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PRESERVING THE ENVIRONMENT BY SERVING THE NOTION OF COMMON GOOD: TOWARD A RESPONSIBLE INVESTMENT

*Matin Pedram**

ABSTRACT

Our lives on the planet constitute a bigger image defining the relationship with the environment. Hence, it is worth talking about the common good of people worldwide. In this sense, we envisage a borderless good or better to say a shared good that is the environment, and individuals' activities can be interpreted by their impacts on it. Environmental protection is a hot topic and states have put their efforts to minimize humans' footprints by introducing regulations and measures because lack of comprehensive measures leads to regulative imbalances among communities. Less-developed communities (LDCs) intend to attract multinational corporations to invest in their communities to decrease the unemployment rate and increase economic prosperity. In this case, there is competition among them to ease the regulations in favour of investment maximization. Such a practice often treats environmental preservation as the secondary matter that results in regulative imbalances between less-developed and industrialized communities (ICs). In this scenario, multinational corporations (MNCs) opt for a more convenient regulative system other than a developed legal system and move their polluted production lines to LDCs, while this is in stark contrast with the flourishing of individuals. This Article discusses that preserving the environment calls for responsible investment through MNCs. It is incumbent on them to ensure that their businesses in the LDCs comply with the stricter regulations in the parent companies' domicile and individuals would be entitled to make them accountable in their home communities.

KEYWORDS: Environmental Law, Common Good, Negative Rights, Environment, Regulative Imbalances, Multinational Corporations.

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INTRODUCTION

Multinational corporations (“MNCs”) have a key role to conduct the decentralized system of production in the world. This is one of the parameters of global capitalism. Global capitalism¹ tends to link people globally and bring them wellbeing and prosperity, but numerous obstacles such as statism, corporatism, vulnerability of environment, and weaknesses of the rule of law in less-developed communities (“LDCs”) indicate that there is a long-lasting way to this end. Theoretically, “MNCs have social and environmental responsibilities to the peoples and environments from which their enterprises profit that demand legal remedy when breached”.² In reality, MNCs manage “the strategic sectors including agriculture, energy, health, infrastructure, media of global economy, and their global presence has reached the most remote places in the world”³ but their practical responsibilities to people and overall environment in LDCs are not promising.

LDCs have been chosen by MNCs as their honeymoon destinations because “there is normally neither pollution⁴ prevention culture, nor proper legislation regarding pollution permits. Further, governments are in a weaker position that cannot efficiently enforce these regulations”.⁵ In other words, “the rules of [Industrialized Communities] ICs are much stricter than those of LDCs”.⁶ The gap⁷ has motivated them to activate their subsidiaries in LDCs. In this sense, MNCs are able to affect businesses in various communities with “globalization”⁸

¹ See William I. Robinson, *Global Capitalism: Reflections on a Brave New World*, RESILIENCE (Aug. 03, 2017), <https://www.resilience.org/stories/2017-08-03/global-capitalism/>.

² Maxi Lyons, *A Case Study in Multinational Corporate Accountability: Ecuador’s Indigenous Peoples Struggle for Redress*, 32 DENV. J. INT’L L. & POL’Y 701, 702 (2004).

³ Daniel Iglesias Márquez, *Legal Avenues for Holding Multinational Corporations Liable for Environmental Damages in a Globalized World*, 2 (3) DIREITOS HUMANOS EM REVISTA 58, 59 (2015).

⁴ In this Article, pollution refers to “modern pollution such as ambient air pollution, soil and chemicals pollution that are mainly associated with urbanization and industrialization. By contrast, traditional pollution refers to indoor air pollution, largely caused by poor ventilation and smoke from cook stoves and heating fires, and water pollution from unsafe sanitation.” See THE GLOBAL ALLIANCE ON HEALTH AND POLLUTION, POLLUTION AND HEALTH METRICS: GLOBAL, REGIONAL AND COUNTRY ANALYSIS REPORT (Dec. 18, 2019), https://gahp.net/wp-content/uploads/2019/12/PollutionandHealthMetrics-final-12_18_2019.pdf.

⁵ Anam Masood, *Multinationals Exporting Pollution to Developing World*, DAILY TIMES (Jan. 21, 2020), <https://dailytimes.com.pk/543498/multinationals-exporting-pollution-to-developing-world/>.

⁶ Kumba Digidowiseiso, *Deforestation and Multinational Companies: a Conceptual Note*, MPRA Paper No. 22093, 3 (2010).

⁷ Tetsuya Morimoto, *Growing Industrialization and Our Damaged Planet: The Extraterritorial Application of Developed Countries’ Domestic Environmental Laws to Transnational Corporations Abroad*, 1 (2) UTRECHT L. REV. 134, 137 (2005).

⁸ Globalization can negatively impact the environment when it enables businesses to avoid national environmental regulations in ICs by moving their polluting operations to places with the least environmental regulations. See Katinka Danielle Jesse and Jonathan Verschuuren, *Litigating against International Business*

mak[ing] the influence of multinational enterprises more pervasive and impacting.”⁹

People are being exposed by the global presence of MNCs and globalized environmental issues, and there is no uniform system of environmental law to promote and protect environmental norms. In addition, sovereignty and state’s authority do not permit a universal system of environmental law in which the same standards of environmental protection are applied globally.

Moreover, it is hardly possible to think about individuals’ common concern without considering environmental disaster. The UN Secretary General in 2020 emphasizes that:

Humanity is waging war on nature. This is suicidal. Nature always strikes back—and it is already doing so with growing force and fury. Biodiversity is collapsing. One million species are at risk of extinction. Ecosystems are disappearing before our eyes. . . Human activities are at the root of our descent toward chaos. But that means human action can help to solve it.¹⁰

It is true that borders separate us and there is scarce possibility of harmonic action among states on this matter,¹¹ but it does not mean that they can preclude the population from destructive actions. Australian legal philosopher John Finnis stipulates that “the common good of a group is not a set of goods that exist only in community, but extends to goods that can be cultivated even by Robinson Crusoe alone on his island without hope of rescue”¹² On this occasion, positive moral norms explain individuals’ positive responsibilities to protect and promote the common good of various types of communities, while negative norms exclude any intentional or deliberate act of destroying or

Corporations for Their Actions Abroad: Recent Environmental Cases from the Netherlands, IUCN ACAD. OF ENV’T L. E-J. Issue 1 (2011).

⁹ J. Eluka, Ndubuisi-Okolo Purity Uzoamaka, and Anekwe Rita Ifeoma, *Multinational Corporations and Their Effects on Nigerian Economy*, 18 (9) EUR. J. OF BUS. AND MGMT 59, 66 (2016).

¹⁰ Fiona Harvey, *Humanity is Waging War on Nature, Says UN Secretary General*, THE GUARDIAN (Dec. 02, 2020), <https://www.theguardian.com/environment/2020/dec/02/humanity-is-waging-war-on-nature-says-un-secretary-general-antonio-guterres>.

¹¹ It stems mostly from weaknesses of the rule of law in LDCs and their economic gap with ICs. For instance, article 4 of the *Paris Agreement* echoes that “developed country parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.” Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

¹² John Finnis, *What is the Common Good, and Why Does It Concern the Client’s Lawyer?* 40 S. TEX. L. REV. 41, 53 (1999).

harming any basic good.¹³ When we take environmental and MNCs' activities mainly in LDCs into account, they are at odds with negative and positive moral rights because MNCs are reluctant to seriously preserve the environment, nor do their activities exclude any intentional harm to the health of people.

