THE RESPONSIBILITY OF MULTI-NATIONALITIES CORPORATION UPON HUMAN RIGHTS VIOLATIONS

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ABSTRACT

Multinational companies are among the international legal issues that have been deeply debated in international public law about their legal personality and whether this personality falls within the internal legal system or within the national legal scope. The dispute over the responsibility of these companies for the damages they may cause when doing their business, and the search for the limits and frameworks and the foundations of this responsibility at length. We have not been exposed much in this research to the position of public or national law on the adaptation of the legal personality of multinational companies. We will focus on the responsibility of these companies in the context of human rights violations and how to deal with these violations legally with the immunity that the host country may grant to these companies and not subject them to the national legal system (Belgium v. Spain, 1970). The research is based on the legal mechanisms by which these companies can be prosecuted and forced to assume legal responsibility for any violation of international human rights treaties, as well as violations that occur within the framework of the national legal system. The company is one of the non-state concerns of international law and is bound by international treaties relating to human rights and has the burden of respecting these treaties and cannot avoid not applying them under the premise of the existence of mortal immunity, while not subject to the national legal system. There are obligations that we also find in the areas of international humanitarian law that require companies to follow them and not violate them.

Keywords: Responsibility, Multi-Nationalities, Corporation, Human Rights, Violations

INTRODUCTION

The rules of internal law govern the nationality of the company that operates on its territory and this is what applies to all companies. The specificity of multinational companies, which are due to their economic role as well as institutional factors and implications that have an impact on international relations, has led to controversy and controversy in adapting the legal status of these companies, as it is one of the most important features of international economic development, although the roots of these companies are due to liberal economic thought (Hamad, 2016; Hussain, Ahmad, Quddus, Rafiq, Pham & Popesko, 2021).

LITERATURE REVIEW

The Definition of the Multinational Company

The company is an economic phenomenon in the first place, but this economic phenomenon needs a legal template that regulates its relationship within the framework of its external and internal environment. This perception highlighted a difference in the modelling of the economic definition of legality, as the economist focuses on his perceptions and his research and concepts related to the economic activity of the company. The legal researcher focuses on the search for concepts and elements related to the center and the legal relationships that govern the company's work. Economic definitions are linked to the search for elements related to the size of the company's economic activity, its strategy, or even the nature of the administrative organization or the management and control center (Julian, 2003, Hussain, Nguyen, Nguyen & Nguyen, 2021). On the legal side, we find that the legal definition is linked to the search for

elements, including the nationality of the founders of the complaint or the capital invested in the company, which consists of revenues flowing from more than one country. The presence of a mother company that manages its activity in the region of more than one country through multiple branches with the imposition of a unified management and control system on the rest of the branches parallel to the inability of any country to subject the total activity of the company to its control (Ibrahim, 2015; Hussain & Hassan, 2020).

