The Human Rights Obligations of Multinational Corporations and Their Regulation

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Abstract. With the deepening of globalization, the involvement of transnational firms in the process of world economic development is becoming increasingly significant. Global supply chain production and sales are increasingly being handled by multinational enterprises. As a result, in order to obtain profits, transnational corporations are polluting the host country's environment, utilizing illegal labor practices and other abuses of human rights when conducting their business. Therefore, it has become the focus of the international community and rights advocacy organizations to assume the responsibility of human rights of transnational corporations. In this context, through literature analysis, comparative method and other research methods, this paper studies the urgency and necessity of multinational firms must take on obligations related to human rights, the current situation and dilemma of multinational corporations to undertake human rights responsibilities, and the legal regulation of multinational corporations' human rights responsibilities. There are three main ways to investigate the human rights responsibility of transnational corporations: state regulation of transnational corporations, non-governmental organization regulation of transnational corporations and self-regulation of transnational corporations. However, at present, these approaches are not enough to guarantee the obligations of multinational corporations with regard to human rights, and these measures must be strengthened to regulate the human rights responsibilities of transnational corporations.

Keywords: Multinational corporations; Human rights responsibilities; Regulation mode.

1. Introduction

The 2022 FIFA World Cup opened in the Middle Eastern country of Qatar, but human rights abuses such as exploitation and enslavement of foreign workers can be seen everywhere. In the construction of the Qatar World Cup, the working and living conditions of foreign workers were poor, wages were often unpaid, and there were constant casualties. These problems have irreversible impacts on the local society and natural environment. Therefore, they have aroused wide concern of the global society and made multinational companies face the condemnation and pressure of public opinion from the public and media [1].

As a product of globalization, transnational corporations have become an indispensable part of modern economic globalization. Although transnational corporations can bring economic development and employment security, they will aggravate social, economic and environmental problems in some countries and cause great damage to the inhabitants' and local governments' human rights. In fact, the state should regulate the responsibility of multinational enterprises for human rights. However, the procedure for enforcing obligations related to human rights of TNCS is stalled by the inability or unwillingness of their home and host countries to perform their duties. At present, how to enforce human rights laws on the accountability of multinational businesses has emerged as a critical issue in the defense of human rights.

2. Urgency of Human Rights Responsibility of Transnational Corporations

2.1. Positioning of Transnational Corporations in International Law

Transnational corporations, also known as multinational corporations and international corporations, primarily refer to the monopolies of developed capitalist countries that establish

branches or subsidiaries abroad and engage in global production and business operations based on foreign direct investment. With the growth of economic globalization, transnational corporations play an important role in international economic exchanges. Most people consider transnational corporations to be an issue of international law, but international law has not established their subject status, and only emphasizes their important role in the international community. Countries differ on whether transnational corporations are subjects of international law.

From a legal standpoint, the constitution of the subject of international law requires the following three requirements: the ability to conduct international business independently and to participate in international legal relationships; To be able to directly discharge one's rights and obligations under international law; International claim capacity. First of all, in practice, more and more transnational corporations can directly participate in international legal relations, and transnational corporations can independently carry out international exchanges in a certain field. In addition, many principles of international law, such as most-favored-nation treatment, indirectly recognize the independent legal personality of TNCS. Secondly, in the practice of international justice, more and more transnational corporations can directly assume the rights and obligations under international law in certain fields. By analogy with the principles of civil law, transnational corporations are equivalent to persons with limited capacity for civil conduct in civil law. Although they do not have full capacity for conduct and full capacity for rights, they are qualified as independent legal subjects. Finally, in the context of increasingly fierce competition in the international economic market, if transnational corporations do not have the ability to claim, the probability of bankruptcy will be greatly increased, and bring adverse effects on the development of the international economy. According to common sense, transnational corporations should have the ability to claim internationally. Therefore, transnational corporations have three elements that constitute the subject of international law.

Recognizing the subject status of transnational corporations in international law not only enables them to have certain rights and be protected more effectively, but also enables them to undertake corresponding responsibilities and fulfill corresponding obligations according to international law, which is of great significance to the regulation of human rights responsibilities of transnational corporations.

2.2. Necessity for Multinational Corporations to Take Responsibility for Human Rights

According to the traditional theory of human rights, only the state and the government having public authority have an obligation to protect human rights and bears human rights responsibilities. However, with the growth of society and the international economy, multinational corporations have carried out many human rights violations in economic, social and cultural fields by virtue of their own advantages in order to seek benefits. In some cases, the damage caused by transnational corporations to the victims is no less than the damage caused by the violation of human rights carried out by the state.

