
A Commentary

C.H. BECK • HART • NOMOS

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C.H.BECK · HART · NOMOS
Article 32

Immunites of warships and other government ships operated for non-commercial purposes

With such exceptions as are contained in subsection A and in Articles 30 and 31, nothing in this Convention affects the immunites of warships and other government ships operated for non-commercial purposes.


Cases: The Charkeih (1873) LR 4 A&E 59 (UK); The Prins Frederik (1920) 4 Dods. 451 (UK); The Parlement Beige (1880) 5 PD 197 (UK); ITLOS, The ‘ARA Libertad’ (Argentina v. Ghana), Provisional Measures, Order of 15 December 2012, ITLOS Reports (2012), 332, Chung Chi Cheung v. The King (1938) 4 All ER 786 (UK); Rechtbank Amsterdam (District Court of Amsterdam), Wyrimueller Salvage BV v. ADM Naval Services, Judgment of 19 November 1987, NYL 20 (1989), 294, The Schooner Exchange v. McFadden, 11 US 116 (1812)

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In the early part of the twentieth century, a number of treaties dealing with the liabilities of ships under private maritime law generally excluded warships and vessels on public service from their application. A general regime relating to the immunity of State vessels was set forth in the 1926 International Convention for the Unification of Certain Rules Concerning the Immunity of State-Owned Ships. Although it received limited ratifications, it helped influence domestic practice on immunity of State vessels. The general principle of immunity was recognised by the Institut de Droit International’s Resolution of 1928. When the 1930 Hague Codification Conference failed to produce an agreement on the law of the sea, the matter received no further attention until the International Law Commission began its preparatory work for UNCLOS I.

The Convention on the Territorial Sea and the Contiguous Zone (CTSCZ) was developed against a background of increasing restrictions on the immunity of public vessels. In the light of the...
Article 32

Immunities of warships and other government ships operated for non-commercial purposes

With such exceptions as are contained in subsection A and in Articles 30 and 31, nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

Bibliography:
James Crawford, Execution of Judgments and Foreign Sovereign Immunity, AJIL 75 (1981), 820-869;

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I. Purpose and Function

This article restates the immunity under general international law for warships and vessels operated for government non-commercial purposes. This position continues except as provided for in Arts. 30 and 31.

It is not clear if Art. 32 regulates immunity or merely references an existing rule of general international law. It can be contrasted with Art. 95, which clearly stipulates that warships on the high seas enjoy complete immunity from States other than the flag State. Art. 32 is more complex since it does not explicitly state a right of immunity, but rather relies upon the existence of a general right and subjects this to certain conventional exceptions. This aspect of Art. 32 was at issue in the ARA Libertad Case. The Tribunal decided that it had prima

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face jurisdiction to deal with provisional measures, since Ghana and Argentina were in dispute about the meaning of Art. 32, but it did not explicitly determine the meaning of Art. 32. However, Judges Wolfrum and Cot issued a strongly worded disagreement with the Tribunal's reasoning in their Joint Separate Opinion, which explicitly categorized Art. 32 as a rule of reference and not a rule of incorporation.

As indicated in the commentary on Arts. 30 and 31, the Convention does not except certain public vessels from the prescriptive jurisdiction of the coastal State. As such, warships and other non-commercial government vessels remain subject to the requirements of innocent passage under Arts. 19-21, and coastal State laws and regulations adopted in conformity with Arts. 21 and 22. They also remain subject to the coastal State's right of protection against non-innocent passage under Art. 25.

II. Historical Background

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26 See for example the Tribunal's remarks in respect of Art. 31 in the ITLOS, The ARA Libertad Case (Argentina v. Ghana), Provisional Measures, Order of 15 December 2012, ITLOS Reports (2012), 332, para. 64.