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**Senate Resolution Concurring in the Ratification of
the International Maritime Organization
Convention on Facilitation of International
Maritime Traffic, 1965, As Amended (FAL
Convention)
and
Presidential Administrative Order Mandating
concerned government agencies to comply strictly
with the Convention on Facilitation of International
Maritime Traffic, 1965, as amended, creating a
Maritime Traffic Facilitation Coordinating and
Consultative Council, and for related purposes**

**A Legislation Drafting Project submitted in partial fulfillment 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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Maritime Legislation Drafting Project

Senate Resolution and Administrative Order To Accept (Ratify) and Implement the Convention on Facilitation of International Maritime Traffic, 1965, As Amended

Explanatory Note

I. What is the Convention on Facilitation of International Maritime Traffic?

1.1. Status

The Convention on Facilitation of International Maritime Traffic, or FAL Convention, was adopted on April 9, 1965 by the International Conference on Facilitation of Maritime Travel and Transport, which was held under the auspices of the International Maritime Organization, or IMO.¹ The FAL Convention entered into force on March 5, 1967.² Since then its Annex, which contains its technical provisions, has been amended 11 times to keep it up to date with changing social needs and technological advances in shipping.³ The latest amendments entered into force on May 15, 2010.⁴ Implementation of the FAL Convention and other related matters are monitored by the IMO through its Facilitation Committee.

As of January 6, 2015, there are 115 Contracting States to the FAL Convention.⁵ The combined merchant fleets of these Contracting States constitute approximately 91.27% of the gross tonnage of the world's merchant fleet.⁶ The Philippines has signed the FAL convention but with reservation as to acceptance.⁷ The Philippines may accept the FAL convention following Article X of the FAL convention. In the meantime, the Philippines has an obligation not to defeat the object and purpose of the FAL convention.⁸

¹ International Maritime Organization; FAL Convention, 9th ed., London, U.K., 2011, p. v.

² Ibid.

³ IMO Assembly; A 28/Res. 1089, 24 January 2014.

⁴ Ibid at p. vii.

⁵ International Maritime Organization; Status of multilateral Conventions and instruments in respect of which the International Maritime Organization or its Secretary-General performs depositary or other Functions, As of 6 January 2015, p. 172. <http://www.imo.org/About/Conventions/StatusOfConventions/Documents/Status%20-%202015.pdf>, 10 January 2015.

⁶ Ibid.

⁷ Status of multilateral Conventions and instruments in respect of which the International Maritime Organization or its Secretary-General performs depositary or other Functions, As of 6 January 2015, p. 171. <http://www.imo.org/About/Conventions/StatusOfConventions/Documents/Status%20-%202015.pdf>, 10 January 2015.

⁸ Vienna Convention on the Law of Treaties, Article 18, 23 May 1969, <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>, 6 April 2015.

1.2. Rationale for the FAL Convention

Ships visiting several countries during the course of a voyage were historically subjected to diverse set of regulations on customs, immigration, health, quarantine, environment protection and security that were developed independently and imposed by the local and central authorities of each State.⁹ In particular, ships were required to submit numerous documents in various forms from port to port that often asked for the same information on cargo and passengers but in a slightly different way.¹⁰ Ships were also burdened with local language translations, consular visa requirements, variations in document size and paper stock used, and the necessity for authentication by the shipmaster of the information submitted.¹¹ With these requirements, ships and their cargo and passengers are often unduly delayed, and hundreds of expensive man-hours are wasted. Further, excessive delays usually result in extra work for the port and customs authorities, extra costs for the ship owners and operators, added pressure for the master and crew to deliver goods on time, cargo loss, and loss of business for ship owners and shippers.¹² In order to address this problem, IMO Member States adopted the FAL Convention.¹³

1.3. Content and Key Features

The FAL Convention consists of 16 articles and an Annex. The articles provide the objectives and scope of the convention, the general obligations of the contracting parties, and the amendment and other procedures. Meanwhile, the Annex provides the technical rules, standards and recommended practices for simplifying formalities, documentary requirements and procedures on:

- a) arrival, stay and departure of ships and persons;
- b) clearances of cargo, passengers, crew, and baggage;
- c) health and quarantine, including sanitary measures for plants and animals; and
- d) services at ports.¹⁴

1.4. Objectives

The FAL Convention was agreed and adopted in order to “facilitate maritime traffic by simplifying and reducing to a minimum the formalities, documentary requirements and procedures on the arrival, stay and departure of ships engaged in international voyages.”¹⁵ Its main objectives, in particular, are:

- a) to prevent unnecessary delays in international maritime traffic;

⁹ <http://www.imo.org/About/Conventions/ListOfConventions/Pages/Convention-on-Facilitation-of-International-Maritime-Traffic-%28FAL%29.aspx>, 26 November 2014.

¹⁰ Ibid.

¹¹ Ibid.

¹² <http://www.imo.org/OurWork/Facilitation/Pages/Home.aspx>, 26 November 2014.

¹³ Ibid.

¹⁴ International Maritime Organization; FAL Convention, 9th ed., London, U.K., 2011, p. v.

¹⁵ FAL Convention, Preambulatory Clause.

