

The Hague Convention,

Hague Convention XII (18 October 1907)

Convention Relative to the Creation of an International Prize Court

Articles 1 - 57

Entry into Force: THIS WAS NEVER RATIFIED

Animated by the desire to settle in an equitable manner the differences which sometimes arise in the course of a naval war in connection with the decisions of national prize courts; Considering that, if these courts are to continue to exercise their functions in the manner determined by national legislation, it is desirable that in certain cases an appeal should be provided under conditions conciliating, as far as possible, the public and private interests involved in matters of prize; Whereas, moreover, the institution of an International Court, whose jurisdiction and procedure would be carefully defined, has seemed to be the best method of attaining this object; Convinced, finally, that in this manner the hardships consequent on naval war would be mitigated; that, in particular, good relations will be more easily maintained between belligerents and neutrals and peace better assured; Desirous of concluding a Convention to this effect, have appointed the following as their Plenipotentiaries: (Here follow the names of Plenipotentiaries) Who, after depositing their full powers, found in good and due form, have agreed upon the following provisions:

PART I

GENERAL PROVISIONS

Article 1. The validity of the capture of a merchant ship or its cargo is decided before a prize court in accordance with the present Convention when neutral or enemy property is involved.

Art. 2. Jurisdiction in matters of prize is exercised in the first instance by the prize courts of the belligerent captor. The judgments of these courts are pronounced in public or are officially notified to parties concerned who are neutrals or enemies.

Art. 3. The judgments of national prize courts may be brought before the International Prize Court -

1. When the judgment of the national prize courts affects the property of a neutral Power or individual;

2. When the judgment affects enemy property and relates to -

(a) Cargo on board a neutral ship;

(b) An enemy ship captured in the territorial waters of a neutral Power, when that Power has not made the capture the subject of a diplomatic claim;

(c) A claim based upon the allegation that the seizure has been effected in violation, either of the provisions of a Convention in force between the belligerent Powers, or of an enactment issued by the belligerent captors. The appeal against the judgment of the national court can be based on the ground that the judgment was wrong either in fact or in law.

Art. 4. An appeal may be brought -

1. By a neutral Power, if the judgment of the national tribunals injuriously affects its property or the property of its nationals (Article 3, No. 1), or if the capture of an enemy vessel is alleged to have taken place in the territorial waters of that Power (Article 3, No. 2(b)).
2. By a neutral individual, if the judgment of the national court injuriously affects his property (Article 3, No. 1), subject, however, to the reservation that the Power to which he belongs may forbid him to bring the case before the Court, or may itself undertake the proceedings in his place;
3. By an individual subject or citizen of an enemy Power, if the judgment of the national court injuriously affects his property in the cases referred to in Article 3, No. 2, except that mentioned in paragraph (b).

Art. 5. An appeal may also be brought on the same conditions as in the preceding article, by persons belonging either to neutral States or to the enemy, deriving their rights from and entitled to represent an individual qualified to appeal, and who have taken part in the proceedings before the national court. Persons so entitled may appeal separately to the extent of their interest. The same rule applies in the case of persons belonging either to neutral States or to the enemy who derive their rights from and are entitled to represent a neutral Power whose property was the subject of the decision.

Art. 6. When, in accordance with the above Article 3, the International Court has jurisdiction, the national courts cannot deal with a case in more than two instances. The municipal law of the belligerent captor shall decide whether the case may be brought before the International Court after judgement has been given in first instance or only after an appeal. If the national courts fail to give final judgment within two years from the date of capture, the case may be carried direct to the International Court.

Art. 7. If a question of law to be decided is covered by a treaty in force between the belligerent captor and a Power which is itself or whose subject or citizen is a party to the proceedings, the Court is governed by the provisions in the said treaty. In the absence of such provisions, the Court shall apply the rules of international law. If no generally recognized rule exists, the Court shall give judgment in accordance with the general principles of justice and equity. The above provisions apply equally to questions relating to the order and mode of proof. If, in accordance with Article 3, No. 2(c), the ground of appeal is the violation of an enactment issued by the belligerent captor, the Court will enforce the enactment. The Court may disregard failure to comply with the procedure laid down in the enactments of the belligerent captor, when it is of opinion that the of complying therewith are unjust and inequitable.

