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# Elusive catch: domestic challenges encountered by the Philippines in Ratifying the Cape Town Agreement of 2012

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WORLD MARITIME UNIVERSITY

# ELUSIVE CATCH:

## DOMESTIC CHALLENGES ENCOUNTERED BY THE PHILIPPINES IN RATIFYING THE CAPE TOWN AGREEMENT OF 2012

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A dissertation submitted to the World Maritime University in partial fulfilment of the requirements for the award of the degree of Master of Science in Maritime Affairs

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# Declaration

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

(Signature): 

(Date): .....

Supervised by: .....

Supervisor's affiliation: .....

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Ad Dei gloriam!

# Abstract

Title of Dissertation: **Elusive Catch: Domestic Challenges Encountered by the Philippines in Ratifying the Cape Town Agreement of 2012**

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Through meticulous research of the domestic landscape, this dissertation seeks to identify and shed light on the prevailing subtleties that constitute hindrances to the Philippines' approach to improve maritime safety and sustainable fishing practices. In addition, this study attempts to determine potential solutions to overcome the challenges to ratification and foster an environment more conducive to legal consideration, thereby substantially contributing to the expeditious adoption and domestication and effective implementation of 2012 Cape Town Agreement in the domestic level.

Essentially, this dissertation is humbly devoted to deliver a comprehensive analysis of the impediments that the Philippines wrestles with in its pursuit of addressing the impacts of illegal, unreported and unregulated fishing (IUUF) through the CTA. Via a profound assessment of the complicated interplay of factors that mold the nation's policies and fishing practices, this study intends to enlighten the responsible parties including the maritime administration, other government agencies tasked to implement maritime rules and processes, and maritime stakeholders, especially the fishing sector, as they align with the applicable regime in international maritime governance. As such, this paper undertakes to provide insights into the extensive implications of assuming obligations arising from the adoption of the CTA by flag and coastal states aspiring to enhance maritime safety, protect marine resources, and promote responsible fishing practices.

**KEYWORDS**: IUU Fishing, challenges, ratification, Cape Town Agreement, solutions

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# List of Abbreviations

| | |
|---|---|
| AIS | Automatic Identification System |
| BFAR | Bureau of Fisheries and Aquatic Resources |
| BMB | Biodiversity Management Bureau |
| C188 | Work in Fishing Convention, 2007 |
| CPA | Cebu Port Authority |
| CTA | Cape Town Agreement of 2012 |
| DA | Department of Agriculture |
| DENR | Department of Environment and Natural Resources |
| DFW | Destructive Fishing Watch – Indonesia |
| DOST | Department of Science and Technology |
| DOTC | Department of Transportation and Communication |
| DOTr | Department of Transportation |
| DFA | Department of Foreign Affairs |
| EMB | Environmental Management Bureau |
| EMSA | European Maritime Safety Agency |
| FAO | Food and Agriculture Organization |
| FVSC | Fishing Vessel Safety Certificate |
| ICCFRAIMC | International Coordinating Committee to Facilitate the Ratification/Accession and Implementation of Maritime Conventions |
| ICCRIMC | Interagency Coordinating Committee on the Ratification and Implementation of Maritime Conventions |
| IMO | International Maritime Organization |
| ILO | International Labour Organization |
| ITLOS | International Tribunal for the Law of the Sea |
| IUUF | Illegal, Unreported, and Unregulated Fishing |
| LME | Large Marine Ecosystem |
| MARINA | Maritime Industry Authority |

| | |
|---|---|
| NGO | Non-governmental organization |
| NIA | National Interest Analysis |
| NOAA | National Oceanic and Atmospheric Administration |
| OSH | Occupational Safety and Health |
| PCG | Philippine Coast Guard |
| Pew | Pew Charitable Trust |
| PFVSRR | Philippines Fishing Vessel Safety Rules and Regulations |
| PMMRR | Philippine Merchant Marine Rules and Regulations |
| PPA | Philippine Ports Authority |
| PSA | Philippine Statistics Authority |
| PSMA | Port State Measures Agreement |
| RFMO | Regional Fisheries Management Organization |
| SDG | Sustainable Development Goals |
| SEAFDEC | Southeast Asian Fisheries Development Center |
| STCW-F | International Convention on the Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel |
| UN | United Nations |
| UNCLOS | United Nations Convention on the Law of the Sea |
| UP-IESM | University of the Philippines – Institute of Environmental Science and Meteorology |
| UP-MSI | University of the Philippines – Marine Science Institute |
| VHF | Very High Frequency |
| VMS | Vessel Monitoring System |
| VTS | Vessel Traffic System |

# Chapter 1 Introduction

The maritime industry plays a critical role in developing not only the societal cooperation of states and their respective cultures but also their economy. In a maritime archipelagic nation like the Philippines, in addition to trade and economic activities, the sea has been the cradle of protection, sustenance and cultural distinctiveness. Amid the intricacies of the maritime domain, the inadequacy of policy in maritime safety involving fishing vessels and the sustainability of marine resources have become apparent as one of the most serious issues among global concerns. Under this light, members of the family of nations and international organizations have deemed it necessary to enter into international accords and agreements in order to confront the challenges and to advance suitable maritime practices.

One of the notable international instruments that has gained importance and relevance in recent years is the Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977. Designed to further enrich the safety of fishing vessels, strengthen labor relations and set minimum standards, the Cape Town Agreement of 2012 (CTA) serves as a vital regulatory framework under the system of maritime governance. Although the family of nations recognizes the profound impact of this agreement in improving safety of life at sea and thwarting Illegal, Unreported, and Unregulated (IUU) fishing activities, the niceties of embracing this regime present a complex and tedious journey.

This dissertation dwells into the domestic challenges that the Philippines is facing as it attempts to ratify the CTA. With its well-defined coastline and abundant marine resources, the Philippines will greatly benefit from the enhanced safety measures and sustainable fishing practices aimed at by the adoption of the Agreement. Nonetheless, a number of complicated local challenges need close study as the path to ratification is shown. This paper embarks on an exhaustive analysis of the intricate variety of challenges that the Philippines faces in its effort to ratify the CTA, from exploring legislative constraints to strengthening institutional capacities, from evaluating economic considerations to unravelling the nuances of its international commitments.

## Chapter 1.1 Background and Context

While the Philippines is geographically located within the reach of commercial transactions consisting of transportation of passengers, goods, and services, its territorial composition as an archipelago has always been suitable for fishing as primary means of livelihood for people residing therein (MARINA, 2021) vis-à-vis supporting global food supply in the international community. As such, the Philippine fishing industry contributes to both local and international markets like the European countries and other industrialized nations.

The motorized vessels used in fishing activities may be suitable in some cases, nonetheless, as the activities were carried out farther, there has been a radical increase in the number of reported accidents at sea resulting to casualties caused by perils of the sea brought about by the current of the waters or unexpected bad weather, or even unfortunate use of illegal and noxious fishing devices (MARINA, 2021).

Significantly, illegal, unreported, and unregulated fishing (IUUF) wreaks havoc on the sustainability of fisheries, not only in the Philippine waters, but in other large marine ecosystems (LMEs). According to Pew Charitable Trust (Pew), IUUF is not just an environmental hazard, but, it is now used as an implement to commit international crimes such as piracy, human trafficking and narcotics smuggling (Chapsos &

Hamilton, 2018). This prompted the International Maritime Organization (IMO), Food and Agriculture Organization (FAO) and the International Labour Organization (ILO) to advocate for the prevention of the IUUF (Pew, 2017).

In response of the Philippine government to ensure the safety of fishers on board fishing vessels engaged in fishing operations and protection of marine environment, it has taken attempts to ratify the Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 Relating to the International Convention on the Safety of Fishing Vessels, 1977 (Cape Town Agreement).

However, these attempts, which started in 2018, have remained futile for reasons which this dissertation seeks to unfold. The country would have benefitted from the ratification of the CTA to prevent the prevailing incidents at sea surrounding the fishing industry thereby effectively conserving and sustaining marine resources.

## Chapter 1.2 Problem Statement

The ratification of international maritime instruments presents a complex and multidimensional obligation for member states, involving inter-related factors that influence the adoption and implementation process in the domestic level. However, as observed by other neighboring states, the ratification procedure is characterized by a labyrinth of domestic challenges that warrant comprehensive analysis. This study aims to dwell into the specific domestic challenges that the Philippines encountered in its efforts to ratify the CTA, navigating the legal constraints, institutional capacities, economic considerations, and complexities of international commitments that shape the nation's approach to maritime safety and sustainable fishing practices.

## Chapter 1.3 Research Aims and Objectives

The ratification of the Cape Town Agreement would be a momentous opportunity for the country to thwart the impending damages to the fishing industry caused by

overfishing and IUUF. Although this may seem a long shot for a developing state like the Philippines, with a strong political will and collaboration with the fishing sector and other relevant stakeholders, the ratification would be a stepping stone for its realization. Hence, it is the objectives of this paper:

1) To provide an overview of schemes to perpetuate illegal fishing
2) To analyze the effects and benefits of the ratification of the Cape Town Agreement;
3) To identify domestic challenges encountered by the Philippines on its attempt to ratify the Convention; and
4) To formulate suitable policy recommendations based on best practices observed from ratifying States.

## Chapter 1.4 Research Questions

Ratification of a convention cuts across the country's exercise of sovereignty and consequently restricts its power and subject itself to the provisions of the convention it is adopting. As a member of the international community, the Philippines is expected to adhere to the international policies adopted by the international community to which it is a member. Nevertheless, by virtue of that same membership, it enjoys certain advantages and benefits from where this dissertation anchors the following research questions:

1. What can the ratification of the Cape Town Agreement bring to ratifying States like the Philippines?
2. What are the challenges faced by the Philippines that resulted to failed attempts of ratification?
3. Are there legal implications or procedural constraints which need to be addressed?

## Chapter 1.5 Research Methodology and Methods

In correspondence with the established aims and objectives cited above, this research seeks to implement a combination of qualitative and legal research methodology in order to arrive at a sound conclusion.

The candidate has gathered data by means of peer reviewed articles and other available credible information in the website, from at least three (3) Southeast Asian non-signatory States, and organizations such as the International Maritime Organization Food and Agriculture Organization and Pew Charitable Trust.

Another method used by the candidate to solicit relevant information is by means of research questionnaire, whether personal or electronic mail, in-person or digital platform, of identified government employees from the Philippine government such as the Maritime Industry Authority, Philippine Coast Guard, Bureau of Fisheries and Aquatic Resources, and Philippine Fisheries Development Authority. This research shall also involve the private sector including the Alliance of Philippine Fishing Federation, and Southern Philippines Deep Sea Fishing Association, using the same method.

The research shall not be restricted by the methodology used, but, it shall exhaust such other secondary sources available including, but not limited to, peer-reviewed articles, relevant journals, annotations, and other academic contributions.

On the other hand, in order to accomplish the third objective of this research, relevant laws, policy issuances, orders, and strategies shall be looked into to determine the potential legal implications arising from the ratification of the Convention.

## Chapter 1.6 Structure of the Dissertation

This dissertation is structured in the following manner:

Chapter 2 lays one of the most prevalent practices in the fishing industry that is, illegal, unreported, unregulated fishing (IUUF), that the CTA seeks to address. It discusses the different ways through which IUUF is carried out, and the existing international regimes applicable to fishing activities.

In relation to the existing regimes mentioned in Chapter 2, Chapter 3 presents the CTA as one of the missing pillars for sustainable fishing. In this Chapter, the advantages of ratifying the CTA are likewise exhausted. In addition, the impact of the "no favourable treatment" clause to all states is discussed. Furthermore, this Chapter presents the status of ratification of the CTA and the challenges resulting to stalemate.

Chapter 4 exhibits the Philippine Fishing Industry Profile, its fishing fleet, the legal regimes governing fishing activities in the Philippines, including incidents at sea.

Chapter 5 exhausts the domestic challenges that thwarts the ratification of the Cape Town Agreement. This Chapter examines the administrative, procedural and legal constraints, political challenges, level of awareness about the Agreement, the economic considerations, and technical capacities and enforcement.

Finally, Chapter 6 presents the summary and conclusions with appropriate recommendations arising from the discussion of relevant areas cited in the previous chapters.

# Chapter 2 Literature Review: An Overview of IUUF Global Schemes

Sustainable fisheries play an indispensable component in maintaining sufficient food supply and economic development (Park et al., 2023, Brockington et al., 2023), and in supporting the subsistence of millions of people wo have been relying on the richness of marine resources (Tahiluddin & Sarri, 2022). Nevertheless, in order to cope up with the increasing demand for fish, fishers resort to illegal methods of fishing to the prejudice of various ecosystems which often result to degradation of marine environment and exhaustion or overexploitation of aquatic resources, which is now commonly referred to as "illegal, unreported and unregulated fishing" (Agnew et al., 2009). Globally, an estimated average annual loss amounting to $25.5 billion to $49.5 billion to coastal and island States (Sumaila et al., 2020) results from IUUF practices. Furthermore, IUUF often involves the use of techniques that are detrimental to marine resources and ecosystems, targeting species that need to be protected, sometimes leading to damaged coral reefs and destructive bycatch of endangered species (Selig et al., 2022).

