



IMO
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SAFETY OF FISHING VESSELS REGULATIONS

*Regulations under the Maldives Navigation Act (Act Number: 69/79), implementing
the provision of the Cape Town Agreement into the Laws of the Maldives*

A Legislation Drafting Project submitted in partial fulfilment of the requirements for
the award of the Degree of Master of Laws (LL.M.) in International Maritime Law at
the IMO International Maritime Law Institute

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i. DEDICATION

I would like to dedicate this project work to my beloved sister for her continuous support, encouragement and constant love throughout this journey. And to all the fishermen in the Maldives who work tirelessly on the sea.

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A) EXPLANATORY NOTE

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1. INTRODUCTION

This legislation drafting project is submitted in partial fulfilment of the requirements for the award of the Degree of Master of Laws (LL.M.) in International Maritime Law at the IMO International Maritime Law Institute (IMLI). The purpose of this project is to incorporate the Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (Cape Town Agreement) into Maldivian Law and to provide for the effective implementation thereof. This paper highlights the reasons why the Maldives needs to become a party to the Cape Town Agreement by providing an overview of the Agreement and the objectives which it aims to achieve. It also briefly explains how this Agreement will be incorporated and implemented into the domestic laws of the Maldives.

2. WHY SAFETY OF FISHING VESSELS MATTERS

Fishing is one of the most dangerous occupations in the world and the people engaged in fishing are usually among the poorest in the society risking their lives at sea just to provide food for their families. Billions of people are depending on the fishermen and the fish that they bring home. The total number of fishing vessels in the world is estimated at around 4.6 million. Most of these are small vessels. Some 64,000 fishing vessels of 24 meters in length and over operate in marine waters.¹ Over 58 million people are engaged in the primary sector of capture fisheries and aquaculture and over 15 million are working full-time on board fishing vessels.² As per the Food and Agriculture Organization of the United Nations (FAO) over 32,000 fishermen die every year.³ The accidents at sea and loss of lives have great impact on small-scale fishing communities. These statistics showcase the need to improve the safety of fishing vessels which would directly impact the livelihoods of these communities by decreasing the number of accidents at sea.

¹ IMO, 'Enhancing fishing vessel safety to save lives'

<<http://www.imo.org/en/MediaCentre/HotTopics/Pages/Fishing.aspx>> accessed on 28 July 2020.

² ILO, 'Fisheries' < <https://www.ilo.org/global/industries-and-sectors/shipping-ports-fisheries-inland-waterways/fisheries/lang--en/index.htm>> accessed 22 January 2020.

³ FAO, 'Safety for fishermen' < <http://www.fao.org/fishery/safety-for-fishermen/en/>> accessed on 22 January 2020.

As all fishers are potentially vulnerable to decent work shortfalls, including unacceptable working and living conditions on fishing vessels, long working hours, low income, isolation at sea and abusive recruitment, the tripartite delegates of 8th Association for South East Asian Nations (ASEAN) Labour Inspection Conference recognized that the sustainability of the fishing industry depended not only on economic and environmental factors, but also on whether the industry could ensure decent work for its fishers.⁴ The meeting noted the importance of the fishing industry in many ASEAN economies and to thousands of national and migrant workers who depend on the industry for their livelihood.⁵

3. HISTORICAL BACKGROUND OF THE CAPE TOWN AGREEMENT

The International Maritime Organization (IMO), the International Labour Organization (ILO) and FAO are the three specialized agencies of the United Nations that play a role in fishermen's safety at sea. IMO is the agency responsible for improving maritime safety and preventing pollution from ships, whereas ILO formulates international labour standards in the form of Conventions and Recommendations, setting minimum standards of basic labour rights.⁶ FAO has the mandate to raise levels of nutrition by improving productivity and distribution of food, and to raise the standards of living and better the conditions of rural populations.⁷

As improved safety of fishing vessels has been a major concern, the three organizations have jointly prepared a Code of Safety for Fishermen and Fishing Vessels. Part A was adopted in 1968 and is an educational tool dealing with the fundamentals of safety and health. Part B of the Code was adopted in 1974 and is

⁴ ILO, 'The Eighth ASEAN Labour Inspection Conference on the theme "Securing Decent Work in the Fisheries Sector through Labour Inspection in ASEAN"' (held from 18-19 December 2019 in Bangkok, Thailand) < https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/governance/labadmin-osh/news/WCMS_734364/lang--en/index.htm > accessed 23 January 2020.

⁵ Ibid.

⁶ FAO, 'International conventions and guidelines on safety at sea' <http://www.fao.org/3/X9656E/X9656E01.htm#P387_35388> accessed 22 January 2020.

⁷ Ibid.

intended to serve as a guide to those concerned with framing national laws and regulations and its application is limited to fishing vessels of 24m in length and over, excluding recreational fishing vessels and processing vessels.⁸ The Code was amended in 2005 to guide all the concerned parties in the formulation of measures aimed at improving safety and health on board fishing vessels without however claiming to be a substitute for national laws and regulations.

Safety of fishing vessels has always been a concern for IMO.⁹ However the main conventions that concern safety at sea such as International Convention for the Safety of Life at Sea (SOLAS)¹⁰ and the International Convention on Load Lines¹¹ do not cover fishing vessels for the reason that those conventions are applicable to larger vessels considering the design and operation of the vessels. Without any binding instrument, it would be impossible to impose a mandatory inspections regime in order to check safety conditions of the fisherfolk as they may be exposed to exploitations such as longer working hours without proper working condition and without any mean to seek help.

In order to address the issue of safety of fishing vessels, the first attempt by IMO was to establish a binding international agreement which was the Torremolinos International Convention for the Safety of Fishing Vessels¹² (Torremolinos Convention) which recognized the great difference in design and operation between these vessels and other types of ships. The Convention included safety requirements for the construction and equipment of new, decked, seagoing fishing vessels of 24 meters in length and over, including those vessels also processing their catch.¹³

⁸ Ibid.

⁹ IMO, 'The Torremolinos International Convention for the Safety of Fishing Vessels'
<<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/The-Torremolinos-International-Convention-for-the-Safety-of-Fishing-Vessels.aspx>> accessed 19 July 2020.

¹⁰ IMO, *International Convention for the Safety of Life at Sea* (adopted 1 November 1974 entry into force?) 1184 UNTS 3.

¹¹ IMO, *International Convention on Load Lines* (Adopted 5 April 1966; Entry into force: 21 July 1968) 9159 UNTS 640.

¹² IMO, *Torremolinos International Convention for the Safety of Fishing Vessel* (adopted 2 April 1977)
<<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/The-Torremolinos-International-Convention-for-the-Safety-of-Fishing-Vessels.aspx>> accessed 22 January 2020.

¹³ Ibid.

Existing vessels were covered only in respect of radio requirements. However, States did not recognize the need for ratifying this Convention due to its technicality. It can also be a reason that the fishing industry had shown its reluctance to be subjected to standards set in the Convention as fishing has been a long tradition of independence and many regard fisheries as the last frontier of free enterprise and resent government involvement, which may be perceived by the industry as being inadequately informed of the risks and nature of fishing operations, or of the slim profit margins which might be eroded by the mandatory compliance with regulations on training, vessel construction and equipment. Additionally, legislators may refrain from imposing laws or regulations on the fisheries that lead to additional costs or may otherwise be perceived as repressive.¹⁴

To overcome the constraints of the provisions of the Torremolinos Convention, IMO held a conference at Torremolinos, Spain, to consider the possibility of adopting a protocol which would amend and replace the Torremolinos Convention.¹⁵ The conference adopted the 1993 Torremolinos Protocol¹⁶ which also never entered into force due to lack of sufficient ratifications. The changes brought by the 1993 Protocol include raising the vessel lower size limit from 24m to 45m. The Protocol also called for the development of Regional Guidelines for those vessels between 24m and 45m, taking into account the mode of operation, sheltered nature and climatic conditions of that region.¹⁷

With the failure of the Torremolinos Convention and 1993 Torremolinos Protocol, IMO renewed its commitment and held another diplomatic conference in October 2012 in Cape Town, South Africa, aiming to amend the provisions of the Torremolinos Protocol in order to assist States in the implementation of its provisions. It was one of the largest fishing vessel conference held in the history of IMO.

