



**Presidential Task Force
to Combat Illegal Fishing (Task Force 115)**



INDONESIA'S MULTI-DOOR APPROACH IN COMBATING FISHERIES CRIME

FISHERIES CRIME IN INDONESIA AND TRANSNATIONAL ORGANIZED CRIME ELEMENTS

Mas Achmad Santosa

Presidential Task Force to Combat Illegal Fishing

**NATIONAL
COMMITMENT TO
COMBAT
FISHERIES
CRIME**



“We have to strive to restore Indonesia as a maritime country. The oceans, the seas, the straits and the bays are our future. We have been turning our backs on them for far too long. Now is the time to restore all until we achieve Jalesveva Jayamahe; in our seas we are triumphant.”

Joko Widodo,
President of the Republic of Indonesia
20 October 2014



“1:3 children in Indonesia are stunted due to malnutrition. Indonesia also needs 12% growth rate per year to escape middle income-countries’ trap. The only sector that could provide opportunity for food security and economic growth is marine and fisheries resources. Indonesia owns the world’s 2nd longest coastline stretching across the archipelago. The quickest way to gain such benefit is to combat fisheries crime that has been depleting our resources.”

Susi Pudjiastuti,
Minister of Marine Affairs and Fisheries of the Republic of Indonesia
15 October 2015

THE IMPACT OF IUU FISHING

- The world's oceans are in peril and **global fish populations are in serious decline**. The UN FAO's 2014 report found that 90.1% of the world's fish stocks were fully exploited or over-exploited. The number of fisheries which are fully or over-exploited have been steadily increasing.¹
- **IUU Fishing is generally considered to be responsible for 10% to 22% of total global fisheries production.**² In Indonesia, IUU Fishing caused State loss of up to IDR 9 billion just in one year at only 12 fishing ports.³ Indonesia has more than 800 fishing ports.
- The impact of IUU Fishing on marine ecosystems and marine wildlife populations has been severed.⁴ Several fishing grounds in **Indonesian seas have been heavily drained** and IUU Fishing activities have **damaged the marine ecosystems**.
- **IUU Fishing damages the economy of the State.** Indonesia has suffered up to USD 20 billion loss per year because of IUU Fishing, which also threatens 65% of Indonesia's coral reefs⁵, more than 85% of global fish stocks⁶ and economic activities of small-scale fishermen.

- IUU Fishing which is conducted in a State will eventually affect another State(s); in fact, affecting the world's marine ecosystem.
- Global oceans cover around 70% of our planet and the collapse of marine ecosystem worldwide is inevitable; although IUU Fishing activities are concentrated in one or few regions.



- Therefore, **any activity which endangers and threatens the global marine ecosystem and global fish stocks shall be considered as crime.**
- Most IUU Fishing activities shall be referred to as fisheries crime.

Sources:

¹FAO. "The State of the World Fisheries and Aquaculture: Opportunities and Challenges." FAO, Rome, 2014. Available at: <http://www.fao.org/3/a-i3720e.pdf>

