

Evaluating the Role of International Law in Curbing Multinational Corporations Malpractices in Developing Countries

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Abstract: *In this study, we examine the detrimental practices of multinational corporations MNCs in developing countries and assess the role of international law in mitigating these issues. Despite globalization fostering industrial relocation to reduce costs and maximize profits, this shift has led to significant human rights, environmental, and worker safety violations, exemplified by incidents in Cajamarca and Bhopal. We argue that while current international law mainly offers rights without obligations to MNCs, a robust legal framework, including the establishment of an international business court and adherence to corporate social responsibility CSR, is crucial to combat these malpractices. Employing inductive and mixed - methods approaches, we analyze various case studies to underscore the necessity of a reformed international legal system in addressing the multifaceted challenges posed by MNCs in the host countries.*

Keywords: Multinational Corporations, International Law, Corporate Malpractices, Developing Countries, Corporate Social Responsibility, CSR

1. Introduction

Multinational corporations are playing very important role in the world's economy because MNC is very huge in size and each MNC can contain several subsidiaries in many countries.

Meanwhile there are 60, 000 MNCs worldwide which are controlling more than 500, 000 subsidiaries in the world and the number considered the half of international trade¹, moreover USA possess about 44% of the MNCs compared to 22% European MNCs firms.²

The first multinational corporation was founded in the sixteen century and that was accompanied with the creation of European Tracking companies specifically the Dutch and English ones.

In the history, the MNCs helped a lot in the development of the European economies as most of the MNCS were established in the colonies which were under control of the European power.

In the nineteenth century, the multination national corporations were in the mining, oil and agriculture sectors and until now there are MNCs which still exist in the fields.

In the twentieth century, most of the MNCs were changed to be more in manufacturing, because the companies founded barriers in customs and tariffs issues specifically in exporting the products, as a result most of the companies preferred to move directly to the market to eliminate those kinds of barriers, and it was strategy used by the European

and Japanese cars - manufacturers who they opened subsidiaries of their cars manufactures in USA in order to reach directly the market.

After globalization many big companies had started to create entities and subsidiaries in all over the world and specially in the poor countries, unfortunately the goal behind the creation of those subsidiaries was to reduce costs and maximize profits, besides those benefits created many problems to the host countries as like environmental problem and human rights problem.

In 1996 the Union Oil Company of California and its subsidiaries had been accused by Burmese villagers of making many crimes against them as the multinational company was in charge of building a gas pipeline in Burma and it had made many crimes against civilians as like forced labor, wrongful death, false imprisonment and rape³.

All those crimes considered as human rights violations and sadly human rights are not covered by the international law concerning the multinational corporations' malpractices, but the villagers sued the company in the US courts and it took more than fifteen years to acquire the judgment, and it was the first kind of a human rights lawsuit that was made against multinational company, and the company compensated all the victims.

Moreover, Cajamarca is a province in Peru which contains gold mine project, besides Cajamarca is neighboring Yanacocha which is part of 16 gold mining projects, the mining projects had badly affected the biosystem in Cajamarca because there are four lakes and more than 700 springs in Cajamarca, and the mining process required a lot of mercury substance to isolate the gold from the rocks, unfortunately the multinational company Minera Yanacocha

¹ " Multinational corporations", Espace Mondial L'Atlas, September 28,2018, <https://espace-mondial-atlas.sciencespo.fr/en/topic-strategies-of-transnational-actors/article-3A11-EN-multinational-corporation>

² Y.K.Shetty," Managing the Multinational Corporation: European and American Styles",jstor,1979, <https://www.jstor.org/stable/40227469>

³"The first case of its kind: holding a U.S company Responsible for rape, Murder, and Forced Labor in Myanmar", Earth rights International, <https://earthrights.org/case/doe-v-unocal/>

did not use the safe methods in disposing the mercury and that caused a pollution in the lakes and the rivers.

