

A Study on How to Improve Fishing Vessel Workers' Safety and Rights in accordance with International Law

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1. Purpose

- ▶ Keeping pace with the increasing global calls for enhancing the human and labor rights of fishing vessel workers, South Korea is set for the ratification of two international agreements, the ILO Work in Fishing Convention (The Work in Fishing Convention No.188, 2007: C188, hereinafter the Work in Fishing Convention) and the 2012 Cape Town Agreement on fishing vessel safety (hereinafter the Cape Town Agreement).
- The purpose of this study is to investigate and analyze the aforementioned agreements to draw implications, while comparing and analyzing relevant regulations stipulated by domestic law. Therefore, it ultimately intends to propose specific directions for improving Korean laws in preparation for the ratification of the agreements.
- Furthermore, specific improvement plans are suggested in this study using short-, mid-, and long-term perspectives, focusing

on realistic receptiveness and regulatory power while taking ratification into account. Through such efforts, this study aims to contribute to the preparation of amendments and policy measures for improving the governmental system, changes in policies while enhancing conventional practice in the industry.

2. Feature

- ▶ The analysis of this study puts more emphasis on the areas of the agreements applicable to Korean and foreign fishing vessel workers upon the adoption of the aforementioned international agreements.
 - Preceding studies have already gone through an in-depth and thorough analysis on the subject of improvement measures for migrant fishing vessel workers to which this study gives a number of suggestions not having undergone additional analysis.
 - Given a limited research period and budget, the scope of this study excludes specific content related to surveys on domestic industries as well as economic impact analyses by type of fishery industry in case that the agreements are adopted.
- ▶ Methods utilized in this study include a literature review, consultation with experts, a group interview with relevant organizations in Korea and a policy seminar as a means to supplement and verify the results.

3. Results

1) Summary

- ▶ If a member state of the Work in Fishing Convention is unable to implement all of the measures provided for in this Convention due to special problems of a substantial nature in the light of insufficiently developed infrastructure or institutions, the Member may, in accordance with a plan drawn up in consultation, progressively implement all or some of the provisions.
 - In accordance with Article 5, the competent authority, after consultation, may decide to use gross tonnage in place of length (L) or length overall (LOA) as the basis for measurement in accordance with the equivalence set out in Annex III.
 - Although rules of equivalence are not applied to all provisions of the agreement, it provides implications on the equivalence between gross tonnage and length.

〈Table summary -1〉 Content of progressive implementation in Work in Fishing Convention

| Category | Content |
|---------------------|--|
| Article 10 clause 1 | • Requirement to obtain a valid medical certificate |
| Article 10 clause 3 | • Requirement to obtain a medical certificate of a fisher which normally remains at sea for more than three days |
| Article 15 | • Crew list |
| Article 20 | • Responsibility of a fishing vessel owner to ensure that each fisher has a written fisher's work agreement |
| Article 33 | • Risk evaluation in relation to fishing |
| Article 38 | • Protection in the case of work-related sickness, injury or death |

Source: Prepared by the author

- Areas that require the amendment of Korean law in response to the ratification of Work in Fishing Convention are stated in 〈Table-summary -2〉 as below;

〈Table summary-2〉 Areas that require the amendment of domestic law in response to ratification of the Work in Fishing Convention

| Classification | | Work in Fishing Convention | Content of amendment in domestic law |
|--|------------|---|---|
| Part 1 Definitions and scope | Article 1 | Definition | • The Seafarers' Act article 2 (definitions) |
| | Article 2 | Scope | • The Seafarers' Act (Scope) |
| | Article 3 | Exclusion | |
| Part 2 General Principles | Article 6 | Implementation | |
| | Article 7 | Competent authority and coordination | • Consider the possibility of progressive implementation |
| | Article 8 | Responsibilities of fishing vessel owners, skippers and fishers | |
| Part 3 Minimum requirements for work on board fishing vessels | Article 9 | Minimum age | • Restrictions relevant to minimum age of fishing vessel workers are absent in the Seafarers' Act but able to correspond to the Labor Standard Act (Article 64, 65, Enforcement decree article 35, Enforcement regulation article 11) • Those related to night work can correspond to article 92 of the Seafarers' Act |
| | Article 10 | Medical examination | • Partially able to correspond to article 87 and clause 2 of article 52 of the Seafarers' Act • Need to amend enforcement regulations of the Seafarers' Act in regard to specifics including the content and period of validity of medical certificates |
| | Article 11 | | |
| | Article 12 | | |