²MRAG Ltd., 2009 cited by Sander *et al.* 2014:114

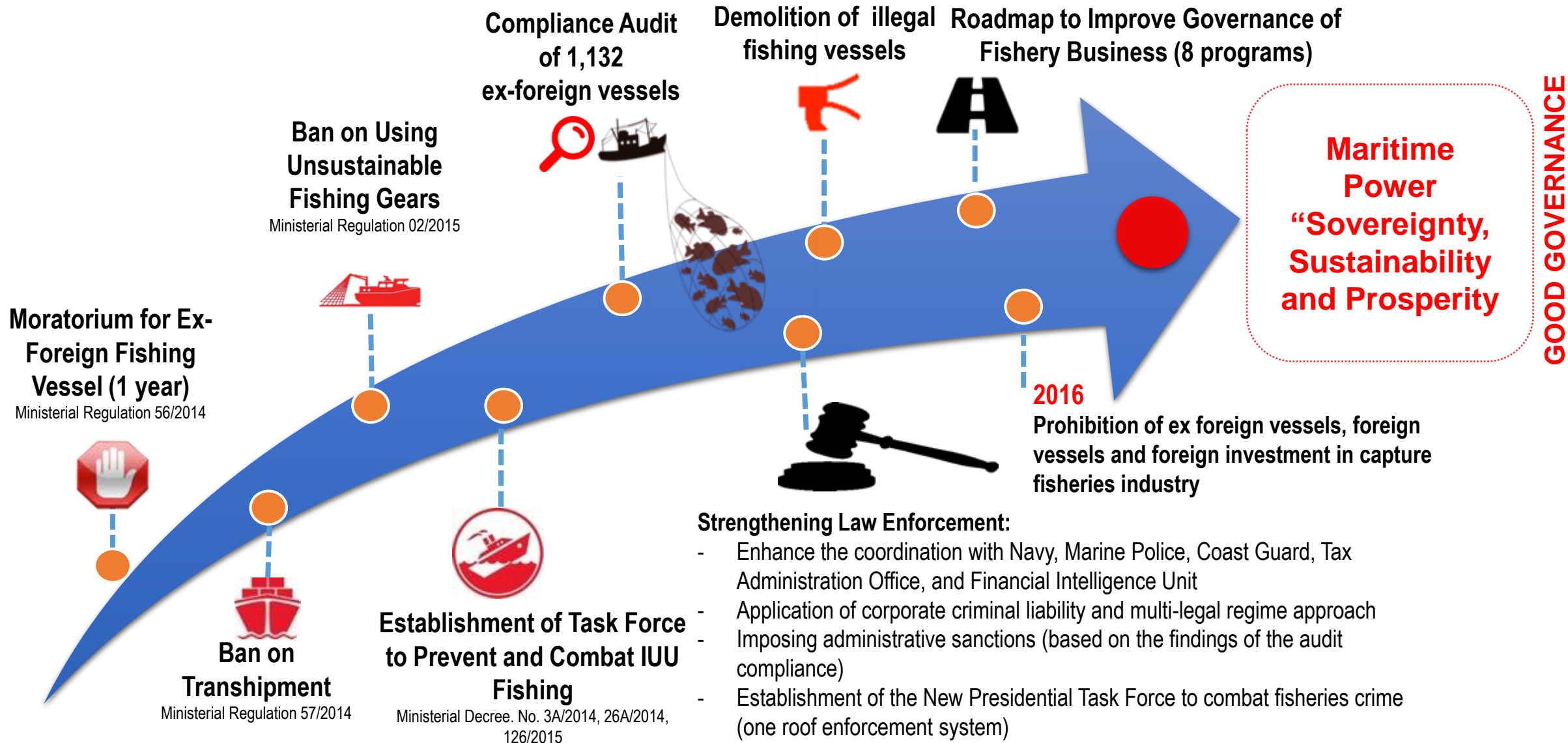
³Field study by the Minister's Advisor, Dr Arif Satria, for the period of 2013-2014

⁴Sander *et al.* 2014:114

⁵Managing Director and Chief of Operating Officer of the World Bank (2015)

⁶WWF (October 2015), *More Than 85 Percent of Global Fish Stocks Are at Significant Risk of Illegal Fishing* – WWF Report. Available at: <https://www.worldwildlife.org/press-releases/more-than-85-percent-of-global-fish-stocks-are-at-significant-risk-of-illegal-fishing-wwf-report>

ACTIONS TO PREVENT AND COMBAT FISHERIES CRIME





UNDERSTANDING AND DEFINING FISHERIES CRIME

DEFINING FISHERIES CRIME AS TOC

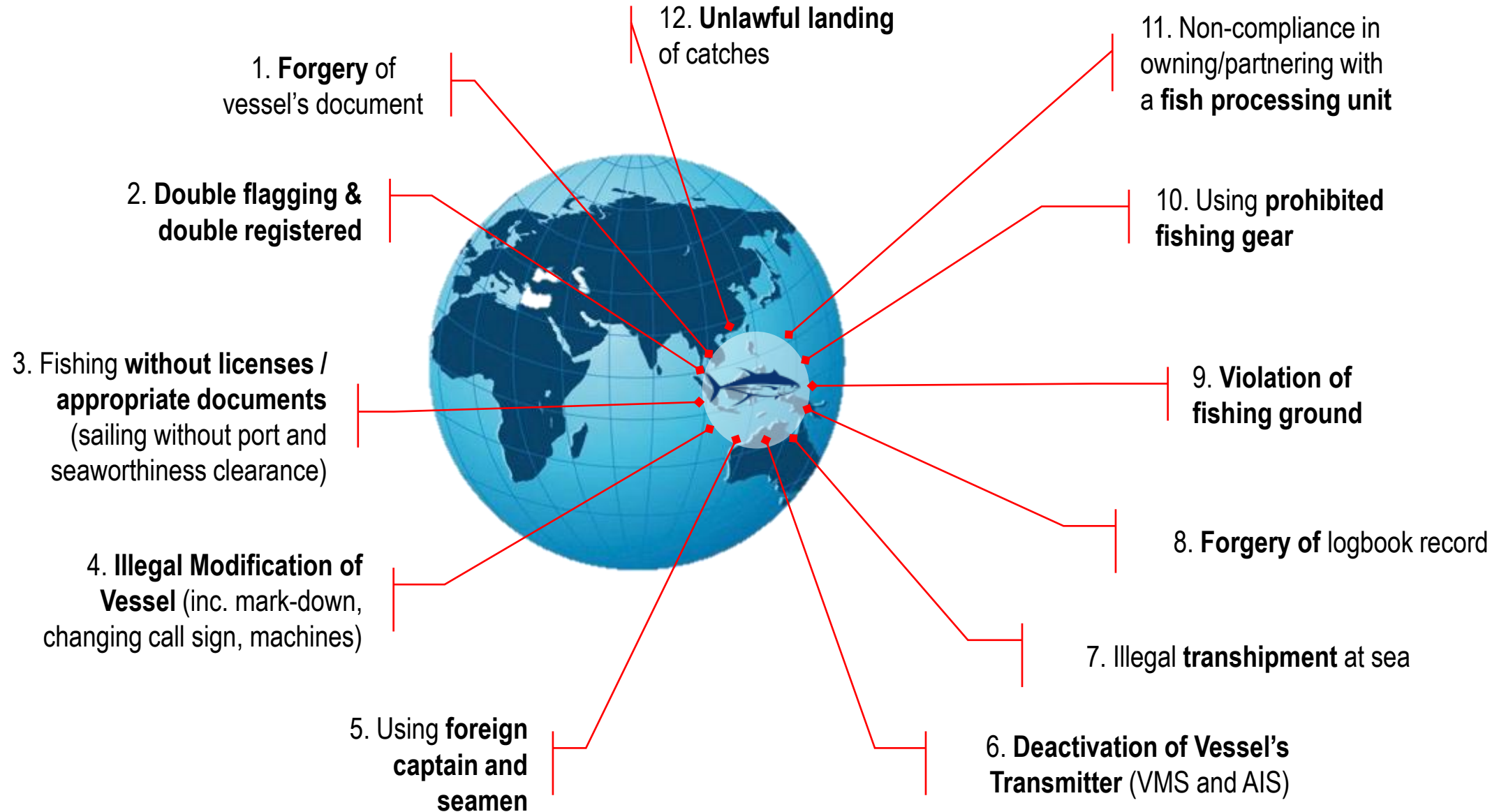
The *Annual European Union Organised Crime Situation Report* (2003) expands on TOC definition, noting that in order for something to be described as organized crime, at least six of the following characteristics are required; and it **must have characteristics 1, 3, 5, and 11**:

