LNEP

Lecture Notes in Education Psychology and Public Media

Proceedings of ICILLP 2024 Workshop:
Turkey's Current Corruption Situation:
Laws, Economic Impact and Government Analysis

Murcia, Spain

October 18th, 2024

EWA Publishing

Volume 66

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ISSN: 2753-7048
ISSN: 2753-7056 (eBook)

ISBN: 978-1-83558-519-1
ISBN: 978-1-83558-520-7 (eBook)

Publication of record for individual papers is online:
https://www.ewadirect.com/proceedings/lnep/home/index

This imprint is published by **EWA Publishing**
Address: John Eccles House, Robert Robinson Avenue, Oxford, England, OX4 4GP
Email: info@ewapublishing.org

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Preface

The 3rd International Conference on International Law and Legal Policy (ICILLP 2024) is an annual conference focusing on research areas including international law, relations, legal policy, and sociology. It aims to establish a broad and interdisciplinary platform for experts, researchers, and students worldwide to present, exchange, and discuss the latest advance and development in international law, relations, legal policy, and sociology.

This volume contains a selection of high-quality papers submitted to the workshop " Turkey's Current Corruption Situation: Laws, Economic lmpact and Government Analysis " held in collaboration with the ICILLP 2024. The workshop, chaired by Dr. Javier Cifuentes-Faura from University of Murcia, is part of a broader initiative to examine interdisciplinary approaches in political corruption, earthquake, Turkey and policies. Each of these papers has gained a comprehensive review by the editorial team and professional reviewers. Each paper has been examined and evaluated for its theme, structure, method, content, language, and format.

Cooperating with prestigious universities, ICILLP 2024 organized three more workshops in Preston, Aderdeen and Boston. Dr. Renuka Thakore chaired the workshop “EmpowerHER: Advancing Women in STEM Higher Education and Careers”, which was held at University of Central Lancashire. Dr. Naser Makarem chaired the workshop “Brexit and Audit Pricing”, which was held at University of Aberdeen. Dr. Rick J. Arrowood chaired the workshop “Today's College Students and Faculty: How AI is Transforming Their Behaviors, Legally”, which was held at Northeastern University.

Besides these workshops, Eminent professors from top universities worldwide were invited to deliver keynote speeches, including Dr. Renuka Thakore from University of Central Lancashire, Dr. Naser Makarem from University of Aberdeen, Dr. Javier Cifuentes-Faura from University of Murcia, etc. They have given keynote speeches on related topics of international law, relations, legal policy, and sociology.

On behalf of the committee, we would like to give sincere gratitude to all authors and speakers who have made their contributions to ICILLP 2024, editors and reviewers who have guaranteed the quality of papers with their expertise, and the committee members who have devoted themselves to the success of ICILLP 2024.

Dr. Renuka Thakore

General Chair of Conference Committee

Workshops

Workshop – Prestion: EmpowerHER: Advancing Women in STEM Higher Education and Careers

September 27th, 2024 (UTC+1)

School of Law and Policing, University of Central Lancashire

Workshop Chair: Dr. Renuka Thakore, Lecturer in University of Central Lancashire

Workshop – Aberdeen: Brexit and Audit Pricing

July 31, 2024 (UTC+1)

Department of Accountancy and Finance, University of Aberdeen

Workshop Chair: Dr. Naser Makarem, Assistant Professor in the University of Aberdeen

Workshop – Murcia: Turkey's Current Corruption Situation: Law, Economic Impact and Government Analysis

October 18, 2024 (UTC+2)

Department of Financial Economics and Accounting, University of Murcia

Workshop Chair: Dr. Javier Cifuentes-Faura, Researcher in University of Murcia

Workshop – Boston: Today's College Students and Faculty: How AI is Transforming Their Behaviors, Legally

November 13, 2024 (UTC-5)

D'Amore-McKim School of Business, Northeastern University

Workshop Chair: Dr. Rick Arrowood, Lecturer in Northeastern University

ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic lmpact and Government Analysis

ICILLP 2024

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0007

Research on Environmental Legal Risks in Foreign Investment of Chinese Transnational Corporations

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Abstract: Since the development of the trend of economic globalization, the number of China's overseas investment projects has risen sharply, but at the same time, the potential environmental problems and risks in the investment process have become evident. This essay discusses the environmental legal risks faced by Chinese transnational enterprises in the process of outbound investment and analyzes the specific impact of host country environmental regulation risk and multilateral treaty environmental regulation risk. As global environmental problems become increasingly serious, the investment activities of transnational corporations (TNCs) may be harmful to the local environment while promoting local economic development. This essay summarizes the current status of research on environmental legal in Chinese and international academia, emphasizes that home countries should take responsibility for environmental protection in their investment places when promoting overseas investment. This essay proposes a strategy covering three dimensions--international level, home country and TNCs, in order to promote the sustainable development of TNCs's overseas investment.

Keywords: External investment, transnational corporations, environmental protection, environmental legal regulation risk.

1. Introduction

Driven by economic globalization, outward investment by transnational corporations (TNCs) has grown rapidly, forming a golden period of investment development. However, this surge has also brought to light prominent legal risks related to national security reviews, anti-monopoly laws, labor laws, and environmental laws. In recent years, global environmental problems have been deteriorating, and while attracting foreign investment, governments have been paying more attention to protecting their own environments and introducing stricter environmental regulations. As a result, the contradiction between TNCs and their own environmental strategies has become increasingly intensified.

While TNCs' outward investment activities contribute to the economic development of host countries, they may also bring them environmental benefits. These investments can finance environmental protection projects in host countries and support the restoration and protection of local ecosystems. Nevertheless, TNCs usually rely on the natural resources and ecosystems of host countries to support their business operations, with the potential for negative impacts on the local

DOI: 10.54254/2753-7048/66/2024MU0007

environment. Additionally, TNCs must comply with local laws and regulations in host countries. However, in some cases, host countries may raise their environmental regulation standards for political or economic reasons to restrict foreign investment. Such actions can lead to conflicts between foreign investors and governments, affecting the economic interests and social stability of both parties.

In view of the above challenges, this paper will explore the environmental legal risks faced by Chinese TNCs in the process of external investment and propose corresponding solutions. This essay is designed to provide a scientific support for host countries in formulating environmental protection policies, and to help TNCs better understand and cope with environmental risks, in order to realize sustainable development. After analyzing and summarizing the current research status, this essay will explore the host country environmental regulation risks and multilateral treaty environmental regulation risks faced by those enterprises in the process of outward investment. It will analyze the specific impact of these risks on enterprise operations, and put forward corresponding countermeasure strategies, covering the international level, the national level and the enterprise level.

2. Current Research Status in Related Fields

2.1. Current Status of Research in China

When some Chinese scholars discuss environmental protection in investment areas in recent years, their perspectives tend to focus on the investment places themselves, while relatively ignoring the fact that the home country, as the main body of overseas investment, carries the necessary responsibility, obligation and importance of protecting the environment of investment areas in multiple dimensions, such as political, economic and legal aspects. However, as environmental issues have gradually become a global focal point, an increasing number of scholars are shifting their research perspectives. They now recognize and actively advocate that the home country, while promoting its overseas investment activities, should also undertake the obligation to protect the environment of the investment areas.

Han Xiuli, through studying environmental disputes arising from TNC investments, analyzes the hazards of environmental risks and discusses the international community's stance and measures on environmental protection in host countries. From a multi-dimensional perspective, she puts forward a series of strategies and recommendations to protect the environment in the investment destination, such as solving the problem of the Chinese government's regulatory malfunction, actively negotiating and concluding new BITs or revising the existing ones with other countries and strengthening the right to limit the host country's regulations [1].

Wang Yanbing, from an international perspective, examines how TNCs can align with global environmental protection trends and fulfill their environmental responsibilities in overseas investments [2]. Sun Shiyan focuses on the home country perspective and explains the important role of the home country in promoting the awareness of environmental protection in the investment process of TNCs [3]. These perspectives complement each other, forming a comprehensive framework for analyzing and solving environmental legal problems in TNC investments.

2.2. Current Status of International Research

Internationally, some scholars recognize the relationship between environmental protection and overseas investment, suggesting that environmental measures should be integrated into investment activities. However, research on environmental protection measures in investment places is not yet sufficient, especially from a Chinese perspective.

Doak Bishop recognizes the close connection between overseas investment and environmental protection, and illustrates that neglecting environmental protection of the investment place in the process of investment may lead to serious consequences as well as derivative legal risks. However,

DOI: 10.54254/2753-7048/66/2024MU0007

his research often remains surface-level and lacks effective suggestions for robust strategies [4]. Kevin R. Gray continues to carry out in-depth analysis of the research direction, analyzing the reasons for the formation of environmental risks from a multi-dimensional perspective through multiple real-life cases of environmental disputes. Nevertheless, his proposed solutions are often simple and idealized, lacking practical applicability [5].

To sum up, existing literature offers a foundation on the legal risks related to environmental protection in overseas investments but lacks specific, practical solutions. Therefore, this paper aims to explore this field further. By examining the types of legal risks in the investment environment of TNCs, and combing the actual situation and cases of the international, host and home countries, the paper provides suggestions and theoretical references for the improvement of the environment of overseas investment of TNCs.

3. The Types of Environmental Legal Risks in Chinese Foreign-Related Enterprise Investment

3.1. Risks of Host Country Environmental Regulation

Under the background of global economic integration, ecological environmental protection has become an essential part of the development strategies of every country, especially in many developing countries along the Belt and Road Initiative. While aiming for high economic growth, these countries have gradually elevated environmental protection to the core of their national development agendas. As a consequence, when concluding international investment treaties or agreements, they paid more attention to strengthening environmental regulation of foreign enterprises engaged in investment activities in their countries. Originally, the host country's elevation of environmental protection standards was a legitimate action within its sovereign rights. However, the uncertainty and frequent fluctuations in environmental protection laws and policies in some countries, coupled with the arbitrary implementation of environmental regulations and the failure to deliver on government promises of preferential treatment, pose significant potential risks to investment projects reliant on policy support.

3.1.1. Inconsistency of Environmental Standards

Environmental protection standards are a comprehensive collection of norms and technologies established at the national or international level to protect and enhance the quality of the environment. The system covers a number of key components, which include, but are not limited to, environmental quality standards, pollutant emission standards, national environmental sample standards and environmental foundation standards. Currently, the scale of outward investment by Chinese enterprises continues to expand at the forefront of the world. According to the data, 26,870 newly established foreign-invested enterprises were set up nationwide, a rise of 14.2% year-on-year; the actual amount of foreign investment utilized was 498.91 billion yuan, a decline of 29.1% year-on-year, and the investment was widely distributed geographically [6]. Generally, countries along the Belt and Road have become important investment destinations for Chinese enterprises, with nearly 70% prioritizing these regions for investment.

However, differences in economic development status, recognition of environmental protection challenges, and varying environmental protection capabilities have led to diverse environmental protection standards among countries. As a developing country, China has made remarkable progress in improving its own environmental protection standards in recent years, but there is still a gap compared with developed countries. When engaging in foreign investment activities, Chinese TNCs often struggle to fully meet the increasingly strict environmental protection requirements of their host

DOI: 10.54254/2753-7048/66/2024MU0007

countries due to their existing operating habits or lack of technological adaptation, leading to potential environmental legal compliance risks and, ultimately, economic losses.

Although some countries currently have lower environmental protection standards and more relaxed investment entry thresholds, this may change as host governments raise standards later. For example, in Peru, the country rich in mineral resources, strict environmental legislation and enforcement are standard. On March 30, 2014, Aluminum Corporation of China's (Alcoa) Tromoc copper mine project in Peru was ordered to stop because Peruvian officials claimed the investment caused environmental damage. Alcoa had to withdraw from the investment, resulting in significant losses.

3.1.2. Media Publicity on Environmental Impact of Chinese Enterprises

Despite further development in economic globalization, Cold War-era ideologies persist, and ideological conflicts often manifest in national policies, including political, economic, and cultural aspects. Recently, the rapid growth of China's external investment and its increasing national power have raised concerns among the United States, Western countries, and neighboring nations. They fear that China's rise could alter the global geo-economic and political landscape, leading to speculation about China's emergence as a potential "new ruler" of the world.

Meanwhile, in the current national public opinion field, some western media are trying to create a gap between China's friendly relations with countries along the Belt and Road and African countries. They frequently hype the "Chinese environmental threat theory", incorrectly portraying China as a primary culprit in global warming and over-interpreting Chinese enterprises' outward investment behaviors. This has been elevated to accusations of human rights violations and deprivation of development rights, with claims that China is practicing a "new type of colonial strategy".

For example, articles in the Financial Times such as "China and Africa: Building a New World Order?" and "U.S. accuses China of 'exporting' air pollutants" failed to correctly reflect China's philosophy and principle of friendly cooperation and mutual benefit. Instead, they enhanced the misunderstanding of the external world about China's outbound investment, which brought great risks to China's investment. Specific cases, such as the violence against Chinese businessmen in Papua New Guinea in May 2009, were fueled by misguided public opinion. The US$1.4 billion investment by the Metallurgical Group of China in the Rimu nickel mine project in the country, which is supposed to be a positive initiative to promote local economic development, was distorted by some forces as a symbol of "neo-colonialism", which triggered unnecessary conflicts and social unrest [7].

3.2. Multilateral Treaty Regulation of Risk

Under the framework of international environmental law, multilateral environmental regulation has brought many potential non-commercial risks to the investment activities of Chinese foreign-related enterprises. Although international environmental law does not impose hard and fast rules on the size and total amount of overseas energy investment by countries, the restrictions on the total carbon emissions of developed countries and some large developing countries have undoubtedly adversely affected China's overseas energy investment. Chinese companies may have acquired the right to explore and exploit oil, natural gas and coal, but were ultimately unable to ship these resources back to China for consumption due to the limits of total carbon emissions. With the impact of international environmental conventions on national domestic laws, countries will increase their legal and social responsibilities in their own environmental laws, further increasing the economic and social costs of Chinese foreign-related enterprises [8].

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3.2.1. International Environmental Law

International environmental law consists of a number of specialized and highly targeted environmental protection treaties. Each treaty addresses a particular environmental issue independently and has its own working and monitoring mechanisms, which has led to the fragmented and fragmented nature of international environmental law. For example, the World Environmental Convention (WECC) attempts to integrate and codify key principles of international environmental law in order to improve legal uniformity. However, the principles in different treaties, such as the precautionary principle, are unique and need to be regulated by different standards to achieve their binding and counterbalancing effects. In fact, the fragmentation of international environmental law is caused by the characteristics of international law itself and is an inevitable phenomenon in the development of the international legal system. Moreover, environmental issues are inherently cross-cutting and have intricate relationships with other issues, making it difficult to isolate them simply from other issues [9].

This fragmentation also means that multilateral treaties can become tools serving the interests of a few. The inconsistency of the negotiation demands of the negotiators is essentially due to the inconsistency of interests. In 2018, in the voting on the resolution sponsored by the United Nations General Assembly with the theme “Towards a World Environmental Convention”, the United States did not hesitate to vote against it based on its national interests. Among the EU member states, France and Germany, which are more influential, are more concerned about environmental protection, making it easy for the EU's final environmental policy to vary according to the preferences of these two countries. These international treaties have had a direct impact on China's foreign-related investment [10]. For example, the International Convention on the Prevention of Marine Oil Pollution and the International Convention on Oil Pollution Preparedness, Response and Cooperation provide for the prevention, preparedness and response of marine pollution from ships, and clarify the importance of the protection of the marine ecological environment. The United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement require countries to take responsibility for controlling and preventing the ecological impacts that may be caused by global warming. These treaties impose significant restrictions on the development of China's foreign-related investment [8].

3.2.2. The Outcome of The Game Between Countries

Environmental issues are not a separate economic or technical issue, but also a strategic game issue, involving the rights and obligations of various countries in the international community. Although the characteristics of international environmental law and the current international situation have hindered the conclusion of multilateral treaties, in essence, in the process of global environmental negotiations, the struggle between countries for political discourse and economic dominance is the fundamental reason. Political power is a means used to achieve economic interests. In international affairs, countries with significant influence can shape the formulation of international rules to their advantage, ensuring that global environmental governance develops in their favor. For example, in the negotiation of the World Environmental Convention, major countries such as the United States have always explicitly opposed it, primarily because their environmental policies and national interests were dominant. They did not believe that adopting the World Environmental Convention would bring substantial benefits to them [9].

Since the outbreak of the financial crisis, there have also been some changes in the attitudes of countries around the world on environmental governance issues. In the face of the environmental crisis, countries around the world will put their own economic development needs first. The need for finance to deal with the financial crisis has largely taken away the share that environmental protection

DOI: 10.54254/2753-7048/66/2024MU0007

should have. Due to the development stage, national strength, and emission differences of various countries, there are great differences in the demands of the environmental field, and the game between major countries is particularly obvious. When countries approach environmental issues, they weigh their interests, and economic interests are usually at the center. If the issue is beneficial to their country, they support it; otherwise, they resolutely oppose it.

4. Optimal Pathways for Chinese Outbound Investment Enterprises to Deal with Environmental Legal Risks

4.1. International Level

4.1.1. Promote the Establishment of A Multilateral Dispute Settlement Mechanism

In order to make up for the shortcomings of "behavioral disorientation" caused by the differences in the environmental legal systems of the host country and the domestic country, the best way is to establish a sound and complete multilateral rule on investment and environmental protection between the host country and the domestic country. The system of interaction between environmental policies established by the Energy Charter Treaty (ECT) is a typical reference. The ECT aims to establish an open and inclusive market for energy trade and investment among the countries of the Agreement, and it establishes basic rules covering energy trade, investment rules, dispute settlement and ancillary issues. The ECT's Protocol on Energy Efficiency and Environmental Protection establishes the guidelines and systems that must be followed by the agreement countries for circular development and eco-friendliness, and the awareness of environmental protection runs throughout, reflecting the sustainability of energy trade in both the preamble and the text [11]. The system not only provides a clear code of conduct for investment enterprises, but also reduces environmental legal risks to a certain extent. Chinese foreign-related companies can ensure that their investments in host countries are more transparent and legal by promoting similar multilateral dispute settlement mechanisms.

4.1.2. Active Use of International Treaties And Customary Law Rules

Given the inadequacy of the domestic and overseas investment insurance legal systems and the ineffective implementation of international dispute settlement mechanisms, using existing international investment mechanisms to avoid environmental risks is the best solution. At present, Chinese investors rarely use the Multilateral Investment Guarantee Agency (MIGA) to avoid environmental risks, which requires investment enterprises to actively declare projects with greater environmental risks to the MIGA Convention, and solve the communication barriers with the host country through information symmetry and environmental data transparency. This approach can avoid the host country's judicial process and reduce the hostile attitude of the host country to foreign investors, thereby maximizing the company's profits while the host country's environment is not damaged [12]. Specific measures include participating in and promoting the formulation and implementation of international environmental protection standards, learning from the successful experience of other countries, and improving the company's own environmental protection capabilities and compliance levels.

4.2. National Level

4.2.1. Improve Judicial Interpretations of Laws Related to Outbound Investment

With the increase in the increment of outbound investment and the increasing diversification of risks, it is necessary to optimize the overall layout of the domestic environment and rule of law at the national level. Environmental rule of law refers to environmental protection actions guided by laws

DOI: 10.54254/2753-7048/66/2024MU0007

and regulations, including improving the environmental legal system at the legislative level and the dynamic process of implementing environmental systems. In terms of environmental laws and regulations for investment and exports, China should establish an environmental legal system with the Environmental Protection Law and the Foreign Investment Law as the core, and improve the legal system for the prevention and control of environmental risks in an all-round, multi-level, and wide-ranging manner [13]. China should further promote special legislation on the regulation of environmental risks in overseas investment and strengthen the importance of legislation on corporate behavior and the precision of regulation. This will enhance the competitiveness of domestic enterprises in the international market, and ensure that their investment behavior in the host country complies with local legal requirements and reduce potential legal risks.

4.2.2. Raise Project Export Standards

When an enterprise submits an investment project for review, it is required to submit an application for environmental protection. However, due to relatively relaxed export conditions, lack of clarity in relevant domestic regulations, and lack of strict supervision of investment, many enterprises rarely actively fulfill their social obligations in pursuit of profits [14]. Strengthening export controls on energy investment projects and improving enterprises' environmental protection practices are necessary. First of all, when reviewing the export conditions of the project, it is necessary to provide a detailed and clear Environmental Impact Assessment (EIA) report, EIA implementation plan and other options. Foreign investment management organs shall review the authenticity and feasibility of foreign investment projects, and have experts and scholars from relevant departments conduct research and verification of the environmental impact factors, measures, and potential risks of foreign investment projects. Second, after the initial review is passed, environmental information such as environmental protection measures and alternatives should be published on the China OFDI website, but no specific time limit for disclosure should be set. It is necessary to listen to the local people of the host country, as they have a higher level of local awareness. This can be a way to participate in the project and timely reflect potential environmental risks. Finally, approval should be denied for projects that involve serious environmental impacts in order to protect the host country's ecological environment.

4.2.3. Strengthen Government Supervision of Export Enterprises

In view of the unclear environmental protection responsibilities and regulatory failures in China's overseas investment management, the key is to reconstruct the environmental legal management system and establish the responsibility boundary to ensure that the Ministry of Commerce and other core departments can define management functions and roles in accordance with the law, compliance and due diligence. In order to achieve this goal, the country's top priority is to establish a framework for ongoing regulation. For example, in the “going out” stage of a project, a comprehensive assessment of its environmental friendliness is carried out in the approval of overseas investment. Implementing a dynamic supervision mechanism throughout the process will enable quick responses to potential or emerging environmental problems and immediate corrective measures. In addition, the government should strengthen regular inspections of export companies to ensure the implementation of their environmental protection measures, establish a whistleblowing mechanism, and encourage the public and non-governmental organizations to monitor their environmental behavior, so as to enhance their environmental responsibility and self-discipline.

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4.3. Enterprise Level

4.3.1. Strengthen Legal Compliance in Investments

The overseas investment behavior of domestic foreign-related enterprises is not only subject to the national legal framework of the host country, but also involves its diverse regional local regulations and policy systems. Investors need to understand and follow the local laws and policies that are closely related to environmental protection. Given the global differences in environmental protection standards, Chinese enterprises should adopt a forward-looking strategy when making outbound investments. This means following stricter environmental protection standards initially. In particular, when the host country's environmental protection standards are lower than China's domestic standards, investment activities should be based on China's high standards to prevent potential environmental legal risks that may arise in the future due to the host country's improvement of environmental standards and ensure the compliance of investment activities. Specific measures include establishing a professional legal team or hiring external legal counsel, and regularly training employees to improve their legal awareness and environmental awareness, so as to create a good legal compliance atmosphere within the enterprise.

4.3.2. Proactively Assume Social Responsibility

Corporate social responsibility is often fulfilled under external pressure. However, the core competitiveness of modern enterprises is closely tied to their proactive assumption of social responsibilities. Enterprises that actively practice social responsibility are more likely to win the recognition and respect of the host country, industry peers and consumers with their corporate culture and values. For Chinese outbound companies, the host country's environmental social responsibility includes improving the company's ethical standards, effectively implementing environmental governance measures, and strengthening the protection of local workers. Therefore, Chinese enterprises with foreign investment should take the initiative to internalize environmental social responsibility as a guide for corporate actions. Establishing a social responsibility department within the enterprise, formulating a detailed social responsibility plan, publishing social responsibility reports on a regular basis, actively participating in local community construction and environmental protection activities, and establishing a good corporate image are essential steps.

5. Conclusion

This paper systematically analyzes and discusses the environmental legal risks faced by Chinese foreign-related enterprises in the process of outbound investment, mainly including the environmental regulatory risks of the host country and the regulatory risks of multilateral treaties. Through an in-depth study of the sources, manifestations and impacts of these risks on enterprises, this paper proposes a series of theoretical frameworks and policy recommendations to help Chinese foreign-related enterprises better cope with environmental legal risks and achieve sustainable development.

In general, the environmental legal risks faced by Chinese foreign-related enterprises in the process of outbound investment are multifaceted, including regulatory risks from the host country and regulatory risks from international environmental treaties. In order to better respond to these risks, enterprises need to take a variety of measures, including strengthening their understanding and adaptation to host countries and international environmental regulations, improving their own environmental protection capabilities, and paying close attention to the dynamics of international environmental governance. Through these measures, companies can effectively reduce environmental legal risks and achieve sustainable development.

DOI: 10.54254/2753-7048/66/2024MU0007

The research presented in this paper aims to provide more theoretical support and practical guidance for managing the environmental legal risks of Chinese foreign-related enterprises in outbound investment. It is hoped that these insights will help enterprises achieve better development and growth in the context of globalization, ensuring their operations are both legally compliant and environmentally sustainable.

Authors Contribution

All the authors contributed equally and their names were listed in alphabetical order.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0009

Litigation Jurisdiction of China International Commercial Court under the "Belt and Road" Initiative

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Abstract: The China International Commercial Court (CICC) plays a crucial role in the context of the "Belt and Road" initiative, providing a platform for the fair and efficient resolution of international commercial disputes. Despite its strategic importance, the CICC faces significant jurisdictional challenges. These include blurred boundaries of case acceptance, insufficient innovation in distinguishing international cases, overly broad applicability due to exclusionary practices, and inadequate consideration of international investment disputes. This article thoroughly examines these issues and offers comprehensive solutions to enhance the CICC's functionality. Key recommendations include clarifying the CICC's positioning as a one-stop platform integrating mediation, arbitration, and litigation; refining the boundaries of case acceptance through detailed legal provisions and judicial interpretations; strengthening the standards for determining international cases to better reflect the complexity of international commercial activities; and enhancing the mechanisms for resolving international investment disputes. Addressing these challenges will improve the CICC's operational efficiency, bolster its international credibility, and better support the "Belt and Road" initiative.

Keywords: China International Commercial Court, Belt and Road Initiative, international commercial disputes, litigation jurisdiction.

1. Introduction

The expansion of jurisdiction is a powerful prerequisite for enhancing competitiveness. In the context of countries vying to establish international commercial dispute resolution mechanisms, the global competitive landscape is taking shape. The “Belt and Road” initiative has brought substantial benefits to participating countries. As a major strategy of China, this initiative is not only related to China's economic development, but also involves the economy of the participating countries. Due to significant differences in political systems, economic development, religious beliefs, and legal systems among these countries, there is a pressing need for China to enhance its influence and rule-making power in the international business arena. To fairly and efficiently resolve commercial disputes and better support the "Belt and Road" construction, the China International Commercial Court (CICC) was established.

The international commercial court model has gained popularity among various countries in recent years. Economically developed countries and those aspiring to elevate their international status are actively establishing their own international commercial courts. As the world's second-largest

DOI: 10.54254/2753-7048/66/2024MU0009

economy and initiator of the “Belt and Road”, China faces a complex international environment. The CICC is essential in supporting China's global strategy, improving its image, maintaining stability, and building judicial credibility. The CICC has a precise positioning and has made a name for itself in international commercial dispute resolution through specialized personnel allocation, flexible mechanisms, and information management.

However, the early stages of the CICC's establishment have been constrained by conservative regulations and foundational limitations. Currently, the CICC's jurisdiction faces several shortcomings, including an insufficient international vision, poor institutional connection, and inadequate protection of the rights of the parties involved. These issues not only constrain the practical functioning of the CICC, but also affect China's position and reputation in international commercial dispute resolution. Therefore, this article will conduct in-depth research on these issues and identify specific solutions to improve the operational efficiency and international recognition of the CICC.

This article is divided into five parts. After the introduction, the second part will introduce the current situation of the CICC litigation jurisdiction under the "Belt and Road" initiative, and analyze its jurisdiction, case determination standards, judge composition, trial level system and its "one-stop" international commercial dispute resolution mechanism. Next, the third part explores the shortcomings of jurisdiction, including vague boundaries for accepting cases, extensive involvement in the return of priorities, overly broad applicability due to exclusionary practices, and inadequate consideration of international investment disputes. Then, the fourth part proposes corresponding solutions, such as clarifying the positioning of the court, improving the flexibility of evidence rules, perfecting the system of international commercial expert committees, and creating a comprehensive information-based litigation system. Finally, the fifth part summarizes the entire text and proposes directions and suggestions for future development.

2. The Current Provisions on the Jurisdiction of Litigation of the CICC under the "Belt and Road" Initiative

To advance the “Belt and Road” initiative and enhance judicial services, the Supreme People's Court of China issued the Provisions on Several Issues Concerning the Establishment of International Commercial Courts in June 2018. These Provisions, based on principles of fairness, impartiality, professionalism, efficiency, and international openness, established the First and Second International Commercial Courts in Shenzhen and Xi'an. The 19 articles define the CICC's jurisdiction, case determination, judge composition, trial level, positioning, and other relevant issues.

One key aspect of the Provisions is the jurisdiction. The CICC has jurisdiction over five types of cases: major foreign-related commercial cases, cases chosen by agreement, applications for recognition and enforcement of foreign judgments or arbitration, cases designated by the Supreme People's Court, and cases transferred from lower courts. This includes statutory, contractual, transfer, and designated jurisdiction, ensuring broad authority.

The second is the recognition of international commercial cases. The Provisions refer to Article 1 of the Supreme People's Court's Interpretation on Foreign-related Civil Relations Law to define international commercial cases. These cases fall into three categories: civil and commercial disputes between equal parties, which the CICC primarily handles; investment disputes between entities and countries, which are excluded from CICC jurisdiction; and treaty-related disputes between countries, also excluded and managed by other mechanisms like the Washington Convention and WTO dispute resolution. Thus, the CICC mainly resolves civil and commercial disputes between equal parties.

The third is the composition of judges. The CICC has hired a group of judicial personnel who can handle work in both Chinese and English. These judges have a theoretical understanding of precedents and legal provisions and are well-versed in trade and investment practices, with extensive

DOI: 10.54254/2753-7048/66/2024MU0009

judicial experience. Their professional background and language proficiency enable the CICC to efficiently handle complex international commercial disputes.

The fourth is the review level of the CICC. The CICC implements a final adjudication level model, where the parties do not actually have the right to appeal, making it the first of its kind among many international commercial courts. This model aims to improve the efficiency and finality of rulings, reducing the uncertainty and prolonged litigation that parties might otherwise face. By providing a definitive resolution, the CICC enhances the predictability and reliability of its judicial outcomes.

The fifth feature is the "three-in-one" one-stop international commercial dispute resolution mechanism. The Supreme People's Court has introduced the International Commercial Expert Committee, a new institution with specialized personnel that embodies Chinese characteristics. This mechanism includes qualified international commercial mediation and arbitration institutions working with the CICC to provide a comprehensive dispute resolution platform. The CICC respects the parties' independent wishes and supports dispute resolution through mediation, arbitration, and litigation, ensuring convenience, efficiency, and professionalism.

The sixth is the simplification and convenience of litigation procedures. If the evidence materials submitted by the parties are in English and approved by the other party, they can be used directly in the trial without needing a Chinese translation. The CICC can flexibly adopt audiovisual transmission technology or other information methods during the investigation and cross examination stages of evidence. At the same time, the litigation procedure is based on the principle of convenience and efficiency, and all procedural processes support online methods, providing services to the parties through various electronic public platforms. In addition, the parties can choose the applicable law around the substantive issues of the dispute. The Provisions list the ways to determine relevant foreign laws and provide comprehensive convenience services for the parties.

In summary, the current provisions on the jurisdiction of the CICC demonstrate a comprehensive and multifaceted approach to handling international commercial disputes. The CICC's broad jurisdictional scope, the precise categorization of international commercial cases, the composition of highly qualified judges, the final adjudication model, the integration of multiple dispute resolution methods, and the streamlined litigation procedures all contribute to its effectiveness. However, there remain challenges related to jurisdictional clarity and the need for further refinement to enhance its international perspective, institutional integration, and the protection of parties' rights. Addressing these issues is crucial for improving the CICC's operational efficiency and strengthening its role in the global commercial dispute resolution landscape.

3. Insufficient Litigation Jurisdiction of CICC under the “Belt and Road”

3.1. Blurred Boundary of Case Acceptance

As the CICC is subordinate to the Supreme People's Court, its judgments are legally binding, and parties cannot appeal except in specific circumstances for retrial. Once a case is transferred to the CICC, the original right to appeal is lost. To clarify the scope of cases accepted by the CICC versus other courts with foreign-related jurisdiction, the "Provisions of the Supreme People's Court on Several Issues Concerning the Jurisdiction of Lawsuits in Foreign-related Civil and Commercial Cases" introduced "significant impact" restrictions in higher-level jurisdiction and subject matter limits in agreement jurisdiction and arbitration judicial review. However, this approach cannot fundamentally solve the problem of the boundary between the CICC and foreign-related commercial trial courts. Instead, it may create new issues, such as granting the Supreme People's Court excessive discretion in escalating cases. For example, parties might question the fairness of the court's jurisdiction, believing it deprives them of their right to appeal and thereby undermining their acceptance and trust in the court's ruling.

DOI: 10.54254/2753-7048/66/2024MU0009

Due to the blurred boundaries of cases, the functions of the CICC cannot be effectively utilized, which may also lead to the waste of judicial resources. If the parties choose an unsuitable court due to unclear boundaries when choosing litigation channels, it will not only prolong the litigation time, but may also increase litigation costs. In addition, in cases where boundaries are blurred, jurisdictional disputes between courts may also increase, further affecting the efficiency and fairness of case trials.

3.2. Local Regression Involves a Wide Range of Aspects

The term "international cases" is currently confined to the existing legal provisions for 'foreign-related cases' and is limited to a strict three-element standard. This limitation has stifled innovation within the CICC, making it operate similarly to domestic courts and failing to highlight its role as an international institution. The fundamental difference between the CICC and domestic foreign-related commercial courts lies in correctly determining the scope of "international cases". International cases should correspond to the positioning of international institutions, emphasizing neutrality and focusing on whether the legal relationships involved in commercial disputes have cross-border connection factors. In contrast, foreign-related cases are assessed from a national perspective, aiming to restore the disrupted legal order within the country and focusing on whether the legal relationship is related to the country.

The current legal framework defines international cases too narrowly and fails to fully consider the complexity and diversity of international commercial activities. For example, some complex commercial cases involving multiple parties and legal relationships may be excluded from the jurisdiction of the CICC under the current definition. This recognition standard not only limits the scope of cases accepted by the CICC, but also affects its authority and attractiveness in international commercial dispute resolution.

3.3. Exclusion-Based Approach Leads to a Wide Range of Applicability

The Provisions do not clearly define commercial cases. The Supreme People's Court noted that the CICC excludes two types of cases: trade or investment disputes between countries, and investment disputes between host countries and investors [1]. This exclusionary approach significantly broadens the scope of commercial cases, suggesting that most commercial disputes between parties are included, except for these two excluded categories and cases involving fundamental national interests.

Due to China's integration of civil and commercial affairs, the boundary between civil and commercial cases is not clear. According to China's consistent practice, in order to protect public order and good customs, property disputes involving identity relationships are not allowed to be governed by agreement, and such disputes cannot be simply classified as commercial cases. From the perspective of the parties involved, there is a certain risk when choosing the CICC as the jurisdictional court when it is uncertain whether the dispute meets commercial standards due to the lack of clear legal basis and sufficient case studies for reference. Therefore, the current regulations on commercial cases are unclear and incomplete, which may reduce the possibility of parties choosing the CICC's jurisdiction.

Moreover, the exclusionary approach's broad applicability may lead to the CICC operating at overload. A wide range of cases might cause a surge in case numbers, increasing the court's workload. Furthermore, the undefined scope of cases may also lead to inconsistent criteria for accepting cases, affecting the fairness and consistency of case trials.

3.4. Poor Consideration of International Investment Disputes

The current international investment arbitration has always faced legitimacy issues. Although sovereign states agree to accept the jurisdiction of certain arbitration institutions through bilateral

DOI: 10.54254/2753-7048/66/2024MU0009

investment agreements, the arbitrator's decision is often seen as a policy choice of their home country [2]. Stakeholders are highly skeptical of the existing investment dispute resolution mechanism [3] and have reached a consensus on its urgent need for reform [4].

China, with its high participation in international investment arbitration, also grapples with issues of legitimacy and fairness. The CICC's consideration of investment disputes between host countries and investors appears insufficiently comprehensive and in-depth. Mediation lacks binding force, and unsuccessful mediation can result in wasted time and capital. Consequently, resolving international investment disputes solely through mediation is not practical. The independence and neutrality of arbitrators are often questioned, casting doubt on the fairness of arbitration results.

In this context, the CICC needs to establish itself as a fair, efficient, and authoritative platform for resolving investment disputes [5]. Currently, the trend of resolving international investment disputes through litigation is on the rise, as seen in the European Union's proposal for an investment court, which is gradually being implemented [6]. In negotiating free trade agreements with the US, Canada, and Singapore, the EU insists on submitting investment disputes to court rather than arbitration. The European Court of Justice in Slovakia v Achmea BV has made a ruling that the arbitration conducted between two EU countries under a bilateral investment treaty does not comply with EU legal provisions [7]. This trend indicates that the role and positioning of the CICC in resolving international investment disputes need to be further clarified and strengthened to cope with the increasingly complex international investment environment.

4. Solutions to the Issues of Litigation Jurisdiction of CICC under the “Belt and Road” Initiative

4.1. Clarifying the Positioning of the CICC

The CICC, as a one-stop platform that integrates mediation, arbitration, and litigation, needs to further clarify the key issues of arbitration and mediation. The review of mediation agreements reached by Chinese courts in out of litigation mediation procedures should adopt a combination of non-key clause form review and limited substantive review of key clauses. However, the effectiveness of mediation agreements reached under the auspices of expert committees is higher than that of ordinary mediation agreements outside of litigation. Therefore, the review of these agreements should be different from traditional models, mainly focusing on formal review.

Specifically, if substantive examination is conducted on mediation agreements reached in international commercial disputes, the procedures will inevitably be more cumbersome and complicated due to the complexity of the case [8]. Given that members of the International Business Expert Committee can provide legal advice and possess sufficient qualifications for mediation, their involvement should ensure that the work is not duplicated during the review process. Simplifying the review procedure of mediation agreements facilitates the connection between litigation and mediation mechanisms, aligning with the CICC’s goal of forming a trinity dispute settlement platform. Parties will likely prefer submitting disputes to mediation based on convenience and efficiency, consistent with the “Belt and Road” concept of valuing peace and win-win cooperation. Conducting only a formal review of mediation agreements made by the International Commercial Expert Committee further clarifies its positioning and role.

4.2. Clarifying the Boundaries of Accepting Cases

The scope of cases accepted by the CICC and domestic foreign-related commercial courts overlaps. It is necessary to further clarify through legislation or judicial interpretations which cases fall within the jurisdiction of CICC and which fall within the jurisdiction of domestic foreign-related commercial courts, ensuring that parties have clear guidance when choosing litigation channels [9]. For this

DOI: 10.54254/2753-7048/66/2024MU0009

purpose, detailed legal provisions and judicial interpretations can be formulated to clearly list the specific jurisdictional divisions for different types of cases. For example, by adding specific case types and subject matter limits, the rationality and fairness of hierarchical jurisdiction can be ensured. In addition, in order to address the issue of excessive applicability caused by exclusionary practices, it is necessary to clearly define the definition of commercial cases. Detailed case classification standards should be established to clarify which cases belong to commercial cases and which do not, especially property disputes involving identity relationships, in order to avoid confusion. For cases excluded from the jurisdiction of the CICC, clear exclusion criteria and rules should be established to ensure the clarity and transparency of the scope of acceptance. At the same time, by regularly updating and explaining the scope of cases accepted by the CICC, we ensure that the legal and business communities have an accurate understanding and application of the CICC's scope of cases, thereby further enhancing the CICC's authority and credibility.

Secondly, more detailed standards should be established in the promotion of jurisdiction to clarify which cases can be promoted to the CICC, in order to avoid affecting the litigation rights of the parties due to unclear boundaries. On the one hand, by refining the "significant impact" criteria, it is possible to clarify to what extent disputes can be considered as having a significant impact on national interests or the international business environment, and thus be elevated to the CICC. On the other hand, it is possible to consider establishing an independent jurisdiction review committee, where independent legal experts review and confirm cases subject to higher-level jurisdiction, to ensure fairness and impartiality in such cases.

4.3. Strengthening the Standards for Determining International Cases

To address the issue of narrow international case identification, it is necessary to establish identification standards that are more in line with the actual international commercial activities. Although the existing three element standards provide a basic framework, they are too rigid in practical operation and fail to cover all possible types of international commercial disputes. Therefore, on the basis of existing standards, cross-border connectivity factors should be considered, and complex commercial cases involving multiple parties and legal relationships should be included in the scope of international cases [10]. Expanding the definition of international cases through legal revisions or new judicial interpretations ensures that more types of international commercial disputes fall under the CICC's jurisdiction

In judicial practice, flexible application of international case determination standards should be encouraged to ensure that the CICC can cover more types of international commercial disputes. In terms of specific operations, regular seminars and guidance case studies can be held to help judges and lawyers better understand and apply international case determination standards. In addition, an international legal research center can be established to specifically study the latest developments and trends in international commercial disputes, providing theoretical support and practical guidance for the CICC's case determination and adjudication.

4.4. Strengthening the Jurisdiction of International Investment Dispute Cases

To address the limitations of jurisdiction over international investment dispute cases, it is essential to strengthen international investment dispute resolution mechanisms. Drawing on the EU's experience, establishing a specialized international investment court or dispute resolution mechanism can ensure the independence and neutrality of arbitrators and judges. By legislation or international agreements, clarify the criteria and procedures for accepting international investment disputes, ensuring that the CICC has authority and impartiality in handling such cases. For example, bilateral or multilateral investment agreements can be signed to clearly define the procedures and standards for resolving

DOI: 10.54254/2753-7048/66/2024MU0009

investment disputes, ensuring transparency and fairness in international investment dispute resolution [11]. In addition, strengthen international cooperation in the international investment dispute settlement mechanism, clarify the procedures and standards for resolving international investment disputes through the signing of bilateral or multilateral agreements, and enhance the transparency and predictability of the international investment dispute settlement mechanism. This can not only enhance the status and influence of the CICC in international investment dispute resolution, but also strengthen investors' trust in China's judicial system. Meanwhile, through international cooperation, we can learn from the successful experiences of other countries and regions to enhance the level and efficiency of China's international investment dispute resolution mechanism.

5. Conclusion

In the context of diversified dispute resolution mechanisms, future competition among international commercial dispute resolution systems will be defined by jurisdiction rather than by the types of mechanisms. Since its establishment in 2018, the CICC has concluded only 8 cases, with none accepted based on agreement jurisdiction, indicating issues with its jurisdiction system. The most fundamental problem is the lack of international positioning. Equating "international cases" with "foreign-related cases" has caused the CICC to revert to operating more like a domestic court rather than an international institution. Any additional differentiation criteria based on this cannot play an effective role. The combined effect of the minimum amount and the actual connection limit the autonomy of the parties' will. At the same time, the CICC's trial of first instance cases may also lead to disputes over the standards for determining jurisdiction and discretion.

Therefore, it is urgent to redefine the criteria for determining "international commercial cases". International cases should emphasize that disputes are related to more than one country or region, and be examined in conjunction with substantive connecting factors and dispute nature standards. Clarify the criteria for defining commercial cases through enumeration and exclusion, and leave the possibility for the acceptance of international investment dispute cases along the “Belt and Road” initiative. After the scope of cases returns to the international standard, the effect of case diversion will become apparent, and the provisions on the amount of litigation subject matter can also be temporarily removed. Based on China's voice in the “Belt and Road” initiative and the change in the status of Chinese parties, the agreement jurisdiction can also cancel the actual connection. The occupation of some judicial resources will attract more foreign resources to flow into China, improve China's business environment, accelerate the development of industries such as lawyers, form a siphon effect, and jointly help China's judicial influence worldwide.

Given that the CICC serves as both the first and highest level of trial, exercising escalation jurisdiction authority requires greater caution and standardization. It is crucial to safeguard the parties' right to know and object, thereby enhancing the international credibility and attractiveness of China's judiciary. These improvements will enable the CICC to more effectively resolve international commercial disputes, support the in-depth implementation of the “Belt and Road” initiative, and strengthen China's position in the global judicial system.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0015

Research on Corporate Environmental Responsibility: A Case Study of Multinational Corporations

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Abstract: In light of the expanding global environmental challenges, multinational corporations (MNCs) are often held accountable for their disproportionate role in environmental degradation. This study looks at how MNCs safeguard the environment and what factors lead to ecological dangers that are related with them. The production volumes of MNCs and their inclination to relocate pollution-intensive industries to developing countries are the specific subjects of the study. A few of the main obstacles that the study identifies to MNCs' environmental responsibility are the deficiency of the current international legal framework, the lack of harmonization of environmental legislation, and the tendency of developing countries' economic priorities to overlook strict environmental measures. To address these issues, the study recommends the following measures: the establishment of robust monitoring and accountability mechanisms; the direct imposition of practicable environmental liabilities; the strengthening of international judicial cooperation; and the clarification of judicial ambiguities regarding MNCs' legal responsibilities in the environmental sector. The paper uses a case study methodology to provide a comprehensive review of best practices and tactics for improving MNCs' environmental management. The findings underline the importance of governments working together to ensure that multinational firms' actions are consistent with environmental sustainability ideals.

Keywords: Multinational Corporations, Environmental Responsibility, International Legal Framework, Jurisdictional Clarity.

1. Introduction

In the age of globalization, multinational corporations (MNCs) play an important role in influencing the global economy. However, their massive operations frequently generate questions about their environmental responsibility. This study focuses on the role of companies in environmental protection, the reasons for MNCs' environmental impacts, and the challenges and solutions to meeting their environmental responsibilities.

To begin, firms, particularly multinational corporations, have a huge environmental impact due to their large scale of production and global operations. They are both huge resource consumers and major polluters. As a result, understanding corporations' roles in environmental preservation is critical for fostering sustainable growth and reducing ecological damage.

DOI: 10.54254/2753-7048/66/2024MU0015

Second, the causes of multinational corporations' environmental impact are multifaceted. They frequently include complex supply networks that span multiple nations with differing environmental requirements. Because of their large production scales, multinational enterprises may create more severe environmental damage than smaller businesses. Furthermore, relocating polluting industries to developing nations has become a contentious topic. These considerations make it difficult to hold multinational corporations accountable for their environmental obligations.

Third, there are still certain barriers to holding MNCs accountable for their environmental duties. For example, existing international conventions have flaws, environmental regulation differs by country, and developing countries frequently disregard environmental protection.

Finally, overcoming the barriers to responsibility for MNCs' environmental duties necessitates a holistic approach. This includes: create a monitoring and accountability structure for the environmental impact of multinational firms' investments. Clearly define the environmental responsibilities of multinational firms' investments, and develop reasonable and feasible compliance measures. Improving international judicial cooperation and communication.Furthermore, explain the jurisdiction over multinational firms' environmental law responsibilities.

Overall, the purpose of this research is to provide insights into the corporate role in environmental protection, to understand the root causes of MNC environmental consequences, and to propose practical measures to improve their accountability. By doing so, it adds to the discussion of corporate environmental responsibility and promotes a more sustainable business landscape in the global context.

2. The Role of Enterprises in Environmental Protection

Enterprises, as powerful actors in the global economic system, carry significant responsibility for the state of our environment. Their operations transcend multiple sectors and touch on practically every area of human life, resulting in a deep and far-reaching impact on the natural environment. As a result, corporations play an important but contentious role in environmental conservation.

2.1. Environmental Responsibility of MNCs

The environmental responsibility of multinational corporations refers to the obligations and negative repercussions that large corporations must meet and bear as a result of the potential or actual environmental damage produced by their investment operations. The environmental responsibilities of MNCs discussed in this study include both environmental legal liabilities and obligations.

The environmental obligations of multinational corporations refer to the standards of conduct that large corporations must follow in their investment activities. Specifically, when investing in host countries, multinational corporations must ensure compliance with the host country's environmental protection laws, regulations, and national policies, as well as that the technology and equipment used in their production activities meet the host country's environmental standards.

The environmental legal responsibilities of multinational corporations refer to the liability for danger elimination, nuisance removal, and damage compensation that these corporations must bear when they fail to properly fulfill their environmental protection obligations and consequently cause actual environmental damage during their investment activities [1].

MNCs' operations and trading activities have a global impact, spanning several nations and markets and including a diverse variety of industries and fields. However, from an environmental standpoint, while the expansion of trade activities has expanded the scale of production and consumption, it has also resulted in increasing use of natural resources and waste emissions, worsening environmental deterioration. Furthermore, the deregulation of global investment and trade has increased the size and scope of economic activity. Although a country's natural resources remain

DOI: 10.54254/2753-7048/66/2024MU0015

within its sovereign jurisdiction, the entities that use them are no longer limited to that country's borders, since natural resources have become a shared subject of global economic activity [2]. The strong economic strength of MNC makes it very likely that their operation in the host state will create huge economic gains for the host state, but at the same time it also means that during this process, the natural resources of the host state will be exploited in large quantities, and the host state will have to face the harm caused to the environment due to the lack of standardization of the country's environmental protection technology and system in various aspects such as production, transportation, and so on.

2.2. The Relationship Between the Business Behavior of MNCs and the Host Country's Environment

MNCs are business entities based in one country that use outward foreign direct investment (OFDI) to establish subsidiaries, branches, or affiliates in other countries or regions in order to engage in international production, operation, or service activities with the goal of increasing profits. One of the distinguishing features of economic globalization is the expansion of MNCs' areas of activity, which have allowed them to grow rapidly and play an increasingly major part in international economic transactions. The development of MNCs has promoted the optimal global allocation of resources, accelerated the adjustment of the international industrial structure, promoted technological progress and institutional innovation, created more opportunities for deepening economic and trade exchanges and cooperation between countries and regions, and brought countries and regions closer together [3].

MNCs have a variety of criteria for choosing the destination of their funds, with proximity to the target market being one of the factors, as well as lower labor costs, use of local natural resources, and avoidance of increasingly stringent pollution controls in the home country being important motivations. There is a clear distinction between developed and developing countries in terms of environmental standards, which causes developed countries to deliberately transfer certain polluting industries or industrial wastes to developing countries with relatively low environmental standards in order to avoid the high costs associated with their own high environmental standards. This "export of public dangers", "environmental invasion", and "environmental exploitation" by wealthy countries not only affects developing countries interests, but also jeopardizes the cause of global environmental conservation [4].

MNCs, in the course of their investments and operations and in the pursuit of economic benefits, may sometimes fail to take full account of their adverse impact on the environment. These corporations should therefore be held responsible for the deterioration of the global ecological environment. In fact, transnational corporations are often the main responsible parties in incidents involving cross-border environmental pollution.In the list of non-compliant enterprises in 2004-2006 published by the environmental protection bureaus around China, 33 multinational corporations, including Shanghai Panasonic Battery Company Limited, whose parent company is Panasonic Corporation of Japan, Changchun PepsiCo, whose parent company is PepsiCo of the U.S.A., and Shanghai Nestle Drinking Water Company Limited, whose parent company is Nestle Group of Switzerland, were listed due to a variety of “coincidence”, “negligence” and “accident” made the list [5]. In addition, the Bhopal chemical spill case in India, the Delta pollution case in Nigeria, the case of the pollution of the Cascavel copper mine in Chile, among others, demonstrates the damage done to the environment of host countries as a result of the negligence of transnational corporations with regard to environmental issues.

DOI: 10.54254/2753-7048/66/2024MU0015

3. Causes of Environmental Damage by Multinational Corporations

Multinational firms increased in number in tandem with the growth of international trade and industry. Despite growing economies and adding jobs, these firms' actions, especially in developing nations, have had a negative effect on the environment. The relocation of highly polluting firms and an increase in environmental contamination in host nations are the main sources of the damage described in this section.

3.1. Transfer Pollution-intensive Industries to Developing Countries

Relocating or shifting their polluting operations to developing countries is one of the main ways multinational firms damage the environment. There are many factors that lead to this tendency. To begin with, less developed nations usually have stricter environmental rules than industrialized ones. This regulatory leniency allows multinational corporations to operate with less regulation, which implies that environmental norms are not inspected or enforced as often. However, developing countries--which operate as the host countries for MNCs--preferringly let their polluting activities due to the immense economic benefits that MNCs bring. Secondly, developing countries have lower production costs since labor and raw materials are cheaper and local groups have less negotiating leverage. This cost advantage encourages MNCs to set up polluting facilities in particular areas. Increased market share and access to new consumer bases are ultimately the driving forces behind the relocation of industries to developing countries.

3.2. More Severe Environmental Pollution to Host Countries

The relocation of polluting industries not only raises environmental costs, but it also exacerbates existing pollution problems in host countries. MNCs frequently use outmoded technology and industrial processes that are energy-intensive and generate a substantial amount of waste. Hazardous chemicals and greenhouse gases harm the air and water, erode land, and disrupt ecosystems.Furthermore, many developing countries lack adequate waste management infrastructure, resulting in inefficient industrial waste disposal, worsening the pollution problem. For instance, a Union Carbide India Ltd. chemical facility in Bhopal, India, had metal tanks storing methyl isocyanate leak in 1984, killing about 2,000 people at the time and maybe as many as 4,000 more in the years that followed. More than 200,000 people were impacted by this catastrophe, which also killed a great deal of wildlife and seriously damaged the ecology [6].

4. Challenges Faced in Holding MNCs Accountable for Environmental Rights Responsibilities

To effectively promote sustainable development on a global scale, it is imperative to acknowledge the challenges associated with holding MNCs accountable for their environmental rights commitments. Three main topics will be covered in this section: the deficiencies in the existing international legal rules, the disarray and lack of coherence among national environmental legislation, and the disrespect for environmental protection in developing countries.

4.1. Deficiencies of Existing International Legal Rules

A wide range of challenges arise when evaluating the effectiveness of current international legal rules. An important problem, to start with, is the ambiguity around the goal of sustainable development. Development's ultimate objective is sometimes articulated as "sustainable development," but the international agreements that govern development do not currently provide any concrete, quantifiable strategies for achieving this goal. Moreover, despite the fact that many environmental regulations

DOI: 10.54254/2753-7048/66/2024MU0015

have been established to facilitate sustainable development, they are often composed in an unduly broad manner. There are currently many international environmental protection documents in existence, but their potential for practical application is limited because most of their provisions are of a philosophical nature and lack operationalization. Moreover, environmental agreements that have been ratified by a significant number of countries sometimes fail to specify the specific rights and obligations that member states really bear in practice.

The small number of nations taking part in international environmental accords with explicit commitments is another significant problem. Cooperation is impossible since some nations have postponed or refused to join international environmental conventions. The rights and obligations contained in these treaties are not properly implemented globally due to the small number of participating countries, and as a result, they lack true legal binding power. For instance, the OECD does not encourage investment activities in developed countries with the intention of promoting the development of investment activities in developed countries, despite the fact that developed countries make up the vast majority of its members and only a small number of developing countries are involved in the organization.

For instance, the OECD, which is an alliance of developed and only a few developing nations, does not and will not place excessive limitations on the investment activities of multinational corporations in nations that are not members of the OECD. Instead, it prefers to keep the two sets of environmental standards in place. Furthermore, the Kyoto Protocol is likewise confronted with this kind of problem. Of the major nations, only China and the European Union are still pursuing carbon emission reduction initiatives; Russia, and Canada have all declared their departure from the Kyoto Protocol.

Lastly, there are not enough robust measures in place to enforce international environmental law. Certain international organizations have norms that are not legally enforceable. These regulations, which are directed specifically at multinational firms, are merely meant to serve as guidelines; multinational corporations are under no need to abide by them. Using the OECD as an example once more, it is stated at the outset of the organization that the Norms are suggestions made by governments to multinational corporations [7].

4.2. The Lack of Coordination and Uniformity in Environmental Legislation Across Countries

National environmental laws are fragmented and incoherent, making it extremely difficult to hold multinational firms accountable for their environmental rights commitments. The main causes for this discrepancy include diverse national priorities, variable regulatory capacities, and varying levels of commitment to environmental preservation.

There are wide differences in national objectives; for example, some nations may prioritize environmental preservation over economic growth. The way that environmental policy is created and carried out is impacted by this difference in emphasis. Countries aiming for economic growth may relax regulations in order to draw in foreign capital, giving businesses a reprieve from ever-tougher environmental laws in other nations or inside their own. MNCs might choose the most advantageous locations for their operations based on environmental compliance costs rather than technological or financial feasibility because of the resulting legislative gaps.

Furthermore, the disparities in regulatory capacities between countries contribute to a lack of uniformity. Some countries have the infrastructure, experience, and financial resources to successfully adopt and enforce strict environmental laws. As a result, some may have limited capacities, and control and repercussions for infractions may be less strict. This mismatch jeopardizes international attempts to hold multinational firms accountable since they can migrate to less monitored places and circumvent environmental regulations.

DOI: 10.54254/2753-7048/66/2024MU0015

To summarize, efforts to hold MNCs accountable for their environmental rights obligations are hampered by a lack of coordination and uniformity in environmental regulation across nations. To tackle this challenge and ensure that environmental sustainability is not sacrificed in the name of economic success, we need a stronger global regulatory framework and harmonised environmental standards.

4.3. The Lack of Attention to Environmental Protection in Developing Countries

There is a general lack of concern for ecological and environmental protection in developing countries. Many of these countries have attracted transnational corporations with lax environmental laws in their pursuit of economic construction. The result has been to place a double burden on their environments - as dumping grounds for polluting industries and facing serious environmental degradation with limited resources to mitigate these problems.In order to solve the problem of survival, developing countries have to make concessions at the level of environmental regulation, such as MNCs, thus limiting the behavior of developing countries as host countries to change, improve and update their own environmental rules. At the same time, MNCs are more willing to enter foreign markets where environmental regulations are less stringent than in their home countries [8]. OECD research in 1993 showed that liberalized trade and investment rules between countries with uneven levels of environmental protection may encourage firms to relocate to jurisdictions with lower levels of environmental regulation and lower compliance costs [9].

In short, imperfections in international law, inconsistencies in domestic legislation and the neglect of environmental protection by developing countries prevent transnational corporations from being held accountable for their environmental rights and responsibilities. These obstacles must be addressed with concerted international efforts if we are to make any substantial progress in protecting our global environment.

5. Corresponding Solutions

In response to the obstacles to the accountability of transnational corporations mentioned above, this section will propose corresponding solutions, including the establishment of a monitoring mechanism, clarification of the environmental responsibilities of transnational corporations, strengthening of international collaboration, and clarification of the jurisdiction of transnational corporations for environmental infringements in four areas.

5.1. Establish a Monitoring and Accountability Mechanism for the Environmental Responsibility of MNCs' Investments

During the wave of globalization, transnational firms' investment activities had far-reaching environmental consequences. To monitor these operations and promote environmental sustainability, a rigorous monitoring and accountability structure has become an essential instrument. Transparent reporting requirements, third-party audits, and cross-border enforcement authorities are at the heart of such a process, combining to provide a comprehensive view of transnational firms' environmental performance.

