

CAN THE CPTPP HELP? THE (UN)EXPECTED ROLES OF THE CPTPP TO ERADICATE FORCED LABOR ISSUES IN TAIWANESE DISTANT WATER FISHERIES

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Abstract

Labor rights and working conditions may be affected if international trade and investment agreements are concluded between contracting parties. Some assert that these agreements advance states' labor conditions because boosting economic activities creates job opportunities and raises wages. Others are concerned that the “race-to-the-bottom” phenomenon might occur, namely, governments would be incentive to lower their labor protection standards to reduce manufacturers' operation costs and enhance the competitiveness of their global exports. Hence, the interplay between economic integration and the labor welfare of participating states has been emphasized by both policymakers and legal academics. In response, contemporary international economic agreements incorporate more “non-economic” elements. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is ambitious because it provides high-quality standards and a new platform to address broad coverage of labor matters (e.g., minimum wages, hours of work, and occupational safety and health) by establishing the link between labor protection and trade liberalization. This link ensures that implementing the CPTPP strengthens members' capacity to fulfill labor protection standards.

Taiwan is an island country rich in marine resources. Hence, fishing has long constituted an important part of Taiwan's economy. Taiwan currently has more than a thousand distant water fishing fleets, which is second only to China. Unfortunately, forced labor issues, exploitation recruitment, and human trafficking have been reported against Taiwan's migrant fishers. Since 2017, Taiwan has reformed its relevant legal framework to strengthen the protections of its crews. Despite the changes, NGO investigations reveal that wage deductions and overtime work allegedly continue. The inclusion of several Taiwanese fishing vessels on the United States Forced Labor List in 2020 is another strike against the Taiwanese government after being lifted from the European Commission's “Yellow Card” list.

Taiwan has recently applied to join the CPTPP. However, failing to offer equal and fundamental protections stipulated in the CPTPP may arguably constitute a stumbling block for Taiwan's accession into the CPTPP since some CPTPP members are the primary home countries for migrant fishers in Taiwan. Therefore, this paper examines whether Taiwan's current legal landscape regarding the protection of migrant fishers satisfies both the requirements set by the CPTPP and other relevant international labor standards, including the International Labour Organization conventions and the forced labor indicators. Specifically, this paper conducts a content analysis and in-depth interviews to identify how legal protections granted to migrant fishers are deficient and how Taiwan can improve them. By focusing on the labor chapter and relevant provisions of the CPTPP, this paper demonstrates how accession into the CPTPP will provide a more effective

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collaborating mechanism that will facilitate multilateral cooperation between Taiwan and other members. The cooperation will jointly address the forced labor issues on distant water fishing vessels. The goal of this paper is to envisage legal and policy recommendations to facilitate Taiwan's accession into the CPTPP and polish Taiwan's regulatory framework that protects migrant fishers.

I. INTRODUCTION

On September 22, 2021, one week after China submitted its own application, Taiwan announced that it filed an application to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). According to President Tsai Ing-wen, her administration is pursuing regulatory amendments to align Taiwan's legal and policy environment with the CPTPP's high standards,¹ including commitments to market access for goods and services, investment, and intellectual property. Beyond its traditional economic criteria, however, the CPTPP has been touted as a "next-generation" free trade agreement that considers non-economic policy concerns, including international labor and environmental standards.

Taiwan is one of the largest national forces in distant water fishing. Due to the country's prolonged domestic labor shortage, demand for foreign crew members has soared since the 1990s. Today, migrant fishers constitute the major workforce in the Taiwanese fishing sector. However, NGOs have revealed that this Taiwanese industry occasionally suffers from forced labor and human trafficking, entailing wage deduction, excessive working hours, and physical violence. The unfortunate death of an Indonesian fisher, Supriyanto, onboard a Taiwanese fleet² alongside the impoundment of the Taiwanese distant water fishing vessel "Fuh Sheng No. 11" in South Africa prompted both the Taiwanese government and international society to seriously confront the issue of forced labor in the Taiwanese fishing industry.³ Recently, the U.S. Department of Labor (DOL) released its 2020 "List of Goods Produced by Child Labor or Forced Labor," which included Taiwanese fishing products for the first time. According to the DOL, "crews on Taiwan-flagged vessels face confiscation of documents, long days with little rest, physical and verbal abuse, and lack of payment."⁴ In 2022, U.S. Customs and Border Protection applied the forced labor indicators developed by the International Labour Organization (ILO) to Da Wang, a fishing vessel flying Vanuatu's flag but with the Taiwanese beneficiary, accusing it of harvesting seafood using forced labor.⁵ While Taiwan has taken measures to protect migrant fishers' rights and eliminate labor abuses, there is undoubtedly still room for improvement, especially in terms of alignment with international labor standards through increased inspection frequency and international cooperation.

Needless to say, the Chinese government's firm opposition to Taiwan's engagement in international society and China's increasing geopolitical power in the Asia-Pacific region are always foreseeable stumbling blocks to Taiwan's bid to join the CPTPP. Thus, it is tremendously important for Taiwan to pursue support from CPTPP members and, more broadly, the international community. Taiwan should also polish its own preparatory works, such as revising or reforming current domestic laws and regulations that deviate from the standards set by the CPTPP. For Taiwan, its challenges in complying with the CPTPP include certain import bans on agricultural products, high tariffs on automotive parts, rigid

¹ Taiwan applies to join CPTPP, Executive Yuan (Sept. 23, 2021), <https://english.ey.gov.tw/Page/61BF20C3E89B856/4ba3bc36-9a82-41eb-b00a-e8d0532edf5a>.

² Lin Yen-tung & William Hetherington, Indonesian fisherman's death sparks labor protest, Taipei Times (Dec. 28, 2016), <http://www.taipetimes.com/News/taiwan/archives/2016/12/28/2003662061>.

³ James X. Morris, *Is This the Start of an Illegal Fishing Crackdown in Taiwan?*, The Diplomat (Oct. 25, 2018), <https://thediplomat.com/2018/10/is-this-the-start-of-an-illegal-fishing-crackdown-in-taiwan/>.

⁴ U.S. Department of Labor, 2020 List of Goods Produced by Child Labor or Forced Labor, at 33, https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/2020_TVPRAListOnline_Final.pdf.

⁵ Notice of Finding That Certain Seafood Harvested by the Taiwanese Da Wang Fishing Vessel With the Use of Convict, Forced or Indentured Labor Is Being, or Is Likely To Be, Imported Into the United States in Violation of 19 U.S.C. § 1307, <https://www.federalregister.gov/documents/2022/01/28/2022-01778/notice-of-finding-that-certain-seafood-harvested-by-the-taiwanese-da-wang-fishing-vessel-with-the>.

regulations on service sectors, and other market access concerns in general.⁶ In my view, concerns pertaining to forced labor and abuse could also constitute an obstacle amid negotiations.

This is unavoidable, as the Taiwanese fishing industry's patterns of abuse have become internationally notorious, especially among the countries from which the suffering migrant fishers originate.⁷ Given that some of these countries are critical actors in the Indo-Pacific region as well as CPTPP members, Taiwan must address their concerns to facilitate its accession process of joining this mega-regional trade organization. Additionally, even if the U.S. is not a member of the CPTPP, Taiwan should pursue its support, as it could influence its allies to support Taiwan's accession bid.⁸ Boosting the rights of migrant fishers and removing itself from the DOL's list are essential steps for Taiwan to gain bipartisan support in the U.S.⁹

In addition to the political and economic importance, this paper argues that the CPTPP's regulatory provisions and institutional arrangements—particularly its labor chapter—can contribute to Taiwanese reforms aimed at the welfare of migrant fishers. This paper is structured as follows. Section II details the unique labor dynamics of the Taiwanese fishing industry with a focus on forced labor. It also introduces the international legal framework pertaining to forced labor and migrant fishers' labor rights, examining Taiwan's current legal environment to identify discrepancies. Next, section III details the advantages of leveraging trade agreements to reinforce labor protections, examining how trade and workers' rights can be mutually complementary. It elucidates the CPTPP's labor chapter, and its regulatory and cooperative model for achieving synergies between trade and labor rights. Section IV explains how the desire to join the CPTPP can impose inward pressure on Taiwan to reinforce its compliance with international labor standards. Moreover, it illuminates the institutional arrangements established by the CPTPP's labor chapter—which are relatively overlooked in the existing literature—and their role as both a facilitator of bilateral cooperation between Taiwan and migrant fishers' home states and an open channel through which Taiwan can establish a closer and formal relationship with the ILO. Section V offers some concluding remarks.

II. THE INTERNATIONAL AND TAIWANESE LEGAL FRAMEWORKS ON MIGRANT FISHING WORKERS: A COMPARATIVE ANALYSIS

A. Forced Labor Issues in the Global Fishing Sector

Commercial fishing constitutes one of humanity's most important food sources; notably, it offers animal protein, which is essential to food security. However, fisheries

⁶ Roy Lee, *CPTPP Membership for Taiwan: Rationales, Challenges, and Outlook*, University of Nottingham Taiwan Studies Programme (June 30, 2022), <https://taiwaninsight.org/2022/06/30/cptpp-membership-for-taiwan-rationales-challenges-and-outlook/>.

⁷ *The Labor Protection Issues Become Potential Hurdles for Taiwan's Bid for CPTPP*, PUBLIC TELEVISION SERVICE (Oct. 1, 2021), <https://news.pts.org.tw/article/547272>. Chien-Hung Lee, *The High Standards of CPTPP Labor Chapter*, 69 TAIWAN LABOR QUARTERLY (Mar. 2022), <https://www.mol.gov.tw/media/bjijnwyke/%E5%8F%B0%E7%81%A3%E5%8B%9E%E5%B7%A5%E5%AD%A3%E5%88%A8%69-%E6%A8%82%E8%AA%AA%E9%A0%AD%E6%A2%9D-%E8%B7%A8%E5%A4%AA%E5%B9%B3%E6%B4%8B%E5%A4%A5%E4%BC%B4%E5%85%A8%E9%9D%A2%E9%80%B2%E6%AD%A5%E5%8D%94%E5%AE%9A-cptpp-%E4%B9%8B%E9%AB%98%E6%A8%99%E6%BA%96%E5%8B%9E%E5%8B%95%E8%A6%8F%E7%AF%84-%E6%9D%8E%E5%81%A5%E9%B4%BB.pdf?mediaDL=true>.

⁸ See PASHA L. HSIEH, *NEW ASIAN REGIONALISM IN INTERNATIONAL ECONOMIC LAW* 191 (2022).

⁹ See Jacques deLisle, *Taiwan's Quest for International Space: Ma's Legacy, Tsai's Options, China's Choices, and U.S. Policy*, 60 *Orbis* 550, 566-67 (2016).

have long been considered a “3D” industry: dirty, dangerous, and demanding.¹⁰ Currently, over 56 million people work on vessels involved in commercial fishing, which is thought to be one of the world’s most hazardous industries.¹¹ Commercial fishers often work in poor, indecent working environments that feature unpredictable weather conditions, simple and crude accommodations, and the hazardous unpredictability of marine environments. Circumstances are even worse for those hired by vessel owners with different nationalities from their own. According to the ILO, migrant fishers are often placed in environments that are detrimental to their physical and mental health. They are forced to endure excessive working hours with very low pay, and their work is intense, difficult, and dangerous. Additionally, the vessels on which they work often lack decent accommodation and have limited access to healthy food and clean water. They are at great risk of injury due to a lack of workplace training and safety equipment. Migrant fishers are constantly exploited and mistreated due to language barriers, cultural differences, and insufficient knowledge regarding the legal remedies to which they are entitled in both their home and flag states. In 2020 alone, the Foreign Ministry of Indonesia received 1,451 appeals from Indonesian nationals working on foreign fishing vessels. Accordingly, there are rising concerns over the forced labor, human trafficking, and worker exploitation around the world.¹² Many NGOs and civil groups advocate for strengthening legal protections for migrant fishers.

With that being said, reinforcing the legal protection for migrant fishers is not an easy task because of various reasons. First and foremost, neither migrants’ home countries nor flag states have clear, detailed information on the number of migrant fishers employed by vessel owners. This lack of comprehensive data has hindered monitoring and regulatory efforts.¹³ Moreover, migrant fishers are often employed by distant water fishing vessels that venture further into the high seas, which are far beyond the administrative control and jurisdiction of coastal nations. Occasionally, they work on flag-of-convenience (FoC) vessels, which are those owned by operators of the receiving state but flagged to third countries with weaker regulatory systems to reduce costs and avoid scrutiny.¹⁴ Hence, identifying the responsible actors behind forced labor and worker abuse is extremely complicated and time-consuming; convicting them once they are identified is also difficult in many cases. Finally, even when workers’ flag states and home states have laws and regulations aimed at protecting migrant fishers, there is often a stark gap between the “law on the books” and the “law as implemented.” Labor inspections are rarely thoroughly carried out in the migrant fishers’ sectors, leaving many labor abuses and exploitations hidden. These factors all contribute to making migrant fishers the most vulnerable and neglected group in the fishing industry.

B. International Legal Framework on Forced Labor in the Fishing Sector

¹⁰ Lisa Rende Taylor, *Modern-day slaves are working in our food supply — but it's a problem that can be fixed*, CNBC (Feb. 13, 2018), <https://finance.yahoo.com/news/modern-day-slaves-working-food-013600170.html>.

