Legal Norms for the Protection of labor rights of Multinational Enterprises: Based on the Perspective of Comparative Law

Kaili Zhong *

Department of law, North China Electric Power University, 071003, Beijing, China

* Corresponding Author Email: 1713011006@stu.sqxy.edu.cn

Abstract. With the development of economic globalization, the scale of multinational enterprises continues to expand, the number of labors working in multinational enterprises is rapidly increasing while labor rights of multinational enterprises are frequently violated. How to protect human rights of those labors has become a challenge that current world must face. The home countries, host countries, international organization and multinational enterprises fail to undertake their labor rights protection responsibilities in many times, and there are significant deficiencies in legislation here. Nowadays, multiple entities are in the practice of overseas labor protection in order to promote the world's sustainable development, integrate the interests and achieve the cause of global human rights protection career. This essay will use historical research, comparative analysis, regulatory research to provide ideas and solutions for the better realization and legislation of labor rights protection from the aspects of the history of particular labor rights protection, the concepts and characteristics of relevant protection subjects, the main reasons for the current situation of infringement, theoretical basis of labor rights protection, legislative impetus, final expectations for international actors in action.

Keywords: Multinational enterprises; Labor right protection; Legislation.

1. Introduction

In today's world, while multinational enterprises' labors who provide personnel services to the enterprises create enormous wealth for the development of the home countries' domestic finance and world economic also face a dual threat of their personal and property rights. The issue of human rights protection for multinational enterprise' transnational labors is a focus of international attention and a key direction of international trade cooperation. From the typical cases of overseas labors' rights being infringed in the world, the rights are mainly infringed on right to work and rest, social security, personal safety, and illegal deprivation of intermediaries, etc.

Some transnational labors are at the bottom of the host society and in a weak position in labor relations, and their personal rights are threatened. Especially in labor dispatch relations, transnational labor rights are more difficult to be protected. At the same time, some labor exporting and importing countries lack relevant agreements to protect the rights and interests of foreign workers, which may lead to a significant increase in the probability of incidents of abuse of workers. Their employers are rarely punished, which makes it more difficult to improve the situation of labors being violated.

According to report by People's Daily, on August 22, 2007, two Indonesian maids were beaten to death by their employers in Saudi Arabia, while the other two were severely injured. According to surveys by Indonesian human rights organizations and labor groups, since the beginning of 2007, more than 10 Indonesian foreign workers have been abused and killed overseas [1].

The investigation shows that Indonesian maids must firsthand over their passports to intermediaries or employers after arriving in Malaysia, which may result in a certain degree of loss of personal freedom.

Nike, a globally renowned sports brand from Oregon, USA. In 1991, Nike was exposed to the fact that there was a "sweatshop" in Southeast Asia, and through various means, it squeezed and corporal punishment of workers and other acts that seriously violated the legitimate rights and interests of workers. In 2005, Nike officially acknowledged the exploitation of workers in its overseas factories in the 2004 fiscal year social responsibility report. Among them, the situation is most severe in Asia,

where there are not only persistent forced labor to work overtime, extreme verbal and physical punishment of labor, and serious violations of the physical and mental health of female workers, but also widespread illegal employment of child labor [2].

The exploitation of labor by some multinational enterprises is more common in the Asian region. For instance, Foxconn is a multinational high-tech enterprise specializing in the 6C industries of computer, communication, digital content, automotive components, and routing, established in 1974. It has over a hundred branches worldwide. Since the first Foxconn employee jumped from a building to commit suicide on January 23, 2010, until November 5, there have been 14 incidents of employee suicide by jumping from a building at Foxconn, attracting attention from all sectors of society and even the world. In addition, South Korea's largest multinational company, Samsung, was exposed for illegal labor treatment and child labor in eight factories in China. To this day, similar incidents of multinational corporations violating labor rights continue to be reported in 2012. It is obvious that labor rights are frequently violated, especially in low-end labor work areas. Until today, it has still been exposed by many media outlets.

As shown in the cases study, the situation of the protection of labor rights has become very serious in recent decades. Social subjects must reflect on the past problems in this area and think deeply about legislation aspect, further regulate labor rights related issues, and improve the legislative mechanism.

2. Legislation and Protection in the History of Transnational Labors

The labor composition of multinational enterprises comes from a variety of sources and based on the characteristics of the enterprises' own development; it attracts large-scale labor from around the world. For their home country, some workers are referred to as "transnational labors". Taking this group of "transnational labors" as the starting point, analyze the history of specific subjects' protection of labors working in multinational enterprises, development trends, and provide reference experience for contemporary world institutional protection.

