

# Host Country's Supervision Responsibility on Multinational Enterprises and Ways to Fulfill Its Responsibility

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**Abstract:** The interests of host country and multinational enterprises are closely linked. Although multinational enterprises may help the growth of economy of host country, there are pros and cons of activities taken by multinational enterprises inside the host country. There are not enough regulations on regulating multinational enterprises. Through effective regulations, activities of multinational enterprises can be regulated and will not do anything harmful to the host country such as environmental pollution, commercial bribery. In order to regulate multinational enterprises, home country and other international organization should act. In addition, for home country, it is also its responsibility and obligation to urge multinational enterprises to bear corresponding social responsibilities instead of evading social responsibilities.

## 1. Introduction

Multinational enterprise is a kind of company that base in a country (also known as home country) and set up a subsidiary or branch through foreign direct investment in other countries (also known as the host country). After the Second World War, especially since the 1960s, multinational enterprise has made great contribution to the host country. However, recently, activities taken by the subsidiaries or branches of multinational enterprises in the host country often infringe employees' right to work, cause damage to the environment of the host country or infringe other rights. Activities taken by multinational enterprises bring a lot of benefit to the host country, but the host country does not have enough regulations on regulating multinational enterprises. Sizes of some multinational enterprises are very big and they may establish foreign policy that is different from the foreign policy of their home country. As John Haddox said before, Nestle Corporation was not Swiss corporation nor a multinational enterprise, but it had its own nationality which is "the Nestle nationality" [1]. Although this opinion does not seem to be true now, it reflected a fact that big multinational enterprises might act its own way that might or might not harm host country. As a result, home country and other international organizations must act. There are several solutions to regulate multinational enterprises so that less damage is made by them. Firstly, home country can regulate extraterritorial behaviors of multinational enterprises through a relatively complete legal system and a variety of policies and regulations. Secondly, a consultation institution may be set up as a bridge between home country and host country. Finally, host country may regulate multinational enterprises through internal supervision. Based on the above background, this paper will argue that home country has the duty to control the extraterritorial behaviors of multinational enterprises, and home country has the jurisdiction to regulate multinational enterprises. The last part of this paper will discuss solutions to the problem of how to regulate multinational enterprises.

## 2. Existing problems of multinational enterprises

Activities taken by multinational enterprises may harm host country in different aspects such as labor rights, environment, cultural, economics, security and politics. For a long time, multinational enterprises' main objective is to maximize profits. Multinational enterprises take activity that usually ignore others' rights.

KFC is a global well-known fast-food restaurant that owned by a large Multinational enterprise called Tricon Global Restaurants Inc. Tricon Global Restaurants Inc. has over 40000 chain restaurants. In 2019, it expanded over 1000 restaurants. Tricon Global Restaurants Inc. took an active part in public benefit activity and had always taken good consideration of rights of host country. However, news about the quality and safety standards of food of KFC have never ended. Tricon Global Restaurants Inc. as a parent company does not have enough supervision over KFC. Researches show that the level of disclosure of social responsibility information of Tricon Global Restaurants Inc. is much better than its subsidiaries [2]. The reason is that there is not enough host country or home country or international law on regulating those subsidiaries.

Subsidiaries of multinational enterprises usually ignore labor rights of the host country. For example, multinational enterprises usually require workers to work overtime which is contrary to the law of host country. As above said, since there is not enough regulation on regulating those subsidiaries, they will not disclose that their workers always work overtime.

### **3. Obligation of home country on regulating multinational enterprises**

In order to attract foreign investment and develop the economy, many host countries are unwilling to regulate or loose the control of multinational enterprises. Although some host countries are willing to regulate multinational enterprises, they are unable to conduct effective supervision due to the lack of efficient government agencies or due to the investment protection measures of the bilateral investment agreement signed with the home country [3]. More importantly, many multinational enterprises invest in host countries in the form of establishment of subsidiaries. Due to the principle of legal personality independence and the distribution of jurisdiction by traditional international law, the host country's regulatory measures usually only extend to subsidiaries, while the operations of multinational enterprises' decisions are often made by the parent company. Based on this background, this part of the paper will propose possible legal bases for the home country's supervision and obligations to multinational enterprises including interpretation based on international law, interpretation of human rights treaties and international covenant on economic, social and cultural right.

