



## **International Convention on Maritime Search and Rescue**

### **Background**

The International Convention on Maritime Search and Rescue was developed to provide assistance for any accident occurs in the middle of the sea. The establishment of the Convention was critically needed because there was no international regulation that fully accommodates the search and rescue operation thoroughly. Recalling the International Convention for the Safety of Life at Sea in which this Convention obligates every ship to go to the assistance of vessels in distress was enshrined both in tradition and in international treaties. As mentioned before, the Convention did not provide a thorough mechanism for search and rescue mission. Therefore, the establishment for the International Convention on Maritime Search and Rescuer was urgently needed in order to establish a proper safe and rescuer operation in future times. The International Convention on Maritime Search and Rescue was established based on the previous Convention; UNCLOS, International Conference on Safety Life of the Sea.

### **Concept**

Based on the preamble of the Convention, the main objective of this Convention is to develop an international safe and rescue plan that can be conducted to every accident that occurs around the globe and also to promote co-operation between other search and rescue organization in purpose to create a more effective search and rescue operation and all of these purpose shall be achieved solely based on previous Convention related to maritime affairs such as but not limited to UNCLOS and The International Conference on Safety Life of the Sea. Also in order to attain these objectives, the Convention establishes a preparatory e=measures and rescue co-ordination centers and subentries.

## **Entry into Force**

The International Convention on Maritime Search and Rescue was adopted on April 27<sup>th</sup>, 1979 and went into force in June 22<sup>nd</sup>, 1985. According to the Article V of the Convention:

1. The Convention shall enter into force 12 months after the date on which 15 states have become Parties to it in accordance with Article IV;
2. Entry into force States which ratify, accept, approve or accede to the Convention in accordance with Article IV after the condition prescribed in paragraph (1) has been met and before the Convention enters into force, shall be on the date of entry into force of the Convention;
3. Entry into force for States which ratify, accept, approve or accede to the Convention after the date on which the Convention enters into force shall be 30 days after the date of deposit of an instrument in accordance with Article IV.
4. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to the Convention in accordance with Article III shall apply to the
5. Convention, as amended, and the Convention, as amended, shall enter into force for a state depositing such an instrument 30 days after the date of its deposits.

## **Main Features**

The International Convention on Maritime Search and Rescue consist of 8 Articles and 6 Annexes. As stated within the Convention, every member states that ratifies the Convention is obligated to adopt all necessary measures in purpose to attain the objective of the Convention and also its Annex.

Regarding to the outline of the Convention, the Articles provide general regulation about the mechanism of the adoption of the Convention, the general ideas of the obligation, amendments and etc. Whilst upon its Annex, it describes mostly on the requirements and the recommendation of all Parties to comply. According to Chapter 1 of the Annex, it provides on the definition and terms that will be used accord-

ingly within the Convention.

In Chapter 2, it oversees the obligation of all Parties to conduct search and rescue service individually or by cooperating with other member states. Such efforts have to at least consist of; legal framework, assignment of responsibility, organization of available resources, communication facilities, coordination and operational functions and processes to improve the service including planning domestic and international operative relationships and training. Within this Chapter, it has to be noticed that the search and rescue have to be conducted to every individual in distress at sea or taking refuge in remote area or can be acknowledged as the individuals who managed to take shelter on coast area. Chapter 2 also oversees the role of Secretary-General to be notified on any arrangements made by Parties, individually or with cooperation with other member states. Referring to Chapter 1, the Secretary-General shall be acknowledged as the Secretary-General of the International Maritime Organization (IMO). Within this Chapter, it also regulates the necessity in establishment of rescue coordination centers, sub centers and the partnering with aeronautical services as well.

As mentioned before, Parties are encouraged to co-operate in order to develop a more effective search and rescue operations. In which specifically regulated in Chapter 3 that if in any chance there's a cooperation between member states, therefore it can be acknowledged that each member states agreed to authorize every measures in implementing search and rescue operation. Such measures are but not limited to allowing an immediate entry to its territorial sea in purpose on conducting the search and rescue operation.

