

Environmental Regulation of Transnational Corporations by Host Countries

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Abstract. Transnational corporations play a vital role in the world economic development, is the most important subject of international investment activities, and is closely related to the sustainable development of the world environment. At present, in order to attract foreign capital, many developing countries ignore the importance of environmental protection, which makes many multinational corporations in developed countries transfer high-polluting industries to the outside world, which poses great challenges to the environmental governance of host countries. More and more environmental pollution cases of transnational corporations have occurred, making the international community gradually realize the importance of environmental regulation of transnational corporations. In view of this, this paper mainly makes a comparative analysis of the environmental regulation policies of different countries in the world as host countries. By drawing on, studying and analyzing the advanced experience of developed countries and combining with the current situation and deficiencies of developing countries in the process of development, this paper makes a research and analysis, and puts forward countermeasures and suggestions to solve the difficult problems of environmental regulation of transnational corporations by host countries.

Keywords: Host country; Multinational corporations; Environmental responsibility; Legal regulation.

1. Introduction

Globalization is becoming the mainstream in modern economic activities. With the development of internationalization, enterprises play an increasingly important role in transnational corporations and become one of the important subjects in international investment. With the continuous expansion and development of transnational corporations, environmental problems are increasingly exposed, which poses a great challenge to the host country's environmental regulation of transnational corporations.

Before discussing the issue, it is necessary to clarify the definition of "transnational corporation" and "host country". The concept of "multinational corporation" originated in the United States. In the late 1990s, Lesor, then director of the Tennessee River Administration of the United States, proposed for the first time that the economic organizations engaged in production and management activities across national borders are "transnational" enterprises rather than simply national enterprises. Since then, the term "multinational corporation" has gradually become popular. It was not until 1974 that the United Nations Economic and Social Council decided to adopt the term "transnational corporation" uniformly.

A multinational corporation is an enterprise that establishes subsidiaries or branches in other countries of the world through direct foreign investment, with its original place of registration as its base, to carry out international production and monopolize business activities. Therefore, an important feature of multinational corporations is transnational distribution. Among the countries involved in a multinational corporation, the country where the company is originally registered and the country where the company is located is the home country. "The host country is the country where the TNCS operate. The host country mainly benefits the MNEs by opening up its policies and regulations, while the MNEs mainly benefit the host country by using their superior resources [1]."

Nowadays, the expansion of transnational corporations around the world means the rapid development of overseas investment transnational economy, which brings great development opportunities to the host country. However, while promoting economic development and prosperity

of the host country, the negative impacts brought by transnational corporations cannot be ignored, especially the damage to the host country's environment.

2. Current Situation and Causes of Environmental Pollution by Transnational Corporations

The development of transnational corporations has promoted the global economy and driven the development of international trade, but it has also produced some new global problems. In terms of climate change, for example, one-fifth of human carbon dioxide emissions come from Multinational companies [2].

In the context of current economic globalization, some developed countries are increasingly aware of environmental protection, and with the upgrading and adjustment of industrial structure, developed countries have formulated high standards and perfect environmental laws and enforcement standards, raising the pollution cost of their own high-polluting industries and reducing the development space of environmentally polluting industries. At the same time, due to the imperfection of environmental protection system in developing countries, ineffective administrative law enforcement departments and other factors, transnational corporations are objectively promoted to transfer high-polluting industries to developing countries, which exacerbates the environmental pollution problems in host countries. In order to pursue economic benefits, developing countries usually choose to negotiate compensation settlement rather than fully pursue liability against transnational corporations. The pollution transfer of developed countries, the lack of the system in developing countries, and the lack of accountability in developing countries have caused transnational corporations to transfer the highly polluting industries from their home countries, which has seriously damaged the environmental management of host countries.

In 1984, Bhopal, Madhya Pradesh, India, was the scene of one of the most tragic industrial accidents in world history. The company involved in the case, a chemical plant operated by Union Carbide in Bhopal, India, leaked poison gas for two days in December 1984. A large number of highly toxic gas methyl isocyanate leaked from the chemical plant, causing extremely serious direct losses, even after several years continued to affect the local daily life, the final victims reached more than 200,000 people.