¹¹ Sally Yozell & Amanda Shaver, *Shining a Light: The Need for Transparency across Distant Water Fishing*, STIMSON (Nov. 1, 2019), <https://www.stimson.org/2019/shining-light-need-transparency-across-distant-water-fishing/>.

¹² ILO, *Work in Fishing Convention No. 188 and Recommendation No. 199*, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_161209.pdf.

¹³ *Migrant fishers prone to modern slavery*, INTERNATIONAL LABOUR ORGANIZATION (Dec. 20, 2021), https://www.ilo.org/jakarta/info/public/fs/WCMS_832460/lang-en/index.htm.

¹⁴ EJF, *Blood And Water: Human Rights Abuse in the Global Seafood Industry*, <https://ejfoundation.org/resources/downloads/Blood-water-06-2019-final.pdf> (2019); see also EJF, *Lowering the Flag: Ending the Use of Flags of Convenience by Pirate Fishing Vessels*, <https://ejfoundation.org/resources/downloads/Lowering-the-flag.pdf> (2009).

1. ILO Forced Labour Conventions, 2014 Protocols, and the ILO Declaration on Fundamental Principles and Rights at Work

Advocating for decent occupational environments and working conditions for migrant fishing workers is emphasized by the United Nations Sustainable Development Goals (SDGs). Item 8.7 of the SDGs suggests countries taking immediate and effective measures to eradicate forced labor, modern slavery and human trafficking in all its forms.¹⁵ This notion of actively working to prevent forced labor has long been recognized by the international community. The fundamental legal framework concerning eradicating forced labor in all forms is built by two major ILO Conventions – ILO Forced Labour Convention, 1930 (No. 29) and ILO Abolition of Forced Labour Convention, 1957 (No. 105). The ILO Forced Labour Convention became open to signing in 1930; today, it is a widely ratified multilateral convention with 179 contracting parties.¹⁶ In the same vein, adopted in 1957, the ILO Abolition of Forced Labour Convention advances and complements the 1930 Convention by requiring the ILO member states to immediately abolish forced labor by the state for economic development purposes, for maintaining discrimination based on race and religion, or as a means of political coercion.¹⁷ The 1957 Convention is also universally ratified by the ILO member states, with 178 contracting parties as of today.¹⁸

More recently, in response to the evolving nature of forced and compulsory labor, the ILO added the Protocol of 2014 to the Forced Labour Convention to supplement the ILO Forced Labour Convention signed almost a century ago. Within these legal instruments, “forced labour” comprises “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”¹⁹ Grounded on this definition, the ILO further develops 11 indicators that represent the most common signs of the possible existence of the occurrence of forced labor situations, including (1) abuse of vulnerability; (2) deception; (3) restriction of movement; (4) isolation; (5) physical and sexual violence; (6) intimidation and threats; (7) retention of identity documents; (8) withholding of wages; (9) debt bondage; (10) abusive working and living conditions; and (11) excessive overtime.²⁰ Under the Forced Labour Convention and its accompanying protocol, countries must develop national policies and plans of action to eliminate forced labor in consultation with employer and worker organizations and other relevant actors.²¹ Specifically, the Protocol of 2014 highlights the potential of the abuse of migrant workers during the recruitment and placement processes.²² If a country discovers forced labor within its territory, it must work to provide all victims with accessible and effective remedies to the situation regardless of their current

¹⁵ *Sustainable Development Goals*, United Nations, <https://www.unodc.org/roseap/en/sustainable-development-goals.html> (last visited July 15, 2022).

¹⁶ *Ratifications of C029 - Forced Labour Convention, 1930 (No. 29)*, International Labour Organization, https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174.

¹⁷ ILO Abolition of Forced Labour Convention (No. 105), Art. 1.

¹⁸ *Ratifications of C105 - Abolition of Forced Labour Convention, 1957 (No. 105)*, International Labour Organization, https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312250.

¹⁹ ILO Forced Labor Convention (No. 29), Art. 2.1.

²⁰ ILO, *ILO Indicators of Forced Labour*, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf.

²¹ Protocol of 2014 to the Forced Labour Convention, Art. 1.

²² Protocol of 2014 to the Forced Labour Convention, Art. 2(d).

migration or legal status.²³ The requirements laid out in the 1930 and 1957 ILO conventions regarding forced labor and its accompanying protocol have been reaffirmed and consolidated by the 1998 ILO Declaration on Fundamental Principles and Rights at Work (ILO Declaration), which recognizes the elimination of forced and compulsory labor as a fundamental labor right that all ILO members are obligated to respect, promote and realize this principle, regardless of their signatory status on the Forced Labour Convention.²⁴ These ILO legal instruments constitute the fundamental global labor standards with regard to forced labor.

2. ILO Work in Fishing Convention, 2007 (No. 188)

Despite many legal instruments having been adopted by the ILO to enhance labor standards and workers' treatment, the special nature of the working conditions in the fishing industry were long neglected. At the domestic level, migrant fishers are commonly excluded from state labor laws. Even if migrant workers are covered by labor protections, they are systematically discriminated against in terms of their benefits and treatment. Hence, there is an urgent need for more up-to-date legal instruments and global labor standards that effectively guide states to ensure a decent working environment and equal treatment to workers in this sector.²⁵

Amid these circumstances, the ILO Work in Fishing Convention 2007 (ILO Convention No. 188) was tailored to reflect the unique features of the fishing industry and passed with overwhelming support in June 2007. This convention "sets the basic standards of decent work in the fishing industry. [The ILO's] commitment is to work to make this Convention one that provides effective protection for all of the people who work in this sector."²⁶ The convention's scope includes all fishers and fishing vessels engaged in commercial fishing operations.²⁷ It outlines binding requirements for contracting states, mandating them to implement laws and regulations that address the primary concerns stemming from fishing work. The convention covers occupational safety, living conditions, minimum wage, health and medical care/insurance, rest periods, recruitment processes, mandatory and prohibitive provisions in work agreements, and social security. The main purpose of ILO Convention No. 188 is to ensure that fishing vessels are managed in a way that guarantees migrant fishers decent working and living conditions on board. Moreover, it compels contracting states to establish investigation and grievance mechanisms to respond to workers' complaints, aiding them in the prevention of forced labor, human trafficking, and other occupational abuses.

The enhancement of foreign crew members' onboard living and working conditions is critical to the maintenance of their physical and mental health as well as the prevention of labor exploitation in distant water fisheries. To this end, Part III of the convention sets the minimum requirements for work aboard fishing vessels. More specifically, Article 9 of the Convention sets the minimum age of a worker on a fishing vessel as 16 years old.²⁸ To ensure the capabilities and well-being of fishing workers, all fishers working onboard a

²³ Protocol of 2014 to the Forced Labour Convention, Art. 4.

²⁴ <https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>

²⁵ International Labour Organization, Conditions of work in the fishing sector A comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector: Fifth item on the agenda, 17 (Report V(1), 2003).

²⁶ *ILO Work in Fishing Convention No.188 (2007) enters into force*, INTERNATIONAL LABOUR ORGANIZATION (Nov. 16, 2017), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_596898/lang--en/index.htm.

²⁷ International Labour Organization Work in Fishing Convention, 2007 (No. 188) [“ILO Convention No. 188”], Art. 2.1.

²⁸ ILO Convention No. 188, Art. 9.1.

fishing vessel shall obtain a valid medical certificate attesting to fitness to perform their duties.²⁹ Each contracting state must implement accessible medical evaluations to guarantee that these standards are met.³⁰ The convention also prescribes a minimum number of rest hours for fishing workers aboard vessels: at least ten hours within any 24-hour period and 77 hours within any seven-day period.³¹ Article 20 of the convention asserts that vessel owners must provide “decent work and living conditions on board the vessel...”³² Annex III of the convention details certain fundamental elements of accommodations for vessel workers.³³ Vessels must provide adequate living conditions, dining places, sleeping quarters, and sanitary facilities. Potable water and nutritionally adequate food that meets workers’ religious and cultural needs must be available to a sufficient degree. The convention also addresses other fundamental facilities, such as adequate lighting, heating, and air-conditioning systems, laundry rooms, and accessible means of communication.³⁴

Regarding recruitment, placement, and the content of employment contracts, the convention establishes several requirements aimed at boosting the transparency of hiring procedures and ensuring fair work agreements. Article 16 states that member states shall adopt laws and regulations that reinforce the comprehensibility of employment contracts.³⁵ Notably, Annex II of the convention sets minimum standards for employment contracts, such as wage enumeration, health and social security coverage, and conditions for contract termination.³⁶ As brokers and other intermediaries are frequently accused of being responsible for exploitative recruitment practices, the convention mandates member states to establish a standardized system of licensing, certification, and evaluation to ensure proper recruitment and placement processes.³⁷ Fishers’ wages are to be paid monthly through mutually agreed-upon methods.³⁸ Part VI of the convention addresses vessel workers’ medical care, accident avoidance, compulsory insurance covering work-related sickness, injury, or death, and social security.³⁹ The convention also asserts that vessel owners must be financially responsible for these provisions.

Regarding the establishment of effective grievance mechanisms, Article 17 of ILO Convention No. 188 requires countries to adopt laws or other measures regarding “the means of settling disputes in connection with a fisher’s work agreement.”⁴⁰ Such dispute-settlement mechanisms should be easily accessible to foreign fishermen.

Regular inspections are critical to ensure that the legal standards stipulated in ILO Convention No. 188 are fully enforced. Hence, Part VII of the convention requires member states to establish a system for ensuring compliance that includes inspections, reporting, monitoring, complaint procedures, penalties, and corrective measures. Member states’ relevant authorities shall appoint personnel to carry out monitoring and inspection procedures.⁴¹ Notably, as port states enjoy special jurisdictional privileges over the vessels that enter their ports, Article 43 of the convention empowers member states to inspect the fishing vessels that enter their ports. If they detect hazardous conditions that may threaten

²⁹ ILO Convention No. 188, Art. 10.1.

³⁰ ILO Convention No. 188, Art. 11.

³¹ ILO Convention No. 188, Art. 14.1.

³² ILO Convention No. 188, Art. 20.

³³ ILO Convention No. 188, Annex III.

³⁴ ILO Convention No. 188, Annex III.

³⁵ ILO Convention No. 188, Art. 16.

³⁶ ILO Convention No. 188, Annex II.

³⁷ ILO Convention No. 188, Art. 22.

³⁸ ILO Convention No. 188, Arts. 23-24.

³⁹ ILO Convention No. 188, Arts. 29-39.

⁴⁰ ILO Convention No. 188, Art. 17.

⁴¹ ILO Convention No. 188, Art. 42.

the safety or health of vessel workers, they may take measures necessary to rectify such situations, including detaining and delaying suspected vessels. When conducting such investigations, port states must notify the nearest representative of the flag state and, if possible, have them present.⁴² The convention's inspection mechanism is supplemented by the accompanying Work in Fishing Recommendation (No. 199) as well as two sets of inspection guidelines.⁴³

Thus far, despite the convention not having gained universal ratification like the Forced Labour Convention, the fact that over 160 countries have signed this convention demonstrates its notion of establishing an international labor standard in the global fishing sector. Commentators also assert that it has had positive impacts on the labor rights of migrant fishers, as it complements the ILO's legal instruments pertaining to forced labor in the fishing industry. More specifically, the two annexes on "must-have" provisions in employment contracts and minimum standards of accommodation and occupational safety both offer instructive guidance for national and regional legislation, anchoring global standards for decent work on fishing vessels.⁴⁴ Most importantly, as the forced labor of migrant fishers is currently the primary concern of international society, ILO Convention No. 188 is generally read together with the ILO Convention on Forced Labor and its accompanying protocol—the most widely ratified international legal instruments under the ILO.

C. Discrepancies between Taiwan's legal framework and international labor standards

Migrant fishing workers have constituted an indispensable labor force in the Taiwanese fishing industry. However, interviews conducted by NGOs and government investigators reveal that fishing workers are often mistreated by recruiters or captains in a way that falls under the ILO's definition of forced labor. For example, some Indonesian fishers employed by Taiwanese vessel companies assert that they are constantly subjected to intimidation, threats of violence, or actual physical violence by their Taiwanese captains and crew members. Others had reported that their passports and identifying documents were seized by recruiters or vessel owners when they boarded vessels. More commonly, NGOs have repeatedly documented that migrant workers working on Taiwanese vessels face wage deductions, placing them in the form of debt bondage. They are frequently required to work excessively long hours and live in extremely poor conditions without clean water or healthy food. All of these circumstances suggest that Taiwan's fishing and seafood industries face systematic forced labor issues.

The Taiwanese government recently acknowledged the seriousness of the issue of forced labor in its fishing industry and began to work to enhance protections for migrant fishers. Despite Taiwan's unique international legal status, it is a critical actor in the global push to prevent exploitative recruitment practices. Recent years have seen Taiwan adopt numerous reforms in response to international criticism; it has branded itself as a responsible country in the governance of global fisheries. Despite it being unable to join the ILO or accede to the ILO conventions regarding forced labor and fishing workers' protection, it voluntarily implemented the Act for Distant Water Fisheries and promulgated the Regulations on the Authorization and Management of Overseas

⁴² ILO Convention No. 188, Art. 43.

⁴³ ILO, *Guidelines on flag State inspection of working and living conditions on board fishing vessels*, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/normativeinstrument/wcms_428592.pdf (2017).

