# PROTECTION OF EMPLOYEES IN INTERNATIONAL EMPLOYMENT CONTRACTS

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## Abstract

This study investigated the level of labor protection as per the international labor contract. Thus, the way applicable law is applied to international labor relations in Jordan and other Arab countries such as Kuwait and Bahrain, and Rome I Regulation were discussed (Council of the European Union, 2008). This was done to evaluate labor protection in Jordan compared to the other countries. Attempts were made to raise the problem, delineate the ongoing situation in Jordan, and suggest suitable solutions. The analytical method, and the survey of judiciary literature and relevant legal documents showed labor protection in Jordan is not suitable. This is because the Jordanian judiciary is contradictory regarding the interpretation of occurrences related to determining the applicable law, for there are no clear, explicit legal provisions in this regard. It was also suggested that the Jordanian legislator intervenes to protect the labor and provides legal regulations on the application of law. This study has provided the fertile soil for beneficiaries to enhance labor protection to make it conform to international standards, and for future research to aim at this purpose, and deal with labor rights in remote work or work performed in more than one country.

**Keywords:** Choice of Law, Conflict of Laws, Contracting Parties, Labor Relations, Lex Voluntatis

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## 1. INTRODUCTION

The changing nature of labor relations over the years has created incentives for research in the field of labor law. As new professions evolve along with changes in society, work that is commonly called "traditional" may soon become a rarity. New technologies are giving rise to new forms of employment that do not fit into traditional definitions and categorizations. Their regulation has recently become the subject of the most heated public debate. Existing legal instruments seem too harsh and incapable of addressing many issues of new flexible employment forms (Kunda, 2018; Balhoush, 2020).

The development of information technology has led to the development of labor relations between citizens of different countries, and the conclusion of labor contracts via the Internet, without territorial reference. Besides, economic cooperation between countries, businesses, institutions, and organizations belonging to more than one state and having branches in more than one country has led to the conclusion of employment contracts between workers and employers belonging to more than one state (Şeremet, 2020; Lahmoud, 2020).

These circumstances have necessitated the development of national legal regimes, rules, and guarantees that meet international standards in the field of human rights protection, which should be used by an employee in a contractual relationship. Based on this, the issue of protecting labor rights of an employee in his/her contractual relationship with an employer is no longer limited to labor legislation, but also extends to conflict of laws and private international law. At the same time, an employee, regardless of whether an employment contract concluded by him/her is a national or foreign one, remains the weakest party in the contractual relationship and needs protection. However, in addition to the role of the national legislator regarding citizens' labor rights protection, an employee also has a degree of responsibility to protect his/her rights in international labor relations, especially at the stage of determining the law that regulates these relations (Trandafirescu, 2017).

The conflict of laws allows the parties to a civil law contract complicated by a foreign element, including the parties to an international commercial contract, to subordinate it to the competent legal order they have chosen. The parties have the right to agree on the application of the law of any state to their contractual obligations. The parties' right to choose is an expression of the generally recognized *lex voluntatis* (the autonomy of will) principle.

It should be noted that the modern doctrine of private international law proceeds from the understanding of *lex voluntatis* as one of the key general principles of legal regulation of international relations. It directly determines the content of a significant number of legal norms used to solve the conflict of law issues in certain areas of private law relations with a foreign element. Based on the ideas of freedom, independence of will, and expression of will, this principle in the field of private international law is transformed into a clearly defined conflict-of-laws rule, with the help of which a competent legal order is chosen. Thus, the autonomy of will manifests itself in specific conflict-of-law rules of private international law as a connecting factor, allowing the subjects of private relations to independently interpret them (Trandafirescu, 2017).

Traditionally, the main spheres of private law relations with a foreign element, in which the *lex voluntatis* principle is implemented, are civil legal relations, in particular with respect to transactions, contractual obligations, inheritance, as well as marriage and family relations. Quite logically, the question arises, are there labor relations complicated by a foreign element, in which the parties can independently choose the law to apply to their relations? In other words, is it possible to implement the *lex voluntatis* principle in labor relations with a foreign element? The position of modern private international law is that labor relations with a foreign element are private in nature, therefore, are an integral part of private international law. Indeed, it can hardly be denied that an employee and an employer, entering into an employment relationship, are legally equal parties, independent in terms of property and interests, and freely express their will aimed at establishing these legal relations.