¹⁴ FAO (n4).

¹⁵ IMO, '1993 Torremolinos Protocol and Torremolinos International Convention For The Safety Of Fishing Vessels, Consolidated Edition 1995' (International Maritime Organisation 1995) 1.

¹⁶ The 1993 Protocol has been ratified by only six States (Cuba, Denmark, Iceland, Italy, Norway and Sweden)

¹⁷ FAO (n4).

Following this Conference, a new instrument which is the Cape Town Agreement¹⁸ was adopted which will enter into force 12 months after the date on which not less than 22 States the aggregate number of whose fishing vessels of 24 m in length and over operating on the high seas is not less than 3,600 have expressed their consent to be bound by it. So far only 14 countries have ratified / acceded to the Agreement¹⁹ which remains open for accession by States.

The main purpose of the Cape Town Agreement is to improve safety standards, reducing the loss of life in the fisheries sector, combat illegal, unreported and unregulated fishing, improve working conditions, reduce marine pollution, increasing protection of polar waters and reduce risks for search and rescue services.²⁰

To support the Cape Town Agreement, IMO in collaboration with ILO and FAO has been implementing a comprehensive range of activities through the IMO's technical co-operation programme.²¹ Since the Torremolinos Convention and 1993 Torremolinos Protocol failed to enter into force and the Cape Town Agreement awaits for States to consent to be bound by it, IMO has developed, in collaboration with FAO and ILO a number of non-mandatory instruments such as FAO/ILO/IMO Document for Guidance on Fishermen's Training and Certification and the revised Code of Safety for Fishermen and Fishing Vessels, 2005, and the Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels, 2005.²² In addition to this, IMO also adopted the 1995 STCW-F Convention²³ which

¹⁸ IMO, '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' (adopted 29 October 2012)

¹⁹ IMO, 'Status of Treaties'

<<http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/StatusOfTreaties.pdf>> accessed 30 July 2020.

²⁰ IMO, 'Fishing Vessel Safety'

<<http://www.imo.org/en/OurWork/Safety/SafetyTopics/FishingVessels/Pages/Default.aspx>> accessed 23 January 2020.

²¹ Ibid.

²² Ibid.

²³ IMO, 'International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995' (Adopted on 7 July 1995 and entered into force on 29 September 2012) <<http://www.imo.org/en/OurWork/HumanElement/Pages/STCW-F-Convention.aspx>> accessed 23 January 2020.

sets the certification and minimum training requirements for crews of seagoing fishing vessels of 24 meters in length and above.

The Cape Town Agreement is said to be a milestone for improving fishing vessel safety and loss prevention and therefore, it stands a reason for its adoption to improve lives of many. The effort of IMO and other concerned organizations with regard to the safety of fishing vessels could be achieved through its adoption as there are no other mandatory international requirements for stability and seaworthiness, life-saving appliances, communications equipment, or fire protection, as well as fishing vessel construction.

During the promotion of this Agreement, Sandra Allnutt, Head of Maritime Technology in IMO's Maritime Safety Division, in a regional seminar in Cape Town held in October 2017, emphasized on the need for its adoption by mentioning “We want to reduce loss of life in one of the most dangerous professions in the world, and we want to enhance safety on board fishing vessels... this Agreement, once fully ratified, in force and implemented, will be an internationally binding agreement which will facilitate better control of fishing vessel safety by flag, port and coastal States. It will also contribute to the fight against illegal, unreported and unregulated (IUU) fishing.” She also added “This is something to be welcomed, for the millions of people worldwide who work in the fishing sector.”²⁴

4. AN OVERVIEW OF THE CAPE TOWN AGREEMENT

Fishing, especially when conducted illegally, often lacks sufficient on-board safety equipment, or involves vessels operating for extended periods of time without undergoing safety inspections and therefore less likely to maintain a decent working condition on board, endangers the workers and has been considered to be one of the most hazardous occupation in the world. The Cape Town Agreement seeks to enhance safety onboard fishing vessels. It is an internationally binding agreement which will facilitate better control of fishing vessel safety by flag, port and coastal States. It will also contribute to the fight against illegal, unreported, and unregulated (IUU)

²⁴ IMO, ‘IMO promotes fishing vessel safety agreement to save lives’ (Briefing: 27 26th October 2017) < <http://www.imo.org/en/MediaCentre/PressBriefings/Pages/27-Cape-Town-Agreement-.aspx>> accessed 23 January 2020.

fishing.²⁵ The Cape Town Agreement will set minimum requirements on the design, construction, equipment, and inspection of fishing vessels 24 meters and above. Its entry into force will empower port States to carry out safety inspections that could be aligned with fisheries and labour agencies, to ensure transparency of fishing and crew activities. It will also call for harmonized fisheries, labour, and safety inspections.²⁶

The Cape Town Agreement has two sections. Section one consists of the general obligations to be assumed by State Parties and section two consists of an annex composed of 10 chapters. Chapter 1 outlines the application, eligibility and scope of the provisions. Chapters 2-10 give detailed design, construction and equipment requirements for fishing vessels. They are listed under three categories based on a vessel's size: 24–45 meters, 45-60 meters, and more than 60 meters.

4.1 General Obligations of State Parties to the Agreement

Article 1 of the Cape Town Agreement provides, *inter alia*, that those States that become Contracting Parties shall give effect to the provisions of: a) the Agreement and b) the Protocol as amended by the Agreement with the exception of articles 1(1) (a), (2) and (3), article 9 and article 10 of the same Protocol. Furthermore sub-article (2) provides that the articles of the Agreement, articles 2 to 8, 11 to 14 and the regulations in the annex to the Protocol and the regulations in the annex to the Convention are to be read as one instrument as modified by the Agreement.²⁷

4.2 Application, Eligibility and Scope

The Cape Town Agreement applies to commercial fishing vessels of 24 meters in length and above or equivalent in gross tons²⁸ and unless expressly provided otherwise, the provisions of the annex shall apply to new vessels.²⁹ The provisions of the Agreement shall not apply to vessels which are used exclusively for: a) sport or

²⁵ PEW, 'A brief from the PEW Charitable Trusts (October 2018) < https://www.pewtrusts.org/-/media/assets/201a9/09/ctaexplained_brief.pdf> accessed 23 January 2020.

²⁶ Ibid.

²⁷ The Cape Town Agreement, (n17), Article 1.

²⁸ Ibid, Chapter 1, Regulation 1, Section 2.

²⁹ Ibid, Section 1.

recreation, b) processing of fish or other living resources, c) research and training and d) carrying of fish.³⁰ In addition, a party to the Agreement may exempt a vessel if it considers the requirement unreasonable, or if the vessel is only operating within its exclusive economic zone.³¹ This can be done by notifying the IMO Secretary-General of the terms and conditions on which the exemption is granted under the Agreement.³²

4.3 BRIEF OVERVIEW OF THE CHAPTERS OF THE ANNEX TO THE AGREEMENT

4.3.1 CHAPTER I

As mentioned earlier, Chapter 1 of the Agreement outlines the application, eligibility and scope of its provisions. The Agreement provides flexibility for State parties in implementing its provision. States that are party to the Agreement have up to 10 (ten) years to put radio communications provisions in place, and up to 5 (five) years to implement provisions regarding lifesaving appliances, emergency procedures, and navigational equipment.³³ This gives States a significant period of time to prepare before the Agreement's regulations in these particular areas are complied with.

Since the provisions of the Agreement mainly apply to new vessels and some of the provisions apply to existing vessels, this Chapter defines 'new vessels' and 'existing vessels' as;³⁴

(1) New vessel is a vessel for which, on or after the date of entry into force of the present Protocol:

(a) the building or major conversion contract is placed; or

(b) the building or major conversion contract has been placed before the date of entry into force of the present Protocol, and which is delivered three years or more after the date of such entry into force; or

³⁰ Articles of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (consolidated version) Article 3.

³¹ The Cape Town Agreement, (n17), Chapter 1, Regulation 3, Section 3.

