

A Brief Discussion on the Host Country's Legal Regulation of the Environmental Behavior of Multinational Corporations --Taking China as an Example

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ABSTRACT

In many host countries, the industrial production of multinational companies has seriously damaged the environment. However, many of the host countries cannot effectively regulate the environmental behavior of multinational companies. This paper uses literature research and comparative research, taking China as an example, to study the host country's regulation of the environmental behavior of multinational companies. China is an important destination for foreign investment in the world, and the problems exposed in China's regulations on multinational companies are universal to many host countries. International regulations about the environmental behavior of multinational companies are not compulsory and international non-governmental organizations that can provide China with regulatory and professional support often face financial difficulties. On top of that, China's domestic environmental legal system is imperfect. China mainly relies on public authorities to regulate the environmental behavior of multinational companies while social organizations lack legal protection in regulating multinational companies. In addition, whether multinational companies would avoid harm to China's environment depends only on their self-consciousness. In order to solve these problems, at the level of legal regulation, the international society can designate a negative list for multinational companies with bad environmental behavior. Additionally, host countries like China should establish a complete environmental monitoring legal system. At the level of regulatory bodies, international non-governmental organizations should carry out environmental protection activities within the framework of the United Nations and the international public welfare organizations' litigation and relief capabilities should be strengthened. Host countries like China can also promote the signing of trade and investment agreements with the home countries of multinational companies, making home countries assume part of the obligation to regulate multinational companies. In addition, host countries should also increase public supervision of multinational companies to strengthen their self-discipline.

Keywords: multinational corporation, environmental behavior, host country, legal regulation

1. INTRODUCTION

By 2019, China had set up more than 1 million foreign-funded enterprises. As the second largest foreign investment destination in the world, China's regulations on the behavior of multinational corporations can better reflect the universality and representativeness of the problems. With the development of economic globalization in China, multinational companies are

gradually penetrating into the inland central and western regions. In Jiangxi province alone, foreign investment grew by 10.3 percent in 2019, far outpaced the national growth rate of foreign investment [1]. However, four of Shanghai's top 10 polluters in 2020 were foreign-owned. The situation is expected to worsen in central and western China, where environmental monitoring mechanisms are weak [2]. Although the state has promulgated special laws on environmental governance and monitoring,

China's current environmental monitoring is still dominated by provinces and cities, with a chaotic monitoring system, unable to form a systematic, comprehensive standard. In addition, the relaxation of foreign investment does not take into account the actual situation of national environmental regulation [3]. Therefore, how to enable host countries to effectively control multinational companies' environmental behavior is an important issue for solving environmental pollution and effectively using foreign capital.

2. THE BASIS FOR THE HOST COUNTRY TO REGULATE THE BEHAVIOR

As China continues to open up, the market access system is gradually relaxed. Foreign investment in China has maintained high growth, and China became the world's second largest foreign investment destination for three consecutive years from 2017 to 2019. Therefore, the environmental problems caused by multinational companies in China are becoming more and more prominent. China has also formulated a large number of laws related to environmental protection to solve these environmental problems. However, due to the trans-regional characteristics of multinational corporations, the legal regulation of the environmental behavior of multinational corporations should be carried out at both the international and domestic levels.

2.1. Treaties and agreements in international law

The Global Compact, the Code of Conduct for Multinational Corporations, the Stockholm Convention and the Kyoto Protocol are all important legal documents regulating the environmental behavior of multinational corporations. Although the environmental problems of multinational companies are legally binding by these legal documents, they are all soft laws. Thus, it's the multinational companies' sense of responsibility that determines whether the actual pollution problem could be solved.

Although the United Nations Framework Convention on Climate Change and others are legally binding, they have not formulated specific measures and cannot be applied in actual operations. They can only rely on domestic laws and other agreements among countries.

2.2. Domestic laws and regulations of the host country

As shown in Table 1, China has made a series of environmental pollution laws since 1982.