Transparent reporting standards form the foundation of monitoring and accountability measures. MNCs should be compelled to frequently release their environmental impact assessment reports, which should include all relevant firm operations such as resource consumption, emission levels, waste disposal, and other environmental indicators. By making this information available to the public, stakeholders like as civil society organizations, consumers, investors, and affected communities can assess MNCs' environmental performance. This transparency not only raises public knowledge of

DOI: 10.54254/2753-7048/66/2024MU0015

environmental issues, but it also fosters healthy rivalry among businesses, leading them to adopt greener business methods.

In contrast, independent third-party audits are critical for assuring the report's accuracy and fairness. Third-party auditors or organizations should be professionally qualified and accountable for the results of their audits. Their responsibility is to guarantee that the information provided by MNCs is true and full, and that no data has been modified or misreported. Through regular audits, potential non-compliance can be detected and corrected in a timely manner, thus avoiding environmental damage.

Cross-border collaboration with enforcement powers is the most difficult aspect of monitoring and accountability measures. MNC operations typically involve numerous countries, making it difficult for a single country's legislation to properly manage their worldwide environmental implications.

Therefore, the international community needs to enhance cooperation and establish cross-border enforcement mechanisms to ensure effective regulation of environmental violations by MNCs. This may include international treaties, agreements and shared enforcement databases so that national regulators can access relevant information in a timely manner and take coordinated enforcement action.

5.2. Directly Stipulate the Environmental Responsibilities of MNCs' Investments

It is not only recommended, but absolutely necessary for multinational companies operating in a globalized market to expressly codify their environmental obligations. MNCs must explicitly state that they have a responsibility to integrate sustainable practices into their company operations and address environmental issues. This tactic ensures that commercial activities don't worsen environmental harm. To achieve this, realistic and workable directives that reflect the various operational contexts in which multinational corporations operate are needed. These rules, which point companies in the direction of certain environmental goals, should also be enforceable. By establishing specific emission reduction targets, MNCs are encouraged to implement cleaner technology and energy-efficient procedures, reducing their carbon footprint. Similarly, setting minimum recycling standards promotes resource efficiency and reduces waste.

Furthermore, by offering a framework for continuous improvement, these recommendations encourage multinational companies to go above and beyond the call of duty and implement innovative strategies that benefit both the environment and their financial performance. By integrating these ideas into their corporate structures, MNCs promote a positive feedback loop in which economic growth and environmental stewardship become mutually reinforcing objectives.

5.3. Strengthening International Judicial Cooperation and Communication

National governments around the world must work together to resist the exploitation of environmental rights by multinational companies. This unity of purpose necessitates a comprehensive approach that includes information sharing, mutual help in investigation and evidence collection, and the recognition and implementation of foreign court rulings. Such collaboration is crucial since MNCs frequently operate across numerous jurisdictions, making it difficult for any single country to adequately regulate and adjudicate their environmental impact.

An essential component of this cooperation is information exchange. By sharing information on corporate operations, environmental violations, and regulatory regulations, nations can better comprehend the global environmental impact of multinational corporations. International organizations ought to facilitate this exchange by acting as impartial repositories of this data. Mutual legal aid agreements need to be strengthened in order to facilitate efficient cross-border investigations and evidence gathering. As a result, authorities would be permitted to pursue environmental justice

DOI: 10.54254/2753-7048/66/2024MU0015

even in scenarios where multinational firms operate internationally. These kinds of agreements will streamline the very complex legal process of pursuing damages from multinational firms for environmental harm.

The adoption of rulings from foreign courts and their execution are equally important. In order to escape sanctions, multinational firms may relocate their operations or assets to countries that do not uphold foreign verdicts. Mutual recognition would ensure that crimes against the environment cannot be ignored merely because they were first decided in a separate jurisdiction. Moreover, enhanced communication and collaboration among governments, corporations, international organizations, and civil society are necessary to address the systemic issue of multinational corporations violating environmental rights. This collaborative effort should include ongoing conversations about emerging environmental concerns, the development of new legal frameworks, and the exchange of difficulties and success stories.

A global conference on environmental rights could serve as an example of this type of collaboration. This regular conference would provide an opportunity for stakeholders from all backgrounds to interact, discuss best practices, and share their experiences. For example, experts may provide case studies, NGOs may highlight particularly significant violations, and businesses may demonstrate how they incorporate environmental responsibility into their operations.

5.4. Further Clarify the Jurisdiction Over the Environmental Legal Responsibilities of Multinational Corporations

The jurisdiction that multinational firms choose has a considerable impact on the outcome of lawsuits concerning environmental infringement. MNCs often establish their headquarters in industrialized nations with robust environmental standards, while simultaneously making investments in less expensive developing nations. When there are environmental violations, claimants typically sue multinational corporations in their home countries to take advantage of stronger environmental infringement compensation processes and earn higher compensation. At now, the most efficient way to manage the social problems resulting from multinational corporations' cross-border operations may be through the laws of their home countries, since there is no global public body that can regulate MNCs' environmental duties in a standard manner [10].

And for this purpose, the principle of forum non conveniens should be emphasized. This principle means that the forum state should exercise jurisdiction when the plaintiff is unable to seek judicial relief in a third state with close ties. In environmental tort litigation against MNCs, a home state that has established the "forum necessitatis principle" should allow victims affected by environmental pollution to sue on the basis of this principle when it is not possible or reasonable for them to obtain judicial relief in the host state.

6. Conclusion

The study on corporate environmental responsibility uses multinational organizations as case studies and concludes by highlighting the key role played by corporations in environmental protection. As participants in the global economy, multinational corporations have a huge impact on the environment. They often cause great harm in developing countries and dispose of polluting enterprises. This paper emphasizes the importance of developing new international legal standards, harmonizing environmental regulations, and establishing effective monitoring and accountability structures. The study makes useful recommendations aimed at helping multinational corporations to create sustainable corporate cultures that prioritize environmental management and protect the environment for future generations.

DOI: 10.54254/2753-7048/66/2024MU0015

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0005

Improvement of the Carrier Delivery Rules in China's Maritime Law from an International Perspective

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Abstract: This paper examines the impact of carrier delivery rules on China's Maritime Law in the context of international maritime cargo transportation. It identifies significant issues such as the imbalance of interests between carriers and consignees, the challenges in carrier identification, and the inconsistencies in the duration of carrier responsibilities. Drawing on international conventions such as the Hague Rules, Hamburg Rules, and Rotterdam Rules, this study provides comprehensive recommendations for refining China's Maritime Law. Key proposals include improving the legal definitions and criteria for carrier identification, harmonizing liability periods for container and non-container cargo, and strengthening the fulfillment of carrier obligations through robust inspection and supervision mechanisms. These improvements aim to align China's Maritime Law with international standards, enhance the efficiency and reliability of maritime transport, and support the sustainable growth of China's maritime industry. The findings underscore the necessity for ongoing legal reforms to maintain China's competitive edge in global maritime trade.

Keywords: China's Maritime Law, Carrier Delivery Rules, International Maritime Conventions.

1. Introduction

As global trade flourishes, international shipping of goods by sea has become an important part of the international logistics system. However, the rules governing the delivery of goods by carriers in maritime shipping are complex and vary significantly across different jurisdictions. This presents challenges in standardizing practices and ensuring legal consistency, particularly for China, a major player in global shipping.

The Chinese Maritime Commercial Law, which governs maritime transport in China, has been heavily influenced by international conventions such as the Hague Rules, the Hamburg Rules, and the Rotterdam Rules. Despite these influences, there are notable gaps and inconsistencies within the Chinese legal framework, especially concerning the identification of carriers, the delineation of carrier responsibilities, and the handling of liability and exoneration provisions. These issues have led to legal ambiguities and practical difficulties in enforcing the law, thereby affecting the efficiency and reliability of maritime transport.

Given these challenges, there is a pressing need to re-evaluate and improve the Chinese Maritime Commercial Law to better align with international standards and practices. Chinese scholars have

DOI: 10.54254/2753-7048/66/2024MU0005

identified problems with the identification of the delivery object of goods and the provisions on the rights and obligations of carriers and consignees. They have proposed establishing delivery rules tailored to different transport documents based on the identity of the delivery subject [1]. Furthermore, there are calls for legislative reforms to address the period of responsibility of the Chinese carrier, exoneration from liability, and the setting of advance liability and proof responsibility. Suggestions also include abolishing the "maritime failure of liability" provisions, extending the duty of navigation throughout the shipping process, and expanding carrier liability [2]. Despite these scholarly contributions, there remains a need for a comprehensive study that synthesizes these perspectives and provides actionable recommendations for legal reform. Current research often highlights individual issues without offering a holistic view of how these elements interconnect within the broader legal and operational framework of maritime transport.

This paper aims to fill this gap by conducting a thorough analysis of the carrier delivery rules in international maritime transport and their implications for Chinese law. By reviewing the relevant international conventions and major shipping nations' regulations, this paper will identify best practices that can be adapted to the Chinese context. Additionally, the paper will evaluate the practical challenges faced in implementing current laws and propose specific reforms to enhance legal clarity and operational efficiency.

The structure of this paper is as follows: Section 2 reviews the international conventions and regulations of major shipping nations that balance the interests of carriers and consignees. Section 3 analyzes the current status and challenges of carrier delivery rules in the Chinese Maritime Commercial Law. Section 4 offers detailed recommendations for enhancing the legal framework related to the transport of goods by sea in China. Finally, Section 5 concludes the paper by summarizing the key findings and emphasizing the importance of these improvements for China's role in global maritime trade.

2. Provisions of International Conventions and Major Shipping States to Balance the Interests of the Parties to the International Transport of Goods by Sea

2.1. The Need to Balance the Interests of Both the Carrier and the Consignee

Maritime transport is an important component of international trade, with carriers and consignees as the main players in the transport of goods by sea. The balance of interests between these two parties is essential for the smooth conduct of international commerce. If either party holds excessive rights or obligations, it can lead to instability in the maritime market, thereby undermining the normal flow of international trade in maritime goods.

Balancing interests ensures that carriers can operate without facing overwhelming liabilities while consignees receive adequate protection for their goods, which promotes trust and cooperation between the parties [3]. Overburdening carriers with too many responsibilities can discourage their participation and investment in the shipping industry, while insufficient protection for consignees can lead to significant losses and reduced confidence in maritime transport. Therefore, it is imperative to establish a fair and equitable legal framework that addresses the needs and concerns of both carriers and consignees.

2.2. Provisions of International Treaties

International treaties play a significant role in establishing standardized rules for maritime transport, aiming to balance the interests of carriers and consignees. The Hague Rules, the Hamburg Rules, and the Rotterdam Rules are among the most influential international conventions in this regard.

The Hague Rules focus on the carrier's liability and provide numerous exemptions to protect carriers from excessive claims. Article 3, paragraph 6, stipulates the duration of the carrier's liability,

DOI: 10.54254/2753-7048/66/2024MU0005

while Article 4 outlines exemptions such as non-fault liability and exemptions for shipping breaches. The Hamburg Rules, on the other hand, place greater emphasis on the consignees' protection. Article 4 establishes the period of liability for carriers, extending their responsibility beyond what is stipulated in the Hague Rules. Article 5 defines the basis of the carrier's liability, and Article 6 sets higher limits for compensation, annulling the exemption for navigation errors and extending the carrier's responsibility. The Rotterdam Rules attempt to modernize and harmonize international maritime law by incorporating elements from both the Hague and Hamburg Rules. Chapter IV establishes the obligations of carriers, Chapter V details the carrier's liability for compensation, and Chapter XII addresses excessive liability. The Rotterdam Rules adopt the principle of presumed fault, balancing the interests of both parties by presuming the carrier's fault unless proven otherwise [4].

2.3. Relevant legal provisions of the principal shipping country

Major shipping nations have also developed their own legal frameworks to balance the interests of carriers and consignees, often influenced by international treaties but tailored to their specific legal and economic contexts.

Article 5 and 6 of the United States Maritime Goods Transport Act 1999 explicitly stipulate the rights and obligations of the shipper and the rights of the carrier and the ship. The carrier' s liability includes liability for navigability, cargo liability, basic responsibility for reasonable circumference, and liability in respect of delivery of goods, as well as the right to immunity, for example, for loss or damage to goods caused by the fault of the captain, crew, pilot or other employed carrier to drive or manage a ship. In addition, a carrier may also be liable for loss and damage to the goods as a result of force majeure, such as fire, weather, war or armed conflict.

In the Carriage of Goods by Sea Act 1992 of the United Kingdom, the carrier's related liability rights were not separately displayed, but included in the specific content under each heading. According to the common law of the country, if the carrier breaches an obligation to circumvent the shipment, he may become the insurer of the goods and liable for loss of goods, unless the loss is caused by a catastrophe, a governmental act, an act of public enmity or the shipper's own fault. Whether a delay in delivery constitutes a carrier's liability depends on the specific agreement of the contract of carriage and the applicable legal provisions. If the contract clearly stipulates a delivery time, and the carrier fails to deliver the cargo on time, the carriers may have to bear the liability for delayed delivery.

Other national laws, which differ from the specific provisions of the above-mentioned States and international conventions, have mostly the same provisions for the basic process of delivery by the carrier as well as the obligations of liability and the right of discharge.

3. The Status and Difficulties of the Rules of Delivery of Carriers in the Chinese Maritime Commercial Law

3.1. Relevant Provisions of the Chinese Maritime Commercial Law on Carrier Delivery

The Hague Rules and the Rotterdam Rules are the maritime conventions that best represent the current concepts of international maritime goods transport legislation, and some of their provisions on the carrier's liability regime have significant implications for the revision and improvement of the Chinese Maritime Commercial Law. Currently, the types of carrier liability in China are classified into three categories: the principle of strict liability, non-completely defraudable responsibility, and the principles of total defrauded responsibility.

The provisions of Article 46 and Article 51 of the Maritime Code of China on the carrier's liability and the reasons for exemption of Article 51 basically refer to the provisions of The Hague Rules and the Visby Rules. The principle of imputation of incomplete negligence liability is adopted, which

DOI: 10.54254/2753-7048/66/2024MU0005

allows the carrier to be exempted from liability under certain negligence circumstances. There are 17 exemption contents in The Hague Rules and Visby Rules, which are different from China's Maritime Code in terms of the number of items and specific expressions, but there is no substantial difference in the contents. They were established under the background of the conditions at that time in order to avoid the carrier from taking excessive voyage risks and to protect and encourage the development of China's maritime industry. They not only transfer the risks of the ship, but also break the balance of rights and interests between the ship and the cargo.

3.2. Issues in Practice

Firstly, the issue of carrier identification and the determination of liability limits is a significant challenge, as exemplified by the "Zhongji case". The main international conventions do not provide a unified concept for carriers, and each major international convention has its own contracting parties. At the same time, each country's legislation has its own standards for defining carriers, which are different from each other. This has led to the lack of a universally accepted carrier definition standard internationally, increasing the difficulty of identifying carriers [5]. Establishing a clear and precise rule for carrier identification in China is essential to facilitate quick determination of carrier identity, clarify compensation liabilities, and protect the legitimate rights and interests of consignees.

Secondly, the determination of the carrier's liability for delayed delivery presents another significant issue. China's Maritime Law does not fully incorporate the definition of delayed delivery as specified in the Hamburg Rules, which includes provisions for delivery within a reasonable time frame even without explicit agreement. This also creates problems in the application of law and is difficult to determine in practice. In practice, it is extremely rare for both parties of the ship and cargo to reach a clear agreement on the delivery time in advance. When signing the freight contract, it is usually difficult for both parties to pay attention to the specific arrival date. The common bill of lading format also does not have a "delivery time" column, and both parties are likely to overlook this point [6]. The conditions for determining delayed delivery are also extremely strict, so it is difficult to determine that the carrier's behavior constitutes delayed delivery in practice, and the interests of the consignee are easily infringed.

Finally, regarding the determination of the scope of the carrier's liability period, the determination of the liability period for Chinese maritime carriers in China's Maritime Law is not mandatory. The Chinese Maritime Code holds that the carrier is only responsible for the damage or loss of goods that occur during this period. But the meaning of international conventions in various countries is that if the cause of damage, loss or delayed delivery of goods occurs during the liability period, the carrier should also be held responsible. In practice in China, the time during the management of goods is consistent with the responsibility period for non-container goods, but there is a certain deviation from the responsibility period for container goods [7]. This regulation is not conducive to determining the carrier's liability in the event of damage or loss of goods, and is not conducive to safeguarding the legitimate interests of the consignee.

3.3. Importance of International Carrier Delivery Rules for the Carriage of Goods by Sea to China

The airworthiness obligation in the Chinese Maritime Commercial Law is mainly a duty of the carrier to carefully handle airworthyness, which is fundamentally different from the "preliminary obligation" under British and American ordinary law. Article 47 of the Maritime Commercial Law stipulates the duty of navigability, which is merely one of the obligations of the carrier, and if a carrier violates the obligation to navigate, the consequences and liability and other breaches of the contract shall be measured in accordance with the specific provisions of the maritime commercial law and shall be

DOI: 10.54254/2753-7048/66/2024MU0005

liable for the loss or damage of goods resulting therefrom. With regard to the obligations, liabilities and immunities of carriers, Chapter IV of the Chinese Maritime Commercial Code is basically drawn up with reference to the Hague Rules, even though China has not acceded to the Rules of The Hague.

In the context of the Hague era, the Chinese Maritime Commercial Law can maximize its positive role, but it is not in line with the development of the international shipping environment in the twenty-first century. The provisions of the maritime obligations in the Chinese maritime Commerce Law should also change with the actual development of international Shipping, pay attention to the absorption of the advanced provision of the globalized navigability obligations under the Rotterdam Rules, so that the interests of the carrier and the goods party can reach a new balance, while promoting China's shipping industry development, establish their own discourse in the international shipment market [8].

4. Recommendations on the Improvement of the Legal System Relating to the Transport of Goods by Sea in China

4.1. Improving the Identification of Carriers in Practice

In the context of globalization, the development and division of labor in the maritime transport industry, as well as the irregularity in the signing of the ticket, make the identification of the carrier increasingly complicated, leading to the occurrence of related litigation cases. The complexity of identifying carriers appears mainly in the post circulation of tickets, in our country, the issuer of tickets and carriers can be regarded as the same person, or the issuer of tickets is issued on behalf of the carriers, but in practice, the phenomenon of the abuse of other shipping companies' tickets occurs from time to time, and it is easy to recognize deviations in the case of the identity of carriers without considering the contract process, the payment of shipping fees and the issuance and flow of tickets [9]. Therefore, in this regard, the law should be continuously improved.

First and foremost, the legal definition of the carrier should be clarified, serving as the basis for identifying carriers. Identification criteria should be refined to include specific scenarios such as the conclusion of a maritime freight contract, the issuance of quotations by the captain, and the examination of transport arrangements and delivery orders. Additionally, attention should be given to the delivery process and subsequent dispute resolution mechanisms. For example, when the name of the carrier is not explicitly agreed upon in quotations or other documents and multiple carriers are possible, the law should provide clear guidelines for allocating the burden of proof to determine the responsible party. Furthermore, the establishment of a comprehensive registry for carriers could aid in the accurate identification and accountability of carriers. This registry should be accessible to relevant parties, including shippers and consignees, to verify the legitimacy and credentials of carriers. Regular audits and updates to this registry will ensure that it remains accurate and reliable.

4.2. Clarification of the Duration of the Responsibility of the Carrier in the Delivery Process

Article 46 of the Maritime Commercial Law of China stipulates: "During the period of liability of the carrier, the cargo due to loss or damage, unless otherwise provided in this section, carrier shall be liable for compensation." However, the current law does not clearly define the liability period. It should be explicitly stated that the carrier is responsible for any loss or damage occurring during this period, and that liability extends to cases where the cause of damage occurs within this timeframe [10].

Currently, Chinese carriers provide different liability periods for container and non-container cargo. For container cargo, the responsibility period spans from the receipt of the cargo at the loading port to its delivery at the destination port. For non-container cargo, the liability period extends from the moment the cargo is loaded onto the ship until it is disembarked. This inconsistency can lead to

DOI: 10.54254/2753-7048/66/2024MU0005

confusion in cargo management and regulatory difficulties. Therefore, harmonizing the liability periods for all types of cargo is essential to ensure clarity and consistency.

Additionally, the law should include provisions for delayed delivery. The definition of delayed delivery should be expanded to cover situations where, although no clear delivery time is agreed upon, the delivery has not been completed within a reasonable timeframe as would be expected of a diligent carrier. This would protect consignees' interests and ensure that carriers adhere to reasonable delivery schedules.

4.3. Strengthening the Fulfillment of the Obligations of the Carrier in the Delivery Process

Carriers have several fundamental obligations: proper storage, safe transport, notice and timely delivery of goods. To ensure these obligations are met, carriers must strictly adhere to agreed terms with shippers, ensuring that recipients receive their goods in the expected condition and timeframe.

In the process of strengthening the fulfilment of the obligations of carriers, it is necessary to strengthen the inspection and supervision of the carriers in the carriage process by the relevant departments. In addition, an independent third-party monitoring mechanism could be introduced to monitor and evaluate carriers' transport processes through third party bodies that have no interest in either of the shipping parties, to correct the carrier's violations in a timely manner and to guarantee the safe and lawful carriage of goods.

Moreover, penalties for non-compliance should be clearly defined and strictly enforced to deter carriers from neglecting their duties. The establishment of a transparent reporting system where stakeholders can report any discrepancies or issues encountered during the shipping process will also enhance accountability.

5. Conclusions

This paper conducts an in-depth research on the impact of carrier delivery rules on China's Maritime Law in international maritime cargo transportation, and based on the issues of imbalanced interests between carriers and consignees in international cargo transportation, it aims to improve the system of cargo delivery rules in China's Maritime Law to a certain extent.

The Maritime Code of China is a highly foreign-related law and should be consistent with international customary law. When it was enacted in 1993, most provisions of China's Maritime Law were based on international conventions and the relevant laws of other countries. Despite these influences, some provisions were not fully integrated, leading to inherent loopholes and practical problems. These issues have resulted in an imbalance of interests between carriers and consignees during the transportation of goods. China’s reliance on international conventions and foreign legislative experiences has provided a solid foundation, yet it has also introduced challenges that need to be addressed.

Judicial practices have highlighted these issues, demonstrating the necessity for ongoing improvement and revision of China's Maritime Law. The global maritime environment has evolved significantly since the 1990s, and China’s maritime industry has grown to become a major player in international shipping. Therefore, aligning China’s Maritime Law with contemporary international standards and practices is crucial for enhancing its effectiveness and ensuring it meets current industry needs. The proposed improvements include refining the identification of carriers, clarifying the duration of carrier responsibilities, and strengthening the fulfillment of carrier obligations.

With the continuous development of China's maritime transportation industry, the improvement of the Maritime Law is more in line with the needs of the Chinese era and will undoubtedly be an important reform in China's maritime cargo transportation field.

DOI: 10.54254/2753-7048/66/2024MU0005

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0013

Maritime Disputes from a Global Perspective and Solutions under International Law

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Abstract: This study explores the utilization and challenges of international laws in resolving global maritime disputes through a detailed analysis of representative cases from South America, Africa, and Asia. It highlights the crucial role of international law, particularly the United Nations Convention on the Law of the Sea (UNCLOS), in providing a legal framework and dispute resolution mechanisms. However, the study also identifies significant challenges, including political interference, legal ambiguity, and enforcement issues. By comparing regional dispute settlement mechanisms, the study demonstrates the effectiveness of multilateral negotiations in South America, regional legal frameworks in Africa, and a combination of multilateral and unilateral actions in Asia. Based on these insights, the study proposes several recommendations to enhance the international legal framework, promote regional cooperation, and innovate dispute resolution mechanisms. These measures aim to ensure fair and effective resolution of maritime disputes, maintain maritime peace and stability, and promote the healthy development of global ocean governance.

Keywords: Maritime disputes, international law, UNCLOS, dispute resolution mechanisms.

1. Introduction

In today's globalization, the ocean, as a blue link connecting countries, is increasingly prominent in its strategic position. The ocean is not only an important channel for international trade and transportation, but also a treasure trove of rich natural resources, including fishery resources, mineral resources and energy resources. However, with the growth of global population and economic development, the demand for these resources in various countries continues to grow, which has triggered a fierce competition for marine rights and interests. The frequent occurrence of maritime disputes has become one of the important challenges to global peace and stability.

These disputes not only involve the core interests of territorial sovereignty and the distribution of marine resources, but also deeply affect regional and global security and stability. For example, the sovereignty dispute in the South China Sea and the island dispute in the East China Sea not only involve China, Japan, the Philippines, Vietnam and other countries, but also attract the attention and intervention of foreign countries such as the United States, increasing the complexity of the dispute and the difficulty of resolution. Similarly, the division of seas between Argentina and Uruguay, Somalia and Kenya become more tense due to resource development. In addition, maritime disputes also involve environmental protection, marine ecology and sustainable development. The phenomena of illegal fishing, overexploitation and marine pollution have further exacerbated the seriousness of

DOI: 10.54254/2753-7048/66/2024MU0013

disputes and the urgency of resolution. The international community must face the dual challenge of protecting the marine environment and achieving sustainable development while developing and utilizing marine resources.

In this context, international law, as a vital tool for resolving sea areas disputes, plays an increasingly important role. International law provides a basic legal framework and principles, such as the United Nations Convention on the Law of the Sea (UNCLOS), which provides a legal basis for the implementation of maritime rights and resource development among countries. However, due to the differences in the interpretation and application of international law among countries, as well as the lack of the implementation mechanism of international law, there are still many challenges in practical operation. Therefore, from the perspective of international law, it is of great significance to maintain international order and promote global peace and development to study maritime disputes and their settlement mechanisms in depth.

At present, scholars at home and abroad have conducted extensive research on the settlement of disputes in the sea areas [1], the application of national laws and regulations in the settlement of disputes in international law [2], and the dispute in the sea area from a global perspective [3]. Through the sorting out of existing literature, it's obvious that with the complex and changeable international situation and the development and application of new technologies, maritime disputes have shown new characteristics and trends. For example, South American countries tend to resolve disputes through multilateral negotiations, while African countries rely on regional legal frameworks and organization, while Asian countries often take a combination of multilateral and unilateral actions. On the basis of the research results of predecessors, this article will conduct an in-depth and comprehensive discussion on maritime disputes and its settlement mechanism, and put forward suggestions on the global sea dispute resolution path.

This research consists of five parts. Following the introduction, the second part will introduce global representative cases of maritime disputes, showcasing the current situation and characteristics of disputes in different regions. The third part will explore the application, shortcomings, and challenges of international law in the settlement of maritime disputes by region. The fourth part will propose pathways for global maritime dispute resolution based on the previous analysis. The fifth part will summarize the main findings of the research and point out future research directions.

2. Case Analysis About Global Maritime Disputes

Maritime disputes around the world have their own characteristics, reflecting the geopolitical, legal framework and historical background of different regions. Analyzing these disputes enhances our understanding of the role and limitations of international law in resolving maritime conflicts.

2.1. South American Maritime Disputes Cases

The maritime dispute between Argentina and Uruguay is mainly focused on the La Plata River and its estuary. This area is a crucial fishing and shipping channel between the two countries and contains significant oil and gas resources. The focus of the dispute is on how the two countries demarcate their respective maritime borders to ensure their exclusive right to develop resources. Although the two countries signed the Treaty of the La Plata River in 1973 and the Additional Protocol in 1974, there are still many frictions and conflicts in practice. In recent years, the two sides have tried to resolve the dispute through bilateral negotiations and international arbitration, but the effect is limited and the problem has not been completely resolved. For example, in 2006, Uruguay built a pulp mill on the La Plata River. Argentina believes that the project will have a serious impact on the water quality and ecological environment of the river, leading to tension between the two countries and causing years of legal and diplomatic disputes. In 2010, the International Court of Justice (ICJ) ruled that

DOI: 10.54254/2753-7048/66/2024MU0013

Uruguay and Argentina cooperate fully on environmental impacts and strengthen environmental protection measures, but the two countries still disagree in the implementation process [4].

Brazil and its neighbors also have disputes over maritime delimitation, especially with countries such as Uruguay and Guyana. The demarcation of Brazil's sea areas is closely related to its territorial expansion and colonial history. Since independence in 1822, Brazil's borders have undergone many adjustments and expansions, many of which are determined by signing treaties with adjacent countries, which often involve the division of sea areas. Brazil has a vast coastline and rich marine resources, especially the large oil fields found off the coast of Brazil, which makes the demarcation of sea areas more sensitive and complex. Brazil and Uruguay mainly focus on the overlapping areas of the continental shelves and exclusive economic zones of the two countries on the demarcation of the South Atlantic. Brazil advocates demarcation of boundaries in accordance with international law to ensure the right to develop the region's rich oil and gas resources. In 1997, Brazil and Uruguay reached a preliminary maritime delimitation agreement through bilateral negotiations, but controversies persist in its implementation. The maritime delimitation issue between Brazil and Guyana involves their continental shelves. In 1999, Brazil and Guyana launched negotiations through diplomatic channels in an attempt to resolve the dispute, and although they reached a delimitation agreement in 2004, conflicts over resource development interests continue [5].

2.2. African Maritime Disputes Cases

Disputes in African waters are also representative. The center of the maritime dispute between Somalia and Kenya is the triangular sea between northern Kenya and southern Somalia, which is considered to be rich in oil and gas resources. The dispute began in 1979, when Kenya passed domestic legislation to unilaterally declare its exclusive economic zone in the Indian Ocean but was opposed by Somalia. Somalia advocates demarcation according to the principle of natural extension of the continental shelf of coastal countries, while Kenya advocates parallel demarcation according to the latitude. In 2014, Somalia referred the dispute to the ICJ for judicial adjudication. The ICJ decided to accept the case in 2017 and began its formal trial in 2019. In 2021, the ICJ made a preliminary ruling in favor of some of Somalia's claims, but the dispute is still pending because Kenya is dissatisfied with the outcome of the ruling [6].

In addition, the multinational maritime disputes in the Gulf of Guinea are even more complex, involving the interests and demands of many countries. The Gulf of Guinea is rich in oil and natural gas resources, and the exploitation and distribution of these resources have become the focus of disputes among countries. In addition, due to historical reasons and natural geographical conditions, there is ambiguity and controversy in the demarcation of the maritime areas of countries along the Gulf of Guinea, leading to frequent disputes. For example, the sovereignty dispute between Nigeria and Cameroun on the Bakassi Peninsula has lasted for many years. The Bakassi Peninsula is located in the Gulf of Guinea. It is rich in resources and has an important strategic location. In 1994, Cameroun submitted the dispute to the ICJ, seeking a ruling on sovereignty over the region. In 2002, the ICJ ruled that the Bakassi Peninsula belonged to Cameroun, but Nigeria was dissatisfied with the outcome of the ruling. After years of negotiations and international mediation, the two countries signed the Greentree Agreement in 2006 under UN mediation, where Nigeria agreed to gradually withdraw its troops, partially resolving the dispute [7].

2.3. Asian Maritime Disputes Cases

In Asia, the sovereignty dispute over the South China Sea islands is the focus of attention. The South China Sea is not only rich in oil and gas resources and fishery resources, but also strategically important. It is one of the busiest shipping channels in the world. About one-third of global shipping

DOI: 10.54254/2753-7048/66/2024MU0013

passes through this place every year. The core of the dispute is the sovereignty claim of the South China Sea islands and their surrounding waters. China claims indisputable sovereignty over the South China Sea islands and their surrounding sea areas on the basis of historical rights and international law. China's "nine-line" claim covers most areas of the South China Sea, while countries such as Vietnam and the Philippines claim sovereignty over some islands and sea areas. Vietnam's claims are based on historical use and international law, especially the provisions of the UNCLOS on the exclusive economic zone and the continental shelf. In 2013, the Philippines unilaterally referred the dispute to the Permanent Court of Arbitration in The Hague, seeking to adjudicate the legitimacy of China's claim in the South China Sea. In 2016, the arbitral tribunal ruled, denying most of China's historic claims in the South China Sea and supporting some of the Philippine claims. China refused to accept the award, believing that the arbitral tribunal had no jurisdiction and reaffirmed its sovereignty over the South China Sea. This ruling not only failed to ease tensions in the South China Sea, but also exacerbated regional instability [8].

Meanwhile, the Dokdo (Takeshima) dispute between Japan and South Korea also reflects the complexity of the East Asian maritime dispute. The origin of the Dokdo dispute can be traced back to the early 20th century. In 1905, Japan officially incorporated Dokdo into Shimane Prefecture during the Russo-Japanese War, and continued to actually control the island after the war. After the end of World War II in 1945, with the defeat of Japan and the signing of the San Francisco Peace Treaty, the sovereignty of Dokdo was once again controversial. After 1954, South Korea actually controlled Dokdo and stationed troops on the island and set up administrative facilities to strengthen its sovereignty claim. Japan has repeatedly proposed to resolve the dispute through the ICJ, but South Korea insists that Dokdo is its inherent territory and refuses international judicial intervention. The Dokdo dispute is not only a territorial issue, but also involves history and national emotions. It has become a long-term sensitive issue in bilateral relations between Japan and South Korea. In 2005, the Japanese government announced "Takeshima Day", which triggered a strong protest from South Korea, and the relations between the two countries were once tense. Despite recent economic and cultural cooperation, the Dokdo dispute remains unresolved. Calls from the international community and regional organizations for peaceful dispute resolution have yet to yield practical results [9].

These cases of maritime disputes reveal the competition and conflict between countries in the rights and interests of the sea area, and also reflect many factors in the formation of maritime disputes in various countries, mainly the seizure of resource development, the ambiguity of the division of the sea area, and the historical impact. Besides, it also shows various measures taken by countries to deal with maritime disputes, such as dialogue and negotiation, submission to the ICJ and international arbitration institutions for adjudication, and cooperation.

3. The Utilization and Challenges of International Laws and Regional Comparative Analysis

3.1. Application of International Law in Maritime Dispute Settlement

The UNCLOS is hailed as the "Constitution of the Ocean", which is an important part of modern international law, and is particularly applicable to global maritime disputes. It provides clear legal guidance on maritime rights and interests and offers mechanisms for peaceful dispute resolution. The UNCLOS defines the demarcation of national sea areas, rights, and obligations, and lays out pathways for international dispute resolution. Provisions like the width of the exclusive economic zone, the definition of the continental shelf, and the rights to resource development provide a framework for negotiation in disputes. Additionally, its dispute resolution mechanisms—negotiation, mediation, arbitration, and litigation—facilitate peaceful settlements. For instance, Brazil and its neighbors seek fair maritime boundary agreements through diplomatic negotiations or international arbitration under

DOI: 10.54254/2753-7048/66/2024MU0013

UNCLOS provisions. The UNCLOS also guides and normalizes maritime disputes in Africa, such as the Somalia-Kenya dispute and Gulf of Guinea conflicts.

The ICJ and international arbitration play crucial roles in maritime dispute resolution, offering authoritative platforms for legal interpretation, application, and adjudication. They help promote peaceful and fair dispute resolution. For example, in the sovereignty dispute over the South China Sea islands, although the ICJ is not directly involved in the dispute settlement process, its status as an authoritative institution of international law provides an important reference for the parties to the dispute for legal interpretation and application. Through the previous jurisprudence and advisory opinions of the ICJ, countries can more clearly understand the application of the principles of international law in maritime disputes, so as to promote the settlement of disputes through diplomatic negotiations, consultations and other peaceful means. International arbitration, exemplified by the South China Sea arbitration initiated by the Philippines, demonstrates the potential of arbitration in complex disputes, offering a relatively fair and transparent resolution platform through professionalism, neutrality, and procedural flexibility.

3.2. Limitations of International Law in Practical Application

In the process of the implementation of international law, practical application is restricted by a variety of limitations, mainly including the interference of political factors, the ambiguity of legal provisions and the ineffectiveness of legal implementation.

Political factors play an important role in the implementation of international law. Countries often take flexible positions in international affairs based on their own interests, which makes it difficult for international law to play its due role on some sensitive issues. The fierceness of the political game has made the legal framework originally aimed at maintaining international order and fairness possible to become a tool for the competition of major powers in practice, thus weakening the authority and universal applicability of international law.

The ambiguity of the provisions of international law is also a major obstacle in the application of international law. Because international law involves many sovereign countries, its formulation process is often full of compromise and balance, resulting in the abstract and generalization of legal provisions in some cases. In specific cases, how to accurately interpret and apply these vague provisions has become a difficult problem for international scholars and the judiciary. Ambiguity not only increases the uncertainty of the application of the law, but may also cause disputes and conflicts among countries, further hindering the effective implementation of international law.

The inadequacy of legal enforcement is another serious challenge to international law. Compared with domestic law, international law lacks a strong enforcement mechanism. Although the international community has established international judicial institutions such as the ICJ, it is often limited by various factors in handling transnational disputes, making it difficult to ensure the timely implementation of judgements. In addition, some countries may selectively abide by or circumvent international law out of various considerations, which undoubtedly weakens the binding force and practical effect of international law.

3.3. Regional Differences in Dispute Settlement Mechanisms

Dispute settlement mechanisms show significant differences in different regions. South America, Africa and Asia each have unique multilateral negotiations, mediation models and regional legal frameworks and organizational roles.

Dispute resolution in South America is mainly carried out through multilateral negotiations and mediation mechanisms. For example, the maritime demarcation dispute between Brazil and Uruguay reached a preliminary agreement through bilateral negotiations and promoted the peaceful settlement

DOI: 10.54254/2753-7048/66/2024MU0013

of the dispute with the support of the international community. The African continent relies on its regional legal framework and organizations, such as the African Union and the African Continental Free Trade Zone, to promote the construction and improvement of the dispute settlement mechanism. For example, the African Continental Free Trade Area promotes the liberalization of trade and investment in the region through a unified legal framework, and at the same time establishes a dispute settlement mechanism to provide an efficient and fair solution to disputes between member countries. The Asian region has shown the coexistence of multilateral and unilateral actions in dispute resolution. On the one hand, Asian countries actively participate in multilateral cooperation mechanisms, such as ASEAN and its leading Regional Comprehensive Economic Partnership Agreement (RCEP), which resolve regional disputes through multilateral negotiations and consultations; on the other hand, in the face of a complex and changing international environment, some countries have to take unilateral actions to safeguard their own interests.

3.4. Implementation and Coordination of International Law Rules

The implementation and coordination of the rules of international law face many challenges around the world. Different regions have different interpretations and practices of international law, and the implementation effect of international law is also different. Compared with Europe and Africa, Europe can often implement the rules of international law more effectively with its profound rule of law tradition and perfect legal system. For example, EU member states have successfully promoted the in-depth development of regional economic integration and cross-border cooperation through joint compliance with EU laws and international laws. In contrast, although the African region has made some progress in strengthening the regional legal framework and organizational construction in recent years, it still faces many difficulties in the implementation of international law, such as lack of resources and limited enforcement capacity.

Countries must balance domestic law with international law. For example, China, while actively participating in global governance, faces challenges in harmonizing domestic laws with international conventions, especially in environmental protection. Efforts to revise domestic laws and strengthen cooperation with international organizations have advanced China's legal framework and contributed positively to global environmental protection.

4. Suggestions on the Path for the Settlement of Global Maritime Disputes

In today's globalization, the ocean, as a blue link connecting countries, has an increasingly prominent strategic position. However, the development and utilization of marine resources and the rise in international maritime activities have led to frequent maritime disputes, impacting international peace and stability. Post-World War II, the UN Charter prohibited the use of force or threats in resolving member state disputes, promoting a trend towards diverse and peaceful dispute resolution methods [10].

4.1. Improving the Framework of International Law

The framework of international law is the basis for resolving disputes over sea areas. However, in the current international law system, some rules are vague and lagging, and it is difficult to adapt to the rapidly changing international ocean situation. Therefore, improving the clarity and applicability of the rules of international law is the primary task of resolving disputes in sea areas. Taking the UNCLOS as an example, as the basic law of international sea law, it provides a legal framework for the rights and obligations of countries in the field of oceans. However, in practice, some provisions of the UNCLOS, such as the demarcation of exclusive economic zones and the demarcation of the continental shelf, are often controversial due to the lack of specific and clear operating guidelines. To

DOI: 10.54254/2753-7048/66/2024MU0013

this end, the international community should strengthen the study of the interpretation and applicability of the UNCLOS and clarify the specific meaning and scope of application of relevant provisions by formulating more operational rules or guidelines for implementation, so as to reduce misunderstandings and differences. At the same time, in response to emerging marine issues, such as marine environmental protection, marine biodiversity protection, and the utilization of marine genetic resources, the international community should speed up the formulation and improvement of relevant international law to ensure that these fields have laws and regulations to follow and enhance the applicability of international law. For example, in response to the problem of marine plastic pollution, the international community can formulate special international treaties or agreements to clarify the responsibilities and obligations of countries and jointly promote marine environmental protection.

It is equally important to enhance the authority and execution of international judicial institutions, so it is necessary to strengthen the independence and impartiality of international judicial institutions. International judicial institutions should ensure that cases are tried independently and impartially without any external interference and influence during the trial process. To this end, the international community should increase its support for international judicial institutions and ensure that they have sufficient resources and capacity to fulfil their responsibilities. Promote countries to respect and implement the rulings and decisions of the international judiciary. The rulings and decisions of international judicial institutions are an important cornerstone of maintaining the international rule of law and international order. However, in practice, some countries refuse to implement the rulings and decisions of international judicial institutions for various reasons, which seriously undermines the authority and enforcement of international judicial institutions. To this end, the international community should strengthen supervision and restraint on these countries and promote their respect for and implementation of the rulings of international judicial institutions.

4.2. Promoting Regional Cooperation

Regional cooperation is one of the effective ways to resolve disputes in sea areas. By establishing a regional dispute settlement mechanism, maritime disputes in the region can be handled more flexibly and efficiently. Take Southeast Asia as an example. There are frequent maritime disputes in this region, involving territorial sovereignty and maritime rights and interests disputes between many countries. In order to mitigate the impact of these disputes on regional peace and stability, Southeast Asian countries have strengthened regional cooperation and established multiple regional dispute resolution mechanisms. Among them, the most representative is the Declaration on the Behavior of the Parties in the South China Sea and its follow-up documents, which provide important guidance and norms for countries in the South China Sea to deal disputes. By complying with and implementing these documents, countries in the South China Sea have maintained restraint and rationality in maritime disputes and have made positive contributions to peace and stability in the region.

Cross-border cooperation and information sharing are also important means for resolving maritime disputes. By strengthening transnational cooperation, countries can jointly meet marine challenges, share marine resources, and maintain marine order. At the same time, through information sharing, countries can keep abreast of the dynamics of the sea area, grasp the situation of disputes, and formulate coping strategies. Take combatting piracy and maritime terrorism as an example. These activities seriously threaten international maritime security and stability. In order to effectively respond to these threats, countries have strengthened transnational cooperation and information sharing. Through the establishment of a joint patrol mechanism, the sharing of intelligence information, the development of joint drills, etc., all countries cooperate to fight and jointly combat piracy and maritime terrorism. These efforts not only improve the efficiency and quality of the crackdown, but also enhance mutual trust and cooperation among countries.

DOI: 10.54254/2753-7048/66/2024MU0013

In the settlement of maritime disputes, cross-border cooperation and information sharing are also of great significance. Countries can enhance the understanding and understanding of maritime disputes and provide strong support for dispute resolution by establishing joint investigation mechanisms, sharing sea area data, and carrying out joint scientific research. At the same time, by strengthening transnational cooperation and information sharing, countries can also jointly meet global challenges such as marine environmental protection and marine resource utilization, and promote the improvement and development of the global marine governance system.

4.3. Innovating Dispute Resolution Mechanism

Multilateral cooperation and resource sharing are an innovative way to resolve disputes in the sea. Through multilateral cooperation to develop sea resources and share development results, countries can resolve maritime disputes on the basis of mutual benefit and win-win results. For example, with global warming and the acceleration of ice melting in the Arctic, the strategic position and resource value of the Arctic region are becoming increasingly prominent. However, the Arctic region involves territorial sovereignty and maritime rights disputes among many countries. In order to mitigate the impact of these disputes on peace and stability in the Arctic region, countries have strengthened multilateral cooperation, development and resource sharing, and achieved the goal of resource sharing and mutual benefit and win-win results by jointly formulating plans for resource development and environmental protection in the Arctic region, establishing joint scientific research institutions, and carrying out joint scientific research. These efforts not only promote the development of the Arctic region, but also provide a valuable reference for the settlement of global disputes.

Traditional international arbitration and mediation mechanisms have played a certain role in resolving disputes in the sea area, but there are still some shortcomings. In order to better adapt to the rapidly changing international maritime situation and dispute resolution needs, the international community should actively explore a new type of international arbitration and mediation mechanism. A possible new arbitration mechanism is to establish a professional international arbitration institution or arbitral tribunal. These institutions or tribunals can conduct specialized arbitration for specific types of maritime disputes (such as fisheries disputes, oil and gas resources disputes, etc.) to improve the professionalism and efficiency of arbitration. At the same time, these institutions or tribunals can also learn from the experience and practices of international commercial arbitration and introduce more flexible and convenient arbitration procedures and rules to meet the actual needs of both parties to the dispute. Another possible new mediation mechanism is the establishment of a multi-party mediation platform or mechanism. These platforms or mechanisms can invite both parties to the dispute and relevant stakeholders to participate in the mediation process and seek consensus and solutions through dialogue, consultation and other means. This method can not only enhance the fairness and transparency of mediation, but also improve the success rate and execution of mediation.

5. Conclusion

This study has explored various representative cases of global maritime disputes, highlighting the core role of international law in their resolution. From South America to Africa to Asia, detailed analysis reveals both the potential and challenges of international law, including political interference, legal ambiguity, and enforcement issues.

By comparing regional dispute settlement mechanisms, the study illustrates the effectiveness of multilateral negotiations and mediation in South America, the regional legal framework and organization in Africa, and the unique multilateral and unilateral action model in Asia. These differences not only reflect the formation factors of disputes in various regions, but also provide a diversified perspective and reference for the resolution of disputes in global sea areas.

DOI: 10.54254/2753-7048/66/2024MU0013

Based on the above analysis, this study puts forward suggestions for improving the dispute settlement mechanism. First, enhancing the framework of international law by clarifying and improving its rules, and strengthening the authority and enforcement of international judicial institutions, is essential for fair and effective dispute resolution. Second, promoting regional cooperation, establishing regional dispute resolution mechanisms, and strengthening cross-border cooperation and information sharing can help resolve conflicts at the regional level and reduce the risk of conflict escalation. Finally, innovative dispute resolution mechanisms, such as promoting multilateral cooperation and resource sharing, and exploring new international arbitration and mediation mechanisms, will provide more flexible and efficient solutions for maritime disputes.

In a word, the settlement of global maritime disputes is a long-term and complex task, which requires the joint efforts of the international community to continuously improve the international legal system, strengthen regional cooperation, and innovate the dispute settlement mechanism. Only in this way can we maintain the peace and stability of the oceans and promote the benign development of global ocean governance while respecting the sovereignty and maritime rights and interests of all countries.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0010

The Current Application and Optimization Suggestions of the Punitive Damages System in China

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Abstract: China has now established a system of punitive damages, with *the Civil Code* as the main body, supplemented by other separate laws. This paper posits that the punitive compensation system addresses the shortcomings of the current private law system. With the blurring boundaries between public and private law, the punitive compensation system is more conducive to preventing social risks and providing comprehensive and adequate relief to the rights and interests of the infringed. The purpose of this paper is to analyse the historical origin and function of the punitive damages system, to summarize the process of its localised application in China, and then to analyse the status and existing problems in the application, and to put forward the improvement methods for the existing problems. The research value of this paper mainly includes two aspects: theoretically, it helps identify defects and deficiencies in the application of the punitive damages system; practically, it aids in reducing the judiciary's subjective arbitrariness.

Keywords: punitive damages, current application and optimization, suggestions.

1. Introduction

The United Kingdom was the birthplace of the punitive damages scheme. With the continuous progress and development of the rule of law in China, based on the sanctions of malicious infringement and the purpose of better safeguarding the rights and interests of the infringed, China has gradually instituted a system of punitive damages with the nature of public law to play a disciplinary, deterrent and relief function. After the promulgation of the Civil Code, China established the punitive compensation system for the first time, and made specific provisions on the fields of product infringement, environmental infringement and intellectual property infringement. In product infringement, Article 1207 of *the Civil Code* makes specific provisions on the utilization of punitive damages. In environmental tort, with the increasingly serious environmental pollution in the world and the transformation of the values of ecological civilization, Article 1232 of *the Civil Code* makes a general provision for punitive damages. In intellectual property rights, *the Trademark Law* revised in 2013 introduced punitive damages into intellectual property rights for the first occasion, and then successively introduced punitive damages in *the Copyright Law* and *Patent Law*. However, due to the scattered and inconsistent application standards of punitive damages for rights to intellectual property in the single law, Article 1185 of *the Civil Code* once again makes general provisions on punitive damages for intellectual property rights.

DOI: 10.54254/2753-7048/66/2024MU0010

Nonetheless, in judicial practice, there are many dilemmas in the implementing the punitive damages system. Under the public law model of governance, there is often a possibility of failure on the part of the subject of public law regulation, while public law regulation focuses more on punishment than relief, which is not conducive to safeguarding the interest of aggrieved parties. Under the private law remedies model, private subjects often lack the will to request punitive damages due to the uncertainty of the effects of the remedies. At the same time, due to the existing legislation on punitive damages provisions being mostly general, in practice, the judgement standard is often difficult to unify, resulting in excessive space for the judge's discretion, and very likely to result in different judgements in similar cases. In view of this, this paper will be from the theoretical level in-depth discussion of the current situation of the domestic application of the deficiencies and shortcomings, and at the practical level to reduce the judicial subjective trespassing to improve the path.

This paper is structured into three main sections. The initial section examines the historical development and legislative status of the punitive damages system, clarifies its foreign origins and functions, and summarises its localisation process in China. The second part examines the challenges of applying the punitive damages system in China, focusing on defects in the public law system, ineffective private law remedies, and excessive judicial discretion. The third part proposes optimisation paths for these issues, suggesting improvements such as combining public and private law, increasing practical application, safeguarding government independence, and balancing penalties with remedies. Additionally, it recommends strengthening publicity, distinguishing between statutory and punitive damages, and drawing on international experience, as well as refining compensation criteria and establishing uniform judgement standards to reduce judicial discretion.

2. History and Legislative Status of The Punitive Damages System

2.1. Foreign Origins and Functions of Punitive Damages System

2.1.1. Origins and Initial Functions of The UK

The punitive damages system originated in England, dating back to the Wilkes v.wood case of 1763. This case recognised punitive damages aimed at punishing the defendant for malicious conduct and deterring future misconduct. Over time, punitive damages have grown in the English legal system, although they have also caused controversy due to the lack of harmonised rules.

In the 1964 case of Rookes v. Brand, punitive damages were defined as punitive and exemplary, distinct from aggravated damages. The case outlined three scenarios for applying punitive damages: oppressive, wanton or unconstitutional acts performed by a public official; situations where the defendant benefits beyond compensating the plaintiff's damages; and instances expressly provided for by law.

There is some controversy about the function of the punitive damages system. According to scholar Owen, the functions of punitive damages can be categorized as punishing, deterring, compensating and enabling private assistance in law enforcement [1]. Dobbs further adds that punitive damages not only serve these functions, but also save the state treasury the cost of litigation and compensate the victim for his or her mental anguish [2]. These views provide different perspectives on the multiple roles and importance of punitive damages in the legal system.

2.1.2. Developments and Amendments in The United States

The United States developed the punitive damages system based on British law, forming a unique legal system. Initially, punitive damages were included in statutes such as section 7 of *the Sherman Act* of 1890 and section 4 of *the Clay Act*, which applied the system of punitive damages only to the

DOI: 10.54254/2753-7048/66/2024MU0010

punishment of bullying and humiliating behaviour. After the twentieth century, the United States gradually expanded the punitive damages system to apply to penalties for abuse of power, product liability and business torts, extendeding it to antitrust, labour law, intellectual property law, maritime law and other economic areas. In judicial practice, United States courts routinely award large punitive damages in order to punish and deter.

Professor Wang Zejian summarises four main factors associated with punitive damages in U.S. law: state court jurisdiction, inconsistent standards among states, reliance on jury opinions, the win-share system for attorneys' fees, and the hidden public law nature of U.S. tort law [3].

2.2. The Localisation Process of Punitive Damages in China

2.2.1. Early Introduction and Initial Application

China adopted characteristics of the civil law system, introducing punitive damages in 1993, through *the Law on the Protection of Consumers' Rights and Interests.* Subsequently, the punitive damages system was included in *the Contract Law* of 1999, *the Labour Contract Law* of 2007, *the Food Safety Law* of 2009 and *the Trademark Law* of 2013.

On 1 January 2021, *the Civil Code of the People's Republic of China* came into force, providing for the application of punitive damages in three areas, including product infringement, environmental infringement and intellectual property rights. In march of the same year, the Supreme People's Court issued the Judicial Interpretation on Punitive Damages for Intellectual Property Rights, and the Copyright Law and Patent Law, which were amended and implemented on 1 June, also introduced a punitive damages system. *The Interpretation on the Application of Punitive Damages in Hearing Cases of Ecological and Environmental Tort Disputes* passed in December of the same year further improved the applicable rules of punitive damages in the environmental field.

In recent years, China has issued a series of laws and regulations in different fields, which stipulate the punitive compensation system in different fields, marking that China has entered a new period of development from the introduction of punitive compensation system into judicial practice.

2.2.2. Specific Provisions in Existing Legislation

In product infringement, article 1207 of *the Civil Code* states that if a product is produced or sold knowing it is defective, resulting in death or serious health damage, the infringed person can claim punitive damages. However, there have been disputes over the interpretation of "corresponding" as stipulated in the provision, which has led to inconsistencies in the determination of the amount of punitive damages.

In environmental infringement, article 1232 of *the Civil Code* provides that if the infringer violates the law and deliberately contaminates the environment or destroys the ecology causing serious consequences, the party who was harmed by the infringement may seek equivalent punitive damages. The adoption of *the Interpretation on the Application of Punitive Damages in Hearing Cases of Ecological and Environmental Tort Disputes* further regulates the scope of the use of the punitive damages mechanism in environmental litigation, but the standard for calculating damages remains inconsistent.

In intellectual property, punitive damages are included in *the Trademark Law*, *the Copyright Law* and *the Patent Law*, while *the Civil Code* also provides for this in general, with article 1185 stipulating that intentional infringement under aggravating circumstances allows for punitive damages. However, the legal norms have not yet been fully adopted in judicial practice, and different understandings of "malice" and "corresponding" have led to difficulties and disputes in practice.

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3. Dilemmas in The Judicial Application of The Punitive Damages System

3.1. Deficiencies in The Public Law Regime

3.1.1. Imperfect Legislation

The punitive damages system originated in the common-law system, while China mostly draws on the civil-law system. Civil law countries generally have a more conservative attitude towards the punitive damages system. For example, Germany and Japan do not allow for a system of punitive damages in the existing laws. The German Civil Code does not recognize the punitive function of tort liability, let alone the existence of punitive damages. Therefore, the localisation of the punitive damages system in China faces the problem of institutional integration. In essence, China has not simply copied the structure of civil compensation of the civil-law system, nor transplanted the punitive compensation system of the common-law system; rather, it has developed a model of punitive compensation system with Chinese characteristics.

The provisions on the punitive damages system in China's current laws are mainly embodied in *the Civil Code*, which is dominated by general provisions and supplemented by specific provisions in other sectoral laws. However, there are fewer provisions on the punitive damages system in public law and fewer state interventions, leading to inconsistencies in the provisions and application of punitive damages in the various sectoral laws of the private law system [4].

3.1.2. Ambiguity in The Government's Role

In environmental violations, for example, there are deficiencies in the environmental legal responsibilities of governments, which can easily lead to a failure of governmental protection and a failure of environmental law [5]. The government tends to emphasise economic development to the relative neglect of environmental protection. Ecological benefits tend to be expressed as long-term benefits rather than processes that can be seen immediately, but economic benefits can be quickly apparent. Moreover, China's administrative appraisal system takes GDP as the main appraisal and evaluation criterion, leading to the government's differential treatment of different environmental offences and potentially sacrificing some environmental benefits for economic gains which hinders the reduction of environmental pollution and ecological damage.

In addition, China's current legal system mainly emphasises corporate responsibility and relatively neglects government responsibility. Laws on environmental protection focus on penalties for polluters and lack the government's preventive and remedial measures, as well as a system for monitoring the government's performance of its duties. Although the Ministry of Ecology and Environment promulgated *the Measures for Interviews by the Ministry of Ecology and Environment* in 2020, which provides for interviews and accountability of local governments that fail to fulfil their environmental protection duties in accordance with the law, they still face many practical dilemmas in practice [6], and penalties for the government are often limited to warnings rather than real solutions to the problem.

3.2. Ineffectiveness of Private Law Remedies

3.2.1. Limited Relief Effects

In intellectual property, *the Judicial Interpretation of Punitive Damages for Intellectual Property* makes specific provisions for the calculation of the base and determination of the multiplier of the amount of punitive damages. These are based on the amount of the plaintiff's actual losses, the amount of the defendant's unlawful proceeds, and the benefits gained from the infringement. If all of

DOI: 10.54254/2753-7048/66/2024MU0010

them are difficult to be calculated, they should be determined by the multiplier of the rights licensing royalties. However, in judicial practice, the standard of proof for the above three criteria is often too high, making it difficult for parties to provide sufficient evidence, resulting in courts relying on discretionary compensation. Furthermore, the provisions on the multiplier for punitive damages are vague, leading to inconsistent judgements and undermining the system's remedial function.

In environmental infringements, *the Civil Code* only provides for the application of the punitive damages regime in general terms and does not specify the criteria for the amount. *The Interpretation on the Application of Punitive Damages to the Trial of Disputes over Ecological and Environmental Infringements* only provides for the scope of damages but not the base amount of damages or the criteria for calculating the damages, making it difficult for the parties concerned to obtain reasonable remedies.

In product infringement, the Supreme People' Court considers the extent of the damage and the number of affected plaintiffs as factors for punitive damages [7]. The above two reference factors for determining the amount of compensation are relatively vague, which in judicial practice often makes it difficult for the courts to from a uniform standard for the amount of compensation in the course of a trial, resulting in the dilemma of "different judgements for the same case".

3.2.2. Low Public Willingness to Defend Rights

In intellectual property, the application standard of punitive damages is not uniform, making it difficult to form a consistent standard for the determination of the elements such as "malice" and "seriousness", and the base and multiplier of the damages. As a result, the effectiveness of the punitive damages system in protecting intellectual property rights against malicious infringement is not evident, leading to declining public expectations and a reduced willingness to request punitive damages in litigation.

In environmental infringements, China's *Environmental Protection Law* allows social organisations specialising in environmental protection to bring public interest litigation against environmental pollution and ecological damage. However, these organisations face high prosecution costs and bear the initial burden of proof, requiring them to demonstrate that the defendant's actions violated state regulations and caused or posed a significant risk of ecological harm. The high costs of environmental justice appraisals further burden plaintiffs, reducing their willingness to prosecute. Additionally, as public welfare organisations, they cannot make economic profits from litigation victories, and under the "homogeneous compensation" principle, they lack incentives to win cases. This diminishes their motivation to bring public interest litigation [8].