- b) to secure the highest practicable degree of uniformity in formalities and other procedures; and
- c) to aid co-operation between governments on these matters.¹⁶

1.5. Scope

The FAL Convention applies to all ships, except warships, and pleasure yachts.¹⁷ And the measures for the facilitation of international maritime traffic provided for under the convention and its annex apply equally to the ships of coastal and non-coastal States whose governments are contracting parties to the convention.¹⁸

1.6. Obligations of the contracting parties

Governments of contracting parties undertake to cooperate, with each other or through the IMO, to adopt, in accordance with the provisions of the FAL Convention and its Annex, measures that would:

- a) facilitate international maritime traffic;
- b) prevent unnecessary delays to ships, their crews, passengers and cargoes;
- c) secure the highest practicable degree of uniformity in formalities, documentary requirements and procedures; and
- d) keep to a minimum any alterations needed to meet special national requirements.¹⁹

These measures should be practical and no less favorable than those applied to other means of international transport.²⁰ Such measures include national laws, regulations, ministerial decrees, official notifications or other instruments according to the administrative system of each Contracting Government.²¹

1.7. Flexible Approach: Standards and Recommended Practices

The Annex of the FAL Convention specifies Standards, and Recommended Practices to aid the Contracting Governments in fulfilling their obligations under the convention. These Standards and Recommended Practices are primarily addressed to the Contracting Governments' public authorities, that is, the agencies or officials in a State responsible for the application and enforcement of the laws and regulations, particularly those relating to international maritime traffic.²² Standards are internationally-agreed measures whose uniform application is "necessary and practicable" to facilitate international maritime traffic.²³ Contracting governments must comply with Standards, unless it is impracticable to

¹⁶ <http://www.imo.org/About/Conventions/ListOfConventions/Pages/Convention-on-Facilitation-of-International-Maritime-Traffic-%28FAL%29.aspx>, 26 November 2014.

¹⁷ FAL Convention, Article II (3).

¹⁸ FAL Convention, Articles II (2).

¹⁹ FAL Convention, Articles I to IV.

²⁰ FAL Convention, Article II (1).

²¹ FAL.3/Circ.202, Annex, p. 3.

²² FAL Convention, Annex, Section 1 (A).

²³ FAL Convention, Article VI (a).

do so, or special reasons require the adoption of different measures.²⁴ The Contracting Government must inform the IMO promptly of the difference between national measures and the Standards.²⁵ Recommended Practices are, on the other hand, measures the application of which is deemed “desirable”.²⁶ Contracting Governments are urged to adjust their formalities, documentary requirements and procedures according to the Recommended Practices in so far as practicable.²⁷ This flexible concept of Standards and Recommended Practices allows continuing progress to be made towards the formulation and adoption of uniform measures in the facilitation of international maritime traffic.²⁸

1.8. Non-Restrictive Interpretation

The FAL Convention allows further flexibility by providing that it should not be interpreted as preventing Contracting Governments from applying, under national laws or international agreements, wider facilities to international shipping.²⁹ Further, it should not prevent governments from applying temporary measures that are necessary to preserve public morality, order and security, or to safeguard public health.³⁰ Meanwhile, all matters that are not expressly provided for in the convention remain subject to national laws.³¹

1.9. Tacit Amendment Procedure

Amendments to the FAL Convention enter into force after one year from the acceptance by two-thirds of all the Contracting Governments.³² But similar to most IMO Conventions, the FAL Convention incorporates a tacit acceptance procedure that expedites amendments to its technical provisions, which are largely contained in its Annex. The Annex may be amended through a proposal adopted by at least two-thirds of the Contracting Governments present in an IMO Facilitation Committee meeting called for that purpose.³³ This proposed amendment will enter automatically into force after 15 months from the time it was communicated to all contracting governments, unless it is, in the meantime, rejected by at least one-third of the contracting governments.³⁴ This procedure allows the FAL Convention to remain useful despite rapidly evolving social needs, and technological advances in the shipping industry.

²⁴ Article VIII (1).

²⁵ Ibid.

²⁶ FAL Convention, Article VI (b).

²⁷ Article VIII (3).

²⁸ <http://www.imo.org/About/Conventions/ListOfConventions/Pages/Convention-on-Facilitation-of-International-Maritime-Traffic-%28FAL%29.aspx>, 26 November 2014.

²⁹ FAL Convention, Article V (1).

³⁰ FAL Convention, Article V (2).

³¹ FAL Convention, Article V (3).

³² FAL Convention, Article IX.

³³ FAL Convention, Article VII (2) (a).

³⁴ FAL Convention, Article VII (2) (b).

- b) recommended use of a single window concept to enable all the information required by public authorities in connection with the arrival, stay and departure of ships, persons and cargo, to be submitted without duplication;
- c) revised standards on shore leave and access to shore-side facilities for crew;
- d) and a standard on the treatment of stowaways.³⁹

The revised Annex has been circulated with a view to adoption at the FAL Committee's 40th session, scheduled for March or April 2016.⁴⁰

II. Why the Philippines should accept and implement the FAL Convention?

2.1. Importance of International Shipping to the Philippine Economy

International shipping allows the efficient conduct of international trade, in particular the large-scale import and export of raw materials, food and manufactured goods. According to the United Nations Conference on Trade and Development (UNCTAD), maritime transport remains the backbone of international trade and the global economy.⁴¹ Around 80 per cent of global trade by volume and over 70 per cent of global trade by value are carried by sea and are handled by ports worldwide.⁴² And, these shares are even higher in the case of most developing countries.⁴³

The Philippines is not only a developing country but is also an archipelago. It, thus, continues to depend largely on international shipping to link with global supply chains, which are crucial to its economic development. Indeed, the UNCTAD's latest available data indicate that international container port throughput for the Philippines continued to grow annually from 2010 to 2013.⁴⁴

2.2. Inefficient regulation of international maritime traffic

There has been, however, a significant slowdown in this rate of growth in the last two years.⁴⁵ In the World Bank's 2015 Doing Business Report,⁴⁶ the rank of the Philippines under the area of Trading Across Borders fell by 12 places to 65 from its previous rank of 53

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ <http://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=1068>, 29 November 2014.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ United Nations Conference of Trade and Development Secretariat. Review of Maritime Transport 2014, UNCTAD/RMT/2014.

