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Addressing Corporate Human Rights Violations and Environmental Harm: Advancing a Holistic Remedial Framework through Tort Law and the EU Corporate Sustainability Due Diligence Directive (CSDDD)

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This research investigates solutions for instances of corporate human rights violations and environmental harm, with a focus on applying the 'Eggshell Skull Rule'. It suggests a three-step method for determining liability and stresses the importance of restoring victims to their pre-violation condition. The study examines legal remedies, emphasising the significance of aggravated and exemplary damages in addressing corporate wrongdoing. It supports the use of exemplary damages to penalise misconduct and prevent future offences, addressing challenges in applying legal frameworks to corporate behaviour. Furthermore, it assesses the difficulties and debates surrounding exemplary damages in civil cases. This study contributes to discussions on corporate accountability and aligns with the EU Corporate Sustainability Due Diligence Directive by advocating for a comprehensive remedy structure. It underlines the necessity of both compensatory and punitive measures to maintain accountability and fairness in cases of corporate misconduct.

Keywords: *Human Rights Violations; Corporate Accountability; Remedy; Human Rights; Tort Law.*

Introduction

In contemporary discourse, multinational corporations (MNCs) have emerged as formidable entities, challenging traditional conceptions held by international legal orthodox scholars regarding their status as subjects of international law.[1] This shifting landscape has prompted a reevaluation of scholarly approaches, advocating for a multifaceted methodology. This approach diverges from the positivist doctrine predominant in the nineteenth century, which categorically positioned MNCs outside the purview of international legal consideration, thereby engendering ambiguity within the scholarly community regarding the legal

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[1]Stephens (2002).

identity of non-state actors.[2] However, this paradigm shift does not completely abandon foundational legal principles. Rather, it seeks to reconcile emerging perspectives with enduring natural law principles of early origin. Recognising the intrinsic value of both paradigms, this nuanced approach underscores their respective contributions to the fabric of international law, particularly concerning the legal relations between sovereign states and MNCs.[3]

Acknowledging the evolving role of MNCs in the global legal framework underlines the importance of maintaining established legal philosophies. This dual recognition fosters a more comprehensive understanding of international legal dynamics.[4] However, this approach has raised concerns regarding its impact on human rights and access to remedies for victims of rights violations. Granting MNCs elevated legal status without corresponding responsibilities threatens accountability mechanisms and justice for those affected by corporate wrongdoing. Consequently, the erosion of legal safeguards undermines human dignity and hampers individuals' ability to seek redress for infringements by powerful corporate entities. This prioritisation of corporate interests over human rights imperils fundamental principles within international law.

The elevation of MNC's legal status diverges significantly from human dignity's core tenets and human rights law's genesis. Human dignity, rooted in all individuals' intrinsic value and equality, remains immutable and surpasses any corporate or institutional entity.[5] Granting MNCs heightened legal stature inherently challenges this principle by insinuating a hierarchy wherein corporate interests trump the sanctity of human dignity.[6] Additionally, human rights, stemming from every individual's innate dignity and value, highlight the non-negotiable entitlements and protections inherent to human existence. Elevating MNCs above the realm of human dignity and human rights undermines this foundational premise, perpetuating a paradigm where corporate entities wield disproportionate privileges compared to individuals.[7] Essentially, human dignity can be construed as an innate, divine entitlement afforded to all living beings, transcending legal frameworks and institutional hierarchies. Consequently, any endeavour to elevate MNCs above the realm of human dignity and human rights not only contravenes the foundational principles of these doctrines but also jeopardises the integrity of human rights law, designed to safeguard the inherent dignity and worth of every individual, irrespective of their affiliations or status.[8]

Critics have denounced the orthodox approach as antiquated and outmoded, asserting its irrelevance in the contemporary era shaped by globalisation.[9] Proponents of a traditionalist paradigm echo this sentiment, positioning MNCs on the periphery of international law. They advocate for discarding the orthodox

[2]Duruigbo (2007).
[3]Neff (2014).
[4]Nartey (2022)
[5]Gilabert (2019).
[6]Ullah, Adams, Adams & Attah-Boakye (2021).
[7]Mnyongani (2016).
[8]Yasmin & Imran (2018).
[9]Nartey (2021).

approach, decrying its rigidity and failure to adapt to current socio-political dynamics. Detractors argue that this rigidity has dire consequences, citing instances where it has led to loss of lives among indigenous communities and environmental degradation in pursuit of self-determination. Moreover, the orthodox approach has hindered litigation against MNCs, exacerbating its limitations.[10] Therefore, prioritising corporate interests over human rights undermines the fundamental principles of human dignity and rights. This neglects individuals' inherent rights and equality, violating the essence of human existence and their connection with the environment. Profit-driven motives take precedence over ethical considerations, corroding human relationships and environmental stewardship crucial for sustainable business practices.[11] Consequently, this approach diminishes human dignity and undermines the protection of human rights, contradicting the foundational principles of ethical conduct and responsible business behaviour.[12]

This article further contends against the orthodox approach, advocating for an alternative international law doctrine inclusive of diverse stakeholders, such as states, international organisations, individuals, private entities, and non-governmental organisations alongside MNCs.[13] Furthermore, it challenges the notion that international legal personality is a prerequisite for imposing rights or duties on MNCs.[14] It posits that acknowledging rights and duties precedes the attribution of international legal personality.[15] Thus, I argue that recognising MNCs' legal identity and obligations under international law should align with acknowledging their rights and duties, mirroring the moral and legal philosophy underpinning the Universal Declaration of Human Rights 1948 (UDHR 1948).[16]

Further support for recognising MNCs' legal personality and corporate responsibility stems from their established rights in international domains.[17] MNCs possess various rights under international law, including the right to conduct business, protection under human rights laws, property rights, and other corporate entitlements.[18] These recognised privileges enable MNCs to assert their rights in international courts or arbitration settings. Okeke's contribution to the discourse on MNCs' international legal identity, known as the 'Okeke criteria,' emphasises that MNCs, to some extent, function as subjects of international law with rights, obligations, and the authority to vindicate their rights.[19] Additionally, the attribution of international legal personality to MNCs is linked to their transboundary operations and international impact, granting them access to

[10]Wijesinghe (2018).
[11]De Schutter (200514).
[12]Ruggie (2013).
[13]McDougal & Leighton (1949).
[14]Zerk (2006).
[15]Adeola (2001).
[16]Hughes (2011).
[17]Karavias (2013).
[18]Addo (1999).
[19]Nartey (2022).

international legal proceedings.[20] This trend aligns with Charney's assertion that modern MNCs possess international legal personality and actively participate in the international legal system.[21] Furthermore, Ijalaye suggests that MNCs can be considered selective subjects of international contract law for agreements signed with states.[22]

