CAUSES OF ACTION BEHIND PARENT COMPANIES' ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS IN THE NATIONAL COURTS

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Abstract

The vertical nature of international human rights norms presupposes states to be the addressee of human rights obligations. Therefore, there is no corporate liability for human rights abuses under international law. National legislation also does not contain any explicit rule that would allow to hold a parent company liable for human rights violations committed by its subsidiary or supplier abroad. Nevertheless, even in the absence of a clear legal basis, the national courts of Canada, France, the UK and the Netherlands, express their willingness to recognise the existence of responsibility to respect human rights on the part of corporations. Furthermore, modern case law of the aforementioned states represents possibilities to actually hold corporations liable under tort and criminal law for violations of this obligation. The reason for these “bottom — up” developments appears to be the shift of focus from corporate to victims protection. Corporate legal autonomy originated from strict corporate separation principle, as it becomes questionable nowadays. The need for the developments was born from a laissez-faire approach applied to corporations over the years that gave them the possibility to become invisible in their home states and therefore insulate liability for wrongdoings abroad. National courts of Canada, France, the UK and the Netherlands in course of their judicial practice invoke a great variety of possible causes of action to be the ground of imposing the responsibility to respect human rights on corporations and consequently holding them liable for violation of that obligation. Causes of action encompass international human rights law provisions, invocation of duty of care concept, human rights due diligence framework and criminal law provisions. However, the question whether any cause of action invoked by national courts in order to hold parent companies liable for human rights abuses committed by their subsidiaries or suppliers abroad meets the criteria of universality and applicability at the international level.

Keywords

human rights, cause of action, parent company, subsidiary, corporate liability, direct liability, due diligence

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Introduction

On 24 April 2013 at least 1,080 workers died, and 2,500 workers were severely injured in the eight-storey building collapse in Bangladesh, which occurred due to gross negligence of its owners.[1] The building housed five factories, manufacturing clothing for a range of large foreign brands, including Zara, Mango, Benetton.[2] Despite the fact that evacuation was ordered, seeking to meet delivery deadlines the workers were urged by the suppliers to return to work on the day of the collapse.[3] The Rana Plaza tragedy was not the first one but provided a catalyst for global corporate liability developments.

Criminal charges were brought against 38 individuals.[4] Among them 30 secured bails and 6 remained at large.[5] A number of civil lawsuits have been filed in foreign jurisdictions.[6] The victims of human rights abuses encountered a myriad of material and jurisdictional obstacles being deprived of access to justice and substantive remedies.

It may seem that the national courts have their hands tied since corporations are not addressees of international human rights obligations and are not generally exposed to direct liability for human rights

1 Siddiqui J., Uddin S. *Human Rights Disasters, Corporate Accountability and the State: Lessons Learned from Rana Plaza* // Accounting, Auditing and Accountability Journal. 2016. Vol. 29. № 4. P. 688.

2 Foxvog L., Gearhart J., Maher S., Parker L., Vanpeperstraete B., Zeldenrust I. *Still Waiting. Six Months after History’s Deadliest Apparel Industry Disaster, Workers Continue to Fight for Reparations* // Clean Clothes Campaign. 2013. P. 21

3 Trebilcock A. *The Rana Plaza Disaster Seven Years on: Transnational Experiments and Perhaps a New treaty?* // International Labour Review. 2020. Vol. 159. № 4. P. 546.

4 Ibid.

5 Rashad A. *Rana Plaza Trial Progresses at Snail’s Pace* // Newage. 21 April 2023. URL: https://www.newagebd.net/article/199924/rana-plaza-trial-progresses-at-snails-pace (accessed: 05.05.2024).

6 Salminen J. *The Accord on Fire and Building Safety in Bangladesh: A New Paradigm for Limiting Buyers’ Liability in Global Supply Chains?* // American Journal of Comparative Law. 2018. Vol. 66. № 2. P. 432–433.

abuses under domestic laws. Nevertheless, shifting the focus from company to victims protection Canadian, Dutch, French and English national courts hugely succeeded in elaboration of substantive causes of action of parent company liability for human rights abuses committed by their subsidiaries or suppliers abroad and provided petitioners with possibilities to alleviate considerable jurisdictional obstacles, including presumption against extraterritoriality and choice of procedural and substantive laws. However, evidential burdens remain unbalanced being primarily imposed on claimants — victims.[7] It becomes a significant hurdle for petitioners in business–human rights litigation from the standpoint of substantial financial expenses incurred in fulfilling the burden of proof, especially in terms of requiring proficient legal counselling and gaining access to the relevant information.[8] In the absence of burden of proof reversal, that currently has not been invoked by any procedural rule in the business–human rights litigation field, companies become more advantageous parties to business–human rights litigation with "generous possibilities to defend".[9] This issue unequivocally requires further examination, however, the present paper aims to focus on the overriding question of whether any cause of action invoked by national courts to hold parent companies liable for human rights abuses committed by their subsidiaries or suppliers abroad meets the criteria of universality and applicability at the international level.

For this purpose, the paper elaborates on various causes of action being invoked by national courts in order to establish parent company liability and strives for representation of an in-depth comparative analysis of different jurisdictions' approaches to this issue, revealing their potential to become a universal model applicable at the international level. For further comprehensiveness the analysis is divided by national courts' approaches to the applicable cause of action into four sections, discussing causes of action under international law, under duty of care concept, under human rights due diligence legislative framework and, finally, under criminal law.

1. Cause of action under international law

Neither international customary law, nor any international treaty provides for directly expressed legal rule that could bring parent companies accountable for human rights violations. Nevertheless, recognition of parent companies' liability for human rights violations committed by their subsidiaries abroad is not a novelty. During the last years along with "ubiquity of the giant multinational corporation and its ability, through legal structures, to insulate itself from liability for the conduct of its foreign subsidiaries"[10] the urge for direct parental liability has increasingly risen. Due to the lack of success of universal human rights in realisation of universality and extraterritorial jurisdiction principles in practice, large corporations received the ability to operate across the globe with impunity "beyond the reach of states with stricter human rights standards of conduct than often exist in the developing world".[11] These new challenges to international human rights law destabilise the existing framework and require an evolved understanding of existing principles.

In 2020 *Nevsun Resources Ltd. v. Araya* became one of the first steps in the movement towards recognition of the direct parental liability for human rights violations under international law. Three Eritrean workers brought a claim against Nevsun Resources Ltd., a company incorporated in Canada. The plaintiffs were enlisted by the Eritrean military to forced labour at the mine Bisha, 40% owned by an Eritrean state entity and 60% — by Nevsun through its subsidiaries.[12] The plaintiffs claimed damages for domestic torts as well as for breaches of customary international law prohibitions against forced labour, slavery, cruel, inhuman, or degrading treatment, and crimes against humanity.[13] Nevsun sought to strike the applicants' claim of international customary law violations as it has no reasonable prospect of success.[14]

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7 van Dam C. *Breakthrough in Parent Company Liability: Three Shell Defeats, the End of an Era and New Paradigms* // European Company and Financial Law Review. 2021. Vol. 18. № 5. P. 738.

8 Farah Y., Kunuji V., Kent A. *Civil Liability Under Sustainability Due Diligence Legislation: A Quiet Revolution?* // King's Law Journal. 2023. Vol. 34. № 3. P. 520.

9 Fasterling B. *Whose Responsibilities? The Responsibility of the "Business Enterprise" to Respect Human rights* // *Accountability, International Business Operations and the Law* / ed. by L. Enneking, I. Giesen, A.-J. Schaap, C. Ryngaert, F. Kristen, L. Roorda. New York : Routledge, 2020. P. 18–37, 28.

10 Curran V. *Harmonizing Multinational Parent Company Liability for Foreign Subsidiary Human Rights Violations* // Chicago Journal of International Law. 2016. Vol. 17. № 2, art. 3. P. 403.

11 Curran V. *Op.cit.* P. 403.

12 Supreme Court of Canada. *Nevsun Resources Ltd. v. Araya*. Case no. 37919. Judgment of 28 February 2020. § 7.

13 Ibid. § 4.

14 Ibid. § 5, 16.

The Supreme Court of Canada raised the question of whether customary international law prohibitions ground a claim for damages under Canadian law. It was held affirmatively. The Court found that the acts indicated by plaintiffs constituted violations of *jus cogens* norms from which no derogation is permitted.[15] Considering the question of whether customary international law is part of Canadian national law, the Court invoked the doctrine of adoption, stating that "the adoption of customary international law as part of domestic law is by way of automatic judicial incorporation".[16] Therefore, having assumed that international customary law forms a part of the law of Canada, the Court found the applicants' claim to be justified and viable to proceed in Canada.[17]

Subsequently, and most importantly, the Court turned to the question of Nevsun's liability for identified violations. It held that some norms of customary international law "prohibit conduct regardless of whether the perpetrator is a state".[18] Hence, such norms being applicable to private actors could cover corporations.[19] Furthermore, it was stated by the majority that: "it is not 'plain and obvious' that corporations today enjoy a blanket exclusion under customary international law from direct liability for violation of 'obligatory, definable, and universal norms of international law'".[20] In particular, quoting Professor G. H. Koh, the Court emphasised that corporations, being artificial persons created by law, on a par with states and individuals should be held liable for human rights violations.[21] Moreover, the Court stressed that the argument that customary international law itself does not recognize company liability for human rights violations "misconceives modern international law".[22]

Moving to the question of remedy, the Court noted that treating human rights violations as ordinary domestic torts is not sufficient "to adequately address the heinous nature of the harm caused by this conduct".[23] The Court further added: "requiring the development of new torts to found a remedy for breaches of customary international law norms automatically incorporated into the common law may not only dilute the doctrine of adoption, it could negate its application".[24]

To conclude on this case, it is of high importance to stress that despite the fact that the Court found violations committed by Nevsun to be violations of customary international law, it did not state that any international custom is the cause of action to hold the company liable for such violations. In accordance with the Court, companies' obligation to respect human rights exists merely by virtue of international law. Based on this assumption it accepted the absence of an outright prohibition in international law to hold a company liable for human rights violations[25] to be a prenatal direct liability cause of action.

