistance  
and Salvage of Aircraft or by Aircraft at Sea.\***

The President appointed the following official delegation to attend the Fourth International Conference on Private Air Law, convened at Brussels, Belgium, on September 19, 1938:

*Delegates:* G. GRANT MASON, JR., Member of the Civil Aeronautics Authority, Chairman of the delegation; STEPHEN LATCHFORD, Department of State, Vice-Chairman of the delegation; DENIS MULLIGAN, Consulting Counsel on International Aviation, Civil Aeronautics Authority.

*Technical Advisers:* LAUREL E. ANDERSON, Legal Adviser of the Maritime Commission at London; CAPT. L. T. CHALKER, Chief Aviation Officer, United States Coast Guard; ARNOLD W. KNAUTH, Admiralty Lawyer; J. BROOKS B. PARKER, Aviation Insurer.

*Secretary:* EDWARD T. WAILES, Second Secretary, American Embassy, Brussels.

*Technical Assistants:* JOHN J. IDE, Technical Assistant in Europe for the National Advisory Committee for Aeronautics; ARTHUR LEBEL, Department of State.

*Interpreter:* LEON DOSTERT, Director of the Division of Modern Languages, Georgetown University.

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\* For prior action of the Association and its Committees on this subject, see Documents No. 207, p. 2141; No. 214, pp. 2216-2220; No. 220, p. 2260; No. 224, p. 2320; No. 225, pp. 2336-2337; No. 230, pp. 2369-2422; No. 239, pp. 2435-2491—Sec'y.

The Conference adopted, and many of the plenipotentiaries present signed, an international convention relating to assistance and salvage of aircraft or by aircraft at sea, and a protocol dealing specifically with the question of aviation insurance under the Rome Convention of 1933.

The concluding act of the Conference, with the texts of the Salvage Convention and Insurance Protocol, and provisional translations prepared by the State Department, are presented herewith.

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**Translation of Convention for the Unification of Certain  
Rules Relating to Assistance and Salvage of Aircraft or  
by Aircraft at Sea, Adopted and Signed at the Fourth  
International Conference on Private Air Law,  
Held at Brussels in September, 1938.**

(Preamble omitted.)

ARTICLE 1.

The High Contracting Parties agree to take the necessary measures to put into effect the rules established in this Convention.

ARTICLE 2.

(1) Any person exercising the functions of commanding officer aboard an aircraft shall be bound to render assistance to any person who is at sea in danger of being lost, in so far as such person may do so without serious danger to the aircraft, her crew, her passengers, or other persons.

(2) Every captain of a vessel shall be bound, under the circumstances contemplated in paragraph (1), and without prejudice to more extended obligations imposed upon him by the laws and conventions in force, to render assistance to any person who is at sea in danger of being lost on an aircraft or as the consequence of damage to an aircraft.

(3) For the purposes of this Convention, assistance shall mean any help which may be given to a person who is at sea in danger of being lost, even by merely giving information, consideration being given to the different conditions under which maritime navigation and air navigation operate.

(4) The obligation of assistance shall not exist unless the aircraft or the vessel is in the course of a trip or ready to depart, and unless it is reasonably possible for it to render useful aid.

(5) The obligation of assistance shall cease when the person who is under such obligation becomes aware that assistance is being rendered by others under similar or better conditions than it could be by himself.

(6) The national legislations shall determine the penalties designed to insure the execution of this obligation, and the High Contracting Parties shall communicate to each other, through diplomatic channels, the texts of such laws.

(7) No liability can rest with the owner or the *armateur* of the vessel or with the owner or operator of the aircraft, as such, by reason of failure to discharge this obligation, except in the case where he shall have ordered the person bound to render assistance not to render it.

### ARTICLE 3.

(1) Any assistance rendered in discharge of the obligation contemplated in the foregoing article shall call for an indemnity based on the expenses justified by circumstances, as well as the damage suffered in the course of the operations.

(2) If the assistance was rendered in the absence of any obligation to do so, the assister shall have no right to indemnity unless he has obtained a useful result by saving persons or by contributing thereto.

(3) The indemnity shall be payable by the operator of the aircraft assisted, or by the owner or *armateur* of the vessel assisted in accordance with the rules of the national laws or of the contracts governing such vessel.

(4) The indemnity cannot exceed the sum of 50,000 francs per person saved and, if no persons have been saved, the sum total of 50,000 francs.

In any case the obligation of the aircraft operator shall be limited to the sum of 500,000 francs.

