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The Home Country Should Be Responsible for the Regulation of the Human Rights Responsibilities of MNEs

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ABSTRACT
Various issues of human rights abuses by MNEs have received considerable attention, many previous studies have justified the host states regulation. In our research, home country regulation is introduced and compared with the host regulation. Based on case analysis, we find that the home states regulation have advantages comapred to host states regulation, even though it has some other drawbacks. Then we discussed the practicability of home country regulation in reality. Finally, we conclude that the home country should assume the obligation to regulate human rights issues of MNEs, for its apparent advantages.

Keywords: *Home country, MNEs, Human right, Legislative, Judicial remedy.*

1. INTRODUCTION

In this paper, we aim to argue that the home country should assume the regulatory obligation of the human rights responsibility of MNEs, in that it has comparative advantages with other regulation methods.

Firstly, regarding the considerable status of MNEs in the global market, MNEs influenced by the concept of profit maximization commit variable human rights abuses. We will introduce two typical cases of human rights violations in the world: the Foxconn suicides (abuses of labour rights) and the BHP Billiton case (local environment damages).

Then, we will present one subsequent survey by Chinese labour watch, which shows common labour abuses in Chinese electronics industries. Companies failed to regulate quickly and improve human rights issues even after severe consequences; thus, self-regulatory methods' efficiency was suspicious.

For current third-party regulation, we also doubt the effectiveness. Taking the OECD guideline as an example, we will discuss its limitation on two aspects: the nature of the guideline and the signatory states.

In the second part, we will discuss the necessity and advantages of home country regulation of multinational companies. First of all, we will start with the Chevron case, a famous case of human rights violations by MNEs. We will compare the advantages and disadvantages of host country regulation and home country regulation through the introduction and analysis of this case, we Finally, we will summarize the advantages of home country regulation and makes dialectical thinking on home country regulation.

Regarding part three, we perceive that the home country should go through two effective ways. First is about legislative measures. Home country should legislation restricts or removes barriers for victims to initiate litigation. And it also can transmit some international law into domestic law. We will introduce some example.

Second, is about the judicial remedy. We will illustrate the current situation to elicit the methods. First, the home country should ensure the victim can file a

lawsuit when the infringement occurs outside the territory. Second, it also should provide legal aid to the victim to help them to obtain evidence about violations of the human rights. Then, we consider that the home country should provide victims with legal assistance to reduce their transnational litigation costs. We will prove that through an example. And finally, we think home states should extend the statute of limitations.

2. LITERATURE REVIEW

2.1. Research background and significance

2.1.1 Background

In today's era of economic globalization, multinational corporations, through their various branches and huge economic strength, are not only closely related to the global economic development, but also have a huge impact on the human rights situation of all countries. On the one hand, MNEs have a positive impact on the human rights situation of the business place by promoting the local economic development and increasing jobs for the local people. On the other hand, due to the profit-making purpose of enterprises, MNEs will inevitably increase profits by reducing production costs. If this process lacks the supervision and regulation from the enterprise, the state, and the society, it is likely to have a negative impact on human rights. The "sweatshops" of Nike and other enterprises in developing countries in the 1980s and 1990s are an example [1].

At present, the research and practice on this issue are more inclined to the responsibility of multinational corporations, and ignore the human rights obligations of States to a certain extent. The state is the most direct and main obligation to protect human rights. More and more scholars call for the restoration of state obligations in this field in order to solve the problem effectively. Therefore, it is necessary to study how to strengthen the human rights obligations of MNEs' home countries.

2.1.2. Practical significance

The practical significance of this paper is mainly reflected in the following aspects: through the theoretical research and practical exploration of the home country's regulation of the human rights obligations of MNEs, it provides a legal basis for the home country to regulate the business behavior of MNEs in the host country, reduce the infringement on the human rights of the host country, and improve the relevant human rights relief. In addition, this paper also summarizes the practice of the main home countries of MNEs in regulating the extraterritorial acts of domestic MNEs, and summarizes the feasible measures and paths for the home countries to fulfill the human rights obligations of regulating the acts of domestic multinational corporations [2].

2.2. Research status

Generally speaking, the research on the home country's regulation of MNEs' human rights obligations is still a new field. Foreign scholars have a rich discussion on this issue, but there are few directly related studies; Chinese scholars lack direct discussion on this issue and lack of extensive and in-depth research.