The polluted water killed the wildlife in the province and more than 900 people were poisoned by drinking the water, besides the multinational company did not only harm the environment but also it destroyed the society in the province, besides about 60% of the export earning in Peru are from mining⁴ and Peru is one of the poorest countries in the world.

The malpractice of MNC in Peru had broken the law and caused many human rights violations because the company did not create a job opportunities for the locals as mining jobs required a high skilled people, and the company brought skilled people from outside the region and the company did not have the intention to train the local people for the high skilled jobs in mining, and this led to high unemployment rate among the local people, also many native people had moved to the province looking for jobs and this created a high inward migration rate which led to a crowded area with high rate of prostitutions and crimes.

Another incident related to the multinational corporation's malpractices which had happened in Shenzhen China specifically in Foxconn technology company.

Foxconn company is Chinese supplier for Apple and Foxconn is responsible for assembling the iPhones, besides Foxconn company used to have more than 450,000 workers, but in 2010 many workers in Foxconn committed suicides, and more than 14 workers died as a result of suicides.

The main cause of the suicides in Foxconn is the toxic working environment, as the workers are exposed to a lot of pressures from the managers, also the managers humiliated them a lot and they lied in their promises by giving the workers raises to their salaries, besides the workers worked for more than twelve hours without a break which is long harsh day and there is a worker who called Xu who said: "it is not good place for human beings"⁵.

Law was broken in Foxconn company when the labors were deprived from their rights to work in healthy environment, and there is a clear human rights violation in the managers' humiliations to the workers during the working hours which is touching badly the workers' dignities and this is obvious in article 1 of the human rights declaration: "All human beings are born free and equal in dignity".

Also depriving workers from their leisure time is also a human right violation and this is mentioned in article 24: "Everyone has the right to rest and leisure, including reasonable limitations of working hours and periodic holidays with pay".

Furthermore, Nike is another case of multinational corporation's malpractice which made human rights

violations also it broke the international labor law, as in 1998 speech at the national press club in Washington DC: "the Nike product has become the synonyms with slaves' wages, forced overtime and arbitrary abuse. I truly believe that the American consumer does not want products made in abusive condition"⁶.

After globalization Nike's directors decided to move their manufactures to the developing countries in far east, and the reason for choosing of the poor countries was to reduce the cost, but Nike did many mistakes to reach its financial goal as like hiring children with low wages, giving the workers a very toxic working conditions, also forcing the workers to do overtime jobs without compensations.

Nike made a human rights violations when it hired children to work in its manufactures which is also a violation on the international labor law, likewise Nike did not offer the workers a safe working place, and Nike deprived the workers from the free time.

Moreover, The deadliest disaster that had been made by multinational corporation was in Bhopal, India in 1984; more than 2000 persons were died because of the explosion in Union Carbide India Limited (UCIL) pesticide plant in Bhopal, and because of the explosion a massive leak in the methyl gas had happened in the region, besides more than 500,000 people exposed to the poisonous gas and resulted thousands of victims and injured people.

The News week described the morning in Bhopal: "it looked like a neutron bomb had struck, buildings were undamaged but humans and animals littered the low ground turning Bhopal into a city of corpses."⁷

50% of UCIL shares were owned by union carbide (UC) for that reason more than 145 lawsuits against UC had been made by the families of the victims in the USA courts.

After long time of investigation by the juries of US court, the judgment proved that UC was responsible for the explosion because the design of the plants in Bhopal was not drafted on the base of the high safety standard that is existing in the parent company UC.

The US courts had only compensated the victims with money but it did not arrest anybody, and the Indian courts judged to arrest some managers in UCIL but no one had entered the jail and they only paid penalties also they escaped the judgment.