The Nationality of the Multinational Company

Nationality is a legal and political association and within the framework of jurisprudence that has established the granting of citizenship to the company as a necessary technical means to regulate its work and the legal implications that can result from the activities of companies. In addition to being legally protected by the state of its nationality, the nationality of the company may be distinct and different from that of the natural persons who make up it. A realistic analysis of the details of the work and establishment of multinational companies assumes the existence of a company or a president and branches operating in other countries and then the search for the nationality of the parent company as well as the nationality of the subsidiaries of them. Since both the parent company and the subsidiary are various legal units, the parent company is a state national, but the subsidiaries are of other countries (Schwarzenberger, 1993). As for how to obtain citizenship, it is in accordance with legal standards controlled by the law of the country in which the company is to be registered. This legal multiplicity of nationalities is taken for granted according to our opinion and finds groundless as well as a partial analysis of the mechanisms of the formation of these companies we also find it the original poison that accompanied the description of these companies in being multi-national. But can the company and its subsidiaries be subjected entirely to a single legal system? It is conceivable that the multinational company is subject to a single administrative regulation governing its internal relationship with its employees or among the company's units. However, in view of the multinationals of the parent company and its subsidiaries, we find ourselves faced with the impossibility of applying one law to the total activity of the company and the issue of tax and legal accounting remains multiple according to the activity of each branch and the possible physical and legal effects and facts that may accompany it. According to this realistic analysis, multinational companies are, if viewed in a fragmented manner, by the person of the special law and according to each country in which they operate, but there is another angle in which to look. (Wolffang, 1964; Hussain, Quddus, Pham, Rafiq & Pavelková, 2020). In addition to the legal advantages (which are more important) that remove the company from the internal legislative framework of the state that operates on its territory, through which companies seek to equally in the legal relations between countries due to the fear of companies political and legislative fluctuations in the state or the delay of national legislation to keep up with economic developments or the complex and overlapping path of international investment contracts. For example, these legal advantages are provided that the national legislation does not interfere in the provisions of the contracts between the State and the company, as article (18) of the Kuwait Oil Concession Agreement concluded in 1934 stipulates that the agreement shall not be violated by any individual legal or administrative action by the Sheikh of Kuwait. This means internationalizing investment contracts based on the agreement of the parties to the contract and thereby subjecting any future disputes to arbitration by testing the public sources of international law or even any other law that has been agreed in advance by the parties to the contract. These roles and legal relationships have led some jurists to say that multinational companies have an international legal status, as Professor René Gendarme believes that the exit of companies from domestic space into international legal space gives them an equal status to the status of the state. Lazaurs believes that the multinational company is a person of public international law and is in the same state status but may differ with the state in the job it performs only (Ahmed, 2009). Professor Friedman argues in a less errant position that multinational companies are registered under private law, but when there is a legal dispute with the host state, both parties choose to

resort to public international law and its rules (Wolfgang, 1964). In our assessment of both points of view, public international law, given the opinion of the International Court of Justice in the case of damages incurred by service at the United Nations in 1949, has changed the data of the international legal personality forever. It is no longer possible to talk about international law governing not only inter-state relations, but also international law governing relations between states and other non-state actors, but non-state actors (ICJ Reports, 1949). We do not believe that this is now limited to intergovernmental organizations and the individual, but the opinion of the International Court of Justice in 1949 spoke of new situations that cannot be ignored. In other words, the door will remain open to accommodate any new people within the framework of international legal relations. But with the asymmetry in the legal positions of the people of international law, the state remains the main person in international law, from which the rest of the people of international law are derived, as international organizations are established on the basis of the agreement of states and therefore determine the limits of their legal status. Moreover, the legal status of the individual is determined by states through international conventions and even multinational companies, the will of the state determines the international legal status of them, and the fact that multinational companies are established in accordance with domestic laws does not prevent them from enjoying international legal status within the limits of the agreements and contracts these companies have concluded with the state (Abdulaziz, 2012).

The Obligations of Multinational Companies in the Field of Human Rights

The fact that there is asymmetry in international legal centers between persons of international law has led to a disparity in jurisdiction and therefore a disparity in rights and obligations, resulting in a disparity in the bearing of direct and indirect legal responsibilities. In the context of international human rights law, the explicit and direct addressee in assuming legal responsibilities to provide human rights and ensure that they do not violations lies primarily with the state, which exercises this responsibility in protection, security and punishment. This responsibility includes the exercise of this jurisdiction by protecting all natural and moral persons residing in the territory of the state, and the scope of protection limits extends to even multinational companies operating on the territory of the State. The ILO Convention (25) on forced labor in article (4) paragraph 1 indicated that states would not allow or perform forced labor for the benefit of private individuals, companies or associations. Article (2) of the Convention on the Elimination of All Forms of Racial Discrimination referred to the prohibition of such discrimination by any person or organization (Forced Labor Convention, 1930). The Convention for the Elimination of Forms of Racial Discrimination against Women in Article (2) also provided for the prevention of such discrimination, whether issued by a person, organization or institution (CEDAW, 1979). Similarly, international conventions on the fight against forms of discrimination impose legal responsibilities on legal persons, but indirectly and through the state whose territory is damaged or caused by an activity that has begun in its territory. Here is the research into the possibility of multinational companies bypassing human rights and perceived violations in this area, as these companies work primarily to maximize economic resources and make the most profit possible. These activities may be accompanied by side effects that may be inflicted on certain individual rights or even collective rights, and it is conceivable that the company will act individually or conspiratorially in agreement with the host state to violate individual rights for the purpose of achieving the common interest of both parties to the contract and the limits of these violations may amount to serious and serious violations of the rules of international human rights. In addition, these companies now employ workers, leaving them with important responsibilities in respecting human rights, specifically in what is within the requirements of the International Covenant on Economic, Social and Cultural Rights, and in this context we will address the statement of the criteria to be followed within the framework of the requirements of international human rights law (Belgium *vs.* Spain, 1970).

