Analysis of the Problems Between International Investment Law and the Protection of Labor Rights of Multinational Companies - A Case Study of "Sweatshop"

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Abstract. In recent years, under the influence of economic globalization, the development of international law has also shown a corresponding humanistic trend. That is, while solving problems from the perspective of the country, it also began to pay attention to the protection of the well-being of individual citizens and the whole society. This paper uses the case analysis method to consider the problems between international investment law and the protection of multinational company labor rights and interests by analyzing the specific cases of "sweatshops". In the study of sweatshop cases, the author found four main reasons for the formation and spread of sweatshops, as follows: 1. The management system of enterprises; 2. The supervision of the government and trade unions has not been implemented; 3. Jurisdiction is unclear in international law; 4. The legislation on labor rights is not perfect in international investment law and international trade law. And put forward the corresponding suggestions for the four problems found.

Keywords: Case analysis, sweatshop, multinational corporation, International Investment Law.

1. Introduction

In recent years, by the influence of economic globalization, the development of international law has also shown a corresponding humanistic trend. Which is, while solving problems from the perspective of the country, it also began to pay more attention to the protection of the well-being of individual citizens and the entire society. In the early stage of economic globalization, the majority of developing countries made various commitments in the investment agreements in order to attract foreign investment, which ignored their domestic interests. With the growing domestic demand for protecting social interests, countries will also require native investors to assume certain social responsibilities in foreign negotiations in order to protect the social health and sustainable development of the host countries. Labor rights as internationally recognized fundamental human rights also have gradually been valued and responded to in international investment and trade treaties. The United Nations Commission on Trade and Investment pointed out that more and more host countries have terminated agreements that ignored their own interests. In contrast, new investment agreements signed in recent years have included protection of environmental and labor rights provisions to avoid excessive protection of investors' interests and ignoring the appeal of host countries.

Currently, human rights considerations are infrequently explicitly stated in either bilateral or international investment agreements. The preservation of human rights, however, is frequently intimately tied to other elements in international investment agreements that address social and public objectives, such as worker and environmental protection. In the US 2004 BIT model article 12,13 provisions, for instance, it was stated that it was "improper" to promote investment by lowering the level of domestic environmental and human rights protection. States parties are prohibited by Article 11 of the Canadian BIT Model from taking actions that could lower the "health, safety, and environment" standard [1]. Although some standard clauses in BIT are relevant to and may have an impact on the protection of human rights, their primary and original intent is not to do so. The single theme of international investment agreements is the cause of the understated consideration of human rights issues. Despite the fact that investor property rights are also a type of human rights, the defends investors' property interests. However, it should be noted that investor protection and international

human rights law both have a common range and share the same goal of resolving the asymmetric conflict between private and state power [2].

Therefore, this paper will outline the conflict of international investment law and labor protection from the following four aspects. The first is the legislative trend of labor rights protection, the second aspect is to illustrate the conflict between multinational companies and the protection of labor rights through examples such as Nike's "sweatshop", the third is the main reasons for the conflict between international investment and labour protection given the above examples, and the last is to make corresponding opinions and suggestions for international investment law and labour protection.

2. The Legislative Trend on Labor Rights Protection in the International Investment Law

International investment liberalization has created a free and open platform for the international flow of capital and promoted the economic prosperity and development of various countries. However, at the same time, it has caused a considerable impact on public interests, including labor rights, and violations of multinational corporations on labor rights occur frequently. In the face of such impact, inherent domestic law and international law system are challenging to provide practical solutions, domestic law, the mother country, due to company nationality, and jurisdiction restrictions on investment activities cannot form effective regulation, and the host country regulation is subject to the investment treaty, through the law to improve the level of domestic labor protection will face many legal risks. International law level, the macro international human rights law and specific international labor law, such as human rights conventions, the international labor organization (ILO) charter and eight basic conventions, provides comprehensive legal norms for labor protection and implementation mechanism, but due to its text and performance mechanism defects, difficult to real investment activities and national behavior, so you need to seek a new path to protect labor rights and interests [3]. At the same time, the developed countries to "leveling the game," minimize the competitiveness gap between developing countries due to labor costs, introduced in the field of international trade and investment into labor protection clause, under the multilateral trading system, due to the collective opposition of developing countries, the labor clause into failed, and in bilateral and regional treaties as the main form of trade and investment, the labor clause has been more smoothly [4].