³² Ibid.

³³ The Cape Town Agreement, Chapter 1, Regulation 1, Section 4.

³⁴ Ibid, Chapter 1, Regulation 2, Section 1, 2.

(c) in the absence of a building contract:

- (i) the keel is laid; or
- (ii) construction identifiable with a specific vessel begins; or
- (iii) assembly has commenced comprising at least 50 tonnes or 1% of the estimated mass of all structural material, whichever is less.

(2) Existing vessel is a fishing vessel which is not a new vessel.

One of the main notable changes in the Agreement other than the changes that relate to the construction of the vessel, is the obligations on the State parties to inspect and conduct surveys and the times frame within which such surveys are to be carried out.³⁵ Such surveys include surveys of life-saving appliances and other equipment, surveys of radio installations, surveys of structure, machinery and equipment. Further, specific intervals within which such surveys are to be performed for the types of equipment and machinery are provided in regulations 7, 8 and 9, respectively. The responsibility to carry out the inspections is that of the flag State Administration. However, this function may be delegated to nominated surveyors or recognized organizations.³⁶

The skipper or the vessel owner has an obligation to maintain the condition of the vessel and its equipment to ensure that the vessel in all respects will remain fit to proceed to sea without danger to the vessels or persons on board. And after such survey no change shall be made in the structural arrangements, machinery, equipment and other items covered by the survey, without the approval of the State Administration.³⁷ He is also obliged to notify the flag State Administration or the nominated surveyor in case of an accident or a defect affecting its safety, efficiency or life-saving equipment is discovered, to determine whether a survey under regulations 7, 8 or 9 is required.³⁸

³⁵ Ibid, Chapter 1, Regulation 6,7,8,9.

³⁶ Ibid, Chapter 1, Regulation 6, Section 1.

³⁷ Ibid, Chapter 1, Regulation 10, Section 1, 2.

³⁸ Ibid, Chapter 1, Regulation 10, Section 3.

The flag State is obliged to issue a certificate called an International Fishing Vessel Safety Certificate, except for vessels exempted under regulation 3(3), after an initial or renewal survey of the vessel which complies with the applicable safety requirements stated in the regulations.³⁹ This certificate shall not exceed a period of 5 (five) years.⁴⁰ When an exemption is granted to a vessel, except for vessels exempted under regulation 3(3), State Administration is to issues a certificate called an International Fishing Vessel Exemption Certificate.⁴¹ Regulation 12 provides a State Party to conduct a survey on a vessel in case of a request from flag State Administration, and if satisfied that the requirements are met, to issues the relevant certificates to the vessel or endorse the certificates already onboard the vessel. Regulation 13 of this chapter provides for the duration and validity of the certificates. An important provision of this chapter is regulation 16 which provides that certificates issued under the authority of a State Party shall be accepted by the other State Parties and shall be regarded by the other Parties as having the same force as certificates issued by them. This facilitates the movement and operation of the fishing vessels.

4.3.2 CHAPTERS II to X

Chapters 2 to 10 give detailed design, construction and equipment requirements for fishing vessels that need to be complied with in order to obtain the International Fishing Vessel Certificate. These chapters apply depending on the size of the vessel. Chapters II, III, VI, VIII and X apply to all new fishing vessels which are of 24 meters in length and over, whilst chapters IV, V, VII and IX apply to new fishing vessels of 45 meters in length and over.

Chapter II deals with construction, watertight integrity and equipment. The regulations in this chapter establish that the strength and construction of hull superstructures, deckhouses, machinery casings, companionways and any other structures and vessel's equipment shall be sufficient to withstand all foreseeable

³⁹ Ibid, Chapter 1, Regulation 11, Section 1.

⁴⁰ Ibid, Chapter 1, Regulation 13, Section 1.

⁴¹ Ibid, Chapter 1, Regulation 11, Section 3.

conditions of the intended service and shall be to the satisfaction of the flag State Administration.⁴²

Chapter III deals with the stability and associated seaworthiness of the vessel. It states that the vessels so designed and constructed that the requirements of this chapter will be satisfied in the operating conditions referred to in regulation 7. Calculations of the righting lever curves shall be to the satisfaction of the flag State Administration.⁴³

Chapter IV covers the provision with regard to machinery and electrical installations and periodically unattended machinery spaces. These provisions apply to vessels of 45 m in length and over.⁴⁴ It states that such machineries and electrical installations shall be designed, constructed, tested, installed and serviced to the satisfaction of the flag State Administration.⁴⁵

Chapter V deals with fire protection, fire detection, fire extinctions and firefighting. This chapter also applies to new vessels of 45 m in length and over.⁴⁶

Chapter VI contains provisions relating to the protection of the crew. Regulation 1 of this chapter provides general protection measures dealing with lifeline system, deck opening, skylights, and the surface of all decks.⁴⁷

Chapter VII deals with lifesaving appliances and arrangements. This chapter also applies to new vessels of 45 m in length and over. However, regulation 13 and 14 which covers radio lifesaving appliances and radar transponders also applies to existing vessels of 45 m in length and over, provided that the Administration may defer the implementation of the requirements of these regulations until the date of entry into force of the Agreement.⁴⁸

Chapter VIII deals with emergency procedures, musters and drills. This chapter applies to new and existing vessels of 24 m in length and over. It requires all vessels

⁴² Ibid, Chapter II, Regulation 1, Section 1.

⁴³ Ibid, Chapter III, Regulation 1.

⁴⁴ Ibid, Chapter IV, Regulation 1.

⁴⁵ Ibid, Chapter IV, Regulation 3, Section 1.

⁴⁶ Ibid, Chapter V, Regulation 1, Section 1.

⁴⁷ Ibid, Chapter VI, Regulation 1, 2, 3, 4.

⁴⁸ Ibid, Chapter VII, Regulation 1, Section 2.

to provide clear instructions for each crew member, which shall be followed in case of emergency.⁴⁹

Chapter IX provides standards and procedures regarding radio communications. This chapter applies to new and existing vessels of 45 m in length and over. However, for existing vessels, the Administration may defer the implementation of the requirements until the date of entry into force of the Agreement.⁵⁰

Chapter X includes provisions regarding shipborne navigational equipment and arrangements. This chapter applies to new and existing fishing vessels. However, the flag State Administration may exempt any vessel from any of the requirements of this chapter where it considers that the nature of the voyage or the vessel's proximity to land does not warrant such requirements.⁵¹

5. WHY THE MALDIVES NEED TO ADOPT AND IMPLEMENT THE CAPE TOWN AGREEMENT

The Republic of Maldives is an archipelago of 26 natural atolls, consisting of over 1 100 coral reef islands in the Indian Ocean with total population of 407,660 consisting 338,434 Maldivians and 63,637 foreigners.⁵² The islands are scattered over an area of 750 km from north to south and 120 km from east to west covering around 90 000 km², and about 99 percent of the country's territory consists of ocean.⁵³

The Maldives has always been a country dependent on fishing for survival. Fishing has been a vital part of living, as a main source of food or occupation. Prior to the introduction of tourism in the Maldives, fishing was the main occupation and major contributor to the country's economy. Nevertheless, since 1978, the fisheries

⁴⁹ Ibid, Chapter VIII, Regulation 2, Section 2.

⁵⁰ Ibid, Chapter IX, Regulation 1.

⁵¹ Ibid, Chapter X, Regulation 1,2.

⁵² National Bureau of Statistics, 'MALDIVES Population and Housing Census 2014' <<http://statistics.maldives.gov.mv/nbs/wp-content/uploads/2015/10/Census-Summary-Tables1.pdf>> accessed 26 January 2020.

Foreign population enumerated in Census 2014 is less than the official figures recorded in Immigration documents.