In product infringement, infringers are often unspecified consumers, making the number of infringers uncertain while the financial resources of the infringers are limited. Some scholars argue that the financial strength of the infringer is closely related to the enforcement of the judgement. If the amount of punitive damages is too high, enforcement may fail, preventing consumers from obtaining the awarded damages and creating an enforcement impasse [9]. As a result, consumers, as plaintiffs, tend to prefer statutory damages over punitive damages, as the latter's fulfillment is uncertain, reducing their willingness to seek punitive damages.

3.3. Excessive Discretion in Judicial Practice

3.3.1. Reasons for Excessive Discretion

At the legislative level, as the provisions in China's present legal framework of punitive damages are mostly general in nature, they do not make uniform provisions for their practical application. The legal provisions provide only a vague scope of application and some references, and there is a lack of consistent standards. This leaves a wide margin of discretion in judicial practice.

DOI: 10.54254/2753-7048/66/2024MU0010

In specific cases, different judges will make reference to a variety of factors in determining the base and multiplier of the damages, including the actual losses suffered by the plaintiff, the defendant's unlawful proceeds, and the gravity of the infringement, and so on. However, due to the inherently subjective and complex nature of these factors, there can be significant differences in how the same factor is interpreted and measured by different judges. In the absence of clear guiding standards, this variability can further magnify discretion and lead to wide disparities in discretionary outcomes. Owing to the complexity and diversity of individual cases, judges have too much room for discretion when dealing with similar cases, thus leading to the frequent occurrence of different judgements in the same case.

3.3.2. Negative Impact of Discretion

Excessive court discretion may make it difficult to apply punitive damages effectively. Differences in the identification of subjective elements and the ambiguity of reference factors result in judges having varied perceptions of the conditions for applying punitive damages, complicating their actual application in practice.

Excessive discretion can also blur the line between statutory and punitive damages. In intellectual property, statutory damages often cover punitive assessments for infringement, resulting in punitive damages not working effectively. Current law provides that statutory damages in intellectual property consider the circumstances or nature of the infringement, which often includes the infringer's subjective fault, the manner of infringement, the duration, and the extent of damage to the right holder [10]. At the same time, some Higher People's Courts have issued local guidance which recognises that the extent of subjective fault of the perpetrator should be taken into consideration, reflecting the punitive function of statutory compensation.

For example, Article 5 (4)of *the Opinions of the Shanghai Municipal Higher People's Court on Several Issues Concerning the Application of Statutory Compensation Methods to Determine the Amount of Compensation in Disputes over Intellectual Property Infringement*; Article 6(5) and (6) of *the Guiding Opinions of the Jiangsu Higher People's Court on Several Issues Concerning the Application of Fixed Compensation Methods to Damages from Intellectual Property Infringement*; Article 9(3) of *the Beijing Municipal Higher People's Court on Determining Liability for Damages for Copyright Infringement*; Article 19(5) of *the Guidelines of the Chongqing Municipal Higher People's Court on Several Issues Concerning the Determination of Damages for Intellectual Property Infringement*. The difficulty of distinguishing between the statutory and punitive damages systems in judicial practice has resulted in the widespread application of statutory damages, hollowing out the punitive damages system.

Excessive discretion may also lead to large punitive damages awards. The lack of clear criteria for calculating the base and multiplier for punitive damages means that judges can make their own judgements based on relevant factors, likely resulting in huge and varied awards. Large punitive damages can create economic and social issues. For respondent enterprises, a large amount of compensation may lead to a deterioration of its financial position or even bankruptcy, thus affecting the employment of employees and market stability. As for the plaintiffs, high compensation awards are often difficult to enforce, as defendants may be unable to pay or evade payment. In addition, frequent large awards can raise public doubts about judicial impartiality, creating perceptions of unfairness or arbitrariness, and reducing trust in the justice system.

DOI: 10.54254/2753-7048/66/2024MU0010

4. The Path of Development in The Application of Punitive Damages in China

4.1. Improvement of Deficiencies in The Public Law System

4.1.1. Implementation of "Pluralistic Governance" Combining Public and Private Law

The system of punitive damage is essentially a special compensation system based on private law, using private law means to carry out the punitive and disincentive roles played by public law. Through economic incentives, it encourages individuals who have suffered damages to file civil lawsuits, achieving the goal of defending interests though judicial power [11]. To address the shortcomings of the current public law system of punitive damages, the idea of multi-dimensional co-governance, combining public and private law, should be introduced. Pluralistic governance means "public-private partnership", where the government, as the public administration, strengthens its cooperation with social groups and individuals. The governance approach originated in the 1990s and is now popularly used around the world as a core concept and measure for governments to achieve common goals and enhance service delivery. However, as China mainly draws on the civil law system's pattern of public-private law separation, the division between public and private law is more obvious, introducing a governance model that combines public and private law will create some conflict with the traditional governance system and legal system.

Therefore, there is a need to adjust and improve the legal framework and to clarify the status and role of the governance model combining public and private law in the legislation pertaining to punitive damages. Supportive provisions for the public-private partnership model should be added as an important component of the punitive damages regime in the current legal system.

4.1.2. Integrated Implementation of Government Authority

Although the government, as the main body of the public law system, is affected by a variety of social factors, the government should maintain its independence, act as a neutral party in the distribution of benefits, and reduce the consideration of its own interests. It is necessary to take into account the interests of all the people and economic development, fully implement the powers of the government, and gradually transform it from a "management-oriented" government to a "service-oriented" government.

In intellectual property, General Secretary Xi Jinping emphasized the necessity of introducing a system of punitive damages to significantly increase the cost of violations in his keynote speech at the first China International Import Expo in 2018. The government, as the representative of public will, protects intellectual property rights as well as innovations, and it should protect and guide innovations through government power as well as public law.

In environmental infringements, the government should emphasise governmental environmental responsibilities and strengthen the fulfilment of governmental environmental obligations, improving the monitoring mechanism for governmental performance. While exercising its authority over the targets of environmental management and penalties, the government should also strengthen its monitoring system for the exercise of public power in the public interest in accordance with the law. Moreover, the government should harmonize economic interests with environmental protection, adopting policies that promote resource conservation, environmental improvement, and human-nature harmony, ensuring coordinated economic and social development with environmental protection.

In product infringement, the government and the relevant departments should strengthen their supervision, increasing personnel and equipment for effective quality control. By establishing a product quality traceability system, it can ensure supervision throughout the production, circulation, and sales processes, promptly addressing infringements and preventing serious consequences.

DOI: 10.54254/2753-7048/66/2024MU0010

Additionally, enterprises should be encouraged to improve their quality management systems, enhancing self-supervision and correction to reduce product infringements.

4.1.3. Achieving Both Penalties and Remedies

Public law liability tends to emphasise the "punitive" function, but administrative liability's punitive function is not sufficiently remedial when public interest requires separate remedies. The emphasis on the disciplinary function should be accompanied by adequate relief for the damaged rights and interests, not only as compensation for the infringed, but also as a response to social expectations.

In intellectual property infringement, in addition to punishing the infringing behaviour, attention should also be paid to adequately compensating the infringed for their economic losses and moral damages, so as to ensure that their legitimate rights and interests are fully protected. In environmental infringement, the specificity of environmental problems determines that it not only needs the disciplinary and deterrent function of administrative punishment, but also needs to be combined with the principle of risk prevention, increased risk prevention and ecological restoration function [12]. With regard to product infringement, the government not only punishes infringement, but also establishes a sound product liability insurance system to provide relief to victims through the insurance compensation mechanism and reduce their financial burden.

4.2. Improving The Effects of Private Law

4.2.1. Increasing The Willingness of Violated Persons to Defend Their Rights

In judicial practice, the usage of the punitive damages system should be increased, the distinction between punitive damages and statutory damages should be clarified, and punitive damages should be correctly implemented. At the same time, it is necessary to lessen the challenge of proof for plaintiffs of punitive damages, lower the standard of proof for punitive damages, and improve the application of the system of impediments to proof, so as to increase the plaintiffs' willingness to request. For example, legislation can be enacted to clarify the circumstances in which the burden of proof is reversed, so as to reduce the difficulty for the plaintiff in proving the subjective malice of the defendant and the gravity of the circumstances. In addition, incentive mechanisms, such as through the provision of legal aid and the establishment of special funds, can be set up to encourage plaintiffs to file claims for punitive damages.

4.2.2. Clarify That Statutory Damages Are Not a Substitute For Punitive Damages

The system of statutory damages was initially intended as a substitute for actual damages and originated in the United States with the system of fines imposed on tortfeasors in *the Anna Act* [13]. China's statutory compensation system was formally proposed in *the 1998 Summary of the Supreme People's Court Symposium on Intellectual Property Trial Work in Selected Courts of the Country*, which clearly states that the purpose of the statutory compensation system is to fulfil the role of compensation when the loss cannot be determined.

The functions of the punitive damages system, which are now generally recognised in China by Professor Wang Liming, include the compensatory function, the sanctioning function, and the deterrent function. It is clear that statutory damages are unable to achieve the above functions of the punitive damages system. Therefore, it is necessary to clarify the criteria for the application of the punitive damages system in legislation and judicial interpretations, and to refine the criteria for the determination of subjective elements and the definition of "aggravating circumstances".

DOI: 10.54254/2753-7048/66/2024MU0010

4.2.3. Improvement of Laws and Regulations by Drawing On Extra-Territorial Experience

China's base for punitive damages can be based on statutory damages in the academic community has a big controversy, but the United States and Taiwan of China will be in the judicial practice of statutory damages as the base for the calculation of punitive damages. Taiwan of China has a high degree of similarity with the mainland, and its practical experience shows that the application of punitive damages does not necessarily conflict with the system of civil law, and the mainland can learn from the idea.

At the same time, China's provisions on the application of statutory compensation are vague, and the range of compensation amounts is too large. Canada has more detailed and clear provisions on both statutory and punitive damages, and by drawing on its legislative experience, it can improve China's relevant laws and regulations to ensure that the amount of compensation is reasonable and fair.

4.3. Reducing Judge's Discretion

4.3.1. Refinement of Compensation Criteria

Firstly, it is necessary to clarify the quantification of the base amount of punitive damages, taking into account the actual losses suffered by the infringer, and determining different standards in different jurisdictions, and to determine the base amount of the calculation by taking into account the actual situation in the field. For example, in intellectual property infringement, the market loss caused by the infringement and the defendant's illegal income can be used as the basis for calculation; in environmental infringement, the amount of compensation can be determined on the basis of the cost of environmental remediation and the degree of ecological damage; and in product infringement, the number of consumers who have been victimised and the loss of each victim can be used as the basis for calculation. The choice of multiplier should be based on the seriousness of the infringement, the subjective malice of the defendant, the duration of the infringement and so on, to ensure that the amount of damages can serve as a punishment and deterrent without making it unaffordable for the defendant. In addition, a ceiling on the amount of punitive damages should be established in order to avoid situations in which excessive damages affect the survival of enterprises and social stability.

4.3.2. Development of Harmonised Determination Criteria

For the reference factors of punitive damages, there are different views in the academic community, and there is no uniform reference standard in practice. Differences among academics on the reference factors of punitive damages ultimately stem from different understandings of the functions of the punitive damages system, including "dualism", "triadism", "quadrism" and so on, of which the function of "deterrence" is basically universally recognised. Therefore, in determining the reference factor for the infringer, the "penalty" function is tested. At the same time, the reference factors for infringers should take into account the number of infringers and the damages suffered. The common viewpoints of academics should be refined and combined with judicial practice so as to form a uniform standard of determination.

The criteria for determining punitive damages can be discussed and revised on a regular basis through the establishment of a committee of experts, consisting of legal scholars, practitioners and industry experts, to ensure that they are scientific and reasonable. In addition, judge training should be strengthened to ensure they fully understand and adhere to the criteria for determining punitive damages and the conditions for their application. This will help reduce the impact of individual subjective factors on the outcomes of judgements and ensure consistent application in practice.

DOI: 10.54254/2753-7048/66/2024MU0010

5. Conclusion

The system of punitive damages serves to a certain extent to punish and prevent serious torts with subjective malice and to compensate for the insufficient remedy of damages under the principle of homogeneous compensation. However, in judicial practice, there are still deficiencies such as insufficient public law regulation, ineffective private law remedies and too much room for judges' discretion. To address these shortcomings, the application of the punitive damages system ought to be improved by combining public and private law, drawing on overseas experience and further refining the criteria for determining punitive damages.

By optimising the punitive damages system, the rights and interests of aggrieved persons can be better safeguarded and social risks can be better controlled, thus better responding to the needs of social governance. However, the proposal to reduce judges' discretion may still be insufficient due to the influence of various factors in practice, and the overemphasis on uniform standards and the reduction of room for discretion may result in the rigidity of trials. Therefore, while improving the system, a certain degree of flexibility should be maintained to ensure a balance between judicial fairness and efficiency.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0016

The Exploration of the Remedies of Environmental Infringement by Multinational Corporations: Taking China as an Example

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Abstract: Under the background of an increasing number of multinational corporations, it is noteworthy that they can bring great benefits and harm to host states at the same time. Consequently, it is necessary for host states to build up effective regulations to deal with potential risks. This essay chooses to take China as an example. As the biggest developing country in the world, how to regulate foreign investments has become an imperative issue if China wants to achieve further and sustainable development. By introducing its current legislative system and displaying cases, this essay analyzes the deficiencies of the current regulation system from legislative and judicial aspects. Based on the above analysis, this paper also attempts to explore possible solutions to make up for the weaknesses. Ultimately, the author agrees to construct a more exclusive and comprehensive legal system for MNEs in China and refine the prevailing judicial remedies. The main methods used in this paper are literature analysis and comparative analysis.

Keywords: Multinational corporation, Environmental infringement, Principle of forum non conveniens, Limited liability system, Independent legal personality.

1. Introduction

Multinational enterprises (MNEs) refer to corporations that consist of decision-making centers located in one country and more than one operating centers (with or without legal personality) located in other countries [1]. Nowadays, with the irresistible trend of economic globalization, for gaining higher profits and a broader global market, the scope of MNEs is expanded to the whole world as links between the host states and home states.

Nevertheless, due to MNEs' intrinsic tendency to pursue more profit, besides numerous economic benefits, pollution of the environment to host states is almost inevitable during the production process. According to the statistics, since the reform and opening, foreign direct investment (FDI) flows into China have increased from $11.007 billion in 1992 to $144.369 billion in 2020 [2]. Simultaneously, China scored 37.3 points in the 2020 Global Environmental Performance Index Report, ranking 120th out of more than 180 countries [3]. It illustrated that with the considerable amount of foreign investment flowing in, environmental infringement caused by MNEs has also become an increasingly important problem to China.

DOI: 10.54254/2753-7048/66/2024MU0016

An environmental tort can be demonstrated as the infringement of the public's right to property, personality, and the environment on a wide scale due to the perceived adverse effects of activities on various natural or artificially modified factors, such as the atmosphere, water, land, forests, and human monuments, resulting in a decline in the quality of the environment [4].

In conclusion, this paper will discuss the weaknesses of China's current approaches to deal with environmental infringement caused by MNEs and attempt to improve the legal system and explore effective measures.

2. Current Regulatory Basis for Environment Tort

It is more proper for host States to provide remedy mechanisms to compensate victims of corporate environmental degradation. Hence, the liability of these companies must be claimed through the judicial and administrative remedies available within national legal systems.

2.1. China's Legislative System Relevant to Environmental Problem

Compared with other countries, China has not established a thorough legislation system to regulate environmental infringements, and there is still a significant blank in the stipulations relating to the liability of MNEs for environmental abuses. Specifically speaking, China's regulation system can be divided into three layers.

2.1.1. Constitution

As the most effective code in China's legal system, the Constitution lays down the principles of environmental protection responsibility for MNEs. It reads that "any organization or individual is prohibited from appropriating or destroying natural resources by any means". It also stipulates that "Foreign enterprises and other foreign economic organizations within the territory of China, as well as Chinese-foreign joint ventures, must abide by the laws of the People's Republic of China". The upper regulations offer a reasonable foundation for setting up liabilities to MNEs when causing harm to the environment in China.

2.1.2. Laws and regulations enacted by the legislature

According to the object of regulation, the laws stipulate the behavior of MNEs from different aspects, which can be classified into three categories.

The first category is provisions in special environmental laws and regulations. For example, the Environmental Protection Law of the People's Republic of China reads that "All entities and individuals have the obligation to protect the environment". Besides, laws like the Energy Conservation Act, the Marine Environment Protection Act, and the Law on Prevention and Control of Radioactive Pollution stipulate the liabilities from different angles.

The second category is the environmental protection requirements for foreign investors in foreign investment laws and regulations. For instance, the Foreign Investment Law of the People's Republic of China regulates that "Foreign investors and foreign-invested enterprises conducting investment activities in China shall abide by Chinese laws and regulations and shall not endanger China's national security or harm the public interest". Other laws like the PRC-foreign Cooperative Joint Venture Law and the Provisional Administrative Measures for Approval of Foreign Investment Projects have similar regulations as well [4].

The last category is provisions on environmental protection for foreign investment in other sectoral laws. The Civil Code of the People's Republic of China provides that "Where damage is caused to others as a result of polluting the environment or destroying the ecology, the infringer shall be liable

DOI: 10.54254/2753-7048/66/2024MU0016

for the infringement". The Criminal Law also establishes the offense of "pollution of the environment".

2.1.3. Local Legislations

According to the Constitution, the people's congresses of provinces and municipalities directly under the Central Government and their standing committees may, if they do not contravene the Constitution, laws or administrative regulations, enact local laws and regulations.

In China, local legislations also include provisions relevant to environmental protection. For example, the Shanghai Municipal Regulations on Environmental Protection stipulates that "Development zones shall implement centralized disposal of water pollutants in accordance with the regulations and shall not introduce pollution-producing projects if water pollution prevention and control facilities have not been completed or are incomplete." In addition, the Regulations on Prevention and Control of Water Pollution in Zhejiang Province and the Regulations on Prevention and Control of Air Pollution in Beijing Municipality all stipulate local environmental standards, which constrain the production and operation behavior of enterprises, including transnational corporations, in the local context [5].

2.2. Jurisdicitons of Subsidiaries and Parent Companies

In the process of jurisdiction, the application of the law presupposes the establishment of jurisdiction and the identification of responsible parties with liabilities under the law. Therefore, jurisdiction should be clarified in cases of environmental infringements. It included the jurisdiction of subsidiaries and the parent company [6].

2.2.1. Jurisdictions over Subsidiaries

Since the subsidiaries are usually directly responsible for causing environmental damage, the courts of the host states have jurisdiction based on the principle of personal and territorial jurisdiction. Meanwhile, according to the principle of determining jurisdiction over torts, the place of commission of the tort and the place of the result of the tort are both in the host states, so the host State has uncontested jurisdiction as well [1].

2.2.2. Jurisdictions over Parent Companies

Based on the structure of MNEs, the companies set up in host states are normally subsidiaries controlled by their parent companies abroad. Since the major shortcoming of filing a lawsuit against the subsidiaries as defendants is the possibility of resulting in the victims being unable to obtain adequate financial compensation, when subsidiaries do not possess affluent assets to undertake liabilities, many victims would "pierce the veil of the company" and propose a lawsuit in home states. For example, in the Bhopal gas leak case in India, the Indian government chose to file the lawsuit in America, where the proximately liable subsidiary's parent company was located [7]. However, the biggest obstacle to this approach is that courts in home states can dismiss the request for prosecution based on the principle of forum non conveniens.

3. Obstacles to Seeking Relief

According to the statistics, few lawsuits issued by host states to seek compensation for environmental violations by transnational corporations have been successful. Therefore, discovering potential obstructions hidden behind the customary jurisdiction procedure plays an irreplaceable role.

DOI: 10.54254/2753-7048/66/2024MU0016

3.1. China's Current Legislation System Lacks Thoroughness and Effectiveness

By making horizontal comparisons with some developed countries who has constructed relatively mature legislative system about environmental infringement caused by MNEs, it can be more simple to dig out drawbacks in China's legal system.

3.1.1. Horizontal comparisons with other countries

3.1.1.1. America

In America, the earliest regulation about the environment can be traced back to the introduction of the National Environmental Policy Act in 1969, in which America highlighted a principle that the balance between developing the economy and protecting the environment must be kept. Then, in 1970, with the boost of environmental protection activities, the US government established the Environmental Protection Agency, and issued a great number of laws and regulations in succession, indicating that America has entered the "post-industrial age". Nevertheless, it is noteworthy that the US federal government has publicly stated that it has a "neutral policy" towards multinational companies, which means MNEs in America are subject to the same constraints and regulations as domestic corporations. This policy can be recognized as the first relevant attempt to regulate MNEs behavior. However, although the McKinnny Act in 2000 tried to reaffirm this issue, the regulation to MNEs about environmental protection hasn't got any further development until today [5].

3.1.1.2. Japan

Compared to the United States, Japan's environmental protection legal system presents a different picture. After World War II, Japan had posed great effort into reviving its economy, which caused devastating damage to the environment simultaneously. At that time, serious public hazards occurred very frequently, like the widely known Minamata Disease Events stemming from organic mercury and Itai-Itai Disease caused by cadmium. Driven by the above phenomenon, Japan has set out to reinforce the regulations about environmental protection. It has continued for decades, and among series of legislations, the Natural Environment Protection Act issued in 1972, together with the Basic Law on Countermeasures against Public Hazard, has become the two pillars of Japan's environmental law system. Consequently, Japan has set up a relatively thorough legal system about environment. Its comprehensiveness is very worthy of reference by other countries [5].

3.1.2. Weaknesses of China's Legal System

In China, at the level of the whole nation, there is no specific legislation on controlling the transfer of pollution by MNEs, but rather a model of decentralized legislation. For example, the Constitution prohibits the appropriation or destruction of natural resources by any organization or individuals and local laws and regulations enacted to specifically address environmental protection, like the Regulations of Shanghai on Environmental Protection. Besides, the few legislative provisions are too principled and lack operationalization as well, which basically only provides abstract standards without any concrete explanation of the implementation of the law [8].

In conclusion, there's no denying that most countries have already realized that with the rapid burgeoning of global trade, the protection of environment should be paid as much attention as to the prosperity of economic growth. However, few countries have established comprehensive legal system presently. According to the cases involving environmental pollution by multinational enterprises, there're still lots of defects in today's regulation system in host states.

DOI: 10.54254/2753-7048/66/2024MU0016

3.2. Specific Obstacles in the Process of Jurisdiction

3.2.1. The Principle of Forum Non Conveniens

There has not been an explicit demonstration of the principle of forum non conveniens. The original meaning of the Latin text is “inconvenient court”, and its illustration in practice can be roughly described as “It allows a court of competent jurisdiction to decline to exercise jurisdiction where a substantially more convenient and suitable alternative court exists” [9]. The essence of this principle is the application of discretion by a state’s domestic courts to decline to exercise jurisdiction [10]. The following two steps should be considered when deciding whether this principle should be applied. Firstly, to determine whether an alternative court exists. Secondly, if an alternative court exists, the next step is to decide whether the case needs to be dismissed, considering the relevant public and private interest factors [11].

Typical cases reflecting the defects of this principle can be traced back to the Bhopal gas leak case and the lawsuit issued by plaintiffs in Ecuador against the Chevron. In these two cases, involving MNEs both caused severe environmental damage to the host states. To get adequate compensation from the parent companies, the victims chose to initiate proceedings in the courts of the home states. Nevertheless, the courts of home states all rejected the victims’ requests because of the doctrine of forum non conveniens, which forced the victims only able to file lawsuits against the subsidiaries in host states. As a result, since the subsidiaries’ capability to undertake responsibility was rather limited, the victims’ compensation was far from affluent to make up the loss.

According to the case analyses, flaws of this principle can be summarized from the following aspects.

Firstly, the application in practice of this principle has departed from its original purpose for which it was established. At the beginning, the principle was generally regarded as a tool to balance the interests of the plaintiff, defendant and the court and is discretionary in nature [7]. But with the dramatically growth of the MNEs, considerate transnational tort disputes were incurred, which were often sued by foreign victims in the MNEs’ domicile. Meanwhile, the sub-parent organizational model typically adopted by MNEs makes victims more tend to sue the parent company in home states to obtain adequate reparation. Under such circumstance, the “forum non conveniens” has provided the home states with a seemingly reasonable excuse to refuse victims’ claims [9]. Therefore, the abuse of “forum non conveniens” can turned this principle into a matter of connivance that helps the home state to evade the responsibility.

Secondly, the use of this principle deprives the plaintiffs’ opportunity to obtain sufficient compensation for the damage arising from infringements, which encourages the arrogance of MNEs to damage the environment recklessly and is not conducive to the host states’ safeguarding their legitimate interest in the long run. According to the statistics in the US, of the 55 cases in which United States courts declined to exercise jurisdiction based on the forum non conveniens doctrine, only 1 was re-filed in a foreign court, while the others were either forced to settle with the defendant or the lawsuit was abandoned [12]. The actual damage awarded to the plaintiffs in the judgments in the aforementioned cases also fell far short of the amount they had requested.

3.2.2. Regime of Independence of Legal Personality

The most common legal form of an MNE is a closely controlled group of companies held by a parent company or an intermediate holding company and linked by shares, i.e., a parent company and its subsidiaries [13]. According to the relevant provisions of the Company Law of China, the company may set up subsidiaries, which have legal personality and independently bear civil liabilities in accordance with the law, which can be recognized as an embodiment of the limited liability system

DOI: 10.54254/2753-7048/66/2024MU0016

in Chinese law. As the cornerstone of the modern company law system, the limited liability system was once considered by scholars to be a great institution invention "as important as the invention of the steam engine and electricity".

Even though subsidiaries have independent legal personality and can undertake the damage responsibility on their own theoretically, in fact the parent-subsidiary relationship in an MNE is very close, with the activities and business model of the subsidiary being decided by the parent company and the technology and resources of the parent and subsidiary being shared. Their operations and economic returns are closely linked to the parent company [14]. Whether in China or abroad, after the occurrence of these serious environmental pollution accidents, the parent company, as the shareholder of the subsidiary, has proposed to bear the losses with a limited liability system and to compensate for the environmental pollution up to the limit of the parent company's investment, leaving the host state's serious environmental public interest losses to be full responsibility of the subsidiary, which, however, often does not have the ability to bear the responsibility that matches the consequences of its pollution. As a result, just like the principle of forum non conveniens stated above, the abuse of limited liability system makes it a de fecto trick for the parent company to escape from liability.

In response to the problem, China has attempted to establish relevant stipulations to regulate parent companies' behavior. For example, the Company Law provides that shareholders of a company who abuse the independent status of the company's legal personality and the limited liability of its shareholders to evade debts and seriously jeopardize the interests of the company's creditors shall be jointly and severally liable for the company's debts. In other countries, this regime is universally applied and is also called "piercing the veil of corporation".

Nevertheless, since relevant provision of China's legal personality denial system is relatively brief and vague, there are still many difficulties in applying the system to solve problems, like the lack of specific provision and feasible measure, which makes it hard to determine the facts and solve the problems. All these need to be further improved in the future legislative work.

4. The Exploration of Effective Measures

It is now commonplace to observe that the causes and consequences of global environmental change cannot be addressed through the exercise of national jurisdiction alone [15]. It is more proper for host States to provide remedy mechanisms to compensate victims of corporate environmental degradation. Hence, the liability of these companies must be claimed through the judicial and administrative remedies available within national legal systems [16].

4.1. Establish a Thorough Regulatory System

Since the reform and opening of China, there has been no unified legislation on the utilization of foreign direct investment and environmental protection, which has created regulatory loopholes in the process of utilizing foreign investment [17]. Therefore, it is of great significance for China to adjust the current legal system. The author believes that coordination should be carried out mainly in the following two areas.

4.1.1. Absorb the MNEs as Separate Subjects into the Existing Legal System

Due to the boosting trend of China's opening and attracting foreign investment, it is inevitable that more MNEs would be active in Chinese market, which leads to necessity and urgency to build up exclusive legislation to regulate their behavior. To realize this aim, it is necessary to clarify the scope of application of MNEs from the current legal system, and subsequently introduce new specialized legislation if possible and necessary.

DOI: 10.54254/2753-7048/66/2024MU0016

4.1.2. Develop Relevant Remedies to Assist in the Implementation of the Law

Although the author put forward the idea of refining and adding the existing law, the inherent limitation of the law dictates that its scope and capability of the law to regulate is also limited. Considering that, building up institutional mechanisms to support better implement the law. Nowadays, the most popular call in the academic community is to construct environmental protection standard and environmental insurance system. By clarifying the standard, pollution caused by MNEs can be prevented in advance. Some scholars agree that a phased improvement of environmental protection standards should be constructed, dividing the goal into several steps for gradual realization [18]. The insurance system refers to the transfer of liability risk to the insurer through an insurance mechanism in respect of the liability of the insured for environmental tort damages that the insured should have borne on its own to the victims as a result of pollution of the environment, which offers feasibility for MNEs to make amends after the pollution [19].

4.2. Set up the Boundaries of the Use of Principle Forum Non Conveniens

Since the principle of forum non conveniens was born with a certain degree of rationality and benefit, it should not be rejected in its entirety, but rather its possible negative effects should be controlled. At the macro level, the court should not limit its attention to the level of judicial proceedings alone but should increase its focus on the public interest [11]. This can be achieved by clarifying each step in the implementation of the principle.

The key point in applying the principle is to decide whether there is an adequate alternative forum for a case. In the past, this threshold has been simply minimized to the place where the infringement occurred. Therefore, Consideration should be given not only to the “greater expediency” of the alternative court exercising jurisdiction over the accused, but also to the “greater likelihood” of the alternative court exercising jurisdiction over the accused [20]. If the alternative court does not have the ability to provide effective remedies to aggrieved parties who have suffered from the environmental damage, it cannot be regarded as a suitable alternative court.

Moreover, when applying this principle, private and national interests should both be considered as important weighing factors [21]. In weighing the private interest factor, courts have tended to focus on the evidence, the distance between the witness's location and the court, and the costs involved, which varies with the development of technology and should be reassessed depending on the facts of cases. Many American scholars believe that “If we allow our corporations to pollute the natural environments of other countries with impunity, we are not only harming our environment, but we are also violating our responsibility to ensure that our actions at home do not harm the environments of other countries”.

4.3. Complete the Regime of Piercing the Veil of Corporations

China's Company Law for the legal person personality denial system of the existing provisions of the system is relatively vague, the application of the circumstances and recognition standards are not specified, which is the practice of transnational corporations in environmental infringement cases cannot be directly applied to the system for the prosecution of an important reason [14]. Therefore, author agrees to add up explicit explanations of the concept mentioned in the clause. For example, expanding the scope of corporate shareholders to natural and legal persons and enlarge the scope of creditors to creditors of contractual debt and creditors of tortious debt [14].

DOI: 10.54254/2753-7048/66/2024MU0016

5. Conclusion

Under the era of economic globalization, the burgeoning of international cooperation and transnational corporations has become an inevitable trend, which bring both benefit and harm to host states. As a developing country who is still in need of considerable foreign investments to improve its economy and protect its own interest, taking environment as an example, it is of great significance and urgency for China to explore an effective way to regulate MNEs' behavior, restricting it within a controllable scope. Therefore, based on the imperfect current legislative situation, the author agrees to optimize China's regulative system from legislative and judicial levels.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0012

The Legal Dilemma and Optimization Path of the Jurisdiction of the International Court of Justice in Litigation

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Abstract: The litigation of the International Court of Justice (ICJ) is a vital avenue for peacefully resolving legal disputes between nations and fostering positive international cooperation. ICJ's aim is to refine and develop its methodology for properly handling and adjudicating various legal disputes among countries, and to optimize the related codified rule framework accordingly. Concurrently, the ICJ harbors the vision of broadening its jurisdiction and gaining recognition from more countries, striving to better maintain international peace, promote the proper resolution of international disputes, and advance the continuous progress and development of the international judicial system. However, in the context of the evolving and progressing international community, the ICJ has encountered numerous challenges in the actual exercise of its jurisdictional authority. This study examines these challenges in depth, focusing on issues related to admissibility, optional compulsory jurisdiction, and delayed jurisdiction. Through this analysis, a series of targeted recommendations are proposed to address these practical dilemmas and to support the ICJ in fulfilling its crucial mandate more effectively.

Keywords: Jurisdiction, admissibility, optional compulsory jurisdiction, forum prorogatum.

1. Introduction

As the accelerating process of global economic integration and the increasing international association, there were more and more disputes between nations. Under this background, Permanent Court of International Justice (PCIJ) emerged as the times required. PCIJ, which was established in 1920, served as the main judicial authority of the League of Nations, aiming to settle international disputes with judicial means. After the World WarII, establishment of the United Nations marked a new stage of the international relationship. On June 26, 1945, the Charter of the United Nations and the Statute of the International Court of Justice was passed on the United Nations Conference on International Organization, through which the International Court of Justice (ICJ) was formally established as the main judicial authority of the United Nations. The ICJ inherited the legal precedents and experience of PICJ, and made some adjustments based on historical development. Formally functioning in 1946, the ICJ worked to maintain international peace and security with judicial means, as well as promote the development and unification of international law.

The ICJ mainly accepts two types of cases: advisory and contention. In the advisory cases, the ICJ gives suggestions to the legal problems which are submitted by the subsidiary organs and specialized

DOI: 10.54254/2753-7048/66/2024MU0012

agencies of the United Nations. In the contentious cases, the ICJ makes legally binding judgements to the international disputes. In the litigation process, the jurisdiction of the ICJ is the foundation of accepting and hearing a case, which is of great significance to protect national sovereignty and interests during the international communication.

Despite extensive use, there remains significant research space in dispute settlement, especially through the ICJ's contentious proceedings. Moreover, there is significant controversy in the field of international law surrounding how to determine the jurisdiction of the ICJ when concerning some complex problems. In practice, some nations try various devices to avoid the jurisdiction of the ICJ, in order to evade sanctions from the ICJ. In some other cases, the unclear jurisdiction causes that substantive issues of the disputes could not receive effective settlement. Therefore, this research will mainly focus on some problems that may affect the ICJ's jurisdiction in special circumstances, aiming to give suggestions for settling international legal disputes properly, protecting the legitimate rights and interests of states, and maintaining international peace and stability, as well as making contribution to the development of international legal system and international judicial system.

This paper mainly focuses on three aspects: admissibility, optional compulsory jurisdiction, forum prorogatum. The structure of this paper is as follows. After the introduction, the second part will give a briefing of their current regulations and theoretical foundation, analysis their applicable conditions and scope, and summarize the main opinions and controversy in academic community and judicial practice. In the third part, it expounds the legal dilemmas in these three aspects, including the unclear standard of admissibility, the controversy about automatic reservation when relating to optional compulsory jurisdiction, and the confidence crisis of forum prorogatum. Next, the fourth part will try to give respective optimized paths and detailed measures, such as clearing the standard of admissibility, limiting the use of automatic reservation clause, and develop criteria for the recognition of forum prorogatum. Finally, the fifth part will conclude the main results of this research and look ahead to future research directions.

2. The Current Regulations and Theoretical Foundation

2.1. The Legal Framework of the Jurisdiction of the ICJ

The jurisdiction of the ICJ is determined according to the Statute of the International Court of Justice (hereinafter referred to as "the Statue"). The Statue is the basic legal paper of the operation of the ICJ, which regulates the organization, authority, and proceedings of the ICJ in detail. According to Article 36 of the Statute, jurisdiction of the ICJ includes three types: voluntary jurisdiction, agreement jurisdiction, and optional compulsory jurisdiction.

Voluntary jurisdiction means that the parties in particular cases agreed to submit the dispute to the ICJ and abide by the court's judgement. This form of jurisdiction is highly flexible but also highly dependent on the agreement of both parties, making it less predictable and potentially unstable. Agreement jurisdiction means that countries approve in advance that they will submit the possible disputes to the ICJ in future. This method is quite common in international treaties and bilateral or multilateral agreements, because of the foreseeability and legal certainty of the possible disputes. Optional compulsory jurisdiction involves countries unilaterally declaring their acceptance of the ICJ's compulsory jurisdiction over certain categories of disputes when they sign or approve the Statute. This type of jurisdiction ensures a more stable and predictable source of cases for the ICJ, enhancing its role in the international judicial system.

2.2. Theoretical Analysis of Related Studies

Nowadays, the studies of the ICJ's jurisdiction mainly focus on certain aspect of it, and the overall researches primarily center at several problems that the ICJ is facing with, such as fuzzy determination

DOI: 10.54254/2753-7048/66/2024MU0012

to admissibility, automatic reservation clauses' limitation to optional compulsory jurisdiction, and the ICJ finding it difficult for member states to trust its forum prorogatum [1].

Up to now, the ICJ and the academic circles have not given clear regulations and standards to admissibility. Generally speaking, admissibility problems are proposed and resolved in the preliminary opposition procedure, whose purpose is making sure that certain dispute can be accepted by the ICJ. "Unless the contentious procedure (substantive procedures of the case) is legally acceptable (the case is admissible and the court has jurisdiction), the case cannot enter the substantive trial procedure" [2]. Some scholars argue that one of the biggest jurisprudential problems of the ICJ is the concept overlap between admissibility and jurisdiction. The ICJ's most reasoning under the title "admissibility" is actually the analysis of the condition, "significance or scope of the judgment", of the jurisdiction [3] .

Automatic reservation, also known as the Connally Reservation, allows member states to decide which issues are considered internal affairs. It was first proposed by American parliamentarian Connally in the US government's reservation clauses when it declared its acceptance of the jurisdiction of the ICJ in 1946. Following this, dozens of countries declared similar clauses. Although the ICJ has not provided a definitive response to the effectiveness of automatic reservations, it still considers these reservations. The ICJ holds that if both parties question the effectiveness of automatic reservations, the issue could be used as part of the facts and evidence in the trial. This creates a complex legal landscape where the ICJ must navigate between respecting state sovereignty and fulfilling its judicial mandate [4].

Forum prorogatum means that the respondent country agrees the jurisdiction of the ICJ expressly or impliedly. It depends on the discretion of the ICJ whether the actions of the parties can be regarded as acceptance of its jurisdiction, but the ICJ do not give a clear regulation on the implied consent of the respondent country. Believing that implied consent can be flexible and widely used, the ICJ maintains that not regulating the means of implied consent benefits the utilization of its institutional advantages. Nevertheless, the lack of clear standards may cause concerns that the ICJ could overreach its jurisdictional boundaries, encroaching on areas that the parties did not explicitly agree to [5].

3. The Legal Dilemma of the Jurisdiction of the ICJ

3.1. Reviewing Order of Jurisdictional Objection and Admissibility Objection

Admissibility objection and jurisdictional objection both belong to the preliminary objection of the ICJ trial. Admissibility objection means the negative viewpoints on the admissibility of the claims, and the reasons for this negation towards admissibility are not about substantive issues [6]. Admissibility objection usually can be divided into four situations. First of all, whether the dispute is a legal dispute, or a political dispute? Could it be settled through legal principles and rules? Secondly, before the dispute is submitted to the ICJ, have local remedies, including judicial and administrative remedies, been exhausted? Thirdly, are the parties qualified to be the litigants? Namely, they should prove they have a stake to the subject matter of the lawsuit. Finally, whether the third state has a stake to the dispute.

Current research predominantly focusses on reviewing order of jurisdictional objection and admissibility objection. Since the Rules of Court (hereinafter referred to as "the Rules") does not regulate a reviewing order between jurisdictional objection and admissibility objection, there are different precedents in practice. For instance, in Interhandel (Switzerland v. United States of America) in 1957, the US totally proposed four preliminary objections. Among them, a jurisdictional objection (part (a) of the Fourth Preliminary Objection) claimed that according to the automatic reservation clause, the dispute was a domestic affair, so the ICJ did not have the jurisdiction. Additionally, the admissibility objection (the Third Preliminary Objection) claimed that the dispute had not exhausted

DOI: 10.54254/2753-7048/66/2024MU0012

internal remedies and could not be accepted by the ICJ. When reviewing the Fourth Preliminary Objection, the ICJ firstly reviewed the Third Preliminary Objection, and then reviewed part (a) of the Fourth Preliminary Objection basing on its conclusion [7].

However, in Border and Transborder Armed Actions (Nicaragua v. Honduras), although Honduras proposed a jurisdictional objection after an admissibility objection, the ICJ still reviewed the jurisdictional objection preferentially [8].

3.2. The Force of Automatic Reservation Clause

Optional compulsory jurisdiction of the ICJ grants parties a certain degree of flexibility and control. According to Article 36 of the Statue, parties can declare to recognize the compulsory jurisdiction of the ICJ. In practice, state parties usually propose several reservation clauses when recognizing the optional clause in order to maintain their self-interest and power of control. Among those reservation clauses, automatic reservation clause particularly worths paying attention to.

Automatic reservation clause stipulates that it is decided by state parties that whether a dispute is a domestic affair, causing a limitation to the jurisdiction of the ICJ and then weakened judicial authority of the ICJ. As a result, the academia and judicial practice of the ICJ widely discuss how to determine the effectiveness of automatic reservation clause. Some scholars, represented by Judge Sir Hersch Lauterpacht, argue that the ICJ should determine automatic reservation clauses as invalid, because they conflict with Article 36 of the Statue. Moreover, since the automatic reservation clauses have close connection with the parties' declaration of acceptance to optional compulsory jurisdiction, the ICJ should determine the whole declaration as invalid [9]. However, some others, represented by Judge Read, believe that the effectiveness of automatic reservation clause should be judged by the court case-by-case[9].

Automatic reservation clause plays an important role in harmonizing the interests of all parties and is of great significance in balancing national sovereignty and international cooperation relations. The ICJ has always been committed to enlarge the scale of its jurisdiction and encourage more parties to accept its jurisdiction, in order to promote the peaceful settlement of international legal disputes and the construction of international legal system. As a result, it is not proper to directly determine the declaration of acceptance to arbitrary compulsory jurisdiction as invalid just because of automatic reservation clause. And as to the method of judging its effectiveness case-by-case, the ICJ is facing with the problem of how to balance the parties' discretion based on automatic reservation clauses and the optional compulsory jurisdiction of the ICJ.

3.3. The Lack of the Criteria of Implied Consent in Forum Prorogatum

Forum prorogatum means when a party submits a dispute to the ICJ, the ICJ has not recognized its jurisdiction on the case. Only if the other party declares to accept jurisdiction of the ICJ, or makes implied consent through its action, the ICJ can exercise jurisdiction over this case.

Forum prorogatum was firstly established as an explicit regulation in the Rules in 1978. This regulation is actually the summary and codification of precedents and experience of the PCIJ and ICJ, and it truly restricted some arbitrary or unfounded lawsuits. It stipulates that without consent of the respondent party, the registrar cannot take any further actions, like listing the submission in the list of cases, except handing over the submission to the respondent party, in order to avoid damaging judicial administrative rules [10]. This regulation enables the ICJ not to directly refuse the submission of a party who has the right to appear in court and is beneficial for the ICJ to enlarge its jurisdiction, in order to make good use of its function and help the settlement of international legal disputes and development of international relationships.

DOI: 10.54254/2753-7048/66/2024MU0012

Nonetheless, forum prorogatum rules has also caused widespread concern in the international community. The trend of actively applying forum prorogatum obviously cause countries' perturbation in terms of sovereignty infringement. The lack of criteria of implied consent especially increases these concerns. Although Article 38, Paragraph 5 of the Rules reduces the space for implied consent to a certain extent, it is not totally equal to "consent must be declared expressly".

Therefore, under current rules and practices, the implied consent of a party is completely judge by the discretion of the ICJ. For example, the ICJ may determine whether the party accept the jurisdiction of the ICJ by examining the party's defense against the dispute in some normal occasions [5]. In this situation, it is hard for parties to accept that the ICJ may determine they accept its jurisdiction without clear criteria, because there is a risk of sovereignty infringement. Additionally, it may have bad effect on a party's reputation if the party is involved into an international litigation before its express consent.

Moreover, from the perspective of the operation of the ICJ, the lack of criteria of implied consent also influents the efficiency of the ICJ. Because it costs a plenty of time and energy to review the relevant actions of the accused party, rather than quickly screening behaviors that may constitute implied consent through specific criteria. Even though the ICJ can determine the party accepts its jurisdiction, it still has to discuss and determine the scope of the implied consent.

Overall, the lack of the criteria of implied consent in forum prorogatum not only causes the parties are unwilling to accept this institution, but also may cause a waste of judicial resources of the ICJ. As a result, the problem obstructs the realization of the original intention of establishing this system and the development of international legal system, and further exploration of its improvement path is needed in legislation and practice.

4. The Optimization Path of the Jurisdiction of the ICJ

4.1. The Reviewing Order of Jurisdictional Objection and Admissibility Objection

Usually, the ICJ first reviews jurisdictional objection, and then admissibility objection. This is because before ICJ makes judgements to any claim or other relevant issues, it should make sure that it has the right to give a ruling. Thus, only if the ICJ has the jurisdiction, it has the right to review admissibility objection. However, in some special situation, due to the consideration of judicial economy, or when the admissibility may affect the establishment of jurisdiction, the ICJ will change the order and review admissibility objection in advance.

In this regard, the Statue and the Rule do not give detailed regulation but allow the ICJ to decide reviewing order based on the different situation of the cases. Although this method can ensure the judicial justice to some level, it may cause the waste of judicial resources and procedural uncertainty. To further clarify the order of review and save judicial resources, the ICJ should establish more specific rules. For instance, clearly stipulate the situation when admissibility objection can take priority over jurisdictional objection or stipulate that the ICJ should review the objections in order of the relevance between the objections and the substantive issues of the case, from the most complete prerequisite ones to the ones most related to the substantive issues [11].

4.2. The Effectiveness of Automatic Reservation Clause

The current review criteria adopted by the ICJ is good faith review. Namely, automatic reservation cannot definitely cause the ICJ loses its jurisdiction but should be reviewed by the court according to the principle of good faith, making sure that the parties do not invoke the automatic reservation clauses for the purpose of maliciously evading the jurisdiction of the ICJ. In Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France), the ICJ recognized that automatic reservation clauses can empower the party with discretion, and ICJ should review whether the purpose of them is of good faith [12]. In the case, Judge Keith analyzed detailly the criteria of reviewing

DOI: 10.54254/2753-7048/66/2024MU0012

automatic reservation clauses. He invoked the court's statement in Gabcˇikovo-Nagymaros project and pointed out that "good faith obligation reflected in Article 26 of the Vienna Convention "obliges the Parties [to a treaty] to apply it in a reasonable way and in such a manner that its purpose can be realized"[12].

However, the relevant guidelines for the specific application of the principle of good faith still need further established. To review the legitimacy of automatic reservation clauses, the ICJ should summarize the past experience and establish a series of standard procedures and specific details, which fully consider whether the reservation affairs obstruct the object and purpose of the treaty and if an affair is recognized as domestic affair, whether the party considers irrelevant factors or for improper purposes. Besides, the ICJ should ensure the transparency of the procedure, in order to reduce the abuse of automatic reservation clauses, and strive for jurisdiction to the greatest extent possible.

4.3. The Recognition of Implied Consent in Forum Prorogatum

As to the recognition of implied consent, there are two problems needing solving: how to recognize the party accepts the jurisdiction of the ICJ and how to ascertain the scope of the jurisdiction the party accepts. In the circumstances of implied consent, the defendant party has not declared to accept the jurisdiction of the ICJ, so the recognition should be more prudent, showing that the ICJ only expects to achieve jurisdiction over the dispute itself, in order to dispel the concerns of the parties as much as possible.

Therefore, the ICJ could review the purpose of applicant states, ensuring that they do not maliciously file lawsuit for any other purpose, and their claims have a high degree of relevance to the dispute. This method can make the accused party believes in the impartiality of the ICJ and thus easily accept its jurisdiction.

Besides, the ICJ can also list the basis or relevant circumstances for determining implied consent in the rules, enabling the parties to have a certain understanding of the judgment criteria. As to the scope, the ICJ should strictly and clearly state in its documents about which claim is deemed to have implied consent from the parties.

Implied consent actually is the ICJ's understanding about particular action of the parties, so there is a possibility of misunderstanding. To prevent this problem, the ICJ can stipulate that the significant issues such as something involving national sovereignty and security, can only be heard by the ICJ with the parties' express consent. Besides, the ICJ can give a period for objection. If the party thinks that its action should not be recognized as implied consent, it can raise an objection to the ICJ during this period.

5. Conclusion

With the development and changes of international society, the ICJ faces many challenges in the practical operation of its jurisdiction in litigation. This research further clarifies the relevant issues of the jurisdiction of the ICJ based on the current academic perspectives, especially gives suggestions on how to deal with the legal dilemmas related to admissibility, automatic reservation, and forum prorogatum. Regarding the reviewing order of jurisdictional objection and admissibility objection, the ICJ should clearly stipulate situations where admissibility objections can take priority over jurisdictional objections, or review objections based on their relevance to the substantive issues of the case. For the effectiveness of automatic reservation clause, the ICJ should establish a series of standard procedures and specific details to review the legitimacy of automatic reservation. Concerning the recognition of implied consent in forum prorogatum, the ICJ should develop more specific supporting regulations to clarify the criteria and processes involved.

DOI: 10.54254/2753-7048/66/2024MU0012

By optimizing the relevant regulations and operational procedures about its litigation jurisdiction, the ICJ can settle international legal disputes much more effectively and enhance its authority and credibility in the international community. Future research can further explore other issues that may affect the jurisdiction of the ICJ and propose more comprehensive solutions to promote the improvement of the international judicial system.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0020

Protection of Seafarers' Rights and Interests by International Treaties

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Abstract: In 2006, the ILO adopted the Maritime Labour Convention, which has had an important impact on the rights of seafarers worldwide and the promotion of the international maritime industry. In recent years, China's labor and social security legal system has been gradually improved, and legal norms such as the Regulations on Seafarers and the Maritime Traffic Safety Law have been promulgated and implemented successively, laying a certain foundation for the system of labor norms for seafarers. However, these special legislation has some limitations, such as not strong operability and not identical with the international treaty system. This paper mainly studies the framework structure and implementation mechanism of maritime labor conventions, finds out China's application method of international law, and puts forward the shortcomings of China's implementation process and corresponding countermeasures and suggestions suitable for the current situation of Chinese seafarers. By combining theory with practice, this paper uses literature analysis and analysis deduction to find out the strategies that can optimize the implementation mechanism in China. At present, China has made a lot of preparations for the implementation of maritime labor conventions, carried out a lot of legislative activities, and has already acquired relevant legislative experience and technology. Improving the labor supervision system and making full use of the tripartite mechanism platform and industry associations are the top priorities for China to better implement international conventions and protect the rights and interests of seafarers in the next stage.

Keywords: MLC, Rights and interests of crew, Social security.

1. Introduction

The crew refers to all staff on board, including the captain, and plays a crucial role in the development of the shipping industry. Qualitative shipping, i.e. safe shipping that is respectful of the marine environment, would not be feasible in the absence of quality work provided by competent maritime labour, enjoying decent working and living conditions aboard. Crew members, as marine workers, also result in the speciality of their work due to the specific nature of their working environment. The harsh working environment at sea and the excessive length of working hours put the crew at a great test [1]. During the coronavirus pandemic, the crew continued to work as a high-risk working species with the virus and its proximity, under the enormous pressures of the working environment caused by uncertainties such as supply of materials and repatriation, and to assume the burden of ensuring the sustained supply of the resources and necessities needed for global production and the smooth

DOI: 10.54254/2753-7048/66/2024MU0020

transportation of the materials needed for the fight against the epidemic. It is the dedication and contribution of the crew that ensures the sustained stability and prosperity of the global basic productive life during the epidemic. However, due to the crew being employed by the shipowner, the owner of the ship is severely compromised by its right to rest, as a result of the enormous cost savings, such as the cost of high return costs, for the crews to work on board for prolonged overloads. At the same time, in the maritime field, there is a special transport mechanism for flagship vessels, i.e. a vessel registration system that allows the registration in the country of ships controlled by foreign owners and foreigners and provides more convenient registration requirements and preferential conditions for the owners. Under such a mechanism, shipowners are free to register ships in different countries and to select cheap labour from the world labour market for huge economic benefits. Due to measures to reduce the obligations of shipowners, such as registration costs and taxes, in order to attract the owners of ships from all countries, the legal regulation on the protection of crew's labour rights and interests is often minimal, or even not at all, so that under the flag system, the labour rights, security and litigation rights of the crew are seriously violated [2].

Furthermore, crew members often enter into crew employment contracts with crew labour intermediaries, while the intermediary agency and the shipowner also enter into contracts for the employment of crew and the nature of the crew service lease contracts, the essence of which is the provision of a certain number, a certain condition crew to the owner of the ship, and the associated rights obligations of the contracting crew labor institutions, earning mainly from the difference in the price of the labour force agreed on the two contracts respectively. As the crew does not enter into contracts directly with the owner of the actual employee, it is difficult to protect crew's right to labour remuneration when the intermediary is in debt to the ship's employees. Consequently, due to inequalities in the position of labour parties, crew members of a vulnerable party should be protected, and it is also essential for the development of the shipping industry to study the protection of crew rights and interests. Since China's protection of crew rights and interests is based on international treaties and the current legal system is still inadequate, the aim of this paper is to study the protection of the crew's interests by international Treaties and their application in China.

2. Protection of the Rights and Interests of Crew Members under International Treaties

2.1. Necessity of International Treaties for the Protection of Crew Members

An international treaty is an international agreement concluded by the subject of international law under international law, which reflects the coordination of States parties and aims at establishing, changing and terminating a relationship of obligations of rights in international law and is usually expressed in writing. International treaties are therefore, in essence, the product of the harmonized will of States. As one of the important sources of international law, international treaties arose alongside the international community and evolved with the evolution of the international society, which has become a universal form of international community in modern international relations. The international nature of shipping production requires the same labour capacity provided by the crew of each country, so that each country trains crew in accordance with the requirements of the STCW Convention, thus forming an international crew labour market. As the legal protection of crew labour is given greater importance in each country and falls within the scope of domestic law, there are differences in national laws, which reflect the role of international treaties in the event of conflict. The International Labour Organization Convention on Maritime Labour, 2006, is the fourth pillar international convention for maritime transport, following the Convention for the Safety of Life at Sea (SOLAS), the MARPOL Convention and the STCW Convention, and has a positive and far-reaching impact on the protection of the fundamental interests of the global crew and promoting the healthy development of the international shipping industry.

DOI: 10.54254/2753-7048/66/2024MU0020

2.2. International Labour Organization Crew legislation

Convention on Maritime Labour Due to the fact that past conventions were designated under a specific historical context, the situation had not changed in a timely manner and had only been adapted from a maritime safety perspective to the formulation of the Convention, without taking into account the social standards of crew labor and labour protection from the perspective of labour law, the mandatory provisions on crew labour were too specific and objectively constrained States from ratifying it, causing unfairness to shipowners and governments who consciously protect the rights and interests of crews. In order to more effectively play the protective role of crew law for crew members, to create a system of fragmented crew protection systems, to enhance the effectiveness of the protection system and to safeguard equity, the International Labour Organization established a working group in 1995 and, after four conferences, introduced the 2006 Convention on Maritime Labour in 2006.

The structure of the Convention is divided into preambles, general principles, subsections and codes [3]. In the preamble, Member States expressed their willingness to exercise effective management of ships' working conditions, crew equipment and social affairs, as well as to indicate the basis for legislation, establishing core rights and fundamental principles in general and clarifying the dominant relationship between sub-rules and subsidiary rules. The General Rules provide for the fundamental rights of seafarers, including the right to freedom of association and to collective bargaining, the elimination of all forms of forced and forced labour, the abolition of child labour and the eradication of employment and occupational discrimination, the full implementation of seamen' s employment rights, including safe working conditions, equitable employment opportunities, decent work on board, good living conditions, access to social security, and the obligations and responsibilities of the flag State party to implement the Convention through legislation to ships under its jurisdiction, the effective control and control of the institutions for the recruitment and placement of sailors by the exporting country of the State party and the non-Party's refusal to provide more favourable treatment to those States and the need for consultation with the owners and crew organizations in the absence of such organizations with the Trilateral Ad Hoc Committee. The general rule sets out the core powers of crew members, as well as the relevant principles and basic obligations of Member States to ratify them.

The Convention provides for the specific implementation of the fundamental rights and obligations of Member States in its sub-rules. The first is the minimum requirements for seafarers on board, including the prohibition of employing persons under the age of 16 on board the ship, the ban on night work for crew members under 18 years of age, which reflects the ILO system against child labour. The subsection also lays down the conditions of employment of crew members, and the obligation to pay a certain percentage of wages to the crew's family members is explicitly an obligation of the employer. The crew's living rooms, recreational facilities, food and meals, health protection, medical care, welfare and social security are all specified in detail in the subsection.

3. China’s Rules for the Application of International Law

In August 2015, the 16th meeting of the Standing Committee of the 12th National People's Congress (NPCSC) ratified the Maritime Labor Convention 2006, and at the same time declared that pension insurance, medical insurance, work injury insurance, unemployment insurance and maternity insurance are the types of tax insurance applicable in China in accordance with the Convention [4]. The Maritime Labor Convention 2006 entered into force for China one year later.

DOI: 10.54254/2753-7048/66/2024MU0020

3.1. China's Dilemma in Applying Relevant International Regulations

In general, international treaties do not produce legal effects in the country, but need to go through certain "conversion" or "incorporation" procedures to produce effects in that country. In China, the Constitution does not explicitly provide for the relationship between international law and domestic law, so the domestic application of ratified treaties is carried out on a "case-by-case" basis, generally by "incorporation", i.e., directly incorporating the content of the convention in its entirety into the national legal system by means of general legislative provisions, "conversion", "transformation" and "incorporation" [5]. In general, "consolidation", i.e., the adoption of general legislative provisions, directly incorporates the contents of the conventions into the national legal system as a whole, and "transformation", i.e., the adoption of legislative forms to selectively re-legislate international conventions that need to be applied domestically, or to "consolidate" or "transform" them. Article 268 of China's Maritime Law stipulates: "Where an international treaty concluded or participated in by the People's Republic of China contains provisions different from those of this Law, the provisions of the international treaty shall be applied, except for those which the People's Republic of China has declared its reservations." This provision not only indicates that the international treaties concluded or participated in by China are an integral part of China's maritime legal system, but also indicates that the treaties take precedence in case of conflict with domestic laws. Therefore, as the drafting country of the maritime labor convention, China has done a lot of preparatory work for the ratification of the convention, the establishment of the corresponding legal system, from the domestic practice, the 2006 Maritime Labor Convention in the domestic application of the transformation of the main.

Due to the 2006 maritime labor convention in the existence of member states negotiated compromise provisions, so not every provision of the provisions of the detailed and clear, some of the provisions of the provisions of the use or even fuzzy, and the lack of practical applicability. Therefore, for China's compliance with the 2006 Maritime Labour Convention will be a long process of domestication. For specific and clear rules, can be directly implanted into our legal system, and for the principle of the rules or our country did not have or inconsistent with the rules, we need to learn from other countries more mature practice, after the specificity of the creation of a part of our legal system. In this process, it is much more difficult to rely on the existing legal system and integrate the existing legal resources of many sectors for absorption and digestion, compared to the domestication process of international conventions that are more technical.