2.2.1. Chinese research status

The research of Chinese scholars on this issue mainly focuses on the human rights responsibilities of MNEs, while, the research on the human rights obligations of MNEs regulated by the state is relatively rare. The domestic research on this topic can be divided into three categories: the research on the human rights responsibilities of MNEs, the research on the human rights obligations of the home country, and the research on the human rights obligations of the home country to regulate MNEs [3].

In the research of Chinese scholars, there are many discussions on the human rights responsibility of MNEs. For example, Li takes the human rights responsibility of enterprises as the research object in her doctoral dissertation, and discusses the theoretical basis, boundary, and special problems of enterprises undertaking human rights responsibility in China. Scholars such as Xu, Zhang, and Li have studied the reasons, classification, and development trend of human rights responsibilities of MNEs. He, Yuan, Chi, Li, and other scholars analyze the international law path to regulate the human rights responsibility of MNEs from the shortcomings of the existing model.

Some scholars have studied the human rights obligations of the home country. Sun made a textual analysis of the jurisdiction provisions of the International Covenant on Civil and political rights. He thought that the territorial factor of the International Covenant on Civil and political rights was weakened, and more attention was paid to the fact that the behavior of the contracting state affected the jurisdiction of any individual in any way. The Negative Obligation of the contracting state to respect individual rights was not limited, but the right of individual was guaranteed. Positive obligations are limited by the degree of control over the territory and individuals involved. Hu analyzed the changes and development of the relevant cases of the European Court of human rights in her master's thesis, holding that the jurisdiction of international human rights treaties is based on the standard of "de facto authority and control over human beings" [4]. Starting from the International Covenant on economic, social, and cultural rights, Yu Liang interpreted the International Covenant on economic, social, and cultural rights with the customary rules of treaty interpretation, and commented

on the latest practice of the Committee on economic, social, and cultural rights.

As for the foreign human rights obligations of the home country to regulate MNEs, the number of relevant studies is limited. From the perspective of the human rights obligations,of the state Juan analyzes the theoretical basis, specific identification, and national practice of the home country regulating the extraterritorial human rights obligations of MNEs. Wang believes that the home country regulation path, as a supplement to the host country regulation path, has the legitimacy of power and obligation, and summarizes the specific measures with China as an example.

2.2.2. Research status abroad

Foreign scholars have rich academic discussions on the foreign human rights obligations of the home country to regulate MNEs, and the research angles are also relatively diverse [5].

Schutter comprehensively introduces the national obligations of regulating MNEs to fulfill their human rights responsibilities, the self-regulation of corporations, and the direct responsibilities imposed by international law on MNEs. Among the works on the human rights obligations of States, Langford and others contributed the first rare book in this field, which specifically discusses the human rights obligations. Mccogdale and Simmons discussed the extent to which the human rights violations of MNEs can lead to state responsibility. In another article, Mccogdale also discusses whether the state's human rights obligations are subject to geographical restrictions and related situations. Rabbi discussed the feasibility of using jurisdiction according to the principle of necessity to promote the abuse of accountability system of human rights and environmental rights by MNEs in developing countries with weak accountability mechanism. Colan examines the current legal theory of human rights liability of MNEs, and introduces the legislative and judicial traditions and innovations of several major home countries of MNEs in solving the violations of human rights by their subsidiaries.

More scholars choose to discuss the extraterritorial application of international human rights treaties from the jurisdiction provisions of international human rights conventions and related cases. For example, by analyzing the opinions of the UN human rights treaty bodies and relevant cases, scholars such as Milanovich and Kumans have clarified the significance of the jurisdiction clause, sorted out the legal sources of the application of international human rights conventions, and put forward suggestions on the development of the human rights obligations of States. By analyzing the case of the Democratic Republic of Congo v. Uganda, Livanga aims to understand the norms of the application of human rights law and explore the circumstances or conditions under which a country is responsible for human rights violations outside its territory. Ogenstein and Kinley analyze the opinions of UN human rights treaty bodies and the determination of jurisdiction in relevant cases, and think that the development of human rights obligations is a trend from law to principle, and from principle to law.

