



PAPER ID: 11A04C



RESPONSIBILITIES OF MULTINATIONAL CORPORATES IN COMMON LAW

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ARTICLE INFO

Article history:

Received 10 July 2019
Received in revised form 30 October 2019
Accepted 14 November 2019
Available online 05 December 2019

Keywords:

Civil responsibility;
Damage and liability;
Legal performance;
Foreign investment;
International corporate performance.

ABSTRACT

The arrival of multinational corporates is one of the most significant symbols of economic globalization. The international business has evolved by the arrival of these corporates and has made new issues. Meanwhile, some groups complained about it and knew it destructive, and other groups talked about its positive effects on societies and denied its negative results. Multinational corporates are considered as a powerful political and economic societies all over the world. The most important mechanism to transfer technology in the recent decade has been establishing multinational corporates. It is tried in this research to describe the positive legal performance of these corporates in the host countries and their effect on the globalization process in particular, on the national security of countries, and state the conditions that the activities of the international corporate can be properly utilized. In other words, how to express the positive and negative performance of these corporates about their activities can be described. In this regard, two countries of Iran and Britain were described and each limit will be investigated in this research which themselves have proved some laws about the responsibility of the international corporates.

Disciplinary: Multidisciplinary (Globalization, International Business, International Law).

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1. INTRODUCTION

The multinational corporates are rooted in western and eastern Indian traders. These institutions are rarely multinational and a colonial tool. Improving marine and Barry Shipping and the emergence of business thinking created the initial samples of the multinational corporates. There are three main reasons behind the incremental attention to multinational corporates. The first one is the old discipline originating politics. The successful accumulation by social actors led to others attempt to organize the opposite power which has various objectives and benefits. Second, some corporates expose themselves and even the industries they work into serious damages to human rights, work-environment standards, and other social issues. Third, such corporates have global abilities and

wealth that give them incomparable power and capacity than international organizations and governments.

It is said that international corporates are the international laws peak which finally will change the definition of international laws.

This law was created to adjust the governors' relationships. The concept of power-based policy is mixed with economics-based power. These actors have non-political economic power.

2. PROBLEM STATEMENT

Corporate is defined as participating, sharing, and communicating various owners' rights in an object with sharing among them. The commercial corporate is called the one doing commercial activities. The term "national" is used with various and sometimes opposite meanings. In some cases, it means European national (governmental) and sometimes it means what belongs to one or several people, not all government (Moeini, 2006).

Meanwhile, the concept of the multinational corporation resulted after the World War II, and the popular application of multinational term started since the publication of exclusive attachment of "business week" magazine called multinational corporates (Rahnama, 1978, 78). The new form of multinational activities was formed by the industrial revolution, and these corporates dominated the economy of non-developed countries with the corporation of big banks in the mother country. The concept of multinational corporates has been called by various names during its lifetime: "international commercial institute", "international agency", "international corporates group", "multinational agency", "multinational corporates", "international commercial unit", "international collaborative group", and even "the US corporate monster" (Suez et al., 1979, 70).

There were several international corporates in the global era before the development of these types of institutes and they have developed their commercial activities beyond the national borders of their country. The extra utilization of the host countries' resources and achievement to the rich revenues, and finally its transfer to the origin country gradually caused disillusionment among nations and sometimes with national governments in host countries. In some cases, the assets of these companies have been nationalized or confiscated by the host government. Managers and authorities of the foreign investors have found out when these types of investments with the cooperation of investors and traders are in the host country, many of the mentioned problems will be removed. According to Mosafa and Masoudi (2010), the multinational corporates have responsibilities from various aspects in whose accomplishment the responsibilities of the multinational corporations have been examined from economic, social, environmental, and ethical based on human rights, workforce, and society. For example, Britain has the most comprehensive possible competence to deal with violations in accordance with the law of civil liability of foreigners. According to this law, Britain courts are competent to investigate any act contrary to international civil law rules, regardless of where it occurs. In contrast, the internal court tries in confrontation with multinational corporates to follow the proper reference competence theory. The judicial procedure has had a growing tendency to qualify on the basis of the appropriate jurisdiction theory. According to this theory, a dispute can be arranged in a court that can best investigate the matter. According to the importance of the multinational corporates an investigation of their responsibilities and laws in the global society as well as the similarities between Iran and Britain laws from various aspects, this research investigates and compares the responsibilities of multinational companies from Iran and Britain laws.