The case is not unique. There are many cases of pollution caused by oil exploitation in Ecuador, and the case of banana pesticide in the United States. "At present, bilateral investment treaties and other international norms only make provisions in principle and in general for the public interest such as environmental protection, but do not specify the liability of multinational companies for environmental damage." Therefore, how to perfect the legal system of environmental damage liability of the host country to transnational corporations and strengthen the environmental regulation of the host country to transnational corporations have become the current topic to be solved.

3. The Regulation of Environmental Responsibility of the Host Country of Transnational Corporations

At present, the relevant regulations on environmental pollution in developed countries have been relatively perfect. By comparing the environmental legal system of the United States, the European Union and domestic, the author analyzes the measures that can provide experience for the host country and organizations of different nationalities to solve the environmental pollution problems of transnational corporations.

3.1. American Environmental Law System

Aiming at various aspects of environmental protection, the federal government of the United States has formulated a detailed environmental legal system with the National Environmental Policy Act passed in 1969 as the core, forming a complete environmental legal supervision system. For different

subjects, the United States also provides different specific measures to achieve environmental responsibility regulation.

At the citizen level, the United States has established a complete public interest litigation system to ensure the rights of the public and environmental protection organizations to protect environmental rights and interests through litigation, improve citizens' awareness of environmental protection, and create a good environment for environmental protection. At the enterprise level, the United States adopts equal treatment for domestic companies and multinational companies, implements unified environmental standards, and strictly prohibits the implementation of double marks for domestic and foreign companies, so as to eliminate the possibility that multinational companies can evade the responsibility for environmental pollution. At the national level, the US government has stipulated a strict environmental penalty system. If a multinational company fails to fulfill its environmental protection responsibilities, it will face a penalty ranging from a high legal fine to a confiscation of all economic gains of the country. Such a strict penalty system forces multinational companies to strictly abide by relevant laws and regulations [3].

3.2. EU Environmental Law System

Compared with the United States, the European Union, as a regional integration organization mainly composed of developed countries, develops its environmental legal system in accordance with the integration principle.

First of all, the European Union has developed a sound corporate environmental liability system, directly listing transnational corporations within the scope of Europe as the objects of supervision, formulating detailed environmental protection requirements, and creating an environmental insurance system to fully prevent potential environmental damage caused by transnational corporations. Secondly, after more than 20 years of development since the first directive 85/337/EEC was issued in 1985, the EU has formed four assessment types, namely environmental impact assessment, strategic environmental impact assessment, trans-boundary environmental impact assessment and trans-boundary strategic environmental impact assessment, which strongly supports the environmental system of the EU. A high-quality environmental responsibility regulatory system for multinational corporations has been formed. Third, while taking into account the interests of all member states and the EU as a whole, a relatively complete carbon emission trading system has been gradually formed, which objectively promotes multinational companies to take the initiative to undertake environmental protection obligations when entering the EU. Finally, through legislation, the EU adopted the Directive on Environmental Impact Assessment and its amendments, establishing a sound environmental impact assessment system in Europe.

3.3. China's Environmental Law System

In general, our environmental legal system started late, but the development speed is fast, formed the "environmental protection law" as the basis of a complete environmental legal system. At the same time, environmental law enforcement has been strengthened, striving to protect the environment while developing the economy.

The first is to learn from a large number of foreign advanced environmental governance experience and environmental legislation; Second, combining with their own national conditions, on the basis of learning from foreign experience to improve the national conditions, established the environmental legal system suitable for our own development, has achieved a qualitative leap in environmental legal system.

The establishment of environmental law system has provided the behavior code for the investment of transnational corporations in our country and restricted the high pollution behavior of enterprises. Through the western developed countries perfect environmental legislation and environmental management mode of reference, the simple pursuit of the perfection of laws and regulations to improve the efficiency of environmental governance. At the same time, with the continuous maturity of the system, an environmental public interest litigation system with citizens and procuratorates as

the main body has emerged to deal with the environmental pollution control problems of multinational corporations, introducing multiple subjects to participate in environmental governance, which objectively plays a role in supervising multinational corporations' compliance with environmental protection standards in China. But at present, Chinese environmental protection is in the bud stage. How to strengthen the application better is the direction of our environmental protection.

