

Study on the Legal Regulation of Multinational Corporations on Environmental Human Rights

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ABSTRACT

As international exchanges become more frequent and the global economy develops rapidly, more and more multinational companies are setting up factories in China to expand their scale or scope. The establishment of factories in China to expand their scale or scope comes with the consequent damage to the Chinese environment. In various industries, most MNCs inevitably cause environmental pollution and damage in the process of producing products in the host country. However, the lack of relevant legal regulations for most multinational corporations exposes the deficiencies in environmental human rights protection. Although the current state of environmental human rights protection in developed countries is obviously better than that in developing countries, developing countries can also improve the state of environmental human rights protection in their own countries through various ways, such as government regulation, TNCs' own regulation, and intervention by international organizations. The case study method is used to analyze and suggest the shortcomings of transnational corporations regarding environmental human rights. The main purpose is to analyze the current situation and dilemma of environmental human rights in the host country, and to analyze the suggestions of relevant legal regulation. Ultimately, the goal is to help improve the environmental plight of TNCs and host countries.

Keywords: *Transnational Corporations, Environmental Human Rights, Legal regulation.*

1. INTRODUCTION

In today's economic globalization, the development of multinational corporations has become an important part of the global economy. However, at the same time, with the emergence of globalization, multinational corporations have emerged with many negative impacts while promoting the development of the world. Among them, while enjoying the huge profits brought by development, MNCs have irresponsibly brought huge negative impacts to the environment and residents of the host countries. Various reports of "sweatshops" have appeared in the public eye. Large-scale environmental accidents have emerged repeatedly, and legal regulation of multinational corporations is imminent. Most of the scholars propose to regulate the environmental problems caused by multinational corporations in host countries at the international level, and the legal application of multinational corporations' environmental tort liability issues are analyzed from the perspective of private international law in Chen Yunnan's Legal Application of Multinational Corporations' Legal Application Issues and Liability. This paper will analyze how to effectively

regulate multinational corporations from the perspective of multinational corporations themselves, the host country and the international level.[4]

2. THE BASIC THEORY

2.1 The concept of multinational companies.

Transnational Corporation (TNC) has various names such as Multi-national Enterprise (MNE), International Firm (IF), Super-national Enterprise (SNE), and Cosmo-corporation and Cosmo-corporation. From the legal point of view, the existing definitions are broad, scholars pointing out that multinational corporations refer to enterprises composed of several companies or other business entities, while the United Nations Code of Conduct for Multinational Corporations considers "multinational corporations" to be enterprises composed of entities established in two or more countries. According to this definition, there are countless multinational corporations around the world. In order to make their own continuous development and maximize the profit, multinational companies, with their advanced

technology and strong capital and perfect management concept, have been extending their hands to all parts of the world, most of which are developing countries. While bringing capital and advanced technology to developing countries, they have also brought a lot of environmental human rights violations. For example, famous multinational companies such as Disney and Wal-Mart have been prosecuted for violating labor standards. At the same time, similar cases of environmental pollution such as the Bhopal gas leak case in India have similarly had irreversible effects on the host country's environment.

2.2 The concept of environmental human rights.

In her book named *Environmental Human Rights: Power, Ethics, and Law*, British scholar Jane Hancock specifically elaborated on environmental human rights and distinguished between "environmental rights" and "environmental human rights". Domestic scholars also mention the term "environmental human rights", but most of them do not distinguish from "environmental rights", but only change the name of the term, and also discuss the relationship between environmental rights and human rights in their exposition. Jane Hancock argued that the human rights that must be realized in existing legal provisions necessarily included universal environmental human rights, where he meant the right to freedom from toxic pollution of the environment and the right to own natural resources. Jane Hancock also argued for the importance of environmental human rights theory in terms of politics, power, and ethics, and highlights the disdain and destruction of environmental human rights by capitalism and liberalism. The book also cites a lot of examples to prove that capitalist countries and multinational enterprises, driven by economic profits, invest and build factories in less developed regions without paying attention to the protection of local environmental human rights, resulting in the deforestation of large areas and the digging up of large amounts of mineral deposits, leaving the less developed regions with serious air and water pollution, and local residents suffer from various strange diseases in such an environment, and cancer villages begin to appear and spread. Cancer villages began to appear and spread. However, these underdeveloped regions are still unable to get rid of their poverty, and the vicious cycle continues. [2] The introduction of environmental human rights, which combines environmental rights with human rights, can link the environmental movement with the human rights movement and expand the power of the environmental movement as well as the power of human rights action. The development of environmental human rights theory will lead to more citizens treating the environment as their own right, which will have two benefits: firstly, citizens will become aware of environmental protection and take personal action to protect the environment. Secondly, citizens will become

