

# Research on the Jurisdiction of MNEs in Cases of Human Rights Violations

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**Abstract.** As multinational enterprises continue to develop and grow, violations of international human rights law by multinational enterprises occur frequently, such as environmental damage and labor rights violations. While bringing employment and economic development to the host country, MNEs will also have a significant impact on local human rights. Multinational enterprises may directly affect the human rights in their regions by employing child labor, forced labor, discriminatory recruitment methods, poor working conditions, and carrying out activities without the consent of the residents on their land, or indirectly threaten the lives and health of others by destroying the environment. In addition, MNEs may also instigate the national government to violate human rights for commercial purposes, or support the government to adopt policies that violate human rights by providing infrastructure, financial support, or international credibility for the government, thus indirectly violating the human rights of residents. Access to justice is the most direct way for victims to seek redress in cases of human rights violations by multinational enterprises. However, as far as current practice is concerned, the judicial route is also the most difficult route to relief, of which the first issue to be resolved is jurisdiction. This research use case study, comparative research, and historical research to discuss how to strengthen the international legal regime of human rights responsibilities of MNEs, and to draw on international theoretical and practical experiences. Finally, this research systematically studies the issue and finally makes recommendations at the international and domestic levels.

**Keywords:** multinational enterprises (MNEs); human rights violations; jurisdiction; regulation of international law.

## 1. Introduction

Multinational enterprises have always been the main force of international socio-economic development, playing an important role in pulling social productivity and realizing economic globalization. China's Ministry of Commerce Research Institute released the "40 Years of Multinational Enterprises' Investment in China Report" in 2019, which showed that a total of 961,000 multinational enterprises had invested and established in China, and received \$210 million in investment from multinational enterprises. However, cases of violations of basic human rights by business enterprises, such as parent companies of multinational enterprises and their branches and subsidiaries, are common. In the process of conducting business activities in host countries, multinational companies generate a large number of human rights violations, mainly in the areas of labor, environmental pollution, food safety, and product safety. For example, the case of factory labor being violated represented by Nike in the United States and the environmental pollution incident of oil companies represented by the oil spill in Mexico Port.

In cases of human rights violations by MNEs, both the human rights violations and the subsidiaries that committed the acts are within the territory of the host country. Therefore, the host country certainly has jurisdiction over the case according to the principle of territorial jurisdiction. However, due to the relatively imperfect development level of the rule of law in the host country, MNEs may exert pressure on the host country through divestment or international investment arbitration. The jurisdiction of the host country in the MNEs' infringement of human rights litigation faces many difficulties. Finally, it is difficult for victims to obtain effective judicial relief.

## **2. Jurisdictional problems in cases of multinational enterprises' violation of human rights**

### **2.1 Specific Cases of Human Rights Violations by MNEs**

#### **2.1.1. The Judicial Treatment of the Indian Bhopal Poisonous Gas Leaking Case**

A large spill of highly toxic cyanide occurred at a pesticide plant operated by Union Carbide Corporation Ltd. in Bhopal, India. The accident killed tens of thousands of people, caused congenital deformities in many newborns, and caused irreversible damage to the local ecosystem. Shortly thereafter, the victims filed a total of 145 lawsuits against the U.S. parent company. Additionally, the Indian government approved the Bhopal Gas Leak Disaster (Processing of Claims) Act of 1985, which established it as the exclusive legal agent of those who suffered losses as a result of the Bhopal gas catastrophe[1]. In March of that year, the Indian government filed a lawsuit in U.S. federal court against Union Carbide and its Indian subsidiary. All of these cases, which were filed in the United States, were consolidated into one case in the Federal District Court for the Southern District of New York. Upon receipt of the lawsuit, the Federal District Court for the Southern District of New York declined to hear the case on the grounds of forum non conveniens, arguing that the case arose in India and should be heard in Indian courts. The Indian government instead filed a lawsuit in the District Court of Bhopal, Madhya Pradesh, India, and after three years of litigation, the case ended with the Indian Supreme Court awarding a lump sum of \$4.7 billion in damages to the Indian subsidiary. Although the victims contested the verdict, arguing that the damages could not compensate them for the losses they had suffered, it did not change the outcome. To this day, residents continue to fall ill and even die as a result of living in an environment contaminated by toxic gases, exacerbating local poverty[2].

