

# On the horizon of environmental crime: the comparative research of the legal person crime between Mexico and China<sup>1</sup>

*Sobre el horizonte del crimen ambiental: Un análisis comparativo del crimen de las personas físicas entre*

*México y China.*

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## ABSTRACT

In recent years, in all scales global there are more and more environmental crimes happened in the society, which are more and more serious. Although both developing countries and also belong to the Continental Law System, Mexico and China are quite different on the environmental crime of the legal person. Based on a different legal principal, this paper will compare the legislation on the environmental crime of legal person, evaluate the advantages and disadvantages, analyze the possibility and necessity of legal person being the subject of the environmental crime, to finally find a best model of legislation on the environmental crime of legal person and to better solve the growing severe problem of the environmental problems.

**KEY WORDS:** environmental crime, system legal, legal person, legislation.

## RESUMEN

La sociedad global ha visto crecer en los últimos años los crímenes contra el medio ambiente, los cuáles además, van agravándose, haciendo necesaria la aparición de una acción coordinada en todas las escalas. México y China, que son dos países en vías de desarrollo, cuyo sistema jurídico pertenece al derecho internacional, aplican distintos tratamientos a los delitos contra el medio ambiente cometido por las personas físicas. Lo anterior, debido a que los principios jurídicos de ambos sistemas son diferentes. Este trabajo tiene el objetivo de analizar las diferencias de los principios jurídicos entre ambos países, para encontrar el mejor

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modelo legislativo que castigue los delitos relacionados con el medio ambiente. Compararemos la legislación sobre este delito entre México y China, valorando las ventajas e inconvenientes, de que la persona jurídica pueda ser considerada como delincuente ambiental, para evitar que este problema siga creciendo.

**Palabras clave.** crimen ambiental, sistema legal, legislación, persona física.

## INTRODUCTION

The problem of environment is a global issue. The phenomenon of destruction of ozonosphere, global warming and environmental pollution are universal. Being developing countries, Mexico and China couldn't be inevitable. To change this condition, Mexico and China have strengthened the power of environmental protection in recent 20 years and perfected from aspects of legislation, law enforcement and judicature, which has resulted in great achievements on environmental governance. As the most mandatory law, the criminal law is the last barrier to punish the environmental crime. The *Federal penal code of Mexico* (2014) and the *Criminal Law of People's Republic of China* (2011), both draw a special chapter to regulate the environmental crime. But on question of the subject of the environmental crime, especially the legal person crime, there is a big difference between two countries because of the different ideology and culture.

In this paper, we formulate a hypothesis: it's important and possible to confirm the legal person could be the subject of the environmental crime, which means that it needs both countries to present it in the legislation and advance reform according to the condition of the country.

The objectives of this paper are: 1) to show the regulation about the environmental criminal law of the two countries; 2) to analyze the advantages and disadvantages of the regulation of China and Mexico; 3) to illustrate the importance and possibility to take legal person as the subject of environmental law and 4) to reflect about the perspectives futures of the reform of the legislation of the two countries.

Our questions are as following: whether the legal person should be the subject of the environmental crime? If recognized, whether we should punish the legal person or the person in charge, or both? How should we maximize the effectiveness to attack and control the environmental crime through enforcing the system of the legal person crime?

Those questions would be responded from several points: firstly, to begin with a background part, which provide an overview of the legislation regarding the environmental crime of legal person of the two countries, both theoretically and practically; then to analyze in a second part, from aspect of criminal components and value, to prove the importance and possibility to take the legal person as the subject of environmental crime; thirdly, to compare the

penalty differences on the environmental crime of the legal person between China and Mexico to testify there are advantages and disadvantages in each penalty system, as well as it should be reference with each other; Finally, to make the conclusion that no matter to China, or to Mexico, it's necessary to perfect the legislation of the environmental crime of the legal person to protect the environment and human being.

### **The legislative condition about environmental crime of legal person of Mexico and China**

“Criminal subject” means the person who has committed the crime and should take the criminal responsibility. The two countries both recognize that “natural person” should be the subject of the environmental crime. However, whether a legal person should be the subject, how to define the criminal responsibility between the legal person and the natural person in a case, and the problem of penalty are main differences between Mexico and China.

#### *Principal theories to establish the environmental crime of the legal person*

As for the Common law, one of the principles to establish the criminal responsibility of the legal person is “*Respondeat Superior*”<sup>4</sup> (Latin for “let the master answer”, also called “*Master-Servant Rule*”) (Black, 2001a), whose criminal connotation is that in many circumstances, an employer is responsible for the behaviors performed by the employees in the course of their employment. The criminal behavior of a natural person and his intention would be treated as the improper treatment of the legal person itself and the guilty of the natural person would be shifted to the legal person, and then, the legal person should take responsibility for the illegal behavior of its employees (Zheng Kun-Shan, 1998). According to the doctrine, in the Common law system, the legal person should be the subject of the environmental crime. Moreover, the responsibility undertaker should only be the legal person. Even if the natural person should take the responsibility, it would shift to the legal person.