The amounts fixed in this paragraph shall be considered as referring to the gold franc containing 65½ milligrams of gold of

a standard of fineness of 900/1000. They may be converted into each national currency in round numbers.

Furthermore, the owner or *armateur* of the vessel shall not be liable beyond the limits determined by the existing laws and conventions governing his obligation in matters of maritime assistance and salvage.

(5) (a) In case there has been assistance by several vessels or aircraft, and the total sum of the indemnities due exceeds the limit fixed in the foregoing paragraph (4), a proportional reduction of the indemnities shall be made.

(b) In such a case the salvors must assert their rights or give notice of their claims to the person who is liable for the indemnity within the maximum period of six months from the day of the assistance.

(c) After this period, settlement of the indemnities may properly be made; the interested parties having permitted the above-mentioned period to elapse without asserting their rights or giving notice of their claims may exercise their rights only as to the amount which shall not have been distributed.

#### ARTICLE 4.

(1) In case of assistance and salvage of the aircraft at sea in danger of being lost or of the things that are on board, the ship or aircraft which shall have rendered assistance shall be entitled to remuneration to be determined on the following bases:

(a) First, the measure of success obtained, the efforts and deserts of those who have rendered assistance, the danger run by the aircraft assisted, by her passengers, her crew and her cargo, by the salvors and by the salving aircraft or vessel, the time consumed, the expenses incurred, and the losses suffered, and the risks of liability and other risks run by the salvors, the value of the property risked by them, consideration being given to the special adaptation, if any, of the assister;

(b) Secondly, the value of the things salvaged.

(2) No remuneration is due if the services rendered have no useful result.

(3) The remuneration can never exceed the value of the property salvaged at the conclusion of the operations of assistance or salvage.

(4) Remuneration is due even when the aircraft or the vessels belong to the same operator or to the same owner or *armateur*.

(5) In case there has been assistance or salvage by several vessels or aircraft, the remuneration shall be divided among them on the bases established in paragraph (1) of this article.

(6) The same rules shall apply in case of assistance or salvage at sea, by an aircraft, of a vessel in danger, or of her cargo, in which case the owner or *armateur* of the vessel shall retain the right to avail himself of the limitation of his liability, as determined by existing laws and conventions governing maritime salvage and assistance.

#### ARTICLE 5.

In case indemnities or remuneration are due under Articles 3 and 4 of this Convention, an equitable distribution shall be made of expenses incurred and of losses suffered, upon the bases and within the limits set forth in the said articles.

#### ARTICLE 6.

Any distribution of remuneration between the operator and the personnel of the aircraft shall be governed by the national laws.

#### ARTICLE 7.

In case there has been both assistance and salvage of persons and of property, the salvor of persons shall be entitled to a fair share of the remuneration granted for the salvage of property, without prejudice to the right to indemnity which he has under Article 3.

#### ARTICLE 8.

(1) No indemnity or remuneration shall be due if the assistance was rendered or the salvage effected in spite of express and reasonable prohibition to do so by the one who was assisted or salvaged.

(2) The court may reduce or deny the indemnity or the remuneration if it appears that the salvors have, by their fault, rendered the assistance or the salvage necessary or increased the loss, or if they were guilty of theft, concealment or other fraudulent acts.

ARTICLE 9.

(1) The remuneration due for the operations of assistance or salvage shall be payable by the operator of the assisted aircraft, or by the owner or *armateur* of the assisted vessel, in accordance with the national laws or with contracts governing the vessel.

(2) The operator of the aircraft shall have a recourse against the owners of goods for such part of the remuneration as pertains to assistance and salvage of such goods. However, this recourse shall be denied or reduced if it appears that the assistance or the salvage of the goods has been rendered necessary by an act of the operator of such a nature as to render him liable to the owners of such goods.

(3) The owner of the goods may, in all cases, by paying such part of the remuneration as pertains to assistance or to salvage of his goods, or by depositing suitable security for such payment, obtain the delivery of the goods by the operator and the release of any goods that may have been attached.

(4) The recourse of the owner or of the *armateur* of the vessel against owners of goods shall remain subject to maritime rules.

ARTICLE 10.

Neither the personal effects and baggage of the crew and passengers, nor articles transported under the régime of postal conventions or of agreements relating to the postal service, shall be included in the property, either for the purpose of calculating the remuneration or in respect of the recourse to be exercised.

ARTICLE 11.