Some scholars analyze the human rights responsibilities of MNEs and states from the perspectives of Luger's "protection, respect and remedy" framework and "industry, commerce, and human rights: guiding principles for the implementation of the United Nations" protection, respect and remedy "framework. By examining the framework of "protection, respect, and remedy" of Lugar, Mccogdale explores whether the state's obligation to protect human rights is more extensive and profound, especially whether it includes the regulation of enterprises' extraterritorial activities. Maresh focuses on the human rights responsibilities and obligations of business entities and countries in conflict areas, especially how the home country can fulfill its human rights obligations when its multinational companies are involved in serious human rights violations in conflict areas. Bernaz discusses whether extraterritorial responsibility can help to strengthen the accountability for extraterritorial violations of human rights by enterprises,; whether there is such an obligation; and whether such an obligation should be encouraged., based on Article 2 of "industry, commerce, and human rights: guiding principles for the implemention of the United Nations Framework on" protection, respect, and remedy ".

Some scholars discuss this issue from the perspective of regional or domestic law. For example, Amaral and Ravello, through the analysis of human rights violations by MNEs in the mining industry in Latin America, discuss the American standards and development prospects of MNEs and their home countries' human rights responsibilities, so as to realize the simultaneous development of global market and human rights protection under the background of economic globalization. Andrew analyzes the attitude of the courts of the United States and the United Kingdom towards the human rights responsibilities of MNEs by studying the cases of human rights responsibilities of MNEs in the United States and the United Kingdom. Uta Kohl's case against kiobel v. Royal Dutch in 2013 The analyzes the western government's attitude towards MNEs' human rights liability litigation and its effectiveness in violating the norms of public international law and the substantive requirements of international human rights law enforcement.

Foreign scholars' comprehensive and advanced research in this field provides rich literature resources for this paper, which has important reference significance.

3. BACKGROUND

3.1. Status quo of MNEs in the current economy

With globalization on the rise, multinational enterprises (MNEs) are expanding at an unprecedented pace. As of 2017, there are about 60,000 MNEs worldwide, controlling more than 500,000 subsidiaries and taking hold of about 50% of the international trade [6].

It is a fact that MNEs currently dominate the global market, especially in some less developed areas. Also, the significant economic power of MNEs threatens the local government's control of the domestic market, and the solid global status of most MNEs parent countries worries the host developing countries on imposing some policies. In the BHP Billiton case discussed later, a typical case of an MNE violating human rights, the Papua New Guinea government's inaction of MNEs abuses resulted in a deleterious effect on the local inhabitants and environment.

3.2. Typical cases of MNEs violating human rights

Under the digital and data-driven economy, technology industries account for sixty percent of the top transactional corporations globally, such as Apple, Amazon, and Microsoft as the most well-known leading corporations in electronics fields [7]. Even in the most well-known corporations within the technology sectors, human rights abuses happen all the time. For example, Foxconn, a Taiwanese multinational electronics contract manufacturer, which used to be one of the World's leading corporations of electronics products and services, produced a series of famous products like the iPad, iPod, and Kindle [8].

However, in 2013, a string of suicides of employees from a Chinese Foxconn factory shocked people [9], gathering both experts' and citizens' attention on the lurking human rights violation issues that workers suffered. Moreover, the word 'Sweatshop' reappeared, which first appeared in the 19th century, describing low-cost companies aiming to maximize profits. Even nowadays, multinational corporations usually divide their production process into some less developed regions where cheap labour and resources are available. Some of these corporations even exploit workers to reduce the cost of production to the most considerable extent, in other words, to make the most significant revenue. The Foxconn case is not the only one that existed, but the only unfortunate one that emerged to the public at that time.

A subsequent survey by Chinese Labour Watch showed that between October 2010 to June 2011, ten subjects, which were all leading companies in China's electronics industries, were found to have numerous abuses on human rights. Breaking the Chinese Labour Law (2008) and brand companies' Corporate Social Responsibility Codes of Conduct, excessive overtime, discrimination, meagre wages, and arbitrarily fining are common violations among those ten companies had a worse evaluation than the Foxconn [10]. The data above was significant, showing that human rights violations are becoming more common among large electronics corporations. It is worth more attention and resolution to help vulnerable victims who cannot compete with influential companies and preserve a harmonious global market from the nefarious actions of some profit-maximum multinational enterprises.