3. RESEARCH BACKGROUND

Some similar domestic and foreign research has been conducted about multinational corporates and their responsibility as follows:

1- Mosaffa and Masoudi (2010) in their research under the title of “evolution in multinational corporates responsibility” concluded that their responsibility has encompassed their vertical aspect from economics to ethics and from the horizontal aspect from the workforce to whole humanity by developing multinational corporates activity. In addition, the importance of its ten principals will be referred in addition to the determination of the UN International Covenant on the field.

2- Aghaei and Akbarian (2011) concluded in their research under the title of “political economics of multinational corporates and development-oriented government that multinational corporates arrival and their status in international political economics have significantly changed the diplomacy and interaction among actors. And now the arrival of these corporates to the international era, two other aspects in addition to government-government diplomacy were added that are corporate-government and corporate-corporate diplomacies. Moreover, this issue is proved that multinational corporates do not necessarily make the world countries particularly the developing countries develop by entering the international era, but their interaction with the development-oriented government which is particular for the developing countries makes this government type and their interaction with the multinational corporates develop.

3- Farhandi (1989) conducted research under the title of “the main origin of thought manners about the relationship between the multinational corporates and the third-world countries” and investigated the relationships between the multinational corporates' relationship and the third-world countries.

4- Kashani Arani (2007) in research under the title of “courts conflicts about multinational corporates stop” first analyzed the theories of unity or generality, the plurality of territoriality of stopping multinational corporations, and scientists' reasons about it. Then, it will be observed after investigating to accomplish the unity or generality of stop and discussion about legal competences of Iran courts to deal with the suspension of such companies and the issuance of a ruling although, the stop nature is appropriate issuance of a single ruling. However, the solution must be checked in contract laws according to the contradiction of domestic laws of countries, stop generality, and impossibility of issue in laws contradiction framework. Nonetheless, bilateral or multilateral contracts are not sufficient for this case. Adjusting the global agreement is essential to reach the goal with the possible addition of governments.

6- Maimunah ISMAI (2009) determined the issue of corporates social responsibilities in his research titled “corporates social responsibilities and their roles in social development” an international landscape.”

This work investigates multinational corporates and their responsibilities in Iran and Britain and by what regulations the multinational corporates dominate on the commercial issues.

3.1 DEFINITIONS OF VARIABLES

3.1.2 MULTINATIONAL CORPORATE

It is called to the type of corporates formed by the participation of real and legal people from different countries and gradually loses their dependency and national features to the specific country.

These types of corporates have backgrounds older than one century but have mainly developed in recent decades. These corporates are multinational based on ownership. Today, corporates like British Petroleum, British Telecom, and British Airways are global with a weak relationship with Britain

3.1.3 CORPORATES

Corporate is defined as sharing, dividing, and collecting the rights of multiple owners in an object in a manner that is disseminated.

Commercial corporate: it means the corporate do business. The national term in Iran has sometimes different and contradicted meaning. In rare cases, the term national means European, and sometimes it means the corporate belongs to one or several persons, not all the nations (Moeini, 2006).

4. METHODOLOGY

The methodology of this research is a descriptive-analytical/ the data collection method of this thesis is a librarian that will be conducted by taking notes from the Persian and Latin books as well as the internet. The data collection tool is taking notes from books, articles, and internet references. Since the methodology of this research is fundamental-theoretical and based on the descriptive-analytical method, and the data collection method is librarian, the quantitative and qualitative methods like surveying won't be used but the comparative method is used.

4.1 CONCEPT OF RESPONSIBILITY

4.1.1 LEXICAL DEFINITION

Responsibility means the legal commitment to another person to remove the caused loss by him/her. The legal meaning of responsibility is the individual commitment to tolerate the legal punishment verdict in turn of his behavior. Some Iranian jurists know responsibility as the obligation of a person to answer his actions and behaviors towards the people according to the mentioned lexical meaning, whose measure of manifestation is behavioral causing damage or crime. Although responsibility is not defined in Iran law anyway and so jurists haven't defined it similarly, all of them know responsibility as a type of commitment.

