

MINISTERE DES AFFAIRES ETRANGERES

Décret n° 2004-1144 du 17 mai 2004, portant publication de la convention entre le gouvernement de la République Tunisienne et le gouvernement de la République Populaire de Chine dans le domaine du transport maritime.

Le Président de la République,

Sur proposition du ministre des affaires étrangères,

Vu la loi n° 2003-55 du 29 juillet 2003, portant approbation de la convention entre le gouvernement de la République Tunisienne et le gouvernement de la République Populaire de Chine dans le domaine du transport maritime, conclue à Tunis le 16 avril 2002,

Vu le décret n° 84-1242 du 20 octobre 1984, fixant les attributions du ministère des affaires étrangères,

Vu le décret n° 2003-2244 du 27 octobre 2003, portant ratification de la convention entre le gouvernement de la République Tunisienne et le gouvernement de la République Populaire de Chine dans le domaine du transport maritime, conclue à Tunis le 16 avril 2002.

Décète :

Article premier. - Est publiée au Journal Officiel de la République Tunisienne, en annexe au présent décret, la convention entre le gouvernement de la République Tunisienne et le gouvernement de la République Populaire de Chine dans le domaine du transport maritime, conclue à Tunis le 16 avril 2002.

Art. 2. - Le Premier ministre et les ministres concernés sont chargés, chacun en ce qui le concerne, de l'exécution du présent décret qui sera publié au Journal Officiel de la République Tunisienne.

Tunis, le 17 mai 2004.

Zine El Abidine Ben Ali

*Agreement between
the Government of the Republic of Tunisia
And The Government of the People's Republic of China
on Maritime Transport*

The Government of the Republic of Tunisia and the Government of the People's Republic of China (*hereinafter referred to as « the Contracting Parties »*) ;

For the purpose of further developing friendly relations between the two countries, strengthening their cooperation in the field of maritime transport ;

Adhering to international maritime agreements which both Contracting Parties implement ;

On the basis of equality and mutual benefit, freedom of navigation and the principle of non-discrimination ;

Have concluded as follows :

Article 1
Definitions

In this agreement :

1. The term of « *Vessel* » means any merchant vessel registered in the territory of one Contracting Party in accordance with its national law, flying the national flag of this Contracting Party and engaged in international maritime transport, including merchant vessels under flag of a third state acceptable to the other Contracting Party and owned or operated by shipping companies of one Contracting Party. This term, however, shall not include :

- ❖ Warships ;
- ❖ Fishing ships ;
- ❖ Scientific research vessels ; and
- ❖ Other public ships built and used for non-commercial purpose.

2. The term of « *Members of the crew* » means the master and other persons working or servicing on board ship, who hold the identity documents as referred to in article 8 of this Agreement and whose names are included in the crew list of the vessel.
3. The term « *Shipping companies* » means any economic entity in compliance with the following conditions :
 - ❖ To be established in the territory of one Contracting Party and have its head office therein ;
 - ❖ To undertake all the civil responsibilities independently ;
 - ❖ To be engaged in the business of international maritime transport with its owned or operated vessels.
4. The term of « *Port* » means international commercial ports of the Contracting Parties open to foreign vessels.
5. The term of « *Competent authorities* » means :
 - ❖ In the Republic of Tunisia : *The Ministry in charge of the merchant marine or such other body authorized to perform merchant shipping or related maritime functions.*
 - ❖ In the People's Republic of China : *The Ministry of Communications.*

Article 2 *Rights of operating*

1. Vessels of either Contracting Party have the right to sail between the international commercial ports of both Contracting Parties open to foreign vessels to engage in cargo and passenger transport between the two Contracting Parties or between either Contracting Party and a third country.
2. The provisions in paragraph 1 of this Article do not affect the right of commercial vessels of a third country in the transport of passengers and cargo between the Contracting Parties.

Article 3

Cabotage

1. This Agreement does not apply to cabotage and inland water transport as well as activities reserved by either Contracting Party to its national organizations in accordance with its national laws, such as towage operation, piloting, salvage and port services in its territorial sea and inland waters.
2. While vessels of one Contracting Party sail from one port of the other Contracting Party to another in order to load cargo abroad or unload cargo from abroad, it shall not be regarded as cabotage and inland water transport. The same goes with passenger transport.

Article 4

Cooperation

Both Contracting Parties encourage their respective maritime authorities, and their maritime and port organizations and enterprises in particular, to cooperate, including but not limited to, in the following aspects :

- a. to promote maritime and port development of both Contracting Parties on the basis of equality and mutual benefit, and eliminate any obstacles which might hamper the development thereof ;
- b. to make full and effective use of the maritime fleet of the Contracting Parties so as to satisfy the transport demand for their foreign trade ;
- c. to ensure the safety of navigation, including the safety of vessel, members of the crew, passenger and cargo, and the protection of environment ;
- d. to enhance business, scientific and technical contacts and exchanges of experiences ;
- e. to exchange information on activities of international organizations and on international maritime agreements.