On contrary, the Continental law has been influenced deeply by the principle of “*Societas delinquere non potest*”<sup>5</sup> (Latin for “legal entities cannot commit a criminal offence”). Therefore, there is no regulation about the legal law crime in the traditional continental law system. However, as the development

<sup>4</sup> “As for those things which a servant may do on behalf of his master, they seem all to proceed upon this principle, that the master is answerable for the act of his servant, if done by his command, either expressly given, or implied: nam qui facit per alium, facit per se (Latin for he who acts by an agent, does it himself).”

<sup>5</sup> It was a Roman motto. The modern concept of “legal entity” was born in Rome with the concept of “*Universitas*” which was something different from the human being. Under the Roman law this abstract entity was not able to commit crimes because the Roman law had in the center of its doctrine the “human body”, which is considered as something that has morality and is able to suffer pain.

of the theory and the practice of the legal person crime, especially more and more environmental problems have brought about, which has challenged this traditional principle. In the book of *Lehrbuch des Deutschen Strafrechts (German Criminal Law Textbooks)*, Liszt (1851-1919) believed that if a legal person possesses the capacity, the legal person crime should be admitted; if the legal person is an independent subject of the legal benefit, we should make punishment to the legal person (Franz von Liszt Translated by Xu JiuSheng 2000). Gradually, laws of the majority of the continental countries have regulated the environmental crime of legal person. However, the continental country thinks the subject of the environmental crime of the legal person should include the legal person and the relative person in charge, both of which should take the criminal responsibility. For example, the fourth article in the *Law of Pollution Crime* of Japan regulates:

When the legal representative of the legal person, the agent of the legal person or the natural person, employee or other persons violate the law for the business of the legal person or the natural person, besides the actor should take the punishment, the legal person and the natural person also should be fined according to the law. (Congress of Japan, 1970)

#### *The legislation of the environmental crime of legal person in Mexico*

Mexico had inherited the traditional theory of the continental legal system and believed the legal person would not be the criminal subject, because legal person was not a kind of physical existing with morality and it was only a kind of artificial person in the law, whose appearance is just convenient to a group of person to fulfill a common target. Therefore, the offender should be a kind of physical existing with morality, that is, the human being. Furthermore, if the legal person is treated as a whole and is requested to take the criminal responsibility, it's equal to take the innocent natural person as the person liable and to judge them in principles of *presumption of guilt* and *summary judgment*. Maybe in a legal person, somebody had objected to commit such crime or totally didn't know the crime, but they are still requested to take the criminal responsibility, which has not only violated the modern criminal positivism, but is also on the contrary of justice and fairness, even the common sense. In addition, the guilt of the legal person is also difficult to confirm (Betancourt, 2012). Therefore, in the earnest, there was no regulation about legal person in the Mexico criminal law. But as the development of the society and the legislative tendency of the international society, the legal person crime has appeared in the article 11 of its criminal law:

When any member or representative of a corporation or a partnership, corporation or business of any kind, other than state institutions, commits a crime with the means to

this end will provide the same entities, so that it is committed on behalf of or under the protection of the social representation or benefit from it, the court may, in cases specified by law exclusively, in the judgment decreed the suspension of the group or its dissolution, when deemed necessary for safety public. (Congress of Mexico, 2014)

Although there is legislation in the criminal law of Mexico, but the truth is that till now, Mexico still doesn't totally accept the legal person crime, the article 11 is only the principled rule and hasn't regulated in the relatively special provision of the criminal law, included in the chapter of the environmental crime. Therefore, it's hard to practice.

In the recent years, the theoretical and practical circles of Mexico both have advocated to re-legislate about the legal person crime.

Firstly, the scholars of Mexico have carried out a theoretical analysis concerning the legal person crime. The main reason of the traditional "*Societas delinquere non potest*" is that the legal person doesn't possess the morality and subjective intention. To refute this view, the scholars have referenced some theories of Spanish, such as "*Joint and Several Liability*" theory (De la Cuesta, 2013), "*theory of defective organization of the company*" (Jornadas en honor del Profesor Klaus Tiedemann, 1995),<sup>6</sup> "*constructivist concept of corporate criminal culpability*", etc. Especially the third theory is a relatively new one, which was firstly put forward by Gómez-Jara, who has set up a "constructivist model of corporate criminal self-reliance." He suggests that the legal person should build the fidelity to the law and the culture of the company to comply with the law. The faithfulness to the law is the reason and resource why the legal person should create a culture of compliance with the law. There is an important result derived from the author's own argument: the corporate offense could be excluded if the company has shown fidelity to the law through the so-called "effective compliance programs". The company in fact is a corporate citizen, just like a natural person, every citizen should show the faithfulness to the law. If the company has set up a culture of the compliance with the law, it shows that the company has fulfilled his role of being a citizen, which would testify that the company has no guilty. It may bring about a civil or administrative liability, but not a criminal one. To explain simply, a company has committed some behavior to destroy the environment, but if the company has set up a system of "*effective compliance with the law*", then, the guilty of the crime would be exempted. (Gómez-Jara, 2006).

