



澳門大學

UNIVERSIDADE DE MACAU
UNIVERSITY OF MACAU

Faculty of Law

**Overview of Corporate Liability for
Environmental Harm from Domestic and
International Law Perspectives**

By

Song Yijie

Supervisor: Muruga Perumal Ramaswamy

A thesis presented in partial fulfillment of the requirements for the
Degree of Master of International Law at the University of Macau

July 2012

Declaration of Authorship

Student Name: Song Yijie

Student Number: MBo4943-7

Entrance Academic Year: 2010

Program Enrolled: Master of Law in European Union Law, International Law and Comparative Law in English language

Area of Study: International Law

Title of the Thesis: Seeking Corporate Liability for Environmental Damage

Supervisor: Muruga Perumal Ramaswamy

I, SONG YIJIE, hereby declare that, I am the author of the above thesis and it is my original research work. This work has not been submitted anywhere else, either in part or whole, for a degree or other academic credits. I undertake the sole responsibility for any inaccuracy in this declaration.

Yours Sincerely,

Date: June 29th, 2012

Place: University of Macau

Signature: Song Yijie

Name: Song Yijie

Table of Treaties and Legal Documents

- Alien Tort Claims Act (1789)
- Basel Convention on the Control of Transboundary Movement of Hazardous Substances (1989)
- Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal (1999)
- Company Law of the People's Republic of China (2005)
- Constitution of People's Republic of China (1982)
- Convention on the Rights of the Child (1989)
- Criminal Law of the People's Republic of China (1997)
- Draft Principles on the Allocation of Loss in the case of Transboundary Harm arising out of Hazardous Activities (2006)
- Draft U.N. Code of Conduct on Transnational Corporations (1984)
- Environmental Protection Law of People's Republic of China (1989)
- General Principles of the Civil Law of the People's Republic of China (1987)
- International Convention on Civil Liability for Oil Pollution Damage (1969, amended in 1984, and 1992)
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971)
- Joint Protocol relating to Application of the Vienna Convention and the Paris Convention (1988)
- Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures (1990)
- Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures (2000)
- Law of the People's Republic of China on Foreign-funded Enterprises (2000)
- Lugano Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (1993)

Marine Environmental Protection Law of the People's Republic of China (1999)

Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (2003)

OECD Guidelines for Multinational Enterprises (2011)

Paris Convention on Third Party Liability in the Field of Nuclear Energy (1960)

Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Oil Pollution Damage (1971)

Rio Declaration on Environment and Development (1992)

Stockholm Declaration of the United Nations Conference on the Human Environment (1972)

Tort Law of the People's Republic of China (2009)

U.N. Declaration on the Rights of Indigenous People (2007)

Vienna Convention on Civil Liability for Nuclear Damage (1963)

