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MARITIME SAFETY COMMITTEE
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Agenda item 22

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WORK PROGRAMME

Outcome of the twenty-fifth session of the Assembly on entry into force and implementation of the 1993 Torremolinos Protocol

Note by the Secretariat

SUMMARY

<i>Executive summary:</i>	This document provides the outcome of A 25 on matters related to the entry into force and implementation of the 1993 Torremolinos Protocol and proposes course of action to be taken on the matter
<i>Strategic directions:</i>	1.1 and 5.2
<i>High-level actions:</i>	1.1.2 and 5.2.1
<i>Planned outputs:</i>	1.1.2.1, 1.1.2.3, 5.2.1.3 and 5.2.1.4
<i>Action to be taken:</i>	Paragraph 25
<i>Related documents:</i>	MSC 83/15/1, MSC 83/INF.12, MSC 83/28, A 25/9/1, and resolution A.1003(25)

BACKGROUND

1 Article 10 of the 1993 Torremolinos Protocol sets out its entry into force requirements, that it must be accepted by at least 15 States with an aggregate number of fishing vessels (of 24 metres in length and over) under their flag exceeding 14,000. To date, fourteen States, representing approximately 22% of the required number of fishing vessels, have ratified the instrument, even though the Assembly, in adopting resolution A.925(22) on the entry into force and implementation of the 1993 Torremolinos Protocol* and the 1995 STCW-F Convention**, had expressed the view that the reported unacceptable loss of fishermen's lives, which continues to be alarmingly high, could be substantially reduced by the global, uniform and effective implementation of both the Torremolinos Protocol and the STCW-F Convention.

2 As his continued efforts to promote the acceptance of the aforementioned instruments and, in particular, the earliest possible entry into force of the 1993 Torremolinos Protocol, the Secretary-General addressed the Committee on Fisheries of the Food and Agriculture Organization (FAO) in March 2007, where he urged the Ministers and other Government representatives attending that meeting to promote, in their respective countries, the earliest

* The Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977.

** The International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995.

possible acceptance of those instruments and emphasized the great importance of the work on the safety of small fishing vessels. Furthermore, the second session of the Joint FAO/IMO *Ad Hoc* Working Group on Illegal, Unreported and Unregulated Fishing and Related Matters (JWG) was held at FAO in July 2007 and the issue of the entry into force of the Torremolinos Protocol was discussed.

3 The Maritime Safety Committee, at its eighty-third session, having considered the list of actions requested by the JWG (MSC 83/15/1, paragraph 14), concurred with the JWG's recommendations. In particular, the Committee agreed that IMO, in consultation with FAO, should explore options suggested, including the possibility of preparation of the draft Agreement relating to the implementation of the Torremolinos Protocol with a view to adoption by an appropriate IMO organ.

4 Having considered the outcome of MSC 83 on this matter and the proposal by the Secretary-General, the Assembly, at its twenty-fifth session, adopted resolution A.1003(25) on Entry into force and implementation of the 1993 Torremolinos Protocol, which is attached at annex 1.

5 The present note summarizes the main outcome of the JWG, MSC 83 and A 25, taking into account the conclusions of the 2004 Regional Seminar on the Implementation of the 1993 Torremolinos Protocol (Beijing, 21-24 September 2004) and the study carried out by an IMO Consultant (Dr. T. Mensah) on the conditions for the entry into force of the Torremolinos Protocol.

SUMMARY OF RELEVANT MEETINGS

2004 Regional Seminar on the Implementation of the 1993 Torremolinos Protocol (Beijing, 21-24 September 2004)

6 The Seminar on the Implementation of the 1993 Torremolinos Protocol took place from 21 to 24 September 2004 in Beijing, China, with the participation of representatives from China; Indonesia; Japan; Malaysia; Myanmar; the Philippines; the Republic of Korea; the Russian Federation; Thailand; Vietnam; Hong Kong, China; and Macao, China.

7 In order to facilitate the work of the Seminar, two working groups were established at the Seminar as follows:

- .1 the Working Group on Technical Issues to identify technical difficulties that the participating countries may have encountered while considering to implement the 1993 Torremolinos Protocol and to find solutions to the identified difficulties; and
- .2 the Working Group on Legal Issues to identify the legal constraints that the participants may have experienced while considering to ratify the 1993 Torremolinos Protocol; to arrive at specific recommendations as to how to address these constraints and to determine the extent to which the Asian Guidelines and Part B of the Fishing Vessel Safety Code (as revised) may be used as a basis for the development of further guidelines for vessels registered within the region but operating or intending to operate outside the region.

8 The relevant outcome of the Beijing Seminar was reported to the Council at its ninety-third session (C 93/4/Add.2).

Outcome of JWG

9 The JWG considered issues related to the entry into force of the 1993 Torremolinos Protocol and 1995 STCW-F Convention, and noted that IMO had appointed an international consultant, Dr T. Mensah, to undertake a legal study to facilitate the entry into force of the Torremolinos Protocol.

10 The Consultant presented the following options to the JWG, noting that many Governments had indicated that certain provisions were too stringent and wanted the relevant provisions of the Protocol to be amended before they could agree to be bound by the Protocol. The full report of the Consultant is reproduced in annex 2.

Adoption of a new Protocol

11 The Consultant considered a suggestion to adopt a new Protocol which would incorporate lower entry-into-force requirements while maintaining the substantive provisions of the 1993 Protocol, but did not consider that such an approach would be satisfactory. In the first place, a new Protocol would not satisfy the Governments which have concerns with some of the present provisions of the Protocol. Further, a new Protocol could present serious legal and constitutional complications for the States which have already ratified the 1993 Protocol.

Revision of provisions of the Protocol

12 The preliminary view of the Consultant expressed at JWG was, assuming there was a general agreement between the interested States that revising some provisions would facilitate ratification by a sufficient number of States required to bring the 1993 Protocol into force, then it would be possible to introduce the agreed revisions into the Protocol before it came into force. The two alternative options for achieving this are outlined hereunder:

.1 Statement of understanding for suspending the application of provisions of the 1993 Torremolinos Protocol (Option 1)

The first option under this approach was for the Governments to identify the provisions which they found to be too stringent and agree on the changes that would be needed to make them acceptable. The Governments would then agree that, upon entry into force of the Protocol, the specified provisions would either not apply at all, or would apply subject to the specific changes that have been agreed. Such an agreement to suspend the application of the specified provisions could be formulated by a Statement of understanding that might be adopted by the appropriate organ of IMO or by a conference of States convened by IMO with the collaboration of FAO. The Consultant stated that an agreement of all the States Parties to a Treaty to suspend the application of certain provisions (or to adopt a moratorium in respect of such provisions) was permitted under the international law of treaties as embodied in the 1969 Convention on the Law of Treaties, and there were precedents for such a procedure. A sample of a Statement of Understanding for the revision of the provisions of the 1993 Protocol, drafted by the Consultant, is attached in annex 3.