(1) Indemnity and remuneration actions must be brought within two years from the end of the operations of assistance or salvage.

(2) The recourse of the operator against the owners of goods shall be barred after a period of one year beginning with the date of the payment of the remuneration for assistance or salvage.

(3) The method of calculating the limitation period, as well as the causes of suspension and interruption of such period, shall be determined by the law of the court before which the case is brought.

#### ARTICLE 12.

Any agreement for assistance or salvage entered into at the time and under the influence of danger can, at the request of one of the parties, be annulled or modified by the court if the court considers that the conditions thereof are not equitable, and particularly when the remuneration is excessively large or small and out of proportion with the services rendered.

#### ARTICLE 13.

(1) Actions for indemnity or remuneration shall, at the election of the claimant and in conformity with the rules of procedure and of jurisdiction of each State, be brought either before the courts of the territory where the defendant is domiciled, or before those of the territory where the operations of assistance or salvage were carried out, or, if the aircraft or the cargo have been attached, before the courts of the place of attachment.

(2) If different salvors bring action in jurisdictions located in different countries, the defendant may, before each one of them, produce a statement of the aggregate amount of the claims and moneys due, with a view to preventing the limits of his liability from being exceeded.

#### ARTICLE 14.

Any person who has the right to use an aircraft and who uses it for his own account shall be termed "the operator of the aircraft." In case the name of the operator is not recorded on the aeronautic register or on any other official document, the owner shall be deemed to be the operator, subject to proof of the contrary.

#### ARTICLE 15.

Any person who, without having the right to use an aircraft, uses it without the consent of the operator, shall be liable for the

indemnities and remuneration, and the operator who has not taken reasonable precautions to avoid unlawful use of his aircraft, shall be liable jointly and severally with him, each one of them being bound within the conditions and the limits provided for in the foregoing articles.

ARTICLE 16.

This Convention shall, with the reservation of the provisions of Article 13 relative to jurisdiction, apply to government vessels and aircraft, with the exception of military, customs and police vessels or aircraft, to which the rights and obligations flowing from the foregoing provisions shall not apply.

ARTICLE 17.

(1) The provisions of this Convention shall apply with respect to all interested parties when either the assisting or salving vessel or aircraft or the assisted or salvaged vessel or aircraft is registered in the territory of one of the High Contracting Parties.

(2) The expression "territory of a High Contracting Party" shall include any territory subject to the sovereign power, the suzerainty, the protectorate, the mandate or the authority of the said High Contracting Party in behalf of which the latter is a party to the Convention.

(3) Provided, however:

(a) That with respect to interested parties who are nationals of a non-contracting State, the application of the said provisions may be conditioned by each one of the contracting States upon reciprocity;

(b) That when all the interested parties are nationals of the same State as that of the court before which the case is brought, the Convention shall not be applicable;

(c) That in case vessels and aircraft are engaged in the same operation of assistance, this Convention shall not apply to relations between vessels.

ARTICLE 18.

The present Convention shall be drawn up in French in a single copy which shall remain deposited in the archives of the



Ministry for Foreign Affairs of the Kingdom of Belgium, and of which a duly certified copy shall be sent by the Government of the Kingdom of Belgium to each one of the Governments concerned.

ARTICLE 19.

(1) The present Convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry for Foreign Affairs of the Kingdom of Belgium, which shall notify each one of the Governments concerned of the deposit thereof.

(2) As soon as five ratifications shall have been deposited, the Convention shall come into force as between the High Contracting Parties which shall have ratified it ninety days after the deposit of the fifth ratification. Any ratification which is deposited subsequently shall take effect ninety days after such deposit.

(3) It shall be the duty of the Government of the Kingdom of Belgium to notify each one of the Governments concerned of the date on which the present Convention comes into force.

ARTICLE 20.

(1) The present Convention, after coming into force, shall be open for adherence.

(2) Adherence shall be made through a notification addressed to the Government of the Kingdom of Belgium, which shall so inform each one of the Governments concerned.

(3) The adherence shall take effect ninety days after the notification to the Government of the Kingdom of Belgium.

ARTICLE 21.

(1) Each one of the High Contracting Parties may denounce the present Convention by a notification addressed to the Government of the Kingdom of Belgium which shall at once so inform each one of the Governments concerned.

(2) The denunciation shall take effect six months after the notification of the denunciation and shall operate only with respect to the party making the denunciation.

ARTICLE 22.