Article 5
Treatment of vessels in port

1. Each Contracting Party shall mutually grant vessels of the other Contracting Party the most-favoured-nation treatment in respects of port access, paying port dues, charges and tonnage dues ; proceeding customs, quarantine and other formalities in port ; berthing, shifting, loading/unloading cargo, embarking/disembarking passengers ; as well as in supplying provisions for vessels, members of the crew and passengers.
2. Port facilities and piloting services of one Contracting Party shall be provided to vessels of the other Contracting Party in way of the most-favoured-nation treatment.
3. The payment of port charges and dues by a vessel of a Contracting Party in a port of the other Contracting Party shall be made in currency freely convertible in accordance with the applicable internal law of the other Contracting Party.
4. The internal law relating to fiscal matters in force in one Contracting Party shall apply to all supplies and spare parts taken aboard by vessels of the other Contracting Party in the ports of the former Contracting Party.

Article 6
Facilitation of transport

The Contracting Parties shall, within the limits of their respective laws and regulations, take all appropriate measures to facilitate and expedite maritime transport to avoid unnecessary delay of vessels, and simplify and expedite as much as possible the relevant procedures of vessels.

Article 7
Documentation of vessels

Each Contracting Party recognizes the certificates of nationality and other ship's documents held by vessels of the other Contracting Party and issued by the competent authorities of the flag state.

2. Vessels of one Contracting Party holding valid tonnage certificates issued in compliance with the International Convention on Tonnage Measurement of Ships, 1969 and accepted by the other Contracting Party shall not be re-measured in the ports of the other Contracting Party. All dues and charges affected on the tonnage of vessels shall be calculated and collected thereof.

Article 8

Identity documents of the members of the crew

1. Each Contracting Party recognizes the identity documents issued by the competent authorities of the other Contracting Party for its members of the crew. These identity documents are :
 - ❖ for the Tunisian crew : ♦ *Seaman's book*, or
♦ *Seaman's identity declaration*.
 - ❖ for the Chinese crew : « *Seafarer's passport of the People's Republic of China* » ;
2. The identity documents held by members of the crew of a third country employed on board vessels of one Contracting Party which are issued by the relevant authorities of that third country shall also be recognized as valid documentation if such documents are sufficient as passports or as passport substitutes in accordance with the laws and regulations of the other Contracting Party. However, when these members of the crew are active away from their vessels, they shall hold proofs of their employment on board their vessels.

Article 9

Stop over by members of the crew

1. During the stay of a vessel of one Contracting Party in the port of the other Contracting Party, members of the crew of the vessel holding the identity documents as referred to in Article 8 of this Agreement may go ashore, without visa, and stop over in the city or town where the port is located in accordance with the relevant regulations of the staying country, provided that the master of the vessel has, in accordance with the regulations of the port, submitted the crew list to the relevant authorities of the port.

2. Sick members of the crew requiring hospitalization in the territory of the other Contracting Party shall be permitted by the relevant authorities of the other Contracting Party to remain in hospital for the time necessary for such treatment and then return to their home country by means of traffic or proceed to another port of that Contracting Party to join their vessels.
3. When the above-mentioned members of the crew leave and return to their vessels, they shall go through the formalities in force in ports for passport control and customs control.

Article 10

Entry, departure and transit by members of the crew

1. Members of the crew of one Contracting Party holding the identity documents as referred to in Article 8 of this Agreement may enter, leave or transit the territory of the other Contracting Party by means of any traffic as passengers for reasons of joining their vessels, transferring to another vessel, being repatriated or for other reasons acceptable by the relevant competent authorities of the other Contracting Party after they obtain visas from the relevant competent authorities of the other Contracting Party who shall issue the visas in shortest possible time.
2. Each Contracting Party reserves its right to refuse the entry into its territory by members of the crew whom it considers undesirable, even though these members of the crew have the identity documents as referred to in Article 8 of this Agreement.
3. The provisions in this Agreement do not affect the laws and regulations of each Contracting Party concerning the entry, stay and departure by foreigners.

Article 11

Mutual contact and meeting

The master of a vessel of each Contracting Party or his designated members of the crew may contact and meet with the official representatives of their country and ship-owners or their representatives, or vice versa, after they have completed the procedures stipulated by relevant laws and regulations of the staying country.