With the advancement of technology, two of the most significant monitoring systems introduced to detect IUUF activities are the vessel monitoring systems (VMS) and automated identification system (AIS). Indonesia was the first country to develop this system to determine the location and activity of its commercial fishing vessels (SEAFDEC, 2023). AIS, on the other hand, was intended to avoid vessel mishaps by transmitting to other vessels at sea, the ship's identity, position, speed, and movement, which are likewise recorded via satellite or other land-based receivers (Kroodsma et

al., 2018). Unfortunately, these systems are not enough to deter and eliminate illegal fishing practices.

## Chapter 2.1 Schemes to perpetuate IUUF

There are particular methods used by fishers engaged in IUUF that cut across the expenditures of operators and government impositions, or defeat the attempts to trace the vessel's history (Lubchenco & Haugan, 2023). These schemes prove to accommodate perpetrators by rewarding them with high gain and affording minimum risk.

### a. Transshipment Utilization

Monitoring catches at sea presents an adequate hindrance in the global endeavor to combat IUUF. The effectiveness of implementing vigorous catch monitoring practices varies significantly among regions and nations, creating an environment that is ripe for exploitation by IUUF vessels. One prevalent strategy employed by these vessels to avoid detection and regulatory oversight is the practice of illicit transshipment at sea (Christy & Suhadak, 2017). This manner involves transferring their catch to other vessels, often duly registered fishing vessels of larger size, without the need to enter port. This scheme empowers IUU operators to maintain their fishing operations while veiling their illicit actions and concealing the origin of their catches.

The possibility of transshipment as a strategy for IUUF increases the uneven and irregular nature of catch-monitoring practices conducted at sea. IUUF vessels frequently operate in remote and inadequately monitored areas where surveillance is scarce. This deficiency provides a convenient environment for IUU operators to make unsanctioned transfer of catch to different vessels. By offloading their catch to another vessel, IUU operators can conceal evidence of unlawful activities and neglect the obligation to make a report to the regulatory bodies (Kumala et al., 2021).

The ramifications of illegal transshipment are particularly conspicuous in regions endowed with high-value fisheries. For example, within the Pacific, a habitat rich in prized tuna stocks, the financial losses stemming from illegal transshipment are staggering. It is estimated that these prohibited practices lead to an annual loss exceeding US$142 million in value from tuna-like products (Long et al., 2020). This practice not only induces a direct financial toll but also exacerbates overfishing and depletion of marine resources, endangering the fisheries and jeopardizing the fishers' means of subsistence.

Like in Indonesian seas, studies show that IUU fishing and transshipment are still rampant in the area despite the presence of a Vessel Traffic System (VTS) installed at the Maritime Affairs' Head Office in Jakarta (Masroeri et al., 2021). This means that IUU operators can easily escape penal implications arising from their unlawful acts.

Mitigating the challenges posed by illegal transshipment necessitates a multifaceted approach that integrates enhanced surveillance and monitoring, reinforced regulations, and bolstered international cooperation. Modern technologies like VMS offers the potential solution to furnish real-time data on vessel activities, rendering covert transshipments by IUU operators more challenging (Detsis et al., 2012). Additionally, regulatory frameworks that mandate the transparent reporting of transshipment activities, coupled with stringent port controls and inspections, can act as barriers against the laundering of unlawfully caught fish.

Collaboration on a global scale is key to combat the scourge of illegal transshipment. Regional fisheries management organizations (RFMOs) assume a pivotal role in coordinating efforts among member countries to implement standardized monitoring and enforcement strategies. The Port State Measures Agreement (PSMA), a universally endorsed international accord aimed at preventing IUU-caught fish from

infiltrating global markets, further contributes to the solution by compelling port states to scrutinize incoming vessels and shipments (Pew, 2018b).

The illegal transshipment scheme underscores the inconsistencies in catch-monitoring practices that provide an avenue for IUUF vessels to exploit regulatory loopholes. The financial losses and ecological degradation resulting from these actions underscore the urgency of rectifying the issue. Through enhancements in monitoring technologies, the reinforcement of regulations, and the cultivation of international collaboration, the global community can forge ahead in closing the fissures that enable IUUF operators to perpetuate illegal transshipments (Österblom et al., 2010). This collective effort is vital for the preservation of marine resources and the cultivation of sustainable fisheries management.

### b. Running under flags of convenience

Article 91 of the UNCLOS, paragraph 1, vests upon flag States the right to grant nationality to ships upon compliance of the conditions imposed upon by the flag State. Such grant carries with it the right to fly its flag. However, the same provision of the UNCLOS, third sentence, mandatorily requires the existence of a genuine link between the flag State and its ship.

As ruled by the International Tribunal for the Law of the Sea (ITLOS) in the M/V "Viginia G" Case, citing its ruling in the M/V "Saiga" (No. 2) Case, "the purpose of the provisions of the Convention on the need for a genuine link between a ship and its flag State is to secure more effective implementation of the duties of the flag State..xxx" (Panama v. Guinea-Bissau, 2014). This contemplates jurisdiction and control enshrined under Article 94 of the UNCLOS over administrative, technical and social matters, including but not limited to, registration of ships, its complement, and measures to ensure safety at sea such as construction, equipment and seaworthiness of ships, manning, labor conditions and training of crews, use of signals, maintenance of

communications, prevention of collisions, surveys and safety inspections, conformity to generally accepted international regulations, reporting to flag State by another State of improper exercise of jurisdiction and control with respect to ships, and investigation in the event of marine casualty or incident, among others.

Therefore, the establishment of a genuine link does not automatically attach upon registration of a ship in a State, unless, such state was able to faithfully exercise its duties consistent with Article 94 of the UNCLOS. Otherwise, such registration is a mere accommodation to the ship in order to fly a flag of a State in convenience, which is often referred to as a "flag of convenience".

When a ship flies a "flag of convenience", it bears the flag of a State that has failed to ensure the seaworthiness of the ship, hence, such ship is unsafe for being substandard. While it offers various gains, including reduced regulatory oversight, streamlined registration procedures, reduced tax obligations, and traceability of beneficial ownership (Lubchenco & Haugan, 2023), it adversely affects the standing of the State that accommodated the registration and ultimately compromises safety of life at sea and endangers the marine environment. Unfortunately, IUUF operators take advantage of this practice to circumvent established fisheries management and conservation measures. They may use these vessels to avoid fines related to illegal fishing activities, or even change flags and ship names in what is known as "flag-hopping" (Miller & Sumaila, 2014). This scheme confuses officials in charge of monitoring and managing fishing activities, effectively covering the vessel's true identity and ownership history.

### c. Offloading in ports of convenience

Fishing vessels that engage in IUUF practices are meticulous in choosing ports that are able to prevent thorough inspections. This is achieved through evaluation of ports based on sufficiency of inspection capabilities, adequacy in the port's recordkeeping, or vulnerability of inspectors to corruption. These ports of convenience which are

strategically studied by IUUF vessels, serve as a necessary condition for accessing marketplaces and for having logistical support with minimal risk of detention. Ports of convenience are usually prevalent in free trade ports with lenient customs laws that allow transshipment activities. (Long et al., 2020b).

### d. Creating complex ownership networks

The value chains that are associated with fishing cross multiple jurisdictions and therefore causing unclear ownership networks that confuses the actual beneficial ownership. It becomes a difficult task to identify and prosecute instances of illegal fishing within this intricate framework, and it demands a strong collaboration and exchange of information between states, governments, and organizations. However, this collaboration is often lacking, making it a more challenging task. Consequently, cases of illegal fishing are usually concentrated on prosecuting the vessel and its crew for a particular violation at the domestic level, and often fail to uncover potential unlawful practices carried out by the same vessel in different jurisdictions. Moreover, there is a shortage of initiatives to prosecute the principals who are staging IUUF operations (Long et al., 2020b; Lubchenco & Haugan, 2023).

### e. Disabling vessel monitoring and identification systems

In order to ascertain the location and activities of vessels, vessel monitoring and identification systems have been required in most flag state jurisdictions. Large vessels use a satellite-based automatic identification system to broadcast their positions. Nevertheless, IUUF vessels often capitalize on the flaws and glitches in these systems. They either disable or tamper with them to conceal their identity and location (Long et al., 2020a).

### f. Producing fraudulent documents and vessel identification

The fisheries industry heavily relies on paper-based documentation, and even when electronic records are available, they are not widely used throughout the supply chain. Due to this, operators frequently resort to fabricating or altering essential documents like fishing licenses, vessel registration certificates, and catch certificates. These dishonest tactics are likewise utilized to conceal illicit activities, such as past irregularities, and avoid adhering to regulatory standards, lawful costs, and other obligations. Additionally, these alterations serve as passes to support unauthorized entry to other resources, services, or advantages within the fishing sector (Lubchenco & Haugan, 2023).

### g. Labor exploitation

Fishing vessels that engage in IUUF often neglect the welfare of their crew members. This includes inadequate working conditions, insufficient training, and lack of essential safety equipment (Pew, 2018). Furthermore, the fishing vessels frequently operate in precarious weather conditions, ultimately decreasing their expenditure. This disregard for worker well-being allows them to prioritize short-term profits over the safety and health of their crew. In some alarming cases, migrant laborers who are seeking job opportunities overseas have fallen prey to fraudulent job offers on land, only to realize that they have been subjected to appalling working conditions on dangerous fishing vessels navigating the open seas (Lubchenco & Haugan, 2023).

## Chapter 2.2 Existing International Instruments Regulating Fishing

Over the course of the last ten years, a more intricate understanding of the dangers presented by IUUF operations have come to light. The public and political counterparts have become increasingly aware of this issue, and a consensus has been reached regarding the importance of countries banding together to deal with illegal fishing.

Nations acknowledge that the elimination of IUUF can aid in the recovery of fisheries without resorting to unpopular measures such as fishing moratoriums or enforced capacity removals. This issue has also gained significant international attention, especially after the adoption of specific targets under SDG 14 in 2015. These objectives aim to put an end to IUUF and end practices that contribute to it (14.6) by the year 2020 (Hutniczak et al., 2019). Hence, the following international agreements:

### A. Agreement on Port State Measures to Prevent, Deter, Eliminate Illegal, Unreported and Unregulated Fishing (PSMA)

The PSMA is a conclusive binding agreement developed by the Food and Agriculture Organization (FAO) of the United Nations which has become effective in 2016. The instrument aims to end IUUF via a regime of inspection that effectively denies entry of fishing vessels or access to ports for offloading of fish catch from vessels engaged in illegal fishing practices (Jaal, 2022).

This legal framework envisions an international and regional cooperation through increased information sharing and communications. Having this advantage, it will improve systems in analyzing data on vessels operating illegal fishing activities which, in effect, would intensify capacity to detect and bar IUUF (NOAA Fisheries, 2023).

### B. International Convention on the Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995

Another complementary international instrument that serves as the other half of the safety regime for fishing vessels is the STCW-F. This accord is focused on the human element which is indispensable aspect in every fishing vessel operation. Remaining true to the mission of the IMO of ensuring safety of life at sea and protection of the marine environment, the STCW-F sets forth the minimum training requirements and certification of crew on board seagoing fishing vessels considering the unique nature

of the fishing industry and the fishing working environment. This Convention entered into force in 2012 but is still undergoing review (IMO, 2019).

### C. ILO Work in Fishing Convention (C188)

Work in Fishing Convention, 2007 is an international instrument developed by the International Labour Organization (ILO) that took effect on 16 November 2017 which sets forth an acceptable international labor standard, seeking to protect the interest of seafarers employed on fishing vessels. This Convention has the objective of guaranteeing living working conditions for fishers that meet minimum requirements with regard to work on board, conditions of service, accommodation, food, occupational safety and health (OSH) protection, medical care, and social security (ILO, 2013).

## Chapter 3 The Cape Town Agreement of 2012: The Missing Pillar to Sustainable Fisheries

With the prevailing circumstances of overfishing, habitat degradation, and depletion of marine resources continue to become apparent, the adoption by the IMO of the CTA serves as crucial yet often overlooked basis in the quest for sustainable fisheries. It provides a potential solution by addressing a vital aspect that is typically relegated to the side lines in sustainability discourses: ensuring the safety and well-being of fishermen and their vessels (IMO, n.d.). As a key element of the wider sustainable fisheries framework, this global accord focuses on setting comprehensive safety standards for fishing vessels. This emphasis underscores the inseparable connection between preserving ecosystems and safeguarding human welfare. By bridging the gaps in vessel safety, labor conditions, and the welfare of the crew, the CTA contributes to

a comprehensive strategy for sustainable fisheries management. As a result, it strengthens the resilience of marine ecosystems while simultaneously upholding the vitality and dignity of the fishing industry's workforce. Therefore, the agreement serves as a long overdue and indispensable cornerstone for establishing a genuinely sustainable and ethically sound fishing sector.

