

19. CONVENTION ON THE LAW APPLICABLE TO TRAFFIC ACCIDENTS¹

(Concluded 4 May 1971)

The States signatory to the present Convention,
Desiring to establish common provisions on the law applicable to civil non-contractual liability arising from traffic accidents,
Have resolved to conclude a Convention to this effect and have agreed upon the following provisions –

Article 1

The present Convention shall determine the law applicable to civil non-contractual liability arising from traffic accidents, in whatever kind of proceeding it is sought to enforce this liability.
For the purpose of this Convention, a traffic accident shall mean an accident which involves one or more vehicles, whether motorised or not, and is connected with traffic on the public highway, in grounds open to the public or in private grounds to which certain persons have a right of access.

Article 2

The present Convention shall not apply –

- (1) to the liability of manufacturers, sellers or repairers of vehicles;
- (2) to the responsibility of the owner, or of any other person, for the maintenance of a way open to traffic or for the safety of its users;
- (3) to vicarious liability, with the exception of the liability of an owner of a vehicle, or of a principal, or of a master;
- (4) to recourse actions among persons liable;
- (5) to recourse actions and to subrogation in so far as insurance companies are concerned;
- (6) to actions and recourse actions by or against social insurance institutions, other similar institutions and public automobile guarantee funds, and to any exemption from liability laid down by the law which governs these institutions.

Article 3

The applicable law is the internal law of the State where the accident occurred.

Article 4

Subject to Article 5, the following exceptions are made to the provisions of Article 3 –

- a) where only one vehicle is involved in the accident and it is registered in a State other than that where the accident occurred, the internal law of the State of registration is applicable to determine liability

¹ This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under “Conventions”. For the full history of the Convention, see Hague Conference on Private International Law, *Actes et documents de la Onzième session (1968)*, Tome III, *Accidents de la circulation routière* (223 pp.).

- towards the driver, owner or any other person having control of or an interest in the vehicle irrespective of their habitual residence,
- towards a victim who is a passenger and whose habitual residence is in a State other than that where the accident occurred,
- towards a victim who is outside the vehicle at the place of the accident and whose habitual residence is in the State of registration.

Where there are two or more victims the applicable law is determined separately for each of them.

- b) Where two or more vehicles are involved in the accident, the provisions of a) are applicable only if all the vehicles are registered in the same State.
- c) Where one or more persons outside the vehicle or vehicles at the place of the accident are involved in the accident and may be liable, the provisions of a) and b) are applicable only if all these persons have their habitual residence in the State of registration. The same is true even though these persons are also victims of the accident.

Article 5

The law applicable under Articles 3 and 4 to liability towards a passenger who is a victim governs liability for damage to goods carried in the vehicle and which either belong to the passenger or have been entrusted to his care.

The law applicable under Articles 3 and 4 to liability towards the owner of the vehicle governs liability for damage to goods carried in the vehicle other than goods covered in the preceding paragraph.

Liability for damage to goods outside the vehicle or vehicles is governed by the internal law of the State where the accident occurred. However the liability for damage to the personal belongings of the victim outside the vehicle or vehicles is governed by the internal law of the State of registration when that law would be applicable to the liability towards the victim according to Article 4.

Article 6

In the case of vehicles which have no registration or which are registered in several States the internal law of the State in which they are habitually stationed shall replace the law of the State of registration. The same shall be true if neither the owner nor the person in possession or control nor the driver of the vehicle has his habitual residence in the State of registration at the time of the accident.

Article 7

Whatever may be the applicable law, in determining liability account shall be taken of rules relating to the control and safety of traffic which were in force at the place and time of the accident.

Article 8

The applicable law shall determine, in particular –

- (1) the basis and extent of liability;
- (2) the grounds for exemption from liability, any limitation of liability, and any division of liability;
- (3) the existence and kinds of injury or damage which may have to be compensated;
- (4) the kinds and extent of damages;
- (5) the question whether a right to damages may be assigned or inherited;
- (6) the persons who have suffered damage and who may claim damages in their own right;
- (7) the liability of a principal for the acts of his agent or of a master for the acts of his servant;
- (8) rules of prescription and limitation, including rules relating to the commencement of a period of prescription or limitation, and the interruption and suspension of this period.

Article 9

Persons who have suffered injury or damage shall have a right of direct action against the insurer of the person liable if they have such a right under the law applicable according to Articles 3, 4 or 5.

If the law of the State of registration is applicable under Articles 4 or 5 and that law provides no right of direct action, such a right shall nevertheless exist if it is provided by the internal law of the State where the accident occurred.

If neither of these laws provides any such right it shall exist if it is provided by the law governing the contract of insurance.

Article 10

The application of any of the laws declared applicable by the present Convention may be refused only when it is manifestly contrary to public policy ("*ordre public*").

Article 11

The application of Articles 1 to 10 of this Convention shall be independent of any requirement of reciprocity. The Convention shall be applied even if the applicable law is not that of a Contracting State.

Article 12

Every territorial entity forming part of a State having a non-unified legal system shall be considered as a State for the purposes of Articles 2 to 11 when it has its own legal system, in respect of civil non-contractual liability arising from traffic accidents.

Article 13

A State having a non-unified legal system is not bound to apply this Convention to accidents occurring in that State which involve only vehicles registered in territorial units of that State.

Article 14

A State having a non-unified legal system may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its legal systems or only to one or more of them, and may modify its declaration at any time thereafter, by making a new declaration. These declarations shall be notified to the Ministry of Foreign Affairs of the Netherlands and shall state expressly the legal systems to which the Convention applies.

Article 15

This Convention shall not prevail over other Conventions in special fields to which the Contracting States are or may become Parties and which contain provisions concerning civil non-contractual liability arising out of a traffic accident.

Article 16

The present Convention shall be open for signature by the States represented at the Eleventh Session of the Hague Conference on Private International Law. It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 17

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 16. The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 18

Any State not represented at the Eleventh Session of the Hague Conference on Private International Law which is a Member of this Conference or of the United Nations or of a specialised agency of that Organisation, or a Party to the Statute of the International Court of Justice may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 17.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands. The Convention shall enter into force for a State acceding to it on the sixtieth day after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration shall be deposited at the Ministry of Foreign Affairs of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State having declared to accept the accession on the sixtieth day after the deposit of the declaration of acceptance.

Article 19

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification indicated in the preceding paragraph.

Article 20

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 17, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 21

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 16, and to the States which have acceded in accordance with Article 18 of the following –

- a) the signatures and ratifications referred to in Article 16;
- b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 17;
- c) the accessions referred to in Article 18 and the dates on which they take effect;
- d) the declarations referred to in Articles 14 and 19;
- e) the denunciations referred to in the third paragraph of Article 20.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at The Hague, on the 4th day of May, 1971, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Eleventh Session of the Hague Conference on Private International Law.