⁵³ FAO, 'Fishery and Aquaculture Country Profiles' (*The Republic of Maldives, May 2019*) <<http://www.fao.org/fishery/facp/MDV/en>> accessed 26 January 2020.

contribution to the GDP has shown a continual declining trend, mainly due to the rapid growth of the tourism sector in the economy and diversification of the fishery related businesses into other economic sectors such as export and labour. In 2017, there were around 17,589 fishers employed in the fisheries sector engaged in skipjack, yellowfin and reef fisheries.⁵⁴

IUU fishing in the Indian Ocean is one of the major obstacles to the long-term sustainable management of tuna fisheries in the Maldives. It predominantly occurs in the form of poaching at the Exclusive Economic Zone (EEZ) boundary line where IUU vessels speciously operate at proximate high seas. Given the highly migratory and straddling nature of tuna and tuna like fish stocks in the Indian Ocean, the need for a coordinated effort at the global and regional level aiming at effective combat measures against IUU fishing is well recognized.⁵⁵

A 2-year study which was finished in 2017 identified 432 vessels performing unauthorized activities inside the Maldivian EEZ and 542 unauthorized drifting buoys deployed or drifting through Maldivian waters. International bodies were alerted and notified about this violation.⁵⁶ There are several reports of IUU fishing in the Maldives EEZ and territorial waters.⁵⁷

The Maldives has been on the receiving end of the social and economic loss caused by IUU fishing and has been taking measures to prevent IUU fishing. One such measure is the ratification of the FAO Port State Measure Agreement (PSMA) in March 2017. The new Fisheries Act which came into force on 16th September 2019 also covers regulatory measures to enhance the fisheries monitoring, control and surveillance scheme that is essential for the development sustainable fisheries.

⁵⁴ Ibid.

⁵⁵ UN, 'The Ocean Conference' (Implementation of strengthened and coordinated Monitoring, Control and Surveillance scheme to prevent, deter and eliminate IUU fishing, June 2017) <<https://oceanconference.un.org/commitments/?id=19038>> accessed 26 January 2020.

⁵⁶ Corporate Maldives, 'The Current Trend in Maldives Fisheries Industry' <<https://corporatemaldives.com/the-current-trend-in-maldives-fisheries-industry/>> accessed 26 January 2020.

⁵⁷ Emirate 24/7, 'Lankan fined for illegal fishing by Maldives' <<https://www.emirates247.com/news/sri-lanka/lankan-fined-for-illegal-fishing-by-maldives-2013-03-10-1.497982>> accessed 27 January 2020.

In order to combat IUU fishing and to work for sustainable development of fisheries, the Maldives has been taking part in intergovernmental organizations such as the Indian Ocean Tuna Commission (IOTC). As per the Maldives national report submitted to the IOTC in 2018, the foreign licensed longline fleet operates in the outer waters of the EEZ, beyond 75 miles. Reporting and monitoring of the foreign longline fishery was sub-optimal, and due to pressure from the pole-and-line and handline fishermen, licensing for foreign vessels was ended in mid-2010. The Government of the Maldives resumed licensing fully local longline vessels and businesses to fish from 75 miles from shore, within the Maldives EEZ, in 2011. The Longline Fishery Regulation (No. 2014/R-388) allowed vessels to target yellowfin and bigeye tuna from 100 miles and beyond and regulated the fishery with a total allowable catch (TAC) based on the fleet development plan submitted to IOTC, a quota system to distribute the TAC, mandatory Vessel Monitoring System (VMS) and logbook reporting of catch and effort. In 2017, 44 longline vessels were licensed to operate in the Maldives EEZ (Table 1).⁵⁸

Table 1: Number of vessels operating in Maldives EEZ and on high seas, flagged to Maldives (2012-2017).

Year	Vessel type	Length Range (LoA, meters)							
		< 07.5	> 07.5 < 12.5	> 12.5 < 17.5	> 17.5 < 22.5	> 22.5 < 27.5	> 27.5 < 32.5	> 32.5 < 37.5	> 37.5
2013	Engine row boat	4	--	--	--	--	--	--	--
2013	Longline vessel	--	1	5	2	--	--	--	7
2013	Mechanized masdhoni	--	23	117	141	224	68	11	--
2013	Mechanized vadhu dhoani	1	6	--	--	--	--	--	--
2014	Engine row boat	2	2	1	1	1	3	--	--
2014	Longline vessel	7	34	10	9	2	--	--	9
2014	Mechanized masdhoni	--	--	132	163	277	94	12	--
2014	Mechanized vadhu dhoani	1	2	1	2	--	--	--	--
2015	Mechanized masdhoni	11	50	161	182	302	108	14	1
2015	Longline vessels	-	-	9	17	2	-	-	-
2016	Mechanized masdhoni	9	43	116	155	273	93	16	-
2016	Longline vessel	-	-	14	21	3	-	-	4
2017	Mechanized masdhoni	-	66	140	170	320	104	17	1
2017	Longline vessel	-	1	13	23	3	-	-	4

According to the statistics⁵⁹ provided by the Ministry of Fisheries, until 2019, there are 794 fishing vessels registered in the Maldives out of which 595 vessels are of 45 meters and over. The data provided by the Ministry show that there are 64 fishing vessels less than 45 meters in length, hence the total number of fishing vessels that are 24 meters and over are not clear from the data. However, it is evident that there is a

⁵⁸ IOTC, 'Maldives National Report Submitted to the Indian Ocean Tuna Commission Scientific Committee, 2018' < https://www.iotc.org/sites/default/files/documents/2018/11/IOTC-2018-SC21-NR16_-_Maldives.pdf.> accessed 30 July 2020.

⁵⁹ See Attachment 1 of this explanatory note.

large number of fishing vessels that are required to meet the safety standards provided under the Cape Town Agreement.

The Maldives is a coastal State and highly dependent on the fisheries and by adopting and implementing the provisions of the Cape Town Agreement would highly benefit the country in combating the IUU fishing and providing higher safety standards and better working and living conditions for the Maldivian vessels wherever they are and foreign vessels operating in the coastal waters or calling at its ports, including their seaworthiness.

The Cape Town Agreement will create minimum safety standards for a huge proportion of the global fishing fleet, potentially saving the lives of a large number of fishers operating on the high seas. It would also lessen the chance of vessel incidents in the territorial waters that would usually require assistance from the coastal State's maritime authority or Coast Guard. It would allow for inspections of fishing vessels to make sure that the vessels safety and working conditions are in compliance with the international standards set in the Agreement.

As mentioned earlier, the provisions of the Agreement regarding vessel design and construction apply to many vessels, most would apply exclusively to new vessels. As the Agreement allows States to implement provisions in phases, there is no need to immediately enforce changes in vessel design, construction, or equipment for all flagged vessels. The major impact from the implementation of the Agreement would be the inspection and certification requirements. It might be a challenge for the State Administration to set the arrangements to implement these requirements. However, it would help to better protect productive fish stock in the Maldives waters and help in identifying IUU fishing practices.

The Minister of Fisheries, Marine Resources and Agriculture, Ms. Zaha Waheed, highlighted in an interview given to IMO, that the Cape Town Agreement is an important initiative taken to combat IUU fishing and it is important to sign the Agreement in order to stop the illegal activities that are taking place on the high seas.⁶⁰

⁶⁰ IMO,

<http://www.imo.org/en/MediaCentre/HotTopics/Documents/CapeTownAgreement_SandraAllnut/A-Maldives_Final.mp4> accessed 30 July 2020.

6. MALDIVIAN LEGAL FRAMEWORK ON MARITIME ISSUES

6.1 Relevant Authorities

The Maldives does not have one specific administrative authority to regulate maritime issues. Maritime related matters are dealt with in different administrative bodies (Ministries). Such administrative bodies include:

i. Ministry of Transport and Civil Aviation

The Ministry of Transport and Civil Aviation (Ministry of Transport) is the lead Ministry in the government which oversees maritime issues. The Ministry of Transport has the mandate to make national policies regulating ports and the shipping industry and taking necessary measures to protect the environment from any harms from vessels. The Ministry of Transport has the mandate to take necessary measure for controlling maritime accidents and developing the shipping industry in the Maldives. Some of these tasks have been delegated to Maldives Transport Authority (the government body which operates under Ministry of Transport and which assists the Ministry in regulating maritime related issues). It also has mandate to make specific regulations for building and maintenance of seagoing vessels which will operate in the Maldives territorial waters. The Ministry of Transport is also responsible for the registration, issuing of necessary licenses for fishing vessels and for safety checks and training of officers and crew.⁶¹

The Ministry of Transport also has the mandate to act on behalf of the Government in ratifying maritime conventions and enter into agreements with other State authorities and international organizations regarding maritime safety and security and develop cooperation between different States with regard to maritime issues.⁶²

⁶¹ Maldives Transport Authority, 'mandate'

<<https://transport.gov.mv/%de%93%de%b0%de%83%de%a7%de%82%de%b0%de%90%de%b0%de%95%de%af%de%93%de%b0-%de%87%de%ae%de%8c%de%af%de%83%de%a8%de%93%de%a9%de%8e%de%ac-%de%89%de%a6%de%90%de%a6%de%87%de%b0%de%86%de%a6%de%8c%de%b0%de%8c/>> accessed 28 January 2020.