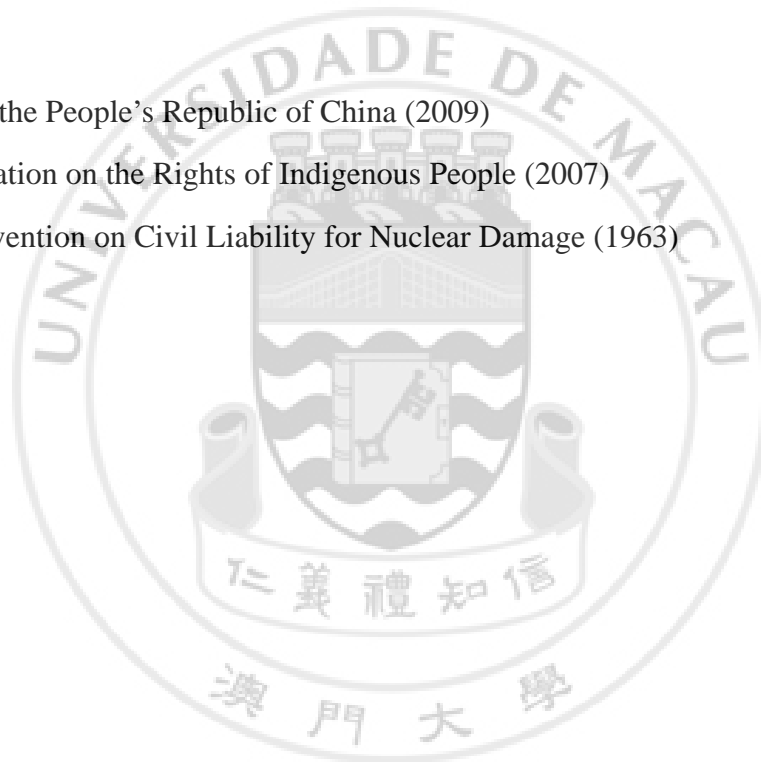


Table of Cases

- Beanal v. Freeport-McMoran* (1999) 197 F.3d 161
- Doe I v. Unocal Corporation* (2000) 110 F.Supp.2d 1294
- Dow Chemical Company v. Castro Alfaro* (1990) 786 S.W.2d 674
- Flores v. Southern Peru Copper Corporation* (2003) 414 F.3d 233
- In re Oil Spill by the Amoco Cadiz off the Coast of France on March 16, 1978* (1984)
1984 U.S. Dist. LEXIS 17480
- Lubbe and Others and Cape Plc. and Related Appeals* (2000) [2001] I.L.Pr. 12
- Jota v. Texaco* (1988) 157 F.3d 153
- Sithole v Thor Chemicals Holdings Ltd* (2000) 2000 WL 1421183
- Sosa v. Alvarez-Machain* (2004) 542 U.S. 692, 124 S.Ct. 2739
- Trail Smelter Case* (United States of America v. Canada) (1941)
- Universal General Insurance Company (UGIC) v Group Josi Reinsurance Company*
(2000) [2000] I.L.Pr. 549
- Zaist v. Olson* (1967) 154 Conn. 563

CONTENTS

Chapter One: Introduction.....	1
1.1 Introduction	1
1.2 Literature Review	4
1.3 Objectives of the Thesis	7
1.4 Research Questions	8
1.5 Methodology	9
1.6 Scope and Limitations	10
1.7 Chapter Layout.....	12
Chapter Two: Corporate Liability for Environmental Damage: Concepts, Definitions, and Relevant Problems.....	15
2.1 An Overview of Relevant Concepts	15
2.1.1 The Scope of Environmental Damage.....	16
2.1.2 Corporate Activities Causing Environmental Damage.....	17
2.1.3 Liability for Environmental Damage (Responsibility v. Liability)	18
2.2 Corporate Liability for Environmental Damage Deserving Special Attention.....	20
2.2.1 The Legal Status and Basic Legal Structure of Corporations.....	20
2.3 The Difficulty in Holding Transnational Corporations Liable for Their Environmental Damage.....	23
2.3.1 The Basics of Transnational Corporations	24
2.3.2 TNCs' Activities Causing Environmental Damage.....	28
2.3.3 Factors Contributing to the Difficulty in the Attribution of TNCs' Environmental Liability	29
Chapter 3: Seeking Legal Redress against TNCs for Their Environmental Damage through Different Avenues: the Home State Avenue and the Host State Avenue.....	36
3.1 Seeking TNCs' Liability for Environmental Damage through the Host State Avenue. 36	36
3.1.1 The Legal Basis for Jurisdiction of the Host State	36
3.1.2 Environmental Liability under the National Tort Law Regime.....	37
3.1.3 The Disadvantages of Seeking Legal Redress in the Host State	40
3.2 Seeking Legal Redress against TNCs for Their Environmental Damage through the Home State Avenue.....	43