What can individuals expect from MNCs and states when they learn that exposure to toxic air, water, soil, and chemicals kills 8.3 million people around the world every year?¹⁴ People might consider the enactment of more regulations to reduce this effect, and since 1970, ICs have enacted several regulations to control pollution and minimize negative externalities¹⁵ of polluting industries. In this regard, media coverage and people's awareness are methods to implement these regulations.¹⁶ Rather than plausible reductions, implementing these numerous regulations accelerates the process of relocation. This environmental movement has been compelling industries to find alternative destinations for their polluting industries. It has gradually constituted a globalized market in which firms in ICs are transformed into MNCs with political impacts.¹⁷ This movement bedevils any international collective actions to reduce the externalities particularly with tangible impacts on LDCs.¹⁸ Regulative imbalances between LDCs and ICs in terms of environmental protection constrain them from any real collective action.

The Article begins with the notion of the common good and its possible relations with the environment. Despite the fact that there are numerous usages

¹³ *Id.*

¹⁴ Niall McCarthy, *Study: Pollution Kills 8.3 Million People Annually*, STATISTA (Dec 20, 2019), <https://www.statista.com/chart/20360/premature-pollution-related-deaths/>.

¹⁵ Ronald Coase developed an economic efficiency under the externalities. He stated that in "a world where individuals can bargain costlessly, the law does not affect the efficient allocation of resources and, by implication, efficiency cannot be used to select the appropriate law." See CENTO VELJANOVSKI, *ECONOMIC PRINCIPLES OF LAW*, 41 (2007), Ronald H. Coase, *The Problem of Social Cost*, 3 THE J. OF L. AND ECON. 1, 1–44 (1960). By contrast, Murray N. Rothbard refused a value-free theory of property (Coase Theorem) and elaborated on an ethical system of property rights to address externalities. For further information regarding the different methods for minimizing externality See Murray N. Rothbard, *Law, Property Rights, and Air Pollution*, 2 (1) CATO J. 55, 55–99 (1982); Timothy D. Terrell, *Property Rights and Externality: The Ethics of the Austrian School*, 2 (2) J. OF MKTS. & MORALITY 197, 197–207 (2009).

¹⁶ Barry Castleman, *The Export of Hazardous Industries in 2015*, 15 (8) ENV'T HEALTH, 1 (2016).

¹⁷ Jernej Letnar Čermeč, *Corporate Responsibility for Human Rights: A Critical Analysis of the OECD Guidelines for Multinational Enterprises* 4 HANSE L. REV. 71, 71 (2008).

¹⁸ It can be seen that MNCs do not only continue their routine process in LDCs, but also worsen the situation. Tearfund's report indicates that Coca-Cola, PepsiCo, Nestle, and Unilever could fill 83 football pitches per 24-hour period with their irresponsible selling of plastic-pack products in Brazil, China, India, Mexico, Nigeria, and the Philippines. See MULTINATIONALS DUMP 500,000 TONNES OF PLASTIC WASTE IN DEVELOPING COUNTRIES EVERY YEAR, PLASTIC SOUP FOUNDATION (Mar. 31, 2020), <https://www.plasticsoupfoundation.org/en/2020/03/multinational-companies-dump-half-a-million-tonnes-of-plastic-waste-in-developing-countries-every-year/>.

and interpretations of the common good, Finnis' account of the common good¹⁹ is employed to prepare a framework for negative rights. In part II, it appears that the right to a healthy life is one of the individuals' intrinsic goods that should be respected. It yields a cornerstone to evaluate any activities in terms of their negative externalities on individuals' health all over the world. It helps consider the duty of MNCs as the key player of transferring capital to LDCs in both investment and environmental impacts. Hence, part III distinguishes the implications of the common good on the foreign investments in LDCs through MNCs. I derive the liability of MNCs from the notion of responsible investment making them accountable for their subsidiaries' externalities in LDCs. It cannot only stress their duty of care, but also correct the regulative imbalances around the world. It appears that liability cannot be a prompt response to the environmental concerns; therefore, it is necessary to develop the notion of self-organization in MNCs' affiliates. I conclude that individuals' membership on the earth results in a common norm toward controlling environmental issues and any pollution exportation by MNCs should be rejected.

II. ENVIRONMENTAL CONCERNS IN THE FRAME OF COMMON GOOD

It is worthy to contextualize environmental law and overall pollution in terms of common good. Common good provides a framework in which individuals can voluntarily act and participate in the basic aspects of wellbeing.²⁰ Finnis stipulates that basic human goods are the aspects of the flourishing of a person; therefore, they cannot be regarded as abstract forms.²¹

A. *Finnis' Account of Common Good*²²

Finnis talks about a set of conditions that empowers the members of a

¹⁹ In *A Natural Law Based Environmental Ethic*, Scott A. Davidson used Murphy's account of natural law to establish a cornerstone for environmental ethics. "Murphy's account can be developed into an environmental ethic that generates human obligations to non-human animals, plants, and perhaps even ecosystems and machines." See Scott A. Davidson, *A Natural Law Based Environmental Ethic*, 14 *ETHICS AND THE ENV'T* 1, 1–13 (2009). However, I intend to use Finnis' standpoint to strengthen the requirement of collaborative action to address environmental concerns and responsible investments.

²⁰ There can be various lists of basic aspects of wellbeing, but among them we can consider "aesthetic experience, friendship, imaginative immersion, knowledge, life and bodily well-being, peace of mind, play, practical reasonableness, self-integration, sensory pleasure, and skilful performance" as the basic aspects of good. See GARY CHARTIER, *FLOURISHING LIVES: EXPLORING NATURAL LAW LIBERALISM*, 4 (2019).

²¹ JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS*, 195 (2011).

²² It is possible to distinguish between two main accounts of the common good: "1- *Joint activity conceptions* (the privileged class of common interests as interests that members have in taking part in a complex activity that involves all or most members of the community). 2- *Private individuality conceptions* (members of a political community have a relational obligation to care about their common interest in being able to lead lives

community to reach their objectives, or to recognize the values reasonably. Hence, they have reason to cooperate with each other in a community.²³ In this sense, “the common good is the good of individuals²⁴, living together and depending upon one another in ways that favour the wellbeing of each.”²⁵ Human flourishing depends on the realization of the basic goods and the common good has an instrumental role to realize them.²⁶

It is plausible to consider that any instrumental or purposeful harm to people’s basic aspect of wellbeing (in which life is at the heart) is wrong.²⁷ In terms of production, individuals encounter pollutions stemming from industrial output, while environmental destruction is not in compliance with the common good of people. On this view, “environmental law represents a sensible pursuit of human ends and instantiate; therefore, the basic good of practical reasonableness.”²⁸ Concretely, MNCs’ activities should be justified in such an atmosphere. More than four decades has passed from when Castleman distinguished the double standard of MNCs’ headquarters (they are mainly in Europe, the U.S., and Japan) and their affiliates in the case of health protection. Surprisingly, they expose individuals and the environment in LDCs to hazards that would not be tolerated in their home communities.²⁹ In fact, MNCs expand

as private individuals.” See Waheed Hussain, *The Common Good*, (Mar. 21, 2018) THE STANFORD ENCYCLOPAEDIA OF PHILOSOPHY, <https://plato.stanford.edu/archives/spr2018/entries/common-good/>.

