

The Legal Responsibilities of Multinational Corporations in Human Rights Protection

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Abstract: With the development of international trade, multinational corporations play a vital role in commercial activities. However, the multinational corporation's profit-based mentality makes the forced labor problem really severe, which violates the workers' basic human rights. Based on the principle of personal responsibility, corporate social responsibility and the balance of interests, multinational corporations have a necessary and irreplaceable responsibility to prevent forced labor issues and protect labor rights. Therefore, this article explores the causes of human rights violations by multinational corporations in international commercial transactions. Specifically, the complicated supply chains of multinational corporations make it difficult to supervise human rights violations. Meanwhile, they often evade their responsibilities by using independent legal personality irrational and failing to conduct their due diligence. Based on the analysis of these reasons, the article proposes to set up a well-developed system for piercing the veil of legal entities, improving supply chain's transparency, and adopting uniform human rights assessment standards to avoid forced labor issues. In short, giving labor protection suggestions for multinational corporations, this article can help multinational corporations better fulfill their human rights protection obligations.

Keywords: multinational corporation, forced labor, human right

1. Introduction

Forced labor can be defined as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily [1]. According to the International Labour Organization's Modern Slavery Global Assessment Report published in 2022, 27.6 million workers worldwide were experiencing forced labor in 2021. Focused on the industrial sectors, labor abuses are concentrated in service, manufacturing, construction, agriculture and domestic work [2]. The listed industries are labor-intensive and the employees' wages account for a large part of the company's production costs. In order to reduce costs, the listed corporations often choose to achieve their goals by forcing employees to do work without their consent. At the same time, this type of labor problem is more common in developing countries.

Uzbekistan has experienced economic growth through its cotton industry, however, the phenomenon of forced labor in Uzbekistan is very serious. The government forced women to work in cotton harvesting by threatening the cancel of their kids welfare benefits. Meanwhile, the students who rejected the cotton-picking will have the academic penalties [3]. The other forced labor problem occurs in Bangladesh's garment manufacturing industry. Employees are forced to work more than

the legal working hours almost everyday, letting them complete impossible work tasks without any additional pay, greatly undermines the rights of employees to be protected by labor laws [4].

For enterprises, profitability often becomes the basis for the continuous operation of the enterprise and the goal of becoming bigger and stronger. But worker protections often increase the cost to corporations. For example, if a corporation provides more labor subsidies to employees, such as vacations, the company will often end up producing less products than it would have if it had not taken vacations. As a result, when facing a conflict between labor protection and corporate profits, corporations tend to choose the latter, and they even squeeze employees to get more capital they want. More specifically, multinational corporations externalize the risks and cost they should bear to workers, which will break the fair competition order in the global market and bring great damages to the workers' human rights.

In the context of the economic globalization, the strength and power of multinational corporations is gradually expanding [5]. At the same time, the gap between the status of employees and corporations is gradually increasing. When the world's leading multinationals use forced labor to make more money, others will follow immediately. The negative consequence of this phenomenon is that more and more workers are being exploited by powerful corporations and the workers have no choice but to bear, forming a vicious circle.

As the author mentioned before, the profit-based mentality for enterprises often exacerbates the exploitation of employees, so they lack the motivation to regulate their illicit behaviors. Concentrate on this issue, the host country and the home country also has the power to regulate these negative issues. However, if the host country wants to make more money to boost their economies, they are likely to ignore the forced labor practices of the multinational enterprises. For home country, due to the limitations of territorial jurisdiction and the principle of sovereign equality of States, it is difficult for the home country to regulate the behavior of multinational enterprises within territory of the host country. Thus causes the control of labor issue fairly difficult.

The multinational enterprise, the host country and the home country are three major entities when there comes a forced labor issues. Among these three entities, multinational corporations are often in a vital position when dealing with the issues of forced labor, as the incidents always happen directly in the enterprise. Meanwhile, based on legal requirements, they should also bear corresponding responsibilities. Based on the legal liability for the protection of human rights, the article will make suggestions for the regulations of multinational corporations, so as to better fulfill their human rights protection responsibilities in the global business activities.

