

The Host State's Legal Liability for Forced Labor Regulation of Multinational Corporations

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Abstract: The problem of forced labor by multinational corporations has become increasingly prominent in the context of economic globalization, posing a severe challenge to the host state's legal regulatory capacity. This article deeply explores the legal responsibilities of host states. It points out the legal basis for the legal responsibility of the host state to bear the requirement of forced labor, including local jurisdiction and obligations under international law. Through the analysis of the existing regulations of host state, it is found that host state has many shortcomings in regulating forced labor by multinational corporations, such as legal regulatory defects, insufficient regulatory capacity and multinational corporations evading accountability. This article proposes that host state should internalize international law to improve the rule of law environment in the host state, establish an investor-state dispute settlement (ISDS) mechanism and urge multinational corporations to assume social responsibility. In brief, the legal responsibilities of host state should be strengthened to achieve effective regulation of forced labor by multinational corporations.

Keywords: Forced labor regulation mechanism, Host country legal responsibilities, Legal regulations

1. Introduction

In the context of globalization, multinational corporations take considerable contributions to the global economy. While promoting international trade and investment, they cause many problems. Compared with other labor issues, forced labor infringes on workers' human rights to a greater extent. In addition, it is difficult to accurately identify in the complex supply chains of multinational companies and divide responsibilities of multiple parties in regulation. Therefore, forced labor issues have a profound impact.

Forced labor issues in multinational corporations has attracted widespread attention worldwide recently. 'Work or service exacted under threat of penalty and undertaken involuntarily' is the definition of forced labor provided by the International Labor Organization [1]. Although many countries have enacted relevant regulations to address this issue, it still appears commonly in multinational corporations. For example, BYD Brazilian factory was exposed for confiscating passports of 107 Chinese workers and withholding 60% of their wages as security deposits in 2024 to detain them for work. Although such practices violate Brazil Labor Code, local authorities relaxed enforcement to attract foreign investment. This phenomenon has raised international attention to forced labor issues.

The harm of forced labor is multifaceted. First, it seriously infringes on the labor rights of workers and thus infringes on human rights since the status of labor rights are considered as part of universal human rights [2]. Secondly, forced labor can reduce production costs so that it undermines the fairness of market competition. The forced labor issues indicate that the company has loopholes in supply chain management, which will cause question of company's management and generate negative public opinion. Thus the brand image of company will be affected.

The legal regulations on the forced labor of multinational companies mainly involve three entities: the home state, the multinational company and the host state. By passing laws and regulations, the host state typically requires multinational corporations to adhere to human rights standards when conducting business abroad. For instance, human rights due diligence is incorporated into supply chain regulations under the EU Supply Chain Act. It requires all big businesses in the block to perform due diligence on human rights issues with their suppliers, including child labor and forced labor in their manufacturing processes [3]. Multinational companies establish internal compliance mechanisms to strengthen due diligence in the supply chain.

The host state has regulatory obligations on the issue of forced labor due to the principle of territorial jurisdiction and international law obligations. However, it is often difficult for the host state to effectively supervise multinational companies due to imperfect legal systems and insufficient law enforcement capabilities. In detail, multinational companies take advantage of loopholes in legal systems of the host state to evade legal responsibilities. In addition, the difference in legal standards between the host state and the home state makes the solution of forced labor issues more complicated. In instance, The documentary Perfume's Dark Secret revealed that the suppliers of L'Oréal and Estée Lauder used child labor in their supply chain [4]. These children earn less than \$2 per day with no labor contracts or injury compensation while their behavior has long been ignored. This case reflects the failure of host state enforcement.

This essay mainly studies on the legal basis, current problems and improvement path of the host state's legal responsibility for forced labor regulation. It is hoped that the research in this essay will enable host state to be more effective in regulating the forced labor practices of multinational corporations.

2. Legal basis for the legal responsibility of the host state to bear the requirement of forced labor

2.1. Local jurisdiction

First, local jurisdiction is the embodiment of national sovereignty [5]. Sovereignty denotes a nation's right to autonomously determine and manage its internal and foreign matters. No other nation has the authority to meddle or infringe in any way. Other countries have no right to infringe or interfere in any form. Therefore, the State enjoys full and exclusive jurisdiction over all persons, objects and acts within its territory.

After World War II, the concept of national sovereignty was extended to economic sovereignty. In the 1970s, with the enactment of a series of legal documents such as the Resolution on the Right to the Free Development of Wealth and Natural Resources and the Declaration on the Establishment of a New International Economic Order, the international community generally recognized that the country enjoyed complete and permanent sovereignty over all economic activities within the country [6]. Consequently, the state possesses the authority to exercise control over the business operations of multinational corporations within its territory.

