The International Regulatory Framework for Labor Protection of Multinational Enterprises

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Abstract. The issue of labor protection for multinational enterprises has attracted international attention due to the proliferation of "sweatshop" incidents in the international arena. But at the same time, on the one hand, international labor standards as a system for regulating international labor affairs does not yet exist a mandatory convention and responsibility framework for its implementation; on the other hand, national statutes are all in the form of voluntary ratification, without enforceability and specific sanctions. The above reasons together lead multinational enterprises to disregard labor rights. Therefore, this paper proposes to link labor standards with trade and investment in order to better regulate multinational enterprises.

Keywords: Multinational enterprises; Labor protections; Labor standards; Trade sanctions.

1. Introduction

This essay originated from daily reflections on the study of the legal profession and observations of real life. In the classroom, I have learned that although international statutes are not binding, the international community, such as the International Labor Organization, still makes efforts to protect labor rights; in domestic law, multinational enterprises are bound to be regulated by the domestic labor laws of the host and home countries, but why in practice there are still scandals such as Foxconn "sweatshop" or child labor factories. In domestic law, multinational enterprises are bound to be subject to domestic labor laws and regulations in the host and home countries, but why are there still scandals like Foxconn's "sweatshop" factories or child labor factories in practice? I am very curious about this phenomenon.

One of the main reasons is that the host countries of capital importation are often developing countries with sub-developed economies, which attract foreign investment by lowering labor conditions and sacrificing labor interests, which is also called Race-to-the-Bottom. at the same time, with the development of globalization and the prosperity of multinational enterprises, how to effectively protect labor rights in multinational enterprises has become an issue that cannot be ignored, which It is decided that it is very necessary to explore this issue.

Therefore, the purpose of this paper is to investigate the reasons for the derailment between theory and practice, and to try to provide possibilities for improving labor protection in multinational enterprises by analyzing the main problems encountered in the implementation of labor standards and their causes.

2. Theoretical Basis of Labor Rights Protection

2.1. Theory of Social Responsibility of Multinational Enterprises

In foreign countries, the theoretical basis of labor responsibility of multinational enterprises lies in social enterprise responsibility. And the concept of social enterprise responsibility has gone through two important development stages: one is the stage of profit uniqueness theory, and the other is the stage of stakeholder theory [1].

According to classical economics, which defines firms as "economic subjects" that are basically economic institutions that are collectively supported and benefitted by shareholders, the main objective of businesses is to maximize shareholders' profit. According to liberal economist Milton

Friedman, in a market economy, "enterprises have one and only one social responsibility - to use their resources, to the extent permitted by law and regulation, to engage in activities designed to increase profits." This perspective on corporate social responsibility, which is based on the one-way cycle of investment-production-sales-profit, is seen in the framework of "shareholder-centric" economic theory. It is representative of how corporate economic responsibility is understood in the usual business setting.

As the Western free market economy has developed and expanded, issues with the environment, social inequality, and labor protection have frequently arisen as a result of businesses' heedless pursuit of profit maximization, and this "profit-oriented" perspective that disregards social interests has gradually come under scrutiny. More and more business owners are realizing that if they view the maximization of profit as the only social responsibility of the company, they will ignore their reliance on other societal groups and individuals and harm the environment, ecology, and social environment in an effort to increase profit. Therefore, businesses should exercise greater social responsibility for the peaceful growth of the entire society. A new idea of corporate social responsibility based on stakeholder theory has arisen as a result of this knowledge.

As a result, it is now widely believed that enterprises should be responsible for employees, consumers, society and the environment, in addition to creating profits and being responsible for the interests of shareholders. For multinational enterprises, in the wave of globalization its playing more and more benefits, but also enjoying the dividends brought by globalization, which determines that multinational enterprises as a special corporate subject, should pay more attention to and bear the social responsibility of multinational enterprises. Then there is no doubt that the protection of labor rights is one of the important parts of the social responsibility of multinational enterprises.