2. The Legitimacy For Multinational Corporations To Take Responsibility On Labor Issues

2.1. The Principle Of Personal Responsibility

The principle of personal responsibility is one of the fundamental principles in existing legal system, which means that the legal entities should take the corresponding responsibility for their own illegal behaviors. Although today's legal system emphasizes the freedom of the individual's action, this kind of freedom have some limited meaning in the legal frame, that is the actions of the individual cannot interfere and infringe others' rights without reasonable reasons. This principle has two advantages: on the one hand, personal responsibility is an early warning for civil subjects, which is conducive to people restraining their illegal behaviors, otherwise they have to take their own obligations. On the other hand, this principle represent the combination of fairness and justice, giving people a convincing legal solution, the person who did the behavior should take the responsibility.

This principle is widely used in legal contexts. In tort liability, the principle of personal responsibility is recognized as the fundamental principle if the liability. This principle indicates that

everyone should be accountable for the damage caused by their actions instead of letting other people to bear the legal responsibility. In administrative law, even if an administrative staff is in the exercise of his official duties, he is liable if he abuses his power to cause harm to citizens. It also appears in the criminal law, Section 1589 of the U.S. Federal Penal Code provides if the entities have forced labor offence, they are punishable by life imprisonment for serious violations [6].

The principle listed before applies to multinational corporations as well, if corporations commit wrongful acts that violate human rights, they have to obey the legal consequences instead letting other subjects as their alternative.

2.2. Corporate Social Responsibility

The Corporate Social Responsibility (CSR) can be defined as the responsibility of an organization for the impacts of its decisions and activities on society and the environment, through transparent and ethical behavior that contributes to sustainable development [7]. Such responsibility can be mandatory, if the labor laws in host country prohibit act that damage the fundamental rights of employees, the corporations have to obey them. It can also be voluntary, great labor protection standards help to shape the reputation of corporations.

After the Industrial Revolution, more and more multinational corporations sprang up. They gradually become one of the most important subjects in commercial activities. While the strength of enterprises is gradually increasing, they were influenced by social Darwinism and aimed only at their own profit, ignoring anything that happened outside. This kind of self-interested behavior brought irreversible bad consequences to the society, such as excessive exploitation of labor leading to the destruction of human rights, which will seriously harm the overall welfare of society.

With the characteristics of the sustainable aim in current commercial activities, the internal management system of corporations has improved than before, and the demands of the working class to protect their own rights and interest have been rising. Therefore, the corporation development emphasizes that although it's proper for enterprises to make profits, it should also undertake responsibilities to other entities such as employees. In other words, when the global rules are incomplete or in-existent, multinational enterprises are tend to be go beyond what is required by law and internalize their externalities.

IKEA can be a great example in using this theory. IKEA believes that its vision of "creating a better everyday life for the many people" embraces co-workers, customers, suppliers and their local communities. For employees working in the corporation, IKEA set a range of regulations on protecting the good working and living conditions for them. Meanwhile, any behavior that involves forced labor is strictly prohibited [8].

2.3. The Principle Of Balance Of Interests

From the perspective of economics, self-interest is the foundation of a market economy. People will compete with each other in order to make more profit, so as the enterprises. Among the competition, all of the competitors have to balance the costs and the benefit. However, people tend to be selfish and less rational, they will do their best to externalize their own risks to others, and take all the benefits they get for themselves. Obviously, it is unreasonable to let others bear the risks and costs which is created by the corporation. The current market activity emphasizes the autonomy of people's will on the basis of equality and freedom, that is to decide based on their own will, and of course they should bear the risks and consequences themselves [9].

Multinational corporations often make profits by reducing their sunk costs in the supply chain through improper ways. These sunk costs include workers' wages, welfare guarantees for workers, and other social security costs. More specifically, multinational corporations externalize the risks and

cost they should bear to workers, which will break the fair competition order in the global market and bring great damages to the workers' human rights.

Based on the theory mentioned above, when a multinational corporation obtains profit from its business activities, it should assume corresponding obligations in order to achieve a balance of interests. In other words, multinational corporations should not make profits by externalizing costs to employees. On the contrary, they should conduct business activities on the basis of protecting labor rights.

3. The Problems And Suggestions For Multinational Corporation's Human Rights Responsibility

3.1. The Current Problems For Multinational Corporation's Human Rights Responsibility

3.1.1. Independent Legal Personality: Parent Company's Evasion

Independent legal personality and limited liability are two fundamental factors in the modern market economy, which stimulate more and more people to carry on business activities. This can contribute to the development of the global economy. But such good system still has its downsides, the multinational corporations may use this institution to avoid their own responsibilities.

