

1977 年托列莫利諾斯國際漁船安全公約 1993 年議定書之 2012 年開普敦協定

1993 年 04 月 02 日 通過，尚未生效

Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating the Torremolinos International Convention for the Safety of Fishing Vessels, 1977

Adopted at Torremolinos on 2 April, 1993, Not yet in force

SFV 2012

ATTACHMENT 1

CAPE TOWN AGREEMENT OF 2012 ON THE IMPLEMENTATION OF THE PROVISIONS OF THE TORREMOLINOS PROTOCOL OF 1993 RELATING TO THE TORREMOLINOS INTERNATIONAL CONVENTION FOR THE SAFETY OF FISHING VESSELS, 1977

THE PARTIES TO THIS AGREEMENT,

RECOGNIZING the significant contribution to maritime safety in general and that of fishing vessels which can be made by implementation of the provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977,

ACKNOWLEDGING, HOWEVER, that certain provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, 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 that 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 provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977,

HAVE AGREED as follows:

附件一

實施「1977年托列莫利諾斯國際漁船安全公約1993年托列莫利諾斯議定書」規定的2012年開普敦協定

本協定各締約國，

認識到實施「1977年托列莫利諾斯國際漁船安全公約1993年托列莫利諾斯議定書」規定能對整體海上安全以及漁船安全做出的重大貢獻，

但確認「1977年托列莫利諾斯國際漁船安全公約1993年托列莫利諾斯議定書」中的某些規定使得一些旗下擁有相當規模漁船隊的國家在實施該議定書方面存在困難，且妨礙該議定書的生效，並因而妨礙其中規定的實施，

渴望通過共同協定制定所有相關國家都能夠實施的、盡可能高地漁船安全標準，

考慮到實現該目標的最佳方式是締結一項實施經本協定修訂的「1977年托列莫利諾斯國際漁船安全公約1993年托列莫利諾斯議定書」規定的協定，

特協議如下：

Article 1 General obligations

- (1) The Parties to this Agreement shall give effect to the provisions of:
 - (a) the articles of this Agreement; and
 - (b) 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"), with the exception of article 1, paragraphs (1)(a), (2) and (3), article 9 and article 10 of that Protocol, as modified by this Agreement.
- (2) The articles of this Agreement, articles 2 to 8 and 11 to 14 of the 1993 Torremolinos Protocol, the regulations in the annex to the 1993 Torremolinos Protocol, and the regulations in the annex to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (hereinafter referred to as the "1977 Torremolinos Convention") shall, subject to the modifications set out in this Agreement, be read and interpreted as a single instrument.
- (3) The annex to this Agreement shall constitute an integral part of the Agreement and a reference to this Agreement shall constitute at the same time a reference to the annex thereto.

Article 2 Interpretation and application of the 1993 Torremolinos Protocol and the 1977 Torremolinos Convention

Articles 2 to 8 inclusive and articles 11 to 14 inclusive of the 1993 Torremolinos Protocol shall apply to this Agreement. In applying these articles, the regulations in the annex to the 1993 Torremolinos Protocol, and the regulations in the annex to the 1977 Torremolinos Convention, a reference to "the present Protocol" or to "the Convention", respectively, shall be deemed to mean a reference to this Agreement.

Article 3 Signature, ratification, acceptance, approval and accession

- (1) This Agreement shall remain open for signature at the Headquarters of the Organization from 11 February 2013 to 10 February 2014 and shall thereafter remain open for accession.
- (2) All States may become Parties to this Agreement by expressing their consent to be bound by the 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 (4) of this article; or
 - (d) accession.
- (3) Ratification, acceptance, approval or accession shall be effected

第1條 一般義務

1. 本協定各締約國須施行以下規定:
 - (a) 本協定的條款；及
 - (b) 經本協定修訂的「1977年托列莫利諾斯國際漁船安全公約1993年托列莫利諾斯議定書」(以下稱「1993年托列莫利諾斯議定書」)，但該議定書第1條第1項(a)項、第(2)項、第(3)項以及第9條及第10條除外。
2. 本協定條款、「1993年托列莫利諾斯議定書」第2至8條及第11至14條、「1993年托列莫利諾斯議定書」附則的條款，以及「1977年托列莫利諾斯國際漁船安全公約」(以下稱「1977年托列莫利諾斯公約」)附則中的條款，須在經本協定所述的修訂後，作為一份文書理解及解釋。
3. 本協定附則須構成本協定的一個組成部分，凡述及本協定，須同時構成述及其附則。