Ensuring Human Rights and Civil and Political Rights

The duty to guarantee, and protect the rights enshrined in the International Covenant on Civil and Political Rights lies primarily with the states parties to the Covenant. The civil and political rights community is linked to a set of rights, including the right to self-determination, which leaves the choice for peoples to determine their social, cultural and political status, as well as their freedom of choice for areas of economic development. This covenant prohibits any coercive acts that endanger an individual's life and rights and prevents the subjection of human beings to any kind of slavery. This covenant prohibits any coercive acts that endanger an individual's life and rights and prevents the subjection of human beings to any kind of slavery (International Covenant on Economic, 1966). The German philosopher Friedrich Nietzsche referred to the relationship between religion, economy and slavery and the creditor's ability to tame, humiliate, humiliate and subdue the debtor, and that slavery evolved from the bondage of shackles and the body to the bondage of thought and economics, as the slave may choose his way to slavery by imposing specific economic policies on him (George, 2002). In addition to the wage bondage that makes a human being a slave to the wages he receives (Muhammad, 2016), the International Covenant also prohibited the use of forced labor, which is in accordance with article 5 of the Code of Conduct on Business and Human Rights. Companies have been prevented from resorting to forced labor and imposing any forced labor on individuals, as well as the right of workers to form trade unions in order to protect their interests (UN Guiding Principles on Business and Human Rights). The International Declaration on International Investments and Multinational Corporations (OECD) and its guidelines in section (V) stated that multinational companies should respect the rights of workers employed in establishing trade unions and organizations represented it (OECD Guidelines for Multinational Enterprises.

Ensuring Economic, Social and Cultural Rights

The International Covenant on Civil and Political Rights came primarily to free individuals from state domination and coercive power, thus placing a negative obligation on the state not to be exposed to the rights of individuals. Political and civil rights were public rights that must be adhered to and provided in real time. Economic, social and cultural rights seemed to require long-term plans and programs to implement them. Some researchers in international law believe that there is a conflict between political and civil rights with economic, social and cultural rights that the state's acceptance of the rights contained in the Second Covenant with its forms of rights may call for state intervention to implement or waste rights that have been stipulated in the First Covenant (Philip, 1990). In addition to the overlap that may occur between the obligation not to interfere in the exercise of the rights of individuals contained in the First Covenant with the duty of the state in the development of laws that do the rights contained in the Second Covenant and work to accomplish them in accordance with well-thought-out and codified programs. On the other hand, the state's realization of the rights enshrined in the Second Covenant will be the main guarantor of the individual's ability to confront the state when it interferes with the rights stipulated in the First Covenant. The first hypothesis that individual rights are multiplied if the state intervenes to impose economic, social and cultural rights, assumes that the state is delayed and violated by carrying out the duties of economic assistance to individuals and creating appropriate opportunities for them to determine their economic destiny (Philip, 1990). The state cannot stand idly by in the face of the great economic problems at the expense of the less economically capable class, and the state must intervene to protect the balance and economic system of the state even in cases of deficits or the weakness of the major economic deficits and exposed to private or public economic crises. This is what the United States did during the mortgage-related economic crisis in 2007 by providing emergency assistance to some companies to overcome the economic crisis (Hamad, 2016). The International Covenant on Economic, Cultural and Social Rights imposes the State's obligation to provide the right to work and its attached working conditions, fair pay and equal employment

