The Liability of Preserving Labour and Human Right Regarding Multinational Enterprises in Distinct Countries

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Abstract. This paper studies the background and current situation analysis of multinational corporations and four approaches that are beneficial to coping with these dilemmas since it includes the property of prevention, discontinuation, and punishment. At the same time, this paper combines three global cases in South Africa, Bangladesh, and Zambian to show the neglect of human rights by multinational companies with some specific ways multinational corporations treat labor. Meanwhile, the analysis is carried out from the perspective of the environment to pay attention to. It focuses on the attitudes and considerations of host and home countries towards Multinational Enterprises. Economic benefits are the main consideration of the countries and multinational companies involved. Establishing a reasonable mechanism within multinational Enterprises to restrain overseas subsidiaries under certain conditions, assuming international responsibilities, and fulfilling international obligations, especially human rights, have a positive bearing on the global community. Different methods and methods have limitations, and ultimately the key is to rely on the multinational itself.

Keywords: Multinational enterprises, human rights, home state, host state, environment.

1. Introduction

Multinational enterprises are generally conceived to embark on international manufacture and commercial activities by setting up subsidiary corporations based on investment from home state to host state with a view to making the optimal use of advantageous product elements amongst the developed and developing nations. However, there are some detrimental instances. In 2011, Chinese textile factories in South Africa had to be confronted with being fined millions of CNY for paying wages below the local minimum wage. The collapse of the Rana Plaza building in Dhaka, Bangladesh, on April 24, 2013, was a wake-up call. The building, which housed five garment factories, killed at least 1,100 people and injured more than 2,500. In 2019, in Vedanta Resources PLC and another v. Lungowe and others, the plaintiffs argued that the U.K. parent company, Vedanta, had failed in its responsibility of care to its Zambian subsidiary. The subsidiary's mining practices caused serious environmental pollution in a Zambian village. This article intends to analyse the relationship between multinational companies and human rights and labour rights to formulate a set of measures with the art of balance to coordinate the conflict of interests between multinational companies and individuals. Next, this content will find out the problems of multinational companies, analyze the causes, and put forward measures for multinational companies to adapt to contemporary development.

2. Problem Analysis

Due to the profit orientation, initially, the multinational enterprises are more than willing to expand all over the world with their superiority in the capital, information, and advanced organisational structure to reap the benefit of the labour who exist in developing, even impoverished countries, obtaining an extremely higher percentage of profits. The phenomena, however, contribute to the indifference to labour rights that could not be preserved well. Although multinational enterprises have legitimate interests and qualifications towards investment in other nations, those interests also include liabilities to the labour rights and conditions of the workforce they employ to achieve those interests. For instance, to adequately utilize existing resources, they are required to overwork constantly and consistently to ensure the machine functions from day to night. Disciplinary action for violations generally involves verbal and written warnings and demotion with seriousness, each one of them being observed with varying degrees of seriousness [1]. In addition, nonage child workers are harnessed and perceived as adult labour, in some cases, to pay much lower salaries, reducing the fixed expenditure, involving medical insurance and routine welfare since the youngsters rarely gain an in-depth knowledge of relevant interests.

The action, obviously, violates the regulation introduced by competent authorities that mainly aims to conserve their inhabitants from being exceedingly exploited and exhausted. As a result, it is essential to delve into the issues to balance interests between those enterprises and their employees, which may exert a positive bearing on them. One reason is that it is beneficial to enterprises' long-term growth, as legal behaviour is more prone to presenting their corporate values and spirits and is an approach to taking responsibility for the community. Another is that the labours and fundamental human rights could be attached importance to in aspects of insurance, income and dignity and so forth. Both are much more likely to function in the legal structure. Multinational enterprises, however, are liable to evade a high proportion of hazards involving relocating their equipment and other essential productive factors, which tends to have a detrimental bearing on the remaining regional inhabitants. Owing to the poverty of nations, the authorities are comparatively willing to introduce these corporations to levy taxes, advance the standard of living and promote economic prosperity, at the same time, and the government lacks the strength and merit to enact legislation. Accordingly, the behaviour of pursuing a short-term interest renders these the possibility of exploiting loopholes in the law to decrease the lowest salary, lack security, and even reject reaching an agreement with their counterparts. Both negative actions and the scarce consciousness of rights safeguarding are responsible for the loss of legal interest.