This perspective finds reinforcement and validation in international arbitration practices. An illustrative example is found in the *Libya-Oil* Companies Arbitration, where Umpire Dupuy invoked international law to resolve a dispute between a state and a private oil company.[23] In this instance, international law served as the governing framework for the contractual agreement.[24] Conversely, Lauterpacht examines the mechanism of international dispute settlement outlined in investment treaties, as well as the historical context of investment arbitration post-WWII, concluding that states are the exclusive subjects of international law, and individuals do not possess rights under it.[25] The author further contends that due to the evolution of international law, MNCs do indeed possess international legal personality.[26] Reiterer challenges the conventional notion that only states are subjects of international law, advocating for the inclusion of non-state actors such as NGOs, transnational corporations, and individuals.[27] This assertion is echoed by other scholars who recognise a modern trend towards acknowledging diverse subjects of international law, including corporations. The evidence presented in this discourse highlights contradictions and misconceptions within the traditional legal framework regarding MNCs. While it is evident that such misconceptions are not conclusive, it is apparent that the orthodox legal perspective is outdated, particularly in light of the increasing significance of MNCs in international affairs.[28] Furthermore, numerous legal experts have questioned the conclusion that MNCs possess international legal personality, citing controversy surrounding their economic and political influence. Despite this, their legal standing aligns with the traditional view, asserting that corporations are private entities subject to national laws rather than international laws.

The conventional interpretation of legal personality has presented formidable barriers to the pursuit of justice for victims of human rights infringements. This traditional stance typically confines legal personality to states and occasionally extends it to individuals, relegating entities like corporations to the status of legal constructs devoid of inherent rights or obligations. Consequently, when corporations commit human rights violations, victims encounter formidable obstacles in securing effective redress and holding these entities accountable. This orthodox perspective not only obstructs victims' access to justice but also

[20]Shaw (2017).
[21]Wallace (1982).
[22]Wallace (1982).
[23]Duruigbo (2007).
[24]Nartey (2018).
[25]Lauterpacht (1996-1997).
[26]Donner (2023).
[27]Kokkini-Latridou (1981).
[28]Malanczuk (2000).

undermines the core tenets of human dignity and human rights. Human rights are universally applicable and non-negotiable, binding upon all individuals and entities regardless of their legal standing. However, by withholding legal personality from corporations and predominantly attributing liability to individuals, this approach inadequately addresses the intricate dynamics of contemporary human rights violations.

Therefore, in today's global landscape, where multinational corporations exert substantial economic and political influence, it is imperative to challenge the traditional understanding of legal personality. Holding corporations answerable for human rights transgressions is indispensable for upholding human rights norms and ensuring equitable justice for impacted individuals and communities. The discourse surrounding corporate accountability underlines the imperative for corporations to be acknowledged as legal entities endowed with corresponding rights and obligations. Rejecting the orthodox paradigm of legal personality aligns with evolving perspectives on corporate responsibility and fosters enhanced accountability and transparency in corporate behaviour. By acknowledging corporations' legal personality and holding them answerable for human rights infractions, the international community can propel the advancement of human rights protection and uphold the principles of justice and dignity for all.

In the contemporary landscape, dominated by the pervasive influence of MNCs and the relentless pursuit of economic maximisation, the proposition to acknowledge MNCs' legal personality and corporate responsibility encounters considerable comprehension hurdles. This is especially pronounced within a framework where human rights often languish as secondary concerns. Consequently, a pressing imperative emerges to conceive an alternative mechanism capable of supplanting the primary apparatus for holding corporations answerable for human rights transgressions.[29] Within this context, tort law emerges as a compelling alternative mechanism.[30] Renowned for its focus on addressing civil wrongs and furnishing redress for victims of wrongful acts, tort law presents an auspicious avenue for enforcing accountability upon corporations for human rights violations.[31] Unlike conventional legal frameworks, which may struggle to address the intricacies of corporate misconduct within a globalised economy, tort law is a flexible and adaptable framework primed to confront the evolving challenges emanating from MNCs' transnational operations.[32] By leveraging the foundational tenets of tort law, encompassing principles such as duty, breach, causation, and damages, it becomes conceivable to erect a more resilient apparatus for holding corporations accountable for their conduct.[33] This, in turn, facilitates enhanced safeguarding of human rights within the domain of corporate behaviour. The adoption of tort law as a pivotal mechanism for corporate accountability signifies a pragmatic and efficacious rejoinder to the

[29]Nartey (2021).
[30]Nartey (2023).
[31]Bright, Marx, Pineau & Wouters (2020).
[32]Deva (2003).
[33]Nartey (2018).

complexities engendered by contemporary MNC operations and their consequential impact on human rights.

Therefore, this article delves deeply into the foundational principles of tort law to explore the concept of remedy, focusing on applying the 'Eggshell Skull Rule' in cases involving human rights violations and environmental harm perpetrated by corporations. By drawing upon established legal precedents and scholarly analyses, the article proposes a systematic three-step approach for determining liability in such cases, emphasising restoring victims to their pre-violation state. Furthermore, the study meticulously examines the nuances of judicial remedies, underscoring the pivotal role of aggravated and exemplary damages in cases of corporate wrongdoing. It asserts that these forms of damages serve not only compensatory but also punitive and deterrent functions, essential for addressing corporations' deliberate or negligent actions that harm individuals and the environment. Through a thorough analysis of case law and legal principles, the article advocates for applying exemplary damages to punish corporate misconduct and deter future transgressions. Moreover, the article navigates the complexities inherent in applying the '*Rookes v Barnard* Categories' to corporate wrongdoing, stressing the need for a nuanced approach that accounts for the defendant's conduct's oppressive, arbitrary, or profit-driven nature. Additionally, it engages with the challenges and controversies surrounding the use of exemplary damages, evaluating arguments for and against their application in civil proceedings.

The article is structured into five distinct sections. The first section delineates the methodology employed in the research endeavour. Here, I elucidate the systematic approach adopted to investigate and analyse corporate human rights violations and potential remedies, ensuring transparency and rigour in the research process. The subsequent section comprises a literature review, meticulously examining the discourse and existing knowledge surrounding corporate human rights violations and the available remedies for victims. This segment synthesises the prevailing scholarship and insights to overview the subject matter comprehensively. The third section of the article constitutes a substantive discussion, centring on the elucidation of remedies for corporate human rights violations within the framework of the 'Egg Skull Rules.' This segment critically engages with the intricacies of legal principles and precedents to demystify the avenues for redress available to victims. Following the discussion, the fourth section offers recommendations for appropriate remedies for victims of corporate human rights violations. Drawing upon the findings from the preceding sections, this segment provides actionable insights and proposals to address the challenges posed by corporate malfeasance. Finally, the fifth section serves as a conclusion, encapsulating the key insights gleaned from the discourse and research findings. It offers a summative reflection on the implications of the article's findings and underscores avenues for further research and action in the realm of corporate accountability and human rights protection.