more aware of monitoring the environmental behavior of other actors, including the government, enterprises, and other citizens. This will greatly increase both political and public participation in the protection of environmental human rights.

3. CURRENT SITUATION

The development of TNCs in developing countries has violated environmental human rights. The expansion of TNC activities has led to adverse reactions and created multiple tensions in both developed and developing countries, which can be attributed, to a large extent, to the growing economic dependence between national and geographical markets. Environmental issues are central to sustainability and are not problems that can be solved by one individual, one group or one country alone, but are public problems facing all of humanity. The main root cause of environmental pollution is the profit-making behavior of multinational corporations in the manufacturing or production categories, and its solution is not very realistic to rely on countries alone. With the globalization of the economy, if multinational companies continue to develop their economies through the exploitation of resources on a large scale, it will cause environmental problems to continue to occur. Therefore, it is very important for multinational companies to take the initiative to participate in this environmental management and pollutant control. In addition, if a multinational company has the trust and praise of the public, it is also very meaningful for the future development.[10]

3.1 Examples of transnational corporations violating environmental human rights.

The investment and operation of multinational companies in the world have caused significant influence on the environment of the host country, and even resulted in environmental pollution, thus badly affecting the survival environment of the host country. For instance, the United States Standard Corporation, which exceeds the standard discharge, Shanghai Pizza Hut, which discharges wastewater at will, Germany Noel Crane Equipment, which is put into operation without authorization and causes serious consequences, and the British Bleachright Group, one of the key polluting enterprises in Zhejiang Province. Of course, the above list only involves enterprises with water pollution, and does not include other pollution. In June 2011, an oil spill occurred in an oil field in Bohai Bay of CNOOC, a cooperative project between CNOOC and ConocoPhillips. The oil spill caused marine pollution and environmental damage, polluting an area of 6,200 square kilometers of ocean. In a study by the Organization for Economic Cooperation, it was shown that countries with weaker environmental regulations are the target of choice for some companies' factories. The study further suggests

that this trend may encourage companies to locate plants in countries with weak regulations. Without clarity on the responsibilities of multinational companies, the host country's environment will become increasingly hostile.[3]

3.2 Examples of multinational companies violating the right to life and health of workers.

In 1991, Nike factories were exposed by oppressing and damaging the legal rights of laborers, and the then multinational company Nike received criticism and accusations from the society. In this day, related labor violations are frequently reported. In addition, multinational companies also violate the local residents' right to life and development. In June 2006, for example, 33 well-known multinational companies in China were exposed in the newspaper by the State Environmental Protection Administration for environmental violations: Shanghai Panasonic Battery Company, which discharged wastewater in excess of the standard, Changchun PepsiCo, which discharged polluted wastewater in excess of the standard, Shanghai Nestle, which put into operation without acceptance of the main facilities, 3M Shanghai, which put into operation without approval, and Shanghai PepsiCo. 3M Shanghai, Nestle Drinking Water Company, which was put into operation without acceptance, Japanese Kao Shanghai, which discharged excessive wastewater at will, American Standard, which discharged wastewater at will, Shanghai Pizza Hut, which was put into operation without authorization and caused serious consequences, Noel Lifting Equipment, which was one of the key polluting enterprises at the provincial level in Zhejiang, and the British Blewright Group, which had major environmental safety hazards in its electroplating production line. Japan's Yamaha Engine Co., Ltd. and many other multinational companies have been punished by the Environmental Protection Administration for wastewater pollution. Of course, the above list only covers water-polluting companies, but not other companies such as air and solid waste polluters, so the above examples are just the tip of the iceberg of violations by multinational companies in China. Water and air pollution caused by multinational companies has a direct negative impact on local residents and local industries that depend on water and the environment. Although water bodies and soil themselves have a certain self-purifying capacity, excessive pollution has far exceeded the self-purifying capacity of water bodies and soil itself, and the treatment of these pollutions will be a time-consuming and continuous battle. [6] In addition, the damage to local ecology caused by these pollutions will take decades or even centuries to eliminate, and the ecological losses are incalculable. China as the world's largest developing country, in China's Ningxia Hui Autonomous Region and Inner Mongolia Autonomous Region, which is the junction of the famous Tengger Desert, in order to improve the local GDP in the Tengger