3. Reasons for legal dilemmas

To this day, cases of human rights violations by multinational corporations are happening all around us, both visible and invisible, which cause individuals' reflections.

3.1. Home state

With regard to the home state, encouraging domestic MNEs to invest abroad is conducive to promoting domestic industrial structure adjustment and upgrading and technological innovation. In the short term, the capital outflow is unfavorable to the domestic balance of payments, and a large number of subsidiaries set up by multinational companies have led to a decline in exports, a rise in unemployment, a reduction in the industrial base, and even an outflow of key technologies. In the long run, however, profit reflow helps improve the balance of payments. More advanced and rapidly developed core technologies mean more opportunities to seize the opportunity of industrial growth earlier, monopolize more markets, and improve the countries' influence in such industries, which can contribute to the countries' economic growth and even become means of diplomacy in the economy when necessary. However, excessive labour rights legislation, administrative and judicial measures can constrain the development of their multinational enterprises, increasing their operating costs and affecting their international competitiveness, while adding an additional burden to the domestic courts and increasing their responsibility to safeguard labour rights. By the end of 2009, a total of 27 states had used universal jurisdiction to prosecute alleged illegal actions, and over twelve condemnatory sentences had been issued [2]. Home countries may be in the awkward position of wanting to reap the benefit of multinational enterprises without disrupting the normal legal order. Provided that domestic judicial organisations and administrative law enforcement organisations exert a detrimental bearing on the headquarters of multinational companies in the home state, it will bring to a situation that neither the home country nor the multinational companies are more than willing to see. Sometimes, the silence and inaction of the relevant competent departments are not without meaning but just show the attitude. At the company level, no matter how large the multinational company is, it also gradually grew up in the country at the beginning, so the company will also have a sense of responsibility to the country. In fact, looking back at the development history of MNEs, almost all of them have received a large variety of support or even direct funding from their own governments and society, such as tariff protection and taxation support. But it does create a tacit understanding between the company and the government: when the company runs into difficulties, it will ask home countries for support and assistance. When home countries encounter difficulties, they will also demand dedication and even necessary sacrifices from multinational companies. It is too early to determine the effectiveness of specific state legislation to prevent business activities that adversely impact human rights [3].

3.2. Host state

For host states, excessive labour rights protection in their legal regimes for foreign investment inevitably affect their ability to attract foreign investment, and labour rights guarantee is often given relatively low priority compared to the urgency of rapid economic growth and dramatic infrastructure construction. However, the essence of capital aims to go to extreme lengths to acquire respectable profits so that it is indispensable for the global community with the location of the parent company to take measures. The main purpose of regulating the business practices of multinational enterprises is to make them earn extensive profits with less infringement of labour rights in the host countries, and to promote the international protection of labour rights whilst making some appropriate adjustments to the international economic order by increasing the obligations of multinational enterprises and their home countries. With the growth of the host countries' economy and enhancement of their awareness of the law and human rights, not only the favorable side appears, but also the unfavorable features are gradually discovered. Any economic policy introduced by the host country's government may exert an positive or detrimental impact on the business activities of multinational companies. Therefore, confronted with the uncertainty of the business environment, multinational companies generally show great concern about the news and political measures of host countries to pursue merits and avoid demerits. Initially, host countries may condone or acquiesce in allowing multinationals to override local laws. A typical instance is that multinational companies may find ways to evade the law by paying workers below the local minimum wage and not contributing to social and health insurance unless necessary. For another example, multinational companies are much more likely to ignore the requirements and responsibilities of environmental protection. Obviously, the development of environmental protection is often at a lower level of value in the development of most developing countries. With regard to multinational companies, they should be aware that environmental protection exerts a conceivable impact on the prospective potential of a country's development. However, international environmental norms that directly bind only state parties into individual obligations for private enterprises may be more challenging than the analogue task concerning human rights treaties [4]. The protection of the environment and resources is generally regarded as a higher value order in developed countries than in the economy. Although taking all these factors together, the idea of authority concerning developing countries is still to actively seek out multinational enterprises to locate in their countries to promote local economic development and employment.