In another case of MNE’s human rights violations, Papua New Guinean sued the. BHP Billiton company in 1994 for damages the local environment and violations to inhabitants' everyday life by dumping mineral waste in the Fly River. The BHP Billiton company, the government of Papua New Guinea, and several other corporations jointly established the OTML (OK Tedi Mining Limited). They began to extract The Teddy copper-gold mine in 1984 [11]. Along with expanding the mineral extraction scale, the BHP Billiton company sought to dump waste into the local river. Papua New Guinea tacitly agreed, for they do not want to give up the enormous revenue gained from this mineral project [12].

On average, 80 million tons of waste rocks were poured into the river annually, which adversely influences the lives of 50,000 residents in 120 villages downstream. In a political dilemma between economic benefits and effect on the environment, the government ’s tacit consent leads to the local citizenry suffering.

3.3. Current limited guidelines

The OECD Guidelines are recommendations from governments to MNEs on business activities, setting standards on various issues such as human rights, labour rights, and the environment. It aims to provide an international and extraterritorial, government-backed grievance mechanism to address complaints between companies and individuals suffered by irresponsible corporations [13]. However, the limitation of this guideline is also apparent, especially from the following two aspects.

The OECD guideline is a so-called "soft law". Although the guideline applies to MNEs of all types of ownership, industries, and businesses headquartered in the territory of signatory states, it cannot be enforced by the courts like those customary laws. With the significant differences in economic power between MNEs and

victims, it is hard to expect that MNEs will voluntarily follow the guideline.

The other limitation is related to the signatories of this guideline. Even if there are currently 46 countries that have signed the guideline, China is not on the list. As the country with the second most foreign direct investment in the World in 2020, China's human rights issues will be proportional to the number of trades. The inapplicability of this guideline within China will essentially limit its effectiveness, while many victims cannot get help from it [14].

4. THE NECESSITY AND ADVANTAGES OF HOME COUNTRY REGULATION

From the introduction of the previous part, we can know that human rights violations by MNEs frequently occur in the context of economic globalization, especially in cases of extraterritorial human rights violations, and most victims are unable to obtain adequate relief. In view of this dilemma, besides the traditional way of host country regulating transnational corporations, a new solution is proposed: let the home country of transnational corporations assume human rights obligations to regulate transnational corporations' extraterritorial activities. Since there is more than one way to solve the problem of extraterritorial human rights violations by MNEs, why choose how to regulate the human rights obligations of transnational corporations by the home country?

Next, this paper will compare the advantages and disadvantages of these two ways through a typical case and then focus on analyzing the advantages and necessity of the home country to assume regulatory obligations.

4.1. The case of extraterritorial violations of human rights

In recent years, extraterritorial violations of human rights by MNEs have occurred frequently. Chevron Corporation v. Ecuador is one of the most typical cases, and the torturous and complex process of the Chevron case is also very representative. It exposes the seriousness of extraterritorial human rights violations by MNEs and the inability of the current approach to solving the problem.

The Texaco oil company drilled crude oil in pristine rainforest in northern Ecuador from 1964 to 1990. Because Texaco intentionally dumped toxic substances into the river, it caused severe environmental pollution of the local tropical rain forest and damaged the lives and health of the local residents. In 1993, about 30,000 indigenous Ecuadorians sued Texaco, and Chevron inherited the case when it merged with Texaco in 2001.[8] Chevron claims that Texaco reached a $40m "settlement" agreement with Ecuador in 1998, releasing it from all claims. In 2003, the Ecuadorean court heard the environmental pollution compensation lawsuit. In 2011, the Ecuadorean court ruled in that case and fined Chevron a whopping $8.6 billion in total. The court in Ecuador raised the fine to $18 billion after Chevron delayed complying with the ruling. In 2013, the Supreme Court of Ecuador issued a final ruling, ordering a fine of $9.5 billion to be paid to clean up and repair the environment, set up a health system, treat victims, and pay compensation.