²³ Finnis, *supra* note 21, at 155.

²⁴ “For some, the wellbeing of animals is especially significant”. See Gary Chartier, *The Law of Peoples or a Law for People: Consumers, Boycotts, and Non-Human Animals*, 12 BUFF. ENVTL. L.J. 122, 124 (2005). Hence, MNCs’ causality (PepsiCo, Unilever, and Nestlé) in deforestation in Sumatra which is a shared ecosystem for elephants, orangutans, rhinos, and tigers, is wrong. See Arthut Neslen, *Pepsico, Unilever and Nestlé. accused of complicity in illegal rainforest destruction*, THE GUARDIAN (July 21, 2017), <https://www.theguardian.com/environment/2017/jul/21/pepsico-unilever-and-nestle-accused-of-complicity-in-illegal-rainforest-destruction>. It is still the case in 2020, when “Rainforest Action Network (RAN) assessed eight global brands – Kellogg’s, General Mills, Mondelez, Hershey’s, Mars, PepsiCo, Nestlé and Unilever . . . The survey found none were performing adequately in avoiding “conflict palm oil”, defined as palm oil whose production is leading to deforestation, loss of peatland or other habitat, and exploitation of workers or indigenous peoples.” See Fiona Harvey, *Biggest Food Brands ‘Failing Goals to Banish Palm Oil Deforestation’*, THE GUARDIAN (Jan. 17, 2020), <https://www.theguardian.com/environment/2020/jan/17/biggest-food-brands-failing-goals-to-banish-palm-oil-deforestation>.

²⁵ Finnis, *supra* note 21, at 305.

²⁶ Finnis highlights that for facilitating this objective, a given community needs a political authority which is organized and guided by practical reasonableness to enforce law and maintain order. In spite of this, some scholars believe that the realization of basic goods does not require a community to have a political authority. Put less tersely, a stateless society that can maintain order and enforce law is in accordance with the natural law theory. See George Duke, *Finnis on the Authority of Law and the Common Good*, 19 LEGAL THEORY, 47 (2013). GARY CHARTIER, *ECONOMIC JUSTICE AND NATURAL LAW*, 28–29 (2009).

²⁷ Chartier, *supra* note 26, at 22.

²⁸ Bebhinn Donnelly and Patrick Bishop, *Natural Law and Ecocentrism*, 19 (1) J. OF ENV’T L., 95 (2007).

²⁹ Castleman, *supra* note 16, at 5.

their presence globally in the sense that they have greater resources and influence in comparison with the past; therefore, they are not restricted by the states' authorities and states do not have sufficient power to regulate the global business of MNCs.³⁰

In this regard, it might be promising if the environment would be considered as the common heritage of humanity. Although there might be some resemblance between the common good and common heritage of humanity, it does not seem possible to transplant environmental laws into the common heritage of humanity, nor is it possible to use them interchangeably. Apart from the lack of an inclusive framework, this probable inclusion has harmful implications for people in LDCs. The philosophical foundations of common heritage of humanity indicates that this principle was a reaction to the LDCs' concerns about technological advances of ICs and their superiority in exploiting resources of the seabed.³¹

Further, ICs' and LDCs' viewpoint to the common heritage of humanity are totally different.³² LDCs use this principle to claim an equitable share in some areas like seabeds and outer space. While it should be considered that regarding global environmental resources as the common heritage of humanity can open doors to unwanted interferences of ICs in the sovereignty of LDCs in the case of mismanagement;³³ it is at odds with the notion of absolute sovereignty in international law.³⁴

Nevertheless, Dr. Daniel Iglesias Márquez emphasizes that international environmental law has to lead states to prevent players from harm to the environment.³⁵ States' actions either locally or internationally are not enough to ensure viable constraints on environmental harms.³⁶ Similarly, some scholars believe that by considering the great influences of MNCs around the world,

³⁰ Michael Ewing-Chow and Darryl Soh, *Pain, Gain, or Shame: the Evolution of Environmental Law and the Role of Multinational Corporations*, 16 INDIANA J. OF GLOB. LEGAL STUD. 195, 222 (2009).

³¹ Werner Scholtz, *Common Heritage: Saving the Environment for Humankind or Exploiting Resources in the Name of Eco-Imperialism?* 41 (2) THE COMPAR. AND INT'L L. J. OF SOUTHERN AFRICA, 292 (2008).

³² *Id.*

³³ *Id.*

³⁴ Nico Schrijver, *Managing the Global Commons: Common Good or Common Sink?* 37 (7) THIRD WORLD Q., 1258 (2016).

³⁵ "States should implement environmental international standards through enacting legislation and regulations to control multinationals in their territory and under their jurisdiction". Márquez, *supra* note 3, at 61.

³⁶ By contrast, Strange believes that "it is the state, with its authority reinforced by the mutual support provided by the Westfailure system that is the roadblock stopping remedial action". See Susan Strange, *The Westfailure System*, 25 *Rev. of Int'l Stud.*, 351(1999).

environmental law has to be developed globally.³⁷ In this sense, one may envisage a comprehensive international environmental law that addresses pollution in the world with sound and monopolistic authority to implement laws because the convergence of states' actions is not satisfactory at the current levels of cooperation. For example, the *Paris Agreement* adopted by 196 states is in practice meant to hold the global average temperature to 2°C well below above preindustrial levels,³⁸ while a report in 2019 warns that hitting this target is not possible mainly due to regulative imbalances.³⁹ In addition to the international level,⁴⁰ some activities can be seen in regional or transnational levels. For instance, the European Union has unified its environmental policy to ensure that all the members have a unique policy on carbon emission or overall environmental protection,⁴¹ but an EEA report in 2020 indicates that air pollution continues to be a significant problem.⁴²

³⁷ Ewing-Chow and Soh, *supra* note 30, at 221–22.

³⁸ Art. 2: “1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by: (a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change[.]” Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

³⁹ “An analysis of current commitments to reduce emissions between 2020 and 2030 shows that almost 75 percent of the climate pledges are partially or totally insufficient to contribute to reducing GHG emissions by 50 percent by 2030, and some of these pledges are unlikely to be achieved”. See ROBERT WATSON, JAMES J. MCCARTHY, PABLO CANZIANI, NEBOJIA NAKICENOVIC, LILIANA HISAS, THE TRUTH BEHIND THE PARIS AGREEMENT CLIMATE PLEDGES, (Nov. 2019), <https://feu-us.org/behind-the-climate-pledges/#:~:text=Key%20Conclusions,by%2050%20percent%20by%202030>.

⁴⁰ Another international movement is the WHO manifesto that asks states to:

1. protect nature and preserve clean air;
2. invest in clean energy to ensure a quick healthy energy transition, which will also bring co-benefits in the fight against climate change;
3. build healthy, liveable cities, focusing on mobility issues, such as public transport, and promotion of walking and cycling;
4. stop using taxpayer’s money to subsidise the fossil fuels that cause air pollution. See WORLD HEALTH ORGANIZATION, MANIFESTO FOR A HEALTHY RECOVERY FROM COVID19 (May. 26, 2020), <https://www.who.int/news-room/feature-stories/detail/who-manifesto-for-a-healthy-recovery-from-covid-19>.