⁶² President 's Office, Maldives < <https://presidency.gov.mv/Pages/dv/63>> accessed 28 January 2020.

ii. Ministry of Fisheries, Marine Resources and Agriculture

The Ministry of Fisheries, Marine Resources and Agriculture (Ministry of Fisheries) has the mandate to administer maritime polices and one of its main objectives is to ensure the development and sustainable management of marine and agricultural resources of the Maldives. It has also the responsibility to strengthen the fisheries sector in order to increase its competitiveness and sustainably manage all marine living resources in the maritime zones of the Maldives. In addition, the Ministry of Fisheries describes the conditions for the licensing of foreign vessels or joint ventures in the EEZ, provides for apprehension of vessels, arrest, and penalties, and implements the Coastal Fishery Zone (CFZ).⁶³

iii. Other Relevant Authorities

In addition to the above mentioned ministries, there are other institutions which play an important role in their respective areas of responsibility and have supportive functions in maritime sector such as the Ministry of Economic Development (MED) which is responsible for the licensing of all commercial fishing vessels including foreign fishing vessels and for the determination of the number of licenses to be issued, the negotiations and other dealings with licensees.

To provide a credible dissuasion for violations of laws and regulations, the Coast Guard section of the Maldives National Defense Force (MNDF) is in charge of the surveillance, monitoring and enforcement of laws on maritime zones of the Maldives as declared in the Maldives Maritime Zones Act (Act no. 6/96). Under the Armed Forces Act, the Coast Guard has the power to inspect any vessel which enters Maldivian waters illegally or attempts to enter and navigate in the Maldivian Waters.⁶⁴

6.2 Relevant Laws and Regulations

i. The Maldives Navigation Act and the Regulations thereof;

The main relevant Act with regard to safety at sea is the Maldives Navigation Act (Act no. 69/78) which covers navigational safety requirements for seagoing vessels.

⁶³ Ibid.

⁶⁴ Act Number 1/2008, Armed Forces Act, Article 41 (a) (2).

The Act gives power to the Minister of Transport to make regulations on safety of any seagoing vessel which operates in the Maldives territorial waters. There are three main Regulations which cover safety measures for seagoing vessels. They are:

1. The Regulations on navigation of seagoing vessels in the Maldives territorial waters have 13 chapters. Chapter 2 was dedicated to safety measure for building a vessels that shall operate in the Maldives territorial waters (This chapter has been repealed by new Regulations (Regulations no. 2017/R-2) which came into force in 1st January 2018). Chapter 3 of the Regulations provides that all vessels are to be registered under these Regulations in the Ministry and stipulates what are the requirements for registration. Chapter 4 provides safety measures for vessels and had some provisions for safety requirements for fishing vessels. However, this chapter was also repealed by the new regulation (Regulation no. 2015/R-229) on safety of seagoing vessels.
2. The Regulations on safety of seagoing vessels (Regulation no. 2015/R-229). As per section 45 (b) ‘vessel’ is defined as any seagoing vessel which carries cargo, passenger or cargo and passengers. Therefore, the safety standards set in these Regulations do not apply to the fishing vessels. As mentioned above, section 4 (b) of these Regulations has repealed chapter 4 of the Regulations on navigation of seagoing vessels in the Maldives territorial waters, creating thus a lacuna in the national legislation.
3. Regulation on building of seagoing vessels. This Regulation does not apply to vessels under 8 m long, navy vessels and any vessels used for international voyage. This Regulation applies to vessels, including cargo carrier, cargo and passenger carriers and fishing vessels over 8 meters long that operate in the Maldives territorial waters. Even though this Regulation applies to fishing vessels, it does not cover all the safety requirements specified under the Cape Town Agreement. One of the main features in the Cape Town Agreement is surveying and certification of the fishing vessels. However, this Regulation does not have such provisions.

ii. The Maldives Fisheries Act

Sustainable development and management of capture fisheries in the Maldives is governed by the Fisheries Law of the Maldives (Act no. 14/2019), which empowers the Ministry of Fisheries to establish and administer regulations for sustainable utilization and conservation of fisheries stocks and living marine resources, including protecting threatened species and establishing conservation areas. It also supports the development of management plans for the main types of fisheries practiced in nearshore and offshore waters. Regulatory measures and compliance tools which comply with this goal will enhance the fisheries monitoring, control and surveillance scheme that is essential for the development sustainable fisheries. The Act gives power to the Ministry of Fisheries to oversee all fisheries activities in the country.

This Act applies to vessels that operate on international waters under Maldivian flag. Section 34 (a) of the Act requires the obtaining of a license from the Ministry or from the authorized authority if any of the Maldivian flag vessels opt to fish in international waters other than the Maldives territorial waters. The Act contains provisions on the use and exploitation of the living marine resources, particularly fishery resources and on foreign licensed fisheries conducted in the EEZ of the Maldives. All vessels that carry out any kind of fisheries activity within the Maldives territorial waters are subjected to obtain a license as per the effective Regulation under this Act.⁶⁵ The Act also covers regulatory measures to combat IUU fishing and requires the regulatory bodies to give their full support and provide necessary information to other States, international organizations and non-government organizations for the prevention of IUU fishing.⁶⁶

iii. General Observation on the Maritime Legal Framework with regard to Safety of Fishing Vessels.

As the main purpose of the Cape Town Agreement is to provide safety standards for the fishing vessels of 24 m in length and over, as mentioned above, the existing Regulation on building of seagoing vessels does not cover the vessels that would operate in international waters or outside the territorial waters of the Maldives. One of

⁶⁵ Maldives Fisheries Act (Act no. 14/2019), section 36 (a).

⁶⁶ Ibid, Section 43.

the main purposes of the Cape Town Agreement is to provide safety measures for the vessels that operate in international waters and for those vessels to conduct fishing operations safely and legally. Also, the Agreement calls for harmonized fisheries, labour, and safety inspections empowering port and coastal States to carry out vessel safety inspections that could be aligned with fisheries administrations and labour agencies, to improve transparency of fishing and crew activities. However, the existing Regulations do not have these safety requirements (such as surveying and inspections of the vessel and issuing certificates specified in the Agreement) covered under the Cape Town Agreement.

Therefore, it is important to have regulatory measures for the fishing vessels that operate on the high seas, be it Maldivian flag vessel or a foreign flag vessel which operates in the Maldives jurisdiction in order to ensure the safety of fishing vessels and the crews that work on board of the vessel and also as a measure to tackle the IUU fishing in the international waters.

7. METHODOLOGY TO INCORPORATE THE CAPE TOWN AGREEMENT INTO THE LAWS OF THE MALDIVES

As discussed before, looking into the organizational structure of the executive, there are two State authorities which have common interest in the area of safety of fishing vessels. The Ministry of Transport (Maldives Transport Authority) has the mandate and power under the Maldives Navigation Act to make regulations regarding the design, construction and equipping a vessel which cover the safety requirements of the vessels that operate under Maldivian flag or foreign vessels that operate within Maldivian waters. On the other hand, the Ministry of Fisheries has a mandate to take all necessary measures to combat the IUU fishing under the Maldives Fisheries Act as well as under the international agreements to which the country has adhered. Thus, the incorporation of the Cape Town Agreement by Ministry of Transport in collaboration with the Ministry of Fisheries would be the starting point to bring the change.