Art. 8. If the Court pronounces the capture of the vessel or cargo to be valid, they shall be disposed of in accordance with the laws of the belligerent captor. If it pronounces the capture to be null, the Court shall order restitution of the vessel or cargo, and shall fix, if there is occasion, the amount of the damages. If the vessel or cargo have been sold or destroyed, the Court shall determine the compensation to be given to the owner on this account. If the national court pronounced the capture to be null, the Court can only be asked to decide as to the damages.

Art. 9. The Contracting Powers undertake to submit in good faith to the decisions of the International Prize Court and to carry them out with the least possible delay.

PART II CONSTITUTION OF THE INTERNATIONAL PRIZE COURT

Art. 10. The International Prize Court is composed of judges and deputy judges, who will be appointed by the Contracting Powers, and must all be jurists of known proficiency in questions of international maritime law, and of the highest moral reputation. The appointment of these judges and deputy judges shall be made within six months after the ratification of the present Convention.

Art. 11. The judges and deputy judges are appointed for a period of six years, reckoned from the date on which the notification of their appointment is received by the Administrative Council established by the Convention for the pacific settlement of international disputes of the 29 July 1899. Their appointments can be renewed. Should one of the judges or deputy judges die or resign, the same procedure is followed for filling the vacancy as was followed for appointing him. In this case, the appointment is made for a fresh period of six years.

Art. 12. The judges of the International Prize Court are all equal in rank and have precedence according to the date on which the notification of their appointment was received (Article 11, paragraph 1), and if they sit by rota (Article 15, paragraph 2), according to the date on which they entered upon their duties. When the date is the same the senior in age takes precedence. The deputy judges when acting are assimilated to the judges. They rank, however, after them.

Art. 13. The judges enjoy diplomatic privileges and immunities in the performance of their duties and when outside their own country. Before taking their seat, the judges must swear, or make a solemn promise before the Administrative Council, to discharge their duties impartially and conscientiously.

Art. 14. The Court is composed of fifteen judges; nine judges constitute a quorum. A judge who is absent or prevented from sitting is replaced by the deputy judge.

Art. 15. The judges appointed by the following Contracting Powers: Germany, the United States of America, Austria-Hungary, France, Great Britain, Italy, Japan, and Russia, are always summoned to sit. The judges and deputy judges appointed by the other Contracting Powers sit by rota as shown in the table annexed to the present Convention; their duties may be performed successively by the same person. The same judge may be appointed by several of the said Powers.

Art. 16. If a belligerent Power has, according to the rota, no judge sitting in the Court, it may ask that the judge appointed by it should take part in the settlement of all cases arising from the war. Lots shall then be drawn as to which of the judges entitled to sit according to the rota shall withdraw. This arrangement does not affect the judge appointed by the other belligerent.

Art. 17. No judge can sit who has been a party, in any way whatever, to the sentence pronounced by the national courts, or has taken part in the case as counsel or advocate for one of the parties. No judge or deputy judge can, during his tenure of office, appear as agent or advocate before the International Prize Court nor act for one of the parties in any capacity whatever.

Art. 18. The belligerent captor is entitled to appoint a naval officer of high rank to sit as assessor, but with no voice in the decision. A neutral Power, which is a party to the proceedings or whose subject or citizen is a party, has the same right of appointment; if as the result of this last provision more than one Power is concerned, they must agree among themselves, if necessary by lot, on the officer to be appointed.

Art. 19. The Court elects its president and vice-president by an absolute majority of the votes cast. After two ballots, the election is made by a bare majority, and, in case the votes are equal, by lot.

Art. 20. The judges on the International Prize Court are entitled to travelling allowances in accordance with the regulations in force in their own country, and in addition receive, while the Court is sitting or while they are carrying out duties conferred upon them by the Court, a sum of 100 Netherlands florins per diem. These payments are included in the general expenses of the Court dealt with in Article 47, and are paid through the International Bureau established by the Convention of the 29 July 1899. The judges may not receive from their own Government or from that of any other Power any remuneration in their capacity of members of the Court.

Art. 21. The seat of the International Prize Court is at The Hague and it cannot, except in the cases of force majeure, be transferred elsewhere without the consent of the belligerents.