| Classification | | Work in Fishing Convention | Content of amendment in domestic law |
|----------------------------------|------------|----------------------------|---|
| Part 4 Conditions of service | Article 13 | Manning and hours of rest | <ul style="list-style-type: none"> • Need to amend article 65 and article 75 of the Seafarers' Act (including fishing vessels) |
| | Article 14 | | |
| | Article 15 | Crew list | <ul style="list-style-type: none"> • Able to correspond to article 20 and article 40 of the Seafarers' Act |
| | Article 16 | Fisher's Work Agreement | <ul style="list-style-type: none"> • Able to correspond to article 27 of the Seafarers' Act and article 17 and enforcement decree article 8 of the Labor Standard Act • Need to amend relevant regulations within the Seafarers' Act and enforcement decree of the Seafarers' Act considering the Annex II • Need to establish a provision related to work agreement within the Seafarers' Act |
| | Article 17 | | |
| | Article 18 | | |
| | Article 19 | | |
| | Article 20 | | |
| | Article 21 | Repatriation | <ul style="list-style-type: none"> • Need to review the content relevant to the cost of repatriation stipulated in article 38 of the Seafarers' Act |
| | Article 22 | Recruitment and Placement | <ul style="list-style-type: none"> • Partially able to correspond to the Seafarers' Act but need to amend enforcement decree in order to supplement specific items of the agreement |
| Part 5 Accommodation and food | Article 23 | Payment of fishers | <ul style="list-style-type: none"> • Need to amend article 53 of the Seafarers' Act |
| | Article 24 | | |
| | Article 25 | Accommodation and food | <ul style="list-style-type: none"> • Need to adjust the scope of fishing vessels that require the implementation of measures with respect to accommodation • Need to complement provisions in the Seafarers' Act relevant to free food and operational cost • Need to complement enforcement decree article 32 of the Seafarers' Act concerning food and drinking water |
| | Article 26 | | |
| | Article 27 | | |
| | Article 28 | | |

| Classification | Work in Fishing Convention | Content of amendment in domestic law |
|--|----------------------------|--|
| Part 6 Medical care, health protection, and social security | Article 29 | <ul style="list-style-type: none"> • Require to stipulate a mandatory carriage of appropriate medical equipment and medical supplies in the Seafarers' Act • Need to change the role of medical service provider carried out under the current law to the role of shipowners • Need to review relevant provisions in article 84, article 85 and article 85 of the Seafarers' Act in regards to those in charge of medical service on board the ship • Need to remove the conditional clause of article 49 of the Enforcement decree of the Seafarers' Act • Need to complement article 82 and article 89 of the Seafarers' Act concerning the medical treatment on land |
| | Article 30 | |
| | Article 31 | <ul style="list-style-type: none"> • Need to specifically stipulate roles and requirements of shipowners and skippers when establishing on-board safety standards for the prevention of occupational accidents, injuries and diseases • Need to complement article 82 of the Seafarers' Act in regards to shipowners' obligation to provide protection gear equipment to fishing vessel workers • Include fishing vessel workers in education provisions of the Seafarers' Act • Need to complement article 79 of the Seafarers' Act in regards to risk assessment |
| | Article 32 | |
| | Article 33 | |
| | Article 34 | <ul style="list-style-type: none"> • Need to complement the overall content of social security in the Seafarers' Act |
| | Article 35 | |
| | Article 36 | |

| Classification | | Work in Fishing Convention | Content of amendment in domestic law |
|--------------------------------------|------------|--|--|
| | Article 37 | Protection in the case of work-related sickness, injury or death | <ul style="list-style-type: none"> • Despite being in place in the current system, these measures need adjustment due to their complexity which results in confusion (article 106 of the Seafarers' Act, article 3, 6, 16, 49 of the Act on Accident Compensation Insurance for Fisheries and Fishing Vessels, article 6 of the Industrial Accident Compensation Insurance Act, article 2 of the Enforcement Decree of the Industrial Accident Compensation Insurance Act) • Need to conduct a comparative review with workers on land |
| | Article 38 | | |
| | Article 39 | | |
| Part 7 Compliance and enforcement | Article 40 | Compliance and enforcement | <ul style="list-style-type: none"> • Need to complement article 132 of the Seafarers' Act in regards to the obligation of a port state |
| | Article 41 | | |
| | Article 42 | | |
| | Article 43 | | |
| | Article 44 | | |

Source: Prepared by the author

- The Cape Town Agreement mandates safety measures not concerning all fishing vessels but only those fishing vessels of 24 m in length or 300 tons in weight or more.
- This is because the representative size of fishing vessels operating in international waters is 24 meters/300 tons and over. Those shorter than 24 meters are generally operating within an

exclusive economic zone, which is subject to state's safety regulations

- ▶ Consisting of a total of 10 chapters, the Cape Town Agreement varies in regards to fishing vessels subject to application and periods until implementation by chapters.
 - The Cape Town agreement stipulates that those between chapters 2 and 6 should be implemented upon ratification of the agreement. However, the agreement allows progressive implementation in regards to chapter 10 which means implementation must be carried out within 5 years of ratification, while implementation for chapter 9 should be complete within 10 years from ratification.
- ▶ The table below illustrates specific areas of domestic law that require amendment in respond to the ratification of the Cape Town Agreement