⁴⁵ Ibid.

⁴⁶ <http://www.doingbusiness.org/data/exploreeconomies/philippines#trading-across-borders>, 29 November 2014. The World Bank's Doing Business project provides objective measures of business regulations and their enforcement across 189 economies and selected cities at the subnational and regional level. Doing Business offers detailed reports that provide data on the ease of doing business, rank each location, and recommend reforms to improve performance in each of the indicator areas. Under the Doing in Business 2015 report, the Philippines' overall rank fell 9 places to 95 from its 2014 rank of 86. Rankings are given on a descending scale (i.e., 1 being the highest).

in the 2014 report.⁴⁷ And one of the indicators in this area included the number of documents required for clearance by government ministries, customs authorities, port and container terminal authorities, health and technical control agencies.⁴⁸

At present, the arrival, stay and departure in the Philippines of ships engaged in international voyage is regulated primarily by Tariff and Customs Code of the Philippines (TCCP).⁴⁹ The TCCP mandates the Bureau of Customs to supervise and control the entry and clearance of ships engaged in international trade.⁵⁰ In line with Title III, Part I of the TCCP and other relevant laws such as the Philippine Immigration Act of 1940,⁵¹ the Quarantine Act of 2004,⁵² and the Plant Quarantine Decree of 1978,⁵³ the Bureau of Customs requires ship owners, masters or agents of ships engaged in international trade to submit to customs officials the following the documents for entry and departure:⁵⁴

<u>Arrival</u>	<u>Departure:</u>
4 copies of Oath of Master of Entering Vessel with Documentary Stamp	7 copies of Outward Foreign Manifest
Quarantine Practique	3 copies of Clearance of Vessel to a Foreign Port
Clearance of Vessel from Last Port of Call	4 copies of Clearance from Customs Inspector assigned on board
original and 6 copies of Inward Foreign Manifest	4 copies of Statistical Supplement assigned on board
3 copies of Crew List	Bureau of Quarantine Clearance for outgoing vessels
3 copies of Passenger List	Plant Quarantine Clearance
3 copies of Bonded Store List	Post Office Clearance
3 copies of Narcotics and Dangerous Drugs List;	Request for Clearance by Shipping Agency signed by Customs Inspector
3 copies of Ship's Store List	Inspector's Report
3 copies of Firearms and Ammunition List	Oath of Master for departing/outgoing vessel
3 copies of Crew's Declaration List	Oath of Master to Foreign Port clearing without passenger
3 copies of Parcel List	

Meanwhile, the TCCP also requires ships to submit the cargo manifest directly to the Commission on Audit.⁵⁵ And, other public authorities such as the Maritime Industry Authority, the Philippine Ports Authority, and other port authorities also require separate

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Republic Act No. 1937, as amended.

⁵⁰ Republic Act No. 1937, Section 602(c).

⁵¹ Commonwealth Act No.613.

⁵² Republic Act No. 9271.

⁵³ Presidential Decree No. 1433.

⁵⁴ Bureau of Customs' Citizens Charter (2014).

⁵⁵ Tariff and Customs Code of the Philippines, Section 1007.

copies of the cargo manifest.⁵⁶ The Bureau of Customs prescribes the forms appropriate for these documentary requirements. But these prescribed forms do not conform to the IMO FAL forms.

Because of progressive developments in technology, business practices, and social realities in international maritime transport and trade, these documentary requirements and other formalities are, arguably, now outdated, redundant, and unduly burdensome. Further, these formalities do not comply with international standards, in particular, those in the FAL Convention. This lack of uniformity causes unnecessary delays and costs not only for the maritime industry but also for the government. Further, the heavy administrative burden on ships may eventually discourage ships from calling at Philippine ports. And this in turn will raise the cost of international trade for the Philippines, which ultimately affects the general public in terms of higher prices of imported consumer goods, and possible job cuts due to higher business expenses costs for exporters and multinational firms.

2.3. Benefits of adopting the FAL Convention

The Philippines needs, arguably, to update and streamline these formalities, and harmonize them with international standards and practices in order to ensure the efficient and cost-effective entry and flow of international maritime traffic, and consequently, maximize the benefits from international trade. Towards this end, acceptance and effective implementation of the FAL Convention would be an important step since it would make life easier for ships and their crews by reducing reporting formalities and administrative burdens, and ensuring the highest practicable degree of simplicity and uniformity with other Contracting Governments.⁵⁷ And easing administrative burdens on international shipping would lower transportation and trade transaction costs to the benefit of not only of shipowners but also of exporters, importers, public authorities, and ultimately of consumers or the general public. Indeed, the IMO identified the following benefits of implementing the FAL Convention:

“1. General

- A standardized rapid system of clearing ships inwards and outwards with easy completion of clearance documents in advance of the arrival of the ship eliminates delay and contributes to a quick turn-around.
- Minimization of passenger clearance requirements reduces dock-side congestion and eliminates the need for correspondingly larger facilities.
- Easy reproduction on small inexpensive machines by shipboard or shore-based personnel of the simplified standardized documents reduces filing and storage space requirements.

