

Research on the Protection of Labor Rights in Chinese Multinational Corporations from the Perspective of International Law

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ABSTRACT

At present, multinational companies are gradually entering the Chinese market. While bringing convenience to China's economy, there are also frequent violations of labor rights by multinational companies. However, under the state-centered implementation system of international human rights law, the labor rights and interests of Chinese employees are not well protected. This paper studies how the labor rights and interests of Chinese multinational corporations are protected based on international law by means of legal norm analysis and case study. These problems are mainly reflected in the existing laws do not respond well to social demand; labor rights supervision mechanism is not perfect. The reason lies in the evolution and complex mechanism of the legal system of transnational corporations. For China, the existing legal system should be re-examined and improved by considering the relationship between sovereignty and labor rights and labor rights and development. At the same time, since the development and implementation of international law cannot be separated from the will and action of sovereign states, it is necessary to consider the development of domestic law. Only by expanding the level can the society construct a more fair, reasonable, and effective judicial relief system. Therefore, the author suggests that the interaction between domestic law and international law be used to correct this problem.

Keywords: *Multinational enterprises, labor rights, Chinese multinational corporations.*

1. INTRODUCTION

Since the 1970s, with the continuous expansion of the scope and influence of industrial and commercial enterprises represented by multinational corporations, the international community's expectations for enterprises to respect labor rights have continued to increase. However, multinational corporations frequently violate labor rights such as violating the legitimate rights and interests of laborers, employing child labor or forced labor, and endangering life and health. [1] However, litigation against transnational corporations for human rights violations often faces many legal and practical difficulties. They create objective conditions for international legal conflicts and increase the concealment of legal evasion by creating diversified organization, management, transaction, and other related mechanisms. The specific problems are reflected in the fact that the current law fails to respond well to social needs. The supervision mechanism for the violation of labor rights by multinational companies is insufficient. This means

that the legal regulation of human rights violations by transnational corporations must consider the coordination and interaction of international law and domestic law and improve diplomatic means to effectively solve the problem.

At first, the whole paper carries on the multinational corporation illegal labor rights case analysis. Secondly, the author discusses the present Chinese transnational corporation existing problems and analyzes it. Finally, the solutions are proposed. At present, the problem of labor rights infringement by multinational corporations has aroused the attention of scholars all over the world. The fundamental solution to this problem lies in perfecting laws and regulations and strengthening the supervision mechanism of transnational corporations. Some even argue that the solution involves an international treaty. [2] This paper will be based on the view of international law and discuss how to use the interaction between international law and domestic law to solve this situation.

2. THE PRESENT SITUATION OF MNES IN CHINA

2.1. A Long Period of Neglect of Labour Rights by Labour Rights

From 2010 to 2016, 30 employees of Foxconn had committed suicide by jumping off buildings, causing a bad social impact. Objectively speaking, due to the introduction of the labor contract law, multinational have been required to safeguard certain rights and interests of employees. However, today's young people are unable to endure the same intense working hours as the previous generation of workers. The exploitation of working conditions has led to the occurrence of the incident. They work longer hours and are paid less for their labor. These are the reasons that lead to this situation. However, this is not the first time Foxconn has violated labor rights. In 14th June in 2006, there was an article titled that "iPod City" was published in the "Mail on Sunday". [3] The report provided numerous photos taken inside iPod factories in China, which were owned by Foxconn Group. Foxconn's Longhua factory in Shenzhen employed 200,000 people, making the 'iPod city' more populous than Newcastle. UK. Longhua workers typically lived in dormitories that could accommodate up to 100 people, and visitors were not allowed in it without permission. The workers worked up to 15 hours a day to make the iPods, but they were paid just £27 a month. Remember. In 2006, the average minimum wage for full-time workers was about \$3.82 an hour, or \$1,719 a day for 15 hours of work a month. Longhua workers were paid 0.86 yuan an hour, which was far below the standard. The incident soon attracted global attention and more people bought Apple's products. However, finally, they were sued by Hon Hai's Hon Fujin Precision Industry Co., Ltd. for 30 million yuan in damages in a dispute over reputation infringement. The move quickly stifled reports and investigations that should have been delayed, silenced domestic media, and caused the issue to drag on to this day. [4]

In practice, such cases are not uncommon, as Wal-Mart was fined nearly \$200 million for not giving employees enough time to eat and rest after working five hours straight. It is difficult for multinational enterprises in China to be punished for similar violations of workers' rights and interests. China's low wages, long working hours and good manufacturing secrecy are attractive to multinational companies. In recent years, multinational companies in China have been exploiting Chinese employees, depriving, and flouting their human rights.