The importance of this study lies in the fact that the protection of the workers' class constitutes an international social public order. This study examines how to determine the law applicable to the international individual labour contract in Arab private international law in the European Union, and to provide legal evidence, case law and practical cases to determine how Jordan's traditional approach requires different interaction and wider openness to the work of European jurisprudence and judiciary in its search for solutions that achieve a high level of protection for the worker.

The objectives of this study which seeks to uncover the status in Jordan, namely the level of indefinite protection of the worker as compared to that granted by other States, as well as to indicate whether there is a legislative shortage regarding the determination of the law applicable to the individual labour contract of states, proposing appropriate solutions for Jordanian legislators.

To achieve the aforesaid goals, the structure of this paper is as follows. Section 2 discusses the most important recent findings regarding this issue, highlighting the importance and relevance of this study. Section 3 discusses the research methods used to achieve the study goals, as well as the evidence used for this purpose. Section 4 details the findings of the study. Since this study is one of the legal studies that adopt the analytical method, this part presents the analytical results of the legal provisions reached by the research. Section 5 presents the results of the study, which have been discussed accurately and in more detail in order to cast light on this topic and show the degree to which labor is protected internationally. In Section 6, findings have been summarized, recommendations have been given, and the implications of those results, and future studies based on these results.

## 2. LITERATURE REVIEW

Modern research concerning the protection of an employee at the stage of choosing a law applicable to international labor contracts is devoted to such issues as:

- law enforcement in labor relations regulation according to the Rome I Regulation (Czerwiński, 2015; Kunda, 2018);
- regulation of distance work with a foreign element in the era of globalization (Shuraleva, 2014);
- *lex voluntatis* as the basic principle of control over the fulfillment of obligations (Pokachalova, 2016);
- the application of the *lex voluntatis* principle when defining law applicable to civil law contracts (Şeremet, 2020);
- the emergence and evolution of the *lex voluntatis* principle in private international law (Ristovska & Pelivanova, 2018; Trandafirescu, 2017);
- international private law instruments for regulating transnational employment in the European Union (Van Hoek, 2014);
- the Hague Principles and the choice of non-state legal norms for regulating an international commercial contract (Saumier, 2014);
- the law applicable to the international labor contract (Aldmour, 2020);
- protection of the worker's wages according to the provisions of the UAE Federal Labor Law (Balhoush, 2020);

• the applicable law to the international labor contract in Algerian private international law (Kamal, 2022);

• applicable law in international contract disputes (Lahmoud, 2020).

The relevance of this study is due to the need to adapt international and national law governing legal relations with a foreign element to new challenges and opportunities associated with the development of information and communications technology (ICT). Under the influence of globalization, labor legislation in many countries expands the types of atypical labor contracts. Distance employment necessitates the formation of a full-fledged system of conflict of laws in labor legislation since a distance employment contract does not exclude foreign actors. This raises the question of the applicable law in this case.

## 3. RESEARCH METHODOLOGY

The objectives of the present research were to illustrate the ongoing situation of labor protection in Jordan compared to other countries. Moreover, an attempt was made to elaborate on the legislative provisions regarding the applicable law of private labor contract and its efficacy. Should there be any defect in those legislations, solutions have been suggested to the Jordanian legislator. All this required the analytical method, where a detailed analysis of the study tools was presented to understand the ongoing situation and to illustrate the large gap in the level of protection provided by legislations of the UN countries. After this analysis, results have been presented and discussed, their implications have been illustrated, and effective solutions have been presented to them. For this purpose, we have reviewed the relevant legal documents in the Jordanian law as well as the previous legal literature of Jordan and International Court of Justice, which dealt with the labor protection in international contracts. Furthermore, attempts were made to survey and analyze the Convention on the Law Applicable to Contractual Obligations 1980 and the Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

## 4. RESULTS

Modern comparative legal studies are unanimous in their assessments that legislation does not allow parties to choose the law applicable to commercial contracts unless the contract has an international status. Thus, contracts that comply with these laws are national and fall within the scope of national law, and contracts that are considered international are subject to the law chosen by the contracting parties (Trandafirescu, 2017; Van Hoek, 2014; Aldmour, 2020).