1. **Collaboration of more than 2 people** (in accordance with Art. 2(a) of Palermo Convention)
2. Each with own appointed tasks (in accordance with Art. 5 para. 1 of Palermo Convention)
3. **For prolonged or indefinite period of time** (in accordance with Art. 5 para. 1 of Palermo Convention)
4. Using some form of discipline and control (in accordance with Art. 23 of Palermo Convention)
5. **Suspected of the commission of serious criminal offences** (in accordance with Art. 2(b), 5, 6, 8 and 23 of Palermo Convention)
6. Operating at an international level (in accordance with Art. 3 para. 2 of Palermo Convention)
7. Using violence or other means suitable for intimidation (in accordance with Art. 23 of Palermo Convention)
8. Using commercial or businesslike structures (in accordance with Art. 2(c) of Palermo Convention)
9. Engaged in money laundering (in accordance with Art. 6, 7 of Palermo Convention)
10. Exerting influence on politics, the media, public administration, judicial authorities or the economy
11. **Determined by the pursuit of profit and/or power*** (in accordance with Art. 5 para. 1 of Palermo Convention)

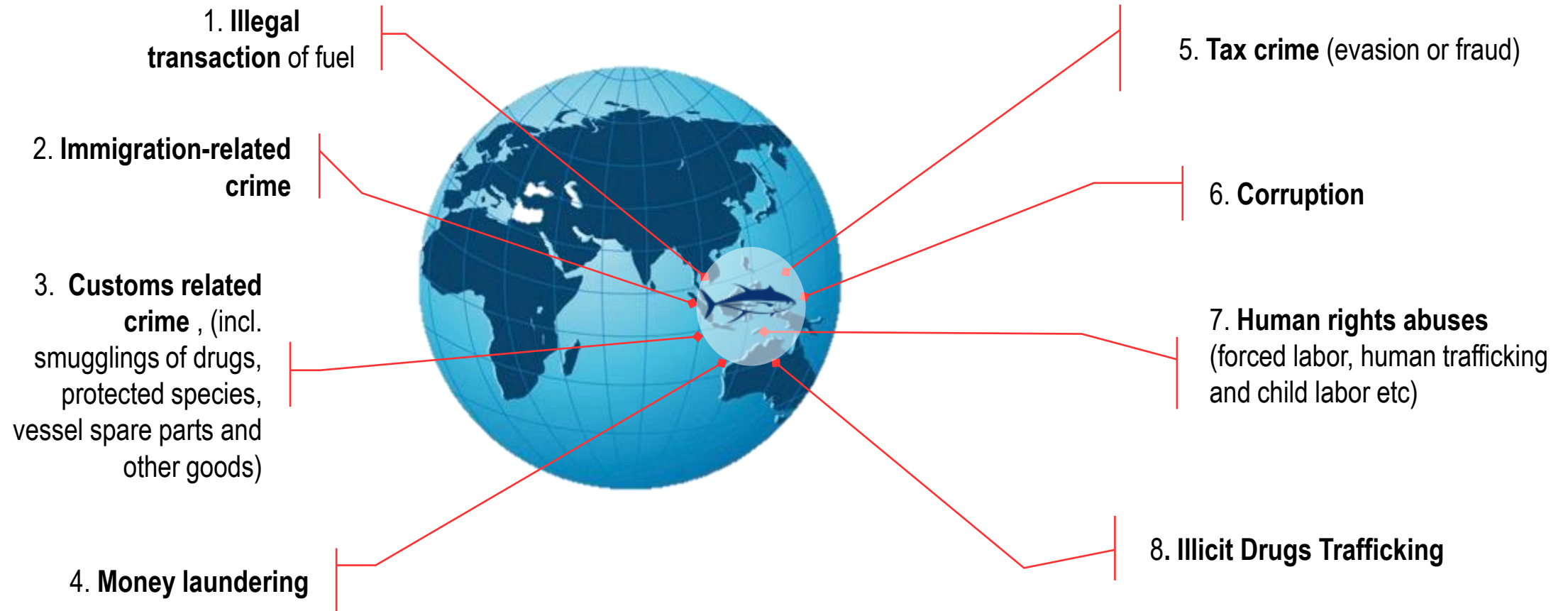
Source:

