

The Mechanism and Insufficiency of the Protection of Marine Fishery Labor in International Law

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ABSTRACT

Fishery, also known as the “aquatic industry”, refers to the production sector that obtains economically valuable fish or other aquatic animals and plants from the water. It includes the aquatic fishing industry that collects aquatic animals and plants resources from the water and the aquaculture industry that breeds aquatic animals and plants in the water. Compared with other professions, fishery, especially marine fishery, is recognized as one of the most dangerous industries. The marine fishery is a high-input and high-risk industry. Ships and fishery workers may suffer far greater risks than land industries when they sail and operate at sea. Besides force majeure factors, human factors such as improper operation can easily cause significant damage to ship and crews. In addition, marine fisheries involve the delimitation of the exclusive economic zones of various countries, and fishers may also be caught by coast guard officers and attacked by pirates when they cross-border fishing. Due to the trans-regional nature of marine fisheries, its labor protection issues must not only rely on the laws and regulations within countries but also rely on the relevant protection systems of international law. Therefore, it is very meaningful to explore the mechanisms and deficiencies of the current international law to protect fishery labor.

Keywords: Fishery, Marine Fishing, Labor, International Law.

1. INTRODUCTION

Generally speaking, there are two types of marine fisheries: the first type is the aquaculture fishery represented by sea cages, artificial reefs, and marine pastures. It is a knowledge- and capital-intensive industry and generally has a small human input and a high output per human. It is the future development direction of the world's fisheries; the second is the traditional capture fishery, which needs to operate in a larger space, is more susceptible to the impact of the marine environment and meteorological conditions and has higher uncertainties. The "marine fishery labor" referred to in this paper specifically refers to the latter group of people.

The protection of labor rights in capture fisheries is a long-term problem. Compared with the protection that aquaculture fisheries workers can receive when they work as factory workers in coastal areas, the capture fishery faces a more serious problem of infringement of rights and interests. Specifically, the characteristics of their work include the following aspects:

1.1. Unstable Operating Environment

Marine fishery laborers need to go to the sea on ships and go to various locations to fish. This makes some workers unable to adapt to the environment and susceptible to certain diseases. The incidence of gastric diseases (such as intestinal trichinosis) and osteoarthritis (such as rheumatoid arthritis, femoral head necrosis, etc.) of fishery workers are several or even dozens of times higher than that of ordinary people.

1.2. Living On a Ship All Year Round

If marine workers live aboard all year round, the maritime management agencies and other law enforcement agencies will de facto lose the ability to track and control the crew's behaviour. This is why crimes such as murder, theft, and arson often occur at sea, and the perpetrators are difficult to find.

1.3. Irregular Labor Management of the Crew

Due to the characteristics of marine fishing, fishermen often need to turn night into day or work long

hours. Otherwise, they may miss the “window period” of fishing. This leads to an irregular state of their right to rest, personal injury compensation, and labor remuneration. Even if there are problems, it is difficult for workers to obtain evidence and prosecute.

In addition, offshore fishing often crosses the ranges of individual exclusive economic zones, and also involves national political and diplomatic issues. Therefore, it is very necessary to protect marine labor at the level of international law⁴.

2. THE MECHANISM OF THE PROTECTION OF MARINE FISHERY LABOR IN INTERNATIONAL LAW

2.1. International Conventions

In the sense of international law, there are many documents that provide for the protection of marine labor, the most noteworthy of which are the international conventions. International conventions are open multilateral treaties that have a strong binding force on member states. International conventions on marine fisheries can be divided into two types, global conventions and regional conventions.

2.1.1. Global Conventions

The “United Nations Convention on the Law of the Sea” (UNCLOS) can be regarded as the constitution in the field of international law of the sea, which puts forward principled requirements for the protection of the marine environment, the conservation of marine living resources, and the demarcation of areas and settlement of disputes of international marine fisheries.

For example, Article 119 of the Convention puts forward specific requirements for the conservation of marine living resources; Article 120 includes the protection of marine mammals. Regarding the conservation of marine living resources and their living environment, the twelfth part of UNCLOS contains principled provisions on marine environmental protection. UNCLOS also stipulates the right of visit and the right of hot pursuit for the competent authorities and warships of various countries when disputes occur. It also makes necessary restrictions on the exertion of these rights, so as to avoid armed conflicts and unreasonable frictions that damage the rights and interests of the crew.