The contracting parties' freedom to choose the law applicable to their contract depends on the contract's status (whether it is international or national). If the contract is national, then it is governed by national law norms, and the parties' freedom to choose the law does not play any role, but if it is international, then the parties have enough freedom to choose the law governing this contract (Kamal, 2022).

Analyzing Jordanian and other legislation, it should be noted that in Jordan, as well as in most countries, parties to an employment contract choose the law regulating their labor relations. The parties' right to choose is an expression of the generally recognized *lex voluntatis* principle. An example of *lex voluntatis* in labor relations can be an employment contract, which creates opportunities to concretize working conditions that are beneficial for the parties. However, based on its doctrinal essence, this principle has a very vague nature and can be leveled by judicial discretion.

*Lex voluntatis* is enshrined in international conventions governing contractual obligations. Such acts include:

• the Hague Convention on the Law Applicable to International Sales of Goods, 1955;

• the Hague Convention on the Law Applicable to Agency Agreements, 1978;

• the Rome Convention on the Law Applicable to Contractual Obligations, 1980;

• the Inter-American Convention on the law applicable to international contracts, 1994, and others (Nasyrova, 2014; Şeremet, 2020).

The presence of a foreign element in private law (including labor) relationship and the different content of private law of different states with which the relationship is associated, give rise to conflict of laws. Among the methods of its settlement is the choice of a competent legal order to resolve the case. In the field of labor relations, the following basic conflict-of-laws principles have developed:

• the autonomy of will (*lex voluntatis*);

• the place of work (*lex loci laboris*);

• the ship's flag (*lex flagi*);

• the personal law of the employer (natural person) (*lex personalis*) or legal person (*lex societatis*);

• the place where a contract is made (*lex loci contractus*) (Ferrari, 2020; Shuraleva, 2014).

As can be noted, the legal regulation of international labor is a new direction for many countries. The branch of private international law differs from other branches not only by its specific object but also by the presence of a conflict of laws, which emphasizes the uniqueness of this branch (Şeremet, 2020).

Regarding the *lex voluntatis* principle, it should be noted that in the legal literature its limited application in labor relations with the participation of foreigners is allowed, provided that the written form of the parties' choice of law is observed and the latter is closely connected to the employment contract. Besides, the parties to the employment contract should be allowed to choose legal orders of different countries to apply to the employment contract elements (Van Hoek, 2014).

It should be noted that some international agreements address the issue of the law applicable to an international labor contract, including the Rome I Regulation, which is the main element of defining the law applicable to international labor disputes in the European Union (Council of the European Union, 2008; Grušić, 2015). Article 3 of the Regulation enshrines the principle of freedom of the parties to choose the law applicable to an individual labor contract. The Article 3 stipulates that the parties to the contract must choose the law

governing the entire contract or any part of it. The Article does not require any connection between the chosen law, parties, or contract (Van Hoek, 2014).

Article 8 of the Rome I Regulation provides that the application of the law chosen by the parties should not lead to the deprivation of an employee of the rights that would have been granted to him/her in the absence of a choice. This Article is identical to Article 6 of the 1980 Rome Convention in relation to applicable law on contractual obligations (Biagioni, 2010; Council of the European Union, 1998). In this regard, the parties are given a choice of law applicable to the employment contract, provided that the application of the chosen law does not lead to the deprivation of an employee of his/her rights that would have been granted to him/her otherwise.

Accordingly paragraphs 2, 3, and 4 of Article 8 of the Regulation indicate the law applicable to an individual employment contract, which has not been chosen by the parties (Czerwiński, 2015). In this regard, paragraph 2 determines that the contract is governed by the law of the country in which the employee usually works, and if this place cannot be determined, the contract is governed by the law of the country where the institution that hired the employee is located. Paragraph 4 provides that if it follows from all the circumstances of the case that the contract has clearly closer ties with a country other than that specified in paragraphs 2 or 3, then the law of that other country shall apply.

As can be noted, the exercise of freedom of choice is carried out in accordance with the Rome I Regulation, which defines for employee equal or better rights than the law applicable in the absence of a corresponding agreement. However, if in the latter case the freedom of choice diminishes these rights, then this law does not apply and the law that is defined by this Regulation applies. Questions that may arise in this regard, among other things, boil down to how to determine the location of a business, based on the fact that the business is conducted in more than one country, or how to determine the location of a business if it is diversified.