Also, the practical circles of Mexico have taken an important analysis. In 2012, the President of Mexico Enrique Peña Nieto sent to the Senate an initiative whereby decree amending, supplementing and repealing various provisions of the Federal Penal Code and the Federal Code of Criminal Procedure. One of the issues is the implementation of a model imputation of criminal

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<sup>6</sup> This theory was mentioned by Professor Tiedemann, which was accepted by many Spanish scholars. Tiedemann believed that the duties of monitoring and control of the legal person would result in the duty to prevent the commission of crimes by its members.

responsibility to legal persons “private nature”, including the procedural operation of the proposed scheme, and the classification, by using the technique of numerous clauses of those types that one might find a legal person would be a criminal defendant, as well as a list of the consequences that may be imposed on legal persons and the explicit reference to the mitigating circumstances of criminal responsibility applicable to collective entities themselves. After investigated, the Conference made a bill on the legal person crime. The Conference believed: firstly, many other countries of continental law system have given up the theory of “*Societas delinquere non potest*” and have made the legislation of the legal person crimes. Secondly, from the domestic point, in many fields such as society, economy, environment, etc, more and more legal person crimes have been occurred, which have brought about gigantic damages to all kinds of legal benefits. Thirdly, from the international point, to regulate the legal person crime is also the requirement of the international convention, for example, the United Nations Convention Against Transnational Organized Crime, Forty Recommendations of FATF, etc. According to these Conventions, as a signatory or a membership, it needs Mexico to make the legislation of legal person crime (The Commission of Justice of Mexico, 2012a). On the basis of the above reasons, the Conference has put forward the legislation suggestions from aspects of criminal constitution, apportionment of the responsibility and penalty. To tell the truth, the standard of this bill is very high and could bear comparison with the legislation of some developed countries. But unfortunately, the bill couldn’t be passed. From this point, we can also deduce that presently, the society of Mexico still doesn’t completely accept the legal person crime.

#### *The legislation of the environmental crime of legal person in China*

In China, no matter the theoretical circles or the practical circles both consider that legal person should be the subject of the environmental crime and should be incarnated in the legislation. The main reasons are as following:

“*Double Criminal Subject Theory*” believes that the subject of the legal person crime include the legal person and its representatives, because in the crime of the legal person, these two have played an important or decisive function. They have the subjective culpability and have committed the objective crime, therefore no matter the legal person or the representatives should take the criminal responsibility. (Bing-Song, 2000)

“*Double Mechanism Theory*” deems that in the crime of the legal person, there are double mechanisms: one is the offender on the surface, whose subject is the legal person; the other is the offender in the deep, whose subjects mainly include the person in charge and the person directly responsible. According to the principle of “Bearing responsibility solely for one’s own crime”, both of these two kinds of offender should take the criminal responsibility

(Wei-Yi, 1991).

“*Criminal Joint Responsibility Theory*” thinks that the criminal offences of the legal person and its principal members are connected with each other, which is the reason why we should punish these two. (Zhang Wen, 1994)

“*Theory of the Natural Person Should Be Excluded from the Criminal Subject*” considers that the subject of the legal person crime should only be the legal person itself and can't include the natural person. If the natural person is included, the crime should be joint crime of the legal person and the natural person. While, the legal person is a legal fiction, whose intention is expressed through the concrete behavior of the natural person, therefore, the problem of joint crime would not exist. So, we can only punish the legal person (Meng Ling, Fei Ling, 2011).

“*The Integration of the Responsibilities of the Legal Person and Its Member Theory*” holds that the legal person crime is a kind of complex, which is constituted by the entity and the member of the entity, and the two parts should be integrated into one to take the criminal responsibility together (Lou Yun-Sheng, 1996).

To summarize the above theories, we can conclude that there is only the difference on whether the natural person should take the responsibility in the environmental crime of the legal person, but as for the legal person, it's definite that it is the subject of the environmental crime.