Table 1. Chinese Environmental Legislation

Legal Status	Name of Laws	Time of Effect	Specific Provisions
The Fundamental Law	Constitution of the People's Republic of China	In 1982	Article 9; Article 10; Article 22, Article 26.
The Basic Law for Environment Protection	Environmental Protection Law of the People's Republic of China	In 2015	the full text
Special Legislation for Environment	Marine Pollution Prevention and Control Act	In 1982	the full text
	Law on the Prevention and Control of Air Pollution	In 1987	
	Law on the Prevention and Control of Water Pollution	In 1984	
	Law of prevention and Control of Environmental Noise Pollution	In 1996	
	Prevention and Control of Pollution by Solid Waste	In 2004	
	Radioactive Pollution Prevention and Control act	In 2003	
	Land Administration Act	In 2004	

	Forest Protection Act	In 1998	
	Grassland Resources Protection Act	In 2013	
	Mineral Resources Protection Act	In 2009	
	Water Law of the People's Republic of China	In 1988	
	Marine Environmental Protection Act	In 1982	
	Fisheries law	In 2013	
	Wildlife Protection Act	In 2018	
	The Coal law	In 2016	
	National Regulations on the Administration of Environmental Monitoring	In 1983	
	Measures for Environmental Standards Management	In 1999	
	Law of the People's Republic of China on Promoting Circular Economy	In 2018	
	Energy Conservation Law of the People's Republic of China	In 2018	
Other Sector laws	Civil Code of the People's Republic of China	In 2020	Chapter 7 of Title 7
	Civil Procedure Law	In 2017	Article 55
	Criminal Law	In 2017	Chapter 6 Section 6

In addition, China’s environmental legal system also includes environmental and resource administrative regulations, local regulations, departmental regulations and local government regulations of great amount, which are specific laws and regulations made according to specific acts of environmental pollution. Besides, China has made detailed provisions from comprehensive laws to specific regulations tailored to local conditions like many other host countries [4].

However, multinational companies adopt different environmental standards in different regions in reality. There is no unified environmental monitoring system at the national level nor specific standards in legal regulation, which is not conducive to effective regulation of multinational companies' behavior. On top of that, Chinese laws and regulations, the rights and obligations of various subjects are not equal. In the actual situation, the punishment for environmental pollution by multinational corporations is relatively low. It does not act as a deterrent, while the environmental monitoring system stipulated by law is not effectively implemented in practice [5].

3. REGULATORY BODY OF MULTINATIONAL CORPORATIONS

There are four main types of subjects that regulate the environmental behavior of multinational companies in China: Chinese public authority, Chinese domestic social organization, international organizations, and multinational companies themselves.

3.1. Chinese public authority

Like many other host countries, China's public authority plays a key role in regulating the environmental behavior of multinational companies. Specifically, the relevant departments of the Chinese government, the People's Procuratorate of China are the most important public authority to regulate the environmental behavior of multinational companies. They can regulate the environmental behavior of multinational companies through administrative management or file public interest litigation.

3.1.1. Departments of the Chinese government

According to China's Environmental Protection Law, the environmental authorities of China's central

government and local governments implement unified supervision and management of environmental protection work in the whole country or local governments' respective administrative regions. To the central government, the Ministry of Ecology and Environment and the Ministry of Natural Resources are the most important environmental authorities. Local governments have their own environmental authority similar to these two departments.

Therefore, if a multinational company harms the environment, the departments of the Chinese central government and local governments can impose administrative penalties on the multinational company in accordance with the Environmental Protection Law and other relevant laws and regulations. In practice, the functional departments of the Chinese government have become the main body that regulates the environmental behavior of multinational companies.

3.1.2. People's Procuratorate

In China, the People's Procuratorate is a legal supervision agency that has the power to initiate public interest litigation against multinational companies that seriously damage the environment. Therefore, the People's Procuratorate is also an important subject in regulating the environmental behavior of multinational companies in China.

According to Article 26 and Article 134 of the Chinese Constitution, the People's Procuratorate has the duty to conduct legal supervision and safeguard the country's environmental interests.

In addition, Article 55 of China's Civil Procedure Law stipulates that for actions that damage the public interest, such as polluting the environment and infringing on the legitimate rights and interests of many consumers, the agencies and related organizations prescribed by the law can bring suits to the courts. This is known as environmental public interest litigation in the Chinese procedural law, which plays an important role in judicial supervision in the field of environmental protection. Therefore, if the actions of multinational companies damage the public interest of the environment, the People's Procuratorate has the power to initiate public interest litigation, regulating the environmental behavior of multinational companies in the end.

3.2. Chinese domestic social organization

China's domestic environmental protection organizations are also one of the subjects that can regulate the environmental behavior of multinational companies.

According to Article 55 of China's Civil Procedure Law, Chinese domestic organizations that meet certain conditions can initiate public interest litigation for

actions that harm the environment and affect the public interest.

