

The Regulation of International Treaties on MNEs' Labor Rights Obligations

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Abstract. With the deep development of globalization, MNEs as its carrier play an important role and their own power grows rapidly in this process. In the extreme pursuit of profit, MNEs violate international labor rights in a very serious manner, which breaks up the basic principles of labor rights protection established by the International Labor Organization (ILO) and causes significant damage to human rights. The root cause of this phenomenon is the lack of direct and effective international laws to restrain labor rights violations by MNEs. This paper proposes that labor rights obligations should be imposed on MNEs through international treaties, especially it should draw on the excellent practices of some FTAs. At the same time, it is hoped that through this approach, a feasible path for the establishment of an international mechanism for the protection of labor rights will be explored.

Keywords: MNEs, Labor Right, International Treaty.

1. Introduction

The modern meaning of MNEs can be dated back to the 17th century, along with the continuous development of capitalist globalization gradually expanded, once formed a transnational monopoly situation [1]. At the same time, influenced by the continuous self-adjustment within capitalism, MNEs got rapid development after World War II. However, the rapid development of MNEs hasn't been accompanied by the establishment of corresponding regulatory mechanisms, resulting in many violations of human rights by MNEs in recent decades, especially labor rights.

Since 1919, many countries around the world have continued to sign and improve the provisions and norms on international human rights guarantees, which have basically defined the scope of labor rights clearly. As set forth in the core human rights standards of the International Labor Organization (ILO), the basic labor rights, including the abolition of forced labor, prohibition of child labor, and equal opportunity and treatment of workers in employment and occupation without distinction due to race, color, sex, religion, political opinions, national or social origin.

Nonetheless, the Global Rights Index 2022, published by the International Trade Union Confederation (ITUC), which ranks 148 countries on respect for labor rights, shows that the violations of labor rights reach the peak ever in 2022, with the Middle East and North Africa ranked as the worst regions for labor rights [2]. Starting from the 1980s, MNEs in some developed countries shifted labor-intensive industries to developing countries to reduce labor costs and increase efficiency and profit. Since then, labor issues gradually became the main manifestation of human rights violations by MNEs.

The problem of labor rights violations caused by MNEs has become more and more serious, with the emergence of such egregious phenomena as limiting labor wages and benefits, lowering safety and health standards, and providing unsecured dismissal mechanisms for workers that undermine basic labor rights. It is no exaggeration to say that MNEs are contrary to the ILO's provisions on labor rights and the worldwide consensus on basic labor rights.

Behind these chaotic situations, the reason for the violation of labor rights by MNEs was found in the absence of relevant legal mechanisms. The main regulation of labor rights obligations of MNEs so far is from ILO. But to a large extent, it is only a declaratory regulation without normative effect considered as "soft law". In 2021, the United Nations adopted the legally binding instrument on the regulation of the activities of MNEs and other business enterprises in international human rights law, and its revised draft was also adopted, with the brief aim of complementing the implementation of

the human rights responsibilities of MNEs by strengthening the obligations of States [3]. However, it conflicts with the existing human rights system. It will take a long time to resolve the contradictions between the ideas presented in the draft and the realities of the human rights system, and the draft does not currently have mandatory effect. Beyond that, there is little effective international law regulating the labor rights obligations of MNEs.

This paper argues that labor rights obligations should be imposed on MNEs through international treaties. It discusses the current situation and arguments on the violation of labor rights by MNEs, explains the necessity and justification of imposing labor human rights obligations on MNEs through international treaties and to provide certain ideal paths and suggestions for the future protection of international labor rights.

2. The reasons for MNEs to take responsibility of labor rights

2.1. Problems of labor violations by MNEs

In recent decades, MNEs have committed numerous labor rights violations, and the status of the problems is becoming more serious, whose main manifestations are as follows.

Firstly, child labor is becoming a serious problem. Based on the latest statistics of the ILO, the number of child laborers around the world has increased to 160 million, and the number reaching 127 million in the Asia-Pacific region accounts for 60% of the world; Labor numbers in Africa is the second, reaching 48 million, accounting for 23% [4]. The ten countries with the most labor rights violations include Turkey, the Philippines, Egypt, and others, which is obvious that they are mainly concentrated in developing countries, especially those with backward economies. Among them, such as Apple, Samsung, and other large multinational suppliers use child labor are not rare.