Research Methodology

The research methodology employed in this article encompasses elements of both social-legal research and doctrinal legal research, supplemented by a mixed-method approach to ensure a comprehensive investigation into corporate human rights violations and potential remedies. The social-legal research aspect involves an in-depth analysis of the social, political, and economic contexts surrounding corporate behaviour and its implications for human rights. This entails examining relevant literature, reports, case studies, and other empirical data to understand the broader societal impact of corporate actions on human rights. Concurrently, the article also incorporates doctrinal legal research, focusing on the examination of legal principles, statutes, case law, and judicial decisions relevant to corporate accountability for human rights violations. This doctrinal analysis provides the necessary legal framework for understanding the rights and obligations of corporations within the context of human rights law.

Moreover, the mixed-method approach employed in this research involves the integration of qualitative and quantitative methods to gather and analyse data. Qualitative methods, such as literature reviews and case studies, offer insights into the nuances and complexities of corporate human rights violations and potential remedies. Quantitative methods, such as statistical analysis of legal cases, complement the qualitative findings by providing empirical evidence or trends in corporate behaviour and accountability. By combining social-legal research, doctrinal legal research, and a mixed-method approach, this study ensures a holistic examination of corporate human rights violations and remedies, contributing to a deeper understanding of the complex interplay between law, society, and corporate behaviour.

Literature Review

In the annals of MNCs' historical evolution and their involvement in human rights transgressions, a persistent challenge lies in the formulation of a conclusive argument and litigation strategy capable of providing appropriate redress to victims.[34] As elucidated in the preceding introduction, MNCs wield considerable power to influence and, at times, control human lives and resources, often surpassing the regulatory capacities of host states. This phenomenon exemplifies the constraints faced by national governments in exercising and regulating their sovereign control over natural resources, as enshrined in the principle of Permanent Sovereignty of National Resources.[35] Within the discourse of this paper, MNCs' power may override fundamental principles of human dignity and rights. However, this power does not supersede these principles; hence, violations should warrant punitive remedies to deter future transgressions. Such remedies

[34]Kieserman (1999).
[35]UNGA, Permanent Sovereignty over Natural Resources (adopted 17 December 1973) A/RES/3171.

aim to restore victims to their original position, emphasising the imperative of holding MNCs accountable for their actions and ensuring the preservation of human dignity and rights.[36] Therefore, this form of remedy serves as a poignant example illustrating that human rights violations yield no benefit and emphasise the importance of human rights above all else. It signifies that enforcing punitive measures against violators communicates a clear message: transgressions against human rights will not be tolerated. By prioritising the restitution and vindication of human rights, this approach reinforces the principle that human rights reign supreme and must be safeguarded at all costs, emphasising the imperative of upholding dignity, equality, and justice for all individuals.

Empirical evidence gathered in this study has highlighted the extent to which MNCs leverage their power and influence to manipulate or subvert host governments.[37] Notable instances include environmental damage cases such as the *Exxon Valdez oil spill,* the Prestige oil tanker disaster, the *Bhopal* gas tragedy, and the *Doe v Unocal* litigation.[38] Despite myriad manifestations, MNCs continue to perpetrate human rights violations, whether directly facilitating such violations, failing to intervene, or benefiting from the perpetuation of violations. These violations span a spectrum of atrocities including murder, torture, rape, environmental degradation, forced displacement of communities, and labour exploitation.[39] However, the challenge persists in holding MNCs accountable, particularly when the ultimate perpetrators remain shielded behind abstract legal personhood, with elusive headquarters and opaque ownership structures. The proliferation of such violations highlights the inadequacy of the prevailing regulatory approach towards MNCs, primarily characterised by soft law mechanisms.[40] Despite attempts, this regulatory framework has fallen short in effectively addressing the scourge of human rights violations perpetrated by MNCs, leaving victims without adequate recourse for justice.[41]

The inadequacies and failures of human rights law and international legal frameworks in effectively holding MNCs accountable for human rights violations and providing remedies for victims have become increasingly apparent. These shortcomings highlight systemic challenges and limitations inherent in these legal regimes, necessitating a reevaluation of approaches to corporate accountability.[42] As a result, it is proposed that corporate accountability for human rights violations and the provision of remedies should pivot towards the principles of tort law.[43] Tort law offers a promising alternative, characterised by its focus on addressing civil wrongs and providing remedies for victims of wrongful acts. Unlike human rights law and international legal frameworks, which often struggle to address the

[36]Gümplová (2014).
[37]Clapham & Jerbi (2000).
[38]Lang (1996).
[39]Kaeb (2007).
[40]Marx, Wouters & Bright (2019).
[41]Engström (2002).
[42]Nartey (2021).
[43]Nartey (2022).

complexities of corporate misconduct within a globalised context,[44] tort law provides a flexible and adaptable mechanism for holding corporations accountable. Its emphasis on concepts such as duty, breach, causation, and damages aligns well with the complexities of corporate human rights violations and the needs of victims for redress. By embracing tort law principles, corporate accountability can be strengthened, and victims can receive more effective remedies for human rights violations. This shift towards leveraging tort law as a foundational framework for corporate accountability represents a pragmatic response to the failures of existing legal mechanisms and holds promise for enhancing justice and redress for victims of corporate wrongdoing.[45]

For instance, since the 1970s, various intergovernmental organisations have formulated voluntary guidelines, declarations, and codes of conduct to govern the behaviour of multinational corporations (MNCs).[46] Examples include the OECD's Guidelines for Multinational Enterprises (1976), the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the UN's Global Compact. While these initiatives represent a significant step forward, their efficacy is limited by their soft law nature, primarily targeting national governments for implementation rather than directly regulating corporations. However, the ILO principles stand out as they include instruments specifically designed to scrutinise corporate behaviour. The OECD Guidelines, for instance, are recommendations directed at MNCs by national governments in observing states, aiming to align corporate activities with governmental policies, foster community-corporate assurance, enhance foreign direct investment, and promote sustainable development. Notably, these guidelines emphasise the need for enterprises to respect the human rights of those affected by their conduct consistent with the host state government's international obligations and commitments. This accentuates the role of national governments in implementing regulations to govern MNC conduct, as highlighted by the term 'consistent' in the guidelines.[47]

Despite the establishment of monitoring bodies such as the Communities on International Investment and Multinational Enterprise (CIIME), which comprises representatives from member states, enforcement of these guidelines remains challenging. Baade elucidates that while CIIME monitors compliance, member states often disregard its judgments, illustrating the limited efficacy of soft law mechanisms in ensuring corporate accountability.[48] Moreover, the guidelines advocate for enterprises to uphold policies promoting non-discrimination in the workplace, prohibiting child labour, and eradicating forced or compulsory labour. The accompanying commentary shows the paramount importance of adhering to domestic laws as a fundamental obligation for corporations. However, these guidelines merely serve as complementary principles delineating standards of

[44]Bernaz (2016).
[45]Plunkett (2015).
[46]International Council on Human Rights Policy (2002).
[47]Baade (1979).
[48]Ibid.