The International Labour Organization (ILO) adopted the "Work in Fishing Convention" in June 2007, which sets out the international standards of minimum requirements for work on fishing vessels, including working conditions, accommodation and meals, occupational safety and health, medical care, security, and other aspects. It has a profound impact on crew management, welfare benefits, occupational safety,

social security, and the design and construction of fishing vessels of the world's fisheries⁵.

The Convention applies to fishing vessels with a length of 24 meters and above, and the specific contents include:

The minimum age for working on a fishing boat/ship is 16 years old, and fishermen under the age of 18 are prohibited from participating in night work.

The fishery crew staying at sea for more than 3 days must undergo a medical examination, and the validity period of the medical examination certificate is 2 years.

The minimum rest time for fishery crew is no less than 10 hours in 24 hours, no less than 77 hours in 7 days, etc.

Although the provisions of the “Work in Fishing Convention” are more detailed than those of the “United Nations Convention on the Law of the Sea”, it is still very general and is the minimum protection of marine labor. From this, it's clear that because a global convention needs to restrict more countries, its provisions will not be particularly elaborate, and the degree of protection it provides is also limited.

2.1.2. Regional Conventions

Compared with global conventions, regional conventions are more specific and pertinent, and their provisions generally meet the requirements of member states better.

The “Convention for the Protection of the Marine Environment of the North-East Atlantic” (OSPAR Convention) was signed in Paris in 1992, and its member states are the coastal countries of the Northeast Atlantic. In addition to stipulating anti-dumping and pollution clauses, the Convention also stipulates that each contracting party should send representatives to form a committee to supervise and regularly evaluate the quality of the marine environment. The Convention stipulates that when a conflict arises between contracting parties, the dispute shall be resolved in an international arbitration tribunal. Regarding the composition and remuneration of the arbitration tribunal, it also made detailed regulations.

The “Antarctic Treaty” is an earlier convention signed in Washington, the USA in 1959. Its member states include Argentina, Australia, Belgium, and the Soviet Union (now Russia). The treaty is mainly aimed at resolving the Antarctic issues, so it stipulates that Antarctica should always be used exclusively for peaceful purposes and should not be a venue or object of international disputes. Article 9 of the treaty refers to the protection and preservation of Antarctic living resources (including fishery resources). Article 7 requires personnel and ships of member states to notify other

contracting parties in advance when they go to Antarctica. It also requires that ships and aircraft that load and unload cargo and people in Antarctica should be open to observers at all times. This openness and transparency can well reduce the possibility of conflicts between fishing vessels and other parties.

It can be seen that: the signatories of regional conventions have a stronger sense of participation and the ability to influence them. Therefore, the provisions of regional conventions are usually stricter and more targeted. Although this has a higher degree of protection for the marine fishery environment and the protection of the rights and interests of marine labor, it is difficult to say whether the global convention is more important or the regional convention is more important. Generally speaking, the conventions of global conventions are fundamental and universal, which determines that many of its provisions cannot be applied to specific cases like regional conventions; but on the other hand, without the legal framework and basic principles established by global conventions, many regional conventions cannot be formulated either.

2.1.3. Resolutions of International Organizations

Resolutions made by international organizations are sometimes referred to as “soft law”. This is because, compared to a country’s internal laws and international treaties, these resolutions are not much binding and mandatory (according to the Articles 39-42, 44, 48, and 53 of the UN Charter, the Security Council can make resolutions/acts that are binding on member states, so this judgment is not absolute), and often only provides a kind of principled guidance. Therefore, as far as the protection of marine fishery labor is concerned, the degree of protection provided by the resolutions of international organizations is relatively low, but they are not dispensable.