.2 Agreement relating to the implementation of the 1993 Torremolinos Protocol (Option 2)

The second option under this approach suggested by the Consultant was to incorporate the agreed revisions of the 1993 Protocol in a new instrument referred to as an Agreement relating to the implementation of the 1993 Torremolinos Protocol. This Agreement would be read and interpreted with the 1993 Protocol as a single treaty instrument. The Agreement would be adopted by an appropriate IMO organ or by an intergovernmental conference convened by IMO in collaboration with FAO. Such an Agreement would provide that States which accept it would also have to accept the 1993 Protocol, and the States which have already ratified the 1993 Protocol would be able to accept the revisions in the Agreement through the tacit acceptance procedure, if they so wished.

The adoption of such an Agreement would make it possible to revise the 1993 Protocol in order to remove the impediments that currently prevent some States with large fishing fleets from ratifying the Protocol. It would also make it possible for the revisions to become applicable at the same time as the Protocol enters into force. In addition it would avoid the complications of having two separate treaties. In particular, it would make it possible for the States which have already ratified the 1993 Protocol to accept the revised Protocol without necessarily going through the constitutional or parliamentary processes normally required for formal ratification. A sample of an Agreement for the Implementation of the 1993 Protocol drafted by the consultant is attached in annex 4.

13 The JWG, having been made aware of the intention of additional States to ratify the Protocol and having noted the benefits of the possibility to introduce in the proposed Agreement the flexibility found within the ILO Work in Fishing Convention, 2007, also making use of the tables of equivalence between vessel's length and tonnage contained therein, recognized the potential of the Consultant's proposal to achieve the entry into force of the 1993 Protocol.

14 Having noted that the technical difficulties for the entry into force of the Protocol had been described in detail in the report of the 2004 Regional Seminar on the Implementation of the 1993 Torremolinos Protocol in Beijing, China, such as the "narrow beam design" and the differences between vessels involved in fishing in domestic and international waters, the JWG agreed to recommend that IMO, with the collaboration of FAO, undertake appropriate consultations with interested Governments with a view to identifying the revisions of the provisions of the 1993 Protocol which are needed to make the Protocol acceptable to enough Governments to ensure the early entry into force.

15 The JWG also recommended that IMO, with the co-operation of FAO, explore options suggested by Dr. Mensah and in particular explore the possibility of preparation of a draft Agreement relating to the implementation of the Torremolinos Protocol with a view to adoption by an appropriate IMO organ.

16 The JWG further recommended that the IMO Secretariat, in co-operation with the FAO Secretariat, consider the organization of international events for a focused consideration, at a decision-making level, of the entry into force of the Torremolinos Protocol and the STCW-F Convention.

Outcome of MSC 83

17 MSC 83 noted the outcome of the JWG presented by the Chairman of the JWG and the technical content of the options put forward by Dr. Mensah. The Secretariat explained the reported disadvantages of the option to adopt a new Protocol and highlighted the advantage of the second option aiming at an Agreement relating to the implementation of the Protocol.

18 Having considered the list of actions requested by the JWG (MSC 83/15/1, paragraph 14), MSC 83 agreed that IMO, in consultation with FAO, should explore options suggested, including the possibility of preparation of the draft Agreement relating to the implementation of the Torremolinos Protocol with a view to adoption by an appropriate IMO organ. In this context, the Committee invited interested delegations to consider submitting, to MSC 84, a proposal for a new work programme item that would progress the matter of the entry into force of the 1993 Torremolinos Protocol.

19 MSC 83 concurred with the JWG's recommendations that the two Organizations should undertake appropriate consultations with the interested Governments with a view to identifying the revisions to the 1993 Protocol, which may be needed to make the Protocol acceptable to the required number of Governments to ensure the early entry into force; and assist Governments to adopt measures needed to accept and implement the 1993 Protocol; and that the IMO Secretariat, in co-operation with the FAO Secretariat, should further consider organizing international events for a focussed consideration, at a decision-making level, of the entry into force of the Torremolinos Protocol and the STCW-F Convention. Subsequently, the Committee requested the Secretariat to act accordingly within the context of the ITCP under the co-ordination of the Technical Co-operation Committee.

20 MSC 83 also agreed to refer the full report of the JWG (MSC 83/INF.12) to FSI 16 for detailed consideration and requested the Secretariat to inform the FAO and the ILO on the outcome of the consideration of this matter.

OUTCOME OF A 25

21 A 25, having noted the above decision by MSC 83, adopted resolution A.1003(25) on Entry into force and implementation of the 1993 Torremolinos Protocol, proposed by the Secretary-General with the objective of re-doubling and enhancing the Organization's efforts to promote the safety of fishermen and fishing vessels.

22 A 25 also included new entries in the Organization's High-level Action Plan and the table of the Planned outputs for 2008-2009, i.e., identification of revisions to the 1993 Torremolinos Protocol which may be needed to make the Protocol acceptable to the required number of Governments to ensure entry into force, possibly through the development of an additional instrument; and legal and technical options to facilitate and expedite the earliest possible entry into force of the 1993 Torremolinos Protocol, as called for under resolution A.1003(25).

NEW WORK PROGRAMME

23 A 25 endorsed the decision of MSC 83 to explore the options to facilitate and expedite the earliest possible entry into force of the Torremolinos Protocol and encouraged the Committee to take any action it may deem necessary and appropriate towards such an end.

24 Under the endorsement of the Assembly and its encouragement reflected in resolution A.1003(25), the Committee may wish to consider, with a proposal for a new work programme to be submitted by a Member Government, including a new work programme in an appropriate Sub-Committee, to explore options to facilitate and expedite the earliest entry into force of the Torremolinos Protocol.