The development of transnational labor rights protection movement and the advancement of government protection system vary from country to country. But in general, since the fast economic and social development, with the continuous progress of science and civilization culture, social quality, national functions and other aspects, all social subjects have paid more attention to the protection of human rights, especially the protection of labor rights. In recent years, a plenty of governments have formulated measures to protect labor rights, improved domestic labor protection laws and actively seek international cooperation. In addition, public have also paid great attention to the infringement of labor rights in some countries and regions.

The home country has a long development history of providing certain protection measures for its citizens, known as "transnational labors" "oversea workers", who make a living in multinational enterprises. It means that the initial stage of a country's overseas labor protection system can be traced back to a long time ago and has gone through a long period of historical exploration in many cases. Labor protection related systems and policies are often adjusted with factors such as domestic economic development needs and the economic interests of multinational corporations, which has led to a long and winding path for labor protection in multinational corporations.

Taking the evolution of China's overseas labor rights protection system as an example, the Qing government recognized for the first time the legitimacy of workers going abroad to work and foreign recruitment in China to ensure the rights and interests of Chinese workers going abroad and put Chinese workers going abroad into an institutionalized track. The Qing government took the initiative to develop laws, sign treaties, and set up consulates to protect migrant workers from being forced to recognize the legitimacy of workers going abroad to work. During the normative period, the overseas labor protection system gradually entered the process of legalization and became an important part of top-level design. At that time, the government conducted labor training, designated regulations, and emphasized and strengthened the use of international forces to protect overseas workers. Since China's reform and opening up, the scale of migrant workers has expanded rapidly. The government

has continuously developed system construction, laws and regulations. China has initially established a set of overseas Chinese labor management system that integrates the operation supervision system, emergency response and resolution mechanism, and rights and interests' protection mechanism. However, the main body of overseas Chinese labor safety protection is still the government, resulting in a relatively single mode of safety supply, one-sided content of safety supply, and low efficiency of safety supply, making it difficult to cope with the huge challenges brought by the protection of overseas Chinese labor. Nowadays, with the participation of multiple entities in the practice of overseas labor protection, how to coordinate actions, integrate interests of all parties, and form joint forces has also become a major issue in the current overseas labor protection [3].

Looking back at the history of labor rights protection institutional evolution, it can be found that the transnational labor rights and interests protection system has been continuously improved with the development of social economy, requiring proper labor related legislation, strict and detailed guidance regulations. The issue of overseas labor involves complex posers such as jurisdiction, national sovereignty, and overseas interests. Due to the difficulty and complexity of protecting overseas labors, it is difficult to achieve significant breakthroughs and innovations in the judiciary. Therefore, nowadays, the protection of transnationals labor rights has expanded from a narrow range of subjects to multiple subjects and even the whole mankind.

3. Multinational Enterprises and Related Protection Entities

3.1. The Concept and Characteristics of the Multinational Enterprises

The full name of MNE is "multinational enterprise". It is a monopoly enterprise based in its own country, established branches or subsidiaries around the world through foreign direct investment, and engaged in international production and business activities.

From the perspective of the personnel composition of multinational enterprises, their overseas institutions are mainly composed of expatriate employees, third-party employees, as well as local employees. Multinational enterprises are currently in the heyday of international expansion, hiring local personnel to prepare for greater localization benefits, while hiring expatriate employees to meet the needs of management leadership, as well as hiring a range of technology personnel from around the world. Therefore, the multinational enterprises have a large number of personnel, a wide range of personnel mobility, multiple layers of internal management structure, and complex management content.

Multinational enterprises can also be equated with multinational corporations at certain times. The definition of the concept of multinational corporations in the *Draft Code of Conduct for Transnational Corporations* formulated by the United Nations in 1983. Generally speaking, they are composed of a complete structural system, which sets up branches and other related entities in multiple countries or regions through capital exports. These entities and branches share resources or exchange policies with each other. After World War II, multinational corporations not only achieved rapid development on their own, but also played a crucial role in restoring the post-war economic order and building an economic globalization system.

They ultimately achieve global market share, resource allocation, and profit maximization in current world.

3.2. Jurisdictional Dispute Problems

American scholar Raymond Vernon proposed that multinational enterprises, as physical units, are generally regarded as nationals of the government. As long as they operate on the territory of another country, any multinational enterprise must establish branches in its territory in accordance with the laws of the host government [2].