However, Chinese laws require excessively high qualifications for social organizations that initiate environmental public interest litigation, limiting the ability of social organizations to monitor multinational companies' environment. Article 58 of China's Environmental Protection Law stipulates that only social organizations that "specialize in environmental protection public welfare activities for more than five consecutive years and have no illegal records" are eligible to initiate public interest litigation. However, not many social organizations can meet this condition, which limits the number of social organizations that are qualified.

3.3. International organizations

International organizations are divided into intergovernmental international organizations and non-governmental international organizations. Both of them are able to regulate the environmental behavior of multinational companies.

3.3.1. Intergovernmental Organization

Intergovernmental organizations mainly regulate multinational companies by signing treaties, and many of these treaties contain content that restricts the environmental behavior of multinational companies. There are some internationally well-known international treaties, such as the Global Compact, OECD Guidelines for Multinational Enterprises and Protect, the Kyoto Protocol.

However, as is mentioned above, these international treaties have insufficient deterrence against multinational companies. Although these international treaties urge multinational companies to fully respect and protect the environment, none of them has compulsory force. When multinational companies violate these treaties, there is no one to make them bear legal responsibility.

3.3.2. Non-governmental organization

Non-governmental organizations can also use their own ways to regulate the environmental behavior of multinational companies. Some world-famous non-governmental organizations contribute a lot to environmental protection, such as the Friends of the Earth International, Greenpeace, and World Wide Fund for Nature or World Wildlife Fund.

One of the most important activities of non-governmental organizations is to play the role of supervisors of commercial entities, especially large multinational companies, and urge them to change their production and business models through media reports. Meanwhile, non-governmental organizations can reduce

the multinational company's environmental damage by offering multinational companies advice, providing environmental protection technical support and exposing corporate environmental pollution behavior.

International non-governmental organizations also play an important role in monitoring the impact of government public policies on the environment [6]. They can give Chinese government professional advice to help the Chinese government introduce more scientific and efficient environmental protection policies and improve Chinese domestic environmental legislation to better regulate the environmental behavior of multinational companies.

However, the non-governmental organizations are facing funding problems, limiting their influence on multinational companies. The funding sources of international non-governmental environmental organizations mainly come from membership dues and funding from various parties, which are unstable.

3.4. Multinational companies themselves

Multinational companies can also regulate their own environmental behavior to avoid damages to the host countries environment.

If multinational companies pay attention to avoiding harm to the host country's environment, they can get a good impression of consumers. And normally, a good impression of consumers means more profits. Therefore, many multinational companies also consciously avoid causing damage to the host country's environment.

For example, Foxconn has paid more attention to social responsibility, which includes the social environmental responsibility after the suicide of many employees. Foxconn's president put forward the environmental protection goal of "energy saving, emission reduction, greening, and recycling". And Foxconn also made efforts to implement this goal through clean production and other ways.

The regulation of multinational corporations' own environmental behavior is unstable. Multinational companies can change their behavior anytime they want. Whether multinational companies avoid damage to the environment caused by production behavior is entirely out of the self-consciousness of multinational companies.

4. MEASURES TO IMPROVE THE LEGAL REGULATION OF ENVIRONMENTAL BEHAVIOR OF MULTINATIONAL CORPORATIONS

There are some suggestions from the points of legal regulation, regulatory body and dispute settlement mechanism for the host countries like host countries

represented by China to regulate multinational companies better, despite the problems they faced.

4.1. Suggestions on the level of legal regulation

4.1.1. Establish a global negative list of multinational companies

In most international treaties, the regulation of multinational companies is not enforceable and can only rely on the sense of responsibility of the multinational companies themselves.

In practice, the interests of multinational companies often conflict with international treaties, resulting in the ineffective implementation of treaties. Therefore, international economic organizations with global influence and each member state should jointly formulate a negative list of multinational companies against environmental pollution behaviors based on international treaties as the review and judgment standard and use this as a prerequisite for multinational companies to enter the countries. In this way, multinational companies have to combine environmental prevention and corporate benefits in their daily operation. Therefore, the host country has the initiative in environmental supervision.

4.1.2. A complete environmental monitoring standard system shall be established in the host countries

Although the host countries represented by China have formulated many laws and regulations in the field of environmental pollution prevention and protection. However, due to differences in economic development between regions in host countries, different regions have different environmental monitoring standards, and local governments may lower environmental monitoring standards to attract foreign investment. Therefore, a national environmental monitoring system should be established. In this system, all data are entered into the government system and regularly checked by government departments. It is open to the public to be supervised by environmental public welfare organizations at any time, which prevents multinational companies from using regulatory loopholes to cause environmental pollution in the host country.

