Protocol to the
International Convention for the Unification of Certain Rules of Law With Respect to Collisions Between Vessels, 1910

The States Parties to this Protocol,

Recalling that the International Convention for the Unification of Certain Rules of Law with respect to Collisions Between Vessels, made in Brussels on 23 September 1910 entered into force on 1 March 1913 and is still applicable today;

Recalling that the International Convention on Certain Rules concerning Civil Jurisdiction in matters of Collision, made in Brussels on 10 May 1952 entered into force on 14 September 1955 and is still applicable today;

Considering that the Collision Convention, 1910, has been widely accepted in the marine industry,

Recognizing that that the Collision Convention, 1910, has been widely ratified;

Affirming the desirability of determining by mutual agreement certain uniform rules of law with respect to collisions;

Noting that developments since the entry into force of the Collision Convention, 1910 and Jurisdiction Convention, 1952 have demonstrated a need for a review of the rules contained in these conventions;

Desiring to adopt in one single instrument uniform rules of law with respect to collisions between vessels and civil jurisdiction in matters of collision;

Recognizing that the scope of application of the Collision Convention, 1910, should be extended;

Recognizing that the wording of the Collision Convention, 1910, should be modernized;

Considering that these objectives may best be achieved by the conclusion of a Protocol to the Collision Convention, 1910,

have agreed as follows:

Article 1

Article 1 of the International Convention for the Unification of Certain Rules of Law with respect to Collisions Between Vessels, made in Brussels on 23 September 1910 is replaced by the following:

Article 1 – Compensation for Collision Damages

Where a collision occurs, the compensation due for damages shall be settled in accordance with the following provisions.

Article 1*bis* – Definitions

For the purposes of this Convention:

(a) "Collision" means contact between two or more vessels and any other accident involving such vessels, arising from a manoeuvre, or a failure to manoeuvre, or from a failure to comply with any applicable rules of navigation, statutory or otherwise, even if no actual contact has occurred and even if the Vessels or any of them may be at anchor or otherwise made fast at the time of the casualty;

(b) "Inland waterway vessel" means every description of water craft solely designed for inland navigation;

(c) "Owner" means the registered owner, the bareboat charterer, or any other person having by way of demise, lease, other legitimate contractual engagement, or in fact possession of the vessel;

(d) "Vessel" means any description of watercraft, ship, structure or artificial means designed for or capable of navigation on or within the water, including fixed or floating platforms or mobile offshore drilling units, save when such platforms or units are on location engaged in the exploration, exploitation or production of sea bed mineral resources.

Article 1*ter* – Scope of Application

1. This Convention shall govern the jurisdiction, choice of law, allocation of liabilities, and the evaluation of damages in collision actions, including recourse actions, for loss or damage arising from collisions between vessels taking place:

(a) in any waters where all colliding vessels were flagged in member states,

(b) in the inland waters or territorial sea of a member state, or

(c) in any other waters to which a State Party has declared that the terms of this Convention shall apply.

2. This Convention shall not apply to collisions:

(a) to which the 1960 Convention relating to the unification of certain rules concerning collisions in inland navigation applies, if the state where proceedings are brought is also a contracting state of the 1960 Convention;

(b) between inland waterway vessels if the member state where the collision occurs has opted to exclude inland waterway vessel collisions from the application of this Convention, or

(c) involving ships of war or to Government ships appropriated exclusively to a public service, subject always to the national laws of the state of origin of such ships.

Article 2

The second paragraph of Article 2 of the Convention is repealed.

Article 3

The Convention is amended by adding the following after Article 4:

Article 4*bis* – Owner's Liability

Whenever any article of the present Convention refers to a vessel as being at fault or liable, the owner thereof shall be at fault or liable for the damages caused, which does not exclude in rem or other proceedings being taken against the vessel.

Article 4

The Convention is amended by adding the following after Article 7:

Article 7*bis* – Himalaya Clause

If claims arising from a collision are brought against a servant of the owner of a vessel, including the crew of the vessel or a pilot, these persons enjoy the same rights under this Convention as the owner of the vessel they serve. A person shall not be entitled to such rights if it is proved that the loss resulted from his or her personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

Article 5

The Convention is amended by adding the following after Article 9:

Article 9*bis* – Recoverable Damages

1. Save as provided for below, the claimant shall be entitled to recover such damages as may reasonably be considered to be the direct consequence of the collision. Damages shall place the claimant in the same financial position as he would have been had the collision not occurred.