However, nowadays, it is not uncommon for multinational corporations to use jurisdictional difficulties to evade legal penalties. Due to the multinational nature of their scope of activities, internal complex connection and strategic globalization, multinational corporations often take various

actions to evade the laws and jurisdiction of their host country, take advantage of the institutional flaws in their jurisdiction, and ultimately evade punishment for their violations of human rights by their host country. Therefore, when analyzing the impact of the concept of multinational corporations on the protection of labor rights, jurisdictional difficulties cannot be ignored.

3.3. Other Related Entities

3.3.1 The Home State

The main meaning of a multinational enterprise's home country is that the country of its born and growth. It is where the multinational enterprise born, grown, and strengthened in, until going global and multinational. Also, the country where the headquarters are located, in general. As the core, home country usually responsible for the enterprise business decision-making, finance, and several important links even like research and development and production activities. And eventually, the country with primary rights and interests. As the main owners and managers of the company hold the nationality of that country, the home country is the country with the greatest profit.

The home country government of multinational enterprises should regulate and guide the behavior of enterprises from a macro perspective. The home country enterprises should strengthen the communication and cooperation of human rights undertakings and improve the ability to bear the responsibility of labor rights as a whole; Under the guidance of the home country government, most multinational enterprises will be more inclined to take active measures in the protection of labor rights and take measures to comply with relevant laws and agreements in the daily management of enterprises. Without the constraints of the home country government, the current practices of multinational enterprises are mostly limited to meeting the basic requirements of local laws. Immature enterprises still have certain deficiencies in their work environment, employee training, media relations, and other aspects. The emergence of these problems is closely related to the imperfection of the legal system and the imperfection of the legal enforcement mechanism of the host country. However, the neglect of local laws and the protection of labor rights by multinational enterprises themselves is also an important reason for the problems.

3.3.2 International organizations

The International Labor Organization (ILO) plays a major guiding role in this issue among international organizations.

The organization follow the basic framework of protection, respect, and relief, and have made many attempts to promote communication and cooperation between home and host countries, regulate the human rights responsibility of multinational corporations, such as tripartite agreements.

4. The reasons for the Current Infringement Situation

4.1. The Relationship between Multinational Enterprises and Government

Multinational enterprises make full use of their own advantages and conditions to achieve maximum resource allocation, and utilize the space provided by various preferential policies to obtain benefits. While maximizing the interests of the company, it often sacrifices the interests of workers, squeezing their value in exchange for company income. In order to achieve economic development, some countries urgently lower entry barriers and reduce censorship restrictions in order to attract a large number of multinational enterprises. This will lead to the government sacrificing labor rights to safeguard its own economic interests, ignoring the survival dilemma that labor is suffering, and the government's initiative is poor. Many multinational enterprises without strict approval and qualified supervision lack mechanisms to protect the rights and interests of workers, neglecting to establish a specific set of human rights protection measures.

4.2. Labor Status

Multinational enterprises can easily transfer investment between different countries, making it easy for capital to transfer from countries with high labor costs to countries with low labor costs, but the labors have no right to choose. This imbalance between the optional advantages of capital and the non-selective disadvantages of labor has become an important reason why "sweatshop" is hard to eliminate. Due to unfair technological capabilities and capital flows, the social status of workers is low. Most multinational enterprises are established in labor-intensive developing countries, mainly due to the attraction of cheap labor. The quality requirements for labor and human resources are not high, and the quantity is large. The supply of cheap labor exceeds the demand, while labor is exploited and squeezed by the company.

4.3. Weak Social Legal Awareness

Labors lack legal awareness while effective and widely applicable labor rights protection treaties or laws are rare. The enterprises lack a sense of social and human rights responsibilities, and government protection initiatives are poor.

5. The Motivations and Theoretical Basic of Legislative

5.1. Social Contract Theory

When the multinational enterprises conduct income activities such as resource development in the host country, they should also bear the responsibility to protect the labor and the social rights and interests. As a significant part of human society, enterprises should obey the overall situation, focus on long-term interests and social benefits, and take responsibilities for human rights issues while reaping a great number of financial benefits. It means that they should take the corresponding human right responsibilities while run international business. Enterprises that refuse to fulfill responsibilities to protect labor will be rejected by the society.

