The Environmental Protection Responsibility of Multinational Enterprises

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Abstract. In the context of economic globalization, more and more multinational enterprises are choosing to move their highly polluting companies to low-income developing countries that are rich in resources, and these highly polluting enterprises are causing huge disasters to the environment of these developing countries. Therefore, multinational enterprises need to take responsibility for environmental protection. However, it is not enough to rely on the self-regulation of multinational enterprises, but the international community, together with the home countries of multinational companies and host countries, should also regulate multinational companies.

Keywords: Environmental protection; Multinational enterprises; Corporate social responsibility; Regulatory measures.

1. Introduction

Since the 1970s, developed countries have implemented strict laws on environmental protection and gave severe penalties to enterprises who violate the relevant laws. At the same time, multinational enterprises from developed countries started to transfer high pollution and high energy consumption industries to developing countries. These industries caused serious damages to the environment of developing countries. The transfer of pollution has even become a significant motivation for some multinational enterprises to invest abroad. The research of the Organization for Economic Cooperation and Development has shown that in recent two to three decades, environmentally harmful industries have been moving to low environmental protection and low-income countries, resulting in a sharp increase in pollution-intensive enterprises in developing countries, and this trend is worsening. Typical examples are the 1984 industrial gas leak in Bhopal, India, and the oil contamination in Ecuador.

2. Theoretical Basis of Environmental Responsibility of MNEs

According to the situation mentioned above, holding companies responsible for the environment, both ethically and legally, has become a priority. Enterprises must not only exist as vested interests, but also take responsibility for the social problems arising from their economic activities.

2.1. From the Perspective of Enterprise Social Responsibility

The theory of enterprise social responsibility was formed in the 20s of the 20th century, when major Western countries believed that the basic concept of enterprise legislation was to maximize the personal interests of shareholders, and the sole purpose of company operators was to maximize the interests of shareholders, and the so-called corporate social responsibility was not recognized by the ruling party and legislator [1]. However, the subsequent global economic crisis has turned the theoretical dilemma around. Since then, with the development of social economy, enterprises have gradually strengthened their social impact due to their economic advantageous position, and the drawbacks of completely pursuing the concept of maximizing shareholder interests have become increasingly apparent, which in turn poses a threat to labor protection, consumer rights and interests, social order and resource environment, and impacts the balance of interests of individuals, enterprises, governments and even society. In this context, the theory of corporate social responsibility has gained preliminary recognition. In the 60s and 70s of the 20th centuries, environmentalism was booming,

and the focus of corporate social responsibility was correspondingly tilted towards natural resources and the environment. In the 90s of the 20th centuries, the connotation of stakeholder theory was clarified and expanded, which led to the further in-depth development of corporate social responsibility theory and practical activities, emphasizing that the scope of corporate social responsibility should include employees, consumers, customers, creditors, suppliers, governments, communities and even environmental interests.

2.2. Theoretical Foundations of MNEs' Environmental Responsibility to Host Countries

The UN Sustainable Development Goals consider that corporate value creation should encompass three aspects: "First, environmental sustainability, i.e., safeguarding the long-term stability and resilience of the ecosystem that supports human existence; second, social sustainability, i.e., promoting respect for and development of human rights; and third, economic sustainability, i.e., meeting the economic needs of a stable and resilient society [2]."

Corporate environmental responsibility needs to be implemented on every individual enterprise, involving core interests such as costs and benefits. Empirical analysis shows that companies that actively assume social responsibility often achieve better results [3]. The economic activities of transnational corporations had caused enormous damage to the environment of the host country and should be responsible for protecting the environment, restoring or compensating for the damage to the environment. Only by doing the above can the host country have sustainable resources and a good environment to support the economic activities of multinational enterprises, and multinational enterprises can achieve sustainable development in the host country.

3. Existing Regulatory Measures for Multinational Enterprises

Despite the fact that the economic activities of MNEs cause serious damage to the environment of host countries, there is still a huge lack of environmental protection measures for MNEs in host countries as of now. So, in the intervening two or three decades between the massive transfer of polluting enterprises by multinational corporations, both the international community and the home and host countries of MNEs have developed a range of treaties and regulatory measures.

