# Study on Environmental Responsibility of Multinational Corporations in International Investment under the "One Belt, One Road"

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**Abstract.** The importance of multinational firms on the growth of the global economy has been generally acknowledged by the international community under the background of global investment. However, the investment process's negative influence on the environment of the host country is often not taken into account. With the growing conflict between international investment and environmental protection, it is urgent to explore how to make multinational corporations bear environmental responsibilities. In order to explore how to improve the environmental responsibility of Chinese multinational corporations in International Investment, this paper is based on the "One Belt, One Road", and analyzes the existing international legal regulations, the environmental responsibilities of multinational corporations, and the challenges faced by multinational corporations in taking the environmental responsibility. The analysis leads to the conclusion that the issue of environmental protection should be addressed by increasing social responsibility among multinational corporations as well as by enhancing the system for international investment litigation and improving the content of already-existing international investment agreements with regard to environmental protection obligations. This will help Chinese multinational corporations to address environmental protection issues in their overseas investments under the "One Belt, One Road".

**Keywords:** One Belt, One Road; International Investment; Multinational Corporations; Environmental Responsibility.

## 1. Introduction

China has steadily increased its foreign investment in recent years as the level of economic cooperation among the nations and areas along the "Belt and Road" has increased. Meanwhile, many of Chinese multinational corporations are also scrambling to set up overseas markets. At present, China's overseas investment industries are mainly distributed in the mining industry, energy industry, hydropower development, and other heavily polluted industries, and are mostly located in Southeast Asia, Africa, South America, and other environmentally fragile countries and regions. These countries and regions do not have perfect environmental protection laws, and the lack of awareness of environmental protection and social responsibility makes it very easy for Chinese enterprises to pollute and damage the local environment when investing overseas in these countries and regions [1].

It is evident that some corporations neglect or ignore their own responsibility for environmental protection when making foreign investments, which not only exposes them to a variety of environmental risks, but also fundamentally limits the sustainability of the project. Based on this, in order to find the relationship between environmental protection objectives and international investment agreements, and to grasp the root cause of the conflict between environmental objectives and investment protection in international investment agreements. Based on international legal standards, it is essential to examine the inevitable environmental protection obligations of multinational corporations in international investment. Additionally, it is also necessary to discuss the challenges and suggestions for improving the environmental responsibility of multinational corporations in international investment under the "One Belt, One Road". Therefore, this paper attempts to help Chinese multinational corporations avoid environmental risks and build up a good corporate image and reputation in the international investment environment. The aim is also to deepen economic cooperation between China and the countries and regions along the Belt and Road, and to demonstrate the image of a responsible power.

## 2. International regulation of the environmental responsibility of multinational corporation

Currently, the domestic environmental protection laws of the investment host country serve as the fundamental framework for the legal regulation of multinational corporations' and other companies' environmental duty in developing the Belt and Road. However, the corresponding basic international law norms mainly include international environmental conventions and international investment agreements.

### 2.1 International environmental conventions

Multilateral environmental treaties serve as the primary vehicles for international environmental conventions. The most significant ones are waste management policies, maritime environmental protection laws, space environment protection laws, and air quality protection policies. State parties are obligated by their commitments under international law, which include highly detailed standards for the control of the protection of the maritime and spatial environment as well as the protection of natural resources [2]. However, rules relating to the protection of the atmosphere, particularly with regard to international rules in the context of climate change are imperfect. The reason for this is that as a global systemic project requiring global regulation of energy supply and demand and greenhouse gas emissions, it falls within the scope of international governance mechanisms. It has therefore become the most important subject of international environmental law and the focus of conflicting interests and conflicts between States [3].

