JOURNAL FÜR ENTWICKLUNGSPOLITIK

vol. XXXX 3-2024

NEW INTERNATIONAL SOCIAL AND ENVIRONMENTAL RULES: PUTTING PEOPLE OVER PROFIT?

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Published by:
Mattersburger Kreis für Entwicklungspolitik
an den österreichischen Universitäten

Journal für Entwicklungspolitik (JEP)
Austrian Journal of Development Studies

Publisher: Mattersburger Kreis für Entwicklungspolitik an den österreichischen Universitäten

Publications Manager: Clemens Pfeffer
Cover: Clemens Pfeffer
Photo: Mural painting, Palacio de Justicia, Cusco, Peru: Alex Proimos, 2009, www.flickr.com/photos/proimos/3952013306

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Journal für Entwicklungspolitik XXXX, 3-2024, S. 89–108

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On the Liability of EU Corporations for Human Rights Abuses in their Supply and Value Chains: A Legal Analysis of the EU Supply Chain Directive from a Remedial, Victim Protection Perspective

Abstract *When EU-based corporations share responsibility for violations of human rights occurring in their international supply and value chains, it raises the following question: to what degree can the victims hold them legally accountable? This article examines relevant legal hurdles for injured parties from the countries of the Global South, according to the current state of the laws, and analyses the degree to which the CSDDD, the European Union's supply chain directive, rectifies these hurdles. Consequently, the new regulations for liability are only partly able to overcome these legal hurdles. The strength of CSDDD rests mainly in its preventive impact rather than its remedial one. Stricter regulation by EU member states, however, is possible but only time will tell if or when those actions are implemented.*

Keywords *business and human rights, liability, CSDDD, due diligence, supply and value chains*

1. From human rights litigation to human rights legislation

1.1 Globalisation and the 'competitive advantage of human rights abuses'

The concept of 'business and human rights', a general term for the social and environmental results of economic globalisation, has in recent years moved from the periphery of public debate to the centre of legal policy discussions (Falkenhausen 2020: 1, 342; Heinen 2022: 348; Pordzik 2022: 1). Globalisation has led to complex corporate structures and relationships dictating the operation of major areas of production and distribution, value chains becoming a central organising form in commerce, and the advent of transnational corporations, affecting the lives of people worldwide (Falkenhausen 2020: 1; Heinen 2022: 348; Kaufmann 2021: 3; Kaufmann 2016: 54; Pordzik 2022: 1; Schall et al. 2023: VII). This is no accident, nor did it happen in a legal vacuum; it was a political decision (Heinen 2022: 348; Schall et al. 2023: VII): subsidiary companies and the resulting legal separation of shareholder and corporate assets and the opening of international markets, combined with the suppression of protective measures, have allowed corporations to embark on risk-filled projects without the fear of failure or of damages posing them an existential threat (Blach 2022: 175; Grabosch 2021: 5). The limited social and environmental regulations of countries in the Global South are an incentive for corporations to found subsidiaries in such countries and diversify their supply and value chains; the countries involved are often willing to attract international investment at the expense of social and environmental standards (Heil 2022: 438; Hübner 2022: 16; Kaufmann 2021: 2f.). The asymmetrical balance of power between transnational corporations and nations of the Global South, created by the "cold market logic of the lowest price" (Schall et al. 2023: VII), has led to a long list of massive damages, the results of an economic struggle carried out at the cost of human rights (Kaufmann 2016: 60; Kaufmann 2021: 2; Schall et al. 2023: VII).

In the past, the discourse on 'business and human rights' was relegated to the fringes of law and political science; it has since reached the halls of jurisprudence and civil law in the Global North (Hübner 2022: 1; Schall et al. 2023: VII).

The drivers of this development were civil justice organisations, unions, and employee representatives, as well as courageous legal scholars and pro-bono attorneys willing to argue risky, costly legal cases. Examples worth mentioning include the cases Jabir et al. v. KIK Textil und NonFood GmbH, Kiobel v. Royal Dutch Petroleum or Vedanta Resources Plc and another v. Lungowe and others.

These strategic human rights lawsuits allowed the enforcement of compensation claims against parent and contracting corporations in the Global North, where their prospects of success were better than in the Global South (Heinen 2022: 348). These cases have rarely met with success in Europe either, though as cases have often been rejected on procedural grounds and not decided on their strength, as in the lawsuit Jabir et al. v. KIK Textil und NonFood GmbH (Kaufmann 2021: 4; Pordzik 2022: 4f.).