In doing so the Court "[called] on trial judges to examine this novel legal theory and consider the imposition of a new form of civil liability (distinct from traditional common law torts) on private parties".[26] Nevertheless, the *Nevsun* case has never been tried on the merits, being out-of-court settled in October 2020 with the terms of the settlement to be confidential.

The decision at hand appears to be a great breakthrough in the evolution of international approach to corporate liability for human rights abuses and has every prospect of success to become a universally applicable cause of action of a parent company direct liability for human rights abuses by means of its expansion to other jurisdictions and recognition of it to be an international custom. Nevertheless, the aforementioned way of reasoning raises concerns as by far it could lead to serious perversions in the human rights protection regime.[27] Form the author's point of view, such an approach should be

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15 Ibid. § 73,75, 81–84.
16 Ibid. § 87.
17 Ibid. § 95, 132.
18 Ibid. § 105.
19 Ibid. § 111.
20 Ibid. § 113.
21 Ibid. § 112.
22 Ibid. § 105
23 Ibid. § 125, 126.
24 Ibid. § 128.
25 Rusinova V., Ganina O. *Postanovlenie Verkhovnogo suda Kanady ot 28 fevralya 2020 goda po delu "Nevsun" protiv Arayi: "tikhaya revolyutsiya" v. otsenke statusa korporatsiy po mezhdunarodnomu publichnomu pravu? [Judgment of the Supreme Court of Canada of 28 February 2020, on Nevsun v. Araya: a "quiet revolution" in the assessment of the status of corporations under public international law?]* // Mezhdunarodnoe pravosudie. 2021. Vol. 11. № 2. P. 37.
26 Wisner R. *Supreme Court of Canada Opens the Door to Novel International Human Rights Claims: The Uncertain Implications for Canadian Resource Companies* // McMillan. March 2020. URL: https://mcmillan.ca/insights/supreme-court-of-canada-opens-the-door-to-novel-international-human-rights-claims-the-uncertain-implications-for-canadian-resource-companies/ (accessed: 28.04.2024).
27 Butler J. *The Corporate Keepers of International Law* // American Journal of International Law. 2020. Vol. 114. № 2. P. 216–218.

treated prudently as the nature of international human rights rules suggests that international human rights obligations are mandated by and for states and extend to corporations as long as the states themselves have incorporated such obligations into their domestic legal frameworks and made them applicable to private entities.[28] As it was stressed by the dissenting judges, the fact that no international custom exists allowing to hold a company liable for violation of international human rights should have become an insurmountable obstacle.[29]

2. Cause of action under duty of care concept

On the level of national legislation, the problem appears to remain — "inability to point to a binding obligation stipulated in law" becomes the biggest challenge to litigation.[30] However, from another point of view, in the absence of a binding rule, a broad discretion in application of the cause of action of parental liability is accorded to judges. A decent stratum of case law represents judges' willingness to provide victims of human rights abuses with substantial justice. Canada, the UK and the Netherlands became the trendsetters in this movement. In the course of their judicial practice related to human rights violations committed by multinational corporations the judges have embraced the concept of duty of care. They amount a breach of the corporate responsibility to respect human rights to be a breach of the duty of care "which requires a person that is found liable of having acted with negligence thereby causing harm to another, to compensate the victim of such harm".[31]

In this regard, attention should be paid to Nevsun's predecessor — 2013 Canada Supreme Court decision on *Choc v. Hudbay Minerals Inc*.[32] In contrast to *Nevsun*, *Choc* being decided on jurisdiction 11 years ago is yet to be decided on the merits. Three related actions (the "Caal action", the "Choc action", the "Chub action") were brought in jurisdiction of Canada by Guatemalan citizens against Canadian mining company Hudbay Minerals Inc. and its wholly owned subsidiaries, HMI Nickel Inc. (HMI) and Compania Guatemalteca de Níquel S.A. (CGN) that owned and operated the Fenix mining project in Guatemala.[33] The claimants asserted Hudbay to be directly liable in negligence for its "on-the-ground management of the Fenix project, and in particular, its negligent management of the Fenix security personnel" who allegedly murdered Adolfo Ich Choc, shot German Chub and left him paralyzed, raped 11 women, including Maria Caal.[34]

In accordance with the defendants, the claimants failed to provide a reasonable cause of action and it was "plain and obvious" that there was no such recognized duty of care.[35] The Supreme Court of Canada stressed that novelty of the allegations is not justification for striking the claim out.[36] In this regard, the Court turned to two–stages *Anns/Cooper* test[37] that applies to consider the possible existence of a novel duty of care. Stage one includes consideration of whether the harm was "the reasonably foreseeable consequence" of the defendant's breach and whether "there is sufficient proximity between the parties that it would not be unjust or unfair to impose a duty of care on the defendants". If the first stage is established, there is a *prima facie* duty of care. At the second stage the Court should identify whether there are broader policy reasons precluding this *prima facie* duty.[38]

Having found foreseeability of the harm caused,[39] the Court focused on the issue of proximity. It stated that proximity should be understood as "the circumstances… of such a nature that the defendant may be said to be under an obligation to be mindful of the plaintiff's legitimate interests"[40] and could be defined by "expectations, representations, reliance, and the property or other interests involved".[41] The Court found

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28 Ibid. P. 216.
29 Rusinova V., Ganina O. *Op.cit*. P. 34.
30 Farah Y., Kunuji V., Kent A. *Op.cit*. P. 511.
31 van Dam C., Gregor F. *Corporate Responsibility to Respect Human Rights vis-à-vis Legal Duty of Care // Human Rights in Business: Removal of Barriers to Access to Justice in the European Union* / ed. by J. Rubio, K. Yiannibas. London : Routledge, 2017. P. 119–138, 122.
32 Ontario Superior Court of Justice. *Choc v. Hudbay Minerals Inc*. Case no. CV-10-411159. Judgment of 22 July 2013.
33 Ibid. § 4–10.
34 Ibid. § 5–7, 25.
35 *Choc v. Hudbay Minerals Inc*. § 18, 40.
36 Ibid. § 42.
37 UK House of Lords. *Anns v. Merton London Borough Council*, Judgment of 12 May 1977; Supreme Court of Canada. *Cooper v. Hobart*. Case no. 27880. Judgment of 16 November 2001.
38 *Choc v. Hudbay Minerals Inc*. § 56–59.
39 Ibid. § 65.
40 Ibid. § 66.
41 Ibid. § 69.

that Hudbay made public representations concerning its relationship with local communities and committed itself to respect human rights, "which would have led to expectations on the part of the plaintiffs".[42] Furthermore, plaintiffs' interests "were clearly engaged when… the defendants initiated a mining project near the plaintiffs and requested that they be forcibly evicted".[43] Therefore, having found a *prima facie* duty of care to exist, the Court moved to the second stage of the test.[44]

Notwithstanding "competing policy considerations" were identified,[45] the Court noted that precedent case law has advised against dismissing a claim "based on policy reasons" on a pre-trial stage.[46] Hence, the Court came to the following conclusion: a novel claim of negligence should be dismissed at the pre-trial stage only if it is "clearly unsustainable" or "untenable" that is not the case in the situation at hand.[47]

Therefore, the Supreme Court of Canada found itself competent to "create" the cause of action of parental liability. By means of the *Anns/Cooper test* it introduced the "novel" duty of care that resonates with the rationale applied by the Court in 2020 to *Nevsun*: while *Nevsun* is grounded on international law, *Hudbay's* "novel" duty of care arises from domestic common law negligence developments. Nevertheless, it is possible to see that in both those cases the absence of a strict legal framework allowed the Canadian courts to exercise their discretion in application of the cause of action of parental liability in order to place the protection of human rights abuse victims in the first place.