The “International Guidelines for the Management of Deep-sea Fisheries in the High Seas” is one example. Aiming at the conservation and sustainable use of marine living resources, and the protection of fragile marine ecology, the “International Guidelines for the Management of Deep-sea Fisheries in the High Seas” stipulates that countries should establish new relevant organizations to cooperate and implement temporary conservation and management measures, to ensure the orderly management of deep-sea fisheries, and strive to prevent the adverse effects of deep-sea fisheries on the marine ecosystem. Although this document is only a reference tool, it is of great significance to the management of high seas fisheries.

The Food and Agriculture Organization of the United Nations (FAO) has also formulated the “Code of Conduct for Responsible Fisheries” (CCRF), which refines the fishery-related regulations in the “United Nations

Convention on the Law of the Sea”. For example, Article 7 of the Code, Fishery Management, recognizes the importance of fishery resources to fishermen and stipulates that for straddling fish resources, highly migratory fish resources and high seas fish resources caught by two or more countries, relevant countries should cooperate to ensure effective protection and management. When a country is not a member of intra-regional fishery management organizations, it should still abide by international agreements and international laws, and cooperate in the management of fishery labor.

2.2. Inter-State Agreements

Inter-state agreements refer to agreements between multiple (usually two) countries on specific political and economic matters. Since inter-state agreements are the product of state-to-state negotiations, they can be said to be the most targeted solution to a specific resource allocation or a particular dispute.

Although inter-state agreements are highly realistic and individual in nature, they are not omnipotent in terms of protecting the rights and interests of marine labor. The fishery conflict between China and South Korea around 2000-2018 is an example¹. China and South Korea established diplomatic relations in 1992². Since then, the two countries have had frequent economic and trade exchanges. Therefore, in 2000, the “China-Korea Fisheries Agreement” was signed. It is an agreement on the distribution and protection of fish resources in the seas shared by the two countries which is based on the “United Nations Convention on the Law of the Sea”.

This agreement regulated the fishing activities of China and South Korea well at the beginning. However, because it sidesteps the issue of fishing areas (the “China-Korea Fishery Agreement” does not clearly delimit the waters between China and South Korea), and because many clauses have become obsolete and outdated with historical development, the frequency of Chinese fishing boats entering waters that South Korea considers being its exclusive fishing zones has continued to increase, leading to seizures of the fishermen and even bloodshed incidents. In 2000, only 29 Chinese fishing boats were seized by South Korean officials, and this number reached 534 in 2011. At the same time, due to the South Korean media's hype about the invasion of Chinese fishing boats, the South Korean government and citizens' attitudes towards Chinese fishing ships and fishery workers had been deteriorating, making the South Korean Coast Guard's enforcement efforts more and more serious. They were equipped with firearms and other weapons and opened fire when warning and driving away Chinese fishing boats. This grim state only slowly eased after China and South Korea restarted negotiations on maritime delimitation in 2015⁹.

Therefore, even if an inter-state agreement is more targeted (compared with international conventions and resolutions), it still cannot completely solve the problems surrounding the protection of marine fishery labor. Moreover, as time progresses and objective conditions change, such agreements will inevitably encounter various practical problems in the implementation process. Compared with international conventions, their operation is usually easier to change with the progress of time and become less and less ideal¹⁰.

2.3. Other Protection Mechanisms

2.3.1. National Legal Adjustment Systems

Strictly speaking, the fishery laws and regulations formulated within a country do not fall within the scope of international law. However, because fisheries include inshore, offshore, and marine fisheries according to their different distances from the coast, they will inevitably involve fishing issues in territorial waters and exclusive economic zones. Therefore, even a country's internal laws will inevitably need to answer the questions about the protection of fishery labor rights and the solution of international disputes.

Take China's fishery legislation as an example. The Fisheries Law of the People's Republic of China has not achieved a high degree of protection for marine fishery workers. China's Fisheries Law shows a clear tendency to emphasize internally and neglect externally. Although it provides detailed regulations on administrative supervision measures within the jurisdiction of China, it lacks relevant regulations on foreign-related marine fisheries. For example, if there is an incident in which the Maritime Law Enforcement Bureau of another country detains Chinese fishing boats and fishermen, the country lacks special response measures and judicial procedures. At the same time, China's domestic marine fishery legislation lacks innovation, is not well-suited to the new areas of marine fishery development and is too general to apply in some cases.