3.1. International Conventions

In response to the growing environmental crisis, international organizations have accelerated the process in environmental protection, and a series of norms have been developed. These numerous international environmental protection norms include both binding international environmental conventions and various declarations. As of 1988, the United Nations Environment Program listed 140 multilateral international conventions and agreements on environmental protection, with more bilateral environmental protection treaties signed between countries. For example, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the International Convention on Civil Liability for Oil Pollution Damage, the Vienna Convention for the Protection of the Ozone Layer, etc [4]. These conventions required countries that have concluded conventions to comply with the provisions and add the spirit and principles into domestic laws [5].

3.2. Home Country’s Regulation of MNEs

Under the trend of global economic integration, outward FDI by MNEs can have an impact on the host economy; as the scale of outward investment expands, home countries are increasingly concerned about the impact of outward FDI on their own economic development. At the same time, according to the principle of personal jurisdiction under international law, a country has the same regulatory responsibilities towards MNEs with its own nationality. The relevant regulatory duties of the State are both a sovereign duty and a corresponding international obligation of the State. In the

event that a State fails to fulfil or fails to properly fulfil its obligation to regulate the environmental protection of multinational parent companies and subsidiaries in its territory in the course of their production and operation activities, the State should be held liable for the damage caused by the environmental violations committed by these companies.

Home country control over its own overseas subsidiaries can be achieved indirectly by regulating the parent company by legal means. The duty of home countries to regulate the overseas operations of multinational corporations is reflected in the fact that home countries have both the power and the duty to supervise multinational corporations to prevent environmental and human rights violations throughout the supply chain. The United Nations Human Rights Council has formally recognized the right to a safe, clean, healthy, and sustainable environment as a human right of great significance [6]. In a way, the damage done by MNEs to the environment of host countries is essentially damage to human rights, and the OFDI of MNEs is inextricably linked to the support of home countries. "While MNEs' international investment decisions depend to a large extent on the policies and rules of the host country, a growing number of international investment practices show that home country measures also have a strong influence on investors' investment decisions and are increasingly becoming a focus of investors' attention" [7]. MNEs need the help of home countries in situations involving market access conditions, conflicts with host countries, etc. The corporate strategies of MNEs also reflect national policy orientations. Especially in the field of international trade and international investment, MNEs often convert their corporate interests into national will, and the state then converts this will into international legal norms by participating in international legislation. Therefore, it is necessary to pursue the state responsibility of the home state for the environmental damage caused by MNEs' overseas investment in the host country from the perspective of the home state's obligation to regulate overseas investment.

3.3. Host Country’s Regulation of MNEs

From the perspective of protecting victims, the credibility and economic power of the state is incomparable to other subjects such as natural persons, multinational corporations, commercial organizations, and non-governmental organizations. The basis of state liability for environmental damage to multinational corporations lies in the negligence of host and home countries in fulfilling their obligations to supervise multinational enterprises, and the mutual influence of parent companies, subsidiaries, host countries, and home countries in the international production and operation activities of multinational enterprises. This is consistent with the jurisprudential basis of natural justice for immutability.

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 [8]. From the perspective of international environmental law, a state's right to proper management derives from its resource sovereignty, and the host state's obligation to regulate multinational corporations to protect the environment corresponds to the host state's right to environmental management. This obligation requires that when the behavior of multinational enterprises causes environmental damage to the host country, the host country should deal with the relationship between multinational corporations' investment and environmental protection by the fundamental that environmental standards should not be lowered. The host country should always pay attention to the protection of the environmental rights of the host country by multinational corporations and has the obligation to remedy and guarantee such environmental damage in its country; the state has the responsibility to compensate and make up for the lack of responsibility of private subjects when they are unable to bear the responsibility.