ACTION REQUESTED OF THE COMMITTEE

25 The Committee is invited to consider the information provided and to decide as appropriate.

ANNEX 1

RESOLUTION A.1003(25)

**ENTRY INTO FORCE AND IMPLEMENTATION OF
THE 1993 TORREMOLINOS PROTOCOL**

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety,

BEING DEEPLY CONCERNED that the conditions for the entry into force of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (hereinafter referred to as the Torremolinos Protocol) have, fourteen years after its adoption, still not been met owing to the fact that an insufficient number of Governments with the required aggregate number of fishing vessels under their flag have so far deposited, with the Secretary-General, instruments of ratification, acceptance, approval or accession to it to enable it to enter into force,

RECALLING ALSO resolution A.925(22) on “Entry into force and implementation of the 1993 Torremolinos Protocol and the 1995 STCW-F Convention” by means of which it urged Governments to consider accepting the two instruments at the earliest opportunity; and requested the Maritime Safety Committee to review the situation concerning their entry into force and, in the light of such review, to take action as it deemed appropriate,

WELCOMING the outcome of the Seminar on the Implementation of the Torremolinos Protocol, held in Beijing, People’s Republic of China, in September 2004, which, having identified technical and other difficulties encountered in relation to the implementation of the Protocol, recommended solutions to address them,

WELCOMING ALSO the outcome of the second session of the Joint FAO/IMO *Ad Hoc* Working Group on Illegal, Unreported and Unregulated Fishing and Related Matters, held in Rome, Italy, from 16 to 18 July 2007, which, having considered the options suggested in a legal study presented at the said session and aimed at facilitating the entry into force of the Protocol, recommended that such options be further explored; in particular, the possibility of preparing a draft Agreement relating to the implementation of the Torremolinos Protocol with a view to its adoption by an appropriate IMO body,

HAVING NOTED the decisions of the Maritime Safety Committee, at its eighty-third session, on the outcome of the aforementioned session of the Joint FAO/IMO *Ad Hoc* Working Group,

REMAINING CONVINCED that the continuing and alarmingly high number of fishermen’s lives and of fishing vessels reportedly lost every year could be substantially reduced by the global, uniform and effective implementation of the Torremolinos Protocol, the entry into force of which would make a significant contribution to maritime safety in general and that of fishing vessels in particular:

1. REITERATES ITS STRONG RECOMMENDATION to Governments to consider ratifying, accepting, approving or acceding to the Torremolinos Protocol at the earliest possible opportunity;
2. INVITES Governments to consider the feasibility of establishing uniform regional standards, as called for in article 3(5) of the Torremolinos Protocol, communicating to the Organization any such action for circulation to other Parties to the Protocol for information;
3. ENDORSES the decision of the Maritime Safety Committee, at its eighty-third session, to explore the options recommended by the second session of the Joint FAO/IMO *Ad Hoc* Working Group on Illegal, Unregulated and Unreported Fishing and Related Matters to facilitate and expedite the earliest possible entry into force of the Torremolinos Protocol; and encourages the Committee to take any action it may deem necessary and appropriate towards such an end;
4. REQUESTS the Maritime Safety Committee to review the situation concerning entry into force of the Torremolinos Protocol and, in the light of such review, to take action as it deems appropriate;
5. REQUESTS the Secretary-General to take any such additional measures as may be required aimed at assisting Member Governments in the process of becoming Parties to, and implementing the Torremolinos Protocol.

ANNEX 2**LEGAL STUDY TO FACILITATE THE ENTRY INTO FORCE OF
THE 1993 TORREMOLINOS PROTOCOL RELATING TO
THE 1977 TORREMOLINOS CONVENTION ON
THE SAFETY OF FISHING VESSELS****Report by the IMO Consultant****Introduction**

1 The Consultant was requested to undertake a “Study to help countries ratify the 1993 Torremolinos Protocol”. The assignment was to be in two phases as follows:

- .1 to undertake a home-based desk exercise to prepare a report describing the necessary legal and technical conditions for the acceptance of the 1993 Torremolinos Protocol. In doing so the Consultant should also make use of the outcome of the Seminar in Beijing, of the study carried out by the Secretariat in 2003 and of the Guidelines for the safety of fishing vessels of 24 metres in length and over but less than 45 metres in length operating in the seas of the south-east Asia region; and
- .2 to participate in the IMO/FAO meeting to be held in Rome from 16 to 18 July 2007 for the purpose of introducing the outcome of his/her work.

2 The Consultant was requested, on conclusion of the mission, to “provide IMO with a draft report on his assignment as well as the above-mentioned study, including the mission conclusion and recommendations on the best way for the concerned countries to proceed with the implementation of the above-mentioned safety regulations and the acceptance of the 1993 Torremolinos Protocol for the safety of fishing vessels”.

Preliminary conclusions of the Consultant

3 As requested, the Consultant participated in the Second Session of the FAO/IMO *Ad Hoc* Working Group on Illegal, Unreported and Unregulated Fishing and Related Matters held at the Headquarters of the United Food and Agriculture Organization (FAO) in Rome from 16 to 18 July 2007. The Consultant submitted to the meeting the result of his “desk-exercise” in the form of “Preliminary Conclusions”. The text of the Preliminary Conclusions is reproduced in the annex to this Report.

Discussions at the Joint *ad hoc* FAO/IMO Working Group meeting, 16 to 18 July 2007

4 In the Preliminary Conclusions the Consultant recalled that a number of technical difficulties had prevented many States from ratifying the 1993 Torremolinos Protocol. It was noted that these difficulties had been described in detail in the report of the 2004 Regional Seminar on the Implementation of the 1993 Torremolinos Protocol (Beijing, 21-24 September 2004). Discussions at the Regional Seminar had led to the conclusion that it was not realistic to expect an early entry into force, unless some of the major technical difficulties were removed. It was suggested, therefore, that the most practical way to facilitate the entry into force of the 1993 Protocol was to identify the provision of the Protocol that gave cause for concern to many governments and stakeholders. Discussions would then be undertaken to determine the appropriate mechanisms and arrangements for revising these provisions and thus make it possible for the governments concerned to ratify and implement the Protocol without serious complications to them or their fishing industries.

5 The Working Group took note of the preliminary views of the Consultant regarding the legal and related technical substantive measures that might be taken to facilitate the entry into force of the 1993 Protocol, with the participation of the largest number of states having fishing vessels of 24 metres in length and over.

6 In this regard, it was noted that there were legal difficulties to amending the provisions of the 1993 Protocol before it enters into force. In particular, the meeting noted the view of the Consultant that the problem could not conveniently be solved by the adoption of an amending Protocol. In this regard it was observed that a new Protocol could present legislative and constitutional problems for the States that had already ratified the 1993 Protocol since they might be obliged to go back to their relevant constitutional bodies to seek authorization to ratify the new Protocol.