⁵⁶ Philippine Ports Authority Memorandum Circular No. 11-2013; Maritime Industry Authority Memorandum Circular No. 1-75.

⁵⁷ Promoting Maritime Treaty Ratification: the ICS/ISF and CMI campaign; Accessed on 29 November 2014 from <http://www.ics-shipping.org/docs/default-source/resources/policy-tools/PromotingMaritimeTreatyRatification.pdf?sfvrsn=30>

- The uniform layout makes the use of Automatic Data Processing (ADP) techniques possible.

2. To governments

- Reduction of the administrative burden and better utilization of personnel in customs and other public authorities is achieved by eliminating non-essential documents and information.
- Formalities are no more onerous than those of competing ports.
- Governments have the benefit of forms designed by international experts. Simple, well-designed forms make for more efficient and less-expensive administration and help increase port throughput by preventing unnecessary delay to ships, passengers and cargoes.
- National forms which follow an international model are more readily understood by ships' masters and, therefore, more likely to be correctly completed. Language difficulties are minimized.
- The uniform position of similar items of information on each form makes it easier to check the documents and extract the required information.

3. To shipowners

- General benefits derive from the acceptance of the principle that formalities and procedures in respect of maritime traffic should be no more onerous than those for other modes of transport.
- Fewer and simpler forms need to be completed. Less information is required and less work is therefore involved.
- If no changes are foreseen with regard to crews, ship stores or passengers during the voyage or any part of it, identical forms for several ports can be completed at the same time. In such circumstances the same forms can be submitted both on arrival and on departure.
- The ship's manifest and cargo declaration can be completed in one run, thus keeping down costs and reducing the possibility of errors.
- The uniform position of information makes typing easier and contributes to quicker familiarization of new personnel with document processing. It also facilitates the use of ADP.

4. To shippers

- The enhanced efficiency of clearing ships and cargo saves time and expense.
- The use of standardized commercial documents, e.g. bills of lading, simplifies the production of documents.
- Cargoes awaiting shipment or collection are exposed for a shorter time to the risk of damage or pilfering within port facilities.
- The utilization of containers and pallets is improved.
- It becomes possible to utilize documents produced by ADP techniques.
- Requirements for authentication of documents are simplified.

- Time savings reduce the charges for services rendered by public authorities outside regular working hours.”⁵⁸

Because of these potential benefits, the IMO General Assembly, in its latest session,⁵⁹ invited all its Member States to place a high priority on working towards the full and effective implementation of the FAL Convention.⁶⁰ And aside from the IMO, other important international maritime organizations such as the International Chamber of Shipping, the Baltic and International Maritime Council, and the Comité Maritime International also recognize and promote the FAL Convention as among the significant maritime conventions needed to give greater uniformity to International Maritime Law.⁶¹

Implementation of the FAL Convention would also be beneficial to the Philippines in that it would contribute to the State’s compliance with its existing obligations under the framework of UNCLOS and the Convention on the International Maritime Organization to cooperate with other Member States to achieve uniformity of highest practicable standards and regulations governing international shipping.⁶² And, it would also advance the Philippines’ undertaking under the General Agreement on Tariffs and Trade to facilitate international trade and remove trade barriers, specifically to simplify trade documentation requirements.⁶³ Further, implementation of the FAL Convention will be consistent with the policy of the Philippines, as declared under Anti-Red Tape Act of 2007⁶⁴, to reduce red tape and expedite transactions in government.

III. How can Philippines be a Contracting Party to, and implement the FAL Convention?

3.1. FAL Convention Acceptance (Ratification) Procedure

States may become Parties to the FAL Convention by, among others, signature with reservation as to acceptance followed by acceptance.⁶⁵ Acceptance is effected by deposit of an instrument with the Secretary-General of the IMO.⁶⁶ Acceptance is the basically same as ratification, that is, the international act whereby a State establishes on the international plane its consent to be bound by a treaty.⁶⁷ The Philippines has signed the FAL Convention but has

⁵⁸ International Maritime Organization; Cutting red tape: IMO and the facilitation of maritime travel and transport, December 1996.

⁵⁹ 28th session, November-December 2013

⁶⁰ IMO General Assembly; IMPLEMENTATION OF THE FACILITATION CONVENTION, A.1089(28).

⁶¹ CMI President’s 11 April 2013 Letter to National Maritime Law Associations.

⁶² <http://www.comitemaritime.org/Promoting-Ratification-of-Maritime-Conventions/0,27143,114332,00.html> 29 November 2014.

⁶³ Convention on the International Maritime Organization, 1948, Article 1.

⁶⁴ General Agreement on Tariffs and Trade, Article VIII, 1(c).

⁶⁵ Republic Act No. 9485, June 02, 2007.

⁶⁶ Article X of the FAL Convention, 1965, as amended.

⁶⁷ Ibid.

⁶⁷ Vienna Convention on the Law of Treaties (1969), Article 2.

not yet followed this with an acceptance.⁶⁸ This means that the Philippines has not yet consented to be bound by the convention.

3.2. Coordinated approach on Relationship between International law and Philippine domestic law

In terms of the relationship between international law and domestic law, the Philippines' approach reflects a coordination or mix of the traditional monist and dualist views. Under the Philippines' legal system, international law and domestic law operate on two separate spheres, and each one is supreme in its own sphere. But international law may be incorporated⁶⁹ (by the Constitution) or transformed⁷⁰ (when ratified as a treaty) as part of domestic law. When incorporated or transformed as part of domestic law, international law shall automatically have force and effect similar to a national law or statute, but it may be deemed void, repealed, amended or modified if wholly or partly inconsistent with either a Constitutional provision, or a later statute.