The state is supposed to regulate the human rights abuses carried out by multinationals. With the development of economic globalization, multinational corporations are headquartered in one country and their subsidiaries are spread throughout other countries, making it difficult for the host country or other countries to supervise them. In addition, the attitude of the host country government to actively attract the investment of transnational corporations in order to seek benefits often reduces the enthusiasm of the host country to regulate the human rights responsibilities of transnational corporations. To a certain extent, the host country was complicit in human rights violations committed by transnational corporations.. Therefore, it is urgent and necessary for transnational corporations to undertake human rights responsibilities.

2.3. The dilemma and current situation of multinational corporations taking on human rights responsibilities

2.3.1 Domestic Law Level

Based on the principles of territorial jurisdiction and individual property rights, the domestic legal basis to regulate the human rights obligations of multinational corporations stem primarily from their host and home countries. From the perspective of the host country, many host countries are heavily dependent on the capital input of transnational corporations. In order to prevent the withdrawal of investment by transnational corporations, the host country often dare not regulate the host country. In addition, due to the different degrees of human rights protection in different countries, there are certain obstacles for multinational corporations to shoulder human rights responsibilities.

From the point of view of the home country, it is a powerful means to protect human rights to regulate the the human rights obligations of multinational corporations under the domestic legislation of their home country, however, in most cases, the host country is hesitant to oversee the human rights obligations of multinational corporations. The subsidiary or branch established by a multinational corporation in the host country is established according to the domestic law of the host country. The jurisdiction obtained by the host country based on the principle of territoriality should take precedence over the jurisdiction obtained by the home country based on the principle of personal ownership. Therefore, the home country often refuses to regulate the infringement of the multinational corporation based on this willingness when it is unable to make profits.

2.3.2 International law level

Currently, International human rights law is the principal international law governing the human rights responsibilities of multinational corporations. As a subdivision of international law, the particularity of international human rights law lies in that the subject of international law can not only enjoy rights but also fulfill obligations in other international treaties, and the two are in a state of balance. However, in international human rights law, the subject of international law almost only needs to undertake obligations, but does not enjoy corresponding rights, and the beneficiaries are often individuals. In addition, Majority of the sources of international human rights law come from declarations or resolutions within or outside the United Nations. However, these declarations and resolutions are not promulgated in the form of laws, and the subject of international law can choose whether to abide by these non-mandatory declarations and resolutions according to its will. In the case that the subject of international law almost only needs to undertake obligations but not enjoy rights, Most subjects of international law are unwilling to comply with such non-mandatory provisions if it is profitable to do so [2].

According to the traditional theory of human rights, the primary focus of responsibilities under international human rights law falls on the State, while the multinational corporation does not have the status of international subject, and it cannot undertake the responsibilities and fulfill the obligations in international law. At present, how to interpret the human rights obligations of states in relation to the human rights obligations of transnational corporations remains a challenge in standardizing the human rights responsibilities of transnational corporations under international law.

3. The Current Situation of the Regulation of Human Rights Liability of Transnational Corporations

3.1. Current Situation of Human Rights Mechanism of Host Countries towards Transnational Corporations

As the place where the infringement occurs, the host country has the right to administer the human rights violation cases of transnational corporations and provide relief for the victims according to the principle of territorial jurisdiction.

Due to the vast territory, abundant resources and low labor price of developing countries, transnational corporations are often willing to invest and set up subsidiaries in developing countries in order to maximize their benefits. Therefore, the host countries of transnational corporations are mainly developing countries. However, the low human rights standards in developing countries result in imperfect domestic human rights legislation. At present, the main domestic laws regulating transnational corporations in host countries are foreign investment laws, which regulate transnational corporations from three dimensions: entry, operation and exit. In addition, the labor law, corporate law and domestic law of the host country with overlapping parts of environmental law and international human rights law can be used to regulate the human rights responsibilities of transnational corporations [3].

3.2. Current Status of Regulating Human Rights Accountability for Transnational Corporations in Their Home Countries

The home country, as the place of registration, main place of business and headquarters of a transnational corporation, shall have jurisdiction over violations of human rights committed by transnational corporations, based on the principle of individual jurisdiction.

On the contrary to the host country, the home country, as a developed country, has the economic strength to sanction transnational corporations and has perfect domestic laws which can be used to regulate the human rights responsibilities of transnational corporations. At present, the home country regulates transnational corporations mainly based on domestic legislation and some international treaties. However, transnational corporations and their home countries are often in a community of interests. In order to obtain maximum benefits, the home country often holds a negative attitude towards the regulation of transnational corporations and is often willing to reduce the rules governing human rights of transnational corporations [4].