7 The Working Group considered two alternative procedures that the Consultant suggested might be used to effect changes in the 1993 Protocol in order to facilitate ratification by the number of States needed to bring it into force.

8 Under the first option Governments would agree that, upon the entry into force of the 1993 Protocol, certain specified provisions would either not apply at all or would only apply subject to the changes that have been agreed beforehand. The suspension of the provisions concerned would be either indefinite or for such period as would be agreed and clearly stated. The agreement to revise or suspend provisions of the 1993 Protocol would be formulated in Statement or Memorandum of Understanding to be subscribed to by Governments which become parties to the 1993 Protocol.

9 The second option was to incorporate agreed revisions of the 1993 Protocol in a new instrument, to be referred to as the Agreement for the Implementation of the 1993 Protocol. This Agreement would be read and interpreted with the 1993 Protocol as a single treaty instrument.

Final recommendations of the Consultant

10 On the basis of the comments made during the meeting of the Joint FAO/IMO Working Group (16 to 18 July 2007) and the conclusions reached by the meeting, the Consultant now submits final recommendations on the steps that may be taken to facilitate the early entry into force of the 1993 Protocol in a form acceptable to a sufficient number of states with fishing vessels of 24 metres in length and above.

11 These recommendations are submitted on the assumption that:

- .1 there is general consensus among the interested governments that revisions of the Protocol are needed and would facilitate ratification of the Protocol by many more states and thus help to bring it into force at an early date; and
- .2 there will be agreement regarding the revisions that are required for this purpose.

12 On the basis of the above assumptions it is the view of the Consultant that it will be possible to introduce the necessary revisions to the 1993 Protocol, and bring the Protocol into force with those changes, without necessarily having to adopt a new and separate Protocol.

13 As indicated above, the first step in the revision process is for Governments to identify the provisions of the 1993 Protocol that they consider to be either too stringent or otherwise unacceptable to them and also agree on the changes that are needed to remove the obstacles to their implementation. Once the relevant provisions have been identified (and the requisite changes to them have been determined and agreed upon) Governments would agree that, upon entry into force, the 1993 Protocol would only be applied subject to the agreed changes. Two alternative options are available for achieving this objective.

Adoption of a statement or Memorandum of Understanding

14 Under the first option Governments would agree that, upon the entry into force of the 1993 Protocol, the identified provisions would either not apply at all or would only apply subject to the revisions that have been previously agreed. The suspension of the relevant provisions, or their application in a modified form, would be for a specified period (but with the possibility of extension, if this is subsequently agreed in a manner clearly set out beforehand). The agreement to suspend the application of certain provisions or to apply them only as revised would be formulated in the form of a Statement or Memorandum of Understanding to be accepted by all governments entitled to ratify, accept, approve or accede to the Protocol. Such a Statement or Memorandum of Understanding could be adopted either by the appropriate organs of IMO (the Assembly or the Maritime Safety Committee). It could also be adopted by a meeting or conference of governments convened by IMO with the collaboration of FAO. (As observed in the Preliminary Conclusions of the Consultant, collaboration of the FAO would assist in ensuring that the ministries and departments responsible for fisheries, as well as the relevant stakeholders in the fisheries sectors, of the different countries would be involved in determining and agreeing to the changes that would make the Protocol acceptable to the countries whose acceptance is needed to bring the Protocol into force.)

15 An agreement by all the States Parties to an international agreement to dispense with the application of certain provisions of the agreement (or to adopt a moratorium in respect of those provisions) is permitted by the international law of treaties, and there are precedents for such a procedure. Article 58 of the Vienna Convention on the Law of Treaties provides that, subject to certain conditions, two or more parties to a multilateral treaty may agree “to suspend the operation of provisions of the treaty, temporarily and between themselves alone”. The right granted to two or more parties to suspend the operation of a treaty as between themselves should, *a priori*, be also available to all the parties of the treaty, if they so agree.

16 Similarly, the Vienna Convention states that the terms of a treaty shall be interpreted “in their context”. Significantly, the Convention adds that “the context shall comprise, in addition to the text, including the preamble and annexes:

- .1 “any agreement relating to the treaty which was made between the parties in connection with the conclusion of the treaty”; and
- .2 “any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty”.

Finally, the Vienna Convention states that in the interpretation of a treaty “there shall be taken into account, together with the context, any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions”.

17 It would thus appear that, to the extent that there is clear agreement among all the countries that are potential parties to the 1993 Protocol that they will interpret and apply the Protocol in a particular way, there is no rule or principle of international treaty law that would prevent them from interpreting and implementing the Protocol in the way that they have agreed. And such an agreement will be operative whether it was made prior to the conclusion of the Protocol, prior to the entry into force, or even subsequent to its entry into force.

18 In this connection, it is worth recalling that an analogous procedure was adopted in relation to certain provisions of the 1973 Convention on the Prevention of Marine Pollution (MARPOL 1973). Some years after it was adopted, it became clear to governments that there was little possibility of the Convention entering into force without the revision of certain of its original provisions. Accordingly, it was agreed to make changes to several parts of the Convention. In particular, it was agreed that the application of Annex II to the Convention needed to be deferred “until certain technical problems have been satisfactorily resolved”. The agreed changes to the 1973 MARPOL Convention were made by means of a new protocol (the Protocol of 1978 relating to the International Convention for the Prevention of Marine Pollution, 1973). In its Article II the 1978 Protocol suspended the application of Annex II to the 1973 Convention. In specific terms the Parties to the 1978 Protocol agreed that “they shall not be bound by the provisions of Annex II of the Convention for a period of three years from the entry into force of the present Protocol or for such longer period as may be decided by a two-thirds majority of the Parties” in the Marine Environment Protection Committee of IMO. To emphasize the effect of the suspension of Annex II, paragraph 2 of the same article stated that during the period of suspension, the Parties to the 1978 Protocol “shall not be under any obligations or entitled to claim any privileges under the (1973) Convention in respect of matters relating to (that Annex)”.

19 There is, of course, a significant difference between the 1978 Protocol and the option suggested for the 1993 Protocol. The suspension of Annex II of the 1973 MARPOL was achieved by means of a new treaty agreement which could only become effective by formal consent of states to be bound. For the reasons previously stated, the approach adopted for the 1978 Protocol would not be appropriate or effective in relation to the 1993 Protocol. This is because the adoption of a new protocol along the lines of the 1978 MARPOL Protocol would have the effect of nullifying the ratifications of the 1993 Protocol that have already been submitted by states. This could delay even further the entry into force of the new protocol. For that reason, governments might wish to consider as a more acceptable option a procedure that does not involve the adoption of another protocol.

