



**IMO**

**INTERNATIONAL MARITIME LAW INSTITUTE**

Established under the auspices of the International Maritime Organization

A specialized agency of the United Nations



**“A LAW TO INCORPORATE THE 2012 CAPE TOWN  
AGREEMENT 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 INTO THE LAWS OF  
DEMOCRATIC REPUBLIC OF CONGO AND PROVIDING  
FOR THE EFFECTIVE IMPLEMENTATION THEREOF”**

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

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## **DEDICATION**

I have chosen to dedicate this project to the Administration of the Ministry of Transports and Communications of my country, particularly to Mr Donat Bagula, General Secretary, for his unimagined support and consideration for my participation in the IMO-IMLI training as the first selected candidate from the Democratic Republic of Congo and allowing me to open this door for other colleagues of the Maritime Administration or of other national structures concerned about the advancement of our maritime sector.

Also, to all the experts of my country who are engaged in the State Action at Sea issues through their respective Administrations (Maritime Administration, the Navy, environment, foreign affairs, fisheries, navigation training centres, Wima DRC and ports industry).

## **ACKNOWLEDGEMENTS**

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I would like to thank Professor David Attard and all the IMLI staff for their considerate guidance, especially my personal moral tutor (Ms. Ramat Jalloh) for her moral support, and my drafting project supervisor (Ms. Elda Kazara-Belja) for her contribution and recommendations.

## I. EXPLANATORY NOTE

### 1. INTRODUCTION

The present maritime legislation drafting project is submitted in partial fulfilment of the requirements for the award of the Degree of Master of Humanities (M.Hum) in International Maritime Legislation at the IMO International Maritime Law Institute (IMLI).

The purpose of this project is to produce a completed work which will have two different documents. The first one is a Law to Incorporate the 2012 Cape Town Agreement on the Implementation of the Provisions of the Torremolinos International Convention on the Safety of Fishing Vessels (Cape Town Agreement) into the laws of the Democratic Republic of the Congo (D.R.C) and the second is a Ministerial Decree (Arreté) Providing for the Effective Implementation of the Provisions of the Agreement in D.R.C.

Therefore, apart from the present *explanatory note* which is constituted of point 1 to 7, this draft project will consist of :

- *The draft Law n°..... of ...../...../2021 Authorizing the Accession by the Democratic Republic of the Congo to the 2012 Cape Town Agreement on Safety of Fishing Vessels*
- *the draft Ministerial Decree and its annex on Safety of Fishing Vessels in the Democratic Republic of Congo.*

### 2. EVOLUTION AND HISTORICAL BACKGROUND OF THE 2012 CAPE TOWN AGREEMENT

There are three (3) specialized United Nations Agencies which play a role in fishermen's safety. The first one is the International Maritime Organisation (IMO), the second is the International Labour Organisation (ILO) and the third is the Food and Agriculture Organization (FAO).

Whereas the IMO is responsible for improving maritime safety and preventing pollution from ships, ILO formulates international labour standards in the form of convention and recommendations, setting minimum standards of basic labour rights.<sup>1</sup> 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.<sup>2</sup>

It is important to note that the International Convention on Load Lines (LLC 69) and the International Convention on Safety of Life at Sea (SOLAS) do not cover fishing vessels for the reason that these conventions are applicable to merchant ships. Fishing vessels were excluded from their application taking into consideration their different design and operation. In the light of this situation, it would be impossible to impose a mandatory inspection regime in order to check safety conditions of fishing vessels.

In order to address the issues of safety of fishing vessels, the first attempt by IMO was to establish a binding international agreement which was the 1977 Torremolinos International Convention for the Safety of Fishing Vessels<sup>3</sup> which recognized the great difference in the 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.<sup>4</sup> However, States did not feel the need to ratify this Convention due its technicality.

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.<sup>5</sup> The Conference adopted the 1993 Torremolinos Protocol<sup>6</sup> which also never entered into force due to lack of sufficient ratifications.

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<sup>1</sup> FAO, 'International conventions and guidelines on safety at sea'  
<<http://www.fao.org/3/x9656e/X9656E01.htm>> accessed on 26 December 2020.

<sup>2</sup> Ibid.

<sup>3</sup> IMO, Torremolinos international convention for the safety of fishing vessels (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 on 26 December 2020.

<sup>4</sup> Ibid.

<sup>5</sup> IMO, 1993 Torremolinos Protocol and Torremolinos International Convention for the safety of fishing vessels, consolidated Edition 199 (OMI 1995) 1.

<sup>6</sup> Ibid.

The changes brought by the 1993 Protocol included raising the vessel lower size limit from 24m to 45m. The Protocol called for 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.<sup>7</sup>

With the failure of the Torremolinos Convention and its 1993 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 1993 Protocol in order to assist States in the implementation of its provisions. It was one of the largest fishing vessels conference held in the history of the IMO.

Following this Conference, a new instrument which is the Cape Town Agreement<sup>8</sup> 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 Agreement<sup>9</sup> **which remains open for accession by States.**

To support the entry into force of the Cape Town Agreement, IMO in collaboration with ILO and FAO have been implementing a comprehensive range of activities through the IMO's Integrated Technical Co-operation Program.<sup>10</sup> Through this support, 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. IMO also adopted the 1995 STCW-F Convention<sup>11</sup> which sets the minimum training and certification requirements for crews of seagoing fishing vessels of 24 meters in length and above.

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<sup>7</sup> Ibid.

<sup>8</sup> 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 11 October 2012).

<sup>9</sup> IMO, "Status of Treaties" <<http://www.imo.org/en/about/Conventions/statusofconventions/documents/statusofTreaties.pdf>> accessed on 28 December 2020.

<sup>10</sup> IMO, "Fishing vessel Safety" <<http://www.imo.org/en/ourwork/HumanElement/Pages/Default.aspx>> accessed on 31 December 2020.