The Bhopal accident proved that there is weakness in the judiciary system related to multinational corporations' malpractices, because the judgment was not fair enough to the victims, and it took long time to acquire the judgment and there were actually two courts from two different countries who involved in the investigation and this made a

⁴ "Conja Cajamarca Mine Case- International Rights of Nature Tribunal Lima", Garn Communication, December 26, 2014, <https://www.garn.org/conga-cajamarca-mine-case/>

⁵ Brian Merchant, "Life and death in Apple's forbidden city", The Guardian, June 18, 2017, <https://www.theguardian.com/technology/>

⁶ Jhon Cushman, "Nike pledges to end child labor and apply US Rules abroad", New York times, May 13, 1998, <https://www.nytimes.com/1998/05/13/business/>

⁷ Marker Whitaker, "it was like breathing fire", News week, December 17, 1984, <https://www.newsweek.com>

conflict of interest, and this accident is required an international commercial court which is impossible to have as the international law does not oblige the multinational corporations by norms and rules which means that MNCs are subject only to domestic law.

Moreover, in China a Chinese journalist was arrested for 10 years because the Chinese authorities discovered an email sent by the Chinese journalist Shi which contained sensitive information about the government.

Shi sent a classified email contained data which described the government's instructions about how the media should act to help prevent social unrest in 50 anniversary of China, and the Chinese authority had known about the email with the help of Yahoo as the email was Yahoo email, and the authority asked Yahoo to disclose the email and Yahoo's director complied with the request, also Jerry Yang Yahoo's CEO said: "if you want to do business in China you have to comply."⁸

Yahoo violates the human rights by its decision in helping the Chinese authorities, because yahoo as multinational corporation had disclosed the privacy of its users' emails and it obstructed the freedom of expression process and both actions considered as human rights violations which are clear in the human rights declaration of 1948.

1) The leverage of multinational corporations on the hosts countries:

Most of the multinational corporations are moving in the developing or poor countries and there are many reasons for this shift as like low tax and tariffs, low labor cost, natural resources and weak governance of the host countries.

Most of the multinational corporations are very eager to have a strong relation with developing countries' authorities as they will facilitate the complicated issues related to the businesses of MNCs, and in the same time the authorities will benefit a lot from investments of MNCs.

In the book of Thomas Risse, we found the statement of power of norms versus the norms of power which is about the multinational corporations' influence on the host country, sometime the MNC can implement its terms and norms on the host countries for many reasons:

- a) Most of the host countries are poor countries and they are in need for businesses in their economies, and MNCs can threaten the host countries to withdraw the investment from their countries if MNCs do not work in their own policies and norms: "the 65 reports alleged abuses by companies in 27 countries, they were mainly low income countries, or on the low side of the middle income category, finally the countries were characterized by weak governance"⁹.
- b) Multinational corporation may use the international arbitration to sue the host country of its investment

which has been negatively affected by the bad administration of the host country.

- c) The subsidiary has contact to its home country as a probable source of political influence, and over it to the international financial institutions such as world bank on which the host country may be subject to support.

As we can see MNCs can be very dangerous on the host countries because the international law does not protect the host countries from the bad influence of the subsidiaries and vice versa.

The multinationals operate as globally integrated entities but not subject to any single global regulator¹⁰, and most of the parent companies are not responsible to their subsidiaries except it is under near day to day operations.

2) Multinational corporations' effects on human rights and environment:

Most of the MNCs' malpractices which we mentioned previously are led to human rights violations, for example in Burma, workers had been abused by their employers and there were many deaths among the workers, also in Peru the people had suffered a lot from the Mining company which polluted the water of the province and caused the death of people and nature, besides the mining company in Peru did not hire the native people which contributed in the increasing of unemployment rate inside Peru, and it is obvious how the human rights and environment protection had been violated in Peru.

Moreover, the Multinational company Foxconn in Shenzhen China had made human rights violations by providing the workers with toxic work environment, humiliations and obligations; and because of the bad environment inside the company workers started to kill themselves and it was a high rate of suicides among workers also this is a human rights violation.

Nike had also made a human rights violation by using children labor in their industries around the world, similarly in Bhopal people and environment were deeply harmed by the gas explosion which polluted the air with methyl gas.