Take Japan as an example to manifest environmental prevention system. Since 1990s, aiming at the root causes of pollution, Japan has vigorously promoted “the pollution prevention and control administrator system” in enterprises, and established "clean production", "green products", "eco-labels" and "product life cycle assessment". The system has effectively promoted the implementation of pollution prevention [9].

4. Lack and Imperfection of Regulatory Measures and Their Causes

4.1. International View

The conventions and declarations mentioned above can be said to be "international soft law". Using "international soft law" to regulate the social responsibility of multinational enterprises, the primary basis is the initiative of multinational enterprises to recognize and accept, once the multinational enterprises for "soft law" does not accept, then the relevant guidelines and principles are unable to play a significant role in the social responsibility of multinational enterprises. Therefore, only rely on international treaties to regulate multinational enterprises may not be effective.

4.2. Home Country and Host Country's View

4.2.1 Limited ability of MNEs to assume liability and scope of compensation

Most multinational enterprises are parent companies in their home countries and set up in other countries in the form of subsidiaries. After an environmental pollution accident, multinational corporations can effectively avoid their own liability by virtue of the limited liability system of their subsidiaries, thus indirectly reducing the amount of compensation. If the multinational corporation causes a huge amount of compensation for environmental damages, its entire assets may not be sufficient to actually bear the entire liability; if it goes bankrupt after settling part of the compensation, the remaining outstanding portion will be exempted. Under such circumstances, the victims' avenues of redress are limited, and the restoration of the damaged ecological environment is difficult to achieve [10].

4.2.2 Difficulty in establishing causation for environmental damages in MNEs

When a multinational corporation is held liable for environmental tort damages under tort liability law, the victim making the claim is obliged to prove that the environmental tort has a cause-and-effect correlation with the outcome of the environmental damage loss. However, in environmental torts, due to their highly specialized and technical nature, it is difficult for the victim to make an accurate analysis, judgement and proof of the cause of the tort. Environmental torts are also characterized by the fact that the consequences of the damage suffered by the victim may often be the result of a cumulative combination of multiple perpetrators emitting polluting substances over a long period of time. Environmental damage by multinational companies often involves aspects such as climate change and biodiversity and is fraught with scientific uncertainty. From a risk perspective, it is difficult to predict damage before it occurs, and it is also difficult to predict subsequent damage after it has occurred. The damage caused by transnational corporations to climate change and biodiversity is progressive in nature and exact scientific data is difficult to capture in a short period of time, the quantitative value of changes in environmental damage is not easy to estimate, and there is uncertainty as to the duration of the damage, the geographical scope of the changes, etc., making it very difficult to obtain objective evidence. The liability of multinational companies for environmental damage is therefore uncertain due to a lack of evidence. With some 3,000 of the world's largest companies currently causing £1.4 trillion of environmental damage annually, the climate refugees caused by MNE carbon emissions and other social aspects of climate change are clearly not included in the environmental costs of corporate activity. In legal terms, it is clearly difficult to establish a causal link between the carbon emissions of multinational corporations and the consequences of the social damage problems they cause, such as climate refugees.

5. Recommendations for the Environmental Problems Caused by MNEs

5.1. Piercing the Corporate Veil

Piercing the corporate veil is also called the corporate personality denial system. As subsidiaries enjoy independent legal personality, courts in some countries have interpreted company law, bankruptcy law and tort liability law to treat the parent company of a multinational corporation as a

whole, holding that the parent company owes the same duty of care to its overseas subsidiaries not to cause danger and damage to the ecological environment through its production and operation activities as the company itself. In this case, if victims are allowed to sue the parent company of a multinational corporation in the courts of the location of its parent company (usually its home country), and the local courts have jurisdiction over the environmental damage cases of the multinational corporation, the dilemma of the limited ability of the multinational corporation to assume liability can be somewhat eliminated.