At the multilateral level, the United Nations and its member States have made long and valuable efforts for sustainable development and human rights protection, forming a series of detailed documents, and Labour protection is one important aspect of that. Specific to the international investment law, the harmful impact of the neoliberal investment treaty on the public interest and state regulation has led countries to change their ideas, a new generation of investment treaties began to try to balance the interests of investors and host countries, and into the concept of sustainable development and human rights protection, its concept in the field of international investment from external issues gradually to internal goals. Moreover, the protection of labor rights and interests, as the due meaning of sustainable development and human rights protection, is an inevitable trend to standardize and legalize in international investment treaties [5].

3. Cases Description - Conflict between multinational corporations and labor rights protection

With the sharing of science and technology and reform and opening up, the world's economic development presents globalization and integration. As more nations have joined the WTO, trade barriers have been removed, allowing for increased trade and capital flows, enterprise activities have expanded to the global market, and the national economy has become more global. from a closed economy to an open economy, and the transnational flow of capital and labor factors is increasingly frequent. Many large multinational corporations, including the Nike company mentioned in this

article, plan to gradually move their production lines from high-cost countries and regions to low-cost countries and regions in order to control production costs and maximize profits. Asia has thus come to be known as the "factory of the world." Additionally, with the implicit consent of the local government to maintain the workers' pay and rights as low as possible, which is a significant factor in the media's regular revelations of so-called "sweatshop" scandals [6].

Marc Kasky, a labor organizer and citizen of the United States, sued Nike Inc. in 1988, alleging that the company had engaged in unfair and dishonest business practices that violated California's statutes against false advertising and unfair competition. Kasky claimed that there were substantial factual omissions and misleading information in Nike's public statement about the working conditions in its overseas suppliers' facilities. Nike claimed that the First Amendment's protection of free speech rendered the lawsuit unlawful. The California Supreme Court, which overturned the lower courts' rulings, determined that the Nike statements come under the category of commercial communication, which is given less constitutional protection than non-commercial speech. The appellate court that followed the trial court's decision sided with Nike. When the US Supreme Court ruled in this case in 2003 that it had incorrectly granted certiorari and dismissed the case, the California Supreme Court's ruling was essentially affirmed. A few months later, Nike and Kasky made the decision to settle the legal issue for $1.5 million in order to enhance the systems for monitoring manufacturing workers and the workplace. The Nike remarks were deemed to be under the category of commercial communication, which is afforded less constitutional protection than non-commercial speech, according to the California Supreme Court, which reversed the decisions of the lower courts. Both the trial court and the subsequent court of appeals ruled in favor of Nike. The California Supreme Court's decision was basically upheld when the US Supreme Court determined in this case that it had granted certiorari in error and dismissed the appeal in 2003. A few months later, Nike and Kasky decided to pay $1.5 million to resolve the legal dispute in order to improve the procedures for keeping an eye on production employees and the workplace. However, it's still regretful to the public since the fact of the concerned issue of labor working conditions was not yet concluded.

Nike released a report on April 13, 2005, revealing the work conditions of the workers at its more than 700 production plants comprehensively and recognizing the exploitation of the workers in its factories everywhere, especially those based in Asia. More than a quarter of Nike's South Asian factories forbade employees from drinking or using the restroom during working hours, and 25 to 50 percent of them did not even allow them days off, according to a survey of ten factories done in 2003 and 2004. The research also revealed that more than half of employees worked more than 60 hours per week, and that roughly a quarter of factories penalized workers who refused to work overtime by paying them less than the required minimum wage [7].