*Fröhlich 2003:2, citing the Annual European Union Organised Crime Situation Report (6204/1/97 (ENFOPOL 35 REV 2) DG H II)

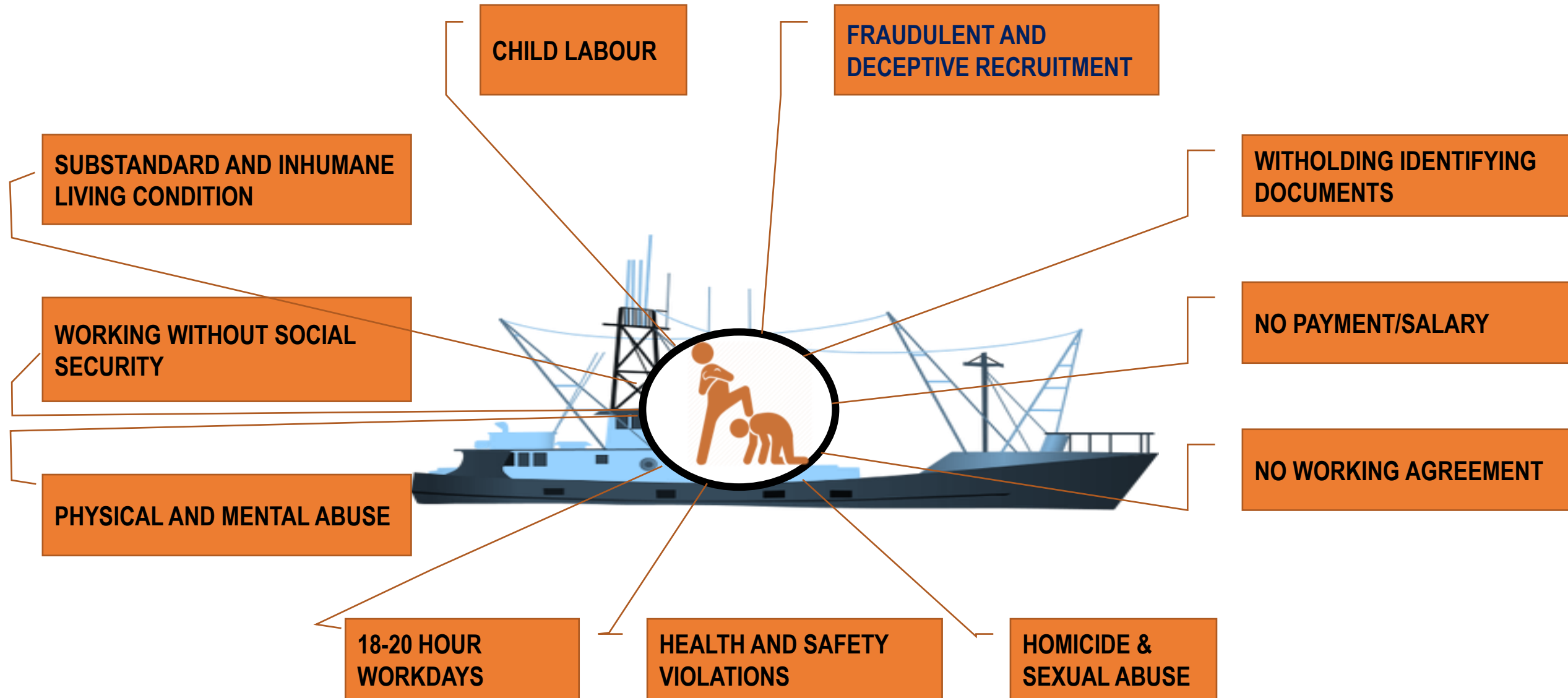
FISHERIES CRIME MODUS IN INDONESIA



FISHERIES-RELATED CRIMES MODUS IN INDONESIA



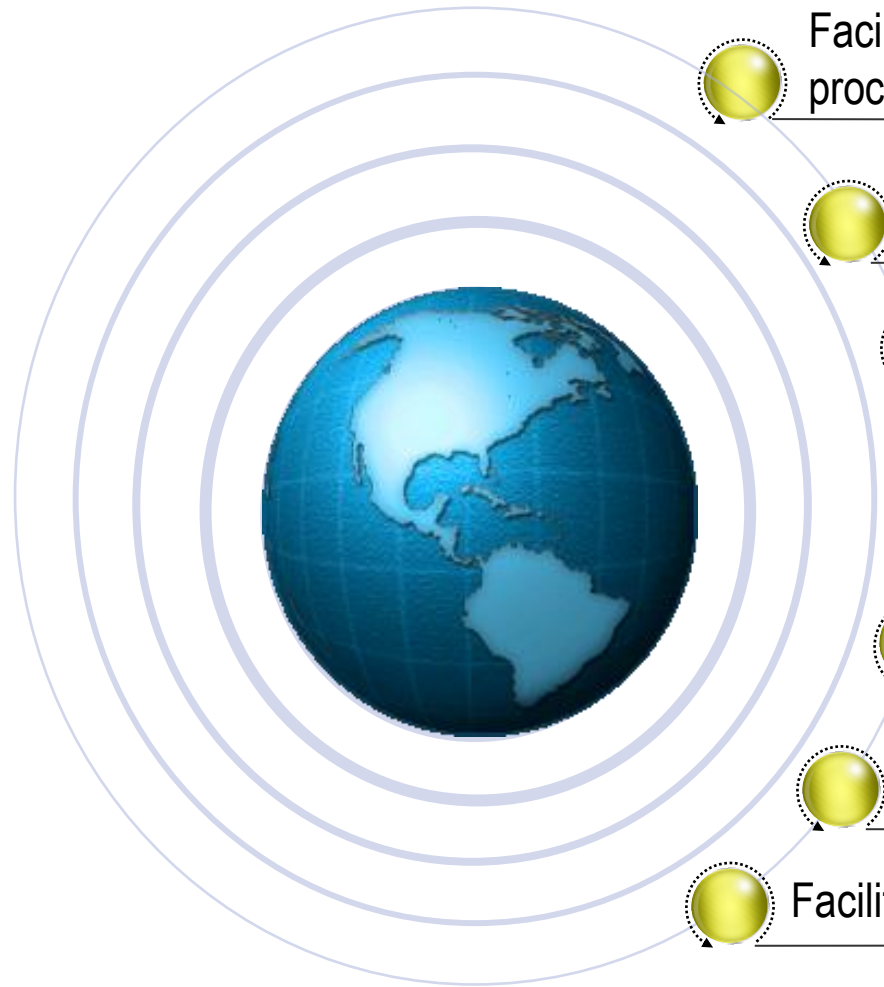
TYPES OF HUMAN RIGHTS ABUSES IN FISHERY BUSINESS



FISHERIES CRIME IN INDONESIA AND TOC ELEMENTS

- ☐ Double-flagging
- ☐ Beneficial (genuine) ownership
- ☐ Vessels Crewing agency
- ☐ *Locus* of fish laundering and money laundering
- ☐ Transshipment of illegally caught fish in foreign waters
- ☐ Other countries as safe-haven of ex-foreign (prohibited vessels) operated in Indonesia