3.3. Effect of Ratification or Acceptance as treaty under Philippine law

Under the Philippine Constitution and by the nature of his or her office, the President, as head of state and government, has the exclusive power to accept or ratify international agreements on behalf of the State.⁷¹ Although international agreements regardless of form or nomenclature have the same binding effect in the international sphere, the Philippine legal system distinguishes between a treaty, and an executive agreement on their respective procedures and effects in the domestic sphere.⁷² **A treaty will have the force and effect of domestic law, and take precedence over any prior statutory enactment,** if the Senate concurred to the President's ratification.⁷³ On the other hand, ratification of an executive agreement does not require the Senate's concurrence but the executive agreement cannot amend or repeal prior laws.⁷⁴ In general, the Constitution does not require a specific form for an international agreement.⁷⁵ It is up to the President to determine whether an international agreement should be in the form of a treaty or an executive agreement and the President has

⁶⁸ Status of multilateral Conventions and instruments in respect of which the International Maritime Organization or its Secretary-General performs depositary or other Functions, As of 6 January 2015, p. 171. <http://www.imo.org/About/Conventions/StatusOfConventions/Documents/Status%20-%202015.pdf>, 10 January 2015.

⁶⁹ Section 2, Article II of the Constitution.

⁷⁰ Article VII, Section 21 of the Constitution.

⁷¹ *Bayan Muna, v. Executive Secretary Romulo, et al.*, G.R. No. 159618, February 1, 2011.

http://sc.judiciary.gov.ph/jurisprudence/2011/february2011/159618.htm#_ftnref65 29 November 2014.

⁷² *Ibid.*

⁷³ *Santos III v. Northwest Orient Airlines, et al.*, G.R. No. 101538, June 23, 1992.

http://www.lawphil.net/judjuris/juri1992/jun1992/gr_101538_1992.html 29 November 2014.

⁷⁴ *Commissioner of Customs, et al. v. Eastern Sea Trading, G.R. No. L-14279*, October 31, 1961.

http://www.lawphil.net/judjuris/juri1961/oct1961/gr_1-14279_1961.html 29 November 2014.

⁷⁵ Except for an international agreement that allows the presence of foreign troops in Philippine territory, which should be in the form of a treaty in line with Sec. 25, Art. XVIII of the Constitution. *Bayan Muna, v. Executive Secretary Romulo, et al.*, G.R. No. 159618, February 1, 2011.

delegated this authority to the Department of Foreign Affairs.⁷⁶

Since there would be a need to modify existing provisions of law, such as those in the Tariff and Customs Code of the Philippines, that are not consistent with the Standards and Recommended Practices under the FAL Convention, it would be more appropriate to ratify or accept the FAL Convention as a treaty and not as an executive agreement. Thus, the President would have to secure the concurrence of at least two-thirds of all the members of the Senate to the acceptance of the FAL Convention.⁷⁷ After the Senate's concurrence, the Department of Foreign Affairs will deposit an instrument of acceptance in accordance with the provisions of the convention thereby binding the Philippines to implement the convention.⁷⁸ The FAL Convention will then be deemed **transformed into Philippine law and it will take effect domestically** after compliance with the publication requirements under the Civil Code.⁷⁹ And existing provisions of law that are not consistent with the FAL Convention, including Title III, Part I of the Tariff and Customs Code of the Philippines, which governs the formalities, documentary requirements and procedures for the arrival, stay and departure of ships engaged in foreign trade, would be automatically repealed or modified accordingly. The Senate's concurrence will be expressed formally through a Resolution. A Draft Resolution is attached to this Explanatory Note.

The need for the Philippine Congress to further enact an implementing piece of legislation will depend on whether the provisions of the ratified treaty are intended to be self-executing in character or not.⁸⁰ Indeed, a treaty may expressly or impliedly require a Contracting State to enact a domestic law for its effective implementation. For the FAL Convention, its provisions are self-executing since these are mostly directives upon the Contracting Governments and their respective public authorities. Contracting Governments are obliged to bring the Standards and Recommended Practices into force nationally.⁸¹ Because the Annex to the FAL Convention, however, is addressed primarily to public authorities, national legislation is not limited to laws in a formal sense, but may include other instruments such as official notifications, charters or ministerial degrees, in line with the respective administrative system of each Contracting Government.⁸² For example, it may be included in the regulations issued by various public authorities, such as Port, Immigration and Customs authorities.⁸³

⁷⁶ Executive Order No. 459, November 25, 1997. <http://www.gov.ph/downloads/1997/11nov/19971125-EO-0459-FVR.pdf> 29 November 2014.

⁷⁷ Article VII, Section 21 of the Philippine Constitution (1987). <http://www.gov.ph/constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-article-vii/> 29 November 2014.

⁷⁸ Executive Order No. 459, November 25, 1997.

⁷⁹ Article 2 of the Philippine Civil Code provides: "Laws shall take effect after fifteen days following the completion of their publication either in the Official Gazette or in a newspaper of general circulation in the Philippines, unless it is otherwise provided."

⁸⁰ *Pribhdas J. Mirpuri vs. Court of Appeals, et al.*, G.R. No. 114508, November 19, 1999. <http://sc.judiciary.gov.ph/jurisprudence/1999/nov99/114508.htm> 29 November 2014.