Desert, the local government established an industrial park, in order to introduce enterprises, the local government introduced preferential policies for enterprises to solve the pollutants free of charge, but in its industrial park, the local government did not establish a perfect device to deal with pollutants. However, in the industrial park, there were no well-developed pollutant treatment devices, so that later enterprises directly discharged pollutants into the hinterland of the Tengri Desert, causing pollution of groundwater and air in the desert. Moreover, some local herders endured the pollution while more people left their original places. The pollution of the Tengri Desert is just a typical example of environmental human rights in China, but many local governments in China sacrifice environmental human rights protection for the sake of economic development, which eventually brings endless suffering to local residents. When the government's policy is problematic, companies will gladly accept it to make more profits, and the problem of environmental human rights arises.[1]

4. THE DILEMMA

Through the above situation, it can be seen that there are some difficulties in regulating transnational corporations' infringement of environmental human rights in host countries through laws. Most of the dilemmas appear are in developing countries.

4.1 The main problems of host countries.

Firstly, the multinational corporations of developed countries drive the development of developing countries through capital and technology. Countries in development, technology and capital from developed countries are exactly what they need. In order to achieve the purpose of development, politically and legally developing countries will have to make concessions on the regulation of the legal system. At the same time, multinational corporations are more willing to enter foreign markets where environmental regulations are less stringent than in their home countries. Secondly, multinational corporations from developed countries influence or even manipulate the behavior of developing countries on environmental human rights through their strong economic power. This has caused the emergence of various phenomena of environmental human rights violations in the host countries. Thirdly, the legal awareness of environmental human rights among citizens in developing countries is relatively weak, and there are few environmental human rights NGOs. A common problem in all developing countries is that the awareness of environmental human rights is very low among citizens of most developing countries including not only the general public but also the top management of local governments. The Federal Republic of Nigeria in southeastern West Africa is a country that relies on oil exports and has many multinational companies that have

invested in the country including Shell, a Fortune 500 company that has invested in oil exploration in Nigeria. However, at the end of the last century, the company was protested by local environmental human rights groups in the Ogoniland region of Nigeria, who demanded that the company stop oil exploration in the region and demanded compensation for ecological damage. Instead of negotiating with the local environmental rights groups, Shell worked with the local government to divide the group and, through financial support to the government, get additional police protection for its work. The local government, with the support of Shell, has created a massacre of people. Therefore, there is a weak awareness of environmental human rights at the top of the government, and this lack of environmental human rights awareness is all the more frightening because the government is the body that makes and enforces laws and policies, and its actions have a guiding role, and it is because of this that the massacre of the people by the Nigerian government occurred. Therefore, the lack of environmental human rights awareness is very scary, and because of this, the development of environmental human rights awareness is a very important thing. Through the above examples and the discussion of the importance of environmental human rights awareness, the current situation of environmental human rights in developing countries can be clearly understood.[12]