The European Court has addressed some of these issues in its decisions. As for the definition of the place where a business is usually conducted, the following example is typical. Thus, in one of the considered cases, the plaintiff was a Dutch citizen residing in France, working for an English company as an international sales manager and working in Germany, Belgium, the Netherlands, France, and other countries, while using his home in France as an office for his business operations. A dispute arose between him and the company in which he works, as a result of which he filed a claim with the European Court of Justice. The court, referring to his usual place of business, ruled that the place of contractual obligations performance is the place where the employee fulfills his obligations to the employer, in this case, it is France (*Jan Voogsgeerd v. Navimer SA.*, 2011).

With regard to the place of business, the following should be noted. Thus, the European Court ruled that the principle of the place of business does not apply to an individual labor contract if it is impossible to determine the place in which business processes are usually carried out. The fact that a business is located in more than one country can be determined through appropriate evidence, including the actual place of business, the location of the company that published the job advertisement, or the place where the interview was held. The Court ruled that a "place of business" does not need to be a separate legal entity and can, for example, be an office (*Anton Schlecker v. Melitta Josefa Boedeker*, 2013).

In accordance with paragraph 4/8 of the Rome I Regulation, it is not strictly necessary to adhere to the aforementioned exception to the definition of law applicable to a contractual relationship. In this regard, the European Court has ruled that in defining applicable law, priority should be given to the relationship between a contract and the place of business; besides, references to another country's law do not automatically prevent the application of that law. However, even in cases where an employee usually performs work for a long and uninterrupted period in the same country, the court may exceptionally ignore the law of the country in which the business is usually carried out if it appears from the circumstances in general that the contract is more closely related to another country. Important factors affecting a close relationship with a country include, inter alia, the employee's income tax payment in that country, along with social security coverage, pensions, health insurance, and disability programs.

## 5. DISCUSSION

Ensuring an appropriate level of guarantees of employee's labor rights is an important aspect of *lex voluntatis* in labor relations with a foreign element since an employer may compel an employee to choose a law that is more "beneficial" for him/her (employer). Speaking about the legal system of Jordan, it seems that the optimal solution would be to consolidate in the relevant legislation the norm stipulating that the choice of the parties of the law applicable to the labor contract in no case can worsen the employee's position compared to the norms of law that would be applicable in the absence of choice. A clear legal framework for the implementation of autonomy of will in labor relations complicated by a foreign element will formally comply with the approach used in the legislation of European countries and contribute to the achievement of genuine freedom of expression and equality of parties to international labor relations (Czerwiński, 2015).

In accordance with the Rome I Regulation, the choice of the law may not be made at the time of the conclusion of a contract. A law can be chosen at a later stage, and the chosen law can also be replaced by another law. Unless otherwise agreed by the parties, subsequent changes are retroactive. Thus, the newly chosen law will regulate the contractual relations of the parties as a whole from the moment of their inception until termination. However, there are certain legal restrictions on retroactive effect, motivated by legal certainty: subsequent changes in the choice of applicable law should not adversely affect the formal validity of the contract and the rights acquired by third parties.

Article 3 of the Rome I Regulation does not limit the autonomy of the parties to any coherence

requirement, therefore, the parties can choose any law, even a law that has no objective connection with the contractual relationship. Vast freedom of choice contributes to the achievement of reasonable expectations of the parties and the realization of the purpose of the contract; it also takes into account the need to select a "neutral" law that is not related to either side. The freedom to choose unrelated law can also be misused to impose on the other party a law less favorable to its contractual position. Against this background, the balance is created by certain restrictions of the chosen law, which, in principle, are aimed at protecting the weaker party with ties to the EU territory. Likewise, restrictions on party autonomy (but also on situations where the law is applied in the absence of a choice of parties) are subject to public policy considerations (Kunda, 2018).

In many countries of civil law, in particular in Russian law, there are no special conflict-of-laws rules governing the choice of law in cross-border labor relations. Thus, for example, the Russian doctrine emphasizes that although the legislation of the Russian Federation with regard to labor relations has not formulated a general conflict-of-laws principle, it proceeds from the principle of applying the law of the country where the work is performed. Even if the contract is concluded between foreign entities abroad, there are no exceptions to this principle (Shuraleva, 2014).