<sup>11</sup> IMO, "International Convention on Standards of Training, Certification and Watch keeping for Fishing Vessel Personnel (STCW-F), 1995" (adopted on 7 July 1995)

Another IMO activity aimed for the promotion of the implementation of the Cape Town Agreement was held at Torremolinos, Spain in October 2019 as a Ministerial Conference on the Safety of Fishing Vessels and Illegal, Unreported and Unregulated (IUU) Fishing. In order to achieve the ambitious objectives that have been established to meet the criteria for entry into force of the Cape Town Agreement by the *deadline of 11 October 2022*, the Spanish Government called on IMO Member States to sign a non-legally binding Declaration of Intent in order to publicly demonstrate the willingness of their governments to ratify and promote the Agreement by the date of the tenth anniversary of the adoption of this instrument, namely 11 October 2022.

Until the time of this Ministerial Conference, (almost seven years after the adoption of the Agreement) only 11 States with approximately 1,400 fishing vessels had already consented to be bound by the Agreement, a number much lower than that required for entry into force, i.e. 22 States owning at least 3,600 fishing vessels operating on the high seas.<sup>12</sup>

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⟨<http://www.imo.org/en/Ourwork/HumanElement/pages/STCW-F-Convention.aspx> ⟩ accessed on 3 January 2021.

<sup>12</sup> IMO, Lettre circulaire No 4027 13 Septembre 2019.



### **3. ANALYSIS OF STATE PARTIES OBLIGATIONS UNDER THE 2012 CAPE TOWN AGREEMENT**

The Cape Town Agreement seeks to enhance safety on board 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 IUU fishing.<sup>13</sup>

The Agreement provides in its Article 1, that, those States which become parties to it, shall give effect to the provisions of the Agreement and the Protocol of 1993 as amended by the Agreement with the exception of article 1, paragraphs (1) (a), (2) and (3); articles 9 and 10 of that Protocol as modified by the Agreement. The same Article 1 also provides that articles 2 to 8, 11 to 14 of the 1993 Torremolinos Protocol, and the regulations in the annex to the Torremolinos Convention 1977 shall, subject to the modification set out by this Agreement, be read and interpreted as single instrument.<sup>14</sup>

The Agreement sets minimum requirements on the design, construction, equipment and inspection of fishing vessels of 24 meters and above.

#### **3.1 Application and Scope**

The contents of the Cape Town Agreement are subdivided into two sections. The first one consists of the general obligations to be assumed by State Parties and the second is an annex which is composed of ten (10) Chapters.

The first chapter outlines general provisions applicable to the Agreement as a whole. Chapters 2 to 10 include detailed provisions on design, construction and equipment requirements for the three (3) categories of fishing vessels. These categories have been based on a vessel's size: from 24 to 45 meters; from 45 to 60 meters and more than 60 meters.

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<sup>13</sup> PEW, "A brief from the PEW Charitable Trust (October 2018)" <[http://www.pewtrusts.org/media/assets/2019/09/ctaexplained\\_brief.pdf](http://www.pewtrusts.org/media/assets/2019/09/ctaexplained_brief.pdf)> accessed on 22 November 2020.

<sup>14</sup> Cape Town Agreement, Article 1.

The Cape Town Agreement applies to commercial fishing vessels of 24 meters in length and above or equivalent in gross tons<sup>15</sup> and, unless expressly provided otherwise, the provisions of the annex shall apply to new vessels.

The provisions of the Agreement shall not apply to vessels which are used exclusively for: a) sport or recreation, b) processing of fish or other living resources, c) research and training and d) carrying of fish. 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.<sup>16</sup> This can be done by notifying the IMO Secretary-General of the terms and conditions on which the exemption is granted under the Agreement.

The Agreement empowers 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 thus calls for harmonized fisheries, labour and safety inspections.<sup>17</sup>

### **3.2 Brief Overview of the Annex to the Cape Town Agreement**

**Chapter I:** As abovementioned, this Chapter outlines the general provisions applicable to the Agreement as a whole. The Cape Town Agreement provides flexibility for State parties in implementing its provisions. Under regulation 1(4) of Chapter I, Administrations have been given the choice of progressive implementation of Chapter IX (Radio communications) over a period of at most 10 years; and the provisions of Chapters VII (life-saving appliances and arrangements), VIII (emergency procedures, musters and drills) and X (shipborne navigational equipment and arrangements) over a period of not more than five years. A country which intends to implement any of these provisions progressively is required to make this known in writing to the IMO when depositing its instrument of accession. This flexibility gives States a significant period of time to prepare before the Agreement's regulations in these particular areas are complied with.

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<sup>15</sup> Cape Town Agreement, Chapter 1, Regulation 1, paragraph 2.

<sup>16</sup> Ibid., Regulation 3, paragraph 3.

<sup>17</sup> Ibid.

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.

In the Cape Town Agreement, the main changes, other than those relating to the construction of vessel, are regarding the obligations on the State parties to inspect and conduct surveys and the timeframe within which such surveys are to be carried out. The responsibility to carry out the inspections is for the flag State administration. The Administration is obliged, after an initial or renewal survey of the vessel which complies with the applicable safety requirements stated in the regulation, to issue an International Fishing Vessel Safety Certificate, except for vessels exempted under regulation 3(3).<sup>18</sup>

When an exemption is granted to the vessel, except for vessels exempted under regulation 3(3), the Administration is to issue the International Fishing Vessels Exemption Certificate. Regulation 13 of Chapter I provides for the duration and validity of certificates.

Regulation 16 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.

One of the key features of the Agreement is the provision of the no more favourable treatment clause under Article 4(7) of the Agreement. Under this provision, Parties to the Agreement are required to apply the standards set in the Agreement to all vessels, including vessels flying the flag of non-party States.

**Chapters II to X:** Provisions in these Chapters give detailed requirements on the design, construction and equipment 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 vessel.