2.2. Possibilities of labour Rights Violations

Human rights and labor rights problems are serious in multinational corporations especially in labor-intensive multinational enterprises. Taking Foxconn for example,

how to squeeze profits out of a new generation of workers is indeed a major challenge for multinationals in China while managing to prevent problems under the weight of huge global manufacturing needs. Foxconn apparently realizes that it can no longer squeeze its workers, recently raised wages by 30% for rank-and-file workers and 66% for some. However, it's still in the lower middle of the social wage scale. Like the factories of large and famous multinational companies such as Nike and Disney, Foxconn Group always passively acts in accordance with the policies and laws of the host country and never takes the initiative to protect its own labor rights.

The exploitation of workers by multinational corporations' broke boundaries between morality and nature, age, gender, day, and night. Since June 1919, the International Labor Organization has been developing international Labor standards. As of mid-November 2002, the ILO had adopted 185 treaties and 192 suggestions. Labor rights such as guaranteeing workers' right to life, equal opportunities for employment and career development, guaranteeing safety and health, and ensuring equal participation in society are all included in these conventions. [5] However, many multinational companies, such as Foxconn do not seem to take their obligations under these conventions and recommendations seriously. To maximize the profits of the company and reduce costs, they force workers to work overtime in the form of minimum wage and overtime pay.

Some multinational companies suppress workers. Even the governing body has not succeeded in correcting labor rights. China's Trade Union Law stipulates that the main income of all workers in Enterprises, public institutions and government agencies in China is wages. At the same time, they have the right to join and organize trade unions, regardless of nationality, race, sex, occupation, religious belief or education level. No organization or individual may obstruct or restrict it. The labor union should have regulated the employers' compliance with labor security laws, regulations, and rules. Meanwhile, they should keep close contact with employees, listened to and reflected their opinions and requirements, and solved workers' problems in time. However, some MNEs's labor union organization is extremely weak, and even the other ruling party are paralyzed. The 12 consecutive jumps confirmed that the multinational company deliberately suppressed the labor union organization. The protection of workers' rights and interests has become an empty talk, this kind of responsibility is obviously serious.

3. THE EXISTING PROBLEMS OF CHINA'S CONTROL OF MULTINATIONAL CORPORATIONS

3.1. *Current Regulations That Do Not Meet the Needs of Society.*

China is a big labor exporter, but the laws and regulations on the protection of the rights and interests of overseas workers are not adapted to the situation, that is to say, the lack of legal power, and the interests of workers who work in the multinational corporations do not give a good response. Some scholars point out that the key to human rights obligation lies in that the company should do something before and after the human rights violation. [6] It is equally important to take preventive and remedial measures. However, there are shortcomings in the process of judicial safeguard in this aspect in our country. The main reasons are the following two points.

Firstly, the legislative ideas of domestic laws are biased, and the substantive rights of overseas workers are absent. China's special laws and regulations on the protection of the rights and interests of overseas workers have not emerged. Meanwhile, the existing relevant legislation is not based on the protection of the rights and interests of overseas workers. However, it is mainly for the protection of foreign labor cooperation economy. [7] This is more prominent in the foreign cooperation regulations of The State Council because most of the contents of the regulations aim to standardize the procedures for the export of labor. However, there is the lack of substantive rights. Although procedural norms are important, they should serve the realization of substantive rights.

Secondly, the protection of international law is absent. Although China has signed nearly 140 free trade and investment agreements, few of them involve the wording of labor protection. Since the reform and opening, although China has been committed to the perfection of labor protection system, it is limited by the level of economic development. [8] It is still not considered that China's labor legislation has been in line with the international standards. There is still a certain difference in terms of labor standards and developed countries.