Article 12
Internal affairs on board vessel

1. During the stay of vessels, members of the crew, passengers and cargo of one Contracting Party in the territory of the other Contracting Party, they shall be subject to the relevant laws and regulations of the other Contracting Party.
2. Neither the relevant authorities of one Contracting Party shall interfere in internal affairs on board vessels of the other Contracting Party which are in the territorial sea or ports of one Contracting Party, nor shall the judicial authorities of one Contracting Party exercise its judicial powers over the offence on board vessels of the other Contracting Party, unless it is so required or agreed to by the master, diplomatic representatives or consular officials of the other Contracting Party, except where :
 - a. the offence on board the vessel involves the territory of one Contracting Party or its nationals ;
 - b. the result of the offence harms the public order or security of one Contracting Party ;
 - c. the offence on board the vessel involves persons other than the members of the crew of the vessel ; or
 - d. measures taken by one Contracting Party to suppress illicit traffic in narcotic drugs or psychotropic substances.
3. When the court or other relevant authorities of one Contracting Party intend to adopt any compulsory measure or exercise official investigation on board a vessel of the other Contracting Party which is in the territorial sea or port of one Contracting Party under the circumstances mentioned in paragraph 2 of this Article, it shall be notified in advance to a diplomatic representative or consular official of the other Contracting Party and convenience shall be provided to that representative or official for his contact with the vessel. However, the notice may be given simultaneously with the action to be done under emergency.

4. The provisions in paragraph 2 of this Article do not affect the rights of supervision and investigation of each Contracting Party under its national laws.

Article 13

Incident

1. Should a vessel of one Contracting Party encounter a danger or other incident in the territorial sea or the vicinal water of the other Contracting Party, the relevant authorities of the other Contracting Party shall render the same possible rescue and assistance to the members of the crew and passengers of that vessel as it may give to its nationals and shall inform the relevant authorities of the former Contracting Party.
Principles established in international conventions acceptable by both Contracting Parties shall be followed in dealing with commercial rescue of the distressed vessel and cargo and in dealing with maritime accidents. No discrimination shall be exercised on the charge thereof.
2. If cargo, equipment and stores discharged or rescued from the distressed vessel need to be temporarily stored on shore of the other Contracting Party so as to be transported back to the original country or to a third country, the other Contracting Party shall provide convenience for such arrangement. No customs duties or other taxes shall be imposed by the other Contracting Party on such cargo, equipment and stores insofar they are not delivered for use or for sale in the territory of that Contracting Party.

Article 14

Assistance, advice and information

Subject to applicable internal law and international law, the Contracting Parties undertake to render to each other all assistance, advice and information requested, within the limits of their resources, regarding all merchant shipping and related maritime matters, including safety of life and property at sea, and preventing and combating pollution from ships, maritime search and rescue and the training of personnel and seafarers.

Article 15

Usage and transfer of income

Income of the shipping companies of one Contracting Party derived in the territory of the other Contracting Party may be used for the payment occurred in the territory of the other Contracting Party, or be freely remitted abroad at the exchange rate published by bank on the date of transfer.

Article 16

Office outside territory

Shipping companies or enterprises of each Contracting Party may establish their shipping representative offices or business conducting offices in the territory of the other Contracting Party under the applicable laws and regulations of that Contracting Party, and the activities of such offices shall be in compliance with the relevant laws and regulations of the staying country.

Article 17

Relations with other organizations and treaties

This Agreement does not affect the obligations and rights of each Contracting Party derived from the membership of any other international or regional organizations or treaties.

Article 18

Consultation

At the request of either Contracting Party, representatives from the competent authorities of the Contracting Parties may meet and discuss the implementation of this Agreement and any other proposals submitted by either Contracting Party at the date and place mutually agreed upon.

Article 19

Settlement of dispute

Should there be any dispute between the Contracting Parties on the interpretation or in the implementation of this Agreement, the competent authorities of the Contracting Parties shall solve it through friendly consultation on the basis of mutual understanding. In case no agreement could be reached, it shall be solved through diplomatic channels.

Article 20

Entry into force, amendment and termination

1. Each Contracting Party shall notify the other Contracting Party through diplomatic channels in the written form of its completion of national legal procedures as required for the entry into force of this Agreement. This Agreement shall enter into force thirty days after the issuance of the last notification.
2. This Agreement shall remain in force for five years. Thereafter this Agreement shall be renewed for successive periods of five years unless either of the Contracting Parties notifies the other Contracting Party in the written form for the termination of this Agreement six months prior to the expiration of this Agreement.
3. This Agreement may be amended with unanimity of the Contracting Parties. The amendment shall enter into force in accordance with the procedures stipulated in paragraph 1 of this Article.

In witness whereof, the undersigned duly empowered by their respective Governments, have signed this Agreement.

Done at Tunis, on this 16th date of the month of April, 2002, in duplicate in the Arabic, Chinese and English languages, all the three texts being equally authentic. In case of any divergence in the interpretation of this Agreement, the English text shall prevail.

*For the Government of
the Republic of
Tunisia*

*Farhat MEDINI
Secretary of State
At the Ministry of
Transport*

*For the Government of
the People's Republic of
China*

*YANG Wenchang
Vice-Minister
Of Foreign Affairs*