#### **2.1.2. The Case of Nike Violating the Right to Life and Health of Workers**

In the 1970s and 1980s, the term "sweatshop" was synonymous with human rights violations by multinational corporations. The typical representative of a "sweatshop" is Nike, a world-famous sports brand headquartered in Oregon, U.S.A. In 1991, Nike was exposed to the fact that "sweatshops" existed in Southeast Asia, and the report pointed out that Nike factories committed serious violations of labor's legal rights through various methods, such as oppression and corporal punishment. In 2005, Nike released its "2004 Annual Financial Report for Social Responsibility", formally admitting the existence of worker exploitation in its overseas factories. The situation was most serious in Asia, where there were not only persistent forced overtime work, extreme abuse, and corporal punishment of laborers, but even the extremely bad practice of widespread illegal employment of child labor. At the time, the multinational company Nike was criticized and accused by the international community. Over the last few years, protests against Nike's reversion to the harsh treatment of its employees have been staged around the United States by concerned individuals[3].

### **2.2 The Dilemma of the Jurisdiction of MNEs' Actions Against Human Rights**

#### **2.2.1. Factual Issues Facing the Jurisdiction of the Host Country's Courts**

In the case of human rights violations by MNEs, the victims are usually the people living in the host country, the place where the human rights violations occur is also in the host country, and the place where the overseas subsidiaries of multinational enterprises that commit human rights violations operate is also in the host country. Therefore, the courts of the host country have the right to exercise jurisdiction over the case according to the principle of territoriality. However, in practice, due to the relatively backward economy of the host country, the legal system of human rights is not perfect, and the dual political and economic attributes of MNEs and their complex internal structure bring difficulties to the jurisdiction of the host country.

First of all, even if the host country is willing to regulate the human rights violations of MNEs, it is likely to be subject to its own ability to effectively regulate. Some MNEs have greater influence over international trade and financial policy than many less developed nations. However, MNEs are

frequently ignorant of, or simply dismiss, the negative impact that their actions may have and frequently do have on the spectrum of human rights, driven as they are by the need for profit[4]. The host countries of most MNEs are developing countries with backward economies. These countries have imperfect legal systems and policies, inadequate judicial and administrative relief forms, and a serious lack of expertise in supervising MNEs. Under the political pressure brought by the strong economic strength of MNEs and their close ties with their home countries, they do not have enough capacity to regulate and punish the acts of MNEs[5]. From this, researchers on this topic can also find the difficulties of the host country in the supervision of MNEs in the field of human rights. Secondly, as far as the current laws are concerned, the parent company of a multinational enterprise and its subsidiaries in other countries are established by the laws of the country where the MNEs operate. They have independent legal status and independently assume responsibility. The parent company is generally not responsible for the acts of its subsidiaries. As a whole, MNEs do not take full responsibility for any country, which makes it extremely difficult for any jurisdiction to regulate all acts of multinational enterprises. Moreover, it makes it challenging for victims of human rights crimes by multinational corporations to get the proper compensation.

### **2.2.2. Legal Obstacles to the Jurisdiction of the Home States' Courts**

The jurisdiction of the host country's courts can not provide fair relief to the victims of MNEs' violations of human rights. Many victims seek relief in countries or regions other than the place where the violations of human rights occur, especially in the home country's courts, but face a lot of obstacles. On the one hand, the home country will independently deny the jurisdiction over the subsidiary company according to the law. On the other hand, the courts of the home country will refuse to hear the case on the grounds of inconvenient jurisdiction based on the consideration of national interests and other factors[6]. The legal personality independence system was originally established to protect the interests of shareholders, but in the process of development, it has become a tool for shareholders to avoid legal liability. Since the MNEs subsidiary has the legal personality of the host country and is solely responsible for its actions and debts, the parent company is not responsible for the actions of the subsidiary. Parents are also shareholders of their subsidiaries and are called parent companies because they hold a certain percentage of shares in their subsidiaries and can effectively control them. However, due to the company's independent legal identity and limited legal accountability, parent corporations frequently refuse to accept responsibility for human rights breaches perpetrated by their subsidiaries overseas, and it is challenging for victims to initiate cases in the home nations of MNEs.