WHY SHOULD WE DEFINE FISHERIES CRIME AS SERIOUS CRIME AND TOC?



Facilitates and eases **international cooperation**: confiscation, criminal proceedings, law enforcement, etc

Expedites the adjustment of national laws in order to adjust with UNTOC principles: **legislation harmonization**

Facilitates the implementation of **extraterritoriality principle** (Art. 15 UNTOC)

Facilitates **extradition and mutual legal assistance (MLA)** procedures (Art. 16-18 UNTOC)

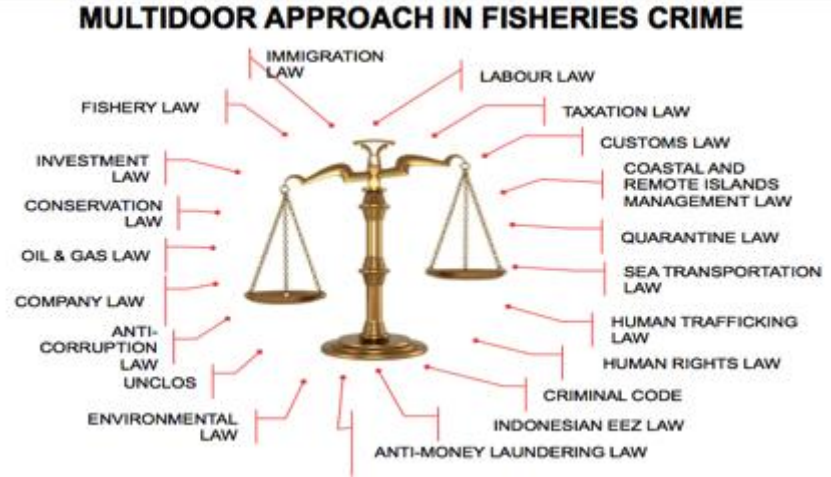
Alleged offenders are subject to **effective, proportionate and dissuasive criminal and non-criminal sanctions**, including monetary sanctions (Art. 10 UNTOC)