There are no rules in international law that obligate the multinational companies to protect the human rights and environment: "international law in the field of public international environmental law does not address private actor as legal subjects."¹¹

And it is true that international law recognizes the facts that multinational corporations and businesses abuse human rights but with few exceptions: "it does not impose duties directly on the MNCs to refrain from such abuses nor does it currently possess the means that could enforce any such provisions."¹²

¹⁰ John Gerard Ruggie, "just Business: Multinational corporation and Human Rights", (USA: Norton & Company, 2013) p5.

¹¹ Christina Voigt, "International Environmental Responsibility and Liability", SSRN, March 25, 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=379141

¹² John Gerard Ruggie, "just Business: Multinational corporation and Human Rights", (USA: Norton & Company, 2013) p70.

⁸ John Ruggie, "Just Business: Multinational corporations and Human Rights", (USA: Norton and Company, 2013) p16.

⁹ John Gerard Ruggie, "just Business: Multinational corporation and Human Rights", (USA: Norton & Company, 2013) p50.

There are some policies in international law that can be applied on MNCs 'malpractices cases as like money laundering, anticorruption, aspects of environmental protection and child sex tourism but always with human rights it remains limited.¹³

There is no international law that obliges the multinational corporation to protect the human rights and environment, and there are only soft laws originated with the international labor organization ILO and the organization of economic corporation and development (OECD).

ILO announces that all parties including multinational enterprises should respect the universal declaration of human rights¹⁴.

UNGP is also an organization related to united nation that produced in 2015 a soft law concerning the multinational companies' responsibilities toward international human rights, but unfortunately all those soft laws are optional to the companies' will to implement, which means that the MNCs are not obliged by those soft laws.

It is important to mention that: " some 94% of all national regulations related to foreign direct investment that investments that were modified in the decade from 1991 to 2001 were intended to further facilitate it."¹⁵

There are more than 80, 000 multinational corporations around the world and there are only 100 entities which were known to have policies and practices related to human rights and environment.¹⁶

Most of the UN treaties gave little consideration to international businesses practices, even the treaties do not necessitate the states to apply the extraterritorial jurisdiction over business abuse.

Furthermore, states announced the human rights responsibilities of multinational corporations most directly in soft laws.

3) Multinational companies and CSR (Corporate social Responsibility):

CSR had been mentioned for the first time by the economist Howard Bowen in his book (social responsibilities of businessman) in 1953, and CSR has been developed specially after the rise of social and environmental movements.

¹³ Jennifer A. Zerk," Extra territorial jurisdiction: lessons for business and human rights sphere from regulatory areas", HKS, (NA, International Organization Labor , n.d.) (NA, UNCTAD, World Investment 2002, 2002) (Sultan, 2021) (D.Cameron, 2015) (Kamminga, 2004)June,2010, <https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crj/files/workingp>

¹⁴ " What is the ILO declaration MNE declaration", International Labor Organization, <https://www.ilo.org/empent>

¹⁵ "UNCTAD, World Investment Report 2002", (New York: UNCTAD,2002)p7.

¹⁶ "The London Based Business and Human Rights Resource Center Keeps Track of Companies Human Rights Policies", <https://www.business-humanrights.org>

The absence of the international law that can protect the human rights and the environment in the host countries from the multinational corporations' malpractices led to the rise of CSR, which is considered somehow as a legal alternative for the international law, but the weakness of CSR represents by its identification as a soft law.

CSR can contribute in the economic development of the host countries, also the CSR provides a safe work place for the workers far from the toxic working environment, besides CSR gives a fair wages and benefits for the workers.

The CSR is working for the benefits of the stakeholders as like the employees and the society, and CSR puts the profits of the shareholders in the second place of the companies' goal.

There are four main responsibilities in CSR which are Economic responsibility, legal responsibility, ethical responsibility and philanthropic responsibility.