⁸¹ IMO; Explanatory Manual to the Convention on Facilitation of International Maritime Traffic, 1965, as amended, FAL.3/Circ.202, 11 October 2010, p.3.

⁸² *Ibid.*

⁸³ *Ibid.*

3.4. Implementation through Presidential Act

For the Philippines, a further implementing law or statute is not necessary to implement the FAL Convention since upon its ratification or acceptance as a treaty it would be transformed into domestic law and its provisions would be binding, especially upon the concerned public authorities. And any provision of existing laws that are contrary to the FAL Convention will be deemed automatically repealed, amended, or modified. It would be, however, desirable to institutionalize a mechanism that would guide, monitor and review the public authorities' implementation of the FAL Convention, particularly the Standards and Recommended Practices. For this purpose, a statute or law enacted by Congress would not be advantageous since its relative permanence and the tedious process of its enactment would lack the flexibility and speed needed to cope with possible amendments to the FAL Convention's Standards and Recommended Practices or to developments in the maritime industry. Instead, the President may promulgate an appropriate Administrative Order, that is, an Act of the President that relates to particular aspects of governmental operations pursuant to his duties as administrative head.⁸⁴ The proposed Administrative Order would provide and institutionalize general directives, guidelines, and systems to ensure that the concerned public authorities comply strictly and effectively with the FAL Convention and its Standards and Recommended Practices.

3.5. Key features of the Administrative Order

In order to achieve the objective of ensuring that Philippine public authorities comply with the Standards and Recommended Practices under the FAL Convention, and effectively implement other measures to facilitate international maritime traffic, the Administrative Order should contain the following key features:

1. The Administrative Order will direct the concerned public authorities to comply strictly with, and implement the Standards and Recommended Practices of the FAL Convention, to exercise delegated authority to issue the necessary regulations to fill in the details of implementation, and to achieve full compliance at by the end of a reasonable transition period. In particular, the Administrative Order will emphasize compliance with Standard 2.1 of the Annex of the FAL Convention, which prescribes the maximum formalities that may be required for the arrival, stay and departure of ships engaged in international voyage. And the concerned public authorities will be required to adopt strictly the IMO Standards Forms.
2. The Administrative Order will establish a Maritime Traffic Facilitation Coordinating and Consultative Council to be chaired by the Executive Secretary,⁸⁵ and composed of the heads of public authorities relevant to international maritime traffic such as the Bureau of Customs, Maritime Industry Authority, Bureau of Immigration, Philippine

⁸⁴ Administrative Code of 1987, Book III, Chapter 2, Section 3.

⁸⁵ The Executive Secretary is a member of the Cabinet (that is, equivalent to a minister) who is tasked with, among others, directly assisting the President in the management of the affairs pertaining to the Government, and in the administration of special projects. Administrative Code of 1987 (Executive Order No. 292, s. 1987), Section 27.

Ports Authority, Philippine Coast Guard and Bureau of Quarantine, and representatives from key stakeholders such as shippers, ship owners, ship agents, masters, seafarers, and consumer groups. The main functions of this council will be to plan, coordinate and harmonize the efforts of all concerned government agencies in implementing the FAL Convention, to monitor the compliance of public authorities, and to promote continuing public-private sector cooperation on facilitating international maritime traffic.

3. The Administrative Order will, on account of the latest proposed amendments to the FAL Convention Standards and Recommended Practices, also direct public authorities to establish a national single window for reporting formalities (that is, ships need only to submit all the required documents to one central data collection point, instead of the previous practice where they had to submit separate sets of documents to each concerned public authority) and prioritize electronic exchange of information, liberalize the regulations on the grant of shore leave for crew, and emphasize just and humane treatment of stowaways.

P S. Res No. ____

Republic of the Philippines
Congress of the Philippines
Senate
Pasay City
Sixteenth Congress
Second Regular Session

RESOLUTION No. ____

Resolution Concurring in the Ratification of the International Maritime Organization Convention on Facilitation of International Maritime Traffic, 1965, As Amended (FAL Convention)

WHEREAS, it is the policy of the State, as declared under Anti-Red Tape Act of 2007 (Republic Act No. 9485, June 02, 2007), to reduce red tape and expedite transactions in government;

WHEREAS, the State recognizes the importance of international maritime traffic to the national economy;

WHEREAS, the Philippines is a member of the International Maritime Convention (IMO), and it is the policy of the State to advance the purposes of the IMO, including to achieve the uniform adoption by Member-States of the highest practicable standards concerning international shipping;

WHEREAS, adherence to the FAL Convention will promote uniformity in international maritime law, and in particular, will ease administrative burdens on international shipping and consequently, lower transportation and trade transaction costs to the benefit of shipowners, exporters, importers, the government, and ultimately, of consumers or the general public;

WHEREAS, in the hearings conducted by the Senate Committee on Foreign Relations on _____, 2015, concerned government agencies, maritime industry experts and stakeholder representatives for ship owners, shippers, and consumer rights groups strongly supported the Senate concurrence on the FAL Convention;

WHEREAS, pursuant to Section 21, Article VII of the 1987 Philippine Constitution, "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate: Now, therefore, be it

Resolved, that the Senate of the Philippines concur, as it hereby concurs, in the ratification of the Convention on Facilitation of International Maritime Traffic, 1965, As Amended (FAL Convention)

Adopted, (Signed) President of the Senate

This Resolution was adopted by the Senate on _____ 2015.
(Signed) Secretary of the Senate

Note: This Resolution together with the FAL Convention will be published in the Official Gazette in accordance with standard procedures of the Senate. The convention will be deemed enacted into law upon compliance with Article 2 of the Philippine Civil Code, which provides: "Laws shall take effect after fifteen days following the completion of their publication either in the Official Gazette or in a newspaper of general circulation in the Philippines, unless it is otherwise provided."

