

1993 TORREMOLINOS PROTOCOL RELATING TO THE 1977 TORREMOLINOS INTERNATIONAL CONVENTION FOR THE SAFETY OF FISHING VESSELS

Adopted in Torremolinos, Spain on 2 April 1993

ARTICLE 1 GENERAL OBLIGATIONS	2
ARTICLE 2 DEFINITIONS	2
ARTICLE 3 APPLICATION	3
ARTICLE 4 CERTIFICATION AND PORT STATE CONTROL	3
ARTICLE 5 FORCE MAJEURE	4
ARTICLE 6 COMMUNICATION OF INFORMATION	4
ARTICLE 7 CASUALTIES TO FISHING VESSELS	5
ARTICLE 8 OTHER TREATIES AND INTERPRETATION	5
ARTICLE 9 SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION	5
ARTICLE 10 ENTRY INTO FORCE	5
ARTICLE 11 AMENDMENTS	6
ARTICLE 12 DENUNCIATION.....	8
ARTICLE 13 DEPOSITARY.....	8
ARTICLE 14 LANGUAGES.....	8

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THE PARTIES TO THE PRESENT PROTOCOL,

RECOGNIZING the significant contribution which can be made by the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, to the safety of ships in general and to the safety of fishing vessels in particular,

ACKNOWLEDGING HOWEVER that certain provisions of the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, have given rise to difficulties in their implementation by a number of States with substantial fishing fleets under their flags and that this has prevented the entry into force of the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, and consequently the implementation of the regulations contained therein,

DESIRING to establish in common agreement the highest practicable standards for the safety of fishing vessels which can be implemented by all States concerned,

CONSIDERING that this objective may best be achieved by the conclusion of a Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977,

HAVE AGREED as follows:

ARTICLE 1 GENERAL OBLIGATIONS

- (1) The Parties to the present Protocol shall give effect to the provisions of:
 - (a) the articles of the present Protocol; and
 - (b) the regulations contained in the annex to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (hereinafter referred to as "the Convention"), subject to the modifications set out in the annex to the present Protocol.
- (2) The articles of the present Protocol and the regulations of the annex to the Convention shall, subject to the modifications set out in the annex to the present Protocol, be read and interpreted as one single instrument.
- (3) The annex to the present Protocol shall constitute an integral part of the Protocol and a reference to the present Protocol shall constitute at the same time a reference to the annex hereto.

ARTICLE 2 DEFINITIONS

For the purpose of the present Protocol, unless expressly provided otherwise:

- (a) Party means a State for which the present Protocol has entered into force.

- (b) Fishing vessel or vessel means any vessel used commercially for catching fish, whales, seals, walrus or other living resources of the sea.
- (c) Organization means the International Maritime Organization.
- (d) Secretary-General means the Secretary-General of the Organization.
- (e) Administration means the Government of the State whose flag the vessel is entitled to fly.
- (f) Regulations means the regulations contained in the annex to the Convention as modified by the present Protocol.

ARTICLE 3 APPLICATION

- (1) The present Protocol shall apply to seagoing fishing vessels including vessels also processing their catch entitled to fly the flag of a Party.
- (2) The provisions of the Annex shall not apply to vessels exclusively used:
 - (a) for sport or recreation;
 - (b) for processing fish or other living resources of the sea;
 - (c) for research and training: or
 - (d) as fish carriers.
- (3) Unless expressly provided otherwise, the provisions of the Annex shall apply to fishing vessels of 24 metres in length and over.
- (4) In a case where a limit of the vessel's length is prescribed as greater than 24 metres in a chapter for the application of that chapter, the Administration shall determine which regulations of that chapter should apply, wholly or in part, to a fishing vessel of 24 metres in length and over but less than the length limit prescribed in that chapter and entitled to fly the flag of that State, having regard to the type, size and mode of operation of such a vessel.
- (5) Parties shall endeavour to establish, as a matter of high priority, uniform standards to be applied by Administrations to fishing vessels referred to in paragraph (4), which operate in the same region, taking into account the mode of operation, sheltered nature and climatic conditions in such region. Such uniform regional standards shall be communicated to the Organization for circulation to other Parties for information.

ARTICLE 4 CERTIFICATION AND PORT STATE CONTROL

- (1) Every vessel required to hold a certificate in accordance with the provisions of the regulations is subject, when in a port of another Party, to control by officers duly authorized by the Government of that Party in so far as this control is directed towards verifying that the certificate issued under the provisions of the relevant regulations is valid.
- (2) Such certificate, if valid, shall be accepted unless there are clear grounds for believing that the condition of the vessel or of its equipment does not correspond substantially with the particulars of that certificate or that the vessel and its equipment are not in compliance with the provisions of the relevant regulations.

