

No. 13935

FEDERAL REPUBLIC OF GERMANY
and
BRAZIL

Treaty concerning the entry of nuclear ships into Brazilian waters and their stay in Brazilian ports. Signed at Brasília on 7 June 1972

Authentic texts: German and Portuguese.

Registered by the Federal Republic of Germany on 5 May 1975.

RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
BRÉSIL

Traité relatif à l'entrée des navires nucléaires dans les eaux brésiliennes et à leur séjour dans les ports brésiliens. Signé à Brasília le 7 juin 1972

Textes authentiques : allemand et portugais.

Enregistré par la République fédérale d'Allemagne le 5 mai 1975.

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND
THE FEDERATIVE REPUBLIC OF BRAZIL CONCERNING THE
ENTRY OF NUCLEAR SHIPS INTO BRAZILIAN WATERS AND
THEIR STAY IN BRAZILIAN PORTS

The Governments of the Federal Republic of Germany and the Federative Republic of Brazil,

Motivated by a common interest in the development of the peaceful uses of nuclear energy, including its use in merchant shipping,

Have agreed as follows:

Article 1. For the purposes of this Treaty:

1. “Authority” means the agency of the Federative Republic of Brazil which is competent for the implementation of this Agreement.

2. “Licensing State” means the Federal Republic of Germany, as the State which has authorized the operation of the ship under its flag.

3. “Ship” means the nuclear ship *Otto Hahn*, registered in the Federal Republic of Germany, or any other ship to which this Agreement is extended under article 11.

4. “Operator” means the person authorized by the licensing State to operate the ship.

5. “Brussels Convention” means the convention on the Liability of Operators of Nuclear Ships, opened for signature at Brussels on 25 May 1962.

6. “SOLAS Convention” means the International Convention for the Safety of Life at Sea, signed by the Federative Republic of Brazil and the Federal Republic of Germany in London on 17 June 1960.²

7. “CNEN Rules” means the “Rules for the Use of Brazilian Ports, Bays and Territorial Waters by Nuclear Ships”, approved on 14 January 1971, by resolution 4-71 of the Governing Board of the National Nuclear Energy Commission of the Federative Republic of Brazil.

8. “Brazilian waters” means the waters adjacent to the Brazilian coast to a breadth of 200 (two hundred) nautical miles, measured from the low-water line along the mainland and island coast of Brazil as marked on Brazilian charts; this definition shall not affect rights and views of the Contracting Parties with respect to the coastal sea and to their competence on the high seas.

9. “Nuclear fuel” means any material which is capable of producing energy by a self-sustaining process of nuclear fission and which is used or intended for use in a nuclear ship.

10. “Radioactive products or waste” means any material, including nuclear fuel, made radioactive by neutron irradiation incidental to the utilization of nuclear fuel in a nuclear ship.

¹ Came into force on 4 September 1974 by the exchange of the instruments of ratification, which took place at Bonn, in accordance with article 14(2).

² United Nations, *Treaty Series*, vol. 536, p. 27.

11. “Nuclear damage” means loss of life or personal injury and loss or damage to property which arises out of or results from the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste; any other loss, damage or expense so arising or resulting shall be included only if and to the extent that the applicable national law so provides.

12. “Nuclear incident” means any occurrence or series of occurrences having the same origin which causes nuclear damage.

Article 2. (1) Except as otherwise provided in this Treaty, the provisions of national law, and in particular the CNEN Rules, shall apply to the ship.

(2) The entry of the ship into Brazilian waters shall be subject to the prior approval of the Authority.

(3) For the purpose of obtaining such approval, the “Safety Assessment” referred to in chapter VIII, regulation 7, of the SOLAS Convention and in rule 21 of the CNEN Rules shall be presented to the Authority reasonably in advance.

(4) The Authority shall also be informed in detail, reasonably in advance as provided for in paragraph 3, of the operations which the ship intends to carry out in Brazilian waters and ports, particularly loading and unloading operations.

(5) The ship shall comply with the instructions of the Authority concerning navigation in Brazilian waters, including any instructions concerning the ports in which the ship may stay and the requirements relating to the ship’s operations.