4.1.2 LEGAL CONCEPT

In addition, responsibility in a legal concept in foreign law that requires either unilateral power or compliance with a legal norm to do or not to do something. For example, the seller is responsible to deliver the sold thing in a selling contract and the customer is responsible to pay it. Sometimes the opposite part is called a capable person. The responsible person is legally obliged to do or tolerate something. Therefore, the responsible person may be obliged to pay or execute something. The responsibility may be caused by optional action or law requirements. For example, if a person violates the contract clauses requirements, break the public laws, he/she will be legally responsible (Feyz, 1994: 112).

4.2 OBJECTIVES OF MULTINATIONAL CORPORATES

The final target of multinational corporates is the daily incremental development and gaining gain as much as possible all over the world. The multinational corporates are the unrest searchers of productivity and profit. These companies work wherever production is cheaper and efficiency is

more. They always seek for profit even at the global level. Their central base is in their home country, but the whole world is their economic homeland. The strategic target of these corporates is the economic unity and globalization of the countries' national economies.

Obviously, the multinational corporates prioritize the maximum profit for their mother corporate and the profitability of subordinate corporates is the next priority.

4.3 PRINCIPAL REASON FOR DEVELOPING THE MULTINATIONAL CORPORATES

Actually, the main reason for developing the multinational corporates particularly in developing countries is dependent on the following aspects:

First, ensuring the availability of essential raw materials

Second, predicting foreign markets for export facilities and having their whole control

Third, no need to anticipate competition from small local companies and organizations

Fourth, huge profits from the cheap workforce (Samavati, 2001: 88)

It is understood from the term multinational corporates that are formed and managed by people with various nationalities, and this perception about “multinational corporates” is logical. The nationality of the corporates is registered based on its state citizenship because a corporate can't have various nationality or citizenship. Thus, calling multinational is meaningful only if its formers have various nationalities; otherwise, it must be said that the expression of “multinational corporate” is not correct. This critic has been argued by representatives of some countries in the United Nations Economic and Social Council. Hence, it is suggested to use the term multinational corporate instead of several-nationality corporates, and this expression can show the argued corporates better (Samavati, 2001).

4.4 NATURE OF MULTINATIONAL CORPORATES

Today, there is not even unity in the definition of the multinational corporates. Some jurists believe that the domestic legal system can't be able to adjust and adapt the activities of the companies with the developed activities all over the world anymore. They are called multi-national by jurists because they act in the realm of the governance of several countries and need to adjust their behaviors with two or several countries. Meanwhile, UNCTAD selected the term “multinational corporates” and believes that these corporates can't be called the subordinators of international law but they must have assigned new laws about their performances (Mohammadi, 2009).

4.5 LEGAL ENTITY OF MULTINATIONAL CORPORATES

Controversy over the international legal personality of transnational corporations is based on the increasing influence of these companies on the development and transformation of international law. In some cases, these corporates even have more economic power than some governments. This fact has changed these corporates to one of the biggest actors of an international economic era. However, the anticipation reason for these corporates as the international laws subordinators is not only their economic power, the legal aspect has significantly influenced on it. It is particularly significant in international business. For example, the role of international corporates can be referred to in coding this commercial agreement relevant to intellectual property. Moreover, these corporates have a significant role in the conflict solving process in the structure of the World Trade Organization. It itself leans on the previous breakthroughs of these corporates in the framework of the international laws (Kamrani, 2000).

4.6 INTERNATIONAL LAWS OF FOREIGN INVESTMENT

The multinational corporates use various methods for investment. The establishment of the economic agencies in the host country or investment in the existed agencies is the usual way of investment. Such a mechanism is well known as the capital participation (Ardeshir, 2010).

Today, the different methods are used for foreign investment such as technology transfer contracts that are mainly signed through the under-license contracts. The investment is investigated before entering to the issue of international laws. The public international law is a legal system to protect itself along with international peace and security which made a self-imposed normative system based on the principle of free will. In this field, international investment law is one of its independent sub-systems.

4.7 MAIN AXES OF THE INTERNATIONAL LEGAL SYSTEMS OF FOREIGN INVESTMENT

Private ownership and its status in the international legal systems of foreign investment

The new jurists try to promote a global concept for ownership right through international documents. The concept of private ownership in the US is the basic principle of social structure. In Britain and other European countries, the interpretation of property rights was not accepted as the cornerstone of community formation. It is generally perceived that ownership is a right given by society and must be used in alignment with the public interests (Joybari, 2000: 83). The arrival of this legal order is nothing more than the mere existence of more suitable behavioral standards for transnational corporations compared to domestic enterprises. Another point about the concept of ownership is the description of the concept of ownership. Hence, it is concluded that the environmental factors, except the public interest and importance of these actions, are tied to pay for compensation in cases that the government expropriates.