The basic structure of a multinational corporation is a parent company and several numbers of subsidiaries. These subsidiaries are generally located in different countries around the world, conducting commercial activities independently. The subsidiaries usually have independent legal personality that separate from their parent company in order to cut down costs. Subsequently, if a subsidiary commits a human rights violation in the host country, even if such violation would cause the subsidiary to pay tortious damages to the employee, the employee will not be able to obtain effective remedies because the subsidiary does not have enough property. Besides, in this case, the subsidiary has a separate legal personality from its parent company, the employees cannot file a lawsuit against the wealthy parent company.

Based on the mentioned legal provisions, multinational corporations often let subsidiary with limited liability carry out forced labor activities secretly in order to reduce costs, which will exacerbate the violation of employees' basic rights.

3.1.2. Supply Chain Complexity: Difficult Regulation

Under the background of economic globalization, commodities, technology, information, services, capital, personnel and other production factors are transnational and cross-regional flowing frequently, making the whole world a unified market, the multinational corporations allocate their resources by exploiting their comparative advantages. In this way, the supply chains of multinational corporations are characterized as global fragmentation and complexity.

The global supply chain is the tool that multinational corporations use to connect their various functions around the world [10]. From raw material suppliers, to corporations located in the midstream, and downstream companies responsible for product distribution, transportation and recycling, they are located in different countries. At the same time, they will subcontract the certain production tasks to more companies, which cause the global supply chain more complicated. If a forced labor incident happens, it is difficult to find which link causes the problem due to the complex structure. In other words, it is impossible for the parent company to supervise every downstream manufacturer effectively.

Apple has a fairly complicated supply chain worldwide, although Apples says firmly it is dedicated to the ethical sourcing of minerals through the whole supply chain, the use of child labor in digging mines still happened in the Indonesian island of Bangka. Meanwhile, the Chinese workers working

at the Pegatron factories in Shanghai often face forced labor issues, they have to manufacture the apple phones 12-hour shifts, which means Apple's promises to protect workers were routinely broken [11].

3.1.3. Lack Of Initiative: Human Right Due Diligence In Supply Chain

Due diligence in supply chain is an integral part of human right due diligence, which can be understood as the scope of the company's human right due diligence obligations extends from the company's own activities to the supply chain where the company is located [12]. The business activities of multinational enterprises involve many countries around the world, but there are differences in the standards for human protection in different countries, especially in some developing countries, their labor protection laws are far from perfect. In this way, corporations often transfer some production sectors to these countries in order to reduce costs. However, due diligence in supply chain can urge well-known corporations to monitor the human rights protections through more companies in their supply chains. This approach will be more conducive to the realization of human rights protection on a global scale.

Corporations are not the subject of international law in most situations, so this kind of due diligence obligation is usually created and regulated by every country's domestic laws. But this method has two negative consequences. On the one hand, it is difficult for multinational corporations to know the different legal consequences of each country in a short period of time, which will increase the cost of the international trade. On the other hand, the following concept break the traditional personal and territorial jurisdiction, expanding the jurisdiction of a country, which can lead the disputes around countries. For instance, corporation who has an annual turnover of more than 36 million will have the due diligence obligation in the UK's Modern Slavery Act, which means the UK can govern non-UK businesses that carry on activities in other countries.

3.2. The Solutions For Multinational Corporation's Human Rights Responsibility

3.2.1. Duty Of Care: Parent Company's Responsibility

As the author mentioned before, the parent company and its subsidiaries have independent legal personality in commercial activities and they undertake their obligations separately. Generally speaking, parent companies are not responsible for their foreign subsidiaries' actions. However, in the following situation, the parent company situated in home country has the obligations to take responsibilities for subsidiaries who situated in host country. This approach can better deal with the evasion of human rights protection by the parent company.

The UK Supreme Court established the principle that a parent company may be liable for the human rights impacts of its overseas subsidiaries in *Vedanta Resources plc v Lungowe* (2019). This case emphasizes the need for the home country and the parent company in the home country to regulate its subsidiaries within the given standard [13]. If parent company fails to meet the standards of duty of care, parent company will be responsible for the subsidiaries' behaviors. Duty of care is a term for the legal responsibility of maintaining the health and well-being of others [14]. If the multinational corporations fail to meet the standard of care, they have to be undertake corresponding legal responsibility.