## **3. State Practice on the Jurisdiction of MNEs to Sue for Human Rights Violations**

The status of jurisdictional issues is crucial in litigation against MNEs for human rights violations, and it addresses the question of which country's courts should hear the case. The following is a review of the practice of the United States, as the home country of investment, and China, as a major country for the introduction of foreign investment, and a comparative study of the courts' attitudes toward jurisdiction in such cases.

### **3.1 Practice in the United States as Represented by the Home Country of Investment**

A multinational corporation typically has a developed country as both its home country and the location of its management center. Since the home country has personal jurisdiction, it may occasionally apply its domestic laws extraterritorially to subsidiaries and other entities based in the host country. The most typical of these laws is the U.S. Alien Tort Claims Act of 1789 (ATCA), which gives foreigners the right to seek civil remedies in U.S. courts for human rights violations they have suffered both within and outside the United States. The United States is one of the countries that currently recognizes and accepts suits by foreigners against U.S. companies, including multinational corporations, for their conduct abroad. In *Doe I v. UnocalCorp*, the district court held that the

corporation was liable for its forced labor and use of slaves because the relevant prohibitions of international law apply to all international subjects. Similarly, in *Beanal v. Freeport*, the court held that the company was responsible for the massacre because according to the rules, neither public institutions nor private individuals can carry out massacres[7]. The suit was based on the rules of international law rather than domestic tort law, and the U.S. court found that it was in the interest of the United States to entertain such a suit.

Although the ATCT Act provides a legal basis for the U.S. to interfere in the internal affairs of other countries with human rights issues, in terms of the social responsibility of MNEs to protect human rights, it is undoubtedly quite positive in that it directly empowers domestic courts to hold domestic corporations accountable for human rights violations abroad, based on treaty obligations under international law[8]. However, researchers should also note that the U.S. ATCT Act is not a panacea. In *Deo v. Unocal*, the Washington Legal Foundation held that ATCT is the only law on jurisdictional determination and does not create a federal substantive right, meaning that federal courts cannot govern tort actions arising from violations of international human rights practices. While victims seeking relief in the United States through the ATCT Act face issues of jurisdiction, cause of action, and governing law, this principle established by U.S. courts provides avenues of relief for victims to obtain reasonable relief in their home countries, and victims can overcome these obstacles with the effort to obtain court support.

## **3.2 China's Practice as a Major Foreign Investment Introduction Country**

### **3.2.1. China's Legal Provisions Related to Human Rights Responsibilities**

There is currently no specific legislation on corporate human rights responsibility in China, but the relevant provisions of China's environmental law, labor law, company law, and other relevant laws can regulate the behavior of multinational corporations in China, for example, China's company law stipulates that enterprises have social responsibility. For instance, the term "social responsibility" in business law refers to the idea that the firm's primary goal should not be to maximize profit or create money for the minority shareholders, but rather to promote other societal interests in addition to those of the shareholders. Such social interests include the interests of employees, consumers, local communities, the environment, the socially disadvantaged, and the public interest of society as a whole. Therefore, it is clear from the meaning of corporate social responsibility that human rights responsibility is at its core. Therefore, from the legislative level, there are still rules and regulations for the human rights responsibilities of multinational companies investing in China.