Long statute of limitations period to commence proceedings for offences; even longer if the alleged offender evaded the proceedings (Art. 11 UNTOC)

Facilitates and opens network for **wider exchange of information and data analysis**



FISHERIES ENFORCEMENT CASES IN INDONESIA



ADMINISTRATIVE ENFORCEMENT

(POST MORATORIUM AND ANALYSIS & EVALUATION)

ANALYSIS AND EVALUATION RESULT

Severe Violation : 769 vessels

Average Violation : 363 vessels

1,132 vessels +



ADMINISTRATIVE SANCTIONS

REVOCATION

BUSINESS LICENSE: 15

FISHING LICENSE: 245

REEFER LICENSE: 31

SUSPENSION

FISHING LICENSE: 35

REEFER LICENSE : 26

WRITTEN NOTIFICATION

FISHING LICENSE: 47

REEFER LICENSE: 48

CRIMINAL ENFORCEMENT

HAI FA CASE



■ IMO	: 7818561
■ MMSI	: 371295000
■ Call sign	: 3 EAY
■ AIS TYPE	: Cargo
■ Gross Tonnage	: 3830
■ Deadweight	: 4258 t
■ Length x Breadth	: 107 x 16.12m
■ Year built	: 1978
■ Captain Name	: Zhu Nian Le



**Purple Notice
by INTERPOL**

Violations

- Catch and export hammerhead sharks without any permit
- AIS and VMS were deactivated once Hai Fa entered Indonesia's water (5 periods of time)
- Sail back to China without seaworthiness and port clearances

Verdict

- District and Appellate Courts ruled that Hai Fa's Captain guilty and imposed fine only amounted to two hundred million Rupiah (around USD \$15,000)
- Currently, Hai Fa is under investigation by Marine Police for different violations

Transnational Elements in Hai Fa Case

- Vessel is **operated through a company** registered in Indonesia. The Indonesian company is **affiliated with a Chinese Company** registered in Cayman Island and listed in the U.S. stock market (Nasdaq)
- Hai Fa **uses Panamanian flag** and **exported hammerhead sharks** caught in Indonesian waters
- Hai Fa's **captain is a Chinese citizen**



CRIMINAL ENFORCEMENT (2)

BENJINA CASE



Violations

- Human trafficking and modern slavery
- Child labour
- Smuggling of people and goods
- Illegal transshipment
- Use of prohibited fishing gears (trawl)
- Forgery of vessels and seafarers documents
- Illegal transaction of fuel

Status and Legal Process

- 682 seafarers in Benjina became victims of trafficking
- 8 (eight) people in Benjina are in the process of prosecution (incl. companies' managers) – now the accused
- 5 (five) vessels carrying victims of trafficking have been confiscated
- Investigation is conducted for fish crimes, forgery, labour crime, immigration crime, and money laundering by the Police and MMAF investigators.

Transnational Elements in Benjina Case

- Victims of trafficking and slavery originated from various countries, e.g. Thailand, Myanmar, Lao, Cambodia, and Vietnam
- One of the owners is a company registered in British Virgin Islands that is affiliated with a Hong Kong company owned by two Thai citizens
- Most fishing vessels were built in Thailand and using at least Indonesian, Thai, and PNG flags
- Caught fishes from Indonesia and transhipped the fish in the PNG waters with a Thai reefer

Verdicts

- District court sentenced 5 crews, 1 manager fields, and 1 security of Benjina group of 3 years imprisonment in human trafficking case.

CRIMINAL ENFORCEMENT (3)

FV. VIKING CASE



- IMO : 8713392
- MMSI : 457712000
- Gross Tonnage : 1322 GT
- Length : 70.11 m
- Captain Name : Juan Venegas (Chile)
- Flag : Nigeria (denied)
- Built Location : Japan
- Built Year : 1987
- Fishing gear : Gillnet

**Purple Notice
by INTERPOL**

VIKING'S HISTORY OF VIOLATIONS

- During the last ten (10) years, the Viking has operated under twelve (12) different names and claimed the flag of at least eight (8) different countries
- On three (3) occasions since 2012 the Viking has provided registration papers to port authorities during port inspections to verify flag state
- On each occasion, the documents provided were false
- On 15 March 2015, the Viking was detained in Malaysia by Malaysian authorities where the master of the Viking was found guilty of offences under the Fisheries Act and fined RM 200,000

VIKING'S APPREHENSION IN INDONESIA

- The Viking entered Indonesian waters without prior notification to Indonesian authority, and the vessel's Automatic Identification System (AIS) was not activated
- The Viking also carried fishing gear, which leads to suspicion that the vessel "Viking" may have operated illegal fishing activities in Indonesia
- The Viking was apprehended by Indonesian Navy on 26 February 2016, inside Indonesia's Exclusive Economic Zone (EEZ), 12.7 miles from Tanjung Uban, Bintan, Riau Islands Province, Indonesia
- The "Viking" is now under investigation by the Indonesia Presidential Task Force to Combat Illegal Fishing, where the Navy is one of the members.