Chapters II, III, VI, VIII and X apply to all new fishing vessels which are of 24 meters in length and over but Chapter IV, V, VII and IX apply to new fishing vessels of 45 meters in length and over. Hereunder, follows a brief overview of each of the chapters.

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<sup>18</sup> Ibid, Chapter I, Regulation 6, paragraph (1).

**Chapter II** is composed of 15 Regulations which deal with the applicable requirements in relation to construction, watertight integrity and equipment. These regulations 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 the conditions of intended service and shall be to the satisfaction of the Administration.<sup>19</sup>

**Chapter III** has 14 regulations about the stability and associated seaworthiness of vessel. It states that the vessels shall be designed and constructed so that the requirements of this Chapter are satisfied in the operating conditions referred to in regulation 7. Calculations of the righting level curves shall be to the satisfaction of the Administration.<sup>20</sup>

**Chapter IV** consists of 24 regulations and covers provisions with regard to machinery, the steering gear power units, if any, and ancillary equipment and the means of applying torque to the rudder stock necessary for effecting movement of the rudder for the purpose of steering the vessel under normal service conditions. These provisions apply to vessels of 45m in length and over.<sup>21</sup>

**Chapter V** comprises 44 Regulations which address fire protection, fire detection, fire extinction and firefighting. The requirements for use of non-combustible materials in construction and insulation of the boundary bulkheads of machinery spaces, control stations, etc. and protection of stairway enclosures and corridors shall be common to all three methods.<sup>22</sup>

**Chapter VI** is composed of only six (6) Regulations and it is about the protection of the crew. Means to the satisfaction of the Administration, such as guard rails, lifelines, gangways or underdeck passages, shall be provided to protect the crew in moving between accommodation, machinery and other working spaces.<sup>23</sup>

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<sup>19</sup> Cape Town Agreement, Chapter II, Regulation 1, paragraph (1).

<sup>20</sup> Ibid, Chapter III, Regulation 1.

<sup>21</sup> Ibid, Chapter IV, Regulation 1.

<sup>22</sup> Ibid, Chapter V, Regulation 1, paragraph (3).

<sup>23</sup> Ibid Chapter VI, Regulation 3, paragraph (4).

**Chapter VII** deals in its 32 regulations with life-saving appliances and arrangements. This chapter applies to new vessels of 45m in length and over but, as stipulated in regulations 13 and 14 which cover radio lifesaving appliances and radar transponders, it shall also apply to existing vessels of 45m 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 Cape Town Agreement.<sup>24</sup>

**Chapter VIII** is composed of four (4 regulations) about general emergency alarm procedures, musters and drills. It applies to new and existing vessels of 24 m in length and over. It requires all vessels to provide clear instructions for each crew member, which shall be followed in case of emergency.<sup>25</sup>

**Chapter IX** has 16 regulations and provides standards and procedures about radio communications. This chapter applies to new and existing vessels of 45 m in length and over. But for existing vessels, the Administration may defer the implementation of the requirements until the date of entry into force of the Cape Town Agreement.<sup>26</sup>

**Chapter X** is composed of six (6) regulations which cover shipborne navigational equipment and arrangements. It applies to new and existing vessels of 45 m in length and over. However, the Administration may exempt any vessel from any of the requirements of this Chapter where it is considers that the nature of the voyage does not warrant such requirements.<sup>27</sup>

#### **4. WHY THE D.R.C NEEDS MARITIME LEGISLATION RELATED TO THE SAFETY OF FISHING VESSELS**

Fisheries support the livelihood of millions of people around the world. FAO reports that over 54 million people worldwide work in the fisheries (FAO, 2014).<sup>28</sup> There is a need, however,

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<sup>24</sup> Ibid, Chapter VII, regulation 1 paragraph (2); Regulations 13 and 14.

<sup>25</sup> Ibid, Chapter VIII, Regulations 1 and 2 paragraph (2)

<sup>26</sup> Ibid, Chapter IX, Regulations 1, 2.

<sup>27</sup> Ibid, Chapter X, Regulation 2.

<sup>28</sup> American Journal of Human Ecology <<https://www.researchgate.net/publication/306013272>> accessed on 19 December 2020.

to improve the safety of fishing vessels which would impact positively the life of the communities by decreasing or reducing the number of accidents.<sup>29</sup> The accidents and incidents at sea, lakes and rivers in the D.R.C have detrimental impact on small-scale fishing communities.

The D.R.C is a central African country covering an area of 2.345.000 km<sup>2</sup>, with a total population of around 80.000.000. It is a large country in terms of area and it has (nine) 9 neighboring countries. Its water areas consist of the great Congo River and its many great Rivers and Lakes as well as around the 43 km coastline on the Atlantic Ocean.

Those rivers and lakes are full of fish and surrounded by several riparian communities that practice artisanal but also industrial fishing. It is important to note, for example, that Lake Tanganyika (nearly 700 km long and 50 km wide) is the most fish-rich lake in Africa and this lake separates the D.R.C from Tanzania, Zambia and Burundi. Fishing is therefore an activity closely related to the livelihood and nutrition of the Congolese. Many of them rely on the fish caught for their economic development and sustainability. That is why there is a need to promote safety of fishing vessels in D.R.C.

The D.R.C fishing vessels and boats face several problems, in particular: boarding by the security forces of neighboring countries (the case of Angola on the Atlantic coast and Uganda on Lake Albert), the poor working conditions of their crews, the lack of adequate electronic equipment that could indicate them the limits of the maritime borders of the country but also areas where fishing is prohibited according to national regulations (breeding areas, areas close to off-shore installations, areas crossed by pipelines, etc.).

Therefore, certain efforts carried out by various national authorities with responsibilities at sea deserve to be strengthened in order to allow the D.R.C to fulfill its duties as a flag State, coastal State or port State in relation to the safety of fishing vessels.