China's newly revised "Regulations on the Management of Ocean Fisheries" in April 2020 better responds to this problem⁷. The new regulations explicitly prohibit ocean-going fishing vessels from engaging in IUU (illegal, unreported, unregulated) fishery activities, and also raise all responsibilities and supervision measures involving ocean-going enterprises, fishing vessels, and crews to a level consistent with current international rules and requirements. It strengthened foreign-related safety management and increased penalties for violations.

2.3.2. Diplomatic protection mechanism

The diplomatic protection mechanism for marine fishery labor includes three types:

2.3.2.1. Diplomatic Mediation

Diplomatic mediation means that when a country's fishery workers suffer personal damage, the government can use diplomatic means to negotiate or mediate, so that the workers can be quickly released and restore freedom. In the China-Korea fishery conflict, after Chinese fishermen were arrested by South Korea, the Chinese government repeatedly used the method of diplomatic mediation to urge South Korea to release the workers.

2.3.2.2. Foreign Protection

Foreign protection refers to a country's protection of nationals outside its borders based on the rights of *ratione personae*. If a country's marine fishery workers are infringed on their rights and interests on the high seas or other countries' waters, then the country can protect them. Foreign protection has to comply with the preconditions stipulated by international law, such as that the citizen(s) must have been illegally violated by the host country and have exhausted local remedies.

2.3.2.3. Consular Protection

The difference between consular protection and foreign protection is that foreign protection is usually implemented by the diplomats in embassies, while consular protection is implemented by consuls in consulates. Therefore, when a fishery worker is arrested, he/she needs to apply for consular protection, otherwise, he/she cannot get such protection.

3. THE INSUFFICIENCY OF THE PROTECTION OF MARINE FISHERY LABOR IN INTERNATIONAL LAW

3.1. Legislative Deficiencies in International Conventions

3.1.1. The Demarcation Standard of the Fishing Zones is Unclear

Currently, there are more than 500 maritime boundaries between adjacent exclusive economic zones on a global scale. Since the core of maritime delimitation is the distribution of maritime rights and interests, if these boundaries cannot be delineated reasonably, disputes will easily arise. The distribution and migratory characteristics of fish stocks have caused a large part of fish resources to frequently cross different sea areas in order to survive and multiply, and be shared by two or more countries, which makes the problem of maritime delimitation even more difficult.

However, in the "United Nations Convention on the Law of the Sea" and other international conventions, the provisions on the delimitation of sea areas are relatively

general, providing neither appropriate standards for delimitation activities nor dispute resolution clauses when disputes arise due to delimitation issues. Therefore, the current situation is that the delimitation of maritime areas still relies on measurement, negotiation and conscience among countries.

3.1.2. Unreasonable Release Procedures

The prompt release of caught fishermen is a recognized principle in international law. Article 73 of the "United Nations Convention on the Law of the Sea" states that the arrested vessel and its crew shall be released quickly after providing an appropriate letter of guarantee or other guarantees. The "China-Korea Fisheries Agreement" and other inter-state agreements also have similar clauses.

But the reality is that countries have different answers to what kind of practice is counted as a prompt release, and what conditions should be met before the ships and fishermen can be quickly released. International standards are missing on this issue. What standards the fishing boats must meet, the size of the draught, the suitability of fishing, and other release conditions have not been unified on a global scale. This has led to many fishermen being detained for unreasonably long periods of time in practice (for example, Chinese fishermen have been detained by the South Korean coast guard for the longest 110 days), which clearly violates international principles.

3.2. Non-regulation in Maritime Law Enforcement

3.2.1. Cross-Border Jurisdiction

According to the distance from the coastlines, the sea areas surrounding a country can be divided into territorial seas, contiguous zones and exclusive economic zones. According to the "United Nations Convention on the Law of the Sea", coastal states have sovereignty over their own territorial waters, so they have the right to formulate fishery laws and regulations including criminal liability clauses and exercise jurisdiction over any actions that may affect the peace and security of the country. But the problem is that many countries have extended this power to the contiguous zones and have unnecessary interference with passing ships. Similarly, in order to prevent smuggling and illegal crossing of national borders, a country can exercise necessary jurisdiction over customs, finances, immigration, health and other matters in the contiguous zone, but some countries exercise this power in the exclusive economic zones. Cross-border jurisdiction will cause fishery workers to face uncertain administrative risks. These risks will reduce the efficiency of fishing, making them suffer economic losses and even the loss of personal freedom.