5.2. National Interests

Protecting the personal rights and interests of labors who work hard overseas is an important way to safeguard home country's national dignity and overseas interests. The home country itself is relatively backward, and the income from the return of overseas workers increases the economic income of the home country, stimulates consumption in the home country, drives new investment, and creates new domestic jobs, thereby becoming an important source of funds for the development of the home country. Through technical learning and skill training at multinational enterprises, labors may also become a source of new technologies as well as a booster for the formation of emerging export industries, which will simultaneously benefit the home country. Undoubtedly, the home country should be the first responsible subject for protecting overseas labors and should bear the responsibility for protecting labors throughout the territory and beyond. From the perspective of negative impacts, when labors cannot obtain certain guarantees of employment in other countries, they are vulnerable to illegal violations, which will disrupt the world economic market order, damage bilateral relations between countries, affect the security of the host country, hinder the normal trade development between the two countries, and damage the credibility of the host country.

In the process of overseas investment by enterprises, it is often necessary to hire local employees in the host country and carry out basic business activities based on this. For Zimbabwe, which is in a difficult period of economic development and has a high unemployment rate, whether foreign enterprise investment can drive local employment development is a common concern for locals. For Chinese enterprises investing and operating in Africa, their daily operation and management should not only comply with the local laws and policies on the protection of labor rights, but also refer to the internationally prevailing standards for the protection of labor rights. They should meet international standards in many aspects, such as freedom of association, collective bargaining labor safety, working

environment, wage level, working hours, etc. Abiding by the labor rights protection laws of the host country and meeting the international labor standards can help enterprises avoid possible labor rights disputes, reduce investment risks, and have great benefits for enterprises to establish a good image, safeguard national interests, and realize the long-term development of investment activities [4].

5.3. International Law and Guidelines

The relevant bilateral agreements signed between the home country and other countries and regions, as well as the relevant domestic laws and regulations of the home country, will become the theoretical basis for multinational companies to protect labor rights and interests.

The environmental right, which was first proposed in international legal instruments, gradually became part of the category of basic human rights in the 1970s. The 1966 International Covenant on Economic, Social and Cultural Rights states that everyone should have the right to an environment that meets basic living conditions. In the early 1970s, the European Draft on Human Rights in Natural Resources established environmental rights as a new human right. The most authoritative definition of environmental rights in the international community currently belongs to the definition in the 1987 report "Our Common Future", which is to perceive and uphold the right of contemporary and future generations of humanity to live in a beautiful environment. From this, it can be seen that the legislative foundation cannot be separated from the consensus reached in international laws and conventions in the early years on the protection of environmental rights and equality rights. Nowadays, legislative deficiencies should still be reflected on [5].

The Declaration on Multinational Enterprises aims to provide action standards for all parties, including government employers and workers, in compliance with the provisions of the ILO Charter, labor standards and recommendations, thereby encouraging multinational corporations to actively carry out activities to promote international economic development and achieve the goal of safeguarding workers' human rights. The Declaration on Multinational Enterprises stipulates that multinational corporations are required to comply with multiple obligations under domestic and international law regarding the protection of human rights when conducting responsible business activities [6].

According to OECD Guidelines for Multinational Enterprise, which was promoted in 2000, the guidelines on labor relations that have a prominent guiding effect on the protection of labors in international investment and multinational enterprises are reflected in the following aspects: firstly, within the framework of applicable legal provisions and universally applicable labor relations or employment practices, enterprises should comply with various core labor rights. Second, ensure the occupational health and safety of workers, provide professional basic training skills, and actively cooperate with relevant government authorities [7].

As the literal meaning of the code of conduct implies the code of conduct for multinational enterprises lacks the mandatory binding force of international conventions, but still provides specific recommendations for multinational enterprises to assume labor protection responsibilities. As of the end of 2009, thirty OECD member countries and twelve nonmember countries had signed the code, which made this labor rights protection system widely applicable and provided legislative recommendations for host country legislation [8].

6. Promoting the Protection of Labor Rights through Legislation

As a leading region in the embryonic development of capitalism, Europe has rich experience in responding to issues related to labor protection and human rights responsibilities of multinational enterprises. According to European laws, employees have the right to participate in negotiations with investors regarding matters related to their immediate interests such as working hours and working conditions, health and safety issues, collective layoffs, and transfer of operations. Especially for multinational enterprises, their impact covers two or more countries, and full consultation should be made with employees regarding various aspects of business policies that affect labor [9].