It is noteworthy that, to date, the D.R.C does not have any specific regulations relating to the construction, equipment or inspection of fishing vessels despite the existence of the general regulations contained in Ordinance-Law No. 66-98. of March 14, 1966 on the Maritime

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<sup>29</sup> FAO, <<http://www.fao.org/fishery/safety-for-fishermen/en/>> accessed on 20 December 2020.

Navigation Code or Ordinance 67-133 of March 12, 1967 on implementing measures with regard to inspections and safety certificates for commercial and fishing vessels.

This is why, within the framework of this maritime legislation project, the D.R.C will have to start the process of accession to the Cape Town Agreement and subsequently give full effect to its provisions through the promulgation of a Ministerial Decree on Safety of Fishing Vessels.

As the D.R.C is a coastal country and dependent on the fisheries, the accession to and implementation of the provisions of the Cape Town Agreement will be highly beneficial to the country in combating IUU fishing and providing safety standards and better working conditions for the Congolese vessels wherever they are and even foreign vessels operating in the coastal waters or calling at the D.R.C ports.

The implementation of the Cape Town Agreement will create minimum safety standards for the fishing fleet and save the lives of a large number of fishers on board fishing vessels operating on the high seas. It will reduce the cases of vessel accidents and incidents in territorial waters, in rivers and Lakes because such vessels or boats require assistance from the coastal state's Maritime Authority or Navy forces.

Moreover, the adequate implementation of the Agreement, will allow for inspections of fishing vessels to make sure that vessels safety and working conditions are compliant with the international standards set therein.

The Secretary-General of the Ministry of Transports and Communications, Mr. Donat Bagula, confirmed this at the Torremolinos Ministerial Conference of October 2019. In interview given to IMO, he said, *"We need to cooperate and to protect fishery resources from over production. The Cape Town Agreement will be the international instrument which helps to improve cooperation. Everybody seeks to exploit the ocean and unfortunately there is not framework allowing collaboration. This conference allows us to get everyone on board to improve safety of life at sea"*.<sup>30</sup>

*The major impact would be the inspection and certification requirements as it might be a challenge for the maritime Administration to set the arrangements to implement these*

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<sup>30</sup> IMO, < [http://www.imo.org/en/Mediacentre/HotTopics/Documents/CapeTownAgreement\\_DonatBAGULA/A-Congo\\_Final.mp4](http://www.imo.org/en/Mediacentre/HotTopics/Documents/CapeTownAgreement_DonatBAGULA/A-Congo_Final.mp4) > accessed on 26 December 2020

*requirements. However, the implementation of the Agreement will help to better protect productive fish stock in the D.R.C waters and identify and combat IUU fishing practices.*

*Considering the advantages offered by the implementation of the Cape Town Agreement, the Government of the D.R.C through the Transports and Fisheries Ministries has commenced the process of accession to the Agreement and implementation of its provisions.*

This commitment is also reflected in the active participation of experts of these concerned Ministries in the work of the Ministerial Conference of 2019.

Indeed, Mr. Bagula signed the Declaration of Intent of Torremolinos on 2012 Cape Town Agreement, on behalf of the D.R.C, as proposed by the Spanish Government during the Conference.

## **5. THE D.R.C LEGAL FRAMEWORK FOR MARITIME MATTERS**

The D.R.C, like the other countries of the Gulf of Guinea, is familiar with the problems of IUU fishing. Having faced the challenges of this phenomenon, D.R.C participates in the regional strategy for the prevention and fight against IUU fishing and other illegal acts at sea.

By providing means and equipment to the naval force which plays the role of the D.R.C Coast Guard, such as the SEMAPHORES ships for maritime security and surveillance, the D.R.C Government enhances its efforts to promote State Action at Sea as well as the Blue Economy. Among the efforts made by the Government, the following can be listed:

- The work to update the law on fishing (including a project under consideration in parliament);
- The Audit of State Action at Sea, on the river and lake of the D.R.C in collaboration with the French Cooperation in 2016;
- The Audit of the DRC maritime sector as part of the IMO Member State Mandatory Audit in May 2017;
- The construction of the deep-water port in Banana / Moanda
- The restructuring and establishment of the D.R.C Port Authority in partnership with the Belgian Technical Cooperation (Port of Antwerp);



- The process of Restructuring and Empowering the D.R.C Maritime Administration, including studies carried out in 2014 with funding from the World Bank.

#### **A) The Authorities involved in the D.R.C State Action at Sea (D.R.C Governance of State Action at Sea, River and Lakes)**

In the D.R.C, the various attributions related to specific matters are contained in a document called “Ordinance relating to the Attributions of the Ministries of the Government”. This document is published by the Office of the President of the Republic each time after the establishment of a new Government, taking into account the objectives and size of the Government.

##### **1. The Ministry of Transport and Communications**

Under the terms of the Ordinance setting the powers of the Ministries, the mandate for the organization and management of the transport network, including road, rail, sea, river and lake routes as well as airways, falls onto the Ministry of Transports and Communications. Thus, this Ministry has the following attributions: the organization and management of all modes of transport; meteorology; merchant marine; civil aeronautics; the operation of road, rail, maritime, river and lake infrastructures, airports, and meteorology; equipment for road, rail, maritime, river and lake transport and civil aviation; the qualification of technical personnel in road, rail, maritime, river, lake and civil aviation transport; the development of national transport policies; the coordinated development of all modes and equipment of public transport; the promotion of inter-modality of transport and its platforms.

It is worth of note that the Central Administration of this Ministry is provided by the General Secretariat which includes the Directorate of the Navy and Waterways among its various technical departments.

The Directorate of the Navy and Waterways (DMVN) plays a major role in the State Action at Sea, on Rivers and Lakes in the DRC. Particularly in the future implementation of the Cape Town Agreement in DRC, it is through this Directorate that will be conducting the Fishing vessel Inspection and the deliverance of different certificates according to the Regulations of the annex of the Cape Town Agreement and then in reference to the Ministerial decree which

will be the national act implementing the provisions of the Agreement in terms of boosting and coordinating the activities related to the Safety of Fishing Vessel.