4.2. Suggestions from the perspective of the regulatory body

4.2.1. Suggestions for the host countries

The host countries should strengthen the domestic "multi-subject co-governance systems". The public authority of the host country, as the most important subject to regulate the environmental behavior of multinational companies, should ensure strict supervision

of the environmental behavior of multinational companies. In addition to the public authority, the host country should also increase the ability of other entities to monitor the environmental behavior of multinational companies. For example, China can appropriately loose the qualification restrictions on the initiators of public interest litigation in their own countries to ensure enough supervision on the environmental behavior of multinational companies [7].

4.2.2. Suggestions for the international organizations

International intergovernmental organizations should try to formulate an enforceable international treaty regulating the environmental behavior of multinational companies. According to this treaty, all contracting countries are obliged to prevent their own multinational companies from harming the environment in host countries. The countries that seriously violate the obligation shall bear legal liability. The form of legal liability can be huge fines and economic sanctions.

International non-governmental organizations can obtain funding to maintain their survival by participating in international environmental protection activities under the framework of the United Nations. Although international non-governmental organizations may lose some independence in their activities under the framework of the United Nations, they can still play their part in regulating the environmental behavior of multinational companies and protecting the international environment.

The litigation capabilities of international public interest organizations in the environmental field should be reinforced. In litigation cases involving environmental issues of multinational companies, the rights and interests of plaintiffs with weak litigation ability cannot get effective relief. After the international public interest organizations' litigation capabilities in the environmental field are strengthened, they will have the power to better protect the rights and interests of plaintiffs with weak litigation capabilities [8].

4.2.3. Suggestions for the multinational companies

To ensure the stability of the self-regulation of multinational companies, it is necessary to raise public supervision of multinational companies. The host country government should guide the public to pay more attention to the environmental behavior of multinational companies through media reports and other methods. Suppose the public is very concerned about the environmental behavior of multinational companies. In that case, multinational companies will not dare to relax their self-discipline to maintain their good impression in the public's mind [9].

4.3. Suggestions on the improvement of dispute settlement mechanism

Due to the ongoing process of economic globalization and the need for profit, multinational companies will inevitably bring environmental problems to the host country when they transfer technology. Like the Bhopal incident, the United States rejected the litigation request based on the court inconvenience principle. In the end, the amount of compensation from the multinational company was much lower than the claim, unable to relieve the victims. In order to avoid such situations, the host country and the home country of the multinational company can sign a trade and investment agreement to specifically regulate environmental issues and stipulate that the multinational company shall bear strict responsibility for environmental pollution. Through the signing of trade and investment agreements, the home country is obliged to assist the host country in monitoring the environmental pollution behavior of multinational companies. In this way, a joint governance system between the host country and the home country can be initially established.

5. CONCLUSION

The environmental behavior of multinational companies can seriously damage the environment of the host country, but the host country may be unable to effectively regulate the environmental behavior of multinational companies. China is a typical representative of the host country because it's the world's second-largest foreign investment destination. Therefore, other host countries are likely to encounter the problems China faces in regulating the environmental behavior of multinational companies. At the international level, the existing international laws regulating the environmental behavior of multinational companies do not have the compulsory force, and International non-governmental organizations often have trouble supervising multinational companies due to funding problems. At the host country level, many host countries do not have a complete environmental legal governance system. At the level of multinational companies, the regulation of multinational companies only depends on the company's consciousness. In order to solve these dilemmas, this paper proposes the following solutions. At the level of legal regulation, the international community should try to formulate an enforceable international treaty and set up a negative list for the environmental pollution behavior of multinational companies. The host country should also improve its domestic environmental legal system. At the level of regulatory bodies, international non-governmental organizations should integrate into the global multinational corporate environmental behavior governance system with the United Nations as the core and strengthen the litigation and relief capabilities of international public welfare organizations. The host

country can also sign a trade and investment agreement with the home country of the multinational company, setting the home country the obligation to regulate the multinational company. In addition, the people of the host country should increase supervision of multinational companies and strengthen public opinion constraints on multinational companies. With combined efforts, the balance of host countries' needs for a clean environment and economic proficiency will be reached.

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