Article 3. (1) Before entering port, the ship shall be subject, at a place appointed by the Authority, to the special control provided for in chapter VIII, regulation 11, of the SOLAS Convention and in rule 33 of the CNEN Rules.

(2) The master shall allow persons appointed by the Authority to board the ship for the purpose of adequately verifying the precautions against radiation hazards.

Article 4. During the ship’s stay in a Brazilian port, the Authority shall coordinate with the master of the ship such measures as are necessary for the most adequate performance of the safety precautions required to be taken under the SOLAS Convention and the applicable national law.

Article 5. (1) The ship may discharge radioactive products or waste in Brazilian waters, excluding Brazilian ports, only with the duly documented approval of the Authority.

(2) The ship shall pay, in addition to the dues payable by conventional ships, any pilotage and towage costs arising from the performances of necessary safety precautions in Brazilian waters and ports or from emergency measures under paragraph 4 of this article.

(3) The conditions for repair or maintenance of the ship’s nuclear power plant in Brazilian waters and ports, and for inspection by the Authority of repair or maintenance work, shall be laid down in the instructions referred to in article 2, paragraph 5.

(4) Without prejudice to the measures provided for in article 4, the master of the ship shall take any emergency measures that may be deemed necessary and shall immediately inform the Authority, which shall render the necessary assistance.

(5) In the event of any accident likely to lead to an environmental hazard while the ship is in or is approaching Brazilian waters or ports, the master shall immediately

inform the Authority in accordance with chapter VIII, regulation 12, of the SOLAS Convention and shall immediately comply with its instructions.

(6) If circumstances external to the ship necessitate emergency measures relating to the ship, the master shall likewise comply with the instructions of the Authority.

(7) If the master of the ship is of the opinion that any of the instructions referred to in the preceding paragraphs cannot be complied with, he shall immediately so inform the Authority, which may in all cases prohibit the entry of the ship into Brazilian waters or its continued stay in such waters, irrespective of the stage reached in any loading or unloading operations.

(8) (a) In the event of the ship's being stranded or wrecked in Brazilian waters or ports, the Authority may take whatever measures it deems necessary for the prevention of imminent nuclear damage, if such measures cannot be taken by the operator of the ship or by the licensing State. The costs incurred shall be payable by the operator.

(b) The licensing State shall, at the request of the Authority, render free of cost, any possible assistance in the form of personnel or materials.

(c) Nothing in this Agreement shall affect the rights of the Authority with respect to the removal of obstacles to navigation and the destruction of wrecks.

(9) The master of the ship shall allow Brazilian technicians and scientists to remain on board during passages through and stays in Brazilian waters and ports, for the purpose of observing the operations of the ship.

Article 6. (1) The operator shall be absolutely liable for any nuclear damage upon proof that such damage has been caused by a nuclear incident involving the nuclear fuel of, or radioactive products or waste produced in, the ship.

(2) If the operator proves that the nuclear damage resulted wholly or partially from an act or omission done with intent to cause damage by an individual who suffered damage, the competent courts may exonerate the operator wholly or partially from his liability to such individual.

(3) The liability of the operator shall be limited to 400 (four hundred) million German marks (Deutsche Mark) in respect of any one nuclear incident.

(4) The licensing State undertakes vis-à-vis the Federative Republic of Brazil to ensure the payment of claims for compensation for nuclear damage established against the operator in accordance with this Agreement by providing the necessary funds up to a limit of 400 (four hundred) million German marks to the extent that the yield of the insurance or other financial security maintained by the operator is inadequate to satisfy such claims.

(5) Nuclear damage suffered by the ship itself, its crew, equipment, fuel or stores shall not be covered by the operator's liability under article 6, paragraph 1.

(6) Rights of compensation shall be extinguished after a period of 10 years from the date of the nuclear incident.

(7) Where nuclear damage is caused by nuclear fuel, radioactive products or waste which were stolen, lost, jettisoned, or abandoned, the period established under paragraph 6 shall be computed from the date of the nuclear incident causing the nuclear damage; however, the period shall not exceed a period of 20 years from the date of the theft, loss, jettison or abandonment.

(8) In the event of aggravation of the damage, any claim which has been established within the periods specified above may be extended, even after the expiry of those periods, provided that final judgement has not been entered.