Its role is to guarantee the safety of goods and people by establishing and monitoring regulatory standards for maritime, river and lake transport activities, in particular by:

- monitoring port infrastructure, shipyards and waterways;
- monitoring and securing floating units;
- supervision and control of seafarers (crews).

Regarding the Multimodal Transport Project and recommendations from the World Bank (2014), and those of Commission of Congo basin (CICOS), the Direction of Navy and Waterways (DMVN) is under reform.<sup>31</sup>

## **2. The Ministry of National Defence**

Organic law n ° 11/02 of August 11, 2011 relates to the organization and functioning of the armed forces in the D.R.C Several ordinances relating to the reform of the DRC Army force (FARDC) were subsequently adopted.

In accordance with this new organization, the Naval Force exercises its powers over all the waters of the D.R.C, whatever their legal status, and not only over sea areas. Its responsibilities include search and rescue, as well as assistance in hydrographic surveys. Fishing policing is not mentioned, although the Naval Force exercises it, especially on the lakes.<sup>32</sup>

Under the authority of its Chief of Staff, the Naval Force comprises an administrative, logistics and services unit, a naval logistics base, and four naval groups distributed throughout the national territory.

## **3. The Ministry of Fisheries**

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<sup>31</sup> RAPPORT D'EVALUATION, L'action de l'Etat en mer, sur les fleuves et les lacs en République Démocratique du Congo, Septembre 2016.

<sup>32</sup> Ibid.

With a very limited staff, this Ministry courageously pursues its activities to improve its knowledge of the fishing industry. For a sustainable and responsible fishing, its action would be all the more effective if it would be supported by the other ministerial departments in charge of public order, especially in terms of sanctioning infringements on rivers, lakes, as well as at sea.

## **B) D.R.C Laws and Regulations Related to Maritime Issues**

The Constitution of the Democratic Republic of Congo of February 18, 2006, as amended by Law n ° 11/002 of January 20, 2011 revising certain articles, in its paragraph 21 of article 202 grants the central government exclusive competence on maritime and inland navigation.

The provisions of a legislative or regulatory nature, the Laricier Codes constitute a reference tool in legal matters in the D.R.C (civil, penal, commercial, labor, fiscal, public and administrative law) and are often used by public administrations at the central or local level.

Regarding IMO conventions, the D.R.C deposited with the IMO Secretariat, the instruments of ratification of 6 conventions: *IMO Convention of 1948*, *International Convention for the Safety of Life at Sea (SOLAS 74)*, *International Convention on tonnage measurement of ship, 1969 (LLC 69)*, *Convention On the International Regulations for preventing Collisions at Sea, 1972 (COLREG 72)* , *The Convention of Seafarers' Training, Certification And Watch keeping 1978 (STCW 78)* and the *1972 London Convention*.

In response to the urgent need to protect its interests, above all in order to reduce its exposure to the risks of pollution from ships and its consequences on its coastline, the country added to its legal corpus other conventions in 2014, such as: *MARPOL 73*, *Abidjan Convention and its Protocol of 23 March 1981 relating to Cooperation in the Protection and Development of the Marine Environment*, *the 2004 Convention for the Control and Management of Ballast Water and Ship Sediments*, *the 2003 Protocol relating to the 1992 OPCR Fund*, *2001 Convention on Civil Liability for Bunker Oil Pollution Damage*.

Unfortunately, to date, the deposit of the instruments of accession to these conventions has not taken place.

Ordinance-law n°66/98 and n ° 66/96 of March 14, 1966, respectively, relating to the Maritime Navigation Code and the River and Lake Navigation Code constitute the basic legislative texts of the waterway transport sector in D.R.C. It is inconceivable to continue to refer today to texts dating from this earlier period (1966) because these texts do not take into account the provisions of the various conventions and other legal instruments which govern international maritime transport. Reforms are on the Government's agenda because a very large number of texts relating to technical, social and economic regulations date from the colonial era with inconsistencies with the Congolese socio-economic realities of today. These legislative norms include:

- Ordinance 5TP of December 25, 1924 relating to the surveillance and policing of navigation on the Upper River, tributaries and lakes;
- Ordinance No. 41-336 of October 14, 1954 on the Police of River Ports;
- Ordinance 64-560 of 22 December 1958 relating to navigation and policing, protective measures for the waterway, engineering structures and port facilities;
- The legal regime of the seaports of Matadi, Boma and Banana is included in Ordinance No. 41/334 of October 26, 1954, as amended by Ordinance No. 64/157 of April 15, 1958;
- Ordinance 63-13 of January 19, 1956 establishing maritime police stations in the localities of Léopoldville, Boma, Matadi and Kalemie;
- Ordinance 67/133 of March 12, 1967 on implementing measures, with regard to inspections and security certificates for commercial and fishing vessels;
- Ordinance No. 41/133 of October 9, 1954 on the handling and deposit of flammable substances in the seaports of Bas Congo and Ordinance No. 22/98 of March 27, 1956 on occupational safety;
- Ordinance 68-126 of March 28, 1968 on the organic regulations of the maritime police. It mentions that maritime commissioners are OPJs for offenses relating to maritime navigation and river navigation. They exercise police power on board ships, in particular for all matters relating to the persons on board (crews or others) and the administrative police of the ship.

It should be noted that there are also several Ministerial Decrees and Sectorial Circular Notes. At the sub-regional level, for inland navigation, there are certain regulations put in place by CICOS including:

- The Agreement establishing a uniform river regime and creating the International Commission of the Congo-Oubangui-Sangha Basin (CICOS) of November 6, 1999;
- The CEMAC-DRC Inland Navigation Code (not yet ratified by the DRC);
- Common regulations relating to the contract for goods by inland waterway;
- Regulations for the construction and maintenance of inland navigation vessels.

