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TRANSNATIONAL CORPORATIONS' ENVIRONMENTAL IMPACT: SOFT AND HARD LAW APPROACHES

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ABSTRACT

This article examines the issue of international legal regulation of the negative environmental impact of transnational corporations (TNCs). It substantiates the necessity of international mechanisms due to the insufficiency of national laws and the transboundary nature of the harm caused. The works of Andrew Clarke, Lisa Benjamin, and Yue Lin are analyzed, highlighting how the traditional principles of corporate law (shareholder primacy and short-term profit) must be reconsidered in the context of the climate crisis, and the concept of the "sustainable corporation" is presented. The theoretical section provides a comparative analysis of key international instruments such as the UNGP, OECD Guidelines, CSDDD, and the Aarhus Convention. Differences between soft law and mandatory mechanisms, the "Brussels effect," due diligence, and the problem of greenwashing are discussed. The article proposes ways to eliminate regulatory gaps through the harmonization of international and national norms, the strengthening of mandatory due diligence, and ESG principles. In conclusion, it emphasizes the need for the joint application of national and international mechanisms to effectively ensure global ecological accountability.

Introduction

In the modern world, transnational corporations play a significant role in global economic development. However, their activities frequently cause serious environmental damage and risks. Regulating the environmental impact of transnational corporations solely through national legislation is insufficient, as these corporations operate across multiple jurisdictions and the harm caused to the environment is often transboundary in nature. Environmental damage is not confined by state borders, which limits the effectiveness of purely domestic regulatory approaches. Although the transnational nature of corporate activity requires international regulation, the existing international

legal norms governing the ecological responsibility of transnational corporations remain inadequate. National environmental laws are limited to the territory of a particular state. For this reason, international mechanisms have been developed to regulate the environmental activities of transnational corporations. These mechanisms represent a broader shift from voluntary corporate responsibility standards to more systematic, and in some cases mandatory, regulatory systems. The main instruments in this field include the European Union's Corporate Sustainability Due Diligence Directive, the Organization for Economic Co-operation and Development Guidelines for Multinational Enterprises, the United Nations Guiding Principles on Business and Human Rights, and the Aarhus Convention, which aims to enhance corporate responsibility in environmental protection. This article studies the environmental impact of transnational corporations on the basis of international legal regulation, analyses relevant scholarly literature, compares international mechanisms with national realities, and proposes ways to close existing regulatory gaps through better harmonization of national and international norms.

Literature Review

Many scholars have conducted research on this topic. Andrew Clarke's book *Corporate Law and Climate Change: Theory, Risk and Governance* is one of the most important contemporary studies that provides a comprehensive theoretical and practical analysis of the problem of corporate law and climate change. In this work, the author examines how the climate crisis is seriously affecting the traditional principles of corporate law — namely shareholder primacy, limited liability, and directors' duties — in the context of achieving net-zero carbon emissions by 2050. The book offers an in-depth analysis, supported by examples, of issues such as "hubris" (overconfidence), financially risky stranded assets, the social license to operate, and the expansion of the duty of care in the climate context, covering corporations from large and powerful companies of past eras to modern well-known corporations. For instance, real case studies from Australian practice — the Adani Group's coal operations, the Rio Tinto case, and the McVeigh and Sharma cases — are used to link corporate law theory and practice. These cases demonstrate that in modern corporate systems, not only shareholders' interests but also broader social and environmental factors are of significant importance. In the Adani Group example, transparency issues are evident; in the Rio Tinto case, stakeholder accountability; in *McVeigh v. Retail Employees Superannuation Trust*, ESG risks; and in *Sharma v. Minister for the Environment*, the link between state and corporate responsibility is clearly manifested. Clarke emphasizes that modelling shareholder primacy is no longer sufficient in the climate crisis and proposes the concept of the "sustainable corporation," scientifically justifying the need to reshape corporate law. The work is also an important source for research on corporate law, environmental law, and ESG issues, and demonstrates the need to reconsider economic change-

related risks in developing countries within the framework of corporate governance and directors' legal obligations.