2.2. The Close Connection Between Labor Rights and Human Rights

As a part of human rights but different from human rights, labor rights should be protected. The reason is that:

Labor rights, as a right written into the constitution, have the highest rank of rights. In the history of labor rights, labor rights have always been studied and characterized as part of human rights, and before the 18th century, labor rights were protected by the constitution as the core right of the human rights protection system. Later on, labor rights changed from liberal rights to more social rights, such as Article 34 of the Swiss Federal Constitution of 1874, which provides for the right to safety and security at work, labor contracts and work injury insurance, which means that it gradually left the human rights protection system centered on liberal rights, but it still does not affect the protection of labor rights by the constitution, because as early as 1919, the Weimar Constitution of Germany has first included In 1919, the German Weimar constitution had already included labor rights as social rights in the constitution.

3. The International Legal Basis for the Protections of Labor Rights

As early as the 1970s and 1980s, the issue of how to protect the human rights of employees of multinational enterprises, especially labor rights, has already attracted the attention of the United Nations. The UN has tried to codify a treaty on the human rights responsibilities of business such as multinational enterprises, namely the Code of Conduct for Multinational Enterprises, to improve this issue, but this attempt has been repeatedly frustrated. The draft was not adopted in the end due to major differences between developed and developing countries on the legal nature of the code, the treatment and jurisdiction of transnational enterprises in host countries.

As a result, in addition to national labor laws at the domestic level, multinational enterprises can currently be regulated at the international level only through international organization documents and regional agreements that have no legal compulsion. According to Virginia Leary, a professor at the University of California, the four main ways to implement labor standards or protect labor rights are treaties, codes, soft laws, and trade agreements [2]. Either way, they are not legally enforceable,

but they all play an important role as models. In addition, for the sake of universality of the discussion, only important documents of international organizations will be discussed here.

3.1. Global Compact

Due to the frustration of the codification of the Code of Conduct for Multinational Enterprises and the urgent need to solve the problems of multinational enterprises, former UN Secretary--General Annan proposed the concept of the Global Compact in 1999. Ten principles in all, broken down into four categories--human rights, labor standards, environmental preservation, and anti-corruption--are proposed by the Global Compact, the first two of which are directly tied to transnational corporations and global human rights issues. The Global Compact has also launched a number of initiatives in recent years to create a framework of accountability mechanisms to protect the integrity of the Compact, such as a stringent policy on the use of the Global Compact logo, a grievance procedure by the Global Compact Office, and a requirement for all participating businesses to submit annual progress reports.

3.2. Business and Human Rights: Guiding Principles for Implementing the UN "Protect, Respect and Remedy" Framework

The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect, and Remedy" Framework (Guiding Principles) were established by the United Nations Commission on Human Rights in 2011. The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect, and Remedy" Framework, adopted by the Human Rights Committee in 2011, establish a three-pronged justification for the obligation of the State to protect human rights, the corporate obligation to uphold human rights, and victim access to remedies. The notions outline the core ideas and application guidelines for a number of areas. The Principles outline the standards and processes that States and private companies must adhere to when putting into practice international human rights obligations. They are taken directly from the relevant sections of international human rights conventions..

3.3. OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises (OECD Guidelines) are part of the Declaration on International Investment and Multinational Enterprises, adopted in 1976, which originally aimed at maximizing the benefits of foreign investment and reducing the risks of imposing conflicting requirements on multinational enterprises through the development of consensus international standards among member countries. conflicting requirements on multinational enterprises [3]. The Guidelines were revised in June 2000, including a special implementation mechanism that mandated nations create National Contact Points to settle disputes and consult on business behaviour. The Guidelines were last updated in 2011, and as part of that update, a new human rights section was added. The current Guidelines for Multinational Enterprises' framework for multinational corporations to uphold human rights adheres to the three tenets of the 2011 Guiding Principles on Business and Human Rights: Implementing the UN "Protect, Respect, and Remedy" Framework. The Guidelines advise firms to develop policy statements pledging to protect human rights and conduct human rights prohibition investigations in addition to requiring them to comply with pertinent host country legislation and international human rights responsibilities.