Art. 22. The Administrative Council fulfils, with regard to the International Prize Court, the same functions as to the Permanent Court of Arbitration, but only representatives of Contracting Powers will be members of it.

Art. 23. The International Bureau acts as registry to the International Prize Court and must place its offices and staff at the disposal of the Court. It has charge of the archives and carries out the administrative work. The secretary general of the International Bureau acts as registrar. The necessary secretaries to assist the registrar, translators and shorthand writers are appointed and sworn in by the Court.

Art. 24. The Court determines which language it will itself use and what languages may be used before it. In every case the official language of the national courts which have had cognizance of the case may be used before the Court.

Art. 25. Powers which are concerned in a case may appoint special agents to act as intermediaries between themselves and the Court. They may also engage counsel or advocates to defend their rights and interests.

Art. 26. A private person concerned in a case will be represented before the Court by an attorney, who must be either an advocate qualified to plead before a court of appeal or a high court of one of the Contracting States, or a lawyer practising before a similar court, or lastly, a professor of law at one of the higher teaching centres of those countries.

Art. 27. For all notices to be served, in particular on the parties, witnesses, or experts, the Court may apply direct to the Government of the State on whose territory the service is to be carried out. The same rule applies in the case of steps being taken to procure evidence. The requests for this purpose are to be executed so far as the means at the disposal of the Power applied to under its municipal law allow. They cannot be rejected unless the Power in question considers them calculated to impair its sovereign rights or its safety. If the request is

complied with, the fees charged must only comprise the expenses actually incurred. The Court is equally entitled to act through the Power on whose territory it sits. Notices to be given to parties in the place where the Court sits may be served through the International Bureau.

PART III PROCEDURE IN THE INTERNATIONAL PRIZE COURT

Art. 28. An appeal to the International Prize Court is entered by means of a written declaration made in the national court which has already dealt with the case or addressed to the International Bureau; in the latter case the appeal can be entered by telegram. The period within which the appeal must be entered is fixed at 120 days, counting from the day the decision is delivered or notified (Article 2, paragraph 2).

Art. 29. If the notice of appeal is entered in the national court, this Court, without considering the question whether the appeal was entered in due time, will transmit within seven days the record of the case to the International Bureau. If the notice of the appeal is sent to the International Bureau, the Bureau will immediately inform the national court, when possible by telegraph. The latter will transmit the record as provided in the preceding paragraph. When the appeal is brought by a neutral individual the International Bureau at once informs by telegraph the individual's Government, in order to enable it to enforce the rights it enjoys under Article 4, paragraph 2.

Art. 30. In the case provided for in Article 6, paragraph 2, the notice of appeal can be addressed to the International Bureau only. It must be entered within thirty days of the expiration of the period of two years.

Art. 31. If the appellant does not enter his appeal within the period laid down in Articles 28 or 30, it shall be rejected without discussion. Provided that he can show that he was prevented from so doing by force majeure, and that the appeal was entered within sixty days after the circumstances which prevented him entering it before had ceased to operate, the Court can, after hearing the respondent, grant relief from the effect of the above provision.

Art. 32. If the appeal is entered in time, a certified copy of the notice of appeal is forthwith officially transmitted by the Court to the respondent.

Art. 33. If, in addition to the parties who are before the Court, there are other parties concerned who are entitled to appeal, or if, in the case referred to in Article 29, paragraph 3, the Government who has received notice of an appeal has not announced its decision, the Court will await before dealing with the case the expiration of the period laid down in Articles 28 or 30.

Art. 34. The procedure before the International Court includes two distinct parts: the written pleadings and oral discussions. The written pleadings consist of the deposit and exchange of cases, counter-cases, and, if necessary, of replies, of which the order is fixed by the Court, as also the periods within which they must be delivered. The Parties annex thereto all papers and documents of which they intend to make use. A certified copy of every document produced by one Party must be communicated to the other Party through the medium of the Court.

Art. 35. After the close of the pleadings, a public sitting is held on a day fixed by the Court. At this sitting the Parties state their view of the case both as to the law and as to the facts. The Court may, at any stage of the proceedings, suspend speeches of counsel, either at the request

of one of the Parties, or on their own initiative, in order that supplementary evidence may be obtained.