## Chapter 3.1 What is the Cape Town Agreement of 2012?

The Cape Town Agreement, also referred to as the 2012 Agreement on the Implementation of the Provisions of the Torremolinos Protocol from 1993 regarding the Torremolinos International Convention for the Safety of Fishing Vessels in 1997, is an international instrument adopted by the IMO, that lays down the bare minimum benchmarks for the design, construction, and equipment of fishing vessels. The agreement also contains provisions that aim to enhance the protection of the crew and observers, thereby ensuring a fair and equitable fishing industry (IMO, n.d.).

Prior to the adoption of the CTA, there were two international instruments that were promulgated to govern safety of fishing vessels: (1) The Torremolinos International Convention for the Safety of Fishing Vessels, 1977; and (2) The Torremolinos Protocol of 1993, relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, both of which have failed to secure the required number of ratifications thereby preventing their entry into force. With the ratification of the CTA, it shall replace the said two prior instruments.

As fishing has been considered, time and again, as one of the most dangerous profession, the legally-binding agreement pushed for by the international organization would serve as the regime that would afford adequate protection to fishers by enhancing safety on vessels carrying them thereby ultimately saving their lives at sea. The agreement is also the solution contributed by the IMO to combat IUUF.

Like any other IMO instrument, the CTA provides guidelines to States exercising their flag, port and coastal state obligations by facilitating full control and effective monitoring of fishing vessels. As the CTA sets the minimum safety requirement for the design, construction and equipment and inspection of fishing vessels, it is made applicable only to fishing vessels 24 meters in length and over or its equivalent in gross tons. Table 1 shows the basis of measurement used by the CTA.

*Table 1 Basis of Measurement*

| Vessel Type | Length | Gross Tonnage |
|---|---|---|
| Fishing Vessels | 24 m | 300 GT |
| | 45 m | 950 GT |
| | 60 m | 2,000 GT |
| | 75 m | 3,000 GT |

Source: Chapter 1, Regulation 1 of the Cape Town Agreement of 2012

Unlike other IMO instruments, the CTA provides transitory periods when certain provisions may be made to apply mandatorily. This means that not all provisions are implementable for the same period as its entry into force since the CTA allows some chapters to be implemented within a specific time frame on a later date.

*Table 2 Implementation Chart for the Chapters in the 2012 CTA*

| Chapter | | Application | | | | |
|---|---|---|---|---|---|---|
| | | New Fishing Vessels | | Existing Fishing Vessels | | |
| | | 24 m – 45 m (300 GT – 950 GT) | ≥45 m (≥950 GT) | 24 m – 45 m (300 GT – 950 GT) | ≥45 m (≥950 GT) | Flexible Implementation |
| I. | General provisions | ✓ | ✓ | ✓ | ✓ | N/A |
| II. | Construction, watertight integrity and equipment | ✓ | ✓ | ✗ | ✗ | N/A |

| | | | | | | |
|---|---|---|---|---|---|---|
| III. | Stability and associated seaworthiness | ✓ | ✓ | ✗ | ✗ | N/A |
| IV. | Machinery and electrical installations and periodically unattended machinery spaces | ✗ | ✓ | ✗ | ✗ | N/A |
| V. | Fire protection, fire detection, fire extinction and fire fighting | ✗ | ✓ | ✗ | ✗ | N/A |
| VI. | Protection of the crew | ✓ | ✓ | ✗ | ✗ | N/A |
| VII. | Life-saving appliances and arrangements | ✗ | ✓ | ✗ | ✓ | No more than 5 years |
| VIII. | Emergency procedures, musters and drills | ✓ | ✓ | ✓ | ✓ | No more than 5 years |
| IX. | Radiocommunications | ✗ | ✓ | ✗ | ✓ | No more than 10 years |
| X. | Shipborne navigational equipment and arrangements | ✓ | ✓ | ✓ | ✓ | No more than 5 years |

Source: 2012 Cape Town Agreement (Explained) (IMO, n.d.)

As illustrated in Table 2, flag Administration has the prerogative to use either gross tonnage or fishing vessel length as the basis of measurement to determine the applicability of the provisions. Upon due determination, consistent with the provisions under Regulation I/2(1), new fishing vessels shall refer to vessels constructed after the effectivity of the CTA. On the other hand, for existing vessels, the party may gradually implement the provisions of Chapter VII, VIII, IX, and X over a period of no more than 5 or 10 years, as the case may be. Whenever the party avails of this prerogative, the progressive implementation period starts on the date of the entry into force of the CTA or on the date when the Agreement becomes effective for the Party, whichever occurs later. However, it is worthy to note that, in accordance with Regulation VII/1(2) and VII/13-14, the only requirements of Chapter VII that apply to existing vessels concern hand-held very high frequency (VHFs) radio and radar transponder (IMO, n.d.).

## Chapter 3.2 Benefits of Adopting the Cape Town Agreement of 2012

While the PSMA provides a regime of inspection aimed at making ports free from IUUF by denying any access thereto for offloading of illegally caught fish, the ILO C188 aims at affording suitable working and living conditions for fishers, and the STCW-F ensures competent fishers by prescribing minimum standards for training, certification and watchkeeping, the CTA completes the four pillars of sustainable fishing by focusing on vessels carrying fishers to perform fishing activities by fostering a safety culture in fishing vessels.

The ratification of the CTA shall bring about advantages that would benefit not only State or the fishers on board, but also those who are dependent upon them for support. The preservation of life remains to be the ultimate right that any person possesses, much less to be taken lightly by administrations given the perils they would have to endure at sea. Hence, the following are tangible benefits that may be reaped out of the State's adoption of the agreement:

### A. Safety of Fishers Enhanced

The CTA is an important maritime instrument whose main objective is to amplify safety of fishers and their vessels in the international waters. By developing the comprehensive safety standards specifically applicable to fishing vessels, it directly addresses the dangerous situations fishermen often face when exploiting marine resources. The Agreement strengthens security oversight through application of a multi-pronged approach.

The CTA primarily requires precise standards for the design, construction and equipment of fishing vessels. These standards cover various elements such as stability, watertightness, fire safety and availability of emergency equipment (Hwang, 2022). By ensuring that ships are designed and equipped to withstand the challenges of the vast seas, the Agreement significantly reduces the risk of accidents and disasters at sea.

Furthermore, the Agreement prescribes a system of surveys and inspections of fishing vessels to verify compliance with the established safety standards. Member States have the obligation to spot potential areas for improvement at the earliest possible opportunity. This framework promotes a culture of accountability and enrichment of fishing safety practices (Pew, 2018a).

In addition, the Agreement lays down the significance of possessing fundamental education of crew on board fishing vessels. It addresses the need for training, including the basic safety protocols, emergency response strategies and proficiency in the use of safety equipment (FAO, 2001; FAO, 2023).

The CTA significantly improves fishers' safety by imposing strict standards for the design and construction of fishing vessels, introducing periodic assessments to ensure compliance, and prioritizing extensive training of crews on safety protocols (IMO, n.d.). This holistic strategy effectively addresses the unique challenges associated with fisheries and underscores the international community's commitment to protecting the lives and well-being of those working on fishing vessels at sea.

### B. Marine Environment and Resources Conserved

The CTA assumes a crucial role in protecting the marine environment by cultivating safer and more conscientious fishing practices. While the primary focus of the Agreement is on augmenting the safety of fishing vessels and their crew, its impacts within the marine ecosystem carry substantial importance.

Through the establishment of rigorous safety criteria for fishing vessels, the Agreement effectively curbs the incidence of accidents, oil spills, and vessel losses that could potentially catalyse environmental deterioration (Lindley & Techera, 2017). Fishing vessels that are meticulously designed and constructed are less susceptible to

mishaps leading to the discharge of pollutants into the marine milieu, consequently shielding fragile ecosystems and marine species (Håvold, 2010).

The mandate for periodic assessments and inspections ensures continuous adherence to safety benchmarks (Sodik, 2009). This systematized monitoring exerts a preventive influence on the neglect of vessels, diminishing the likelihood of vessels being abandoned and transmogrified into hazards for marine life and coastal ecosystems (Chang, 2011). Furthermore, these inspections provide a platform to identify possible sources of pollution, thus contributing to the early initiation of intervention and mitigation strategies (Swan, 2006).

An emphasis on crew awareness to safety protocol can help protect marine resources. A well-trained crew can better respond to emergencies, thereby lessening the impact of an accident to the environment. Competent crew are also better able to utilize fishing equipment, reducing the likelihood of fishing gears being neglected, stranding and endangering marine animals.

### C. Inspection Regime for Fishing Vessels Established

The CTA introduces a robust and comprehensive regime of inspection of fishing vessels, forming an integral element of its provisions to bolster maritime safety and ensure accountable fishing practices. At the centre of its approach is the establishment of a meticulous inspection framework designed to ascertain fishing vessels' adherence to stipulated safety norms. This, in turn, serves to curtail risks faced by both vessels and crew members, while simultaneously diminishing the potential repercussions on marine ecosystems.

Fundamentally rooted in a set of key principles, the inspection regime encompasses the following facets:

**Regularity of Surveys and Inspections** - The CTA mandates that fishing vessels undergo consistent surveys and inspections. The objective here is to evaluate compliance with the predefined safety standards (Pew, 2018b). These assessments are executed by competent authorities designated by member states, ensuring a standardized and methodical evaluation of vessel safety (Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol Relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, 2012).

**Depth of Scope of Inspections** The inspection process is all-encompassing, covering different angles of vessel safety, ranging from design and construction to equipment and operational protocols (Pew, 2018a). This holistic approach guarantees a thorough scrutiny of all elements of vessel safety, upholding a stringent benchmark.

**Sustained Adherence to Prescribed Standards**: The inspection regime operates in the spirit of compliance with the prescribed safety standards. By verifying adherence to these measures, the agreement endeavours to foster a culture of continuous enhancement in vessel safety, thus avoiding scenarios where vessels might be neglected or their condition deteriorates over time (Pew, 2018a).

**Verification of Compliance**: During these inspections, any safety deficiencies or non-conformities are identified. This timely detection enables corrections and corrective actions to be implemented, addressing potential risks before they escalate into imminent safety threats or environmental hazards (Pew, 2018a). Should vessels be found non-compliant with the safety standards, the inspection regime recommends immediate intervention. In such an instance, authorities can collaborate with vessel operators to rectify deficiencies and ensure alignment with the stipulated safety criteria (Pew, 2023).

**Address Abandonment Issues**: A notable contribution of the CTA's inspection regime is its role in stopping instances of vessel abandonment (Pew, 2018a). The

agreement recognizes that abandoned vessels pose significant hazards to the marine environment. The inspection framework therefore proactively identifies the vessels that are at risk of abandonment, curbing a potential ecological threat (IMO, 2019b).

**Accountability and Transparency**: The inspection mechanism fosters a sense of accountability among vessel owners and operators. With transparent evaluation procedures and clear reporting mechanisms, the assurance of upholding safety standards is reinforced, and necessary enhancements are communicated effectively to pertinent stakeholders (Pew, 2023).

By implementing regular surveys, ongoing compliance evaluations, and prompt identification and rectification of safety shortfalls, the Agreement profoundly contributes to the cultivation of a more secure and sustainable fishing industry.

### D. Modern Slavery Combatted

The CTA emerges as a potent instrument in the battle against modern slavery within the fishing sector by directing attention towards the safety and welfare of fishermen (IMO, n.d.). While its primary objective revolves around addressing vessel safety, the agreement indirectly addresses the exploitative practices frequently linked to modern slavery.

The agreement mandates rigorous safety standards for fishing vessels, aiming to enhance the working conditions of the crew members (IMO, n.d.). This encompasses provisions for crew accommodations, health and safety protocols, and appropriate living conditions (Alderton et al., 2004). As vessels have no other choice but to respect the dignity and uphold the rights of their crew, the CTA reduces the risks of exploitation.

Complementarily, highlighting crew training in safety protocols has a ripple effect in the fight against modern slavery. A proficiently trained crew is better equipped to

comprehend their entitlements, discern signs of exploitation, and report any abuses they may encounter (Alderton et al., 2004). Training augments the capacity of crew members to advocate for equitable treatment, thereby decreasing their vulnerability to modern slavery practices.

Also, the mandatory surveys and inspections stipulated by the agreement introduce mechanisms for surveillance and accountability. These assessments can uncover instances of substandard working conditions, inadequate remuneration, or other indicators of modern slavery (Pew, 2023). This scrutiny serves as a restraint against exploitative conduct, as vessels and operators are likelier to face consequences for any violations discovered during inspections.

Moreover, the CTA contributes to heightening the transparency and traceability of fishing operations. By endorsing conscientious fishing practices, the agreement indirectly bolsters commitment to guarantee that seafood supply chains remain free from exploitative labour practices. This transparency empowers consumers and stakeholders to make informed choices aligning with their commitment to eradicate modern slavery.