As strategic cases, they have not led to compensation and reparations for all damages incurred, but have been used as emblematic cases to highlight loopholes and areas of legal uncertainty to pose the central question: are corporations in the Global North responsible for the protection of human rights in their supply and value chains, and—when their subsidiaries or suppliers in the Global South injure human rights—can they be held legally accountable?

1.2 Legislation of human rights due diligence for corporations and attempts to establish EU-wide standards

In the last decade, regulatory and standardisation initiatives have addressed the issues of business activity and human rights at the national, regional, supranational and international levels. These efforts were led by regulators in the English-speaking countries, which first established regulations for corporate reporting and information obligations, but which increasingly include additional responsibilities transcending the narrow borders of corporate—i.e. legal—entities[1] (Heil 2022: 439, 443; Grabosch 2021: 16f.; Röhl 2023: 9f., 23). One example of this trend is the recent German supply chain due diligence law (*Lieferkettensorgfaltspflichtengesetz*, LkSG), which requires roughly 4,900 corporations with more than 1,000 employees to examine 11 specific human-rights risks; the assessment includes their direct suppliers, and, in specific instances, their entire supply chain. Based on the risk analysis, the management must submit a policy statement and implement a system of risk management, consisting of "appropriate" and "effective" measures to prevent, remedy, and mitigate the risks identified. An accessible internal complaint mechanism must be established, and the measures must be reported (Heil 2022: 439ff.; Grabosch 2021: 17f.; Kieninger 2024: 1038 ff.; Kocher/Kaltenborn et al. 2023: 577 ff.). The legal system helps enforce these new responsibilities: regulatory law, such as right of public access and subpoenas, and the power to impose fines up to 2% of a corporation's annual revenue, both contribute to the enforcement of human-rights due diligence and the imposition of penalties for noncompliance.

The LkSG was the most controversial bill presented to the 19th legislative term in Germany (Grabosch 2021:15); yet, it contains no provisions for civil damages (Bachmann et al. /Kaltenborn et al. 2023: 368 ff; Röhl 2023: 23; Pordzik 2022: 7; Schall et al. 2023: 198). In contrast, the European Commission made it clear from the outset that the EU Directive on Corporate Sustainability Due Diligence (CSDDD) was intended to contain provisions for civil liability (Pordzik 2022: 8). The Commission's proposal was presented in February 2022; in March 2024, a version was finally agreed upon by the Permanent Representatives' Committee, accepted by the Ministerial Council, and passed by the Committee of Legal Affairs and the European Parliament in April 2024. The CSDDD saddles corporations with considerable human rights and environmental responsibilities, while the directive also includes a liability provision (Lutz-Bachmann et al. 2022: 835).

The following will examine the hurdles presently standing in the way of claims for damages against EU corporations made by victims of human rights injuries caused by international supply and value chains. In a further step, the ability of the CSDDD to overcome these hurdles will be examined. The analysis restricts itself to remedial elements and the opportunities for civil compensation from the standpoint of victim protection.

2. Legal hurdles for human-rights lawsuits *de lege lata*

When EU corporations' international supply and value chains injure human rights and the victims file suit for compensation, various legal questions arise, which are relevant in various jurisdictions (Görgen 2019: 50; Kaufmann 2016: 56ff.). The following section highlights four hurdles to the enforcement of compensation claims.

2.1 Classical national orientation of international law

The term 'human rights' immediately suggests the jurisdiction of international law; however, that law is based on a classic national orientation, with associated difficulties in enforcement (Hübner 2022: 2; Kaleck et al. 2016: 54ff.). Human-rights catalogues—also referenced in the LkSG and

CSDDD—are valid between the ratifying states. Transnational corporations, however, are not subject to international law, and the directives in question presently contain no direct obligations for corporations.[2] As such, there is no mechanism to compensate private parties for injury to goods which are protected by human rights law (Görgen 2019: 483; Kaufmann 2021: 386; Pordzik 2022: 170); recourse to civil law is necessary to make human rights suits enforceable (Spitzer 2019: 95). Claims for compensation are currently only possible under national law (Görgen 2019: 483; Hübner 2022: 8; Kaufmann 2021: 46). The 'translation' of these human rights cases into civil compensation claims cannot be accomplished without certain transformational steps and compromises (Pordzik 2022: 170). For instance, only a limited set of human rights abuses is considered to be an injury in the sense of non-contractual liability norms[3] (Falkenhausen 2020: 303). A violation of indigenous beneficial interest, for example, cannot be viewed as an injury of an absolutely protected right within the meaning of non-contractual liability (Kaufmann 2021: 247ff.; Pordzik 2022: 206 f.). Additionally, human rights are often very inexactly and abstractly formulated, making it difficult to extract specific corporate obligations from them, the non-fulfillment of which could form the basis of a claim for damages (Pordzik 2022: 155f.). As such, comprehensive human-rights protection cannot rest on civil law; at best, private enforcement can handle only specific aspects of such situations (Kaleck et al. 2016: 109 ff.; Kaufmann 2021: 121, 386).