⁴⁴ Stanford Center for Ocean Solutions, *The Outlaw Ocean Report: An Exploration of Policy Solutions to Address Illegal Fishing and Forced Labor in the Seafood Industry*, at 7 (2020).

Employment of Foreign Crew Members (henceforth referred to as “the Regulations”) to domesticize the international standards and recommendations set by the ILO. In 2022, the Fisheries Agency of Taiwan further announced the “Action Plan for Fisheries and Human Rights”, a national policy led by the Executive Yuan across different government agencies to jointly improve working conditions on fishing vessels in accordance with international standards.⁴⁵

While Taiwan has allegedly made significant efforts that have been acknowledged by the international community, it is undeniable that it must still overcome several deficiencies—especially when it comes to the law enforcement aspect. As the Environmental Justice Foundation (EJF) insightfully points out: “It is encouraging to see the Taiwan Fisheries Agency is taking steps to improve legal measures to protect the human rights of migrant fishers. However, there are still significant gaps between the well-intended legal reforms and the reality at sea.”⁴⁶ Below are the most common concerns raised by the international community.

First, Taiwan’s regulatory framework is criticized by NGOs for leading to discriminatory treatment against distant water fishing workers, as it excludes them from enjoying Taiwan’s fundamental labor standards. To elaborate, under Taiwan’s legal framework, migrant fishers working in distant water fishing vessels are not subject to the Taiwanese labor laws governing the labor rights applicable to domestic workers. Instead, their rights and benefits are governed specifically by the Act for Distant Water Fisheries⁴⁷ and the Regulations.⁴⁸ In comparison with domestic workers, migrant fishers have a lower minimum wage (USD 550 as of today, which is far lower than the minimum wage (USD 850) for domestic workers), lack the standard labor insurance and national health insurance provided to most Taiwanese workers, and are practically unable to organize or join labor unions.⁴⁹

Second, even if Taiwan’s legal framework is allegedly stemmed from international labor standards, its implementation is lacking: Issues of wage deduction and debt bondage still exist in practice. Contractual relationships among workers, Taiwanese operators, and intermediaries are complicated, making it difficult to identify the level at which exploitation is occurring. For example, the Regulations prohibit Taiwanese manning agents from charging service fees.⁵⁰ However, workers still report being charged recruitment fees by brokers or agencies in Taiwan and their home countries. Additionally, while Taiwanese vessel owners and workers are required to sign employment contracts based on the template provided by the Taiwan Fisheries Agency and submit them to the Taiwanese government, their duties and obligations are usually governed by an underneath contract signed in the workers’ home countries.⁵¹ Unless disputes occur, this *de facto* employment

⁴⁵ *Taiwan, EU stage 4th Human Rights Consultations*, Taiwan Today (July 19, 2021), <https://taiwantoday.tw/news.php?unit=2,6,10,15,18&post=204473>. See also Kuo-Wei Yen & Li-Chuan Liu Huang, *A review of migrant labour rights protection in distant water fishing in Taiwan: From laissez-faire to regulation and challenges behind*, 134 *Marine Policy* 1 (2021).

⁴⁶ Mark Godfrey, *Taiwan Responds to NGO Reports on Forced Labor within Its Fishing Fleet*, Seafood Source (Apr. 2, 2021), <https://www.seafoodsource.com/news/environment-sustainability/taiwan-responds-to-ngo-reports-on-forced-labor-within-its-fishing-fleet>.

⁴⁷ Act for Distant Water Fisheries (Taiwan), <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=M0050051>.

⁴⁸ Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members (Taiwan), <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=M0050061>. [“Regulations”]

⁴⁹ *Labor Abuse in Taiwan’s Seafood Industry & Local Advocacy for Reform*, GLOBAL LABOR JUSTICE – INTERNATIONAL LABOR RIGHTS FORUM (GLJ-ILRF, Dec 2020), <https://laborrights.org/sites/default/files/publications/Labor-Abuse-in-Taiwan-Seafood-Industry-Local-Advocacy-for-Reform.pdf>.

⁵⁰ Regulations, Art. 13.2

⁵¹ Interview with a Taiwanese lawyer from Taiwan Legal Aid Foundation (Jan. 24, 2022).

contract that usually fails to meet international labor standards and circumscribes Taiwanese legal requirements is never explored.⁵²

Third, the labor inspections conducted on distant water fishing fleets are insufficient in both their frequency and substance. The Taiwan Fisheries Agency fails to always actively investigate and intervene when it detects signs of exploitative employment. Currently, the Taiwanese government has only assigned very few investigators to distant water fishing vessels docked at Taiwanese ports and six investigators to foreign ports that Taiwanese vessels are authorized to use.⁵³ These inspections primarily entail interviews with migrant fishers about their situation on the vessel. Without assistance from the Ministry of Labor, the Taiwan Fisheries Agency is unable to identify potentially serious instances of forced labor due to the lack of professions in terms of labor inspections.

Fourth, while Taiwan has established a remedial mechanism to handle grievances raised by foreign crew members through various potential remedies, fishing workers are largely unable to access these remedies, as they are generally deprived of communication opportunities while out at sea. Additionally, even when vessels dock at Taiwanese ports, it is difficult for workers to report abuse or exploitation; in these cases, they enter Taiwan with a “temporary entry permit” rather than a visa, meaning they can only stay on land for 14 days.⁵⁴ Hence, the current legal remedies are practically not accessible to migrant fishers.⁵⁵

The most challenging issue raised by NGOs is the lack of regulations on FoC vessels. The aforementioned legal frameworks are not applicable to FoC vessels because Taiwan lacks jurisdiction over fishing vessels flying the flag of other countries, even if they are owned and operated by Taiwanese operators. Recently, the U.S. reported that seafood caught by such Taiwanese-owned FoC vessels was suspected of being involved with forced labor, ruining the perception of Taiwan as effectively combating labor abuse in its distant water fishing industry.⁵⁶ The main priority of the Taiwanese FoC regulations is, however, to deter illegal, unreported, and unregulated fishing rather than to prevent labor abuse on distant water fishing vessels. Thus, Taiwan must focus on the issue of forced labor in the context of its FoC regulatory framework and collaborate with flag states to jointly reinforce the management of FoC vessels.

Notwithstanding the fact that the Taiwanese legal framework for the protection of migrant fishers has been positively reformed, there is still significant room for Taiwan to fully align itself with international labor standards. The existing legal system results in systemic discrimination against migrant fishers in terms of wages, working conditions, and other labor rights. Even if state officials express a desire to mitigate such discrimination, strong opposition by industry stakeholders (e.g., vessel owners, fishermen associations)

⁵² *Labor Abuse in Taiwan's Seafood Industry & Local Advocacy for Reform*, GLOBAL LABOR JUSTICE – INTERNATIONAL LABOR RIGHTS FORUM (GLJ-ILRF, Dec 2020), <https://laborrights.org/sites/default/files/publications/Labor-Abuse-in-Taiwan-Seafood-Industry-Local-Advocacy-for-Reform.pdf>.

⁵³ Taiwan Fisheries Agency, *The Response of the Fisheries Agency to the GLJ-ILRF Regarding Labor Abuse in Taiwan's Seafood Industry and Local Advocacy for Reform*, https://laborrights.org/sites/default/files/publications/Fisheries%20Agency%20Response%20%E5%9C%8B%E9%9A%9B%E5%8B%9E%E5%B7%A5%E6%AC%8A%E5%88%A9%E8%AB%96%E5%A3%87%28GLJ-ILRF%29%E5%9B%9E%E6%87%89%E8%AA%AA%E6%98%8E_0.pdf.

⁵⁴ Regulations of Temporary Entry Permit for Foreigners, Art. 9.

⁵⁵ *Labor Abuse in Taiwan's Seafood Industry & Local Advocacy for Reform*, GLOBAL LABOR JUSTICE – INTERNATIONAL LABOR RIGHTS FORUM (GLJ-ILRF, Dec 2020), <https://laborrights.org/sites/default/files/publications/Labor-Abuse-in-Taiwan-Seafood-Industry-Local-Advocacy-for-Reform.pdf>.

⁵⁶ U.S. Customs and Border Protection. (August 18, 2020). “CBP Issues Detention Order on Seafood Harvested with Forced Labor”; and U.S. Customs and Border Protection. (February 6, 2019). “CBP Issues Detention Order on Tuna Harvested by Forced Labor Aboard the Tunago No. 61”.

limits the incentives for the government to further advance any legal reforms. Moreover, despite Taiwan's efforts to enhance the protections offered to migrant fishers, blame for inadequate enforcement cannot be placed solely on Taiwan. Cooperation between Taiwan and sending states, ports countries, and FoC flag states is crucial to effectively eradicate labor exploitation and forced labor in the distant water fishing industry. Unfortunately, it is difficult for Taiwan to reach official international instruments with other countries due to its international legal status; let alone receive technique and financial support from the ILO. Hence, there is an urgent need for Taiwan to explore a novel, less conventional approach, in both normative and practical terms, to address forced labor occurring within its fishing industry.

Alternatively, this paper argues that aside from focusing on the collaboration through traditional means of bilateral dialogue, participating in forms of regional economic integration that emphasize the synergies between trade and labor protection might open a brand new window to effectively achieve the goal of enhancing labor protection. As this paper will argue in the following section, the desire to join the CPTPP provides a proper incentive for Taiwan to advance its alignment with international labor standards by creating inward pressure on its legislature and relevant agencies. Furthermore, this mega-regional trade agreement may constitute an effective mechanism with which Taiwan can pursue multilateral cooperation despite its unique international legal status. As this paper will expand on in the *infra* section, the inclusion of core ILO labor standards and a cooperative mechanism could incentivize Taiwan to take more progressive steps to reform its domestic labor regulations and facilitate bilateral cooperation between Taiwan and other CPTPP members. Most importantly, the platform offered by the CPTPP will enable Taiwan, which is unable to join most international organizations, to connect with the ILO and, in turn, receive support in its fight against forced labor in its fishing industry. What follows is an examination of the role of trade agreements in facilitating labor protection with a specific focus on the CPTPP labor chapter.

III. THE ROLE OF INTERNATIONAL ECONOMIC AGREEMENTS IN PROMOTING LABOR RIGHTS

A. The link between trade and labor rights

The implications of trade and investment liberalization on labor rights have long been debated in the field of international legal studies. Some view the dynamic as exceptionally straightforward, suggesting that the promotion of trade and investment positively influences employment markets from the perspectives of economic, social, and cultural rights. For instance, increases in trade and investment create considerable employment opportunities in receiving countries. Moreover, global economic activities contribute to the transfer of new skills and technologies as well as the development of human capital, all of which enhance public welfare by empowering people and making societies more equal. Additionally, to attract greater investment flows and trade opportunities, states are incentivized to develop a business-friendly environment by honoring the rule of law, respecting due process, and protecting personal freedom, ultimately promoting more accountable, democratic, and transparent societies.

While increases in trade and investment contribute to the advancement of states' public interests and welfare, the effects of these business activities largely depend on states' actions. Ideally, governments should direct trade revenues and investment flows toward national development efforts. However, there are concerns over a "race to the bottom," with countries engaging in downward regulatory competition by weakening their labor standard and only passively enforcing labor laws to strengthen their cost advantage and

boost their global competitiveness. Moreover, the nature of trade and investment impacts workers' collective labor rights, occupational safety, and health.⁵⁷ For instance, the processes and production methods used in manufacturing certain products are environmentally harmful⁵⁸ or produced using forced labor.⁵⁹ Some factories are even accused of exposing workers to harmful chemicals without proper protective equipment, causing irreversible harm to their health.⁶⁰

Today, there is broad recognition of the need to promote synergies between economic and non-economic regimes (e.g., environmental protection, public health promotion, human rights) through international economic agreements, which also includes the enhancement of labor rights.⁶¹ International organizations, including the United Nations, admit the need to strengthen public interests and welfare in the international economic regime in order to create synergies between human rights and global trade and investment.⁶² In General Comment No. 24, the United Nations Committee on Economic, Social and Cultural Rights emphasized that states “should identify any potential conflict between their obligations under the Covenant and under trade or investment treaties, and refrain from entering into such treaties where such conflicts are found to exist” and “cannot derogate from the obligations under the Covenant in trade and investment treaties that they may conclude.”⁶³ General Comment No. 24 also notes that “[t]he interpretation of trade and investment treaties currently in force should take into account the human rights obligations of the State.” Therefore, states should explicitly incorporate international human rights norms into future economic treaties to enable adjudicators to find a legal basis for considering human rights when interpreting treaty standards. Similarly, the Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements and the Guiding Principles on Business and Human Rights specify why and how states should ensure that trade and investment agreements align with their obligations to labor protections by retaining the regulatory ability to protect labor rights during economic negotiations.⁶⁴ While these documents are soft law in nature, they offer a path to strengthen synergies between economic and non-economic interests at the international level.

B. The integration of labor clauses in trade agreements

⁵⁷ See Layna Mosley & Saika Uno, *Racing to the Bottom or Climbing to the Top? Economic Globalization and Collective Labor Rights*, 40(8) Comparative Political Studies 926-28 (2007).

⁵⁸ See Steve Charnovitz, *The Law of Environmental “PPMs” in the WTO: Debunking the Myth of Illegality*, 27(1) YALE J. INT’L L. 59, 70-74 (2002).