3.4. Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

The only tripartite UN institution, the International Labor institution (ILO), has been tackling societal challenges brought on by the actions of multinational corporations. The ILO Tripartite Declaration on Multinational Enterprises and Social Policy (also known as the "Tripartite Declaration") was published in 1977. Multinational Corporations and Social Policy), which was updated in 1977 and again in 2000 and 2006, respectively. In accordance with a number of general

policies found in the Tripartite Declaration of Principles, multinational corporations must follow local laws and regulations, international labor standards pertaining to human and labor rights, and agreements made to uphold local laws and recognized international obligations. Additionally, it lays out particular standards for touchy human rights subjects like employment, education, living and working circumstances, and labor-management interactions. The articles of the Tripartite Declaration of Principles must be completely implemented by ILO member nations, and they must also submit the pertinent reports from their governments on time. The Tripartite Declaration of Principles is not legally binding, but due to its extensive provisions and widespread acceptance by other nations in the international community, it is regarded as the most comprehensive and influential international standard in the fields of labor and human rights.

4. Existing Regulatory Measures for Multinational Enterprises' Labor Protection Responsibilities

4.1. Supervisory Mechanism

One of the most successful strategies to promote the implementation of national labor protection standards is to encourage States parties to ratify the international labor protection conventions, which serve as the primary legal foundation for the protection of labor rights at the level of national law. The International Labor Organization (ILO) is the main driver of global labor standards, hence it is the subject of this article..

In addition to ratifying international labor conventions, member states are also obligated to fulfill their obligations under the conventions. According to the ILO Constitution, ILO member states are responsible for three main obligations regarding the implementation of labor standards: the obligation to submit annual reports; the obligation to respond to questions from supervisory bodies; and the obligation to accept investigations into allegations and problems of violations of the conventions. The actions taken by the ILO to promote the implementation of labour standards include: defining rights through acceptance or recognition by member States of ILO Conventions and Recommendations.; Ensuring Member States' understanding of rights through international supervision and guidance.; Assistance with implementation measures through technical cooperation and advisory services [4].

In addition, under the ILO Constitution, governments, employers and trade unions have the right to lodge complaints with the Director-General of the International Labour Office concerning the failure of a Member State to observe and comply effectively with the provisions of ratified conventions, and such complaints fall into three categories: complaints, grievances and special complaints. Complaints are lodged by workers' or employers' organizations, charges are lodged by the governments of Member States, and special charges are specific to violations of freedom of association.

4.2. Sanction Mechanism

4.2.1 Linking Trade, Investment and Labor Standards

Linking trade and investment agreements to labor standards is arguably the most controversial part of trade and investment agreements between developed and developing countries, but it is also the most effective means of enforcing labor standards to protect labor rights. Developed countries, most typically the United States--include labor standards in trade or investment agreements, and negotiate the content of labor standards. In BITs, the content of labor rights protection is mostly based on the International Labor Organization's "core labor standards" and adds mutually acceptable labor rights.

Many countries have included labor provisions in their BITs. Take the U.S. model BIT as an example, when the U.S. enters into BITs with other countries, labor provisions are commonly included, but most BITs contain labor provisions only between some countries. For example, the 2004 FTA between Australia and the United States contains environmental and labor protection

provisions consistent with the U.S. model BIT, but the corresponding provisions are not repeated in Australia's BITs with other countries.