### E. Better Employment and Working Conditions Contributed

The CTA emerges as a substantial catalyst for the amelioration of employment and working conditions for fishermen through the establishment of an exhaustive framework that squarely places their safety, well-being, and rights at the forefront (IMO, n.d.). While its primary objective orbits around the augmentation of vessel safety, the Agreement's provisions exert a direct and positive influence on the lives of fishers.

The agreement demands exacting safety standards for fishing vessels, encompassing an array of facets containing vessel design, equipment, and operational protocols. This dedicated commitment to safety manifests as a tangible enhancement in the working

conditions of fishers on board. Vessels that are meticulously maintained and furnished with appropriate safety measures curtail the perils associated with fishing operations, leading to a reduction in accidents and incidents at sea that jeopardize the lives and livelihoods of crew members (Mustafa, 2022).

On the other hand, the importance afforded to crew training in safety protocols empowers fishers with the expertise and better appreciation of facts required to navigate precarious situations and emergencies. This training not only elevates their personal safety but also contributes to a sense of empowerment and self-assurance (Alderton et al., 2004). As fisher amass proficiency in handling potential risks, they are better poised to shield their well-being and champion their entitlements in the workplace.

Likewise, the routine surveys and inspections mandated by the agreement guarantee a consistent adherence to safety standards. This sustained vigilance engenders the overall quality and safety of vessels, which has a direct bearing on the working conditions of fishers. Vessels that uphold these standards create an environment more conducive to crew members, fostering a workplace that is safer and more healthful (Pew, 2023).

Additionally, the all-encompassing approach of the CTA towards vessel safety reverberates into other dimensions of employment and working conditions. Vessels that accord precedence to safety are more inclined to invest in crew amenities, spanning improved accommodations, upgraded sanitation facilities, and adequate rest areas (Mustafa, 2022). These enhancements further augment the physical and psychological well-being of fishermen during their often strenuous and labour-intensive undertakings.

Through its provisions enjoining stringent safety standards, crew training, systematic inspections, and the attendant influence on vessel amenities, the Agreement fosters an

ambiance that consistently attends to the safety, health, and dignity of fishers. By elevating their working conditions and the overall quality of their lives, the agreement contributes to the cultivation of a more sustainable and conscientious fishing industry.

### F. Ship Construction and Equipment Industry Improved

The CTA exerts valuable influence on the ship construction and equipment sector, instilling an elevated emphasis on safety benchmarks, quality assurance, and technological advancements (IMO, n.d.). It tacitly catalyses innovation and enhancements within the shipbuilding and equipment domains.

The Agreement provides stern safety standards for fishing vessels, encompassing dimensions such as design, construction, and equipment. These standards compel shipbuilders and equipment manufacturers to meet rigorous requirements, thereby enhancing the calibre and dependability of vessels and associated equipment (Håvold, 2010). As shipbuilders strive to align with these standards, they are driven to elevate their engineering methodologies, material selections, and manufacturing procedures, effectively propelling the industry toward elevated echelons of excellence.

More so, the commitment to vessel safety engenders a demand for cutting-edge equipment that aligns with the prescribed standards. This demand precipitates research and development undertakings aimed at creating pioneering safety technologies, navigational aids, communication systems, and emergency equipment (Håvold, 2010). Consequently, the ship equipment sector is spurred to innovate and devise solutions that cater to the evolving safety requisites delineated in the agreement.

Furthermore, the agreement's emphasis on crew training and competency amplifies the significance of equipment utility and efficacy. This, in turn, prompts equipment manufacturers to devise user-friendly systems that accommodate the diverse proficiencies of crew members. Responding to this, the ship equipment sector adjusts

by fabricating intuitive, efficient, and ergonomic equipment that facilitates effective utilization even amid challenging conditions (Chauvin et al., 2007).

Additionally, as fishing vessels undergo assessments to ensure adherence to safety standards, the ship maintenance and repair sector witnesses a surge in demand (Baiju, 2019). This creates avenues for maintenance services, spare parts provisioning, and upgrades, fostering collaboration among shipbuilders, equipment manufacturers, and maintenance providers.

Through the imposition of stringent safety standards, the stimulation of demand for sophisticated equipment, the encouragement of innovation, and the nurturing of collaborative endeavours, the Agreement propels the industry toward refined ship construction, production of suitable equipment, and augmented safety measures. Consequently, the agreement engenders an ecosystem that not only safeguards the welfare of fishermen but also stimulates progress in shipbuilding and equipment technologies, ultimately yielding benefits in terms of maritime safety and sustainability.

### G. Competitiveness of the Nation’s Fishing Fleet Strengthened

The CTA serves as a potent tool in fortifying a nation's fishing fleet's competitiveness through the enhancement of safety, propagation of responsible practices, and elevation of the industry's reputation on a global platform (IMO, n.d.). Although its core focus is on maritime safety, the Agreement has an undeniable influence in multiple aspects that positively affect the enhancement of the competitiveness of a nation's fishing fleet.

The CTA compels vessel operators to prioritize construction and upkeep of vessels adhering to elevated safety benchmarks. Vessels constructed in line with these standards exhibit reduced susceptibility to accidents and incidents, culminating in reduced downtime, diminished insurance costs, and heightened operational efficiency

(Håvold, 2010). These attributes collectively contribute to a more dependable and competitive fishing fleet.

Again, commitment to vessel safety impels technological innovation. The requisition for advanced safety technologies, communication systems, navigation aids, and emergency equipment fosters research and development initiatives (Chang, 2011). This technological progression not only guarantees crew safety but also augments the fleet's technological prowess, fostering improved efficiency and competitiveness in fishing operations.

Moreover, the agreement's emphasis on crew training engenders a skilled and well-informed workforce. Proficient crews can navigate vessels with enhanced efficacy, respond promptly to emergencies, and contribute to superior resource management. Competent crews enhance operational efficiency, curtail resource wastage, and contribute to heightened catch quality, ultimately amplifying the competitiveness of a nation's fishing fleet (Alderton et al., 2004).

Furthermore, the regime of inspections that fishing vessels undergo to ensure safety compliance results in improved vessel maintenance and operational preparedness (Hwang, 2022). This translates into a reduced likelihood of breakdowns or accidents during fishing operations, enabling fishing vessels to remain operational and productive for extended durations, thereby fostering a more competitive fishing fleet.

Through the safety standards, the thrust for technological innovation, the cultivation of a skilled workforce, and the advocacy of vessel maintenance, the Agreement fosters an environment that magnifies operational efficiency, diminishes risks, and elevates the holistic performance of the fishing industry. The potential benefits would substantially cause the promotion of fishing fleet that is more competitive, robust, and poised for triumph in the global arena.

## Chapter 3.3 Necessity of Ratification: No Favorable Treatment to States

The "no more favorable treatment" provision enshrined within the CTA plays a foundational role in establishing a framework of fairness and impartiality in the application of safety standards for fishing vessels. Often referred to as the "non-discrimination clause," this provision operates as a safeguard against any unwarranted preferential treatment granted to vessels based on their flag state or national identity. As observed in the long line of instruments, the highest degree of priority to safety and sustainability is of paramount consideration.

In essence, it promotes equal treatment for all fishing vessels, regardless of their registration. This clause dictates that irrespective of a vessel's registration under a specific flag state or the country to which it belongs, it must adhere to the identical safety standards and requirements (Group, 2016) outlined within the Agreement. By doing so, the clause mitigates the potential for disparities in safety compliance, guaranteeing that all vessels are held to uniform regulations, regardless of their national affiliation.

The significance of the clause's operation lies in its ability to counteract the practice of "flags of convenience." This practice involves vessels registering under nations with lax regulations, enabling them to circumvent stringent safety and labour standards. By enforcing a standardized set of safety criteria, the “no favorable treatment” clause effectively curtails the pursuit of lenient regulatory environments. Consequently, this approach obstructs the exploitation of regulatory loopholes that might otherwise be used to prioritize cost-cutting and profit generation over crew safety and maritime sustainability. By levelling the playing field, the clause acts as a safeguard, reducing the likelihood of substandard vessels contributing to maritime accidents and ecological hazards.

Moreover, the clause serves as a catalyst for transparency and accountability within the fishing industry. It prevents the danger of giving preferential attention to vessels

based on affiliations, whether political or economic, ensuring that safety standards are upheld to afford crew members, marine ecosystems, and coastal communities adequate protection. Therefore, all member states must adhere to universally agreed-upon safety standards applicable to all vessels, cultivating an environment of dutiful fishing practices.

Effectively operationalizing the "no favorable treatment" clause necessitates a collaborative effort between member states and regulatory bodies. Consistent monitoring, regular inspections, and comprehensive audits are integral to holding vessels accountable for adhering to the same safety benchmarks, irrespective of their geographical origin. Such collective efforts not only facilitate a culture of trust and cooperation among nations but also reaffirm the commitment to equitable treatment within the maritime domain.

Hence, the "no favorable treatment" clause embedded in the CTA operates as a cornerstone in rectifying disparities in safety compliance and establishing an equitable framework for the treatment of fishing vessels on a global scale. Through its enforcement of uniform safety standards, prevention of flags of convenience, and promotion of transparency, this clause safeguards the rights of fishers, reinforces maritime safety, and nurtures a just and sustainable fishing industry. It stands as a transformative way towards harmonizing regulations, fostering fair conditions for all vessels, and cultivating an environment where safety and responsibility take precedence.

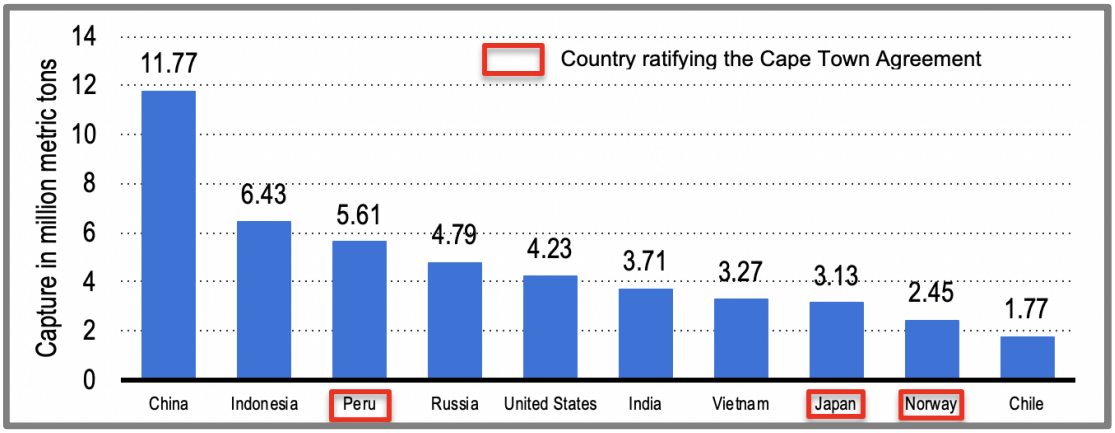
## Chapter 3.4 Status of Ratification of the CTA

Notwithstanding the considerable initiative of the IMO Member States, other UN specialized agencies, observers and the IMO Secretariat to encourage adoption of the regime on the design, construction and equipment of fishing vessels, still, the CTA is yet to achieve the required ratification to enter into force.

To operationalize the CTA, it requires ratification by at least 22 States having an aggregate number of 3,600 fishing vessels of 24 m in length operating on the high seas (Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol Relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, 2012). In the recent years, there has been an increased tendency toward ratification, raising optimism for its entry into force by 2023. As of March 2023, 20 States having a total number of approximately 2,570 qualified fishing vessels have ratified the CTA, including the recent ratification communicated by Japan, Belize and Portugal (IMO, 2023).

Despite the benefits laid in the preceding sub-chapter, only three of the top ten fishing nations have ratified the CTA as shown in Figure 1 below (Shahbandeh, 2018).

*Figure 1 Top 10 fishing nations worldwide in 2020 (in million metric tons)*




Source: Food and Agriculture Organization (FAO)

The extent of fishing activities per country based on the amount of production may be taxing to comprehend. Nonetheless, it is evident from the data provided on fish catch that fishing activities are aggressively executed via fishing vessels manned by fishers. By looking at the countries that have ratified the CTA, comparatively, out of top 10 countries by fish production, only three countries, Peru, Japan, and Norway, have

belonged to the list. The truth of the matter is, the remaining seven other countries have not ratified not only the Cape Town Agreement but even the Torremolinos Protocol (Hwang, 2022).

### A. China

China currently holds the largest number of fishing vessels by more than half of the total global fishing vessels at 564,000 vessels (FAO, 2022). Recognizing the specific safety standards on fishing vessels introduced by the CTA, China sees the need to make changes in their domestic rules and regulations.