For the improvement of the legal personality denial system, the following three aspects can be started: first, to clarify the scope of "shareholders", to further improve the provisions of the shareholders of the company, the "shareholders" in the application of the legal personality denial system, including not only natural shareholders, but also Secondly, to further clarify the rights of the denial of legal personality system, that is, the subject of qualified plaintiffs, where the creditors include creditors of contract debts and tort debts, and is not limited to natural persons and companies, but also includes social welfare organizations and state power institutions; finally, to clarify the system Finally, the scope of application of the system and the circumstances of application, especially the specific circumstances of application of the denial of legal personality of the parent and subsidiary, to provide a specific standard for the "abuse of the independent status of legal persons and limited liability of shareholders", such as the parent company's control over the subsidiary exceeds the normal scope, the occurrence of mixed property, mixed business, etc., especially the infringement or violation of business is done under the decision and control of the parent company In such cases, the parent company should be held jointly and severally liable for the subsidiary's debts [11].

5.2. Trade and Tax Restrictions

First, trade restriction is an important aspect, including restrictions on products, restriction on partner countries and tax mechanism.

As for restrictions on products and countries, in trade negotiations, countries should refrain from trade agreements with developed countries that do not have an effective carbon price Moreover, in trade relationship, PPM-based trade discrimination should be applied [12]. PPM, product differentiation on the basis of process and production methods, refers to treating products differently based on their process and production method. For example, a carbon tax on the income of FDI derived from fossil fuel extraction should be applied [12].

Besides, tax mechanism is another efficient way. If one country complies strictly with international environmental regulations, it may undermine the competitiveness of national industry advantages, compared to others who do not comply with. To evade unfairness and protect the former countries, Carbon border adjustment is suggested [12]. It means that an import fee levied by carbon-taxing countries on goods manufactured in non-carbon-taxing countries. Such a tax could be applied by countries adhering to the Paris Agreement and could be in line with international trade rules. Furthermore, Bureau et al. also claims that a uniform import tariff on low-ambition countries' exports should be taken. It would be applied by a "club" of countries adopting ambitious and binding policies to fight climate change, against all imports from countries outside of the club. The tax would therefore act as an incentive to join the club, so as not to be subject to its payment. The tariff change would be effective at shielding ambitious and binding climate policies against competition from less committed countries. Therefore, the efforts against carbon emission and climate change will be consolidated.

5.3. Home Countries' Regulatory Responsibilities and Measures Towards MNEs

Although multinational corporations are engaged in highly polluting economic activities mostly outside the home country, the home country should raise the awareness of the community of human destiny. Since the treaties developed by the international community are mostly "soft law," the relevant provisions of international treaties can be refined by the home state and transformed into domestic law. Once international conventions become binding and mandatory norms for enterprises

operating within the scope of a country's territory. In this way, multinational enterprises can become indirectly responsible for the environmental aspects of international environmental conventions.

In response to the problem of conflict between the limited liability system and environmental liability in the international environmental liability of multinational corporations, we try to introduce the "environmental liability fund support design" in the international environmental liability mechanism of multinational corporations. This design has precedents in the field of international environmental law, for example, the 1971 Convention on the Establishment of the International Fund for Oil Pollution Damage sets a relatively comprehensive framework for the international oil pollution damage compensation fund system and stipulates the purpose of the fund establishment, the scope of compensation and the limitation of liability, as well as other important aspects. The main purpose of this "liability fund support design" is to ensure that the victim countries or the international community can obtain timely and adequate compensation for environmental pollution and damage caused by the operation of multinational corporations, and to prevent multinational corporations from evading international environmental liability through the limited liability system and fault-based liability system. The specific design is to establish a global environmental liability insurance system for multinational corporations or to establish a host country environmental liability compensation fund as a condition for multinational corporations' investment entry [13].

6. Conclusion

In the face of increasingly serious environmental problems on a global scale, both international organizations and home countries of multinational corporations, as well as host countries and multinational corporations themselves, have an inescapable responsibility. All parties in the international community should therefore assume their respective responsibilities. This is important for achieving the goal of "carbon neutrality" and for building a better community of human destiny. Of course, there is still a long way to go in order to unite all parties to form a synergy to solve the environmental pollution problems caused by multinational companies.

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