### **3.2.2. The Practice of Human Rights Responsibilities of Multinational Enterprises**

The entry of multinational enterprises has made a significant contribution to China's economic development. Most multinational enterprises not only bring capital, technology, products, and modern management concepts to China but also drive the growth of local enterprises. However, there are also multinational enterprises in the Chinese market that ignore this truth and do things that violate the law and moral code, such as the Nestle milk powder iodine exceeding the standard. For these behaviors disclosed by the media, some companies justified as "adjustments made to adapt to the characteristics of the Chinese market". Although these companies reviewed their behavior afterward and actively responded to the situation, and achieved good results, it is still common for multinational enterprises to violate Chinese laws and regulations and infringe on human rights in China.

Multinational enterprises have been revealed to be non-compliant with Chinese laws, while at the same time requiring their Chinese suppliers and distributors to implement social responsibility campaigns. Additionally, some businesses have established social responsibility divisions within their Chinese subsidiaries and hired notaries to serve as auditors to check on how their Chinese suppliers and subcontractors are adhering to corporate labor norms. Thousands of businesses in China's coastal regions that supply international corporations have been subject to social responsibility audits by such businesses since the mid-1990s. Although more and more companies have been involved in the CSR movement, in terms of the effectiveness of CSR implementation, the labor standards inspection has

made the proposition of labor standards and labor rights protection are more widely and deeply known in the scope of enterprises and society, especially for raising the awareness of the rights of both workers and employers, it has positive significance. However, the campaign has had a limited impact on improving labor standards and protecting labor rights in practice.

## **4. The way to solve the jurisdiction problem of multinational enterprises**

### **4.1 On the Basic Theory of International Civil Jurisdiction**

#### **4.1.1. The Principle of Respecting National Sovereignty**

Among the established principles of international civil jurisdiction, the most basic principle is to respect the judicial sovereignty of states. Especially on the issue of jurisdiction, the courts of various countries are required to respect the sovereignty of other countries when exercising jurisdiction. On the issue of jurisdiction in the cases of MNEs' violation of human rights, researchers should ensure the court's jurisdiction over the cases on the principle of respecting the national sovereignty of other countries and respect the national interests and sovereignty of other countries at the same time. Although most of the jurisdictional conflicts in the cases of MNEs' violation of human rights are negative conflicts, the principle of international comity also plays a role[9]. As the courts of the host country, it is entirely necessary to consider this principle. At the same time, the courts of the home country carefully apply the principle of "forum non conveniens" and respect their respective national sovereignty and interests.

#### **4.1.2. The Principle of Judicial Effectiveness**

The principle of judicial effectiveness means that when determining international civil jurisdiction, countries need to consider whether the judgments made by the competent courts can be recognized and enforced. According to this principle, it is not appropriate for a jurisdiction state to exercise jurisdiction over a particular case if it cannot guarantee the enforcement of the judgment rendered in that case or request other states to enforce it. The principle of judicial effectiveness is necessary both to achieve the legal system itself and to protect the interests of the parties. It is both an important principle for determining international civil jurisdiction and for coordinating conflicts of international civil jurisdiction.

#### **4.1.3. The Theory of Judicial Discretion**

Within the scope of conforming to justice, fairness, justice, and rationality, judges can exercise discretionary power under certain circumstances, so that the law can have more flexibility and applicability. In the jurisdiction of MNEs' human rights infringement cases, due to the wide range of economic, political, and other interests involved, there are also gaps between the legislative provisions and the actual situation of various countries. The complexity of the situation can not be fully foreseen by the legislators when they legislate. Therefore, it is necessary for judges trying cases to use their discretion to carefully examine the existing provisions or precedents of their jurisdictions.

### **4.2 The Implementation Path to Solving the MNEs' Violation of Human Rights Jurisdiction**

#### **4.2.1. Reducing Jurisdictional Barriers from the Domestic Perspective**

First, researchers should consider it in terms of strengthening the regulatory power of the host country. In the field of MNEs, as the British scholar, Clive M. Schmitthoff said, "according to the international multinational enterprise law, whenever the interests of the home country and the host country conflict, the jurisdiction of the latter must take precedence. This is a principle." In practice, many host countries with relatively backward economic development often have an imperfect domestic legal system, and even can not strictly regulate enterprises to attract foreign investment. States should ensure in bilateral investment agreements that they maintain the appropriate regulatory capacity to protect human rights by such provisions. When exercising jurisdiction over MNEs' actions

against human rights, they can hear more fairly and fairly, to effectively protect the rights and interests of victims.