⁴¹ “The EU has been working for decades to improve air quality by controlling emissions of harmful substances into the atmosphere and by integrating environmental protection requirements into transport, industry, energy, agriculture and the building sector. The aim is to reduce air pollution to levels which minimise harmful effects on human health and the environment across the EU.” See EUROPEAN COMMISSION, *THE SECOND CLEAN AIR OUTLOOK*, COM (2021) 3, 1, (2021).

⁴² “Air pollution is a major cause of premature death and disease and is the single largest environmental health risk in Europe responsible for around 400,000 premature deaths per year in the EEA-39 (excluding Turkey) as a result of exposure to PM 2.5.” See EUROPEAN ENVIRONMENT AGENCY, *AIR QUALITY IN EUROPE—2020 REPORT*, No 09/2020, 10 (2020).

In accordance with Finnis' account of the common good, among basic aspects of wellbeing, life is of utmost importance because it constitutes a structural set of requirements on individuals' choices. Apparently, a person cannot make a choice without being alive. In the absence of it, our choices regarding plans, commitments, and strategies are baseless.⁴³ Further, "one should be well enough mentally to be able to exercise free rational choice and being physically and mentally healthy enough to act upon her decisions."⁴⁴ Hence, the notion of common concern of humankind is proposed to not only raise concerns about environmental issues, but also call for collective action of states. Common concerns refer to issues that "inevitably transcend the boundaries of a single state and require collective action in response."⁴⁵ It is a *prima facie* fact that preserving the environment can be a common concern of humankind that entails "a strong international dimension along with a contemplation of the interests of future generations."⁴⁶

MNCs export pollution to LDCs with weaker regulations, while they emit less in communities with stricter regulations.⁴⁷ Although individuals' lives matter and can be the rationale for environmental protection, the status quo of regulative imbalances has secondary importance for environmental protection in LDCs, and the bargaining power of MNCs⁴⁸ indicate that individuals either in LDCs or ICs need effective alternatives compelling MNCs to maintain responsible investments.

B. Negative Rights: The Cornerstone of the Right to a Healthy Life

When negative rights are taken into account, it means everybody has a moral right to freely choose and act, provided that her act does not infringe the same rights of others.⁴⁹ Here, we talk about freedom of people to their property and

⁴³ Anthony Fisher, *Bioethics after Finnis*, in REASON, MORALITY, AND LAW: THE PHILOSOPHY OF JOHN FINNIS, 275 (John Keown & Robert P. George eds., 2013).

⁴⁴ *Id.* at 274.

⁴⁵ Dinah Shelton, *Common Concern of Humanity*, 39 ENV'T L. AND POL'Y 83, 83 (2009).

⁴⁶ Schrijver, *supra* note 34, at 1258–59.

⁴⁷ Itzhak Ben-David, Yeejin Jang, Stefanie Kleimeier, and Michael Viehs, *Exporting Pollution: Where Do Multinational Firms Emit CO₂?* 27 (Fisher College of Business Working Paper No. 2018-03-20, 2020).

⁴⁸ UNCTAD's recent analysis of fifteen concluded international investment agreements in 2019 indicates that "eleven of them address the protection of environment and sustainable development, while nine provide for general exceptions. Also, eight of them include provisions for the promotion of corporate and social responsibility, and only four explicitly recognize that parties should not relax health, safety or environmental standards to attract investment." See UNCTAD, WORLD INVESTMENT REPORT 2020: INTERNATIONAL PRODUCTION BEYOND THE PANDEMIC, 112–13 (2020).

⁴⁹ Thomas Nagel, *Foreward of* ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA (2013).

contract (liberty rights).⁵⁰ In the case of environmental concerns, we discuss negative environmental rights in which a person is entitled to be permitted to be alone in one affair or another; therefore, non-interference prevails.⁵¹ Further, states “should prevent the legislature, or any government agency, from acting in a way that would have the foreseeable effect of compromising environmental quality.”⁵²

Although relationships among states have been determined under the Westphalian system⁵³ and it might be difficult to internationally and uniformly promote and protect the basic aspects of wellbeing, international law has enormously improved. In this regard, we cannot just talk about maintaining peace between states, but we need to discuss the protection of individuals’ lives, freedom, health, and so on.⁵⁴ As the UN Secretary General highlights: “Making peace with nature is the defining task of the 21st century. It must be the top, top priority for everyone, everywhere.”⁵⁵ These are rights of people within a state that constitute a common concern under international law.⁵⁶ States’ consent to be bound by norms, is the source of international law, but fundamental rights rooted in natural law tradition called human rights constitute inherent rights. These two have made globalized constitutional norms.⁵⁷

Negative rights make it clear that “everyone has an absolute right not to be purposefully or instrumentally harmed. This rules out any purposeful or instrumental attack on someone’s life or bodily wellbeing (though not the use of proportionate defensive force).”⁵⁸ Put less tersely: every good can be encapsulated in an individual’s life and health. It means that life and health can

⁵⁰ LOREN E. LOMASKY, *PERSONS, RIGHTS, AND THE MORAL COMMUNITY*, 84 (1987).

⁵¹ Stephen Capone, *Negative Rights*, ENCYCLOPAEDIA OF GLOBAL JUSTICE, https://doi.org/10.1007/978-1-4020-9160-5_338 (Deen Chatterjee ed. 2011).

⁵² Shelley Ghosh, *Right to Environment and Right of Environment- a Critique* (May. 20, 2012) Available at SSRN: <http://dx.doi.org/10.2139/ssrn.2062997>.

⁵³ In this system, the state has the monopoly of legitimate use of coercion within its territorial borders. Susan Strange, *The Westfailure System*, 25 REV. OF INT’L STUD. 345, 345 (1999).

⁵⁴ Emmanuelle Jouannet, *What is the Use of International Law? International Law as a 21st Century Guardian of Welfare*, 28 MICH. J. INT’L L. 815, 821 (2007).

⁵⁵ Marie Denoia Aronsohn, *A Case for Global Climate Action: U.N. Secretary General Delivers Potent Remarks at Columbia*, STATE OF THE PLANET (Dec. 02, 2020), <https://blogs.ei.columbia.edu/2020/12/02/world-leaders-forum-climate-action/>.

⁵⁶ Christopher C. Joyner, *‘The Responsibility to Protect’: Humanitarian Concern and the Lawfulness of Armed Intervention*, 47 VA J. INT’L L. 693, 717 (2007).

⁵⁷ Payam Akhavan, *Canada and International Human Rights Law: Is the Romance Over?* 22 CAN. FOREIGN POL. J. 331, 332 (2016).