First, The Economic responsibility is related to the multinational corporation 's contribution in developing the host country 's economy specially if the host country is developing country.

Second, the legal responsibility means that the multinational corporation must respect and apply the laws that protect the consumers, labors, environment, equity and safety, also MNC must follow the rules of the host countries.

Third, the ethical responsibility represents by acting in a way reliable with belief of societal and moral standards and norms.

Forth, the philanthropic responsibility is associated with the multinational corporation's charity, and this is including donation and philanthropy.

4) Why most multinational corporations do not commit CSR:

There are many underdeveloped or developing countries that can't oblige the multinational corporations to implement the CSR in their strategies specially toward the legal responsibility, as the host countries will probably have a weak organizational and judicial structures, corruption, lack of punishment system, so in case the multinational corporations violation the laws and rules of the host country there will be not court to judge the violation of the multinational corporation, because there is inefficient justice systems in the host country.

There are many multinational corporations which use the CSR to confuse the public's consideration from other critical business practices done by the multinational corporations as like money laundry.

Moreover, There are many studies proved that the main purpose of using CSR in the multinational corporations' strategies is for financial benefits: " covering 700 academic sources from numerous fields, the result was the primary

reasons for firms to engage in CSR where the expected financial benefits associated with CSR".¹⁷

Furthermore, There are controversial industries which their products terminate their customers and environment as like Tobacco and alcohol industries, and the controversy is in the commitment of those industries in philanthropy and donations activities.

5) International court of justice:

The permanent court of international justice was established in 1920 and UN had established the international court of justice in 1945 after the end of the World War two to solve the problems among nations.

The international court of justice is generally accepted as "authoritative statements of international law."¹⁸

Regrettably, the international court of justice does not play a major in solving the disputes among nations because "Resolution of such disputes, in the end depends on diplomacy or economic or military sanctions, there is no final legal "umpire" for the conflicting authorities of nations."¹⁹

For example, Investors and companies who want to sue the host countries for violations or vice versa, they can't directly submit their claims in the international court, but first companies and investors have to present their claims in the court of their home country, and later the court will decide or not to transfer the lawsuit to the international court: "since there are no worldwide trial court in which private parties can directly file lawsuits, they are forced to use national courts when disputes arise."²⁰ And we mentioned previously some similar cases as like the cases of Cajamarca and Bhopal who their victims spent years in the courts of the multinational companies 'countries to acquire the final judgement.

There are many treaties and resolutions related to the disputes between the multinational companies and host countries that were made during the years, and some of those rules and treaties have become generally accepted, but the international laws are still underdevelopment and in the early stage of maturity, and this situation raises the question about the ineffective role of international law in protecting the citizens of the host countries from the multinational corporations' malpractices.

2. Material and Methods

We used in the text the inductive method as we mentioned many incidences about the multinational corporations' malpractices that had happened in many countries around the world as like Peru, China, Burma, Thailand and India.

¹⁷ Sikander Sultan, "Corporate Social Responsibility", (Great Britain: Expert Of Course ,2021)p53.

¹⁸George D. Cameron, "International Business Law", (USA: Van Rye Publishing, 2015)p4.

¹⁹George D. Cameron, "International Business Law", (USA: Van Rye Publishing, 2015)p.66.

²⁰George D. Cameron, "International Business Law", (USA: Van Rye Publishing, 2015)p.72.

And from those incidences we concluded a general statement which was the absence of effective international law which could prevent those malpractices.

We used in the text the Mixed methods approach which was the quantitative and qualitative methods.

1) Quantitative method:

We used in the text some statistical numbers to prove some important points as like the number of multinational companies with their subsidiaries which was more than 500, 000 entities, also we mentioned the number of employees in Foxconn that was 450, 000 who were working in toxic work environment.

Furthermore, we cited the number of victims in Bhopal which was 2000 persons who died as a result of the explosion.