3.2.1 Home State Control of the TNCs	43
3.2.2 Seeking Legal Redress against TNCs for Environmental Damage through Foreign Direct Liability	45
3.3 A Common Issue in Both Host State Redress and Home State Redress: TNCs' Group Liability for Environmental Damage	58
3.3.1 The Need to Consider Parent Company's Liability for the Activities of Its Subsidiaries	59
3.3.2 The Traditional Legal Basis for Holding Parent Company Accountable.....	61
3.3.3 The New Approach to TNCs' Group Liability.....	67
3.3.4 Current Situation of Liability Allocation in Transnational Corporate Group	70
Chapter 4: International Law Governing the Issues Related to TNCs' Environmental Responsibility or Liability for Environmental Damage	71
4.1 TNCs' Environmental Liability at the International Law level: Two Approaches	72
4.1.1 International Environmental Law Addressing TNCs Liability Indirectly through the Obligations of States	72
4.1.2 International Standards Directly Addressing TNCs Environmental Responsibility	75
4.2 The Role of State Responsibility in Handling Corporate Environmental Damage	75
4.2.1 State Responsibility for Transboundary Environmental Damage	76
4.2.2 Resorting to State Responsibility for Environmental Damage Caused by Corporations	78
4.2.3 The Difficulty in Resorting to State Responsibility for Corporate Environmental Damage.....	80
4.3 International Civil Liability Conventions Harmonizing Environmental Liability in Some Specific Areas and Their Role in Seeking Legal Redress against Corporations	81
4.3.1 The Civil Liability Conventions Dealing with a Specific Area.....	82
4.3.2 The Council of Europe's Lugano Convention for Damage Resulting from Activities Dangerous to the Environment	87
4.3.3 The Evaluation of the Role of International Civil Liability Regimes	88
4.4 International Organization Norms and Guidelines Directly Addressing TNCs' Environmental Responsibility	90
4.4.1 International Organization Instruments Regulating Corporate Environmental Practice	91

4.4.1.2 The OECD Guidelines for Multinational Enterprises	93
4.4.2 The Characteristics of the International Instruments.....	97
4.5 The Proposal to Hold TNCs Liable for Their Environmental Damage by Using International Human Rights Law	99
4.5.1 The Value and Theoretical Foundation of the Human Rights Approach for the Environmental Claims.....	99
4.5.2 The Existing Substantive Human Rights and Procedural Rights Relevant to the Protection of the Victims of the Environmental Damage and the Natural Environment	101
4.5.3 Appealing for the Establishment of the Human Right to a Healthy Environment	103
4.5.4 The Proposal to Use the Right to a Healthy Environment to Address TNCs’ Accountability for Environmental Damage.....	104
4.6 The Role of International Criminal Law against TNCs for Their Environmental Damage.....	106
4.6.1 The Significance of International Criminal Liability for Environmental Damage	106
4.6.2 The Proposal of an International Tribunal to Hold TNCs Accountable for the Environmental Crimes.....	107
Chapter 5: A specific Study of the Legal Issues Related to the TNCs Liability for the Environmental Damage in the Context of China.....	110
5.1 Current Situation of TNCs with Subsidiaries in China, the Accompanying Environmental Problems, and the Corresponding Reasons.....	110
5.1.1 TNCs Establishing Subsidiaries in China and the Accompanying Environmental Problems.....	110
5.1.2 Reasons for TNCs Environmental Pollution in China.....	112
5.2 The Concept of TNCs in Chinese Law and the Corresponding Regulatory Regime ..	114
5.2.1 The Hierarchical Chinese Legal Regime Governing TNCs Practice in China.....	114
5.2.1.4 The Relevant International Law	117
5.3 TNCs Environmental Liability under Current Chinese Legal Regime	118
5.3.1 Administrative Liability and Comments	118
5.3.2 Criminal Liability and Comments	120
5.3.3 Civil Liability	121
5.4 Enforcement of the Liability Rules against TNCs in China.....	124

Chapter Six: Conclusion.....	126
Bibliography:.....	135
Books:	135
Articles and Book Chapters.....	137
Dissertations:	143
Dictionaries:.....	144
Electronic Resources:.....	144

