

Extraterritoriality of Human Rights Norms in Distant Water Fisheries: On Investors' Due Diligence Obligations in FOC Governance

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Abstract

In recent years, Taiwan's distant-water fishing vessels have been involved in illegal, unreported, and unregulated fishing as well as human trafficking or forced labor, which has made headlines at home and abroad. Among them, flag of convenience (FOC) vessels have drawn particular attention, which led to the adoption of the unprecedented normative framework composed of the Act to Govern Investment in the Operation of Foreign Flag Fishing Vessels and the Regulations on the Approval of Investment in or the Operation of Foreign Flag Fishing Vessels. However, risks of human rights violations by FOCs remain an obstacle to renewing the image of the distant water fisheries.

Going beyond the positions taken by different stakeholders in disputes, the present paper tries to put forward realistic and feasible recommendations on FOC regulations based on academic literature, official documents, interviews and meeting records over the years. The first step is to understand the inevitable existence of FOCs in reality, followed by an analysis of the unique industry-government cooperation model throughout the development history of Taiwan's distant water fisheries. For its second part, this paper discusses the similarities between FOC and the multinational corporations targeted by the normative framework of "business and human rights". Accordingly, by taking into account the international soft law on business and human rights as well as recent French

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and German legislations, this paper suggests that the existing domestic norms should incorporate the due diligence duty of the FOC investors and thus support the guiding model for the transformation of the distant-water fisheries.

FOC investors of a certain enterprise scale should be subject to the due diligence obligations and regularly formulate prevention plans for environmental and human rights infringement risks. Furthermore, to alleviate the problem for fishermen recruited overseas to seek effective remedies across borders, the government should set up a national contact point (NCP) for fisheries and human rights to consider cases reported. This NCP should be a collegial body in charge of case dispute mediation and general prevention recommendations. In addition to the current administrative penalties, the civil litigation jurisdiction for infringements occurring overseas will be supplemented to ensure the attribution of liability.

Keywords: Flag of convenience, distant-water fisheries, business and human rights, national contact point, civil liability