#### **3.1 Obligation of home country on regulating multinational enterprises based on the international law.**

Responsibilities of countries have been declared in international law, and countries have the right and obligation to protect the activities of its citizens and corporate legal persons in foreign countries. All countries are establishing such a mechanism to alleviate the damage caused by foreign investment in the host country, and home country has the subrogation to request full and timely compensation. Developed countries use laws and regulations to ensure the protection of the assets of multinational enterprises and the properties of their branches in developing countries. Moreover, there is no conditional requirement for the protection of foreign nationals or enterprises by the home country. The creation of this kind of responsibility has so far been affected by bilateral treaties or unilaterally accepted by some countries. At the same time, it should be noted that various countries declare in international treaties that violations of human rights are prohibited, regardless of whether such behavior occurs at home or abroad.

The home country has the ability to ensure that the activities of its nationals abroad and the activities of foreign investors can comply with the laws and regulations of the host country, which is based on the personal jurisdiction of the home country. For example, the European Court of Human Rights believes that the jurisdiction can extend beyond the territory, including effective control over the territories of other countries and authority or control over people [4]. If the home country is not prepared to take responsibility for preventing illegal acts of its nationals abroad, it will definitely lose the right to protect its nationals diplomatically. This responsibility can be implemented, especially under current international law. Intentionally sending nationals or institutions abroad to cause damage to the host country will result in national liability. At the same time, when nationals or institutions of

the home country are in danger of causing harm to the host country, as long as it can be determined to be illegal, then the home country also has the responsibility to prevent actions of its nationals or institutions, this is because in international law, countries have broad responsibilities not to cause damage to other countries. International law requires the government and other authorities to take measures before the country assumes responsibility. Imposing responsibilities on the home country is a way to control the behavior of multinational enterprises, otherwise they will not be regulated by the current international law. Obviously, the home country has the ability to control, because they have stated that they can impose extensive overseas control measures on multinational enterprises in many fields.

The home country is responsible for providing relief to the victims through domestic courts, preventing its nationals from committing illegal acts abroad and causing damage to the nationals of other countries [5]. When a national of one country causes damage to another country, but the home country does not provide relief measures, the injured country has sufficient reasons to demand the home country to take responsibility. Under current international law, providing relief to victims is the primary responsibility of the home country [6]. At the same time, when the actions of multinational enterprises violate the provisions of international jus cogens such as the abuse of labor in the host country, the home country is responsible for punishing the offender. If the home country does not punish the criminal company, the home country will bear the responsibility. For example, There are several provisions in Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) [7], which home country is responsible for human rights violation committed by multinational enterprises such as Articles 5 (conduct of persons or entities exercising elements of governmental authority), 8 (conduct directed or controlled by a State), 11 (conduct acknowledged and adopted by a State as its own) and 16 (aid or assistance in the commission of an internationally wrongful act by another State). These provisions force the home country to regulate multinational enterprises to some extent so that multinational enterprises will not breach the articles. In addition, it has become customary international law that a country must not knowingly allow its territory to be used to engage in acts that damage the rights of other countries. As early as 1941, in the Trail Smelter Case between the United States and Canada, the arbitrator made a preliminary elaboration on this common law rule. The ruling pointed out that “in accordance with the principles of international law and U.S. law, no country has the right to use or permit the use of its territory in such a way as to cause damage to the property and life in or on the territory of another country.” [8].

Table 1. Articles on responsibility of states for internationally wrongful acts.

Legal Items	Articles on Responsibility of States for Internationally Wrongful Acts
Article 5	The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance
Article 8	The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of that State in carrying out the conduct.
Article 11	Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.
Article 16	A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) That State does so with knowledge of the circumstances of the

Legal Items	Articles on Responsibility of States for Internationally Wrongful Acts
	internationally wrongful act; and (b) The act would be internationally wrongful if committed by that State.