***Commission for the Conservation of Antarctic Marine Living Resources, an RFMO for the Antarctic region**

CRIMINAL ENFORCEMENT (3)

FV. VIKING CASE (2)



Transnational Elements in Viking Case

- Country of citizen of Viking's owner is suspected to be from Spain
- The Viking's owner is suspected to be resided in South Africa
- Allegedly, the Viking caught their fishes in South African Waters
- Country of citizen of the agent who helped the Viking's operation is suspected to be from Australia
- Countries of citizen of the crews involved in illegal poaching operation are from Chili, Peru, Argentine and Myanmar
- The flag state was falsely claimed as Nigeria

DEMOLITION OF FV. VIKING: INDONESIA'S ACTION AGAINST STATELESS ILLEGAL FISHING VESSEL



- Under Article 317 of the Law No. 17 of 2008 on Shipping, failing to report vessel's identity and voyage data falls as well as deactivating AIS transmitter is subject to one (1) year imprisonment and criminal penalty up to IDR 200,000,000 (two hundred million rupiah)
- Furthermore, under Article 93 paragraph (4) of Law No. 45 of 2009 on Fisheries, operating foreign fishing vessel in Indonesia's EEZ without fishing license is subject to six (6) years imprisonment and criminal penalty up to IDR 20,000,000,000 (twenty billion rupiah)



Nigeria denied the Viking's vessel registration and fishing authorizations claimed by the Viking



DEMOLITION OF VESSELS

LAW NUMBER 45 OF 2009 ON FISHERIES

Article 69 (4) : “... the investigator and the fisheries supervisor may conduct particular action such as *burning down and/or sinking down* foreign-flagged fisheries vessels based on sufficient initial evidence.”

Article 76A : “Any object and/or tool used for and/or resulted from fisheries crime may be *confiscated for the state or destroyed* subsequent to the approval of the chief of a district court.”

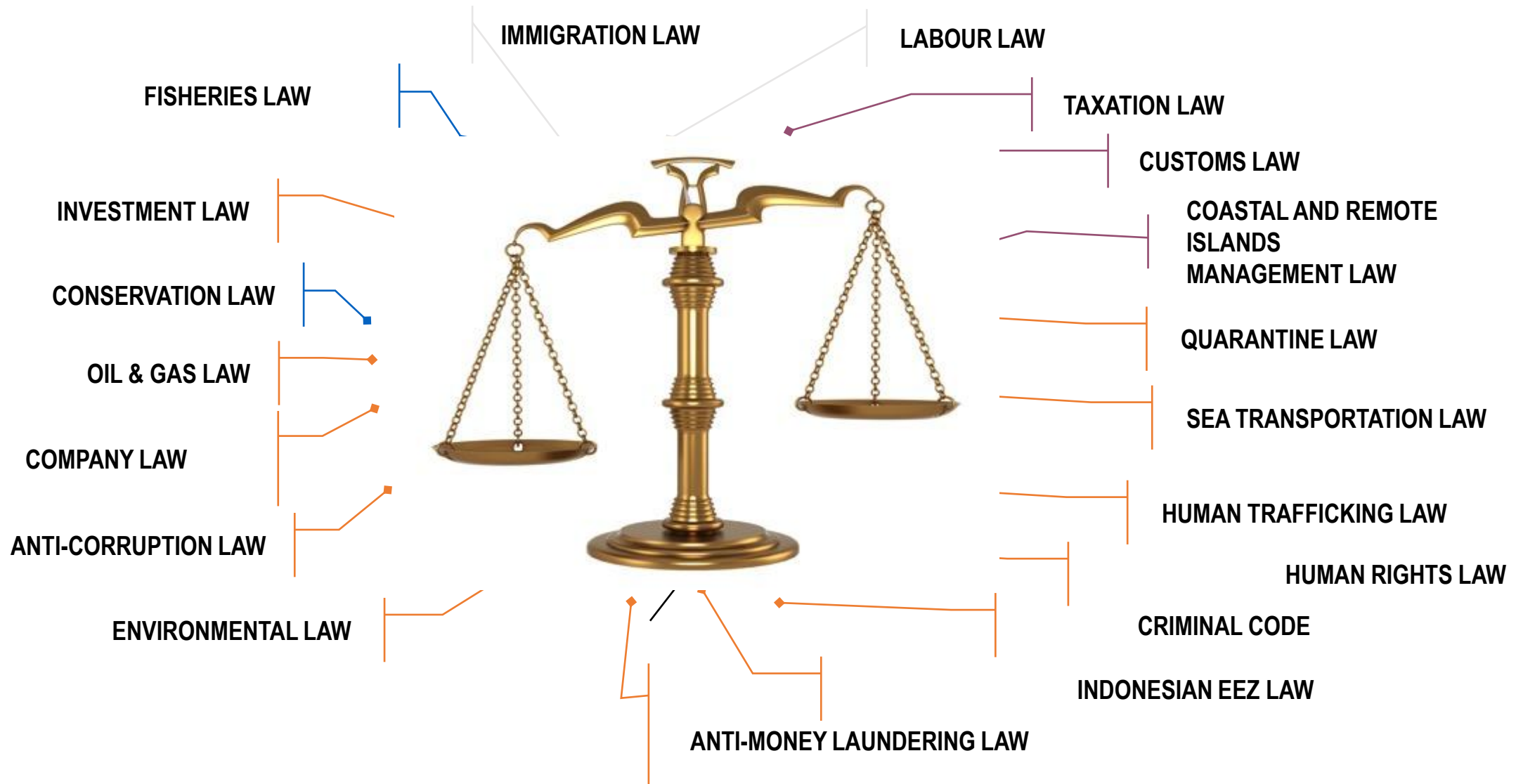
UNCLOS (ratified by Law 17/1985)