⁵⁹ See Renee Chartres & Bryan Mercurio, *A Call for an Agreement on Trade-Related Aspects of Labor: Why and How the WTO Should Play a Role in Upholding Core Labor Standards*, 37(3) N.C. J. INT’L L. & COM. REG. 665 (2011).

⁶⁰ See EMMA AISBETT ET AL., *RETHINKING INTERNATIONAL INVESTMENT GOVERNANCE: PRINCIPLES FOR THE 21ST CENTURY* 61-71 (2018).

⁶¹ Ernst-Ulrich Petersmann, *The Promise of Linking Trade and Human Rights*, in *Linking Global Trade and Human Rights* 46 (Daniel Drache & Lesley A. Jacobs eds., 2014).

⁶² *Id.* at 47.

⁶³ UN Committee on Economic, Social and Cultural Rights ‘General Comment No 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities: restricting marketing and advertising of certain goods to protect public health’ (10 August 2017) UN Doc E/C.12/GC/24.

⁶⁴ United Nations, *Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements* (Addendum to the Report of the Special Rapporteur on the Right to Food, Olivier De Schutter) UN Doc A/HRC/19/59/Add.5 (19 December 2011). United Nations, *Guiding Principles on Business and Human Rights*, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

Labor standards and associated issues are traditionally not addressed by the WTO.⁶⁵ During the first WTO ministerial conference in Singapore, developing members strongly resisted the inclusion of labor issues on the WTO negotiation agenda. Ultimately, the Singapore Ministerial Declaration denounced the use of labor standards for protectionist purposes, emphasizing that the ILO is a more appropriate international forum for discussions about labor protections.⁶⁶ While informal interactive mechanisms have been established between the WTO and the ILO, there is still an inherent limit without a more formal cooperative platform that institutionalizes interaction between trade and labor standards.

In light of the inadequate interaction between trade and labor regimes, some scholars argue that the ILO and international/regional economic integration institutions should collaborate to develop a new global order in which the promotion of trade would not hinder labor standards.⁶⁷ Since the Doha Development Round, which began in 2001, progress in multilateral trade promoted by the WTO has been stagnant. Alternatively, bilateral and regional trade agreements have risen to fill the gap, gaining a more prominent role in shaping the international economic legal order. As a result, countries advocating for a “trade-labor” nexus have shifted their focus to contemporary free trade agreements (FTAs)—especially mega-regional economic integrations like the CPTPP, and endeavor to add reciprocal labor commitments in these trade pacts.⁶⁸ This dynamic has led to a new trend of inserting labor rights provisions and mechanisms into trade arrangements. A study shows that these provisions are now gradually inserting in trade agreements, growing from 7.3 % in 1995 to 28.8 % in 2016.⁶⁹ This gradual entanglement between trade and labor rights in international legal instruments appears to be empirically clear.

Some commentators, however, criticize the inclusion of labor rights clauses in FTAs, arguing that they constitute a protectionist gambit by developed/Western countries.⁷⁰ They assert that the real intention behind the insertion of labor protections is to weaken the competitiveness of developing countries. Some believe that these clauses actually threaten the sovereignty of developing countries. In the context of an FTA between a Western country and a post-colonial country, labor standards may be perceived as an element of neo-colonial imperialism, which is sensitive to the externally imposed values from the Western countries.⁷¹ With supervision mechanisms and potential consequences for deviation, parties are forced to comply with labor standards set by Western powers, which may not be socially or culturally suitable.⁷² Overall, they argue that the universalization of

⁶⁵ Cathleen Cimino-Isaacs, Labor Standards in the TPP, in TRANS-PACIFIC PARTNERSHIP: AN ASSESSMENT 261, 263 (Cathleen Cimino-Isaacs & Jeffrey J. Schott eds., 2016).

⁶⁶ Singapore Ministerial Declaration, para. 4, https://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm.

⁶⁷ Sungjoon Cho & César F. Rosado Marzán, *Labor, Trade, And Populism: How ILO-WTO Collaboration Can Save The Global Economic Order*, 69 AM. U. L. REV. 1771, 1788 (2020).

⁶⁸ Cathleen Cimino-Isaacs, Labor Standards in the TPP, in TRANS-PACIFIC PARTNERSHIP: AN ASSESSMENT 261, 264 (Cathleen Cimino-Isaacs & Jeffrey J. Schott eds., 2016).

⁶⁹ ILO, Handbook on Assessment of Labour Provisions in Trade and Investment Arrangements (ILO, 2017) 11.

⁷⁰ See, e.g., Lisa Lechner, The domestic battle over the design of non-trade issues in preferential trade agreements, 23(5) Review of International Political Economy 840 (2016). See also Emilie M. Hafner-Burton, Forced to Be Good: Why Trade Agreements Boost Human Rights (2013).

⁷¹ See Christian Barry & Sanjay Reddy, *Just Linkage: International Trade and Labor Standards*, at 23 (Aug. 25, 2005), <http://www.columbia.edu/~sr793/justlinkage.pdf>; Kevin Kolben, *The New Politics of Linkage: India's Opposition to the Workers' Rights Clause*, 13 Ind. J. Global Legal Stud. 225, 249-253 (2006).

⁷² Kevin Kolben, *Integrative Linkage: Combining Public and Private Regulatory Approaches in the design of Trade and Labor Regimes*, 48(1) Harv. Int'l L. J. 202, 207 (2017).

Western labor standards in FTAs is “actually a disguised form of protectionism by developed countries.”⁷³

In my view, however, the link between trade liberalization and labor protections is a normatively desirable development in the international trading regime.⁷⁴ From the perspective of institutionalism, trade agreements can mitigate coordination issues for countries that want to enhance their labor standards.⁷⁵ Typically, countries lack incentives to voluntarily implement labor standards, as it would not result in any tangible and prominent benefits. Such reluctance is even more prominent in developing countries, where comparatively low labor costs are a critical component of their competitiveness. Therefore, if a group of countries collaborates and implements mutually agreed-upon standards and establishes cooperative mechanisms in bilateral or regional contexts, the “Prisoner’s Dilemma” could hopefully be resolved to at least some extent because countries realize that raising the labor standard, which is a public good from which cooperation can bring more economic benefits, can eventually improve business productivity and nationwide economic performance.⁷⁶ The undesirable “race to the bottom” is significantly mitigated.⁷⁷

The above assertion from the political economy perspective is also supported by the global governance standpoint, which stresses that linking states’ obligations to the protection of labor rights in FTAs is believed to be more effectively achieve compliance, compared to pursuing “soft” international labor or human rights treaties⁷⁸ As mentioned, the ILO is the principal international organization charged with formulating and enforcing international labor standards. Its primary tools for monitoring whether member states abide by their commitments under ILO conventions are periodical reporting and investigating mechanisms. If member states are found to have deviated from their legal obligations, the ILO can only investigate and publicize its findings (i.e., name and shame them) and provide them with technical assistance to align their labor policies with their international obligations.⁷⁹ However, the ILO lacks the authority to impose retaliatory trade measures or sanctions.⁸⁰ In comparison, bilateral and regional trade agreements are more capable in terms of achieving compliance.⁸¹ Several studies have empirically demonstrated a positive association between the inclusion of labor obligations in FTAs and working conditions among their contracting parties. They explain that the “carrot” (i.e., trade benefits and capacity-building assistance) and the “stick” (i.e., potential suspension of trade benefits and risk of economic sanctions for violating international

⁷³ See Chang fa Lo, *To Lead or Not to Lead Reverting President Trumps Retreat from the United States’ Traditional Leading Role in Promoting Human Rights Through Trade*, 12(2) ASIAN J. WTO & INT’L HEALTH L. & POL’Y 227, 230 (2017).

⁷⁴ Kevin Kolben, *Integrative Linkage: Combining Public and Private Regulatory Approaches in the design of Trade and Labor Regimes*, 48(1) Harv. Int’l L. J. 202, 206 (2017).

⁷⁵ Werner Sengenberger, *Globalization and Social Progress: The Role and Impact of Global Labour Standards*, at 9, <https://library.fes.de/pdf-files/iez/02980.pdf> (2003).

⁷⁶ *Id.* Alan Hyde, *A Stag Hunt Account and Defense of Transnational Labor Standards—A Preliminary Look at the Problem*, 1, 19 (Cornell Law Sch., Legal Studies Research Paper No. 06-008, 2006).

⁷⁷ Christopher McCrudden & Anne Davies, *A Perspective on Trade and Labor Rights*, 3 J. INT’L ECON. L. 43, 49 (2000).

⁷⁸ See Emilie M. Hafner Burton, *Trading Human Rights: How Preferential Trade Agreements Influence Government Repression*, 59(3) INT’L ORG. 593 (2005).

⁷⁹ Faradj Koliev & James H Lebovic, *Selecting for Shame: The Monitoring of Workers’ Rights by the International Labour Organization, 1989 to 2011*, 62(2) Int’l Q. Stud. 437 (2018).

⁸⁰ Steve Charnovitz, *The Lost History of the ILO’s Trade Sanctions* (George Washington University Law Faculty Publications NO. 14, 2019), https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2729&context=faculty_publications.

⁸¹ Kevin Kolben, *Trade, Monitoring, and the ILO: Working to Improve Conditions in Cambodia’s Garment Factories*, 7 Yale Hum. Rts. & Dev. L. J. 79, 85–88 (2004).

labor standards reiterated by the FTA) successfully improve labor conditions among FTA members.⁸²

C. Relevant state practices: The case of the U.S.

The U.S. pioneered the concept of incorporating labor issues into international trade agreements. In fact, since the Trade Act of 1974, the executive branch has been required to always incorporate labor rights into all trade negotiations.⁸³ The country's rationale behind this approach is twofold. Normatively, the 1970s saw increased opposition to products manufactured in and imported from developing countries at the expense of their workers' labor rights despite their relatively low cost and quality. Additionally, U.S. industries feared that their products would, in time, be unable to compete with imports manufactured by workers who earn extremely low wages and suffer from poor occupational safety. Hence, labor issues have long been a consideration in U.S. foreign trade policy which in turn have reflected in the trade or investment agreements with its counterparties.⁸⁴

For the U.S., the first regional trade agreement featuring provisions on labor rights was the North American Agreement on Labor Cooperation (NAALC), one of the accompanying agreements of the North American Free Trade Agreement (NAFTA). The NAALC featured the Commission for Labor Cooperation (CLC), a specialized institution aimed at ensuring parties' compliance with international labor standards. To facilitate enforcement, the NAALC created the Evaluation Committee of Experts (ECE), which aimed to examine if contracting parties' domestic labor laws or regulations—including minimum wages, overtime pay, prevention of employment discrimination, equal pay for men and women, prevention of occupational injuries and illnesses, compensation in cases of occupational injuries and illnesses, and protection of migrant workers—comply with international standards. The ECE publishes reports that offer recommendations for investigated member states to revise their policies or implementation measures. If a labor dispute arises and cannot be resolved by the ECE, the CLC functions as a dispute-settlement forum to resolve the dispute in an amicable and mutually satisfactory manner, which is quite distinct from the more adversarial dispute-settlement mechanisms in conventional FTAs. In short, the NAALC employs a cooperative approach to reach its objectives through information exchanges, technical assistance, and consultations.⁸⁵

The NAALC model further emerged in the subsequent US FTAs soon after the ILO passed the ILO Declaration.⁸⁶ Specifically, the later U.S. FTAs reaffirmed contracting parties' obligations under the ILO Declaration. For instance, the U.S.-Jordan FTA featured the following “internationally recognized” labor rights: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labor; (d) labor protections for children and young people, including a

⁸² Samira Salem & Faina Rozental, *Labor Standards and Trade: A Review of Recent Empirical Evidence*, 4(2) Journal of International Commerce and Economics 36 (2012). Günseli Berik & Yana van der Meulen Rodgers, *Options for Enforcing Labour Standards: Lessons from Bangladesh and Cambodia*, 22(1) Journal of International Development 56 (2010).

⁸³ Carol J. Pier, *Workers' Rights Provisions in Fast Track Authority, 1974-2007: An Historical Perspective and Current Analysis*, 13(1) Indiana Journal of Global Legal Studies 77, 78-79 (2006).

⁸⁴ See generally Cathleen D. Cimino-Isaacs, *Worker Rights Provisions and U.S. Trade Policy*, Congressional Research Service Report, <https://crsreports.congress.gov/product/pdf/R/R46842> (2021).

⁸⁵ *North American Agreement on Labor Cooperation: A Guide*, U.S. Department of Labor, <https://www.dol.gov/agencies/ilab/trade/agreements/naalcdg#Obligations>.