Additionally, according to the principle of closest connection, as long as the acts take place within the territory of the host state, it has the local jurisdiction to control over the business activities of multinational companies.

Secondly, territorial jurisdiction has priority as the most basic principle of jurisdiction. Since multinational companies are also entities of their home state, the home state will also assert personal jurisdiction over them. It will result in conflicts between local jurisdiction and personal jurisdiction. Even if the jurisdiction of the home country is legitimate based on state authority, it may not infringe upon the territorial jurisdiction of the host state [6]. Therefore, the host state regulation of multinational companies should dominate the entire domestic regulatory framework for multinational companies.

2.2. Obligations under international law

The host state's obligation to regulate the forced labor practices of multinational corporations is also reflected in international treaties.

First, international treaties stipulate that the state is the primary bearer of human rights protection. The International Covenant on Civil and Political Rights (ICCPR) declares in Article 8 that “No one shall be required to perform forced or compulsory labor [7].” It stipulates obligations of host state to respect, observe and protect all human rights and fundamental freedoms. As the status of labor rights are considered as part of human rights. Therefore, the host state has the obligation to regulate the forced labor practices of multinational corporations and protect the rights and interests of workers.

Second, the Principles of the Tripartite Declaration on Transnational Corporations and Social Policy signed by ILO provides detailed regulations on host state' regulation of forced labor by multinational corporations. Article 9 stipulates that all member states have the obligation to eliminate all forms of forced or compulsory labor even if they have not signed relevant treaties. In addition, Articles 23-25 detail the measures that host state governments should take to prevent and eliminate forced labor. They should formulate national policies and cooperate with workers' organizations to compensate victims and sanction perpetrators [8].

Last, pillar (I) of the United Nations Guiding Principles on Business and Human Rights (UNGPs) stipulates the state duty to protect human rights [9]. This pillar includes two basic principles and eight implementation principles. The two basic principles require the host state to use policies, laws and other means to protect human rights within the country from infringement by third parties, including industrial and commercial enterprises. The eight implementation principles stipulate that the state should use policies to positively guide industrial and commercial enterprises to implement behaviors that promote human rights protection, and use the law as a mandatory means to sanction human rights violations. These state actions will restrict industrial and commercial enterprises to prevent human rights violations [10].

3. The dilemma of host state in regulating forced labor

3.1. Defects in host state laws and regulations

Host states reduce the regulatory responsibilities on multinational corporations because of their dependence on foreign investment. Since host states are usually developing countries, they have a strong demand of attracting foreign investment to develop their domestic economies. As a result, they frequently create lax legislation to allow multinational firms cut health and safety expenses and hire inexpensive employees.

In other words, using the "race to the bottom theory" as a basis, host state governments will adopt measures such as lowering legal regulatory standards when competing for foreign investment to gain competitive advantages in attracting foreign investment. If the host state wants to amend laws and policies to protect the human rights of domestic workers, multinational corporations will threaten to withdraw their investment and turn to other countries with a more relaxed investment environment.

Therefore, host state give up amending policies and laws to protect human rights in order to retain foreign investment for a long time.

The dependence on foreign investment may also leads to the collusion of the host state and multinational corporations in human rights violations. The host state will shield multinational corporations and allow them to be exempted from the host state's legal liability, resulting in the failure of the host state's legal regulation. For instance, Chevron's Nigerian affiliate was charged with forcibly quelling local protests with the Nigerian military in the *Botto v. Chevron Oil Company* case [11].

3.2. Insufficient regulatory capacity of the host state

First, the host state is constrained by its limited capacity and cannot carry out effective supervision. The host state is usually developing or underdeveloped country, it has imperfect domestic legal systems and policies. Additionally, it has a serious lack of expertise in supervising multinational corporations, which leads to accountability difficulties brought about by the complex organizational structure of multinational corporations [12]. What's more, under the political pressure by the strong economic strength of multinational corporations and their close ties with their home countries, the host state do not have strong political power to punish the behavior of multinational corporations.

Second, the host state's law enforcement activities are affected by the international investment protection mechanism. Even if the host state's judicial system is capable of punishing subsidiaries, the parent company may initiate arbitration on the grounds of the host state's violating the principle of fair and equitable treatment and infringing on its investment rights and interests. Once the arbitration tribunal rules that the host state has violated the investor protection clauses in the bilateral investment agreement, the host state will face high compensation liability. This risk makes the host state hesitate when taking regulatory measures to constrain foreign investment, and further looses the supervision and accountability of multinational corporations [13].