In 2019, the UK Supreme Court handed down its decision on *Vedanta Resources PLC v. Lungowe*[48] and, hereby, "delivered a promising ruling… that [opened up] the litigation against UK parent companies for extraterritorial human rights abuses".[49] 1,826 Zambian citizens, brought a claim in England alleging that their health and farming activities had been damaged by toxic water pollution caused by Nchanga Copper Mine.[50] The mine was operated by Zambian local company Konkola Copper Mines PLC (KCM), which is a subsidiary of Vedanta Resources PLC (Vedanta), incorporated in the UK.[51] The claimants alleged human rights violations committed by companies at issue under common law negligence and breach of statutory duty.[52]

The High Court and the Court of Appeal established jurisdiction over Vedanta based on Article 4.1 of the Recast Brussels Regulation,[53] which allows any claimants to sue a party domiciled in a member state in that same state, and over KCM, being a "necessary or proper party" to the litigation as provided by the English Civil Procedure rules, enshrined in paragraph 3.1(3) of Practice Direction 6B.[54] Therefore, the aforementioned provision forms the basis on which the claimants are permitted to sue the local subsidiary in England while the English parent company becomes an "anchor" defendant. Defendants appealed to the Supreme Court alleging absence of a real triable issue against Vedanta and England to be improper jurisdiction.[55]

The Supreme Court dismisses the appeal. It found that the claimants had a legitimate claim against Vedanta, as the parent company exercised "sufficiently high level" of control and supervision on its subsidiary operations "with sufficient knowledge of the propensity of those activities to cause toxic escapes into surrounding watercourses", as well as published materials in which Vedanta asserted its own responsibility for implementation of environmental control and sustainability standards.[56] In accordance with the Court parent company duty of care emerges not from mere existence of parent–subsidiary relationships but "depends on the extent to which, and the way in which, the parent availed itself of the opportunity to take over, intervene in, control, supervise or advise the management of

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42 Ibid. § 69.
43 Ibid.
44 Ibid. § 70.
45 Ibid. § 74.
46 Ibid; Ontario Court of Appeal. *Haskett v. Equifax Canada Inc*. Case no. C37573, C37574. Judgment of 14 April 2003. § 52.
47 *Choc v. Hudbay Minerals Inc*. § 75.
48 UK Supreme Court. *Vedanta Resources PLC et al. v. Lungowe et al.*, Case no. 2017/0185. Judgment of 20 April 2019.
49 Palombo D. *Op.cit.* P. 238.
50 *Vedanta Resources PLC et al. v. Lungowe et al.* § 1.
51 Ibid. § 2.
52 Ibid.
53 Regulation (EU) No 1215/2012 of the European Parliament and of the Council on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of 12 December 2012.
54 *Vedanta Resources PLC et al. v. Lungowe et al.* § 16–20.
55 Ibid. § 22.
56 Ibid. § 55.

the relevant operations of the subsidiary".[57] Consequently, the Court asserted that a claim for parent company liability for its subsidiary violations could not raise any controversies as it falls under general liability for common law negligence and does not comprise a distinct category of liability.[58] Therefore, in accordance with the Court Vedanta owes duty of care under the English tort of negligence.

Concerning the issue of the proper place for litigation the Court provided summary examination of potential jurisdictions' connecting factors[59] and found Zambia to be "overwhelmingly" the proper place for the claim to be tried.[60] Despite those findings, the Court reminded that it may permit service of English proceedings on the foreign defendant "if satisfied, by cogent evidence, that there is a real risk that substantial justice will not be obtainable in that foreign jurisdiction".[61] The lack of practical ability to fund such group claims when claimants are "at the poorer end of the poverty scale in one of the poorest countries of the world"[62] and absence of sufficiently experienced legal teams within Zambia able to deliver effective litigation against a well-resourced rival as KCM are the two factors representing the real risk of substantial justice non-availability in Zambia.[63] Thus, despite the determination of Zambia to be the proper place for litigation, the Court admitted the claim should proceed in England. In 2021 Vedanta' and KCM' expressed consent "without admission of liability" to settle all the claims brought against them by Zambian claimants.[64]

Therefore, from the author's point of view, *Vedanta* appears to be revolutionary. The Court, similarly to the Canadian Court in *Hudbay*, chose common law tort of negligence to be the cause of action for a parent company liability. However, it did not turn to the "creation" of a "novel" duty of care but stated that the parent direct liability originates from general principles of common law negligence. Therefore, the English court significantly lowered the victims' evidential burden by means of elimination of any additional level of verification of whether the duty of care exists on the part of the parent company.

Maintaining the pace of its evolved judicial practice, in 2021 the UK Supreme Court held on *Okpabi et al. v. Royal Dutch Shell*.[65] More than 40,000 citizens of Niger Delta brought a claim in England against Royal Dutch Shell (RDS), a UK domiciled company, and its Nigerian subsidiary, Shell Petroleum Development Company of Nigeria Ltd. (SPDC) for substantial environmental damage caused by oil spills and pollution from pipelines resulting in water sources contamination.[66] The Claimants alleged SPDC, being an operator of the pipeline, to be liable for damage as well as RDS to owe them a common law duty of care on the basis that it exercised significant control over SPDC's operations and undertook responsibility for SPDC's operations by means of mandatory health, safety and environmental policies implementation.[67]

In 2017 the High Court held that although it has jurisdiction over the claims against RDS, it found "no arguable duty of care on the part of RDS to the claimants under English law".[68] Therefore, in the absence of an "anchor" defendant it is invalid to serve the claim on SPDC under the "necessary or proper party" jurisdictional gateway.[69] In 2018 the Court of Appeal agreed with the High Court and grounded its decision on a generalised presumption that a parent company is not liable for its subsidiaries acts.[70] It stated that mere implementation of group-wide policies could not suffice to incur a parent company duty of care in respect of its subsidiary activities, as it does not "demonstrate a sufficient degree of control of SPDC's operations in Nigeria by RDS to establish the necessary degree of proximity".[71]

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57 Ibid. § 49.
58 Ibid.
59 Ibid. § 66.
60 Ibid. § 85–87.
61 Ibid. § 88.
62 Ibid. §90.
63 Ibid. § 88–93.
64 *Vedanta Resources Limited and Konkola Copper Mines Plc Joint Statement of 19 January 2021.* URL: https://www.vedantaresources.com/uploads/media_pdf/press_release/vrl/2021/vedanta-statement-on-kcm.pdf (accessed: 25.04.2024).
65 UK Supreme Court. *Okpabi at. al. v. Royal Dutch Shell PLC. at. al.* Case no. 2018/0068. Judgment of 12 February 2021.
66 Ibid. § 3–6.
67 UK Supreme Court. *Okpabi at. al. v. Royal Dutch Shell PLC. at. al.* § 7.
68 England and Wales High Court. *Okpabi at al. v. Royal Dutch Shell PLC. at al.* Case no. HT-2015-000241, HT-2015-000430. Judgment of 26 January 2017. §118.
69 Ibid.
70 England and Wales Court of Appeal. *Okpabi at al. v. Royal Dutch Shell PLC. at al.* Case no. A1/2017/0407 and 0406 Judgment of 14 February 2018. § 207.
71 Ibid. § 127.

The Court of Appeal findings are not surprising as they predated the revolutionary *Vedanta* decision. In 2021 the Supreme Court brought *Okpabi* into compliance with its up-to-date case law. The way of reasoning presented by the Supreme Court resembles the "consistency check" procedure of the Court of Appeal ruling on *Okpabi* to the Supreme Court decision on *Vedanta*. Primarily, the Court stated that no presumption against parent company liability exists,[72] and therefore, the Court of Appeal erred in applying a "limiting principle" that parent companies "could never incur a duty of care in respect of the activities of a particular subsidiary merely by laying down group-wide policies".[73] On the contrary, that sort of policies "may be shown to contain systemic errors which, when implemented as of course by a particular subsidiary, then cause harm to third parties".[74] Secondly, in accordance with the Supreme Court, the Court of Appeal had inappropriately focused on the issue of control that should be seen just as "a starting point".[75] The relevant inquiry is "the extent to which the parent did take over or share with the subsidiary the management of the relevant activity".[76]

Moving directly to the matter of parent company duty of care, the UK Supreme Court reminded that in accordance with *Vedanta*, parent company liability in negligence is not a special category of liability, therefore, it "require[s] no added level of rigorous analysis".[77] Building on an earlier elaborated approach to invoke general principles of common law negligence to be the cause of action of a parent company liability instead of a "special" category of law to be applied, the Supreme Court concluded that claimants showed an arguable case, and it could proceed in English courts. That said, to the author's knowledge, neither decision on the merits has been issued, nor the case has been settled by the parties, yet.

Learning lessons from the Supreme Court decision on *Vedanta*, in *Hamida Begum v. Maran (UK) Ltd*. case the High Court and the Court of Appeal went even further expanding the parent duty of care not only to acts of its foreign subsidiaries but to acts of its foreign suppliers. This way of reasoning provides for similarities with legislative aims and intentions of human rights due diligence legislation around the globe.

In the *Maran* case a claim was brought by Ms. Begum, on behalf of Mr. Mohammed Khalil Mollah, against Maran Ltd., a UK-domiciled company. In 2017 Maran, being a shipbroker, acted as an agent for the oil tanker owner, Centaurus Special Maritime Enterprise (CSME), in relation to the sale of the tanker with the purpose of its demolition.[78] Maran had arranged for the oil tanker to be sold to a third party — Hsejar Maritime Inc. (Hsejar) located in Singapore — a "demolition cash buyer" that then sold the tanker to shipyard company Zuma Enterprise Yard (Zuma) in Bangladesh where it finally was demolished.[79] On 30 March 2018 Mr. Mohammed Khalil Mollah was working on the demolition of the tanker in Bangladesh when he fell to his death.[80] In 2019, Mr. Mollah's widow, Ms. Begum, brought proceedings against Maran in English courts for negligence based on the existence of a duty of care arising out of Maran's "autonomous control of the sale of the vessel and the [Maran's] knowledge that, as a result of that sale, the vessel would be broken up in Bangladesh in highly dangerous working conditions".[81]

The High Court found that "it is artificial and overly restrictive to say that the danger was created solely by the acts and omissions of the yard employer in Bangladesh <...>. It was a danger which inhered in this end-of-life vessel once it was broken up", therefore it is "arguable" that, by selling the oil tanker to Hsejar, Maran had acted in a way that would expose the shipyard workers to risk of injury.[82] Maran appealed the decision.