3.2. China's Efforts in Fulfilling Obligations under MLC Regulations

In order to fulfill the obligations of the labor conventions, China has set up a "tripartite consultation" permanent institutions, clear maritime labor field of tripartite consultation institutions, including consultation and consultation, decision-making, the development of collective labor, international exchanges and cooperation responsibilities, the establishment of maritime labor dispute resolution system and night maritime labor supervision system.

3.2.1. Establishment of the "Tripartite Consultation" Standing Body

The Tripartite Commission is a maritime labor agency under the International Labour Office as stipulated in the Maritime Labor Convention, 2006. It is independent of national shipowners' and crews' organizations and, in certain circumstances, replaces shipowners' representative organizations or crews' organizations. It undertakes a general review of the role of the Convention and is entrusted with specialized functions relating to the Code's simplified proposed amendment procedure. It is composed of representatives of Governments that have ratified the Maritime Labor Convention, 2006, and representatives of shipowners and crews selected by the Council.

DOI: 10.54254/2753-7048/66/2024MU0020

A tripartite coordination mechanism, whereby government authorities consult with shipowners' and crew organizations to better safeguard the interests of all parties in the maritime labour sector, is gradually being established in China. At the national level, the Tripartite Coordination Mechanism, comprising the Ministry of Transport, the China Seamen's Construction Trade Union and the China Shipowners' Association, is an important part of the framework of the National Tripartite Mechanism for Coordinating Labour Relations, which serves the development of China's shipping industry, the rights and interests of China's seafarers, and the development of China's shipping enterprises, and establishes a platform for the government departments, seafarers' trade unions and shipowners' organizations to carry out regular communication and coordination, which is conducive to the joint resolution of maritime labour relations. It is conducive to jointly solving major problems in maritime labor relations and crew management, and realizing decent work for crew members.

3.2.2. Clarifying the Responsibilities of Tripartite Consultative Bodies in the Maritime Labour Field

In order to make the Maritime Labour Convention 2006 be updated in time to meet the needs of the continuous development of the maritime industry, the Convention not only grants the governments of member states the right to propose amendments to the Convention, but also grants the representative organizations of shipowners and crews such a right, which is conducive to the protection of the interests of the widest range of shipowners and crews as a whole. In order to effectively safeguard the rights and interests of all parties, the Convention stipulates that the Tripartite Specialized Committee to consider the functioning of the Convention and to vote on amendments to the Convention by means of the simplified amendment procedure “shall weight the votes of each representative of shipowners and crews in the Committee so as to ensure that each of them has half of the voting rights of the members present at the meeting. This effectively ensures that the rights of any one of the three parties will not be suppressed.

The tripartite coordination mechanism for shipowners' labor in China includes studying the impact of the development situation, policies and systems of the shipping industry on maritime labor relations, coordinating the tripartite's policy propositions on the overall issues of maritime labor relations, studying and agreeing on maritime labor standards such as the labor system of the shipping industry, wage and compensation, working hours, rest and vacation, labor safety and health, life and welfare treatment, and vocational skills training, and pushing forward the establishment and improvement of the It also promotes the establishment and improvement of equal consultation, collective contract system and labor contract system, strengthens the contact, exchange and cooperation with the International Labor Organization and tripartite agencies of various countries, and organizes the participation in relevant contracts.

Among them, collective contract refers to a written agreement between employee representatives or trade unions and the corresponding employing unit or its group organization, for the purpose of regulating labor relations, with the common interests of all workers as the central content. Crew employers are usually shipowners and shipowner-managed ships and crew service organizations, usually represented by shipowners' associations, while the China Seamen's Construction Trade Union and its subordinate units at all levels represent all crew members and reach collective agreements with shipowners or shipowners' associations through negotiations. The profession of seafarers is highly specialized and therefore has more concentrated collective interests, making it suitable for the use of collective contracts. 2009 saw the establishment of the National Tripartite Coordination Mechanism for Maritime Labor Relations, comprising the Ministry of Transport, the China Seamen's Construction Trade Union and the China Shipowners' Association [6]. China's first industry-specific collective agreement, the China Crew Collective Agreement (A), was also officially signed. The Convention stipulates that the collective agreement needs to include crew recruitment and placement,

DOI: 10.54254/2753-7048/66/2024MU0020

employment agreement, crew wages, working hours and rest time, vacation, repatriation, shipowner's responsibility, crew's use of shore-based welfare facilities and social security, as well as clarifying the effectiveness of the collective agreement. Compared with the requirements of the Convention, China's crew collective contract involves most of the contents required by the Convention, but the provisions on the crew's use of shore-based welfare facilities are not perfect.

3.2.3. The Establishment of Maritime Labour Dispute Settlement System

The Convention encourages crew members to resolve their labor disputes at the ship's side as far as possible, and then turn to external parties only when it is difficult to resolve. The China Crew Collective Agreement (Class A) stipulates that labor disputes occurring during the crew's stay on board a ship can be resolved through the coordination of the ship's trade union or by filing a complaint with the higher-level trade union. If a crew member finds that the ship on which he/she is working does not comply with the labor standards stipulated in the agreement, he/she can complain to the China Seamen's Construction Trade Union and the China Shipowners' Association; he/she can also complain to the competent maritime authorities of China in the location of the port of call of the ship or in the location of the labor relations of the crew. At the same time, China's procedure for hearing labor dispute cases is that the parties concerned can apply for conciliation to the unit's Labor Dispute Conciliation Committee, and if conciliation fails, they can apply for arbitration to the Labor Dispute Arbitration Committee, or directly apply for arbitration, and if they are not satisfied with the arbitration award, they can file a lawsuit with the court; the court is not allowed to accept cases without labor arbitration, which specifically implements the tripartite mechanism involving the state, labor unions, and the employing units.

3.2.4. Improve the Labour Supervision System

China's current administrative supervision of crew labor is divided into crew general labor inspection and crew labor safety and health inspection. The general labor supervision of crew members is carried out by the administrative department of labor security, and the labor safety and health supervision of crew members is carried out by the maritime administration agency as the competent authority of the industry, in which the state border health quarantine authorities have the right to supervise the health condition of international ships when they enter or leave the country and the health condition of their crew members who may be involved in contagious diseases, and the state safety supervision and management departments have supervisory and guiding duties on the labor safety and occupational hygiene of crew members, which basically meets the requirements of the state. The State Safety Supervision and Administration Department is also responsible for supervising and guiding the labor safety and occupational health of seafarers, which basically meets the requirements of the Maritime Labor Convention 2006 for the administrative supervision of seafarers' labor, including the labor inspection of seafarers in port countries, but the 14 items of the Convention's seafarers' labor inspection projects have not been fully implemented.

4. Problems of China’s Seafarers Law System

4.1. Lack of Unified Basic Law

China's current seafarers' law system lacks a law that plays an overarching role in various laws and regulations. When a maritime labor dispute occurs and a legal basis is sought, the Ministry of Communications has various regulations, letters and approvals, but no specific provisions can be found in the legislative basis. For example, the Regulations on Crews only contain generalized provisions on crew insurance, life and workplace, and crew wages. The Maritime Traffic Safety Law

DOI: 10.54254/2753-7048/66/2024MU0020

only has three provisions related to the protection of the rights and interests of the crew, the other contents are about the crew's obligations, the Maritime Law only in the crew's ship priority, the crew's wages belong to the common sea loss and the subject matter of the marine insurance contract embodies the protection of the rights and interests of the crew, and therefore can not be called the rights and interests of China's crew protection of the legal system of the foundational laws.

However, the development of special protection of the rights and interests of the crew of the "crew law" is more difficult, which involves the problem is too broad, including coastal transportation routes, ocean voyage, the size of the ship, the crew level, public and private law issues at the same time. At this stage, the function of the temporary use of the "crew regulations" to adjust the crew management-related issues, the "maritime law" to adjust the private law issues.

4.2. Defects in Legislative Content

Crew Regulations is China's legislation for the crew, but the content focuses on the administrative management of the crew, clear crew registration, tenure, training and legal liability and other administrative issues, emphasizing the management, but ignored the protection of the crew. And it lacks legislative purpose and basic principles in its content. Since the Regulations on Seafarers only provide for the protection of the rights of seafarers in principle, we can only seek laws and regulations such as Labor Law and Occupational Disease Prevention and Control Law. However, the work of seafarers is risky, arduous and mobile, so it can't reflect the special protection of seafarers' occupation, and can't adjust the complex employment relationship of seafarers, especially the lack of legal conditions for the termination and cancellation of the contract, and the protective provisions for female seafarers.

4.3. Lack of Legislative Harmonization

The Ministry of Commerce and the Ministry of Transportation can both regulate the maritime transportation sector because it involves trade in services, but there are often problems in the interface and coordination between the two. For example, the Ministry of Transportation formulated the "crew services regulations" and the Ministry of Commerce's "seafarers sent to foreign labor cooperation regulations" conflict in content. Therefore, due to the multiple management of service organizations will lead to the legislation is not uniform.

5. Suggestions for Improvement of the Current Situation

5.1. Strengthen the Construction of Law Enforcement and Enhance the Awareness of Seafarers' Rights Protection

China should assess the existing judicial procedures and optimize them, and strengthen the linkage and collaboration of government departments in order to reduce the time of dispute resolution and improve the efficiency of judicial power to protect the rights and interests of seafarers. We can set up a rights protection hotline and provide legal knowledge training to encourage the crew to strengthen their legal awareness and rights protection consciousness, and report and seek protection in time when they suffer from rights infringement. Only by improving China's internal maritime governance can we further improve China's global maritime governance capability [7].

5.2. Make Full Use of the Tripartite Mechanism Platform and Industry Associations

Utilizing the tripartite mechanism and industry associations in each region to establish a regional seafarers' comprehensive service platform to fully understand and obtain real-time information on seafarers' market elements and seafarers' activities. At the same time, industry associations in

DOI: 10.54254/2753-7048/66/2024MU0020

different regions can fully exchange and cooperate with each other to create a fair, just and convenient market environment for seafarers' work, increase the exemption of personal income tax for seafarers, expand the employment paths of seafarers on the road, enhance the attractiveness of seafarers' occupation and promote the employment of seafarers [8].

6. Conclusion

Due to the special nature of seafarers' work, it is necessary to protect the rights and interests of seafarers through special laws and regulations. Attempts can be made to presume the domestic legislative process with international conventions, meet the requirements of international conventions on the protection of crew's rights and interests, improve the applicability of international conventions in domestic legislation, and solve the problems after the current legislation on the protection of labor rights and interests of seafarers. Various departments and industry associations need to make cooperative efforts to pay attention to the protection of the rights and interests of seafarers, pay attention to the latest progress of international conventions, balance the process of the rule of law at home and abroad, and actively exercise the rights and fulfill the relevant obligations under international conventions, so as to promote the construction of a harmonious labor relationship and the development of the shipping industry.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0022

Tax Avoidance on Intangible Assets by Multinational Corporations in the Context of the Two-Pillar Solution and China's Response Proposal

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Abstract: International trade has entered the digital economy era due to the sector's rapid development. In order to avoid paying taxes on a global scale, multinational corporations use loopholes in conventional international tax laws. This severely damages the tax bases of many nations, results in significant financial losses, and undermines the fairness of international taxation. Various reform initiatives have developed to address the tax difficulties posed by economic digitalization. The OECD has introduced two significant solutions based on the BEPS action plan, collectively referred to as the "Two-Pillar" solution, to address the issues of tax base erosion caused by the transfer of profits of multinational enterprises and the inability of source countries to tax the profits of certain multinational enterprises in the context of the digital economy. Pillar One breaks through the entity presence rule emphasized in the existing international tax system and redistributes the profits and taxing rights of eligible large multinational enterprises to the market countries to ensure that eligible large multinational enterprises can undertake fairer global tax obligations in the context of economic digitalization. Pillar Two starts from the effective corporate income tax rate and introduces a global minimum tax system to combat the behaviors of multinational enterprises aimed at avoiding tax obligations. China is in favor of promoting the "Two-Pillar" approach as a participant in the OECD "Two-Pillar" declaration, a member of the G20, and the BEPS Inclusive Framework. Facing the new international tax rule system that is about to be implemented, China should be well-prepared in different aspects.

Keywords: Intangible asset, Tax avoidance, Two-Pillar solution.

1. Introduction

In recent years, multinational corporations have begun to frequently utilize intangible asset transfer pricing for tax avoidance, and the United Nations estimates that the global loss of tax revenue due to tax avoidance caused by multinational corporations' profit shifting methods is as high as $500-600 billion per year. Taking the European Union as an example, multinational enterprises using offshore places or tax havens to avoid taxes can carry out international tax avoidance every year to generate nearly 25 million euros of tax avoidance, accounting for 2%-2.5% of the Europe's GDP [1]. In the context of the digital economy, the phenomena of tax base erosion and profit diversion caused by

DOI: 10.54254/2753-7048/66/2024MU0022

intangible asset transfer pricing urgently calls for the implementation of a robust anti-avoidance policy. Therefore, the issue of intangible asset transfer pricing tax avoidance has become the focus of international organizations and countries around the world, and the BEPS action plan launched by OECD regards intangible asset transfer pricing as an international tax issue that needs to be focused on in the era of digital economy. The “two-pillar” solution is the latest research result of OECD, which also marks that the BEPS action plan has entered into the 2.0 era. The “two-pillar” solution provides a new solution for intangible asset transfer pricing anti-avoidance, which is the long-awaited transfer pricing anti-avoidance solution for intangible assets. It is a milestone achievement of the anti-avoidance tax on transfer pricing of intangible assets that countries are eagerly waiting for. As a large digital economy country, the scale of digital economy in China has reached 5.4 trillion U.S. dollars, second only to the U.S. as the world's second largest country [2]. The government must respond to the uncertainty created by the digital economy era by developing appropriate coping mechanisms and finding more efficient ways to address the tax issues raised by the transfer pricing behavior of intangible assets.

2. Tax Avoidance by Multinational Enterprises

2.1. Some Tax Avoidance Methods

2.1.1. Transfer Pricing

Transfer pricing, reduced to its essence, is a means of allocating costs between units of a large organization or multinational company for goods or services supplied [3]. Among the many achievements of the BEPS action plan, transfer pricing documentation and country-specific reporting are two of the minimum standards, which shows that the use of transfer pricing to avoid tax has attracted international attention. Generally speaking, businesses in high-tax countries sell products, services, and intangible assets to their affiliates in low-tax countries at a discount, and businesses in low-tax countries sell the same products, services, and intangible assets to their parent companies in high-tax countries at a premium. To reduce their tax obligations, profits are thus transferred from nations with higher tax loads to nations with lower tax burdens. By using transfer pricing in commodities transactions, multinational firms escape tax in the most significant way. In general commodity transactions, the main manifestation of transfer pricing international tax avoidance is the transfer of profits through the “high in, low out” method.

2.1.2. Tax Havens

For the income of domestic individuals or enterprises, China levies income tax on the income of domestic individuals or enterprises in both domestic and foreign countries in accordance with the principle of resident jurisdiction, but for the income of foreign-funded enterprises, China follows the principle of territorial jurisdiction in levying enterprise income tax on their gains in China. Global firms frequently establish shell businesses in nations or areas that provide reduced tax rates or even exemptions from paying taxes; these include primarily the Virgin Islands and the Cayman Islands, among other places. Multinational corporations conduct formal operations in shell companies and put most of their profits in tax havens.

2.1.3. Thin Capitalization

“Thin capitalization” is the process by which a company reduces its share of equity capital by expanding its borrowings in order to increase the amount of pre-tax deductions and, ultimately, to reduce the company's tax burden. Some companies aim to increase pre-tax cost deductions and reduce

DOI: 10.54254/2753-7048/66/2024MU0022

taxable corporate income by deliberately using borrowing or loans rather than raising shares in the financing process, thereby avoiding tax obligations.

2.1.4. Abuse of International Tax Agreements

International tax treaty abuse refers to the use of tax-specific arrangements with the will of the agreement by individuals or enterprises outside the agreement country, trying to conform their tax procedures to its relevant agreement treaty, from which they can obtain as many tax benefits as possible, obtaining tax benefits that do not belong to them, and finally realizing a specific plan to avoid paying taxes.

2.2. Tax Avoidance Motivations of Multinational Enterprises

In the early days, the transaction objects of multinational enterprises were mainly tangible goods and services, and the transactions mainly took place in the real market, coupled with the relatively simple organizational structure of enterprises, the transfer pricing arrangements of multinational enterprises were also relatively simple. With the rapid development of the global economy, although the essential logic of multinational enterprises using transfer pricing to avoid tax has not changed, but the transfer pricing involved in the object of the transaction, the form of a huge change [4].

With the development of knowledge economy and digital economy, intangible assets have become the favorite in transfer pricing arrangement. In the knowledge-based economy, the main driver of company value has shifted from tangible assets to intangible assets. Transfer pricing, in which the enterprise group sets the sales price and shifts the tax burden from a high-tax jurisdiction to a low-tax jurisdiction in order to avoid taxes, is the most straightforward and efficient technique for multinational enterprise groups to decrease their tax burden. And due to global digitization, the pricing of intangible assets has become more hidden and difficult to measure. Clearly, a major motivation for transfer pricing by multinational enterprises is the existence of tax havens, which often have lower local tax rates to attract foreign investment because of smaller domestic markets. For example, Apple's “two-tier Irish” tax shelter has enabled Apple to avoid tens of billions of dollars in taxes during the period in which it has used the shelter, maximizing the company's operating profits. Over the ten-year period from 2004 to 2014, Apple International Sales Ireland generated sales profits of €110.8 billion, which, assuming an Irish income tax rate of 12.5%, would have resulted in a €14 billion, or 12.6%, reduction in tax payments on sales profits. Meanwhile, Apple International Operations Ireland, one of Apple's “subsidiaries” that avoids tax, received nearly $30 billion in dividends from its subsidiaries between 2009 and 2012, and most surprisingly, these dividends were never taxed. Most surprisingly, these dividends were never taxed. Overall, Apple's “two-tier Irish” model of tax avoidance reduces the company's tax costs by a significant amount in order to maximize economic benefits.

3. Measure Made by the OECD(Two-Pillar Solution)

OECD is a leading international organization in tax avoidance. In response to the impact of the digital economy on international tax rules, the OECD has proposed the Two-Pillar solution, which has more than 130 countries participating in it. Overall, there are two pillars, One way to update outdated international tax laws for the twenty-first century is to give market jurisdictions additional authority to tax multinational enterprises (MNEs), regardless of their physical location. The other is setting a floor on tax competition by imposing a minimum 15% tax on corporate profit [5].

DOI: 10.54254/2753-7048/66/2024MU0022

3.1. Pillar One: Profit Redistribution Rules

Pillar One comprises three main components: a fixed return for specific baseline marketing and distribution activities that are physically conducted in a market jurisdiction, in accordance with the ALP (Amount B); a new taxing right for market jurisdictions over a share of residual profit calculated at an MNE group (or segment) level (Amount A); and procedures to enhance tax certainty through efficient dispute prevention and resolution mechanisms.

The Amount A rule applies the new profit-sharing methodology to in-scope multinational enterprise groups, specifically, multinational enterprises with global annual sales revenues of more than €20 billion and profit margins of more than 10 percent are required to allocate 25 percent of the portion of their profits in excess of 10 percent to the market country. Amount A covers most industries, but extractive industries and regulated financial institutions are excluded. MNEs that fall under the scope of this agreement will gain access to mandatory and binding dispute prevention and resolution mechanisms that prevent double taxation of Amount A. These mechanisms will cover all matters relating to Amount A, such as disputes over company profits and transfer pricing [6].

The Amount B rule is a simplified application of the traditional stand-alone transaction principle and is a simplified transfer pricing methodology for distributors designed to provide a standardized return on benchmark marketing and distribution activities undertaken in a jurisdiction.

3.2. Pillar Two: Global Minimum Tax Rules

The Global Minimum Tax Rule, which is the cornerstone of Pillar Two, is intended to guarantee that the global minimum tax cannot be lower than the effective effective tax rate (ETR) of major multinational firms in any jurisdiction in the world.The Subject to Tax Rule (STTR) and the Global Anti-Base Erosion Rules (GloBE) make up the second pillar.

There are two basic regulations that make up the GLoBE rules. The Undertaxed Payment Rule (UTPR) and the Income Inclusion Rule (IIR) are the two. The terms "IIR" and "UTPR" relate to the imposition of a top-up tax on a parent entity in relation to a constituent entity's low-taxed income and, respectively, the denial of deductions or the requirement for an equal adjustment to the extent that a constituent entity's low-tax revenue is not subject to tax under an IIR.These GLoBE regulations are specifically designed for MNEs that satisfy the BEPS Action 13 level of 750 million euros. nations can freely apply IIR to MNEs headquartered in their nations, even if this threshold is not met [7]. By setting the minimum tax rate used for purposes of the IIR and UTPR to 15%, it can effectively prevent tax avoidance in their own countries by setting up subsidiaries in other low-tax jurisdictions.

In addition to completing those regulations, the STTR modifies the underlying methods and principles for use in treaty settings. When specific categories of intra-group covered income have domestic taxing rights over that revenue relinquished by treaty and are subject to nominal corporate income tax rates below the STTR minimum rate, source jurisdictions are permitted to "tax back" under the STTR. The STTR is intended to assist developing Inclusive Framework members in safeguarding their tax bases, and it supersedes the GloBE Rules (STTR tax is creditable under those regulations) [8].

4. Effects and Advices

4.1. The Significance of the OECD "Two-Pillar" Solution

First, it promotes deeper shared governance in the area of international taxation. The "two-pillar" approach is a multilateral approach that pursues in-depth co-governance among tax jurisdictions in the area of international taxation. On the one hand, there may be a gradual convergence in the identification of global tax bases and the determination of tax rates. The "two-pillar" approach is not

DOI: 10.54254/2753-7048/66/2024MU0022

limited to a single entity, but takes the consolidated statements of multinational enterprise groups as the logical starting point, and is based on the multilateral governance of all stakeholders under the same system of rules, which is likely to advance international taxation towards the convergence of tax bases. The Global Minimum Tax (GMT) regulations aim to level the playing field in taxation by minimizing the disparities in business income tax rates across different jurisdictions. On the other hand, the multilateral tax governance system will gradually take shape, especially when the Pillar I program becomes binding through the signing of a multilateral convention in the future, which will tighten the network of multilateral tax governance mechanisms [9].

Second, it updates international tax laws in a methodical manner. The core of international tax law is the division of the right to tax cross-border business profits. However, previous international tax laws focused more on the division of the right to tax cross-border income and neglected to address aspects of the tax base and tax rate that impact tax burdens. Additionally, the division of the right to tax cross-border profits focused primarily on factors related to production and supply, such as personnel and assets, essentially ignoring market factors like marketing performance [10]. The Pillar One is a breakthrough in that it recognizes the profit-creating value of data and allocates taxing rights to a separate market country for a portion of the multinational enterprise's residual profits. Pillar Two takes a closer look at the interaction between domestic tax law and international tax treaties, and takes an unprecedented approach to curbing base erosion and profit shifting by multinational enterprises, starting with the fundamentals of the tax base and tax rates. The "Two-Pillar" solution is a systematic upgrade compared with the traditional international tax rules and other countermeasures in the past, which is a major step forward in international tax concepts and rules, and lays a solid foundation for the construction of a fairer and more reasonable global tax governance system.

4.2. Proposals for China's Response under the "Two-Pillar" Solution

The OECD's international tax reform program is always being paid attention to and adopted by all countries. In order to effectively respond to the "Two-Pillar" solution and the changes in the international tax landscape under the current international tax reform environment, China should improve its laws and related aspects, so as to be able to respond to the upcoming reform program in a more relaxed manner.

4.2.1. Improvement of the Enterprise Income Tax Law of the People's Republic of China

China, as a member of G20, has agreed to the "two-pillar" program statement issued by OECD. When the "Two-Pillar" solution officially comes into effect in China, China must follow the requirements of the program, but there is a lack of relevant content in the current EIT law. However, the lack of relevant content in the current CIT law makes it difficult for the tax authorities to exercise their taxing power without a legal basis. Therefore, the current corporate income tax law should be improved to provide strong protection for the tax authorities in exercising their taxing power.

First, a new method of accounting for taxable income on a group basis has been introduced. The "two-pillar" program requires that taxable income be calculated on a group basis, whereas in our tax law it is calculated on a legal entity basis. In order to match the new rules, new provisions can be added to the tax law. For example, "Pillar One" involves consolidated financial statements, increasing the adjustment of tax differences, and "Pillar II" involves the calculation of the effective tax rate, increasing the exclusion of income and the calculation of the effective tax amount. Secondly, the scope of permanent establishment is expanded. According to the current tax law, only when a non-resident enterprise establishes a permanent establishment in China can it levy enterprise income tax, and this permanent establishment is defined in the form of "physical existence". However, in Amount A, as long as a certain economic presence is established in the market country, the market country

DOI: 10.54254/2753-7048/66/2024MU0022

has the right to tax. Therefore, it is possible to expand the scope of permanent establishment in the tax law by adding a new provision on virtual subjects, which is mainly based on economic existence. For example, an enterprise that has not set up a physical form of organization or place in China but has online continuous business services in China can also be regarded as constituting a permanent establishment in China. Thirdly, it is to refine the approved collection method. Currently, China's tax law lacks an approved collection method for non-resident enterprises engaged in online business. It is proposed to delineate a clear range of approved levy margins, taking into account the current types of business of digital enterprises and on the basis of analyzing the revenues and profits of a large number of digital enterprises.

4.2.2. Enhancing Digital Tax Administration

In the era of digital economy, all countries are facing great challenges in tax collection and management, with new technologies and concepts emerging, and multinational conglomerates using intangible asset transfer pricing for tax avoidance becoming more and more complicated [11]. Tax authorities should seize the new opportunities of technological development and apply emerging technologies to anti-avoidance work, such as big data and cloud computing. Applying new technologies to the supervision and adjustment of intangible asset transfer pricing can effectively reduce tax-related risks and establish channels for collecting tax-related information. It can also establish a database of intangible asset transfer pricing, strengthen international information and intelligence exchange, and promote the sharing of global tax information under the digital economy.

4.2.3. Preparation of Complex Tax Personnel in International Taxation

In the field of international taxation, the development of digital economy inevitably means that digital enterprises have richer means of tax avoidance, and for the anti-avoidance of tax in the digital economy, intangible assets present characteristics such as high risk and easy to hide the value which bring great challenges to tax collection and management. The complex characteristics and various tax avoidance means have put forward high requirements for the relevant tax personnel, who not only need to have practical experience related to the anti-avoidance work of the international tax system, but also have an understanding of the latest bilateral international tax agreements, multilateral international tax conventions, and some new tax avoidance means, and also must have the knowledge of IT, artificial intelligence, data services, etc., in order to be competent for the anti-avoidance work in the era of the digital economy. In order to be competent in the anti-avoidance work in the era of digital economy. Therefore, in order to improve the relevant intangible asset transfer pricing anti-avoidance system, it is necessary to strengthen the cultivation of complex tax personnel and build the international anti-avoidance personnel system.

5. Conclusion

The transfer pricing of intangible assets has given rise to numerous new forms of tax avoidance by multinational conglomerates in the context of the digital economy. To address these tax challenges, the OECD has introduced a "Two-pillar" approach that aims to create a globally harmonized solution. The "Pillar One" program is designed to match the costs incurred by multinational enterprises in their actual business activities in their market jurisdictions with their value contributions, while "Pillar Two" is designed to prevent MNEs from utilizing transfer pricing for tax avoidance through the introduction of the Global Minimum Tax (GMT). China's current development cannot be separated from the digital economy, and the digital economy is bound to be a key focus of development in the future. As a member of the G20, the BEPS Inclusive Framework, and a participant in the OECD's "Two-Pillar" statement, China is actively promoting the "Two-Pillar" solution. In the face of the new

DOI: 10.54254/2753-7048/66/2024MU0022

system of international tax rules that will soon be implemented, China should prepare for the new system in terms of the corporate income tax law and other aspects. Although there are still uncertainties, no matter how the international tax reform program will eventually evolve, China should find its own balance of interests in the global tax rights and interests.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0028

Challenges and Legal Response to Human Rights Protection: A Case Study of Foxconn

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Abstract: This essay is a discussion of human rights issues based on the Foxconn suicide jump and the judicial system in China today regarding the protection of human rights of workers. This essay will analyze the reasons behind the Foxconn incident, and at the same time, it will deeply study the factors that human rights protection laws and regulations are not well enforced from different perspectives, as well as give feasible solutions. This essay uses both case study method and literature analysis method. Using the Foxconn incident as a case study, this paper enters into an in-depth analysis of the societal problems that existed within the company and offers solutions. By collating and studying the existing literature, drawing on the research ideas and findings of scholars, and analyzing the omissions and shortcomings of their research logic and methodology, this essay aims to provide an in-depth analysis of the Foxconn incident. This paper finds that even though there are existing laws in China on the protection of workers' human rights, the judicial system does not adequately regulate this area, and the enforcement of existing laws is also inadequate, which can be attributed to the attitudes of enterprises, the actions of the government, and the development trends in society.

Keywords: Foxconn, Law-enforcement, Government, Human rights protection.

1. Introduction

Human rights are fundamental and inalienable rights and freedoms that every human being is entitled to and should enjoy, including civil and political rights, such as the right to life, and economic, social and cultural rights, such as the right to health. Companies may not violate the rights of workers in the conduct of their business. MNEs, in particular, must pay attention to the protection of the human rights of workers in their operations in the host State. Because it is a matter of company reputation, production, and in serious cases may face legal liability.

In the context of state of economic development in the world today and international attitudes towards the protection of human rights. Nowadays there are already a number of international legal instruments, or treaties, on the protection of human rights and the fight against labour exploitation, which have been accepted by a wide range of countries. The problem of labour exploitation has indeed improved considerably, relative to last century's society.

However, in practice, even with the legal provisions in place, there is still a lot of labour oppression going on. Foxconn is a typical example. Many workers and the media have exposed the fact that Foxconn has been oppressing the labour force. These kinds of cases show that today's legal system is still inadequate.

DOI: 10.54254/2753-7048/66/2024MU0028

At present, China's judicial system has developed a relatively complete system of labour laws, but what leads to incidents of labour oppression continue to occur is that these laws are not well enforced. Based on this, this paper will explain the underlying causes behind the Foxconn incident and analyse why these laws have not been well enforced, as well as give some potential solutions.

2. Case Study: In-depth Analysis of the Foxconn Incident

2.1. Background Information on the Foxconn Incident

In 2010, 18 workers producing iPhones and iPads at a Foxconn factory in China attempted suicide by jumping off buildings. The Foxconn suicides were a series of suicides linked to low wages and harsh working conditions at the Foxconn City Industrial Park in Shenzhen, China.

Foxconn implements a rotating shift system that alternates between day and night to ensure continuous operation of production machines for 24 hours. Day shift workers operate from 8 AM to 8 PM, while night shift workers work from 8 PM to 8 AM the following day. Among them, 73.3% of workers average more than 10 hours of work per day, with a monthly average of 83.2 hours of overtime. The existence of "dragging shifts" and "voluntary overtime" to meet excessively high production targets leads to some workers exceeding 10 hours of daily work [1].

Foxconn incident is not just a single isolated incident, but a holistic and brand-new fact that can be analyzed. Therefore, the following sections will analyze the causes from business, social and government perspectives.

2.2. Causes of Foxconn Incident

2.2.1. Labor Exploitation

Labor exploitation is the abuse of people in the workplace for profit. The abuse can be direct and brutal or much less obvious. But its impact is devastating for victims; psychologically, physically, emotionally and financially. Including excessive working hours, forced labor, poor welfare and inhumane management practices.

2.2.1.1. Extremely Poor Working Conditions

According to the World Health Organization (WHO), guaranteeing the right to health refers not only to timely, quality and accessible medical care, but also to guaranteeing the conditions for realizing the right to health [2]. Health does not mean the absence of physical illness or a weak mental state, nor does it mean being physically healthy and mentally happy at the same time, but it means that as a social human being, his or her physical and mental states are able to meet and adapt to the basic requirements of sustainable development in the social environment in which he or she lives [3].

The Labor Law of the People's Republic of China provides for a maximum of eight hours of work per day, not exceeding 44 hours per week, with extended working hours generally not exceeding one hour per day and 36 hours per week [4].

However, from the news reports, it is clear that the daily working hours of Foxconn employees greatly exceed the statutory hours, and at the same time require employees to absolutely obey the inhumane management regulations gradually break the psychological defense of the workers, long hours of work so that employees do not have the time to rest, the pressure is constantly adding up, and ultimately overwhelmed by the pressure to choose to end their lives.

In addition, Foxconn's employee welfare system is very poor. Some employees have said in interviews that they can only support the most basic health conditions while working at Foxconn.

DOI: 10.54254/2753-7048/66/2024MU0028

Also, Foxconn will deduct employees' bonuses for various reasons, resulting in workers receiving very low salaries.

2.2.1.2. Dehumanizing Management Models

In the Foxconn management model, they often take extremely harsh disciplinary norms to control employees. When an employee first joins the organization, managers will warn them that the requirement is "Obey, Obey, Absolute Obey", and to train the new employees as a submissive body by way of military training, so as to realize the paramilitary management requirements centered on "obedience" [5]!

Such a model of management is violent and oppressive of workers' rights. Under the high-pressure discipline, the meaning of the employees' labor is to serve the "highest mission" of the work, i.e. to serve the product and the production target. In order to maximize production, the culture of "obedience" has become the core value of Foxconn [6].

Foxconn, as a large multinational enterprise whose main source of profit is production, has increased its productivity to a great extent under such a high production management model, although it has also exacerbated the degree of labor alienation.

2.2.2. Social Stress

In China, where the population base is huge and there is a relative surplus of labor, the pressure to find a stable job in today's society is not small.

Most of the employees of Foxconn are migrant workers, belonging to the low-education group, and most of them need to rely on manual labor for labor remuneration. The phenomenon of overwork among low-skilled labor groups, such as rural migrant workers, has not only become apparent in recent years; a 2005 survey showed that the average monthly working hours of rural migrant workers exceeded the average working hours of the local urban labor force by 20 hours.

Many of the jobs that require advanced degrees, relative to the more accessible jobs, are only related to manual labor. This is one of the reasons why so many people still work at Foxconn today, even if they are being oppressed.

China's economic development has come about through a series of gradual, incremental transformations. This transformation is also typical of the “East Asian model”: export-led industrialization, a strong sense of economic construction and a strong guiding role for the government economic construction and a strong guiding role [6]. Successful export-led industrialization in East Asian newly industrializing countries and regions relies on a low-wage, hard-working labor force.

2.2.3. Government’s Attitude

Underpinned by the idea and normative basis of corporate human rights responsibilities, there has been a growing call for the protection of workers' human rights in the field of labor relations, and the prevailing view is increasingly in favor of the responsibility of corporations to protect human rights, including labor human rights. However, the effective implementation of this human rights responsibility cannot be achieved overnight. This essay argues that the responsibility of enterprises to protect human rights.

This paper argues that the responsibility of enterprises to protect human rights is faced with a double conflict: one is the conflict between the profit-seeking nature of capital and the value of human rights in the pursuit of the goal of economic development, and the second is the conflict between different countries, and even different geographical regions within a country, in terms of the value of the right to a different standard.

DOI: 10.54254/2753-7048/66/2024MU0028

Currently, in its pursuit of economic growth, the Chinese Government has actively implemented a series of policies and subsidies to promote business development. However, this strong focus on economic benefits may have led, to some extent, to inadequate protection of the human rights of the labour force. When there are human rights violations or labour oppression, the government may appear to be insufficiently proactive in its response, aiming to minimise the impact on economic interests. This phenomenon reflects the Government's cautious attitude in dealing with the relevant issues and may also be a reason for insufficient enforcement of laws and regulations.

2.2.4. MNEs' Lack of Social Responsibility

The International Organization for Standardization (ISO) has identified organizational management, human rights, labor practices, the environment, fair operating practices, consumer issues, community involvement and development as the seven themes of social responsibility in ISO 26000 document, and has stated that States should take measures to encourage organizations to respect human rights even when operating extraterritorially.

Foxconn enterprises, as economic individuals that exist to maximize profits, evade social responsibility in practice, especially the assumption of social obligations with regard to the protection of labor human rights, wander around the edges of the legal red line, disregard responsibility under soft or promotional laws, evade responsibility for peremptory norms, and ignore the rights and interests of workers at the bottom of the hierarchy.

Various theories on CSR, including stakeholder theory and corporate citizenship theory, are unable to fundamentally resolve the paradox between the behavior of enterprises in pursuit of profit maximization and the resulting social contradictions, the root cause of which lies in the instrumental value orientation of CSR theories, as well as in the lack of a legal regulatory system and mandatory responsibilities.

3. Analysis: Factors Hindering Enforcement

3.1. Lack of Regulation and Supervision

Regulation in this context means, non-legally, that China today has more complete laws on human rights protection, but they are only poorly enforced in practice. This point is directed at the government, and arguably, it can also be argued that this is because of a lack of supervision. In other words, in practice, the intensity of law enforcement is inadequate, so much so that it allows some people to exploit the loopholes in the law and evade legal responsibility. The reasons for this result are manifold and can be divided into objective and subjective aspects.

Objectively, in terms of the overall trends in the world today, at the level of legal regulation, among the several types of United Nations legal normative documents relating to labor human rights, the constituent documents of the International Bill of Human Rights are more binding on United Nations member States and States parties to the Convention, providing basic human rights values and emphasizing the purpose of human rights themselves. However, their content focuses mainly on the provisions of basic human rights, and compared with the implementation of specific labor issues, they only form a relatively rough framework, making it difficult to regulate in detail the complex and changing situations of human rights violations. In addition, the binding force of the International Bill of Human Rights rests primarily on the responsibilities of States and Governments with regard to human rights, and non-State organizations, such as businesses, cannot be the subject of such norms [6].

Subjectively, the government, as a law-enforcement agency, does not strictly carry out its duties in practice, and in serious cases, it even connives at the occurrence of incidents like Foxconn without making any move, and the government's decision-making greatly affects the mechanism of the

DOI: 10.54254/2753-7048/66/2024MU0028

operation of laws and regulations in the society. The Government's negligence is a major reason why the regulations are not well enforced.

3.2. Lack of Clarity in the Concept of Collective Labor Rights

Collective labor rights refer to rights enjoyed by groups of workers, four sections are included: Freedom of association, Collective bargaining, right to strike, Co-determination, right to information. Collective labor rights are the fundamental guarantee for the exercise of individual labor rights, and they are a powerful tool for workers to protect themselves when the management infringes on the interests of labor.

Under Foxconn's management system, workers are independent individuals, and the strict system puts obstacles in the way of establishing connections between people, leading to fragmented social relations. This makes it very difficult for workers to seek help when they are abused, and the power available to each individual is very small, and in the face of a large company such as Foxconn, which has already formed a complete system of management, their power of resistance is almost non-existent, and the weakening of workers' bargaining power further contributes to the existence of such unfair practices as the oppression of labor, which are still in existence.

Collective bargaining is at the heart of the right to work and is the ultimate guarantee of the fulfilment of workers' rights; it should be understood as the negotiation between two parties on an equal footing on certain points of conflict, with neither party being able to compel the other to take a decision that is contrary to its own wishes. However, in China's legal practice, the design of the current law is more inclined to the collective consultation system, and lacks the true meaning of ‘collective bargaining’: firstly, the Labor Law and the Trade Union Law only provide for ‘non-confrontational’ collective contract signing procedures (i.e., collective bargaining) from the point of view of the purpose and result of the negotiation, but also for ‘non-confrontational’ collective bargaining. First, the Labor Law and the Trade Union Law only provide for a ‘non-adversarial’ procedure for the signing of collective contracts from the point of view of the purpose and outcome of the negotiations (i.e., part of the institutional framework for collective bargaining), and ‘de-conflict’ collective bargaining [7].

As a result, Foxconn's trade unions now have less clout, making it impossible for lower-level employees to assert their legal rights. Because of these institutional deficiencies in collective bargaining, workers under the "Foxconn factory regime" are unable to defend themselves through the right to collective bargaining, which has been reduced to a "declaratory right" under the current legal system.

3.3. Contradictions between the Pursuit of Capital and Human Rights Guarantees

As Foxconn's presence in the Midwest grows, it represents the expanding power of capital under the process of globalization. The expansion of global capital is aimed at maximizing economic and trade development, which coincides with the pursuit of production profit maximization by asset owners, while the comprehensive construction and implementation of labor human rights protection may lead to lower profitability, which is contrary to the value of pursuing profit in business. Behind the frequent violations of labor rights in China is a degree of economic development brought about by the comparative advantage of low labor costs. Due to the high mobility of capital, and in order to rely on capital to drive economic growth, developing countries compete with each other to gain access to capital by keeping wages and working conditions low, leading to a “race to the bottom” (“race to the bottom”) [8].

Competition in the handmade market is fierce, so enterprises want to seek profit, need to rely on constantly squeeze labour costs, so as to provide customers with cheaper prices compared to other

DOI: 10.54254/2753-7048/66/2024MU0028

competitive industry rivals, so the ‘Foxconn-like enterprises’ through the compression of labour costs, mainly relying on a large number of cheap labor inland to reduce the cost of labour, and make considerable profits at very low prices. They are able to make substantial profits at very low prices [9].

3.4. Intervention of External Factors

Some scholars have pointed out that “Foxconn's monopoly position has been achieved through deep alliances with local governments and capital accumulation” [10]. As Foxconn brings great benefits to both the government and the economic development of the region, its role is extremely important and many local government administrators are "extremely enthusiastic" with Foxconn CEO Guo Taiming.

With such a macro-trade background, the regional economy, as a local economic growth entity, will also do its best to develop the economy, and the main body that guides this trend and operates it into social life is the government. Because of the imperfect information gap, it is sometimes difficult for the government to balance high economic performance with human rights protection in its decision-making, and the upper echelons of the leadership see only fast-growing profits and not the exploitation of labor, which is obscured by a variety of factors. Or perhaps some local governments are intentionally pursuing the goal of economic growth, relaxing their supervision of enterprises like Foxconn, which can bring huge benefits, and deliberately condoning their violation of morality and the law.

Local governments have invariably become an umbrella for Foxconn's “evil”, intervening in the collective behavior of workers on the grounds of maintaining social order, production order, and the protection of other people's lives and property, and subjectively ignoring the need to intervene in terms of the manner of the collective behavior of the workers, the scope of the impact, and the question of whether the parties expect or agree with the government's intervention. It also subjectively ignores the question of whether intervention is necessary in terms of the manner and scope of the impact of the collective behavior of the workers, and whether the parties concerned expect and agree with government intervention.

Local governments, which should administer according to the law and correct the misconduct of employers, often consider the regional investment environment and enforce the law negatively in the name of “protecting enterprises”, lowering the intensity of labor inspection and law enforcement standards in order to safeguard the interests of employers in labor disputes, which directly leads to “Foxconn-like enterprises” and “low cost of labor violations”. “The cost of labor violations is too low [11].”

4. Viable Governance Pathways to Rule of Law

In this section, for the sake of logical consistency and relevance, guidance will be provided on each of the four factors mentioned above that affect the lack of implementation of human rights protection laws in practice. Similarly this part will be analyzed in terms of the different subjects, both at the macro level and at the micro level, with the macro level starting with the improvement of the judicial system and the regulatory system, strengthening the public's conception of collective labor rights, and providing avenues for workers at the bottom of the hierarchy to exercise their rights. Correction of behavioral deviations in government and business, starting at the level of social practice.

4.1. Sound Law Enforcement and Monitoring System

At its 19th Congress, the Party set out two goals for future construction, to basically realize socialist modernization by 2035; and to build China into a rich, strong, democratic, civilized, harmonious and

DOI: 10.54254/2753-7048/66/2024MU0028

beautiful modern socialist power from 2035 to the middle of this century. The State should continue to support the development of new forms of employment. However, development should not be premised on sacrificing the rights and interests of those engaged in new employment forms, and problems should be solved continuously in the process of development, rather than using development to cover up problems.

Firstly, a good foundation for legislative practice will be laid through the establishment of legal pilots, starting at the local level with the promulgation of mandatory regulations to implement the implementation of human rights protection regulations, and pilot practice will be used to explore and validate the legal norms applicable to the new forms of employment, in order to provide valuable experience and feedback for subsequent legislation. Pilot implementation will help to gain a deeper understanding of the needs of this group for protection of their rights and interests, and to examine the problems that may arise in practice from the existing laws, while at the same time providing strong support for the formulation of more specific and targeted legal measures [12].

On the other hand, the Government should proactively assume the regulatory responsibility of ensuring that the law can be well enforced, which needs to be driven by both internal and external forces. Some new laws and regulations could be discussed and introduced into Chinese judicial practice, such as those with the mandatory power to supervise and enforce the law, in order to avoid malicious harboring in practice, while the part of the judicial system on human rights protection needs to be further clarified in the definition of human rights, i.e., the scope of the protection, so as to prevent the existence of the phenomenon of conceptual substitution and confusion of the facts in the judicial practice.

4.2. Strengthening Social Forces for Collective Labor Rights

The existing law needs to further clarify the formal and procedural provisions of the right to collective action on the basis of the affirmation of the legality of the right to collective action, so as to add the necessary prerequisites for the legitimization of the right to collective action.

Specifically, the concept of collective bargaining, its procedures, the main participants, the mechanism for the output of representatives, and the penalties for preventing or hindering collective bargaining need to be clarified in the law [13].

Labor-intensive enterprises are at the low end of the global industrial chain, and their main competitiveness comes from cheap labor; in a sense, raising the wage level of workers means compressing the profit margins of such enterprises, and excessively high wage costs may force them to move out of the country.

However, as society develops and the quality of the new generation of migrant workers improves, the pattern of low wages and low rights cannot be maintained, and legitimate labor rights and interests, including wages and working conditions, should be improved. The legitimate rights and interests of workers should not be confused with the issue of employment; on the premise of guaranteeing employment, the legitimate rights and interests of workers should be safeguarded, working conditions should be improved, working hours should not be too long, overtime work should be paid for, and labor protection should be provided. When the legitimate rights and interests of workers are harmed, the relevant authorities and trade unions should come forward to protect them [12].

4.3. Building Harmonious Labor-Capital Relations

The relationship between labor and capital under the capitalist production model is highly antagonistic, focusing on the distribution of surplus. In the context of the socialist market economy with Chinese characteristics, there is both an antagonistic and cooperative aspect between labor and capital. However, they must ultimately align with the goal of common prosperity, which serves as the

DOI: 10.54254/2753-7048/66/2024MU0028

final aim of socialism with Chinese characteristics [14]. The core solutions focus on establishing harmonious labor-management relations.

In practice, the functions of the government in labor relations continuously weaken. The oversight of labor relations is inadequate. Therefore, it is necessary to promptly address the gaps in labor relations, clarify government responsibilities, and ensure that labor relations can develop in a coordinated manner.

Through government intervention in labor relations, promote the mechanism of collective bargaining. This aligns with the previously mentioned reinforcement of the concept of collective labor rights. Simultaneously, enhance social oversight responsibilities to safeguard the legal rights and interests of both labor and management. Furthermore, increase monitoring efforts and enforce strict and fair law enforcement. It is essential to ensure comprehensive supervision of workers' labor hours and intensity while improving productivity. Labor inspection agencies must not overlook or compromise on violations by platform companies. They should effectively exercise their role in overseeing the labor market [15].

From a corporate perspective, it is essential to strengthen the legal framework for labor in enterprises, cultivate new labor relations, and grant workers equal status. Furthermore, traditional labor laws only apply to conventional labor relations and fail to address the significant changes in employment forms during the platform economy era. Therefore, it is necessary to enhance labor laws, labor contract laws, and related regulations and policies. Given the complexity of employment models in the platform economy, after establishing labor standards, a differentiated and tiered rights protection system should be created for workers across different industries, positions, and employment models to meet the needs of various workers [16].

4.4. Strengthening Corporate Social Responsibility

Enterprises must change the management concept, adjust the management mode, to assume certain social responsibility. 2005 revision of the People's Republic of China Company Law, Article 5 proposed: “companies engaged in business activities must comply with the laws, administrative regulations, comply with social morality, business ethics and honesty and trustworthiness, to accept the Government and the public to assume social responsibility for the supervision.” Therefore, enterprises should take the initiative to assume certain social responsibility while pursuing profit maximization.

The lack of self-regulation of private enterprises has led to the prevalence of a responsibility gap between corporate social responsibility and the needs of employees, and from the current situation, the. The gap between corporate social responsibility and the needs of employees is widespread, and from the current situation, the gap is large.

According to Luhmann, systemic “regulation is always systemic self-regulation” [17]. And systemic evolution can only occur in one way: within the system-- “aiming to change the power within the subsystem under discussion and requiring strong power support from the outside”, developing self-limiting and internally democratizing normative forms and strong power support, developing normative forms of self-limitation and internal democratization [18]. In the case of economic systems, the preferred solution to the issue of corporate responsibility for human rights lies within the economic system itself.

Enterprises can only be socially responsible if they actively adapt to the democratization movement in the “spontaneous sphere”. This relies on the fact that “reflection can only be realized in social subsystems if the structure of negotiation is generated in them [19]”. Enterprises need to establish mechanisms for communicating with workers on an equal footing, and communication is a ‘structure of opportunity’ that provides a normative basis for the law to define the bottom line, the procedures and the basic guidelines for communication when enterprises are directly confronted with

DOI: 10.54254/2753-7048/66/2024MU0028

the pressures of consumers, laborers and other stakeholders. At the same time, the enterprise itself also needs to be transformed internally, sound and more perfect decision-making mechanism, should not just focus on the pursuit of economic interests, but should look at the long term, pay attention to the labor hardship.

In addition, the government must pay attention to the leadership of the development trend of enterprises, regulate the behavior of enterprises through legislation, and promote healthy competition among enterprises in the practice of social responsibility.

5. Conclusion

In conclusion, this essay outlines the reasons behind the Foxconn mass suicides and discusses the human rights of workers, analyzing in depth that such incidents occur due to ineffective law enforcement. This essay explores the factors behind the impact of law enforcement and also gives some feasible options. This essay highlight that China should implement rigorous and transparent enforcement mechanisms for its labor and human rights protections.

Under this incident, it also reflects the real face of the grass-roots workers in today's society, whose rights are not well protected. The issues reflected in the Foxconn incident highlight the current state of human rights protection. Workers remain in a significantly vulnerable position compared to capitalists. This disparity underscores the urgent demand for enhanced human rights safeguards. To prevent similar occurrences in the future, it requires not only the adjustment of the workers but also the collaborative efforts of the state, corporations, and other societal forces.

Moving forwards, there is still a long way to go to improve the human rights protection system in China's judicial practice, The traditional subject of human rights guarantees is the State, yet it is often difficult for the State to regulating and safeguarding human rights violations on specific grounds. This is the result of a combination of forces, including business, government, and decision-making leaders. In terms of long-term interests, in addition to generating profits and maximizing profits, they should take the initiative to assume social responsibility in accordance with the law, eliminate negative externalities as far as possible, and create social welfare.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0030

Policies and Legislations for Transgender Restrooms in Schools: Based on the Current Situation of China

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Abstract: In recent years, the protection of transgender rights has received more and more attention with the development of the times, but in China's education system, transgender rights are still an often overlooked content, and still lag behind in terms of legal framework and social acceptance. There is a lack of specific legislation for the needs of transgender people in educational settings, as well as the construction of facilities. For transgender students, the incomplete facilities of transgender toilets in Chinese schools have always been a problem for them. This paper explores the legislation of transgender toilet facilities for transgender students in Chinese schools, filling a critical gap in legal protection and social awareness. By highlighting the existing shortcomings in the Chinese legal system, this study highlights the urgent need for reforms to recognize and protect the rights of transgender students. In addition, the study advocates educational initiatives that promote understanding and acceptance of gender diversity. The significance of this study is to provide reference for policy changes to create a more inclusive educational environment.

Keywords: Legislative reform, Transgender, Restroom facilities, Gender diversity.

1. Introduction

According to the definition of American Psychological Association (APA), transgender is a general term for people whose gender identity or gender expression does not match the sex assigned at birth [1]. Gender identity refers to a person's psychological consciousness of identifying as male, female or other gender. Gender expression refers to a person's behavior, clothing, hairstyle, voice or physical characteristics to convey the gender he or she identifies with to others. Transgender, sometimes called transsexual aka trans. In addition, transgender may also include people who do not completely belong to traditional masculinity or femininity, such as bisexual, genderqueer and any other gender that does not consider their gender to be within the binary gender theory. According to data published by United Nations Development Programme (UNDP) in 2012, in 2011, there was very little information about transgender people in Asia and the Pacific [2]. It is estimated that the proportion of transgender people in the population aged 15 and above may be about 0.3%. It is estimated to be about 9 million to 9.5 million. In addition, the total population in mainland China, Hong Kong and Taiwan is 1,360,720,000, 7,234,800,000 and 23,410,280 respectively, while the number of transgender people in these regions accounts for 4,082,160, 21,705 and 70,231 respectively [3]. Among them, according to reports in China, 92.8% of transgender youth have been abused or neglected by their parents, and 76.6% of transgender youth have been abused or bullied in school due to their gender non-conforming identity.

DOI: 10.54254/2753-7048/66/2024MU0030

According to reported cases of gender confirmation surgery, there are at least 400,000 gender non-conforming people in China [4].

This group is often discriminated against and misunderstood in China. In life, work or school, they often encounter difficulties and obstacles of varying degrees. One of the difficulties is how transgender people should choose when they encounter only two types of restrooms formen and women. For transgender people, the lack of social recognition and unreasonable facilities often make them afraid to go to the restroom in public places because they are afraid of their discomfort. This phenomenon is very much in need of improvement for transgender people and society needs to pay attention to it. Therefore, this article will focus on the unreasonable status quo of restroom facilities in schools and the expectations for future legislation and policy updates.

Finally, this article will start from the analysis of the current status of transgender people in China, the research on contemporary Chinese policies on transgender people, and the expectations for reasonable changes in future policies and legislation.

2. Basic Concepts

Before starting analyzing the current situation of transgender people in China, first it needs to determine the definition of each word in the title. In this article, all the content will be analyzed based on the definition. First of all, the above text has shown the definition of transgender people. This paragraph mainly wants to add content about transgender students: According to the survey report of the 2021 National Transgender Health Survey Report 0130-2, it can be seen in Figure 1 [5].

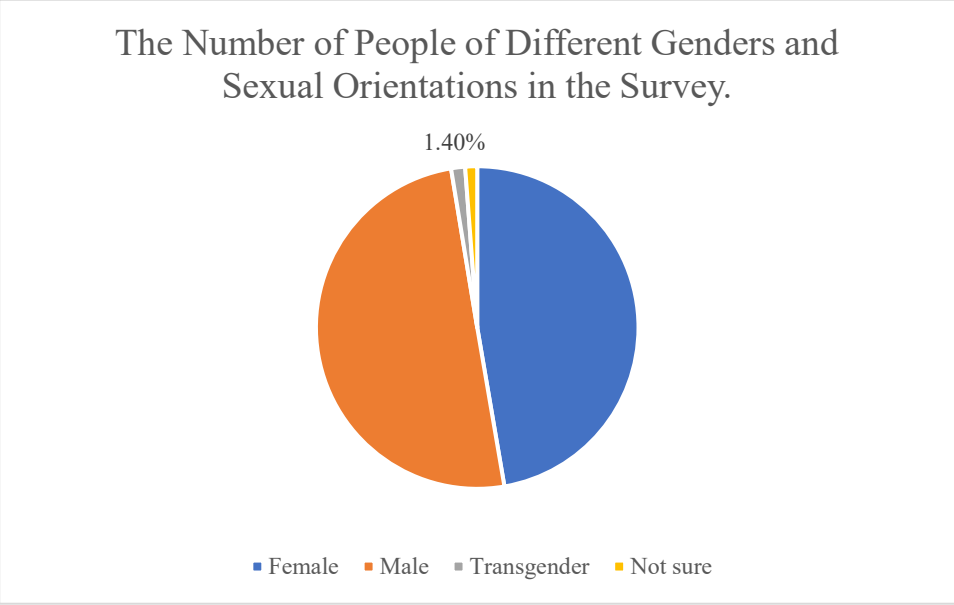

Figure 1: The Number of People of Different Genders and Sexual Orientations in the Survey.

Among 421 students from middle schools, high schools, universities and vocational high schools, 1.4% of them are transgender, which means 5-6 people are transgender. The sample size of this questionnaire is for reference, in other schools, there are more transgender students, but the school has not prepared infrastructure such as third toilets for them. In addition, the research report on the lives and rights of gender-diverse minors in China also puts forward two examples.

Case 1: Transgender woman Bingbing has been living in the school dormitory since fifth grade. "During the three years of junior high school, I only went to the men's bathroom twice, both times because the teacher punished me for cleaning the men's bathroom. I couldn't go to the women's

DOI: 10.54254/2753-7048/66/2024MU0030

bathroom, so I had to endure it." Regarding her past experience, Bingbing said calmly that in order to reduce the number of times she went to the bathroom, she deliberately controlled her water intake. "Drink less water, eat less fruit, and insist on not going to the bathroom at school. At that time, my aunt's house was near the school, and if I really couldn't bear it, I would go to my aunt's house to go to the bathroom."

Case 2: Lingling, an intersex person, is most afraid of going to the toilet. After Lingling went to school, the toilets in the school were divided into "male and female", which made Lingling very painful. On the first day of school, "he" was ridiculed. When "he" walked into the girls' toilet, he was greeted with screams and Lingling was kicked out of the girls' toilet. "He" didn't dare to go to the girls' toilet, so he went to the men's toilet when he needed to go to the toilet. However, when he went to the toilet to urinate, everyone stood, only "he" squatted, and his classmates laughed at Lingling for being "weird". After a few days, "he" felt awkward and embarrassed. In the end, Lingling left the campus when she was in the second grade of elementary school. That day, Lingling hated her weird body in her heart.

From the above examples, it can be seen that for transgender students, not being able to freely go to the restroom in school is a very painful thing for them. From the perspective of human rights, according to Article 1 and Article 22 of the Universal Declaration of Human Rights, "All people are born equal and enjoy equal dignity and rights [6]." Everyone has the right to social security and the right to free development, which depends on the efforts of national and international cooperation." Therefore, it can be seen that the inability to freely go to the restroom in school has damaged the dignity, privacy and human rights of transgender students, and in serious cases may cause varying degrees of physical or psychological discrimination and harm.

This requires a display of human rights in a special public place like the campus. The school provides a place for every child to receive education. In school, teachers not only need to teach and impart knowledge about subjects to children, but also need to create a good growth environment for every child in terms of body, mind and body to cultivate children's values and ideas. According to Article 26 of the Declaration of Human Rights, "Everyone has the right to education", and according to the definition of UNICEF, the right to education is considered a human right and is understood as a right of freedom, which clarifies the obligation to provide primary education to children, promote secondary education to all children, the right to equal access to higher education, and the obligation to provide basic education to individuals who have not received a complete primary education [7]. In addition to these provisions on the rights and obligations of individuals to receive education, the right to education also includes eliminating discrimination in the education system at all levels, establishing minimum standards and improving the quality of education. Therefore, the school has the obligation to create a third toilet for these transgender students to ensure the elimination of discrimination against transgender students, and to conduct science popularization courses related to gender diversity.

