Regulations of Home and Host States on the Protection of Human Rights of Multinational Enterprises

Wenjie Liu *

Xi'an Jiaotong - Liverpool University, Suzhou, China

*Corresponding author: Wenjie.liu20@student.xjtlu.edu.cn

Abstract. With the continuous development of modern society, transnational corporations have played an increasingly important role in the world economy. They promote economic exchanges between countries, are conducive to the development of economic globalization, and also bring considerable economic benefits to the local area. At the same time, however, MNEs have also violated human rights from time to time. Many multinational companies choose not to consider the human rights of workers in the host country in order to pursue economic benefits. This situation has become increasingly serious in recent years, which has attracted the attention and research of many scholars. There is no unified conclusion and solution on how to regulate MNEs, especially on the regulatory responsibilities and methods of home and host countries. Considering that the current situation of human rights violations by MNEs is terrible, more solutions are needed to solve this problem. This article introduces some difficulties faced by home and host countries and their efforts to regulate Multinational Enterprises' human rights violations. Converting soft law into hard law according to the national conditions of each country, improving supervision, and signing bilateral or multilateral regulatory agreements between countries may be the solutions to this problem.

Keywords: Multinational Enterprises; Human Rights; Regulations.

1. Introduction

In the past few years, multinational enterprises (MNE) have helped both home states and host states achieve tremendous business growth. For instance, Sinopec has helped Uganda, Kenya, Algeria, and other countries build oil and gas pipeline projects, bringing considerable economic benefits during the first 20 years of the 21st century. However, at the same time, many problems related to human rights, especially labor rights have arisen, and those in host states tend to be more important because of the lack of local legislation and inapplicability of international law and some regions may acquiesce in human rights violations for business benefits. For example, the problem of child labor in Vietnam's rice industry has been puzzling the local government for more than ten years, and the part of international law that guarantees labor rights can hardly be realized in this region. It is about to discuss the current situation of human rights legislation and the regulation of MNEs in labor rights in host states. The regulation of MNEs in home states will be discussed as well because the regulation of labor rights protection needs combined efforts under the international law background. So, this paper will discuss, in turn, MNEs' violation of labor rights and its relief situation in home and host states, and the author will try to give some advice.

2. Analysis of MNEs' Human Rights Violations

2.1 Problems of Today's Regulations of MNEs

Before talking about the responsibilities of regulation in states, the author first wants to discuss the problems that MNEs meet when they try to solve issues related to labor rights. For a long time, there has been a dispute about the international legal status of transnational corporations, that is, whether there is a subject qualification of international law [1]. The booming international economic relations, through which tons of multinational enterprises connect both home and host states using international direct investment or trade, impose a direct influence on the labor issues in host states. While contributions to the economy, like positive spillovers in host states, have been witnessed [2]. For example, the Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration), an ILO instrument intended for MNEs to make for decent work and promotion of economic and social welfare for all, accents the areas demanding more significant support in labor rights protection in the context of MNEs [3], conversely unveils undermined labor rights concerning MNEs, which could prove to be a problem, especially for host countries. Sweatshops in Southeast Asia, as well as forced labor and child labor in Africa, are examples of deteriorated standards of labor rights protection for MNEs located in host states. However, transnational corporations often violate the environment and privacy in developed countries [4]. In view of the above-mentioned violations of labor rights by MNEs, the reasons must be discussed in order to find corresponding solutions.

On the one hand, in the context of today's economic globalization, all countries have the same opportunities and compete with one another at the same time. As a result, the competing host states who are seeking foreign direct investment (FDI) are in a race to secure it by promising little or no regulation on the MNEs, which renders regulatory blackhole and "race-to-the-bottom" which means that government deregulation of the business environment or reduction in corporate tax rates, in order to attract or retain usually foreign economic activity in their jurisdictions. The effect and intent of these actions are to lower labor rates, cost of business, or other factors (pensions, environmental protection, and other externalities) over which governments can exert control. This deregulation lowers the cost of production for businesses. Countries/localities with higher labor, environmental standards, or taxes can lose business to countries/localities with less regulation, which in turn makes them want to lower regulations to keep firms' production in their jurisdiction, hence driving the race to the lowest regulatory standards.