4.8 RESPONSIBILITY OF THE MULTINATIONAL CORPORATES IN IRAN AND BRITAIN

The “mutual strategy” of the multinational corporates is not anything except the collection of the centralized decision makings. The relationship between the center and surrounding is one of the main features of the multinational corporates. Laws, as well as economics and management principles of this collection, must be precisely evaluated. The mentioned relationship can be stated with the concept of dominance. The usual and familiar term of “control” can be chosen. The relationship means the legal or practical relation between two persons that decision making of one is the policy of another. This concept has two merits: one is indoctrination of the existence of an unequal relationship between the center and the surrounding and somehow the existence of the difference between the two, and the lack of complete unity and unambiguous identity. The importance of the concept of domination or control becomes apparent when it comes to the second element of multinational corporations. The multinational being of this phenomenon means the presence of the corporate in the territory of several countries. The multinational corporate is double according to multiplicity because first, it is made of several companies with the legal entity which means the multinational corporation is a collection of companies groups. Second, these companies are made based on the domestic laws of various countries and so have various citizenship (Hosseini & Mousavi Bayeki 2011).

The comprehensive discussion here acts principally about the detected cases as essential by the court. More transparently, they are waste if they take out the veil of immunity. Be noticed that there are many comparative studies in this field. Some cases can be found in various legal fields (their

systematic collection is useful) indicating there are executable and specific regulations in the multinational corporates.

It is efficient to notice that executing the constant and fixed legal principles about the multinationalism is not always easy, because the mentioned concepts based on the probable assumption in them may not be correct.

4.9 DOMINANT REGULATIONS ON THE RESPONSIBILITY OF THE MULTINATIONAL CORPORATES IN IRAN

4.9.1 REGISTRATION OF THE FOREIGN COMPANY IN IRAN

If to deepen the theoretical discussions, it must be said that registration of a foreign company in another country and adaptation of the subordinated country is meaningless unless the meaning of the term in Iranian law is synonymous with a pronounced sentence, because this legal institution was previously registered. It means the foreign legal entity was formed and registered in agreement with the regulation of another country, so its re-registration in Iran and giving certification without the registration of the branch or representative cannot mean anything other than issuing a verdict (Nadimi, 2000).

4.10 RESPONSIBILITY OF THE MULTINATIONAL CORPORATES IN BRITAIN LAWS

4.10.1 STRUCTURE OF CORPORATES IN BRITAIN LAWS

Britain has a historical background and efficient experiences about direct investment, and this issue has helped the Britain countries to invest in other countries of the world properly. Britain protected its benefits with the common-wealth countries, used the governmental help in this regard, and so invested in countries which used to be British colonies. Britain was the second-largest naval force after the United States, which would have the ability to protect the interests of its companies in case of danger to their companies. Therefore, a collection of the mentioned factors and some other factors caused Britain to stay in the field of exporting the US goods directly. Economic recovery in Western Europe has led the countries of the continent to resume capital exports, with the addition of multinational companies from 1965 onward. There are federal, Swiss, Dutch, French, Belgian, and Swedish names above all Western European countries that issued direct investment.

The damage is determined in Britain system in two ways:

A- Liquidated damages: this damage is predicted in advance by both parties according to which the injured party has the right to claim that money in case of violation of the contract.

B- Unliquidated damages: the determination of this damage in contract was entrusted to the judge in this regard as if the condition of the contract is a lethal aspect, and in other words, if the intention is to force it to enter into the implementation of the main obligation, then the condition will be fined (Gary, 2003: 118).

4.10.2 BASES OF THE CORPORATE RESPONSIBILITY IN BRITAIN LAW

The civil responsibility means the obligation of an individual (both legal and real entities) to compensate the imposed damages to another person need the accomplishment of three following elements:

1- The existence of damage; 2- The commitment of the harmful act; 3- The relation between the causal relationship between the person's action and the caused damage (Katuzian, 1983, 142)

Alternatively, the general principle in Iran law is that the responsibility is originated from the fault (Ibid, pp: 186-187), and the risk-based responsibility is an exception.