It happens that there is a similar case. The infringement of workers' rights not only in China but also elsewhere, as in the case of Doe v. Unocal in Southeast Asia. The villagers in the Tenasserim region of Myanmar claimed in Doe v. Unocal, Unidico that Unidico and other defendants had either directly or indirectly subjected them to forced labor, murder, rape, and torture while the locals were working on the nearby oil pipeline. According to one woman from the hamlet, her husband was slain while attempting to avoid being put to work, and the soldier then tossed the mother and her child into a fire. The woman was injured and killed, and two female villagers testified that the Burmese soldiers supervising the project threatened to rape her with a knife after he was called up to build the pipeline project. Similar testimony is still extensive [8].

In the new era, sweatshops have developed new features: from the crude of unequal exploitation to cutting corners and drilling holes in the law. For example, for statutory holidays on time, the holiday time is suspected of shrinking; although overtime pay is paid according to the regulations, compulsory employees and enterprise benefits, it is hard to get compensation; special jobs, especially toxic and harmful jobs, cannot receive due subsidies.

Along with it, there have also been some subtle changes in the field of labor relations within multinational companies. First, Employee requirements are becoming more complicated, from limited to working hours, wages, and industrial injury requirements to paying more attention to diet,

feelings, psychology, work pressure, and other factors; Next, the export of labor to resolve the contradictions is becoming increasingly intense, that is, strikes, jumping and other phenomena, And presents the characteristics of collectivization; Once more, Internationalization of labor and management conflicts, with the involvement of the mother-country trade unions, making the contradictions more complex, more diverse interest groups; last, the potential transformation of labor and management contradictions, that is, the improper way of communication is easy to make small contradictions accumulate into big problems. In addition, with the improvement of workers' quality, their knowledge level, legal awareness, and ability to use the network have been significantly enhanced, and their awareness of rights protection has increased daily. It is with these changes that the past simple and traditional exploitation methods such as hourly wages have become unsustainable, but the new forms of exploitation are still growing freely.

4. Analysis of the main reasons why the "sweatshop" is difficult to supervise

Whereas multinationals have contributed significantly to developing the global economy, we have also gradually uncovered all the contradictions and problems that emerge behind their glory, the most important of which is the violation of human rights. With the exposure of a series of labor rights violations, multinational corporations started paying increasingly greater attention to their human rights and social responsibility research. Nevertheless, the complex problems of multinationals, the inconsistencies and the entanglement of interests of all sides, and the weakness and differences in the legal restraint mechanism all dictate that the investigation of this problem cannot proceed smoothly. Investigating its fundamentals, can analyze the reason that "sweatshop" is difficult to eliminate thoroughly from the following aspects.

4.1. The management system of enterprises is the driving force of the development of sweatshops

The nature of market economy development makes it impossible to pay attention to the preservation of labor rights and interests. Profit maximization, a necessary goal of business growth, entails minimizing the value of workers' labor. The original sweatshops, which were predicated on forgoing collective bargaining and reducing workers' unit product earnings to a minimum in order to gain more surplus value, are now largely found in factories with inexpensive labor. The management system of the company is developed in the pursuit of larger interests, which is based on the growth of the company and the undervaluation of the rights and interests of the employees, so serving as the catalyst for the emergence of the sweatshop. It might be argued that the brutal exploitation of capitalists under the capitalist system and the subsequent globalization of the market are key factors in the genesis of this phenomena.