〈Table summary-3〉 Areas of domestic law requiring the amendment in respond to the ratification of the Cape Town Agreement

| Category | Cape Town Agreement | Content of the amendment in domestic law | Remarks |
|------------------------------|--|--|---------|
| Application scope | <ul style="list-style-type: none"> • Chapter I ~VI are applied upon ratification of the agreement • Chapter VII-X are progressively implemented within 5 to 10 years | <ul style="list-style-type: none"> • Apply structural change upon ratification of the agreement (new vessel) • Mandate equipment installment within 5 to 10 years of the ratification. | |
| Chapter 1 General provisions | <ul style="list-style-type: none"> • 24 meters in length • Application of gross tonnage is available | <ul style="list-style-type: none"> • Need to select between length and gross tonnage for the application of domestic law | |

| Category | Cape Town Agreement | Content of the amendment in domestic law | Remarks |
|--|--|---|-------------------------------------|
| Chapter 2 Structures, watertightness, and design | <ul style="list-style-type: none"> • Conform to the SOLAS | <ul style="list-style-type: none"> • Need to change domestic law on the basis of merchant vessels • Add a provision relevant to acts on interference | In connection with Polar code |
| Chapter 3 Stability and sea worthiness | <ul style="list-style-type: none"> • Technological standards at the time of signing the agreement | <ul style="list-style-type: none"> • Need to revise the agreement to apply current technological standards • Need to establish domestic official standards of sea area information • Require industrial discussion on polar navigation | In connection with Polar code |
| Chapter 4 Engine, electricity, unmanned engine, zone | <ul style="list-style-type: none"> • Installment of additional device to engine and electrical system | <ul style="list-style-type: none"> • Able to correspond to the amendment of 'Fishing Vessel Engine Standard' and 'Standard for Fire Prevention Facilities in Ships' | |
| Chapter 5 Fire prevention, detection and extinguishment | <ul style="list-style-type: none"> • Modify relevant structures and install devices | <ul style="list-style-type: none"> • Need to legislate domestic law in relation to fire protection system • Need to amend 'Fishing Vessel Facility Standard' and 'Enforcement Decree of Fishing Vessels Act' • The construction of fire protection facility can be applied in case of new construction | Absence of relevant domestic law |
| Chapter 6 Protection of crews on board | <ul style="list-style-type: none"> • Conform to the SOLAS | <ul style="list-style-type: none"> • Absence of domestic law concerning some regulations | Related to Annex 8 Need to check |

| Category | Cape Town Agreement | Content of the amendment in domestic law | Remarks |
|---|--|--|---------|
| Chapter 7 Lifesaving appliance, equipment | <ul style="list-style-type: none"> • Additionally install relevant facilities | <ul style="list-style-type: none"> • Absence of domestic law in regards to the installment of lifeboats etc. • Need to discuss with the industry since the installment of lifeboats will increase the cost of shipping companies due to expanding the size of the ship | |
| Chapter 8 Emergency action, response drills | <ul style="list-style-type: none"> • Conform to the SOLAS | <ul style="list-style-type: none"> • Absence of domestic law concerning some regulations | |
| Chapter 9 Wireless communications | <ul style="list-style-type: none"> • Conform to the SOLAS | <ul style="list-style-type: none"> • Able to respond with the amendment of domestic law | |
| Chapter 10 Ship navigation facility, equipment | <ul style="list-style-type: none"> • Technological standards at the time of signing the agreement | <ul style="list-style-type: none"> • Need to revise the agreement to apply current technological standards • Need to discuss with the industry for mandatory installation | |

Source: Reconstructed by the author based on interview materials with the Korean Register as reference

〈Table summary – 4〉 Comparison of application subjects between the Work in Fishing Convention and the Cape Town Agreement

| Name of the agreement | Application subject (in principle) | Relevant domestic law |
|----------------------------|---|--|
| Work in Fishing Convention | <ul style="list-style-type: none"> • All fishing vessels and fishing vessel workers engaging in commercial fishing operations in principle (article 2) | <ul style="list-style-type: none"> • Fishing vessels of 20t and over: the Seafarers' Act • Fishing vessels of less |

| Name of the agreement | Application subject (in principle) | Relevant domestic law |
|-------------------------|---|--|
| | <ul style="list-style-type: none"> • But, there are provisions for exclusion and progressive implementation • Immediate implementation is applied to fishing vessels of 24m and over, fishing vessels that remain at sea for more than 7 days, those normally navigate at a distance exceeding 200 nautical miles from the coastline, and fishing vessels subject to port State control | than 20t: the Labor Standard Act, Minimum Wage Act, Industrial Accident Compensation Insurance Act etc. |
| The Cape Town Agreement | <ul style="list-style-type: none"> • Newly constructed vessels of 24m (300t) and over operating in international waters • There is a provision for expanding the application to existing ships | <ul style="list-style-type: none"> • Fishing Vessels Act, the Standards for Fishing Vessel Facilities, Distant Water Fisheries Development Act etc. |