The Chevron case is so complicated that the ruling has not yet been implemented because it involves many issues, such as the ruling in different countries and transnational enforcement. However, in the subsequent litigation process, various problems emerge endlessly. On the one hand, the relevant laws and policies in Ecuador are insufficient to deal with such a complex problem of environmental pollution and human rights violations. On the other hand, as one of the World's largest energy companies, Chevron, with its muscular economic strength and deep foundation in Ecuador, kept the case pending for several years by political pressure, public opinion guidance, and legal delays. When the Supreme Court of Ecuador decided in 2013, 20 years had passed since the original indictment. However, Chevron has not kept its promise to honour the Ecuadorian court's decision and has refused to pay compensation in various ways since the decision was made. Because Chevron has moved assets out and has no enforceable property in Ecuador, Ecuador has been seeking to enforce Chevron's property in other countries. In 2011, Chevron took the case to the Permanent Court of Arbitration in The Hague, which asked Ecuador to stay its decision until the arbitration was over. Chevron has also filed a lawsuit in a U.S. court alleging the coercion, bribery, fraud, and extortion by attorneys representing the plaintiffs and their legal teams. In 2014, the U.S. District Court judge in Manhattan ruled that the judges who decided on Ecuador had taken bribes. It could hurt the plaintiffs' attempts to recover Chevron's assets in other countries and could even affect the validity of the original judgment.

4.2. The analysis of the case

The Chevron case shows the shortcomings of the traditional host country human rights relief in solving the extraterritorial human rights violations by MNEs.

In reality, there are many difficulties and defects in the host countries' regulation of human rights violations by MNEs. The economic strength of many large multinational corporations is far greater than that of some developing countries. If these host countries want to develop their domestic economy, they have to offer preferential conditions to attract multinational corporations' investment. The preferential conditions are mainly at the expense of the host country environment and the rights and interests of workers. The host

government adopts policies and laws to ensure that if MNEs invest domestically, they can reduce costs and increase profits at the lowest environmental and labour costs. Suppose the host country wants to amend the relevant laws and policies to protect the domestic environment, labour, consumers, and other human rights after a period of time. In that case, MNEs can also threaten to withdraw investment and turn to other countries with a more relaxed investment environment, forcing the host country to give up amending the policies and laws to protect human rights [15]. In other words, many host countries, because of their economic backwardness and their dependence on MNEs, have many worries about taking regulatory measures.

Moreover, because of corruption and other reasons, the host government conspires with multinational corporations to violate their human rights and provides them with military and political facilities. The most typical case in this respect is also related to the case we talked about earlier, that is, the case of Bowoto v. Chevron Corp. In the case, Chevron's Nigerian subsidiary was accused of working with the Nigerian military to violently suppress protests against it. In many cases, it can be said that for the consideration of developing the economy or defending their interests from corruption. The host government has no intention to regulate the human rights violations of MNEs in its own country, making the victims unable to get relief. In the field of human rights, the host country's supervision of MNEs has always been more than enough [16].

In other words, the host country does not have the financial and technical ability to regulate MNEs and lacks the personal will. Therefore, it is unrealistic to rely only on the host country to solve MNEs' violation of human rights. Article 6, Article 7, and other relevant provisions of the United Nations "legal instrument on the activities of transnational corporations (Revised Draft)" provide a direction for the solution of this problem. It may be a feasible and necessary solution for the home country of MNEs to regulate their own enterprises' extraterritorial human rights violations.

4.3. The advantages of home country regulation

This paper argues that the proper scope of a home country's obligation to regulate MNEs includes the use of its legislative, judicial, and administrative authorities to ensure the MNEs parent company or subsidiary does not violate individuals or groups' human rights regard to locality. The home state's obligation to regulate MNEs also extends to providing meaningful remedies and effective relief for MNE human rights violations victims.

Regulating MNEs' violation of human rights outside the region by their home countries is worth exploring. Home country regulation has significant advantages compared with the regulations of the MNEs themselves or the host country. First, the home country, as the country of registration, the country where the principal place of business is located, and the country where the control centre is located, has sufficient legal grounds to regulate the extraterritorial behaviour of the domestic transnational corporations according to the personal jurisdiction. The Maastricht principles provide for the scope of jurisdiction, including effective control of territory and effective control of individuals. If a state exercises effective control over territory outside the territory, the human rights violations in that territory fall within its jurisdiction, of course. Secondly, if the human rights obligations can be assumed by home countries, then accepting such extraterritorial will also help the United Nations reach a consensus on this issue and solve the problem as soon as possible. Thirdly, transnational corporations' home countries are mostly developed countries with sufficient economic strength, a sound legal system, and advanced expertise to supervise and regulate domestic transnational corporations and form a credible deterrent. Fourthly, compared with the host country, the compensation standard of the home country is usually higher, which is more conducive to the protection and relief of the extraterritorial human rights victims caused by transnational corporations.