4.2. Government and labor union oversight is not currently in place

One the one hand, China's rapid economic growth and wide market have drawn many global corporations because it is the largest emerging nation. However, because labor is so cheap and readily available, these businesses are also predominantly labor- and resource-intensive, which provides the ideal environment for the growth of sweatshops. Some local governments provided the sweatshop a lot of residential area in their misguided pursuit of economic gains and investment. Following the establishment of sweatshops, certain governments played a part in the growth and development of sweatshops in order to promote regional unity and stability at the expense of employee interests. [5]

On the other hand, the oversight agency lacks both the guarantee of mandatory force and workable and efficient operational methods. The "Trade Union Law" states: "Enterprises, institutions, and organs with more than 25 members should establish a grass-roots trade union committee; those with fewer than 25 members may do so by creating a standing committee of a grass-roots union, or by the members of more than two or more units may jointly create such a committee." The defense of employees' legal rights and interests is the primary duty of trade unions. While defending the general

rights and interests of all of the nation's people, the trade union also supports and defends the staff and workers' legitimate rights and interests. According to the field survey, more than 90% of the employees who received the questionnaire survey said that they have labor unions and other interests organizations to safeguard the interests of employees. However, when involved whether the rights organization has performed its functions to protect the interests of employees, the employees said that they had not actually encountered or heard about relevant matters.

Similarly, even though the labor arbitration committee dealt with numerous labor arbitration cases, and the 2008 labor contract law and labor dispute mediation and arbitration law, as an essential avenue to protect their own rights and interests, but also caused the arbitration case blowout, however, in practice, although the successful laborer ratio is higher, but what is "win" is often difficult to confirm, laborer request is difficult to ensure that all effective implementation. Additionally, the majority of workers decide to submit it to arbitration after their labor relations with the labor enterprises have ended, which is not advantageous for the long-term employment of the labor force because it lacks an efficient internal resolution mechanism. [6]

4.3. Jurisdiction is unclear in international law

Different from domestic enterprises, the problems of multinational companies are international because they involve many interests. However, the issue of its jurisdiction has been difficult to solve effectively.

First of all, whether the multinational company is in the dominant position in international law is still controversial, and there is no international unity on whether the industrial and commercial enterprises are under the jurisdiction of the host country of the parent company or under the jurisdiction of the host country.

Furthermore, it is challenging to apply directly to multinational firms because countries are the contracting parties to international human rights legislation. The responsibilities and obligations of multinational corporations are challenging to understand in the absence of a defined constraint mechanism, and the investigation lacks compelling evidence to support it. Currently, states are not required by international human rights law to control the overseas operations of businesses that are based on their soil or under their jurisdiction. However, as long as there is a recognized jurisdiction foundation, it normally does not prevent them from doing so.

4.4. The legislation on labor rights is not perfect in international investment law and international trade law

There are currently no worldwide laws that require multinational firms to respect human rights. It is challenging to impose restrictions on multinational firms due to the legal vacuum and absence of binding legal requirements. The sweatshop issue is challenging to resolve and getting worse despite the creation of several pertinent contractual agreements and the dedication of international human rights experts to the protection of international human rights. This is because the mandatory standards for the human rights obligations of multinational corporations have not been effectively implemented.

The Universal Declaration of Human Rights was adopted by the UN General Assembly on December 10, 1948, but it had no official legal status. But as a result of this, two legally binding agreements—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights—were made. The third part of the international covenant on economic, social, and cultural rights (ECHR) contains articles 6, 7, and 8 that guarantee the citizens of the contracting party the right to employment, to fair and good working conditions, to equal pay for equal work, to equal opportunities for advancement, to legal holidays, and to the right to strike. However, there is no way to ensure the implementation of this right by enacting specific mandatory provisions [9].