3.2.2. Over-Enforcement

Over-enforcement violates the principle of proportionality. UNCLOS grants coastal countries the right to conserve, manage and utilize biological resources in the exclusive economic zones. These countries can set a certain amount of fines, deposits or require other guarantees for illegal fishing. However, this convention does not limit the range of punishment and sentencing. As a result, fishermen who have carried out illegal fishing activities may receive sentences that are too strict. Take the fishery dispute between China and South Korea as an example. In order to prevent Chinese ships from illegally entering South Korean waters for fishing, some South Korean officials set a very high amount of guarantee money, which itself violates the fairness and justice requirements of international law.

3.3. Insufficient Protection of Women's Labor Rights

The income of the marine fishery industry is often closely linked to the amount of fish caught. Therefore, it will be very difficult for female workers (many of them are temporary workers) to enter this industry during periods of labor redundancy when market transactions are reduced, such as the fishing moratorium.

At the same time, some employers dislike women's lack of strength and lack of physical fitness, so they exclude or even deprive them of their qualifications to enter the industry³, discriminating against women in fisheries employment. The prospects for the promotion of female laborers who have entered the marine fishery industry are also very uncertain⁶. In addition, due to the lack of public security measures when ships are sailing in other countries' waters, high seas and other areas, the industry is inevitably exposed to sexual harassment and other violence⁸. Due to the generally low level of education, weak legal awareness, and the lack of specific laws and policies of female marine fishery workers, there are many obstacles to the professional development of female workers in the marine fishery industry.

4. CONCLUSION

The conclusion drawn from the above analysis is that there are certain loopholes in the protection of marine fishery labor in international law. In order to better protect the rights and interests of these workers, this article puts forward the following three suggestions.

4.1. More Regional Conventions and Inter-State Agreements

As mentioned above, the provisions of global conventions cannot be particular and applicable to individual cases, while regional conventions and inter-state agreements can fill this loophole. Regional

conventions and inter-state agreements should not violate the basic principles and requirements of global conventions and should use UNCLOS as the legal framework to make more detailed regulations.

When countries reach an agreement, they should fully consider the balance of the distribution of fishery resources among countries, and consider the differences in the number, age structure, working environment, and salary levels of marine fishery workers in each country. An absolute average distribution method cannot be adopted. In addition, different dispute resolution methods should be agreed upon for different situations. For example, if illegal fishing mainly involves economic disputes between different entities (such as ocean fishing companies), it should be tried by a commercial arbitration committee. If illegal fishing involves endangering national sovereignty, smuggling, or even espionage, the dispute should be resolved in the International Court of Justice or the International Tribunal of the Law of the Sea.

4.2. Refining the prompt release procedures

The prerequisites for the prompt release should not exceed the harm caused by the illegal activities of marine fishery laborers nor should they exceed the worker's financial affordability. In the trial of specific cases, the court should clarify the required amount of the security deposits and the value of the collaterals to help fishers gain freedom as soon as possible. Companies that employ fishing workers should also purchase and require fishing boats to purchase relevant insurance for their workers to reduce the risks. These practices are in line with the principles of fairness, and justice in international law and can also effectively avoid situations where the fishermen involved cannot be released and the judgments obtained are too heavy.

4.3. Popularization of International Fishery Law

The understanding of international law among three groups (government officials, law enforcement personnel and marine fishery labor) should be improved. For government officials, only by respecting and understanding the basic principles of international law can they realize the necessity of protecting fishery labor and the marine environment when negotiating international agreements and conducting domestic legislation. For law enforcement personnel, understanding the international law of the sea can enable them to comply with the requirements of the procedure and respect the legal boundaries of their jurisdiction. For marine fishery workers, publicity and education of international law can prevent them from committing illegal activities and reduce the possibility of international disputes and frictions.

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