Lisa Benjamin's book *Companies and Climate Change: Theory and Law in the United Kingdom* is another important source for scholarly research on corporate governance and climate change. The author analyses the central role of companies in the climate crisis and evaluates traditional shareholder primacy and short-term profit principles as outdated traditions. The book puts forward the main thesis that company law can serve as a "bridge" for progressive climate action. Using UK energy companies as examples, Benjamin shows how corporate law can be aligned with environmental policy through the Paris Agreement, EU and UK climate-energy laws, transnational human rights, and climate litigation. In the theoretical section, corporate theories and alternative models in the ecological context are analyzed. The main scholarly contribution of the work lies in its interdisciplinary approach. The author integrates issues of corporate law, climate law, and human rights within a single analytical framework, re-examining key concepts of corporate governance — shareholder primacy, short-termism, and corporate social responsibility — in the context of the climate crisis and net-zero targets. Therefore, this book serves as an important contemporary English-language source for lawyers, policymakers, manufacturers, and corporate leaders on climate change, governance, and directors' duties.

Yue Lin's article "Evolving Normative Dynamics: Understanding China's Varied Approaches to Foreign Corporate Social Responsibility in the Belt and Road Initiative Era" is an important source for contemporary research on the corporate social responsibility (CSR) of transnational corporations (TNCs) abroad, particularly regarding environmental and natural resource issues. The author provides a detailed analysis of Chinese policymakers' varied approaches to ecological and social responsibility problems abroad and compares the differences between corporate environmental responsibility and corporate social responsibility. The article shows that China has created a "parallel governance system" in relation to international corporate social responsibility norms, including environmental and human rights standards, and that this system allows for tailored and flexible responses to each issue. Lin rejects the traditional "compliance or non-compliance" dichotomy and proposes analyzing China's attitude toward international norms through the lens of the "zone of ambiguity" and a spectrum of normative adaptation. The main strength of the study is that it creates an analytical framework explaining China's foreign CSR policy on the basis of domestic and international factors and enables a comparison of Western (CSDDD, OECD, UNGP) and Eastern approaches in the BRI context. Together with the works of Western scholars such as Andrew Clarke, Lisa Benjamin, and Thilo Kuntz, this article allows the ecological regulatory gaps in corporate activity and the

adaptation of international mechanisms in developing countries to be compared from an Eastern perspective.

Research Methods

The main objective of this article is to conduct an in-depth study of the international legal regulatory system for the negative environmental impact of transnational corporations (TNCs), to identify the limitations of national legislation, and to propose ways to eliminate gaps in existing legal mechanisms. The study primarily employs comparative-legal analysis and systemic analysis. The comparative-legal method is used to compare the legal nature, degree of binding force, scope, and practical effectiveness of key international instruments: the United Nations Guiding Principles on Business and Human Rights (UNGP), the OECD Guidelines for Multinational Enterprises, the European Union's Corporate Sustainability Due Diligence Directive (CSDDD), and the Aarhus Convention. The systemic approach allows these mechanisms to be viewed as a whole, assessing their interrelationships and the degree of their integration with national legal systems. The normative-legal analysis method involves a detailed examination of the original texts of international legal instruments, official commentaries, and practical application experience (including complaints reviewed through National Contact Points and amendments in the CSDDD Omnibus Package). Within the literature review, the works of Andrew Clarke, Lisa Benjamin, and Yue Lin, along with other contemporary studies in corporate law, climate law, and ESG issues, are comprehensively examined, yielding theoretical and practical conclusions. In addition, the case-study method is applied: the Australian cases of the Adani Group, Rio Tinto, McVeigh, and Sharma are used to analyse how international norms are reflected in national judicial practice. The study is qualitative in nature and is based on legal interpretation and comparative assessment rather than quantitative statistical data. The scholarly novelty of the research lies in the fact that, for the first time, international mechanisms are systematically compared from the perspective of the "soft law – hard law" transition, and practical proposals for adapting national legislation have been developed for developing countries.