2. The burden of proving the loss or damage sustained shall be upon the claimant.

3. Damages shall not be recoverable to the extent that the person against whom the claim is made is able to show that the claimant could have avoided or mitigated the loss or damage by the exercise of reasonable diligence.

4. Damages shall include:

(a) any loss or damage resulting from the collision to a vessel, or to goods or other property or persons on board any vessel involved in the collision;

(b) any loss of use of the vessel, loss of earning and any other pecuniary or financial loss and any incidental expense or cost connected therewith, incurred as a result of the collision;

(c) reimbursement of salvage, general average, wreck removal and other charges and expenses reasonably incurred as a result of the collision;

(d) any liability incurred by a claimant towards third parties for loss or damage caused by a vessel involved in the collision to property or to persons, whether on board a colliding vessel or not.

Article 9*ter* – Applicable Law

Unless the parties agree or have otherwise agreed, where a collision occurs in the internal waters or territorial sea of a State party, the law of that State shall apply to issues not otherwise regulated by this Convention, and where a collision occurs elsewhere, the law of the court seized of the incident shall apply, except that where all of the vessels involved are flagged in the same State, the law of that State shall apply, wherever the collision may occur. The application of such law shall mean the application of the substantive rules of such law to the exclusion of any rule of private international law.

Article 9*quater* – Jurisdiction

1. (a) Unless the parties agree or have otherwise agreed, actions on the merits of a collision shall be brought by a claimant in a court of a State Party to this Convention:

(i) where the defendant has his habitual residence or domicile, statutory seat, central administration or principal place of business;

(ii) where the collision has occurred, provided that it occurred in the internal waters or territorial waters of that State;

(iii) where a vessel involved in the collision or another vessel owned by the owner of the vessel has been arrested and the arrest has not been challenged or, if challenged, has been uphold, or where the arrest has been lifted by the provision of security; or

(iv) where a limitation fund has been properly constituted by the defendant in accordance with the law of that State on account of the collision.

(b) If an action on the merits of a collision is pending before a court of a State Party,

(i) any action, whether by counterclaim, subrogation, recourse or otherwise relating to damages caused by the collision, which could reasonably risk leading to contradictory judgments if heard separately, may be brought before that court, and

(ii) any further action brought in another State Party to recover the same damage shall be stayed unless and until the previous action has been discontinued, or, if the court so permits, stayed.

2. Paragraph 1 shall apply where a collision is governed by this Convention pursuant to Article 1.2, but shall not apply where all vessels involved are not flagged in State Parties hereto, but are all flagged in State Parties to the International Convention on Certain Rules concerning Civil Jurisdiction in matters of Collision of 10 May 1952.

3. Paragraph 1 shall not apply in cases covered by the provisions of the Revised Rhine Navigation Convention of 17 October 1868.

Article 6

Articles 11 to 13 of the Convention are repealed.

Final Clauses

Article 7

In the Final Clauses of this Protocol, "Collision Convention" means the International Convention for the Unification of Certain Rules of Law with respect to Collision between Vessels, made in Brussels, 23 September 1910.

Article 8
Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at […] from ____ to ____ and shall thereafter remain open for accession.

2. States may express their consent to be bound by this 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.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with [___].

Article 9
Entry into force

1. This Protocol shall enter into force eighteen months after the date on which at least [___ twelve] States have expressed their consent to be bound by it.

2. For a State which expresses its consent to be bound by this Protocol after the conditions for entry into force have been met, such consent shall take effect [___ three months] after the date of expression of such consent.

3. As between the Parties to this Protocol, denunciation by any of them of the Collision Convention in accordance with Article __ thereof, shall not be construed in any way as a denunciation of the Collision Convention as amended by this Protocol.

Article 10
The Protocol and the Collision Convention

1. The Collision Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2. A State which is Party to this Protocol but not a Party to the Collision Convention shall be bound by the provisions of the Collision Convention as amended by this Protocol, as well as by Articles 2 to 10 of the Collision Convention which are neither replaced nor repealed by this Protocol, in relation to other States Parties hereto, but shall not be bound by the provisions of the Collision Convention in relation to States Parties only to the Collision Convention.