⁵⁸ Chartier, *supra* note 26, at 22.

be prioritized over the rest of the basic goods. Hence, our plans must be careful regarding the requirements of life and health.⁵⁹

The good of life is the solid rationale to respond to environmental concerns. That is why the earliest versions of environmental statutes were struggling to secure public health.⁶⁰ The importance of negative rights is such that the International Covenant on Civil and Political Rights (ICCPR) call them inherent and absolute. Article 6 of ICCPR mentions: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” At this stage, “all the rights owners who have the right to live in a healthy and balanced environment are at the same time responsible to protect and improve the environment. The MNCs are included, too.”⁶¹ Dworkin clarifies the current situation with these words:

In a world of strong and increasing economic interdependencies, however, people’s lives may be more affected by what happens in and among other countries than by what their own community decides. Dignity seems to require that people everywhere be permitted to participate in some way—even if only in some minimal way—in the enactment and administration of at least those policies that threaten the greatest impact on them. An unmitigated Westphalian system makes that impossible.⁶²

Despite the fact that MNCs have sufficient financial and technological resources to actively contribute to environmental preservation, huge damage to natural resources (pollution and greenhouse gas emissions) is associated with their activities mainly in LDCs.⁶³ In this regard, Dworkin’s standpoint can be interpreted to highlight the importance of individuals’ negative rights to life and the necessity of their contributions to preserve it. It seems that individuals’ awareness of their negative rights can be a reliable force to globally enhance their solidarity in order to collaborate with each other to preserve their right to healthy lives. For example, a recent report indicates that people’s preferences to opt for responsibly produced goods and services in both LDCs and ICs confirm that MNCs positively react to such movements to maintain responsible investments.⁶⁴

⁵⁹ Fisher, *supra* note 27, at 276.

⁶⁰ Donnelly and Bishop, *supra* note 28, at 94.

⁶¹ Fulya Akyildiz, *The Failure of Multinational Companies in Developing Countries in Sharing Environmental Responsibilities: The Case of Turkey*, 2 (2) SOC. RESP. J. 142, 145 (2006).

⁶² Ronald Dworkin, *A New Philosophy for International Law*, 41 PHIL. AND PUB. AFF. 2, 18 (2013).

⁶³ Márquez, *supra* note 3, at 59.

⁶⁴ UNCTAD, WORLD INVESTMENT REPORT 2020: INTERNATIONAL PRODUCTION BEYOND THE PANDEMIC, 151 (2020).

III. MAKING INVESTMENTS IN TERMS OF ENVIRONMENTAL PRESERVATION

Firms' investment-related decisions in LDCs often are associated with their strategy to find cheaper means of production, market share expansion, enhancing efficiency, and access to foreign assets.⁶⁵ Although, MNCs should comply with the environmental regulations in host communities, environmental footprints have a lesser significance in their decisions.⁶⁶ We need to use other solutions to induce MNCs to not worsen environmental preservations in LDCs. The question is how to fill the gap between ICs and LDCs to maintain responsible investments?⁶⁷

A. Holding MNCs Accountable by Litigation

The regulative imbalances between ICs and LDCs could theoretically be lightened by enacting stricter environmental laws in LDCs, but the issue still remains because of their poor capacity of implementation and enforcement.⁶⁸ For instance, research on a sample of eleven Chinese pollution-intensive MNCs revealed that "the green governance context is a significant factor in MNCs' global location choice and is an important driving force behind MNCs' response patterns."⁶⁹ Besides, MNCs often have bargaining power to threaten the LDCs to leave their communities in the case of stricter environmental regulations. In this scenario, LDCs are exposed to losing foreign investments and jobs.⁷⁰

Pollution is the negative externality of manufacturing activity and its avoidance is costly. MNCs are likely to find ways to evade stricter regulations and their optimal solution is to move polluting activities to LDCs.⁷¹ The possible solution to fill the regulative gap between LDCs and ICs can be tort law. Although MNC's headquarters is not purportedly the direct aggressor of any

⁶⁵ JOHN H. DUNNING AND SARIANNA M. LUNDAN, *MULTINATIONAL ENTERPRISES AND THE GLOBAL ECONOMY*, 437 (2nd ed., 2008).

⁶⁶ For instance, "Unilever's biggest plastic pollution footprint is in India, where approximately 32,500 metric tons is produced per year. In 2019, Unilever sales in India amounted to approximately 4.5 billion Euros." See Ian Tiseo, *Annual Plastic Waste Generation of Unilever, by Country*, STATISTA (Nov. 10, 2020), <https://www.statista.com/statistics/1127470/annual-plastic-waste-volume-unilever/>.

⁶⁷ "The rules of the home countries in which most of the MNCs are headquartered and ones of host countries where a number of MNCs are engaged in pollution-intensive industries". Morimoto, *supra* note 7, at 134.

⁶⁸ Márquez, *supra* note 3, at 63.

⁶⁹ Runhui Lin, Yuan Gui, Zaiyang Xie, and Lu Liu, *Green Governance and International Business Strategies of Emerging Economies' Multinational Enterprises: A Multiple-Case Study of Chinese Firms in Pollution-Intensive Industries*, 11 (4) *SUSTAINABILITY*, 24 (2019).

⁷⁰ Sarah Joseph, *Taming the Leviathans: Multinational Enterprises and Human Rights*, 46 *NETH. INT'L L. REV.* 171, 176 (1999).

⁷¹ Ben-David, Jang, Kleimeier, and Viehs, *supra* note 47, at 27.

harm in LDCs, MNCs are the ultimate beneficiary of its affiliates' activities in LDCs and should perform its duty of care concretely toward them. This argument cannot be easily established. For example, in the U.K., the court in *Chandler v. Cape Plc.* emphasized that it is necessary the parent company has control of the relevant operations in a more direct and substantial way.⁷²

Some scholars in the U.S. previously relied on the Alien Tort Claim Act⁷³ (ATCA) to address environmental concerns. "ATCA obliged multinationals to give increased attention to human rights and environmental strategies, and to resolve complex issues related to different legal and ethical standards between some developed and some developing countries."⁷⁴ In spite of this, the U.S. courts⁷⁵ tend to rule out environmental allegations on procedural or jurisdictional grounds.⁷⁶ In *Beanal v. Freeport-McMoRan*, the court mentions that "federal courts should exercise extreme caution when adjudicating environmental claims under international law to insure that environmental policies of the United States do not displace environmental policies of other governments."⁷⁷ In *Sosa v. Alvarez-Machain*, the U.S. Supreme Court reaffirmed that federal courts should apply ATCA to violations of universal international norms.⁷⁸ In parallel, it can be seen that in *Guerrero & Ors v Monterrico Metals Plc & Anor*, the police officers' complicity in human rights violations in a protest against the development of Rio Blanco mine, owned by Monterrico Metals, prompted the claimants to look for damages.⁷⁹ This case led to an agreement between the claimants and Monterrico Metals out of court, and without the company acknowledging any human rights violations.⁸⁰

⁷² *Chandler v Cape Plc* [2012] EWCA Civ 525 (25 April 2012).

⁷³ ATCA also known as Alien Tort Statute is a 1789 law that affirms the jurisdiction of the district courts over any civil action committed in violation of the law of nations or a treaty of the U.S. (28 U.S.C. §1350). See *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (applying the ATCA).

⁷⁴ Geoffrey Jones, *Multinational Strategies and Developing Countries in Historical Perspective* 36 (Harvard Business School Working Paper 10-076, 2010). See also Jean Wu, *Pursuing International Environmental Tort Claims under the ATCA: Beanal v. Freeport-McMoRan*, 28 *ECOLOGY L. Q.* 487, 507–08 (2001); M. T. Calatayud, J. C. Candelas, and P. P. Fernandez, *The Accountability of Multinational Corporations for Human Rights' Violations*, 64/65 *CUADERNOS CONSTITUCIONALES DE LA CÁTEDRA FADRIQUE FURIÓ CERIL* 171, 179–82 (2008).

⁷⁵ See *Aguinda v. Texaco, Inc.*, 142 F. Supp. 2d 534 (S.D.N.Y. 2001).