4. Impacts of Host Country Environmental Regulations on Transnational Corporations

Strengthening environmental supervision in host countries can change the investment behavior and mode of enterprises, improve green production efficiency, promote enterprises to fulfill social responsibilities, and effectively maintain the ecological environment in host countries. However, over-strict environmental regulations often leave companies struggling to cope. Strict environmental regulation will increase the cost of foreign investment and weaken the competitiveness of enterprises in the host country market, so as to encourage enterprises to actively adjust their investment strategies and transfer investable projects to countries or regions where conditions permit. Relatively light environmental regulation to maximize profits.

4.1. Impact on Countries along the Belt and Road

In 2013, China first put forward the Belt and Road Initiative. Through the analysis of the North-South trade model constructed by some scholars, the conclusion is drawn on the impact of North-South trade on the environment. The results show that trade liberalization improves environmental quality in developed countries, but has the opposite effect in developing countries. In practice, Indonesian officials have made it clear that Indonesia will not cut emissions further to avoid catastrophic climate change because they prefer to pursue economic growth. If the host country is required to regulate the environment of transnational corporations, it will not only fail to improve the environment, but also aggravate the contradiction between countries in environmental governance [4]. Based on this, China timely put forward the concept of green "One Belt, One Road" development, alleviating the contradiction between developed and developing countries in environmental governance, changing the situation of environmental protection and economic development, and achieving the balance and coordination between the two.

Although the Belt and Road Initiative has reduced environmental quality in developing countries, there is no denying that it has improved the quality of the environment in various countries along the route. In general, we must continue to promote the further expansion of the green "Belt and Road" concept, strengthen technical cooperation among countries along the routes, and improve the energy mix of polluting enterprises. Starting from the transnational corporations themselves, they should take the initiative to comply with the environmental protection policies of the host countries, so as to better realize the environmental regulations of the host countries along the "Belt and Road" to transnational corporations.

4.2. Case Study of Transnational Corporations in Angola

In some resource-rich developing countries, there is a phenomenon known as the "resource curse", in which resources lead to lower growth, lower human development and rising inequality [5]. In other words, rich resources do not mean that they can occupy a dominant position in international investment activities. The rich business experience and strong economic strength of transnational corporations make their position in transnational activities very prominent. In this predicament of "resource curse", if the intensity of environmental governance is strengthened, it will inevitably bring the negative impact of environmental regulation, which will be a problem that cannot be ignored for the development of the host country [6].

As the second largest oil producer in sub-Saharan Africa, Angola's rich oil resources have attracted a large number of transnational oil companies to make direct investment in the country. In 2006,

Angola's oil exports amounted to \$30 billion, but at the same time, the extensive exploitation of resources has caused a serious disconnect between Angola's extractive industry and the national economy, and the country has little income from the exploitation of resources [7]. At the same time, multinational corporations fail to comply with relevant corporate social responsibility policies in Angola, which also brings a certain negative impact on Angola's social governance system. The two major issues of environmental governance and social governance are complicated and intertwined. Therefore, when conducting environmental regulation in Angola, it is necessary to take into account the influence of governance means on transnational corporations; otherwise, the contradiction between social governance and environmental governance will become increasingly aggravated.

Corporate social responsibility (CSR) plays an important role in solving the problem of interaction between TNCS and host countries through the case study of MNCS in Angola. It is not necessarily in line with the interests of the company if the host country simply adopts environmental regulation means. However, through the CSR behavior of transnational corporations, the improvement of corporate social responsibility policies, starting from the intersection point between transnational corporations and government activities and responsibilities, while trying to meet the interests of transnational corporations, the dilemma of environmental regulation of the host country for transnational corporations can be solved.

5. Suggestions on Regulating the Environmental Protection Responsibilities of Transnational Corporations

As mentioned above, at present, countries around the world still have some shortcomings in the establishment of environmental liability rules system for transnational corporations. How to further improve and strengthen the legal regulations of host countries on transnational corporations and realize the sustainable development of global economy and environment still face some pain points. Based on the current experience of developed countries, the legal regulation of transnational corporations in host countries can refer to the following suggestions.

5.1. Further Improve the Host Country's Environmental Governance System

First of all, we should strengthen the improvement of domestic legislation and relevant laws and systems of international investment agreements we participate in as soon as possible, and strengthen the implementation. Laws should be strengthened to punish transnational enterprises for pollution, and environmental law enforcement should be strictly enforced to improve environmental management of transnational enterprises in host countries. At the same time, the host country should also raise the corresponding threshold for foreign capital access, abandon the traditional mode of blindly pursuing economic benefits to attract foreign capital, increase environmental standards for the establishment of multinational corporations, improve the threshold for foreign capital access, and prevent high-polluting enterprises from entering the host country.