Finally, the excessive expansion of the home country's extraterritorial jurisdiction has a negative impact on the host state's regulation. Due to the weak regulatory capacity of the host state, victims regard the home court as the only feasible way to achieve remedies for multinational corporations' infringement. At the same time, the international community pays more attention to the practical trend of how the home court optimizes the scope of jurisdiction [14]. This tendency makes the over-expansion of the home court's extraterritorial jurisdiction indirectly limit the possibility of the host court accepting such cases and further weaken the judicial and law enforcement capabilities of the host state.

3.3. Multinational corporations evade accountability

Multinational corporations have a form that parent and subsidiary companies are geographically and legally dispersed and highly free, which means that multinational corporations have "mobile nationality" and are not completely affiliated with any sovereign state [15]. Therefore, the territorial jurisdiction of the host state cannot regulate all multinational corporations [14].

In addition, multinational corporations are able to adjust their corporate structures based on contractual arrangements and transfer responsibilities to other jurisdictions, thereby evading the territorial jurisdiction of the host state. For example, Fuyao Glass implemented labor dispatch at its Dayton factory through a third-party intermediary company. The contract clearly stated that the intermediary agency was responsible for the welfare of the workers while the company was only a nominal employer, which promotes Fuyao Glass to avoid direct responsibility.

4. Methods for host state to assume legal responsibilities for forced labor regulation

4.1. Internalizing international law to improve the legal environment of host state

Improving the legal environment of host state is the fundamental way to regulate the forced labor of multinational corporations in host state and improve the human rights situation in developing host state. Since most host states are developing countries, they are lack of ability to improve legislation. Therefore, the development of international law can guide the development of domestic laws in host state.

The current international law imposes ex ante positive obligations and ex post responsibility mechanisms on countries to protect human rights. In specifics, it means that countries are obligated to take proactive steps to safeguard domestic human rights under international human rights agreements. A nation must take on the associated national responsibilities if it breaches its obligations under international treaties. Consequently, international organizations like the United Nations and the International Labor Organization ought to fulfill their mandate and urge developing nations to ratify and implement international human rights agreements [16]. For example, the "International Program on the Elimination of Child Labor and Forced Labor" led by the ILO provides a relatively comprehensive model guidance for countries to regulate forced labor. It encourages countries to sign treaties such as the "Forced Labor Convention" and the "Abolition of Forced Labor Convention" to align with the identification standards. Therefore, host state can refine the identification standards for forced labor in legislation and transform them into domestic laws for implementation [17].

4.2. Establishing an Investor-State Dispute Settlement (ISDS) Mechanism

Investor-State Dispute Settlement (ISDS) Mechanism is a mechanism that allows foreign investors to bypass the host country's domestic judicial system and directly sue the host government in an international arbitration tribunal, claiming investment losses caused by the host state's actions.

Based on the above-mentioned dilemma of host state in regulating forced labor practices, the establishment of ISDS can enhance the host state's ability to be unaffected by multinational corporations and international investment protection mechanisms and regulate the source of multinational corporations' infringements. Unlike the decentralized national judicial practices that are subject to the political factors of various countries, the isolation of ISDS from national sovereignty and the centralization of arbitration help to form a widely applicable adjudication method and help host state to regulate the formation of norms for multinational corporations' infringements.

On the other hand, the emphasis on public interests in arbitration will reduce the external pressure on host state to exercise regulatory sovereignty. Host state can make multinational corporations bear responsibility by initiating ISDS arbitration or counterclaims. It can gradually change the substantive asymmetry of ISDS in overly biasing towards protecting the rights of foreign investors [14].

As a result, the international investment protection mechanism is no longer a shackle on the development of the rule of law in host state. Instead, it can restore the host state's regulatory freedom and strengthen its regulatory capacity.

4.3. Urge multinational corporations to assume social responsibility

First, host state amend domestic laws and add provisions requiring multinational corporations to assume social responsibility in relevant domestic laws. In the existing legal system, the core of regulation lies in the review of the supply chain and due diligence of enterprises. For example, the EU Regulation on the Prohibition of Products Produced by Forced Labor directly prohibits all products involving forced labor from entering the market, and clarifies the due diligence obligations

of multinational corporations for all links of the supply chain, requiring them to ensure that there is no forced labor in the procurement of raw materials, production and processing.