Article 92: “A ship which *sails under the flags of two or more States, using them according to convenience*, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a *ship without nationality*”

NUMBER OF VESSELS SUNK BY THE MINISTRY, NAVY AND POLICE OCTOBER 2014 – APRIL 2016

NO.	FLAG STATE	TOTAL
1	Philippines	43
2	Vietnam	63
3	Thailand	21
4	Malaysia	26
5	Indonesia	18
6	China	1
7	Papua New Guinea	2
8	Belize	1
9	Stateless	1
TOTAL		176

FISHERIES CRIME REQUIRES NEW ENFORCEMENT APPROACH (MULTI-DOOR APPROACH)



WHY MULTI-DOOR APPROACH?

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- **Why Legal Multi Disciplinary approach for IUU Fishing enforcement?**
 - ❑ Crimes in marine and fishery sector is a cross-sector crime;
 - ❑ Statutory limitation makes it necessary to use other regulation to capture IUU Fishing perpetrators;
 - ❑ IUU Fishing usually involves money laundering, bribery and gratification, and tax evasion /fraudulence;
 - ❑ Application of “*follow the suspect and follow the asset*” principle
 - ❑ Punishment of the functional perpetrators in addition to the physical perpetrators (Corporate Criminal liability)
 - **Multi-door Approach Requires**
 - ❑ Broad perspective
 - ❑ Multi-legal disciplinary
 - ❑ Multi law enforcers and institutions
 - ❑ Synergy among enforcement institution
 - **Multi-door Approach to Combat TOC**
 - ❑ Utilizes multi-laws to enable effective law enforcement with proportionate sanctions (e.g. smuggling of illicit drugs in fishing vessels is prosecuted under Fisheries Law, Narcotics Law and Money Laundering Law)
 - ❑ Expedite TOC investigation
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CHALLENGES AND WAYS FORWARD

CHALLENGES

- Limited access to obtain and verify evidences of fisheries crime
- Limited access to information which leads to foreign owners, buyers, and/or vessels crewing agency
- Lack of support & coordination from other countries and international organizations to address transnational IUU Fishing cases that may involve more than one national jurisdictions
- Leniency in punishment & lack corporate criminal liability (CCL) application

WAYS FORWARD

Mainstreaming and institutionalizing fisheries crime as Transnational Organized Crime under the auspices of the UNTOC

Strengthening the current cooperation with Interpol and other countries, and utilizing Global Record of Fishing vessels optimally.

- Mainstreaming and institutionalizing fisheries crime as Transnational Organized Crime under the auspices of the UNTOC
- International (technical cooperation) to utilize the modern vessel tracking system and technology

Harshening the punishment by amending laws and regulations, developing supreme court guidelines and enforcement officers and judges capacity to promote the application of CCL.

SUMMARY

1. Most IUU Fishing leads to Fisheries Crime
2. Fisheries Crime is a Serious Crime and most of them should be regarded as Transnational Organized Crime
3. Collaboration and synergy in prevention and eradication of fisheries crime in national and international levels are essential
4. Applying multi-door (multi-legal disciplinary) approach to enhance effective law enforcement in national level leads to investigation of Transnational Organized Fisheries Crime



Presidential Task Force to Combat Illegal Fishing (Task Force 115)



THANK YOU!

Presidential Task Force to Combat Illegal Fishing (Task Force 115)