⁸⁶ ILO Declaration on Fundamental Principles and Rights at Work, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/normativeinstrument/wcms_716594.pdf.

minimum age for employment of children and the prohibition and elimination of the worst forms of child labor; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.⁸⁷ Furthermore, a “non-derogation clause”, which prohibits parties from encouraging trade and investment through the weakening of labor protections afforded by parties’ domestic laws, is now standard in U.S. FTAs.⁸⁸ In the same vein, U.S. FTAs also require parties to refrain from a “race to the bottom,” or the intentionally lax enforcement of domestic laws.⁸⁹ To ensure that labor standards are implemented, U.S. FTAs now regularly feature procedural mechanisms and committees specifically focused on labor issues, many of which are derived from the NAALC in some form, including specialized committees for strengthening cooperation between parties, focal points, and tailored dispute resolutions for tackling parties’ breach of labor standards under the ILO and the FTAs.⁹⁰

The most recent U.S. FTAs have become even more prescriptive and enforceable. In 2007, the Bush administration and Congressional Democrats reached the “May 10 Agreement”, which established a template for treaty language on non-trade issues (e.g., labor, the environment, intellectual property) for the U.S. government to employ in negotiations. The “May 10 Agreement” mandated the United States Trade Representatives to reinforce the countries’ commitments to protect workers. For example, the soft language such as “shall strive to” or “shall endeavor to” were to be replaced by “shall”, imposing a stronger legal obligation on FTA parties to implement their commitments to honor international labor standards.⁹¹ In addition, the subject matters covered by the latest labor chapters seem to extend to international labor standards that are not directly related to trade issues.⁹² This development suggests that these dynamic provisions—namely, new labor clauses—are no longer limited to addressing labor concerns stemming from economic activities. Instead, trade agreements may now be leveraged to strengthen the protection of fundamental labor rights.⁹³ Most importantly, disputes arising from the labor chapter are now subject to the FTA’s dispute-settlement chapter, suggesting that labor commitments in the latest U.S. trade agreements are heavily supported by trade sanctions.⁹⁴ The CPTPP labor chapter reflects all of the above elements and reforms, as the U.S. was the primary advocate for the labor chapter under the Trans-Pacific Partnership Agreement (TPP), and the TPP’s labor chapter was inherited by the CPTPP without substantial revisions. The next section details these new labor clauses under the CPTPP.

⁸⁷ Agreement Between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, Jordan U.S., arts. 6(6), Oct. 24, 2000, 41 I.L.M. 63 (entered into force Dec. 17, 2001).

⁸⁸ Jia Jhen (Zac) Liao, *Strengthening Global Governance for Human Rights Through New Era FTAs: Beyond Trade Related Aspects?*, 15(2) Asian J. WTO & Int’l Health L. and Pol’y 653, 660 (2020).

⁸⁹ Agreement Between the Government of the United States of America and the Government of the Sultanate of Oman on the Establishment of a Free Trade Area, Art. 16.2(1), U. Oman, Jan. 19, 2006, <https://ustr.gov/trade-agreements/free-trade-agreements/omanfta/final-text>.

⁹⁰ See e.g., Agreement Between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, Jordan U.S., Oct. 24, 2000, 41 I.L.M. 63 (entered into force Dec. 17, 2001).

⁹¹ See e.g., United States Peru Trade Promotion Agreement, Peru U.S., Apr. 12, 2006, <https://ustr.gov/trade-agreements/free-trade-agreements/peru-tpa/final-text>.

⁹² Chang fa Lo, *To Lead or Not to Lead Reverting President Trumps Retreat from the United States’ Traditional Leading Role in Promoting Human Rights Through Trade*, 12(2) ASIAN J. WTO & INT’L HEALTH L. & POL’Y 227, 236, 240 (2017).

⁹³ Jia Jhen (Zac) Liao, *Strengthening Global Governance for Human Rights Through New Era FTAs: Beyond Trade Related Aspects?*, 15(2) Asian J. WTO & Int’l Health L. and Pol’y 653 (2020).

⁹⁴ Carol Pier, *Workers’ Rights Provisions in Fast Track Authority, 1974–2007: An Historical Perspective and Current Analysis*, 13 Ind. J. Global Legal Stud. 77 (2006).

D. The CPTPP labor chapter: An ambitious regulatory model to create synergies between trade and labor rights

The labor chapter of the CPTPP is claimed to be the most progressive set of labor obligations ever negotiated in a trade pact.⁹⁵ Its ambitiousness reflects in both its substantive provisions and procedural mechanisms. These expansions are elucidated in the following sections.

(1) Substantive enhancement

The CPTPP labor chapter inherits the spirit of the “May 10 Agreement,” which reaffirmed member states’ commitments as ILO members.⁹⁶ Article 19.3.1 of the CPTPP requires all members to adopt and maintain the rights set by the ILO Declaration, including:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour and, for the purposes of this Agreement, a prohibition on the worst forms of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

Learning from previous U.S. FTAs, Article 19.3.2 of the CPTPP extends the scope of labor rights to working conditions, such as minimum wage, hours of work, and occupational safety and health. This provision also corresponds to the newly amended ILO Declaration in 2022, which followed the US FTA model and recognized safety and health as fundamental rights at work. Accordingly, members are obligated to implement laws that guarantee acceptable working conditions. Notably, however, the definition of “acceptable” conditions of work is subject to members’ own discretion, which, arguably, leaves certain policy space for members.⁹⁷

Another spotlight that the CPTPP explicitly addresses is the protection of migrant labor alongside the issue of forced labor. Article 19.10 exemplifies the areas of cooperation among CPTPP members, highlighting the “promotion of equality and elimination of discrimination in respect of employment and occupation for migrant workers” as well as the “protection of vulnerable workers, including migrant workers.”⁹⁸ Given that migrant workers are increasingly widespread in supply chains across multiple hazardous sectors and that they are often subject to forced labor, human trafficking, and abusive recruitment practices, this emphasis on protections for migrant workers is a positive development in strengthening the link between trade and labor. This provision is especially meaningful when considering the fact that many developing CPTPP members are the home countries of migrant workers employed by vessels flying under the flags of developed CPTPP members. Importantly, the CPTPP equips the forced labor clause with “teeth”. Article 19.6 asserts that members shall discourage the import of goods produced using forced or compulsory labor.⁹⁹ This Article, together with provisions on the protection of migrant workers, constitutes a critical step toward the prohibition of trade in goods produced using

⁹⁵ Steve Charnovitz, *The Expanding Labor Dimension of US-Negotiated Regional Trade Agreements: TPP and USMCA*, https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2794&context=faculty_publications.

⁹⁶ CPTPP Art. 19.2.

⁹⁷ CPTPP Ch 19, Fn 5. Critics contend that the concept of “conditions of work” needs to be more specific so as to provide meaningful protection to workers.

⁹⁸ CPTPP Art. 19.10.2.

⁹⁹ CPTPP Art. 19.6.

human trafficking and forced labor. Most importantly, this import restriction also applies to goods imported from non-CPTPP countries, given the CPTPP discourages its members from importing goods produced by forced labor from any sources, regardless of their origins.¹⁰⁰ Therefore, both CPTPP members and non-party countries are incentivized to tackle forced labor within their jurisdiction.

The CPTPP also highlights the importance of boosting public awareness and providing effective procedural guarantees for relevant stakeholders, including employers, workers, and civil society actors. Article 19.8.1 of the CPTPP obliges its members to transparently publish their domestic labor laws, regulations, and means of enforcement to promote greater public understanding of the substantive and procedural protections available to them. Article 19.8.2 requires members to ensure that any person with recognized interest can access administrative or judicial remedies to resolve disagreements over the enforcement of domestic labor laws. Such dispute-settlement forums shall be impartial, independent, and consistent with due process.¹⁰¹

(2) Procedural enhancement

Treaty effectiveness is difficult to measure. One criterion is to evaluate whether contracting parties enforced their legal obligations as stipulated by the treaty. In light of this, Article 19.5.1 of the CPTPP sets the baseline for the agreement's enforcement, requiring its members to enforce their labor laws through "a sustained or recurring course of action or inaction."¹⁰² The CPTPP labor chapter's institutional arrangements, such as its cooperative platform and monitoring mechanisms, are critical to ensuring compliance.¹⁰³ The CPTPP labor chapter enshrines these institutional arrangements to monitor, investigate, and supervise the members' implementation of relevant labor provisions. Moreover, the primary aim of these institutional arrangements is to strengthen capacity-building through technical supports and financial incentives.¹⁰⁴

The CPTPP labor chapter's institutional framework is based on a combination of cooperative channels, consultative mechanisms, and dispute-resolution mechanisms. Article 19.10.1 of the CPTPP highlights the importance of cooperation between members in effectively implementing the labor protections set by the ILO Declaration and the CPTPP.¹⁰⁵ This Article offers 20 non-exhaustive lists of areas in which members should strive to cooperate with one another. The core objectives in promoting cooperation on labor protection are capacity-building and transparency. Notably, the CPTPP further institutionalizes cooperative mechanisms, establishing official links between various international institutions. Article 19.11 and Article 19.12 of the CPTPP establish the "Labor Cooperative Dialogue" and "Labor Council," respectively. The Labor Cooperative Dialogue mechanism serves as an alternative forum for settling formal disputes, which are generally costly and time-consuming. Upon receiving a request from a member, the requested member is obliged to respond to the inquiry and engage in bilateral dialogue with the requesting member in good faith. If they reach a resolution, both parties render an action plan that is subject to independent compliance verification by the ILO or another

¹⁰⁰ CPTPP Art. 19.6.

¹⁰¹ CPTPP Art. 19.8.2.

¹⁰² CPTPP Art. 19.5.1.

¹⁰³ Regarding the discussion of the institutional arrangement created by the treaty, see, e.g., *Robin R. Churchill & Geir Ulfstein, Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law*, 94(4) AM. J. INT'L L. 623 (2000).

¹⁰⁴ Zerrin Savaşan, *Compliance Mechanisms: A General Overview*, in *Paris Climate Agreement: A Deal for Better Compliance?* 69-70 (Zerrin Savaşan ed., 2019).

¹⁰⁵ CPTPP Art. 19.10.1.

independent entity.¹⁰⁶ The Labour Council, which comprises senior officials appointed by members, focuses on prioritizing the cooperative areas between members, reviewing reports submitted by members, and other functions agreed upon by members.¹⁰⁷ To facilitate communication between members, Article 19.13 of the CPTPP requires each member to designate a contact point for addressing matters related to the labor chapter. The contact points established by members may develop and implement bilateral or multilateral cooperative activities.¹⁰⁸

The CPTPP combines consultation and dispute resolution into a special proceeding aimed at settling disputes and implementations of the labor chapter. Article 19.15 of the CPTPP refers to these consultations as a prerequisite for each member to resolve any matter pertaining to the labor chapter through the formal state-to-state dispute-settlement mechanism.¹⁰⁹ In other words, only if disputing members fail to reach a mutually satisfactory resolution through amicable means can they resort to the dispute-settlement mechanism under CPTPP Chapter 28.¹¹⁰ In such a scenario, the enforcement of labor standards is backed by the potential consequence of losing the economic benefits generated by the CPTPP. More specifically, if a member were to fail to meet the standards provided by the CPTPP labor chapter, it would be subject to trade sanctions from other members.

In summary, the labor chapter under the CPTPP is considered to be the first-ever trade agreement to provide robust and comprehensive provisions incorporating labor protections into the promotion of trade liberalization among contracting parties. The expansion of protected labor rights—especially explicit references to relevant ILO legal instruments and the emphasis on cooperation and capacity-building among contracting parties—is a crucial innovation of the CPTPP. The labor provisions provided by both the ILO and the CPTPP labor chapter can serve as the touchstone through which to examine whether Taiwan’s current legal framework on protections for migrant fishers aligns with international labor standards.

IV. ENHANCING TAIWAN’S LEGAL PROTECTIONS FOR MIGRANT FISHERS THROUGH CPTPP ACCESSION

To properly examine how Taiwan’s labor protections for migrant fishers could be improved through CPTPP accession, the following questions must be answered: (A) Why would Taiwan be willing to bear additional responsibilities to reinforce its legal protections to migrant fishing workers if doing so could adversely infringe on Taiwanese vessel owners’ interests and competitiveness? (B) How would the labor chapter of the CPTPP guide Taiwan to review its domestic labor policies? (C) How could the CPTPP facilitate cooperation between Taiwan and other relevant actors, such as CPTPP members and the ILO?

A. The desire to accede to the CPTPP could incentivize Taiwan to strengthen its alignment with international labor standards

Regarding the first question, numerous studies have explained why sovereign states comply with international law and would be willing to conclude an international legal

¹⁰⁶ CPTPP Art. 19.11.

¹⁰⁷ CPTPP Art. 19.12.

¹⁰⁸ CPTPP Art. 19.13.

¹⁰⁹ CPTPP Art. 19.15.

¹¹⁰ CPTPP Art. 19.15.

instrument and bear the legal obligations even if the costs seem to outweigh the benefits.¹¹¹ In my view, while such decisions appear to contradict what rational choice paradigms would predict,¹¹² they can be explained from the perspective of behavioral economics. Prospect theory asserts that individuals are loss-averse; people bear asymmetrical attitudes toward gains and losses, with the risk of loss being felt far more heavily than the potential for gain.¹¹³ Moreover, individuals are averse to ambiguity; experiments have shown that individuals are particularly risk-averse when they do not have access to clearly defined probabilities.¹¹⁴ Behavioral economics legal scholars argue that the concept of loss aversion is applicable to states' decision-making processes. A state may be concerned about its reputation in the international community and, in turn, it is willing to spend asymmetric costs and efforts to prevent the risk of a decline in its reputation or credibility.¹¹⁵ This dynamic partially explains Taiwan's international participation strategy, including acceding to the CPTPP in this case. In its quest for more international space, Taiwan is always striving to effectively participate in international governmental organizations. Effective participation means that Taiwan is primarily interested in gaining the membership of an international organization or becoming the contracting party of an international legal instrument where Taiwan could obtain legal status just as other sovereign states. The full membership of an international organization or to have an international treaty with other countries is strategically important to Taiwan legally and internationally given that such facts could both manifest its statehood and resist China's aggressive efforts to isolate Taiwan.¹¹⁶ Therefore, Taiwan is willing to compromise in exchange for facilitating the accession to the CPTPP and, in a sense, to the international community. For Taiwan, while the material benefits of the CPTPP are valuable, the true prize of accession is its symbolic value.¹¹⁷ Hence, to broaden its international space, Taiwan is willing to take extra or preventative actions to meet the standards set by the targeted international organizations or treaties. Conversely, it is willing to avoid any policies that could undermine its efforts to pursue greater international integration.