20 The adoption of a Statement or Memorandum of Understanding has another defect. The validity and effectiveness of such a Statement or Memorandum would depend on the agreement of all the States Parties to the Protocol or who subsequently become parties to the Protocol. For, although an agreement to interpret or apply the Protocol in a manner different from its stated terms will be binding on the States Parties that have subscribed to it, such an agreement cannot bind other States Parties, if they have not subscribed to the agreement or if they refuse to do so. Consequently, the suspension or revision of provisions of the 1993 Protocol could be challenged by such States Parties.

Adoption of an Agreement subject to formal expression of consent to be bound

21 A second option, which would not carry the risk of being challenged by disagreeing parties, is the adoption of a treaty instrument to which States would express a formal consent to be bound. However, such an instrument need not be a Protocol on the lines of the 1978 MARPOL Protocol. The new instrument could be an Agreement relating to the implementation of the 1993 Protocol. As such, it would be read, interpreted and applied as a single instrument with the 1993 Protocol.

22 For such an Agreement it would also be necessary for Governments to agree on the revisions to be made to the 1993 Protocol. These changes would then be incorporated in the Annex to the Agreement for the Implementation of the 1993 Protocol. The Agreement would be adopted by an appropriate organ of IMO (the Assembly or the Maritime Safety Committee). Alternatively, the Agreement could also be adopted by an inter-governmental meeting or conference convened by IMO in collaboration with the FAO.

23 The Agreement would consist of substantive articles, together with an Annex containing the changes and/or suspensions to the provisions of the 1993 Protocol. The substantive articles would contain provisions setting out the procedure by which States may express their consent to be bound by the Agreement, and also by the 1993 Protocol. In particular, the Agreement would provide that any State which wishes to accept the Agreement would first have to accept the 1993 Protocol. A State which ratifies the Agreement would, therefore, be bound by the provisions of the 1993 Protocol, but subject to the modifications contained in the Annex to the Agreement. For States which have already ratified the 1993 Protocol, the Agreement would provide that they need not express a formal consent to be bound by the Agreement. Rather, they would be able to agree to be bound by the Agreement through the tacit acceptance procedure, unless they indicate that they do not wish to avail themselves of that procedure. Specifically, the Agreement would provide that a State that has already ratified the 1993 Protocol would be deemed to have consented to be bound also by the Agreement unless, within a period specified in the Agreement, that State notifies the depositary that it does not wish to establish consent in this way.

24 The requirements for the entry into force of the Agreement will be the same as the entry into force requirements of the 1993 Protocol. For the purpose of bringing the Agreement and the 1993 Protocol into force, the States to be counted will be:

- .1 States having previously ratified the Protocol which do not expressly object to accepting the Agreement by the tacit procedure;
- .2 States having ratified the 1993 Protocol which reject the tacit procedure but subsequently express their consent to be bound by the Agreement in an appropriate manner; and
- .3 States which express their consent to be bound by the Agreement which also ratify the 1993 Protocol as required by the Agreement.

25 Upon the coming into force of the Agreement, the States that are Parties to it will be bound by the provisions of the 1993 Protocol, as modified by the provisions contained in the Annex to the Agreement. For States which have ratified the 1993 Protocol but which do not accept the Agreement, there will be no treaty nexus with either the States which have accepted the Agreement and the Protocol or the States which previously accepted the 1993 Protocol and have subsequently accepted the Agreement.

26 The adoption of an implementing Agreement would make it possible to revise the 1993 Protocol in order to remove the substantive impediments that currently prevent States with large fishing fleets from ratifying the 1993 Protocol. Such an Agreement will also make it possible for the revisions to the 1993 Protocol to become applicable at the same time as the 1993 Protocol enters into force. In addition, adopting such an Agreement will avoid the complications of having two different treaties that require separate expressions by states of their consent to be bound. In particular, it will make it possible for the States which have already ratified the 1993 Protocol to accept the revisions without necessarily having to go through the constitutional or parliamentary processes normally required for formal ratification.

27 The use of an implementing agreement to adopt revisions to a multilateral treaty that is not yet in force is not unprecedented. An identical procedure was used to make important substantive changes to Part XI of the 1982 United Nations Convention on the Law of the Sea. Eight years after the adoption of the Convention in 1982, it was acknowledged that “there were problems with some aspects of the deep seabed mining provisions of the Convention (in Part XI) which had prevented some States from ratifying or acceding to the Convention”. Following consultations initiated by the Secretary General, and as a result of a review of possible procedural approaches, agreement was reached on certain basic elements of the procedure that might be adopted to resolve the problems relating to Part XI of the Convention. The approaches considered included:

- .1 a contractual instrument such as a protocol amending the Convention; and
- .2 an interpretative agreement consisting of understandings on the interpretation and application of the Convention.

28 Three basic elements emerged from the consultations. The first was that whatever approach might be adopted, it must be of a legally binding nature. The second was that a duality of regimes must be avoided. Finally, it was stressed that the position of States which had ratified the Convention must be respected. Accordingly, it was considered useful to examine the role of the notion of implied or tacit consent might play in protecting the position of such States.

29 In the light of these considerations, a consensus emerged that the best way to revise Part XI and thus “facilitate universal participation in the Convention” was to adopt an Agreement relating to the Implementation of Part XI of the Convention. This Agreement was eventually adopted by means of a resolution of the General Assembly (resolution A/RES/48/263) on 28 July 1994. Attached to the resolution was the text of the Agreement which was presented to States and opened for signature. States could express their consent to be bound by the Agreement, together with the original Convention as modified by the Agreement.

30 The Parties to the Agreement undertook to implement Part XI of the Convention in accordance with the Agreement, including the Annex which forms an integral part of the Agreement. It was also provided that the provisions of the Agreement and Part XI (of the Convention) shall be interpreted and applied together as a single instrument. In the event of any inconsistency between the Agreement and Part XI, the provision of the Agreement would prevail. With respect to consent to be bound by the Agreement, Article 4 of the Agreement provided:

“After the adoption of this Agreement, any instrument of ratification ... of or accession to the Convention shall also represent consent to be bound by the Agreement”.

Paragraph 2 of the same article states:

“No State may establish its consent to be bound by the Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention”.

