

Challenges and Opportunities for the Protection of Labour Rights of Transnational Corporations: The Case of Developing Countries

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Abstract. In recent years, with the globalisation and liberalisation of trade, an increasing number of multinational corporations have been operating in developing countries. While promoting the economic development of developing countries, it has also triggered a series of human rights violations. Therefore, strengthening the protection of human rights for multinational corporations in developing countries is one of the current hot issues in international commercial law and human rights protection. Against this background, the international community has adopted a series of measures, such as the UN Global Compact, the OECD's Code of Conduct for Multinational Enterprises and the ILO's Declaration of Fundamental Principles and Rights, to protect the human rights issues of transnational corporations in developing countries. However, the effectiveness of these measures is still controversial, while further improvements are needed in practice. Therefore, this paper will use the method of case study to analyse the current problems of labour human rights abuses of transnational corporations in developing countries and put forward its own thoughts on how to strengthen the accountability of transnational corporations with respect to the protection of human rights, with a view to conducting a more in-depth analysis and reflection on the interaction between international business law and human rights protection.

Keywords: Transnational corporations; Developing countries; Human rights protection; International business law; Labour rights violations.

1. Introduction

As an important driving force of economic globalization, multinational corporations have played an important role in global economic and social development in recent years, promoting the economic development of countries around the world, especially developing countries. But at the same time, it has also brought about a series of problems, energy companies such as Total and Chevron have been accused of posing a threat to local environments and residents' health through their mining activities in Myanmar. These companies are often found ignoring the voices and needs of local communities and workers, resulting in regional conflicts and human rights violations. Furthermore, these companies have been accused of bypassing investigations into environmental standards and human rights issues, violating relevant regulations [1]. These reports allege that Chevron and Total have violated the human rights of local communities and workers while conducting gas extraction and have deprived local residents of land and resources in Palaung District, Pegu Division, Myanmar. In addition, the two companies are accused of having links with the military and providing funding and support to the army, thus allowing the Burmese army to continue persecuting ethnic minorities. At the same time, the silence and indifference of the international community is condemned.

There are many other cases of similar human rights abuses, and under the current legal framework, workers in developing countries are among the most vulnerable to exploitation due to the lack of strong enforcement mechanisms for legal protection. The current provisions on human rights protection of MNEs are mainly international soft law, which is not mandatory. There is also the problem that the existing legal system is not perfect, and that rights and responsibilities are not clear

Therefore, how to make use of international commercial law, the common force of the international community, to achieve the regulation of human rights violations by multinational companies in developing countries is an urgent problem to be solved at present. This article will try

to suggest possible ideas for the regulation of human rights responsibilities of transnational corporations in developing countries, starting from the existing problems of transnational corporations' human rights violations in developing countries.

2. Liability of Transnational Companies for the Protection of the Rights of Workers

2.1. Sources of Human Rights Responsibilities of Transnational Corporations

Social contract theory is the usual theoretical basis for analyzing MNE's responsibility for protecting labor rights. The social contract theory provides the theoretical guidance and basis for the protection of human rights by transnational corporations. The social contract theory begins with the original state of man - a state of all for one and one for all, a state in which people are in a state of pure nature, with no government, laws or rules to restrict or regulate their behaviour. In this state, each person has the right to protect his or her life, property and liberty. Social contract theory requires that people should act in accordance with ethical norms and the public interest. This suggests that multinational companies should also follow ethical norms and standards in their operations and protect the human rights and interests of local residents. Social contract theory suggests that when the interests of individuals and groups conflict, they need to be resolved through negotiation and compromise. Therefore, when multinational companies have disputes with local residents and governments, they should also resolve them through peaceful means such as negotiation and compromise in order to achieve a balance between the interests of all parties.

The International Labour Convention is also a form of International Labour Organisation legislation. The protection of human rights of multinational corporations in member countries is monitored and regulated by means of proposals made by the Conference. International labour conventions have a positive impact on protecting labour rights and interests, achieving social justice, standardising and guiding Member States' labour and social legislation, and promoting cross-national exchanges and cooperation.

With regard to organizations of an international character, the International Labour Organization (ILO) is playing an increasingly important role in the protection of the human rights of transnational corporations. The organisation has defended the concept of decent work as a strategic objective of international development, in parallel with promoting equitable globalization [2]. It is considered to have a unique guiding role in international labour rights issues. The ILO regulates transnational corporations through the development of relevant agreements and treaties, thus achieving the protection of human rights.

2.2. The Need for TNCs to Take Responsibility

Due to their own profit-seeking nature, transnational corporations, if lack of supervision, will bring a series of human rights violations in the process of promoting economic development.

The protection of labour human rights is a very important aspect of the human rights responsibilities of transnational corporations. Transnational corporations employ and manage a large number of employees in their global operations, who come from different countries and cultural backgrounds and enjoy a wide range of rights and benefits. The protection of labour human rights is an important aspect of the social responsibility of transnational corporations, which should assume their responsibilities and work with their employees, trade unions and local communities to ensure that their operations do not have a negative impact on their employees.