Both the legal and real entities are known responsible based on the relevant laws and regulations. If a community doesn't have a legal entity, that can't be known responsible, but if the responsibility is taken by the community's members, only they can be known responsible and require to compensate for the damages.

The corporate is responsible as a legal entity when first it imposed damage on a person or people, secondly do something harmful by the corporate or its members, and third, there is a causal relationship between the action of the corporate (its members) and the imposed damage.

The basis of civil responsibility in Iran's legal system is a fault. According to this theory, the companion of imposing damage must have done a fault which led to the damage. Since the corporate has a credit, not a tangible and physical nature, the assumption of fault attribution hesitates. There are some ideas in Britain's laws that are essential to mention.

4.11 CIVIL RESPONSIBILITY OF CORPORATE IN COMPARATIVE LAWS

This part investigates two contemporary legal systems as the symbols of common law and written law (British law) systems.

4.11.1 BRITISH LAWS

As mentioned, the bases of civil responsibility of the corporations in British law are based on three *Alterego*, collective fault, and liability theories. This part in particular studies the issue of corporate civil responsibility based on the proved laws of corporations in 2006.

British laws consider two ways to assume corporate civil responsibility. The first way is a corporate may be responsible like a real entity to do a civil responsibility or its usual consequences (compensation of the damages). It is essential to prove such a responsibility to identify whose actions are considered as corporate actions. (For example, the rules of the assignment were used by Mr. Ludhufman in the *Global Case*.) Then, it is essential to prove the actions of this person in absorbing the responsibility is due to corporate civil responsibility.

When a representative works for the corporate, the responsibility is considered for the corporate as far as preventing the commitment of the negotiated contracted person. For example, the initial verdict was violated by the investigating authority in one case who argued that the mayor and members of a municipal association did not have the legal right to do so on the basis of the statute. Therefore, the board should have the right to do business in accordance with the statute in order to be responsible for the company (Ibid, 150). Despite the beliefs of most Iranian jurists, the participation in British laws is not equal and adaptable with the guaranteed corporates.

4.11.2 IRAN LAWS

There has been a lot of controversy about non-material damage to the British courts such as the *Charlie against Boxdonel* lawsuit in 1854 and *Victoria's washing machine* lawsuit against the *Tyumen Industries Ltd* (1949), etc. Although there were no regulations about the non-profit damage before approval procedure code adopted in 1939 in Iran legal system (civil law), it included properties by the approval of the law on loss and damage, in addition, to consider an interest in it, and a number of judgments were issued in this regard. These include the issued vote no. 921 of branch 5 of the *Tehran General Court* after the establishment of the Islamic Republic of Iran, in view of inflation and economic conditions of the community.

The new Civil Procedure Code, adopted in 2000 in article 515 of note 2, states that “damage caused by a non-profit is not legally binding and the damage to the delay of payment is legal in law.”

5. CONCLUSION

The multinational corporates have quickly grown by their huge aspects in a way that develops their giant industrial and commercial empires and incrementally penetrate in more extensive parts of the states' economic lives. Stephen Hammer predicted based on this process that a government of 300-400 multinationals will rule over 70% of the world's industrial output in the not-so-distant future. His prediction was not so far from reality because five developed capitalist countries as the United States, Germany, Japan, France, and the United Kingdom have 172 companies from over 200 large transnational corporations now. These corporates have 25% of the world production and their selling has increased from \$ 3,000 billion in 1982 to \$ 5900 billion based on measurements. These companies seek their profit and development of their actions in the final analysis and do not mention the national benefits in this way, and the international profit of the corporate is mentioned by them above all. In this regard, financial managers of some multinational corporates have so much financial power that they can be jealous of many finance ministers and heads of central banks. However, the increasing investment of transnational corporations in different parts of the world has had a dramatic impact on the economic, social, and cultural life of countries. The performance of these corporates has mixed with the various aspects of the developing countries' aspects in a way that the understanding and analyzing the economic and social conditions of these countries seem unimportant regardless of the role of transnational corporations. Thus, understanding these companies, their actions, and policies are very important as well as their impact and performance in underdeveloped societies.

6. DATA AND MATERIALS AVAILABILITY

No data is used or generated from this study.

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