Besides the theories, in regard of the legislation of the legal person crime, china has integrated the experiences of the common law systems and the continental law system. On one side, it is affirmed in the criminal law that the legal person is the criminal subject. There is a special chapter named “legal person crime” in Chinese Criminal Law (2011); on the other side, to confirm again in the relatively concrete crime. For example, as for the environmental crime, article 346 has regulated:

If a unit commits any crime mentioned in the provisions from Article 338 to Article 345 of this Section (concerning the environmental crime), the unit shall be sentenced to a fine, and persons directly in charge and other persons directly responsible for the crime shall be punished according to the provisions of respective Article s of this Section. (National People's Congress of China, 2011)

To compare the legislation of the two countries, we can see that both countries agree that legal person should be the subject of the environmental crime. But obviously, Mexico is not willing to give up the traditional idea and make the law abstract and imperfect, while as for China, it seems like accept the legal person crime more voluntarily and make the law more concrete and detailed. Let's put aside the problem of whether the legislation of China is good or not and firstly talk about whether it is important and possible to take

the legal person as the subject of the environmental crime

### **The importance and possibility to confirm the legal person could be the subject of the environmental crime**

With regard to whether the legal person could be the subject of the environmental law, it would be analyzed from two aspects: firstly, to analyze the requirement to the environmental crime of legal person from view of the criminal components; then, from stage of value, to analyze whether it is required to use the method of legislation to make a negative evaluation on the legal person crime in order to precaution and attack the legal person crime better.

*From the aspect of criminal components, whether legal person could be the undertaker of the responsibility of the environmental crime depends on whether it possesses the capacity and the guilty.*

In Mexico, the jurisprudential circles consider the subject of the environmental crime as a kind of physical existing with morality only, that is to say, the human being, because the legal person hasn't feet and hands and it couldn't commit the offence, which has totally denied the legal capacity of the legal person in fact. Innately, there is difference between the legal person and the natural person: one is a legal fiction, the other is a natural body, therefore, no matter the civil capacity or the administrative capacity or the criminal one of them should be distinguished. We couldn't just for the reason of the different nature of the legal person and the natural person to deny the capacity. And also, we could affirm the criminal components of the legal person. To compare with the offences of the environmental crime of the natural person, there are three requirements should be met (Jiang Xi-Hui, Xiao Zhong-Hua, 2004a):

Firstly, the crime is committed in the name of the legal person, which is the formal feature of the legal person crime. Therefore, if the member of the legal person commits offences in the name of himself, but the legal person has obtained the benefit, under this kind of circumstances, whether the commitment should be viewed as a legal person crime? The answer is NO. Because there is lack of the subjective fault and we can't inculcate the legal person for a no-fault behavior.

Then, the decision-making organ of the legal person makes a pre-decision or recognize retroactively. This kind of situation does exist in the society: primarily, the member of the legal person commits a concrete crime to cause the result of damage, and then, in order to obtain benefits, the legal person gives tacit consent to that commitment, which should be maintained to constitute the legal person crime. For example, the salesman has committed a contract fraud and the benefits belong to the legal person. After investigates, the legal person recognize the salesman's behavior and accept the illegal benefit. Under



this kind of condition, we should affirm the behavior of the legal person.

Thirdly, the crime is committed by the member or the internal person of the legal person. For the legal person is lack of feet and hands, the committed crime is mainly depended on the natural person to fulfill the criminal intention of the legal person. What should be distinguished is the personal crime of the internally natural person, which is committed in the name of the legal person, and the legal person crime, which is committed with the help of the internally person. The main difference is whether the intention of the legal person to govern the commitment exists.

But it is criticized that whether the illegal benefit belongs to the legal person is a prerequisite of ascertaining the legal person crime. Certainly, the goal of most of the legal person crime is to obtain the illegal benefit and even in negligence crime of legal person, which although is in small number, there is indirectly illegal benefit, for example, in the environmental crime which is committed by the legal person, if the legal person take measures to control the emission of the pollution, the cost would be increased, while through the fugitive emission could they save the cost and get the illegal benefit. However, there exists a logic mistake to use the consequence to restrict the behavior itself. Moreover, it is not a truth that in all cases of negligence crime of the legal person, the legal person would get the illegal benefit. (Qian Hui, Wu Yong-Fei, 2005) Therefore, in my opinion, illegal benefit belonging to the legal person is not one of the components of legal person crime.

On account of the same reason that the difference between the natural person and the legal person does exist, the subjective requirement of the legal person crime should also be distinguished with the natural person crime. The legal person is a unit of the natural person, therefore the intention of the legal person would be expressed as "*the intention as a whole*", whose intention is a logic assembling of its member's intention but not a simple plus of every member's intention and there is no needs of the agreement of everyone. This kind of intention as a whole has the characteristics of independence and duality and should not be reduced into the idea and intention of the natural person (Chen Ze-Xian, 1997).

Firstly, a standard, which the legal person takes the decision of its organ as the intention of the legal person, should be built. The member of the legal person firstly commits a crime and then the behavior is analyzed and accepted by the organ of the legal person, the intention of the member is considered as the intention as a whole.

Secondly, in the system of "*legal representative taking responsibility*",<sup>7</sup> if the decision made by the legal representative is just the for the benefit of the whole entity, the decision would be recognized as the intention of the legal person.

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<sup>7</sup> In some companies, there is no decision organ and the representative of the legal person is the decision maker.