In conducting the operations, the procedures itself has to be organized accordingly. According to Chapter 4, each rescue coordination center and subs center have to be able to produce and maintain an up to date information that will be used to conduct the search and rescue mission. Besides information, rescue coordination center and sub center must have a detailed plans that can be used for the operation and will be developed periodically. According to this Chapter, there are three phases that shall be used in order to determine whether search and rescue operation have to be conducted or not. The first phase would be the uncertainty phase, this phase can be acknowledged when a person is un-

able to be contacted upon or vessels has failed to arrive in expected position. Second would be the alert phase, this phase can be acknowledge when a person or vessels aren't responding to any of contacts made. Last phase is the distress phase which there is a clear and positive information that a person or vessels is in dire need of assistance. As regulated in Chapter 6, every person or vessels who are willing to travel the sea for a certain business needs to have a clear identification in order to ease the search and rescue centers to give an assistance if by any chance they are caught in a distress situation.

Referring to Chapter 5, the search and rescue operation can be terminated in cases; the search and rescue operation is a success and all survivors has passed based on reliable information. However, the operation can also be terminated if by any chance the operation becomes impracticable.

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## **2012 Cape Town Agreement On The Implementation Of The Provisions Of The 1993 Torremolinos Protocol Relating To The 1977 International Convention For The Safety Of Fishing Vessels**

### **Background**

1977 International Convention for the Safety of Fishing Vessels (1977 Convention) was the first International Convention that regulates the safety standard for a fishing vessels. Before the adoption of the 1977 Convention, safety standard for ships was regulated by 1974 International Convention for the Safety of Life at Sea (SOLAS Convention). Despite the existence of the SOLAS Convention that regulates the minimum standard of safety in construction, equipment, and operation of ships, the differences in design and operation between fishing vessels and other types of ship have proved to be an obstacle to their inclusion in the SOLAS Convention.

The 1993 Torremolinos Protocol, adopted in April 1993, was created because 1977 Convention was unlikely to enter into force, largely for technical reasons. The regulations provided in the 1993 Torremolinos Protocol updates, amends, and absorbs the parent Convention, taking into consideration the technological progress between 1977 and 1993.

As the 1993 Torremolinos Protocol was also unlikely to enter into force by the year 2000s, International Maritime Organization (IMO) started reviewing steps needed to increase ratifications by States in order to ensure that this treaty regarding safety of fishing vessels enter into force. By the year 2012, a diplomatic conference in Cape Town, South Africa, held from 9 to 11 October, adopted the “Cape Town Agreement on the Implementation of the Provisions of the 1993 Torremolinos Protocol relating to the 1977 International Convention for the Safety of Fishing Vessels” (Cape Town Agreement). The provisions that was amended during the conference include the requirements of entry into force of the treaty

## **Concept**

Under the Article 3 of the 1977 Convention, the Convention shall apply specifically to sea-going fishing vessels entitled to fly the flag of a States which is a Party. The reason for the adoption of a specific Convention related to fishing vessels, according to IMO, is because the differences in design and operation between fishing vessels and other types of ship. For example, while other vessels usually load cargo in port, fishing vessels must sail empty and load their cargo in the middle of the sea. This difference in operation and design requires different safety standard compared to other types of ship. This is the reason why fishing vessels are exempt from almost all requirements of the SOLAS Convention.

The Preamble of 1977 Convention states that the purpose of this convention is to establish in common agreement uniform principles and rules concerning the construction and equipment of fishing vessels directed to the safety of such vessels and their crews.

### **Entry into Force**

The 1977 Convention under the provisions of Article 10 states that the convention shall enter into force 12 months after the date in which not less than 15 States have either signed it without reservation as to ratification, acceptance, or approval or have deposited the requisite instruments of ratification, acceptance, approval, or accession. The provisions regarding entry into force also requires that the aggregate of fishing vessels of those 15 states constitutes not less than 50 percent by the number of the world's fleet of fishing vessels of 24 meters in length and over. By the late 1980s, the entry into force of the 1977 Convention was considered to be an impossibility, largely because the aggregate number of fishing vessels owned by the signatory states did not meet the requirements, IMO decided to prepare a replacement in the form of a Protocol.