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. ___

Mandating concerned government agencies to comply strictly with the Convention on Facilitation of International Maritime Traffic, 1965, as amended, creating a Maritime Traffic Facilitation Coordinating and Consultative Council, and for related purposes

WHEREAS, it is the policy of the State, as declared under Anti-Red Tape Act of 2007 (Republic Act No. 9485, June 02, 2007), to reduce red tape and expedite transactions in government;

WHEREAS, the State recognizes the importance of international maritime traffic to the national economy;

WHEREAS, the Philippines is a member of the International Maritime Convention (IMO), and it is the policy of the State to advance the purposes of the IMO, including to achieve the uniform adoption by Member-States of the highest practicable standards concerning international shipping;

WHEREAS, the Philippines has accepted the Convention on Facilitation of International Maritime Traffic, 1965, as amended (FAL Convention) and its Annex, as a treaty, and in line with the Constitution, the FAL Convention has the force and effect of law in the domestic sphere, and provisions of prior laws, including Title III, Part I of the Tariff and Customs Code of the Philippines, as amended, that are inconsistent with the FAL Convention are deemed repealed, amended or modified accordingly;

WHEREAS, the Government, is obliged, in line with the FAL Convention, to implement the Standards and, as far as practicable, the Recommended Practices both contained in its Annex that are intended to facilitate international maritime traffic;

WHEREAS, it is desirable to guide the concerned government agencies and officials to ensure strict compliance with the FAL Convention, and it is necessary to institutionalize certain measures, including electronic exchange of information, single window, and national maritime transport facilitation committee, to effectively implement the Standards and Recommended Practices under the FAL Convention;

WHEREAS, achieving full compliance with the FAL Convention in an efficient and expeditious manner will ease administrative burdens on international shipping and consequently, lower transportation and trade transaction costs to the benefit of shipowners, exporters, importers, the government, and ultimately, of consumers or the general public;

NOW, THEREFORE, I, BENIGNO S. AQUINO III, President of the Philippines, by virtue of the powers vested in me by the Constitution and by law, do hereby order:

Section 1. Full Compliance with the FAL Convention. - All public authorities, that is, government officials, agencies and public-benefit corporations under the Executive Branch, including the Bureau of Customs, Maritime Industry Authority, Bureau of Immigration, Philippine Ports Authority, Cebu Port Authority, Subic Bay Metropolitan Authority, Philippine Coast Guard, Bureau of Plant Industry, Bureau of Animal Industry, Postal Services Office, Philippine Drug Enforcement Agency, and Bureau of Quarantine, are hereby directed to ensure full compliance with the FAL Convention and its Annex within one year after the issuance of this Administrative Order. A copy of the FAL Convention and its Annex is attached to, and made an integral part of this Administrative Order as Appendix 1.

Section 2. Use of IMO FAL Forms. – Within 30 days from the issuance of this Administrative Order, all public authorities shall not require for their retention, on arrival or departure of ships engaged in international voyage, to which the FAL Convention applies, any documents other than the following:

- a) IMO General Declaration (FAL form 1)
- b) Cargo Declaration (FAL form 2)
- c) Ship's Stores Declaration (FAL form 3)
- d) Crew's Effects Declaration (FAL form 4)
- e) Crew List (FAL form 5)
- f) Passenger List (FAL form 6)
- g) Dangerous Goods (FAL form 7)
- h) Maritime Declaration of Health
- i) Document required for mail under the Universal Postal Convention

Public authorities shall adopt strictly the standard forms developed by the IMO, and shall, as far as practicable, not require additional categories of information. Consular formalities, charges or fees shall not be required for documents for the clearance of ships.

In line with the FAL Convention, this section shall not preclude public authorities from taking such appropriate measures, including calling for further information, as may be necessary in cases of suspected fraud, or to deal with special problems constituting a grave danger to public order, public security or public health, such as unlawful acts against the safety of maritime traffic and illicit trafficking in narcotic drugs and psychotropic substances, or to prevent the introduction or spread of disease or pests affecting animals or plants. And public authorities shall not be precluded from inspecting the certificates and other papers carried by the ship pertaining to its registry, measurement, safety, manning and other related matters.

Nothing in this Administrative Order shall prejudice the enforcement of tax and other fiscal laws.

Section 3. Creation, General Mandate and Composition of the Maritime Traffic Facilitation Coordinating and Consultative Council. - There is hereby created a Maritime Traffic Facilitation Coordinating and Consultative Council (hereafter referred to as Council) that is mandated, in general, to ensure full compliance with FAL Convention, and to facilitate international maritime traffic. The Council shall be chaired by the Executive Secretary, co-chaired by the Secretary of Transportation and Communications, and composed of the heads of the following government agencies and corporations:

- a) Bureau of Customs;
- b) Maritime Industry Authority;
- c) Bureau of Immigration;
- d) Philippine Ports Authority;
- e) Cebu Port Authority;
- f) Subic Bay Metropolitan Authority;
- g) Philippine Coast Guard;
- h) Philippine Drug Enforcement Agency;
- i) Bureau of Plant Industry; and
- j) Bureau of Quarantine

The Council shall also include one representative each from the following 4 categories of private stakeholders:

- a) Freight forwarders, shippers, exporters, importers, or chambers of commerce;
- b) Ship owners, operators, agents, or masters;
- c) Seafarers; and
- d) Consumer groups.