第2條 「1993年托列莫利諾斯議定書」及「1977年托列莫利諾斯公約」的解釋與適用

「1993年托列莫利諾斯議定書」第2至8條(含)及第11至14條(含)須適用於本協定。在適用這些條款、「1993年托列莫利諾斯議定書」附則的條款以及「1977年托列莫利諾斯公約」附則之條款時，分別述及“本議定書”或“本公約”須被視為係指述及本協定。

第3條 簽署、批准、接受、核准及加入

1. 本協定將於2013年2月11日至2014年2月10日在本組織總部開放供簽署，並在此後繼續開放供加入。
2. 所有國家可以通過以下方式表示同意受本協定約束，成為本協定締約國:
 - (a) 簽署並對批准、接受或核准無保留；或
 - (b) 簽署但有待批准、接受或核准，隨後予以批准、接受或核准；或
 - (c) 簽署，但受本條第四項所述程序約束；或
 - (d) 加入。
3. 批准、接受、核准或加入須通過向

by the deposit of an instrument to that effect with the Secretary-General.

- (4) A State which has deposited before the date of the adoption of this Agreement an instrument of ratification, acceptance, approval or accession to the 1993 Torremolinos Protocol and which has signed this Agreement in accordance with paragraph (2)(c) of this article shall be deemed to have expressed its consent to be bound by this Agreement 12 months after the date of the adoption of this Agreement unless that State notifies the depositary in writing before that date that it is not availing itself of the simplified procedure set out in this paragraph.

Article 4 Entry into force

- (1) This Agreement shall enter into force 12 months after the date on which not less than 22 States the aggregate number of whose fishing vessels of 24 m in length and over operating on the high seas is not less than 3,600 have expressed their consent to be bound by it.
- (2) For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this 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 this 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 this Agreement after the date on which it enters into force, this Agreement shall take effect three months after the date of deposit of the instrument.
- (4) After the date on which an amendment to this Agreement is deemed to have been accepted under article 11 of the 1993 Torremolinos Protocol, as applied to this Agreement pursuant to article 2, any instrument of ratification, acceptance, approval or accession deposited shall apply to this Agreement as amended.

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

DONE AT CAPE TOWN this eleventh day of October two thousand and twelve.

秘書長交存一份文書方為有效。

4. 在通過本協定之前交存批准、接受、核准或加入「1993年托列莫利諾斯議定書」的文書並依照本條第2項(c)款簽署本協定的國家須被視為表示同意在通過本協定之日後12個月受本協定的約束，除非該國在該日期前書面通知保存人其不利用本項所列的簡化程序。

第4條 生效

1. 本協定將在合計擁有不少於3,600艘24米及以上長度的在公海作業的漁船的22個國家表示同意受本協定約束之日後12個月生效。
2. 對在本協定滿足生效條件後但在生效之日前交存批准、接受、核准或加入文書的國家而言，批准、接受、核准或加入須在本協定生效之日生效，或在交存文書之日後3個月生效，以較晚者為準。
3. 對在本協定生效之日後交存批准、接受、核准或加入本議定書的文書的國家而言，該協定須在交存文書之日後3個月生效。
4. 依照第2條對本協定的適用，在本協定的修正案依據「1993年托列莫利諾斯議定書」第11條視為被接受之日後，交存的任何批准、接受、核准或加入文書須適用於經修正的本協定。

下列具名者，均經各自政府為此正式授權，特簽署本協定，以昭信守。

2012年10月11日訂於開普敦。

ANNEX

Modifications to The Annex and The Appendices to The Annex to The Torremolinos Protocol of 1993 Relating to The Torremolinos International Convention for The Safety of Fishing Vessels, 1977

Regulations for The Construction and Equipment of Fishing Vessels

CHAPTER I General Provisions

Regulation 1 – Application

1 The existing text of the regulation is replaced by the following:

- "(1) Unless expressly provided otherwise, the provisions of this annex shall apply to new vessels.
- (2) For the purpose of this Protocol, the Administration may decide to use the following gross tonnage in place of length (L) as the basis for measurement for all chapters:
- (a) a gross tonnage of 300 shall be considered equivalent to a length (L) of 24 m;
 - (b) a gross tonnage of 950 shall be considered equivalent to a length (L) of 45 m;
 - (c) a gross tonnage of 2,000 shall be considered equivalent to a length (L) of 60 m; and
 - (d) a gross tonnage of 3,000 shall be considered equivalent to a length (L) of 75 m.
- (3) Each Party which avails itself of the possibility afforded in paragraph (2) shall communicate to the Organization the reasons for that decision.
- (4) Where a Party has concluded that it is not immediately possible to implement all of the measures provided for in chapters VII, VIII, IX and X on existing ships, the Party may, in accordance with a plan, progressively implement the provisions of chapter IX over a period of no more than 10 years and the provisions of chapters VII, VIII and X over a period of no more than five years.
- (5) Each Party which avails itself of the possibility afforded in paragraph (4) shall in its first communication to the Organization:
- (a) indicate the provisions of chapters VII, VIII, IX and X to be progressively implemented;
 - (b) explain the reasons for the decision taken under paragraph (4);
 - (c) describe the plan for progressive implementation, which shall not be for more than five or 10 years, as appropriate; and
 - (d) in subsequent communications on the application of this Protocol, describe measures taken with a view to giving effect