Secondly, forced labor occurs. Represented by the U.S., forced labor has had a spillover effect, with as many as 100,000 people trafficked from outside the country to engage each year, and several MNEs have been practicing forced labor outside the country for a long time.

In addition, the problem of excessively long working hours appears frequently. In countries that are with high population density, to keep tight job opportunities, laborers have no choice but to extend their working hours to prove and enhance their value of themselves. Recently, some regions in India even chose to amend the labor law permitting prolonged working hours to stimulate the economy, which has led to the violation of labor rights by MNEs legally [5]. Simultaneously, various issues such as women's labor rights, wage standards, labor racial discrimination, and others reflect the reality of MNEs' violation of labor rights. Under so much chaos, it has become inevitable to prompt MNEs to take responsibility for labor rights.

2.2. Legal-related loopholes of labor rights obligation on MNEs

2.2.1 Globalization-International law

The positions of different countries in the global production system are unfair. Developing countries need to participate in disadvantageous ways like labor export and resource supply. As the carrier of globalization, the pursuit of profit at any cost naturally puts MNEs in conflict with the protection of labor rights.

The critical issue is that an effective international law system has not been established under globalization. By far the most important international law on labor rights is the 1948 Universal Declaration of Human Rights (UDHR), which is adopted by the United Nations General Assembly (UNGA) and clearly defines the worldwide consensus on human rights, including labor rights [6]. Some international labor conventions adopted by the ILO, such as the ILO Declaration on the Fundamental Principles and Rights at Work, have certain legal binding [7]. However, these international laws are often ineffective because of jurisdictional disputes, corporate veils, and non-recognition of legal effects. In other words, sometimes, they are only enforceable by nature and are

difficult to be genuinely used in practice. Until now, many international labor treaties adopted by the International Labor Organization (ILO) have not been accepted by several countries.

At the same time, apart from these, mandatory international law is almost blank for the protection of labor right in MNEs. Most are self-regulatory guidance, such as the Organization for Economic Co-operation and Development (OECD) Guidelines for MNEs, which have no legal effect. There is no doubt that in the absence of the principle of "national recognition" and corresponding enforcement mechanisms, such self-regulatory guidance is more like unrealistic slogans, which can neither regulate MNEs through the home or host states from the perspective of domestic law nor can they bring MNEs themselves into the scope of mandatory compliance in the international law.

2.2.2 Domestic law

Here is mainly focused on the provisions related to labor rights violations in the home countries of MNEs. In practice, due to the dispute of home country jurisdiction, there are few domestic laws that can be directly and effectively invoked to protect the labor rights of MNEs, mostly through tort law to achieve protection. For example, The Alien Tort Claims Act of 1789 (ATCA), following the 1980 case "Filartiga v. Peña-Irala", has gradually become an important legal basis for civil lawsuits against MNEs for violation of labor rights [8]. However, it's not universally applicable because of the "act of state" procedures limit.

As a matter of fact, the U.S. is the country that adopts active legislation to guarantee the labor rights of MNEs, the only country that has regulated the labor rights by MNEs through the civil law. However, its legal application is also limited, which obviously shows that the situation is not optimistic about regulating the labor rights of MNEs through domestic laws around the world. Regulations through international law may be more likely to be achieved.

3. Regulating MNEs through international treaties

3.1. Examples of International Treaties regulating MNEs vis labor issues

3.1.1 ILO Tripartite Declaration

The ILO Tripartite Declaration aims to uphold labor protection principles in the UDHR and International Covenant on Economic, Social and Cultural Rights (ICESCR) by guiding host and home country governments, MNEs, and others to take measures or adopt social policies to promote decent labor [9]. Among them, the requirements of social security, elimination of equal opportunity and treatment, forced labor and child labor, and employment security are clearly stated, providing basic guidelines and standards for the protection of labor rights around the world.

This declaration is an international "soft law" in nature, and although it has no legally binding force or effective implementation mechanism, it is of great significance in establishing rules and standards, and its reference to 17 international labor conventions shows it is striving to build a universally applicable legal system for labor protection of MNEs. It has become the most important legal blueprint for labor rights because it focuses on problems of the labor rights violation by MNEs straight, pointing out the direction for the development of worldwide labor rights in recent decades [10].

3.1.2 FTAs

As an important practice in the current development of international law, FTA is closely related to MNEs as the carriers of globalization. FTA is a legally binding international treaty between two or more countries on its own and does a better job in terms of the relevance of the provisions in the agreement, the feasibility of regulation of countries, and the threshold of access to the FTA itself. In fact, many countries are regulating the labor rights obligations of MNEs through the existence of FTAs, and better regulatory approaches and phenomena have emerged through them.