Commentators view CPTPP accession as highly important for Taiwan, as it represents more than just a trade deal that could avoid complete isolation—it lies at the core of Taiwan's long-term survival plan amid rising political and military coercion from China.¹¹⁸ Hence, eliminating disagreements between Taiwan and existing CPTPP members has naturally become a priority for the Taiwanese government to facilitate the accession negotiations. Forced labor, human trafficking, poor working and accommodation conditions, and insufficient labor protections for migrant fishers on Taiwanese fishing vessels could all be raised by CPTPP members during negotiations, especially those that are the home countries of the migrant fishers. In short, Taiwan is prioritizing the

¹¹¹ Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106(8) Yale J. Int'l L. 2599 (1997). Christina J. Schneider, *Weak States and Institutionalized Bargaining Power in International Organizations*, 55(2) INT'L STUD. Q. 331, 334-35 (2011).

¹¹² See generally ANDREW T. GUZMAN, *HOW INTERNATIONAL LAW WORKS: A RATIONAL CHOICE THEORY* (2008); ERIC A. POSNER & ALAN O. SYKES, *ECONOMIC FOUNDATIONS OF INTERNATIONAL LAW* (2013).

¹¹³ See Tomer Brode, *Behavioral International Law*, 163 UNIV. PENN. L. REV. 1099, 1115 (2015).

¹¹⁴ See Anne van Aaken, *Behavioral International Law and Economics*, 55(2) HARV. INT'L L. J. 421, 430 (2014).

¹¹⁵ See Anne van Aaken, *Behavioral International Law and Economics*, 55(2) HARV. INT'L L. J. 421, 477 (2014).

¹¹⁶ Pasha L. Hsieh, *Rethinking Non-recognition: The EU's Investment Agreement with Taiwan under the One-China Policy*, 33(3) LEIDEN J. INT'L L. 689, 710 (2021). See also NINA CASPERSEN, *UNRECOGNIZED STATES* 111-113 (2012).

¹¹⁷ Jana Schmillwii & Ondřej Kucera, *Taiwan's Participation in International Organizations: Obstacles, Strategies, Patterns?*, in *EUROPEAN PERSPECTIVES ON TAIWAN* 147, 167 (Jens Damm & Paul Lim eds., 2012).

¹¹⁸ Shihoko Goto, *The CPTPP isn't just a trade deal for Taiwan, it's a survival plan*, East Asia Forum (Nov. 19, 2021), <https://www.eastasiaforum.org/2021/11/19/the-cptpp-isnt-just-a-trade-deal-for-taiwan-its-a-survival-plan/>.

elimination of any potential reputational risks, aiming to establish an amicable atmosphere for accession negotiations.

The incentive of the CPTPP for Taiwan to strengthen its labor standards for migrant fishers can also be explained by two-level games analysis. According to Putnam, when negotiating a treaty, governments are playing a game at both the international and national levels.¹¹⁹ At the international level, they bargain with their counterparts, all of whom are seeking a mutually beneficial agreement (or at least one that does not significantly contradict their own interests). At the domestic level, governments know that any deal struck at the international level must be approved by internal legislative bodies and endorsed by voters domestically. To minimize potential domestic disagreements and mitigate ratification hurdles, governments aim to incorporate domestic stakeholders' interests into their priorities during international negotiations. Accordingly, the influences of domestic interests on international decision-making and negotiation strategies cannot be overlooked.¹²⁰ Applying this analytical approach to the case of Taiwan's potential CPTPP accession, legal reforms in pursuit of CPTPP accession are likely to be supported at both the domestic and international levels. At the international level, CPTPP members like Vietnam and Malaysia are not only the sending nations of the migrant fishers employed by Taiwanese vessel owners, but also perceive Taiwan as their main competitor in commercial fishing. Therefore, migrant workers' treatment will inevitably come up during negotiations because, on the one hand, they have the mission to protect their own nationals working aboard; and on the other hand, it is not in line with their business interests in commercial fisheries and seafood market if Taiwanese companies and vessel owners can continuously reduce its operational costs through exploiting migrant workers. At the domestic level, NGOs like Greenpeace and EJF and other civil society actors have long been the primary proponents of migrant fishers' labor rights in Taiwan. These NGOs collaborate with international actors (e.g., the American Institute in Taiwan, which is the de facto U.S. embassy in Taiwan) to hold workshops and publish policy reports to pressure the Taiwanese government.¹²¹ Given the growing consensus that forced labor does take place on Taiwanese fishing vessels—and the increasingly common sentiment that labor rights cannot be compromised to pursue economic benefits—domestic voices must be carefully considered by the Taiwanese government officials spearheading CPTPP accession.

Overall, a strong desire to participate in regional trade integration and potential demands from CPTPP members both put strong pressure on Taiwan to boost its alignment with international labor standards.

B. Acceding the CPTPP can help Taiwan to fulfill its obligations of eliminating forced labor in Fishing Sector

Conventionally, a country would only bear the international legal obligation arising from a treaty after it expresses its consent to that treaty.¹²² Hence, some might argue that Taiwan is not a contracting party of those international labor conventions and relevant

¹¹⁹ See generally Robert D. Putnam, *Diplomacy and Domestic Politics: The Logic of Two-level Games*, 42(3) INT'L ORG. 427 (1988).

¹²⁰ *Id.* See also Tomohito Shinoda, *Two-level game analysis of Japan in the TPP negotiations*, 5(4) ASIAN JOURNAL OF COMPARATIVE POLITICS 337(2020). Chien-pin Li, *Trade Negotiation between the United States and Taiwan: Interest Structures in TwoLevel Games*, 34(8) ASIAN SURVEY 692 (1994).

¹²¹ *Labor Abuse in Taiwan's Seafood Industry & Local Advocacy for Reform*, GLOBAL LABOR JUSTICE – INTERNATIONAL LABOR RIGHTS FORUM (GLJ-ILRF, Dec 2020), at 20-24, <https://laborrightrights.org/sites/default/files/publications/Labor-Abuse-in-Taiwan-Seafood-Industry-Local-Advocacy-for-Reform.pdf>.

¹²²

legal instruments which impose legal obligations on treaty parties to eradicate forced labor and human trafficking, it shall not be bound by the aforementioned international treaties. This Positivism-oriented perspective, in my view, however, is not without flaws.

The notion of eliminating forced labor is well established under international law.¹²³ As mentioned in the *supra* section, the root of the international consensus on combatting forced labor and human trafficking can be traced back to 1930 and 1957, when the ILO Forced Labour Convention and Abolition of Forced Labour Convention were concluded and in effect. Under the framework of international human rights, the legal obligation of diminishing forced labor is further reaffirmed and crystalized in the United Nations Universal Declaration of Human Rights (UDHR) and the following two human rights conventions, namely ICCPR and ICESCR. Article 4 of the UDHR provides that “[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”¹²⁴ Following this provision, the ICCPR and ICESCR further elaborate on the concept of slavery and its relationship with forced labor.¹²⁵ Specifically, the Committee on Economic, Social and Cultural Rights has for its part adopted General Comment No. 18 in 2005 exploring the meaning and implications of the right to work. Among its findings is the following:

9. The International Labour Organization defines forced labour as ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.’ The Committee reaffirms the need for States parties to abolish, forbid and counter all forms of forced labour as enunciated in article 4 of the Universal Declaration of Human Rights, article 5 of the Slavery Convention and article 8 of the ICCPR.¹²⁶

This paper is of the view that: Given that the prohibition of forced labor stipulated in UDHR, ICCPR, and ICESCR are universally honored by states – at least no evidence reveals that any states have explicitly denied the illegality of forced labor, it should be fair to infer the existence of *opinion juris* in this regard. In addition, while countries’ implementations of eliminating forced labor at their national levels are varied, mainstream international legal scholarship considers that states need not be universally effective in implementing the rules or exercising certain practices.¹²⁷ Therefore, the prohibition of all states from exercising or tolerating forced labor by others is generally considered customary international law.¹²⁸ In the same vein, numerous scholars also acknowledge that because of its wide acceptance, the ILO Forced Labour Convention and Abolition of Forced Labour Convention, which have over 170 contracting parties, have gained the status of customary international law and thus bind the international community as a whole even for countries that are not contracting parties.¹²⁹ Some even argue that since the threats and severity arising from forced labor combining with potential human trafficking have been recognized in major international and regional treaties as a non-derogable right, the

¹²³

¹²⁴ Universal Declaration of Human Rights, Art. 4.

¹²⁵ ICCPR Art. 8.3.(a); ICESCR Art. 6.

¹²⁶ Committee on Economic, Social and Cultural Rights (CESCR): General comment No. 18 (2005): The right to work, para. 9.

¹²⁷ See Anne Lowe, Customary International Law and International Human Rights Law: A Proposal for the Expansion of the Alien Tory Statute, 23(3) *Ind. Int’l & Comp. L. Rev.* 523, 533 (2013).

¹²⁸ Donald K. Anton, Introductory Note to Protocol of 2014 to the Forced Labour Convention, 1930 (I.L.O.), 53(6) *International Legal Materials* 1227-1235 (2014). Jebberger, F. 2016. Corporate involvement in slavery and criminal responsibility under international law. *Journal of International Criminal Justice* 14, no. 2: 327–41.

¹²⁹ *Id.*

obligations for states to prevent and eliminate forced labor, which is a type of modern slavery, should be tantamount to be *erga omnes* and a peremptory norm in international law.¹³⁰

In terms of other subsequent international legal instruments aiming at combatting forced labor, including the Protocol implemented to update and polish the ILO Forced Labor Convention, the 1998 ILO Declaration, and the ILO Convention No. 188, this paper asserts that they all constitute integral parts of the customary international law regarding forced labor eradication through the evolutionary interpretation. As Van den Bossche and Cook have accurately indicated, the evolutionary interpretation can be perceived as the “proper application of the VCLT rules of interpretation to non-static terms and concepts.”¹³¹ The ICJ in *Navigational and Related Rights* further affirms that the evolutionary interpretive approach shall be adopted when interpreting the generic terms of the treaty. The ICJ reasoned that “where the parties have used generic terms in a treaty, the parties necessarily having been aware that the meaning of the terms was likely to evolve over time, and where the treaty has been entered into for a very long period or is ‘of continuing duration’, the parties must be presumed, as a general rule, to have intended those terms to have an evolving meaning.”¹³²

The concept and definition of “forced labor”, in my perspective, are also generic in nature and hence should not be static to what negotiators envisaged in 1930. The context and forms of forced labor have drastically changed in the past century. Technological changes also influenced many aspects of the workplace.¹³³ Accordingly, the coverage of customary international law regulating forced labor and the substance of labor rights are necessary to be “upgraded” so as to respond to the contemporary issues of labor exploitation. Additional legal instruments and new guidelines are necessary to strengthen countries’ capability and international cooperation to combat modern forms of forced labor.¹³⁴ As a result, any following legal instruments with a view to specifying or elaborating the concept of forced labor should enrich the substance of forced labor elimination and other labor protections under customary international law. For example, in 2022, the ILO Declaration was amended to recognize the right to “a safe and healthy working environment” as a fundamental principle and right at work for the first time, which substantially broadens the scope of internationally recognized core labor rights. Additional measures were needed to strengthen international cooperation to combat modern forms of forced labor.

In the context of migrant fishers’ protection, despite their non-customary law status, the ILO Convention No. 188 and its relevant legal instruments, which bear the identical premise of eradicating forced labor and creating better working conditions for migrant fishers, should all constitute the “relevant rules of international law” under Article 31.3(c) of the VCLT when understanding the evolutive substance of forced labor and core labor rights under customary international law.¹³⁵ In other words, these subsequent international legal instruments surrounding the core concept of forced labor, are the reflections of

¹³⁰ William E. Conklin, *The Peremptory Norms of the International Community*, 23(3) *European Journal of International Law* 837, 858 (2012). Lydia C. L. The et al., *The role of human rights in implementing socially responsible seafood*, 14(1) *PLoS ONE* 1, 9 (2019). Justine Nolan & Gregory Bott, *Global supply chains and human rights: spotlight on forced labour and modern slavery practices*, 24(1) *Australian Journal of Human Rights* 44, 48 (2018).

¹³¹ *Evolutionary Interpretation and International Law*, 228 (Georges Abi-Saab et al. eds., 2020).

¹³² *Navigational and Related Rights (Costa Rica v Nicaragua)* (Judgment), ICJ Reports 2009, p. 213, 242.

¹³³ Christopher McCrudden & Anne Davies, *A Perspective on Trade and Labor Rights*, 3(1) *J. Int’l Econ. L.* 43, 45 (2000).