Source: Prepared by the author

2) Policy suggestions and relevant activities

- It is necessary to develop and proceed with a basic plan for enhancing the rights of both domestic and foreign fishing vessel workers.
 - With an extremely low ratio of domestic fishing vessel workers currently employed and an increasing ratio of foreign fishing vessel workers, it is imperative to promote the rights of foreign fishing vessel workers while improving conditions of their labor.

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- From the viewpoint of a long-term perspective, it is necessary to improve the general conditions of fishing operations to raise the number of domestic workers.
 - Adjustments to the wage criteria and the establishment of standards for limiting labor hours are urgently required to improve the working conditions of fishing vessel workers.
 - ▶ The following measures should be implemented from a long term perspective, which includes; the establishment of safety inspection standards for fishing operation facilities to reduce fishing boat related accidents; development of personnel protective equipment and strengthened safety management of fishing vessels with a single person on board, and the establishment of accident reduction strategies by causes.
 - Training for fishing vessel workers should be carried out side by side.
 - ▶ A comprehensive strategy should be established in connection with the management of IUU fishing.
 - Institutional standards in Korea should continue to be improved and amended in order to be sufficient in comparison to other major countries as well as to meet international standards, further to be able to preemptively respond to IUU fishing issues which may potentially arise in the future.
 - ▶ It is essential to take a flexible approach considering the potential impact on the Korean economy when taking agreements, exemptions and regulations for progressive application into account.

- For areas requiring immediate implementation, an exception from progressive implementation, in particular, fishing vessels of 24 meters in length and over shall be subject to the Work in Fishing Convention (C 188), which is in urgent need of preparation.
- This study summarized the short-, mid- and long-term implementation roadmap to achieving the policy suggestions mentioned above as stated below:

〈Table summary-5〉 Implementation Roadmap

| Category | Major tasks | Specific tasks |
|------------|--|---|
| Short-term | Improving the legal governance such as the Seafarers' Act | <ul style="list-style-type: none"> • Reflect the agreement to fishing vessels of 24m and over |
| | Enhancing labor conditions of foreign fishing vessel workers | <ul style="list-style-type: none"> • Improve the process of employment (Public sector's involvement in the process of expatriation and admission of a country) • Correct areas in violation of human rights including confiscating passports and staying in a detention center etc. (Restructuring the Immigration Act) • Reducing employment frauds (prohibition of deposit in the event of runaway) • Improve abusive language, violations and accommodation issues in ships (application of the Labor Standards Act/the Seafarers' Act while strengthening supervision) • Amend the Labor Standards Act/the Seafarers' Act to meet the Standards of ILO |
| Mid-term | Improving the legal governance such as the Seafarers' Act | <ul style="list-style-type: none"> • Establish a cooperation system with relevant government departments for ratification and effective enforcement of the agreement |

| Category | Major tasks | Specific tasks |
|-----------|--|--|
| | Enhancing labor conditions of foreign fishing vessel workers | <ul style="list-style-type: none"> • Ensure rest time and holidays • Reduce the income gap with local fishing vessel workers • Improve the discrimination in accident compensation (apply the Industrial Accident Compensation Insurance Act) • Increase the number of labor supervisors and conduct relevant training |
| Long-term | Supporting the overall restructuring of the Korean fishery industry/ Boosting education and awareness | <ul style="list-style-type: none"> • Education training and improving the Seafarer's Officer license in connection with STCW-F |

Source: Prepared by the author

3) Expected benefits including policy contribution

- ▶ South Korea should ratify the Work in Fishing Convention and the Cape Town Agreement and rearrange relevant domestic laws including the Seafarers' Act and the Fishing Vessel Act in order to ensure the safety of fishing vessels and promote human and labor rights of workers. Thereby, it is important to make continued effort to enhance basic rights of fishing vessel workers in regard to labor standards, minimum wage, rest time, industrial accident compensation, industrial safety and health as well as the prevention of accidents.
- To promote the basic rights of fishing vessel workers and improve the safety of fishing vessels, the government should

prepare specific short-, mid-, long-term support measures under an overall master plan.

- Improvement of legal frameworks as well as its content will ultimately contribute to enhancing working conditions, life safety and welfare of fishing vessels workers.