The 1972-founded United Nations Conference mechanism has played a crucial role in the international legal regulation of climate change. In Stockholm, the United Nations hosted the United Nations Conference on the Human Environment, which resulted in the adoption of the Conference's Declaration. It is regarded as the foundational text and first source of international environmental law. In 1922, Rio de Janeiro hosted the United Nations Conference on Environment and Development. The United Nations Framework Convention on Climate Change, the Rio Declaration on Environment and Development, Agenda 21, and The Declaration of Forest Principle were all signed by 155 nations. In 1977, the United Nations Framework Convention on Climate Change's Kyoto Protocol was signed. It sets greenhouse gas reduction targets up to 2012 and mandatory reduction obligations for developed countries. In 2015, The Paris Agreement agreed on further targets for medium and long-term emissions reduction obligations. However, the announcement of the US withdrawal from The Paris Agreement following the election of Donald Trump as President has led to serious challenges to the international governance of greenhouse gas emission reductions. Although the US has temporarily withdrawn from The Paris Agreement, developing countries, led by China, continue to push ahead and are more fully represented in the international investment arena [4].

### 2.2 International Investment Agreements

China has signed more than 200 agreements for collaboration with 149 nations and 32 international organizations as of 2022 to create the "One Belt, One Road". Among them, the China-Uzbekistan Investment Agreement, signed in 2011, proposes in its preamble to strengthen cooperation between the two countries to promote healthy, stable and sustainable economic development. It also states in Article 6(3) Exceptions to Expropriation that "Non-discriminatory regulatory measures taken by a contracting party aimed at protecting the legitimate public welfare, including public health, safety, and the environment, shall not constitute indirect expropriation except in exceptional circumstances, such as when the measures taken seriously exceed what is necessary to safeguard the corresponding legitimate public welfare." Similarly, the China-Tanzania Investment Agreement, signed in 2013, for the first time includes in its preamble "to encourage investors to respect corporate social responsibility". The Agreement "must not be understood as preventing a Contracting Party from taking or maintaining environmental measures required to protect human, animal, and plant life or health," according to Article 10 Health, Safety, and Environmental Measures. It is clear that China has begun incorporating environmental clauses into the international investment agreements it has signed with nations along the “One Belt, One Road.” However, the majority of the rules, which are most encouraging and not mandatory and do not apply to corporate social responsibility, are only included in the preamble and the levy exclusions.

# 3. Contingency Analysis of the Environmental Responsibility of Multinational Corporations

## 3.1 A necessity for sustainable development

Protecting capital liberalization is a major requirement of international investment agreements. Its emphasis on property interests is in opposition to the public interest that the environment emphasizes. As international investors engaged in international investment activities, multinational corporations seek, first and foremost, to obtain profits and returns on their investments. Therefore, driven by property interests, multinational corporations as investors, are bound to exploit natural resources to the maximum extent possible [5]. Such a result inevitably upsets the balance of the ecological environment. In addition, international investors such as multinational corporations do not pay enough attention to ecological protection, which can easily lead to environmental disasters as a result of international investment practices. For example, taking carbon leakage as an example, in the EU Emissions Trading System, which relies on the implementation of unilateral climate change policies, multinational corporations are most vulnerable to carbon leakage, according to the Carbon Disclosure Project data from 2007-2014 [6]. There is a growing conflict between multinational corporations and the host countries in which they invest due to ecological damage. This has not only led to questions about the meaning and fundamental value of the existence of multinational corporations and the international investment itself, but has also led to serious constraints on economic development due to environmental degradation, which in turn runs counter to sustainable development. Sustainable development is not only about the coherent development of a country’s economy, society, resources, and environmental protection; it is also essentially a legal issue for a country. The inevitability of sustainable development has been largely agreed upon globally. And international investment, as an important part of the development agenda, is also supposed to be a practitioner of sustainable development.

## 3.2 Important ways of safeguarding basic human rights

First, international law provides a foundation for multinational enterprises to protect the environment and fundamental human rights. The place of multinational enterprises in international law has steadily come into focus as the connection between the environment and fundamental rights have been clarified. In the Rio Declaration Environmental Development of 1992, multinational corporations began to be given a limited subjective status, arguing that the responsibility of multinational corporations should be borne by their home countries. In 2011, the UN Human Rights Council unanimously adopted the UN Guiding Principles on Business and Human Rights. It sets out the normative guiding principles, and general principles to which the corporate responsibility to respect human rights should adhere, and in turn, defines the scope of corporate responsibility for human rights. The responsibility of multinational enterprises to protect the environment and fundamental rights is based on this international law.