The 1993 Torremolinos Protocol's requirement for an entry into force is provided under the Article 10, where the requirement of not less than 50 percent of the world's fishing vessels was replaced by the requirement of 14.000 fishing vessels not less than 24 meters in length. Despite the significant reduce of the aggregate number of fishing vessels required, by the decade of 2000s, the 1993 Torremolinos Protocol was also unlikely to enter into force.

To tackle the problem of the lack of ratification or accession, IMO further reduce the aggregate number of ships requirement. Now under the provisions of Article 4 of the Cape Town Agreement, the requirement of 14.000 ships was replaced by the aggregate number of 3.600 ships of 24 m in length from 22 States.

As of December 2015, the Cape Town Agreement haven't fulfill the requirements for an entry into force.

## **Main Features**

The 1977 Convention laid the groundwork for future amendments. Article 4 of the 1977 Convention states that a State Party has the authority to issue a certificate to declare that a ship has already meet the safety standard, and other State Parties has the obligation to regard that certificate as having the same validity as a certificate issued by them, unless there are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially with the particulars of that certificate. The main safety standard is provided under the Annex. Under the provisions explained in the Annex, the conventions only apply to new fishing vessels of 24 meters in length and over. The provisions in the Annex exempt toher types of ships, such as ships exclusively used for sport or recreation, research and training, processing fish or other living resources of the sea, and fish carriers. The main provisions regarding safety



standard is provided in Chapter II (regarding Construction, Watertight Integrity and Equipment), Chapter III (regarding the Stability and Associated Seaworthiness), Chapter IV (regarding Machinery and Electrical Installations, and Periodically Unattended Machinery Spaces), Chapter V (regarding Fire Protection, Fire Detection, Fire Extinction, and Fire Fighting), Chapter VI (regarding the Protection of the Crew), Chapter VII (regarding Life-Saving Appliances), Chapter VIII (regarding emergency procedures, mudters, and drills), Chapter IX (regarding communications), and Chapter X (regarding navigational equipment),

The 1993 Tollemorinos Protocol, under the provisions of Article 1, states that the Protocol shall give effect to the provisions of said protocol and regulations under the Annex of the 1977 Convention. This means that the ratification or accession of the 1993 Tollemorinos Protocol is also a ratification or accession of the regulations under 1977 Convention's Annex. Even though the provisions of 1993 Tollemorinos Protocol refer to 1977's Annex, the Protocol also have their own Annex that update the safety standard of the fishing vessels. The updated version includes provisions regarding minimum safety standard of, inter alia, automatically controlled machinery spaces, improved lifesaving appliances, immersion suits and thermal protective aids, satellite communications systems and other components of the global maritime distress and safety system.

The amendments to the provisions of the Cape Town Agreement are largely correspond to IMO's aim to tackle the problem of the lack of ratification by States. Not much is changed regarding the safety standard of the ships provided in 1977 Convention's and 1993 Tollemorinos Protocol's Annex.

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## **Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity**

### **Background**

The Convention on the Non – Applicability of Statutory Limitations to War Crimes and Crimes against Humanity is one of the “door opener” to the regulations of war crimes and crimes against humanity nowadays. It was made with an understanding that the gravest crimes of all should not fall within any statutory limitations and all states should be responsible for these types of crimes that fall within the jurisdiction of its state.

According to the ICRC, the Convention was occasioned by the fear, which grew in the mid-1960’s, that German war criminals of World War II, who had not yet been apprehended, might escape prosecution because of the expiration of the periods of limitation applicable to their crimes. The Convention was prepared by the Human Rights Commission and thereafter adopted and opened for signature by the General Assembly of the United Nations. Finally it was adopted and opened for signature, ratification and accession by General Assembly resolution 2391 (XXIII) on 26 November 1968.