附 則

對「1977年托列莫利諾斯國際 漁船安全公約1993年托列莫 利諾斯議定書」附則之附則及 附錄的修訂

漁船構造及設備規則

第I章 一般規定

第1條 - 適用

1 本條的現有文字由以下文字取代：

- “(1)除另有明文規定外，本附則中的規定適用於新船。
- (2)就本議定書¹而言，主管機關可決定使用下列總噸位代替長度(L)作為所有各章的衡量基礎：
- (a)300總噸須被視為相等於長度(L)24m；
 - (b)950總噸須被視為相等於長度(L)45m；
 - (c)2,000總噸須被視為相等於長度(L)60m；及
 - (d)3,000總噸須被視為相等於長度(L)75m。
- (3)每一締約國有利用第(2)項提供之可能時，應告知本組織做出該決定的理由。
- (4)如一締約國斷定不可能馬上實施本議定書第VII、VIII、IX及X章規定有關現有船舶的所有措施，該締約國可依照一計畫，逐步在不長於10年期間內實施第IX章的規定及在不長於5年的時期內實施第VII、VIII及X章的規定。
- (5)每一締約國利用第(4)項給予的可能性，須在其給本組織的第一次通報中：
- (a)列明將要逐步實施的第VII、VIII、IX及X章的規定；
 - (b)說明依照第(4)項做出決定的理由；
 - (c)敘述逐步實施的計畫，該計畫酌情不超過5或10年；及
 - (d)在有關適用本議定書的後續資訊聯繫中，敘述為實施本議定書

to the provisions of the Protocol and progress made in line with the time frame established.

- (6) The Administration may exempt a vessel from annual surveys, as specified in regulations 7(1)(d) and 9(1)(d), if it considers that the application is unreasonable and impracticable in view of the vessel's operating area and the type of vessel."

Regulation 2 – Definitions

- 2 The existing paragraph (14) is deleted, the existing paragraphs (15) to (22) are renumbered as (14) to (21) and the following new paragraphs (22) and (23) are added:

"(22) *Gross tonnage* means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any instrument amending or replacing it.

(23) *Anniversary date* means the day and the month of each year which will correspond to the date of expiry of the relevant certificate."

Regulation 3 – Exemptions

- 3 Paragraphs (3) and (4) are replaced by the following:

"(3) The Administration may exempt any vessel entitled to fly its flag from any of the requirements of this annex if it considers that the application is unreasonable and impracticable in view of the type of vessel, the weather conditions and the absence of general navigational hazards, provided:

(a) the vessel complies with safety requirements which, in the opinion of that Administration, are adequate for the service for which it is intended and are such as to ensure the overall safety of the vessel and persons on board;

(b) the vessel is operating solely in:

(i) a common fishing zone established in adjoining marine areas under the jurisdiction of neighbouring States which have established that zone, in respect of vessels entitled to fly their flags, only to the extent and under the conditions that those States agree, in accordance with international law, to establish in this regard; or

(ii) the exclusive economic zone of the State of the flag it is entitled to fly, or, if that State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured; or

(iii) the exclusive economic zone or a marine area under the

規定所採取的措施及依據所確定的時間表取得的進展。

- (6)如主管機關認為，鑒於船舶的作業區域及船舶類型，此一適用為不合理及不切實際，其可免除第7(1)(d)及9(1)(d)條規定的船舶年度檢驗。”

第2 條 - 定義

- 2 刪除現有第(14)項，現有第(15)至(22)項重新編為第(14)至(21)項，並增加以下新的第(22)及(23)項：

“(22)總噸係指依照「1969年國際船舶噸位丈量公約」附則I或修正或取代它的任何文書中所載噸位丈量規則所計算的總噸位。

(23)周年日係指與相關證書失效日期相應的每一年的月及日。”

第3 條 - 免除

- 3 現有第(3)及(4)項由以下文字取代：

“(3)如主管機關認為，鑒於船舶類型、氣候條件及不存在一般航行危險，此一適用為不合理及不切實際，其可對有權懸掛其船旗的任何船舶免除本附則的任何要求，但：

(a)船舶須遵守主管機關認為適合其預定用途而且能確保船舶及船上人員整體安全的安全要求；

(b)船舶僅在以下區域作業：

(i)對有權懸掛建立該區域的周邊國家船旗的船舶而言，在這些國家管轄下的毗鄰海區內建立的共同捕撈區，但只限於那些國家依照國際法同意在這方面確定的範圍之內及條件之下；或