Based on the general principles applicable in civil law, in cases not directly regulated by legislation, the analogy of law should be applied. Accordingly, contractual labor relations associated with a foreign legal order, first of all, should be regulated on the basis of the law chosen by the parties. In the absence of a choice of law, the applicable law is determined according to the principle of the closest connection (primarily based on the criterion of characteristics of a provision) (Şeremet, 2020).

Conditions on the choice of applicable law, which do not allow the actual will of the parties to be determined, are often qualified by the courts as the absence of an agreement between the parties on the applicable law. At the same time, if the parties indicate "general principles" or "generally recognized norms and rules of international trade" as the chosen law, it is unclear whether such an expression of will is considered sufficient to recognize the choice of law as valid. It can be argued that such an expression of the will of the parties is not enough due to the fact that the law should be interpreted as directly referring to the substantive law of a particular state.

If the parties have not determined in the contract which law is subject to application, then there is an opportunity to take into account the tacit will of the parties, that is, when from the content of the transaction, from the circumstances accompanying its execution, it follows that the parties had in mind to subject their contract to the law of a particular state (Şeremet, 2020). Today, the Jordanian legislator has not singled out a specific rule for an employment contract and has not determined the issue of the applicable law.

In determining the law applicable to international labor relations in Jordanian law, it can be said that the Jordanian legislator has established a general conflict-of-laws rule with respect to the law applicable to contractual obligations, including Article 20(1) of the Jordanian Civil Code. The latter provides that contractual obligations are governed by the laws of the state in which the parties have a common residence. If they have a different place of residence, then it is regulated by the law of the state in which the contract was concluded. This rule does not apply if the parties have agreed on another applicable law (Jordan Civil Code, 1977). The main attributive rule in accordance with this article is the freedom of choice of the contracting parties, in accordance with which the contract is governed by the law of their choice, therefore, the parties can freely choose the specific law governing their contract. However, this raises the question: do the parties have absolute freedom of choice, or are they limited by the need to choose the law associated with the contract?

In countries that use case law, opinions differ on this issue. Some researchers are of the opinion that the parties are absolutely free to choose the law applicable to the contract, and there should be no restrictions on this freedom, which means that the contracting parties can choose any law, regardless of its jurisdictional binding to the contract (Yaqout, 2004). Others argue about the need for a connection between the chosen law and the contract. For example, the freedom to choose the law of the country in which the contracting parties live, or the state to whose nationality one or both of them belong, or the place of conclusion or execution of a contract. Thus, there must be a geographical connection between the chosen law and the contract, or at least there must be a reasonable relationship between the chosen law and the contract so that this connection is sufficient for international trade, for example, if the law chosen by the parties determines the subject of the contract if the contract applies to modern technical enterprises. This is expressly provided for in some national legislative acts, which require a reasonable connection between the contract and the chosen law (Saumier, 2014; Yaqout, 2004). However, the current international trend, presented in the principles of the Hague Conference, calls for freedom of choice for the parties and does not restrict them by the need for a link between the chosen law and the contract. The parties have absolute freedom to choose any law, even if this law is not related to the contract, so they have a choice of law that governs their contract, even if there is no objective or spatial connection between the chosen law and the contract (United Nations Commission on International Trade Law, 2015).

With regard to Jordanian law, the study found that there is no prerequisite for a link between the chosen law and the contract. The previously mentioned Article 20(1) does not require such a link. However, the parties cannot choose the law that will apply to the contract if the contract is not of an international character. In this regard, the study touched upon the international criterion of contract and concluded that the Jordanian legislator does not explicitly stipulate a specific criterion, while the Jordanian judicial system adopts a legal criterion in many of its judgments.

The question arises: does the aforementioned Article 20(1) of the Jordanian Civil Code include international labor contracts or are these contracts

beyond the scope of this article? Referring to the decisions of the Jordanian judicial system, the study has shown that it subjects international labor contracts to the rules of this article. However, it sometimes also subjects contracts to the law of the common residence of the contracting parties. In other cases, it decides to apply the law of the place of concluding the contract, and thirdly, refuses to apply the law chosen by the contracting parties if Jordan is the common place of residence for the contracting parties.