The preamble to the 1968 UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity recognizes that “*it is necessary and timely to affirm in international law, through this Convention, the principle that there is no period of limitation for war crimes and crimes against humanity, and to secure its universal application*”. Aware of the fact that Crimes against Humanity and War Crimes are among the gravest crimes in International Law and are not crimes against a single victim in an isolated context, whereby forgiveness may be the prerogative of the victim. It is the crimes where the humanity itself is affected by these crimes because it is affected by the victimization of a given human group. Most of the time these types of crime did not portrayed as a crime of an international group or community but rather as a national or even a traditional victim of domestic crime. That is the reason why there are several States claiming that these types of crime does not fall

under the jurisdiction of International Organizations since it was not the crime of International community. The issue of this crime itself is rather retributive and symbolic instead of hatred. Crimes Against Humanity and War Crimes are International crimes that rise to the level of victimizing a large segment of given society that is part of the international community.

## **Concept**

It is stated in the preamble that the effective punishment of war crimes and crimes against humanity is an important element in the prevention of such crimes, the protection of human rights and fundamental freedoms, the encouragement of confidence, the furtherance of co-operation among peoples and the promotion of international peace and security, Noting that the application to war crimes and crimes against humanity of the rules of municipal law relating to the period of limitation for ordinary crimes is a matter of serious concern, since it prevents the prosecution and punishment of persons responsible for those crimes. Recognizing that it is necessary and timely to affirm in international law, through this Convention asserting there is no period of limitation for war crimes and crimes against humanity

## **Entry into Force**

In accordance with the provisions of Article VIII, the Convention entered into force on 11 November 1970, on the ninetieth day after the date of the deposit with the Secretary General of the United Nations.

According to Article VIII of the Convention:

1. This Convention shall enter into force on the ninetieth day after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the tenth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day after the date of the deposit of its own instrument of ratification or accession.

## Main Feature

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity consists of Preamble and 11 Article.

Stated specifically in Article II jo. Article I of the Convention that the non-applicability of statutory limitations shall apply to the crimes that can be classified as War Crimes defined in the Charter of the International Military Tribunal, Nurnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, particularly the “grave breaches” enumerated in the Geneva Conventions of 12 August 1949 for the protection of war victims; and the Definition of Crimes Against Humanity defined in e Charter of the International Military Tribunal, Nurnberg, of 8 August 1945 and confirmed 2 by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, eviction by armed attack or occupation and inhuman acts resulting from the policy of apartheid , and the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, even if such acts do not constitute a violation of the domestic law of the country in which they were committed. Moreover the provisions definition of War Crimes provisions will apply to the representative of the State authority and private individuals who participate in or directly incite others of crimes.

In recent years of 1974 and 1998 the Convention on the Non-Applicability of Statutory Limitation was being supported with the existence of other Convention which strengthen the idea of no statutory limitations to War Crimes and Crimes Against Humanity. In 1974, European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes provides:

*“Each Contracting State undertakes to adopt any necessary measures to secure that statutory limitation shall not apply to the prosecution of the following offences, or to the enforcement of the sentences imposed for such offences, in so far as they are punishable under its domestic law:*

1. the crimes against humanity specified in the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948 by the General Assembly of the United Nations;

2. (a) the violations specified in Article 50 of the 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Article 51 of the 1949 Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Article 130 of the 1949 Geneva Convention relative to the Treatment of Prisoners of War and Article 147 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, (b) any comparable violations of the laws of war having effect at the time when this Convention enters into force and of customs of war existing at that time, which are not already provided for in the above-mentioned provisions of the Geneva Conventions, when the specific violation under consideration is of a particularly grave character by reason either of its factual and intentional elements or of the extent of its foreseeable consequences;
3. Any other violation of a rule or custom of international law which may hereafter be established and which the Contracting State concerned considers according to a declaration under Article 6 as being of a comparable nature to those referred to in paragraph 1 or 2 of this article.

In 1998 ICC Statute specifically in Article 29 stating:

*“The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.”*

According to Article III and IV States Parties undertake to take all necessary domestic measures in both national and international way to make a possibility of the persons referred in article II to be brought into justice in accordance with international law and to ensure that statutory or other limitations shall not apply to the prosecution and punishment of the crimes referred to in articles I and II of the convention. If there are existing limitations, it shall be abolished with the existence of this Convention.

As the period of the convention end in ten years from the date on which this Convention enters into force, a request for the revision of the Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations. (GPY)