Particularly for fishing in the D.R.C, the Port State Measures Agreement of 2009 is in the process of being ratified because this Agreement relating to measures within the competence of the port State aimed at preventing, deterring and eliminating IUU fishing is an important international legal instrument and the D.R.C participated in the work of the Regional Fisheries Commission of the Gulf of Guinea (COREP). The country has every interest in completing the process of ratification of this Convention and ensuring its incorporation into the draft law on fisheries which is underway at parliamentary level.

The work of magistrates could however be facilitated if the penal provisions relating to navigation, the merchant navy, fishery resources, the marine environment, the exploitation of hydrocarbons at sea, etc. were brought together in a single Code. This is an expert work in its own right which would consist in supporting the public authorities in their desire to modernize the applicable texts by providing for and punishing offenses that are not yet covered in the existing texts.

## **6. METHODOLOGY OF DOMESTICATION AND EFFECTIVE IMPLEMENTATION OF THE 2012 CAPE TOWN AGREEMENT IN THE D.R.C LAWS**

Looking into the organization and exercise of the executive power in the D.R.C, there are two State Authorities which have common interests in the area of safety of fishing vessels.

The Ministry of Transports and Communications through the Maritime Administration has the mandate and power under the D.R.C Navigation Code to make regulations regarding the design, construction and equipping a vessel that operate under Congolese flag or foreign vessels that operate within the Congolese waters. The other one is the Ministry of Fisheries which has the mandate to take all necessary measures to combat the IUU fishing under the D.R.C Fisheries Law as well as under the international agreements to which the country has adhered.

The establishment of a joint Commission made up of experts from these two Ministries (Transport and Fisheries) for the preparation of the draft of law of accession and the Ministerial Decree aiming at the effective implementation in the Congolese legal system, will constitute a strong signal regarding the pooling of efforts and competences of State public services intervening in the State Action at Sea of the D.R.C.

It is important to accede to the Cape Town Agreement and to draft a Ministerial Decree on Safety of Fishing Vessels for an effective implementation of its provisions in the D.R.C, especially since the country does not have any existing regulation on the safety of fishing vessels.

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.

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 D.R.C 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.

So, in order to adopt the Cape Town Agreement, with the approval from the Parliament, the governing body which is the Ministry of Transports and Communications or the country delegations to the IMO can inform the secretariat of IMO of the State's intention to accede and request technical and legal assistance as appropriate.

Since it would be a law (a law of Accession), as per the national procedures, the initial draft of authorizing the accession by the D.R.C to the Cape Town Agreement needs to be presented into the Council of Ministers of the D.R.C by the Ministry of Transports and Communications in collaboration with the Ministry of Fisheries for its comments and once the Council of

Ministers approves the draft law, it would be sent to the National Assembly Office (1st Chamber of Parliament).

After the National Deputies of the National Assembly, review the draft and take a vote, the draft will be sent to the Senate (2nd Chamber of the Parliament) for the second review and vote, after which it will be sent to the Office of the President of the Republic for the promulgation of the said law which will have to be published in the official gazette and make it available to public.

After the accession to the Agreement, for the purpose of effective implementation of the provisions of the Agreement or for the execution of the law of accession, the draft Ministerial Decree (Arrêté) on Safety of Fishing Vessels in accordance with the Cape Town Agreement can be signed by the Minister of Transports and Communications of the D.R.C.

It is said in the D.R.C Constitution that: The international treaties and agreements, regularly concluded, upon their publication, prevail over national laws, subject to each treaty and agreement being applied by the other party.<sup>33</sup>

## **7. SUMMARY ON THE DRAFT OF MINISTERIAL DECREE ON SAFETY OF FISHING VESSELS IN THE D.R.C**

The presented Draft Ministerial Decree on Safety of Fishing Vessels comprises of 12 sections. Sections I and II are preliminary sections dealing with interpretation of terms used and progressive implementation of certain regulations as stipulated in the Agreement. Therefore, section II 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 the provisions to be progressively implemented and the reason thereof. The said information shall be communicated to the IMO at the time of submission of the instrument of accession.

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<sup>33</sup> D.R. Congo's Constitution of 2005 with Amendments through 2011, Article 215

Section III provides for the exemption from application of the regulations of the Ministerial Decree. However, the Decree 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, vessels that are below 24 meters and vessels that are exempted from the Cape Town Agreement will not be subject to the application of this Decree but to D.R.C Maritime Code and others national regulations.

Sections IV to IX provide for obligations and powers of the State Administration. For example, Section IX details the provisions for port State control measures where all foreign fishing vessels to which the Decree would apply calling at Congolese ports shall be subject 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 the power to detain the fishing vessel which does not comply with the safety measures provided in the Decree.

It is important that the Ministry of Transports and Communications which will administer the implementation of the Decree, carries out the consultation processes as earliest as possible, through a commission of Experts with Ministry of Fisheries and other various stakeholders, to determine the implementation of the provision of each Chapter of the Annex.

For the effective implementation of the Decree, section XII provides for any offense committed under this Decree stating that failure to comply with the provision of the same, 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.