- (3) In the circumstances given in paragraph (2) or where a certificate has expired or ceased to be valid, the officer carrying out the control shall take steps to ensure that the vessel shall not sail until it can proceed to sea or leave the port for the purpose of proceeding to the appropriate repair yard without danger to the vessel or persons on board.
- (4) In the event of this control giving rise to an intervention of any kind, the officer carrying out the control shall forthwith inform, in writing, the Consul or, in his absence, the nearest diplomatic representative of the State whose flag the vessel is entitled to fly, of all the circumstances in which intervention was deemed necessary. In addition, nominated surveyors or recognized organizations responsible for the issue of the certificates shall also be notified. The facts concerning the intervention shall be reported to the Organization.
- (5) If the port State authority concerned is unable to take steps as specified in paragraph (3) or if the vessel has been allowed to proceed to the next port of call, the port State authority concerned shall notify all relevant information about the vessel to the Party mentioned in paragraph (4) and to the authorities of the next port of call.
- (6) When exercising control under this article, all possible efforts shall be made to avoid a vessel being unduly detained or delayed. If a vessel is thereby unduly detained or delayed, it shall be entitled to compensation for any loss or damage suffered.
- (7) With respect to vessels of non-Parties to the present Protocol, Parties shall apply the requirements of the present Protocol as may be necessary to ensure that no more favourable treatment is given to such vessels.

ARTICLE 5 FORCE MAJEURE

- (1) A vessel which is not subject to the provisions of the present Protocol or which is not required to hold a certificate in accordance with the provisions of the present Protocol at the time of its departure on any voyage shall not become subject to such provisions on account of any deviation from its intended voyage due to stress of weather or any other cause of force majeure.
- (2) Persons who are on board a vessel by reason of force majeure or in consequence of the obligation to carry shipwrecked or other persons shall not be taken into account for the purpose of ascertaining the application to the vessel of any provisions of the present Protocol.

ARTICLE 6 COMMUNICATION OF INFORMATION

- (1) The Parties shall communicate to the Organization:
 - (a) the text of laws, orders, decrees, regulations and other instruments which have been promulgated on the various matters within the scope of the present Protocol;
 - (b) a list of non-governmental agencies which are authorized to act on their behalf in matters relating to the design, construction and equipment of vessels in accordance with the provisions of the present Protocol; and
 - (c) a sufficient number of specimens of their certificates issued under the provisions of the present Protocol.

- (2) The Organization shall notify all Parties of the receipt of any communication under paragraph (1)(a) and shall circulate to them any information communicated to it under paragraphs (1)(b) and (1)(c).

ARTICLE 7 CASUALTIES TO FISHING VESSELS

- (1) Each Party shall arrange for an investigation of any casualty occurring to any of its vessels subject to the provisions of the present Protocol, when it judges that such an investigation may assist in determining what changes in the present Protocol might be desirable.
- (2) Each Party shall supply the Organization with pertinent information concerning the findings of such investigations for circulation to all Parties. No reports or recommendations of the Organization based upon such information shall disclose the identity or nationality of the vessels concerned or in any manner fix or imply responsibility upon any vessel or person.

ARTICLE 8 OTHER TREATIES AND INTERPRETATION

Nothing in the present Protocol shall prejudice the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction.

ARTICLE 9 SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

- (1) The present Protocol shall remain open for signature at the Headquarters of the Organization from 1 July 1993 until 30 June 1994 and shall thereafter remain open for accession. All States may become Parties to the present Protocol by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) accession.
- (2) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.
- (3) Each State which has either signed the present Protocol without reservation as to ratification, acceptance or approval or has deposited the requisite instruments of ratification, acceptance, approval or accession in accordance with this article shall transmit to the Secretary-General, at the time of deposit of the above instrument and by the end of each year, information on the aggregate number of fishing vessels of 24 metres in length and over entitled to fly the flag of that State.

ARTICLE 10 ENTRY INTO FORCE

- (1) The present Protocol shall enter into force twelve months after the date on which not less than fifteen 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 in accordance with article 9, the aggregate number of whose fishing vessels of 24 metres in length and over is not less than 14,000.

- (2) For States which have deposited an instrument of ratification, acceptance, approval or accession in respect of the present Protocol after the requirements for entry into force thereof have been met but prior to the date of entry into force, the ratification, acceptance, approval or accession shall take effect on the date of entry into force of the present Protocol or three months after the date of deposit of the instrument, whichever is the later date.
- (3) For States which have deposited an instrument of ratification, acceptance, approval or accession after the date on which the present Protocol entered into force, the present Protocol shall become effective three months after the date of deposit of the instrument.
- (4) After the date on which an amendment to the present Protocol is deemed to have been accepted under article 11, any instrument of ratification, acceptance, approval or accession deposited shall apply to the present Protocol as amended.