behaviour for entities lacking legal personality.[49] One major issue with these guidelines, aside from their non-binding nature, is their reliance on the assumption that host states' national laws suffice to regulate MNC conduct, a notion proven ineffective in practice.[50] By adhering to the orthodox doctrine of international law, which imposes obligations solely on states, the guidelines fail to acknowledge the challenges host states encounter in regulating MNC conduct. Furthermore, these guidelines lack enforcement mechanisms and fail to delineate procedures for national governments to apply them to corporations. They also fall short in providing avenues for compensating victims of corporate human rights violations and environmental damage. Given their voluntary nature and absence of enforcement, these guidelines represent yet another ineffective attempt to shift the regulatory debate from enforcement to self-regulation.[51]

The ILO 1977 Tripartite Declaration of Principles Concerning Multinational Enterprise and Social Policy addresses governments of member states, employers, workers' organisations, and corporations, including MNCs operating within their communities. It emphasises adherence to the Universal Declaration (UDHR) 1948, international conventions, and various core labour rights. This declaration was further strengthened in 2002 with the inclusion of the ILO Declaration on Fundamental Principles and Rights at Work, which safeguards freedom of association, and collective bargaining rights, and abolishes discrimination, forced labour, and child labour. However, despite its comprehensive framework, the ILO Declaration faces several limitations, and its impact on corporate behaviour remains largely undocumented. Consequently, a critical analytical interpretation of both the OECD Guidelines and the ILO Declaration suggests that they have minimal influence on states or corporations. Moreover, their non-binding nature and the limited mandate of observing institutions, which lack judicial or quasi-judicial authority, inhibit their effectiveness in holding corporations accountable.[52]

Additionally, while these instruments encourage MNCs to uphold internationally recognised human rights standards, they ultimately defer to national governments' supremacy. Consequently, they do not prevent host nations from implementing lax labour and environmental regulations, allowing MNCs to exploit such standards with impunity. This underlines the argument that these principles serve as a mechanism for shifting legal accountability from corporations to states, perpetuating flaws created by orthodox legal scholars without offering substantive objectives or conclusions.

Through an analysis of soft law mechanisms such as the Guidelines for Multinational Enterprises, the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the Global Compact, and corporate codes of conduct, it becomes evident that their efficacy is significantly limited. This is primarily attributed to their non-binding nature and the absence of robust enforcement and implementation mechanisms, as well as inadequate redress

[49]Graham (2000).
[50]Muchlinski (2007).
[51]Kamminga & Zia-Zarifi (2021).
[52]Gross & Compau (2009).

mechanisms for victims and sanctions for substantial violations. While these mechanisms have undoubtedly raised awareness of human rights violations MNCs, their impact, validity, and implementation on corporations remain crucial to their effectiveness. In light of these shortcomings, it is evident that these guidelines are ultimately ineffective in achieving substantial outcomes in addressing MNCs' human rights violations.

In 2005, following the UN sub-Commission on the Promotion and Protection of Human Rights' unsuccessful initiative on the Norms of the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights norms, the UN Commission on Human Rights adopted resolution 2005/ 69.[53] This resolution urged the Secretary-General to appoint a Special Representative on the issue of human rights and transnational corporations and other business enterprises for an initial two-year period. Subsequently, in 2006, Kofi Annan appointed Professor John Ruggie to develop a framework addressing MNCs' human rights violations, coinciding with the formation of the UN Human Rights Council. Ruggie's framework, based on the UN concept of Responsibility to Protect, introduced three pillars for assessing individuals' obligations and responsibilities concerning human rights.[54] While Ruggie's Guiding Principles have provided clarity on MNCs and human rights issues, they fall short on several fronts. Firstly, they lack clear mechanisms for cases where national states are unwilling or unable to protect citizens from MNC-related human rights violations.[55] Secondly, they endorse corporations' self-assessment of human rights violations without providing independent assessment mechanisms, raising concerns about objectivity and accountability.[56] Despite widespread international acceptance, the Protect, Respect, and Remedy Framework's voluntary nature and absence of legal mechanisms for enforcement cast doubt on its efficacy. Consequently, this article rejects these guiding principles due to highlighted failures.[57] However, it acknowledges their role in stimulating discourse on legal enforcement and future international regulation.

The UN Human Rights Council's resolution to develop an international legally binding instrument for regulating transnational corporations and business enterprises marks a pivotal moment in the intersection of business and human rights. This decision highlights a growing consensus on the imperative for robust mechanisms to hold corporations accountable for human rights violations and to provide adequate remedies for affected individuals and communities.[58] The formulation of such an instrument represents a notable departure towards heightened legal accountability and enforcement in the field of business and human rights. Unlike non-binding soft law instruments, a binding treaty would establish precise and enforceable obligations for both states and corporations,

[53]UNGA '2005 World Summit Outcomes' (24 October 2005) UN Doc A/RES/60/1
[54]Ruggie (2008).
[55]Karp (2015).
[56]Mares (2011).
[57]Davila (2021).
[58]Mares (2022).

addressing gaps in regulatory frameworks and ensuring human rights protection in business operations.[59] However, crafting and negotiating such a binding instrument present significant challenges. It necessitates consensus among UN member states with diverse interests and substantive engagement with civil society organisations, affected communities, and businesses. Deliberations on the treaty's scope, content, and enforcement mechanisms require careful consideration of competing interests.[60] Additionally, the treaty's effectiveness hinges on its implementation at the national level. States must integrate treaty provisions into domestic laws, establish oversight mechanisms, and enable meaningful community participation. Capacity-building and technical support are crucial, especially for states with limited resources.[61]

The UN Human Rights Council's endeavour to craft an international legally binding instrument for overseeing transnational corporations and business enterprises is indeed praiseworthy, yet it confronts notable impediments. A primary concern lies in the intricate and protracted process of negotiating such a treaty amidst the divergent interests and priorities of UN member states.[62] This complexity may engender challenges in achieving consensus on critical aspects such as the instrument's scope, content, and enforcement mechanisms, potentially leading to compromised provisions that undermine its efficacy.[63] Moreover, the voluntary nature of compliance with international treaties poses significant concerns regarding enforcement and accountability, as the absence of repercussions for non-compliance may render the treaty toothless.[64] To rectify these shortcomings, it is imperative to foster enhanced transparency and inclusivity in the negotiation process, ensuring substantive involvement of civil society organisations, affected communities, and business entities. Additionally, establishing explicit and robust enforcement mechanisms within the treaty framework, including punitive measures for non-compliance and mechanisms for vigilant monitoring and reporting of violations, would bolster its effectiveness. Furthermore, proactive efforts to raise awareness and advocate for widespread support for the treaty among UN member states and stakeholders could surmount political and logistical hurdles, facilitating its successful adoption and implementation.