4.2 Regulatory level of home countries.

At present, most of the MNCs' home countries are developed countries, such as the United States, Europe and Japan. Regarding the legal regulation of TNCs in host countries, some people believe that TNCs belong to the enterprises of their home countries and should be regulated by them as a matter of course. However, home countries lack the incentive to regulate a series of violations of environmental human rights by TNCs in host countries. The company's operation is outside the sight of the home country because the development of multinational corporations is a kind of capital support for the home country, which helps the development of its economy, and multinational corporations operate in other countries far away from the home country. [1]Therefore, from the home country's regulatory perspective, the behavior of multinational companies is difficult to be restrained. Secondly, the lack of initiative in the home country is due to the inconsistent standards for pollutants in the host country and the home country, which leads to different legal constraints. Finally, due to the relatively large internal management of multinational companies, it is relatively difficult to determine the responsibility and easier to evade responsibility.[13]

5. LEGAL MEASURES

5.1 The main measures to regulate in the host country

Developing countries should take to improve the current situation of their environmental human rights so that their environmental human rights can be protected. The environmental human rights problem mainly exists in three subjects including governments, companies and citizens, the following is a discussion of the ways to protect environmental human rights for these three subjects and international organizations.[9]

Firstly, host governments should protect environmental human rights. The government's approach to the protection of environmental human rights is the most important because the legal policies made by the government can be the legal policies that protect environmental human rights or the legal policies that harm environmental human rights. Moreover, the guiding influence of the legal policies is immeasurable, and the government has the responsibility in the protection of environmental human rights, and the modern government should be the responsible government, and the understanding of the responsible government is that the government must actively fulfill its social obligations and responsibilities, and must assume political and legal accountability. Therefore, the government has a vital importance to protect environmental human rights. The government should firstly raise its own awareness of environmental human rights and put the development of GDP as the second priority. Thus, when making laws, they will give priority to protecting local environmental human rights rather than developing the economy. Secondly, transnational corporations should protect environmental human rights. The definition of a company is an economic organization with legal personality that is established in accordance with legal procedures for the purpose of making profit, where the shareholders are responsible for the company up to the amount of their capital contribution, and where the company is externally liable for civil liabilities with all its assets. We can see from the definition of the company that profit is the primary purpose of the company, but the company is also a social organization, since it is a social organization needs to assume social responsibility, and the issue of environmental human rights is the social responsibility that the company needs to assume in terms of environmental human rights. For transnational corporations, they need to take more responsibility for environmental human rights. Since multinational corporations must have their parent companies, and most of the parent companies of multinational corporations are located in developed countries, and the legal system of environmental human rights protection in developed countries is more perfect and the standard is relatively high, so multinational corporations should not only

comply with local laws and policies, but also comply with the regulations of their home countries on environmental human rights protection. In addition, transnational corporations also need to comply with the regulations on environmental human rights set by international organizations, for example, on August 13, 2003, the Sub-Commission on the Promotion and Protection of Human Rights adopted a draft of the Norms on the Responsibilities of Transnational Corporations and Other Businesses with Regard to Human Rights. The Norms set out the obligations of transnational corporations and other business enterprises to respect the sovereignty and human rights of States, and paragraph 14 sets out their obligations to protect the environment. In this way, the behavior of TNCs will be firmly enclosed in the legal policies of local governments, the legal policies of their home countries, the relevant regulations of international organizations and their own rules and regulations, which will better protect local environmental and human rights.[7]

5.2 Regulation of multinational corporations at the international law level

At present, multinational companies are getting bigger and bigger in the international. They likewise have a certain voice when it comes to participating in rule-making. The rapid growth of MNCs has enabled them to influence international policy and regulation. There are many ways in which MNCs can participate in the development of international regulations, both formally and informally. Informal ways include corporate lobbying groups, which at many international summits have insisted on policies that favor environmental protection and prevent multinational corporations from harming the environment. In addition to the participation of multinational companies in the development of international law, the second point is to promote the development of multinational companies for high-tech, technological innovation and improvement have a key role in the protection and improvement of the environment. Through high-tech products, such as pollutant detection systems, or solar cars and other such high-tech can reduce environmental pollutants. As early as 1983, there was an international soft law regulation on the environmental responsibility of transnational corporations, and the UN Draft Code of Conduct for Multinational Corporations mentioned that multinational corporations should comply with the environmental protection laws and regulations of the host country and consider the international regulations. Although this Act is not in force, it has some implications for the conduct of multinational corporations in host countries. [11] The second international regulation is the "OECD Guidelines on Social Responsibility of Multinational Corporations", which was established in 2011, focusing on the fact that all OECD member countries are allowed to comply with these conventions in their own countries and require the