opportunities for men and women, as well as the formation of trade unions (International Covenant on Economic, 1976). The OECD guidelines for multinational corporations were in line with the Second Covenant, noting the responsibility of companies to abide by these principles, as well as their responsibility to workers in cases of restructuring, closure, health and safety conditions, risky working conditions and the rights of migrant workers (International Covenant on Economic, 1976). In addition to the rights enshrined in the International Covenants, there is a set of rights to be observed and respected by multinational corporations, partly within the detailed classifications of rights enshrined in the Covenant on Economic, Social and Cultural Rights, such as the rights of working women which provided more precise details in the International Labor Conventions and their recommendations that address labor standards and gender equality in various ways, such as the 1951 Equal Pay Agreement (Maternity Protection Convention, 2000). Companies are also committed to protecting the rights of children and not being exposed to them and in cases of employment, in accordance with laws that take into account the requirements of the age of employment, working hours and conditions (Hamad, 2016). In the field of human rights, companies are responsible for operating in accordance with the environmental laws and regulations of the host country and to carry out all their work in the light of the broader goal of achieving sustainable development. Sustainable development is one of the most important joints that these companies play a prominent role in reaching by helping the economies of host countries and helping them to promote and reach the highest possible degree of economic growth.

Respect for the Rules of International Humanitarian Law

The title of this paragraph may seem a little strange at first glance, so what links multinational corporations to a law that applies only in international and non-international armed conflicts. This surprise may go away a little bit after we remember the existence of private security and military companies operating in times of armed conflict and the legitimacy of this action comes within the framework of international law for the use of armed force Jus ad bellum outside the framework of our study, but we will talk about the fact that these companies exist and practice the use of means of armed force, whether on behalf of states or in cooperation with them, as well as their use in peace support operations, and within the framework of international humanitarian law (Lindsey, 2013).

The Attribution of Responsibility According to the Rules of General International Law

Liability is a purely legal system that has legal implications for any person who engages in acts that result in harm, and the State bears legal responsibility in exercising its legitimate and illegitimate jurisdiction sought as long as it produces harm. The legal nature of liability has evolved from the assumption that it is based on error or violation of the rules of law to the fact that this liability is not even in breach of the rules of jurisdiction, as Stark considers that the State bears responsibility for any damage it has caused (Starke, 1950). In the same context in which the State is responsible, international law has placed responsibility on intergovernmental organizations, while the international responsibility of the individual is solely within the framework of international criminal law (Roland, 2010). When examining the liability of multinational corporations under general international law, this requires demonstrating the availability of elements of liability in the personality of the company in the light of the legal status of the companies, which assumes that the conduct is governed under general international law. This conduct is attributed to a multinational company, that the conduct results in harm to a protected legal interest in public international law, we have already stated that multinational companies have international legal status, although the initiative of establishment and activity is within the framework of the relations of private law. However, the wording of the work of these companies and their effects on the international economy and the effects they can have on human rights frameworks and the guarantees surrounding them themselves require recognition

of the existence of conduct governed by public international law, highlighted in this process by international economic law, international investment law and international human rights law. In the framework of international economic law, it is envisaged that multinational companies will violate special agreements with host countries or who commit economic crimes of an international nature, or even hold them internationally responsible for violating investment contracts with the State and their contribution to international responsibility under international human rights law. Although there is no direct international legislation requiring companies in particular to assume international responsibility for human rights violations, the search for such responsibility requires that these rules be clarified in soft law, as the codes of conduct mentioned by multinational companies are required to respect the rules of international human rights law. Violations related to individuals' rights to property, their own freedoms, or even environmental crimes or areas of rights arising from the right to work and employment can be conceived, and beyond that, the agreement of interests of both companies and the host State can be envisaged in the context of the violation of human rights and the State provides legal cover for these companies, thereby the responsibility is shared between the company and the host state (Belgium *vs.* Spain, 1970). The nature of international human rights law is that it addresses the speech to all, whether it is a natural or moral person, and the European Convention on Human Rights of 1951 came in the same context, and we seek within the framework of the modern directives of the Human Rights Council attempts to commit companies to take legal responsibility directly. The code of conduct for transnational corporations and other businesses indicated that both the State and companies were held in parallel responsible for protecting human rights violations (Alston, 1999). Multinational companies also bear legal responsibility within the framework of environmental protection, as this right is based on the principle of polluter pays and therefore these companies bear any harmful effects of the environment that are the result of their actions (Miriam, 2010), and within the framework of international criminal law, companies will be liable for any violation of their obligations within the framework of United Nations Convention against Corruption 2003 & International Convention for the Suppression of the Financing of Terrorism 1999. These crimes represent global crimes that can be held accountable by states parties in these agreements and the responsibility of multinational corporations can also be raised within the framework of the Statute of the International Criminal Court, especially companies of a military nature. These companies are responsible for any serious violations of the rules of international humanitarian law or in any act that constitutes a war crime or genocide, while the crime of aggression, by definition adopted at the Kampala Conference in 2010, is far from being conceived or assumed by a multinational corporation, as the concept of aggression remains as a description of conduct among sovereign States only, but Is it valid for the company to be a party to a pending lawsuit, but an international court seems to be very difficult, especially if we invoke the statutes of the International Court of Justice, which does not allow even international organizations to be parties to an international case. While the door also seems closed to any international claim of multinational corporations before the International Criminal Court that makes individuals subject to international criminal liability only, here the rules of traditional international law must be used in the indirect return of companies, as the registered state can refer to the headquarters of the parent company that owns the administration and control (Case Concerning the Barcelona Traction, 1970). Therefore, it also bears the burden of protecting these rights and therefore has the duty to hold companies accountable in the event of human rights violations by these companies.