31 Finally, and with respect of the States which had ratified the 1982 Convention prior to the adoption of the 1994 Agreement, Article 5 of the Agreement provided as follows:

“A State ... which has deposited before the date of the adoption of this Agreement an instrument of ratification ... of or accession to the Convention and which has signed this Agreement ... shall be considered to have established its consent to be bound by the Agreement 12 months after the date of its adoption, unless that State ... notifies the depositary in writing before that date that is not availing itself of the simplified procedure set out in this article.

In the event of such notification, consent to be bound by this Agreement shall be established in accordance with article 4, paragraph 3(b), i.e., signature subject to ratification ..., followed by ratification ...”

32 No objection was raised against the adoption of the Agreement. The 1982 Convention entered into force on 16 November 1994, and the Agreement which modified Part XI of the Convention entered into force on Thereafter, the regime applicable under Part XI consisted of the provisions of Part XI of the Convention, as modified by the Annex to the 1994 Agreement. There are currently 154 States Parties to the Convention as modified by the 1994 Agreement.

Submission of the Report

33 The Consultant respectfully submits for consideration the contents of this Report with the two alternative options for revising the 1993 Torremolinos Protocol in order to facilitate the early entry force of the Protocol.

Signed:

Thomas A. Mensah
London, 4 August 2007

ANNEX

**STUDY TO ASSIST THE EARLY RATIFICATION AND ENTRY INTO FORCE OF
THE 1993 TORREMOLINOS PROTOCOL RELATING TO
THE 1977 TORREMOLINOS CONVENTION
ON THE SAFETY OF FISHING VESSELS**

1 There are no technical or practical impediments to the entry into force of the 1993 Torremolinos Protocol. The requirements for the entry into force are realistic and attainable. There are enough vessels of the requisite dimensions currently in operation and there are more than 15 States which between them have the required number of fishing vessels needed to bring the Protocol into force i.e., not less than 14,000 fishing vessels of 24 metres in length and over.

2 But the Protocol has not entered because the requirements for entry into force, as specified in Article 10 of the Protocol, have not been met. The main reason for this is that not enough States are willing or able to ratify the Protocol. And since the Protocol is not yet in force none of its provisions, including the entry into force provisions, can be amended. Consequently, it has been argued by some that, from a legal point of view, the only realistic way of dealing with the problem is the adoption of a new protocol which will incorporate lower entry into force requirement, while leaving unaltered the technical and substantive provisions of the 1993 Protocol.

3 However, adopting such a new Protocol is not without its own difficulties. In the first place, it is not at all certain that Governments will agree to go through the process of adopting another protocol, following the failure of two earlier attempts in 1977 and 1993. Furthermore, the adoption of a new Protocol could create difficulties for some of the (thirteen) States which have already ratified the 1993 Protocol, since they might be obliged to go back to their relevant legislative or constitutional bodies for authorization to ratify the new Protocol. And, in any case, there is no reason to believe that the Governments which have been unable to ratify the 1993 Protocol will find it any easier to ratify a new agreement with the same substantive provisions. Hence, even if the new Protocol were to enter into force with the lower entry into force requirements, it would most probably apply to only a few countries. This would not achieve the uniformity of law and regulation that was the rationale of the original Convention and Protocol.

4 It would appear, therefore, that a more useful approach would be for IMO and FAO to seek rather to identify the reasons why States have not been able or willing to ratify the Protocol, and to find ways and means to overcome the difficulties faced by those States.

5 In discussions at international meetings and in responses from Governments to inquiries by the Secretariat, a number of reasons have been given for the failure of States to ratify the 1993 Protocol. These reasons include legal technical, administrative, economic and policy considerations. Among them are the following:

- .1 complicated and time-consuming administrative, legislative and parliamentary processes are required to obtain approval from the appropriate national authorities to ratify an international treaty;

- .2 in some countries, the problem is exacerbated by the need to translate the Protocol into the national language before the issue of ratification can be submitted to higher authorities for decision;
- .3 in many countries, the Protocol is not accorded the level of priority needed to speed up the ratification process. A major reason for this may be that the authorities responsible for fisheries administration, and those operating the fishing industry, may not be aware of the existence of the Protocol or may not be fully conversant with its rationale and purpose or how important it is for the fishing industry itself and for those who operate in it or depend on it for their living or their nutrition;
- .4 in most countries the authorities responsible for regulating the fisheries sector are different from those concerned with the regulation of maritime transport. And in many cases, co-operation between the maritime and fisheries sector, which is vital in the pre-ratification process, does not exist or is ineffective. One result of this is that discussions and decisions taken at important IMO meetings may not involve (or be known to) the authorities which take decisions on matters relating to fishing and the safety of fisheries operations;
- .5 many governments consider that ratification and implementation of the Protocol would impose additional administrative and regulatory burdens on them. This is especially the case with governments of developing countries many of which may not have the human, technical and financial resources to discharge these responsibilities;
- .6 ratification of the Protocol may sometimes be opposed by the fishing industry because the members of the industry believe that they would face additional technical and financial burdens in meeting the requirements of the Protocol. In this regard, sections of the industry have referred to certain provisions of the Protocol which they consider to be too stringent and which they wish to see amended before they can agree to be bound by the Protocol. However, it is not easy to amend the provisions of the Protocol before the Protocol itself has entered into force;
- .7 many countries consider fisheries to be essentially a domestic industry since it operates mainly in their own EEZs or territorial seas. They do not, therefore, wish to bring the industry under international regulation. In some cases, the governments feel that the safety of their fishing fleets is adequately taken care of by their existing regulations;
- .8 there is not sufficient awareness among the workers in the fishing industry (the fishermen and the sailors in fishing vessels) of the possible benefit that will accrue to them through ratification and application of the 1993 Protocol to their vessels and their operations;
- .9 many governments fear that ratification of the 1993 Protocol would expose their fishing vessels to control and regulation by other States Parties when the vessels enter into the ports of those States Parties in accordance with the "Port State Control" provisions of the Protocol.

- .10 many governments (and sections of the fishing industry) consider that certain provisions of the Protocol are redundant or inappropriate because of the introduction of new technology or developments that have been introduced since 1993. These governments wish to be assured that there would be no incompatibility between the 1993 Protocol and other IMO instruments or that any such inconsistencies can effectively be dealt with; and
- .11 some countries which have already ratified the 1977 Torremolinos Convention (or incorporated them in their national legislation) may be reluctant to ratify the 1993 Protocol whose provisions are less stringent than those of the 1977 Convention. The same problem may apply to certain Member States of the European Union who may find difficulty in ratifying the Protocol in view of their obligation to apply the EC Directive on the Safety of Fishing Vessels which contains more stringent provisions than those in the Protocol.