⁷⁶ Duane Windsor, *Alien Tort Claims Act*, BRITANNICA (Dec. 17, 2015), <https://www.britannica.com/topic/Alien-Tort-Claims-Act>.

⁷⁷ *Beanal v. Freeport-McMoRan, Inc.*, 197 F.3d 161, 166–67 (5th Cir. 1999).

⁷⁸ *Sosa v. Alvarez-Machain*, 542 U.S. 692, 694 (2004) ("federal courts should not recognize claims under federal common law for violations of any international law norm with less definite content and acceptance among civilized nations than the 18th-century paradigms familiar when §1350 was enacted.").

⁷⁹ *Guerrero & Ors v Monterrico Metals Plc & Anor* (Rev 1) [2009] EWHC 2475 (QB) (Oct, 16, 2009).

⁸⁰ Angela Lindt, *Transnational Human Rights Litigation A Means of Obtaining Effective Remedy Abroad?* 4 (2) *J.OF LEGAL ANTHROPOLOGY* 57, 57 (2020).

Similarly, violations of customary international law or international human rights norms seem to be making a solid ground for ICs' courts holding MNCs liable against individuals in LDCs. For example, in *Nevsun Resources Ltd. v. Araya*, three Eritrean forced labours were required to work at a mine that was under the ownership of a Canadian company called Nevsun Resources Ltd. Workers claimed that their fundamental rights under customary international law were violated by being forced labours and slaves, while Nevsun relied on the internal laws of Eritrea and non-competency of the Canadian court to assess the sovereign acts of a foreign state.⁸¹ Finally, the Supreme Court of Canada held that "since the customary international law norms raised by the Eritrean workers form part of the Canadian common law, and since Nevsun is a company bound by Canadian law, the claims of the Eritrean workers for breaches of customary international law should be allowed to proceed."⁸²

Apart from this, the causality between environmental damages and MNCs' activities should be proved, which is time-consuming and costly.⁸³ The general rule is that if one's activity results in damage to individuals' lives or their basic aspect of wellbeing, she should bear the damage. In the case of MNCs, there are subsidiaries or affiliates which manage their businesses in LDCs; therefore, affiliates or subsidiaries ought to recover any environmental damage stemming from their activities in LDCs.⁸⁴ In *Okpabi & Ors v Royal Dutch Shell PLC*,⁸⁵

⁸¹ *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 (CanLII), (Feb. 20, 2021).

⁸² *Id.*

⁸³ "This is because of the costs associated with gathering evidence in a foreign State to support a claim, the cost of legal and technical experts, and the sheer fact that these cases can take upwards of a decade to litigate." Gwynne Skinner, Robert Mc Corquodale, and Olivier De Schutter, *the Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business*, ICAR-CORE-ECCJ Report, the European Coalition for Corporate Justice, 45 (2016).

⁸⁴ Martyna Robakowska and Dominik Wałkowski, *Multinational Companies Can Be Liable for Environmental Harm Caused by Their Subsidiaries*, CO DO ZASADY (Mar. 3, 2016), <http://www.codozasady.pl/en/multinational-companies-can-be-liable-for-environmental-harm-caused-by-their-subsidiaries/>.

⁸⁵ "At first instance Fraser J held that there was no arguable case that [Royal Dutch Shell PLC] owed the Appellants a duty of care. The Appellants appealed to the [Court of Appeals] against the judgment and Order of Fraser J. The [Court of Appeal] upheld the decision of Fraser J. The Supreme Court has since clarified the law in this area, including by reference to the [Court of Appeal's] decision in this case, in *Vedanta Resources PLC and another (Appellants) v Lungowe and others (Respondents)* [2019] UKSC 20." *Okpabi & Ors v Royal Dutch Shell Plc. & Anor* [2021] UKSC 3 (Feb. 14, 2021) (citing *Okpabi & Ors v Royal Dutch Shell Plc & Anor (Rev 1)* [2018] EWCA Civ 191 (Feb. 14, 2018)) (summary). Eventually, in 2021, the Supreme Court allowed the appeal and clarified the law in this respect by referring to the Court of Appeal's decision on *Vedanta Resources Plc. and another v Lungowe and others* regarding the issue of jurisdiction over this claim: "I would accordingly allow the appeal. On the assumption that the respondents maintain the other challenges to jurisdiction which were not resolved by Fraser J, the matter will have to remit and the parties should seek to agree the appropriate terms of the order to be made." *See Okpabi & Ors v Royal Dutch Shell Plc. & Anor* [2021] UKSC 3 (Feb. 14, 2021).

Lord Justice Simon (in the Court of Appeals), affirmed that there is a distinction between

a parent company which controls, or shares control of, the material operations of a subsidiary, on the one hand, and a parent company which simply issues mandatory policies as group-wide operating guidelines for its subsidiaries... The issuing of mandatory policies plainly cannot mean that a parent has taken control of the operations of a subsidiary (and, necessarily, every subsidiary) such as to give rise to a duty of care in favor of any person or class of persons affected by the policies.⁸⁶

By contrast, Lord Briggs in *Vedanta Resources PLC v Lungowe* stated that: "... the parent may incur the relevant responsibility to third parties if, in published materials, it holds itself out as exercising that degree of supervision and control of its subsidiaries, even if it does not in fact do so. In such circumstances its very omission may constitute the abdication of a responsibility which it has publicly undertaken."⁸⁷ Although Lord Briggs maintained a dynamic position on determining the level of supervision and abandoned the solid description of a parent company, it remains an important factor of the possibility of holding MNCs liable.⁸⁸

In the case of MNCs, individuals face a vulnerable situation rooted in the weaknesses of LDCs' legal systems and access to justice⁸⁹ that enables interested groups or local authorities to influence them.⁹⁰ Then, sticking to the general rule would not be in compliance with the good of a healthy life. Further, "MNCs operate in a wide range of pollution-intensive manufacturing industries

⁸⁶ Okpabi & Ors v Royal Dutch Shell Plc & Anor (Rev 1) [2018] EWCA Civ 191 (Feb. 14, 2018).

⁸⁷ Vedanta Resources PLC & Anor v Lungowe & Ors [2019] UKSC 20 (Apr. 10, 2019).

⁸⁸ It seems that in *Okpabi & Ors v Royal Dutch Shell PLC*, the Supreme Court found it more promising that "control of a company and de facto management of part of its activities are two different things. A subsidiary may maintain de jure control of its activities, but nonetheless delegate de facto management of part of them to emissaries of its parent." See Okpabi & Ors v Royal Dutch Shell Plc. & Anor [2021] UKSC 3 (12 February 2021).

⁸⁹ The significant factors to evaluate LDCs' judicial systems in terms of responding to environmental concerns and human rights violations are "the existence and quality of environmental legislation; the existence of instruments for State monitoring of industrial activities and their effectiveness; the existence of other non-judicial entities for the protection of human rights (attorneys, ombudsmen, etc.); the existence of independent and effective judicial power; the possibilities for citizen access to environmental information; the possibilities for citizen participation in the decision-making process for environmental matters; and finally, the existence of routes of access to environment-related justice for NGOs, for ordinary citizens, and for victims." See Antoni Pigrau, Susana Borràs, Jordi Jaria i Manzano, and Antonio Cardesa-Salzmann, *Legal Avenues for EJOs to Claim Environmental Liability*, EJOLT Report 4, 87 (2012).