ARTICLE 11 AMENDMENTS

- (1) The present Protocol may be amended by either of the procedures specified in this article.
- (2) Amendment after consideration within the Organization:
 - (a) Any amendment proposed by a Party shall be submitted to the Secretary-General, who shall then circulate it to all Members of the Organization and to all the Parties at least six months prior to its consideration.
 - (b) Any amendment proposed and circulated as above shall be referred to the Maritime Safety Committee of the Organization for consideration.
 - (c) Parties whether or not Members of the Organization shall be entitled to participate in the proceedings of the Maritime Safety Committee for the consideration and adoption of amendments.
 - (d) Amendments shall be adopted by a two-thirds majority of the Parties present and voting in the Maritime Safety Committee expanded as provided for in paragraph (2)(c) (hereinafter referred to as "the expanded Maritime Safety Committee") on condition that at least one third of the Parties shall be present at the time of voting.
 - (e) Amendments adopted in accordance with paragraph (2)(d) shall be communicated by the Secretary-General to all the Parties.
 - (f)
 - (i) An amendment to an article shall be deemed to have been accepted on the date on which it is accepted by two thirds of the Parties.
 - (ii) An amendment to the Annex shall be deemed to have been accepted:
 - (aa) at the end of two years from the date of adoption; or
 - (bb) at the end of a different period, which shall not be less than one year, if so determined at the time of its adoption by a two-thirds majority of the Parties present and voting in the expanded Maritime Safety Committee.

However, if within the specified period either more than one third of the Parties or Parties the aggregate number of whose fishing vessels is not less than sixty-five per cent of the number of fishing vessels of 24 metres in length and over of

all the Parties, notify the Secretary-General that they object to the amendment, it shall be deemed not to have been accepted.

- (g) (i) An amendment to an article shall enter into force, with respect to those Parties which have accepted it, six months after the date on which it is deemed to have been accepted and, with respect to each Party which accepts it after that date, six months after the date of that Party's acceptance.
- (ii) An amendment to the Annex shall enter into force with respect to all Parties, except those which have objected to the amendment under paragraph (2)(f)(ii) and which have not withdrawn such objections, six months after the date on which it is deemed to have been accepted. However, before the date set for entry into force any Party may give notice to the Secretary-General that it exempts itself from giving effect to that amendment for a period not longer than one year from the date of its entry into force, or for such longer period as may be determined by a two-thirds majority of the Parties present and voting in the expanded Maritime Safety Committee at the time of the adoption of the amendment.

(3) Amendment by a Conference:

- (a) Upon the request of a Party concurred with by at least one third of the Parties, the Organization shall convene a Conference of the Parties to consider amendments to the present Protocol.
- (b) Every amendment adopted by such a Conference by a two-thirds majority of the Parties present and voting shall be communicated by the Secretary-General to all the Parties for acceptance.
- (c) Unless the Conference decides otherwise, the amendment shall be deemed to have been accepted and shall enter into force in accordance with the procedures specified in paragraphs (2)(f) and (2)(g) respectively, provided that references in those paragraphs to the expanded Maritime Safety Committee shall be taken to mean references to the Conference.

(4) (a) A Party, which has accepted an amendment to the Annex which has entered into force, shall not be obliged to extend the benefit of the present Protocol in respect of the certificates issued to a vessel entitled to fly the flag of a State the Government of which, pursuant to the provisions of paragraph (2)(f)(ii) of this article, has objected to the amendment and has not withdrawn such an objection, but only to the extent that such certificates relate to matters covered by the amendment in question.

- (b) A Party, which has accepted an amendment to the Annex which has entered into force, shall extend the benefit of the present Protocol in respect of certificates issued to a vessel entitled to fly the flag of a State the Government of which, pursuant to the provisions of paragraph (2)(g)(ii) of this article, has notified the Secretary-General of the Organization that it exempts itself from giving effect to the amendment.

(5) Unless expressly provided otherwise, any amendment to the present Protocol which relates to the structure of a vessel shall apply only to vessels for which, on or after the date of entry into force of the amendment:

- (a) the keel is laid; or

- (b) construction identifiable with a specific vessel begins: or
 - (c) assembly has commenced comprising at least 50 tonnes or one per cent of the estimated mass of all structural material, whichever is less.
- (6) Any declaration of acceptance of, or objection to, an amendment or any notice given under paragraph (2)(g)(ii) shall be submitted in writing to the Secretary-General who shall inform all the Parties of any such submission and of the date of its receipt.
- (7) The Secretary-General shall inform all the Parties of any amendments which enter into force under this article together with the date on which each such amendment enters into force.

ARTICLE 12 DENUNCIATION

- (1) The present Protocol may be denounced by any Party at any time after the expiry of five years from the date on which the present Protocol enters into force for that Party.
- (2) Denunciation shall be effected by notification in writing to the Secretary-General.
- (3) A denunciation shall take effect twelve months after receipt of the denunciation by the Secretary-General or after the expiry of any longer period which may be indicated in the notification.

ARTICLE 13 DEPOSITARY

- (1) The present Protocol shall be deposited with the Secretary-General of the Organization (hereinafter referred to as "the Depositary").
- (2) The Depositary shall:
- (a) inform the Governments of all States which have signed the present Protocol or acceded thereto of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of the present Protocol;
 - (iii) the deposit of any instrument of denunciation of the present Protocol together with the date on which it was received and the date on which the denunciation takes effect;
 - (b) transmit certified true copies of the present Protocol to the Governments of all States which have signed the present Protocol or acceded thereto.
- (3) As soon as the present Protocol enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 14 LANGUAGES

The present Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed the present Protocol.

DONE AT Torremolinos this second day of April one thousand nine hundred and ninety-three.