3.2. *Insufficient Regulatory Mechanism of Labour Rights Violation*

The deficiencies of regulatory mechanisms are due to the loss of economic autonomy and cultural conflicts between the countries. The international community used to be the sole actor in the international community. With the increase of exchanges between countries and the expansion of the scope of international relations, the role of transnational corporations and international

organizations as actors has been gradually defined. The traditional view is that the state has supreme power at home and autonomy abroad. This view has not changed but is gradually disappearing as cross-company roles increase. The premise of internal supreme power is within the territory of a country, while the operation of multinational companies is established on a global basis, which goes beyond the scope of national boundaries and affects the monopoly of national sovereignty. The conflict between national economic and social development strategy and transnational corporation's pursuit of profit maximization inevitably leads to the conflict between domestic corporation and transnational corporation. If the final decision-making power of the subsidiaries of MNEs is in the hands of the foreign parent company, the host country will inevitably lose some economic autonomy, and the human rights issue discussed in this paper is one of them. At the same time, while exporting capital, multinational companies also export their own corporate culture, which generally represents the traditional culture and democratic system of the home country. These traditional cultures are contrary to the host country's own cultural concept, so most host countries, especially developing countries, hope to use and resist. Multinationals can put pressure on their governments by lobbying out of court, supporting the training of lawmakers and politicians, and making legal and political arrangements to protect their interests. How to formulate effective policies to supervise the behavior of transnational corporations and coordinate the policies of various countries has become a problem that the international community needs to solve. [9]

4. THE ANALYSIS OF THE PROBLEM

4.1. *Analysis of the Problem about Lack of Legal Rights*

The formation of the legal system in contemporary China does not rely on the power of the society itself. However, it attaches more importance to the leading role of the government, which can be said to be the main driving force of legal progress. Therefore, the formation of legal system in contemporary China is a typical "government-driven" mode, rather than a "natural evolution" mode. In other words, the formation of legal system is an uninterrupted and gradual process. The description, revelation and reflection of this process should not rely too much on artificial stage division but should fully refer to social living conditions. The state of social life is reflected in all aspects, which are closely related to and crucial to the legal system. [10] China's existing experience in the construction of the regulation of law reveal that the consciousness of rights is the driving force to promote commercial economy, democratic politics, and the practice of the legal system construction. The legal system is undoubtedly the product of the practice of the rule of law. In this sense, the sense

of rights and interests has become the driving force to promote legal construction. In contemporary times, law has a broad understanding of the right to study. China has just formulated the Civil Code of the People's Republic of China, which stipulates that the protection of citizens' rights is the core of the legal system. The law was enacted in accordance with the Constitution. In addition, it is the best way to take rights and obligations as the logical starting point of understanding and understanding the legal system. Rights and obligations are the most common concepts in law, which can fully, effectively, and convincingly describe the general legal situation. [11] In the relationship between right and obligation, right is the goal, obligation is the means. Obligation is the extension and derivation of right, right becomes the best way to understand and understand the legal system. Right is one of the important links connecting social living conditions and legal system construction in different periods. Transnational national capital makes the country turn itself into the owner of the company. Institutions such as sovereign wealth funds also rely on the global market to seek profits. Therefore, China's restrictions on transnational corporations will start from policies. However, transnational corporations are related to a country's economic system and to the global economic system. Therefore, the promulgation of its policies will be subject to certain restrictions. On the other hand, rights serve as the purpose for which the government makes laws and regulations. Obligations are derived from rights. Therefore, even if labor rights are violated, multinational companies are involved in multiple interests, so there are many difficulties in the process of specifying laws.

4.2 Analysis of the Problem about International Relationship

Transnational corporations reflect the deepening of the globalization of the world economy. Besides, they also promote the development of globalization and deepen the interdependence between countries. The policies of one country no longer affect only one country, but also have spillover effects on other countries. In other words, multinational companies are more involved in the relationship between countries. The tax, fiscal and other economic policies and even political policies of the home country or host country will affect the global operation policies of MNEs, thus indirectly affecting other countries. [12] For example, the nationalization policy of the host country can make the home country produce corresponding countermeasures to protect the interests of its transnational corporations in the host country. Transnational corporations can bring capital, advanced technology management and many job opportunities, as well as considerable profits, to the host countries. The dependency theory of developing countries believes that the dependence on transnational corporations will lead to the host country's dependence on the home country of

transnational corporations. From multiple perspectives, OFDI will lead to the abnormal economic development of underdeveloped countries and distort the essence of the economic development of these countries. There is no denying that conflicts of interest between MNEs and host countries are normal. The entry of multinational companies into China has brought abundant capital, advanced technology, and scientific management to the Chinese economy. Meanwhile, these core competitiveness for the relatively young Chinese economy injected fresh blood and power. While obtaining economic benefits, multinational companies actively promote localization and employ many Chinese employees. At the same time, as economic giants, multinationals also must pay a lot of taxes. Because the host countries accept the convenience brought by multinational companies, there is nothing they can do even if multinational companies suppress employees.