In reality, the home country courts may sometimes selectively use the doctrine of forum non-convenience for their interests to evade the human rights responsibility of the home country to regulate the extraterritorial acts of MNEs. A typical case is the India Bhopal gas leak case. However, with the adoption of more international conventions, various countries have consciously assumed their human rights obligations. Therefore, it is happening less and less.

In short, from the perspective of the effect of jurisdiction and the implementation of follow-up remedies, the home country must regulate the transnational MNEs' extraterritorial operations and reduce the negative impact on extraterritorial human rights. However, the most urgent task is how to change it from the power or moral obligation of the state to the legal obligation so that the home country cannot selectively supervise and remedy, which is also the issue to be discussed in this paper [17].

5. SUGGESTION AND SOLUTION FOR HOME COUNTRY TO PROTECT HUMAN RIGHT

Regarding how to promote the home country's regulation of MNEs to protect human rights, we believe that there are two main effective ways.

For the legislative measures, it is difficult for victims to seek remedy in the host country because of the current situation. So we think: first, the home country should

legislation restricts or removes barriers for victims to initiate litigation. In terms of the current situation and existing problems, the home state should establish and improve the labour arbitration system, wage negotiation system, and labour union organization system related to multinational companies, and strengthen the construction of labour protection, labour rights, safety production, vocational training, and labour unions. Simultaneously, for the new situation and new problems that appear in reality, if there is no clear legislation. The government can take the lead, and non-governmental organizations can participate in research, formulate industry norms and rules, and then transform the relevant content into laws and regulations when the time is right. Second, we think that home states can transmit some international laws into domestic law. Because international law is an excellent legal basis for regulating human rights, for example: "Universal Declaration of Human Rights". However, a range of them is weak that they should be expanding, the home country can highlight some of them. We consider that it will be helpful to protect human rights [18].

Regarding judicial remedy, victims often face numerous obstacles when seeking remedy, and sometimes the way to seek remedy is completely blocked. It is expected that the plaintiff faces enormous obstacles in launching a lawsuit in the host country, and the only hope of the victims of obtaining judicial remedy is often pinned in the home country's courts. Because of this situation, we believe that the home country must ensure that the victim can file a lawsuit when the infringement occurs outside the territory. Second, when victims seek remedy, it is often tough to prove that MNEs have committed human rights violations. Because compared to the MNEs, the victims are too small and weak. Therefore, the home country should provide legal aid to the victim to help him obtain evidence of human rights violations, which is also more conducive to ensuring the evidence's admissibility and reliability. Third, because transnational litigation costs are incredibly high, many victims are financially insufficient to support them in seeking judicial remedy, so the home country should provide victims with legal assistance to reduce their international litigation costs. For example, in litigation, the winning party cannot pay attorney fees or litigation fees to help the victim file a lawsuit. Finally, because nowadays, most international infringement lawsuits have a statute of limitations of two to three years. It also takes a certain amount of time for victims to investigate and hire a lawyer. Therefore, the statute of limitations often prevents victims from seeking a judicial remedy. For this situation, we think home states should extend the statute of limitations.

6. CONCLUSION

It is common for MNEs to infringe human rights, but it is difficult for victims to seek relief. Through various data and cases, we can see that the traditional host country regulation has exposed various drawbacks. On the one hand, most of the host countries are developing countries. They do not have the economic and technological capacity to supervise MNEs effectively. On the other hand, because MNEs are closely related to the home country's interests, the home country lacks the willingness to supervise, and the soft laws and regulations that require MNEs to bear human rights responsibilities can never be implemented. In this context, it is worth discussing that the home country regulates the extraterritorial human rights obligations of MNEs. We can see the significant advantages of home country regulation through our examples and demonstration, and it is realizable. Many home countries of MNEs have already carried out practice in different fields, regulating and supervising multinational corporations to bear human rights responsibilities and gradually improving this theory.

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