Article 7. Article 6 of this Treaty shall apply to nuclear damage occurring in Brazilian waters or in Brazilian territory, if the nuclear incident occurred:

- in Brazilian waters or in Brazilian territory; or
- outside Brazilian waters on a voyage to or from a Brazilian port or to or from Brazilian waters.

Article 8. Provisions of national or international law concerning limitation of the liability of shipowners shall not apply to claims under this Treaty.

Article 9. (1) Any action for compensation for nuclear damage shall be brought before the Brazilian courts.

(2) Actions shall be brought against the Gesellschaft für Kernenergieverwertung in Schiffbau und Schifffahrt mbH, 2 Hamburg 11, Grosse Reichenstrasse 2 (Corporation for the Use of Nuclear Energy in Shipbuilding and Navigation Ltd.).

(3) A final judgement entered by a Brazilian court having jurisdiction under paragraph 1 shall be recognized in the territory of the licensing State, except:

- (a) where the judgement was obtained by fraud on the part of the claimant; or
- (b) the operator was not given a fair opportunity to present his case.

(4) A final judgement of a Brazilian court which is recognized shall, upon being presented for enforcement in accordance with the formalities required by the law of the licensing State, be enforceable as if it were a judgement of a court of that State.

(5) The merits of a claim on which judgement has been given in accordance with paragraphs 3 and 4 shall not be subject to further proceedings in the licensing State.

Article 10. (1) The Contracting Parties shall endeavour to resolve any dispute concerning the interpretation or application of this Treaty through the diplomatic channel; in so doing, they shall, as regards liability for nuclear damage, take into account in particular the provisions of the Brussels Convention.

(2) If a dispute cannot be resolved in this manner, it shall, at the request of either of the Contracting Parties, be submitted to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted on an *ad hoc* basis; each Contracting Party shall appoint a member, and the two members shall agree on a chairman, being a national of a third State, who shall be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months, and the chairman within three months, after one of the Contracting Parties has notified the other that it wishes to submit the dispute to an arbitral tribunal.

(4) If the time-limits specified in paragraph 3 of this article are not met, either Contracting Party may, failing any other arrangement, request the President of the International Court of Justice to make the necessary appointment. If the President is a national of one of the Contracting Parties or is unable to act for any other reason, the Vice-President shall make the appointment. If the Vice-President is also a national of one of the Contracting Parties or is also unable to act, the next most senior member of the Court who is not a national of one of the Contracting Parties shall make the appointment.

(5) The arbitral tribunal shall take its decisions by majority vote. Each Contracting Party shall bear the expenses of its own member and the costs of its representation in the proceedings before the arbitral tribunal; the expenses of the chairman and the remaining costs shall be borne equally by the two Contracting Parties. The arbitral tribunal may order a different apportionment of the costs. On all other matters, the arbitral tribunal shall establish its own rules of procedure.

Article 11. The application of this Treaty may, by an exchange of notes, be extended to other ships of the licensing State.

Article 12. If the entry into force of a multilateral international agreement or the enactment of national legislation by one of the Contracting Parties has the effect of regulating matters already regulated by this Treaty, the Contracting Parties shall promptly enter into negotiations for a review of this Treaty.

Article 13. This Treaty shall also apply to *Land Berlin*, provided that the Government of the Federal Republic of Germany has not delivered a contrary declaration to the Government of the Federative Republic of Brazil within three months from the date of the entry into force of this Agreement.

Article 14. (1) This Treaty shall be ratified; the instruments of ratification shall be exchanged at Bonn as soon as possible.

(2) The Treaty shall enter into force upon the exchange of instruments of ratification.

(3) The Treaty is concluded for a term of three years. Thereafter it shall be automatically extended from year to year unless it is denounced by one of the Contracting Parties not later than six months before the expiry of any such period of extension.

DONE at Brasilia on 7 June 1972 in two original copies, each in the German and Portuguese languages, both texts being equally authentic.

For the Federal Republic of Germany:

KARL HERMANN KNOKE

HANS-HILGER HAUNSCHILD

For the Federative Republic of Brazil:

MARIO GIBSON BARBOZA