The literature review has examined the necessity of regulating corporate behaviour, evaluating both the soft law mechanisms and the proposed UN binding treaty on corporate accountability. It is evident from this analysis that the existing system, including the potential treaty, may fall short in providing adequate redress for victims of corporate human rights violations. Consequently, there arises a pressing need for an alternative approach to corporate accountability. This article advocates for a remedy under the principle of tort law as a viable solution. The

[59]De Schutter (2015).
[60]Roland, Soares, Sena, Perillo, Tito, Rocha & De Oliveira (2021).
[61]Santoso (2017).
[62]Karska (2021).
[63]Meyersfeld (2016).
[64]Terán (2019).

subsequent section will delve into this proposition, elucidating why adopting a tort law framework is imperative. By conceptualising the rationale behind this alternative approach, the article aims to shed light on the potential benefits and effectiveness of incorporating tort law principles into the realm of corporate accountability. Through a thorough examination of the strengths and limitations of tort law in addressing corporate human rights violations, the article seeks to contribute to the ongoing discourse on enhancing accountability mechanisms and safeguarding the rights of affected individuals and communities.

Reimagining Corporate Accountability: Exploring Remedies at the Intersection of Tort Law and EU Approach

The passage of the Corporate Sustainability Due Diligence Directive (CSDDD) by the European Parliament marks a pivotal advancement in bolstering corporate accountability and sustainability across the European Union (EU).[65] Designed to mandate comprehensive due diligence practices throughout supply chains, the CSDDD seeks to identify, prevent, and alleviate adverse human rights and environmental impacts stemming from corporate operations.[66] This proactive approach obliges companies to scrutinise and rectify their social and environmental responsibilities, aiming to avert harm to labourers, communities, and ecosystems associated with corporate endeavours.[67] Nevertheless, the efficacy of the CSDDD is contingent upon several crucial factors. Key among these is the breadth and rigour of due diligence requirements imposed on companies, alongside the robustness of enforcement mechanisms to ensure adherence. Additionally, the directive's success hinges on the depth of engagement and collaboration among stakeholders, encompassing civil society entities, affected communities, and industry representatives, throughout the implementation and monitoring phases. Furthermore, adequate provisions for resources, capacity-building endeavours, and technical assistance are indispensable to assist companies, especially small and medium-sized enterprises (SMEs), in fulfilling their due diligence obligations.[68] While the CSDDD represents a commendable stride towards fostering corporate sustainability and responsibility, its effectiveness necessitates fortified enforcement mechanisms, stakeholder involvement, and supportive measures to facilitate compliance. In doing so, the EU can advance its dedication to sustainable development and human rights safeguarding.

Furthermore, the French Vigilance Law, enacted in 2017, mandates large French companies to establish vigilance plans to prevent human rights abuses and environmental damage throughout their supply chains.[69] This law imposes legal

[65]European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD))
[66]Ćorić, Knezevic Bojovic, Matijević (2023).
[67]Velluti (2024).
[68]O'Brien & Christoffersen (2023).
[69]Schilling-Vacaflor (2021).

obligations on companies to identify risks, prevent harm, and provide remedies for violations.[70] While proponents laud its potential to enhance corporate accountability and protect vulnerable groups, it may be argued that its effectiveness is limited by its narrow scope, lack of enforcement mechanisms, and potential for companies to engage in 'greenwashing. rather than genuine accountability. Despite these challenges, the law represents a significant step towards holding corporations accountable for their impacts. Furthermore, the implementation of Directive 2014/95/EU, known as the 'Non-financial Reporting Directive,' signifies a significant advancement in corporate transparency and accountability.[71] This directive mandates large companies to disclose non-financial information, including environmental, social, and governance (ESG) factors, in their annual reports. By enhancing disclosure requirements, it aims to promote responsible business practices and facilitate informed decision-making by stakeholders. However, its effectiveness relies on robust enforcement mechanisms and standardised reporting frameworks. Additionally, ensuring consistency and comparability in reporting across companies is crucial for enabling stakeholders to assess corporate sustainability performance accurately.[72]

Similarly, the German Supply Chain Due Diligence Act (Lieferkettensorg-faltspflichtengesetz) marks a significant stride towards corporate accountability and human rights safeguarding within global supply chains.[73] Despite its commendable objectives, critical evaluation exposes both strengths and limitations. The Act's merit lies in its thorough approach to due diligence, mandating companies to detect, prevent, and mitigate human rights and environmental risks across their supply networks. Through stipulations for risk assessments, implementation of preventive measures, and transparent reporting, the Act aims to enforce corporate responsibility for their impact on human rights and the environment. However, concerns arise regarding the Act's limited scope and enforcement mechanisms. Targeting only large firms with over 3,000 employees in Germany may overlook smaller entities, while reliance on civil liability lawsuits from affected parties or NGOs may hinder access to justice. Furthermore, lacking extraterritorial jurisdiction may enable companies to evade accountability for human rights abuses abroad, underscoring the need for a broader approach. Moreover, the Act's reliance on voluntary compliance and self-reporting may compromise its efficacy, allowing companies to prioritize reputation management over genuine commitment to human rights and environmental protection. Therefore, while the German Supply Chain Due Diligence Act advances corporate accountability, addressing its limitations, such as strengthening enforcement and broadening scope, is essential to ensure the effective protection of human rights and the environment within global supply chains.

[70]Bright (2018).
[71]Tsagas & Villiers (2020).
[72]Baumüller & Grbenic (2021).
[73]Koos (2022).

The approaches taken by the EU, France, Germany, Belgium,[74] Switzerland,[75] and other countries regarding corporate accountability and duty of care are commendable steps toward ensuring corporate responsibility.[76] However, a critical analysis reveals a significant deficiency in these approaches: the lack of a clearly defined extent of remedy for victims of corporate harm. Despite efforts to establish frameworks for corporate accountability, the laws have thus far failed to adequately outline principles of remedy for victims. This deficiency is particularly concerning given the gravity of human rights violations and the fundamental principles of human rights at stake. While the development of regulations and directives is a positive step, it is disappointing that they do not comprehensively address the myriad issues faced by victims. In response to this gap, this article proposes to clarify the principle of duty of care, drawing from the UK common law doctrine. By incorporating the duty of care concept into corporate accountability frameworks, there is potential to establish clearer standards for addressing harm caused by corporate actions. This would not only enhance legal clarity but also provide more effective avenues for victims to seek redress and hold corporations accountable for their actions.

What is Remedy?

Tort law serves as a vital mechanism for upholding societal values and safeguarding individual rights against abuses of power. Its fundamental objective is to ensure that victims of wrongful conduct, known as tortfeasors, receive appropriate remedy for the harm inflicted upon them. Within the framework of tort law, particular emphasis is placed on addressing violations of fundamental rights, privacy infringements, and human rights abuses.[77] This includes providing protection for individuals from intimidation in legal proceedings and extending remedies to indirect victims, such as close family members affected by the tortious conduct. At the core of tort law's remedial foundation lies the principle of *ubi jus ibi medium*, signifying that where there is a legal right, there must also be a corresponding remedy.[78] Consequently, both judicial and extrajudicial remedies are available to address tortious conduct. The nature and extent of the remedy sought are contingent upon the severity of the tort and aim to restore the victim to their pre-incident state. Typically, victims of torts, including human rights violations, may seek damages for compensatory purposes or injunctions to prevent future harm. In essence, tort law plays a pivotal role in remedying victims of human rights abuses by deterring wrongful conduct and providing avenues for redress, thereby promoting accountability and justice within society.