The Court of Appeal emphasised that "claims based on a duty of care, in circumstances where the damage has been caused by a third party, are currently at the forefront of the development of the law of negligence".[83] Under general rule a person could not be held liable for harm caused by the actions of a third party, however the Court took into account the "creation of danger" exception.[84] Under the exception

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72 UK Supreme Court. *Okpabi at. al. v. Royal Dutch Shell PLC. at. al.* § 150.
73 Ibid. § 143–145.
74 Ibid. § 145.
75 Ibid. § 146–147.
76 Ibid. §147.
77 Ibid. § 151.
78 England and Wales Court of Appeal. *Hamad Begum v. Maran (UK) Ltd.* Case no. B3/2020/1263. Judgment of 10 March 2021. § 6–8.
79 England and Wales Court of Appeal. *Hamad Begum v. Maran (UK) Ltd.*§ 8.
80 Ibid. § 5.
81 Ibid. § 14.
82 England and Wales High Court. *Hamad Begum v. Maran (UK) Ltd.* Case no. QB-2019-1331. Judgment of 13 July 2020. § 61.
83 England and Wales Court of Appeal. *Hamad Begum v. Maran (UK) Ltd.* § 71.
84 Ibid. § 64; UK House of Lords. *Smith v. Littlewoods Organization Ltd*. Case no. J0205-1. Judgment of 5 February 1987. § 270.

the danger should have been "reasonably foreseeable" by Maran in order for duty of care for Zuma's actions to be assigned to Maran.[85] The Court stressed that the "beaching" method of demolition carried out in Bangladesh is "an inherently dangerous working practice" that "has been the subject of international concern for years".[86] The Court also paid particular attention to the fact that the agreement to sell the oil tanker concluded between CSME (seller) and Hsejar (demolition cash buyer) included a "safe demolition" provision that was "well within the reasonable control" of Maran, being the sales agent of the seller.[87] Building on this issue the Court concluded that Maran "could, and should, have insisted on the sale to a so-called 'green' yard, where proper working practices were in place… [when] there were a number of such yards round the world where this vessel could have been safely demolished".[88]

Hence, the Court found that while Maran did not have control over working conditions in Bangladesh, it did have control over "whether the Claimant's husband would be exposed to the risk of death or serious injury from working on its ship".[89] It was further stressed by the Court that this way of reasoning represents "an unusual extension of an existing category of cases where a duty has been found, but it would not be an entirely new basis of tortious liability".[90] Nevertheless, similarly with *Okpabi* the trial stage on *Maran* has not taken place yet.

Therefore, as compared to Canadian "novel" duty of care, unequivocal rejection of any "special" category of liability and acknowledgement of general principles of common law negligence to be applied as the cause of action of a parent direct liability proposed by English courts provide victims with easier access to justice. Nevertheless, from the author's point of view the aforementioned English and Canadian decisions should not be overestimated. All of the analysed rulings were made at a pre-trial stage that provides for the conclusion that "duties of care considered were held to be arguable rather than actual".[91] Furthermore, answering the question of whether the duty of care concept being invoked as a parental liability cause of action could meet the criteria of universality and applicability at the international level, it should not be overlooked that the concept at hand has limited prevalence in civil law jurisdictions as compared to common law countries.

However, the UK jurisdictional developments have another particularity that could fuel involvement of other jurisdictions into the problem at issue — they represent specific importance for the former British colonies that retained in the frames of common law legal system. For such countries it is the UK Supreme Court that develops the rules on parent company liability through its recent decisions in the absence of any case law concerning the issue at hand in the jurisdictional field of former colonies.[92] This particularity becomes of vast significance while Western multinational companies take advantage of the highest protection standards of their commercial interests in developed countries but outsource their production, often according to the lowest human rights standards, in developing countries.[93]

A vivid example of the UK jurisdictional developments influence on former colonies became the *Four Nigerian Farmers and Milieudefensie v. Royal Dutch Shell* decision handed down by The Hague Court of Appeal in 2021. The Court applied Nigerian law, parent company liability provisions of which were elaborated by the UK Supreme Court. The decision at hand became the first one in Europe to actually hold a parent company liable for human rights violations committed by its subsidiary in the third state.

In 2008 three individual but parallel lawsuits were brought in the Netherlands by Nigerian farmers and fisherfolks with the support of Milieudefensie, a Dutch environmental and human rights protection association. The lawsuits concerned separately pipeline leaks in the Nigerian Delta villages of *Oruma*[94] and *Goi*.[95] The claimants alleged RDS, and its Nigerian subsidiary, SPDC, to be liable in tort of negligence under Nigerian law for damages caused to their farmlands and fishing grounds as well as to their physical

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85 England and Wales Court of Appeal. *Hamad Begum v. Maran (UK) Ltd.* § 53.
86 Ibid. § 26.
87 Ibid.
88 Ibid. § 67.
89 England and Wales Court of Appeal. *Hamad Begum v. Maran (UK) Ltd.* § 130.
90 Ibid. § 65.
91 *ESG in the UK: A Shift to Mandatory Corporate Responsibility?* // Simmons and Simmons. 22 September 2021. URL: https://www.simmons-simmons.com/en/publications/cku434xpg25s80a0702jei63n/esg-in-the-uk-a-shift-to-mandatory-corporate-responsibility (accessed: 24.04.2024).
92 van Dam C. *Op.cit.* P. 747.
93 Palombo D. *Op.cit.* P. 42.
94 The Hague District Court. *Oguru and Efanga v. Shell (Oruma)*. Case no. C/09/330891 / HA ZA 09-0579. Judgment of 30 January 2013.
95 The Hague District Court. *Dooh v. Shell (Goi)*. Case no. C/09/337058 / HA ZA 09-1581. Judgment of 30 January 2013.

integrity due to living in a polluted living environment.[96] According to defendants, the leaks were caused by sabotage and therefore there is no liability under Nigerian law.[97]

District Court of The Hague and further the Court of Appeal found themselves competent to hear the case, being authorised by Article 7 of the Dutch Code of Civil Procedure that provides for "case joinder" mechanism allowing Dutch courts to exercise jurisdiction over a second (foreign or domestic) defendant in the same proceedings in case there is a sufficient connection between claims "in such a way that a joint consideration is justified for reasons of efficiency".[98] It was identified that due to connecting factors Nigerian law should be applied to the substance of the claims while Dutch law to the procedural aspects.[99] The Court in particular stressed that "Nigerian law is a common law system based on English law".[100]

Considering a parent company liability in the *Oruma* pipeline leak under Nigerian law, the Court stressed that the importance must be attached to the UK Supreme Court *Vedanta* ruling.[101] For the circumstances of the case at hand the *Vedanta* rule was represented as follows: "if the parent company knows or should know that its subsidiary unlawfully inflicts damage on third parties in an area where the parent company involves itself in the subsidiary, the starting point is that the parent company has a duty of care in respect of the third parties to intervene".[102] Nevertheless, it appears that the Dutch Court misinterpreted *Vedanta*, as it tied up the parent's duty of care with its subsidiary's negligent conduct, while *Vedanta* refused this interconnection.[103]

Moving to the substantial part of the duty of care, the Court stated that it had not been established beyond reasonable doubt that the leak in *Oruma* was caused by sabotage.[104] The Court stressed that SPDC was aware that a leak could occur and it was foreseeable that in such a case it would be refused access to the leak.[105] Taking these facts into account, the Court found SPDC liable in tort of negligence for not installing a Leak Detection System (hereinafter — LDS) on *Oruma* pipeline that could have prevented damage to a great extent.[106] Referring to the formulated *Vedanta* rule, the Court concluded that RDS as well owed the people of *Oruma* a duty of care to ensure that an LDS was installed[107] as it "was and still is fairly intensively involved — directly and indirectly — with [SPDC]".[108]

Remarkably, in its decision on the *Goi* pipeline leak the Court came to quite a different conclusion.[109] It found SPDC exclusively to be liable for the leak while grounding its decision on Article 11(5)(c) of the Nigerian Oil Pipelines Act.[110] In this regard, the Court stated that parental duty of care could only be assumed in case the subsidiary's actions amounted to tortious conduct and dismissed the claim against RDS.[111] This way of reasoning again resonates with the *Vedanta* approach — the UK Supreme Court clearly stated that the parent's duty of care is separate from its subsidiary's conduct.[112]

Despite the fact that the aforementioned cases were parallel proceedings grounded on similar circumstances, The Hague Court of Appeal came to quite different conclusions. It held the parent company to be directly liable solely in *Oruma* while, making a step away from English courts' reasoning, imposed liability exclusively on the subsidiary in *Goi*. Nevertheless, the Court appeared to make a real breakthrough from a jurisdictional point of view — notwithstanding the ultimate outcome against the parent company in *Goi*, the Court still upheld its jurisdiction over SPDC where the connecting factors with the Netherlands were extremely limited. The Dutch Court of Appeal has found that Article 7 of the Dutch Code of Civil Procedure allows the Court to proceed with jurisdiction on non-EU entities even when there

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96 The Hague District Court. *Oruma,* § 2.1–2.2, 3.2.
97 The Hague District Court. *Oruma*, § 2.9–2.15; *Goi*, § 2.10–2.16.
98 Dutch Code of Civil Procedure, Book 1, Art. 7(1).
99 The Hague District Court. *Oruma*, § 4.9.–4.11; *Goi* § 4.9.–4.11.
100 The Hague District Court. *Oruma*, § 4.11; *Goi* § 4.11.
101 The Hague Court of Appeal. *Oguru and Efanga v. Shell (Oruma)*. Case no. 200.126.804/01 200.126.834/01, Judgment of 29 January 2021. § 3.29, 3.32.
102 The Hague Court of Appeal. *Oruma*. § 3.31.
103 van Dam C. *Op.cit.* P. 739.
104 The Hague Court of Appeal. *Oruma.* § 5.27.
105 Ibid. § 6.14, 6.24.
106 Ibid. § 6.22.
107 Ibid. § 7.26–7.28.
108 Ibid. § 7.1.
109 The Hague Court of Appeal. *Dooh v. Shell (Goi)*. Case no. 200,126,843 and 200,126,848. Judgment of 29 January 2021.
110 Ibid. § 5.1, 5.27.
111 Ibid. § 3.31, 5.30–5.31.
112 *Vedanta Resources PLC et al. v. Lungowe et al.* § 44.

is no "anchor" defendant that contrasts with English courts approach and represents positive jurisdictional development in the area of corporate liability for human rights abuses.