4. Suggestions

As a result, four possible approaches are supposed to exist to free this dilemma.

4.1. Regulate themselves

One is that reaping the benefit of multinational enterprises' credit to regulate themselves is an effective strategy. When they give an account of annual performance towards the competent local authorities concerned, they must hand in a letter of commitment whose content and description include a guarantee that they would not deliberately damage the labour and rights whether abroad or at home state, and what they adapt sorts of manner to preserve the labour's interests. Provided that their actual behaviour disobeys what they have guaranteed, they are much more likely to suffer punishment and sanction: they can be reported in newspapers or authoritative websites to decrease their competitiveness amongst numerous corporations. However, the local competent ones refer to the home state or host state, which is an issue worthy researching. Whether multinational enterprises hand in which nations, contribute to imposing burdens on the administrative sectors, which had to consider the local economy and ultimate effectiveness. Provided that executive sectors are at the location of the impoverished and have insufficient attention, as a matter of fact, it is just on paper as distinct from putting into practice. For such a reason, states should back self-regulation initiatives, but those initiatives should be supported by national laws and acts implemented [5]. For example, French decree 2017-399 introduced a human rights risk management system that requires parent companies to anticipate, manage, assess, and avoid human rights risks in their supply chains. The Netherlands Child Labor Due Diligence Law requires companies in their supply chains to develop and adopt strategies that do not use child labor in their supply chains or face fines [6]. Self-regulation is much more likely to benefit from the credit of multinational companies, and these companies will be much more willing to accept it. The government and business will not tangle with each other and consume each other's resources for legal provisions and legal concepts. After all, such a large company should recognize its commitments and black-and-white words.

4.2. Developing a novel application software

Additionally, developing novel application software to create a platform is much more liable to prompt the communication and interaction concerning labour and human rights amongst home and host states. The app would provide some spaces to store evidence and clues to comparatively ensure the correction of one's claims. Meanwhile, it should be run by non-governmental organizations with a view to intervening in justifiable operations by competent authorities. The government just functions as a user to engage. The core function is that broaden the channels of acquiring statistics regarding multinational enterprises' subsidiaries so that the home state could have a good command of their trace in other regions. The approach is equal to adding a simple supplement between home and hose states, however, it is different from the common practices, including politics and jurisdictions. To some extent, it is analogous to organization structure to provide an opportunity for such enterprises. However, there are concerns about which non-governmental organizations exert the development of the app, whether it leads to unnecessary troubles and before the disappearance of the app, whether there would other alternatives to substitute it. Definitely, this solution would need to consider technical factors and security factors in particular. The development of such software will face restrictions such as network stability, internal operation mechanism, and contemporary landing technology. Not all people will recognize and attach importance to this software platform, and it is inevitable that it will be attacked by hackers and even criminals, as well as the differences in security policies of various countries, and there will be certain difficulties when it is really implemented. At the same time, the routine operation is also a very tricky problem.