Second, host state can use regional trade agreements as stipulation to urge multinational corporations to assume social responsibility obligations. For example, Chapter 20 "Environment" of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership clearly states that member states need to encourage enterprises to adopt CSR principles [18]. On the one hand, it stipulates that member states themselves establish an overall supervision mechanism for the supply chain of enterprises to regulate the flow of forced labor products. On the other hand, it allows member states to collect and identify data on forced labor products through cooperation, which is conducive to the identification of forced labor products in the supply chain and promotes the joint regulation of forced labor products by member states.

5. Conclusion

Forced labor is a serious illegal act that infringes upon the most basic rights and dignity of workers and tramples on fairness and justice. The host state has the legitimacy to regulate the forced labor of multinational corporations based on the territorial jurisdiction contained in the national sovereignty and the host state obligations stipulated in international treaties. Although the host state still has legal regulatory defects, insufficient regulatory capacity and multinational corporations evading accountability, taking all actions to regulate forced labor around the world is the unified goal of the international community. The improvement methods proposed in this article mainly include internalizing international law to improve the rule of law environment in the host state, establishing an investor-state dispute settlement (ISDS) mechanism, and urging multinational corporations to assume social responsibility.

It is hoped that the host state can actively improve legislation and judicial measures, effectively promote multinational corporations to fulfill their human rights responsibilities. Additionally, they ought to exhibit national accountability and support the advancement of the global fight for human rights.

References

- [1] International Labour Organization (ILO), "Forced labor Convention, 1930 (No.29)", Article 2(1), Retrieved from https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C029
- [2] International Labor Organization. (2023). *Labor Rights are Human Rights for all Workers*.
- [3] European Parliament. (2024, April 28). *European Parliament passes the Supply Chain Act*.
- [4] BBC, *Luxury perfumes linked to child labour, BBC finds*, Retrieved from <https://www.bbc.com/news/world-middle-east-68172560>
- [5] James Crawford, *Brownlie's Principles of Public International Law* (9th ed., OUP, 2019), p. 440.
- [6] He Yi. (2004) *On the Human Right Accountability of Transnational Corporations*. *Journal of Wuhan University (Philosophy and Social Sciences Edition)*, 03, 403-407.
- [7] United Nations Human Rights Office of the High Commissioner. (2011). *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. New York and Geneva: United Nations.
- [8] International Labour Organization (ILO), *the Principles of the Tripartite Declaration on Transnational Corporations and Social Policy*, Retrieved from <https://www.ilo.org/publications/tripartite-declaration-principles-concerning-multinational-enterprises-and-3>
- [9] Ma Zhongfa, Zhao Sihan. (2021) *International system governance of multinational corporations' business behavior from the perspective of the United Nations*. *Jiangnan Academic Journal*, 40(03), 95-107.
- [10] Liu Zhiqiang, Huang Yuhao. (2024) *On the Mutual Construction of Human Rights Duty and Responsibility Systems of Business*. *Human Rights Studies*, 4, 17-32.
- [11] Sun Meng, Feng Tingting. (2020) *New Developments in the United Nations on the Human Rights Obligations of Transnational Corporations*. *Human Rights*, 6, 78-94.

- [12] *UN Guiding Principles on Business and Human Rights, Guiding Principle 7, Commentary*; G. Skinner, R. McCorquodale, O. De Schutter, et al., “The Third Pillar Report: Access to Judicial Remedies for Human Rights Violations by Transnational Business” (2013), p. 39
- [13] K. Tienhaara, “Regulatory Chill in a Warming World: The Threat to Climate Policy Posed by Investor-State Dispute Settlement”, (2018) 7 *Transnational Environmental Law* 229.
- [14] Liu Xinchao.(2024) *Dilemma of Judicial Remedy for Transnational Corporate Damages :Comparative Advantage of ISDS as a Supplementary Mechanism*.*Wuhan University International Law Review*, 2024, 8(02), 118-137.
- [15] Kevin Crow.(2021) *International Corporate Personhood: Business and the Bodyless in International Law* ,Routledge, 30.
- [16] Wang Zhe.(2014) *Legal Regulation on Human Rights Violations by Multinational Corporations*. *Times Law*, 12(01), 96-103.
- [17] Xu Zhenyi.(2024) *On China's Response to the Path Evolution of International Regulation on Forced Labor*. *Journal of China Institute of Industrial Relations* , 38(4), 86-97.
- [18] Liu Junmei.(2023) *Corporate Social Responsibility Clauses in Recent International Investment Agreements: International Trends and China's Response*. *Wuhan University International Law Review*, 7(01), 134-157.