The Executive Secretary shall appoint the representatives for these private stakeholders for a term of one year after an open, transparent, and public nomination process. The Council may recommend for the President to include other appropriate public authorities or stakeholder representatives as members of, or observers to the Council.

Section 4. Specific Functions of the Council. – The Council shall also have the following specific powers and functions:

- a) Ensure full compliance with this Administrative Order, and in relation to this, submit reports and recommendations to the President;
- b) Monitor and oversee the strict implementation of the Standards contained in the Annex of the FAL Convention;
- c) Monitor and oversee the implementation of the Recommended Practices contained in the Annex of the FAL Convention, in so far as such implementation is practicable;
- d) Conduct regular public consultations with stakeholders on matters affecting the facilitation of international maritime traffic;
- e) Review policy questions on formalities for clearance of international shipping, and conduct or sponsor research and study of issues, developments, and other matters affecting the facilitation of international maritime traffic;

- f) Formulate and implement a comprehensive and integrated national facilitation program that would ensure full compliance with the FAL Convention, and enhance the facilitation of international maritime traffic;
- g) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems affecting the facilitation of international maritime traffic;
- h) Promulgate rules and regulations as may be necessary for the effective implementation of this Administrative Order, and the FAL Convention and its Annex, including any future amendments to that;
- i) Recommend action to the Department of Foreign Affairs on matters related to the FAL Convention and the facilitation of international maritime traffic that require the conduct of foreign relations;
- j) Secure from any department, bureau, office, agency, or instrumentality of the government or from civil society such assistance as may be necessary to effectively implement this Administrative Order;
- k) Conduct periodic trainings, seminars and information campaigns for government personnel and private stakeholders to enhance facilitation of international maritime traffic;
- l) Monitor status of the FAL Convention and disseminate information to public authorities and stakeholders on any amendments to the Standards and Recommended Practices in the FAL Convention, or on other important developments that affect international maritime traffic;
- m) Develop mechanisms for timely, coordinated, and effective response to grievances from private entities or individuals about unreasonable administrative burdens upon international maritime traffic; and
- n) Exercise all other powers and perform such other functions necessary to effectively comply with the FAL Convention.

Section 5. Secretariat to the Council. – The Office of the Executive Secretary shall provide administrative support services to the Council.

Section 6. Meetings of the Council. – The Council shall meet regularly at least once a month, or more often as deemed necessary by the Executive Secretary. Any member of the Council may request the Executive Secretary to call a special meeting of the Council to address urgent matters.

Section 7. Electronic exchange of information, and Single Window for clearance of international shipping. – The Bureau of Customs shall upgrade and expand the existing Philippine National Single Window for cargo clearance, established under Executive Order 482 s. 2005, to allow ships, engaged in international voyage, to submit electronically to a single window or entry point all clearance requirements for arrival, stay and departure of ships, persons and cargo, including pre-arrival and pre-departure information, without duplication. The Bureau of Customs shall manage the single window, and shall be responsible for disseminating the reported data to the appropriate government agencies. The Council shall endeavor towards the universal use of the documents in electronic format. Documents submitted in paper form shall, however, continue to be accepted until the FAL

Convention's Annex no longer requires such acceptance. The Council shall ensure that the electronic exchange of information and single window is operational within 180 days from the issuance of this Administrative Order.

Section 8. Shore leave. – The Bureau of Immigration is hereby directed to liberalize, in consultation with the Council and the National Intelligence Coordinating Agency, its existing regulations to minimize the requirements for the grant of shore leave to crew members of ships engaged in international voyage.

Section 9. Stowaways. – Incidents of stowaways shall be referred promptly to the Department of Justice for appropriate action, including for investigation of possible cases of trafficking in persons in line with Republic Act No. 10364 or the Expanded Anti-Trafficking in Persons Act of 2012. All public authorities and government officials are reminded to accord full respect to the fundamental human rights of stowaways.

Section 10. Protection of Personal Data. – All government agencies and officials are hereby reminded to faithfully observe Republic Act No. 10173 or the Data Privacy Act of 2012 in handling personal data collected from clearance requirements.

Section 11. Responsibilities of Other Government Agencies. - All government agencies and officials under the Executive Branch are hereby directed to cooperate with the Council. Members of the Cabinet shall work with the Executive Secretary to resolve any concerns about a decision or action of the Council.

Section 12. Non-compliance. Any responsible officer of a concerned government agency that fails or refuses to comply with the provisions of this Administrative Order or the orders, rules and regulations issued by the Council shall be subjected to administrative sanctions in accordance with civil service laws, rules and regulations including Civil Service Commission Resolution No. 11-01502. The Executive Secretary or the heads of the member agencies of the Council shall promptly initiate and ensure timely resolution of the appropriate disciplinary proceedings.

Section 13. Amendments to the FAL Convention. – Public authorities shall, in consultation with the Council, adjust their regulations and procedures to conform with any amendments to the Standards and Recommended Practices of the FAL Convention, and shall ensure full compliance with such amendments within 30 days after the amendments take force and effect.

Section 14. Reporting. – Within 60 days from the issuance of this Administrative Order and every six months afterwards, the Council shall submit a report containing its accomplishments and recommendations on facilitation of international maritime traffic to the Office of the President. The Council shall be responsible for ensuring the State's compliance with reportorial requirements related to the FAL Convention with the relevant international organizations, including the International Maritime Organization.