In addition, transnational corporations are highly mobile and have business distribution in different countries. Even if the home country has jurisdiction over human rights violation cases of transnational corporations based on the principle of personal jurisdiction, cross-border coordination and transnational judicial cooperation with the host country of transnational corporations are required, which makes legal procedures more complicated. Before international law imposed an obligation on home States to regulate the human rights of TNCS, home states were in most cases reluctant to administer cases of human rights violations by TNCS that caused annoyance and could not benefit from it.

3.3. Current Situation of International Organizations Regulating the Human Rights Responsibilities of Transnational Corporations

International organizations are crucial in regulating the human rights obligations of transnational corporations.International organizations have put forward and formulated many documents to regulate the human rights liability of transnational corporations. Although these documents only serve as guidance, they can serve as reference for countries to regulate the human rights liability of transnational corporations and provide standards for countries and enterprises to protect human rights. For example, the United Nations proposed the Guiding Principles on Business and Human Rights, which contains 31 principles covering the three aspects of the UN framework of "Protect, respect and remedy", that is, States have the obligation to protect human rights, enterprises have the responsibility to respect human rights, and victims have the right to redress. At the same time, Sun Lihui explained the necessity of protecting human rights in the development of industry and commerce by taking human rights violations in practice as an example. To protect human rights in the process of business development is also to protect the development of business itself. The two are closely linked and inseparable.In addition to the United Nations, the WTO regulates business practices, constrains the behavior of multinational corporations and promotes a more responsible corporate culture in the international community. The ILO works to promote international labor standards, strengthen social protection initiatives and safeguard the welfare and healthcare of employees [5].

In addition to formulating and issuing conventions, some international organizations create public pressure for multinational corporations to take responsibility for human rights by speaking out in the international community.

3.4. Transnational Corporations Regulate Their Own Behavior

Since 1990, in order to ensure corporate social responsibility and sustainable development, more and more multinational companies have developed their own production codes, requiring themselves and the enterprises or organizations in the supply chain to comply with a series of standards to protect human rights. The so-called "Code of practice for transnational corporations" is a codified internal code of conduct based on the core treaties of the International Labour Organization, which aims to protect workers' rights and has some binding force. For example, in its "Supplier Responsibility Policy", Apple Inc. emphasizes its responsibility to protect the human rights of its suppliers. Apple requires its suppliers to have clear labor standards that guarantee the safety and health of its employees and prohibit forced labor and child labor. In addition, Apple has developed a responsible supply chain audit and management system over the past few years to ensure that suppliers comply with these standards and policies [6].

With the development of globalization and the promotion of corporate social responsibility, multinational corporations begin to pay attention to and attach importance to human rights responsibilities and voluntarily take human rights protection as their responsibility. However, it is far from enough to regulate the human rights liability of transnational corporations by relying on their own norms, because their own norms are only their voluntary behaviors and extremely rely on public opinion and public supervision.

4. The Regulation Path of Human Rights Liability of Transnational Corporations

4.1. Perspective of Host Country

Host countries play an important role in ensuring that TNCS respect and protect human rights in their jurisdictions. The attitude of the host country towards TNCS is contradictory: on the one hand, the host country encourages TNCS to invest in the country in order to develop its economy; on the other hand, TNCS often violate the human rights of the workers in the host country, affect local environmental and health standards, and harm the health and welfare of the local population. The human rights violations caused by the illegal acts of transnational corporations expose the host country to multiple pressures from people's protests, victims' lawsuits and investors' application for arbitration.

In order to avoid such a situation, the host country should first improve the relevant legislation to protect labor rights, environmental health and other human rights, so as to provide more comprehensive and effective protection for people's right to health, and ensure that citizens can seek remedies through litigation, arbitration and other judicial channels when their human rights are infringed. Secondly, we should strengthen the supervision of transnational corporations, do a good job in the supervision of transnational corporations before, during and after, and ensure their legal, fair and transparent operation. The host country should not give up the examination standards for transnational corporations in order to maximize the benefits. Before introducing the investment of transnational corporations, it should regulate human rights and public welfare and force them to strictly abide by the laws of the host country. During and after the process of the supervision of transnational corporations, the corresponding punishment mechanism can be established to punish the illegal acts of transnational corporations. At the same time, the tax supervision of transnational corporations can be strengthened, and the behaviors of transnational corporations can be guided and restricted through tax policies. Finally, host countries can strengthen information disclosure and transparency management of TNCS. By requiring multinational corporations to disclose important

financial, operational, social responsibility, environmental and other information, the government and the public can understand their operations and assess their impact on the local economy and social environment, thus effectively avoiding potential risks [7].