Art. 36. The International Court may order the supplementary evidence to be taken either in the manner provided by Article 27, or before itself, or one or more of the members of the Court, provided that this can be done without resort to compulsion or the use of threats. If steps are to be taken for the purpose of obtaining evidence by members of the Court outside the territory where it is sitting, the consent of the foreign Government must be obtained.

Art. 37. The Parties are summoned to take part in all stages of the proceedings and receive certified copies of the minutes.

Art. 38. The discussions are under the control of the president or vice- president, or, in case they are absent or cannot act, of the senior judge present. The judge appointed by a belligerent Party cannot preside.

Art. 39. The discussions take place in public, subject to the right of a Government who is a Party to the case to demand that they be held in private. Minutes are taken of these discussions and signed by the president and registrar, and these minutes alone have an authentic character.

Art. 40. If a Party does not appear, despite the fact that it has been duly cited, or if a Party fails to comply with some step within the period fixed by the Court, the case proceeds without that Party, and the Court gives judgment in accordance with the material at its disposal.

Art. 41. The Court official notifies to the Parties decrees or decisions made in their absence.

Art. 42. The Court takes into consideration in arriving at its decision all the facts, evidence, and oral statements.

Art. 43. The Court considers its decision in private and the proceedings are secret. All questions are decided by a majority of the judges present. If the number of judges is even and equally divided, the vote of the junior judge in the order of precedence laid down in Article 12, paragraph 1, is not counted.

Art. 44. The judgment of the Court must give the reasons on which it is based. It contains the names of the judges taking part in it, and also of the assessors, if any; if is signed by the president and registrar.

Art. 45. The sentence is pronounced in public sitting, the parties concerned being present or duly summoned to attend; the sentence is officially communicated to the parties. When this communication has been made, the Court transmits to the national prize court the record of the case, together with copies of the various decisions arrived at an of the minutes of the proceedings.

Art. 46. Each party pays its own costs. The party against whom the Court decides bears, in addition, the costs of the trial, and also pays 1 per cent of the value of the subject-matter of the case as a contribution of the general expenses of the International Court. The amount of these payments is fixed in the judgment of the Court. If the appeal is brought by an individual, he will furnish the International Bureau with security to an amount fixed by the Court, for the purpose of guaranteeing eventual fulfilment of the two obligations mentioned in the preceding

paragraph. The Court is entitled to postpone the opening of the proceedings until the security has been furnished.

Art. 47. The general expenses of the International Prize Court are borne by the Contracting Powers in proportion to their share in the composition of the Court as laid down in Article 15 and in the annexed table. The appointment of deputy judges does not involve any contribution. The Administrative Council applies to the Powers for the funds requisite for the working of the Court.

Art. 48. When the Court is not sitting, the duties conferred upon it by Article 32, Article 34, paragraphs 2 and 3, Article 35, paragraph 1, and Article 46, paragraph 3, are discharged by a delegation of three judges appointed by the Court. This delegation decides by a majority of votes.

Art. 49. The Court itself draws up its own rules of procedure, which must be communicated to the Contracting Powers. It will meet to elaborate these rules within a year of the ratification of the present Convention.

Art. 50. The Court may propose modifications in the provisions of the present Convention concerning procedure. These proposals are communicated, through the medium of the Netherlands Government, to the Contracting Powers, which will consider together as to the measures to be taken.

PART IV FINAL PROVISIONS

Art. 51. The present Convention does not apply as of right except when the belligerent Powers are all parties to the Convention. It is further fully understood that an appeal to the International Prize Court can only be brought by a Contracting Power or the subject or citizen of a Contracting Power. In the cases mentioned in Article 5, the appeal is only admitted when both the owner and the person entitled to represent him are equally Contracting Powers or the subjects or citizens of Contracting Powers.

Art. 52. The present Convention shall be ratified and the ratifications shall be deposited at The Hague as soon as all the powers mentioned in Article 15 and in the table annexed are in a position to do so. The deposit of the ratifications shall take place, in any case, on the 30 June 1909, if the Powers which are ready to ratify furnish nine judges and nine deputy judges to the Court, qualified to validly constitute a Court. If not, the deposit shall be postponed until this condition is fulfilled. A minute of the deposit of ratifications shall be drawn up, of which a certified copy shall be forwarded, through the diplomatic channel, to each of the Powers referred to in the first paragraph.