Also, to define the whole intention of the legal person, it needs to exclude the following situation: (1) the natural person pre-commits the crime but not acquiesced by the decisive organ later, (2) during the implement of the intention of the legal person, the natural person produces the private intention of corruption, (3) the natural person misuse the name of the legal person to get private benefit. Under these circumstances, it is not an intention as a whole. (Jiang Xi-Hui, Xiao Zhong-Hua, 2004b)

Therefore, theories and practices of the criminal components have proved that the legal person has the capacity to commit the environmental crime and also the subjective intention could be affirmed, which means that the legal person should be the subject of the environmental crime.

*From view of value, to use means of legislation to make a negative evaluation to the legal person crime could be advantageous to precaution and attack crime*

Usually, the behavior, which would seriously destroy or fiercely threaten the environment and resource, is done by one “person” – the legal person, which is the biggest difference between environmental crime and other types. The cases are too numerous to enumerate, such as improper construction of hydraulic engineering, excessively pumping ground water and liquid resources, destructive mining, or to emit the exhaust fume, waste water, offscum, noise, dust, odor gas, radioactive substance, vibration, Electromagnetic radiation, etc., the majority of which are connected with the legal person. Furthermore, the worsening of the environmental quality caused by the destructive commitments of the legal person and the influence to the life, security and the body health, as well as the destruction to the whole ecologic system are the most serious in all kinds of environmental crimes (Wang Zhi-Yuan 2010). Therefore, we have to self-examine: whether the system of the legal person crime of one county should play an effective and good role in the response to the environmental crime? How to maximize the efficiency and function of the legal person crime system to attack and control the environmental crime? These questions are not only concerning problem of the judicial implementation of the system of legal person crime, but also concerning the philosophy of the legislation design of it, which are worth thinking deeply.

Besides, from view of litigation practice, for the demands of utilitarian and on basis of axiology to verify the function of the criminal law, we can conclude that its main function is to protect the society. Since the legal person crime has damaged the benefit of criminal law, it is an inevitable tendency to adopt it into the criminal law. The thinking model of axiology is brought about by the criminal law of common law system, whose main insist is “*the criminal law of utilitarianism*”,<sup>8</sup> (Jeremy Bentham,1907) which means that

<sup>8</sup> Jeremy Bentham’s principle of utilitarianism, which evaluates actions based upon their consequences.

The relevant consequences, in particular, are the overall happiness created for everyone affected by the action.

the demands of the reality is the guide of the reform of the criminal law. It's is an indisputable proposition that the environmental crimes of the legal person exists in the realistic society, what we need to testify is how to make a more efficient punishment to the legal person. If the present penalty system can't undertake this duty, it should be reformed, which should be proved no matter by theories of "Vicarious Liability" or "Alter Ego Doctrine" <sup>9</sup>(Black, 2001b) in Britain, or American "Confirmation Theory" <sup>10</sup>(Chen Xing-Liang, 2003) or "Approval and Admission Doctrines" <sup>11</sup>(Liang Gen-Lin, 1986). The hazard of the environmental crime has been accredited by all of the countries. At present, there are more and more behaviors of the environment destruction and the consequences are more and more serious. Being a social phenomenon, the criminal law is rooted in certain of socially material life and on this basis to fulfill its value. In different social configuration, the criminal law charges with different missions. (Chen Xing-Liang, 1999)

Under the circumstances of more and more people utilizing legal person to commit behaviors of environment destruction and the environmental pollution being more and more serious, we should and must adopt the legal person crime and make relative legislation.

As regards Chinese criminal legislation about environment, China has admitted legal person crime and has made a relatively good regulation. But in Mexico, the legislation has still at the stage of admitting reluctantly and legislating abstractly. The environment situation of Mexico is not optimistic and the phenomenon of legal person destroying the environment repeatedly happens. There are many voices to advocate strengthening the legislation of environmental criminal law and making the relative laws more concrete (Ramírez, 2013). What it could be predicted is that in the coming future, the federal criminal law is bound to perfect the legislation of legal person crime.

### **The comparison of the method of the responsibility undertaking of legal person crime**

#### *Comparison of the legislation of the criminal responsibility undertaking between Mexico and China*

On the aspect of the criminal responsibility undertaking, there are two types:

<sup>9</sup> Black Stone: Commentaries on the Laws of England, Chapter 14, Vol. 1: "The wrong done by the servant is looked upon in law as the wrong of the master himself; and it is a standing maxim, that no man shall be allowed to make any advantage of his own wrong."

<sup>10</sup> "Confirmation Theory" considers that the intention and the behavior of the high-ranking person, who is doomed as the expression of the personality of the legal person, as the intention and behavior of that legal person. Whether a particular behavior belongs to the legal person or the member would be confirmed by the court on basis of evidences.

<sup>11</sup> "Approval and Admission Doctrines" thinks the reaction of the legal person to the commitment is the basis to take criminal responsibility. This kind of reaction should be categorized into two types: approval and admission. That is to say, if the highest management organs have made an expression of approval or admission to the crime committed by its member, the legal person would take the criminal responsibility.