**3.2 Obligation of home country on regulating multinational enterprises based on interpretation of human rights treaties and interpretation of human rights treaties and international covenant on economic, social and cultural rights.**

The home country’s obligation to regulate human rights violations by multinational enterprises in the host country is mainly based on the home country’s extraterritorial human rights obligations [9]. Based on this kind of obligation, the home country should regulate the violations of human rights by multinational enterprises originating from the country in order to protect the human rights of the people of the host country from violations. At present, there are still disputes over whether the home country should undertake extraterritorial human rights obligations. With the continuous deepening of economic globalization, the actions and omissions of one country can often have a substantial impact on the population of other countries' territories, or even adversely affect in most cases. Especially for some developing countries, their decisions are made by powerful roles such as international financial organizations, multinational enterprises or other countries. It often has a broader and more profound impact on the realization of economic and social human rights in their own countries. In addition, the development of the theory of human rights obligations, the human rights practices of relevant international human rights institutions, and the interpretation of relevant provisions of human rights treaties have provided a solid legal basis for the home country’s extraterritorial human rights obligations [10].

There are three levels of obligations of a country: the obligation to respect, the obligation to protect and the obligation to realize [11]. The Draft Guidelines on Human Rights Responsibilities of Multinational Corporations and Other Business Enterprises with Economic, Social and Cultural Rights stipulate that country has the primary responsibility to promote, ensure respect and protection of human rights recognized by international and domestic laws, including ensure that multinational enterprises respect human rights. The Protection, Respect and Remedy: A Framework for Industry and Commerce and Human Rights [12] and related documents specifically divide the content of human rights obligations and conduct a more in-depth discussion on the realization of human rights content at various levels. The framework includes three core principles: the country has the obligation to provide protection to prevent third parties including industry and commerce, from infringing human rights, which is the core of the international human rights system; enterprises have the responsibility to respect human rights, which is the society’s basic expectations of industry and commerce, and respect for human rights basically means do not violate the human rights of others. These three principles form a complementary whole, and only by mutual support can we achieve sustainable progress. Regarding the extraterritorial human rights obligations of the home country to regulate the behavior of multinational enterprises, the home country mainly undertakes certain extraterritorial human rights obligations at the level of protection obligations. The obligation to protect stems from the horizontal effect of human rights. In addition to the vertical violation of human rights by the country, human rights violations also occur among private subjects. Anyone may violate the universal code of ethics and violate the human rights of others. The obligation of extraterritorial protection originates from the content of the obligation of protection [13]. For the content of the obligation of protection, it is generally believed that the country has the obligation to protect the human rights of people within its territory or jurisdiction from being violated by third parties (including industrial and commercial enterprises such as multinational enterprises). It is interpreted from the perspective of the relationship between the victims of human rights and the relevant countries. The purpose is to provide post-relief to the victims of human rights. According to this understanding, if it can be proved that people outside the territory are under the jurisdiction of the home country, the home country should deal with them. Undertake the obligation to protect, and this requires a clear definition of what is meant by "jurisdiction", which will be analyzed in detail below in the next part. International human rights

treaties confirm the human rights obligations that the country should undertake, express the content of human rights obligations in the form of treaty obligations, and use treaty obligations to urge the country to fulfill its human rights obligations [14]. Therefore, the study of extraterritorial human rights obligations confirmed or contained in international human rights treaties is helpful to understand the legal basis of countries' extraterritorial human rights obligations. In practice, human rights institutions have realized the extraterritorial application of human rights treaties through the interpretation of the scope of application clauses in human rights treaties, mainly the interpretation of "jurisdiction", and confirmed that countries should undertake certain extraterritorial human rights obligations under certain circumstances. At present, most international human rights treaties include "jurisdiction clauses" to determine the scope of application of the treaties. For example, Article 2(1) of the International Covenant on Civil and Political Rights stipulates that each party to this Covenant shall respect and guarantee that all individuals in its territory and under its jurisdiction enjoy the rights recognized by this Covenant. A country's human rights obligations are usually not limited to its territory, but extend to all individuals under its jurisdiction [15]. As far as protection obligations are concerned, the country only needs to be able to treat one of the victims or offenders. To achieve effective control, regardless of whether the victim is in the territory, or whether the infringer's human rights violations occur within the territory, they should bear the corresponding interterritorial/extraterritorial protection obligations. As far as home country regulates the multinational enterprise's extraterritorial human rights protection obligations based on territorial jurisdiction and personal jurisdiction, the home country undoubtedly has the highest form of effective control over the home/headquarters of a multinational enterprise [16]. At the same time, given the status of the home/headquarters in a multinational enterprise, it has control over all entities located in the host country. Effective control or even comprehensive control can be achieved. The home country can exert authority and control over entities located in the host country through the parent company, and have a substantial impact on its behavior. Therefore, the home country is obliged to regulate the behavior of multinational enterprises in the host country, prompting them to respect the human rights of the nationals of the host country, and then realize the extraterritorial protection of human rights.