As for toilet facilities on campus, toilets are a place for people to defecate and usually have the function of cleaning. For people, it is a very private place. For transgender people, entering a toilet that does not belong to their own gender is a very painful thing. According to the design specifications for elementary and middle schools, there are only four categories of toilets for males, females, male teachers, and female teachers, and there is no provision for facilities for third-gender toilets [8]. For China, there are almost no third-gender toilets in schools.

This can be traced back to the development and attention of China's legislation on transgender groups. However, according to an article from the United Nations, there are no laws or policies in mainland China to oppose discrimination against gender identity, gender temperament, gender characteristics or transgender people, and there is even no concept of "transgender" in the legal system [9]. Therefore, this article wants to specifically explore and analyze the improvement of basic

DOI: 10.54254/2753-7048/66/2024MU0030

legislation and policies for the establishment of infrastructure for transgender people, especially transgender students.

Therefore, the following article will analyze the situation of transgender people and transgender students in China based on the current situation of the country as a whole.

3. Current Situation in China

3.1. From the Perspective of the Country

As the world's second most populous country and the second largest economy, China is also the world's largest industrial, agricultural and trading country. China's rapid economic development reflects China's efforts to develop its national hard power and international status. However, in terms of values and soft power, it will have great differences with other countries. The Chinese government's current position on LGBT rights is vague. Although homosexuality has been de-diagnosed to a certain extent, homosexuality was officially de-diagnosed in the 2001 "Chinese Classification and Diagnostic Criteria for Mental Disorders (Third Edition)" (CCMD-3).

However, this move was ten years later than the World Health Organization's official de-diagnostic ization of homosexuality on May 17, 1990. The DSM-III released by the United States in 1987 also de-diagnosed homosexuality, and China was fourteen years later than the United States. Therefore, from these official disease diagnosis manuals, it can be seen that China's tolerance for sexual minorities in the whole society is far lower than that of other countries. In addition, in China, non-cisgender identity is not protected by law [10]. According to the 2020 version of the Guidelines for the Diagnosis and Treatment of Mental Disorders, Chapter 13, Section 9, "Sexual Identity Disorders", transgender people are still defined as heterosexual. According to the National Guidelines for the Clinical Application of Restricted Technologies (G05, Guidelines for the Clinical Application of Gender Reassignment Technologies in the 2022 version), patients who want to undergo gender reassignment surgery must be confirmed as heterosexual to meet the conditions [11].

3.2. From the Social Perspective

In reality, sexual minorities encounter obstacles not only in official documents issued by the state, but also in the related dissemination and development in society and life.

As shown in Figure 2, in terms of school education, according to the "Survey on the Living Conditions of Sexual Minorities in China" released by the United Nations Development Program, from the perspective of gender diversity education in China, only slightly more than 10% of the respondents said that they had received gender diversity education in school, and most of them were graduate students and above [12].

DOI: 10.54254/2753-7048/66/2024MU0030

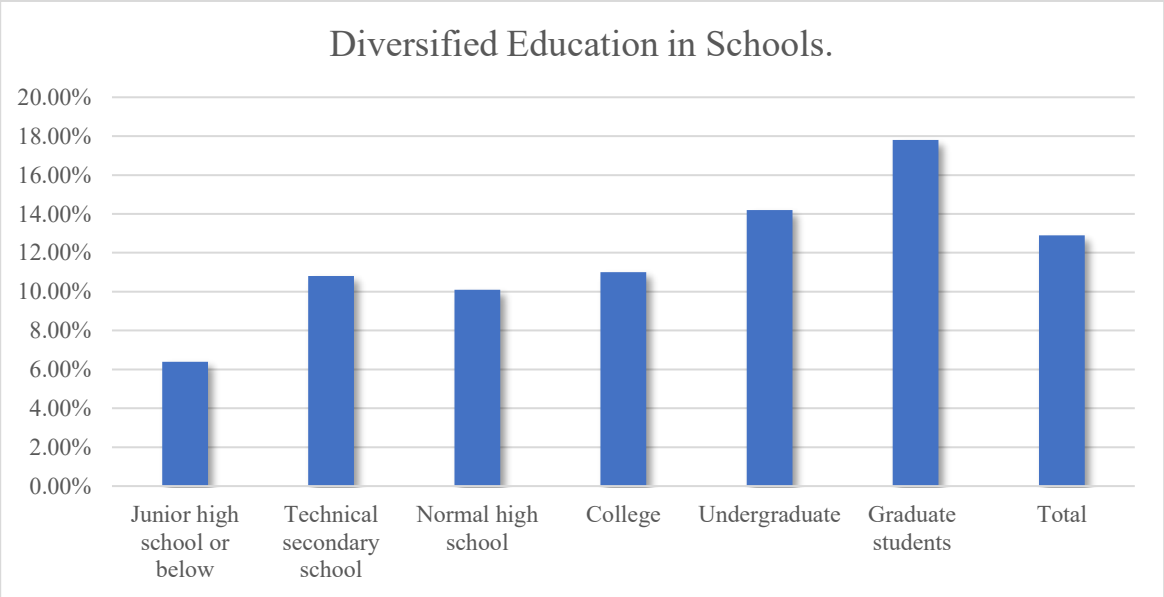

Figure 2: Diversified Education in Schools.

Therefore, it can be seen that China still has defects in targeting sexual minorities. According to the 2017 China Transgender Group Living Status Survey Report, the dropout rate of transgender groups is extremely high. The survey results show that the dropout rate of sexual minorities is around 5%-10%, and the proportion of those who suffer from campus violence during school is extremely high. The average total sample is 70.8%, and the highest proportion of transgender women is 75.07% [13].

Therefore, it can also be seen that the situation of transgender students in school is very difficult. There are no perfect facilities to protect their rights, and they are also bullied to varying degrees psychologically.

In public places, China is not perfect in the construction of public space facilities. According to the 2021 National Transgender Health Survey Report, most transgender men and transgender women avoid using public toilets because of fear . Among 1,465 transgender men, the proportion of transgender men who are afraid to use public toilets is about 62.5%, and 15.4% of transgender men will suffer verbal bullying when using public toilets. Among 2,839 transgender women, the proportion of transgender women who are afraid to use public toilets is 60.2%, 9.5% of transgender women suffer verbal bullying, and 3.6% suffer harassment. Other sexual minorities have also suffered varying degrees of verbal bullying and harassment [5].

On the Internet, in the broadcast of film and television, according to the second point of Article 5, Item 6 of the "General Rules for the Production of TV Drama Content", it is mentioned that sexual minorities are not allowed to be disseminated. In various media magazines, the more traditional the media, the harder it is to see the image of sexual minorities, such as newspapers and magazines. The more new media, such as the Internet, the more images of sexual minorities appear, but only 8.2% of people think that they often see images of sexual minorities on the Internet. Therefore, it can be seen that in society, due to the influence of the media and personal thoughts, people will default to sexual minorities as a normal group [14]. There are also few images of sexual minorities in various traditional media. However, with the progress of the times, new media also tend to show more images of sexual minorities. Unfortunately, for middle-aged and elderly people, most of the time they do not have the opportunity to receive information about sexual minorities, whether in life or on the Internet, and naturally they will develop prejudices along with social trends.

DOI: 10.54254/2753-7048/66/2024MU0030

Therefore, it can be seen that China's prejudice against sexual minorities has lasted for a long time and involves different factors. If you want to change the prejudice in the hearts of the Chinese people, you can only do it step by step. First of all, you should start with the change of national policies, so that you can change the people's minds in terms of authority. Because China is a one-party state, the constitution and other laws are the moral standards in the hearts of the Chinese people. If you don't make changes at the most fundamental level, it will be difficult to gain understanding and support from the people.

4. Future Improvement

From the above research and analysis, it can be found that the situation of transgender people in China is very difficult and discriminated against in the country. The country has an obligation to protect its citizens. As the cornerstone of a country's good life, the law needs to be updated and iterated according to the development of society and the times. At present, the concept of "transgender" is absent in China's laws. This inaction has brought obstacles and challenges to transgender people to a certain extent. Therefore, if it is necessary to re-propose and take action on the issue of toilet facilities for transgender students in schools, it needs to be changed from multiple aspects at the same time.

4.1. From the Perspective of National Legislation

The law is the best weapon for citizens to protect themselves. When their interests are infringed, using legal means to protect their rights is the best choice. For transgender students, not being able to use the toilets that conform to their gender has violated their rights. In the case of protecting cisgender people, setting up third-gender toilets is the best decision. Therefore, relevant regulations can be added to the original requirements for toilet facilities for primary and secondary school students: schools need to add transgender toilets to the locations of the original toilets, and transgender toilets need to ensure that there are at least two toilets in each toilet area. The rest of the hardware facilities are the same as men's and women's toilets.

In addition, this regulation can also be applied to high schools, universities, and even workplaces and other public spaces. With legal provisions, there will be legal effects, which can really make school leaders pay attention and start to change. Protect the rights of transgender students through legitimate means.

4.2. From the Perspective of School Education

Eliminating discrimination is the biggest need for transgender people. For students, their minds are not yet sound, so in terms of thoughts and values, schools, parents, classmates and atmosphere in the school will greatly affect a child's thinking. Therefore, if the problem of discrimination needs to be solved from the root, it is necessary to popularize knowledge about transgender to students in large quantities, and the school also needs the support of parents. Schools can stipulate that children above the fifth grade need at least one mental health class every week. Teachers need to eliminate discrimination for the transgender group in class, popularize the concepts and knowledge about sexual minorities to students, and improve the mental health level of transgender people, improve the ability of transgender people themselves, and finally promote gender-friendly toilets, etc. Therefore, children can feel the existence of the transgender group in the school environment and classroom, and destigmatize the transgender group.

DOI: 10.54254/2753-7048/66/2024MU0030

4.3. From the Perspective of Social Education

In addition to school education, social education is also very important. Some concepts that students can understand may not be understood by parents, such as why schools need to design third-gender toilets, which will also become an obstacle for transgender students. Therefore, in society, more knowledge about transgender can be promoted on television or in the media, so that more and more people can truly understand transgender people, so that parents can maintain a united front with the school when educating their children. Parents can understand why adding third gender bathrooms is important and necessary.

5. Conclusion

In summary, the low penetration rate of transgender toilet facilities in Chinese schools directly reflects China's current neglect and concern for the rights of transgender people. The establishment of transgender toilets is related to the welfare and rights of transgender students, and is also a major challenge these students will face when they enter society. This article focuses on the reasons and current situation of the lack of transgender toilets, including discrimination and lack of legal protection. As far as the current situation is concerned, the first step to protect the rights of transgender people is to have transgender laws in Chinese law, set up transgender toilets, and popularize sexual minority education. The legislative changes and education popularization proposed in this article are to ensure that transgender students will enjoy the same rights and dignity as other students in school and society in the future. In order to achieve a more inclusive and fair society, everyone needs to make certain efforts. Even this goal is difficult to achieve in a short period of time, the changes now are to lay the foundation for better changes in the future. With everyone's joint efforts, China and the world will surely ensure that more and more people enjoy their due rights and build a fairer and happier society.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0036

The Identification of Bundle Sales Between the US and China

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Abstract: As a common monopoly means in the market in today's market, bundle sales is banned by many countries in the anti-monopoly law, but each country has different ways of identifying it. United States as the first country to establish an anti-monopoly law, it has undergone a process of shifting from structuralism to behaviorism, especially in the "Microsoft case", from the different determinations of bundle sales in the two judgments, it can be seen that the United States anti-monopoly law has gradually relaxed the sanctions on the monopoly of large enterprises, Instead, they hope to make use the technological advantages of large enterprises to complete its own innovation and development, and thus United States pay more attention to this component of technical talents in the consumer group. As far as China is concerned, through the determination of bundle sales in the "Qihoo case" and the "Huawei case", it is not difficult to see that China, as a rising star in the anti-monopoly law, has consistently implemented behaviorism, so that China's small and medium-sized enterprises can have more room to survive, Therefore, the rights and interests of its ordinary consumers will also be relatively better protected.

Keywords: Antitrust, Bundle sales, Microsoft case, Behaviorism, Structuralism.

1. Introduction

Antitrust as a country to maintain a balanced market economy, An important means of promoting innovative development, Get much attention in today's society, As far as China is concerned, According to the Annual Report on China's Anti-monopoly Law Enforcement (2023) issued by the State Administration of Regulation, Visible, in 2023, Market regulators investigated and dealt with 11 monopoly cases of abusing their dominant market position, There were five cases involving additional unreasonable transactions and bundle sales sales [1]. Two fewer overall numbers of cases compared to 2022, The number of cases involving additional unreasonable transactions and bundle sales was also reduced by two [2].

As a country that always implements behaviorism under the anti-monopoly system, China has a unique way of identifying monopolistic behaviors, especially the behaviors such as bundle sales. Around 2011, there were two famous anti-monopoly cases in China, one was "Qihoo v. Tencent case" (hereinafter referred to as "Qihoo case"), and the other was "Huawei v. Interactive Digital Case" (hereinafter referred to as "Huawei case"). In both cases, there are disputes about how to identify bundle sales, and it is not difficult to find that China has implemented the behavior model in the identification of bundle sales.

DOI: 10.54254/2753-7048/66/2024MU0036

On the other side of the ocean, the United States, as the first country to establish an anti-monopoly system, has different ideas and systems from China. By relaxing the sanctions on large enterprises, the United States has driven the technological innovation in the market. The United States has experienced a change from structuralism to behaviorism in anti-monopoly thinking, and experienced a change from strict to loose in measures. In "Microsoft case" for the first time, the district court from the perspective of structuralism, in the process of the monopoly of behavior, first judge Microsoft market share, and its market control ability, on the verdict, the judge said Microsoft split sanctions, the Microsoft in two. The verdict has sparked a heated debate, with Microsoft filing a new round of appeals. In the second trial, the appeals court retained its determination of Microsoft's monopoly behavior, but its thinking clearly shifted from structuralism to behaviorism. On the one hand, in the process of hearing the case, the court paid more attention to whether the defendants also established the dominant market position, established the barriers to prevent competitors from entering the market, and paid more attention to the opinions of technical personnel in the consumer group. On the other hand, in the verdict, the appeals court judge decided that he would not seek to split Microsoft, but require Microsoft to pay $1.8 billion settlement fee and prohibit Microsoft from engaging in any adverse behavior to competitors in the future.

The above three cases are all typical cases of anti-monopoly in China and the United States, and bundle sales sales are a typical form of anti-monopoly. So what is the difference between China and the United States? What exactly do these differences mean? Meanwhile why are these differences happening? An analysis of these three questions may help to understand the fundamental differences in antitrust thinking between China and the United States.

2. United States Case: Microsoft Case

2.1. Case Context

Founded in 1975 as a small software programming company, Microsoft in the 1980s shifted to network operating systems and gradually dominated the market. In fact, in the early 1990s, Microsoft's competitors began accusing Microsoft of bundle sales, but in 1994, the Justice Department reached a settlement with Microsoft includes no other conditions are attached when providing win95 to other computer manufacturers [3]. In 1995, Microsoft developed the "explorer" browser, and tied to the operating system for sales, a move directly lead to competitors such as netscape company in the browser market share decline, therefore, the U. S. The Justice Department has accused Microsoft of violating its first settlement agreement, in 1997 the federal court ruled, ordered Microsoft to dismantle the browser and its operating system. Microsoft apparently obeyed the ruling, but it accelerated the pace of development, developing a new generation of browser and operating systems in 1998, meaning that the 1995 ruling would not apply to Microsoft's new products. In the middle of 1998, the justice department united 20 states and appeal to the federal court, accused of Microsoft violated the "antitrust law", after a new round of mediation failed, the federal court judge Jackson that Microsoft has forced consumer choice and bundle sales behavior, he ordered Microsoft to be split in half, then Microsoft made a long appeal.

In the second instance, the appeal court overturned most of the first instance judgment, the reasons mainly include, one is judge Jackson in privately published some hatred of Microsoft subjective speech, the second is the first instance of Microsoft "attempt to monopoly" behavior without any substantial evidence, three is Microsoft's monopoly behavior to a certain extent, is conducive to consumers and technological innovation of [4]. So the appeals court of the second trial reversed the two-part split against Microsoft. Although many states have refused to accept the ruling, Microsoft has only paid $1.8 billion in damages and certain behavioral restrictions.

DOI: 10.54254/2753-7048/66/2024MU0036

While Microsoft still pays a high price to deal with the crisis, it seems acceptable compared to being split in two. And two different judgment also reflects the antitrust ideas and system change, the federal district court of the United States judge Microsoft monopoly behavior mainly based on Microsoft and its competitors' market share, but also judge whether the consumer on products has a free choice, on the verdict also adopted the way of cutting enterprise structure, this is obvious structuralism thought. In the second trial, the appeals court began to judge whether Microsoft was abusing its dominant position, whether Microsoft's bundle sales practices had benefited consumers and technological innovation, and ultimately fined it and restricted its actions. From these considerations, it is not difficult to see that the American antitrust thinking gradually transition to behaviorism [4]. The shift can also be seen in the court's two different decisions of bundle sales.

2.2. Comparison of the Identification of Bundle Sales in the Two Judgments

First of all, we should make clear the concept of bundle sales, it also known as tying, refers to the two products bundled together, so that consumers must buy another bundled product at the same time. On the one hand, this behavior makes consumers lose the choice, on the other hand, it will make enterprises to use their market advantage in a certain field to occupy another market, causing damage to competitors and get improper profits.

In the first instance, Judge Jackson adopted a typical structuralist model for the whole case. First of all, he determined that Microsoft had monopoly ability through its market share, and at the same time, he determined that Microsoft had implemented monopoly behavior through the decline of its competitors such as Netscape, which is a prerequisite for the identification of monopoly. Second, Jackson believes that Microsoft's behavior of tying the browser with the operating system has caused Microsoft to improperly expand its position in the browser market. Finally, more importantly, Judge Jackson argued that the attitude of consumers towards Microsoft was crucial in the case, and that if consumers thought Microsoft deprived them of their option, this was an undeniable bundle sales.

In the second trial, the attitude of the appeal court is completely change, first it did not deny Microsoft's dominant market position, but it gives the opinion is that Microsoft has a dominant position in the operating system, but it does not mean that Microsoft will also establish monopoly barriers in the browser market, for this charges need sufficient evidence to support. Secondly, the appellate court believes that Microsoft's bundle sales of the two products can promote technological innovation, so the benefits brought to the society should be taken into account. Moreover, the appellate court also believes that such bundle sales is common in the industry. In addition, the meaning of Microsoft bundle sales may not be understood for ordinary consumers, but the court focused on the opinions of technical talent. All the above factors show that the court paid more attention to the benefits Microsoft can make for the society. It is not hard to see in the final decision, the court intentionally preserve the Microsoft, so that it to avoid be split, can make it in a complete enterprise to continue to contribute in the field of technology, it also reflects the antitrust thought from structuralism into behavior in the process of pay more attention to enterprise to create value, rather than destruction, it also makes the United States aware of monopoly behavior, especially in some key areas of bundle sales, is actually can promote competition and innovation.

In conclusion, it is not hard to see, the United States of Microsoft two trial results reflects the gradual change of antitrust ideas, both in the process judgment or the results, can reflect the United States has gradually abandoned the structuralism the "rigid direct" antitrust means, it is a shift into a "moderate and indirect" behaviorism.

DOI: 10.54254/2753-7048/66/2024MU0036

2.3. Analyze the Reasons for the Final Judgment

In the second trial, the reason that appeal court gives is simple, most important is to see whether Microsoft's bundle sales has expanded its position in the browser market. In the first instance, Judge Jackson, both out of personal interest and by reason, apparently decided that Microsoft's bundle sales was "trying" to monopolize the browser market. However, in the second instance, the appeal court said that if it wants to determine that Microsoft will have a monopoly in the browser market, it needs to be confirmed. First, the scope of the browser market, Microsoft has the purpose of monopoly, and third, Microsoft's monopoly has the possibility of success [5]. There are only a few pieces of evidence, but it shows the problem that Microsoft cannot assume in the form of bundle sales that an improper monopoly and the improper extension of market dominance.

In addition, the final decision also considered the additional impact of Microsoft bundle sales on society, which is also one of the key factors for Microsoft to avoid the split. The appeal court is first implicitly denied in the first instance of about consumer rights and interests, in the second instance the appeal court that if you want to recognize Microsoft bundle sales belongs to a kind of innovation and development, then need professional technical personnel to judge, ordinary consumers may not be able to understand the true meaning of such products bundle sales. Second, the appeals court held that Microsoft's bundle sales is actually beneficial to consumers to some extent, because the bundle sales of browser and operating system makes consumers cheaper to enter the Internet, and the bundle sales can also promote the quality of each other [5].

Therefore, it is not difficult to see from the above reasons that in the second instance of this case, the court actually relaxed the constraints on monopolistic behavior, paying more attention to not only whether the enterprise has monopoly behavior itself, but also whether the monopolistic behavior of the enterprise produces benefits to the society and whether it promotes technological innovation. The transformation of the verdict from structuralism to behaviouralism also shows that the United States is deliberately preserving large enterprises, allowing them to drive technological innovation. The antitrust in the United States has shifted from strict to loose, which actually gives companies like Microsoft a chance. If it can drive the development of society and technology with their own value, then monopoly is not a question worth investigating.

3. The Cases of China: Qihoo Case and Huawei Case

3.1. Context

China issued the anti-monopoly law in 2008. In the past 16 years, China's anti-monopoly system has been relatively fully developed, and many cases have also provided valuable experience for this reason. It is not difficult to find the Chinese anti-monopoly thought contained in the identification of bundled sales in two cases. One is the "Qihoo case", which began in 2011 as "China's first anti-monopoly case". And the other is the "Huawei case", which can also reflects China's anti-monopoly thinking.

First is "Qihoo" case, the case refers to the company in 2011 Qihoo accused tencent monopoly behavior, violated the antitrust law, Qihoo pointed out that tencent through bundle sales its QQ software products, forcing users to choose QQ software and coercion users ban the use of 360 series software (Qihoo products), these behaviors caused damage to Qihoo. Finally the court believes that the defendant's behavior belongs to self relief, the plaintiff has no evidence to prove that because the defendant's bundle sales behavior they suffered substantial damage, and that the defendant's bundle sales behavior gave consumers a reasonable option, and told, so there is no forced users to choose, and the court that the defendant's bundle sales behavior is beneficial to consumers, therefore has "economic rationality". The most important point is that the court found that the plaintiff's judgment

DOI: 10.54254/2753-7048/66/2024MU0036

of the market position was wrong, and that the defendant did not have a dominant market position in certain areas, so there is no abuse of the dominant market position [6].

The second is the "Huawei case", which Huawei in 2011 accused Interactive Digital Corporation and its subsidiaries to set unreasonable prices, attach unreasonable conditions and conduct bundle sales, and that Interactive Digital Corporation abused its dominant market position and disturbed the order of market competition. In the judgment, the court held that first of all, the defendant gave the plaintiff the overpricing of the pricing of the patent license. In the second instance, the court pointed out in the second judgment that because of the irreplaceable and uniqueness of the patent, the use of bundle sales is conducive to reducing the cost, easy for consumers to use, and in line with the efficiency. Finally, the court found that there was no substantial evidence of the defendants' claims on appeal. Therefore, all the appeals of both sides were rejected.

The above two cases are typical of China's antitrust case, from the recognition process of bundle sales and the final verdict is not hard to see, China is a strict behaviorism, it judges the monopolistic behavior of an enterprise simply from the perspective of whether it abuses its dominant market position, whether there is substantive evidence, whether it infringes the rights and interests of consumers and whether it is involved in patents. Although the judgment result is loose, the trial process before making the judgment is obviously extremely strict.

3.2. The Anti-monopoly Legislative Logic of China Reflected in Two Cases

The first is the "Qihoo case". In the final decision, the court fully considered the rights of consumers, such as their choice and the benefits that consumers may obtain. Through the judgment document, on the other hand, it is not hard to find that China's determination of the dominant market position has a strict heavy and complicated procedures, including the market share, the control of raw materials, the competitors into the market difficulty, etc., that a lot of premise makes the court in the case directly denied the charges about the defendant's dominant market position.

The second is the "Huawei case", What is special about the case is that the accusation is the patented product of Interactive Digital Corporation, and the patented products due to its irreplaceable and high technical barriers, make it is allowed to bundle sales within a certain limit, the final opinion of the court also rejected part of the plaintiff's appeal request. Similar to the "Qihoo case" is that although the bundle sales identification of this case mainly considers the particularity of patented products, it also considers whether it is conducive to the use of ordinary consumers as a factor. And for all appeals, the court requested more detailed evidence, such as evidence that the plaintiff suffered actual losses and the defendant's actions.

In conclusion, China in the trial of related monopoly cases, in the dominant market position is the most basic precondition, often very "cautious", in the Anti-monopoly Law Article 17,18 and 19 to make the corresponding regulation, article 18 lists the six may constitute a dominant market factors, and stipulated in article 19 can be directly according to the market share to infer whether the operator has a dominant market position, but the provision can according to the proof not to apply [7]. Therefore, it is not difficult to see that China has refined so many identification premises, and the purpose is obviously to achieve the development of market economy by relaxing the restrictions on enterprises, and on the other hand, it can directly warn enterprises of the possible monopoly behavior through the identification method of market share. In addition, in the process of the behavior of bundle sales, China also adopted a more "compatible", the side consider enterprise behavior is really good to consumers, such as like "Huawei" patent licensing, the bundle sales way for enterprises can reduce costs, for consumers can improve the efficiency. For another example, the bundle sales behavior of Tencent products in the "Qihoo case". The court finally believed that such behavior first respects the choice willingness of consumers, and then there is a certain "economic rationality".

DOI: 10.54254/2753-7048/66/2024MU0036

Since the anti-monopoly legislation in 2008, China has always maintain the practice of behaviorism, which has made outstanding contributions to the rapid development of the market economy. However, the anti-monopoly law should also be adjusted to adapt to the changing situation, and try to fill the gaps and room left in the anti-monopoly law.

4. The Comparison between China and the US on Bundle Sales Identification

4.1. The Similarity and Difference

In comparing the "Microsoft case" in the United States with the above two cases in China, it is not difficult to find that there are some common and differences in the identification of bundle sales.

The first is the similarities. The most critical point in the Microsoft case was the shift to behaviorism in the second trial, which, like the verdict in the two cases in China, fined the companies involved and restricted their possible future behavior, which is one of the most typical features of the behaviorism model. In addition, in the precondition of the identification of bundle sales, the United States and China consider the same idea of whether the enterprises involved attempt to monopolize, which is a factor to consider whether their legitimacy from the perspective of behavioral purpose. In addition, for bundle sales, China and the United States also consider whether selling products in the form of bundle sales in cases damages competitors and consumers, and need complete and sufficient substantive evidence to judge whether they are not. China and the United States have done the same thing: to consider the rationality of the bundle sales, to judge whether the monopoly has legitimacy is an important factor, such as in the "Huawei" for patent products, the court considered its "economic rationality", that patent products to some extent is irreplaceability and uniqueness. Finally, China and the United States fully respect consumer opinions in the identification of the impact of bundle sales, but there are still obvious differences.

The second is the difference. Can be found in the case from the United States, the United States in the process of antitrust thought change gradually recognize the retained involved enterprise structure integrity can promote technological innovation, it is the reason, let the United States in the "Microsoft" to the attitude of consumers have some fuzzy changes, in the second trial of the us court deliberately focus on the technical talent for Microsoft bundle sales perception and cognition [5]. Instead, China still focuses in similar cases on whether ordinary consumers are lost or in their favor. From this aspect, we can find that the change of antitrust thinking in the United States is mainly to support the continuous innovation of its technology, while China is to consolidate the development of the market economy. On the other hand, in the preconditions of bundle sales, China's judgment of market dominance is more strict and complex, while the United States is relatively simple.

To sum up, the different identification of bundle sales sales between China and the US can reflect the differences in the anti-monopoly thinking of the two countries, and this difference also brings different effects to the two countries.

4.2. The Different Impacts that Could be Had on the Two Countries

The United States in the "Microsoft" show not only from structuralism to behavior change, also reflects the deep concern about the development of science and technology, if follow the traditional way of structuralism, so will cause devastating blow to involved enterprises, so it will reduce the development of cutting-edge technology, also will hinder the development of domestic technology. In the second trial of the "Microsoft case", the United States clearly recognized this problem, so in the process of the trial, it focused on the advantages and disadvantages of technological innovation in the bundle sales behavior of Microsoft. This may make the future United States more comfortable with cases involving the technology sector, and may make the relevant companies more

DOI: 10.54254/2753-7048/66/2024MU0036

"unscrupulous", but its technological innovation will not be blocked. This is both a risk and an opportunity for America.

After the anti-monopoly legislation in 2008, China has always maintained a cautious behavior doctrine. In these two cases, it is not difficult to find that this behavior doctrine is helpful to maintaining economic stability and the development of small and medium-sized enterprises. Behavior requires emphatically grasp the abuse of the dominant market position, but in the above two cases, the Chinese court in the process of determination, still consider many other factors, it also shows that China for bundle sales such monopoly behavior maintained a very rigorous attitude, China is intentionally or unintentionally to create opportunities for companies to drive innovation in the field of technology. In this way, it can drive the development of scale economy in China, and it can also promote the international competitiveness of enterprises [8]. Such anti-monopoly thinking has maintained stable economic development at the moment, and may create more opportunities for China in the technology field in the future.

5. Conclusion

Anti-monopoly has been the key means to maintain fair market competition and promote economic growth since ancient times. Since the "antitrust" legislation, the United States has embarked on the road of systematic antitrust. So far, the United States has changed a lot of traditional ideas, as mentioned above, from structuralism to behaviorism, and from strict to relatively loose. All these changes show that the United States has begun to adapt to the changes of The Times, and began to seek a "way to survive" in an era of the pursuit of technology and efficiency. From the changed judgment in the second trial, it is not difficult to find that the United States is already thinking about whether it can strike a balance between antitrust and promoting technological innovation around the 21st century. Eventually, the United States chose to change its antitrust thinking. Bundles are not necessarily disruptive, and in some cases they can even promote society, and the United States seems to have its own considerations. This directly leads to the stable survival of large technology enterprises in the United States, and it is not difficult to see that the United States is using the hands of these enterprises to drive the innovative development of the field of technology.

China, its anti-monopoly legislation also but 16 years, China's systematization is not perfect, but the above two cases can also be found in China into a new era of rapid growth, indeed established the corresponding legal protection, on the one hand, it guarantees the stable development of the enterprises, on the other hand it also balance the rights and interests of consumers. Although China does not have the long history of anti-monopoly development of the United States, it has maintained the behaviorism from beginning to end, which means that the maturity process of China's anti-monopoly system will be faster. From the determination of bundling in several cases, it can be concluded that China has actually formed a relatively strict anti-monopoly system in a relaxed environment, and whether the determination of market dominance in the preconditions or whether the patent license constitutes bundling reflects that even under the behaviorist model, China can still establish a set of legal systems applicable to the development of its own market economy in its own way. Therefore, more small and medium-sized enterprises can take this opportunity to survive.

However, no matter where the differences between China and the United States are, it is all the efforts made by various countries to adapt to the development of the times. For both China and the United States, the antitrust law still has a long way to go.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0039

Inspiration from the Deferred Prosecution Agreement: Based on Its Comparison with China's Compliance Non-prosecution System

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Abstract: Since the break out of the financial crisis in 2008, the US has attached more importance to economic surveillance. In order to avoid and fight against crimes which take place in big enterprises effectively, meanwhile, release the burden that the prosecution process might bring to companies, the legislature has come up with a new system called "deferred prosecution" and promoted its application in real practice. In recent years, the legislation has been widely used in many cases to tackle with the corruption problem, especially those happen in MNEs, who is powerful enough to play an essential role in global trade and economic growth, and has proved to be a success for it creates a balance between the benefit of MNEs and that of the country, purifying the market atmosphere and optimizing the market order. Similarly, China has a relevant system named "Compliance Non-prosecution". However, there are some differences between two systems, also, application is still strictly limited in China. This essay aims at identifying the contrast of two systems and analysis the essence behind the differences, using cases from both China and the US as an example.

Keywords: Deferred prosecution agreement, Compliant non-prosecution system, Case analysis, Comparative study.

1. Introduction

It was 1st December 2018, in Vancouver, Canada, a Chinese citizen called Meng, the CFO of Huawei Group, was arrested by the Canada government "at the US's request". Soon after her probation, the US Department of Justice asked to intervene the case to "safeguard the interest of America". Under the guidance of the US government, Meng was illegally restricted to act like a normal person and strictly supervise by the Canada government. One year later, in 28th January 2019, Meng and Huawei was sued by the US Department of Justice for disrupting financial order by bank fraud and wire fraud. With the helpful effort of China, the UN human right council paid high attention to the issue and held meetings in particular to resolve the dispute. Few days after the meeting, China's effort paid back. The US Department of Justice reached to an agreement with Meng and permitted to release her unconditionally. The agreement is exactly a deferred prosecution agreement (DPA) [1].

Making a DPA with the one in charge is usually an effective way for the prosecutor to maintain a decent relationship with companies and organizations, meanwhile, impose a duty on them and

DOI: 10.54254/2753-7048/66/2024MU0039

guarantee that they are strictly regulated by laws and policies through compromise. However, compare with a normal DPA, huge differences can be found in this DPA. Firstly, it focuses on personal crime instead of corporation delinquency. Meng, as an individual, became a party of the contract, which means that it is an agreement specific for dealing with Meng's crime and for dropping the charges of Meng. Secondly, it doesn't require Meng to pay a fine and cooperate with further investigation. A normal DPA usually asks the guilty one to accept punishment to compensate for their mistake in a equivalent way. However, there were few obligations that Meng should take on. Two of the most significant duty for her are providing a personal guarantee and abandoning her right to prosecute the US government and relevant officers for body harm and economic damage during her stay in Canada [2]. On the one hand, it was the DPA that free Meng from being surveillance and finally led to her return to China. On the other hand, for the US government, the agreement released the burden caused by media and neutral international organizations, preserving their reputation and cutting their loss. Seemingly, it is a win-win situation for both Meng and the US government.

The case not only provoked a wide discuss among the public, but also motivated many scholar in China to fix their eyes on the concept and the usage of DPA. Early in 2018, China has adopted the concept of "compliance", which means for the compliant behaviour and steps that a guilty corporation promise to take after slightly breaking the criminal law, to legislation. In 2020, the Supreme Prosecutor's Office announced that pilot exercise of applying the "Compliance Non-prosecution system (CNSS)" would be taken in several primary offices. Nowadays, China is still gaining insight from the US and exploring an effective way to combine the desire and reality of the country with the promotion of the system .

2. Analysis on Deferred Prosecution Agreement System

2.1. The Basic Concept of Deferred Prosecution Agreement System

DPA system, is a kind of pretrial division agreement system that used by the prosecutors to delay the process of prosecution [3]. It bypasses the traditional plea agreement system and allow defendants to sign a contract with the enforcement organizations and take some remedy measure which meet a specific criteria during a period of time. Provided that they can finish their promise on time, the Prosecutor's Office can exempt them from being sued based on the contract.

2.2. The Timeline and Legal Sources of the Establishment of Deferred Prosecution Agreement System

The appearance of DPA system can be dated to 1960s. At that moment, the system was used to handle juvenile delinquency. For teens who act minor crime or make wrongdoings for the first time, the Prosecutor's Office offer them a choice plead guilty voluntarily without imposing punishment on them and suing them to the court. It was seen to be a helpful way to educate the adolescence, correcting their mistake and arming them with proper value. In 1974, Speedy Trail Act was formally published by the Congress, which marked the establishment of pretrial division agreement system. However, the range of its application was limited. A few decades later, in 1992, when a crime occurred in "Solomon Brothers Company", the system was applied to deal with corporation crime for the first time. In this case, the company eventually agreed to pay for a 290 million fine, altered the members responsible for management and improved the operation system [4]. It seemed to be great success for the US Department of Justice to firstly implement the system to such circumstance, however, it was not until another scandal happened in Enron that the application of DPA in dealing with corporation crime gain attention again. The system gradually upgraded after the publication of several memos which regulated for its detailed components after the 21 century. Also, with the improvement of Foreign Corrupt Practice Act (FCPA), the system no longer regulates local

DOI: 10.54254/2753-7048/66/2024MU0039

enterprises, it can be also used when MNEs violate the criminal law. In recent years, the system has been widely used in judicial practice .

2.3. The Application of Deferred Prosecution Agreement

DPA has been generally implemented in practice to tackle with crimes related to corporation as the legislation get promoted .

One typical cases was taken place in a huge Swiss automatic machine manufacturing company called ABB. This MNE has violated FCPA and reached an agreement with judicial department for three times during the past two decades. According to the records posted by the US Department of Justice, in 2010, a subsidiary in Texas paid bribe with the officers in CFE, a Mexican state-owned company through middleman in Mexico, to obtain the opportunity to enter a significant contract which could bring more than 81 million dollars to ABB. Besides, ABB group also admitted its illegal trade with the Iraq government. Based on the “Oil-for-Food”programme supported by the UN, ABB signed a contract with the car selling contract with the Iraq government. By paying extra kickback, the subsidiary acquired the chance to cooperate with several local companies and won 11 equipment provision bookings which valued more than 5.9 million. During the plea hearing, ABB Ltd and two subsidiary revealed their wrongdoings above and agreed to signed a three-year DPA with SEC. According to the DPA, ABB acknowledged the allegation on violating FCPA and accepted to paid a criminal fine, relevant interest and other penalty for more than 58 million dollars. Otherwise, ABB also consented to reverse the members in the board of directors and strengthened its duty on report and disclosure. It happens that a similar case occurred in 2022. A subsidiary paid bribes to a South Africa officer who also an high-ranking employee in the local state energy company -- Eskom, to obtain advantage in several profitable contract with the company and other trade associated with the government. The same as what they did in the past, ABB admitted the accuse on breaking FCPA and agreed to enter a DPA, which calls for paying a 315 million dollar fine and compliance rectification [5].

In this case, it benefits both the US government and ABB by signing the DPA. For the US government, it helped them better combat financial crime and regulate the market order, building a fair and open atmosphere which could attract more further investment. As for ABB, although it should bear a huge fine, the DPA still protected it from facing criminal charges, which is harmful to its global image and reputation and might further influence its expansion. Seemingly, it reached a win-win situation for both parties .

Similar to this case, a number of individual and corporations has entered a DPA to avoid being charged throughout these years, among them, some famous enterprises like 3M and JP.Morgan are in the list [5]. The application of DPA is becoming increasingly popular in practice due to its effectiveness in balance social interest and legal benefit. Even though the wide application of DPA is still controversial for it might impose a threat to companies and charge for irrational amount of fine, causing serious damage to enterprises, the advantage of the system is still non-negligible .

Firstly, it enhances the litigation efficiency. By signing a DPA, both parties can take positive actions to avoid the previous mistake from causing more severe outcome. It encourages companies to cooperate with investigation held by the government and disclose more inner information to reveal the illegal behaviour they did, help distinguishing who should bear the duty and be responsible for the wrongdoings and finally come out with an appropriate method to resolve the problem speedily. A long-term litigation will always cause exhaustion to both parties. Entering a DPA can reduce the time and money spent on litigation, making the process more simple and straightforward.

Secondly, it optimizes the allocation of judicial resources. The DPA system offers enormous discretionary power to the prosecutor to determine whether a party should be charged. It is a pre-litigation procedure used to select the cases that can enter the litigation process. By signing DPA and

DOI: 10.54254/2753-7048/66/2024MU0039

obey their duty, it is not necessary for companies or individual to enter the litigation process any more. This helps release the burden of the court and cut the waste in judicial resource.

Besides, it decreases the social impact that crimes bring. On the one hand, it reduces public attention. Making an agreement is a more moderate approach to tackle with problems comparing with litigation, both parties can remedy the trouble effectively, meanwhile, attract less attention to the case and prevent the boom of public opinion over the incident. On the other hand, it helps maintaining the social stability. Solving conflicts promptly is helpful to ease social contradiction and build a harmonious community.

Last but not least, it improves the relationship of both parties and protects their interest. Through entering the contract, companies or individual act to compensate for their wrong behaviors and the government promise not to charge for them. The consideration between two parties is adequate, which helps strengthen the communication and improve trust, bettering the cooperation. What is more, DPA also provides both parties a flexible platform to deal with contradictions. They can bargain and debate with each other equally, reach an agreement based on actual facts and situations, finally, arrive to a solution which can be accepted by both. It guarantees the legal right that both parties have and prevent their interest from detriment .

To sum up, DPA has great impact in many aspects, including saving judicial resource and protecting the interest of both governments and defendants. However, it is worth noticing that DPA might be not suitable to apply in all financial crimes happening on corporations. Still, efforts should be make to clarify the detailed components of the system thus application can be more appropriate.

2.4. The Components of Deferred Prosecution Agreement

2.4.1. Focusing on Companies and Individual Related to Financial Crime

The targets of DPA is companies and individual who break the criminal law in the aspect of finance. Mostly, DPA is for regulating the behaviour of enterprises, few is used to limit a person. The categories of financial crime includes commercial bribery, financial fraudulent, swindling, money laundering and so on [6].

2.4.2. Consent between Two Parties

The essence of DPA is a contract, which regulates the right and obligation of the relevant parties. DPA is a contract made between the guilty companies, individual and enforcement organizations like SEC. The agreement usually requires the guilty party to acknowledge the fact of violating the criminal law, accept penalty, cooperate with investigation and fix inner regulations. If a party agree to sign the contract and follow the agreement in a certain period of time, the Prosecutor’s Office will withdraw their charge afterwards. But if they breach the agreement, then the Prosecutor’s Office is no long limited by the clause of deferred prosecution can is able to sued the party at any time.

2.4.3. The Social Effect of the Crime is Minor

It is the duty of Prosecutor’s Office to distinguish the severity of defendants’ behaviour using discretion. Until now, there are no exact criteria to identify the social effect of a crime, for it is a abstract concept. However, from numerous cases it is obvious to find two characteristics. First, all the crimes are not involved in national security and public interest. Second, the initial penalty of the delinquency is not extremely strict before signing DPA. For instance, punishment like short-term imprisonment and paying fine is not serious compared with other penalty. Base on these two reference standards, prosecutors can judge the extent of social influence of a crime and determine whether they should use DPA to tackle with the legal problem.

DOI: 10.54254/2753-7048/66/2024MU0039

2.4.4. High Possibility of "Being at a Deadlock"

It is also determined by the Prosecutor's Office and it is lack of clear judging standard as well. However, there are still some aspects the officers can look into. Firstly, the court cost. It is not economical to sued a party if the expected court cost is much too expensive. Besides, the power of both parties. From the case study, it is evident that defendants allowed to sign a DPA are huge enterprises especially MNEs who are influential and powerful in global trade market. Although their power is inappreciable in comparison of the Prosecutor's Office and other public authorities, it will still cause great damage to the country's interest if the defendants are charged and strict punishment is imposed on them. Thus, there is no victor in the strife, both parties suffer if the prosecution continues. What is more, the availability of evidence is also a key point requires consideration. The content above illustrates that a normal DPA usually demands the defendant to bear the duty of disclosure. From another prospective, it is a signal demonstrating that the Prosecutor's Office has limited available evidence to convict the defendant of a crime reasonably and legally. Due to the lack of useful evidence, they compromise and utilize DPA for warning and punishing. Litigation is as a gambling game, but the core of it is solving conflict instead of fighting against each other and get triumph.

2.4.5. Agreed by the Court

For cases that enter the process of prosecution, if a DPA was determined to made, it requires the approval of the court. Normally, a formal examination should be taken by the court to ensure the legality of fairness of the agreement.

3. Analysis on Compliance Non-prosecution System

3.1. The Basic Concept of Compliance Non-prosecution System

The CNSS is a division of the guilty plea system. It allows the Prosecutor's Office to identify the corporation who is willing to abide by some specific and is able to satisfy the fundamental conditions of "compliance" while dealing with criminal affairs occurs in companies [2]. In other words, after being examining by the Prosecutor's Office and promising to adjust inner system that obeys certain criteria, at the same time, achieving the promise during the regulated period, enterprises gain freedom again and will not be charged for crime .

3.2. The Application of Compliance Non-prosecution System

The establishment of the system happened merely 4 years ago, it is a brand-new system for China. Even so, the Supreme Prosecutor's Office has actively motivated its application. By conducting experiments in several primary offices and publishing typical cases, the applying standard is getting distinct and detailed.

One of the typical case took place in Shandong Province. An enterprise majors in chemical production, filled 4.8 tons of chemical waste to the soil illegally, which violated the environmental protection clause in criminal law. After being evaluated by the local professional agency permitted by the government, relevant prosecutors found that the extent of detriment is limited. The burying of chemicals only polluted certain range of place and the soil out of that range was still with good quality, which means that the ecological system was in decent condition and no steps should be taken to restore the environment. Besides, considering that the company is a giant in producing a certain chemical in China and products are mainly for export, it is not a wise choice to impose strict punishment on them, for it will cause huge loss in customers which might do harm to their operation

DOI: 10.54254/2753-7048/66/2024MU0039

and financing, resulting in large scale layoff and ultimately leading to bankrupt or instability of the company. Accordingly, in 2022, after confirming that the company had reached an agreement with the government, paying for relevant investigating fees, properly handling the fillings, with the permission of senior office, the primary office decided to apply CNSS and freed the company from being charged .

In recent years, the system has applied to certain amount of cases. Merely in four years after the birth of the system, at present, every single Prosecutor's Office over China adopt it to deal with criminal cases associated with corporation and the significance of the system gradually emerged to the public .

Firstly, it encourages the compliant construction of enterprises. Through setting several criteria for companies and offer them time to adjust their inner managing or operation system, companies can deeply realize their mistake and attach more importance to compliance construction, this helps them correct their regulations and strengthen the publicity of compliant awareness, which ultimately prevent them from crime again.

Secondly, it ensures the normal operation of companies. For companies who are willing to accept compliant rectification and have the capacity to hold such a rectification, the CNSS can reduce the negative effect that criminal procedure and penalty bring. On the one hand, penalties for corporations usually include fine, expropriation, canceling the business licence, etc, which is a huge price for the companies. However, if the system is applied, it can exempted them from tossing excessive money and resources to deal with the case or to compensate for their wrongdoings, get them out from the risk of bankrupt or poor operation. On the other hand, it can bring less bad effect to companies' reputation for it will leave no record about their misbehavior on official websites.

Last, it boosts economic growth and stabilizes the society. The system helps optimize the judicial resources distribution, leading authorities to fix their eyes on cracking down critical crimes and safeguarding people's health, wealth and dignity. With the protection of the public power, the society can be well-regulated and stable. Besides, application of the system also helps set good examples for the whole industry. Once a company readjust their inner system under the standard regulated by authorities, it will motivate others in the same industry to check their regulations and rectify them.

3.3. The Component of Compliance Non-prosecution System

3.3.1. Concentrating on Crime Happening on Corporations and People Closely Related to or Take Charge of the Management and Operation of the Company

The system is specifically for guilty corporations and people who can totally control companies. Mostly, it is applied to companies, seldom happens in individuals for it is uneasy to prove who should be responsible for the crime occurred in a company.

Different from DPA, who focuses only on crimes in financial aspect, the CNSS can be implemented in dealing with 17 kinds of crime, according to Guiding Opinions on Establishing a Third-party Compliance Supervision and Evaluation Mechanism for Related Enterprises (Trial) (Guiding Opinion in short) published by the Supreme Prosecutor's Office [7]. It means that no only financial crimes can be solved by this mean, other crimes such as illegally mining, smuggling common goods can also be settled in this way.

3.3.2. The Penalty of Crime is Minor

The application of the system is also deeply related to the severity of penalty. Basically, it is often used in minor crimes in which the guilty party will be sentenced to penalties like an imprisonment less than three years, detention, community surveillance and fine. However, in the practice of law, it remains some extra circumstances. From the typical cases posted by the Supreme Prosecutor's Office

DOI: 10.54254/2753-7048/66/2024MU0039

it is obvious to find that in some severe crimes, the system is still applied. For example, in a crime about inner information disclosure and insider trade, the offender seriously broke the law [7]. Considered that they are prosecuted, they must be sentenced to a imprisonment for more than five years normally, which is seemingly out of the range of a "tiny penalty". Nevertheless after the cautious judgement of the office, the prosecutors selected to free them from being charged. Until now, there are no rules and standards of how "minor" the penalty should be. Whether a case can implement the system is more associated with the defending strategy that taken by the defender . In other words, it is up to the negotiation between the prosecutor and the defender.

3.3.3. The Willingness and Capability of Compliance

The CNSS is a branch of plea punishment system. The decision of excluding a party from being prosecuted is a lenient punishment, it is used to encourage criminals to admit their guilt and shoulder the legal duty positively. From this knowing it evident to find that whether the system can be applied is based on the willingness of compliance. The willingness can be explained in two aspects. The first one, acknowledging wrongdoings and bearing duty positively. This means only when guilty parties admit their crime and promise to make compensation for their mistake can the system possibly be applied. The second one, making a positive argument about the application of the system. This means guilty parties should persuade prosecutors to implement the system in their case [8]. However, willingness is the only factor, more crucial is that the capacity of compliance, judged by prosecutors.

3.3.4. Execpt Particular Circumstance

According to clause 5 of Guiding Opinion, five circumstances are excluded by the system, including: (1) A nature person set up the company specifically for conducting crimes. (2) The major business or service of the company is conducting crimes. (3) Personnel of a company or another enterprise fraudulently use the name of a company to commit crimes. (4) The crime endangers national security or is relevant to terrorist activities. (5) Other conditions not suit for the system [7].

4. Comparison of Two Systems

4.1. Nature and Objectives

4.1.1. Nature

DPAs in the US is a unique form of plea bargaining, it is particularly prevalent in dealing with corporate crime in financial aspects. They are tools for resolving complex, costly, or otherwise stagnant criminal cases, meanwhile, they offer defendants an opportunity to avoid formal prosecution in exchange for compliance with specified conditions.

The CNSS is a criminal policy tackling with corporate criminal cases. It is a effective method to encourage self-regulatory reforms within enterprises, thereby reducing potential criminal conduct and mitigating the harsh consequences of criminal prosecution, particularly for minor offenses.

4.1.2. Objectives

The primary goal of DPAs is to provide defendants with a way to return to society without being look down upon by other subjects like their business partners in the market, which could ultimately lead to an enormous loss in profit. By imposing penalties such as fine and monitoring, it not only simulates corporations to build up a sense of responsibility but also prevent them from conducting potential crime in the future. Moreover, DPAs also aims at alleviating the burden on the criminal judicial system by resolving cases efficiently and cost-effectively.

DOI: 10.54254/2753-7048/66/2024MU0039

The primary objective of the CNSS is to stimulate enterprises to voluntarily undertake compliance programs, thus preventing future criminal activities. By doing so, it fosters a culture of compliance within corporations, enhancing their overall corporate governance standards. What is more, the CNSS aims to avoid the destructive consequences of criminal prosecution on businesses, such as forced liquidation or bankruptcy, which could have negative effects on employees, investors, and the economy at large.

4.2. Applicable Objects and Conditions

4.2.1. Applicable Objects

DPAs are available to both natural persons and corporations. They are applied only to financial crimes including financial fraud, commercial bribery, and money laundering and so on. They are particularly prevalent in cases involving complex corporate structures.

The CNSS primarily targets enterprises with willingness and capacity to implement compliance reforms. It is designed for those companies that have engaged in criminal conduct but possess the potential for meaningful transformation through compliance revolution.

4.2.2. Conditions

To enter into a DPA, defendants must acknowledge their criminal conduct, accept a punishment, and agree to abide by a set of conditions during a period. These conditions typically include the implementation of a compliance program, reporting to the prosecution authority regularly, and readjust their inner managing system to prohibit further criminal activity.

To qualify for the CNSS, enterprises must submit a tailored compliance plan to deal with the specific violations under investigation. This plan must outline measures to prevent future crimes and enhance overall corporate governance. Enterprises must then implement the plan effectively, actively cooperate with the monitor of the prosecutor. Upon successfully completing their promise after the monitoring period, the procurator may decide not to prosecute the company.

5. Conclusion

In conclusion, the disparities observed between DPAs and CNSS stem from different national contexts and governance enology. Hence, it is hard to tell the superiority of one over another, as both are tailored to serve their respective countries' needs. For the US, as a capitalist nation prioritizing capital accumulation, DPAs help build a balance between government and corporation with huge power, thereby maximizing economic efficiency. Rather than merely a criminal justice tool, they also function as strategic mechanism for pursuing economic prosperity, fostering mutually beneficial exchanges between corporations and the government through contractual arrangements. Conversely, CNSS represents a transformation from traditional heavy-handed penal approaches, marking a procedural advancement. It emphasizes the establishment of a flexible, comprehensive, and unified regulatory framework to supervise all market entities, ensuring transparency and accountability in corporate operations. Both systems, despite distinct, embody adaptive governance strategies tailored to their respective landscapes.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0027

The Harm and Countermeasures of Transnational Commercial Bribery

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Abstract: In today's era of globalization, international exchanges are increasingly close, and transnational bribery cases are frequent. Therefore, combating commercial bribery by multinational corporations and strengthening the compliance system of transnational corporations are of great significance in promoting healthy economic development and social justice. At present, all countries have various legal provisions on corporate anti-bribery, but due to factors such as incomplete consistency of regulations in various economies, the governance effect is limited and it is challenging to fully credit the law's deterrence effect. Meanwhile, as the largest importer of foreign capital, commercial bribery in China is even more rampant, but due to the lack of domestic attention and the dispersion and ambiguity of the relevant laws and regulations, the bribe-takers are seldom sanctioned by the law.Through the analysis of the concept, causes and related cases of commercial bribery, as well as the comparative analysis of the relevant laws of Britain and the United States, this paper seeks to solve the problem of transnational bribery in China.

Keywords: Commercial bribery, Transnational corruption, FCPA, GSK, Cooperation.

1. Introduction

With the acceleration of the process of globalization, multinational companies (MNCs) continue to expand their markets to different countries and regions. These new markets often have different legal, cultural and business environments, which provide a breeding ground for commercial bribery. In some emerging markets and developing countries, multinational companies face fierce market competition. In order to obtain commercial contracts, licenses, or other commercial benefits, bribery is a tactic that certain businesses may utilize to obtain a competitive edge.

The commercial bribery of transnational corporations is a complicated problem, which involves many factors. Governance of such behavior requires global cooperation, strengthening legal supervision, enhancing corporate compliance awareness and internal control to maintain a fair and competitive market environment and promote healthy economic development.

In order to further provide effective strategies for China's governance of commercial bribery by transnational corporations, based on the study of relevant literature, this paper introduces the classic domestic case--bribery by GlaxoSmithKline in China, briefs the situation of bribery by transnational corporations in China, analyzes the negative impact of such behaviors and the coping strategies and challenges faced by China in recent years, and applies the comparative research method. This paper

DOI: 10.54254/2753-7048/66/2024MU0027

probes into the Foreign Corrupt Practices Act of the United States and the Bribery Act of the United Kingdom in order to seek solutions to the legal regulation of commercial bribery in China.

2. Overview of Commercial Bribery Behavior

2.1. Concepts and Characteristics

Countries and international organizations have slightly different definitions for “Commercial bribery”.

An important law of the United States concerning commercial bribery is the Foreign Corrupt Practices Act (FCPA), promulgated in 1977, which provides specific provisions on the definition of commercial bribery and holds that the components of commercial bribery include the following aspects: The subject, the general subject, can be a natural person or a legal person, and the law is mainly concerned with jurisdiction, while applying the principle of personal and territorial;

In the subjective aspect, the doer should have the intention to bribe, so that the briber abuses his public power and makes profits for himself or others. Objective aspects, including the express payment of funds or the assurance of funds, as well as any other valuable item.The law also has more specific provisions on legal liability, including administrative liability, civil liability and criminal liability.

French law does not make specific provisions on the concept of commercial bribery. When dealing with acts of unfair competition, including commercial bribery, France deals with them according to the relevant provisions of the French Civil Code.

Among the existing laws in China, the Anti-Unfair Competition Law implemented in 1993 is recognized as the first law to make clear provisions on commercial bribery, and is also one of the most important bases for combating commercial bribery. Article 8 (1) of the Law states that it is forbidden for business owners to bribe with cash or other resources in order to sell or buy goods.Any unit or individual of the opposing party who covertly takes kickbacks outside the accounts will be judged to have accepted bribes and will face consequences. Anyone caught giving kickbacks to other units or individuals outside the accounts may be prosecuted for soliciting bribes. In the subjective aspect, the actor must have the intention of benefiting himself or a third party, that is, subjective intent [1].

Combined with China's Anti-Unfair Competition Law and relevant laws, the author believes that commercial bribery can be defined as: Commercial bribery is an unfair competition practice whereby operators covertly provide benefits to another unit or individual in a market transaction using their property or other resources in an effort to get trading opportunities or advantageous trading circumstances. In simple terms, commercial bribery of transnational corporations refers to the commercial bribery carried out by transnational corporations and their branches or their agents and intermediaries in China. This kind of bribery is different from ordinary commercial bribery. The main body of this kind of bribery is transnational corporations, which have advantages over domestic enterprises in capital technology and management. Then through commercial bribery this kind of unfair competition behavior, the harm is particularly serious.

2.2. Reasons of Commercial Bribery Behavior

There are various reasons for the formation of commercial bribery, mainly as follows:

Cultural Differences In some countries and regions, bribery may be considered a "normal" business practice, and multinational companies may bend to local business practices when operating in these regions.

Weak supervision: In some countries, inadequate legal systems, inadequate anti-corruption legislation and inadequate enforcement make bribery more difficult to detect and punish.

DOI: 10.54254/2753-7048/66/2024MU0027

Fierce market competition: In a competitive market, multinational companies may choose bribery to quickly obtain business opportunities or exclude competitors.

Insufficient internal control: The compliance control and audit systems of some multinational companies are not sound, which makes bribery difficult to be detected and contained internally.

The pursuit of profit maximization: In order to achieve the goal of profit maximization, some companies may take risks and obtain profits through illegal means.

2.3. Commercial Bribery Cases and Data Analysis

In 2013, the GlaxoSmithKline (GSK) scandal in China was exposed, and in 2023, the US pharmaceutical company Pfizer was once again involved in a bribery case in China, so that the problem of transnational commercial bribery continues to enter the public eye.

The US Securities and Exchange Commission accused Pfizer in August 2012 of bribing state officials, physicians, and healthcare professionals in eight nations, including China. Pfizer ultimately settled with the Securities and Exchange Commission and the US Department of Justice for a sum of more than $60 million, including fines. In 2023, according to information released by the U.S. Department of Justice, Pfizer was again accused of spending $168 million in China to bribe influential officials [2].

It appears that the unending corruption of global pharmaceutical corporations is turning into a "unspoken rule" necessary for foreign businesses to survive. The Cl Ministry of Commerce's statistics show that drug rebates, when used as commercial bribes, embezzled approximately 772 million yuan in national assets annually, or roughly 16% of the pharmaceutical industry's annual tax revenue. This resulted in significant economic losses for the nation and negatively impacted normal competition and market order. The transnational nature of commercial bribery has made it imperative for all nations to step up international cooperation in the investigation and prosecution of commercial bribery in the context of global trade and the economy.Only by strengthening the cooperation with foreign governments and organizations and establishing an effective cooperation mechanism can China completely and effectively curb commercial bribery [3].