(1) The High Contracting Parties may, at the time of signature, deposit of the ratifications, or adherence, declare that the acceptance which they give to the present Convention shall not apply to all or to any part of their colonies, protectorates, overseas territories, mandated territories or any other territory under their sovereignty, authority or suzerainty.

(2) The High Contracting Parties may subsequently notify the Government of the Kingdom of Belgium that they intend to render the present Convention applicable to all or to any part of their colonies, protectorates, overseas territories, mandated territories or any other territory under their sovereignty, authority or suzerainty, so excluded from their original declaration.

(3) They may, at any time, notify the Government of the Kingdom of Belgium that they intend to have the present Convention cease to apply to all or any part of their colonies, protectorates, overseas territories, mandated territories or any other territory under their sovereignty, authority or suzerainty.

(4) The Government of the Kingdom of Belgium shall inform each one of the Governments concerned of notifications made in accordance with the last two paragraphs.

ARTICLE 23.

Each one of the High Contracting Parties shall be entitled not earlier than two years after the coming into force of the present Convention to call for the meeting of another International Conference in order to consider any improvements which might be made in the present Convention. To this end it shall communicate with the Government of the French Republic which shall take the necessary measures in preparation for such Conference.

The present Convention, done at Brussels, on September 29, 1938, shall remain open for signature until June 30, 1939.

IN WITNESS WHEREOF the Plenipotentiaries have signed the present Convention.

**Protocol Supplementing the Convention for the Unification  
of Certain Rules Relating to Damages Caused by  
Aircraft to Third Parties on the Surface,  
Concluded at Rome, May 29, 1933.**

(Preamble omitted.)

ARTICLE 1.

The insurance of the aircraft operator, as provided for under Article 12 of the Convention for the Unification of Certain Rules Relating to Damages Caused by Aircraft to Third Parties on the Surface, must produce the following effects with respect to the injured third parties:

(1) The insurer may, in addition to the defenses available to the operator and without prejudice to any recourse he may have against the insured, interpose only the following defenses against claims based upon the application of the said Convention:

(a) The damage occurred after the insurance ceased to have effect.

Nevertheless, the guaranty of the insurer shall be continued, in case the insurance lapses during a trip, until the next landing supervised by public authority; provided that such continuation shall not exceed 24 hours. In all other cases than that in which the insurance ceases to have effect by reason of expiration of the term thereof the guaranty of the insurer shall be continued until effective withdrawal of the certificate of insurance by the proper authorities, but not beyond 15 days after notification by the insurer to the proper authorities of the State where the certificate was issued.

(b) The damage occurred outside of the territorial limits provided for by the insurance contract, unless flight outside of such limits was caused by *force majeure*, the fact of assistance justified by circumstances, or an error in piloting, in the handling of the aircraft or in navigation.

(c) The damage is the direct consequence of international armed conflict or the direct consequence of civil disturbances.

From the point of view of the application of clauses (a) and (b), third parties may, where there is a discrepancy between the statements in the certificate of insurance or in the aircraft papers, and the stipulations of the insurance contract, avail themselves of the statements in the certificate or in the said papers as to the duration of the insurance contract and as to its territorial extent.

(2) Excepting the above-mentioned defenses, the insurer may not, with respect to third parties, avail himself of any grounds of nullity or of any right of retroactive cancellation.

(3) In case the person of the operator is changed during the life of the insurance contract, the insurer shall remain liable to injured third parties, as if the transfer had not taken place, provided that the duration of such obligation shall not extend beyond seven days from the time when the insurer notifies the proper authorities of the State where the insurance certificate was issued that the insurance has terminated.

#### ARTICLE 2.

(1) This Protocol shall form an integral part of the Convention for the Unification of Certain Rules Relating to Damages Caused by Aircraft to Third Parties on the Surface, concluded at Rome on May 29, 1933.

(2) Beginning with the date on which this Protocol is signed, ratification of the above-mentioned Convention shall imply ratification of this Protocol. However, the High Contracting Parties shall be authorized to ratify both of those acts simultaneously by separate instruments.

(3) Ratification of the Convention and of the Protocol, either by separate instruments or by a single instrument, shall not result in creating obligations toward any other than the High Contracting Parties having taken the same action.

#### ARTICLE 3.

(1) This Protocol is drawn up in French, in a single copy, which shall remain open for signature until June 30, 1939.

(2) A certified copy of this Protocol shall immediately be sent to the High Contracting Parties, through the intermediary of the Belgium Government and through diplomatic channels.