Secondly, from the perspective of fundamental human rights, the relationship between environmental protection and human rights promotion was confirmed by the United Nations Commission on Human Rights in 1990. Multinational corporations were recognized as subjects of human rights obligations. Therefore, the social responsibility to be borne by multinational corporations is not only a moral responsibility, but also a human rights responsibility.

### 3.3 The requirements of social responsibility for multinational corporations

For multinational corporations making international investments, investment in ecological protection should be a necessary part of the investment. It is not only a necessary cost outlay, but can also be duly rewarded in future ecological dividends[4]. This brings us to the issue of the environmental social responsibility of international investment enterprises. In order to better guide multinational corporations to assume corporate social responsibility, the United Nations formulated the UN Draft Code of Conduct on Transnational Corporations in 1974, which clarifies the environmental responsibilities of multinational corporations. It sets out requirements for multinational corporations to comply with domestic laws and regulations on environmental protection in host countries, to disclose information and mitigate damage, and for international organizations to cooperate in efforts to develop and improve domestic international standards for environmental protection. In 1976, the Organization for Economic Co-operation and Development defined the standards and principles of social responsibility for multinational companies in the Guidelines for Multinational Enterprises [7]. The concept of striking a balance between economic development and social progress has been put forward to regulate the bottomless and endless ecological crises of multinational corporations. Similarly, China's Guidance on Promoting the Green "One Belt, One Road" Construction requires that enterprises investing along the Belt and Road should actively assume environmental social responsibility. This is also a soft law rule for sustainable development in the international community. The above provisions show that the environmental social responsibility of multinational corporations has become one of the social responsibilities that they are bound to undertake in their development.

## 4. Challenges of Environmental Responsibility of Multinational Corporations in International Investment under the "One Belt, One Road"

### 4.1 Weak awareness of corporate environmental responsibility among multinational corporations

There are currently no directly applicable international treaties or conventions on corporate investment abroad. Although some legal documents, such as the UN Draft Code of Conduct Transnational Corporations, are of some guidance, they are not mandatory. Therefore, it is crucial for companies to raise their awareness of social responsibility [8]. However, there is a gap between the perception and practice of Chinese companies' environmental responsibility in overseas investment and that of corporations in developed countries. For example, some enterprises still have the misconception that "investment is a salvation for the local economy of the host country, and social responsibility such as environmental protection is a charity". As a result, they are only interested in pursuing economic interests and neglect their social responsibilities. At the same time, they lacked respect for the ecological environment, did not pay enough attention to the ecological and environmental needs of the host country and its residents, and did not respond promptly. In the end, the company was boycotted by several entities or different organizations on environmental grounds, and faced huge punitive damages.

Another reason that Chinese multinational corporations have suffered failure in overseas investment projects is the relatively weak ability of corporations to promote positive environmental protection. The reason for this is that Chinese multinational corporations have not been investing overseas for a long time, and many of them are still in the process of figuring out what to do. In addition, it has to do with the legal regulations on environmental protection in countries along the "One Belt, One Road". These national laws do not usually require corporations to disclose environmental information, but rather encourage them to provide environmental information on their own initiative[9]. Chinese multinational corporations have consistently performed poorly in terms of transparency in information disclosure. This has resulted in some corporations that have improved their environmental performance being less transparent in dealing with sensitive environmental issues.

Meanwhile, coupled with inaccurate reporting by foreign media, these problems can easily invite suspicion of Chinese multinational corporations from all parties in the host country.

### 4.2 Multinational corporations take advantage of the lack of a legal system to avoid taking environmental responsibility

In judicial practice, it is not uncommon to find cases where the absence of a legal regime for environmental liability has led multinational corporations to avoid assuming environmental liability. For example, in the India Bhopal gas leak case, as Union Carbide India Limited was a limited liability company, the net assets of the company were far from adequate to compensate the victims for their losses. If the Indian company alone were held liable, the actual damage would clearly have exceeded its entire net worth and the interests of the victims would have been severely prejudiced. While the defendant's ability to pay damages would be enhanced if the US parent company were added as a defendant, it would be very difficult to enforce a judgment rendered in India against the parent company of a multinational corporation. In order to act as a plaintiff on behalf of the victims, the Indian government passed laws known as the Bhopal Gas Leakage Tragedy Act as a result of the gas leak. In accordance with the Act, the Indian government filed a case in the Southern District Court of New York on behalf of the victims for a total of about US$3.12 billion. However, the plaintiff's lawsuit was dismissed in 1986 on the grounds of forum non conveniens by the Federal District Court for the Southern District of New York [10]. And the Federal Court of Appeals for the Second Circuit, where the Southern District of New York is located, affirmed the decision made by the court of the first instance in 1987 [11]. It is thus clear that multinational corporations that have caused adverse environmental impacts have escaped environmental recourse.