[74]Demeyere (2015).
[75]Palombo (2019).
[76]Cassel (2016).
[77]McMahon & Binchy (2015).
[78]Harpwood (2009).

However, challenges arise when applying tort law principles to remedy victims of human rights violations and environmental damages. To navigate this, the 'Eggshell Skull Rule' doctrine is proposed as a guiding framework for courts in determining appropriate remedies. When examining prominent cases like *Kiobel v Royal Dutch Petroleum Co,*[79] *Chevron in Ecuador,*[80] *and Monsanto (now Bayer) and Glyphosate,*[81] it becomes apparent that a robust application of tort law remedies could have led to more effective redress for the victims. By leveraging principles such as the 'Eggshell Skull Rule,' courts could have established clearer parameters for awarding remedies in these intricate cases, thus bolstering the prospects of justice for affected individuals and communities. This proposition holds significance as it underlines the principle of 'eggshell skulls,' emphasising the corporation's responsibility to fully restore victims to their original state following human rights violations. By adhering to this principle, corporations are compelled to provide adequate remedies to victims, aligning with the broader principles of human rights protection and ensuring justice for those affected.[82] Furthermore, the adoption of the 'eggshell skulls' principle acts as a deterrent against future violations. Corporations are motivated to prioritise preventive measures and ethical conduct to evade potential liabilities stemming from harm inflicted on individuals or communities. Embracing this principle enhances accountability in corporate practices, fostering a culture of respect for human rights and contributing to societal equity. The absence of this principle in literature and law enforcement perpetuates corporate human rights violations. Without a clear mandate for corporations to fully restore victims post-violation, accountability mechanisms falter, enabling ongoing abuses. Inadequate enforcement and legal standards sustain a culture of corporate impunity, where human rights violations persist unchecked. Bridging this gap is imperative for fostering corporate responsibility and upholding global human rights standards.

Eggshell Skull Rule

Despite the severity of human rights violations or environmental harm, existing legal frameworks for liability in cases of physical harm that violates human rights are inadequate.[83] The principle of liability in tort law dictates that regardless of the extent of harm suffered by the victim, the defendant must restore them to their original state. The 'thin skull rule,' commonly referred to as the 'Eggshell Skull Rule,' is a well-established principle in English tort and criminal law that provides redress to victims whose rights have been violated. In cases like *Owens v Liverpool Corp,*[84] courts have upheld this principle, holding defendants

[79]Stewart & Wuerth (2013).
[80]Crasson (2017).
[81]Busscher, Colombo, Van Der Ploeg, Gabella & Leguizamón (2020).
[82]Nartey (2022).
[83]Payne & Pereira (2016).
[84]*Owens v Liverpool Corp.* [1939] 1KB 394.

liable for injuries caused to plaintiffs, regardless of the victim's pre-existing fragility. However, while this principle is consistently applied to physical injuries, it has yet to be extended to cases of corporate human rights violations and environmental damages. Nevertheless, courts should have the discretion to apply the 'Eggshell Skull Rule' principle in such cases, ensuring that victims are fully restored to their original condition, even in the absence of specific regulatory provisions or remedies at the national level.

In the case of the *Bhopal* disaster, the proposed legal principle of tort law, exemplified by the 'Eggshell Skull Rule' doctrine, could guide courts in determining appropriate remedies for the victims.[85] Despite the complexities of corporate accountability and the magnitude of the tragedy, this principle highlights the imperative of restoring victims to their pre-tort condition, considering all resulting harm, including indirect consequences. Similarly, in situations like Bangladesh's violation of labour rights and the absence of corporate accountability,[86] or instances of Silicon Valley's insufficient due diligence leading to human rights violations,[87] applying this principle would entail a comprehensive assessment of the harm inflicted and adequate compensation. Likewise, in Meta's involvement in human rights abuses in northern Ethiopia,[88] the principle emphasises the need for thorough consideration of all repercussions and a robust approach to remedy, ensuring justice for affected individuals and communities.

In the UK for instance, *Reaney v University Hospital of North Staffordshire NHS Trust,*[89] the court grappled with the application of the 'Eggshell Skull Rule' to cases involving pre-existing injuries exacerbated by negligent conduct. The central issue revolved around determining the extent to which the defendant's negligence worsened the plaintiff's condition. The court ruled that the defendant was liable for exacerbating Mrs. Reaney's condition beyond its original state, necessitating a significant care package. This underlines the principle that defendants are responsible for additional damage caused, not pre-existing damage. While the 'Eggshell Skull Rule' is traditionally applied to physical injuries, its application to corporate human rights violations and environmental damages remains unexplored. However, it is arguable that courts should be empowered to apply this principle to such cases, ensuring that victims are restored to their original position. Despite the absence of national regulation or remedy, courts should have the authority to award remedies based on this principle, offering redress for victims of corporate wrongdoing. Therefore, the incorporation of the 'Eggshell Skull Rule' within tort law serves a twofold purpose: delineating the parameters of the tort and establishing liability for the responsible party. Both individuals and corporations, regardless of their geographical location, can be held accountable under tort law if a duty of care is established. Specifically concerning corporate human rights violations, victims may leverage the 'Eggshell Skull Rule'

[85]Varma & Varma (2005).
[86]Siddiqui & Uddin (2016).
[87]Latonero (2018).
[88]Gezahegn (2023
[89]*Reaney v University Hospital of North Staffordshire NHS Trust* [2014] EWHC 3016.

to pierce the corporate veil. This legal doctrine enables victims to hold parent companies liable for the actions of their subsidiaries. This liability arises when it can be demonstrated that the legal separation between the parent and subsidiary is incongruent with their operational realities or when the corporate structure has been exploited for wrongful purposes by the parent company. Thus, the 'Eggshell Skull Rule' provides a mechanism through which victims of corporate human rights violations can seek redress from entities higher up in the corporate hierarchy.

Determining Redress for Victims of Human Rights Violations

Courts grapple with the challenge of determining whether a plaintiff has suffered human rights abuses and, if so, whether the defendant bears responsibility for causing, aiding, or abetting such abuses. In cases where the defendant has inflicted injury upon the plaintiff or harmed the environment, courts must ascertain whether the defendant's actions were the sole cause of the injury or environmental damage, or if they merely exacerbated a pre-existing condition. This distinction holds significant legal weight. If the defendant triggered a latent injury in the plaintiff (often seen in cases where corporations exploit regions with lax human rights standards to maximise profits), then the defendant is liable for the entirety of the harm suffered by the plaintiff. Conversely, if the plaintiff had a pre-existing injury, the defendant is only responsible for exacerbating that condition (commonly observed when a national government violates the human rights of its citizens). In light of these considerations, it is recommended that courts adopt a three-step approach to determine liability for corporate human rights violations and environmental damages resulting in physical harm to victims. Drawing upon the presumed 'Eggshell Skull Rule,' courts should assess liability by examining whether:

- The victim (or the environment) was in a healthy state prior to the occurrence of human rights violations or environmental damage;
- The injury and environmental condition manifested shortly after the human rights violations; and
- The evidence of human rights violations indicates a reasonable causal link between the injury suffered by the victims and the environmental condition.