⁹⁰ Robakowska and Wałkowski, *supra* note 84.

whose products or processes may harm the environment”⁹¹ therefore, it is highly necessary to construe the notion of jurisdiction and put MNCs out of this controversial debate. In *Dooh v. Royal Dutch Shell PLC*⁹², although the District Court dismissed all the claims, the Dutch Court of Appeals in addition to recognizing its jurisdiction⁹³ over the case, “pointed out that the liability of the parent company for failure of supervision cannot be excluded in advance.”⁹⁴ It highlights a procedure to file a claim against both a MNC and its affiliates on the ground of environmental damages in the place of headquarters’ domiciles.⁹⁵

B. Stabilize a Destabilized Situation through Self-Organization

We realize that negative rights forbid the non-consensual use of individuals and their possessions by reliance on the use or threat of physical harm in various forms.⁹⁶ In spite of this, what can be seen is the weak and inconsistent environmental regulations across the world which give teeth to MNCs to increase their profits, minus meaningful economic benefits for local communities.⁹⁷ To realize the importance of our even small choices and signals, a study indicates that members of ICs who choose cheap imported products such as toys and clothes indirectly cause thousands of pollution related deaths in the LDCs⁹⁸

⁹¹ Morimoto, *supra* note 7, at 135.

⁹² *Dooh v. Royal Dutch Shell Plc*, 200.126.834-01, Judgment (Gerechthof Den Haag [Hague Court of Appeal]) (Neth.) (Dec. 18, 2015).

⁹³ “It cannot be established in advance that the parent company is not liable for possible negligence of the Nigerian operating company. It is effective to combine these proceedings against the parent company with those against the Nigerian subsidiary. There is sufficient cohesion in this regard.” *See Dutch Courts Have Jurisdiction in Case against Shell Nigeria Oil Spills*, DE RECHTSPRAAK (Dec. 18, 2015), <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Gerechtshoven/Gerechtshof-Den-Haag/Nieuws/Paginas/Dutch-Courts-have-jurisdiction-in-case-against-Shell-Nigeria-oil-spills.aspx>.

⁹⁴ Robakowska and Walkowski, *supra* note 84.

⁹⁵ The EU states rely on Rome II to cover MNCs’ environmental damages in LDCs. However, this is not a compulsory procedure and courts can refuse to confirm their jurisdiction over environmental damages in LDCs. *See Dani Spizzichino, Multinationals and Human Rights Violations: Legal and Political Strategies in Latin America and the Improvement of Corporate Human Rights Account Ability in Europe*, Master of Laws Thesis, University of Leiden, 44–47 (2017).

⁹⁶ DOUGLAS B. RASMUSSEN AND DOUGLAS J. DEN UYL, *THE REALIST TURN REPOSITIONING LIBERALISM*, 170–71 (2020).

⁹⁷ P. Davies, M.P. Hernandez, and T. Wyatt, *Economy Versus Environment: How Corporate Actors Harm Both*, 27 CRIT. CRIM. 85, 86 (2019). Also, “foreign affiliates may be directly owned by a domestic corporate entity, acting as a domestic hub, while the ultimate owner, the MNC parent, is located in a different country.” Eleonora Alabrese and Bruno Casella, *The Blurring of Corporate Investor Nationality and Complex Ownership*, 27 TRANSNAT’L CORPS. 115, 129 (2020).

⁹⁸ In order to highlight the communal norm regarding environmental protection, Finnis’ account of the common good is chosen. It is a *prima facie* fact that in this account, the nation state is incomplete and it is deliberately replaced by community. *See Finnis, supra* note 21, at 156.

where the goods are produced.⁹⁹ In this chain, MNCs' role is vital and their "environmental irresponsibility in the process of production is one of the most prominent issues confronting LDCs."¹⁰⁰ Although providing goods and services is necessary for individuals to continue their lives, human life in nature is a basic human good and the subject-matter of a primary reason for action. It means that every human's life should be respected and protected to be flourished.¹⁰¹

The status quo is that MNCs are keen on investing in LDCs that have simpler environmental regulations.¹⁰² They outsource polluting activities by reliance on a global supply chain to emit less in their home communities as well as maintain the beneficial methods of production.¹⁰³ This vulnerable situation shows that we need individuals' prompt solidaristic actions to remind MNCs of their responsibility toward communities and the environment.

It can be seen that changes in environmental regulations per se cannot affect the polluting industries because of the absence of a global coordinative action in controlling MNCs' polluting activities.¹⁰⁴ Thomas Linzey sheds light on this phenomenon as:¹⁰⁵

Environmental laws simply permit environmental pollution and the only thing managed by environmental law, are environmentalists, as governments and corporations collude to control the use of the environment and public resources to perpetuate benefits for vested interests.

Self-regulation is one of the voluntary basis activities from MNCs to reduce the regulative imbalances in LDCs. However, self-regulation requires some

⁹⁹ Hannah Devlin, Thousands of Pollution Deaths Worldwide Linked to Western Consumers – Study, THE GUARDIAN (Mar. 29, 2017), <https://www.theguardian.com/environment/2017/mar/29/western-consumers-fuelling-tens-of-thousands-of-air-pollution-related-deaths>.

¹⁰⁰ Hakeem O. Yusuf and Kamil Omotoso, *Combating Environmental Irresponsibility of Transnational Corporations in Africa: an Empirical Analysis*, 21 (11) THE INT'L J. OF JUST. AND SUSTAINABILITY 1372, 1372 (2016).

¹⁰¹ JOHN FINNIS, AQUINAS (MORAL, POLITICAL, AND LEGAL THEORY), 140 (1998).

¹⁰² Despite the pandemic and decreasing rates of investment in 2020, 72% (\$616 billion) of global foreign direct investment belongs to LDCs. See *Global Foreign Direct Investment Fell by 42% in 2020, Outlook Remains Weak*, UNCTAD (Jan. 24, 2021), <https://unctad.org/news/global-foreign-direct-investment-fell-42-2020-outlook-remains-weak>.

¹⁰³ Itzhak Ben-David, Stefanie Kleimeier, and Michael Viehs, *When Environmental Regulations Are Tighter at Home, Companies Emit More Abroad*, HARVARD BUS. REV. (Feb. 4, 2019), <https://hbr.org/2019/02/research-when-environmental-regulations-are-tighter-at-home-companies-emit-more-abroad>.

¹⁰⁴ Ben-David, Jang, Kleimeier, and Viehs, *Supra* note 47, at 4.