5.THE IMPROVEMENT

The dilemma of judicial relief for human rights violations by transnational corporations not only exposes the weak links of the enforcement mechanism of international labor rights law, but also brings challenges to the domestic legal systems in various countries. From the perspective of international human rights law, there is a gap between the hard law ideal of multinational corporations' labor rights obligations and the soft law reality. In addition, there is a gap between de facto law and mandatory law regarding States' obligations to respect, protect and mitigate human rights. [13] From the perspective of domestic law, although different countries build different legal systems and different levels of labor rights protection, there are considerable general and forceful legal shortages during the process of judicial remedy for the aggrieved of human rights violations by transnational corporations. Facing these challenges and obstacles, MNEs should not simply rely on the ability of judges or lawyers to deal with cases or improve the legal system of a country. Moreover, they should find the root of the deep structure and relationship between international law and domestic law. Meanwhile, they should adopt comprehensive and targeted reform or improvement measures. Therefore, to solve this problem, international law and domestic law should be combined. In addition, international law and domestic law should be deeply positive interaction and coordination. To develop and perfect the judicial relief system of transnational corporations violating human rights.

5.1. International Law guide the Development and improve Domestic Law

International law can promote a basic consensus among states on jurisdictional rules and choice of law and reduce the possibility of lengthy jurisdictional disputes. Through international treaties, states can formulate rules

to reduce jurisdictional barriers and ensure that cases are brought to trial more quickly on substantive matters. For example, in cases involving human rights violations by transnational corporations, local subsidiaries can be allowed to participate as co-defendants in lawsuits against the parent company to establish the basis for the jurisdiction of the host country. When the plaintiff has exhausted the judicial aid of the host country and turns to the court of the home country, the principle of necessary jurisdiction can be applied. Moreover, the rules of inconvenient court can be limited to establish the basis for the jurisdiction of the home country. [14] International law can promote legal integration and conceptual convergence in the field of corporate human rights responsibility, thus promoting the reform of civil affairs and criminal law. Firstly, international treaties can promote the reform of civil law in various countries, promote the establishment of human rights due diligence obligations of companies, and reduce the legal obstacles in the process of tracing the human rights responsibilities of multinational corporations. Secondly, in cases of serious human rights violations, states are allowed to make exceptions to the traditional legal concepts of independent legal persons and limited liability. Meanwhile, the state should also form a legal model in which the parent company is responsible for the actions of its subsidiaries. The parent company is required to reimburse its subsidiary's debts to human rights victims when the subsidiary is in arrears or non-repayment. Thirdly, through international treaties, countries can be encouraged to incorporate corporate crimes into the criminal law system, so that serious violations of human rights by companies can be effectively punished. International law can promote judicial cooperation among states in the areas of criminal judicial assistance and recognition and enforcement of judgments. For example, cooperation between States and other States, international and regional organizations and civil society should be promoted in the investigation and collection of evidence and accountability of cases of human rights violations committed by transnational corporations. In the absence of a more ambitious International Court of Commercial and Human Rights, improving the recognition and enforcement mechanisms for retroactive judgments by MNEs is of great practical importance. International law can also enhance social scrutiny of multinational corporations' compliance with international human rights obligations. For example, a monitoring body should be established since the United Nations labor rights regulation mechanism. The listening service is used to receive reports from governments, private industry, non-governmental organizations, and other stakeholders. Meanwhile, it issued an authoritative statement on transnational corporations' respect for international human rights law. It also urged them to consciously assume their human rights obligations and responsibilities. [15]