6 While many of these difficulties apply to some extent to other conventions of IMO, some others are more directly relevant to the 1993 Torremolinos Protocol. It is, therefore, useful and necessary for IMO and FAO to examine the ways in which these and other difficulties may be eliminated, or at least alleviated, in order to make it possible for many more States to ratify the Protocol.

Enhanced co-ordination among shipping and fisheries authorities

7 One of the most important reasons for non-ratification of the Protocol is the absence of effective co-ordination and co-operation between the national authorities responsible, respectively, for the regulation of maritime transport and fisheries operations. Without such co-ordination and co-operation, it is unlikely that any action taken in IMO alone will lead in the foreseeable future to the ratification of the Protocol and its application to a sufficiently large section of the international fishing community. The required co-ordination can be achieved through an arrangement that brings together, at both the national and international levels, the appropriate authorities and officials engaged in the regulation of shipping and fisheries activities. To achieve this objective, the Joint Working *Ad Hoc* Group may wish to address a special recommendation to the appropriate bodies of IMO and FAO to establish jointly a suitable forum to consider the ways and means to encourage and assist governments to ratify the Protocol as soon as possible. For this purpose IMO and FAO may consider the establishment of a joint inter-governmental mechanism, with appropriate representation from the ministries or departments responsible for shipping and fisheries. Alternatively, the mandate could be assigned to the Joint FAO/IMO *Ad Hoc* Working Group on IUU Fishing and Related Matters. This can be done by an appropriate revision of the Working Group's terms of reference.

8 Such a joint intergovernmental mechanism would, among others:

- .1 identify the means by which all the stakeholders concerned will be brought together to examine the various problems posed by the Protocol and agree on modalities for removing the concerns, or at least minimizing them to levels that are acceptable to the majority of governments and to the shipping and fisheries interests in their countries; and
- .2 work out a scheme to provide assistance (technical, legal and financial) to governments and the fishing industry with regard to measures to be taken to reduce constraints in the ratification and implementation of the 1993 Protocol.

For instance, IMO may consider ways in which it can provide assistance to governments in the translation of the text of the Protocol into their national languages.

- 9 The measures that might be taken by the joint IMO/FAO body will include the following:
- .1 to clarify and emphasize the advantages of the Protocol not only for the workers on fishing vessels, but ultimately for the shipping industry itself and the population of the countries as a whole. In particular, attention could be drawn to the risk that the operation of unsafe fishing vessels poses to life and property and the adverse economic and social implications that this can have not only on the lives of seafarers but also on the fortunes of the owners and operators of the vessels and on the health of the fishing industry in general;
 - .2 to articulate the linkage between the effective implementation of the Protocol and the common concern of IMO and FAO for the elimination of illegal, unregulated and unreported (IUU) fishing. In this regard, it might be helpful to stress and explain the generally supported view that the early entry into force of the Protocol could enhance measures being developed to combat IUU fishing; and
 - .3 to identify the provisions of the Protocol which give cause for concern to some governments and stakeholders, with a view to determining mechanisms and arrangements for revising the provisions and thus enable governments to ratify and implement the Protocol without complications to them or their fishing industries.

Possible options for effecting the required changes to the Protocol

10 There are a number of possible options for effecting the required changes to the Protocol and make it possible for more States to ratify it.

Statement of Understanding

11 One option might be to persuade and encourage governments to ratify the Protocol, on the clear understanding that measures will be undertaken, as soon as possible after entry into force, to adopt the required amendments to remove the difficulties. As part of the understanding all the States who become parties to the Protocol will agree that, pending the adoption and entry into force of the amendments, application of the relevant provisions would be suspended or would be subject to such conditions and limitations as may be specified in the Statement of Understanding. To make such an arrangement acceptable, it might be useful to state that the suspension of the stated provisions would be for a clearly specified period which should be relatively short in duration. Among the provisions of the Protocol that might be the subject of suspension or moratorium would be, for example, the provisions relating to port state control over foreign fishing vessels which call at the ports of States Parties. Suspension or a moratorium might also be applied to other provisions of the Protocol whose requirements are deemed to be either too stringent or potentially incompatible with some obligations of States Parties under other international agreements.

12 A Statement of Understanding for this purpose could be adopted by the appropriate organs of IMO and FAO, upon the recommendation of the Joint IMO/FAO intergovernmental body. The relevant organs of IMO and FAO might also be requested to adopt a common recommendation to the States Parties to the Protocol take the necessary legal and administrative measures to make it possible for them to apply the Protocol, subject to the agreed suspension (or moratorium) in respect of the specified provisions.

Agreement for the Implementation of the 1993 Protocol

13 A second option would be for IMO to arrange for the adoption of the amendments to the Protocol that would make it more attractive to more governments. The amendments could be incorporated in an Agreement for the Implementation of the 1993 Protocol. This Agreement would not be a new Protocol and it will not be legally separate from the Protocol: it shall be read and interpreted with the 1993 Protocol as one instrument. This will ensure that there is no duality of regimes. The Agreement will provide that States may express their consent to be bound by it (by means of ratification, acceptance or approval as may be appropriate in each case). The Agreement would provide that, after its adoption, any State which ratifies, accepts, approves or accedes to the Protocol shall be deemed to have also accepted the Agreement. To avoid constitutional complications for States which have already accepted the 1993 Protocol, provision will be made for such States to accept the amendments in the Agreement through implied or tacit consent. However States which wish or need to do so will be entitled to choose to accept the amendments by express consent. For this purpose, the Agreement will state that a State which has already ratified, accepted, approved or acceded to the 1993 Protocol will be deemed to have accepted the Agreement unless it gives notification in writing to the contrary within a specified period.

14 Such an arrangement will make it possible:

- .1 for the 1993 Protocol to be amended in order to remove the provisions which constitute an impediment to its entry into force;
- .2 for the necessary changes to the Protocol to be effected without the legal complications resulting from the operation of two separate Protocols;
- .3 for the amendment to the Protocol to come into force either at the time that the 1993 Protocol enters into force or as soon as possible after it enters into force; and
- .4 for States which have already ratified the 1993 Protocol to implement the amendments without necessarily having to go through the complicated constitutional and parliamentary procedures that would normally be needed for formal ratification of a separate treaty instrument.