*Single-Penalty System and Dual-Penalty System* (He Bing-Song, 1998). “*Single-Penalty System*” means in the environmental crime of legal person, only the legal person should be punished and the member would not take the responsibility. “*Dual-Penalty System*” means that in the environmental crime of the legal person, not only the legal person should be punished, but also the relatively natural person should take the relatively criminal responsibility. China has adopted the Dual-Penalty System, which means that in the environmental crime of the legal person, both the legal person itself and the relative person should take the criminal responsibility. But viewing the legislation of Mexico, it has only regulated the punishment of the legal person and there is no regulation about the responsibility of the natural person. Also, the bill made by the Senate in 2012, has added the articles about the personal responsibility in the legal person crime.<sup>12</sup>(The Commission of Justice of Mexico, 2012b) So, we can deduce that Mexico also adopts the Single-Penalty System. In fact, no matter Single-Penalty System or Dual-Penalty System, respectively possesses the advantages and disadvantages. The key is to combine with the condition of the country to have a choice and to affirm in the legislation to be convenient to the practical operation.

As for the concrete penalty of the legal person, no matter the legislation of China or Mexico is relatively single. In the Mexico, the method that the legal person takes the responsibility is the suspension of the group or its dissolution, while China takes the penalty of “fine”.

The drawback to take suspension or dissolution is that if the influential extent of the legal person to the society is so great, the penalty will always bring about a relatively great negative function to the society to cause the suspension or the dissolution couldn't be executed. For example, if the commodity of one company has occupied a larger market share, to dissolve the company will produce a serious attack to the society, the industry and the consumers. Therefore, in the practice, this kind of penalty is difficult to be executed. As a result, although we have confirmed the legal person crime, we still couldn't punish it, which will make the natural person to more easily utilize the protection of the legal person to commit the environmental crime. (Navarro, Hernández, Becerra y Avalos, 2013)

The method of “fine” is a more common penalty to the legal person, but the shortcoming of this kind of penalty is that it can't fundamentally change the legal person's sense of environment protection. It seems like that so long as one has money, everything would be ok. And also, it is difficult to decide the number of the fine. Usually, the number of the fine will be decided according

<sup>12</sup> Article 13 Bis. The companies are criminally responsible for crimes committed on behalf or on behalf of them, by their agents, legal representatives, administrators, partners or shareholders in accordance with the following:

- I. Do not be criminally responsible the public nature of corporations, unions, political parties or religious associations;
- II. Criminal liability of legal persons does not exclude the physical for the acts or criminal acts carried out on behalf or on behalf of those people.

to the damages. However, in most of the environmental crime, the damages are recessive and the real or virtual damages probably happen in many years, which will cause the inequality between the crime and the responsibility. Even though the legal person would be sentenced to be fined, it will take measures such as price increasing to transfer the lost to the third party. (Li Hong, 2011)

As far as the penalty is not satisfactory, we should find another way to reasonably set the penalty model for the legal person crim.

*How to reasonably set the penalty model for the legal person crime?*

American scholar Christopher D. Stone has summarized the penalty to the legal person crime into 4 categories: personal responsibility, deprivation of rights, economic sanction and intervention the internal structure of the legal person (. Stone, 1975). Mexico's "Suspension" or "Dissolution" belongs to deprivation of rights, while Chinese "fine" belongs to "economic sanction". After compared the advantages and disadvantages of the four methods, Stone considers that the best method to punish the legal person is to intervene the internal structure. The origin of the illegal behavior of the legal person exists in its internal structure. Many legal person crimes are not caused by some decision of some representative of the legal person, but just because there is some fault in the internal structure or caused by the imperfection of the inherent management system. Therefore, in order to perform the legal person from the origin and make it realize its social responsibility, it needs to reform the internal structure of the legal person.

I agree with Stone's opinion that the fundamentally criminal origin lies in the internal structure of the legal person. So, the single "dissolution" is too heavy and the pure "fine" is too mild. Nowadays, Chinese criminal policy is "tempering justice with mercy" and it's better to according to different circumstances of the crime to combine different methods to punish the legal person: concurrently or independently be sentenced a fine, adjust the internal structure or dissolution.

As to how to adjust the internal structure of the legal person, Criminal Code of the French Republic (2004) and United States' Federal Sentencing Guidelines Manual (1995) could be the reference.