As some scholars have said, environmental protection and other issues belong to the category of "supranational law" regulation, and the old theory and principle of international jurisdiction can no longer provide a satisfactory answer to this, so we should actively explore the road of "extraterritorial regulation" [8]. Moreover, environmental pollution caused by transnational corporations in host countries not only affects the local economic environment, but also damages the human rights of local residents. For the improvement of legislation and the formulation of international agreements in the future, it is necessary to clearly identify the liability of transnational corporations for environmental damage and increase the provisions of procedural obligations. In the face of environmental problems, the concept of "prevention rather than treatment" should be made clear, so as to fully prevent and deal with the damage to the environment and human rights that may be caused by international investment of transnational corporations.

5.2. Enhance the Responsibility of Multinational Corporations

In essence, the environmental pollution problem of the host country is caused by transnational corporations, thus bearing the obligation to fulfill environmental protection and bear the responsibility for the adverse consequences [6]. Therefore, the supervision and treatment of environmental pollution of transnational corporations not only rely on the function of host government, but also need to improve the awareness of environmental protection of transnational corporations themselves.

To be specific, transnational corporations should consciously abide by the relevant laws and regulations and national policies of the host country, in particular, they should not take advantage of the legal loopholes of the host country to avoid sanctions for violating laws. Enhance their own sense of responsibility to ensure that the relevant production and operation activities of the enterprise comply with the regulations of the host country. At the same time, regular publicity and education activities are carried out for senior executives of multinational companies to improve their consciousness and sense of responsibility. It is also necessary to strengthen the publicity to the employees of multinational companies, improve their overall participation in environmental protection awareness, and play a certain supervisory role in their daily work and life.

5.3. Strengthen the Role of International Organizations

In response to the challenges brought by economic globalization, various international organizations have sprung up. Take the more typical Organization for Economic Cooperation and Development (OECD) as an example. Although the Organization for Economic Co-operation and Development (OECD) enjoys a powerful voice in the world, as an international organization, Its scope extends only to internal member states. The OECD is made up of 38 countries, 34 of which are developed. Therefore, the average level of environmental protection among OECD member countries is relatively high, which provides extremely favorable conditions for the legislative attempts to create a compulsory and binding institutional environment among governments. There are also many NGOs in the field of environmental protection. By using the means of public opinion supervision, these NGOs have formulated some norms, which have played a role in urging multinational companies to fulfill their environmental obligations.

Based on their special nature, international organizations can refer to the governance style of the European Union. Detailed regulations on environmental protection, and directly binding multinational companies, actively participate in the creation and improvement of international environmental rules, provide policy suggestions for the construction of international environment, complement the formulation of international environmental conventions, can be more targeted to solve international and regional environmental problems. Strengthen the supervisory role of international organizations over transnational enterprises, grant them partial action powers within a reasonable legal framework, assist host countries to investigate and solve environmental pollution problems caused by transnational corporations, and make necessary contributions.

6. Summary

As mentioned in this paper, transnational corporations have developed rapidly in recent years. However, the supporting laws cannot well adapt to the needs of The Times. The host country cannot regulate transnational corporations well at the legal level, and there are many regulatory dilemmas in the performance of responsibilities of transnational corporations, which pose a great threat to the environment of the host country.

However, the environmental regulation of transnational corporations is a very complicated legal issue, which can not be solved perfectly for the host country in a short time. Existing laws in the field of international investment focus on maintaining the investor's right to operate in the host country to the neglect of the host country's right to proper management, which is not well thought out [9]. All the countries should play their own role in protecting the law. In 1992, the International Standards Organization (ISO) was requested to act more extensively regarding the compilation of environmental

management standards [10]. Therefore, how the host country constrains transnational corporations to better fulfill their environmental obligations so as to effectively produce good results and achieve a win-win situation between the host country and transnational corporations is an indispensable and important link to promote the sustainable development of the world economy. Host countries should pay more attention to play the regulatory role of their own laws and overcome the contradictions with transnational corporations, so as to find the right position in the global governance system.

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