*Table 3 Technical Obstacles of the CTA to China*

| Applicable Chapter in the CTA | Particular Requirement | Current Construction Code and Steel Fishing Vessel Standard |
|---|---|---|
| II. Construction | Minimum width, clamping apparatus and gaskets | No such requirement |
| V. Fire Safety | Fire test procedure, ventilation system, application of the Fire Control Pipe Anti-freezing Measures Guide, use of FTP Code | No such requirement |
| VII Lifesaving Appliances | Line throwing apparatus, performance standard for VHF radios for liferafts, servicing stations for liferafts | No such requirement |
| VIII. Emergency Procedures | Emergency procedures, and drills | Insufficient provisions |
| IX. Radiocommunications | Radiocommunications | Insufficient provisions |
| XI. Navigational Equipment | Performance Standards for Track Control Systems | No such requirement |

Source: Implementation studies of Fishing Vessel Cape Town Agreement Barriers in China (Xie, 2020)

However, based on the studies shown, the tedious process of amending existing policies prevents the adoption of the international agreement. The CTA prescribes requirements which are either not included in the present regulation or included but found non-compliant with the standard prescribed. Such being the case, the amendment of the existing policy will require compliance of fishing vessel owners and operators resulting to incur additional costs on the construction and equipment in the fishing vessels.

## B. Indonesia

Between December 2020 and January 2021, there were 13 fishing incidents involving fishing vessels in Indonesian waters (DFW, 2021). These incidents prompted the Indonesian government to revisit safety standards on fishing vessels. The government recognizes the need to increase supervision over fishing vessels, complete safety equipment, provide efficient information dissemination, and promote insurance programs to ensure safety of fishers at sea.

While Indonesia is considered the first country to make VMS data available to the public, disclosing the location and activity of its commercial fishing fleet (SEAFDEC, 2023), it has not ratified the Cape Town Agreement despite having occupied the second spot as one of the major countries with the largest fish production. This may be attributed to the type of fishing vessels operating in Indonesian waters. According to SEAFDEC, there is approximately 625.71 thousand fishing vessels in Indonesia in 2019. However, most of the fishing vessels are less than 100 GT.

Most of the shipbuilding companies in Indonesia are traditional shipbuilders who use outdated methods to build ships. This results to construct outdated and unqualified ships. The government is facing the issue on skills gap as current design and construction skills are not at par with modern-day ship constructions and the alternative renewable and sustainable raw material for shipbuilding (Liu et al., 2016).

Hence, physical limitation and capacity issues may prove to be one of the most recognizable barriers towards adoption of the CTA.

### C. Malaysia

Most fishing vessels involved in deep-sea fishing in Malaysia suffers from lack of safety equipment or if available, either poorly maintained or in dire need of replacement. Results of random inspection often lead to findings of non-compliance with the prevailing safety measures in place such as, but not limited to lack of fire extinguishers, safety buoys on board and dilapidated safety jackets. In addition, out of the 48,826 licensed fishing vessels, only 2,480 are equipped with automatic identification system (AIS) or automatic tracking system (Mustafa, 2022).

Although the Malaysian government has expressed its support for the ratification of the CTA, like other developing countries, Malaysia was significantly affected by the adverse impacts of COVID-19 pandemic that restricted progressive movement of policies on maritime governance and safety in the fishing industry, instead, highest priority was given to health and medical response to emergency (Patto, 2021).

Furthermore, the government of Malaysia has undergone restructuring of its Cabinet that interrupted the continuity of business in the Parliament (Patto, 2021). These challenges experienced by the Malaysian government may be considered as political barriers that pose a serious matter that delayed the ratification of the CTA.

# Chapter 4 Overview of the Philippine Fishing Industry

The Philippines is an archipelagic country that is situated in Southeast Asia, comprising of 7,641 islands with a total land area of 298,170 $km^2$ and surrounded by major bodies of water such as the Pacific Ocean in the east, West Philippine Sea in the west, Luzon Strait in the north and Celebes Sea in the South. It has a total area of 2,200,000 $km^2$ of total territorial water, including an exclusive economic zone and the coastline has 36,289 km, with a 27,000 $km^2$ coral reef area (MARINA, 2023).

Sitting alongside Malaysia, Indonesia, Papua New Guinea, Timor Leste and Solomon Islands, the Philippines is in the heart of the coral triangle which is the global center of marine biodiversity with nearly 60% of the world's known fishes with almost 300 different species of reef-building corals (Carpenter & Springer, 2005). There are 3,645 fish species in the Philippines, and 3,213 species are marine (Froesse & Poely, 2022). The Philippines is known as one of the major fish producers in the world of fisheries. In 2020, the Philippines ranked 13$^{th}$ globally, contributing nearly 1.76 million metric tons in terms of marine capture production (FAO, 2022).

*Table 4 Production Rankings per Country*

| Country or territory | Production (average per year) | | | | Production | | | | Percentage of total, 2020 |
|---|---|---|---|---|---|---|---|---|---|
| | 1980s | 1990s | 2000s | 2010s | 2017 | 2018 | 2019 | 2020 | |
| | (million tonnes, live weight) | | | | | | | | |
| China | 3.82 | 9.96 | 12.43 | 13.24 | 13.19 | 12.68 | 12.15 | 11.77 | 15 |
| Indonesia | 1.74 | 3.03 | 4.37 | 5.98 | 6.56 | 6.71 | 6.56 | 6.43 | 8 |
| Peru (total) | 4.14 | 8.10 | 8.07 | 5.13 | 4.13 | 7.15 | 4.80 | 5.61 | 7 |
| *Peru (excluding anchoveta)* | *2.50* | *2.54* | *0.95* | *1.01* | *0.83* | *0.96* | *1.29* | *1.22* | |
| Russian Federation | 1.51 | 4.72 | 3.20 | 4.28 | 4.59 | 4.84 | 4.72 | 4.79 | 6 |
| United States of America | 4.53 | 5.15 | 4.75 | 4.89 | 5.01 | 4.77 | 4.81 | 4.23 | 5 |
| India | 1.69 | 2.60 | 2.95 | 3.55 | 3.94 | 3.62 | 3.67 | 3.71 | 5 |
| Viet Nam | 0.53 | 0.94 | 1.72 | 2.70 | 3.15 | 3.19 | 3.29 | 3.27 | 4 |
| Japan | 10.59 | 6.72 | 4.41 | 3.48 | 3.19 | 3.26 | 3.16 | 3.13 | 4 |
| Norway | 2.21 | 2.43 | 2.52 | 2.30 | 2.39 | 2.49 | 2.31 | 2.45 | 3 |
| Chile (total) | 4.52 | 5.95 | 4.02 | 2.16 | 1.92 | 2.12 | 1.98 | 1.77 | 2 |
| *Chile (excluding anchoveta)* | *4.00* | *4.45* | *2.75* | *1.40* | *1.29* | *1.27* | *1.23* | *1.27* | |
| Philippines | 1.32 | 1.68 | 2.10 | 1.92 | 1.72 | 1.65 | 1.67 | 1.76 | 2 |
| Thailand | 2.08 | 2.70 | 2.38 | 1.46 | 1.30 | 1.39 | 1.41 | 1.52 | 2 |

Source: The State of World Fisheries and Aquaculture 2022 (FAO, 2022)

Save for the aquaculture sector, the fisheries sector in the Philippines are classified into two: commercial fisheries and municipal fisheries, which are subdivided into two subsectors, marine municipal and inland municipal. According to the Philippine Statistics Authority (PSA), the volume of fisheries production was recorded at 991.14 thousand metric tons in the first quarter of 2023. The PSA claimed that there has been a substantial increase of 2.0 percent in contrast with the 971.76 thousand metric tons output in the same period in 2022. Production increases were noted in marine municipal fisheries at 9.8 percent and aquaculture subsector at 1.7 percent, while commercial and inland municipal fisheries subsectors reported setbacks in -3.7 and -11.7 percent, respectively. (PSA, 2023).

Commercial fisheries cover fishing operations using fishing vessels of over 3 GT outside the municipal waters, that is, beyond 15 km from the shoreline, and are classified into: a) small scale using passive or active gear and utilizing fishing vessels of 3.1 to 20 GT; b) medium scale utilizing active gears and vessels of 20.1 to 150 GT;

and c) large scale utilizing active gears and vessels of more than 150 GT. On the other hand, municipal fisheries cover fishing operations using fishing vessels of 3 GT or less including other forms of fishing not involving the use of watercraft. Aquaculture involves fish culture activities in inland and marine waters (SEAFDEC, 2022).

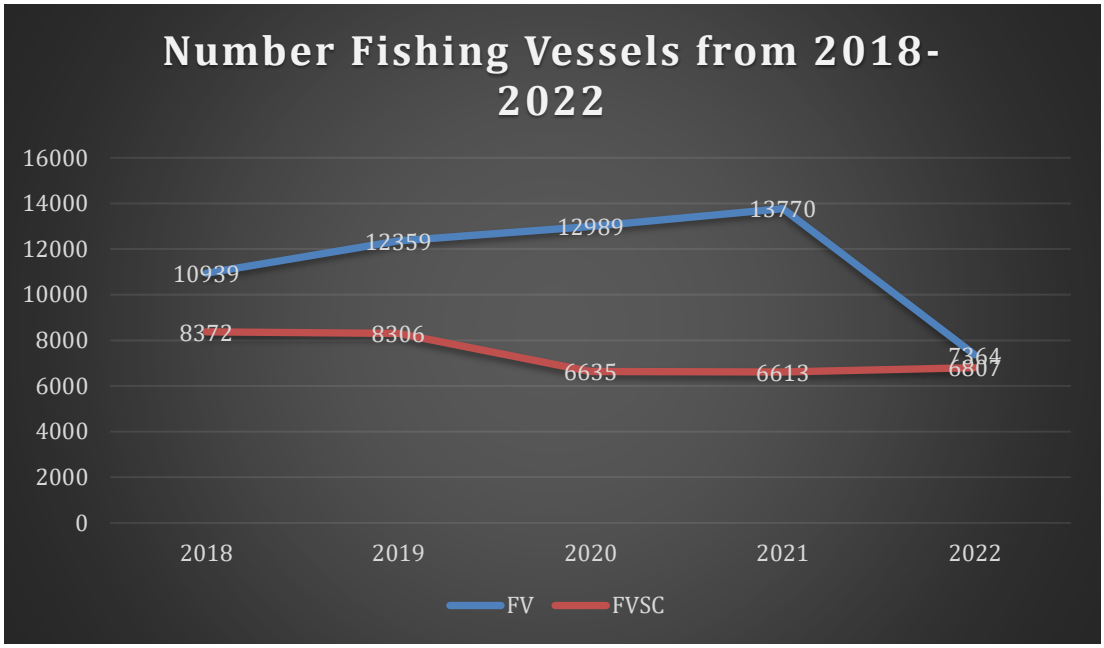
Tracing back from the history of the Philippines, fishing has always been one of the main sources of livelihood and food. Nonetheless, as the population continue to surge, the demand for seafood correspondingly increases, and as demand increases, so as the need to supply. Prompted by such, the use illegal means to catch fish resorted by fishers has become predominant in the country for easier and faster production and profitability (Tahiluddin & Sarri, 2022).

## Chapter 4.1 Philippine Fishing Fleet: An Integral Component to Sustainability

The Philippine fishing fleet is an indispensable component in the promotion of the growth and development of the country's fishing industry and plays an important role in livelihood, food security, and revenue. However, the number of fishing vessels for the last five years has dwindled from 2018 to 2022. As shown in the Figure 2, from 13,770 fishing vessels in 2021, the number of fishing vessels dropped to 7,364. All of these noted fishing vessels are below 50 GT operating in small-scale fishing.

In terms of grant of Fishing Vessel Safety Certificate (FVSC), there was a large gap between the certificated fishing vessels and the actual number of fishing vessel from 2018-2022.

*Figure 2 Number of fishing vessels from 218-2022*




Source: 2017-2021, 2022 MARINA Statistical Report

As shown in Figure 2, there was a gap of 2,567 FVSC which indicated that the corresponding fishing vessel is not safe for operation. There were massive gaps for the years 2020 and 2021 which may have been affected by movement restrictions due to COVID-19 pandemic. The gap was bridged in 2022 as compared from the preceding years by over 92% of the registered fishing vessels.

In contrast with other ships, the vessels comprising the fishing fleet of the country has shown strength in numbers despite having declined when compared to the previous years. However, these fishing vessels have an average gross tonnage of 38.30 and average age of 14.54 registered for domestic operations held by the MARINA.