We declared also the number of multinational companies worldwide which was 80, 000 that did not follow the CSR's policies and procedures, and only 100 MNCs had policies and procedures, besides we mentioned the number of academic sources which was 700 sources proved that most of companies were using the CSR for financial benefits.

2) Qualitative method:

The qualitative method was the main source of data in this article, and we used first the case study research when we mentioned the book of Sikander Sultan about the corporate social responsibility, also another book was used in the text which was about international business law for George Cameron.

We also used the record keeping to collect the data, and there were many sources as like New York Times, News week, International Labor Organization also business and human rights Journal.

3. Results

There were many procedures must be taken into consideration in order to protect the host countries from the multinational corporations' malpractices.

1) Human rights and environment protection should be applied as international law:

most of the accidents that were mentioned previously like Cajamarca pollution, Foxconn 'suicides, Nike and children labor, Bhopal and Burma's environmental destruction could be prevented if human rights and environment protection were treated as international law, and any violation to human rights and environment might be considered as breaking the international law besides penalties could be arranged directly to any violation.

2) Corporate social responsibility or CSR should be an obligation in international law:

We identified earlier in the text the importance of CSR to the host countries, as CSR could contribute in the development of the economy of the host country, also CSR might be a shield against any human rights violations or environmental

destruction, for that reason the international law should oblige the MNCs to implement the CSR in their strategies.

3) Creation of international commercial court:

There should be an international commercial court which specialized in the disputes between the multinational companies and the host countries, since all the lawsuits related to the MNCs' malpractices took long time to be solved, and there would be a lot of steps and procedures to reach the court of the parent company's country.

By the creation of the international commercial court all the parties of the conflict could directly propose a lawsuit and it would take less time in providing the judgement, also the international commercial court had to present the UN in its identity as any decommitment to the court's judgment would be considered as international violation and UN would be in charge of punishing the violators, also the international law should be the official applied law in the international commercial court.

4) International labor law:

The international labor law should be a strict law not a soft law, because there were many multinational companies which hired children with low wages, and they provided the workers with toxic working environment, also the workers' wages were unequal among workers.

International labor law could prevent those malpractices and punish the multinational corporations in case of violation and this law should be applicable in international law.

4. Discussion and Conclusion

The multinational corporations' malpractices are having bad effects on human rights and environment, and most of the malpractices that were mentioned in the text proved the violations against both human rights and environment.

The first reason behind those malpractices is the absence of effective international law that can prevent those bad practices and protect the host countries from any human rights or environmental violation, also the second reason behind the violations of MNCs is the absence of international commercial court that can solve the disputes between the MNCs and the host countries, besides most of the treaties and laws that were made by UN or other international organization as IOL (international organization of labor) are considered soft law that could not oblige the MNC to obey the rules.

Moreover, CSR plays a major role in preventing the companies from doing a human rights and environmental violations.

The results in the text were similar in some points to other research for Menno Kamminga who said: " UN subcommission had adopted in 2003 a text entitled Norms and responsibilities of transnational corporations with regard to human rights, the norms represent an ambitious attempt to codify the principles that companies must respect in the field of human rights, labor law, environmental protection, all the

Norms are considered as soft law instrument that derives its authority from its source in international law. "21

The results were very straightforward for the researchers in my field, and the results were explained clearly and briefly that anyone from other fields or from the public can understand and apply them easily.

The multinational corporations are making a lot of violations in the host countries, and there are many violations which are made against human rights and environment in the host countries, also the reason behind the violation is the absence of international law that can avoid the violations on Human rights and environment.

So, the best solutions to avoid those violations is by empowering the international law with norms and rules against any human rights violations or environmental violations, besides there must be international commercial court that can handle any lawsuit related to multinational corporations' malpractices, likewise CSR should be applicable law and not soft law.

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²¹ Menno Kamminga," Corporate Obligation under International Law "Maastricht university, January 1,2004, https://cris.maastrichtuniversity.nl/files/75441301/Kamminga_200