This study mainly focuses on labor protection issues in FTAs dominated by the U.S. and the E.U. What is good is that the U.S. and the E.U. promote ILO labor standards in regional trade arrangements,

and labor protection provisions are practiced and emphasized in multilateral trade. In the U.S. leading FTAs agreements, not only labor protection standards but also cooperation mechanisms have been established [11]. For example, in the chapter on the labor of Australia-United States Free Trade Agreement (AUSFTA), it is stipulated that both parties are obliged to guarantee labor standards in their respective domestic legislation and specify the consultation mechanism for labor issues. The US-Mexico-Canada Agreement (USMCA) enhances the viability of labor protections and is considered to provide a high standard of labor protection. In fact, all U.S. foreign FTAs since North American Free Trade Agreement (NAFTA) have included certain labor protection provisions based on the specific different countries' situations or traditions [12]. And many other U.S. leading FTAs also have similar protection and incorporate them into the WTO dispute settlement mechanism.

The E.U. has also continued to promote labor standard practices in FTAs. On the one hand, in terms of conventional geographical division, the European Union, as an association of countries, is essentially a giant free trade area. Consequently, its contracting states must abide by the provisions of the UDHR. On the other hand, labor protection is more explicitly provided in some of its external trade agreements. For example, labor protections are more explicitly provided for in some foreign trade agreements. For example, the Cotonou Agreement provides for labor issues, including but not limited to "member countries' reaffirmation of respect for core labor standards as laid down in the ILO conventions".

Influenced by the partially successful experiences in the U.S. and U.K., it has gradually become a new trend to protect labor rights through the inclusion of labor protection provisions in FTAs. For example, Vietnam and other developing countries are also protecting labor rights through FTAs and gradually ratifying other ILO conventions actively [13]. Another example is the European-Korean labor disagreement handling case that has been hotly debated in the past two years. The EU-Korea FTA includes a sustainable development chapter for the first time, emphasizes the legal effect of FTA labor protection through the rules for review and application of labor protection provisions, and clarifies the corresponding responsibilities that parties should assume. Specifically, this FTA requires three main aspects of labor protection: The first is acknowledging the link between trade liberalization and labor standard. The second is the obey to the ILO's regulations. The third is establishing a special institution that allows any state parties to review the issue without unanimous consent [14]. Under the mechanism, it has clear rights and responsibilities, reduces national disputes, and effectively promotes the practice of international labor provisions [15]. More importantly, although the relationship between labor protection and economic development may have adverse effects, there is much more room for improvement in the technical aspects of the agreement, and this incident offers important practical possibilities and prospects for implementing labor provisions through dispute settlement procedures [16]. The emergence of this phenomenon may imply that the gradual implementation of FTAs may also promote the wider acceptance and appliance of international human rights conventions.

In brief, the provisions on labor protection in the FTAs led by the U.S. and the E.U. reflect the current international treaty on labor rights issues for MNEs. Even though there may have some economic and political factors impacting the decisions, it is undeniable that imposing labor rights obligations of MNEs through treaties is practicable and of solid judicial practice significance.

3.2. Why or why aren't these treaties effective at regulation

To some extent, the effectiveness of the labor rights treaty depends on whether it is generally applicable and compulsory, as illustrated respectively by the following examples from the positive and negative sides.

Since FTAs are relatively limited in scope compared to international human rights declarations, they are generally aimed at countries within a certain region, which inevitably have had different degrees of dealings with each other due to geographical influence and historical traditions and have a certain basis for cooperation. To be more precise, they do have a kind of cooperation necessary.

Moreover, due to the requirement of common cooperation, it is also more likely that each other will negotiate and compromise on labor terms.

It may be due to the geopolitical factor, the norms of labor rights protection in some FTAs are better done. They often clarify the labor rights obligations of MNEs through the labor protection provisions in bilateral or multilateral treaties and have established relatively effective and targeted mechanisms. For example, North American Agreement on Labor Cooperation (NAALC), "each party has the right to establish its own labor standards and to maintain consistency with their own labor laws", emphasizes the implementation of each country's own labor laws combined with effective domestic laws. NAFTA combines trade and labor issues. They make the harmonization of labor rights in treaty member countries a mandatory criterion for joining trade agreements [17].