On the one hand, the lack of human rights responsibilities can lead to the destruction of the local environment by transnational corporations, with over-exploitation depleting local resources and deteriorating the living conditions of the people, for example, Coca-Cola's factories in India use large amounts of local groundwater resources, leading to the depletion of water sources in many local

villages. In addition, the wastewater and chemicals produced during the production process have also contaminated the local water and soil [3].

On the other hand, the absence of human rights responsibilities can also lead to exploitation of workers, discrimination in employment and increased inequality. In Cambodia, for example, a number of garment manufacturers have been accused of exploiting workers. These companies include global brands such as H&M, Zara and Nike. Workers say they have to work more than 12 hours a day for a meagre wage and not even enough time for basic health care and rest [4].

It is thus clear that regulating the human rights responsibilities of transnational corporations is an inevitable requirement for healthy and stable economic and social development. Only by actively assuming human rights responsibilities can transnational corporations truly realise the benign interaction between developing countries and society and reach an optimal solution.

3. Multinational Companies in Developing Countries

3.1. The State of Labour Human Rights in Developing Countries

As developing countries are often not as strong as developed countries, their cheap labour and preferential policies often attract multinational companies to invest, thus achieving high returns in exchange for low costs, but the strength of capital often brings a series of problems such as violations of labour human rights.

Historically, human rights have had a much harder time in developing countries, which have often experienced oppression through colonisation and invasion over a long period of time. Under imperialist oppression, people in the colonies and semi-colonies lived in dire straits, their human rights were trampled on, and their basic dignity was not respected and guaranteed. It is precisely because of this long history of exploitation and aggression that people in developing countries have become more attentive to the pursuit of human rights.

At present, developing countries are joining the United Nations, participating actively in its human rights-related activities and in the formulation of human rights-related regulations, and practising respect for the principles of the Charter of the United Nations in relation to human rights. They are also committed to the development of their countries in accordance with the Universal Declaration of Human Rights and to the protection of the human rights of their citizens.

But while the protection of human rights has been effective, there are still many gaps in the legal and regulatory framework. Poverty, which is widespread in developing countries, increases the risk of labour exploitation. Workers are not guaranteed their basic rights and are forced to accept low-paying, high-intensity work in dangerous working conditions, or even unfair or illegal employment conditions under pressure to survive. Sharma et al. reveal that circular migration occurs early on, at 14-15 years, with workers falling out of workforce when they reach 35-40 years, because of the brutality of long hours of work under dangerous conditions, and the lack of access to the minimum rights necessary for a healthy life [5]. The sweatshop problem puts a question mark on the original win-win-win situation where developed countries enjoy cheap goods, multinational companies make high profits and developing countries develop economically.

3.2. Causes of Transnational Corporations' Violations of Labour Human Rights in Developing Countries

Transnational corporations violate the basic rights of workers in developing countries for a variety of reasons.

From the perspective of developing countries themselves, the historical legacy of poverty and imperfect social development has led to a limited standard of living for their people, breeding poverty and low economic standards resulting in cheap labour. In order to develop the social economy and enhance national power, the government will introduce policies to encourage and support the development of multinational companies, in order to drive the local economy, employment

development and enhance national power. This may be at the expense of the local environment and human rights.

From the perspective of multinational corporations themselves, as the accelerator of the world economy, multinational corporations are looking for the best markets, resources and cheap labour in the world, which coincides with the conditions of developing countries, and therefore prefer to develop in them. Moreover, the economic strength of MNCs in developing countries is so strong that governments tend to rely on the development of MNCs to boost the local economy and give preferential treatment to them in terms of taxation and other policies, so that the regulation of MNCs is not strict, and the low requirements of governments even provide opportunities for MNCs to exploit the exploitation of labour and violation of labour rights.

In addition, the old international order had a subtle impact on the issue of labour rights in developing countries. In the old international order, developing countries had a weak voice in the process of signing various treaties and it was often the developed countries that had the say. The current international economic order was established at a time when most developing countries did not exist as independent states [6].

From the above, it is clear that the conditions of developing countries themselves, the tendencies of transnational corporations and the current state of the international order combine to provide a breeding ground for transnational corporations to violate labour rights in developing countries.

4. Labour Human Rights in Developing Countries

4.1. Child Labour Issues

Child labour is literally work performed by children, and work performed by children can be seriously detrimental to their healthy physical and mental development. Long hours of work can lead to children not receiving the education they deserve, thus reducing their potential and dignity [7].