In 2021 The Hague District Court issued another ground-breaking decision. Primarily, the ruling invoked the duty of care concept that is not typical for civil law jurisdictions and consequently appeared to be unique as the Court's findings were not based exclusively on the norms of either international law or national law, but on their combination.

In *Milieudefensie et al. v. Royal Dutch Shell* a group of seven NGOs and more than 17,000 individual claimants[113] brought a claim against RDS alleging that CO2 emissions of the global Shell group (including Shell subsidiaries and suppliers) constituted a violation of both companies' duty of care under Dutch law and its international human rights obligations.[114] Milieudefensie et al. have grounded their claims on the "unwritten standard of care" enshrined in Book 6, Section 162 of the Dutch Civil Code which implies a duty of care for individuals and companies to act in accordance with generally accepted norms of social conduct.[115] For the interpretation of the "unwritten standard of care" the claimants referred to international human rights, specifically, to the right to life and the right to respect for private and family life, as well as to soft law endorsed by RDS: the UN Guiding Principles on Business and Human Rights (UNGP), the UN Global Compact (UNGC), and the OECD Guidelines for Multinational Enterprises.[116]

The Court held that while human rights could not be invoked against Shall company directly, being exclusively "[applied] in relationships between states and citizens",[117] they shall be "[factored] in… the interpretation of the unwritten standard of care".[118] Considering the role of the UNGP in the course of interpretation of the "unwritten standard of care", the Court held that "the UNGP constitute an authoritative and internationally endorsed 'soft law' instrument, which set out the responsibilities of states and businesses in relation to human rights" being in line with the UNGC and OECD Guidelines for Multinational Enterprises.[119] Although the Court had mentioned that "[the UNGP] do not create any new right nor establish legally binding obligations", it still extensively elaborated on the UNGP to be suitable as a guideline in the interpretation of the "unwritten standard of care", taking into account their "universally endorsed content".[120]

In this regard, for the Court it is "irrelevant whether or not [RDS] has committed itself to the UNGP"[121] — responsibility of legal entities to respect human rights is not optional, it is a global standard of expected conduct that exists independently of states and applies notwithstanding the local legal context to all enterprises "regardless of their size, sector, operational context, ownership and structure".[122] Building on this finding, the Court's assessment culminates in the conclusion that "due to the policy-setting influence [RDS] has over the companies in the Shell group, it bears the same responsibility for these business relations as for its own activities"[123] and becomes "responsible for significant CO2 emissions… with serious and irreversible consequences and risks for the human rights of Dutch residents".[124]

Therefore, the decision at hand becomes a significant example of non-binding instruments, specifically the UNGP, to be hardened through the interpretation of national hard law.[125] The Court has applied the domestic law provision of the "unwritten standard of care" as allowing indirect application of international law[126] and therefore constructed the cause of action for holding parent companies' liable for human rights violations from two elements: duty of care enshrined in Dutch tort law, and international soft law principles.

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113 The Hague District Court. *Milieudefensie and Others v. Royal Dutch Shell PLC and Others*. Case no. C/09/571932, Judgment of 26 May 2021. § 2.1.1.–2.1.8.

114 Ibid. §3.1.

115 *Milieudefensie et al. v. Royal Dutch Shell PLC et al.* § 3.2, 4.4.1.

116 Ibid. § 3.2, 4.4.9.

117 Ibid. § 4.4.9.

118 Ibid.

119 Ibid. § 4.4.11.

120 Ibid.

121 Ibid.

122 *Milieudefensie et al. v. Royal Dutch Shell PLC et al.* § 4.4.13, 4.4.15, 4.4.16.

123 Ibid. § 4.4.23.

124 Ibid. § 4.4.16.

125 Macchi C., van Zeben J. *Business and Human Rights Implications of Climate Change Litigation: Milieudefensie et al. v. Royal Dutch Shell* // Review of European, Comparative and International Environmental Law. 2021. Vol. 30. № 3. P. 412.

126 Jagers N., Heijden M.-J. *Corporate Human Rights Violations: the Feasibility of Civil Recourse in the Netherlands* // Brooklyn Journal of International Law. 2008. Vol. 33. № 3. art. 2. P. 855, 857.

From the author's standpoint, the implications of the interpretation proposed by the Court in *Milieudefensie et al. v. Royal Dutch Shell* could potentially go beyond the territory of the Netherlands being a solidly substantiated approach to the cause of action of parent companies' direct liability in comparison with the "absence of an outright prohibition" invoked in *Nevsun* that raises concerns and may lead to inconsistency of international human rights law. However, it is crucial to consider that the decision at issue was grounded in a particular rule of Dutch law allowing indirect application of international law in the course of national law provisions' interpretation. Such a provision is not replicated in domestic law of the vast number of other states.

Nevertheless, invocation of the duty of care concept as the cause of action of parental direct liability is represented in the great variety of cases among different jurisdictions. Its active diffusion on a par with its ability to adapt in the face of the need to create new international rules in order to protect victims contribute to its potential universal expansion and applicability at the international level.

3. Cause of action under human rights due diligence legislative framework

Several jurisdictions have implemented or are in the process of implementing the regulatory framework that transmits into binding obligations the principle of human rights due diligence, first endorsed on a voluntary basis by the UNGP. The first such step became the US Dodd-Frank Act of 2010 that introduced sectoral due diligence and required companies from the Democratic Republic of Congo (DRC) and nine adjoining countries to disclose their use of "conflict minerals"[127] in order to sever the connection between mineral extraction and financing DRC armed conflict.[128] Introduced in 2017 and entered into force in 2021, the EU Conflict Minerals regulation became the direct result of the US Dodd-Frank Act application.[129]

California Transparency in Supply Chains Act adopted in 2010 and entered into force in 2012 became another targeted mandatory due diligence law that requires all companies carrying on business in California to disclose information regarding their efforts to eradicate human trafficking and slavery within their supply chains.[130] It became a role model for similar pieces of legislation in the UK[131] and Australia.[132] Another targeted mandatory due diligence law, being focused exclusively on child labour, was adopted in 2019 in the Netherlands.[133]

The 2017 French duty of Vigilance Law became revolutionary covering all "severe violations" of human rights and thus not being sector-specific.[134] It provides for general material and personal scope of application and includes provisions on civil liability for non-compliance.[135] In 2018 the UN Working Group on Business and Human rights recognized the law to be "the most notable" and "welcome development that other Governments should learn from".[136]

Germany and Norway appear to be following the path set by France. Norwegian Transparency Act[137] and German Supply Chain Act[138] were adopted in 2021 and entered into force in 2022 and 2023 respectively. The German and Norwegian Acts are different from that of France, and their main shortcoming is the absence of civil liability provisions. While Norwegian law does not provide for any explicit provision on liability, German law clearly states that "a violation of the obligations under this Act

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127 US Dodd-Frank Wall Street Reform and Consumer Protection act, Pub. L. № 111-203, § 929-Z, 124 Stat. 1376, 1871 (2010) (codified at 15 U.S.C. § 780).

128 Rusinova V., Korotkov S. *Mandatory Corporate Human Rights Due Diligence Models: Shooting Blanks?* // Russian Law Journal. 2021. Vol. 9. № 4. P. 38.

129 Regulation (EU) 2017/821 of the European Parliament and of the Council Laying Down Supply Chain Due Diligence Obligations for Union Importers of Tin, Tantalum and Tungsten, Their Ores, and Gold Originating from Conflict-Affected and High-Risk Areas of 17 May 2017.

130 California transparency in Supply Chains act of 2010. Civil Code. § 1714.43.

131 Modern Slavery Act 2015. UK Public General acts. 2015.

132 Modern Slavery Act 2018. C2018a00153 № 153. 2018.

133 Wet de invoering van een zorgplicht ter voorkoming van de levering van goederen en diensten die met behulp van kinderarbeid tot stand zijn gekomen, 24.10.2019, Staatsblad van het Koninkrijk der nederlanden, November 13, 2019.

134 Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, Act no. 2017–399. 27 March 2017. Art. 1. (Hereinafter — French Duty of Vigilance Law).

135 Ibid. Art. 1-2.

136 *UN. Report of Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises of 16 July 2018. A/73/163.* URL: https://www.ohchr.org/en/documents/thematic-reports/a73163-report-working-group-issue-human-rights-and-transnational (accessed: 16.05.2024).

137 Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act), LOV-2021-06-18-99. 1 July 2022.

138 Federal Act on Corporate Due Diligence to Prevent Human Rights Violations in Supply Chains. 22 July 2021.

does not give rise to any liability under civil law".[139] It establishes "a duty of effort, but not an obligation to achieve a certain result".[140]

A promising Swiss "Responsible Business Initiative" that suggested partial revision of the Swiss Constitution and stipulated non-sector-specific human rights due diligence as well as included parental liability based on the reversal of the burden of proof did not pass the referendum.[141] The Parliament's Counterproposal was adopted in the form of a separate Ordinance[142] that came into force in 2023 and became a sector-specific piece of due diligence legislation having more in common with the first wave of due diligence laws.