If these criteria are met, the court should award a remedy aimed at restoring the victims to their pre-violation state, irrespective of any intervening actions by third parties, such as states or subsidiaries. The court bears both moral and legal obligations to grant a remedy that safeguards the future well-being of the defendant and the environment. Subsequent sections will expound upon the appropriate remedies courts should adopt for addressing damages stemming from corporate human rights violations and environmental harm

Legal Redress for Corporate Human Rights Violations – Conclusion

The pursuit of judicial remedy for corporate human rights abuses encompasses various forms of damages, including contemptuous damages, nominal damages, compensatory damages, exemplary damages, aggravated damages, and gain-based damages. While multiple types of damages may be applicable in a single case, certain combinations, such as nominal and compensatory damages, are not feasible.[90] This article focuses specifically on aggravated and exemplary damages as avenues for courts to award redress in cases of corporate human rights violations and environmental damages.[91] Unlike other forms of damages, aggravated and exemplary damages serve as punitive measures intended to punish the defendant for their wrongful actions. In the landmark case of *Fidler v Sun Life Assurance Company of Canada*, the Supreme Court differentiated between true aggravated damages, which stem from aggravating circumstances, and punitive damages, which aim to fulfil the objectives of retribution, deterrence, and denunciation.[92] An illustrative instance is *Keays v Honda Canada Inc*.,[93] where the plaintiff, Keays, was awarded $500,000 in punitive damages for wrongful dismissal. Similarly, in *McIntyre v Grigg*,[94] a case of unintentional tort involving drunk driving, the plaintiff, McIntyre, sought punitive and aggravated damages after sustaining severe injuries. Despite Grigg's guilty plea to careless driving, the court deliberated on the punitive measures in light of the circumstances surrounding the accident, highlighting the intricate considerations involved in awarding damages for corporate human rights abuses.

It may be assumed that incorporating these recommendations for judicial remedies within the Corporate Sustainability Due Diligence Directive (CSDDD) would significantly bolster its effectiveness and extend its impact beyond EU member states. By integrating mechanisms to address human rights violations, the CSDDD would not only strengthen its regulatory framework but also provide robust avenues for redress for victims worldwide. This inclusion would ensure that companies operating globally are held accountable for their actions, regardless of their location or jurisdiction. Furthermore, by establishing clear guidelines for judicial remedies, the directive would promote consistency and coherence in addressing human rights abuses across borders. Such provisions would enhance the CSDDD's credibility and encourage broader adherence to its principles by companies operating internationally. Ultimately, by incorporating recommendations for judicial remedies, the CSDDD would fulfil its mandate of promoting corporate sustainability and human rights protection on a global scale, thereby fostering a more responsible and accountable business environment.

[90]Edelman (2000).
[91]Beever (2003).
[92]*Fidler v Sun Life Assurance Company of Canada* [2006] SCC 30.
[93]*Keays v Honda Canada Inc.*, [2006] O.J. No. 3891 (C.A.), leave to appeal to S.C.C. granted, [2006] S.C.C.A. No. 470 [Keays].
[94]*McIntyre v Grigg*, [2006] O.J. No. 4420.

Furthermore, in cases such as the *Meta & Sama* lawsuit concerning poor working conditions and human trafficking in Kenya, the Clearview AI lawsuit regarding consent over the scanning of online photos in the USA, and the EDF lawsuit concerning indigenous rights in Mexico, courts should apply the principle of remedy to address corporate accountability for human rights infringements. Drawing from jurisprudence and soft law standards established by the African Commission on Human and Peoples' Rights (ACHPR), as evidenced in cases like *SERAC v Nigeria*[95] and *IHRDA v DRC (Kilwa)*, courts can delineate the responsibility of corporations in human rights violations. In the *SERAC* case, the state's facilitation of violations by granting legal and military powers to oil companies emphasises corporate complicity. Similarly, in the *Kilwa* case, the state's failure to investigate and punish the involvement of Anvil Mining Company highlights corporate responsibility. These cases demonstrate that corporations play a direct role in perpetrating human rights violations. Following the *Kilwa* case, the ACHPR urged the corporation to acknowledge its role in the violations. By applying this principle of remedy, courts can hold corporations accountable for their actions and ensure redress for victims of human rights abuses.

In the cases of *Estate of Arturo Giron Alvarez, et al. v The Johns Hopkins University, et al.*, *Jesner v Arab Bank*, and *Al-Quraishi, et al. v Nakhla and L-3 Services, Inc., et al. v Nestlé USA, Inc./Cargill, Inc*., the court should adhere to this principle of redress to ensure accountability for human rights violations. These cases involve allegations of complicity in human rights abuses by corporations operating in various contexts. By applying this principle of redress, the court can establish mechanisms to address the grievances of victims and provide appropriate remedies. This principle recognises the fundamental rights of individuals to seek redress for harm suffered as a result of corporate actions or omissions. It underlines the importance of holding corporations accountable for their conduct and ensuring that victims receive justice and compensation for their losses. In the context of these cases, which involve allegations of human rights violations ranging from forced labour to complicity in torture and extrajudicial killings, this principle of redress is paramount. It provides a framework for assessing the culpability of corporations and determining appropriate remedies to address the harm caused to victims. By adhering to this principle, the court can uphold the rule of law and promote accountability in corporate conduct, thereby advancing the protection of human rights globally.

Hence, it is proposed in this article that when adjudicating exemplary damages, judicial discretion must be exercised judiciously to avoid abuse of power. Clear guidelines exist for assessing exemplary damages, particularly within Lord Devlin's first category as delineated in *Thompson v Commissioner of Police of the Metropolis*.[96] These guidelines enhance predictability and mitigate arbitrariness in awards. Moreover, the wealth of the defendant assumes paramount importance in determining exemplary damages. Lord Devlin aptly noted that all

[95]SERAC v. Nigeria, Decision, Comm. 155/96 (ACmHPR, Oct. 27, 2001)
[96]*Thompson v Commissioner of Police of The Metropolis* [1997] 2 All ER 762, 763, 776.

factors influencing the defendant's conduct are relevant. This principle was exemplified in cases like unlawful eviction, where a natural person was awarded £1,000, compared to a corporate entity penalised with £60,000 in commercial law breaches. Therefore, the correct application of exemplary damages in cases like *Trafigura* would ensure proportionality between the remedy awarded and the company's commercial gains.[97] This deterrent effect would dissuade future environmental misconduct and uphold human rights standards.