5.2. Promoting Interaction between International Law and Domestic Law

For transnational corporations and human rights, a typical global issue involving both international law and domestic law. China should respect the interaction between international law and domestic law, consider the development level of international law and domestic law, and balance the reasonable needs of national sovereignty and international human rights protection. National sovereignty gives countries discretion in the formulation and implementation of laws, allowing them to priorities national conditions and policy needs to determine how to better realize broader economic, social, and cultural rights. Besides, the exercise limit of state discretion should be restricted by international law and should not violate the basic principles of international law and the minimum standards of human rights protection [16]

In a multinational company with human rights legal documents in the 6th meeting of the intergovernmental working group, the representative of China puts forward the legal documents in the subsequent modification should stick to four principles. The first one is the complementary principle, it fully respects the judicial sovereignty of each country and the existing legal principles, rules and avoid for countries to develop a new set of rules. Secondly, it is the principle of legality. When providing powerful relief mechanisms for victims, legal instruments should be based on universal international treaties and customary international law. Only in this way can they be widely accepted. The third one is the principle of predictability. Legal documents should be clear rules to create a stable business environment for multinational companies. The Fourth one is the principle of fairness, which is promoting development and human rights in a coordinated way, the two are interconnected and mutually supportive. [17] China's position indicates that the emphasis on business and industry and appreciation of human rights influences legal instruments efforts to protect human rights of victims. However, more emphasis is placed on the balance among sovereignty, human rights, and development. While promoting and improving the human rights protection system, consideration should be given to the needs and interests of developing countries. Enterprises should be treated fairly. Their normal operations should not be affected by excessive aggravation of their human rights obligations. At present, the focus of the negotiation of UN legal instrument on transnational corporations and human rights comes down to how to treat and deal with the relationship between the two. The First one is the promotion of the relationship between development and the protection of human rights. The Second one is the relationship between national laws and new legal instruments in the protection of human rights. Negotiations on legal instruments should strike a balance between the promotion of development and the

protection of human rights. There is no doubt that it is moral to prevent and regulate human rights violations by transnational corporations. However, transnational corporations play an important role in promoting economic globalization, especially in promoting the development of host countries. If they are placed too heavily on human rights responsibilities, it will affect their overseas investment and business, and ultimately harm those less developed countries in need of foreign investment. This theorist believes that all countries have a relatively mature domestic legal framework to regulate all kinds of human rights violations. [18] Legal instruments should therefore focus on those serious human rights violations that are beyond the jurisdiction and scope of States. This will complement the national human rights protection system and fill the gap in the international human rights protection system. Therefore, it is necessary for China to strengthen the study of specific provisions and enhance the clarity and precision of the recommendations. However, there are many laws in the existing texts that are controversial, ambiguous in meaning, too detailed in provisions. They fail to respect the diversity of judicial systems of various countries, such as the basis and basis of jurisdiction, the choice of court and applicable law, the liability and obligation of the enterprise, the scope of legal liability. Each of the above examples has a large space for debate and discussion.

In this regard, China should follow the progress of the current draft and its specific text. At the same time, China should pay attention to the essence and procedure of the domestic legal system and combine the domestic reality and the backward trend of the development of the rule of law. It provides useful suggestions for China to participate in the negotiation process of industry and commerce and human rights. To develop and improve the judicial remedy system for transnational corporations violating human rights, China needs to strengthen the combination and interaction of international law and domestic law based on respecting the reality of domestic rule of law and meeting the interests of all countries.

6.CONCLUSION

Since the concept of labor rights and interests came into being, the struggle for rights of employees has always been accompanied by the development and evolution of the power balance between the state, non-state actors and individuals. In the face of growing multinational corporations and their real impact on global labor rights and interests, the basic and mandatory international human rights standards should not only be declarations in text but should also be implemented as the obligations of the state and the due diligence of multinational corporations. If countries are to truly implement their commitments to respect and protect labor rights, they must pay attention to the effectiveness

of judicial remedies. In order to change the problem of insufficient judicial relief provided by the state and the lack of supervision mechanism, people should frankly criticize and discuss the deficiency of the current judicial relief mechanism and take countermeasures against the existing obstacles. In the field of labor rights protection, although improving the domestic legal system is the ultimate solution, international law plays a crucial role in guiding and promoting the development and reform of domestic law. Therefore, the best way to solve the above problems is to use the interaction of international law and domestic law.

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