(3) Upon the expiration of the period of time mentioned in paragraph (1), the original of this Protocol shall be transmitted by the Belgian Government to the Italian Government, so that it may be deposited and preserved in the archives of the Ministry of Foreign Affairs of Italy.

ARTICLE 4.

This Protocol shall be ratified. The instruments of ratification of this Protocol, in the cases provided for by the second part of paragraph (2) of Article 2, shall be deposited in the archives of the Ministry of Foreign Affairs of the Kingdom of Italy, which shall send notice thereof to each one of the interested governments.

ARTICLE 5.

Adherence to the Convention for the Unification of Certain Rules Relating to Damages Caused by Aircraft to Third Parties on the Surface, concluded at Rome on May 29, 1933, shall imply adherence to this Protocol, with the effect stated in paragraph (3) of Article 2.

ARTICLE 6.

The High Contracting Parties may not denounce this Protocol without denouncing the Convention of which it is an integral part.

IN WITNESS WHEREOF, the Plenipotentiaries have signed this Protocol.

**Resolutions Adopted by the Fourth International Conference on Private Air Law, Held at Brussels in September, 1938.**

(From the Final Act of the Brussels Conference.)

I.

After their deliberations, the above-listed Delegates agreed to submit the following texts for the signature of the respective Plenipotentiaries of the High Contracting Parties:

(a) A Draft of Convention for the Unification of Certain Rules Relating to Assistance and Salvage of Aircraft or by Aircraft at Sea,

(b) A Draft of Protocol supplementing the Convention for the Unification of Certain Rules Relating to Damages Caused by Aircraft to Third Parties on the Surface.

The said drafts are to remain open for signature until June 30, 1939.

II.

(A) The Conference,

urgently recommends that the States which have already ratified the Rome Convention expedite ratification of the Supplementary Protocol mentioned in paragraph (b) of Section I, above.

(B) The Conference,

considering that it has prepared a protocol to determine the conditions of application of Article 12 of the International Convention for the Unification of Certain Rules Relating to Damages Caused by Aircraft to Third Parties on the Surface, concluded at Rome on May 29, 1933,

considering that the protocol has been declared an integral part of the convention to which it refers,

considering that this protocol stipulates that in the future the Rome Convention may not be ratified without ratifying simultaneously the protocol itself,

recommends,

that, beginning with this date, the Italian Government as the depository of the instruments of ratification of and adherence to the above-mentioned Rome Convention, not accept any ratification of that Convention unless it carries with it at the same time the ratification of the protocol, either in the same act or by a separate act.

(C) The Conference,

considering the increasing progress of trans-oceanic air traffic and the importance therein of the amount of aerial postal matter, recommends,

that the CITEJA, in the interest of the unification of private air law, place on its agenda the question of the contribution by interested parties in the payment of remuneration for assistance, examining in particular the question of the extent to which postal payments should be made to contribute.

(D) The Conference,

considering that the convention signed at Warsaw on October 12, 1929, for the unification of certain rules relating to international transportation by air has been in force for several years as between numerous countries,

considering the importance of preserving harmony between international conventions and the ever increasing developments of aviation,

considering the usefulness of the preparatory collaboration by the International Technical Committee of Aerial Legal Experts,

charges the International Technical Committee of Aerial Experts with the duty of making a study of the convention signed at Warsaw on October 12, 1929, for the unification of certain rules relating to international transportation by air, with a view to determining whether, from the experience acquired in the application of this convention, it would be necessary to improve the text thereof, and, if so, with the duty of preparing the desired modifications or amendments in the form of a draft.

(E) The Conference,

realizing the importance and usefulness of the preparatory work done by the CITEJA, and renewing the recommendation already expressed at Rome by the Third Diplomatic Conference on Private Air Law,

recommends,

that all Governments represented at the present Conference join the CITEJA in the interest of assisting in the task of unification of laws assigned to the CITEJA.

. III.

(F) The Conference,

not having been able, by reason of the multiplicity of new proposals and the lack of time available, to undertake a careful examination of the draft of the Convention for the Unification of Certain Rules Relating to Aerial Collisions, which had been submitted to the Conference, decides to refer consideration of this draft to the next diplomatic conference. Furthermore, in view of the fact that several States have submitted remarks and proposals on that draft, the Conference decides to refer these remarks and proposals to the CITEJA, so that the latter may study them and, possibly, also prepare new proposals to be submitted to the Fifth International Conference on Private Air Law.