Art. 53. The Powers referred to in Article 15 and in the table annexed are entitled to sign the present Convention up to the deposit of the ratifications contemplated in paragraph 2 of the preceding article. After this deposit, they can at any time adhere to it, purely and simply. A Power wishing to adhere, notifies its intention in writing to the Netherlands Government transmitting to it, at the same time, the act of adhesion, which shall be deposited in the archives of the said Government. The latter shall send, through the diplomatic channel, a certified copy of the notification and of the act of adhesion to all the Powers referred to in the preceding paragraph, informing them of the date on which it has received the notification.

Art. 54. The present Convention shall come into force six months from the deposit of the ratifications contemplated in Article 52, paragraphs 1 and 2. The adhesions shall take effect sixty days after notification of such adhesion has been received by the Netherlands Government, or as soon as possible on the expiration of the period contemplated in the preceding paragraph. The International Court shall, however, have jurisdiction to deal with prize cases decided by the national courts at any time after the deposit of the ratifications or of the receipt of the notification of the adhesions. In such cases, the period fixed in Article 28, paragraph 2, shall only be reckoned from the date when the Convention comes into force as regards a Power which has ratified or adhered.

Art. 55. The present Convention shall remain in force for twelve years from the time it comes into force, as determined by Article 54, paragraph 1, even in the case of Powers which adhere subsequently. It shall be renewed tacitly from six years to six years unless denounced. Denunciation must be notified in writing, at least one year before the expiration of each of the periods mentioned in the two preceding paragraphs, to the Netherlands Government, which will inform all the other Contracting Powers. Denunciation shall only take effect in regard to the Power which has notified it. The Convention shall remain in force in the case of the other Contracting Powers, provided that their participation in the appointment of judges is sufficient to allow of the composition of the Court with nine judges and nine deputy judges.

Art. 56. In case the present Convention is not in operation as regards all the Powers referred to in Article 15 and the annexed table, the Administrative Council shall draw up a list on the lines of that article and table of the judges and deputy judges through whom the Contracting Powers will share in the composition of the Court. The times allotted by the said table to judges who are summoned to sit in rota will be redistributed between the different years of the six-year period in such a way that, as far as possible, the number of the judges of the Court in each year shall be the same. If the number of deputy judges is greater than that of the judges, the number of the latter can be completed by deputy judges chosen by lot among those Powers which do not nominate a judge. The list drawn up in this way by the Administrative Council shall be notified to the Contracting Powers. It shall be revised when the number of these Powers is modified as the result of adhesions or denunciations. The change resulting from an adhesion is not made until 1 January after the date on which the adhesion takes effect, unless the adhering Power is a belligerent Power, in which case it can ask to be at once represented in the Court, the provision of Article 16 being, moreover, applicable if necessary. When the total number of judges is less than eleven, seven judges form a quorum.

Art. 57. Two years before the expiration of each period referred to in paragraphs 1 and 2 of Article 55 any Contracting Power can demand a modification of the provisions of Article 15 and of the annexed table, relative to its participation in the composition of the Court. The demand shall be addressed to the Administrative Council, which will examine it and submit to all the Powers proposals as to the measures to be adopted. The Powers shall inform the Administrative Council of their decision with the least possible delay. The result shall be at once, and at least one year and thirty days before the expiration of the said period of two years, communicated to the Power which made the demand. When necessary, the modifications adopted by the Powers shall come into force from the commencement of the fresh period. In faith whereof the Plenipotentiaries have appended their signatures to the present Convention. Done at The Hague, 18 October 1907, in a single copy, which shall remain deposited in the archives of the Netherlands Government, and duly certified copies of which shall be sent, through the diplomatic channel to the Powers designated in Article 15 and in the table annexed.

(Here follow signatures)

ANNEX TO ARTICLE 15

[Distribution of Judges and Deputy Judges by Countries for Each Year of the Period of Six Years]

<http://www.lib.byu.edu/~rdh/wwi/hague/hague11b.html>