After the bribery scandal was exposed in 2013, Pfizer still did not repent and continued to use bribery to open the market. Pfizer, as a world-renowned pharmaceutical company, began vaccine research and development and production at the early stage of the epidemic. However, in the Chinese market, Pfizer faces a number of challenges, including government relations, media coverage, public trust and so on. In order to better address these challenges, Pfizer adopted a massive public relations strategy to try to influence the outbreak response and decision-making by "buying off a key minority."

Pfizer's bribery is not unique. In recent years, business giants such as BASF of Germany, Carrefour of France and General Electric of the United States have been frequently exposed to bribery scandals. Its actions not only cost the nation enormous financial losses, but they also had a negative impact on the market's typical competitiveness and order. At the same time, it also reflects the compliance challenges faced by transnational enterprises in emerging markets, and sounds the alarm for China's commercial bribery governance of transnational corporations.

3. Commercial Bribery Laws and Governance Countermeasures of Different Countries

In order to maintain a fair competitive environment and social order, and protect the interests of enterprises and consumers, all countries have formulated strict commercial bribery legal systems, and established corresponding enforcement and punishment mechanisms. This paragraph will deeply analyze the legal framework of commercial bribery in several representative countries such as the United States, the United Kingdom and China,examine how their legal systems are really put to use, and then contrast the parallels and discrepancies between the legal frameworks for commercial

DOI: 10.54254/2753-7048/66/2024MU0027

bribery in other nations. It seeks to shed light on the legal approaches and real-world encounters that different nations have had with commercial bribery.

3.1. Foreign Bribery Practices Act of the United States

3.1.1. Brief Content of the Act

The Foreign Corrupt Practices Act (FCPA) was enacted in 1977 and is a special law in the United States. It is sometimes referred to as "the overseas corruption law" and was repeated three times in 1988, 1994, and 1998. The most important law to limit U.S. company bribery is this one, which forbids U.S. companies from bribing public officials of foreign governments. It also restricts the use of individuals by U.S. companies to bribe foreign government officials and includes pertinent provisions on the accounting system of U.S.-listed companies.

Paying a foreign government official to win or keep business is prohibited by the FCPA. The next five conditions have to be fulfilled in order for this to be considered a violation.

Crime Subject: Any individual, business, officer, director, worker, corporate agent, or shareholder acting on the company's behalf may be subject to the FCPA.

An individual or organization will face consequences if they direct, approve, or help someone else break anti-bribery laws.

The intention behind bribery is twofold: the person paying the bribe, or authorizing someone else to pay one, must do so with the intention of causing the briber or any other individual to abuse their position for financial gain. It's crucial to remember that the FCPA makes offering or threatening to offer a bribe illegal; it does not need the bribery act to achieve its goal.Any attempt to bribe is prohibited by the FCPA, regardless of the purpose: to obtain an improper advantage, to induce a foreign official to use their influence to influence any act or decision, to induce an official to do or refrain from doing anything contrary to their statutory obligations, or to use their official capacity to influence an act or decision [4].

Bribery Method: It is illegal under the FCPA to pay, offer, promise to pay, or provide permission to a third party to pay, offer, or provide money or anything of value.

Bribery of foreign officials, political parties, party staff, or candidates for public office in any foreign country is covered by the FCPA. An employee or official of any foreign country, international organization, department, or agency operating in an official capacity is referred to as a "foreign official". The Foreign Corrupt Practices Act (FCPA) prohibits bribery against public officials of any rank or status. It places more emphasis on the intent behind the bribe than its actual contents, such as official acceptance, payment offer, or pledge.

Test of business purpose: Bribery to assist a company in acquiring, holding, or managing a business is prohibited by the FCPA. The Department of Justice uses the broad term "acquisition or retention of business" to refer to more than just giving something a contract or gaining something else. It should be mentioned that this company does not need authorization from a foreign government agency or government in order to purchase or maintain it [5].

3.1.2. Legal Liability for Violating the FCPA

Criminal liability: Businesses that violate the law may be subject to fines of up to $2 million. Natural individuals may face a fine of up to $100,000 and a five-year jail sentence.

Furthermore, the penalties under the selective penalty law may be substantially higher--in fact, it may be double the benefit of the bribe.

Civil liability: Bribers may be subject to civil lawsuits brought by the Securities and Exchange Commission (SEC) with penalties of up to $10,000. In the SEC's case, the court has the authority to impose extra fines. The entire amount of illicit revenue is the maximum amount of additional fines

DOI: 10.54254/2753-7048/66/2024MU0027

that can be imposed. In cases of significant infringement, natural people are subject to fine limits of $5,000 to $100,000 and others to fine limits of $50,000 to $500,000.

Additional sanctions: Violators may be prohibited from engaging in federal trade, have their export privileges revoked, and be prohibited from trading stocks [6].

3.2. United Kingdom Bribery Act

Britain was the first country to enact anti-bribery laws. Since the Public Bodies Corrupt Practices Act of 1889 criminalized bribery in the public domain, the United Kingdom has successively included bribery in the private sector, bribery by legal persons, and overseas bribery by domestic natural and legal persons. However, by 1997, when the United Kingdom signed the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, its bribery legislation had fallen behind the requirements of various international conventions, one of which was the legislation on corporate liability for bribery. Before the 2010 Bribery Act came into force, it was often difficult under the UK legal system to attribute bribery by corporate associates to corporations. This is mainly because under the "identification principle", it is difficult to prove that the subject of bribery is regarded as a legal person. At the same time, British law does not stipulate the responsibility of legal persons to prevent others from bribing. Article 7 of the Anti-Bribery Law establishes "Failure of commercial organisations to prevent bribery", which for the first time clarifies the responsibility of commercial organisations to prevent bribery by their associates. The British Ministry of Justice's "Anti-Bribery Law Guide" and many related studies have pointed out that the crime adopts Strict Liability, and when the relevant person constitutes bribery, the business organization will be presumed to constitute the crime. At the same time, the Act establishes in Section 7(2) an "adequate procedure" as a plea of not guilty for this offence.

Bribery in business organisation is a crime committed when an "associate" of a business organisation with a "close connection" to the United Kingdom is committed for the purpose of enabling the organisation to obtain or maintain business or to gain or maintain an advantage in an existing business (without being prosecuted or convicted of "offering bribes to others"). If a business organization cannot prove that it has "appropriate procedures" to prevent its "associated personnel" from engaging in the above acts, the organization constitutes a "crime of negligence of business organization to prevent bribery".

3.2.1. The Establishment of New Legal Liability

Article 7 of the Anti-Bribery Act, through the creation of "commercial organizations to prevent bribery dereliction of duty", makes it clear for the first time in British domestic legislation that commercial organizations have the responsibility to prevent their associates from bribery. By establishing the crime, the Anti-Bribery Act partially solves the lack of legislation on corporate liability for bribery in the United Kingdom, meets the legislative requirements of international conventions on corporate liability, and increases the feasibility of punishing commercial organizations for bribery by relevant natural persons, legal persons or unincorporated bodies in the judiciary [7].

3.2.2. Expanded Jurisdiction

The crime of Commercial Organization for the Prevention of Bribery has expanded the jurisdiction of bribery crime in the UK to apply to some foreign legal persons with relevance to the UK, and in the case that the subject of the crime is different from the subject of bribery, there are no territorial and personal provisions on the act and subject of bribery. Article 1(1) of the OECD Convention on

DOI: 10.54254/2753-7048/66/2024MU0027

Combating Bribery of Foreign Public Officials in International Commercial Transactions requires that the criminal liability of domestic personnel engaged in overseas bribery through intermediary agencies be stipulated by legislation, and the crime has a wider applicability.

3.2.3. The Establishment of a "Due Process" Plea of Not Guilty

Section 7(2) of the Anti-Bribery Act provides that if the business organization can prove that it implemented "proper procedures" to prevent bribery by associated persons, then this proof can be used as a not guilty defence to the crime of negligence by the business organization to prevent bribery.

Through the establishment of this not guilty plea, the Act establishes a legal mechanism for business organizations to overturn the original presumption of liability and not bear specific criminal liability because of the establishment of a compliance system. The Law Commission, in its consultation Report No. 185 (para. 9.61), states that this mechanism has two main purposes, one is to incentivize companies to improve their anti-bribery compliance systems, and the other is to provide a degree of certainty to companies. Expands corporate liability for bribery and enables companies to play a role in reducing and eliminating commercial bribery without fear of excessive accountability.

4. Suggestions on the Countermeasures of Commercial Bribery in China

4.1. Improve Legislation

At present, the constitution and mode of transnational commercial bribery are not clearly defined in Chinese law, and the enumeration of transnational commercial bribery means is not comprehensive. For example, the way multinational companies pay bribes through "middlemen", and the constantly innovative and innovative ways of bribery by multinational companies, require further improvement of the relevant law. From the legal point of view, although China's Anti-Unfair Competition Law and Criminal Law contain provisions on commercial bribery, the content is scattered. The problems involved in transnational commercial bribery are numerous and complex, and special laws need to be formulated.

4.2. Extension and Application of Jurisdiction

First of all, China should learn from the extraterritorial jurisdiction principle of British anti-bribery law, and make its domestic anti-commercial bribery law have extraterritorial effect through legislation, so as to provide unilateral public supervision for international bribery.

Moreover, there are often conflicts between the territorial jurisdiction of the host country and the personal jurisdiction of the MNC's subsidiaries in China when the host country engages in criminal acts and the personal jurisdiction of the home country over the MNC. At this time, considering the complexity of commercial bribery of transnational corporations, jurisdiction should not be directly asserted according to the principle of territorial jurisdiction priority, but should be coordinated jurisdiction, and there should be hierarchy among territorial jurisdiction priority, personal jurisdiction supplement, judicial justice and strengthening international cooperation, so as to ensure that the exercise of jurisdiction is conducive to the investigation of facts and timely and effective investigation of criminal acts.

4.3. Introduce Compliance Incentive Mechanism

China's criminal law does not establish a mechanism for enterprises to avoid criminal responsibility or be subject to reduced criminal penalties because they have a compliance system. Therefore, China could also consider introducing a similar compliance incentive mechanism to encourage companies to take proactive measures to prevent bribery. By rewarding compliance measures, enterprises are

DOI: 10.54254/2753-7048/66/2024MU0027

encouraged to actively establish compliance mechanisms and improve compliance awareness, so as to effectively reduce the occurrence of bribery. It can be used as a direct basis for the acquittal of the enterprises involved in the current judicial reform of compliance leniency in China, and can also be used as a legal basis for the procuratorial organ to make a decision not to approve arrest, not to prosecute, or to propose a lighter sentence, and for the court to reduce criminal punishment [8].

4.4. Strengthen International Cooperation

By signing bilateral or multilateral agreements and establishing close cooperative relations with major economies and international organizations, China's transnational commercial bribery can be effectively combated and fair competition order in the international market can be maintained.

To be specific, strengthening international cooperation requires multiple approaches. First of all, establishing information sharing mechanism is the key. Countries should establish an efficient information exchange platform to share clues, evidence and investigation progress of commercial bribery cases in a timely manner, so as to jointly track and combat transnational bribery networks. Such information sharing not only helps to improve the investigative capacity of national law enforcement agencies, but also effectively inhibits the cross-border flow of corrupt funds.

Secondly, it is also essential to strengthen the coordination and cooperation of transnational cases. Law enforcement agencies of all countries should establish a regular communication mechanism, jointly study the characteristics and trends of transnational commercial bribery cases, and formulate targeted combat strategies. In the process of investigation, law enforcement agencies of all countries should support and cooperate closely with each other to jointly conduct investigation and evidence collection to ensure that the case can be successfully solved. In jointly combating corruption networks, China should strengthen cooperation with organizations such as Interpol. These international organizations have rich experience and resources in combating transnational crimes and can provide strong support and assistance to countries.

However, in the process of strengthening international cooperation, we must also face up to conflicts of interest and jurisdictional issues among States. Due to the differences of legal systems, judicial systems and interest demands of different countries, the jurisdictional issues of transnational commercial bribery cases often become difficult for cooperation. In order to overcome this problem, countries should strengthen consultation and communication, strengthen cooperation through extradition procedures, judicial assistance, recognition and enforcement and other systems, and jointly combat international crimes. At the same time, countries should respect each other's sovereignty and interests and ensure fairness and justice in the process of cooperation.

5. Conclusion

Transnational bribery has had a serious adverse impact on the political stability and economic growth of every nation on the planet. Chinese government should pay attention to this problem and take various measures together with the international community to combat corruption. Although there is a long way to go, with the full cooperation of peoples and governments of all countries, the just cause of combating transnational bribery is bound to achieve final success.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0034

The Impact of Religious Belief Culture on Legislation: In Regions of EU and Fujian

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Abstract: The interplay between cultural beliefs and legislation is a critical area of study, particularly in regions where religion significantly influences societal norms and values. This paper explores the influence of religious beliefs on legislation by examining key theoretical perspectives and empirical case studies. It begins with an analysis of the ideas of prominent philosophers--Georg Wilhelm Friedrich Hegel, Karl Marx, and Max Weber--who provide distinct viewpoints on the role of religion in shaping law. This paper then delves into two different empirical studies: the influence of Christian animal welfare on European Union (EU) legislation and the Mazu Mediation Room in Fujian, China. Understanding how deeply the cultural religious principles shape legal frameworks provides foundations considering human rights and social justice, and how religious culture cooperates with the enforcement of law. By studying and comparing these contexts, this paper focuses on analyzing these religious influences on legislation, investigating their impacts, and suggesting the future development of laws in religious regions. Ultimately, the paper wants to contribute to a broader sense of the relationship between religion and legislation, discovering the need for a legislative approach that respects local religious culture while upholding universal human rights and social justice.

Keywords: Philosophy of law, Legislation, Religious beliefs, Mazu Mediation Room, Ethics.

1. Introduction

The relationship between religion and law has been a deep topic throughout history. From ancient civilization to modern society, religions, and cultures keep shaping the fundamental ethical values in people's hearts and following devotes to the establishment and improvement of law. This paper aims to explore the religious influence on legislation, examining how the beliefs and religious culture provide an understanding foundation for legislation.

This paper will first discuss on a conceptual level. The first section will be rooted in the ideas of famous thinkers such as Hegel, Karl Marx, and Max Weber. Each of those philosophers supply their distinct and profound viewpoints on the nature of religion and the issue of religious effects.

Then, this paper will focus on empirical research cases, and try to analyze them with the rich backdrop provided by philosophers. Two real historical cases from two distinct religious areas will be the analysis object in this paper. This paper seeks to find out the direction for legislation by drawing on theoretical insights and historical cases.

DOI: 10.54254/2753-7048/66/2024MU0034

By analyzing key legal cases, legislative debates, and philosophical arguments, this paper aims to provide a comprehensive overview of how religion influences lawmaking and legal interpretation. Additionally, it wants to draw attention to the possibility of positive communication between secular and religious viewpoints, advancing a legislative framework that protects basic human rights and respects religious diversity.

2. Analysis of the Religious Effect on Legislation

2.1. Basic Concepts and Definitions

2.1.1. Religion

Religion can be broadly defined as a system of beliefs, practices, and moral values that relate to the divine. It typically involves a community of believers who share a common moral understanding, and teachings centered around a higher power or spiritual reality. In this paper, religion also has an influence on culture and society. When religion is discussed, it also means the culture behind it. Many religions offer an ethical framework that teaches how followers should behave, both personally and socially. And therefore, becoming part of the society's norms. It potentially restricts and directs people's moral understanding and voluntary choices. The authority is typically spiritual and moral, rather than legal.

2.1.2. Legislation

Legislation refers to the body of laws enacted by a governing authority to regulate behaviors within a society. It is the formal mechanism through which societal rules and standards are established, enforced, and modified. Unlike religious principles, legislation is enforced by legal institutions, such as courts and law enforcement agencies. Current legislation is trying to be universal and objective. Rather than voluntary principles, legislation is binding with authority that has the power to enforce mandatory compliance.

2.2. Theoretical Relationships between Religions and Legislation

This paper selects mainly three influential and distinctive philosophers to discuss this topic, which includes Hegal, Karl Marx, and Max Weber.

Starting with Hegel, Hegel holds a systematic belief in free will, law, and religion. His theory is rooted in the concept of ethical life, known as Sittlichkeit. In his theory, the state represents the highest form of ethical life, where individual freedom exists within the social and political structure. According to Hegel, free will is the will that is accomplished through rational self-consciousness. In other words, real freedom only exists when one obeys rational law, as arbitrary "free will" would lead to chaos. Hegel divides the development of spirit into three stages: The subjective spirit stage, which shows how individuals rationally understand themselves and the world; the objective spirit stage, which shows the rules and understanding as a group, where law and ethics are located; and in the highest stage, the absolute spirit, the spirit exceeds the limits of either individuals or groups and achieves a full understanding of the nature of spirit itself, where religion is located. As mentioned earlier, the state is the highest form of Sittlichkeit, which embodies the absolute spirit, and law is an essential part of maintaining the existence of the state. Therefore, even though law and religion are constituted by spirit, law is the realization of free will within the state's rational framework, while religion reflects a more symbolic or representational understanding of absolute spirit. However, they still have other connections and differences. According to Hegel, religion, as a higher stage of spirit, represents a higher ethical understanding. Law is the system that is built upon the understanding of

DOI: 10.54254/2753-7048/66/2024MU0034

religion. In other words, law is the practical outwardness for particular issues, and religion is the inwardness that provides an ethical and moral foundation for people to make rules [1].

However, Karl Marx offers a serious critique of Hegel's ideas and presents his own beliefs. According to Marx's historical materialism, the economic base determines the superstructure. Concepts like philosophy, religion, and the arts can only exist when the economic foundation is strong enough to support them [2]. Unlike Hegel, Marx does not see the superstructure as a unity of spirit but as a structure shaped by the economic base, which serves to uphold the interests of the ruling class. Therefore, Marx also views the state and religion as instruments of control that serve the interests of the ruling class, rather than expressions of a unified spirit. While Marx acknowledges that religion is often used to provide an ethical and moral foundation for legislation, he critiques this function as a means of legitimizing the interests of the ruling class rather than promoting commonly acceptable justice. Religion makes laws appear to be the result of commonly accepted justice. However, Marx argues that the bourgeoisie control religion and law for their own benefit. In Marx's theory, the bourgeoisie exploit the value of labor power, accumulate the means of production, and alienate the production process to maintain their dominant position. To prevent class struggle with the proletariat, they manipulated religion to serve their interests and intertwined it with the legal system. The divine authority of religion blinds the proletariat, stabilizing bourgeois power and making workers forget to fight for their own interests, instead focusing on a non-existent reward in the afterlife. Therefore, Marx argues that religion, like other ideological tools of the ruling class, cannot serve as a legitimate foundation for legislation. Law, according to Marx, should be a means for society to refine itself, not a tool for the ruling class to protect their property and power [2,3].

Max Weber, unlike Hegel and Marx, emphasizes that legislation is becoming increasingly rationalized as society develops. He advocates for a clear separation between religion and legislation, arguing that modern laws should be based on rational thinking and legal principles rather than religious ethics. While religious values still influence social norms and shape how people behave, their effect on legislation is indirect. Weber points out that religion fundamentally affects individual behavior and thought, and thus, legislation should acknowledge that and be more secular. Weber then introduces the concept of legal-rational authority to describe modern legislation, which is built based on logic, reason, and universally accepted principles. This is different from traditional authority, which is often controlled by religious beliefs. He also introduces the term "iron cage" to express his concern about the consequences of this rationalization. He argues worriedly that as society becomes more rational and calculative, leaving less room for religious principles and beliefs on moral values, individuals will be trapped in a new form of rational control. Speaking on the rationalization of law, this "iron cage" refers to the legal systems becoming too procedural and dispart from moral or ethical considerations based on a shared regional belief. Modern legislation, driven by bureaucratic needs, focuses on rules and regulations that must be applied uniformly, even with less consideration of individual circumstances or human compassion. With the consideration of the necessity of rationality to manage the complexities of modern society, Weber describes this rationalization as a double-edged sword [4].

This paper is enlightened by these great philosophical ideas. While the foundation of legislation should be built upon universally accepted moral principles, it should not be directly derived from religion. Religion which is a product of generations' thoughts, contains inherent flaws and limitations. This paper argues for taking religious values as cultural ethical principles that should be revised and refined through rational thinking. Moreover, with the existing influence of religious authority among the citizens, policymakers can use this influence appropriately and positively to enhance productivity. By using the foundation offered by religious traditions added on rational-legal principles, laws can become more acceptable and better serve the needs of the people.

DOI: 10.54254/2753-7048/66/2024MU0034

3. Empirical Research and Comparison

3.1. Analysis of Christian Animal Ethics Affecting EU Legislation

In 2017, Alma Massaro her moral concerns on contemporary European Union (EU) laws in her work, "Respect for Integrity: How Christian Animal Ethics Could Inform EU Legislation on Farm Animals." In this study, Massaro analyzes the intersection of Christian ethics and EU legislation, giving suggestions on how Christian principles related to animal welfare should influence the legal framework governing the treatment of farm animals [5]. According to Christian belief, human beings are entrusted with both ownership and responsibility for the welfare of their animals: "A righteous man cares for the needs of his animal" [6]. European cultures, roughly speaking, are highly affected by Christianity, even people living in that culture who may not convert to any religion are influenced by its undermined values. Therefore, in a religious area, the moral values concerning animal welfare are rooted in people's minds and social understanding.

With this consideration, Massaro critiques that current EU laws often prioritize economic efficiency over these traditional ethical principles, causing a conflict with Christian principles of compassion and respect for life [4]. This conflict reveals an important issue which is that the religious moral framework, which once served as a foundation for ethical decision-making, is now been largely neglected in current EU legislation. Despite this, religion still plays a main role in shaping societal values, and policymakers must seriously consider these ethical principles to create legislation that is both effective and morally acceptable.

On the other hand, this situation also raises other concerns. If we view society as a temple, then religion can be seen as one of its fundamental pillars. The influence of religious ethics is so deeply ingrained that it inevitably interacts with secular needs. The EU's focus on increasing economic efficiency to meet current demands often clashes with these traditional ethical concerns. If policies become too secularized and efficiency-driven, there is a risk of moral discomfort and a potential for a landslide effect, that the diminishing regard for traditional values like compassion, respect, and integrity could lead to broader erosions in human rights. Therefore, it is essential for legislation to find a balance between religion and secular ensuring that economic rises do not override the ethical principles that sustain a just, civilized, and humane society.

3.2. Analysis of Mazu Mediation Room

In the south coastal region of China, especially in Fujian province, Mazu, also known as the goddess of sea, is deeply integrated with the culture. The Mazu belief system is centered around the worship of Mazu, a deified young woman named Lin Mo-who, according to legend, who lived during the Song Dynasty. She is believed to have possessed extraordinary spiritual powers, particularly in protecting fishermen and sailors from the perils of the sea. After her death, she was venerated as a goddess and protector of seafarers. Mazu culture is not only religious but also highly important in Fujianese life and society. It plays a role in community cohesion, social governance, and moral education [7].

In Putian, Fujian province, local governors established the Mazu Mediation Room in many local police stations [8]. This mediation room is unique to this region and serves an important role in resolving civil disputes. What distinguishes this mediation room from others is its integration of the local religious beliefs of Mazu. In every mediation session, the mediator begins by leading all participants in paying homage to the Mazu figure prominently displayed on the wall. This ritual involves a respectful salute, acknowledging Mazu's presence and invoking her guidance. Interestingly, the practice of Mazu Mediation Room has proven to be highly effective. Many people believe that, under the watchful eyes of Mazu, participants--most of whom are faithful believers--tend to be more

DOI: 10.54254/2753-7048/66/2024MU0034

honest, respectful, and cooperative during the mediation process. The presence of Mazu applies a sense of moral responsibility, potentially encouraging participants to resolve disputes kindly and with integrity.

This paper wants to emphasize the purpose of this practice. Fujian Province, known for its rich religious culture, has effectively integrated beliefs into its legal framework as a tool to enhance the enforcement of laws. By incorporating religious elements, such as the Mazu, the legal system in this region captures the positive moral values inherent in the local culture and uses them to support legal processes.

In other words, the legislation system in Fujian strategically absorbs the benefits of religious ethics, using them in practical law enforcement. During mediation sessions, virtues like respect, honesty, and integrity are naturally upheld by participants—rather than through external compulsion, it is through an internal sense of moral duty provided by their religious beliefs. This practice helps individuals follow the law and resolve disputes with others in a way that follows their inner moral compass.

On a broader scale, the integration of religious values into the legal system also helps to maintain lower crime rates by using the divine aspect given by the use of religion. It also fosters a positive and cooperative relationship between law enforcement authorities and the community. The Mazu Mediation Room serves as a great example of how a balance can be achieved between religious traditions and modern secular needs, demonstrating that religion and law can work together to create a harmonious and just society.

4. Conclusion

Studying on both theoretical insights and empirical evidence, this paper concludes with a comprehensive understanding of how legislation can effectively integrate with religious beliefs, advocating for thoughtful future practices. The paper suggests that legal systems should pay more attention to religious beliefs as a means to make deeper connections with the people they serve. In a broader context, policymakers and those in positions of authority should immerse themselves more fully in the lives and cultures of the citizens they govern. A disconnect between the legal system and the people can undermine the effectiveness of law enforcement.

To bridge this gap, it is important for the legal system to resonate with the way people think and feel. Mutual understanding must be built from the root. Religious culture offers a rich resource for it, as it gathers the collective values and moral frameworks of communities in a positive and unifying manner. By incorporating these cultural and religious elements, legislation can become more localized, thus making it more relevant and acceptable to the population it governs.

However, this paper wants to raise a potential concern. Since both religion and the legal system rely on concepts of authority and justice in the minds of the people. The use of religion in legal practices might, to some extent, influence or even challenge the authority of the legal system. In countries that do not share, or build upon a common religious belief, this integration could potentially undermine the authority and position of the legal system, leading to unexpected consequences.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0032

Governance Dilemma of Commercial Bribery by Multinational Corporations in China

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Abstract: With the deepening development of globalisation, multinational corporations (MNCs) have been operating more and more frequently in China, but the accompanying problem of commercial bribery has gradually emerged.The purpose of this paper is to explore the dilemmas encountered by China in punishing commercial bribery by multinational corporations in China.Through the research method of literature review, this paper finds that the causes of commercial bribery by multinational corporations in China are complex and diverse, including regulatory deficiencies, imperfections in the legal system, differences in business ethics, and insufficient internal control, etc. Such behaviour not only undermines fair competition, but also leads to the emergence of the problem of commercial bribery.Such behaviours not only damage the market environment of fair competition, but also erode the moral foundation of the society and affect China's international image.Therefore, possible solutions are proposed, including strengthening legislation and law enforcement, expanding jurisdiction, and improving the monitoring system, in order to more effectively curb commercial bribery by multinational corporations in China.

Keywords: Multinational corporations, Bribery, The new UK Bribery Act, FCPA.

1. Introduction

In terms of the investigations and prosecutions of the United States of America on overseas commercial bribery, the cases in which measures were taken against the companies were not many each year, but according to the number of cases in the investigations each year, there were 109 cases in 2013, and there were a total of 96 cases in 2013, and measures taken were taken in respectively 9 and 10 cases [1]. It is also evident from the cases under investigation that it generally takes several years from discovery to closure. This reflects the heavy task, difficulty and long cycle of investigation and handling of such cases [2].

A similar trend was observed with regard to the time span between the initial commission of the offence and its detection (latency period) for entrepreneurial offences detected and prosecuted in China.Those who committed the offence of misappropriation of funds generally had a relatively short time span of the offence, with the majority being investigated and punished within three years, while entrepreneurs who committed the offences of passive bribery and active bribery had a longer latent period of the offence, with the majority being investigated and punished within five to ten years after the initial offence [3]. Therefore, based on the above data, it can be seen that transnational commercial bribery cases have the phenomenon of difficult discovery and long latent time, and there is also the

DOI: 10.54254/2753-7048/66/2024MU0032

phenomenon of lengthening the time of case closure. Therefore, the handling of transnational commercial cases reflects the status quo that the situation is more severe, the cases are more complicated, and it is more difficult to investigate and deal with them.

2. Summary and Evaluation of China and Extraterritorial Relevant Legislation

2.1. Basic Extraterritorial Legislation

This paper mainly focuses on the relevant legislation of the United Kingdom and the United States as the object of study, and explores them separately.

2.1.1. General Description of the Current Legislative Situation

Firstly, the FCPA rules in the U.S. The FCPA consists of two types of legal rules: firstly, the anti-commercial bribery provisions, i.e. the provisions prohibiting bribery of foreign public officials; and secondly, the accounting and bookkeeping provisions. The two are not separate, but rather echo each other in that it is illegal to bribe a foreign official for the purpose of obtaining the maintenance of a business, or any undue advantage. This is echoed by the fact that, in order to avoid disguising such illegal conduct, companies are required to establish and maintain accounting records and books of account that give a true and fair view of the company's transactions and assets (i.e., to ensure that there are no false accounts), and they are required to establish an internal accounting system that ensures that no transactions are carried out without proper authorisation.In short, bribery of foreign public officials and false accounting (No Record, No Defence.) are both violations of the FCPA [4].

Secondly, the new UK Bribery Act, which is a typical example of a law that follows and exceeds the FCPA, has revolutionised the UK's anti-bribery regime with the enactment and entry into force of the Bribery Act 2011, which contains a separate offence of bribery of foreign public officials to regulate commercial bribery of multinational corporations from a home country perspective.The UK Bribery Act has inherited a number of provisions from the FCPA, including the subject matter and five elements of the FCPA's anti-bribery provisions, although some of the provisions are stricter than the FCPA [5].

As a pioneering text and leader in the fight against transnational commercial bribery, the value and role of the FCPA is mainly reflected in the following aspects: Firstly, legal value: the FCPA establishes a blueprint for the anti-transnational commercial bribery system, which has become the blueprint for other countries to follow, and is the basis for the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention on Combating Bribery of Foreign Public Officials). Bribery of Foreign Public Officials in International Business Transactions (hereinafter referred to as the OECD Convention) and other international conventions. Second, other values: The FCPA was created to clean up the business environment for cross-border transactions and to help revitalise business ethics and national image [6]. Like the FCPA, the new Bribery Act was born out of the crisis, and it improves the regulation of commercial bribery in the form of a specialised law, replacing the previous messy, uncertain and fragmented legislation, which is conducive to the administration of justice and law enforcement by the SFO and the courts, as well as to the compliance building of multinational corporations.

2.1.2. Evaluation

Some of the provisions of the FCPA are incoherent and have not been fundamentally improved even after amendments. There is still a lack of appropriate guidelines to point the way for business organisations such as multinational corporations as to what level of conduct may be regulated under the FCPA. The procedures tend to favour case-by-case guidance and lack universality. In judicial

DOI: 10.54254/2753-7048/66/2024MU0032

practice, most cases applying the FCPA end in settlements, and few cases actually clarify some of the FCPA's ambiguous provisions.

FCPA enforcement is not as strong as envisioned [7]. Transparency International has suggested that although DOJ and the SEC have done their best to crack down on commercial bribery by multinational corporations, a large number of U.S. multinational corporations continue to pay bribes, and the new Bribery Act does not provide for an opinion procedure, which may lead to uncertainty in enforcement [8].

2.2. Basic Situation of Chinese Legislation

2.2.1. Overview of the Current Legislative Situation

Anti-Unfair Competition Law: This law makes clear provisions on commercial bribery.Commercial bribery includes bribery of state officials, employees of companies or enterprises, and persons from other entities in an attempt to obtain business benefits. The Act requires companies to establish and implement an internal control system against bribery and establishes penalties for offences.

Criminal Law: The Criminal Law contains specific provisions setting out criminal penalties for bribery, including penalties for both active and passive bribery. In recent years, China has increased its efforts to combat bribery offences by amending its criminal law.

Anti-Corruption and Bribery Regulations: These regulations further refine the anti-bribery provisions, clarifying the definition of bribery, penalties and procedures for reporting.

2.2.2. Evaluation

China already has a certain number of laws and regulations governing commercial bribery, but they are still characterised by fragmentation and lagging behind, which affects the relevant departments' punishment of commercial bribery [9].

Firstly, the laws and regulations are too fragmented and have not yet been collated and issued specifically for commercial bribery, which is easy to be biased in practical application.Secondly, the relevant provisions of laws and regulations have not kept pace with the times. With the development of the economy and society, the scope, form and means of commercial bribery will also change, while the existing laws and regulations have not been updated according to the actual situation, and the degree of scientification needs to be improved. Finally, the laws and regulations for the punishment of violations appear weak, resulting in transnational corporations of commercial bribery of the cost of the offence is reduced, punishment and deterrent effect are greatly reduced.

3. The Crux of the Dilemma of Multinational Corporations' Commercial Bribery Governance in China

3.1. Fragmentation of Laws and Regulations Leads to Difficulties in Punishment

Strict and complete laws let multinational enterprises know the huge cost of violating the law, so that multinational corporations such as Lucent and GlaxoSmithKline are always careful and cautious when they face the Chinese market, but they make a completely opposite choice when they face the Chinese market.

In the European and American markets, multinational corporations such as Lucent and GlaxoSmithKline are always careful and cautious, but when facing the Chinese market, they make a completely opposite choice. China has a certain number of laws and regulations on commercial bribery, but they are still fragmented and lagging behind, which affects the relevant departments in punishing commercial bribery. Firstly, the laws and regulations are too fragmented, and have not yet

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been collated and issued laws specifically targeting commercial bribery, which is easy to be biased in practical application. Secondly, the relevant provisions of laws and regulations have not kept pace with the times. With the development of the economy and society, the scope, form and means of commercial bribery will also change, while the existing laws and regulations have not been updated according to the actual situation, and the degree of scientification needs to be improved. Finally, the laws and regulations for the punishment of violations appear weak, resulting in multinational corporations of commercial bribery, the cost of the offence is reduced, the punishment and deterrent effect are greatly reduced.

3.2. Ineffective Fulfilment of Responsibilities by Government Regulators

All industries have the possibility of commercial bribery, and the supervision and investigation of commercial bribery requires the cooperation of various administrative and regulatory departments in their respective areas of work. The governance of commercial bribery in multinational corporations requires closer cooperation among various government departments due to its international nature, hidden nature and complexity.

In the process of investigating and handling cases of commercial bribery of multinational corporations in China, various government departments sometimes shirk their responsibilities for the handling of cases out of local or departmental interests.Should have become the elimination of commercial bribery departments such as public security, industry and commerce, taxation, etc. but choose to avoid, often to not in the scope of responsibility, no authority to deal with, no conclusive evidence and other reasons to take the "can not care about it, regardless of the" attitude, so that the transnational corporations of commercial bribery is only increasing, more and more rampant, which is a clear contrast with the foreign investigation and handling of commercial bribery in a timely, accurate and efficient manner. This is in marked contrast to the timely, accurate and efficient investigation and handling of commercial bribery in foreign countries.

3.3. There are Obvious System Defects in the Governance of Commercial Bribery

As shown in the administrative management system, excessive interference of administrative power in specific economic activities, there are opportunities for rent-seeking power.

The lack of constraints on the administrative examination and approval, registration and filing, law enforcement and certification and other administrative rights, which is easy to produce monopoly. The lack of protection system for commercial bribery whistleblowers; in the market regulatory system, the key sectors of the real power of the staff of the supervision mechanism is not perfect, the regulatory bodies and responsibilities are not clear.

Meanwhile, unclear regulatory bodies and responsibilities; the credit management system in the financial regulatory system is not yet sound, and the accounting regulatory system plays a limited regulatory role for large companies, corporate accounting staff and intermediaries.

4. Possible Response Options

4.1. Strengthen Cross-Jurisdictional Legal Framework and International Cooperation

4.1.1. Expand Jurisdiction

Firstly, China should draw on the principle of extraterritoriality in the UK's Bribery Act, and make its own anti-commercial bribery laws extraterritorial by adopting legislation to provide unilateral public regulation of international bribery [10].

DOI: 10.54254/2753-7048/66/2024MU0032

Furthermore, there is often a conflict between the territorial jurisdiction of the host country over a multinational corporation engaging in criminal conduct, the personal jurisdiction over a multinational corporation's subsidiary in China, and the personal jurisdiction of the home country over the multinational corporation. At this point, considering the complexity of commercial bribery of multinational corporations, jurisdiction cannot be asserted directly based solely on the principle of priority of territorial jurisdiction, but should be coordinated, and there should be a hierarchy between the priority of territorial jurisdiction, complementary jurisdiction ratione personae, judicial fairness and the strengthening of international cooperation, so as to ensure that the exercise of jurisdiction is conducive to the clarification of the facts, and to investigate and deal with the criminal acts in a timely and effective manner.

4.1.2. Strengthen International Cooperation

In establishing close cooperation with major economies and international organisations through signing bilateral or multilateral agreements, it is possible to effectively combat transnational commercial bribery in China and maintain fair competition order in the international market.

Specifically, strengthening international co-operation needs to start from several aspects. Firstly, establishing an information sharing mechanism is the key. An efficient information exchange platform should be established between countries to share clues, evidence and investigation progress of commercial bribery cases in a timely manner, so as to jointly track and combat transnational bribery networks. Such information sharing not only helps to enhance the investigative capacity of law enforcement agencies in various countries, but also effectively curbs the cross-border flow of corruption funds.

Secondly, it is also essential to strengthen coordination and cooperation in transnational cases. Law enforcement agencies of various countries should establish a regular communication mechanism to jointly study the characteristics and trends of transnational commercial bribery cases and formulate targeted combating strategies.In the process of case investigation, law enforcement agencies of various countries should support each other, closely co-operate, and jointly carry out investigation and evidence collection to ensure that the cases can be successfully solved.In terms of jointly combating corruption networks, China should strengthen cooperation with Interpol and other agencies. These international organisations have rich experience and resources in combating transnational crime and can provide strong support and assistance to countries.

However, in the process of strengthening international cooperation, we must also face up to the conflicts of interest and jurisdictional problems among countries. Due to the differences in the legal systems, judicial systems and interests of various countries, the issue of jurisdiction in transnational commercial bribery cases often becomes a difficult point of cooperation. In order to overcome this difficulty, countries should strengthen consultation and communication, enhance cooperation through extradition procedures, mutual legal assistance, recognition and enforcement and other systems, and jointly combat international crimes. At the same time, countries should also respect each other's sovereignty and interests and ensure fairness and justice in the process of cooperation.

4.2. Improve Enforcement Mechanisms

Strengthen regulation and enforcement: Enhance the enforcement capacity and efficiency of regulatory authorities and increase the frequency and depth of inspections of commercial bribery.Ensure that regulators have sufficient resources and powers to effectively enforce the law [9].

Establish reporting and evidence mechanisms: Establish reporting channels and protect the rights and interests of whistleblowers to encourage people to report commercial bribery. At the same time,

DOI: 10.54254/2753-7048/66/2024MU0032

establish an effective evidentiary mechanism to ensure that sufficient evidence can be collected to support the handling of cases.

Strengthen the construction of legal system: Improve relevant laws and regulations, clarify the definition of commercial bribery and punishment standards, to ensure the rigour and applicability of the law. At the same time, strengthen the repair of loopholes in the implementation of laws and timely update of legal interpretations.

Strengthen international co-operation: International commercial bribery usually involves multinational corporations and international transactions. Strengthen international co-operation and information exchange to jointly combat cross-border commercial bribery.

Enhance education and publicity: Strengthen education for enterprises and the public to raise their awareness of the dangers of commercial bribery, and cultivate good business ethics and compliance awareness.

Through the comprehensive application of the above strategies, the enforcement mechanism on commercial bribery can be effectively improved to enhance the effectiveness and social credibility of the fight against commercial bribery.

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By comprehensively applying the above strategies, the enforcement mechanism on commercial bribery can be effectively improved, and the effectiveness and social credibility of the fight against commercial bribery can be enhanced.

4.4. Improve the Regulatory System

In order to effectively supervise and control the occurrence of commercial bribery cases, many countries and regions provide guarantees in institutional settings. For example, Sweden, in addition to the regular prosecuting authorities, courts and other judicial institutions, has also set up a special National Anti-Corruption Office and the Economic Crime Agency. The United Kingdom set up the Serious Fraud Office (Serious Fraud Office) in 2004. Finland has implemented the system of independent investigative officers. Singapore has set up the Corrupt Practices Investigation Bureau; and Hong Kong has set up the Independent Commission Against Corruption (ICAC).

DOI: 10.54254/2753-7048/66/2024MU0032

At present, China's judicial body to combat commercial bribery is mainly the Anti-Corruption and Bribery Bureau, with staff under the civil service system and funding paid by the local authorities, and its effective coverage is relatively limited. Therefore, on the basis of foreign experience, China can implement judicial reform to give more independence to the judicial machinery to combat commercial bribery.Specifically manifested in: personnel management, should be given to the judiciary with full personnel rights, to avoid the interests of civil servants and the establishment of independent of the executive branch of the cadres management system; financial funding, the central financial departments and the highest judicial organs to take the amount of funding jointly approved or to be independent of the financial allocation of the way, so that the judicial organs of the process of work is not subject to the constraints of the local financial sector;In the administration of justice, the judiciary is guaranteed independence of authority and the ability to investigate and collect evidence in cases without interference from the executive branch.It should be noted that the implementation of judicial independence should also emphasise judicial control, and in the process of granting full independence to the judiciary, it is necessary to improve the judicial supervision mechanism in order to prevent judicial corruption.

5. Conclusion

The issue of commercial bribery by multinational corporations in China is a complex and urgent problem. This paper reveals the dilemma and the multiple reasons behind it through analyses, and highlights the need to strengthen regulations, improve regulatory mechanisms and raise the ethical standards of companies themselves.In the future, only through the joint efforts of the international community and the self-restraint of multinational corporations themselves can the problem of commercial bribery be effectively solved and the construction of a healthy and fair business environment be promoted. As a host country, China needs to continuously optimise the business legal environment and intensify its efforts to combat bribery, and at the same time it needs to cooperate with the international community to jointly promote the formation of a cleaner international business atmosphere.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0008

The Protection of Labor Rights of Chinese Multinational Corporations under the Belt and Road Initiative

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Abstract: With the deepening of the "Belt and Road" Initiative, the number of Chinese overseas workers is increasing, and the protection of labor rights and interests is becoming more and more prominent. This article analyzes the problems in the protection of labor rights and interests of Chinese multinational corporations and their causes, and finds that these problems are mainly concentrated in the aspects of identity legitimacy, law application, discrimination in employment access and neglect of the right to human dignity. The incompleteness of the host country's legal and social security system, the inadequacy of diplomatic and consular protection in the home country, the lack of social responsibility of transnational corporations, and the weak awareness of workers' rights are all important reasons for the violation of workers' rights and interests. In order to solve these problems, the paper proposes optimization paths at the national level, the level of transnational companies and the level of workers themselves, including building regional agreements, strengthening legal aid, implementing legal training and raising awareness of self-protection. Through multi-faceted efforts, we can better protect the legitimate rights and interests of overseas workers of Chinese multinational companies, promote the smooth implementation of the Belt and Road Initiative, and achieve the goal of win-win cooperation.

Keywords: The Belt and Road Initiative, overseas workers, labor rights protection, multinational companies.

1. Introduction

Economic globalization has led to the continuous transfer of technology and industry, expanding the business scope of multinational corporations. Consequently, protecting international labor rights has become a key focus for the global community. With the deepening of investment and trade cooperation between China and countries along the "Belt and Road", the number of Chinese overseas workers continues to grow. However, this trend has also increased the risk of infringement on these workers' rights, making it a critical issue to address within the "Belt and Road" initiative.

The protection of overseas workers' rights involves many subjects, including host country, home country, multinational corporation and individual workers. Each has distinct responsibilities and obligations. As the destination of labor, the legal system and social environment of the host country are crucial to the protection of labor rights and interests. The home country needs to play an active role in diplomatic and consular protection. As the direct employers of workers, multinational companies should assume corporate social responsibility to ensure that the legitimate rights and

DOI: 10.54254/2753-7048/66/2024MU0008

interests of workers are protected. Individual workers need to have certain legal knowledge and self-protection awareness, so that they can effectively protect their rights when their rights are infringed.

Despite significant efforts by China to protect the rights and interests of overseas workers, many challenges remain. China's theoretical research on protecting these rights focuses on diplomatic protection and the signing of bilateral and multilateral agreements. However, there is a tendency to prioritize diplomatic means over legal measures [1]. Overseas workers often accept low wages and welfare benefits, and widespread discrimination in host countries, especially against those with less education or training, exacerbates their vulnerability. Current laws need to address these issues comprehensively [2]. Sun and Shi, as well as Li and Hua, highlighted that the increasing number of overseas workers leads to rising labor rights infringement issues, particularly concerning identity legitimacy, legal application, and workers' rights awareness [3,4]. Zhang noted that the host country's imperfect legal system and political instability contribute significantly to rights infringements. Additionally, Zhang pointed out the lack of rights and responsibilities consciousness among laborers, state supervision deficiencies, and insufficient consular and legislative protection as major challenges [5]. Gu and Li also emphasized these problems, pointing out that the increasing number of cases and the lack of awareness of rights of labor subjects indicate that domestic and international laws need to be improved in the protection of labor rights and interests [6]. Zhang stressed the importance of bilateral and multilateral agreements, noting that while international labor legislation like ILO treaties stipulate state obligations, they often lack enforcement mechanisms. Conversely, labor provisions in trade or investment agreements promote compliance through economic incentives or sanctions but also have drawbacks, such as the lack of legally binding adjudication mechanisms in some agreements [7]. Xie pointed out that in the context of the "Belt and Road Initiative", the social security risks faced by overseas workers will cause harm to labor subjects, multinational enterprises and governments [8].

Therefore, this article will start from the problems existing in the host country, home country, multinational companies and workers, analyze the reasons for the infringement of labor rights and interests of Chinese multinational companies under the background of the "Belt and Road", and put forward corresponding solutions. The structure of this article is as follows: After the introduction, Chapter Two discusses the current situation of overseas workers' rights protection in China, focusing on labor export challenges, legislative progress, and international soft law participation. Chapter Three elaborates on the problems and causes of labor rights protection, exploring identity legitimacy, legal application issues, employment discrimination, and human dignity rights. Chapter Four proposes optimization paths for protecting overseas workers' rights, offering specific suggestions at the national, corporate, and individual levels. Chapter Five concludes with a summary of findings.

2. Current Situation of Protection of Rights and Interests of Overseas Workers in China

2.1. Challenges to the Protection of the Rights and Interests of Overseas Workers Brought About by the Export of Overseas Labor Services

Under the background of the "Belt and Road" initiative proposed in 2013, China's export of overseas labor has been increasing, and at the same time, the problem of overseas labor disputes and the infringement of the legitimate rights and interests of overseas workers has been intensified. The security of life and property of Chinese overseas workers will face increasingly severe challenges, and labor disputes will increase accordingly. In 2017, China sent 189,600 workers of various types to countries along the Belt and Road, a slight decrease from the previous year. By the end of 2017, there were 324,400 Chinese labor workers in countries along the routes, basically the same as the previous year, mainly distributed in Saudi Arabia, Qatar, Oman, Laos, Indonesia, Russia, Singapore and other

DOI: 10.54254/2753-7048/66/2024MU0008

countries [3]. Some of these regions have relatively slow development and lagging legal construction. Additionally, political instability, social security issues, and periods of social transition with sharp class contradictions in some regions pose significant challenges to the protection of Chinese overseas workers [4]. For example, in some countries, workers are often exploited, wages are delayed, and working conditions are poor. These problems not only damage the legitimate rights and interests of workers, but also affect the reputation and image of Chinese-funded enterprises.

2.2. China's Domestic Legislation on the Harmonization of the Rights and Interests of Overseas Workers Has Initially Taken Shape

In order to meet the challenge of protecting the rights and interests of overseas workers, China has made initial efforts in domestic legislation. In 2012, The State Council issued the Regulations on the Administration of Foreign Labor Cooperation, which can be regarded as the standard text of China's foreign labor cooperation and the main legal basis for the current administration of China's foreign labor cooperation. Laws and regulations such as Foreign Trade Law, Regulations on the Administration of Overseas Employment Agencies, and Measures on the Administration of Business Qualifications of Foreign Labor Cooperation also involve the protection of the relevant rights and interests of overseas workers [4]. In particular, the Regulations on the Administration of Foreign Labor Cooperation have made clear provisions on the qualifications of foreign labor cooperation enterprises, the training of labor personnel, the signing of contracts, the handling of labor disputes and other aspects, providing a legal basis and operational guidelines for the protection of labor rights and interests. Relevant legislation shows that China's domestic legislation on the coordination of overseas workers' rights and interests has taken shape.

2.3. China Actively Participates in International Soft Law on the Protection of Overseas Workers

At the international level, China has actively participated in the formulation and implementation of international soft law on the protection of overseas workers. International soft law is usually related to the protection of labor rights and interests or labor cooperation. These texts have been recognized by countries and have certain binding force, reflecting the unanimous recognition of the protection of overseas labor rights and interests between countries. At present, China has made great progress in signing bilateral treaties to protect the rights and interests of overseas workers with some countries along the "Belt and Road" [4]. These treaties and international soft laws have not only strengthened labor protection cooperation between China and these countries but also provided better legal protection for Chinese overseas workers. For example, bilateral labor protection agreements can clarify working conditions, wages, social security, and other standards, thereby regulating labor behavior and reducing the risk of rights infringements. Additionally, the implementation of international soft law has promoted coordination and cooperation among countries in labor rights protection, forming an international mechanism to jointly address labor issues.

To sum up, China has made positive efforts in addressing the challenges of protecting the rights and interests of overseas workers, building a domestic legislation system and participating in international soft law cooperation. However, with the promotion of the "Belt and Road" Initiative and the continuous growth of overseas labor export, China still has some problems in the protection of overseas labor rights and interests.

DOI: 10.54254/2753-7048/66/2024MU0008

3. Problems Existing in the Protection of Labor Rights and Interests of Chinese Multinational Corporations and Causes

3.1. Problems in the Protection of the Rights and Interests of Chinese Overseas Workers

The first is the question of identity legitimacy. Aside from a few countries that require a large number of foreign workers, most countries along the "Belt and Road" have strict visa quotas for foreign workers, with some labor markets completely closed to overseas workers. Additionally, countries with lower labor quality may adopt local labor protection policies and strictly control the import of foreign workers. Obtaining a local work visa is fundamental for foreign workers' employment and legal protection in the host country [3]. However, some overseas workers are unable to secure legal status abroad, jeopardizing their rights and interests.

Another significant challenge is the application of the law. Resolving labor disputes through judicial means in foreign countries is often time-consuming and costly. For Chinese migrant workers who have signed labor contracts with the employer or intermediary, the foreign ministry suggests that labor disputes arising in the course of legal work should be resolved through consultation with the employer as far as possible. If the negotiation fails, they can contact the Commercial Reference Office of the Embassy for mediation; and if the mediation fails, workers can bring a lawsuit to the local labor authority for arbitration or court hearing after returning home country. Discussing jurisdiction and applicable law is necessary if overseas workers file labor lawsuits in China [4]. Reaching a consensus among countries along the route is urgent to save costs and improve the efficiency of labor dispute resolution.

Discrimination in employment access is another pressing issue. In recent years, with global economic growth slowing, many countries face rising unemployment. Governments often adopt dual domestic and foreign employment policies to protect local workers' interests [1]. Foreign workers often need to meet higher industry entry requirements than local workers. For example, developed host countries may set high qualification standards or fail to recognize educational and vocational qualifications from many developing countries, denying a large number of overseas workers access to the labor market.

Compared with the above explicit violation of rights, the violation of the right to personal dignity is more hidden and difficult to be detected. Foreign workers, often isolated due to language and cultural differences, lack the support of relatives and friends and live in relatively isolated environments. They are more likely to be abused, isolated, insulted and even beaten by their employers. Even if a complaint is filed with a local government department, it may not be solved due to the unfamiliarity with local laws, language barriers, high cost of rights protection, and inadequate protection by the local government, etc. Worse, workers might face retaliation from employers, such as termination or increased bullying [1].

3.2. Causes of Problems in the Protection of Rights and Interests of Chinese Overseas Workers

3.2.1. Host Country Factors

The host country is the primary factor that causes the dilemma of protecting the rights and interests of Chinese overseas workers. Governments of labor-importing countries avoid the pressure of protecting the interests of their citizens, meeting enterprise production needs, and fulfilling local government economic demands, leading them to overlook infringements on foreign workers' rights. These governments tend to treat foreign and domestic workers with double standards in law enforcement. To protect their domestic job markets and the interests of local workers, host countries impose numerous restrictions on foreign workers' employment, resulting in widespread

DOI: 10.54254/2753-7048/66/2024MU0008

discrimination in industry access. Labor market testing and economic needs testing, initially intangible market barriers in international service trade, have now become significant obstacles for foreign workers entering the host country labor market.

In addition, many overseas workers achieve overseas employment through labor dispatch, and workers sign labor contracts with domestic dispatch companies to establish labor relations. This leads host employers to believe that they are not the direct employers of the workers and are therefore not obliged to pay various types of insurance for the workers, thus avoiding their responsibilities as real employers. Some labor-importing countries do not integrate foreign workers into their social security systems, and host governments lack incentives to enact mandatory welfare and protection laws for foreign workers. Consequently, foreign workers often experience unilateral wage reductions, salary cuts, prolonged refusal of wage increases, or disguised reductions in remuneration through position reclassifications and job content changes [9].

3.2.2. Home Country Factors

Factors related to home country also have an important impact on the protection of overseas workers' rights and interests. First of all, the lack of diplomatic protection makes it difficult to effectively protect the rights and interests of overseas workers. In addition to the lack of special legislative guarantee for diplomatic protection, the supporting system related to diplomatic protection is still not clear, such as the specific protection measures for the legitimate rights and interests of overseas workers. Diplomatic protection in international law is merely a procedure initiated by the government, with unclear criteria and initiation procedures [6].

Moreover, consular protection also faces many challenges in practice [10]. China has not specifically enacted a bill to protect the rights and interests of overseas workers, and the current Regulations on the Administration of Foreign Labor Cooperation and the Regulations on the Administration of Foreign Contracted Projects cannot fully address these rights nor handle the rapidly increasing disputes. There are also deficiencies in the release of safety early warning information and labor education and training, resulting in the lack of response ability and relief means for overseas workers to deal with rights infringement and labor disputes [6].

3.2.3. Transnational Corporations Factors

Multinational companies also have many problems in protecting labor rights. The first is the deprivation of the right to rest and security. Although the labor laws of the host countries have clear provisions on working hours, in practice, employers often extend working hours on the grounds of voluntary labor and violate the workers' right to rest. A survey by the International Labor Organization reported that migrant workers worked longer hours on average than those employed locally in host countries. Deprivation of the right to rest not only damages the health of workers, but also leads to "death from overwork" and other serious consequences.

Furthermore, the lack of training rights was a serious problem. Many overseas workers struggle to adapt to the working environment in the host country or work inefficiently due to outdated skills. Employers, viewing training as difficult, time-consuming, and costly, often choose to lay off workers instead of providing on-the-job training. Foreign workers must return to China within a set period, making long-term residence and work in the host country unlikely. Consequently, employers perceive training costs as high and benefits as low [9].

3.2.4. Individual Workers Factors

The lack of individual worker's consciousness of right and responsibility is also an important reason for the lack of protection of rights and interests. Most of the overseas workers generally come from

DOI: 10.54254/2753-7048/66/2024MU0008

rural areas, remote poor areas, or are general technical personnel with limited education and competitive skills, restricting them to manual labor. These workers often have a weak sense of self-assistance and are not sensitive to rights violations unless personal and property safety are seriously threatened. As a result, they tolerate employers' unreasonable demands, further consolidating employers' dominant positions and perpetuating the infringement of workers' rights [5].

Another reason is the language and legal knowledge barrier. It is difficult for Chinese overseas workers to master the local language in a short period of time, and they are not familiar with relevant laws and regulations. In addition, there are differences in culture and habits among different countries, so overseas workers cannot master the ways and means of rights protection, and they easily lose the right to speak and initiative when negotiating with employers who are obviously in a dominant position [11].

To sum up, the causes of the protection of the rights and interests of overseas workers in China are complex and diverse. It is necessary to carry out systematic reform and improvement from the host country, home country, multinational companies and individual workers, so as to comprehensively protect the legitimate rights and interests of overseas workers.

4. Optimization Path for the Protection of Overseas Labor Rights and Interests of Chinese Multinational Corporations

4.1. National Level

First, at the national level, host and home countries should construct regional agreements. In terms of the protection of the rights and interests of overseas workers, there are few separate labor cooperation treaties, and most of them attach "labor cooperation" as a clause in the content of trade and investment treaties. Bilateral investment treaties concluded between China and many countries contain provisions on labor cooperation, such as the Cyprus BIT (2001) and China-Netherlands BIT (2001), which stipulate the national treatment of Chinese overseas workers, and play a positive role in protecting the rights and interests of Chinese overseas workers [12]. Most foreign labor protection treaties are in the form of labor cooperation or immigration management, such as the North American Labor Cooperation Agreement and the Green Paper of the European Union on the Management of Economic Migration, which are typical multilateral labor cooperation agreements.

In the construction of the "Belt and Road" labor cooperation framework agreement, China should fully absorb the experience from advanced multilateral agreements or regional frameworks worldwide. By exploiting their strengths and avoiding weaknesses, China can mitigate the negative impacts of regional agreements and balance regional and extraregional interests. This approach aims to create more job opportunities and better protection for workers' rights within the region while providing reasonable platform resources for labor markets outside the region, adhering to the "Belt and Road" Initiative's principles of openness and win-win cooperation [1]. For example, China can learn from the successful experience of the North American labor cooperation Agreement and make clear the rights and obligations of all parties by formulating detailed labor rights protection clauses, ensuring that the legitimate rights and interests of workers in the host country are effectively protected. At the same time, a regional labor dispute settlement mechanism should be established to improve the efficiency and fairness of labor rights protection.

Secondly, home countries should provide legal assistance to overseas workers in a timely manner. In reality, some contracts signed by overseas employers and workers do not conform to the laws and regulations of the host country. Once foreign-related labor conflicts occur, even the legitimate and reasonable demands of workers are likely to get no legal support. Therefore, China should prioritize building legal aid platforms for overseas workers' rights protection. The official website of overseas labor information service should be established to provide the overall planning of legal information

DOI: 10.54254/2753-7048/66/2024MU0008

involved in labor disputes and give corresponding risk tips, so as to develop the single ex post relief into the principle of both ex post prevention and ex post relief [4]. In addition, the Chinese government can set up a special legal aid fund to help overseas workers seek legal help when their rights and interests are violated. Regular legal lectures and training courses are held to improve overseas workers' legal awareness and ability to protect their rights, so that they can cope more calmly when faced with rights violations.

4.2. Transnational Corporation Level

Multinational corporations also play an important role in the protection of labor rights. First of all, employment units and intermediary agencies should do a good job of domestic training and necessary explanations before expatriates go abroad. This training should cover the national conditions of the host country, including local climate, laws and regulations, religious customs, and important points for attention. It is also necessary to specify the working environment, salary and contract terms, so that the workers are mentally and materially prepared before going abroad.