On the other hand, multinational enterprises are profitable enterprises committed to increasing production and cutting costs. For example, increasing the working hours of workers can promote output, and using child labor can reduce expenditure and ultimately achieve the goal of pursuing profits. However, some behaviors are illegal and immoral. In addition, MNEs will not only threaten the host country with capital withdrawal but will conduct investment arbitration against the host country once it is adversely affected by the host states [5].

Moreover, the traditional international human rights protection framework tends to be state-centric, and MNEs are not subjects of international law, which primarily regulates the human rights responsibilities of states instead of MNEs.

Last but not least, a state is considered to be only responsible for its own human rights violations but not for the human rights violations committed by its nationals, including MNEs. For reasons of national interest, most home states are reluctant to regulate the conduct of MNEs abroad actively. Therefore, as far as the current international human rights law is concerned, the exercise of extraterritorial jurisdiction by corporations over MNEs in home states does not adequately regulate their international human rights responsibilities, and the extraterritorial human rights obligations of States do not automatically legitimize extraterritorial jurisdiction. This is because the exercise of state jurisdiction is also limited by the principles of sovereign equality of states and non-interference in internal affairs under international law. It can be seen that the restrictions of the home country on the supervision of MNE are also the reasons for some current difficulties.

The production norms of most MNEs are based on the United Nations and the International Labor Organization, which should not be overestimated in their function of self-regulation by MNEs because some of them are ineffective. In consideration of their own economic interests, many transnational corporations choose to violate the provisions of international law to varying degrees.

2.2 The Regulation Dilemma of Home States

Both host country regulations and home country regulations have great regulatory advantages. Since both countries are sovereign states, they can formulate legally binding mandatory policies. However, with the further development of economic globalization, there will inevitably be some conflicts of interest between host countries and home countries in dealing with transnational countries' human rights violations. Once national interests are involved, this issue will also affect the effectiveness of the two countries in managing human rights violations committed by transnational enterprises. But obviously, the home country has great difficulties in the jurisdiction of MNEs.

First of all, the subsidiaries or branches established by transnational enterprises in the host country need to be established in accordance with the laws of the host country and subject to the territorial jurisdiction principle of personal jurisdiction. Therefore, the jurisdiction of the home country over MNEs should give way to the jurisdiction of the host country. But from the perspective of the current legislative practice, the host country's jurisdiction over the foreign parent company is mainly based on the jurisdiction of the principle of "lifting the corporate veil." However, from the perspective of judicial practice, the court holds a strict attitude toward it, which makes the rule play a limited role in jurisdictional issues [6].

Secondly, the State is only responsible for its own human rights violations, not its nationals, including transnational enterprises, for their human rights violations. If the home country needs to supervise some human rights issues of MNEs in the host country, it means that it has to bear greater international responsibility, which is generally unwilling to bear. Therefore, for reasons of national interests, most domestic countries are unwilling to regulate the behavior of transnational enterprises abroad.

Third, there are loopholes in current international law. It does not clearly stipulate that the home country has an obligation to regulate the labor rights of transnational enterprises. It only stipulates that the home country has an obligation to regulate the labor rights of transnational enterprises within its jurisdiction. These provisions have no mandatory constraints on the home country, and the home country government will not be forced to formulate relevant laws. Therefore, some home countries take this opportunity to neglect legislation and regulate extraterritorial human rights, which also hinders home countries from regulating the responsibility of transnational enterprises to assume labor rights.