This study contends, based on the evidence presented, that exemplary damages should be awarded in cases involving summary executions, arbitrary detentions, severe restrictions on freedom of expression and assembly, environmental degradation, forced labour, torture, unfair trials, complicity in government rights violations, livelihood damages, and complicity in torture and extrajudicial killings. These violations encompass all fundamental rights enshrined in the International Covenant on Economic, Social, and Cultural Rights, notably:

- Forcible eviction from homes (right to adequate housing).
- Water contamination from state-owned facilities (right to health).
- Violation of minimum wage laws (labour rights).
- Failure to prevent discrimination in recruitment (right to work).
- Destruction or contamination of food sources (right to food).
- Lack of reasonable limitations on working hours (labour rights).
- Prohibition of minority or indigenous language use (cultural rights).
- Arbitrary disconnection of water for personal use (right to water).

The findings of this article are consistent with previous studies on corporate human rights violations and environmental damage, emphasising the foreseeability of such outcomes. It is evident that corporations are aware, or should be aware, that their actions, including complicity with oppressive governments or inadequate environmental assessments, can lead to significant human rights violations and environmental harm. This study highlights that corporate foresight, under legal principles, does not absolve them from liability, whether it be aggravated or exemplary. Moreover, corporations often engage in human rights violations to enhance profits at the expense of victims and the environment, constituting unjust enrichment. This violates the principle that defendants should not benefit from negligence torts, thus invoking liability through unjust enrichment. This notion reaffirms that tort does not provide a sanctuary for wrongful conduct. The practical implications of this study include the necessity for courts to mandate the awarding of aggravated or exemplary damages following a thorough assessment of corporate conduct. Such damages should be warranted in cases where corporations are directly responsible for gross human rights abuses, collaborate with abusive governments, provide support to abusers, or are complicit in rights violations through investments or partnerships

[97]Dezalay & Archer (2019).

with repressive regimes. The findings of this study hold significant implications for future practice in several key areas:

- **Establishing Duty of Care:** The study emphasises the importance of determining when a corporation owes, or should owe, a duty of care. This involves careful consideration of the corporation's actions and their potential impact on human rights and the environment.
- **Applying Legal Precedents:** Drawing on case law from jurisdictions like the UK where the concept of duty of care has been applied to corporations, other judicial systems should consider adopting similar approaches. This could involve extending legal principles to hold corporations accountable for their actions.
- **Recognition of Duty of Care:** Judicial systems worldwide should recognise the duty of care as an integral aspect of corporate business activities. This recognition is essential for ensuring that corporations fulfil their responsibilities towards human rights and environmental protection.
- **Implementation in Weak Human Rights Law Contexts:** Countries with inadequate implementation of human rights law should particularly focus on applying the duty of care to corporate operations. This can serve as a mechanism to strengthen human rights protections within these jurisdictions.
- **Neighbourhood Principles in Tort Law:** Countries should apply the neighbourhood principles under tort law to human rights violations occurring within their jurisdiction, especially in cases where corporations and governments are indirectly linked. This ensures that legal frameworks adequately address human rights infringements associated with corporate activities.

By addressing these implications, future practices can advance corporate accountability, promote human rights protection, and mitigate environmental harm arising from corporate operations. Furthermore, the identified gap in corporate accountability shows the necessity of addressing corporate liability and the inconsistencies in the interpretation of international human rights law across jurisdictions. To effectively resolve these issues, it is proposed that the establishment of a corporate duty of care should be pursued to establish legal responsibility for corporate human rights violations. Additionally, it is recommended that the international legal system consider the creation of a dedicated court specifically for corporations. This envisioned corporation court would be empowered to apply international human rights law principles, particularly the concept of duty of care, especially in instances where national judicial systems have failed to enforce the law adequately. Such a court would provide a specialised forum for addressing human rights violations committed by corporations, offering victims a platform to present their grievances and have their cases adjudicated. However, it is imperative to view this recommendation as a starting point rather than a definitive solution. Further exploration and detailed examination are warranted to develop the concept

of a transnational corporation court and establish the principles governing corporate duty of care within the international legal framework.

Conclusion

Tort and civil law remedies emerge as viable options for penalising corporate human rights violations and environmental damages under specific circumstances. Firstly, when the remedy imposed is substantial relative to the implicated company's global annual revenue, it deters corporations from viewing human rights as commodities and outweighs potential benefits under a cost-benefit analysis prevalent in modern business decisions. Secondly, tort and civil law remedies become more effective when coupled with non-monetary sanctions as principal penalties under international and human rights law. However, innovative judicial thinking is required, considering corporations cannot be imprisoned like individuals. French law offers nine corporate rights deprivations as enforceable sanctions, including dissolution, judicial surveillance, asset confiscation, and closure of establishments involved in crimes. Extreme corporate human rights violations and environmental damages may warrant severe sanctions like complete asset confiscation and even dissolution, akin to the 'corporate death penalty.' This reflects reckless corporate behaviour disregarding victim rights, necessitating extreme liability and legal remedy. Comparatively, countries holding corporations liable for such violations may adopt similar standards for dissolution as a penalty for egregious corporate misconduct.

For instance, both the French and Belgian legal systems allow for the winding-up of legal entities if they are found to have engaged in criminal activities or intentional misuse for criminal purposes, deviating from their original corporate objectives. While this approach may vary across other jurisdictions, this study focuses specifically on these two states. To avoid issues of complementarity, a comprehensive multi-country analysis of varying standard requirements for corporate dissolution may be necessary to guide global enforcement efforts for human rights violations and environmental damages. Moreover, effective retribution and deterrence for corporate wrongdoing necessitate measures such as closure of business premises, asset confiscation, fines, or in severe cases, dissolution of the company. Judicial oversight and transparency are vital for ensuring the enforcement of these measures. Collaboration with signatory states is crucial for enforcing corporate accountability against entities that violate human rights and harm the environment. This collaboration requires harmonising domestic laws to render court judgments or sanctions enforceable. However, addressing legal, political, and practical challenges in enforcement is essential, given the complex multinational structures of modern corporations spanning multiple jurisdictions worldwide.

In summary, it is recommended that future corporate accountability initiatives adhere to the principles outlined in this article. Specifically, the incorporation of measures such as exemplary damages and dissolution of corporations for egregious human rights violations and environmental damages should be

considered. These measures can serve as effective deterrents and ensure adequate retribution for corporate misconduct. Moreover, it is suggested that the European Union's Corporate Sustainability Due Diligence Directive (CSDDD) integrate these principles to strengthen its effectiveness in addressing corporate wrongdoing. By incorporating mechanisms for exemplary damages and corporate dissolution, the CSDDD can enhance its capacity to hold corporations accountable for their actions. Furthermore, future research is needed to explore the universal applicability of these principles across different legal systems and jurisdictions. Understanding how these measures can be implemented and enforced globally will be crucial for promoting corporate accountability and protecting human rights and the environment on a broader scale.

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