3. The Collision Convention as amended by this Protocol shall apply only to claims arising out of occurrences which take place after the entry into force for each State of this Protocol.

4. Nothing in this Protocol shall affect the obligations of a State which is a Party both to the Collision Convention and to this Protocol with respect to a State which is a party to the Collision Convention but not a Party to this Protocol.

Article 11
Non-unified legal systems

1. If a State Party has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may declare that this Protocol shall extend to all its territorial units or only to one or more of them.

2. Declarations under this article shall state expressly the territorial units to which this Protocol extends.

3. If a State Party makes no declaration under paragraph 1, this Protocol shall extend to all territorial units of that State.

4. If a State Party has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol:

(a) Any reference to the law, regulations or procedures of the State shall be construed as referring, where appropriate, to the law, regulations or procedures in force in the relevant territorial unit;

(b) Any reference to the authority of the State shall be construed as referring, where appropriate, to the authority in the relevant territorial unit.

Article 12
Participation by Regional Economic Integration Organizations

1. A regional economic integration organization that is constituted by States and has competence over certain matters governed by this Protocol may similarly sign, ratify, accept, approve or accede to this Protocol. The regional economic integration organization shall in that case have the rights and obligations of a State Party, to the extent that that organization has competence over matters governed by this Protocol. For the purposes of Article 12 paragraph 1 and Article 17 paragraph 2, an instrument deposited by a regional economic integration organization shall not be counted in addition to the instruments deposited by its member States.

2. The regional economic integration organization shall make a declaration specifying the matters governed by this Protocol in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the [___] of any changes to the distribution of competence, including new transfers of competence, specified in the declaration made under this paragraph.

3. Any reference to a "State", "States", "State Party" or "States Parties" in this Protocol applies equally to a regional economic integration organization where the context so requires.

Article 13
Extension of Application

1. A State Party may, when expressing its consent to be bound by this Protocol, or at any time thereafter, declare that the Protocol shall apply to collisions in waters beyond the territorial sea of the State Party, even though all colliding vessels were not flagged in State Parties to this Protocol.

2. If the declaration is made after the conditions for entry into force of the Protocol have been met, the declaration shall take effect [___ three months] after the date when the declaration is made.

3. The declaration may be withdrawn at any time by the respective State. If the withdrawal is declared after the conditions for entry into force of the Protocol have been met, the withdrawal shall take effect [___ three months] after the date when the withdrawal is declared.

Article 14
Exclusion of Inland Waterway Vessel Collisions

1. A State may, when expressing its consent to be bound by this Protocol or any time thereafter, declare that collisions between inland waterway vessels are excluded from the application of this Protocol.

2. If the declaration is made after the conditions for entry into force of the Protocol have been met, the declaration shall take effect [___ three months] after the date when the declaration is made.

3. The declaration that inland waterway vessel collisions are excluded from the application of this Protocol may be withdrawn anytime by the respective State. If the withdrawal is declared after the conditions for entry into force of the Protocol have been met, the withdrawal shall take effect [___ three months] after the date when the withdrawal is declared.

Article 15
Revision and Amendment

1. A conference for the purpose of revising or amending the Collision Convention, as amended by this Protocol, may be convened by [___].

2. [The ___] shall convene a conference of the States Parties to this Protocol, for revising or amending the Collision Convention, as amended by this Protocol, at the request of [_____ eg six States Parties or one-third of the States Parties, whichever is the higher figure.]

3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to the Collision Convention, as amended by this Protocol, shall be deemed to apply to the Collision Convention as amended.

Article 16
Denunciation

1. This Protocol may be denounced by any State Party at any time [___ eg after the expiry of one year following the date on which this Protocol comes into force for that State].

2. Denunciation shall be effected by the deposit of an instrument to that effect with [___].

3. A denunciation shall take effect [twelve months, or such longer period as may be specified in the instrument of denunciation,] following its receipt by [___].

Article 17

This Protocol shall cease to be in force on the date when the number of States Parties falls below [___].

Article 18
[Depositary]

Article 19
Languages

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

Done at [___ place] this [___ date].

In witness whereof the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.