¹³⁴ Donald K. Anton, *Introductory Note to Protocol of 2014 to the Forced Labour Convention, 1930 (I.L.O.)*, 53(6) *International Law Material* 1227, 1227 (2014).

¹³⁵ *Vienna Convention on the Law of Treaties*, Art. 31.3(c), 1155 U.N.T.S. 331, 8 I.L.M. 679 (1969).

evolutive customary international law. Hence, any violations of these subsequent international legal instruments, even though would not directly constitute a breach of countries' legal obligations, may be perceived as "red flags" of the infringement of customary international law concerning preventing and eliminating forced labor that happens on the fishing industry. Even if Taiwan is not involved in any subsequent forced labor-related international legal instruments and thus would not be bound by those international conventions and treaties under the conventional consent theory, it is still possible that Taiwan needs to internalize those treaty provisions in Taiwan's domestic laws to comply with customary international law. Moreover, these international legal instruments could act as a valuable spur for Taiwan to develop actions that may ultimately provide the requisite political will for the elaboration of domestic legislation.¹³⁶

As this paper will argue in *the infra* sections, the provisions embedded in the CPTPP labor chapter could, substantively and procedurally, enhance Taiwan's legal and executive capacities to comply with its obligations of mitigating forced labor issues in its fishing sector mandated by customary international law. Considering the legal, institutional, and executive complications of enforcing safe and healthy working conditions within the fishing industry, the CPTPP provides a cooperative platform and policy instruments for Taiwan to deepen the scope of cooperation with other CPTPP members. Hence, Acceding the CPTPP can help Taiwan to fulfill its legal obligations to eradicate forced labor in its fishing sector.

C. Positive Implications of the CPTPP labor chapter on the promotion of migrant fishers' labor rights

Turning to the question of how the CPTPP's labor standards can guide Taiwanese legal reform, this paper argues that Taiwan's accession to the CPTPP could aid in solving many of the pragmatic issues that Taiwan currently faces. Research indicates that the labor provisions in trade agreements have both direct and indirect effects on governance.¹³⁷ More specifically, these labor provisions can function through the following policy mechanisms: (1) pre-ratification measures that specify parties' duties to implement reforms to meet the standards set in the trade agreement; (2) monitoring mechanisms aimed at the commitments of government agencies or companies; (3) dispute-resolution mechanisms; and (4) punitive economic measures for violations.¹³⁸ This paper uses this analytical framework to demonstrate how CPTPP accession could aid Taiwan in improving its legal protections for migrant fishers.

Regarding the pre-ratification measures, many argue that Taiwan's legal framework on migrant fishers has been largely consistent with the ILO Forced Labor Convention, its accompanying protocol, and ILO Convention No. 188.¹³⁹ According to the Fishery Agency of Taiwan, the Act of Distant Water Fisheries and the Regulations have substantially incorporated the spirit of ILO Convention No. 188. These steps to domesticate international law mirror the steps that Taiwan has taken to implement the instruments of international human rights conventions.¹⁴⁰ Still, there are three main concerns facing Taiwan's regulatory framework on the protection of migrant fishers. First,

¹³⁶ Lydia C. L. The et al., The role of human rights in implementing socially responsible seafood, 14(1) PLoS ONE 1, 8 (2019).

¹³⁷ ILO, Handbook on Assessment of Labour Provisions in Trade and Investment Arrangements (ILO, 2017) 122.

¹³⁸ *Id.* at 38-39.

¹³⁹ Kuo-Wei Yen & Li-Chuan Liuhuang, *A review of migrant labour rights protection in distant water fishing in Taiwan: From laissez-faire to regulation and challenges behind*, 134 Marine Policy 1 (2021).

¹⁴⁰ Margaret K. Lewis, *Creative Contacts: Taiwan's Quest for International Law Enforcement Cooperation*, 36 Chinese (Taiwan) Yearbook of International Law and Affairs, 94, 99 (2018).

the legal system creates unreasonable discrimination in terms of labor rights against migrant fishers compared to domestic fishing workers. Second is the challenge with forced labor and trafficking prosecutions because relevant evidence is extremely difficult to collect and causes the inability to prosecute offenders. The third is the gap between the “law on the books” and the “law in action”; the legal protections offered to migrant fishers simply lack proper enforcement by government officials. Taiwan could try to overcome these issues by referencing the guidance of the CPTPP labor chapter and its associated ILO legal instruments (e.g., ILO Declaration, forced labor indicators) to comprehensively review its domestic legal framework. For example, the forced labor indicators may illuminate the scope and definition of “forced labor,” which is relatively ambiguous under the current Taiwanese legal system. To elaborate, the existence of intimidation and threats, retention of identity documents, unduly withholding wages, debt bondage, and even failing to provide decent working and living conditions would all constitute forced labor and, in turn, be prohibited.¹⁴¹ Furthermore, given that the elimination of labor discrimination with regard to employment is a core principle of the ILO Declaration and the CPTPP, such discipline provides Taiwan with a strong legal and moral basis to reform its current “two-tiered system,” cementing equal treatment for domestic fishers and distant water migrant fishers. The Taiwanese government should focus on the following tasks: facilitating distant water fishers’ freedom of association and collective bargaining rights, increasing the minimum wage for distant water fishers to the equivalent level of those Taiwanese laborers, and extending the national insurance program to migrant fishers.

In terms of monitoring the legal compliance, the CPTPP labor chapter stresses the roles of both contracting parties and civil societies. For state-level monitoring, the Labor Council comprising representatives assigned by CPTPP members supervises and reports information on the enforcement of labor laws and regulations for each contracting party. Therefore, if Taiwan’s request to join the CPTPP is accepted, the Taiwanese government shall routinely report the implementation of its laws and regulations regarding migrant fishers’ labor rights. Other CPTPP members, especially the home states of the migrant fishers in Taiwan, could then comment on these reports and initiate bilateral dialogue with Taiwan to address potential insufficiencies. In addition, NGOs, labor unions, and other stakeholders in global seafood supply chains, such as vessel owners, fishermen associations, seafood businesses, and even consumers, can all play critical roles in promoting labor rights in Taiwan by advocating domestic legal reforms.¹⁴² Scholars in global administrative law emphasize that enhancing administrative and legislative transparency and ensuring that the opinions of stakeholders are fully heard and reflected in policymaking are fundamental elements of good governance.¹⁴³ This assertion is supported by the CPTPP labor chapter. The public sessions and stakeholder involvement required by the CPTPP could ameliorate Taiwan’s decision-making with regard to protecting migrant fishers by enhancing the transparency and accountability of the recruitment process.

Lastly, in terms of dispute resolutions and economic (dis)advantages, the consequences of non-compliance with labor standards set by the ILO or the CPTPP could pressure Taiwan to reinforce its legal protections for migrant fishers. As already mentioned, the CPTPP enhances the enforceability of labor protections by authorizing its members to retaliate against other members failing to meet their legal obligations under the labor chapter. Article 19.6 empowers CPTPP parties to impose import restrictions on goods that

¹⁴¹ See ILO Indicators of Forced Labour, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf (2012).

¹⁴² ILO, Handbook on Assessment of Labour Provisions in Trade and Investment Arrangements (ILO, 2017) 40.

¹⁴³ Daniel C. Esty, *Good Governance at the Supranational Scale: Globalizing Administrative Law*, 115(7) YALE LAW JOURNAL 1490, 1530-33 (2006).

are suspected of having been produced using forced labor. Hence, if Taiwan is deemed as failing to address the forced labor issues occurring on Taiwanese fishing vessels, other CPTPP members may unilaterally prohibit imports from Taiwan. Moreover, since members may resort to a state-to-state dispute-settlement mechanism under the CPTPP, Taiwan will be required to eliminate any non-complying labor provisions. If the panel established under the dispute-settlement chapter were to determine that Taiwan's labor regulations fail to meet the standards set by the CPTPP and the ILO, and both sides are unable to agree on compensation, the complaining party may further suspend the economic benefits granted to Taiwan under the CPTPP.¹⁴⁴ In my view, both the dispute settlement mechanism and the potential economic retaliation serve as policy interventions that ensure the Taiwanese government will align with the relevant international labor standards for migrant fishers.

In short, the substantive and procedural policy interventions embedded in the CPTPP labor chapter (e.g., pre-ratification measures, monitoring mechanisms, dispute resolution, the potential for economic consequences) make the CPTPP a valuable opportunity for Taiwan to revisit its legal framework on the protections offered to migrant fishers.

D. Institutional arrangements can facilitate a connection between Taiwan and the ILO and drive greater capacity-building

Institutional arrangements are increasingly common in contemporary multilateral conventions and agreements. The main purpose of these arrangements is to develop the normative content of the international legal instrument, especially in regimes where contracting parties are unable to reach a concrete consensus when signing the agreement and, in turn, further negotiation is needed.¹⁴⁵ Moreover, these institutional arrangements can supervise contracting parties' implementation of and level of compliance with their legal obligations.¹⁴⁶ Institutional arrangements vary tremendously in form, ranging from informal dialogue and contact points to more institutionalized cooperative mechanisms such as a specialized committee, supervisory organ, or subsidiary body. In some international agreements, institutional arrangements serve as dispute-prevention and -settlement mechanisms. For example, some multilateral environmental agreements create specific bodies specifically designed to identify violations of contracting parties' legal commitments.¹⁴⁷ Some commentators argue that these institutional arrangements are indispensable for facilitating mutual trust between contracting parties, as they provide a platform through which states can directly communicate with one another, mitigating the risk of deviation from a convention's aims and limiting the impacts of the prisoner's dilemma arising from the cooperation between states.¹⁴⁸

¹⁴⁴ CPTPP, Art. 28.20.

¹⁴⁵ Chang-fa Lo, *Establishing Global Governance in the Implementation of FCTC: Some Reflections on the Current Two-Pillar and One-Roof Framework*, 1(2) Asian J. WTO & Int'l Health L. and Pol'y 569, 579-581 (2006).

¹⁴⁶ Robin R. Churchill & Geir Ulfstein, *Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little -Noticed Phenomenon in International Law*, 94(4) Am. J. Int'l L. 623 (2000).

¹⁴⁷ See, e.g., Montreal Protocol, Art. 8, 1522 U.N.T.S. 293, Sept. 19, 1987. ("[t]he Parties, at their first meeting, shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance").

¹⁴⁸ ERIC A. POSNER & ALAN O. SYKES, *ECONOMIC FOUNDATIONS OF INTERNATIONAL LAW* 30 (2013). R.H. McAdams, *Beyond the Prisoners' Dilemma: Coordination, Game Theory, and Law*, 82 SOUTHERN CALIFORNIA LAW REVIEW 212 (2009). June Namgoong, *Two Sides of One Coin: The US-Guatemala arbitration and the dual structure of labour provisions in the CPTPP*, 35(4) International Journal of Comparative Labour Law and Industrial Relations 483 (2019).

In addition to the above functions, FTAs' labor chapters can facilitate the enhancement of states' capacities to promote, respect, and enforce labor standards.¹⁴⁹ This capacity enhancement can be achieved through legal and institutional reforms, such as enacting new labor laws or revising current regulations, recruiting better-trained labor inspectors, or increasing budgets for the labor-related agencies.¹⁵⁰ In contrast to international labor conventions—which are largely unenforceable or are soft-law in nature—trade agreements that are more legalized can serve as frameworks for institutionalizing cooperation among contracting parties and bridging different international regulatory institutions. As elaborated in the *supra* section, the CPTPP labor chapter covers a vast array of cooperative mechanisms aimed at assisting members with implementation, monitoring, and cooperation. For example, members of the CPTPP have agreed to establish the Labour Council with representatives from each member to establish priorities for cooperation and capacity-building, encourage the participation of civil society, NGOs, and other stakeholders, and evaluate the implementation of the labor chapter to ensure that its provisions are operating effectively. Furthermore, the CPTPP emphasizes coordination with international organizations, especially the ILO, as external, professional, and impartial entities to facilitate and monitor CPTPP parties' compliance with international labor standards. Moreover, the cooperative mechanisms under the CPTPP labor chapter could drive more proactive cooperative arrangements through technical assistance from the ILO. For example, in its labor plan negotiated with the U.S. during negotiations for the original TPP, Vietnam committed to establishing a technical program with the ILO to support the implementation of proposed reforms, with the ILO set to issue biannual public reports on its regulatory and enforcement progress.¹⁵¹ While the U.S.'s withdrawal from the TPP prevented this side agreement from being implemented, the presence of ILO assistance is still evident in the labor plan proposed by CPTPP members.¹⁵²

These institutional arrangements under the CPTPP are of great significance to Taiwan's aim of implementing its labor laws and regulations, as doing so is critical to its potential to engage in multilateral cooperation with other CPTPP parties. To elaborate, the principle of flag-state jurisdiction is widely recognized under international law. Flag states are entitled to exercise their legislative and judicial powers, and are required to adopt regulations on manning, labor conditions, and training in conformity with the generally accepted international regulations, procedures, and practices.¹⁵³ However, the existence of flag-state jurisdiction does not preclude the port states' power to exercise a certain degree of control over vessels that enter their ports,¹⁵⁴ especially when they are empowered by bilateral international agreements with flag states. Port-state power is important in combating illegal, unreported, and unregulated fishing and protecting marine

¹⁴⁹ ILO, Handbook on Assessment of Labour Provisions in Trade and Investment Arrangements (ILO, 2017) 37.