Discussion and Analysis

Theoretical and International Legal Foundations

The existing international legal norms currently provide a set of mandatory and soft instruments for regulating transnational corporations (TNCs) in environmental matters. At the centre of this system are the United Nations Guiding Principles on Business and Human Rights (UNGP), which establish the basic "protect, respect, remedy" framework. Under the UNGP, states have a duty to protect against human rights abuses by third parties, including TNCs, through effective policies, legislation, and adjudication. TNCs themselves have a responsibility to respect human rights by identifying, preventing, mitigating, and accounting for adverse impacts — including ecological harms that intersect with the rights to a healthy environment, water, food, and health — through human rights due diligence. This due diligence

obligation covers the company's own operations, products, services, and business relationships, marking a shift from simple voluntary Corporate Social Responsibility to systematic accountability.

The UNGP serves as an important foundation for reducing and preventing the environmental impact of transnational corporations. It is complemented by the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. Although voluntary in character, these guidelines provide practically powerful guidance for TNCs and often serve as the basis for mandatory legal mechanisms.

The Guidelines further clarify environmental due diligence obligations and envisage risk-based processes aimed at identifying, preventing, and mitigating adverse impacts throughout the value chain, such as climate change, loss of biodiversity, deforestation, air, water and soil pollution, ecosystem degradation, and improper waste management. Corporations must integrate environmental management systems into their operations, assess impacts, set specific indicators aligned with international climate and biodiversity goals, and ensure transparency in reporting. Although not legally binding, the Guidelines gain practical importance through National Contact Points (NCPs), which review complaints and provide mediation mechanisms.

The most significant step in moving corporate legal responsibility from voluntary standards (soft law) toward obligation is embodied in the European Union's Corporate Sustainability Due Diligence Directive (CSDDD). This directive imposes clear and systematic obligations on large companies to identify, prevent, mitigate, and remediate potential human rights and adverse environmental impacts in their own operations, subsidiaries, and value chains. In this respect, the CSDDD represents a major step in transforming corporate social responsibility from a voluntary ethical duty into legal accountability. However, the directive's initial strict requirements were significantly simplified by the Omnibus I Package, narrowing its scope and softening certain obligations. The new approach is risk-based and proportionate: it removes the mandatory climate transition plan requirement and introduces measures to protect small suppliers. At the same time, core requirements remain, including civil liability for victims, administrative fines, directors' oversight duties, and public reporting. Nevertheless, the CSDDD remains one of the most important mandatory legal mechanisms for regulating the environmental and social aspects of transnational corporations' activities. EU standards create the well-known "Brussels effect," whereby EU rules become de facto standards for foreign companies and markets, making this directive particularly significant.

Another important legal instrument is the United Nations Economic Commission for Europe's Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), adopted on 25 June 1998 in Aarhus, Denmark, by

38 countries. This convention is a key international document for protecting human rights related to a healthy environment. The Aarhus Convention ensures the rights to access information, public participation in decision-making, and access to justice, thereby providing citizens with transparency and participation opportunities in environmental matters.

It is clear that we cannot rely on national rules alone or on international rules alone. The most effective approach is to combine both in a smart and coordinated way. International standards set the direction; national laws make them work on the ground. To achieve this, countries should:

1. Introduce mandatory due diligence and climate adaptation plans into national legislation;
2. Strengthen transparency and reporting requirements;
3. Shift corporate governance so that sustainability and ESG principles matter just as much as profit.

These instruments facilitate the transition from purely voluntary corporate responsibility to global transparency, due diligence, and accountability. However, implementation challenges remain, as transnational companies can exploit regulatory gaps through borders, complex supply chains, or forum shopping. National environmental laws are limited by territorial constraints, weak enforcement, lack of resources, and difficulties in controlling extraterritorial activities. International mechanisms reduce these limitations through mandatory due diligence, transparency requirements, and incentives for alignment with global standards, thereby serving to harmonise national and corporate practices. As a result, ecological responsibility becomes an integral part of corporate objectives and governance, laying the groundwork for the formation of the "sustainable corporation" model.