From the level of substantive law, as the status of multinational corporations as subjects of international law is not clear at present, the environment and basic rights and obligations of multinational corporations are not clearly set. Therefore, in litigation, it is difficult to effectively pursue the responsibilities that multinational corporations should bear. At the level of procedural law, jurisdiction is the main point of contention in environmental dispute cases. Applying the doctrine of forum non conveniens limits the victim's and host nation's freedom of forum selection and helps the participating multinational firms avoid environmental legal responsibilities, leading to an unfair outcome where the victim is unable to receive proper justice. As a result, the lack of legal regulation and the ineffectiveness of environmental laws have led to a proliferation of similar international environmental infringement cases.

### 4.3 Inadequate environmental responsibility provisions for multinational corporations in existing International Investment Agreements

Countries around the world conclude numerous investment agreements in their foreign economic dealings. The process of negotiating international investment agreements is a game of wrestling between negotiating countries to protect their own interests and use their negotiating skills and economic strength as leverage. In the Bilateral Investment Treaty (BIT), developing countries need to bring in international investment from multinational corporations to meet their economic growth needs due to the uneven development of the global economy. In the pursuit of better cooperation, the BIT signed by developing countries rarely includes environmental provisions. For example, most of the BITs signed between China and countries along the "One Belt, One Road" were concluded before 1996. Only some of the BITs have taken environmental protection issues into account to a lesser extent.

More Free Trade Agreements (FTA) than BIT makes general references to environmental protection in their preamble or other general provisions. As mentioned earlier, China's FTA with countries along the "One Belt, One Road" often includes a preamble and a reference to sustainable development or a clause on cooperation in the environmental field. It is worth noting that in 2017, the China-Georgia FTA established a special chapter on "Environment and Trade" to include environmental provisions. At present, the highest level of environmental provisions signed by China is the China-Korea FTA environmental provisions [12]. However, the FTA still does not provide for legally binding dispute settlement procedures and public participation mechanisms in relation to environmental obligations.

# 5. Suggestions for Improving the Environmental Responsibility of Chinese Multinational Corporations in International Investment under the "One Belt, One Road"

## 5.1 Increased self-binding and awareness of responsibility among multinational corporations

Firstly, the binding power of multinational corporations is the key to fulfilling their responsibility for environmental protection. The issue of environmental protection is a balance between ethics and law, and ethics should take precedence. Multinational corporations must have a good moral philosophy, so that their decisions can take into account environmental protection needs. This requires multinational corporations to consider both their own corporate environmental protection requirements and the environmental protection needs of the host country in which they operate when making decisions. Therefore, the multinational corporation could achieve the harmonious development of itself, society and nature in the decision.

Secondly, the establishment of a system for the public disclosure of enterprise environmental information is another possible way. The implementation of an information disclosure system for the environmental behaviour of enterprises is a comprehensive analysis and evaluation of the information collected on the environmental behaviour of enterprises in the course of their production and operation, which is made public to society. By introducing public opinion and social supervision, the autonomy of corporations to control pollution is promoted. Furthermore, corporate environmental information disclosure enables the market to act as an incentive for corporate environmental protection behaviour. It enables companies with good environmental performance to gain a decent corporate image among the public, while forcing companies with poor environmental performance to strengthen their pollution control and improve their environmentally destructive behaviour. Therefore, Chinese corporations should voluntarily disclose their environmental information in countries along the Belt and Road to be monitored by the host market and the public, so that Chinese multinational corporations can take the initiative to improve their awareness of their responsibility and enforcement of environmental protection.