The criminal law of French regulates the penalties applicable to the legal persons, besides fine and dissolution, also includes: (1) prohibition to exercise, directly or indirectly one or more social or professional activity; (2) placement under judicial supervision; (3) closure; (4) disqualification from public tenders; (5) prohibition to make a public appeal for funds; (6) prohibition to draw cheques; (7) confiscation of the thing which was used or intended for the commission of the offence, or of the thing which is the product of it; (8) posting a public notice of the decision or disseminating the decision in the written press or using any form of communication to the public by electronic

means.<sup>13</sup>(Parliament of France, 2004)

Also, Federal Sentencing Guidelines Manual (1995) regulates that the legal person should be punished:

1. The court shall order a term of probation if such sentence is necessary to ensure that organization to reduce the likelihood of future criminal conduct;
2. The court may order the organization, at its expense and in the format and media specified by the court, to publicize the nature of the offense committed, the fact of conviction, the nature of the punishment imposed, and the steps that will be taken to prevent the recurrence of similar offenses.
3. Protective observation in order to fulfill the goal of other punishment, such as periodic submissions to the court or probation officer, at intervals specified by the court (A) reporting on the organization's financial condition and results of business operations, and accounting for the disposition of all funds received, (B) reporting on the organization's progress in implementing an effective compliance and ethics program; (C) notifying its employees and shareholders of its criminal behavior , criminal prosecution, civil litigation, or administrative proceeding commenced against the organization, or any investigation or formal inquiry by governmental authorities; (D) submitting to a reasonable number of regular or unannounced examinations of its books and records at appropriate business premises by the probation officer or experts engaged by the court, etc.<sup>14</sup> (United States Sentencing Commission, 1995)

With the reference of the legislation practice of France and United States, the method to adjust the internal structure could include: (1) restricting or changing the rules of the legal person; (2) disclosing the condition of the crime and the judgment to the public; (3) compulsorily engaging in public services; (4) compulsorily periodic submissions to the court or probation officer the reforming condition of the legal person.

## CONCLUSION

In summary, the legislation of environmental crime between China and Mexico is greatly different. Just from point of the criminal subject, although the legal person has been regulated as the subject of the environmental crime in Mexico, the rules are relatively abstract and principled and there is no expression in each concrete crime, as well in the legal person crime, there is no definite regulation about whether the principal charger should take the

<sup>13</sup> Article 131-39 of the Criminal Code of the French Republic (2004).

<sup>14</sup> Chapter 8, Introductory Commentary of Federal Sentencing Guidelines Manual 1995.

criminal responsibility. On contrary, in Chinese legislation, the legal person is definitely the criminal subject and no matter the legal person or the principal charger both would be punished. As for the penalty to the legal person, Mexico insists a relatively heavy penalty, which includes suspension or dissolution; while China adopts a relatively mild method, that is, to fine. However, both of them couldn't reflect the characteristics of the environmental crime of the legal person. My suggestion is to adopt a complex punishment such as fine, restriction of the rights, compulsorily reform of the internal structure, and so on.

Presently, the earth has long been overburdened and the frequently occurring natural disasters are taking a toll of the environment protection to human beings. The environment protection absolutely couldn't be solved by a single country and the "Butterfly Effect" has explained that environment protection is a worldwide problem. To achieve a efficient effect, the environment treatment is required the faithful cooperation between countries, which demands the country to adapt the legislation to the international practice as far as possible, to seek common ground and reserve differences and reduce the conflicts.

The last but not the least, to protect the environment is not only for us living in the moment, but the more important thing is to provide a better living environment to our descendants. Just like Mexico scholar Troncoso says: "If we educate and work for freedom and democracy, we must educate and work for life and can't leave our future generations to inherit a sad museum, which reserves nothing for ours ignorant."<sup>15</sup>(Troncoso, 2004)

## REFERENCES

- Alejandro Ramírez Verdugo (2013). To Initiate to Regulate the Law Concerning Criminal Liability of Legal Person, Mexico (on line), 1<sup>st</sup>, January, at [http://beta.mexicosos.org/images/uploads/materiales/1070/iniciativa\\_de\\_ley\\_para\\_regular\\_la\\_responsabilidad\\_penal\\_de\\_las\\_personas\\_juridicas.pdf](http://beta.mexicosos.org/images/uploads/materiales/1070/iniciativa_de_ley_para_regular_la_responsabilidad_penal_de_las_personas_juridicas.pdf).
- Bentham Jeremy (1907). *An introduction to the principles of morals and legislation*, Oxford, USA, Clarendon Press Year.
- Blackstone (2001), *Blackstone's Commentaries on the Laws of England*, London, Britain, Routledge Cavendish, P425.
- Carlos Gómez-Jara Díez, (2006). *Criminal Liability of Legal Persons*, Madrid, Spain, Editorial Universitaria Ramón Areces.
- Chen Xing-Liang (1999). *Philosophy-Oriented Criminal Jurisprudence*, Bei Jing, China, Law Press, P178.
- Chen Xing-Liang (2003). Legal Person Crime: Analysis From Perspective of
- <sup>15</sup> "Si educamos y trabajamos para la libertad y la democracia, debemos educar y trabajar para la vida, para no heredar a las generaciones futuras el triste museo de lo que no supimos conservar." Elías Troncoso Calderón, "La responsabilidad penal ambiental y su atención especializada".