On 24 May 2024, the EU Council approved the Directive on corporate sustainability due diligence (CSDDD)[143] that has every prospect of success to become a comprehensive piece of mandatory human rights due diligence, establishing civil liability regime for human rights violations, compensation mechanisms and simplification, however, not reversal, of the burden of proof.

Nevertheless, the most part of the aforementioned laws in force does not specify the content of companies' human rights obligations, offers a fragmented approach to liability mechanisms, and appears to be merely limited to disclosure of information about measures undertaken by companies to mitigate human rights risks within their supply chains. Therefore, while such legal instruments provide for mandatory provisions on due diligence procedure but are not explicit with regard to the content of human rights, it results in "absent or ambiguous standard of behaviour" and "makes corporate human rights due diligence a half-measure, nebulous, and open to interpretation".[144] For this reason most of the existent legal constructions of human rights due diligence are incapable to become a viable cause of action behind parent companies liability.

In this regard, judicial implementation of French Duty of Vigilance Law being the pioneer among non-sector-specific human rights due diligence laws should be analysed. Provisions of the law at hand are recognized to be specifically evolved:[145] they make clear that due diligence duties extend beyond the company's own operations; establish a link between due diligence and civil corporate liability; provide for a fault liability for the company's own acts and omissions on the basis of the general tort of negligence.[146] In accordance with the law, if a company fails to establish, implement or publish a pertinent vigilance plan, two tracks are available for "any person with legitimate interest": (1) to serve a formal notice on a company, that would instigate a court procedure for injunctive relief, and (2) to initiate a civil lawsuit under French tort law to claim compensation for damages caused by a company's failure to comply with its vigilance obligations, where compliance would have prevented the harm.[147]

Nevertheless, the law at hand represents a fairly large number of drawbacks that do not permit it to become an efficient cause of action of a company liability for human rights abuses. Primarily, while due diligence duties go beyond the company's own operations they are still limited to the operations of subcontractors and suppliers "with whom the company maintains an established commercial relationship".[148] Secondly, the law does not provide for any clarification on whether "person[s] with legitimate interest" are limited to natural and legal persons that would have legal standing in a liability case. Thirdly, the French Law does not introduce specific "liability for others" that becomes of high

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139 Ibid. Sec. 3(3).

140 Champsaur A. *Supply Chain Due Diligence Obligations in Germany, France, and the EU: An Overview* // Cleary Gottlieb. 5 March 2024. URL: https://www.clearygottlieb.com/news-and-insights/publication-listing/supply-chain-due-diligence-obligations-in-germany-france-and-the-eu-an-overview (accessed: 16.05.2024).

141 Bundesbeschluss Entwurf über die Volksinitiative «Für verantwortungsvolle Unternehmen – zum Schutz von Mensch und Umwelt», (Responsible Business Initiative). 15 September 2017. URL: https://perma.cc/26XJ-ACJN (accessed: 14.05.2024); *See* Bueno N. *The Swiss Popular Initiative on Responsible Business: From Responsibility to Liability // Accountability, International Business Operations and the Law* / ed. by L. Enneking, I. Giesen, A.-J. Schaap, C. Ryngaert, F. Kristen, L. Roorda. New York : Routledge, 2020. P. 239–258, 240.

142 Ordinance on Due Diligence and Transparency in Relation to Minerals and Metals from Conflict-Affected Areas and Child Labour, The Swiss Federal Council. 3 December 2021.

143 Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 of 23 February 2022.

144 Rusinova V., Korotkov S. *Op.cit*. P. 45.

145 See Dowling P. *Limited Liability and Separate Corporate Personality in Multinational Corporate Groups: Conceptual Flaws, Accountability Gaps, and the Case for Profit-Risk Liability // Accountability, International Business Operations and the Law* / ed. by L. Enneking, I. Giesen, A.-J. Schaap, C. Ryngaert, F. Kristen, L. Roorda. New York : Routledge, 2020. P. 219–238, 229; Palombo D. *Business and human rights: The obligations of the European home states*. Oxford : Bloomsbury Publishing, 2020. P. 241–242.; Farah Y., Kunuji V., Kent A. *Op.cit*. P. 513–514.

146 Bueno N. *Op.cit.* P. 250–252.

147 French Duty of Vigilance Law, Art. 1, 2.

148 Ibid. Art. 1.

importance when harm was caused by subsidiaries or other companies under control,[149] that rests incumbent upon the plaintiff to establish that a parent company did not meet its due diligence obligations in relation to the operations of (foreign) subsidiaries or suppliers. Eventually, articles L 225-102-4 and L 225-102-5 introduced into the French Commercial Code by means of the French Duty of Vigilance Law were not designated as "mandatory overriding provisions".[150] According to Rome II regulation, the law governing non-contractual obligations arising out of a tort is generally the law of the country where the damage occurred.[151] Therefore, in order to apply these provisions to torts committed by foreign subsidiaries, a judge would first need to establish their mandatory nature.

Great value for the analysis represents *Friends of the Earth Paris et al. v. TotalEnergies SE* ruling on inadmissibility handed down in 2023.[152] Six environmental and human rights protection NGOs based in Uganda and France initiated proceedings against TotalEnergies SE incorporated in France.[153] Its subsidiaries, TotalEnergies EP and EACOP Ltd., were operators of oil development projects in Uganda and Tanzania.[154] The plaintiffs alleged that TotalEnergies, being a parent company, failed to adequately assess the projects' threats to human rights and the environment. Therefore, they were seeking an order from the Court (1) to oblige TotalEnergies to comply with its duty of care under the French Vigilance Law, as well as (2) to suspend the aforementioned projects due to their negative impacts on the environment and local populations.[155]

Despite the fact that the Court provided in its decision some sort of clarification on a "person with legitimate interest" who could file a formal notice in order to instigate a court procedure for injunctive relief, by tacitly including environmental and human rights protection associations on the list, as well as contributing to the recognition of the mandatory extraterritorial application of due diligence laws when considering global supply chains,[156] the Court, though, held the case to be inadmissible.

Primarily, it stressed that the French Vigilance Law provisions are of general nature and have no clear contours.[157] The Court specifically underlined that the content of the French Vigilance Law provisions could be specified by a decree of the State Council that had not been issued yet.[158] Therefore, it appears that in the absence of clarity the Court decided to proceed with peculiar caution and to adhere to the "technical application of the letters of the law".[159] The grounds the judgment on inadmissibility was based on are far from substantive: the Court concluded that the claim was materially different from the formal notice served on TotalEnergies by the plaintiffs in 2019 and therefore the case becomes inadmissible and cannot be considered on the merits.[160]

The *TotalEnergies* case revealed the unwillingness of the French Court to allow any actualisations or modifications to claims after the formal notice was served on the company, even in case when new circumstances arise, such as new violations or updates to vigilance plans.[161] It should be mentioned that, initially, due to the "lack of jurisdiction" argument (fr.: *exception d'incompétence*) raised by the defendant in the first instance, and consequently, due to legislative reform of February 2021[162] that established exclusive jurisdiction of the judicial court of Paris in duty of vigilance matters, it has been four years since the formal notice was served on TotalEnergies SE before the claim was considered in court.[163]

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149 Bueno N. *Op.cit.* P. 251.
150 Ibid. P. 252.
151 Regulation (EC) No 864/2007 of the European Parliament and of the Council on the Law Applicable to Non-Contractual Obligations (Rome II), OJ L 199/40 of 11 July 2007. Art 4.
152 Paris Judicial Court. *Friends of the Earth Paris et al. v. TotalEnergies SE*. Case no. 22/53942 and 22/53943. Judgement of 28 February 2023.
153 Ibid. § 2–3.
154 Ibid. § 3.
155 Ibid. § 6–10.
156 Ibid. § 19.
157 Ibid. § 23.
158 Ibid. § 21.
159 Farah Y., Kunuji V., Kent A. *Op.cit*. P. 516.
160 *Friends of the Earth Paris et al. v. TotalEnergies SE*. § 28–29.
161 Cossart S., Mamlouk R. *10 Years on from Rana Plaza: Is France's Duty of Vigilance Law Living up to its Promise?* // Cambridge Core Blog. 6 June 2023. URL: https://www.cambridge.org/core/blog/2023/06/06/10-years-on-from-rana-plaza-is-frances-duty-of-vigilance-law-living-up-to-its-promise/ (accessed: 10.05.2024).
162 Loi no. 2021-1729 du 22 décembre 2021 pour la confiance dans l'institution judiciaire.
163 Martinet L., Rouer V., Bocquillon L. *Premiers jugements sur le fondement de la loi sur le devoir de vigilance des entreprises: le juge des référés entre pédagogie et (sur)interpretation* // Actu Juridique. 3 May 2023. URL: https://www.actu-juridique.fr/administratif/premiers-jugements-sur-le-fondement-de-la-loi-sur-le-devoir-de-vigilance-des-entreprises-le-juge-des-referes-entre-pedagogie-et-surinterpretation/ (accessed: 10.05.2024).

Yet, the analysed ruling "reduces the duty of vigilance to a mere compliance exercise"[164] and becomes an example of narrow and formalistic application of the law that tied the judges' hands. It appears to be diametrically opposed to evolutionary interpretation approaches actively applied by the judges when choosing international law or duty of care concept to be the cause of action for holding parent companies accountable for human rights violations. Ambiguous and unclear content of the French Vigilance Law obligations reaffirmed by the Court contributes to the aforementioned argument about the inability of that sort of laws to be a sustainable cause of action for direct parent companies' liability.