**DRAFT LAW N°.....OF ..... AUTHORIZING THE ACCESSION BY THE  
DEMOCRATIC REPUBLIC OF CONGO TO THE 2012 CAPE AGREEMENT 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**

**DEMOCRATIC REPUBLIC OF THE CONGO**  
**THE OFFICE OF THE PRESIDENT OF REPUBLIC**

**DRAFT LAW N°.....OF ...../...../2021 AUTHORIZING THE  
ACCESSION BY THE D.R. CONGO  
TO THE 2012 CAPE TOWN AGREEMENT**

**EXPLANATORY STATEMENT:**

**WHEREAS** the 2012 Cape Town Agreement 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 adopted on 11 October 2012 in Cape Town, South Africa;

**WHEREAS** the Agreement sets minimum standards on the design, construction, equipment and inspection of fishing vessels of 24 meters and above;

**WHEREAS** it is an internationally binding agreement which will facilitate better control of fishing vessel safety by flag, port and coastal States to create minimum safety standards for the fishing fleet, and saving the lives of a large number of fishers operating on the high seas;

**WHEREAS** 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 as the Agreement calls for harmonized fisheries, labour and safety inspections;

**WHEREAS** it is important to note that the accession to and implementation of the Cape Town Agreement in the Democratic Republic of Congo would allow for inspections of fishing vessels to make sure that vessels safety and working conditions are compliant with the international standards set therein;

**WHEREAS** it is noted that, in its triple quality of flag State, port State and coastal State, the Democratic Republic of Congo is not immune from the risk of proliferation of fishing vessels operating outside the international standards and the phenomenon of the Illegal, Unreported, and Unregulated (IUU) fishing;

**WHEREAS** it is submitted that the implementation of the Agreement will indeed contribute to the fight against IUU fishing;

The Parliament has determined to grant its authorization for the Democratic Republic of Congo to accede to the Agreement.

Such is the economy of this law.

The National Assembly and the Senate have adopted

The President of the Republic promulgates the present Law

## **Article 1**

In accordance with article 214 of the Constitution, it is hereby approved the accession by the Democratic Republic of the Congo 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 of 1977

## **Article 2**

This Law comes into force on the date of its promulgation

Done in Kinshasa, on ..... / ..... / 2021

**Felix TSHISEKEDI TSHILOMBO**

II. **DRAFT MINISTERIAL DECREE N° .... /CAB/MIN/TVC/2021 FROM  
...../...../2021 ON SAFETY OF FISHING VESSELS IN THE  
DEMOCRATIC REPUBLIC OF CONGO**

**DEMOCRATIC REPUBLIC OF THE CONGO  
MINISTRY OF TRANSPORTS AND COMMUNICATIONS  
THE MINISTER OFFICE**

THE MINISTER OF TRANSPORTS AND COMMUNICATIONS;

Pursuant to the Constitution of the Democratic Republic of Congo of 18 February 2006, as amended;

Pursuant to the Cape Town Agreement of 2012 relating to the Implementation of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels of 1977 which was adopted on 11 October 2012;

Pursuant to Ordinance-Law No. 66/98 of March 14, 1966 on the Code of Maritime Navigation;

Pursuant Ordinance-Law No. 66/96 of March 14, 1966 on the Code of River and Lake Navigation;

Pursuant to Ordinance No. 5 / TP of December 25, 1924 relating to the monitoring and policing of navigation on the upper river, tributaries and lakes as amended on September 1, 1959;

Pursuant to Ordinance No. .... of ..... 2019 fixing the attributions of the Ministries;

Pursuant to Ordinance No. .... of ..... 2021 appointing the Prime Minister;

Pursuant to Ordinance No. .... from ..... 2021 regarding the appointments of Vice-Prime Ministers, Ministers of State, Ministers, Delegated Ministers and Vice-Ministers;

Pursuant to Ordinance No. 17/024 of 10 July 2017 on the organization and functioning of the Government, practical arrangements for collaboration between the President of the Republic and the Government as well as between members of the Government;

Pursuant to Ordinance 67-133 of March 12, 1967 on implementing measures with regard to inspections and safety certificates for commercial and fishing vessels;

Pursuant to Law n ° ..... of..... / ..... / 2021 Authorizing the Accession by the Democratic Republic of Congo to the Cape Town Agreement of 2012 relating to the Safety of Fishing Vessels;

Considering the Declaration of Intent of Torremolinos signed by the Democratic Republic of Congo during the Ministerial Conference on the safety of fishing vessels and illegal, unreported and unregulated fishing, held in Torremolinos, Málaga (Spain) in October 2019;

On the proposal of the Secretary General for Transports and Communications;

Considering the need and the urgency:

### **DECREES:**

**Article 1:** The Regulations as detailed in this Decree as well as in its Annex shall be cited as the «Safety of Fishing Vessels Regulations».

**Article 2:** These Regulations determine the minimum requirements on the design, construction, equipment and inspection of fishing vessels of 24 meters and above.

**Article 3:** Pursuant to Law n°...../2021 du ...../...../2021 Authorizing the Accession by the Democratic Republic of Congo to the Cape Town Agreement of 2012 relating to the Safety of Fishing Vessel, the international regulations

contained in the Annex of the 2012 Cape Town Agreement comprising of ten (10) Chapters and Appendix attached to it, as may be amended, form part of these Regulations and shall be read as one. In case of discrepancy between the provisions of these Regulations and the provisions of the Annex of the 2012 Cape Town Agreement, the provisions contained in the Annex of the Agreement shall prevail.

**Article 4 :** The Secretary General for Transports and Communications is empowered with the execution of this Decree which enters in to force on the date of its signature.

Done in Kinshasa, on ..... / ..... / 2021

**Chérubin OKENDE SENG**

**ANNEX TO THE MINISTERIAL DECREE  
N°.../CAB/MIN/TVC/2021 FROM ...2021 ON SAFETY OF FISHING  
VESSELS IN THE DEMOCRATIC REPUBLIC OF CONGO**

:

**SECTION I. INTERPRETATION OF WORDS**

In the framework of these Regulations, unless the context otherwise requires:

1. **Administration:** means the Ministry of Transports and Communications or any Ministerial department to whom the responsibility to issue certificates, as well as carrying out inspections and surveys of fishing vessels has been delegated;
2. **Agreement:** means the 2012 Cape Town Agreement on the implementation of the provisions of the 1993 Torremolinos Protocol relating to the International Torremolinos Convention for Safety of Fishing Vessels 1977;
3. **Annex:** means the Regulations contained in the Annex of the Agreement comprising of ten (10) Chapters and Appendix;
4. **D.R.C:** means the Democratic Republic of Congo;
5. **EEZ of the D.R.C:** shall have the same meaning assigned Law Number 6/96 (Maritime zones of D.R.C Law);
6. **Fishing vessel or vessel :** means a vessel used commercially for catching fish; whales, walrus or other living resources of the sea;
7. **The D.R.C fishing vessel:** means fishing vessels entitled to fly the D.R.C flag;
8. **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;

9. *Territorial waters of D.R.C*: shall have the same meaning assigned to them in Law Number 6/96 (Maritime zones of D.R.C Law);

10. *IMO*: means the International Maritime Organization.