Since the existing Regulations, specifically the Regulation on building of seagoing vessels which is governed by the Maldives Navigation Act, do not apply to vessels

that would operate in international waters and they do not have all the safety requirements including the surveying and inspection of the fishing vessels that are covered under the Cape Town Agreement, it is important to adopt the Cape Town Agreement and make new Regulations on Safety of Fishing Vessels for an effective implementation of the provisions of the Agreement.

As mentioned earlier, States can exempt a vessel from application of the provisions of the Cape Town Agreement under the Chapter 1, regulation 3, section 3 of the Agreement, if a State considers the requirements under the Agreement unreasonable, or if the vessel is only operating within the EEZ of that State. Therefore, considering the existing Regulation on the building of seagoing vessels in the Maldives, if the Government is considering to adopt the Cape Town Agreement, it is recommended to make a declaration to give effect to the exemptions provided under the Chapter 1, regulation 3, Section 3 of the Agreement, and provide the details of the vessels that require exemption based on the reason provided in the Agreement. Also, it would be highly important to declare that even though some vessels are exempted from application of the provisions of the Agreement, foreign vessels of 24 meters in length and over that operate in the territorial waters or such vessels that engage in fisheries activities in the EEZ of the Maldives shall be subjected to the rules and safety standards set in the Cape Town Agreement and such vessels are not subjected to the exemption given under Chapter 1, regulation 1, Section 3 of the Agreement.

Therefore, with such an exemption provided under Chapter 1, regulation 1, Section 3 of the Cape Town Agreement, the existing Regulation on building of seagoing vessels can be applied to the exempted vessels from application of the provisions of the Agreement. Hence, it is recommended to have separate Regulations under the Maldives Navigation Act, which would provide for the effective implementation of the Cape Town Agreement and that would be applicable to fishing vessels of 24 meters in length and over that operate in international water including the foreign vessels that operate in the EEZ and territorial waters of the Maldives or call at Maldivian ports. Since it would be a subsidiary legislation (a regulation which is governed by the Maldives Navigation Act), it would not require to go through the Parliament process in order for it to become effective.

However, since the Maldives is not a party to the Cape Town Agreement, Maldives needs to deposit an instrument of accession to the Agreement. The Maldives being a

dualist State, under Article 93 (a) of the Constitution of the Republic of Maldives 2008 (Maldives Constitution)⁶⁷ requires the approval of People's Majilis (The Parliament) for treaties entered into by the Executive (State administrations) in the name of the State with foreign States and international organizations and such treaties shall enter into force only in accordance with the decision of the Parliament. Article 93 (b) of the Maldives Constitution also states that, despite the provision of the article (a), citizens shall only be required to act in compliance with treaties ratified by the States as provided for in a law enacted by the Parliament. Therefore, in order to incorporate and effectively implement the Cape Town Agreement, the domestication of the Agreement is required.

Hence, in order to adopt the Cape Town Agreement, with the approval from the Parliament, the governing body which is the Ministry of Transport or the country delegations to the IMO can inform the secretariat of IMO of their State's intention to accede and request technical and legal assistance as appropriate. When depositing an instrument with the IMO, delegates will need to provide the number of fishing vessels flagged to their State. The IMO provides guidelines on how to calculate this number. The State Administration shall also plan for the progressive implementation of Chapters VII, VIII, IX and X of the Annex to the Agreement.⁶⁸

After the accession to the Agreement, for the purpose of domestication of the provisions of the Agreement, the draft Regulations on the Safety of Fishing Vessels can be initiated by the Ministry of Transport. Since it would be a subsidiary legislation (a Regulation), as per the procedures, the initial draft needs to be sent to Attorney General's Office of the Maldives for its comments and once the Attorney General approves the draft regulation, it would be sent to the President's Office. After reviewing the Regulations, once approved by the President's Office, it will be required to have the Regulations published in the gazette and make them available to public as per Article 61 (a) of the Constitution of the Maldives.

⁶⁷ The Constitution of the Republic of Maldives 2008,
<<http://mvlaw.gov.mv/pdf/ganoon/QaanoonAsaasee/English-constitution.pdf>> accessed 27 January 2020.

⁶⁸ See part 8 (brief of the draft regulations) for further information.

8. BRIEF OF THE DRAFT REGULATIONS

The Safety of Fishing Vessels Regulations comprise of 19 sections. Sections 1 and 2 are preliminary sections composed of introduction and title of the Regulations and the purpose of the Regulations. Section 3 provides for the scope of application of the Regulations which shall apply to fishing vessels of 24 meters in length and above. As mentioned earlier, the existing Regulation on building of seagoing vessels covers some of the safety measures for fishing vessels that operate within the territorial water of the Maldives. However, the draft regulations will apply to vessels of 24 meters and over and vessels that are not exempted from the application of certain chapters of the Cape Town Agreement. Therefore, the vessels that are below 24 meters and vessels that are exempted from the application of these draft Regulations will be subjected to the existing Regulation. Hence no provision is repealed or amended from the existing Regulation.

Sections 4, 5 and 6 provide for the enforcing authority of the State Administration, the date of entry into force and interpretation respectively.

Section 7 establishes a progressive plan by the State Administration, for the implementation of the provisions of Chapters VII, VIII, IX and X of the Annex to the Agreement. The State Administration shall communicate to IMO of this provision to be progressively implemented and the reason thereof. The said information shall be communicated to the IMO in the submission of the instrument of accession. Therefore, it is important that the Ministry of Transport, which has the power to become a Party to this Agreement carries out the consultation processes as earliest as possible, with Ministry of Fisheries and other various stakeholders to determine the final time period needed for the implementation of the provision of each Chapter of the Annex.

Section 8 establishes the vessels that can be exempted from the requirements of certain chapters of the Cape Town Agreement. Section 10 makes provisions for surveys and inspections where the State Administration or the nominated surveyors or recognized organizations by the State Administration can conduct the surveys and inspection. Section 11 establishes the obligation on the owner of the fishing vessel to maintain the condition of the vessel and its equipment's to conform with the

provisions of the Annexes to ensure the vessel remains fit for the safety of the vessel and its crews.

Further, sections 12 and 13 provide for the issue or endorsement of the International Fishing Vessel Safety Certificate and International Fishing Vessel Exemption Certificate and duration as well as the validity of the certificates respectively.

Section 14 details the provisions for the port State control measures where all foreign fishing vessels calling at Maldivian ports shall be subjected to an inspection regime conducted by the Administration or the authorized marine inspectors by the Administration to ensure their compliance with the requirements of the Cape Town Agreement. The State Administration has power to detain the fishing vessel which do not comply with the safety measures provided in the Regulations.

For the effective implementation of the Regulations, section 17 provides for the offense committed under these Regulations stating that failure to comply with the provision of the regulations, especially the provisions relating to certification, shall constitute an offence and be subject to a fine which is to be determined by the State Administration.

ATTACHMENT 1

[Statistics provided by Ministry of Fisheries,
Marine Resources and Agriculture, Maldives,
on 15th January 2020]

Number of registered (licensed or authorized) fishing vessels

2019	794
2018	814
2017	862
2016	886
2015	896

Sizes of the vessels

Less than 45 m	64
45-65	112
65-85	259
Greater than 85	224

* No. of Fishermen 2017 17589

(Number of Fishermen was taken from the survey done by January - February 2018)

*Data provided by Raufiyya Abdulla from Ministry of Fisheries, Marine Resources and Agriculture on 15th January 2020 upon request for the purpose of this research paper.