Nevertheless, it should not be overlooked that existing and proposed legislation on human rights due diligence and related recent case law remains of high importance for the further development of a parent company liability. Firstly, in the absence of any explicit rule in international law, that sort of legislation distinctly names companies to be addressees of human rights obligations. Secondly, although not properly implemented yet, the intention of the legislator to assign to a parent company the responsibility for human rights violations committed by its subsidiaries abroad is clearly visible. Thirdly, the launched process of the related case law has begun to reveal the legislative lacuna of human rights due diligence obligations and has every prospect of success to shift the attention to the substance of the parent companies' duty of care.[165]

4. Cause of action under criminal law

Finally, it should be mentioned that case law has recognised parent companies to be subject not only to civil and tort, but also to criminal liability. In the *Lafarge* case eleven former Syrian employees and two NGOs filed a complaint in 2016 before the French court against Lafarge SA, a French cement company, and its Syrian subsidiary, Lafarge Cement Syria (LCS).[166] LCS maintained its business activities in Syria during the Syrian Civil War. As the Syrian conflict escalated, foreign employees were evacuated by the company, while Syrian employees were forced to continue to work.[167] The company was accused of making arrangements with armed groups and putting Syrian employees in danger, several of whom were kidnapped.[168]

In 2018 Lafarge and LSC were indicted by a French investigative judge for complicity in crimes against humanity, financing of a terrorist enterprise, and endangerment of people's lives, namely, the lives of its Syrian employees.[169] It became the worldwide first decision on a corporation to be indicted for complicity in crimes against humanity as well as the first decision for France when a parent company became indicted for activities of its subsidiary abroad.[170]

However, in 2019, the Court of Appeal dismissed the company's charges of complicity in crime against humanity while upheld the former two.[171] The Court stated that payments provided by LSC to terrorist groups represent *mens rea* (fr.: *le dol général*) that is insufficient to characterise the mental element (fr.: *l'élément moral*) of the crime.[172] *Dolus specialis* (fr.: *le dol special*) should be presented — the accomplice's adherence to the perpetrator's coordinated plan of the crime against humanity.[173]

The Court of Cassation in 2021 clearly rejected this way of reasoning. It stated that Article 121-7 of the French Criminal Code, which provides for the general rule of complicity, simply requires that an accomplice knowingly contribute to the preparation or commission of a crime.[174] Therefore, the Court of Appeal erred in its requirement of *dolus specialis* (fr.: *le dol special*).[175] The decision at hand became historical as the Court for the first time considered the mental element (fr: *élément moral*) of the crime in

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164 Cossart S., Mamlouk R. *Op.cit.*
165 van Dam C. *Op.cit.* P. 718.
166 *Lafarge case: Syria //* Sherpa. URL: https://www.asso-sherpa.org/lafarge-case-syria (accessed: 20.05.2024)
167 *Case Report: Lafarge in Syria //* ECCHR. 16 November 2016. URL: https://www.ecchr.eu/fileadmin/Fallbeschreibungen/Case_Report_Lafarge_Syria_ECCHR.pdf (accessed: 20.05.2024).
168 Ibid.
169 *Landmark Decision: Company Lafarge Indicted for Complicity in Crimes Against Humanity //* Sherpa. 29 May 2018. URL: https://www.asso-sherpa.org/landmark-decision-company-lafarge-indicted-complicity-in-crimes-against-humanity-included (accessed: 20.05.2024).
170 Ibid.
171 Paris Court of Appeal. *Sherpa et al. v. Lafarge SA et al.* Judgment of 7 November 2019.
172 Emmanuel D. *Cour de cassation ouvre la voie à une mise en examen de Lafarge pour complicité de crime contre l'humanité //* Dalloz Actualité. 13 September 2021. URL: https://www.dalloz-actualite.fr/flash/cour-de-cassation-ouvre-voie-une-mise-en-examen-de-lafarge-pour-complicite-de-crime-contre-l-h (accessed: 20.05.2024).
173 Ibid.
174 Court of Cassation. *Sherpa et al. v. Lafarge SA et al.* Case no. 19-87.367. Judgement of 7 September 2021. § 66–67, 70.
175 Ibid. § 67.

complicity against humanity with regard to a legal person. It stated that the economic purpose of multinational companies' business conduct does not prevent them from being charged.[176]

The Court of Cassation also turned for reconsideration of charges of endangerment of people's lives stating that the Court of Appeal erred in rationale. The Court of Appeal applied the French Labor Code articles on employer responsibilities of maintaining prudence and safety over the employees[177] in conjunction with the French Penal Code Article 223-1, providing punishment for direct exposure of a person to a risk of death or injury through deliberate violation of the prudence and safety obligation[178] and found Lafarge to be liable for non-fulfillment of its prudence and safety responsibility to train the personnel of Syrian subsidiary in the event of an attack, notwithstanding the employment of Syrian employees under Syrian law and by LSC.[179] The Court made its conclusion based on permanent interference of Lafarge in the economic and social management of LSC that led to the total loss of the latter's autonomy of action.[180]

Notwithstanding the Court of Cassation agreed with the Court of Appeal on the issue of Syrian employees to be under the effective authority of Lafarge, it stated that the applicability of the French Labor Code and consequently the charge under Article 223-1 of the French Penal Code could not have been deduced from these findings exclusively.[181] In the Court of Cassation's opinion, the Court of Appeal should have primarily turned to Rome I regulation[182] in order to identify the proper law provisions applicable to the employment relationship between Lafarge and Syrian employees.[183]

In 2022 the Court of Appeal, following the way of reasoning proposed by the Court of Cassation, finally reinstated Lafarge's charge of complicity in crimes against humanity.[184] However, the issue of endangerment of people's lives became the subject of further dispute. Based on the "closer connection" exception[185] to the general rule on "choice of law",[186] the Court of Appeal found the employment relationship between Lafarge and Syrian employees to be subject to French Law due to the permanent interference of Lafarge in the management of its subsidiary.[187] On this basis, it upheld the parent company's indictment under Article 223-1 of the French Penal Code.

Nevertheless, in 2024 the Court of Cassation without transferring the case to the lower instance annulled the 2022 decision on Lafarge's endangerment of people's lives. It is decided that in the absence of a "choice of law" provision in the employment contract, the relationship between Lafarge and Syrian employees is governed by Syrian law with no possibility to apply the "closer connection" exception as such connection should be assessed "on the whole".[188] Considerations related solely to the relationships between the parent and its subsidiary are not sufficient to rule out Syrian law application.[189] Furthermore, in accordance with the Court, the French Labor Code articles at issue are neither overriding mandatory provisions[190] that could have provided for French law applicability.[191]

Yet, the French Court decision has a twofold effect: applying general principles of complicity to legal entities the French Court provided for an extremely broad interpretation of criminal law with regard to parent companies' criminal liability for complicity in crimes against humanity, while on the other hand, represented a tremendously strict approach to the acts of endangering the lives of others. Stating that the analysis of the parent company's interference into its subsidiary operations is not sufficient to establish "close connection" with France, the Court of Cassation limited the spatial scope of French labour law and closed the door for Article 223-1 of the French Criminal Code to be a cause of action for a parent

176 Court of Cassation. *Sherpa et al. v. Lafarge SA et al.* Case no. 19-87.367. Judgement of 7 September 2021. § 71.
177 French Labor Code. Art. L. 4121-3, R. 4121-1 et seq., R. 4141-13.
178 Court of Cassation. *Sherpa et al. v. Lafarge SA et al.* Case no. 19-87.367. Judgement of 7 September 2021. § 45.
179 Ibid. § 50.
180 Ibid. § 53.
181 Ibid. § 53, 54.
182 Regulation (EC) No 593/2008 of the European Parliament and of the Council on the Law Applicable to Contractual Obligations of 17 June 2008 (Rome I) (hereinafter — EU Regulation Rome I).
183 Court of Cassation. *Sherpa et al. v. Lafarge SA et al.* Case no. 19-87.367. Judgement of 7 September 2021. § 55.
184 Paris Court of Appeal. *Sherpa et al. v. Lafarge SA et al.* Judgment of 18 May 2022.
185 EU Regulation Rome I, Art. 8 (4).
186 Ibid. Art. 8 (2).
187 Court of Cassation. *Sherpa et al. v. Lafarge SA et al.* Case no. 22-83.681. Judgment of 16 January 2024. § 36.
188 CJEU. *Anton Schlecker v. Melitta Josefa Boedeker*. Case no. C-64/12. Judgment of 12 September 2013.
189 Court of Cassation. *Sherpa et al. v. Lafarge SA et al.* Case no. 22-83.681. Judgment of 16 January 2024. § 41–47.
190 EU Regulation Rome I, Art. 9.
191 Court of Cassation. *Sherpa et al. v. Lafarge SA et al.* Case no. 22-83.681. Judgment of 16 January 2024. § 44.

company direct liability for human rights abuses committed abroad.[192] This way of reasoning does not appear to be surprising as otherwise "a flexible interpretation including foreign law would lead to a (too) broad extension of French courts' criminal jurisdiction".[193]

Therefore, taking into account the principle of strict interpretation of criminal law as well as *corpus delicti* specificities of every national legal system and absence of a legal framework that would allow to bring a corporation criminally liable in a vast majority of states, it is possible to claim that parent company criminal liability cause of action could hardly ever be universally applicable at the international level.