## **SECTION II. PROGRESSIVE IMPLEMENTATION**

1. 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 raisons 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 drills); VIII (emergency procedures, musters and drills); and X (ship borne navigational equipment and arrangements) over a period of no more than five years;

## **SECTION III. EXEMPTIONS**

1. The Administration may exempt any Congolese 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 the fishing vessel is intended and are such as to ensure the overall safety of the vessel and persons on board.
2. The Administration may exempt any Congolese fishing vessel from any of the requirement of the Annex, if the Administration considers that the application is unreasonable and impracticable in view of the type of vessel, the weather conditions and the absence of general navigation 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 on board;

- (ii) The vessel is operating solely in the exclusive economic zone (EEZ) or territorial waters of the D.R.C.
3. The Administration may grant to Congolese fishing vessels partial or conditional exemptions from the application of the requirements of regulations 6 to 7 and 14 paragraph (7) of Chapter IX of the Annex provided that such fishing vessels comply with the requirement 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.
  4. The Administration may grant an exemption under Chapter 1 regulation 3, paragraph (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 (paragraph 7) of Chapter IX of the Annex, unreasonable or unnecessary;
    - (ii) In exceptional circumstance, for a single voyage outside the 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.
  5. The Administration may exempt any Congolese 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.

#### **SECTION. IV        EQUIVELENTS**

1. 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 Congolese 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.
2. 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.



## **SECTION V. INSPECTIONS AND SURVEYS**

1. 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 inspections and surveys include:
  - (i) inspections of life-saving appliance and other equipment;
  - (ii) inspections of radio installations; and
  - (iii) inspections of structure, machinery and equipment.
2. The Administration may delegate the responsibility for such inspections and surveys to nominated inspectors or recognized organizations. In such situations the Administration shall notify IMO of the specific responsibilities and conditions of the authority delegated to nominated inspectors or recognized organizations.
3. Furthermore, the Administration may also request the competent authority of another State Party to the Agreement, to conduct surveys or inspections of Congolese fishing vessels within the jurisdiction of such State.
4. 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 to 9 of the Chapter 1 of the annex.
5. An inspector 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 Inspector 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.

6. 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 of the Agreement.

#### **SECTION VI. MAINTENANCE OF CONDITIONS AFTER SURVEYS.**

1. 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.
2. 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.

#### **SECTION VII. ISSUE OR ENDORSEMENT OF CERTIFICATE**

1. 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 Congolese fishing vessel, an International Fishing Vessel Exemption Certificate shall be issued by the Administration or the any recognized organization authorized by the Administration.
2. 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.

#### **SECTION VIII. DURATION AND VALIDITY OF THE CERTIFICATES**

1. 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.

2. The certificates referred to above shall be issued after an initial survey, carried out by the Administration or the recognized organization authorized by the Administration or a State Party to the Agreement upon request of the Administration.
3. 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, (paragraph 1), 8 (paragraph 1), and 9 (paragraph 1) of Chapter 1 of the Annex to the Agreement;
  - (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.
4. 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.

## **SECTION IX. PORT STATE CONTROL**

1. All fishing vessels calling at a D.R.C 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.
2. 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.

3. 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, where 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.
4. 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.

## **SECTION X. CASUALTIES TO FISHING VESSELS**

1. In the case of a casualty on board a Congolese 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 or the Agreement.
2. The Administration shall report its findings from such investigation to the IMO.

## **SECTION XI. FORCE MAJEURE**

1. A vessel which is not subject to these Regulations or which is not required to hold a certificate under the provisions of 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.
2. 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.

## **SECTION. XII      OFFENCES**

1. It shall be the duty of the ship-owner 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.
2. Where a fishing vessel is found to be sailing without the required certificate, or a certificate that has expired or ceases to be valid, the ship-owner is deemed to be committing an offence under these Regulations and the ship-owner shall be liable to pay a fine [to be fixed by the Administration in accordance to Ordinance-Law No. 66/98 of March 14, 1966 on the DRC Code of Maritime Navigation].

**Seen to be annexed to the Ministerial Decree N°...../CAB/MIN/TVC/2021  
from ...../...../ 2021.**

**Done at Kinshasa, the ...../...../2021  
Chérubin OKENDE SENG**

*To be deposited with the Secretary General of the International Maritime Organisation (IMO)*

## **GENERAL MODEL INSTRUMENT OF ACCESSION**

WHEREAS the **Cape Town Agreement of 2012 on the implementation of the provisions of the 1993 Protocol relating to the Torremolinos International Convention for the safety of fishing vessels 1977**, was adopted at Cape Town/South Africa, on 29 October 2012 by the Cape Town Conference.

AND WHEREAS the **Democratic Republic of Congo**, being a State entitled to become a party to the said Agreement by virtue of **Article 3** thereof,

NOW THEREFORE the Government of **the Democratic Republic of Congo**,...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 1993 Protocol relating to the Torremolinos International Convention for the safety of fishing vessels 1977**, [,as amended].

IN WITNESS WHEREOF I, **Christophe LUTUNDULA**, Minister for Foreign Affairs of **the Democratic Republic of Congo** have signed this Instrument of Accession and affixed the official seal.

DONE at **Kinshasa**, this...XXXXXXXXX day of .XXXXXXXXXX **two thousand and twenty-one**

(Seal)

(Signature)

Minister for Foreign Affairs,

**Christophe LUTUNDULA**