4.3. Introduce more serious measures

Furthermore, authorities could introduce more serious measures to settle this question, such as the crime law. Ubiquitously, the criminal law means is perceived as a detrimental property to exert a deterrent effect on the criminals. In this case, exploiting the means is to regulate, and it is worth exploring to do such characteristic to enhance the liability of paying more attention towards labour and human right. One of the main theories of liability in Unocal and Chevron, and indeed in most of the corporate cases under the Alien Tort Statute, is aiding and abetting liability [7]. At Nuremberg, a wide range of enterprises were convicted on an aiding and abetting theory, to be more specific, Steinbrinck, was convicted for giving money to the army, even though he actually had no interest in seeing the army commit atrocities [8].

Those who are more likely to have a grasp of some of the events to deliberately violate the human nature should be to be bound up by crime deterrent. Likewise, parents' companies should undertake the obligations with the subsidiaries except for demonstration of due diligence and unconnected state. The shock and awe of personal nature will greatly promote multinational companies to turn to the right track. After all, it is the boards, supervisors and senior managers of multinationals who will bear the stiffer responsibilities, forcing them to take such a risky matter seriously. However, at the same time, it is worth reflecting on whether this more severe punishment measures may exceed the limit of normal expectations and whether it will break through the principle of modesty of criminal law. Of course, the discussion of such measures requires us to be cautious

4.4. International organisations should endeavour to function

Last but not least, international organisations should endeavour to function in assisting the multinational enterprises to go along with the applicable approaches to regulate multinational enterprises. If a state tried to regulate corporate conduct over a broad range of human rights activities (e.g., violations of free speech), it might face protests from other states. Such protests would suggest an absence of acceptance of universal jurisdiction [9]. As participants in global governance, multinational enterprises have an increasing impact on the structure and process of global governance. This is specifically reflected in the normative formation, agenda setting and other practical activities of global governance. When international organizations absorb more multinational companies to participate in the formulation of global treaties, there will be opportunities for multinational companies to express their views and opinions based on the interests they represent. Based on this, multinational companies will be much more likely to implement international conventions that they have participated in drafting, even though international conventions usually act as soft law without national coercive power, and non-implementation will not result in a particularly substantial impact. Although it is not legally binding, it is considered as the 'global authoritative standard on business and human rights' [10]. In most cases, multinational companies take the honor of participating in international and global legislation, and actively publicize the international responsibilities and obligations of multinational companies based on this. More or less, they will present themselves as a positive image to the international community. As mentioned above, based on their own interests, home countries and host countries may not make full efforts to regulate, while legitimate international organizations usually perform their missions as an objective and neutral juridical person image, which can overcome the limitations of home countries and host countries to a certain extent.

5. Conclusion

To summarise, this paper studies the background and current situation analysis of multinational corporations and four approaches are beneficial to coping with these dilemmas, since it includes the property of prevention, discontinue and punishment. Any of the stages happen, the home and host states would take effective methods to stop from the four approaches provided. Definitely, it is equally important to have collaboration amongst international organizations, playing a strategic role in directing global efforts to reach the goal of preserving human and labour legitimate rights. To be honest, it is easy to implement the proposals mentioned, however, it hinges on the willingness of multinational corporations, home and host states and the engagement of the individuals and workers who suffer the unjustifiable treatment. Provided that the enterprises conform to the basic core values they have launched to external publicity, provided that bilateral competent agencies concerned both assume the positive responsibility and provided that the citizens endeavour to maintain their interest as opposed to the act without any behaviour, under these circumstances, additionally, with a global effort, it is likely to create friendly atmosphere. Notably, government should balance the value between the economy and protection of rights, far less involving a number of illegal activities. After all, too much state interference in multinational corporations not only creates conflicts in corporate law, but also hinders economic development. In the future, with the help of the home country and the host country, multinational companies will further regulate their own behaviors and promote mutual coordination between the acquisition of interests and the protection of human rights. In addition, the attention of the international community, especially in the attention of international organizations. As well as establishing a reasonable mechanism within MNEs to restrain overseas subsidiaries under certain conditions, assuming international responsibilities and fulfilling international obligations, especially in terms of human rights have a positive bearing on the global community.

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