In this context, the Decision of the Court of Cassation of Jordan No. 67 of 1988 is indicative. The court ruled in a case that involved Jordanian citizens and related to an international labor agreement concluded in the Kingdom of Saudi Arabia. The court applied Article 20(1) of the aforementioned Civil Code and interpreted that the first rule of attribution is the common domicile of the contracting parties and, if the domicile is different, the law chosen by the parties should apply. The court stated that after careful examination and discussion, it becomes apparent that the applicable law is the law of the country where the contracting parties are domiciled, in accordance with Article 20(1) of the Civil Code. The latter is a rule that does not obey the principle of freedom of the contracting parties to choose the applicable law. However, if the domicile is different, the contracting parties can apply the law of the country of their choice (Jordanian Court, 1983).

There was the lawsuit filed with the Jordanian Administrative Court between a Jordanian company and a Jordanian citizen related to an employment contract concluded in Jordan and implemented in a company in Palestine. The court ruled to bring the employment contract into compliance with Article 20(1) of the Civil Code and apply Jordanian labor law to the contract since the contract was concluded in Jordan. The wording of the decision was as follows. Namely, Jordanian labor law shall apply since the contractual relationship was carried out in Amman in accordance with Article 20(1). The fact that the plaintiff's place of residence and activity was in Palestine does not imply the application of Palestinian law, since the treaties took place in the Hashemite Kingdom of Jordan (Jordanian Administrative Court, 2015).

Based on the established practice, the Jordanian judiciary is encouraged to seek to protect an employee by adopting the criterion of the place of business, with the aim of making the employment contract international. At the same time, it should be considered as an international contract as the contract or its main part is performed outside Jordan. At the same time, by choosing the criterion for the place of business, the competent state bodies simplify the control and protection of the rights and obligations arising from labor contractual relations.

## 6. CONCLUSION

Taking into account the study results, one should note that, when developing national legislative regulation on employee labor rights in a cross-border context, the legislator must proceed from the following fact. Namely, the choice of law applicable to an employment contract on distance work should not worsen the worker's position compared to the mandatory rules of the law of the country that would apply in case of no choice. At the same time, taking into account the peculiarities of labor relations and the position of the employee as a "weak" party to the contract, *lex voluntatis* in labor contracts should be limited to strict framework. Namely, the chosen law applicable to a contract must be explicitly expressed in writing or must directly follow from the terms of the contract.

The study calls for the application of the law chosen by the parties, provided that the application of this law does not lead to the deprivation of an employee of his/her rights that would have been granted to him/her in the absence of a choice. If the chosen law grants the worker's rights better than the law applicable in the absence of a corresponding agreement, then the chosen law applies, but if not, then the law defined by Rome I Regulation applies to protect the weak party in the contractual relationship, which is the employee.

Results showed that the Jordanian judiciary misinterprets the legal provisions of labor protection of international labor contracts. This has caused a disagreement and contradiction in the judgements of the Jordanian judiciary in this respect. There exists also a legislative defect where the Jordanian legislator has not provided a text in this regard, which has in turn caused labor protection to deteriorate.

Given that the Jordanian law is free from the rule of conflict of laws determining the law governs the international employment contract, the study suggests to the Jordanian judiciary not to consider employment contracts as among the contracts that are subject to the rule of conflict that relate to contractual obligations and to subject these contracts to the law of the place where the business is usually carried out, and to abandon the tendency towards the application of Jordanian law in all circumstances.

Likewise, the predominant trend in national and international laws, as explained above, is to apply the law of the habitual business place on international employment relations. The Jordanian judiciary could depend for the application of this law on Article 25 of the Civil Law, which requires following the principles of private international law in matters for which no special legal rules have been stipulated.

Implications of the results of this study include more consideration of the ongoing situation and more understanding of low labor protection in the countries investigated. This will provide the fertile soil for beneficiaries to demand more protection so as to be similar to the international standards. This will also allow future studies to focus on raising labor protection to an international level. Such studies may concern the rights of labors working remotely, or may elaborate on determining the applicable law to labor rights when the work is performed in more than one country.

Needless to say, among the limitations facing any study is the scarcity of previous studies investigating the same topic. This is also true of the present study. That is, although many studies investigated the Protection of the worker, but did not discuss the protection of the worker at the international level, and this means, those studies nevertheless did not incorporate the exact topic of this study.

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