*Table 5 Registered Ships Per Group Classification*

| MERCHANT, FISHING, MOTORBANCA AND RECREATIONAL | | | |
|---|---|---|---|
| **SHIP TYPE** | **NUMBER** | **AVE GT** | **AVE AGE** |
| MERCHANT | 2,564 | 937.13 | 24.53 |
| FISHING | 7,364 | 38.30 | 14.54 |

| | | | |
|---|---|---|---|
| MOTORBANCA | 6,004 | 16.1 | 9.94 |
| **SUB-TOTAL** | **15,932** | | |
| RECREATIONAL | 3,746 | - | 8.24 |
| **TOTAL** | **19,678** | | |

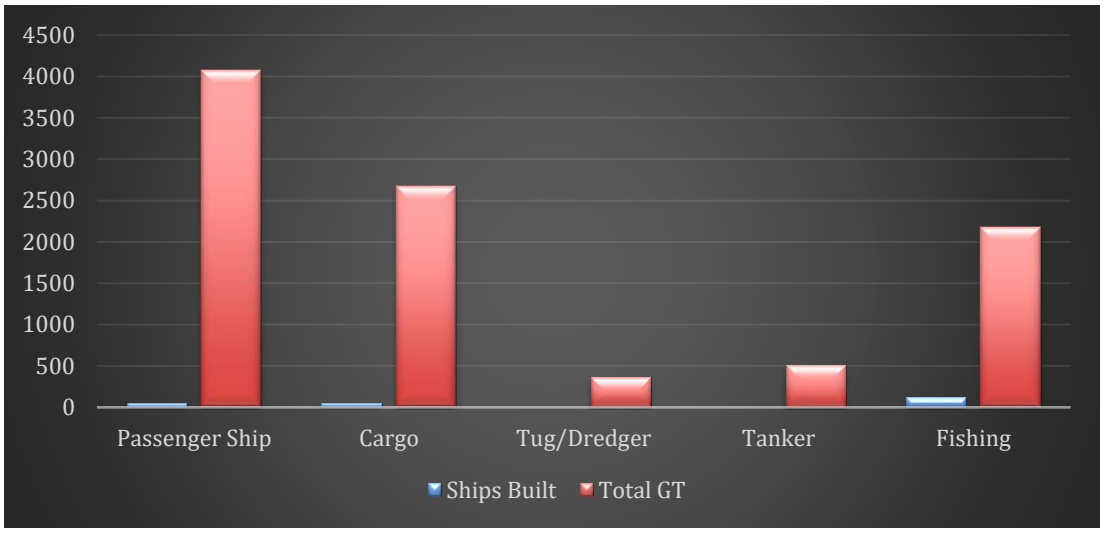
Source: 2022 MARINA Annual Statistical Report

The country's fishing fleet is characterized by diversity. This includes various types of fishing vessels such as outrigger canoes (bangka) which are used by local fishermen in coastal areas, motorbanca, and other carriers like reefer and freezer vessels. This nature of vessels used in fishing shows the diversity of fishing operations regulated by the government.

As of 31 August 2023, there are 64 EU approved fishing vessels inspected by the BFAR. These EU approved vessels consist of fishing vessels weighing more than 300 gross tons, the largest of which is 3065 GT (BFAR, 2023).

In terms of shipbuilding, there were 121 fishing vessels locally constructed for the year 2022. As illustrated below, although most of these locally constructed vessels are used for fishing, the total combined gross tonnage of 2,173.28 GT indicates that these vessels are small in size and are used in small-scale fishing.

*Figure 3 Locally Constructed Vessels (2022)*




Source: 2022 MARINA Statistical Report

## Chapter 4.2 Legal Regime Governing Fishing Vessels

It was in 1932 since the first Fisheries Act was promulgated vesting management of fisheries under the competence and jurisdiction of the then Department of Agriculture and Natural Resources (Aquino et al., 2013). The law was directed towards regulating trade, particularly on exportation and importation of fish and other marine resources.

For so long, commercial fishing and small-scale fishing has remained unregulated which resulted to the depletion of fish stock and degradation of the marine environment. This prompted the imposition of stricter penalties to operators engaged in illegal fishing including destructive fishing by means of explosives, obnoxious substances, and poisonous chemicals (Aquino et al., 2013).

In 1975, rules and regulations relating to fisheries were codified into law through the issuance of the Presidential Decree No. 704 or the Fisheries Decree of 1975 with a view of improving global competitiveness through modernization of the industry. Regardless, there was inability to enforce the law by concerned agencies and there was failure to put up a system of management in identified fishery areas until the enactment of Republic Act No. 8550 or the Fisheries Code of 1998.

### A. The Fisheries Code of 1998, as amended

The Fisheries Code serves as the primary legislation regulating fisheries and aquaculture in the country. As a declared policy of the State, the law was enacted in realization of achieving food security. This law covers a vast array of subjects that pertain to the management, preservation, and growth of fisheries. Among its significant components are the formation of exclusive economic zones, measures for conservation, and the establishment of the BFAR, which serves as the lead agency responsible to manage fisheries.

In view of the prevailing instances of IUUF which undermines international and regional efforts to manage fisheries, Executive Order No. 154, series of 2013 was issued to adopt a national action plan to prevent, deter, and eliminate illegal activities related to fishing. The Fisheries Code was found to have not addressed the IUUF that prompted the Congress to amend the law through Republic Act No. 10654 seeking to further the country's commitment to fight IUUF. This amendment introduced provisions on vessel monitoring systems, catch documentation schemes, and more stringent sanctions for any violations committed.

While there were amendments to the existing Fisheries Code, there were no regulations in place relative to regulating fishing vessels. The Code may have provisions for the licensing and registration of fishing vessels, but in terms of safety requirements for the design, construction and equipment, the Code is found wanting of relevant guidelines.

### B. Philippines Fishing Vessels Safety Rules and Regulations

In view of the commitment of the Philippines to ratify the CTA, the MARINA issued the Philippines Fishing Vessels Safety Rules and Regulations (PFVSRR) on 20 September 2018. The PFVSRR serves as the code governing the design, construction, maintenance, operation, and inspection of fishing vessels of 3 GT or more to enhance safety of life at sea and protection of the marine environment.

Prior to 2018, the rules that were made to apply to fishing vessels were those rules and regulations governing merchant ships under the Philippine Merchant Marine Rules and Regulations (PMMRR). Fishing vessels and commercial ships are audited alike. The safety standards, manning requirements, and crew training and qualifications applicable to commercial ships are likewise applied to fishing vessels.

With the issuance of the PFVSRR, existing fishing vessels that are governed by the PMMRR is allowed a transitory period of one year to comply with the mandatory provisions of the new Code.

In contrast with the Cape Town Agreement, the PFVSRR contains the following Rules:

*Table 6 Chapter Comparison between the PFVSRR and CTA*

| PFVSRR | | CAPE TOWN AGREEMENT OF 2012 | |
|---|---|---|---|
| Rule 3 | Surveys and Certificates | Chapter I | General Provisions |
| Rule 4 | Construction | Chapter II | Construction, Watertight Integrity and Equipment |
| Rule 6 | Stability | Chapter III | Stability and Associated Seaworthiness |
| Rule 7 and 8 | Machinery and Electrical Installations | Chapter IV | Machinery and Electrical Installations and Periodically Unattended Machinery Spaces |
| Rule13 | Fire Protection, Fire Extinction and Fire Safety Measures | Chapter V | Fire Protection, Fire Detection, Fire Extinction and Fire Fighting |
| Rule 16 | Occupational Safety and Health | Chapter VI | Protection of the Crew |
| Rule 12 | Life Saving Appliances | Chapter VII | Life-saving Appliances and Arrangements |
| - | - | Chapter VIII | Emergency Procedures, Musters and Drills |
| Rule 14 | Communications | Chapter IX | Radiocommunications |
| Rule 15 | Safety of Navigation | Chapter X | Shipborne Navigational Equipment and Arrangements |

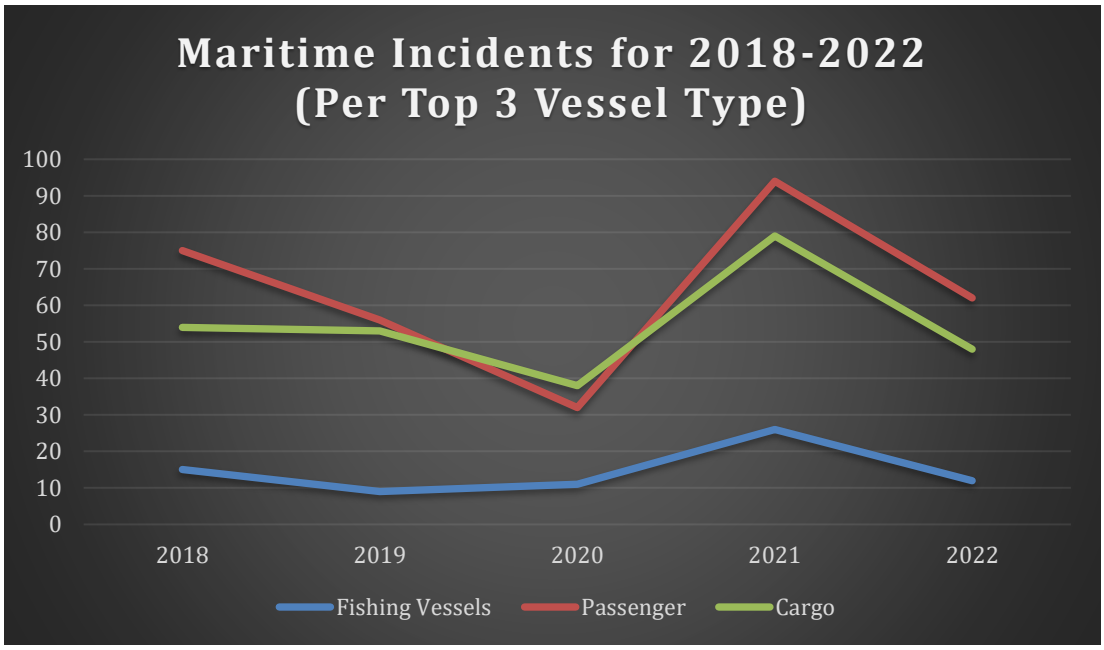
Source: PFVSRR and CTA

While on its face, the PFVSRR may have covered almost every chapter of the Cape Town Agreement, however, the Code has considered variables affecting small fishing vessels below those which are covered by the CTA.

## Chapter 4.3 Marine Incidents at Sea: Perils Unfold

In the Philippines, fishing-related incidents that occur at sea can stem from several hazards. According to statistics provided by the maritime administration, from 2018 to 2022, there were incidents at sea involving fishing vessels:

*Figure 4 Top 3 Vessel Types Involved in Maritime Incidents from 2018-2022*



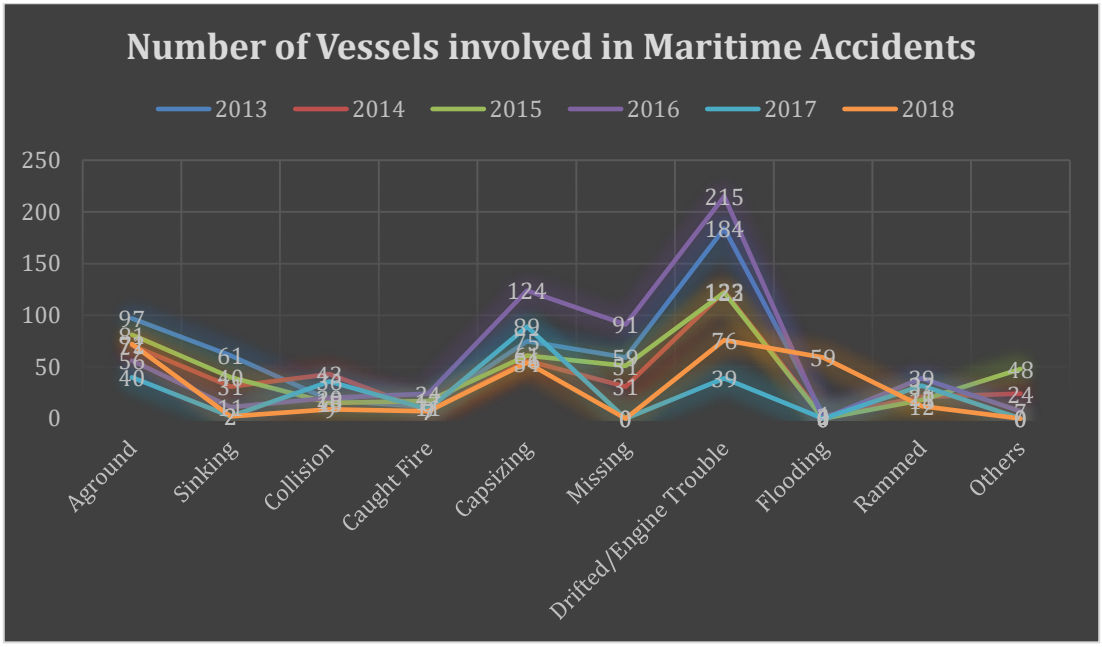

Source: Enforcement Service, MARINA

Whenever maritime casualty incidents occur, investigations were conducted to determine factors that contribute to the happening of the unfaithful events (EMSA, 2022). These events can be triggered by a variety of hazards, including severe weather conditions, hazardous materials, system or equipment failures, natural disasters and human factors.