4.2.2 Trade Sanctions as a Means of Implementing Labor Protections

In terms of specific trade sanctions, the United States is the most typical. Section "301" of the U.S. Trade Act of 1974 is a typical model of unilateral trade sanctions. Its core content is the denial of the rights enjoyed by the United States to any trade agreement, or some legislation, policy or practice of a foreign trade agreement that is inconsistent with or not yet in violation of the agreement, but is found to be unilaterally "unfair," "unjust" or "unreasonable" by the U.S. state "unfair," "unjust," or "unreasonable" in a manner that restricts or impairs the commercial interests of the United States, the Office of the United States Trade Representative has the authority to take action directly under the authority or procedures of the Clause, without regard to any other domestic law or international treaty norm. The Office of the United States Trade Representative has the authority to take unilateral, coercive measures of retaliation and sanction, by virtue of the economic power of the United States, to compel the other party to rescind such legislation, policy or practice, to remove the restriction or injury to its commerce, or to provide compensation satisfactory to the relevant economic sector of the United States.

Section 301 of the Omnibus Trade and Competitiveness Act, as amended and passed by the U.S. Congress in 1988, expanded the definition of "unreasonable" acts, policies and practices to include denying workers' rights of association, denying workers' rights to bargain and organize collectively, allowing any form of forced labor, failing to establish a minimum age for employment of children, minimum wage, work hour standards, occupational safety and health standards, etc. The Section 301 Act expands the definition of "unreasonable" acts, policies, and practices to include denying workers' rights of association, denying workers' rights to bargain and organize collectively, allowing any form of forced labor, failing to establish a minimum age for employment of children, minimum wages for workers, working hour standards, and occupational safety and health standards. For foreign countries that have implemented or are implementing labor rights and standards below their level of economic development, the provisions go further and require the U.S. Trade Representative to find that the implementation of lower labor rights and standards is aimed at obtaining unreasonable benefits, including laws, policies, practices, etc.

4.3. Remedial Mechanisms

4.3.1 Remedies-production Codes

The types of production codes related to international labor standards tend to diversify, and the subjects of their development are not only limited to the spontaneous actions of multinational enterprises, but also include many regional, national and even global industry organizations and non-governmental organizations and international organizations. From a worldwide perspective, production codes can be divided into the following four types:

(1) Internal production codes

They are usually developed, interpreted, implemented and monitored by large multinational enterprises themselves, which make a commitment to the public and require contractors and suppliers along the enterprise's supply chain or entire production line to similarly adhere to its code.

(2) Industry Production Codes

They are usually established by collective organizations such as industry associations and trade associations to develop common standards and provide for corresponding reporting mechanisms.

(3) External production codes

This is a code that introduces multiple stakeholders and is characterized by significant external oversight, clearly expressed as second-party or third-party oversight.

(4) Multilateral Production Code

This is developed by international institutions with direct or indirect government participation. Examples include the Guidelines for Multinational Enterprises adopted by the OECD in 1976 and the

Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy adopted by the International Labor Organization in 1977.

A noteworthy production code is SA8000, developed by Social Accountability International (SAI), which provides very detailed remedies for violations of the production code. For example, Article 1 states that enterprises should not use or support the use of child labor and must have written child labor remediation policies and procedures; even if a enterprise has never employed child labor, it must have written child labor remediation policies and procedures that can be implemented effectively and timely if child labor is discovered. Enterprises should not immediately dismiss child laborers once they are discovered, lest they may be placed in more serious situations. The enterprise should take appropriate remedial measures, such as immediately reporting to the local labor bureau, arranging for a health examination and providing suitable accommodation as soon as possible; if there is an illness, treatment should be arranged until it is cured, with the medical costs borne by the enterprise and the relevant social assistance agencies. The enterprise shall cooperate with the relevant relief agencies to send the child laborer back to his or her parents.

4.3.2 Relief mechanisms established under regional conventions

The Inter-American Commission on Human Rights, as the executive body of the American Convention on Human Rights, in addition to its efforts to promote respect for human rights in each State Party, conducts field investigations of certain situations of massive human rights violations and takes action on allegations of human rights violations by certain individuals. The Inter-American Court of Human Rights, in turn, provides judicial guarantees for the protection of human rights [5].