¹⁵⁰ ILO, Handbook on Assessment of Labour Provisions in Trade and Investment Arrangements (ILO, 2017) 39.

¹⁵¹ Cathleen Cimino-Isaacs, *Labor Standards in the TPP*, in TRANS-PACIFIC PARTNERSHIP: AN ASSESSMENT 261, 273 (Cathleen Cimino-Isaacs & Jeffrey J. Schott eds., 2016).

¹⁵² CPTPP, Art. 19.10.1. See also Heng Wang, *The Future of Deep Free Trade Agreements: The Convergence of TPP (and CPTPP) and CETA?*, 53(2) J. World Trade 317, 332 (2019).

¹⁵³ U.N. Convention on the Law of the Sea, Art. 94, 1833 U.N.T.S. 397, 21 I.L.M. 1261 (1982). (“...3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to: ... (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments; ...5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.”)

¹⁵⁴ Arron N. Honniball, *The Exclusive Jurisdiction of Flag States: A Limitation on Proactive Port States?*, 31 International Journal of Marine and Coastal Law 499 (2016).

environments. For example, in 2009, the Food and Agriculture Organization enacted the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing to impose legal obligations on port states to ensure that vessels docking at their ports have not engaged in such activities.¹⁵⁵ Similarly, Article 218 of the United Nations Convention on the Law of the Sea stipulates that port states may conduct administrative investigations and initiate judicial proceedings against foreign vessels deemed to be liable for marine pollution when they enter their ports.¹⁵⁶ Considering the nature of distant water fishing, with vessel operators often registering in flag states that are unwilling or unable to combat labor abuses (i.e., FoC vessels), port states' power to regulate vessels is a critical component of the global effort against forced labor in the distant water fishing industry.¹⁵⁷ As mentioned in the *supra* section, Article 43 of ILO Convention No. 188 obliges members to rectify conditions that are hazardous to fishing workers' safety or health. More importantly, Article 44 of ILO Convention No. 188 stresses that members shall investigate "all" fishing vessels entering their ports, including those flying the flag of a state that is not a party to the convention.¹⁵⁸ These provisions constituted the legal basis for South Africa to seize and fine the Taiwanese "Fuh Sheng 11" fishing vessel for failing to meet minimum standards of decent work.¹⁵⁹ This case significantly undermined Taiwan's efforts to reform its labor laws and regulations to align with international labor standards. The limited role of Taiwanese state personnel at foreign ports reveals Taiwan's inability to actively cooperate with port states to eradicate labor abuses occurring on fishing vessels flying the Taiwanese flag.

While Taiwan has made some progress toward addressing the barriers posed by distant water fishing's transnational nature through legal and regulatory reforms, getting to the root of its issues requires significant international cooperation and political will by all relevant stakeholders. Among the 32 foreign fishing ports currently authorized for use by Taiwanese distant water fishing fleets, inspectors commissioned by the Taiwan Fisheries Agency are only allowed to conduct inspections in nine of them.¹⁶⁰ There are many regulatory vacuums where fishing vessels can easily escape to ports with lax law enforcement regimes and without bilateral cooperation arrangements with Taiwan. Even if the Taiwanese government were to try to engage in more formal cooperation with migrant fishers' home countries to address forced labor stemming from recruitment and employment processes, achieving this cooperation would be difficult, as most countries do not have formal diplomatic relations with Taiwan and thus refrain from having official interactions with Taiwan due to China's pressure. Thus, Taiwan has to envisage a creative approach to engaging with international organizations and foreign states. Unfortunately, while the Taiwanese government remains eager to build innovative cooperative networks, the island nation remains on the periphery.

In my view, the implementation and cooperative mechanism provided by the CPTPP labor chapter constitute a fruitful opportunity for Taiwan. Under CPTPP Article 19.11,

¹⁵⁵ Agreement on Port State Measures to Prevent, Deter and Eliminate illegal, unreported and unregulated fishing, <https://www.fao.org/3/i1644t/i1644t.pdf>.

¹⁵⁶ United Nations Convention on the Law of the Sea, Art. 218, 1833 U.N.T.S. 397, 21 I.L.M. 1261 (1982).

¹⁵⁷ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_214472.pdf

¹⁵⁸ ILO Convention No. 188, Art. 44 ("Each Member shall apply this Convention in such a way as to ensure that the fishing vessels flying the flag of any State that has not ratified this Convention do not receive more favourable treatment than fishing vessels that fly the flag of any Member that has ratified it.")

¹⁵⁹ Abuse and Illegal Fishing Aboard Taiwanese Vessel Let Slip Through the Net, Environmental Justice Foundation (Sept. 12, 2018), <https://ejfoundation.org/news-media/abuse-and-illegal-fishing-aboard-taiwanese-vessel-let-slip-through-the-net>.

¹⁶⁰ 2021 Trafficking in Persons Report – Taiwan, American Institute in Taiwan (June 2021), <https://www.ait.org.tw/2021-trafficking-in-persons-report-taiwan/>.

members are entitled to initiate formal cooperative dialogue on any matter relating to labor protections at the government-to-government level among CPTPP members. Article 19.10.2 of the CPTPP offers space for its members to further develop cooperation based on bilateral agreements. These collaborative programs could include joint committees between Taiwan and CPTPP members, where countries could discuss the best strategies to enhance their treatment, working conditions, and fishers' security onboard, as well as eliminate the possible labor abuses in Taiwan's fishing industry. Such joint efforts could enable Taiwan and other CPTPP members to identify and address labor disputes in the transnational labor supply chain. If needed, Taiwan and other CPTPP members could also employ the "labor plan" or "side agreement" approach that the U.S. and Vietnam took during the original TPP negotiations to address various matters, such as increasing the frequency and reliability of port inspections, institutionalizing the recruiting platform of migrant fishers, and regulations governing labor brokers and manning agents. Moreover, such cooperative dialogue could address the NGOs' criticisms regarding the ineffective grievance mechanisms offered by the Taiwanese government since it is practically inaccessible for most distant water fishers; any labor disagreements or grievances between migrant fishers and Taiwanese vessel owners or manning agents could be more effectively settled, and remedial decisions (if any) could be implemented through dialogue between Taiwan and the CPTPP members from which the migrant fishers had come.

Additionally, the institutional arrangements under the CPTPP labor chapter could illuminate a path for Taiwan to engage with the ILO. As confirmed by officials from the American Institute in Taiwan, Taiwan struggles to establish official dialogue with the United Nations and its Specialized Agencies, including the ILO, due to China's opposition. In practice, even purely neutral or functional interactions without any political implications, such as information sharing, are avoided.¹⁶¹ Thus, the CPTPP could serve as an intermediate gateway for Taiwan to launch a certain form of interaction with the ILO so as to fill the information gap, regulatory deficiencies of law enforcement, and international cooperation, enabling Taiwan to engage in a broader range of cooperative activities on labor affairs. For example, Taiwan could seek guidance and technical support from ILO officials and experts to enhance its own quality of flag state labor inspections.¹⁶² Forms of technical assistance offered by the ILO could include advisory and direct contacts missions, during which ILO officials meet Taiwanese government officials to discuss problems in the application of standards with the aim of finding solutions. In addition, Taiwan could learn from the experience of setting up a spontaneous labor rights reporting system, enabling it to establish a national reporting mechanism to evaluate Taiwan's implementation of relevant international labor standards concerning the protection of migrant fishers and invite ILO experts to conduct the periodical review.¹⁶³ This mechanism, which has already been successfully employed by the Taiwanese government to align with

¹⁶¹ Li-chuan Liu Huang, *The International Labor Conference Turns Its Back on Taiwan – and Its Own Principles*, *The Diplomat* (June 1, 2017), <https://thediplomat.com/2017/06/the-international-labor-conference-turns-its-back-on-taiwan-and-its-own-principles/>. Interview with officials of the American Institute in Taiwan, March 1, 2022 (on file with author).

¹⁶² ILO, *Guidelines on flag State inspection of working and living conditions on board fishing vessels*, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/normativeinstrument/wcms_428592.pdf (2017). This Guideline indicates specific issues and areas of onboard inspection that should be conducted by the flag state. The inspected items include the employment on board fishing vessels, valid documents, crew list, the manning agents, minimum ages, recruitment and placement of fishers, fisher's work agreement, payment of fishers, repatriation, hour of work and rest, medical examination, medical care, occupational safety, food and potable water, accommodation and social security.

¹⁶³ Wen-Chen Chang, *Taiwan's Human Rights Implementation Act: A Model for Successful Incorporation?*, in *Taiwan and International Human Rights: A Story of Transformation* 227, 234 (Jerome A. Cohen et al. eds., 2018).

international human rights standards, is critical for Taiwan due to its unique international legal status, which hinders its ability to participate in the ILO's rule-making process and receive up-to-date information on enactments or revisions to international labor standards set by the ILO. While achieving member or observer status in the ILO remains highly challenging, the platform offered by the CPTPP could contribute to Taiwan's meaningful participation and deepen Taiwan's engagement in this international governmental organization to tackle the forced labor issues in the fishing sector in the Indo-Pacific region.¹⁶⁴ This approach of "acting as if" it were a formal member in good standing of the state-centered organizations could also strengthen Taiwan's claim to the responsible state in international society.¹⁶⁵

V. CONCLUDING REMARKS

International economic law and international labor standards are increasingly intertwined. Labor norms are often incorporated into the international trade regime to ensure that the promotion of trade liberalization does not come at the expense of sacrificing labor rights protection. In addition, the possible roles of the ILO are also recognized to strengthen capacity-building among the contracting states of trade agreements, hence creating greater synergies between labor protection and the regulatory regimes of trade.

This paper demonstrated how accession to the CPTPP offers a strong incentive and a valuable chance for Taiwan to comprehensively evaluate and amend its current regulatory environment as it pertains to the protection of migrant fishers. By examining the provisions of the CPTPP labor chapter, the ILO forced labour-related Conventions (and the accompanying protocol), and ILO Convention No. 188, this paper revealed regulatory discrepancies between the CPTPP and Taiwan's legal framework in terms of promoting migrant fishers' labor rights. This paper suggests that accession to the CPTPP could positively impact Taiwan's legal environment with regard to the protection of migrant fishers' rights for the following reasons. First, the labor chapter of the CPTPP and its linkage of relevant legal instruments enacted by the ILO can serve as policy interventions that offer guidance for the Taiwanese government to reform its laws and regulations in pursuit of alignment with international labor standards. By employing behavioral economic theories and two-level games analysis, this paper argued that the urgent desire to join the CPTPP could incentivize Taiwan to bring its laws and regulations into conformity with international standards in order to minimize potential concerns or obstacles during the negotiation of accession. Additionally, if Taiwan successfully joins the CPTPP, this paper ascertains that the cooperative mechanism embedded in the CPTPP labor chapter could strengthen Taiwan's bilateral cooperation with other CPTPP members and, more broadly, create a platform for Taiwan to directly engage with ILO officials. Thus, accession to the CPTPP could enable Taiwan to participate meaningfully in the international labor regime. The possible forms of collaboration between Taiwan and the CPTPP members as well as the ILO are also envisaged.

For Taiwan, the preparatory work to join the CPTPP should not be limited to economic matters, such as trade liberalization and tariff commitments, even if they are also prominent obstacles for Taiwan to participate in this mega-regional trade integration. Instead, this paper considers that the bid to join the CPTPP is an invaluable opportunity to prompt the Taiwanese government to comprehensively revisit and reexamine its

¹⁶⁴ Regarding how Taiwan behaves like a state-party to international legal treaties, see Jacques deLisle. *"All the World's a Stage": Taiwan's Human Rights Performance and Playing to International Norms*, in *Taiwan and International Human Rights: A Story of Transformation* 173, 191-95 (Jerome A. Cohen et al. eds., 2018).

¹⁶⁵ *Id.* at 191.

domestic labor laws and regulations to enhance migrant fishers' protection, and build official partnerships with regional actors and international organizations. In the past, Taiwan's human rights record has been proven to be a significant factor in its acquisition of international support from like-minded allies, such as the U.S., Japan, and the European Union, for Taiwan's international participation.¹⁶⁶ In a similar vein, Taiwan's emphasis on the rights of migrant fishers could also aid it in garnering support from the international community, including the CPTPP members. Meanwhile, from the perspective of enhancing global governance and in consideration of Taiwan's crucial role in both global economic activities and distant water fisheries, the international community should acknowledge the fact that the exclusion of Taiwan from relevant international regulatory regimes, such as the CPTPP and the ILO, would adversely undermine their policy objectives. Given that neither the pursuit of being involved in regional economic integration nor the enhancement of labor rights protection is political and intimately connected to high politics such as the issues of statehood and sovereignty, Taiwan's participation in the CPTPP, the ILO, and other international cooperative mechanisms should be seriously considered by the international community.¹⁶⁷

¹⁶⁶ See Jacques deLisle, *Taiwan's Quest for International Space: Ma's Legacy, Tsai's Options, China's Choices, and U.S. Policy*, 60 *Orbis* 550, 566-67 (2016).

¹⁶⁷ Cing-Kae Chiao, *U.S. Positions Promoting Worker Rights in the Trans-Pacific Partnership Agreement and Their Impact on Taiwan*, 48(1) *Journal of European and American Studies* 73, 124 (2018). (In Chinese)