As shown in Figure 5, from 2013 to 2018, the statistical report indicates that “system or equipment failures” has been the main cause of incidents at an average of 127 incidents per year, irrespective of the type of vessel. The causes of incidents shown in the illustration includes agrounding, sinking, collision, fire, capsizing, missing, engine

trouble, flooding, and ramming. Other causes may include piracy/robbery, climate change impacts, and resource conflicts.

*Figure 5 Number of Vessels involved in Maritime Accidents*




Source: Maritime Industry Authority Statistical Report 2014-2018

Notable contributing factors in maritime incidents include the following:

1. **Typhoons and Storms**: The Philippines, being considered as one of the world's natural hazard "hot spots", is vulnerable to typhoons and tropical storms. There are about 20 typhoons happening each year, equivalent to 25% of the global occurrence of tropical depression (Santos, 2021). These severe weather conditions can instigate rough seas and large waves that can pose substantial risks that make navigating and fishing seriously challenging, and worse, can result to accidents.

2. **Navigational Hazards**: Navigational signs, lighthouses, warnings, are the most obvious requirement for safety at sea. These instruments help detect shallow coastal areas, underwater coral reefs, rocks, and sandbars that may

likewise cause accidents and stranding, if unnoticed. The presence of *payaos* or anchored rafts is one of the distinct characteristics of Philippine seas. These rafts are used as a device to attract fish at a certain area, however, there were incidents reported involving tangled ropes of these *payaos* to propellers causing damage to vessels in transit (Sigua & Aguilar, 2003).

3. **System or equipment failure**: Fishing vessels often go through propulsion machinery faults resulting in the main propulsion system failure which can lead to safety and economic loss (Domeh et al., 2022). Mechanical problems such as engine failure, steering issues, or equipment failure happen especially to older or unmaintained fishing vessels which often lead to fishing vessel stranding.

4. **Capsizing**: This incident is used to describe a heeling over of a ship in such a position from which it cannot return upright. Studies revealed that ship capsize frequency per 5027 fishing vessel accident rates of 4.4% for fishing boats from 2004-2017 (Obeng et al., 2022). It can be caused by misdistribution of weight, abrupt weight shifts due to improper loading or unstable fishing conditions, and overloading.

5. **Collisions**: The occurrence of collisions between fishing vessels may either be caused by undetected signals, and wrong diagnoses (Morel & Chauvin, 2006). In the long line of marine investigation reports, whenever collision happens, the investigation finds human contribution, usually due to poor visibility, insufficient navigation lights or inadequacy in training and education.

6. **Inadequacy of safety equipment**: If not the main cause of incidents, the lack of or insufficiency of safety equipment on fishing vessels such as life-saving devices like jackets, lifebuoys, flares and signal, liferafts or VHF

communication equipment, is contributory to incidents which can lead to perilous circumstances in an emergency.

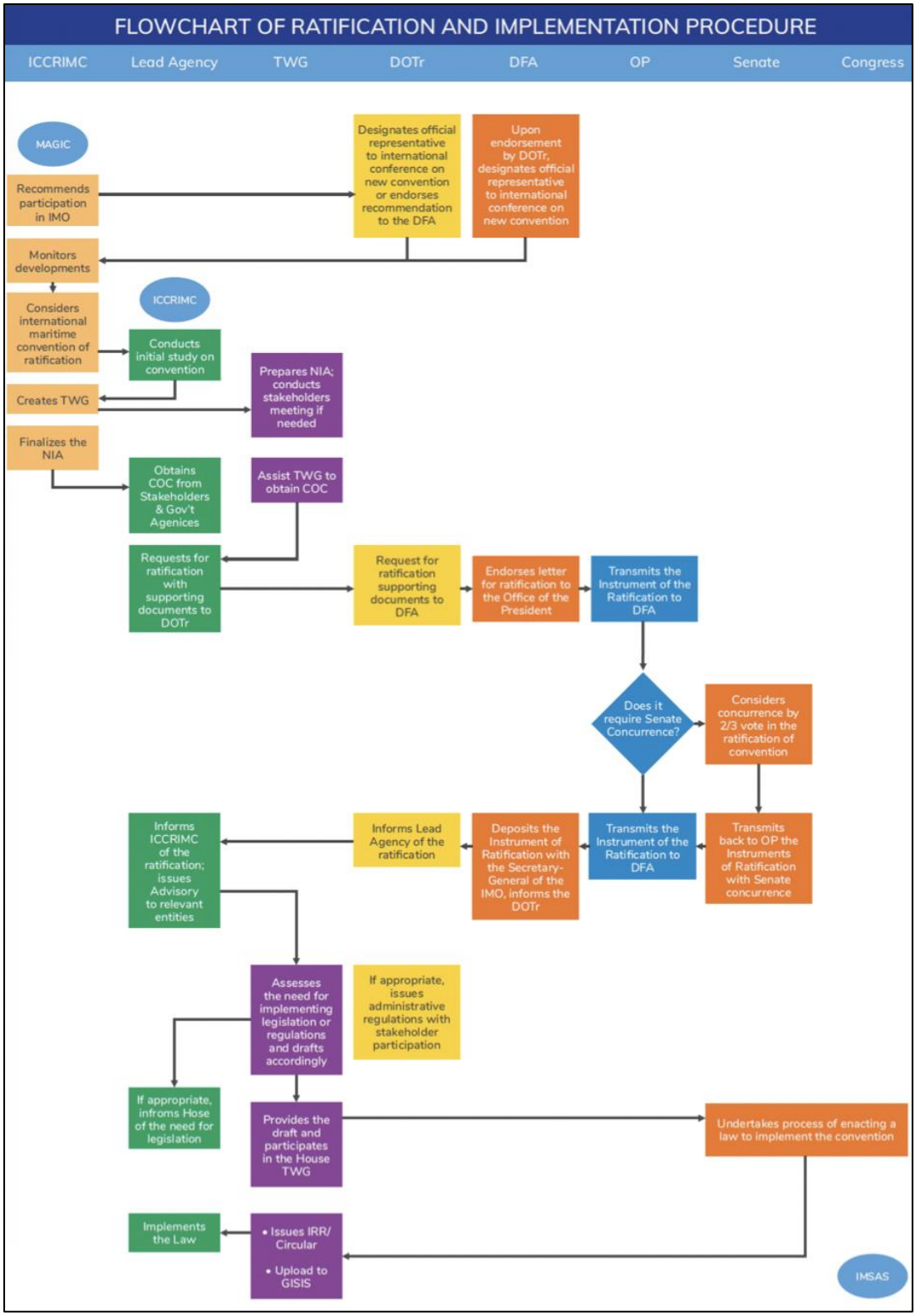
In order to mitigate the risks of accidents and promote sustainable fishing, the Philippine government through inter-agency cooperation led by the MARINA, PCG and BFAR, has developed safety regulations and guidelines to prevent maritime casualties. Moreover, different industry organizations including NGOs have been participating in the policy-making processes to enhance the safety of fishing vessels and well-being of fishers and maintain an environment-friendly practices.

## Chapter 4.4 Ratification Initiated: Attempts Made to Uphold Safety Culture

Recognizing the prevailing impacts of IUUF and the need to address the issues involving fishing vessel safety, the Philippines is among the countries that expressed their intention to ratify the Cape Town Agreement of 2012. Acting under the authority granted by the President, through then Department of Transportation and Communications (DOTC) Department Order No. 2015-16, the Inter-Agency Coordinating Committee on the Ratification and Implementation of Maritime Conventions (ICCRIMC) was established to initiate the process of ratifying and, eventually, implementing applicable IMO instruments.

The ICCRIMC mechanism has been instrumental in the institutionalization of a system of ratifying IMO instruments by formulating a comprehensive inter-agency procedure that suits the fundamental elements of policy formulation, including its review and assessment and stakeholders' engagement. Shown below is the process observed by the Philippine maritime administration:

*Figure 6 Ratification and Implementation Flowchart*




Source: Philippine Maritime Strategy, 2020

## A. Inter-agency Coordination

As further reconstituted under Executive Order No. 156, series of 2021, the ICCRIMC was renamed as the Inter-Agency Coordinating Committee to Facilitate the Ratification of/ Accession to and Implementation of Maritime Conventions (ICCFRAIMC). The ICCFRAIMC is composed of various agencies tasked to implement maritime laws in the Philippines. Among these agencies are the Department of Transportation (then DOTC), Department of Foreign Affairs (DFA), Department of Science and Technology (DOST), Maritime Industry Authority (MARINA), the Philippine Coast Guard (PCG), Philippine Ports Authority (PPA), Cebu Port Authority (CPA) Department of Agriculture (DA) – Bureau of Fisheries and Aquatic Resources (BFAR), Department of Environment and Natural Resources (DENR) – Environmental Management Bureau (EMB), DENR – Biodiversity Management Bureau (BMB), University of the Philippines – Marine Science Institute (UP-MSI), and UP-Institute of Environmental Science and Meteorology (IESM).

The synergy resulting from the constitution of the ICCFRAIMC plays a pivotal role in order to ascertain international maritime instruments for ratification, determine the agency that will serve as focal point to conduct further review and assessment of the applicability of instrument to the country via conduct of National Interest Analysis, and suitable appropriate actions to come up with suitable policy recommendation for effective implementation of ratified instruments.

## B. International Collaboration, Awareness Campaign and Capacity-Building

Taking advantage of the Technical Cooperation Programme of the IMO, in 2018, the Philippines, through the MARINA, collaborated with the IMO and Pew for the conduct of a Technical Seminar on the IMO Cape Town Agreement which served as awareness campaign and capacity-building activity for the Philippine maritime administration and industry stakeholders.

The activity was facilitated by IMO Consultants, resource speakers from Pew, with other foreign observers. The collaboration included on-site visit to one of the major fishing ports in the Philippines, the Navotas Fish Port Complex, to observe actual fishing vessels, fish port facilities, and trading activities, and in-house training directed to instill knowledge to regulators and industry stakeholders about the CTA and potential advantages it could bring to the industry, with fostering safety culture as its paramount consideration.

### C. Review and Assessment

The National Interest Analysis (NIA) serves as a comprehensive review and assessment of the potential impact of an international instrument to the country that the government is seeking to adopt vis-à-vis its coherence with the declared policies of the State. This document is an essential tool to justify the government's move to ratify a particular instrument or not.

The ICCFRAIMC tasked the MARINA to take the lead in the review and assessment of the CTA and its potential impacts to the stakeholders in the fishing sector. One of the more important points of the NIA is the attachment of the "no favourable treatment" clause should the Philippines opt not to ratify the CTA. If so, Philippine-registered fishing vessels shall not be exempt from the application of the CTA upon calling on ports of States that are party to the Agreement.

### D. Stakeholders Engagement

In a consultative forum organized by the MARINA on 26 March 2021, various stakeholders in the fishing industry such as the fishing vessel owners and operators, industry associations, and fisherfolk communities represented their respective interests on the predicament presented by the Philippine maritime administration.

For the stakeholders, the application of the CTA to the Philippines warrants further evaluation, extensive impact assessments, gaps and comparative analyses to the prevailing rules, and further consultation. Hence, these recommendations prompted deferment of the agreement.

As of this date, the Philippines remains to be in the initial stages of ratifying the CTA in consideration of the recommendation of the industry stakeholders.

# Chapter 5 Discussion and Analysis: Challenges to Ratification Unfold

Acknowledging the potential impact of the IMO Cape Town Agreement on the Philippine fishing industry, the Philippines has committed to prioritize the safety of life of fishers at sea and protection of the marine environment by enhancing safety measures on Philippine fishing vessels. This objective may be attainable by initializing the alignment of national policies with established international standards introduced by the Cape Town Agreement. With the ratification of the agreement, the Philippine government will minimize risks of losing life at sea during fishing operations wherever the vessels may be.

Having deductively laid the considerations in the preceding Chapters of this dissertation, several barriers may be inferred therefrom that delays the adoption of the Agreement thereby prolonging the misery to fishers caused by IUUF and allowing risks of unsafe conduct of fishing operations carried out by fishing vessels.

## A. Administrative, Procedural and Legal Constraints

While the flowchart of ratification of the Philippines has been adopted as the procedure to be observed under the ICCFRAIMC mechanism, the same has given much regard to bureaucratic formalities that hinder the speedy action of the established Committee in ratifying or acceding to international instruments.

As observed in the Illustration 1, upon consideration of Committee and conduct of public consultation for the consideration of the stakeholders, the focal or lead agency endorses the NIA and other supporting documents to the DOTr for appropriate action which further endorses the same to the DFA. The DFA, after review of the documents, endorses the instruments to the OP and then the Senate for concurrence.

This procedure pertaining to the DOTr AND DFA, although filters the NIA and other documents justifying the ratification, constitutes as repetition of the actions undertaken by the ICCFRAIMC. The procedures in the said Offices are therefore duplicitous and unnecessary since both are constituting members of the ICCFRAIMC. Consequently, this affects compliance of the Philippines to its obligation as a member of the international community that hampers ratification of IMO instruments such as the Cape Town Agreement.