- Regulation, *Journal of Henan University of Economics and Law*, No. 1.
- Chen Ze-Xian (1997). The demonstration to the duality of the guilty of the legal person crime, *The reorganization and punishment to the legal person crime in the new criminal law – new theories of legal person crime*, Bei Jing, China, China Procuratorial Press, P58.
- Christopher D. Stone (1975). *Where the Law Ends: The Social Control of Corporate Behavior*, Illinois, USA, Waveland Press.
- Congress of Japan (1970), Act for the Punishment of Environmental Pollution Crimes Relating to Human Health. Japan.
- Congress of Mexico (2014). *Federal Criminal Code*. Mexico.
- Elías Troncoso Calderón (2004). Liability of Environmental Crime and Its Special attention "Memorias del Segundo Encuentro Internacional de Derecho Ambiental" P607.
- Franz von Liszt "Translated by Xu JiuSheng (2000). *German Criminal Law Textbooks*" Bei Jing, China, Law Edition, P178.
- He Bing-Song (1998). Concept and Theoretic Evidence of Legal Person Crime – Together With the Evaluation of Theory of Criminal vicarious liability, *Chinese Journal of Law*, No. 2, P98.
- He Bin-Song (2000). *Legal person crime and its criminal responsibility*, Bei Jing, China, China Legal Publishing House, P505.
- Jiang Xi-Hui, Xiao Zhong-Hua (2004). Research on the basic theories of the criminal responsibility of the legal person crime, *Economic Criminology (Vol. II)*, Shang Hai, China, Shanghai People's Publishing House, P23.
- Jornadas en honor del Profesor Klaus Tiedemann (1995). Criminal liability of legal persons from the European perspective, Towards a European Economic Criminal Law, Maderid, Spain, Boletín Oficial del Estado, P591.
- José Luis de la Cuesta Arzamendi (2013). The Criminal Liability to Legal Persons in the Law of Spain, *Revista Penal México*, Número 5, Septiembre, 2013, P13.
- Li Hong (2011). Thinking on perfection of Chinese penalty system of legal person crime, *Studies in Law and Business*, vol. 1, P80.
- Liang Gen-Lin (1986). Brief Introduction of Theories of the Criminal Liability of Legal Person in Britain and United States, *Law of Foreign Countries*, No.4, P32.
- Mariana Navarro Delgado , José Jesús Hernández Rodríguez , Sergio Becerra David Avalos (2013). Environmental Crimes, Pálido de luz (on line), No. 33, at <http://palido.deluz.mx/articulos/1234>.
- Lopez Eduardo Betancourt (2012). The companies against the criminal law, *La Jornada Querrero*, 6, Oct.
- Lou Yun-Sheng (1996). *Legal person crime*, Bei Jing, China, Press of China University of Political, Science and Law, PP. 75-76.
- Meng Ling, Fei Ling (2011). On practical defects of the legal person crime and



- the Reconstitution of the penalty, Justice Web (On line), 10<sup>th</sup>, February, at [http://www.jcrb.com/jcpd/jcll/201102/t20110210\\_495770\\_1.html](http://www.jcrb.com/jcpd/jcll/201102/t20110210_495770_1.html).
- National People's Congress of China (2011), Criminal Law of People's Republic of China. China.
- Parliament of France (2004). Criminal Code of the French Republic, France.
- Pu Wei-Yi (1991). The legal person crime and the double mechanism as well as the double penalty system, *Economy and Law*, vol. 6, PP.11-12.
- Qian Hui, Wu Yong-Fei (2005). Analysis on Concept of Legal Person Crime, Jiaxing Nanhu Procuratorate (on line), at [http://www.jiaxingnh.jcy.gov.cn/Article\\_Show.asp?ArticleID=1628](http://www.jiaxingnh.jcy.gov.cn/Article_Show.asp?ArticleID=1628).
- The Commission of Justice of Mexico (2012). A draft decree that adds and modifies various provisions of the Federal Criminal Code and Federal Criminal Procedure, on liability of legal persons, Parliamentary Gazette (on line), No. 3499-VII, Thursday April 26, At <http://gaceta.diputados.gob.mx/Black/Gaceta/Anteriores/61/2012/abr/20120426-VII/Dictame-naD-11.html>.
- United States Sentencing Commission (1995). *Federal Sentencing Guidelines Manual*. United States.
- Wang Zhi-Yuan (2010). The Criticism of the Philosophy of the Legal Person Crime of China, In Sight of Environmental Crime, Contemporary Law Review, No. 5, PP. 74-79.
- Zhang Wen (1994). Further research on problems of legal person crime, *China Legal Science*, vol. 1, PP. 65-66.
- Zheng Kun Shan (1998). *The Fundamental Theory of the Environmental Criminal Law*, Tai Wan, Book Publishing Company of Wu Nan, P306.