4.2. Perspective of Home Country

The host country regulates transnational corporations according to the principle of territorial jurisdiction, and the home country regulates transnational corporations according to the principle of personal jurisdiction.When the principle of territorial jurisdiction challenges the principle of personal jurisdiction, the latter must yield to the former. In most cases, transnational corporations' extraterritorial infringement is regulated by the host country, and the disadvantage of the host country's regulation leads to the concern of the responsibility of the home country to restrain transnational corporations. In fact, as long as it respects the sovereignty of other nations and does not violate their jurisdiction, the principle of personal jurisdiction allows the laws of the home country to be applied to transnational corporations operating outside the region, provided they do not conflict with international law [8].

The home country can translate its national human rights obligations into domestic laws through legislation, administrative measures or judicial channels, and apply these legal provisions to the behaviors of transnational corporations to restrain and restrict their illegal acts. If TNCS violate human rights standards, governments can force them to modify or improve their behaviour by suspending or cancelling contracts and grants if their human rights violations are proven.

In addition, the home country can encourage enterprises to sign up to some responsibility standards provided by international organizations or human rights protection organizations in order to encourage enterprises to comply with these standards. These standards usually cover requirements such as workers' rights, environmental protection and anti-corruption. When companies sign up to these standards, they promise to abide by them and take responsibility for them.

4.3. International Perspective

First, set up special agencies to exercise the power of supervision. The obligations of transnational corporations regarding human rights are governed by international organizations within the global community.Historically, international organizations have facilitated the coordination of countries to enter into treaties or agreements, which then serve as legally binding documents. Subsequently, these countries themselves are responsible for regulating and sanctioning transnational corporations operating within their respective jurisdictions.If the main role of international organizations is to coordinate the supervision of States parties, then their actual supervision power of transnational corporations is not reflected.

Second, establish binding rules of international law. In order to make transnational corporations shoulder the responsibility of human rights effectively and exert the binding force of international law rules, transnational corporations should be recognized as the subject of international law. In addition, the rules of international law should adopt uniform standards. Countries in the world have different levels of development and different judicial resources, so it is necessary to understand the legislative status of different countries before legislation to take care of and protect the interests of different countries [9].

4.4. From the Perspective of Multinational Corporations

Transnational corporations should establish and perfect self-discipline norms. Currently, strategies for addressing human rights abuses by multinational corporations in foreign jurisdictions involve domestic and international legal frameworks, as well as self-regulatory measures adopted by these corporations.Nonetheless, both domestic law regulation and international law regulation are deemed incomplete or deficient.Although the "code of production" formulated by transnational corporations is not binding, it largely urges transnational corporations to bear the responsibility of human rights.

First, multinational companies should develop a code of conduct that conforms to international human rights standards, is recognized by employees and is adapted to the corporate culture of the company. Secondly, a sound internal supervision and management mechanism should be established to ensure that human rights are respected in the process of production and operation. In addition, the enterprise shall regularly evaluate the human rights situation of the company and disclose the human rights situation of the company through certain procedures [10].

5. Conclusion

As globalization progresses, transnational corporations are exerting increasing market power and expanding their economic influence on a global scale. Nevertheless, the business operations of multinational corporations are liable to exert a considerable influence on human rights. The exploration of the human rights obligations of multinational corporations is an expanding area that encompasses social sciences, law, business, and human rights, and its investigation holds substantial importance. Research on the human rights responsibilities of transnational corporations (TNCs) can encourage positive action towards meeting social responsibilities and establish frameworks to ensure that their business activities have no negative impact on human rights. Furthermore, analyzing the human rights obligations of multinational corporations can facilitate comprehension of discrepancies and deficiencies between governments, aid in the creation of a robust legal structure for holding multinational corporations accountable, and advance the safeguarding and advancement of human rights on the global stage.

Due to the ongoing advancement of economic standards and scientific and technological progress, the range of accountability for human rights infringements by multinational corporations is broadening, and the governance of such accountability is becoming increasingly complex. Therefore, future regulations on the human rights responsibilities of multinational corporations should prioritize artificial intelligence, big data, and digital technology. Such regulations should closely monitor the impact of these technologies on multinational corporations and their broader influence in the digital age. Additionally, corporations must assume greater responsibility for their actions in this rapidly evolving landscape.

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