4.4. Guidance and Assistance

Technical cooperation, which the American scholar Elliott called the "carrot" approach, is also called technical assistance [6]. In defining the role of the ILO in technical cooperation, the resolution of the 80th (1993) International Labour Conference mentions that technical cooperation should be a major means of action to achieve the objectives of the ILO and to complement other means of action, in accordance with the responsibilities established in the ILO Constitution and the Philadelphia Declaration.The technical cooperation program should focus on three main areas: support for democratization, poverty eradication including, in particular, job creation and protection of workers [7]. At the same time, the ILO seeks to strengthen its cooperation with the WTO, the World Bank and other development banks and organizations to promote the protection of labor rights.

5. Major Problems Encountered in the Implementation of Labor Standards

5.1. Can the Ratification of Conventions Improve the Situation of Labor Standards?

As mentioned above, not all of the 185 member states of the ILO have ratified the eight conventions dealing with core labor standards, and the ratification of the eight conventions varies from member state to member state, showing that there are differences in the labor standards recognized by each country. The ILO also takes into account the fact that the implementation of international labour standards can be adjusted by each Member State through appropriate flexibility strategies provided for in the ILO Constitution, due to differences in their economic conditions and levels of development, which may result in a situation where the ratification of labour rights on paper does not necessarily correspond to the actual implementation. Thus, even for countries that have ratified conventions, it does not follow that reliance on ratification will improve the labor situation.

The ILO has mostly come under fire for its voluntary nature and lack of consequences. Overall, ratification of treaties alone is insufficient to enforce labor standards since, despite the ILO's authority to encourage the effective implementation of labor standards in member states, it only frequently intervenes in instances of labor rights abuses.

5.2. Can the Free Trade Agreement Achieve the Effect of Protecting Labor Rights?

The linkage of labor standards with trade and investment agreements by developed countries, led by the U.S., can indeed promote the improvement of labor standards on the one hand, but on the other hand, it has been criticized by developing countries for using labor standards as an excuse to impose trade barriers.

Most scholars believe that it is necessary to link the two because trade liberalization, as the main driving force of globalization, has led to unfair competition between countries with sound social protection and respect for workers' rights and those with low labor standards and no respect for workers' rights. Therefore, in order for workers around the world to share fairly in the benefits of economic development driven by trade globalization, it becomes absolutely necessary to respect core labor standards and to guarantee workers' basic rights, especially trade union rights. Coupled with the current prevailing-international capital's preference for low-cost production points, a competition that can lead to a downward spiral of standards at work, globalization of trade requires globalization of workers' rights. Elliott and Freeman argue that free trade and labor standards are complementary, not competitive, because increased trade promotes economic growth, and economic growth is good for job growth and improvements in people's welfare [8]. As to how labor standards should be linked to trade, this group believes that both the WTO and the ILO should play a role. Core labor standards should be reflected in the WTO framework and have the same effect as other obligations in the WTO agreement, and their implementation should be monitored through the WTO's dispute settlement mechanism, which allows member countries to use trade sanctions as a last resort [9].

6. Conclusion

In conclusion, while the international law level of the Convention has responded to labor protection issues, its lack of coercive power has led to a limited number of cases in which there has been effective feedback on violations of labor rights, so that overall, the Convention alone is not sufficient to enforce labor standards. Currently, tying labor standards to trade and investment agreements is the most successful strategy. "If trade negotiations are the only way to enforce labor standards in an international context, why not?" asks American academic Freeman. Go ahead with trade sanctions if they can raise labor standards, if the gains outweigh the harms resulting from trade losses, and if they can topple a murderous government and save lives. Perhaps the concern over labor standards will inspire international trade organizations to come up with creative ideas for how trade could be used to finance changes in labor standards.

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