For a long time, MNEs have evaded their treaty responsibilities because they are not subjects of traditional international law. This point is of great importance because under the traditional vision of international law, the main international subject is still the state, while intergovernmental international organizations and people fighting for independence can sometimes become international subjects when they meet certain conditions. However, the qualification of individuals and corporations as subjects of international law has always been debated. Therefore, regardless of the doctrine, MNEs cannot be subjects of international law, which is why they are rarely directly regulated by international treaties. However, once the behavior of MNEs is elevated to a certain extent to that of the home state in the FTA, it inadvertently brings MNEs into the realm of effective regulation in international law, and the issue of their labor rights obligations can be discussed because of such jurisprudence.

However, although 162 international labor conventions have been adopted by the ILO so far, such as the Forced Labor Convention, and the Worst Situations Child Labor Treaty being ratified to varying degrees worldwide, the global forced labor and child labor problems are still serious. Though the UDHR has a high authority, it has been reduced to a "verbal" principle and is not effective.

Moreover, enforceable labor standards also have some problems, which may undermine multilateral trade rules under the banner of "human rights" and imply protectionism of national interests [18]. So many countries, such as China, reject the inclusion of enforceable labor standards and refuse to use trade sanctions. Whether it is justified to require all member countries joining the FTA to comply with the stipulated labor terms is still a debatable issue, and whether such required labor standards are in line with the voluntary principle cannot be guaranteed due to the disadvantageous position of developing countries in the international trading system, which may sometimes be forced to choose to accept to promote the development of regional trade. At the same time, whether some countries dominating the FTA will question the foreign policy of developing countries and further interfere with their internal affairs on the grounds of some alleged violations of labor standards in the agreement is also a point of doubt and concern for some countries.

Likewise, people have some doubts about the U.S. intention of introducing labor protection clauses in FTAs. It has been argued that the U.S. is trying to ensure a competitive advantage for U.S. products by making overseas workers and U.S. workers enjoy the same labor standards through such labor protection provisions in cross-border trade, especially in trade agreements with developing countries [19]. The underlying logic is that some developing countries have achieved certain price advantages in the international market due to cheap labor that reduces their production costs. And by means of the minimum required restrictions on wages, and working hours in the labor provisions, some developing countries are forced to raise the cost of labor, which will reduce their price advantage, thus safeguarding the international competitiveness of U.S. products.

Overall, the incorporation of labor rights into the international treaty system through FTAs provisions and other means has effectively imposed labor rights obligations on MNEs, mitigated labor violations by MNEs, strengthened labor rights protection, and developed international labor relations. Considered together, it still provides a practical possibility for MNEs to impose labor rights obligations, and it is undoubtedly a strong measure becoming a trend.

4. Conclusion

As mentioned above, in the present situation where labor rights violations by MNEs are terrible but lack legal regulation, it is necessary to regulate them through the signing of international treaties. However, the number of effective international agreements signed so far is minimal, mainly caused by the lack of coercive guarantee and juridical accountability of such international agreements. Therefore, this study holds a belief that the relevant labor rights should be guaranteed through some of the FTAs in force, and the responsibilities and obligations of the contracting parties should be clarified, and a penalty mechanism should be set up to enforce them. It is undoubtedly of great significance in practice nowadays.

It is also recognized that the limitations of imposing labor rights obligations on MNEs are even through international treaties. On the one hand, the actual regulatory power of labor provisions in international treaties cannot be guaranteed in practice, especially in the face of political and economic disputes under state protectionism, and there are certain difficulties in guaranteeing the labor rights of multinational corporations. On the other hand, even if, as the author advocates, treaties can be concluded in imitation of FTAs that now have better regulation of international labor rights protection, the subsequent derivative problems, such as the balance between labor rights and economic interests, the actual interference of major powers in internal affairs in the name of labor rights protection, and the destruction of bilateral and multilateral trade rules come into play, and further solutions still need to be considered.

However, the truth is even though it will inevitably lead to the emergence of new problems, there are two sides to everything, and the practice of imposing human rights obligations on MNEs through international treaties to safeguard international labor rights is more than necessary. Although there are some objective negative effects, they can also be circumvented through the subsequent further improvement of legal regulation and other means.

In summary, a better international legal regulatory mechanism should first be established through effective international treaties such as FTAs to provide an enforceable fundamental guarantee for labor rights, which is the right approach for real political and economic sustainability under globalization.

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