operators therein to pay attention to environmental issues. Analyzing the above international regulations, this paper can conclude some points. Firstly, the measures for environmental protection are preventive in nature and the protection and detection system should be strengthened so that timely responses can be made. Secondly, pollution should be minimized by updating production technology and training employees. Thirdly, multinational companies should report on the status of protection at regular intervals. Although the above international laws are very weak in regulating multinational companies, some of them may become general principles in international law and regulate the behavior of multinational companies. Therefore, it also lays a good foundation for the future legal regulation. Finally, the establishment of the supervision and accountability mechanism for the environmental responsibility of TNCs' investment. Due to their nature, multinational companies will certainly take cost minimization and profit maximization as their pursuit goals, and it is difficult for them to take environmental protection in host countries as their important strategy and obligation in actual operation and allocate costs to bear this obligation. In order for multinational companies to effectively assume responsibility for the investment environment, it is necessary to establish a monitoring and accountability mechanism when relevant international rules are formulated.[8]

Therefore, in terms of environmental protection and sustainable development, the status of multinational corporations as subjects of international law needs to be recognized to a limited extent, and through their direct participation in the formulation of international law rules and the inclusion of their compliance and responsibility-bearing aspects in international regulation can effectively solve the current dilemma of multinational corporations' regulation. We need to establish a dual-track system of domestic law binding and international law binding for multinational corporations' environmental responsibility and a dual-track system of domestic law and international law to bind multinational corporations' environmental responsibility. Since multinational corporations have the characteristics of transnational operations, but they are not subjecting of international law, there has long been a lack of effective regulation of multinational corporations' behavior at the international level. In recent decades, with the gradual deterioration of the living environment, the survival and development of human beings have been severely challenged. Among them, population, consumption and technology are the three major factors affecting the environment. The production and sales activities for consumption are the most important links that cause environmental damage, and the growth of consumption sabotage the ecosystem, and multinational corporations play a pivotal role in global production, and their activities have an important impact on the environment. Therefore, to promote the harmonious

development of human and nature, the sustainable development of economy should be realized. The corresponding international laws and regulations must be improved, multinational companies must assume corresponding obligations and responsibilities for the realization of sustainable development.[5]

6. CONCLUSION

Through the analysis of the legal regulation of TNCs in host countries and at the international level, this paper puts forward the proposals that the legal regulation of TNCs should be strengthened at the international level and the establishment of a monitoring and accountability mechanism for the environmental responsibility of TNCs' investment. In the context of globalization, there are examples of TNCs destroying environmental human rights in host countries by virtue of their strong economic power. Environmental human rights are another major theoretical development in environmental protection after human rights and environmental rights. They combine environmental protection with human rights protection, improve the level of environmental protection, and enrich the theoretical basis of environmental protection. Through the analysis of the legal regulation of transnational corporations at the host country and international levels, this paper puts forward the proposals that the legal regulation of transnational corporations should be strengthened at the international level and the establishment of a monitoring and accountability mechanism for the environmental responsibility of transnational corporations' investment. Finally, it aims to strengthen the protection of environmental human rights in developing countries. It is expected that this paper can enhance the attention to environmental human rights of TNCs. If developing countries can learn from the experience of developed countries, citizens can build up the awareness of environmental human rights protection. Transnational corporations in developed countries can strictly comply with laws, policies and regulations. It is believed that the environmental human rights problems in developing countries will be improved.

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