B) DRAFT REGULATIONS

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



Safety of Fishing Vessels Regulations			
Introduction and title.	1.	(a)	These Regulations prescribe the minimum requirements on the design, construction, equipment and inspection of fishing vessels of 24 meters and above. These Regulations have been prepared pursuant to section 5 (1), (2), (3), (4), (5), (6), (10) and (12) of Law Number 35/2015 (First Amendment to Law Number 69/78, Maldives Maritime Navigation Act).
		(b)	These Regulations shall be cited as the “Safety of Fishing Vessels Regulations”.
		(c)	The regulations contained in the Annex to the Cape Town Agreement comprising of ten Chapters and Appendix attached to the Cape Town Agreement, as maybe amended from time to time, form part of these Regulations and shall be read as one. In case of discrepancy between the provisions of these Regulations and the provisions contained in the Annex, the provisions contained in the Annex shall prevail.
Purpose.	2.	The purpose of these Regulations is:	
		(a)	To implement the provision of the Cape Town Agreement into the Laws of Maldives in order to enhance safety of fishing vessels and to strengthen the fight against the illegal, unreported, and unregulated (IUU) fishing in the exclusive economic zone and territorial waters of Maldives;
		(b)	To set minimum requirements on the design, construction, equipment, survey and certification of fishing vessels of 24 meters and above;
		(c)	To provide for port State control measures for the safety of fishing vessels which include safety inspection of fishing vessels calling at Maldives ports;
Scope of application.	3.	(a)	Unless expressly provided otherwise, these Regulations shall apply to seagoing Maldivian fishing vessels of 24 meters in length and over including vessels also processing their catch. These Regulations shall also apply to any other seagoing fishing vessels of 24 meters in length and over including

			vessels also processing their catch which operate within the exclusive economic zone or the territorial waters of Maldives and / or such vessels which call at Maldives ports.
		(b)	The provisions of these Regulations shall not apply to vessels exclusively used; <ul style="list-style-type: none"> i. for sports or recreation; ii. for processing fish or other living resources of the sea; iii. for research and training; or iv. as fish carriers.
		(d)	No Maldivian fishing vessel of 24 meters in length and over shall operate unless it is certified by the Administration that such fishing vessel complies with the requirements of these Regulations and of the Agreement.
		(e)	Fishing vessels flying the flag of another country of 24 meters in length and over shall not operate within the exclusive economic zone or the territorial waters of Maldives unless they are certified by the flag State that such fishing vessel comply with the requirements of the Agreement.
Power of the Administration.	4.		These Regulations shall be enforced by the Administration which has the mandate to oversee the safety measures of the fishing vessels.
Entry into force.	5.		These Regulations shall enter into force on the date of their publication in the Government Gazette.
Interpretation.	6.	In these Regulations, unless the context otherwise requires:	
		(a)	“Administration” means the Ministry of Transport and Civil Aviation or any Ministerial Department to whom the responsibility to issue or endorse certificate, as well as carrying out inspections and surveys of the fishing vessels has been duly delegated;
		(b)	“Agreement” means the Cape Town Agreement on the implementation of the provisions of the 1993 Torremolinos Protocol relating to the International Torremolinos Convention for the Safety of Fishing Vessels 1977;
		(c)	“Annex” means the regulations contained in the Annex to the Cape Town Agreement comprising of ten Chapters and Appendix;
		(d)	“EEZ” shall have the same meaning assigned in Act Number 6/96 (Maritime Zones of Maldives Act);

		(e)	“Fishing vessel” or “vessel” means a vessel used commercially for catching fish, whales, seals, walrus or other living resources of the sea;
		(f)	“Maldivian fishing vessel” means fishing vessels entitled to fly the Maldivian flag.
		(g)	“Operate” means catching or catching and processing fish or other living resources of the sea without prejudice to the right of innocent passage in the territorial sea and the freedom of navigation in the 200 miles exclusive economic zone;
		(h)	"territorial waters of Maldives" shall have the same meaning assigned to them in Act Number 6/96 (Maritime Zones of Maldives Act);
		(i)	“IMO” means United Nations, International Maritime Organization.
Progressive implementation.	7.	(a)	With regard to the implementation of the Annex, the Administration may, in accordance with a plan prepared by it and communicated to IMO specifying the provisions which are to be progressively implemented and the reasons thereof, progressively implement the provision of Chapter IX (radio communications) over a period of no more than ten years and the provision of Chapters VII (life-saving appliances and arrangements); VIII (emergency procedures, musters and drills); and X (ship borne navigational equipment and arrangements) over a period of no more than five years.
Exemptions	8.	(a)	The Administration may exempt any Maldivian fishing vessel which embodies features of a novel kind from any requirements of Chapters II, III, IV, V, VI and VII of the Annex, the application of which might seriously impede research into the development of such features and their incorporation in vessels. However, the Administration shall ensure that any such vessel shall comply with other safety requirements which, in its the opinion, are adequate for the service for which the fishing vessel is intended and are such as to ensure the overall safety of the vessel and persons on board.
		(b)	The Administration may exempt any Maldivian fishing vessel from any of the requirement of the Annex, if the Administrations considers that the application is unreasonable and impracticable in view of the type of vessel, the weather conditions and the absence of general navigational hazards, provided that;

			i.	the vessel complies with safety requirements which, in the opinion of the Administration, are adequate for the service for which it is intended and are such as to ensure the overall safety of the vessel and persons onboard; and
			ii.	the vessel is operating solely in the exclusive economic zone or the territorial waters of the Maldives.
		(c)	The Administration may grant to Maldivian fishing vessels partial or conditional exemptions from the application of the requirements of regulations 6 to 7 and 14 (7) of Chapter IX of the Annex provided that such fishing vessels comply with the requirements of regulation 4 of Chapter IX of the Annex, and the Administration is satisfied that such exemptions do not impact the general efficiency of the vessel for its and other vessels safety at sea.	
		(d)	The Administration may grant an exemption under Chapter 1 regulation 3 (3) of the Annex, only:	
			i.	if the conditions affecting safety are such as to render the full application of regulations 6 to 10 and 14 (7) of Chapter IX of the Annex, unreasonable or unnecessary;
			ii.	in exceptional circumstance, for a single voyage outside the sea area or sea areas for which the vessel is equipped;
			iii.	when the vessel will be taken permanently out of service within two years of the date of entry into force of the Agreement.
		(e)	The Administration may exempt any Maldivian fishing vessel from any of the requirement of the Chapter X of Annex, where it considers that the nature of the voyage or the vessels proximity to the land does not warrant such requirement.	
Equivalents	9.	(a)	The Administration may allow any other fitting, material, appliance or apparatus, or type thereof, to be fitted or carried, or that any particular provision to be made in a Maldivian fishing vessel, if it is satisfied by trial thereof or otherwise that such fitting, material, appliance or apparatus, or type thereof, or provision, is at least as effective as that required by the Agreement.	

		(b)	The Administration which so allows, in substitution a fitting, material appliance or apparatus, or type thereof, or provision, shall communicate to the IMO particulars thereof together with a report on any trial made.
Surveys and inspections	10.	(a)	In compliance with the Agreement so far as regards the enforcement of these Regulations and the granting of exemptions therefrom, the Administration shall conduct different types of inspections and surveys. Such surveys and inspections include:
		i.	surveys of life-saving appliance and other equipment;
		ii.	surveys of radio installations; and
		iii.	surveys of structure, machinery and equipment.
		(b)	The Administration may delegate the responsibility for such inspections and surveys to nominated surveyors or recognized organizations. In such situations the Administration shall notify IMO of the specific responsibilities and conditions of the authority delegated to nominated surveyors or recognized organizations.
		(c)	Furthermore, the Administration may also request the competent authority of another State Party to the Agreement, to conduct surveys of Maldivian fishing vessels within the jurisdiction of such State.
		(d)	The Administration shall ensure that the survey of life-saving appliances and other equipment, radio installations and structure, machinery and equipment are performed in accordance with regulation 7, 8, 9 respectively of the Chapter 1 of the Annex.
		(e)	A surveyor or recognized organization nominated by the Administration to conduct inspections and surveys has the power to require repairs to a vessel, carry out inspections and surveys. When it is determined that the condition of the vessel or its equipment do not correspond substantially with the particulars of the certificate or is such that the vessel is not fit to proceed to sea, such surveyor or recognized organization shall immediately ensure that corrective action is taken and shall in due course notify the Administration. If the vessel is in the port of another State Party, the appropriate authority of that port State shall also be notified.
		(f)	In every case, the ultimate responsibility for the competence and efficiency of the inspections and survey rests with the Administration. These surveys and inspections are to be conducted according to the provision of the Annex.