ANNEX 3

ILLUSTRATIVE SAMPLE OF A RESOLUTION CONSTITUTING A STATEMENT OF UNDERSTANDING ON THE INTERPRETATION AND APPLICATION OF THE 1993 TORREMOLINOS PROTOCOL

[THE ASSEMBLY] [THE MARITIME SAFETY COMMITTEE],

RECOGNIZING the significant contribution which can be made the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (hereinafter referred to as “the 1993 Torremolinos Protocol),

CONSCIOUS of the desirability of establishing by common agreement the highest practicable standards for the safety of fishing vessels that can be implemented by all the States concerned,

ACKNOWLEDGING that certain provisions of the 1993 Torremolinos Protocol 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 1993 Torremolinos Protocol and, consequently, the implementation of the regulations contained therein,

NOTING, IN PARTICULAR, that many Governments have indicated that certain provisions of the 1993 Torremolinos Protocol are too stringent and would wish these provisions to be revised before they can agree to be bound by the Protocol,

HAVING ASCERTAINED through consultations among the interested Governments the revisions to the 1993 Torremolinos Protocol that will make the Protocol acceptable to the number of Governments required for the entry into force of the Protocol,

RECOGNIZING, HOWEVER, that there are legal impediments to the adoption of revisions to the 1993 Torremolinos Protocol prior to its entry into force,

HAVING AGREED that these revisions should be effected as soon as practicable after the entry into force of the 1993 Torremolinos Protocol,

NOTING that many States are willing to bring the 1993 Torremolinos Protocol into force provided that the Protocol will be implement subject to the revisions that have been agreed,

CONSIDERING that this objective may best be achieved by the adoption of a Statement of Understanding to that effect to apply as between all States Parties to the 1993 Protocol,

DECLARES that, upon entry into force, the 1993 Torremolinos Protocol will be interpreted and implemented as incorporating the revisions contained in the Annex to this resolution,

DETERMINES that any State expressing its consent to be bound by the 1993 Torremolinos Protocol after the date of the adoption of this resolution shall be deemed to have agreed that the Protocol shall be interpreted and implemented as revised by the Annex to this resolution,

DETERMINES FURTHER that each State which has expressed its consent to be bound by the 1993 Torremolinos Protocol prior to the date of the adoption of this resolution shall be deemed to have agreed that the Protocol is to be interpreted and implemented as revised by the Annex to this resolution, unless such State notifies the Secretary General within 12 months of the date of the adoption of this resolution, that it is not willing to subscribe to the understanding set forth in this resolution,

URGES all Government to take the necessary legal and administrative measures to make it possible for them to implement the 1993 Torremolinos Protocol in accordance with the terms of this resolution.

Annex

(Revisions and modifications to the 1993 Torremolinos Protocol)

ANNEX 4

**ILLUSTRATIVE TEXT OF AN AGREEMENT RELATING TO THE
IMPLEMENTATION OF THE 1993 PROTOCOL RELATING TO
THE 1977 TORREMOLINOS CONVENTION
ON THE SAFETY OF FISHING VESSELS**

The Parties to this Agreement,

RECOGNIZING the significant contribution which can be made the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (hereinafter referred to as “the 1993 Torremolinos Protocol),

ACKNOWLEDGING, HOWEVER, that certain provisions of the 1993 Torremolinos Protocol have given rise to difficulties in their implementation by a number of States having substantial fishing fleets under their flags and that this has prevented the entry into force of the 1993 Torremolinos Protocol and, consequently, the implementation of the regulations contained therein,

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

CONSIDERING that this objective may best be achieved by the conclusion of an Agreement relating to the implementation of the 1993 Torremolinos Protocol,

HAVE AGREED as follows:

Article 1

General obligations

- (1) The Parties to the present Agreement shall give effect to the provisions of:
 - (a) the articles of the present Agreement; and
 - (b) the regulations contained in the annex to the 1993 Torremolinos Protocol, subject to the modifications set out in the annex to the present Agreement.
- (2) The articles of the present Agreement and the regulations of the annex to the 1993 Torremolinos Protocol shall, subject to the modifications set out in the annex to the present Agreement, be read and interpreted as a single instrument.
- (3) The annex to the present Agreement shall constitute an integral part of the Agreement and a reference to the present Agreement shall constitute at the same time a reference to the annex thereto.
- (4) In event of any inconsistency between the present Agreement and the 1993 Torremolinos Protocol, the provisions of the present Agreement shall prevail.

Article 2

Application of the 1993 Torremolinos Protocol

Articles 2 to 8 inclusive and articles 11 to 14 inclusive of the 1993 Torremolinos Protocol shall apply to the present Agreement as they apply to the 1993 Torremolinos Protocol.

Article 3

Signature and establishment of consent to be bound by the present Agreement

(1) The present Agreement shall remain open for signature at the Headquarters of the Organization from to and shall thereafter remain open for accession.

(2) All States may become Parties to the present Agreement by expressing their consent to be bound by the Agreement.

(3) States shall express their consent to be bound by the present Agreement 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) Signature subject to the procedure set out in paragraph (5) of this Article; or
- (d) Accession.

(4) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

(5) A State which has deposited before the date of the adoption of the present Agreement an instrument of ratification, acceptance, approval or accession to the 1993 Protocol and which has signed the present Agreement in accordance with paragraph (3)(c) of this Article shall be deemed to have expressed its consent to be bound by the present Agreement [12] months after the date of the adoption of the present Agreement unless that State notifies the depositary in writing before that date that [it is not willing to avail itself of the simplified procedure set out in this paragraph] [it wishes to maintain its right to express its consent by the procedures provided in paragraph (3)(b) of this Article][its express approval will be necessary before the present Agreement shall enter into force for it].

(6) In the event of such notification, consent to be bound by the present Agreement shall be established in accordance with paragraph (3)(b) of this Article.

Article 4

Entry into force

(1) The present Agreement shall enter into force [12] months after the date on which not less than 15 States the aggregate of whose fishing vessels of 24 metres in length and over is not less than 14,000 have expressed their consent to be bound in accordance with Article 3 of the present Agreement.

(2) For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of the present Agreement 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 Agreement or three months after the date of deposit of the instrument, whichever is the later date.

(3) For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of the present Agreement after the date on which it enters into force, the present Agreement shall become effective [three] months after the date of deposit of the instrument.

(4) After the date on which an amendment to the present Agreement is deemed to have been accepted under article 11 of the 1993 Torremolinos Protocol, any instrument of ratification, acceptance, approval or accession deposited shall apply to the present Agreement as amended.

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

DONE AT this day of two thousand and

Annex

(Revisions and modifications to the 1993 Torremolinos Protocol)