¹⁰⁵ THOMAS LINZEY, OF CORPORATIONS, LAW, AND DEMOCRACY: CLAIMING THE RIGHTS OF COMMUNITIES AND NATURE, 12 (2013).

prerequisites to be successful in LDCs.¹⁰⁶ It may restrain managers from pursuing polluting activities. But, this mechanism depends on the investors' preferences and value on the good of the environment and responsible investments.¹⁰⁷

Apart from self-regulation, the plausible means would be self-organization. Self-organization refers to a bottom-up¹⁰⁸ order in which workers have the genuine right to participate in main and strategic decisions of the MNCs' affiliates. That is a kind of assistance rather than subordination. It means that participants in an association (here MNC's affiliates) choosing commitments (here commitments to their community or environment) "and of realizing these commitments through personal inventiveness and effort in projects."¹⁰⁹ However, in big businesses particularly MNCs, because of their hierarchical systems, there is rare opportunity to enable participants to carry out the decision; therefore, "the same principle requires that larger associations should not assume functions which can be performed efficiently by smaller associations."¹¹⁰

Self-organization empowers MNCs to take a clear step toward a worker-governed nature. Workers' authority in the workplace and their active participation in decisions can increase productivity and efficiency.¹¹¹ Studies confirm that pollution can negatively impact workers' productivity,¹¹² therefore, in the self-organized firm, workers cannot easily rule it out. Put simply, the first impression of consumers flows from their communications with MNCs' workers in a given

¹⁰⁶ Information, transparency, and disclosure are pre-requisites for holding corporations to account for their pledges of self-restraint or voluntary compliance. See David Graham and Ngaire Woods, *Making Corporate Self-Regulation Effective in Developing Countries*, 34 (5) WORLD DEV., 881–82 (2006). In this sense, it is possible to examine Unilever's social responsibility campaign in Iran. The company in accordance with its social responsibility duties conducted a campaign to distribute toothpastes among kids in Iran. However, in some cases, Unilever's affiliate distributed expired toothpastes under the brand of Signal Kids in Iranian kindergartens. See *Welfare Organization's Reaction to the Distribution of Expired Toothpaste in One of the Kindergartens*, YOUNG JOURNALISTS CLUB (Dec. 16, 2019), <https://www.yjc.ir/00U6Rw>. It seems that the lack of information leads to weakness of the community to put pressure on the MNC to explain itself. By contrast, a racist advertisement of Unilever in the U.S. was promptly removed by public pressure. See Nicola Slawson, *Dove Apologises for Ad Showing Black Woman Turning into White One*, THE GUARDIAN (Oct. 8, 2017), <https://www.theguardian.com/world/2017/oct/08/dove-apologises-for-ad-showing-black-woman-turning-into-white-one>.

¹⁰⁷ Itzhak Ben-David, Stefanie Kleimeier, and Michael Viehs, *Exporting Pollution 4* (Charles A. Dice Center for Research in Financial Economics, Working Paper 2018-20, 2018).

¹⁰⁸ Chartier, *supra* note 20, at 17.

¹⁰⁹ See Finnis, *supra* note 21, at 146–47.

¹¹⁰ *Id.*

¹¹¹ Chartier, *supra* note 26, at 94.

¹¹² See Tom Y. Chang, Joshua Graff Zivin, Tal Gross, and Matthew Neidell, *The Effect of Pollution on Worker Productivity: Evidence from Call Centre Workers in China*, 11 AM. ECON. J.: APPLIED ECON., 151, 151–72 (2019); Graff Zivin, Joshua, and Matthew Neidell, *the Impact of Pollution on Worker Productivity*, 102 (7) AM. ECON. REV., 3652, 3652–73 (2012).

community. Also, workers are influenced by their firms' policies and if they have more participation in the direction of the business, they will find themselves more responsible in terms of reputation, environmental protection, and so on.¹¹³ In such a system, it is possible to be an optimist regarding the basic justice and legitimacy of actions.¹¹⁴ In fact, firms whose workers are engaging in the businesses have an internal force to dismantle polluting activities or restructure them in accordance with the advice and supervision of a group of LDCs' nominees. Hence, self-organization cannot only help workers loudly claim their rights, but also react to the environmental concerns in their communities because such concerns affect their wellbeing as well.¹¹⁵

Further, as life is intrinsically good, individuals around the world should benefit from it and have the right to contribute to the basic aspects of wellbeing. In a broader sense, any wrongful activity that harms the environment in one part of the world can potentially impact others in another area. By self-organizing it is possible to hold MNCs accountable for environmental destruction that has negative correlations with the healthy life. Also, their close contact with the local communities can accelerate any reductive plan of pollution. Roger Scruton says that centralized government cannot provide the incentives that ordinary people require to protect their environment.¹¹⁶ Self-organization is an instrument that enables individuals to perform their protective environmental plans. Accordingly, workers have more realistic opportunities to make their own decisions by considering all the requirements of their communities.¹¹⁷ In this case, Alcoa's plan is interesting. Alcoa nominated 15 employees in partnership with Earthwatch Institute to "see first-hand the science of understanding environmental conditions and the connection to Alcoa's strategic programs. These employees then promote Alcoa's environmental leadership to their colleagues and communities upon their return."¹¹⁸

¹¹³ S. De Spiegelaere, A. Hoffmann, R. Jagodziński, S. Lafuente Hernández, Z. Rasnača & S. Vitols, *Democracy at Work, In Benchmarking Working Europe (77)* 2019 BRUSSELS: EUROPEAN TRADE UNION INST. (ETUI).

¹¹⁴ Christian Neuhäuser and Andreas Oldenbourg, *Workplace Democracy and Corporate Human Rights Responsibilities*, 78 (3) REV. OF SOC. ECON., 331, 331–50 (2020).

¹¹⁵ Chartier, *supra* note 26, at 89.

¹¹⁶ ROGER SCRUTON, GREEN PHILOSOPHY HOW TO THINK SERIOUSLY ABOUT THE PLANET, 316 (2012).

¹¹⁷ Chartier, *supra* note 26, at 103.

¹¹⁸ Noria Corporation, *Alcoa Employees to Help Study Environmental Issues*, RELIABLE PLANT (Mar. 07, 2008), <https://www.reliableplant.com/Read/10864/alcoa-employees-to-help-study-environmental-issues>.

CONCLUSION

The Article addresses advances of the notion of common good to highlight the importance of responsible investments in LDCs. Indeed, the right to a healthy life is the intrinsic goal of humans regardless of any differentiated factors among them. Despite the fact that states either in LDCs or ICs are in complicity with the MNCs to not take a meaningful step to diminish pollution around the world and their struggles mainly lead to exporting pollution to LDCs; individuals' solidarity on environmental protection is a serious factor to hold MNCs accountable.

The Article acknowledges that legal systems in ICs are reluctant to extend their jurisdiction to environmental damages stemming from MNCs' malfunctions in LDCs. Also, procedural matters in ICs are costly and proving causality is not easy. Hence, it is rational to develop alternative solutions. In this case, self-organization can be helpful to enable LDCs to internally address global environmental concerns. MNCs' self-regulation has been employed to mandate some environmental requirements, but it could not reach the expectations mostly due to the hierarchical nature of MNCs and their lack of consideration to individuals' common good. The ideal situation is breaking down the big businesses and replacing them with small firms, while in the current system of business, the practical option could be the full-delegation of responsibilities and rights to affiliates around the world with flat management.

In order to attenuate negative externalities of MNCs' activities in LDCs, individuals need a solid system of judicial process to secure their basic aspect of wellbeing. Unfortunately, it is not easily accessible particularly in LDCs, but it does not mean that communities are not able to enhance the quality of environmental protection and stabilize the current situation. Apart from their increasing awareness of the MNCs' low standards in LDCs and noncompliance with the recognizable norms of environmental preservation, MNCs should go beyond the so-called hurdles of investor-governed firms and promote their employees in LDCs to have determinant roles in building the skeleton of the business and respond to environmental concerns. In this case, self-organization can be a reliable means to actively answer the requirements of individuals' common good regarding the right to a healthy life.