Based on the case, in the following three scenarios, the parent company's duty of care will be established. First, if company's group policies have some systemic mistakes and its subsidiaries follow the rules established by parent company and cause injuries, the latter will be responsible for this. Second, if parent company plays an active role in taking these policies which influence the subsidiaries, the host country have to regulate the behaviors of subsidiaries. Finally, the parent company will hold liability when declaring the company is responsible for the actions of the

subsidiary. The author believes that this is due to the fact that company has the right to autonomy itself, they cannot break their commitments once they have announced to the outside that they have an obligation.

3.2.2. Improve Transparency And Visibility Of Supply Chain:Take Rsci As An Example

It's hard to achieve supply chain transparency because corporations may purchase materials and services from thousands of suppliers. However, it is essential for corporations to have clear information throughout the entire supply chain, so they they can know whether there exists the forced labor issues and handle them immediately. Since there are different supply chain structures in different industries, a supply chain supervision mechanism can be established by forming industry associations to enhance the transparency of each link. The RSCI model can be a good example to enhance the transparency of supply chain.

RSCI, or Responsible Supply Chain Initiative, is an association made up of several corporations and associations within the automotive industry. Their mission is to supervise suppliers to obey responsibilities such as human labor conditions and furtherance of human rights in supply chain [15]. RSCI is a comprehensive supply chain management framework that enables corporations to conduct a thorough review of all aspects of the supply chain. By implementing this model, corporations can more effectively identify potential risk points and take appropriate measures to improve transparency. RSCI use meetings, executive interviews, document reviews, worker interviews and closing meetings to monitor of the entire process in supply chain. In this way, corporations can not only ensure that their supply chain partners are regularity, but also build a strong foundation of customer trust.

In summary, large multinational corporations with complex supply chains can monitor every small business by forming certain industry associations and specifying clear evaluation criteria, which is a fairly tool to focus on whether employees are being harmed. Meanwhile, the establishment of a unified industry assessment standard can also help companies to check whether they have violated these standards and make remedies timely.

3.2.3. Use a Unified Standard At The International Level

As mentioned above, multinational enterprises are involved in different domestic laws in their business activities, it's difficult for them to evaluate whether their business practices will violate human rights protection requirements. At the same time, the adoption of a single national standard for the protection of human rights as a uniform standard would also lead to jurisdictional conflicts between countries. Therefore, countries can use international rules to evaluate the due diligence obligations of multinational enterprises, which is conducive to achieving international uniformity in evaluation standards.

The United Nations Guiding Principles on Business and Human Rights, adopted by the UN Human Rights Council in 2011, incorporate due diligence into the framework of corporate governance. This guiding principle can provide great model for a global unified standard. The principle urges business enterprises to respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved [16]. More specifically, the guiding principles require corporations to obey human rights due diligence obligations with respect to negative human rights impacts that are directly linked linked to their business, products or services. Even if there is no contractual relationship between a company and a supplier, it still has an obligation to identify, prevent and mitigate the negative human human rights impacts in which it is involved through a commercial relationship.

If countries implement the above-mentioned uniform standards for the protection of human rights, it will be very beneficial for multinational enterprises to have a clear understanding of their obligations, and it will also minimize the differences in the specific provisions of national laws.

4. Conclusion

This essay has highlighted the legal responsibilities of multinational corporations in the protection of human rights and the corresponding solutions. First, the article explains the justifications for corporations to regulate human rights violation. Then, the main challenges and reasons for multinational corporations in the protection of human rights are analyzed. To address these issues, the article makes a series of positive recommendations, including establishing a parent company's responsibility for human rights oversight of its subsidiaries, improving supply chain transparency, and adopting uniform human rights assessment standards. By implementing these solutions, they can foster the governance effectiveness of multinational corporations in the protection of labors' human rights.

Moving forward, it is evident that addressing multinational corporation's labor right protection necessitates a multifaceted approach. In the context of deepening global trade activities, the cooperation between host and home country in order to establish a complete global mechanism for the labor protection, a neutral third-party monitoring mechanism can better regulate the multinational enterprises' labor abuse behaviors.

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