Comparative Legal Analysis of International Mechanisms

From a comparative perspective, there are notable differences in the legal nature, scope, and practical effectiveness of the main international instruments regulating the environmental impact of transnational corporations (TNCs). Soft law approaches, primarily the UN Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises, offer flexible, non-binding guidance that encourages TNCs to integrate environmental due diligence into their core business activities (i.e., they do not constitute generally binding norms).

Thus, the UNGP's "protect, respect, remedy" framework calls on states to introduce ecological standards and requires transnational corporations to conduct ongoing human rights and environmental due diligence to identify, prevent, mitigate, and account for adverse impacts throughout their value chains. The OECD Guidelines, in turn, encourage corporations in areas such as climate change, biodiversity loss, pollution, deforestation, and waste management to implement environmental management systems, assess impacts, set science-based targets, and transparently engage stakeholders. These instruments promote best practices, innovation in corporate

governance, alignment with Sustainable Development Goals, and the gradual dissemination of norms across different legal and economic systems.

Soft law instruments such as the UNGP and OECD Guidelines allow companies to apply them across different countries and market conditions, providing global flexibility and the ability to implement uniform standards in all locations of operation. At the same time, this flexibility can sometimes lead to negative consequences: companies create the impression of "doing good" without making real changes. Such practices are referred to in the literature as "greenwashing," whereby ecological and social responsibility is selectively and limitedly displayed while real impact remains minimal.

Conclusion

The discussion and analysis show that national legislation, due to the limited scope of its jurisdiction, insufficiently effective enforcement mechanisms, and the existence of complex supply chains, is unable to fully address the transboundary impact of transnational corporations. International instruments partially fill this gap, but they are still insufficiently integrated and lack mandatory mechanisms.

In this regard, the CSDDD represents an important turning point: it seeks to balance shareholder primacy with sustainable development goals and requires companies to implement mandatory due diligence processes and specific climate plans.

At the same time, the OECD Guidelines and UNGP, as "soft law" mechanisms, play an important role in shaping relevant standards for assessing environmental impact, climate change, and alignment with global biodiversity goals.

The effectiveness of these systems largely depends on each country's specific conditions, the strength of its institutions, and the corporate culture within companies. In practice, it can be observed that in countries with strong enforcement of mandatory rules, companies feel greater accountability and comply more seriously with requirements. Voluntary standards, by contrast, are applied more widely in developing markets because of their greater flexibility.

Net-zero targets are gradually aligning with international obligations. However, in practice, the same issues of insufficient enforcement mechanisms, low transparency, and limited resources mean that these norms do not yet deliver the expected results.

Overall, ensuring the environmental responsibility of transnational corporations cannot be limited to national or international rules alone. The correct approach is to apply both in a harmonious and integrated manner, as international norms and national legal systems complement each other. Only when systematically implemented in practice can the desired outcomes be achieved. To this end, several important steps are necessary: First, mandatory "due diligence" and climate adaptation plans for companies must be incorporated into legislation; Second, transparency and reporting systems must be strengthened; Third, corporate governance must focus not only on profit but also on sustainability and ESG principles. Scholarly literature

emphasizes the need to move away from traditional profit-oriented corporate models toward "sustainable corporations" that incorporate environmental protection obligations into their governance systems.

For many developing countries, this process also represents a major opportunity. By taking into account the new requirements of the European Union and adapting international standards to their national systems, they can strengthen the independence and effectiveness of local institutions and eliminate existing internal "regulatory gaps".

Most importantly, adopted rules must not remain on paper: enforcement systems must be strict, liability clearly defined, and individuals must be able to protect their rights through the courts. Only with such an approach can both environmental protection and sustainable, long-term economic development be ensured.

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