Conclusion

The aforementioned case law represents strong social demand: corporations cannot any longer "[be] left to define for themselves the 'social expectations' to which they are meant to respond".[194] The complex structure of multinational corporations has given them a possibility to become "legally invisible in their home states while… present through subsidiaries in innumerable other states".[195] These laissez-faire conditions allowed corporations to continue to avoid international human rights legal obligations and became the inception of severe human rights abuses in developing states under subsidiaries' operation. In accordance with C. van Dam, "the protection parent companies derive from the externalization of the risks of their activities using subsidiaries is disproportionate <…>: the parent benefits from the subsidiaries' advantages, but its burdens are borne by vulnerable individuals and communities".[196] Therefore, the need for corporate legal autonomy originated from strict corporate separation principle becomes questionable nowadays.

In the absence of a binding rule allowing to hold a parent accountable for human rights violations committed by its subsidiaries or suppliers abroad neither in international nor in national law, victims are in a difficult position with limited possibilities to defend. Testing the direct corporate liability concept, a great variety of causes of action have been invoked by courts around the globe. Nevertheless, most of them do not have any prospect of success to meet the criteria of universality and applicability at the international level. Half-measure character of human rights due diligence legislation makes it a cause of action inadequate to ensure victims with substantial justice and ties judges' hands due to its nebulous content. The principle of strict interpretation of criminal law provisions on a par with its *corpus delicti* specificities varying from state to state becomes the reason for courts' unwillingness to extend criminal jurisdiction abroad. Direct application of international law as the cause of action of parental liability for human rights abuses committed abroad raises concerns due to the absence of any international custom or treaty of such a nature.

Therefore, it appears that application of the duty of care concept as the cause of action of a parent company direct liability is the only viable option that could meet the criteria of universality and applicability at the international level. The analysed case law represented its rapid expansion to various jurisdictions and its openness for interpretation since a broad discretion in the duty of care concept application is accorded to judges. These particularities allow judges to answer the social demand. Having conceded that corporations are still persons, even if artificial and created by law, and, thus, should be held liable for human rights violations on a par with states and individuals, judges, applying the duty of care concept to multinational corporations contribute to the "bottom-up" processes of international human rights evolution by formulating a special type of obligations on the part of corporations to respect human rights.

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[192] Farnoux E. *French Supreme Court Ruling in the Lafarge case: the Private International Law Side of Transnational Criminal Litigations* // Conflict of Laws. 13 February 2024. URL: https://conflictoflaws.net/2024/french-supreme-court-ruling-in-the-lafarge-case-the-private-international-law-side-of-transnational-criminal-litigations/ (accessed: 21.05.2024).

[193] Ibid.

[194] McCorquodale R. *Pluralism, Global Law and Human Rights: Strengthening Corporate Accountability for Human Rights Violations* // Global Constitutionalism. 2013. Vol. 2. № 2. P. 315.

[195] Vivian C. *Op.cit*. P. 403.

[196] van Dam C. *Op.cit.* P. 738.

ПРАВОВЫЕ ОСНОВАНИЯ ПРИВЛЕЧЕНИЯ МАТЕРИНСКИХ КОМПАНИЙ К ОТВЕТСТВЕННОСТИ ЗА НАРУШЕНИЯ ПРАВ ЧЕЛОВЕКА В НАЦИОНАЛЬНЫХ СУДАХ

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Аннотация

Вертикальный характер международных норм в области прав человека предполагает, что лишь государства могут являться адресатами обязательств. Таким образом, международное право не предусматривает ответственности корпораций за нарушения прав человека. Национальное законодательство также не предлагает четких правил, которые могли бы позволить привлечь компанию к ответственности за нарушения прав человека, совершенные за рубежом ее дочерними предприятиями или поставщиками в производственно-сбытовой цепи. Однако даже в отсутствие четкого правового базиса, национальные суды Канады, Франции, Великобритании и Нидерландов, напротив, выражают готовность признать наличие обязанности по соблюдению права человека на стороне корпораций. Более того, на сегодняшний день судебная практика этих государств знает случаи успешного привлечения компаний — нарушителей данной обязанности не только к гражданской, но и к уголовной ответственности. Таким образом, наблюдается смещение акцента с защиты корпораций на защиту жертв. Суды делают шаг в сторону от принципа строгого разделения ответственности. Необходимость данных изменений была вызвана подходом невмешательства, применяемым к корпорациям на протяжении долгих лет, который давал им возможность оставаться невидимыми в государствах инкорпорации и, следовательно, избегать ответственности за совершаемые правонарушения в третьих странах. В рамках своей практики национальные суды Канады, Франции, Великобритании и Нидерландов основывают решения о возложении обязанности по соблюдению прав человека на корпорации и, следовательно, о привлечении их к ответственности за нарушения данной обязанности на нормах международного права прав человека, национального уголовного и гражданского законодательства об обязанности проявлять осторожность (англ.: *duty of care*) и соблюдать должную осмотрительность в области защиты прав человека (англ.: *human rights due diligence*). Однако возникает вопрос о том, насколько предлагаемые судами подходы к возможным основаниям иска о привлечении материнской компании к прямой ответственности за нарушения прав человека за рубежом отвечают критериям универсальности и применимости на международном уровне.

Ключевые слова

права человека, основание иска, материнская компания, дочернее предприятие, ответственность корпораций, прямая ответственность, должная осмотрительность

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References

Bueno N. (2020) The Swiss Popular Initiative on Responsible Business: From Responsibility to Liability. In: Enneking L., Giesen I., Schaap A.-J., Ryngaert C., Kristen F., Roorda L. (eds.) Accountability, International Business Operations and the Law. New York: Routledge, pp. 239– 258.

Butler J. (2020) The Corporate Keepers of International Law. American Journal of International Law, vol. 114, no. 2, pp. 189–220.

Chambers R. (2021) Parent Company Direct Liability for Overseas Human Rights Violations: Lessons from the UK Supreme Court. University of Pennsylvania Journal of International Law, vol. 42, no. 3, pp. 519–579.

Curran V. (2016) Harmonizing Multinational Parent Company Liability for Foreign Subsidiary Human Rights Violations. Chicago Journal of International Law, vol. 17, no. 2, art. 3, pp. 403–446.

van Dam C. (2021) Breakthrough in Parent Company Liability: Three Shell Defeats, the End of an Era and New Paradigms. European Company and Financial Law Review, vol. 18, no. 5, pp. 714–748.

van Dam C., Gregor F. (2017) Corporate Responsibility to Respect Human Rights vis-à-vis Legal Duty of Care. In: Rubio J., Yiannibas K. (eds.) Human Rights in Business: Removal of Barriers to Access to Justice in the European Union. London: Routledge, pp. 119–138.

Dowling P. (2020) Limited Liability and Separate Corporate Personality in Multinational Corporate Groups: Conceptual Flaws, Accountability Gaps, and the Case for Profit-Risk Liability. In: Enneking L., Giesen I., Schaap A.-J., Ryngaert C., Kristen F., Roorda L. (eds.) Accountability, International Business Operations and the Law. New York: Routledge, pp. 219–238.

Farah Y., Kunuji V., Kent A. (2023) Civil Liability Under Sustainability Due Diligence Legislation: A Quiet Revolution?. King's Law Journal, vol. 34, no. 3, pp. 499–523.

Fasterling B. (2020) Whose Responsibilities? The Responsibility of the "Business Enterprise" to Respect Human Right. In: Enneking L., Giesen I., Schaap A.-J., Ryngaert C., Kristen F., Roorda L. (eds.) Accountability, International Business Operations and the Law. New York: Routledge, pp. 18–37.

Jagers N., Heijden M.-J. (2008) Corporate Human Rights Violations: the Feasibility of Civil Recourse in the Netherlands. Brooklyn Journal of International Law, vol. 33, no. 3, art. 2, pp. 833–870.

Macchi C., van Zeben J. (2021) Business and Human Rights Implications of Climate Change Litigation: *Milieudefensie et al. v. Royal Dutch Shell*. Review of European, Comparative and International Environmental Law, vol. 30, no. 3, pp. 409–415.

McCorquodale R. (2013) Pluralism, Global Law and Human Rights: Strengthening Corporate Accountability for Human Rights Violations. Global Constitutionalism, vol. 2, no. 2, pp. 287–315.

Palombo D. (2020) Business and Human Rights: The Obligations of the European Home States. Oxford: Bloomsbury Publishing.

Rusinova V., Ganina O. (2021) Postanovlenie Verkhovnogo suda Kanady ot 28 fevralya 2020 goda po delu "Nevsun" protiv Arayi: "tikhaya revolyutsiya" v. otsenke statusa korporatsiy po mezhdunarodnomu publichnomu pravu [Judgment of the Supreme Court of Canada of 28 February 2020, on Nevsun v. Araya: a "quiet revolution" in the assessment of the status of corporations under public international law?]. Mezhdunarodnoe pravosudie, vol. 11, no. 2. pp. 25–39. (in Russian).

Rusinova V., Korotkov S. (2021) Mandatory Corporate Human Rights Due Diligence Models: Shooting Blanks?. Russian Law Journal, vol. 9, no. 4, pp. 33–71.

Salminen J. (2018) The Accord on Fire and Building Safety in Bangladesh: A New Paradigm for Limiting Buyers' Liability in Global Supply Chains?. American Journal of Comparative Law, vol. 66, no. 2, pp. 411–451.

Siddiqui J., Uddin S. (2016) Human Rights Disasters, Corporate Accountability and the State: Lessons learned from Rana Plaza. Accounting, Auditing and Accountability Journal, vol. 29, no. 4, pp. 679–704.

Trebilcock A. (2020) The Rana Plaza Disaster Seven Years on: Transnational Experiments and Perhaps a New Treaty?. International Labour Review, vol. 159, no 4, pp. 545–568.