In the same manner as certificate of concurrence from the relevant agencies are solicited. Certificate of concurrence is the document required from relevant agencies which serves as evidence of support to the action of the ICCFRAIMC. Given that the relevant agencies are members of the ICCFRAIMC as well, the certification by each agency constitutes an additional tier that slows down ratification.

On the other hand, as a matter of policy, the MARINA issued the PFVSRR in 2018 in view of the possible ratification of the Cape Town Agreement. The PFVSRR seeks to implement local policies concerning the design, construction, maintenance, operation and inspection of fishing vessels to foster a safety culture in the fishing industry.

In conjunction with its issuance, the fishing industry stakeholders demanded a comparative analysis of the PFVSRR and the CTA during the public consultation held in 2021. According to them, the comparative assessment will aid the administration in the policy-decision process and further stakeholders' interest on the matter.

## B. Political Challenges

The global impact of the COVID-19 pandemic is undeniable. The response of the government of the Philippines to abate the effects of the COVID-19 is rather considered as one of the longest and strictest policies in the world (Hapal, 2021). The Philippines was placed under state of emergency resulting to lockdowns, mobility restrictions, and social distancing that affected even the slightest activity of the government instrumentalities. Like other Southeast Asian countries such as Malaysia, programs for national development shifted to resilience policies, health and medical responses. The nation's survival has become the paramount interest that justifiably delayed the outstanding commitment such as the ratification of the CTA.

In addition to battling the pandemic, the government has transitioned to a new administration as a result of the Presidential Elections in 2022. Consequently, government restructure and transition of administration from old to new, as a result of election or appointment, interrupted the continuity of plans and programs of the government. This means that there has been another shift in prioritization of programs in such a way that the commitments of the appointed officials must be aligned with the priorities of the newly elected government officials.

While carry-over of programs and revival of commitments may happen during the transition, the pending projects have been stopped and needed to be re-evaluated to determine continuity. As a result, restarting the outstanding commitment followed. This affected the ICCFRAIMC's move to further the ratification of the CTA.

## C. Lack of Awareness

Substantial support from government agencies tasked to implement the maritime laws in the Philippines and relevant stakeholders in the fishing industry is vital for the ratification of the Cape Town Agreement. With the questions formulated to guide respondents in identifying challenges, the maritime administration was able to determine one of the most crucial aspects of soliciting support, that is, information dissemination to instill into the minds of the stakeholders and agencies the urgency of ratification of the CTA to avert the imminent danger brought by IUUF.

According to a respondent from the government sector, one of the factors affecting the move for ratification is an internal obstacle consisting of opposition from stakeholders and securing concurrence from agencies. In a public consultation held for the purpose, it was found that there may be misunderstanding on the provisions of the CTA in regards to its scope and coverage. This fact may be attributed to insufficiency or lack of full knowledge of the Agreement and the potential advantages that the ratification may bring to the country.

On the contrary, a different perspective was raised by another respondent from the private sector saying that while the stakeholders have high regard to safety and environmental protection, the adoption of measures, however, should be realistic and not engage the sector to unnecessary and burdensome regulation. In addition, the private respondent claimed that the fishing sector is now overly regulated.

Another point of contention was the non-ratification of the CTA by biggest fish producing States, like China, India, USA, Indonesia and Russia.

## D. Economic Considerations

When assessing variables in ratifying an international instrument, one of the main considerations is potential costs or expenditures not only on the part of the ratifying Member State but also of the fishing industry stakeholders.

In South Korea, the government is actively pushing for the ratification of the CTA initiated through the understanding the Agreement from the industries and is pursuing to revise their Fishing Vessel Act and seeking to obtain a 170 billion won, equivalent to US$122.78 million, fund to support the industries as they comply with the CTA (Seok-min, 2021). Therefore, availability of funds for the implementation must be available to successfully ratify the international agreement.

According to another respondent, weighing the costs vis-à-vis benefit serves as a strong justification for the adoption of the agreement. Actual costs may not be required but the mere approximation that projects potential expenditures to the stakeholders is material. Moreover, economic considerations on the improvement of safety of the fishing vessel and fishers that responds to the minimum requirement of the Agreement must be quantified. The cost benefit analysis incorporated in the NIA of the Philippines excludes potential costs for the implementation of the Agreement which affected stakeholders' support for commitment to ratify the same.

## E. Technical Capacity and Enforcement Concerns

The technical requirements on the design, construction and equipment of fishing vessels are enshrined under Chapter II through X of the Cape Town Agreement. These requirements apply to fishing vessels with 24 m in length or equivalent to 300 GT in weight that operate in the high seas or within other jurisdictions. Fishing vessels of smaller sizes are governed by a different regime as these vessels operate within the limits of the territorial bounds of the State.

As indicated in table 5 in Chapter 4 of this dissertation, most of the fishing vessels in the Philippines are of smaller size with the average GT of 38.30. As indicated in the list of fishing vessels above 300 GT, BFAR has granted fishing license to only .087% out of the 7,364 vessels registered under the MARINA. Hence, the CTA will not apply to these fishing vessels utilized in small-scale fishing operations. This consideration was manifested by the fishing industry stakeholders during the first public consultation held in 2021.

Additionally, on the enforcement aspect, the Philippine maritime administration lacks the sufficient number of surveyors, auditors and inspectors to enforce the provisions of the CTA. The same is true with the implementation of the PFVSRR. The limited number of manpower poses a significant hindrance for the CTA consideration, save for the inadequacy in education and knowledge of the technical provisions of the Agreement as a distinct burden.

# Chapter 6 Summary Conclusions and Recommendations

Illegal, unreported and unregulated fishing is inimical to the development of States, especially to third world countries like the Philippines that chiefly relies on fishing as one of the main sources of livelihood in coastal communities. IUUF disregards the safety of fishing vessels to cut costs and earn tons of revenue to the extent of making those fishers on board substandard fishing vessels pawns of nefarious operators for personal profit.

The Cape Town Agreement, as the fourth pillar of sustainable fishing, is a bold move of the IMO as a vanguard of safety of life at sea and advocate of marine environment protection. The CTA complements the existing regimes developed to regulate ports, labour conditions, and certification and training of fishers by enhancing safety measures on fishing vessels carrying them.

While the Philippines is dubbed as the premier provider of competent seafarers world-wide, the country has a limitless potential when it comes to regulating the underrepresented and marginalized fishing sector. Having assessed the main challenges affecting other Southeast Asian countries in their pursuit to ratify the Cape Town Agreement, the Philippines stands not so different from these countries as it takes the cited obstacles head on. Nonetheless, by way of conclusion, this dissertation presents the following recommendations to lay initial actions that may lead to fully adopt and implement the Agreement:

1. To streamline the procedure for ratification by maximizing the use of the ICCFRAIMC - With the assistance of the Committee's Technical Working Group, the NIA and other supporting documents may be drafted and reviewed under the auspices of the ICCFRAIMC during its regular sessions. Upon due consultation with the relevant industry stakeholders, the ICCFRAIMC may directly endorse the NIA or other instruments required for the ratification of the CTA or other IMO instruments to the Office of the President for signing then concurrence. The ministerial functions of the DOTr and DFA relating to legal scrubbing and review may be consolidated in the Committee as constituting members to avoid unnecessary and repetitive procedures.

   In the same light, certificate of concurrence may no longer be needed as a Committee Resolution signed by all of the members may suffice.

2. To ensure appropriate funding for activities – Section 5 of Executive Order No. 159, series of 2021 provides the funding requirements for participation and implementation of relevant activities relating to the ratification and implementation of maritime conventions. This provision must be utilized by the members of the ICCFRAIMC by incorporating the activities falling under this category in each member's annual budget proposals.

3. To bolster political will and stakeholders' engagement - A strengthened political will is essential to advance the countries policy initiatives and reforms, and to solve pressing industry matters. It is therefore recommended to organize awareness campaign and support by lobbying the importance of the Cape Town Agreement to elected officials and appointed government heads of agencies. These advocacy campaigns may be made in the form of letters, petitions, utilization of media and communications such as press conferences or interviews, seminars, and workshops, other digital and social media platforms.

   Same awareness campaign may be made during public stakeholders' consultative forum to encourage and convince key industry stakeholders to infuse knowledge of the situation affecting the fishing industry.

4. To develop infrastructure such as an automated system of monitoring and surveillance of fishing vessels to determine their location and activities – Subject to the availability of funds cited under recommendation 2, the lead agency may coordinate with the relevant agency-counterpart for the development of the automated identification system for fishing vessels or may outsource the system development. Appropriate policy proposal for this may likewise be required to support the implementation of the project capable of detecting IUUF activities. In order to achieve integrated database, this paper

recommends close coordination with the Bureau of Fisheries and Aquatic Resources for uniform application and enforcement of the system.

5. To avail of technical assistance from the IMO or other experts for capacity-building – The Philippines may request technical assistance under the Integrated Technical Cooperation Programme of the IMO to develop the Member States' capacity to implement maritime instruments. This may include formal safety assessments, training of surveyors or inspectors, resource mobilization, and regional and international cooperation, among others.

6. To intensify policy and research development by conducting cost-benefit analysis – Cost-benefit analysis quantifying potential expenses that may be incurred in the ratification and implementation of the CTA would justify its adoption. However, this may require field study to encourage industry stakeholders' participation as they may be able to provide tangible data that may intensify researches. Part of the policy and research development is the comprehensive comparative analysis of the prevailing PFVSRR with the provisions of the Cape Town Agreement.

7. Finally, to prepare a draft general bill for the adoption of the Cape Town Agreement with a provision of utilizing the PFVSRR as an implement of the CTA and imposition of stricter penalties for the conduct of illegal fishing practices, after intensified gap analysis and appropriate amendments to conform with the Agreement. The draft may form part of the ratification package prepared by the focal agency considering the tedious process of legislation in the Philippines.

The impact of the Cape Town Agreement transcends the realm of vessel safety. Its pronounced emphasis on ethical and responsible fishing practices resonates with broader sustainability objectives. By encouraging observance of rules and minimum

standards, the agreement actively prevents the overexploitation of fish stocks, the unintended fishing of non-target species, and the degradation of habitats - all of which are causes of destruction of marine ecosystems.

In essence, the CTA orchestrates an implicit yet profound management and conservation of the marine environment and resources. Through the enhancement of vessel safety, the prevention of mishaps and pollution, the mitigation of vessel abandonment risks, and the advocacy for responsible fishing practices, this agreement embodies a comprehensive strategy that underscores the symbiotic relationship between human well-being and ecological vitality within the maritime industry.

The ratification of the Cape Town Agreement of 2012 may have been an elusive catch for the Philippines, but with the foregoing recommendations, this dissertation is hoping to have presented suitable policy considerations to address the identified domestic challenges thwarting its adoption.

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# Appendices

## Appendix 1: Guide Questions for Respondents

| | | |
|---|---|---|
| Name | : | Gerico John Vincent A Magbojos |
| Specialization | : | MSc in Maritime Affairs<br>Maritime Law and Policy |
| Title of Dissertation | : | Elusive Catch: Domestic Challenges of the Philippines in Ratifying the Cape Town Agreement of 2012 |
| Supervisor | : | Prof. Henning Jessen LLM |

**Guide Questions for Respondents**

The Cape Town Agreement, also referred to as the 2012 Agreement on the Implementation of the Provisions of the Torremolinos Protocol from 1993 regarding the Torremolinos International Convention for the Safety of Fishing Vessels in 1997, is an international instrument that lays down the bare minimum standards for the design, construction, and equipment of fishing vessels. The agreement also contains provisions that aim to enhance the protection of the crew and observers, thereby ensuring a fair and equitable fishing industry.

However, just like any other IMO instruments, the Cape Town Agreement cannot be effectively implemented without first adopting it via ratification of member states and its corresponding domestication through appropriate legislation.

Below are ten research questions to look into different factors, including legal, economic, industrial, political and environmental, that may pose obstacles to the ratification process of the Cape Town Agreement.

1. Could you describe your organization's or country's position on maritime safety and environmental protection in the context of the Cape Town Convention?

2. What factors do you think affects the potential ratification of the Cape Town Convention in your jurisdiction?

3. Did the Philippines face any legal, regulatory or administrative constraints in ratifying the Cape Town Agreement? If so, can you explain in more detail?

4. How do economic factors (such as potential costs or benefits) influence the administration's decision to ratify the Cape Town Convention?

5. What role does the participation of the domestic maritime industry play in the approval decision-making process? Are there any concerns or objections from industry stakeholders?

6. Are there geopolitical or international relations factors affecting the way the country ratifies the Cape Town Agreement?

7. How would you rate the awareness and understanding of the Cape Town Agreement by relevant government agencies, industry representatives and the general public in your country?

8. Does your country have specific environmental or ecological issues related to the Cape Town Agreement? How do these issues affect the approval process?

9. Are there other countries or organizations that your country is considering having successful strategies or initiatives to overcome barriers to approval?

10. What measures, if any, is your country taking to address or mitigate the identified obstacles to the ratification of the Cape Town Agreement?