Fourth, the difficulties and political risks that may be involved in the supervision of labor rights of transnational enterprises in the home country will also hinder the indirect supervision of the home country. It can be seen from the existing legal provisions that transnational enterprises generally need to bear criminal responsibility for their human rights violations. As human rights violations by subsidiaries occur in the host country, if the parent company wants to regulate the behavior of its subsidiaries, it must go to the host country to investigate and collect evidence. This involves whether the sovereignty of the host country is violated, and it will be difficult to conduct evidence collection and investigation.

In addition, the abuse of the "inconvenient principle" by the home country is also one of the difficulties. For example, India's "Bhopal case" is a typical case where the home country abused the principle to evade its responsibility for human rights violations. This disaster in 1984 resulted in hundreds of thousands of deaths [7].

2.3 Methods to Mitigate the Current Situation.

The disadvantages and advantages of soft law exist at the same time. Soft law has many advantages, such as a wide range of applications, diverse content, etc. It can provide free legislative space for the country. These advantages have been highlighted in practice in recent years. But at the same time, soft law is generally evaluated as a legal document lacking legal binding force and enforcement force. It must be selected by the State and transformed into domestic law, or hard law, to be legally binding and enforceable. In this way, it can only be used as a choice for transnational corporations. So the core problem is to convert the soft law into the hard law. Fortunately, the development of international labor cooperation has enhanced the awareness of the international community to protect labor rights, and the labor problems of transnational corporations have been widely concern. This has promoted the international community to continuously try to promote the transformation of the human rights obligations of transnational corporations from soft law to hard law. For instance, in 2014, the Human Rights Council of the United Nations adopted resolution 26 / 9, establishing the "open-ended

Intergovernmental Working Group on the relationship between transnational corporations and other business enterprises and human rights", in 2018, the "zero draft" of legal instruments on the basis of the previous three meetings were launched, and in 2020, the working group also launched the second revised draft of the "legally binding instrument on regulating the activities of transnational corporations and other industrial and commercial enterprises in international human rights law". Nations are cooperating to achieve the transformation of soft law to hard law.

The UK also enacted the Modern Slavery Act 2015 [8]. Under the UK Modern Slavery Act, companies that meet the above criteria must prepare an annual "Slavery and Human Trafficking Statement" [Article 54(1)] for each fiscal year, which describes the actions taken or no actions taken by the company during that fiscal year to prevent slavery and human trafficking within its own operations and supply chain [Article 54(4)].

Moreover, the improvement of labor cooperation and practice mechanism is also a necessity for the regulation of MNEs in host states. With domestic legislation combined, the problems may be well relieved. Take The provisions of the U.S.-Singapore Free Trade Agreement [9] as an example. The agreement stipulates in terms of the system that a labor committee can be established under the joint committee, which is composed of officials from various labor ministries or other relevant departments to discuss the implementation of the labor chapter in the agreement. Then the agreement has more detailed provisions on labor cooperation than the Australia-US free trade agreement [10] and has established a cooperation mechanism. Finally, the agreement also establishes a consultation mechanism. Disputes that cannot be settled through consultation can be submitted to the Labor Committee, and they can be resolved by themselves or by the mediation of outside experts. It is hard for host states to establish perfect laws to regulate MNEs in labor rights in a short time, but there are several methods using International multilateral agreements or translating soft law to hard law to help make the regulation of MNE in labor rights in host states become possible.

In addition, although most international laws are too vague to apply to specific situations, countries around the world can sign some agreements with each other to protect human rights issues in the operation of transnational corporations. If the two countries, or countries with similar situations, sign bilateral or multilateral agreements in line with their own national conditions, the regulation of transnational corporations will also be solved

3. Conclusion

To sum up, nowadays, there are still many deficiencies in the protection of labor rights in the host states, and there are many legal loopholes in both domestic law and international law. The issue of human rights violations by transnational corporations has always been very difficult for both host countries and home countries. At present, there are many problems in the application of international law on this issue. However, it can also be seen that the international community has paid close attention to this issue, and some countries and organizations have tried different methods, some of which have also achieved results. The issue of human rights will be a hot issue of international concern for a long time, and more and better solutions are needed.

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