Second, it is essential to apply the law of forum non conveniens fairly. Numerous common law nations and international treaties have acknowledged and affirmed the theory of forum non conveniens. Judges are given the option to dismiss cases under the doctrine of forum non conveniens if they consider that doing so will serve the interests of justice[10]. However, from the results of its analysis above, it is clear that the abuse of the forum non conveniens doctrine by many home countries to deny jurisdiction has distorted the original purpose for which it was established, which was to have the court's jurisdiction over cases with the closest connection to the forum, to make trials easy and quick and to make them fairer. Due to the inherent complexity of MNEs' human rights abuses, the forum non conveniens doctrine should not be applied when the parent and home countries are the primary beneficiaries of MNEs' human rights abuses or when it is clear that the plaintiff is unlikely to obtain just relief in a foreign court of competent jurisdiction. As a trial court, it needs to deeply analyze the multiparty legal relationship and the multiparty interests of the case design, and think at a higher level to enhance the predictability of the law.

#### **4.2.2. Establishing Cooperation Mechanisms from the International Perspective**

The possibility for MNEs to carry out tasks that historically belonged to nations has risen as a result of the globalization of the international economy[11]. In the future, the courts of various countries must establish a reasonable and effective communication and cooperation mechanism for the determination of jurisdiction. Economic and time costs should also be considered in the jurisdiction of MNEs' actions against human rights violations[12]. Although the jurisdiction of the host country and the home country against the MNEs' human rights violations are being resolved. However, bringing transnational human rights litigation is undoubtedly a huge expenditure for vulnerable victims. Moreover, even if the cross-border human rights litigation is supported by the courts of the home country, it will face difficulties in cross-border evidence collection, recognition, enforcement of judgments, etc. By building a judicial big data platform for the recognition and enforcement of foreign judgments by national courts, researchers promote national courts to understand the legal systems and judicial practices of other countries. This is because only when the judgments are finally enforced in practice can judicial remedies be effectively provided for the rights and interests of victims. Therefore, it is necessary to establish a long-term cooperation mechanism at the international level.

## **5. Conclusion**

Multinational enterprises play a very important role in the context of globalization. Due to the different realities and differences in human rights governance among countries, many multinational parent companies domiciled in developed countries enforce strict human rights standards, while their subsidiaries established in developing countries cause violations of local environmental and inhabitants' human rights. And in today's globalized economy and globalized employment world, how to ensure the effectiveness of judicial remedies for human rights violations by multinational corporations is an emerging challenge and a hot topic in international human rights law. Therefore, this paper ultimately focuses on the path to resolving the jurisdictional dilemma in litigation against MNEs for human rights violations.

Based on the basic theory of international civil jurisdiction, this paper proposes to solve the dilemma of the jurisdiction in lawsuits against MNEs for human rights violations from both domestic and international levels. On the one hand, to prevent the home country from abusing the forum non conveniens doctrine to deny jurisdiction, it is domestically necessary to increase the level of human rights governance and judicial operation in the host country. It is also necessary to clarify the rules of application of the doctrine in human rights litigation. On the other hand, the process of developing an international legally binding instrument on MNEs and human rights needs to be accelerated at the international level, and judicial assistance between countries, especially home and host countries,

needs to be strengthened to reduce obstacles in the jurisdiction of litigation against MNEs for human rights violations. Moreover, the enhancement of the legalization of the management of MNEs will be of great significance to the protection of human rights. It is possible to take the labor protection of MNEs as an entry point and propose the improvement of human rights protection in the global field in this way and direction. If human rights are genuinely vital to us, then as a global community, we must determine that people come first and act accordingly.

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