Maintenance of conditions after survey.	11.	(a)	The condition of the vessel and its equipment shall be maintained to conform to the provisions of this regulation to ensure that the vessel in all respect remains fit to proceed to sea without danger to the vessel or persons on board.
		(b)	After the completion of any survey of the vessel, no change shall be made in the structural arrangements, machinery and equipment, without the sanction of the Administration.
Issue or endorsement of certificate.	12.	(a)	Upon completion of a satisfactory initial or renewal survey, the Administration or any recognized organization authorized by the Administration, shall issue or endorse an International Fishing Vessel Safety Certificate which is to be supplemented by a record of equipment that shall be readily available on board of the fishing vessels for examination at all times. Where an exemption is granted to Maldivian fishing vessel, an International Fishing Vessel Exemption Certificate shall be issued by the Administration or the any recognized organization authorized by the Administration.
		(b)	The International Fishing Vessel Safety Certificate, the International Fishing Vessel Exception Certificate and the Record of Equipment shall be drawn up in the format corresponding to the model given in the Appendix of the Agreement or as near thereto as circumstances permit.
Duration and validity of the certificates.	13.	(a)	An International Fishing Vessel Safety Certificate shall be issued for a period specified by the Administration which shall not exceed five years. An International Fishing Vessel Exemption Certificate shall not be valid for longer than the period of the certificate to which it refers.
		(b)	The certificates referred to above shall be issued after an initial survey, carried out by the Administration or surveyors of the recognized organization authorized by the Administration or a State Party to the Agreement upon request of the Administration.
		(c)	Any certificate under regulation 8 of Chapter 1 of the Annex shall cease to be valid:
		i.	if the relevant surveys are not completed within the periods specified in the regulations 7 (1), 8 (1) and 9 (1) of Chapter 1 of the Annex;
		ii.	if the certificate is not endorsed in accordance with the Annex to the Agreement;
		iii.	upon transfer of the vessel to the flag of another State.

		(d)	The Administration shall regard any certificate held by a fishing vessel flying the flag of a State Party to the Agreement, as having the same force as any certificate issued by the Administration.
Port State Control	14.	(a)	All fishing vessels calling at a Maldives port shall be subjected to an inspection regime conducted by the Administration or the authorized marine inspectors by the Administration to ensure that such vessels comply with the requirements of the Agreement and that the International Fishing Vessel Safety Certificate has not expired. If valid, such certificate shall be accepted unless there are grounds for believing the vessel or its equipment does not correspond to the certificate or are not in compliance with the Agreement.
		(b)	If the International Fishing Vessel Safety Certificate has expired or ceased to be valid, the Administration or the authorized marine inspectors by the Administration shall have the power to detain the fishing vessel until it can proceed to sea or leave the port for the purpose of proceeding to the appropriate repair yard, without danger to the vessel or persons on board.
		(c)	When the Administration or the authorized marine inspectors by the Administration, on the exercise of the inspection detains a fishing vessel, it shall immediately notify in writing, the Consul or nearest diplomatic representative of the flag State as well as the surveyor or recognized organization responsible for the issuance of the fishing vessel's certificate. Furthermore, were the port Authority or appointed marine inspections allows such fishing vessels to proceed to its next port of call, it shall notify the competent authority of the next port of call.
		(d)	The Administration shall ensure that all efforts are taken so as to avoid any fishing vessel being unduly detained or delayed when exercising its power under this regulation.
Casualties to fishing vessels	15.		In the case of a casualty on board a Maldivian fishing vessel, the Administration shall open an investigation where it is established that such investigation may bring to light any amendments required to these Regulations.
			The Administration shall report its findings from such investigation to the IMO.
Force Majeure	16.	(a)	A vessel which is not subject to these Regulations or which is not required to hold a certificate under the provisions of the these Regulations at the time of its departure on any voyage shall not become subject to the provisions of these Regulations on account of any deviation from its intended

			voyage due to stress of weather or any other cause of force majeure.
		(b)	Persons who are on board a vessel by reasons of force majeure or in consequence of the obligation to carry shipwrecked or other persons shall not be taken into account for the purpose of ascertaining the application to the vessel of any provisions of these regulations.
Offences	17.	(a)	It shall be the duty of the shipowner and skipper of the fishing vessel to ensure that the fishing vessel complies with the requirements of these Regulations and that valid certificates are on board the vessel and readily available for inspection.
		(b)	Where a fishing vessel is found to be sailing without the required certificated, or a certificate that has expired or ceases to be valid, the shipowner is deemed to be committing an offence under these Regulations and the shipowner shall be liable to pay a fine not exceeding [.....] and, if the offence if a continuing one, to a further fine not exceeding [.....] for every day or part of a day during which the offence is continued.
Jurisdiction	18.		Any dispute arising from the interpretation or application of these Regulations shall be subjected to the jurisdiction of Civil Court of Maldives.
Amendments to these Regulations	19.		The Administration has the power to bring any change necessary to these Regulations. In case of any doubts and omissions arising out of the implementation and application of these Regulations it shall be resolved by amendment to these Regulations.

THE REPUBLIC OF MALDIVES



INSTRUMENT OF ACCESSION

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

WHEREAS the Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 was opened for signatures at the Headquarters of the International Maritime Organization from 11 February 2013 to 10 February 2014, by the conference held from 9 to 11 October in Cape Town, South Africa,

AND WHEREAS the Government of the Republic of Maldives, being a State entitled to accede to the said Agreement by virtue of Article 3 (2) (d) thereof,

WHEREAS pursuant to Article 93 (a) of the Constitution of the Republic of Maldives, the Parliament of the Republic of Maldives, having considered and approved the said Agreement, has consented to accede the same,

NOW THEREFORE, the Government of the Republic of Maldives, having considered and approved the said Agreement, hereby formally declares its accession to the Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, subject to the plan provided to International Maritime Organization on the progressive implementation of measures pertaining to (i) radio communications; (ii) life-saving appliances and arrangements; (iii) emergency procedures, musters and drills; and (iv) ship borne navigational equipment and arrangements, as allowed by the Agreement and the application of exemptions allowed thereof,

IN WITNESS WHEREOF I,, President of the Republic of Maldives, have signed this Instrument of Accession and affixed my official seal.

DONE at Male', Republic of Maldives, this..... day of two thousand and.....

(Seal)

(Signature)

[President]

ATTACHMENT 2

[INTERNATIONAL REGULATIONS FOR THE SAFETY OF FISHING VESSELS -

**CONSOLIDATED TEXT OF THE REGULATIONS ANNEXED TO
THE TORREMOLINOS PROTOCOL OF 1993 RELATING TO
THE TORREMOLINOS INTERNATIONAL CONVENTION FOR
THE SAFETY OF FISHING VESSELS, 1977, AS MODIFIED BY
THE CAPE TOWN AGREEMENT OF 2012 ON THE
IMPLEMENTATION OF THE PROVISIONS OF THE
TORREMOLINOS PROTOCOL OF 1993 RELATING TO THE
TORREMOLINOS INTERNATIONAL CONVENTION FOR THE
SAFETY OF FISHING VESSELS, 1977 (AGREEMENT)]**

Name and Surname: Aminath Shimyaza
Country: The Republic of Maldives
Academic Year: 2019-2020
Date & Time: 07 August 2020 12:30 pm

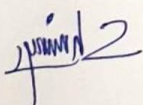
IMO - INTERNATIONAL MARITIME LAW INSTITUTE

Title of MARITIME LEGISLATIVE DRAFTING PROJECT:

SAFETY OF FISHING VESSELS REGULATIONS

**Regulations under the Maldives Navigation Act (Act Number: 69/79), implementing
the provision of the Cape Town Agreement into the Laws of the Maldives**

In accordance with the Regulations for the Degree of LL.M. in International Maritime Law / M.Hum. in International Maritime Legislation, I, the undersigned, do hereby declare that the Maritime Legislative Drafting Project being presented with this declaration is my own personal work and that it has not been previously submitted, or is not concurrently being submitted in candidature for any other degree or diploma.



Signature of Student