6.1. Bilateral Agreements between Countries

In the Model Bilateral Investment Agreement revised by the United States in 2004, its thirteenth paragraph stipulated the clause between investment and labor, The first item is “Contracting parties should recognize that it is inappropriate to attract foreign investment by reducing or weakening the protection provided by domestic labor laws... Efforts should be made to ensure that it does not exempt or otherwise derogate from... to develop laws that reduce or weaken internationally recognized labor rights in accordance with the second paragraph, in order to encourage the establishment, acquisition, expansion, or retention of investments within a country.” Some countries exchange their own economic benefits at the expense of weakening the laws protecting labor rights, which should be condemned seriously. The home and host countries should strengthen communication and confirm the legal protection of labor core rights. This is the best choice to maximize the benefits of bilateral trade.

6.2. Multinational Enterprises Behaviors

From the multinational enterprise’s perspective, the enterprises have diversity in personnel composition. Based on this characteristic, when formulating compensation strategies, specific and diverse labor rights protection measures cannot be ignored, local laws and domestic law regulations on average wages, labor remuneration, and national policies must be taken into account as well.

Multinational enterprises should attach importance to training labors, improve their working and living conditions, and ensure that labors have the right to resolve disputes through dispute pluralistic resolution mechanisms and have useful access to relief routes when labor disputes arise.

Multinational enterprises should actively respond to the content of labor rights protection documents provided by international labor protection organizations, follow the guidance of relevant international human rights regulations, and implement the declaration of multinational enterprises through practical actions.

6.3. Protection Provided by International Organizations

The measures to be taken when formulating and implementing global norms pose challenges of ambiguity and limitations in special cities. International Labor Organization No The global “policy-oriented instrument” on worker health and safety under Convention 155 incorporates many worker protection factors that have been considered in the traditional field of labor rights institutions [10]. However, vague or restrictive standards for worker protection have confused efforts to “elaborate on the substantive content of this policy”. International organizations, especially the International Labour Organization, should be more specific and feasible in protecting workers' basic rights such as health and safety, clarify concepts, and elaborate on the substantive content of policies.

The Declaration on Multinational Enterprises integrates multiple relevant contents of international core labor standards, indicating that international organizations have rich experience in safeguarding the basic human rights and property rights of labors in multinational enterprises [6]. International organizations should adhere to the implementation of protective guidelines and relevant documents, promote dispute resolution and consultation between countries, and make substantial efforts to achieve internationally recognized legal condemnation and institutional supervision of direct violations of labor rights by multinational enterprises. Encourage all entities to develop action commitments that respect the human rights of labors, with a focus on protecting the human rights of minority groups. Promote plans such as the United Nations' Global Compact to promote the development of human rights through organizing policy dialogues, learning, and local cooperation among multiple governments.

6.4. Domestic Law

Some countries still have deficiencies in their domestic legislation, though legislation has already taken shaped, its effectiveness, pertinence, and systematicity still need to be strengthened and improved. It is recommended to establish a specifically recognized legal system for labors’ personal

protection and property protection, clarify the responsible parties, establish a disciplinary compensation system, strictly follow the approval process for cross-border companies entering the country, conduct regular spot checks, and safeguard the vital interests of workers.

Taking China as an example, with the promotion of the "the Belt and Road initiative", China has signed bilateral labor and business cooperation agreements with several neighboring countries and regions, which play a key role in promoting labor cooperation between the two countries and safeguarding the rights and vital interests of overseas workers. Although there are still shortcomings, strengthening international cooperation and ensuring institutional development are important steps [10].

In general, the establishment of labor laws and regulations specifically protecting the rights and interests of special labors should combine with the actual needs, take the current infringement of labor rights as the starting point, summarize the world's outstanding legislative experience, and form a complete and effective system.

7. Summary

With the worldwide allocation and flow of resources and capital, multinational enterprises have developed rapidly. The survival status of workers in multinational enterprises has received widespread attention, and social entities cannot ignore the situation where multinational enterprises infringe on their labor rights. In order to avoid the recurrence of similar events in the "sweatshop", the home country, the host country and international organizations should strive to solve the problem of labor rights infringement from the perspective of legislation by means of negotiation and signing of multilateral treaties. With the purpose of protecting the personal and property rights of labors, relevant national systems should keep pace with the pace of economic development, improve labor legislation, accelerate the transformation and upgrading of the economic model, and be in line with the cause of world human rights protection, establish a sound legislative protection mechanism.

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