#### **4. Jurisdiction of home country to regulate multinational enterprises**

This part will mainly focus on discussing extraterritorial legal issues over the world. First, there is an important concept which is universal jurisdiction should be put forward. The principle of universal jurisdiction is based on the protection of the common interests of all countries. It is considered that for all crimes against the common interests of all countries stipulated in international treaties regardless of the nationality of the offender and the attribute of the place of crime, the contracting country or participating country will exercise criminal jurisdiction when it finds that the offender is within its territory. The significance of universal jurisdiction is not only to protect the interests and security of their own countries, but also to protect the whole world. Child labor is a branch of universal jurisdiction.

Child labor has always been a social concern, and it is also one of the most controversial issues faced by multinational enterprises. According to the 2016 report found out that several large technology enterprises and automobile manufacturers around the world use child labor to mine cobalt in the Democratic Republic of the Congo (DRC). Apple, Samsung, Microsoft, Volkswagen, Daimler AG and other enterprises were all on the list. The survey report points out that the youngest child employed by a cobalt company called Huayou cobalt is only 7 years old. This is only a small amount of problem addressed by the report, there are tons of problems of child labor that people do not know. Therefore, the problem of child labor has always been concerned and the world wants to work hard to solve it.

In response to this problem, various countries also have different behaviors. Different organizations and western governments have been strongly promoting the complete elimination of all forms of child labor, while some developing countries generally resist it and believe that it is a form of cultural protectionism in disguise. Therefore, many multinational enterprises are caught in it and put pressure

by both sides. But in fact, the problem of child labor faced by multinational enterprises is not so difficult to solve, because most countries and regions have child labor protection laws, even in some developing countries. And this will not be a disguised form of cultural protectionism, because the constraints of the country and even the world on child labor appeared long before a multinational enterprise went to other countries.

Moreover, the international protection of child labor rights originated in the early 20th century. When the International Labor Organization was established in 1919, child labor protection was taken as one of its core missions to preliminarily protect child labor through the restriction of the minimum age for employment. Therefore, a series of conventions on the minimum age for employment were adopted from the 1920s to the 1930s. The actions taken by the International Labor Organization in implementing and promoting labor standards include: defining the rights of child labor by accepting ILO conventions and recommendations to ensure that members and the public fully understand the rights of child labor; International investigation, supervision and guidance on child labor and promoting the implementation of relevant conventions in Member States; Formulate some specific action programs to provide technical and policy support for Member States to eliminate child labor; Through cooperation with WTO and other organizations to promote corporate social responsibility standards and other ways to restrict enterprises, so as to achieve the goal of comprehensively eliminating child labor. These international protection laws are accepted by universal jurisdiction. In 1998, ILO adopted a declaration on fundamental principles and rights at work. In principle, they do not support child labor and are willing to abolish child labor if they can afford it economically. According to the agreement reached in the 1998 declaration, even if multinational enterprises do not want their national child labor laws to be extended to extraterritorial laws, this extension is reasonable.

Most of Apple's products are assembled and produced in China, Philippines, Singapore, Malaysia and Thailand. In 2010, Apple's website issued a statement that three factories employed a total of 11 workers who did not reach the local legal working age in 2009, of which the youngest was only 15 years old. But at the time of Apple's inspection, these workers had either reached the legal working age or were no longer employed. Apple's website announced the on-site inspection results of 102 factories and said that about 133000 workers, supervisors and managers were trained during the inspection. Apple said that the core violations include the abuse of workers, the employment of child labor and so on. The company announced that it had asked factories found to have core violations to immediately solve the problem and develop a mechanism to ensure compliance. In addition, apple gave the factory with problems a correction period and continued the inspection after a period. In fact, multinational enterprises need to take more responsibility. Most countries have clear legal provisions on the prohibition of child labor, but the implementation cannot keep up. After discovering such problems, enterprises also correct them in time.