Secondly, special attention should be paid to the risk points that are easy to produce labor disputes, such as the requirements of the labor side on the work schedule and labor intensity, the payment methods of wages and salaries, local living conditions and safety precautions. Through detailed instructions and training, the risk of labor disputes arising from workers not adapting to the local working environment is reduced [3]. For example, multinational companies can develop detailed training programs to help expatriate workers understand and adapt to the working environment and legal regulations of the host country. Through simulation drills and practical training, improve the practical operation ability and adaptability of workers. Moreover, multinational companies should regularly track and evaluate expatriate workers' work and living conditions, promptly addressing any emerging issues to ensure their safety and rights.

In addition, multinational companies should actively fulfill their social responsibilities to ensure that the legitimate rights and interests of expatriate workers are fully protected. For example, multinational companies can establish partnerships with local labor organizations and trade unions to promote the protection of labor rights. Through the signing of collective contracts and labor agreements, the working conditions, wages and social security of workers are clarified to ensure that the legitimate rights and interests of workers are not infringed. Furthermore, multinational companies can appoint labor rights protection commissioners to handle workers' complaints and disputes, promptly resolving issues to ensure workers' rights are effectively protected.

4.3. Overseas Workers Themselves

From the perspective of workers, the most important thing to safeguard their own labor rights and interests is to strengthen self-protection. When seeking overseas employment opportunities, workers should look for regular enterprises or qualified labor intermediaries to work abroad through legal channels. They should avoid trusting verbal promises from domestic acquaintances, fellow townspeople, or illegal intermediaries, and should not follow them to work overseas without signed written labor contracts.

Secondly, workers must sign a written labor contract or service agreement with the enterprise, and check the legal documents related to working abroad, such as overseas project contracts, labor cooperation contracts with foreign employers, etc. In the absence of a written contract, after the arrival of overseas workers in the host country, there is a big gap between the actual salary and treatment and the promise, the employer defaults on wages, and the detention of workers' passports, etc., and the rights and interests are difficult to be effectively protected.

DOI: 10.54254/2753-7048/66/2024MU0008

Third, workers should properly understand the host country's laws and regulations on foreign labor before signing a contract. Although workers' willingness to work abroad has increased, and they are more aware of finding formal channels for legal overseas employment, regulations vary greatly among "Belt and Road" countries. Many workers who have signed written contracts may still not fully understand their rights and obligations or the restrictive clauses added by labor cooperative agencies [3]. Therefore, workers should actively participate in various legal knowledge training courses and lectures to improve their legal awareness and ability to protect their rights. When encountering problems in their work, they should seek help from the Chinese embassy or consulate in the host country in a timely manner and safeguard their rights and interests through legal channels.

5. Conclusion

With the deepening of the "Belt and Road" Initiative, the number of Chinese overseas workers is increasing, and the protection of labor rights and interests is becoming more and more prominent. Through the analysis of the problems in the protection of labor rights and interests in Chinese multinational corporations and their causes, it can be seen that these problems mainly focus on the aspects of identity legitimacy, law application, discrimination in employment access and neglect of the right to human dignity. Specifically, the imperfect legal and social security system of the host country, the insufficient diplomatic and consular protection of the home country, the lack of social responsibility of transnational corporations, and the weak awareness of workers' rights are all important reasons for the violation of workers' rights and interests.

To solve these problems effectively, comprehensive measures must be taken at the national level, the level of transnational corporations and the level of workers themselves. At the national level, host countries and home countries should build regional agreements, learn from international advanced experience, balance interests inside and outside the region, and jointly protect labor rights and interests. Home countries should also strengthen the construction of legal aid platforms, provide timely legal support and risk tips, and protect the legitimate rights and interests of overseas workers in both pre-prevention and post-relief. At the level of multinational companies, employers and intermediaries should strengthen the training and guidance of expatriates, clarify the working environment and contract terms, and reduce the risk of labor disputes caused by maladaptation. Transnational corporations should also actively fulfill their social responsibilities and cooperate with local labor organizations to ensure that workers' working conditions, wages and social security are not infringed. From the perspective of workers themselves, strengthening self-protection consciousness is the key to safeguard labor rights and interests. When looking for overseas employment opportunities, workers should choose regular enterprises and legal intermediaries, and ensure their legitimate rights and interests by signing written contracts. At the same time, they should understand the laws and regulations of the host country, improve their legal awareness and ability to defend their rights, and seek the help of Chinese embassies and consulates in time when they encounter problems.

Through the above multi-faceted efforts, the legitimate rights and interests of overseas workers of Chinese multinational companies can be better protected and the smooth implementation of the Belt and Road Initiative can be promoted. Only with the joint efforts of the government, enterprises and workers can they effectively respond to the challenges of protecting the rights and interests of overseas workers in the context of globalization, promote the healthy development of international labor cooperation, and achieve the goal of win-win cooperation. In doing so, China can achieve higher-quality development in the globalization and further implement and develop the Belt and Road Initiative.

DOI: 10.54254/2753-7048/66/2024MU0008

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0031

Accountability for Environmental Human Rights Responsibilities of MNEs: The Case of Enterprises in China

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Abstract: In recent years, the role of MNEs in China's economic development has been significant, yet their activities have also led to environmental degradation and human rights abuses. This paper delves into the intricate issue of environmental human rights accountability of multinational enterprises (MNEs) operating in China and examines the theoretical underpinnings and practical challenges in holding MNEs accountable for their environmental human rights impacts. It begins by outlining the basic concepts of MNEs' environmental human rights responsibilities, drawing upon international and domestic legal frameworks. Subsequently, it analyzes the common areas of environmental degradation and human rights violations committed by MNEs in China, highlighting the complexities of jurisdiction and enforcement. The article further explores the difficulties in determining accountability and selecting appropriate jurisdictions for legal redress. Through a comparative analysis of existing legal mechanisms and international practices, the paper proposes recommendations for China and the international community to strengthen accountability mechanisms and enhance regulatory frameworks. Ultimately, the paper aims to contribute to the discourse on ensuring that MNEs operating in China fulfill their environmental human rights responsibilities.

Keywords: Multinational Enterprises (MNEs), Environmental Human Rights, Accountability, Legal Frameworks.

1. Introduction

The rapid globalization of the past few decades has significantly increased the influence and operations of multinational enterprises (MNEs) across the globe. These enterprises, characterized by their extensive networks and substantial economic power, have become pivotal players in the global economy. Among the countries that have experienced the profound impact of MNEs is China. China's economic landscape has been markedly transformed by the presence of these global giants, contributing to its growth and development. However, this economic benefit has not come without significant costs, particularly concerning environmental human rights abuses.

The accountability of MNEs for their environmental human rights impacts has emerged as a critical issue, especially in developing countries like China. The complex interplay between economic benefits and adverse impacts necessitates a thorough examination of the responsibilities and accountabilities of these enterprises. This paper delves into the multifaceted issue of environmental human rights accountability of MNEs operating in China. It aims to explore the theoretical

DOI: 10.54254/2753-7048/66/2024MU0031

foundations and practical challenges in holding MNEs accountable for their impacts, drawing upon both international and domestic legal frameworks.

The significance of this research lies in its potential to contribute to the ongoing discourse on corporate accountability and sustainable development. By examining the environmental human rights responsibilities of MNEs in the context of China, this paper seeks to shed light on the existing gaps in the regulatory frameworks and propose viable solutions for enhancing accountability mechanisms. The research is driven by the objective to understand the complexities of jurisdiction and enforcement in holding MNEs accountable and to provide recommendations for strengthening these mechanisms in China and beyond.

In this research, first, it seeks to clarify the fundamental concepts of MNEs' environmental human rights responsibilities within the framework of both international and domestic laws. Second, it aims to identify and examine the prevalent areas of environmental human rights violations by MNEs in China, highlighting the complexities related to jurisdiction and enforcement. Thirdly, the research endeavors to explore the practical challenges in determining accountability and selecting appropriate jurisdictions for legal redress. Lastly, through a comparative analysis of existing legal mechanisms and international practices, the paper proposes actionable recommendations for China and the global community to fortify accountability mechanisms and improve regulatory frameworks.

2. Literature Review

2.1. Current Research on MNEs' Environmental Human Rights Responsibilities Globally and in China

The body of literature on MNEs' environmental human rights responsibilities is extensive. Globally, scholars have explored various dimensions of MNEs' impacts on environmental human rights, emphasizing the need for robust accountability mechanisms [1]. Key studies highlight the detrimental effects of MNEs' operations, including pollution, resource depletion, and adverse health impacts on local communities [2]. These studies underscore the importance of regulatory frameworks and corporate social responsibility (CSR) initiatives in mitigating negative impacts and promoting sustainable practices [3].

One of the seminal works in this area is John Ruggie's formulation of the United Nations Guiding Principles on Business and Human Rights (UNGPs). Ruggie's framework, which has gained wide acceptance, outlines the "Protect, Respect and Remedy" approach, emphasizing that states must protect against human rights abuses by third parties, including businesses, and that businesses must respect human rights by avoiding infringing on the rights of others. Furthermore, effective remedies must be accessible for those affected. This framework has been instrumental in shaping both international discourse and national policies regarding business and human rights, particularly in the context of environmental human rights [4].

The study on MNEs ' environmental human rights obligations has attracted attention in China. China offers a unique setting to examine these questions, as China is one of the most important host countries for MNEs. Two parallel narratives in the writing: MNEs have played a fundamental role in China's economic expansion and thriving, however, by their same token they are frequently responsible of substantial ecological mutilation as well as human being rights offences. There is documentation from studies that paint a picture of air and water pollution, unsafe working conditions, substandard compensation for impacted communities demonstrating the pressing need for accountability [5].

DOI: 10.54254/2753-7048/66/2024MU0031

2.2. Overview of Relevant Legal Frameworks and International Standards

The framework of the law and international standards that make binding MNEs' actions on environmental human rights obligations can significantly influence their responsibility. At the international level, these duties are based on a number of principal instruments. The UNGPs require MNEs to carry out due diligence, identify risks and provide remedies for those harmed. The Organisation for Economic Cooperation and Development (OECD) Guidelines for MNEs, or the OECD Responsible Business Conduct Guidance provides extensive legal advice. They promote the incorporation of sustainability into operations and also transparency within reporting for MNEs.

China has also engaged in international environmental agreements, such as the Paris Agreement, which commits nations to reduce greenhouse gas emissions and address climate change. These commitments reflect China's growing recognition of the need to balance economic development with environmental sustainability [6]. However, translating these international commitments into effective domestic policies and practices remains an ongoing challenge [6].

3. MNEs' Environmental Human Rights Responsibilities in China

3.1. Current Status: Performance and Practices

3.1.1. Case Study 1: An Instance of Environmental Infringement by an MNE in China

On 4 and 7 June 2011, oil spills occurred at Platforms B and C of the Penglai 19-3 oil field in Bohai Bay, and ConocoPhillips China Limited (hereinafter referred to as ConocoPhillips), which was the operator, reported the situation to the State Oceanic Administration (SOA) Beihai Branch [7]. For a long time afterwards, there was no way of knowing whether ConocoPhillips had taken measures to actively plug the oil spills after they had occurred, whether the emergency response mechanism for oil spills was activated by the relevant state authorities, and the progress of the ConocoPhillips oil spills [8]. China National Offshore Oil Corporation (hereinafter referred to as CNOOC) and ConocoPhillips jointly developed the Penglai 19-3 oilfield, and after the oil spill incident, there were no relevant reports about CNOOC taking some actions in response to the oil spill [8]. It was not until 1 July, the 27th day after the oil spill, that CNOOC formally responded to the oil spill. The State Oceanic Administration (SOA), which received the oil pollution report, first announced the oil spill to the public one month after the spill occurred. 13 July, SOA instructed ConocoPhillips to suspend the production operations of Platform B and Platform C. During this period, ConocoPhillips suspended the production operations of Platform B and Platform C, which was the first time that ConocoPhillips was operating in the area. During this period, the Penglai 19-3 oil field operated by ConocoPhillips had been in operation, and the oil spill point of the oil spill accident had not been sealed at all. After that, the North Sea Branch of the State Oceanic Administration formulated a special oil spill contingency plan, requiring ConocoPhillips to formulate a response plan to completely block the source of the oil spill under the disadvantage of decompression and well abandonment measures, to complete the blocking of the oil spill platform, and to request that the final blocking effect be evaluated and appraised. At the same time, the State Oceanic Administration (SOA) took the lead in setting up a joint investigation team to thoroughly investigate the cause of the oil spill accident at the Penglai 19-3 oilfield and to assess the impacts and losses caused by the accident.

After the disclosure of the ConocoPhillips oil spill incident, ConocoPhillips has not indicated its attitude towards the oil spill incident. It was only under the pressure of the community's great concern and the Government's attention that ConocoPhillips belatedly indicated that it would take responsibility for the oil spill. Ironically, the day after ConocoPhillips' senior management stated that the source of the oil spill at the Penglai 19-3 oil field had been permanently sealed, new oil seepage points were found in the vicinity of the oil field's Platform C. Subsequent reports also confirmed that

DOI: 10.54254/2753-7048/66/2024MU0031

new oil leaks were still occurring at the Penglai 19-3 oil field [9]. 3 June 2012, one year after the Penglai oil field spilled oil, ConocoPhillips claimed that the spill was not related to the former one.

Within a short period of one year, two oil spills occurred consecutively in Penglai 19-3 oilfield, where ConocoPhillips is the operator, damaging the local marine ecosystem and causing huge losses to the relevant farmers. In this incident, the attitude and response of the State Oceanic Administration as well as our government, CNOOC and ConocoPhillips in handling the whole incident have made the handling of the ConocoPhillips oil spill quite a cause for concern. At present, the damaged fishermen and farmers in China have 3 filed lawsuits in court for compensation. Previously, ConocoPhillips and CNOOC had promised to pay RMB 3.033 billion in compensation and indemnity for the oil spill [9]. However, the aggrieved parties who suffered losses as a result of the accident have so far not been able to receive full compensation [9].

3.1.2. Case Study 2: Successful Implementation of Environmental Responsibilities by an MNE in China

In contrast, Shell's operations in China provide an exemplary case of successful environmental responsibility. Especially in the wake of the 2011 ConocoPhillips oil spill, Shell took proactive measures to prevent similar incidents from occurring. It developed comprehensive and effective oil spill contingency plans, which not only received approval from the Chinese government but were also publicly disclosed on Shell's official website, demonstrating the company's commitment to transparency and accountability [10].

Shell's contingency plans included several critical measures. Firstly, in the event of an oil spill, the company would immediately shut down production facilities to prevent the spread of pollution. Secondly, each spill incident would be investigated by a joint team composed of company representatives, regulatory agencies, and local officials. This multi-party investigation mechanism not only ensured transparency in uncovering the facts but also facilitated the swift resolution of the issues. Shell also placed particular emphasis on the safety of the affected area, ensuring that secure access routes were provided for residents and workers, thus preventing further harm to local communities during the incident response.

Moreover, Shell demonstrated a high level of responsibility in terms of information disclosure. The company published weekly progress reports on its website, detailing the handling of the oil spill, investigation findings, and response measures [11]. This continuous transparent communication not only kept the public informed about the latest developments but also helped to build societal confidence in Shell's environmental stewardship.

3.2. Legal Frameworks and Regulatory Mechanisms

3.2.1. Domestic Legal Environment in China

3.2.1.1. Constitutional Provisions

China's environmental law is based on the constitutional provisions on environmental protection and consists of the basic law on environmental protection as well as specific normative standards. Article 26, paragraph 1, of the Constitution states: "The State shall protect and improve the living and ecological environments and prevent pollution and other public hazards." Although the constitutional provisions do not explicitly stipulate the environmental responsibilities of MNEs and lack detailed operational guidelines, as the fundamental law of the land, the provisions of the Constitution relating to the protection of the environment are the legislative basis for various environmental laws, rules and regulations, and have a programmatic role, and it is these provisions that provide the template for the design of other legal norms.

DOI: 10.54254/2753-7048/66/2024MU0031

3.2.1.2. Statutory Laws and Regulations

China has enacted several laws related to environmental protection and corporate social responsibility. The Law of the People's Republic of China on Environmental Protection is the basic law on environmental protection in China. Article 24 of the Law provides, "Units that generate environmental pollution and other public hazards must incorporate environmental protection into their plans and establish a system of responsibility for environmental protection; take effective measures to prevent and control pollution and environmental hazards caused by waste gases, waste water, waste residue, dust, foul-smelling gases, radioactive substances, as well as noise, vibration, and electromagnetic wave radiation generated in the course of production and construction or other activities. hazards." This law establishes the basic principles of environmental protection in economic construction.

In addition, China has enacted individual environmental protection laws for each specific and detailed environmental protection object, such as the Marine Environmental Protection Law, Water Pollution Prevention and Control Law, Air Pollution Prevention and Control Law, etc. In other laws, including civil law and criminal law, there are special chapters on environmental pollution liability. For example, the Criminal Law provides for the "crime of destroying environmental resources" in a special section, and the Supreme People's Court and the Supreme People's Procuratorate have canceled the original "crime of major environmental pollution accidents" and replaced it with the "crime of polluting the environment".

The State Council has also promulgated a series of administrative regulations to protect the environment and prevent pollution and other public hazards, such as the Regulations on the Prevention and Control of Noise Pollution, the Measures for the Administration of Forest Harvesting and Renewal, among other environmental protection regulations. They outline the environmental obligations and responsibilities of enterprises.

3.2.1.3. Local Regulations and Rules

Because many environmental problems arise as a result of pollution from local companies, local regulations on environmental protection are closely related to the environmental problems generated by locally owned companies. For example, the Shanghai Municipality Sewage Charges and Fines Management Measures stipulates that all enterprises and institutions, including Sino-foreign joint ventures, that discharge pollutants in excess of the standard should pay sewage charges on a monthly basis. From the local environmental protection legislation, in terms of environmental protection legislation, China has been gradually improving the domestic environmental legal system, but there is still a lack of specialised legislation on the environmental responsibility of companies, and even fewer provisions relating to the environmental protection of MNEs.

3.2.2. Application and Impact of International Legal Frameworks

3.2.2.1. International Multilateral Environmental Agreements

China is a party to several international multilateral environmental agreements which set international standards for the environmental behavior of MNEs. At present, there are more than 100 international conventions on environmental protection, many of which involve the regulation of the environmental liability of MNEs, and to a certain extent, international multilateral environmental conventions will force the domestic law to use international conventions with higher specifications and standards to be directly applicable in the country's domestic law, which has the same legal efficiency and status as the national legislation.

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For example, the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, which regulates the disposal of marine wastes that cause marine pollution. As far as the drilling platforms for the exploitation of offshore oil resources are concerned, although technological innovation has made it possible to strengthen the safety, the oil leakage accidents on the offshore drilling platforms have not been eliminated from time to time, and the hazards caused by the leakage are far beyond human control, and it is impossible for the multilateral environmental conventions to make exhaustive provisions for all environmental infringements in a clear and coherent manner, and the environmental responsibilities of some MNEs will not be directly embodied in the conventions. Some MNEs' environmental liabilities are not directly reflected in the conventions. With regard to international conventions that do not directly regulate the liability of MNEs, the Montreal Protocol provides for a certain period of time to stop the production and use of ODS (ozone depleting substances, mainly Freon) in the contracting parties. In the countries of the parties, MNEs are thus obliged to stop the production and sale of ODS, which is called indirect regulation. In the second phase of the Kyoto Protocol, which was agreed in 2011, there is a clear commitment to reduce greenhouse gas emissions. Developed countries have pledged to reduce greenhouse gas emissions by 25-40 per cent by 2020, compared to 1990 levels; China has also made a commitment to reduce carbon dioxide emissions per unit of GDP by 40-45 per cent by 2020, compared to 2005 levels. The national emission reduction measures are put into concrete implementation, that is, macro-control of the total amount of emissions from various domestic production activities, which inevitably prompts MNEs to better fulfil their environmental responsibilities, and improve their technologies and reduce their emissions, so as to achieve the overall emission reduction of the host country's self-targets.

MNEs are not directly regulated by the protocol, which is aimed at the behaviour of the state, but MNEs investing and operating activities in the host country should be subject to the laws of the country, and the international conventions signed by the host country have a contractual effect in the host country, so MNEs should consciously comply with its provisions to achieve the goal of environmental protection.

3.2.2.2. Environmental Provisions in Regional Investment Agreements

Beyond the constraints of multilateral environmental agreements, regional free trade agreements are gradually incorporating environmental protection into their cooperation agendas to promote the harmonious development of both the economy and the environment.

For example, the North American Free Trade Agreement (NAFTA) between the United States, Canada, and Mexico set a new template for other international agreements. During NAFTA negotiations, special attention was given to environmental protection, which was formalized through an additional agreement, the North American Agreement on Environmental Cooperation (NAAEC). This agreement became part of NAFTA and took effect simultaneously. NAFTA's focus on environmental issues, by incorporating them into the multilateral trade system and investment legislation, broke the traditional separation between international environmental treaties and trade and investment treaties. This shift reflects the growing importance placed on environmental issues in international investment law and has significant implications for global legislation, including in China.

NAFTA's environmental provisions include several key aspects. Firstly, NAFTA's preamble explicitly states that member countries are committed to “ensuring a predictable framework for business and investment in a manner consistent with environmental protection and preservation.” While this statement is not binding, it serves as a warning and support in dispute resolution, emphasizing the importance of environmental protection.

Secondly, in Chapter 11 of NAFTA, Article 1106 establishes an “environmental exception.” This provision allows member countries to take necessary restrictive measures to protect human, animal, or plant life and to conserve exhaustible natural resources. Even if these measures negatively impact

DOI: 10.54254/2753-7048/66/2024MU0031

investors, they are not subject to significant legal risks as long as they serve a legitimate public welfare purpose. This clause provides host countries with a legal defense against claims from MNEs, preventing the abuse of litigation rights.

Finally, Article 1114 is one of the most important environmental provisions in NAFTA, stating that member countries can take environmental measures to protect their national interests, as long as these measures do not conflict with other provisions in Chapter 11. Additionally, the article introduces the principle of "not lowering environmental standards," which entered an investment agreement for the first time and has since been used as a model in subsequent bilateral or multilateral investment agreements.

Moreover, NAFTA member countries strengthened their environmental awareness and protection levels by signing the NAAEC supplementary agreement. Through these initiatives, NAFTA aims to resolve the conflict between investment and environmental protection.

3.2.2.3. Documents from International Organizations

Due to their cross-border operations, MNEs are challenging to regulate comprehensively by any single country. While a country can control an MNEs' activities within its own borders, it struggles to address the environmental harm caused by the MNEs' operations across multiple countries. Various international organizations have made significant efforts to regulate MNEs' environmental responsibilities, which is crucial for research in this field.

The Organization for Economic Co-operation and Development (OECD), comprising 34 primarily developed nations, is one of the key organizations working on this issue. As early as 2006, the OECD released the "OECD Guidelines for Multinational Enterprises," a document aimed specifically at MNEs. These guidelines emphasize the importance of sustainable development, urging MNEs to harmonize their social, economic, and environmental practices. Key provisions include avoiding exemptions from environmental regulations, adhering to host country laws, considering international environmental treaties, and maintaining transparency by disclosing potential environmental risks.

Furthermore, the guidelines encourage MNEs to establish internal management systems that align with external regulations and to conduct regular environmental assessments. They stress the importance of sustainability not only for environmental and social progress but also for the long-term viability of the business itself.

These guidelines, while broad, serve as a framework for MNEs to achieve sustainable development. MNEs must not only comply with legal and regulatory standards but also proactively manage potential risks to the environment, health, and individual rights. By integrating these practices into national law and aligning them with international standards, countries like China can better protect their environment while maintaining their attractiveness to foreign investors.

4. Challenges and Issues: Identifying Key Obstacles

4.1. Insufficient Binding Force of Existing International Legal Rules

The existing rules on the environmental responsibility of MNEs, whether indirect or direct, are of a "soft law" nature and are not mandatory and binding on individual countries. In the face of the current complex international economic situation, international investment treaties containing environmental rules based on negotiated agreements among countries cannot meet the needs of the international community for an environmental legal system.

The unique supply pattern of the current international economic legal system has increased the difficulty of creating international legislation. From the above BITs and FTAs involving environmental protection issues, the content involving environmental protection is mainly manifested in the following: one is the preamble clause, such as the preamble of the U.S.-Uruguay BIT, which

DOI: 10.54254/2753-7048/66/2024MU0031

reads, "It is hoped that these objectives will be achieved in a manner consistent with the protection of health, safety, and the environment" ..... "Another is the entity-specific environmental clause, and another is the environmental exceptions and exemptions clause. Firstly, while preambular environmental protection clauses may, to some extent, serve as a basis for interpreting the purpose of the treaty, they are not legally binding because they do not specify substantive rights and obligations and legal liabilities [1]. Secondly, BIT environmental protection provisions are mostly soft law in nature, and it is uncertain how the enforceability and effectiveness of the environmental provisions can be ensured, as most investment treaties have a "Subject to this agreement" clause, meaning that if the BIT provisions are inconsistent with the host country's domestic environmental protection law, the BIT provisions will not be binding on the host country [1]. The reason for this is that most investment treaties have a "Subject to this agreement" clause, meaning that if the BIT provisions are inconsistent or even in conflict with the host country's domestic environmental protection laws, then the host country's domestic law cannot govern the obligations to be performed under the BIT.

4.2. Weaknesses in International Cooperation

The strength of international cooperation determines, to a certain extent, the effectiveness of environmental protection, and the current lack of international cooperation in the field of environmental protection is an important reason for the difficulty of holding MNEs accountable for their environmental responsibilities. Although environmental issues involve global public interests, due to the transnational nature of environmental issues, environmental protection often conflicts with the self-interests of certain countries, which makes it difficult for individual countries to reach a consensus in the environmental field. Countries have absolute sovereignty over the ecological environment and energy, so in response to environmental infringements caused by MNEs, countries often rely on the principle of national sovereignty and regulate MNEs purely from the point of view of domestic law, ignoring the fact that the environmental problem is a global and comprehensive problem that requires the full cooperation of all countries in the world [8]. The globalization of environmental problems dictated that environmental protection could not be achieved solely through the domestic laws and regulations of one country, and that effective international cooperation was indispensable.

4.3. Conflicts between Home and Host Countries in Restricting MNEs

As sovereign States, it is difficult for both home and host countries to exercise effective control over the environmental pollution behaviour of MNEs in various host countries. Most of the host countries in which MNEs invest are economically underdeveloped countries and regions, and the capital, technology, trade and employment brought by MNEs are precisely what the host countries seek. In order to develop their own or the region's economy, host countries often take a laissez-faire or acquiescence attitude towards the pollution behaviour of MNEs, and intervene less and less in the production and operation of MNEs or do not intervene [8]. Therefore, most host countries are unable to effectively regulate the environmental damaging behaviour of MNEs from the perspective of domestic law. From the perspective of the home country of MNEs, the development of MNEs can not only enhance the economic strength and international competitiveness of the home country and improve the international influence of the home country, on the other hand, MNEs may also, to a certain extent, become the carrier of the image of the home country to help the home country to promote its foreign policy, so that the public in foreign countries have a good positioning of the image of the home country. The commonality of interests makes it difficult for home countries to really regulate and supervise effectively the environmentally damaging behaviour of MNEs abroad.

DOI: 10.54254/2753-7048/66/2024MU0031

4.4. Weaknesses in Environmental Responsibility Information Disclosure in China

Recently, NGOs have ranked the environmental information disclosure indexes of various regions, and many domestic cities scored zero, meaning that a significant number of them have never published any effective information on environmental protection. The government's ineffective disclosure of such information and the lack of public media exposure are also reasons why some MNEs have adopted a double standard of environmental responsibility both at home and abroad. Although MNEs in China have a positive image in the minds of the Chinese people most of the time, the frequent occurrence of such environmental pollution problems is gradually reducing the public's favourable impression of them [8]. In developed countries, once the enterprise has had a large-scale pollution incidents, it will inevitably lead to the public's questioning of its brand. However, in China, the public blindly look at the brand and product quality of MNEs, lack of due attention to the environmental problems of enterprises, and hardly produce a common defence against and negative treatment of a polluting enterprise's consumer penalties.

5. Strategies and Recommendations

5.1. Include Environmental Human Rights in the Legal Code

As China embarks on a new journey towards fully building a modern socialist country and advancing towards its second centenary goal, enhancing the human rights protection level in environmental conservation has become a vital task to meet the growing rights demands of the people. The human rights attribute of environmental rights has reached a consensus in the international community, and China has also recognized this in the National Human Rights Action Plan (2021-2025). The modern development of environmental law and the global consensus on sustainable development have promoted the further development of environmental rights. The construction of a "Beautiful China" has been established as a national goal in China's Constitution, and the confirmation of environmental rights helps to deepen the value system and institutional logic of the environmental code.

This plan focuses on the subjective rights aspect of environmental rights, ensuring that citizens can make claims against environmental harm, while also emphasizing the objective value aspect, elevating environmental protection as a shared responsibility of the state and society [12]. The specific institutional construction includes establishing the basic principles of environmental rights in the code, clarifying the responsibilities of the state and government in protecting environmental rights, and setting up remedial mechanisms to provide effective legal avenues and solutions when environmental rights are violated [12]. Such institutional design aims to make the environmental code a legal text that reflects the characteristics of the times and has Chinese features, meeting the people's demand for a beautiful ecological environment and promoting the modernization process of China's environmental rule of law.

5.2. Improve the Environmental Responsibility Information Disclosure System

To enhance the environmental responsibility of MNEs, China should expand the scope of information disclosure and increase the channels through which the public can access information. By strengthening the environmental information disclosure system and encouraging public participation, corporate environmental violations can be costly due to public scrutiny. On one hand, the Ministry of Ecology and Environment's official website has established an exposure platform, online reporting for environmental pollution, and public notice columns, providing the public with a platform to supervise enterprises [13]. On the other hand, encouraging public welfare organizations to collect and analyze environmental information and disseminate it through websites and social media fosters corporate compliance with environmental legal responsibilities and proactive social responsibility.

DOI: 10.54254/2753-7048/66/2024MU0031

For instance, the Blue Map APP published by the Institute of Public and Environmental Affairs (IPE) compiles corporate environmental supervision records and monitoring data, promoting rectification of excessive emissions by enterprises. Supporting the development of environmental welfare organizations and establishing a communication bridge between enterprises, the public, and the government is an effective means of regulating MNEs.

5.3. Enhance international cooperation with home countries

Environmental pollution has become a global challenge that requires cross-border cooperation and response. There are differences in environmental standards and regulations between developing and developed countries, with developed countries usually setting higher environmental standards and strict legal sanctions, such as high environmental taxes and other penalties for violations of environmental regulations, while developing countries, with relatively lax environmental standards due to economic and financial constraints, are more likely to be destinations for MNEs to transfer pollution [12].

In order to solve the problem of environmental pollution by MNEs in China, China needs to strengthen environmental communication and cooperation with the home countries of these companies. This includes international negotiations through legal channels and the signing of international treaties related to environmental protection to clarify the environmental standards and responsibilities that MNEs should comply with in host countries. At the same time, China can use diplomatic means to negotiate with the home countries of MNEs to jointly resolve environmental problems [8].

6. Conclusion

The environmental responsibilities of MNEs in China are critical to sustainable development and the protection of environmental human rights. By holding MNEs accountable for their environmental impact and ensuring they uphold their environmental human rights responsibilities, China can pave the way for a more sustainable and equitable future.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0037

Gender Equality Through Abortion Rights: Exploring the Constitutional Framework and Social Justice

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Abstract: This paper examines the legal protection of the right to abortion under the U.S. constitutional framework and its impact on women's equality. The study traces the historical and jurisprudential development of the right to abortion and examines the impact of restricting this right on women's education, employment, and overall social justice. This is achieved through the analysis of relevant legal documents. The findings indicate that the protection of the right to abortion is crucial for the assurance of women's autonomy in matters of reproduction, and has a substantial influence on their educational and economic prospects. The paper concludes that the constitutional protection of abortion is a crucial step in achieving gender equality and social justice. It is incumbent upon governments and courts to promote gender equality and social justice by introducing legislation to protect the right to abortion and by creating social security systems. The following section will examine the aforementioned topic in greater detail.

Keywords: Right to abortion, Gender quality, Social justice, Constitution.

1. Introduction

In 2022, the U.S. Supreme Court overturned Roe v. Wade, allowing states to decide their own policies on abortion. The decision sparked widespread social controversy, pushing the issue of abortion rights and gender equality to the public attention once again. In the United States today, issues of abortion rights and gender equality occupy an important place in discussions of law and social justice. The legislative and judicial decisions on abortion rights not only reflect women's control over reproductive autonomy, but also reflect the society's attitude toward women's reproductive autonomy and gender equality, and profoundly affect the path for women to achieve equal status under the constitutional framework, influencing the social justice. Social justice requires that the social system guarantee the fundamental rights and opportunities of everyone on the basis of the principle of equity and provide special protection for the least advantaged groups. Restrictions on abortion rights negatively impact social equity and progress, because they deprive women of control over their own bodies and reproductive choices, negatively impact women's education and employment opportunities, and exacerbate gender inequality.

This paper hopes to make a comprehensive analysis on abortion rights, helping readers more comprehensively understand the role of constitutional protection of abortion rights in promoting equality of women's status, and better understand the function of constitution in realizing social justice.

DOI: 10.54254/2753-7048/66/2024MU0037

Furthermore, this paper also gives suggestions on the protection of women' rights and equal status in the current political and social environment, helping to deal with the fertility dilemma faced by women.

2. Analysis on the Legal Safeguards of the Female Abortion Right

This section will initially delineate the pivotal concepts pertinent to this study and subsequently establish the theoretical basis of the study's analysis. Additionally, this section is an examination of the legal basis for abortion rights in the American Constitution. It will then proceed to elucidate the legal foundations and legal implications for females' equal status in the US, with particular attention to the historical background of abortion rights in American Constitution, the abortion legislations at the federal and state levels, and the legal link between the guarantee of the right to abortion and the equal status of female. This section will undertake a comprehensive analysis of the legal basis of abortion right in the America Constitution and its impact on women's equality, with a particular focus on its role in the realization of social justice.

2.1. Basic Concepts and Definitions

Abortion Rights: The right to abortion is a woman's right to decide whether or not to terminate her pregnancy. Women have the right to control their reproduction. It involves many aspects of women's rights, including personal privacy, body autonomy and reproductive choice.

Gender Equality: Gender equality means that men and women enjoy equal rights and opportunities in the legal, economic, political and social fields, Not to be discriminated against or treated unfairly on the basis of sex [1].

Social Justice: Social Justice means that the social system should guarantee the basic rights and opportunities of each individual based on the principle of Fairness. Especially, a justicial society should provide special protection for the least advantaged groups in the society, so as to realize the common interests of all members of the society [2].

Constitutional Guarantees: Constitutional guarantees are the safeguards of fundamental rights and freedoms set out in the national Constitution, designed to ensure that all citizens enjoy equal rights and protection before the law.

2.2. Analysis of the Jurisprudential Basis of of Abortion Rights in American Constitution

2.2.1. Historical Background of Abortion Rights in American Constitution

In America the legal issue of abortion rights dates back to the 19th century. At that time, abortion was legal at an early stage because there was no explicit law against it. By the end of the 19th century, however, states began gradually passing laws restricting abortion. In the early 20th century, due to advances in medical technology and the advent of the females' movement, the right to abortion became a more prominent social and legal issue. In the late 1960s, as the women's affirmative action movement grew, more and more women demanded control over their reproductive rights, setting the stage for Roe v. Wade in 1973.

The case of Roe v. Wade represents a pivotal moment in the history of abortion rights in America. In the case, Jane Rowe sued the Texas government, challenging the state's law banning all abortions except when the life of the mother is in danger. The U.S. Supreme Court ultimately ruled that a woman has a constitutional right to choose an abortion in the first trimester. This right is protected by the right to privacy guaranteed by the Due Process Clause of the Fourteenth Amendment to the Constitution. The ruling established a "three-stage" framework under which states could impose varying degrees of abortion restrictions at different stages of pregnancy: in the first stage (first

DOI: 10.54254/2753-7048/66/2024MU0037

trimester of pregnancy), women have an absolute right to abortion, and the state cannot interfere; in the second trimester (second trimester), the state can regulate abortion some, but cannot ban it; in the third stage (third trimester), the state may ban abortion, but only with an exception to protect the well-being of the pregnant woman. The ruling effectively legalized abortion nationwide in America, while also setting the stage for future legal disputes.

Although Roe v. Wade established a woman's right to abortion, that right has been challenged and restricted several times in the following decades. In the 1980s, the rise of conservatives in American politics made abortion a central issue of bipartisan controversy. Webster v. Reproductive Health Services is one such case. In that case, the U.S. Supreme Court ruled that a Missouri law could limit the involvement of public hospitals and public workers in abortion issues, a decision that limited the scope of Roe v. Wade and increased state control over abortion.

Planned Parenthood v. Casey is another key judicial decision. In this case, the Supreme Court revisited Roe v. Wade and established the standard of "unnecessary burden." The standard allows state governments to restrict abortion to some extent if it does not pose an "unnecessary burden" on a woman's abortion rights. While Planned Parenthood v. Casey upheld a woman's right to an abortion, it also allowed states to enact more restrictive laws. In the 2000s, conservative-dominated state legislatures continued to push for laws restricting abortion. For example, the Texas Heartbeat Act (S.B. 8, 2021) prohibits abortions subsequent to the detection of a fetal heartbeat. The Act has a unique enforcement mechanism that allows private citizens to Sue anyone who "aids or abets" an abortion. The law greatly restricted a woman's right to have an abortion, prompting nationwide protests and legal challenges.

2.2.2. Abortion Legislations at the Federal and State Levels

The legal basis of women's right to abortion is the right to privacy [3]. There are two kinds of understanding of the right to privacy: one is the "right to choose exposure", which is the right to safeguard the confidentiality of individuals' private information from unwarranted disclosure.; The second is "discretion or self-choice", which means that an individual's right to decide on his or her private life is not governed by government or social forces. On the issue of abortion rights, the United States Supreme Court adopted the second understanding, holding that the core of the right to privacy is the right of individuals to make free choices in certain areas without government interference [4]. In 1965, the Supreme Court, in Griswold v. Connecticut, overturned the 1943 decision in Telston v. Ullman. For the first time, an independent, constitutionally protected right to privacy was recognized as the cornerstone of contraceptive and abortion protection. Then, in 1972, the Supreme Court, in Eisenstadt v. Baird, overturned the conviction that the dissemination of contraceptive information to unmarried persons was a crime, and affirmed the right of a woman to make an independent decision about abortion, even if her husband had no right to interfere. Justice Brennan wrote, "The right to privacy is an individual right, whether married or single, to make individual choices in areas where the government does not have to intervene. These areas can have a significant impact on an individual's life, including a parent's decision to have a child or not [5]." So the right to privacy provides right to abortion a basis of constitution.

The U.S. Supreme Court has been a principal actor in the formation of federal abortion legislation through a series of landmark decisions, including Roe v. Wade, Planned Parenthood v. Casey, and Whole Woman's Health v. Hellerstedt. These decisions established a constitutional right to privacy, including a woman's right to choose an abortion. And the decisions in these cases introduced the "not unduly burdensome" standard, preventing states from enacting laws that pose substantial barriers to women seeking abortions. At the same time, these decisions underscore the Supreme Court's role in interpreting the Constitution to protect abortion rights, influencing state-level legislation and securing the basis for federal protections. State legislatures have considerable authority to regulate abortion

DOI: 10.54254/2753-7048/66/2024MU0037

within the framework established by the Supreme Court. In such condition, laws of abortion vary considerably from state to state, reflecting regional differences in public opinion. Different attitudes towards abortion rights of different state governments take can be grouped into two principal categories: restrictive attitudes and protective attitudes.

In terms of restrictive state legislation, many states with a negative attitude to protecting abortion rights have enacted restrictive laws that challenge the boundaries of the "not unduly burdensome" standard. For example, Texas Senate Bill 8 (SB 8) (2021). The legislation, designated the "Heartbeat Act," prohibits abortions subsequent to approximately six weeks of gestation and, in a distinctive manner, empowers private citizens to enforce the law through civil litigation. The legislation has given rise to considerable controversy and legal challenges; Missouri House Bill 126 (2019): The law, also known as the Missouri Fight for the Unborn Act, bans abortions after eight weeks of pregnancy and does not include exceptions in cases of rape or incest. It sets out severe penalties for doctors who violate the law.

Conversely, in response to increasing restrictions elsewhere, some states have passed laws to protect and expand access to abortion. For example, The New York Reproductive Health Act (2019) and California Abortion Access Act. The New York Reproductive Health Act codifies the protections of Roe v. Wade into state law and removes abortion from the criminal code, ensuring that during pregnancy a woman can obtain an abortion if her health is at risk or the fetus is not viable. California Abortion Access Act expands access to abortion services, including funding clinics and training health care workers, reaffirming the state's commitment to reproductive rights.

These examples illustrate the significant differences in legislation on abortion rights in America at the federal and state levels, which reflect differences in cultural, political, and social attitudes across the states.

2.2.3. The Legal Link Between the Guarantee of the Right to Abortion and the Equal Status of Female

The protection of abortion rights is directly related to the way for women to achieve equal status under the constitutional framework. Under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, all citizens are guaranteed the right to equal protection under the law. This means that no law or policy can treat any group of people unequally. Through Roe v. Wade, the Supreme Court affirmed a woman's right to choose an abortion early in pregnancy as part of her right to privacy. Subsequently, in Planned Parenthood v. Casey, the Court further established the "not unduly burdensome" standard to prevent excessive state interference with abortion rights.

The guarantee of the right to abortion has a profound impact on the realization of gender equality. First, reproductive choice is a central part of women's autonomy, and it directly affects women's opportunities to advance in education and careers. Research has shown that women who have the legal option to have an abortion are more likely to complete high school and college education and have sustained employment opportunities and higher income levels throughout their careers [6]. These factors are essential for women to achieve equality in society.

In terms of education and employment, Finer discovered a noteworthy positive correlation between the legalization of abortion and the probability of women completing higher education [7]. Studies have shown that women who have the option to have an abortion are more likely to continue to complete their education in the event of a disruption, thereby increasing their chances of future employment and income levels. Similarly, research by Angrist and Evans showed that access to abortion rights significantly increased women's labor force participation and economic independence [6]. These results show that the right to abortion has a direct promoting effect on the realization of women's equal status.

DOI: 10.54254/2753-7048/66/2024MU0037

The legal guarantee of abortion right also has an important impact on women's health and well-being. Access to legal and safe abortion services is effective to decrease the health risks and mortality related to illegal abortion [8]. The right to health, an important component of gender equality, ensures that women can make reproductive choices in a safe environment contributes to their overall quality of life and participation in society. A study by Jones et al. pointed out that policies restricting abortion rights lead to an increase in illegal abortions, thereby endangering women's health [8]. In areas where abortion rights are restricted, health problems due to illegal abortions have increased significantly, indicating that the guarantee of abortion rights plays a key role in protecting women's health. This further supports the importance of abortion rights in achieving gender equality.

In addition, the guarantee of abortion rights also allows women choose to have children with suitable time and right conditions, which enables women to better plan their family life, improving their family's economic expectations and their kids' quality of life [9]. Ananat et al. found that there is a positive correlation between abortion rights and family economic stability and children's health [9]. With the result, it has been proved that protection of abortion rights can benefit to both of the individual and women's family. The development of individuals and families also has a positive impact on the overall stability and progress of society, supporting the significance of protection of abortion rights.

Protection to abortion rights provides women with more educational and economic opportunities as well. According to Jones et al., in states where abortion rights are restricted, women, especially low-income women, have significantly reduced opportunities to complete education and employment [8]. The diminishing in women's educational and economic opportunities exacerbates gender inequality. On the contrary, when women have legal and safe access to abortion services, they have more chances to continue their education, engage with the job market, and achieve economic independence, which helps to promote social equality.

The above analysis shows that access to abortion not only enables women to gain reproductive autonomy, but also avoid further educational or economic inequality. Protecting the right to abortion will provides women with more opportunities of education and employment, having a positive impact on family stability and social development. Therefore, as an important factor in realizing gender equality and promoting social justice, the Constitution should protect females' right to abortion and that it is inviolable.

3. Relative Proposals

3.1. Strengthening Legislative Protection at the Federal Level

Strengthening federal legal protections is conducive to the uniform protection of abortion rights throughout the country. Due to the different attitudes towards abortion rights among states, the legislation on abortion rights also varies considerably at the state level. Therefore, the Congress should enact legislation that explicitly include the right to abortion within the constitutional protection, which helps to reduce the discrepancies of abortion rights among states and provides more stable legal guarantees for women's reproductive autonomy.

3.2. Enhancing Public Education and Awareness

Promoting public education and enhancing relative publicity is conducive to improving social awareness of abortion rights and gender equality. The degree of understanding of abortion rights affects the degree of social acceptability for abortion rights, which in turn affects gender equality. Carrying out relevant education through different channels will help the public understand the necessity to protect the abortion rights more correctly. This can help to obtain wider social support, better achieving gender equality and social justice.

DOI: 10.54254/2753-7048/66/2024MU0037

3.3. Building A Comprehensive Social Support System

The government should enhance public financial assistance for abortion services, establishing a social support system supporting to protect women's abortion rights. Women can get comprehensive help of abortion with the provision of adequate medical resources and economic assistance, which provides safe abortion services to women, especially who are socially disadvantaged. In contrast to the health risks caused by a high threshold for abortion, it helps to safeguard women's rights of life and health, promoting the social equality.

4. Conclusion

This article reveals the influence of legal guarantees pertaining to abortion rights on the equal status of women within the constitutional framework. Additionally, it interprets how constitutional principles help achieve social justice. The findings indicate that the protection of abortion rights is a crucial element in enabling women to have physical autonomy, which affects their access to educational opportunities and economic independence.

Moreover, this article presents a comprehensive analysis of the right to abortion, explaining its multifaceted impact and underscoring its significance in safeguarding women's equal status and promoting social justice, with substantial theoretical and empirical evidence to support the arguments. Furthermore, this article also proposes specific suggestions on how to better protect the right to abortion from perspectives of the congress, the government, and society. These suggestions aim to better protect the rights of women and promote gender equality through the protection of the right to abortion.

Future studies could examine the ways in which abortion rights can be secured at the international level. This could include an investigation of the role of international female's rights organizations in supporting female's reproductive autonomy. In addition, future studies can also assess the right to abortion in different cultural backgrounds and explore how cultural factors affect the right to abortion, providing references for countries to formulate policies that align with their specific national circumstances.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0033

The Export Dilemma of China under the WTO Framework: An Anti-Dumping Study on the Determination of Market Economy Status

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Abstract: As China emerges as a dominant force in the global economy, the issue of non-market economy status has become a key issue, particularly in the face of biased anti-dumping measures enforced by other nations. These measures have seriously affected China's export-oriented economy by creating substantial trade barriers. The essay utilizes a blend of literature review, comparative analysis, and data examination, drawing on historical experience and the legal principles and rules as outlined in the WTO agreements. The results show that although China has achieved certain advancements in pursuing acknowledgment of its market economy status, it still faces significant challenges due to political and economic factors.This essay will discuss anti-dumping measures exert considerable pressure on businesses operating within developing economies, and on this basis, it will provide corresponding thoughts and suggestions for China to secure the market economy status, and for Chinese enterprises not to be hit by it as far as possible.

Keywords: Non-Market Economy Status, Chinese Multinational Enterprises, Anti-Dumping Measures.

1. Introduction

When a product is sold at an export price that is below the comparable domestic price, it is regarded as being introduced into the importing country’s market at a price below its normal value, under typical trade conditions, for a similar product intended for consumption in the exporting country. If such a domestic price is unavailable, the product's price is considered lower if it is below either the highest comparable price for export under standard trading conditions to a third country, or based on the production costs in the originating country with an appropriate addition for selling expenses and profit [1]. At this point, the reduced prices of imported goods will inevitably affect the sales of local products, thus adversely affecting domestic enterprises. The concept of anti-dumping was born, which was supposed to be a relief measure to safeguard the growth of domestic businesses. However, in the current World Trade Organisation, certain countries, mainly led by developed countries, are implementing unjust anti-dumping measures, with the designation of non-market economy status being a crucial element in this.

DOI: 10.54254/2753-7048/66/2024MU0033

2. The Status of Non-market Economy and Its Relation to Anti-dumping

To grasp the connection between China's market economy status and anti-dumping investigations, it's essential to first examine the definition of non-market economy (NME) status and understand how the determination of dumping is influenced when a country is classified as an NME.

2.1. Non-Market Economy Status within the Framework of the World Trade Organization

Non-market economy status means that a country or economy is considered to have prices, costs and production factors in international trade that are not entirely governed by market supply and demand, but are subject to government intervention or control.

In simpler terms, the key features of non-market economy status are evident in the following aspects. Firstly, the Government has a significant influence related to the output, pricing, and expense factors of enterprises. For example, the government will intervene in the market through subsidies, tax incentives or price controls. As a result, market supply and demand do not dictate the prices of goods and services; instead, they are shaped by government policies and directives. A possible consequence is that, as a result of government intervention, firms' cost data may be untrue or unreliable and fail to reflect true market conditions.

2.2. Origins of the Issue of Non-market Economy Status

The term 'market economy status' was initially an economic concept, not an international law concept, and there was no relevant definition or interpretation in international law [2]. Following the conclusion of the Second World War, the global economy required significant reconstruction and recovery. To prevent a recurrence of the pre-war errors of trade protectionism and economic blockades, the international community decided to establish a multilateral trading system to support the promotion of free trade. GATT (General Agreement on Tariffs and Trade) came into being, with the primary goal of fostering international trade through lowering tariffs and dismantling trade barriers. The initial focus was negotiating and reducing tariffs and establishing a multilateral trading system. In the 1970s, the United States and a few other countries applied the provisions of their domestic laws on ‘market economy status’ to their economic and trade relations with socialist countries such as China, thus making it a political tool that transcends the economic sphere.

The provision on non-market economies first appeared in the Tariff Act of 1930 of the U.S. In 1974, the U.S. Trade Act specifically listed 406 provisions on market disruption for socialist countries, for example, the Soviet Union and China, which the U.S. considered to be planned economies in which the government regulated all aspects of production and distribution, and the market had no role to play in socialist countries. The United States believes that these socialist countries are planned economies where the government regulates all aspects of production and sales, and the market plays no role in socialist countries.

2.3. The Drawbacks Associated with being Classified as a Non-market Economy

The identification of a market economy has important implications in international anti-dumping. If the exporting country of a product is recognised by the importing country as a non-market economy country, the importing country, when conducting an anti-dumping investigation, can refer to the price data of a third country (i.e. a “substitute country”) which it deems a 'market economy country' for the purpose of determining the normal value of the product in question in the exporting country (region). The normal value of the product in question, and then assess the extent of dumping. The investigating authorities of importing countries often choose as “substitute countries” countries whose domestic

DOI: 10.54254/2753-7048/66/2024MU0033

selling prices or production costs are much higher than those of the exporting country under investigation.

Take the following case as an aid to understanding. In a particular case of mushroom trade with the United States, the United States imposed anti-dumping measures on China and used Indonesia as a substitute country. Although Indonesia and China are both developing countries, the mushroom product is mainly grown in the temperate zone, while Indonesia is in the tropics. Therefore, Indonesia's mushroom product has to be grown in special air-conditioned rooms, and the cost is much higher than that of China's product. The cost thus calculated is obviously much higher than that of China, and it is not appropriate to find China's dumping margin on this basis.

The purpose of recognising non-market economy status has been made clear from the discussion of the foundations as above. When considering anti-dumping investigations, against non-market economies, importing countries often determine that market prices and costs in these countries do not reflect true supply and demand. Data on prices or costs of similar products in a substitute country (usually a market economy) are then used to determine “normal value”. Higher dumping margins typically occur because substitute country costs are often higher than those in the non-market economy, leading to increased anti-dumping duties that reduce the competitiveness of the exporting country's products. Worse still, because of the use of substitution country data, it is difficult for firms in non-market economies to justify their prices, and thus they can easily be found guilty of dumping.

3. China's Market Economy Status Determination

Powered by economic globalisation, China rapidly grew into the world's second-largest economy and a primary engine of global growth. In 2023, China's GDP reached $17.8 trillion, accounting for about 17 per cent of global GDP [3]. In addition, China's manufacturing value-added accounts for about 30% of the global share, ranking first in the world for 14 consecutive years [4]. The data reveal that China is a global leader in economic size and is widely recognised for its key role in the global industrial and supply chains. Consequently, examining the effects of anti-dumping measures and market economy status on China's exports is crucial. This paper therefore chooses China as the object of discussion.

3.1. China is Facing Difficulties Caused by Anti-dumping

WTO Global Trade Prosperity Index report shows that in 2018, the growth rate of world trade slowed down, reaching only 3.9 per cent level. Amid global economic challenges, countries have employed trade protection measures to support their domestic growth. Globally, between 1995 and 2020, about 6,300 anti-dumping investigations were conducted, China accounted for a staggering proportion of 23.46 per cent, twenty-six consecutive years in the anti-dumping encountered by the largest number of countries in the list of first [5]. The investigation covers 18 categories of commodities, including minerals, chemicals, light industry, textiles, agricultural products, machinery and electronics, and medical care. In order to limit the market share of Chinese products in their markets, foreign countries, especially some developed countries, use the excuse that China is a “non-market economy country” to impose discriminatory anti-dumping on China, which not only harms the interests of consumers in importing countries, but also has a significant impact on the economic benefits of Chinese export enterprises, and causes huge losses to China's economy. This has caused great losses to our economy.

In view of the above, it is necessary to analyse the influencing factors of China's frequent encounter with anti-dumping.

DOI: 10.54254/2753-7048/66/2024MU0033

3.2. China's History on the Certification of Market Economy Status

China's “market economy status” issue first surfaced in 1980 during the U.S. anti-dumping case on menthol, where China was classified as a “state-controlled economy”, and “market economy status” provisions were applied to “non-market economy” countries. This case marked the U.S.'s initial use of the substitute country principle for “non-market economies”, a critical precedent in China's anti-dumping history that has continued to influence later cases. Although this paper mainly addresses U.S. anti-dumping actions against China, other entities, including the European Union and Japan, have similarly used these measures to maintain anti-dumping sanctions.

Until 2001, when China joined the WTO, the Chinese side advocated that countries should abolish the recognition of China as a "non-market economy" and give it fair treatment, but this did not happen in the end. At that time, China accepted the negotiation result: accept the discriminatory treatment to continue to exist for 15 years, that is, until 2016 China still retains its non-market economy status determination. After the expiration of 2016, countries should regard China as an ordinary WTO member and treat China as an equal member of the WTO, and no longer take discriminatory anti-dumping measures to treat it.

However, this article is somewhat controversial in terms of its legal nature. The original text of Article 15 provides for "price comparability in determining subsidies and dumping" and the issue of substitute countries, but it does not explicitly state that China will be able to obtain market economy status 15 years after its accession to the WTO. Many people regard this article as "China can obtain market economy status after 15 years of WTO accession", which is actually a misunderstanding without precise legal basis. The World Trade Organisation does not have a strict definition of "market economy status" or the right to adjudicate on it, which gives some countries that do not want China to obtain market economy status a chance to take advantage of it. On the day immediately after Article 15 of the Protocol on China's Accession to the WTO expired, China filed a complaint at the WTO against the United States and the European Union (EU), respectively, seeking the restoration of China's "market economy status". An advisory panel of experts was assembled for the case against the EU in July 2017, but in 2019 China proposed to suspend the panel proceedings, and one year later, China did not request the resumption of the panel proceedings, meaning that the case was officially terminated. Consequently, China did not obtain market economy status as had been hoped.

3.3. Reasons For Excessive Anti-dumping Actions Against China

In order to explore and think about how to incorporate the previous understanding of anti-dumping in the context of anti-dumping, it is necessary to first find the reasons for the current excessive anti-dumping policies imposed on China by other countries, led by Europe and the United States. Combined with the previous explanation of anti-dumping, it can be broadly explained as the following factors.

3.3.1. Economic Factor

Dubbed the “World's Factory”, China has been the largest manufacturer globally for 14 consecutive years since 2010, producing around one-third of the world's total manufacturing output [6]. Starting in 2002, China's foreign trade has expanded swiftly, with growth rates of 34.6 per cent and 35.4 per cent in 2003 and 2004. Although the export growth rate declined after the financial crisis in 2009, it quickly rebounded to 31.3 per cent in 2010. In 2018, a year of trade friction between China and the United States, China's export growth rate was also 6.5 per cent [7]. Export trade has grown exponentially with the growth of the manufacturing sector, leading to a decline in the industrial advantage of importing countries, thus increasing the need for trade protection.

DOI: 10.54254/2753-7048/66/2024MU0033

On the basis of the large volume of exports, it is important to note that export commodities are often accompanied by low-cost qualities. This tends to be concentrated in goods produced by labour-intensive industries, as China has a large labour force. This has led to the flow of relatively low-cost products into overseas markets, making it easy for other countries to define China's inflow of low-cost goods as dumping.

3.3.2. Political Factor

Western political culture, led by the United States, is deeply rooted in the core values of liberal democracy and capitalism. From individual freedom, private property rights, market economy to multi-party democracy. All of this is in fundamental opposition to the collectivism, extensive state control of the economy, and single-party model of governance espoused by socialist countries. Western capitalist countries generally view socialist ideology as suppressing individual freedom, undermining market efficiency, and leading to government overreach, and are therefore deeply distrustful and hostile to it.

It's not just a clash of values, with the rise of China, especially its increasing dominance in the global economy as mentioned earlier, Western capitalist countries increasingly see China as a major geopolitical rival. China's rapid economic development and expanding global influence are seen as a challenge to the existing international order. For this reason, these countries use trade protection measures such as anti-dumping investigations as a political tool to limit China's economic influence and uphold its leading position in the international arena. If the United States recognises China's "market economy status", it will bring great convenience to China in international trade, and the rise of this emerging power will seriously encroach on its trade interests and national sovereignty.

4. Resolution of the Issue of China's Market Economy Status

So far, over 80 nations, including Russia, Australia, New Zealand, Brazil, and South Africa, have recognised China's market economy status. However, major economies like the European Union and the United States have not yet formally done so. The decision to recognise China's market economy status has significant legal and economic implications, especially in terms of anti-dumping investigations and tariffs.

Based on China's experience in obtaining market economy status and the analysis of the reasons for the discriminatory anti-dumping measures taken against China by the United States, Europe and other countries, the author hereby puts forward the following suggestions to the Chinese government and MNEs involved in import and export, with a view to obtaining market economy status in the United States and Europe and other countries so as to reduce the discriminatory anti-dumping measures, and at the same time, to reduce as much as possible anti-dumping in the case of not being able to obtain the market economy status. measures if they are unable to obtain market economy status.