The Attribution of Responsibility According to the Rules of National Law

Legal liability in national law is based on a breach of a legal obligation, and this breach causes material or moral damage to third parties and the rules of civil liability have evolved to the point of taking responsibility without any breach of a legal obligation as long as the conduct causes harm to others. The assumption that multinational companies are held legally responsible for violating their human rights obligations in accordance with the rules of national law

highlights the problem of not subjecting these companies to state law because of the requirement of arbitration or the choice of foreign law or an international model contract through which the applicable law determines the contract between the company and the host state (Ahmed, 2000). Here we ask the following question: is the individual deprived of the right to civil compensation in cases where the contract is not subject to the jurisdiction of the National Court? We believe here that the assumption of return to the state is correct, as it bears the consequences of the actions of multinational companies because they have removed legal relations with these companies outside the rules of national law. This behavior issued by the State makes it responsible for the mistakes of multinational corporations and human rights violations that do not amount to criminality, and the responsibility can be attributed here according to the theory of taking risks, which the public administration bears the burden of taking risks in the conduct of its work and taking responsibility for any act, even if this act is in its origin legitimate, it is not permissible for any person alone to bear the burden of state actions and the damage that may result in damages that may be inflicted on him. The roots of this theory go to the French Council of State, which established the responsibility of the administration to compensate even without error, and we believe that this assumption is correct even in countries with a unified judicial system, since the concept of justice requires that the harm be removed from the person who signed it, whatever the source of the damage, as well as it is consistent with the requirements of social solidarity (Shoaib, 1983). Responsibility can be examined within the framework of the national criminal justice, as criminal liability has been established on companies in some countries such as Britain and the United States of America, while some countries have partially established the responsibility of companies in criminal law such as France, which has established the accountability of companies for crimes related to the environment. Crimes affecting protected interests in international criminal law, such as crimes against humanity, genocide, torture, intentional or unintentional murder, and crimes of endangering human life in general. While punitive laws in Switzerland and Italy limited moral liability to persons in cases of environmental abuse only (Celia, 1993). In this direction, Iraqi legislation has been followed by the fact that, although there is no provision in the Iraqi Penal Code that criminalizes acts by the moral person in general, the Environmental Improvement and Protection Act of 2009 provides for penalties including fines and temporary closure for up to 30 days for the moral person causing pollution. While the penalty of simple imprisonment is limited to the natural persons who run the polluting facility (Environmental Improvement Act, 2009), the main problem in punishing multinational companies criminally, either directly or indirectly, by punishing company representatives seems thorny in determining who is responsible for the danger or committing criminal conduct. The orders may be issued by the parent company and the implementation is through the branch operating in the host country, and the problems seem more complicated if we resort to applying the rules of criminal contribution, whether original or secondary, and then where is the guarantor in cases where the failure of the parent company is proven and how to raise criminal liability and is it in accordance with the rules of the law of the state in which the company was registered? To resolve these problems, we call for the adoption of proposals that protect the interests of people affected by crimes of violations of individual or collective human rights and to define these criminal responsibilities within the contracts concluded between multinational companies and the state in the beginning or conclude an international agreement specifying direct responsibility for the commission of such crimes, especially since some crimes may amount to terrible violations in the field of human rights. In a 2012 report to the British government on Trafigura's 2006 dumping of toxic waste in the Ivory Coast country, Amnesty International reported that some 100,000 people were injured and 15 others died in Abidjan. Police authorities in Britain have shown that there are not enough resources and expertise to investigate this crime, while Amnesty International has interpreted the attack as a mandate for multinational companies to commit further similar crimes outside the borders of the state and impunity (Philip, 1993). Several human rights violations have been detected by these companies related to working conditions, sex discrimination between workers, violation of occupational health conditions and the prevention of the establishment of trade