## 5.2 Improving the international investment litigation regime

First of all, the international law subject qualification of multinational corporations should be clarified. At present, speaking of international economic law as well as private law, multinational corporations' international legal status has been generally recognized. However, the regulation of the environmental legal responsibility of multinational corporations is mostly based on "soft law" at the international law level. In addition, the subjective status of multinational corporations has not been clarified in the "soft law", so it is difficult to set binding rights and obligations for multinational corporations. Therefore, clarifying the status of multinational corporations as subjects of international law and setting out detailed rights and obligations are the prerequisites for effectively regulating the environmental legal responsibilities of multinational corporations. For example, the UN Guiding Principles on Business and Human Rights make clear in article 12 of the chapter on the corporate responsibility to respect human rights that the responsibility of business enterprises to respect human rights refers to internationally recognized fundamental rights, including at least those set out the Declaration on Fundamental Principles and Rights at Work of the International Labour Organization. This constitutes the international legal basis for the environmental and fundamental rights obligations of multinational corporations. However, at a stage when the status of multinational corporations as subjects of international law has not yet been explicitly recognized, the primary measure to make multinational corporations assume their environmental and fundamental rights obligations is still to strengthen state regulation of multinational corporations. Therefore, China's investment enterprises in countries along the "One Belt, One Road", need to comply with their obligations to safeguard environmental and environmental rights, as well as the regulatory acts of the host government.

Secondly, the abuse of the Doctrine of Forum Non Conveniens should also be limited in order to safeguard the environmental responsibility of multinational corporations. The Doctrine of Forum Fon Conveniens is designed to achieve the objective of effectively preventing plaintiffs from choosing, to the detriment of justice and defendants, courts that are inconvenient to litigate in, and to the detriment of defendants. However, in judicial practice, the jurisdictional forum chosen by the victim is often denied by multinational corporations invoking the forum non conveniens doctrine to challenge jurisdiction [13]. The doctrine of forum non conveniens has inevitably become a shield for some multinational corporations to avoid environmental liability due to the unfairness of alternative court decisions and the lengthy re-litigation cycle. Therefore, appropriate measures should be taken to effectively reduce the abuse of the forum non conveniens principle.

### 5.3 Optimizing existing international investment agreements

As mentioned earlier, the provisions on the environmental responsibility of multinational corporations in international investment agreements are inadequate. Based on this, this paper argues that the design of the environmental regime in investment agreements should first be optimized. The effectiveness of environmental agreements should be clarified, and the legally binding nature of environmental provisions should be increased. That is, international investment agreements should clarify their relationship with environmental agreements. In the event of a conflict of treaty application, environmental provisions should be given priority effect. In addition, international investment agreements should further incorporate environmental clauses into specific provisions. Starting from the substantive provisions, and even procedural provisions, to improve the enforcement and legally binding effect of environmental provisions, so as to truly play a role in the regulation of the environmental rights and responsibilities of multinational corporations.

Second, to further strengthen the defense of basic rights, the application of general environmental exclusions should be broadened. Expropriation, national treatment, most-favorable-nation treatment, and other limitations that restrict the use of wide environmental exclusions are frequently included in international investment agreements to protect the environmental interests of host countries. Therefore, in future international investment agreement negotiations, the general environmental exceptions should be further improved, and the restrictions on their application should be reduced.

## 6. Conclusions

As the "One Belt, One Road" project progresses, China has changed from being a simple capital importer in the early years to a country that is both a capital importer and an exporter. The risk of environmental disputes in international investments is also increasing. It is, therefore particularly important to promote changes in the relevant international investment agreements. The improvement of environmental liability regulations will gradually reduce the infringement of fundamental rights related to the environment by multinational corporations. The continuous improvement of the awareness of environmental protection responsibilities by multinational corporations themselves can also effectively avoid international disputes caused by environmental issues. In addition, the improvement of international investment agreements between China and countries along the route will be important for Chinese companies to avoid environmental risks in overseas investments and promote regional economic and environmental governance. Based on these, the improvement of international investment agreements under the idea of environmental protection will certainly help multinational corporations in the field of international investment sustainable development and contribute to the harmony between human beings and nature and sustainable development.

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