4.1. Chinese Government to Actively Acquire Market Economy Status

4.1.1. Diplomatic Negotiations with Relevant States

The first and foremost first step in addressing the issue of international recognition is, of course, to open diplomatic negotiations with China's major trading partners who are currently in dire need of its endorsement, notably the United States and the European Union. The whole negotiation should start with common interests, find ways in which the countries concerned can join hands with China to benefit together, and consult with other countries through appropriate negotiation methods. Since some of the reasons for imposing harsh anti-dumping measures on China are motivated by interests,

DOI: 10.54254/2753-7048/66/2024MU0033

the interests should be used to attract other countries. After decades of development, China has the world's most promising consumer market and is likewise the world's largest manufacturing plant. This is the bottom line that China can now fully demonstrate its ideas. With the current globalisation of the world economy, the best option is to work together for a win-win situation.

4.1.2. Continuing to Deepen Market Economy Reforms and Improve Core Competencies

Although the prejudice caused by ideological differences cannot be eliminated, further deepening of market economy reforms can effectively reduce the opportunities for unfriendly targeting by other countries. Since the reform and opening up of China, China has made great changes, and can be said to have transformed from a planned economy to a socialist market economy. All that remains to be done is to deepen the reforms.

On the one hand, it is necessary to relax market access, reduce administrative approvals, lower the threshold for market entry and encourage more enterprises to participate in market competition. It is necessary to gradually reduce the government's direct intervention in the market, strengthen the market's decisive role in the allocation of resources, and promote market-oriented reforms in prices and factors. On the other hand, it is necessary to promote industrial upgrading, guide traditional industries to develop in the direction of high-end and intelligentisation, support emerging industries, and accelerate industrial transformation and upgrading. At the same time, we should improve supply chain efficiency, strengthen upstream and downstream industry chain coordination, optimise supply chain management, reduce production costs and improve product quality.

Not only that, it should also promote enterprise innovation, encourage enterprises to increase R&D investment in high-precision science and technology, enhance their technological innovation capacity, and develop high value-added products. Promote co-operation between universities, scientific research institutions and enterprises, accelerate the transformation of scientific and technological achievements into productivity, and improve the technological content and market competitiveness of products. Eventually, through the brand strategy, enhance the brand value of products and expand brand influence. The day China's products have irreplaceability, other countries will never be able to use harsh anti-dumping measures to oppose the inflow of products, which can effectively promote diplomatic activities.

4.1.3. Rational Use of the World Trade Organisation to Help Resolve Disputes

As per the WTO accession agreement, the U.S. and EU were to recognise China's market economy status. Despite the agreement's expiration, the United States and European Union continue to exploit legal loopholes, aiming to obscure the facts. Such illegal behaviour should be sanctioned by the WTO. As China has already done, a panel of experts was set up in 2017 to resolve disputes in this area. Although the result was unsatisfactory at the time, the WTO cannot be abandoned as an effective means of safeguarding national rights. As a member of the WTO, China deserves to be protected by the WTO. However, the WTO does not have a hard binding force, in contrast to the powerful countries inevitably appear weak, China should be prepared to fight a protracted war.

4.1.4. Adoption of Appropriate Trade Countermeasures

In order to safeguard China's interests, China can take a certain degree of countermeasures in accordance with the law. This is not unfair treatment, but merely a means of response when other countries take discriminatory measures that effectively infringe upon China's interests. Trade retaliation is a kind of economic behaviour, but in fact it is also a kind of legal behaviour, and there are relevant provisions on this in international law and domestic law [8]. There are relevant provisions

DOI: 10.54254/2753-7048/66/2024MU0033

in international law and domestic law. The use of trade retaliation can serve as a constraint on other countries to a certain extent.

However, it must be stressed here that trade sanctions in any form and for any reason should not be an act to be encouraged and promoted. Trade retaliation should be used only as a countermeasure to discriminatory treatment and never on its own initiative. Even as a countermeasure, they should not be used arbitrarily as a last resort, lest they be abused and impede the path of global economic development, which will ultimately be to their own detriment.

4.2. Businesses Also Need to be Introspective and Learn to Hedge Their Losses

4.2.1. Optimisation of Diversified Market Layout

Enterprises need to avoid overdependence on a single market. By exploring emerging markets, enterprises can diversify their risks and mitigate the impact on their overall business when they encounter anti-dumping investigations in a particular market. Apart from the conventional European and American markets, enterprises are encouraged to explore new opportunities in emerging markets, including Southeast Asia and Africa, which are not only experiencing rapid growth in demand, but also have lower trade barriers relative to developed markets.

At the same time, the discovery of the domestic market should also be paid attention to. Against the background of increased uncertainty in the international market, enterprises can consolidate their domestic market share by strengthening the construction of domestic sales channels and reduce the impact of international market fluctuations on their operations. The stability of the domestic market can provide enterprises with a solid backing and play a cushioning role in the event of external market shocks.

4.2.2. Strengthening International Cooperation

Through co-operation with industry associations and peer enterprises, enterprises can work together to face the challenges of the external market, share information and resources, and improve their overall ability to respond to anti-dumping investigations. For example, industry associations can organise enterprises to jointly participate in responding to anti-dumping cases by providing legal support and coordinating resources, thus enhancing the industry's overall resilience.

In addition, Chinese enterprises can co-operate with local enterprises in importing countries to establish joint ventures or carry out co-production. This approach not only reduces the risk of Chinese enterprises being targeted for external dumping, but also enhances their competitiveness in the target market. By deeply integrating into the local economy, enterprises can gain more market share and policy support, further reducing the risk of anti-dumping. Direct investment in enterprises in the importing country is also a way to be considered to cope with the situation.

4.2.3. Changes In the Enterprise Itself

Enterprises should actively promote their own internal structural changes, improve their own operational mechanisms, and minimise their dependence on the government. At the same time, legal compliance in export management is crucial to preventing anti-dumping investigations. Enterprises should ensure that all export processes, documents and operations are in compliance with the law in order to avoid unnecessary investigations triggered by process loopholes. Especially in the context of increasingly complex international trade, enterprises should establish an effective export early warning mechanism, pay close attention to changes in policies and regulations in target markets, and make timely adjustments to their export strategies.

DOI: 10.54254/2753-7048/66/2024MU0033

In addition, when encountering anti-dumping investigations, enterprises should actively cooperate with the investigating authorities to provide detailed and accurate data and evidence to prove that the pricing and export behaviour of enterprises is reasonable. Enterprises should also cooperate with professional international trade lawyers to provide effective legal defences during the investigation process to ensure that their rights and interests are not infringed.

5. Conclusion

At a time of economic globalisation and upholding the principle of free trade, China should work together with other trading bodies to maintain the stability of global economic development. When subjected to discriminatory anti-dumping measures, the WTO is one of the backings that China can effectively use to fully grasp the rules of the WTO, and take appropriate legal means to safeguard their rights and interests. It is hoped that the suggestions provided in this paper can help China and MNEs to maintain their place in the international competition.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0035

AI-Generated Content: Legal Challenges & Potential Reforms

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Abstract: Artificial Intelligence (AI) is quickly altering numerous markets, including those involving creative jobs such as art, music, and literature. As AI remains to progress and come to be significantly sophisticated, it tests the existing lawful system, especially in the locations of copyright, copyright, and possession legal rights. This article explores whether our present legal system is properly prepared to manage the intricacies and moral problems posed by sophisticated AI modern technologies. By evaluating various lawful systems, evaluating relevant case studies, and exploring existing lawful challenges, this paper intends to understand the level to which our laws have the ability to properly attend to issues related to content created by AI. This study uses study, comparative research study, thorough literary works review, and historical analysis to discover the intersection in between AI and copyright law. Lastly, the paper recommends possible lawful changes and reforms to aid balance the requirement for technology with copyright security, making sure a fair and fair lawful structure.

Keywords: Artificial intelligence, Copyright, Intellectual property, Legal framework, Infringement.

1. Introduction

Artificial Intelligence (AI) has ended up being an effective device in numerous areas, and it is drastically altering the means imaginative material is produced and utilized. AI can now create songs, art, literature, and various other innovative jobs, which elevates crucial concerns concerning that owns these works and exactly how to secure them. The copyright laws we rely on today were created when just people can create innovative material, but the growth of AI obstacles these old policies. Therefore, there is a demand to reassess just how copyright legislation relates to jobs produced by makers.

The intro of AI into the imaginative procedure has actually made it tougher to compare human and maker authorship. AI programs currently produce initial content with little to no human input, which increases the concern of that owns the legal rights to these creations. As an example, should the designer who developed the AI, the user that motivated the AI, or the AI itself possess the copyright? In addition, using copyrighted product to train AI designs has actually resulted in lawful disputes, as in Stability AI v. Artist and Getty Images v. Security AI. These problems highlight the requirement for a legal system that can attend to the special challenges positioned by AI.

DOI: 10.54254/2753-7048/66/2024MU0035

In this paper, we will talk about basic ideas associated with AI and copyright, take a look at the primary legal challenges, and review existing legislations in different countries. Our objective is to identify whether our legal system is gotten ready for the changes produced by AI and to recommend what modifications might be required to make our laws effective in the face of rapidly developing innovations.

2. Basic Concepts and Definitions

2.1. Artificial Intelligence

Artificial Intelligence, often referred to as AI, is the ability of machines (especially computers) to perform tasks that would normally require human intelligence to accomplish. These tasks include gaining from experience, decision making, and issue solving. Today, AI is used in many fields, such as voice acknowledgment systems, self-driving cars and trucks, and even in creative procedures, such as creating and composing songs. In terms of copyright and intellectual property, the ability of AI to develop initial works poses brand-new challenges that conventional copyright legislation was not created to think about [1].

2.2. Copyright

Copyright is a legal right given to the creator of an original work such as a book, song, painting or movie. This right allows the creator to control how their work is used, shared and copied. The purpose of copyright is to encourage creativity by ensuring that creators are able to benefit from their work.. However, with the development of AI-generated content, the conventional copyright structure is being cast doubt on. This is due to the fact that copyright laws were initially developed to shield human designers, and it is uncertain just how these regulations need to put on works developed by machines [2].

2.3. Artificial Intelligence Generated Content

Artificial intelligence-generated material is any kind of imaginative job generated by an AI system with marginal human input or complete self-reliance. This can include text, songs, pictures and other kinds of imaginative imagines. Man-made intelligence-generated material is unique in that it can commonly rival or even get over human imagination, which questions about its creativity and whether it can be shielded by copyright. The lawful condition of AI-generated web content is presently a subject of argument, as typical copyright regulation thinks that all innovative works are produced by human beings. This leaves uncertainty about how to manage the civil liberties and protections of works created by AI.

3. Legal Challenges

The quick development of Artificial Intelligence (AI) postures many legal obstacles, specifically in the location of copyright and copyright (IP). As AI systems come to be a lot more advanced, they are progressively efficient in creating web content that closely resembles or even goes beyond human creativity. This area reviews some important lawful situations that illustrate the intricacy and difficulties that AI-generated content poses to the existing legal framework.

3.1. Stability AI v. Artist

Security AI, the developer of the photo generation device Steady Diffusion, dealt with significant legal challenges due to the nature of its service. Steady Diffusion produces pictures by evaluating big

DOI: 10.54254/2753-7048/66/2024MU0035

databases of synthetic pictures, much of which are safeguarded by copyright. The case versus Stability AI highlights the obstacles dealt with by AI versions that depend on big datasets, frequently extracted from the Internet without the express permission of the original material creators.

In this instance, Getty Images and a team of artists submitted a claim versus Stability AI, alleging that the company unlawfully copied and processed numerous copyrighted images to train its AI designs. The plaintiffs argued that Stability AI's actions comprised copyright infringement because the photos produced by the AI commonly duplicated or appeared like the initial jobs. The court inevitably regulationed in support of the complainants, stating that the use of copyrighted material to train AI models without express consent violated copyright legislation. The decision stresses the demand for clear standards on the use of copyrighted web content throughout AI training and the civil liberties of original material designers [3].

3.2. Guangzhou Internet Court Judgment (2024)

In 2024, the Guangzhou Web Court in China issued a landmark judgment on expert system and copyright violation. The situation included a firm that gave artificial intelligence generation solutions, specifically in the field of artistic creation. The plaintiff owned the copyright in certain works and declared that the AI content produced by the defendant's platform infringed its copyright.

The court ruled in favor of the plaintiffs, finding that the AI firm had infringed the complainants' civil liberties to duplicate and adjust the jobs. The choice is substantial because it is the very first time that a court has actually clearly acknowledged that AI-generated content might infringe existing copyrights, even if the web content is machine-generated with marginal human intervention. The decision emphasizes the value of human intellectual payments in identifying copyright violation and sets a criterion for future instances entailing AI-generated material in China [4].

3.3. Getty Images v. Stability AI

An additional illustrative instance of a legal obstacle referring to AI-generated web content is the UK situation of Getty Images v. Security AI. In this situation, Getty Images, a popular supplier of photos and various other aesthetic content, initiated lawful procedures versus Security AI, insisting that the company had "crawled" Getty's web site without approval. Getty Images, a prominent company of images and various other visual content, launched legal process versus Stability AI, asserting that the company had accessed countless photos from Getty's internet site without permission and utilized them to educate its expert system version, Steady Diffusion.

The lawsuit claimed that the AI-generated photos not just infringed on Getty's copyrights, however likewise lugged the business's trademarks, even more complicating the legal concern. The court ruled that the unauthorized capture of pictures and subsequent use of those pictures to generate AI material comprised copyright infringement. The instance highlights the stress between the large datasets required to train AI models and the control that material creators have more than making use of their work. It also gives vital legal precedent for just how courts will certainly handle future copyright violation insurance claims entailing AI [3].

3.4. Recording Industry Association of America (RIAA) v. Suno and Udio (2024)

The case of RIAA v. Suno and Udio represents a considerable growth in the recurring lawful fights over AI and copyright infringement. In June 2024, the Recording Market Association of America (RIAA) started two considerable legal procedures versus Suno, Inc. and Uncharted Labs, Inc., the developers of the AI songs services Suno AI and Udio AI, specifically. The claims, filed in federal courts in Boston and New York, affirm that these AI solutions took part in mass violation by utilizing copyrighted audio recordings without authorization to educate their generative AI models [5].

DOI: 10.54254/2753-7048/66/2024MU0035

The complainants in these situations, consisting of major music business such as Sony Songs Amusement, UMG Recordings, Inc., and Detector Records, Inc., argue that Suno and Udio have engaged in the unlawful duplicating and exploitation of their audio recordings on a substantial scale. The RIAA has indicated that while the music sector is open to partnership with AI programmers, the unapproved use of copyrighted works to develop AI-generated music has the prospective to cheapen original recordings and the work of human musicians.

The purpose of the RIAA's legal action is to prevent Suno and Udio from remaining to infringe copyrighted audio recordings and to ensure that AI companies stick to copyright regulations, which is essential for guarding the legal rights of musicians, songwriters, and legal rights owners. These instances are considered as crucial in establishing lawful precedents for the accountable and lawful devolopement of generative AI systems in the songs market.

The suits highlight the emerging dispute in between technical advancement and the safeguarding of copyright rights as AI devices evolve to become more advanced, with the ability of creating web content that very closely resembles human creativity. The outcome of these cases is likely to have significant effects for the music market and the wider landscape of AI-generated web content.

4. Current Legislation and Approaches

As AI continues to advance, various nations have taken on a selection of approaches to resolve the lawful challenges related to AI-generated content. This section discovers present regulation and approaches in China, the US and the UK, focusing on how these legal systems have actually adapted to the rise of AI in the imaginative sectors.

4.1. China

China is proactively challenging the lawful complexities related to AI-generated material with the lens of its existing copyright regulations.The Copyright Law of the People's Republic of China (amended in 2020) establishes the legal framework for the protection of intellectual property in the digital age.. Short article 3 of the legislation specifies a "work" as an intellectual development within the literary, artistic, or scientific domain name that is original and capable of being revealed in some type. This interpretation offers a basis for the protection of AI-generated web content, provided that it satisfies the requisite criterion of originality and shows a human intellectual contribution [6].

In addition, the Regulations for the Implementation of the Copyright Law of the People's Republic of China offer supplementary guidance on the handling of AI-generated content.According to Article 2 of the Regulations, for AI-generated content to be considered a protected "work", it has to drop within the literary, creative, or scientific domain, be perceivable and reproducible by humans, and demonstrate creativity, showing the output of human intellectual undertaking.

Furthermore, Chinese courts have actually begun to resolve copyright issues connected to AI, as shown by the 2024 Guangzhou Net Court decision [4]. In this case, an AI comany that offered AI generation services was accused of infringing the copyright of certain jobs. The court ruled that the AI-generated material created by the defendant's system infringed the complainant's copyrights, emphasizing the relevance of human intellectual contributions in copyright violation resolutions.

4.2. United States

In the United States, the aegis of copyright protection is enshrined in the U.S. Copyright Act. According to Area 313.2 of the united state Copyright Workplace's Syllabus of Practice, the object of copyright protection is defined as jobs created by people. This shows that AI-generated material that lacks considerable human innovative input is typically not qualified for copyright protection, unless a substantial number of people were associated with its development [7]. In response to the

DOI: 10.54254/2753-7048/66/2024MU0035

growing prevalence of artificial intelligence (AI) in innovative undertakings, the United States Copyright Office has actually provided the "Guidelines for Copyright Registration of Works Created by Artificial Intelligence" [8]. The guidelines explicitly suggest that while artificial intelligence tools might help with the innovative procedure, the final work must display adequate human creative thinking and autonomy to call for copyright protection.

The objective is to assure that that the job is the intellectual product of the author and not simply a product of the machine.

However, as confirmed by situations such as Stability AI v. Artists and RIAA v. Suno and Udio, using these concepts to AI-generated web content is not always simple. The U.S. lawful system continues to encounter difficulties in determining the degree of human involvment essential for copyright security and in dealing with the utilization of copyrighted product in the context of artificial intelligence (AI) training.

4.3. United Kingdom

In the UK, copyright law is governed by the Copyright, Designs and Patents Act 1988 (CDPA). Under the Act, original literary, dramatic, musical and artistic works are entitled to copyright protection insofar as they are the result of the intellectual effort and creativity of the author.Section 9(1) of the CDPA gives that the writer of a job is the individual who produced it, which traditionally implies that the author is a human being [9].

It ought to be noted, nonetheless, that the CDPA also includes stipulations wherefore are defined as "computer-generated jobs." Write-up 9(3) stipulates that in the event that a work is computer-generated and lacks a discernible human writer, the person who helped with the needed plans for its development is considered the author [9]. This specification is especially significant in the context of AI-generated material, as it indicates that copyright security might be given if the AI system is configured with significant human input, even if the web content itself is machine-generated.

The situation of Getty Images v. Stability AI exhibits the troubles of applying traditional copyright principles to AI-generated material within the context of UK legislation. The central problem in the event was whether AI-generated images (produced by examining and processing large amounts of copyrighted material) could be considered original jobs under the CDPA. The case presents substantial questions concerning the degree to which the act of feeding data right into an AI system can be taken into consideration enough human involvement for the purposes of claiming authorship and copyright protection.

5. Comparative Analysis

The legal responses to AI-generated web content in China, the USA, and the UK expose distinctions and common obstacles in adapting conventional copyright regulation to attend to the troubles posed by AI. This section offers a comparative evaluation of the legal systems of these three countries, concentrating on exactly how they handle AI-generated material and the common problems they face.

5.1. Differences in Legal Systems

The lawful systems of these 3 countries come close to the problem of AI-generated content in various methods, mirroring their one-of-a-kind lawful customs and priorities.

China: China's legal system is defined by an emphasis on human intellectual contribution as the key criterion for copyright protection. China's technique bewares to guarantee that AI-generated web content shows a specific level of human imagination in order to receive defense. This is evident in current court choices in China that highlight the relevance of human participation in the production of AI jobs.

DOI: 10.54254/2753-7048/66/2024MU0035

USA: It is a basic concept of the united state lawful system that copyright protection is just approved to works that have considerable human imaginative input. Standards from the U.S. Copyright Office reinforce the significance of human creativity by stating that works that are totally machine-generated without considerable human input are not qualified for copyright protection. This mirrors the U.S. emphasis on human creative thinking as the foundation of copyright legislation.

United Kingdom: The United Kingdom's strategy is somewhat different because it acknowledges the opportunity of copyright security for computer-generated works under the Copyright, Styles and Patents Act 1988. The Act permits a person who has actually made the required arrangements for the creation of a job to be regarded as the author, even if the web content of the job has been generated by an equipment. However, this raises questions about the level of human involvement required and the overall efficiency of such defense.

5.2. Common Challenges

Despite differences in their legal approaches, China, the US and the UK face common challenges when dealing with AI-generated content.

Identifying Human Involvement: One of the most significant challenges dealt with by all 3 nations is identifying the level of human participation required for a job to get copyright security. As AI comes to be more independent in generating material, the inquiry of just how much human involvement is required to claim authorship ends up being significantly complicated.

Use of copyrighted product in AI training: One more usual difficulty is the issue of using copyrighted material to educate AI versions. All 3 lawful systems are grappling with how to manage using existing copyrighted operate in AI training datasets.The instances of Stability AI and Getty Images in both the united state and the U.K. highlight the difficulty of stabilizing the legal rights of the original developers with the demand for huge datasets for the growth of AI innovation.

6. Future Directions

Given the quick advancement of AI innovations and the difficulties they posture to the existing lawful structure, it is clear that additional lawful modifications and advancements are required. This area explores possible future directions for copyright regulation in the context of AI-generated web content.

6.1. The Need for Legal Adjustment

As AI continues to advance, the lawful system has to adjust to ensure that copyright law stays effective in safeguarding both human designers and AI-generated works. One potential instructions is the development of new copyright categories especially for AI-generated web content. These classifications can establish clear guidelines on authorship, possession, and the level of human involvement required for pretection.

Additionally, there might require to be more clear rules regarding the use of copyrighted material in AI training. Developing a new licensing structure or increasing fair usage to cover the AI training process can assist stabilize the interests of content designers and AI developers [10,11].

6.2. Balancing Innovation and Protection

A substantial difficulty for future lawful developments is to determine a suitable balance between cultivating technology and guarding intellectual property. It is critical to offer support for the innovation of AI technology, as it has the prospective to assist in substantial development in a wide range of areas. Conversely, it is of equal value to assure that the legal rights of human designers are not threatened by the advent of AI-generated content. The lawful system must establish a structure

DOI: 10.54254/2753-7048/66/2024MU0035

that is sufficiently versatile to accommodate arising innovations while at the same time guaranteeing durable defense for copyright rights. This might require not only legal reform yet additionally the formula of unique ethical standards for the deployment of AI in the innovative sectors [12].

7. Conclusion

The legal difficulties posed by AI-generated web content are complicated and multifaceted, necessitating a careful and nuanced technique to the adaptation of existing copyright laws.A comparative analysis of China, the United States, and the United Kingdom reveals discrepancies in legal approaches and common challenges, such as determining the extent of human involvement necessary for copyright protection and regulating the utilization of copyrighted material in AI training.

As AI technology continues to develpment, it is evident that additional legal developments are required to attend to the difficulties that have actually arised. Future directions may include the development of new copyright categories for AI-generated web content, the establishment of even more clear policies governing the exercise of copyrighted product in AI training, and the solution of ethical guidelines for the deployment of AI in the imaginative proccess.

The purpose of these legal adaptations need to be to attain a balance between advertising technology through AI and safeguarding the intellectual property legal rights of human creators, and to guarantee that copyright legislation remains essential and effective in the context of quickly evolving AI technology.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0045

Hostile Work Environment Rules: Comparative Analysis of U.S. and Canadian Laws

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Abstract: The MeToo Movement shocked the world and encouraged multiple victims of workplace harassment to disclose the severity of the problem. A few years have come since the onset of this notorious process, and it is reasonable to investigate if modern countries have adequate legislation to address the selected problem. Therefore, the legislation of the United States and Canada is the object of this research. The comparative research methodology is used to identify the applicable laws, compare them, and comment on the notable findings. This approach is practical and helpful since it highlights efficient strategies that other countries can use to succeed in the selected area. The research has identified that the two countries differ in the sources of law, enforcement, remedies, and definition conditions. Canada impresses with a more tailored approach to satisfy its local needs, but the two countries should regularly update and improve their legislation to address new harassment manifestations and challenges.

Keywords: Harassment, Hostile environment, Legislation, Prevention.

1. Introduction

In 2017, the American society was shocked by allegations against Harvey Weinstein. That notorious case further encouraged multiple men and women to report instances of sexual harassment that had happened to them at the workplace [1]. The MeToo Movement resulted in many legal cases against a hostile work environment, and the US legal and judiciary systems were forced to address all these challenges to punish perpetrators and protect victims.

This paper will explore and analyze the laws to prevent hostile work environments. This study will specifically include the anti-sexual harassment provisions in the workplaces of the United States and Canada. The comparison of the two countries is justified since they can have different approaches to the issue under analysis. In this case, the achievements of one nation can be used to make recommendations for the other country to improve its response to a hostile work environment.

Since there are differences between the legal systems of Canada and the United States, particularly concerning hostile work environments, such information is important for multinational companies, HR specialists, and attorneys. These stakeholders should be aware of the individual countries' peculiarities to understand what remedies can be used if workplace harassment is reported. Consequently, the paper improves people's knowledge of the selected problem and can potentially result in the fact that more individuals will be protected from this issue.

DOI: 10.54254/2753-7048/66/2024MU0045

2. United States Law on Hostile Work Environment

2.1. Legal Framework

In the United States, the Civil Rights Act of 1964, especially Title VII, is used to prevent harassment in the workplace. In particular, this legal provision stipulates that individuals should not be discriminated against based on their race, ethnicity, religion, and sex [2]. Even though the selected legislation piece does not directly address or mention harassment in its text, a few Supreme Court decisions show how this issue can be addressed. For instance, the given Act is used to protect individuals from harassment in Meritor Savings Bank v. Vinson, Onscale v. Sundowner Offshore Serv., Inc., and Faragher v. City of Boca Raton [2]. These examples demonstrate that harassment is adequately addressed in the US judiciary system.

2.2. Definition of Harassment

Sexual harassment is defined as unwelcome sexual contact or verbal harassment. Such negative behavior should additionally satisfy two specific conditions that should be considered harassment. First, sustaining the offending behavior becomes the price employees pay to keep their jobs. This statement demonstrates that victims are forced to withstand this negative experience to avoid being fired. Second, the conduct is harmful and alters the work environment in a way that most decent employees would consider hostile or abusive [2]. This condition implies that harassment always negatively impacts an organization's climate, which can adversely affect employees' well-being and productivity. Consequently, when one of these conditions is absent, misbehavior cannot be identified as harassment.

2.2.1. Unlawful Conduct

In addition to that, American legislation introduces one more term that is broader in its scope. Some employees can suffer from inappropriate jokes, including ethnic or racial slurs. Other workplaces are characterized by undesired physical contact or threats of physical harm [3]. Furthermore, threatening messages or offensive comments result in verbal and written harassment. Finally, sabotage or obstruction is frequent, which denotes that a person intentionally undermines peers' efforts or performance. According to Rosenthal and Belmas, all these misbehaviors can be described as unlawful conduct. It results in a toxic workplace culture that negatively affects workplace morale.

2.2.2. Scope

It is challenging to limit the scope of the object under consideration. The difficulty is associated with the fact that every member of an organization can become a harassment victim. First, it does not matter what position a person occupies since ordinary employees and high-ranking managers are subject to an issue [3]. Second, personal characteristics cannot result in any protection because representatives of all genders, ages, ethnicities, and socioeconomic backgrounds can suffer from harassment. This information indicates that the selected problem is of a universal scope, which denotes that almost everyone can be affected by it. In addition to that, the problem is of universal scope in terms of who can become a perpetrator. High-ranking managers typically engage in this misbehavior, but low-ranking employees can simultaneously harass their colleagues. As for personal characteristics, it is additionally impossible to mention that any specific trait or a combination thereof can make a person more subject to this misbehavior.

DOI: 10.54254/2753-7048/66/2024MU0045

2.2.3. Preventative Measures

Since the given problem is significant and widespread, it is no coincidence that an essential body of research is devoted to how this issue can be prevented. The growth of the MeToo movement increased the importance of this information, and modern organizations and managers typically deal with a few recommendations [4]. Some experts believe that it is impossible to eliminate the risk of this problem entirely and advocate for the establishment of a practice grievance procedure at the workplace. Victims should ideally know what they should do to report this misbehavior and obtain the required assistance. Other suitable guidelines include communication protocols and training sessions [4]. These interventions are needed to instruct people on how they can recognize early signs of harassment and minimize their chances of becoming victims.

3. Canadian Law on Hostile Work Environment

Harassment is a universal problem, which denotes that the United States is not the only nation that suffers from it. Employees from multiple world countries and cultures deal with the issue and suffer from its consequences. This statement equally refers to the US, Israel, most European nations, and other states [5]. Canada is no exception, and local workers suffer from the selected problem in the same way that their international peers do. The Canadian government has recognized the importance of this problem and issued appropriate legislation pieces to address it. On the one hand, the country has specific federal laws that establish behavioral and anti-discrimination standards in the workplace. On the other hand, individual provinces may impose their own codes, rules, and regulations to prevent the spread of this problem [6]. These two layers of the legal framework will be discussed in detail below to get a better insight into how Canada addresses the issue under consideration.

3.1. Federal Legislation

At this level, Canada relies on Part II of the Canada Labor Code and the Canadian Human Rights Act (CHRA) to address workplace harassment. The Canada Labor Code is a comprehensive legislation piece that focuses on occupational health and safety. Significant attention is devoted to sexual harassment since the Code defines the problem and specifies that employers have certain obligations. In particular, organizations should take proactive measures to prevent the issue and have practical prevention policies at hand [4] The legislation additionally includes clear guidelines to demonstrate how harassment cases should be reported, investigated, and resolved. As for the CHRA, it protects employees from various forms of discrimination, and harassment is considered one of its kinds. This legal provision implies broad protection because it regulates behaviors in multiple federal workplaces, such as banks, federal government agencies, and other related companies. Finally, the CHRA specifies a few remedies and interventions that should be used if a person suffers from harassment. They include financial compensation and disciplinary orders against perpetrators [4]. This description demonstrates that Canada adequately addresses the problem from a federal level.

3.2. Provincial Legislation

In addition to the federal laws, individual provinces implement their own provisions to have complete control over the issue under consideration. In general, all the rules and laws that the provinces have are mainly aligned with the federal legislation that has been described above [6]. For instance, Ontario relies on the Occupational Health and Safety Act and the Ontario Human Rights Code. These legislation pieces prohibit harassment in all workplaces and specify that Canadian employers are obliged to develop harassment prevention policies [6]. An identical state of affairs is found in other provinces, including Quebec, British Columbia, and Manitoba. Local governments issue their own

DOI: 10.54254/2753-7048/66/2024MU0045

regulations, but they are mainly informed and impacted by federal rules. The inclusion of local measures is necessary to highlight the importance of the problem and ensure that representatives of all organizations are protected. While the federal legislation pieces typically cover federal workplaces, territorial interventions address all private environments, even those that are specific and unique to the given province.

3.3. Definition of Harassment

In terms of defining harassment, Canada relies on the universally accepted practice. This fact denotes that the Canadian definition is similar to that used in other nations. It is possible to present this articulation based on the CHRA and the Canada Labor Code [4]. Thus, harassment is considered an unwelcome behavior that is offensive, or that is reasonably understood as offensive or humiliating. Perpetrators can rely on verbal, written, or physical means to harass other people. Furthermore, the Canadian legislation comments on the fact that harassment affects the entire work environment and makes it hostile and demeaning. This definition is aligned with the American one, which denotes that the countries have similar approaches to the problem.

3.4. Unlawful Conduct

It is reasonable to investigate how the issue of harassment fits into the broader concept of Canadian law. For that purpose, one should understand how this country defines and addresses unlawful conduct in general. According to Rosenthal and Belmas, this term refers to threats, abusive language, and various forms of physical harassment, including sexual pressure. Furthermore, unlawful conduct is a broad term that is used to describe a myriad of offenses and misbehaviors. They can include criminal offenses, torts, regulatory violations, human rights issues, unlawful employment practices, constitutional violations, and cybercrime. This information demonstrates that the given word combination can be considered a generic term for every violation of law that happens in Canada. Therefore, harassment is a kind of unlawful conduct that can adversely affect employees in different environments. This description indicates that all possible stakeholders should draw adequate attention to the selected problem. Policymakers should make the necessary decisions to develop practical regulatory frameworks, employers are expected to follow these guidelines, and all people should know what they can do to prevent or avoid this issue.

3.5. Preventative Measures

As has been mentioned above, Canadian law at the federal and provincial levels draws much attention to harassment prevention. First, policymakers engage in a research process to develop suitable guidelines and statutes and distribute them among employers and employees. Second, employers are provided with essential responsibility to prevent the spread of this issue. In particular, such managers should organize training and education sessions to improve their workers' knowledge and awareness of the problem [7]. These interventions are needed to guarantee that people are familiar with actions that they should take if they come across harassment. Third, an easy and transparent complaint mechanism should be established in every organization [7]. This system should be created to ensure that employees can quickly and safely report the negative experiences that they had in the workplace. It is effective when this mechanism relies on thorough investigation steps to check the trustworthiness of the complaint and implement appropriate punishment actions if a perpetrator is found guilty.

DOI: 10.54254/2753-7048/66/2024MU0045

4. Comparison and Analysis

4.1. Similarities

Based on the information provided, it is now possible to analyze and compare the two countries' approaches to harassment. It is reasonable to begin by discussing the similarities that show identical steps and interventions regarding the selected problem. First, Canada and the United States offer similar definitions of sexual harassment and outlaw this phenomenon in their workplaces. The two nations are unanimous in stipulating that this issue is an unlawful conduct that contributes to a hostile environment that, in turn, can be described more broadly. This similarity denotes that the nations recognize the importance of the problem and are identically ready to address it.

Second, one cannot ignore the fact that the selected legislation systems allocated much time and effort to describing harassment prevention. The two countries understand that the issue affects multiple individuals, which denotes that different stakeholders should be involved in preventing measures. The US and Canada agree that employers can play a vital role in this aspect because they are responsible for internal policies and guidelines that regulate behavior and relationships between individuals representing the same or different hierarchical levels [7]. In addition to that, governments should provide employers with the required assistance, while employees are expected to engage in intervention strategies willingly and reasonably.

Third, the United States and Canada have arrived at the same conclusion, which is that any person can be subject to harassment. This statement denotes that victims are people of all genders, ages, ethnicities, and religions. The same state of affairs relates to perpetrators, which implies that it is impossible to state that any individual characteristic can state that a person is susceptible to this misbehavior [7]. Finally, the two nations stipulate that harassment does not always contribute to financial or other economic losses for a victim. Instead of it, this phenomenon always results in physical or mental harm that adversely impacts their performance and productivity.

4.2. Differences

This section comments on the discrepancies that are found in the states' approaches. This information is directly aligned with the research's primary purpose because it aims to see the differences in how the two countries address the phenomenon under consideration. Since various approaches to the same issues are found, one can suggest that they contribute to different outcomes.

4.2.1. Scope of Legislation

The first discrepancy is associated with the sources of harassment legislation in the countries provided. Even though the two are federal states, the given aspect is essentially different. In the United States, federal legislation provides all the necessary information. This statement refers to Title VII of the Civil Rights Act of 1964 and Supreme Court decisions [4]. These provisions represent a federal level, which denotes that this regulation is sufficient in the US. However, Canada shows a different approach because the available federal clauses, such as the CHRA and the Canada Labor Code, are associated with individual provinces' laws and regulations [3]. This strategy is more specific since local governments can adjust and tailor the applicable legislation to the needs and requirements that are acute and crucial in the given territory.

4.2.2. Enforcement and Remedies

The discrepancy introduced above contributes to further points of interest that affect law enforcement and remedies. Since the United States relies on federal law to regulate this sphere, it has a unified

DOI: 10.54254/2753-7048/66/2024MU0045

approach to remedies and enforcement. This statement denotes that employers should use the available law to guarantee that their employees are provided with safe working conditions and working complaint procedures. If judges hear harassment cases, their decisions should be based on the Civil Rights Act of 1964. On the contrary, Canada impresses with more flexibility and variations in the given aspect. Provinces are entitled to issue their own rules and standards for how harassment cases should be handled in the workplace [2]. That is why various organizations in Canada can have different enforcement procedures and remedies. However, one should acknowledge that these regional variations should not contradict the federal rules.

4.2.3. Cultural and Legal Context

The third difference is slight, but it deserves adequate attention. It is worth acknowledging that Canadian law fails to specify what conditions should be met for an aggressive and offending misbehavior to be considered harassment. As per the provided legal documents, this term refers to offending and humiliating actions that can be performed in different forms. However, the American approach is more specific because it stipulates that harassment occurs when a perpetrator knows that victims will withstand this harmful experience to keep their employment [2]. This description indicates that not every case of offending behavior is harassment and requires appropriate responses. Stakeholders should understand that interventions and prevention measures should be used in those cases when harassment takes place.

5. Conclusion

The research that was conducted has arrived at a few significant conclusions and implications. The Canadian approach to harassment legislation is more specific because the country's provincial governments issue local regulations to guarantee that current and unique threats are adequately achieved. This finding demonstrates that every nation should draw attention to its regional and local peculiarities when developing and issuing harassment regulations. It is of vital importance to ensure that all organizations and employees can easily find recommendations and assistance in dealing with harassment, irrespective of where they reside or work.

The presented evidence has additionally indicated that employers can play a crucial role in preventing, addressing, and managing workplace harassment. Therefore, the given research is helpful for those managers and leaders of organizations that have offices or facilities in the United States and Canada. These individuals should understand that the provided countries have different regulations and expectations regarding harassment management.

In conclusion, it is reasonable to comment on future considerations that can be raised based on obtained findings. The two countries should understand that workplace harassment and hostile work environments are not stable phenomena. They continually change and fluctuate, which denotes that all stakeholders should be aware of these changes and adequately address them to prevent the spread of the problem. Today, employers face an increased concern and importance because the post-remote work era provides workplace environments with new challenges.

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Proceedings of ICILLP 2024 Workshop: Turkey's Current Corruption Situation: Laws, Economic Impact and Government Analysis
DOI: 10.54254/2753-7048/66/2024MU0041

The Boundaries of Transgender Rights: A Case Study Based on the Historical Legislation of the United States

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Abstract: The U.S. started to legally recognize transgender as transexuals in the 1970s, but with the late 1980s' gender queer theory, the U.S. legal system recognizes all transgenders by how they identify themselves. The 2010s see rapid growth in transgender movements and related surgical industries. This paper studies the historical development of transgenders rights in the U.S. and analyzes its legitimacy based on past legislation and ideologies of America. It uses historical analysis and case studies on past lawsuits of the development of transgender. It analyzes how the three aspects of social, economic, and political factors intertwine to form the current legislation regarding transgenders. It divides the post-1980s transgenders into two groups to analyze, each based on a historical analysis of legislative values in the U.S. The current development of transgender rights and the over-protection of which has violated the U.S.'s founding ideologies of liberty. To ensure the basic right to privacy in sex-divided facilities, legal systems should give clear criteria for determining transgender. To protect transgenders, especially adolescents and young adults, legislation needs to outlaw the school-to-clinic pipeline.

Keywords: Transgender, Legislation, Gender-affirmation surgery, Young adults.

1. Introduction

America's opinions on whether or not facilities that have long been legally divided based on sex--from sports teams to restrooms--should be divided based on biological sex or gender identity have been polarized.

In 1972, the United States Congress passed a standard national law requiring all school districts to teach gender identity instead of biological sex. The Metropolitan School District of Martinsville, Petitioner v. A. C., a Minor Child by His Next Friend, Mother and Legal Guardian, M. C., 2023 Supreme Court case overruled the regional decision to grant the pledge for a female self-identified as male to use the male bathroom rather than a transgender bathroom within the school, although opinions vary across contexts and regions [1].

The Supreme Court's recognition of the rights of transgenders who have not biologically transformed their sex makes it possible for situations vice versa--males who claim they want to be identified as females can enter female bathrooms, female prisons, and any facilities. In the case of Isla Bryson, who raped two women in Cornton Vale women's prison, his permission into the female prison before she changed her gender biologically posed a direct threat to women's fundamental right

DOI: 10.54254/2753-7048/66/2024MU0041

to bodily integrity and sexual autonomy [2]. The U.S. Case laws' protection of transgender rights has violated female rights, pushing forward the discussion of the boundaries of transgender rights.

2. Analysis on the Legal Basis of Transgender Rights

2.1. Basic Concepts and Definitions

In the U.S, transgender refers to any individual whose gender identity does not match their sex assigned at birth, which covers those identified as non-binary, genderqueer, or in a way that doesn't fall on the male/female spectrum. The New York State Unified Court System notes that less than 25% of all transgender people have had a specific surgical or medical treatment such as hormone intake to change their biological sex [3]. Thus, the legal definition of gender transition only requires a change in gender affirmation psychologically, not necessarily biologically. Under this framework, a transgender woman is a biological male "who understands himself" to be female [4]. In determining whether an individual can be recognized as transgender and protected by law, the U.S. Supreme Court does not mandate a diagnosis of gender dysphoria, in turn allowing anyone to go by the gender they claim they understand themselves to be.

2.2. Analysis of the Historical Background of Transgender Rights in the United States

2.2.1. Pre 1980s

The initial recognition and attention to transgender were brought along with the Gay Liberation Movement from the 1960s to 1970s, catalyzed by the Stonewall Inn Riots of 1969. The 1970s movement was more focused on issues affecting gay and lesbian communities, pushing forward the legal marital rights of transsexuals who have gone through complete gender reassignment surgeries. The earliest case that considered transgender rights in the U.S. was Matter of Anonymous v. Weiner case in 1966, concerning a transexual who tried to modify her name and sexual orientation on her birth certificate after undergoing genital surgeries. In the judgment, the Bureau of Vital Statistics approached the New York Academy of Medicine, which concluded that despite seemingly possessing feminine traits, transgender women were "still chromosomally males" [5]. The New York City and New Jersey Health Code forbade changing one's sex on birth certificates unless it was a mistake occurred at the time of birth. Similar cases in the next decade forbid change of sex on birth certificates even after sex reassignment surgeries [6]. In the 1960s and 1970s, the social and legal belief were founded on the idea that males who were born with male anatomy and were not able to acquire females' sexual organs, and vice versa. Therefore, sex could not be altered through medical or surgical methods.

By the 1970s, transsexuals' surgeries had given them sexual autonomies with full reproductive functions of the other sex. The genital surgeries one has received allowed his or her inner sense of gender and physical sexuality to correspond legally on birth certificates. In MT v. JT case in 1976, The Superior Court of New Jersey recognized transexuals' postoperative sex for the validity of a marriage between a male and a transexual female [7].

2.2.2. Post 1980s (The Modern Movement)

The late 1980s introduced the modern definition of transgender with the concept of gender identity and the gender queer theory. According to leading authors like Judith Butler, Gayle Rubin, and Susan Stryker, the gender distinction between male and females was a fake dichotomy which in essence was a societal product designed to enhance the heterosexual white male power structure and marginalize sexual and racial minorities [8]. Transgenderism was created by these authors as a means of

DOI: 10.54254/2753-7048/66/2024MU0041

questioning potentially "destroying" this social order. One of the pioneers of the transgender movement, Susan Stryker, contends in one of the most well-known articles on Performing Transgender Rage the idea of a transsexual figure is a technical production that stands for a struggle against the conservative Western society, including the established heterosexual norms, the conventional familial structures and principles, and the patriarchal oppression [9].

The modern transgender movement is therefore more representative of a "politically correct" ideology that aligns with the values of the United States strongly pursued since the 1960s: liberty and equality.

2.2.3. Development and Penetration

The transgender movement develops and penetrates the American society with a combination of socio-political factors.

In 2013, James Nicholas Pritzker declared his gender transition from male to female without a biological transition, changing his name to Jennifer Natalya Pritzker, and was celebrated as the first trans billionaire. In the same year, her philanthropic organization, the Tawani Foundation, issued a significant grant to the Palm Center, a think tank focused on LGBT issues. The donation was distributed to medical facilities for experiments--mostly on black teenagers from poor backgrounds --educational institutions ranging from primary schools to universities, and social movements for promotion. This funding helped launch the Transgender Military Service Initiative, which aims to sponsor research and encourage public discussion on integrating trans individuals into the military. In the meantime, radical gender theory was pushed into the state curriculum by Illinois Governor J.B. Pritzker, James Pritzker's cousin, while state Medicaid funds were directed toward transgender surgery [10,11].

In his written opinion, he expressed himself as a generous Republican but denied any donation to the GOP due to the party's policies against LGBTQ+ groups [12]. His identity as a Republican and his open rebuke of the Republican Party allowed him to gain support from both political parties, especially the latter in the state of Illinois--a Democratic stronghold and one of the "big three" Democratic states.

In Chicago, at least four public school districts and major hospitals have formed collaborations with Pritzker-funded activists, intaking trans ideology training, resources, and staffs. Children at schools are taught radical gender theories and encouraged to go to hospitals, while Lurie Children's Hospital expose them to breast binders, artificial penis packs, and etc. The Children's Hospital aims to challenge traditional conventions in Western society and encourage vulnerable pupils to seek transgender treatment as a solution, creating a "school-to-clinic pipeline" [13].

Socially, from about 1988, activists in the U.S. began to include "T" after the acronym LGB. The modern movement, known as the "LGBTQ+ Rights Movement", is inclusive of a wider range of identities, including transgender, non-binary, and genderqueer individuals. With the rise of social media and influencers sponsored by the Pritzker family, the transgender movements on social media after 2010s. With strong political and monetary support, it has been focused on legal recognition and policy change, particularly marriage rights, anti-discrimination laws, and gender identity recognition.

In Kantaras v. Kantaras case in 2004, the Florida Second District Court of Appeal ruled that Michael Kantaras, a transgender man who had undergone some, but not all, gender-confirming surgeries, was legally male [14]. The Vermont Court of Appeals recognized that surgery was not a mandatory requirement for a change of gender on legal documents in 2011. The court acknowledged that gender identity could be legally recognized based on a person's psychological identity rather than solely on physical characteristics [15]. Those state cases marked a shift in the legal requirements for gender changes on official documents, moving away from the previous stipulation that surgery was necessary for such changes.

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Transsexual rights was officially extended to cover transgender rights by the Supreme Court in 2020. In Bostock v. Clayton County case in 2020, Aimee Stephens was fired by R. G. & G. R. Harris Funeral Homes in Bostock v. Clayton County. Aimee Stephens had been employed as a man but fired by G. & G. R. Harris Funeral Homes for expressing the intention to "work ... as a woman." The Supreme Court ruled that discrimination based on gender identity violates Title VII of the Civil Rights Act of 1964 by interpreting the term “because of…sex” to include any “but-for” occasions related to all gender identities, including transgenders [16]. Employees who identify as female and use feminine pronouns but were assigned male at birth cannot be fired by their employers due to their gender identification. Accordingly, it is unlawful for establishments to offer services, benefits, or privileges to individuals because of their gender--rather than their sexual orientation--including transgender individuals.

While Aimee Stephens was diagnosed with gender dysphoria in this case, though having not gone through any genital surgeries, the diagnosis might be completely removed by Western countries in the future as Denmark emerged as the first to take out gender-nonconformity from the classification of mental illness in 2017, separating them from terms like "problem," "disorder," or “dysphoria” [17]. This move was intended to destigmatize transgender individuals and represents a shift in the understanding of being transgender. The focus on gender identity and expression rather than on a medical diagnosis will further blur the boundary in the standard of determining transgenders legally.

3. Background of Legislation

3.1. Analysis of the Historical Background of the Civil Rights Act of 1964

The monumental Bostock v. Clayton County decision was based upon a violation of Title VII of the Civil Rights Act of 1964, which makes it “unlawful... for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual ..... because of such individual’s race, color, religion, sex, or national origin” [18]. The Act was a result of the Civil Rights Movement in the 1950s and early 1960s. Although the primary focus of the Act was to address racial discrimination, the addition of sex under Title VII of the Act became crucial in the fight for gender equality.

The word “sex” in 1964 means the biological division between males and females [16]. The inclusion of "sex" in this document was to address sex-based discrimination which was mainly toward women, considering the context of this amendment when legal restrictions and societal norms entrenched gender inequality against women for a century. In Goesaert v. Cleary case in 1948, the Supreme Court affirmed a Michigan law that prohibited women from holding bartending positions unless their father or spouse owned the business [19]. The United States had not made significant progress in its constitutional interpretation of the Equal Protection Clause (14th Amendment) since 1875, when Wisconsin's Lavinia Goodell was turned away from her state's bar for being female. Wisconsin's Chief Justice wrote: "It would be revolting to all female sense of innocence . . . that woman should be permitted to mix professionally in all the nastiness of the world which finds its way into courts of justice ....”[20]. A key justification for this workplace discrimination was women’s biological potential for pregnancy. From this ability stems the public’s “separate spheres” assumption, that men, by nature, should be the financial providers for their families while women, also by nature, were responsible solely for childbirth, child-rearing, and home management [21]. Because females might take time off for pregnancy and child-rearing, employers often viewed women as less reliable or less committed to their careers, denying females employment opportunities and paying lower wages.

The principle of laws is that people should not be held responsible or penalized for innate aspects of their identity that they cannot change. The items in the Civil Rights Act of 1964--sex, race, color,

DOI: 10.54254/2753-7048/66/2024MU0041

and national origin--all fall in this category. The Act's purpose was therefore to ensure that individuals were judged on their abilities, qualifications, and contributions, which are not parts of biological determinism.

After the passage of the Civil Rights Act of 1964, the broader women's liberation movement from the 1960s to 70s started to use both the Act and the Equal Protection Clause to overrun previous discriminatory case laws.

In Phillips v. Martin Marietta Corp. case in 1971, the Supreme Court held that the company's policy of hiring men with young children but excluding similar females violated Title VII of the Civil Rights Act [22]. In Reed v. Reed case in 1971, the Supreme Court held unanimously that a state provision requiring men to be given preference over women in estate administration impairs women's right to equal protection, marking the first case that discrimination against females is unconstitutional under the Fourteenth Amendment [23].

The U.S. Supreme Court successfully continued the conversation with the political arms of government over gender discrimination lawsuits in the 1970s. According to Ruth B. Ginsburg's main contention, the Court helped legislation and rules "catch up with a changed world" through promoting and supporting the congress's and government's reexamination of sex-based categorizations [20].

3.2. Current Background

The reason transgender rights should be re-examined after the 1980s is that both the societal and legal criteria of gender identity have changed. In the past, individuals who required genital surgeries experienced gender dysphoria--a psychological disease in which the discrepancies between a person's biological sex and gender identity has caused them significant emotional disorders [24]. Gender dysphoria, as a mental disease, falls inside the category of what one cannot change and should be protected. However, unlike most other things considered in the Civil Rights Act of 1964, gender identity in the 2000s century has become something that can be completely self-determined. A person can be identified as another gender without any genital surgery or hormone intake, and without a medical diagnosis of gender dysphoria. Without any testament, individuals have the freedom to claim their inner psychological feel of gender to their benefit, meaning that one has full autonomy over their gender identity. The lack of a unified standard for gender and the exploitation of related legal grounds to make all society respect transgender rights have furthered this right to the extent of violating women's rights, thus going against the original main purpose of including "sex" into the Civil Rights Act of 1964 -- protecting the rights of biological females [25].

The Declaration of Independence, as well as the United States Constitution, says "We hold these truths to be self-evident, that all men are created equal, that they are endowed, by their Creator, with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness [26]." The three items of alienable rights are listed in decreasing importance and priority-- one's pursuit of happiness should not violate another's liberty, and one's liberty should not interfere with another person's life. The definition of liberty, given in The Declaration of the Rights of Man and of the Citizen of 1789, reads: "Liberty consists in the freedom to do everything which injures no one else [27]." Although French, the document holds a universal principal of liberty which were also seen in writings of James Wilson: "Without law, liberty also loses its nature and its name, and becomes licentiousness [28]." Constitutionally, each person is free to live their lives independently, in any way they choose, so long as they do not violate the rights of others. When it does so, Amendment 14 ensures "equal protection" to all citizens, in this case, females.

In this case, transgender's rights is the "liberty" to identify themselves as whichever gender they prefer. However, this liberty directly injures the right to life of females. According to the Pew Research Center, 46% of American adults believe transgender persons should be obliged to use bathrooms that correspond to the biological gender they received at birth [29]. Nine women filed a

DOI: 10.54254/2753-7048/66/2024MU0041

lawsuit in McGee v. House case in 2021 against Poverello House, one of the largest homeless service providers in the Fresno area, claiming that the nonprofit's women's shelter permitted a transgender resident to harass them sexually while they resided there [25]. The transgender was “a male who identifies as female,” but was allowed to enter female public areas for shower and rest. The presence of a transgender woman with male anatomy in a space traditionally reserved for females can be seen as an intrusion into a private area, violating females’ innate right to privacy, to control who sees and has access to their bodies, and protection from being exposed to the bodies of others, particularly those of the opposite biological sex, in intimate spaces. The biological differences between the sexes are the reason why these spaces were segregated in the first place. When the liberty of transgenders interferes with the normal lives and natural rights of females, this liberty should be compromised.

It is important to consider whether the current “transgender rights” falls in the definition of “natural rights”. If not, their rights should not be protected at all. By saying “all men are created equal,” the constitution means that all men, when created, or born, are equal. This implies that the state protects anything that someone is born with and cannot determine, such as race, sex, national origin, and etc. For this reason, the American Law Institute even provides protection from legal responsibilities for criminal conduct if at the time such conduct is a result of mental disease or defect [30]. Gender dysphoria is recognized as a protected disability under federal disability rights laws, but considering transgenders who are not diagnosed with the mental disease of gender dysphoria, they do not face a necessity to identify as transgender. Gender identity is not a natural right, but rather a choice that one should be responsible for.

The distinction between privileges and rights is that the former suggest a specific right to immunity bestowed upon a limited group by the government or another authority. What the current laws and policies are giving transgenders is no longer a right, but a privilege. It exceeds the natural rights of a human. Through alternating between male and female, one gains immunity to the restriction of unisex to enter facilities exclusive to the other sex and the privileges of the other sex without carrying the related duties. The legal definition of “privilege” is that one has the freedom to perform by how they prefer, but their freedom is unprotected [31]. Therefore, when enjoying the privileges brought by their identity as transgender, transgenders should take full responsibility for their actions.

One should only take responsibility for things for which he or she has the cognitive ability and knowledge to make an informed decision. Otherwise, it shall be the institute that provides the service without fully acknowledging the risks to be legally responsible, while transgenders should be identified as the victims of such promotion. Patient autonomy is one of the main principles of medical legal ethics [32]. Most transgender adolescents do not have this autonomy due to the immature mindset of this age group. The self-reporting among younger generations does not reflect a real increase in awareness and acceptance, but rather an actual increase in prevalence and a shift to make transgender part of the 21st century’s social norm.

Compared to roughly 0.5 percent of all adults, 1.4 percent of 13 to 17-year-olds and 1.3 percent of 18 to 24-year-olds identified as transgender. About 18% of transgender-identified people in the United States are young people aged 13 to 17, an increase from 10% in a prior investigation conducted in 2016-2017 [33]. The APA has identified the rising trend to identify as transgender among young adults, especially teenagers, in the U.S. under the psychology of “social contagion.”[34]. Through social media, young individuals were able to locate transgender networks and obtain the scant information on gender identity transitions in an echo chamber.

77 individuals out of 27 studies expressed regret about undergoing gender-affirming surgery (GAS). Based on the Kuiper and Cohen-Kettenis categorization, the majority clearly regretted their actions [35]. Compared to general population control groups, patients who have had GAS are linked with 12.12 times higher risk of suicide attempts and self harm, and 7.76 times higher risk of PTSD [36].

DOI: 10.54254/2753-7048/66/2024MU0041

U.S.'s foundational idea of democratic living was ensured through education and open information, with presidents and founding fathers' centuries of efforts in giving all citizens the right to make a fully informed decision [37]. Allowing anyone to make an irreversible change and likely destruction to their body should be on the basis that they can make an informed decision. Otherwise, it is not democracy or freedom, but rather a violation of it. With transgenderism, society cannot trust a young adult who has not received unbiased education about transgender or gone through careful consideration of long-term consequences to make a clear decision. With no acknowledgment of the harms of transexual medicare such as puberty blockers, they are encouraged to do so under social media, peer influence, and the subsidized school-to-clinic pipeline, where they have been receiving not education, but promotions, from hospitals and schools to take transgender surgeries.

4. The Development Direction of Transgender Rights Laws and Policies

The trend of transgender holds an inherent resemblance to drug abuse and alcoholism among Americans, especially young adults, with the leading reasons for drugs being peer influence, influence on social media, and lack of knowledge. Thus, it might follow a similar process to be stopped, with the first step being a scientific recognition of the harms of transgender Medicare.

However, the development of transgender rights would still see a rise in the future. In most recent cases, two rulings have included gender-affirming surgeries and care in state-run health insurance programs. In April 2024, the Fourth Circuit Court of Appeals in Richmond, Virginia ruled that state health insurance plans must cover gender-affirming care in North Carolina and West Virginia. A month later, The Eleventh Circuit Court of Appeals, which previously stood against gender-nonconforming groups, ruled that transgender people are entitled to certain federal non-discrimination rights in the context of group health plans [38].

The lack of legal restrictions to conduct the surgeries and the reputation of formal institutes that conduct them further the impression of the safety of such transitions among potential young adults. Social media as the largest influencer and source of information for most citizens gives exposure and limited information to the public on pro-transgender content, but little exposure on the actual health problem or the profit chains behind it.

As a democratic nation, any political and legal change should be based upon a consensus among the public. Society's lack of knowledge toward transgenderism is due to the time that transgender enter society has not been long enough to expose its harms. Currently, only 1% of patients who have gone through GAS express regret, but many of them have just finished their surgery in recent decades, with all studies' mean follow-up years below ten years. Science needs time to see and collect the real effects of transgender surgeries on a person's physical and mental health and conduct further research into related fields.

The total revenue for transgender medications and operations in the American "medicine" market has exceeded $4.4 billion by 2023. This amount is predicted to approach $7.8 billion by 2030 [39]. Unless the profit chain behind the system is fully exposed and stopped, the government cannot and would not restrict the growth of transgender industries in the U.S.

5. Conclusion

The pre-1980s gave legal recognition to those born with abnormal hormone levels, medically diagnosed with gender dysphoria, and having gone through genital surgeries to make themselves transsexual. The current case law fails to keep up with the changes in the post-1980s era's interpretation of transgender as gender identity rather than biological differences, which needs to be re-examined based on two types of transgenders and the legal definition of "liberty". Those who claim themselves transgender without any medical procedures exploit the justice system to gain privileges

DOI: 10.54254/2753-7048/66/2024MU0041

while violating the other sex's right to live with privacy. For this group, legal systems need to limit their rights by marking clear criteria for transgender and making them responsible for the "privileges".

Why transgender rights are currently protected and respected is no longer out of a necessity that transgenders have, but out of a combination of social, economic, and political factors. With financial and political support that opens a school-to-clinic pipeline, profit-driven hospitals, schools, and social media influencers normalize and promote transgenderism to young Americans without medical knowledge or autonomy to decide their gender. For this group of young adults, the law needs to protect their liberty on the right to make an informed and deliberate decision. This development direction for laws needs society's approval as a pre-requisite, which needs scientific studies on the long-term effects of such surgeries and enough exposure to gain public awareness.

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