According to the ILO report, 160 million children worldwide are engaged in child labour, 79 million of them are engaged in hazardous work, the latest global estimates suggest that by the beginning of 2020, 160 million children worldwide will be in child labour and engaged in child labour, accounting for nearly one in ten of all children worldwide. Seventy-nine million children are engaged in hazardous work that directly endangers their health, safety and moral development [8]. The Nike scandal over the lowering of labour age standards and the recruitment of child labourers has highlighted the violation of child labour rights by multinational companies [9].

At present, international organisations and countries are actively promoting the issue of child labour, but still face many tests. Both developing and developed countries have introduced laws and policies to prohibit child labour, and national and international legal instruments have been introduced to eliminate child labour, but there is a lack of enforcement and a lack of strong enforcement bodies to tackle the problem [10].

4.2. Labour Health Issues

The issue of violations of workers' right to health by multinational companies has long been a hot topic of discussion. The right to health is a fundamental right of workers that should and must be protected.

However, some multinational companies do not actively take responsibility and exploit legal loopholes and the connivance of local governments to exploit and squeeze the labour force, violating the lives and health of workers with high intensity and long working hours, and the poor living environment that affects the health of local residents and workers. On the one hand, labour protection policies in developing countries are often not mature enough, and governments do not do their due diligence in protecting labour health, thus allowing multinational companies to exploit policy loopholes and infringe on labour health rights. On the other hand, transnational corporations may be able to reduce their costs in the selection of raw materials and safe production standards in order to

make a profit, thus choosing materials that pose a threat to labour health and exposing workers to a contaminated environment, thus violating their right to health.

On 24 April 2013, an eight-storey garment factory building collapsed in Rana Plaza, Dhaka, the capital of Bangladesh, killing 1,127 people. The cause was the use of substandard materials and heavy equipment that the multinational company's factory could not withstand. This caused the building to crack under the high load, which ultimately led to the tragedy, one of the worst disasters in the history of human industrial development [11]. It reveals the lack of corporate responsibility of multinational companies in developing countries, the loopholes in corporate regulation and the inadequacy of the existing legal and international order in regulating violations of labour rights by multinational companies.

Current legislation, on the other hand, tends to be soft law, lacking in compulsion, as regards the regulation of the human rights responsibilities of transnational corporations. These soft law instruments cannot be directly applied to regulate transnational corporations and lack enforcement mechanisms to play a substantive role in protecting labour rights.

5. Possible Ideas for Using International Commercial Law to Solve Problems

5.1. International Community

At the international level, the signing of international conventions can serve as a guide for the regulation of multinational companies.

The protection of labour rights in the international community is often achieved through the adoption of legislation by international organisations and the involvement of States in signing legislation, such as the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration). In this way, a dispersed workforce becomes a collective force with a voice in the world.

The United Nations and other non-governmental organizations should collaborate in promoting legislation and organising the conclusion of multilateral treaties by States. International organisations and sovereign states should agree that international direct regulation mechanisms and domestic indirect regulation mechanisms should work together and cooperate with each other. Human rights accountability mechanisms for transnational corporations should encourage transnational corporations to take positive steps to protect human rights.

5.2. Source and Host Countries

Host country regulation of transnational corporations is the most direct way to prevent transnational corporations from violating labour rights. But host countries are often powerless to regulate TNCs, especially in developing countries. Developing countries have underdeveloped economies and are therefore more willing to give TNCs "preferential policies" and lower human rights standards to attract TNC investment.

Home State regulation is an important part of preventing human rights abuses by transnational corporations. However, international law does not specify whether states of origin have extra-territorial human rights obligations with respect to the regulation of transnational corporations. As a result, many States only comply with their obligations under international human rights law or international human rights treaties that are within their jurisdiction, while their home States are idle in legislating extraterritorial human rights obligations.

In order to solve the problem of the lack of regulation of multinational companies in home and host countries, it is necessary to call on both parties to respond positively to the rules and regulations of the international community and to implement the rules and regulations designated by the international community into their own legislation and relevant policies, taking into account the actual situation in their own countries. At the same time, home and host countries should be aware of the dangers of transnational corporations' violations of labour rights and should not seek temporary gains to the detriment of long-term development. The host country should formulate relevant policies to

protect the human rights of its own workers, encourage and support the establishment of trade unions to defend their own rights and interests and at the same time, it should exercise supervision over multinational companies and liaise with the home countries of multinational companies to reach a consensus and strike a combination of punches to truly achieve effective supervision over multinational companies [12]. The home country should actively cooperate with the host country, and when there is a conflict between the home country and the host country regarding the system of multinational corporations, adopt the system that is most conducive to the protection of labour rights, so as to protect labour rights and interests to the greatest extent.

6. Conclusion

The solution to the problem of human rights violations by transnational corporations is not the responsibility of individual subjects but requires the international community as well as countries to pay attention to human rights development and actively assume their human rights responsibilities. Only when countries truly recognise the importance of protecting labour rights and cooperate can they truly realise the regulation of the human rights responsibilities of transnational corporations, thus enabling them to achieve more sustainable and long-term development as economic accelerators around the world.

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