Companies must adhere to, support, and put into practice a set of nine fundamental principles on human rights, labor practices, and the environment within their various spheres of influence under the United Nations Global Compact (COP). Among them are human rights, which businesses should

uphold, respect, and never violate; labor standards, which businesses should uphold while also recognizing the rights of collective bargaining, maintaining the freedom of association, doing away with all forms of forced labor, doing away with child labor, and preventing any form of discrimination in the workplace and in business. Under the auspices of the Advisory Committee on the Global Compact, UN Secretary-General Nan Annan adopted the Global Compact Note on Integrity Measures on June 25, 2005, which specifically outlines the steps to be taken to check on the Global Compact participants' implementation. According to the "integrity measures," participating companies are deemed "inactive" and lose the right to use the global contract logo and to take part in global contract activities until they submit progress reports for two consecutive years and publish them on the global contract website. Even though the global contract makes use of other national laws' oversight procedures, it cannot be viewed as mandatory [10].

5. Suggestions

According to the aforementioned analysis and example, sweatshops have been around for a very long time because of business, the government, the application of international law, and the ineffective legal system. Multinational firms' human rights practices should be further regulated, and the appropriate remedies should be used in the following ways.

5.1. Strengthen supervision by the government and trade unions, and introduce third-party supervision mechanisms

Give trade unions their due as the rulers of the land, oversee the system of decision-making, create a model of conflict resolution where workers negotiate on their behalf, encourage the release of corporate information, and safeguard workers' rights. In order to improve law enforcement monitoring, advance labor law implementation, use the power of social organizations, establish third-party supervision, mimic media and public opinion, and provide a system for internal conflict resolution, the government has assembled a special team. Create a reliable election method to efficiently track how well businesses are protecting human rights [11].

5.2. Clarify the question of the jurisdiction of multinational corporations

Establish specific international court of human rights to address the abuse of human rights by multinational corporations. Organizations such as the United Nations Human Rights Commission to investigate the human rights situation and violations of multinational corporations, and strengthen collaboration between host and host countries.

5.3. Improve legislation and formulate binding and directly applicable principles of international law

In order to guarantee the human rights responsibilities of multinational corporations and regulate the violation of the human rights of workers in developing countries, we should start from two international and domestic aspects:

International: Establish or further establish certain systems within the framework of international economic organizations to force multinational corporations to comply with international human rights obligations. International economic organizations are continually forming and growing stronger along with the rise of economic globalization. On this foundation, the framework for multinational corporations' human rights accountability can be built in order to effectively regulate their human rights practices. As the primary organization, multinational corporations are required to uphold obligations to protect employees' rights and interests, as well as those of management and supervision when laws are broken or policies are not strictly followed. To do this, these corporations must be strictly regulated through the use of trade barriers, which create direct interest checks and balances and help them fulfill their obligation to uphold human rights. [6]

Domestic: Improve domestic law, increase the viability of legislation, and deepen the link between domestic law and international human rights law. International treaties like the Universal Declaration of Human Rights and the United Nations Global Contract are made into local civil and commercial laws, enforced, and regulated in accordance with China's unique national circumstances [12].

5.4. Boost the industry's internal self-discipline

Give industry organizations' regulatory role full play, create a set of enterprise self-discipline systems through internal industry management and supervision, and bolster industry-specific restrictions.

6. Conclusion

The examination of this issue cannot be straightforward due to the complexity of the issue with multinational organizations, the conflicts and entanglements of the interests of all parties, the weakness of the legal restriction mechanism, and other factors. However, in the context of international public law, the assumption and distribution of human rights obligations by multinational corporations is extremely important for China's economic stability, development, and progress. There is still plenty to learn about this issue. With the development of social economy, the continuous improvement of relevant laws and regulations, the workers' education level, "sweatshop" is different from the past working environment, unpaid wages, extended hours simple and crude infringement, with new characteristics: in the benefit maximization, forced to work overtime, holiday shrinkage, and so on and so forth. In order to further regulate the performance of the human rights responsibilities of multinational corporations, we should clarify their jurisdiction, improve the legislation, strengthen the supervision of multinational corporations, and constantly improve the legal awareness and rights protection ability of workers. The labor rights and interests of multinational firms can only be effectively achieved in the new era when nations enhance domestic legislation and cooperate more closely.

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