## **5. Solutions to prevent multinational enterprises cause harm to host country**

Although multinational enterprises provide more job opportunities for host country, the working condition of workers is even worse since developing countries may waive some regulations so that they could gain more profit. As a result, home country should regulate multinational enterprises. However, as mentioned above, home country is in principle not responsible for the conduct of multinational enterprises and they do not want to regulate multinational enterprises because home country can benefit a lot from activities of multinational enterprises. Currently, some countries have some regulations on regulating multinational enterprises, but most of the regulations do not cover all the multinational enterprises and only regulate little companies. For example, in France, Le devoir de vigilance came into effect in 2017 which requires companies to protect human rights. However, the law does not apply to every French company, but only those multinational enterprises with more than 5000 employees. Although the law further extends to companies that are controlled by a parent company, the law does not cover every multinational enterprise [17]. There are not much home countries that have enough regulations on regulating multinational enterprises. The level of regulations of domestic law on regulating multinational enterprises is still low.

Some home countries have joined many different international conventions that touch on human rights. They must then have the obligation to fulfill their international agreements by regulating multinational enterprises abroad. The home country must act to fulfill its obligations under international conventions. For example, as mentioned above, there are some obligations which require country to fulfill in ARSIWA. Those provisions force the home country to regulate multinational enterprises to some extent so that multinational enterprises will not breach the articles. Another example is the International Covenant on Economic, Social and Cultural Rights [18], indicating which of the members' states should do in order to respect and safeguard labor rights. For example, article 2 states that every member state should do the best of its ability and take steps to fulfill those rights that are admitted under the Covenant. Moreover, in the third part of the Covenant indicates that all members should admit everyone has the right to work and can freely choose and accept work. Everyone is entitled to fair and good working condition such as equal pay for equal work. The Covenant requires member states to take proper steps to secure those rights. In order to fulfill obligations of home countries under international conventions, the home country may have to transform international conventions into domestic law. However, the parent and subsidiary companies are subject to different laws and jurisprudence. It is possible that the home country applies the continental law system while the host country applies the common law system or even the law system of the religious country. Even in the same legal system, different laws may be applied to different countries. There will be conflicts between different laws, and the coordination between laws will bring a series of legal problems. As a result, there will be difficulties for multinational enterprises during business operation to fulfill every regulation of both the home country and host country if there are too many regulations that have the aforesaid situation.

Another argument on rejecting too much regulation on multinational enterprises by home country is that home country should not intervene in the domestic affairs of other countries. If a subsidiary of a multinational enterprise established under domestic law of host country, interference by the home country may affect the sovereign rights of host country to deal with its own affairs domestically. Host country has its sovereign rights of choosing whether to regulate multinational enterprises in its territory even though multinational enterprises may harm host country, other countries do not have rights to intervene through any means. Such argument raises an issue of the extent of regulating multinational enterprises by home country. The level of regulation imposed by home country is still not certain and it is different from country to country.

As a result, there should be one and only one higher standard multilateral treaty which requires every country to regulate multinational enterprises is needed. Such treaty should also set up some obligations that multinational enterprises should fulfill. Every country and multinational enterprises should fulfill the obligations set up in such treaty. Secondly, there should be an international organization which act as a bridge between home country, host country and multinational enterprises. Such organization allows party to communicate directly if anything happens. Any party may bring issue to such organization and ask for solution to the issue. For example, if the home country finds out that multinational enterprises are causing damage to the host country, the home country may ask the multinational enterprise to act correctly through the organization. Thirdly, once there is a treaty that urge the host country to regulate multinational enterprises, the host country should supervise multinational enterprises by setting up supervision mechanism. Activities of multinational enterprises should be recorded and regulated.

## **6. Conclusion**

Nowadays, business activities taken by the subsidiaries or branches of multinational enterprises in the host country may infringe rights through different ways, but currently the host country does not have enough regulations to regulate multinational enterprises. It is now generally agreed that home country also has the obligation to regulate multinational enterprises through domestic law and impose more responsibility on home country through different ways such as international laws, covenants and treaties. International organizations should also take part in regulating multinational enterprises,

several institutions that can connect home country, host country and multinational enterprises should be established.

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