(ii)在船舶有權懸掛其船旗的國家的專屬經濟區，或如該國尚未建立此種區域，則為該國依照國際法所確定的，在其領海之外並與其領海毗鄰，從測量其領海寬度的基線向外延伸不超過200海里的區域；或

(iii)依照有關國家符合國際法的

jurisdiction of another State, or a common fishing zone, in accordance with an agreement between the States concerned in accordance with international law, only to the extent and under the conditions that those States agree to establish in this regard; and

- (c) the Administration notifies the Secretary-General of the terms and conditions on which the exemption is granted under this paragraph.
- (4) An Administration which allows any exemption under paragraph (1) or (2) shall communicate to the Organization particulars of the same to the extent necessary to confirm that the level of safety is adequately maintained and the Organization shall circulate such particulars to the Parties for their information."

4 The existing regulations 6 to 11 are replaced by the following new regulations 6 to 17:

"Regulation 6 – Inspection and survey

- (1) The inspection and survey of vessels, so far as regards the enforcement of the provisions of the present regulations and the granting of exemptions therefrom, shall be carried out by officers of the Administration. The Administration may, however, entrust the inspections and surveys either to surveyors nominated for the purpose or to organizations recognized by it.
- (2) An Administration nominating surveyors or recognizing organizations to conduct inspections and surveys as set forth in paragraph (1) shall as a minimum empower any nominated surveyor or recognized organization to:
- (a) require repairs to a vessel; and
- (b) carry out inspections and surveys if requested by the appropriate authorities of a port State. The Administration shall notify the Organization of the specific responsibilities and conditions of the authority delegated to nominated surveyors or recognized organizations.
- (3) When a nominated surveyor or recognized organization determines that the condition of the vessel or its equipment does not correspond substantially with the particulars of the certificate or is such that the vessel is not fit to proceed to sea without danger to the vessel or persons on board, such surveyor or organization shall immediately ensure that corrective action is taken and shall in due course notify the Administration. If such corrective action is not taken the relevant certificate should be withdrawn and the Administration shall be notified immediately; and, if the vessel is in the port of another Party, the appropriate authorities of the port State shall also be notified immediately. When an officer of the Administration, a nominated surveyor or a recognized organization has notified the appropriate authorities of the port State, the Government of the port State concerned shall give such officer, surveyor or organization any necessary assistance to carry out their obligations under this regulation. When applicable, the Government of the port State concerned shall ensure that the vessel shall not sail until it can proceed to

協定，在另一個國家管轄下的專屬經濟區或海區，或一個共同捕撈區，但只限於那些國家依照國際法同意在這方面確定的範圍之內及條件之下；及

(c) 主管機關通知秘書長依據本項給予免除的規定及條件。

- (4) 主管機關依據第(1)或(2)項允許任何免除，須在證實充分維持安全水準所必需的程度，將同一免除的細節送交本組織，本組織須將此類細節分發締約國知悉。”

4 現有第6 至11 條由以下新的第6 至17 條取代：

“第6條 檢查及檢驗

- (1) 就執行本套規則規定及給予免除這些規定而言，對船舶的檢查及檢驗須由主管機關的官員完成。但主管機關可將這些檢查及檢驗委託給其為此目的指定的驗船師或經其認可的組織。
- (2) 為進行第(1)項所述檢查及檢驗而指定驗船師或認可組織的主管機關，至少須授權所指定的驗船師或認可的組織：
- (a) 要求對船舶進行修理；及
- (b) 在收到港口國有關當局請求時，進行檢查及檢驗。
主管機關須將授予指定的驗船師或認可組織的許可權的具體職責及條件通知本組織。
- (3) 當指定的驗船師或被認可組織確定船舶或其設備的狀況在實質上與證書所載情況不符，或不適合於在對船舶或船上人員都無危險的狀態下出海航行時，該驗船師或組織須立即確保採取糾正措施，並適時通知主管機關。如不採取此種糾正措施，則應撤銷有關證書，並須立即通知主管機關；如該船是在另一締約國的港口內，則亦須立即通知該港口國的有關當局。在主管機關官員、指定的驗船師或被認可組織業已通知港口國有關當局後，該有關港口國政府須給予該官員、驗船師或組織任何必要協助，以履行本條規定的其義務。在適當時，有關港口國政府須確保該船不得啟航，直至它能在對船舶或船上人員