unions. Especially in the case of immunity from the application of regional law for its actions, and this is what happened with Black Water, which worked in Iraq for the period 2003-2010. In 2007, it was charged with the murder of Iraqi civilians and was not subject to Iraqi criminal law, but to U.S. federal law (John, 2015).

Social Responsibility and Respect for Human Rights

Multinational companies are primarily profitable, and the main purpose of their establishment is to make a profit for shareholders, but the interaction of these companies within the international economy has been made by additional obligations outside the legal liability to which they are voluntarily subject to legal liability. These companies must work to contribute to achieving sustainable development and improving the level of economic growth, as these companies are key factors in achieving economic development, and the response of companies through the social responsibility system revolves around two dimensions based on the damage that the company may cause environmental damage and here is the response complex on what the company has caused in advance. In the second dimension, the response to address problems rooted in the societies in which companies operate and these problems have nothing to do with them, such as poverty, education, health, etc., is based on the commitment of multinational corporations to ensure respect for individual and collective human rights in this area due to ethical and social considerations, so this responsibility is called social responsibility (David, 2001). Some define social responsibility as the commitment of multinational companies to improve society and sustain growth through the economic actions they perform, and the extent of this responsibility is apparent at the medium and long term level as well as the perpetuation of the link between the company's representatives and the social benefits surrounding the company's work, and this responsibility varies in the areas of human and social rights as well as improving the environment and achieving sustainable development (Philip, 2005). The idea of voluntary responsibility is based on reducing profits or contributing in part to increasing interest in the surrounding social circle, which will contribute to the higher development and environment of the company's work, which benefits significantly from the circle of interest it has created. Although voluntary corporate responsibility was the result of social and public pressure, the actual reality proved that these companies benefited from the results of the voluntary commitment to improving economic and social rights in the social circles interacting with them, as well as the growing labor market and free trade led to the adoption of the slogan of social responsibility by major multinationals on a voluntary basis and that when they enter any new market, they will respect human rights, working conditions and rules of non-discrimination between workers. It will respect occupational safety requirements and maintain environmental balance, and IT developments have helped to open up new markets and create competition among companies that will focus on providing higher levels of voluntary commitment capable of attracting local consumers. These voluntary commitments have gone from a mere commitment to a business strategy for these companies, and the State has contributed to encouraging companies to commit voluntarily through their tax incentives and financial facilities that have developed their commitment to social responsibility and increased their commitment to the voluntary implementation of human rights obligations (Carly, 2003).

CONCLUSIONS

A multinational corporation is a dual economic entity formed in accordance with national legal systems but has essential roles within the international economic environment, and when these companies conduct their business activities in the host country, they often try to obtain unusual privileges in the national legal system. These companies are granting themselves immunity from national law and require international arbitration in the event of any disputes with the host state, thereby taking themselves out of the national legal system to the environment of the international legal system. In this way, it is an actor of international law without the state,

and within the framework of human rights and the responsibility of these companies to respect and promote human rights, we find that international law imposes legal obligations within the framework of international human rights conventions clearly and explicitly and through flexible law through international directives and declarations concerning the practice of these companies for their commercial activities in the host country. The legal liability of these companies is realized when there are violations of international human rights treaties as well as human rights violations in accordance with national standards and these companies bear full legal responsibility for any harm to individuals directly or indirectly, as well as the possibility of individuals suing and refer to the host state if they provide legal cover for violations of human rights or the negligence of the state or deliberately not to violate their human rights on their territory.

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