2.2 The separation / legal entity principle: the basis of corporate law

The greatest legal hurdle when attempting to enforce compensation claims is the separation principle or the concept of the legal entity (Kaufmann 2021: 390; Nitsch/Kalss et al. 2024: 18; Pordzik 2022: 68f.). Economically, a corporation is a group of companies; publicly, it is viewed as a single entity, but legally, before the law, even wholly-owned subsidiaries of the parent company are legal persons, liable only for their own actions and the risks they themselves assume (Bruckner et al. 2020: 39; Heil 2022: 439; Gehling et al. 2022: 663 f.; Schall et al. 2023: 201; Blach 2022: 163 f.). The separation between shareholders and corporate assets leads to a fundamental limitation of liability; the assumption of responsibility for other legal entities is not easily achievable (Kodek/Lewisch 2023: 83ff.).

Additionally, an importer can essentially trust its foreign subsidiaries or subcontractors to act responsibly (Gehling et al. 2022: 663 f.; Kodek/Lewisch 2023: 98f.). As such, a breach of obligation is the responsibility of the company in whose sphere of responsibility it occurs. A transfer of a subsidiary's obligations is essentially impossible; otherwise, a kind of 'lifting of the corporate veil' would take place, unreconcilable with the separation principle (Blach 2022: 216ff., 164 f.). Further, there is no general responsibility for the monitoring or supervision of individual legal entities, simply due to the contractual and economic relationship (Blach 2022: 163 f.; Kaufmann 2021: 390; Kodek/Lewisch 2023: 86ff.).

The separation principle also leads to a significant curtailing of liable capital, since the financial resources of a subsidiary or subcontractor in the Global South are often insufficient to cover the immense damages in legal situations involving numerous injured parties[4] (Blach 2022: 172, 175; Pordzik 2022: 4). This allows subsidiary or contracting companies to commit massive injury while being exposed to only limited risk. This is the 'untouchable' foundation of corporate law.

2.3 Private international law and deficient legal protection in host countries

When examining the merits of a transnational lawsuit, practitioners in the first instance must decide which substantive law will be used to decide it. This question is governed by 'private international law' and determines which private law system has to be applied to transnational legal matters; it must be strictly separated from the matter of which court is competent to try the case, which is a question of the international jurisdiction of domestic courts (Kaufmann 2021: 151). According to this jurisprudence, expressed in the 'Rome II' Regulation, the substantive law to be applied in non-contractual liability claims cases is not that of an EU member state, but that of the jurisdiction in which the damages occurred (Kaufmann 2021: 189f., with further references, 387).

Strategic human-rights lawsuits in Europe have habitually applied the substantive law of the affected Global South nation in the assessment of the facts, as in the lawsuit Jabir et. al. v. KIK Textil und NonFood GmbH. The Regional Court in Dortmund tried the case and was therefore the competent court. However, Pakistani law had to be applied to the substantive issues (International Private Law) (Kaufmann 2021: 163, 402ff.). This places judges in a precarious "legal dilemma" (Kohler 2008: 34): they are forced to rule according to a substantive law that they have not studied.[5] Attorneys have occasionally tried to compel the application of the law of the EU member state in which the case was brought, in order to clarify the legal accountabilities of a parent or contracting company located in the Global North that transcend their limits as a legal entity, which is understandable.

Less understandable, however, is the assumption that legal protections per se are deficient in countries of the Global South. It cannot be denied that states may tend to insufficiently embed human rights obligations in national law for fear of losing the investment of transnational corporations (Pordzik 2022: 2). Purely in terms of substantive law, however, the assumption is incorrect, since—particularly in terms of collective rights such as those of indigenous peoples (and also considering the possibilities for class-action lawsuits) – the legal systems of EU member states are to an extent 'developing countries' themselves.

2.4 The dogmatism of tort law: *casum sentit dominus* and *neminem laedere*

When human rights cases are transferred to tort law, they must be measured according to its principles. Tort law governs the conditions under which one person is accountable for the injury suffered by another. The basic principle of tort law is *casum sentit dominus*, "the accident is felt by the owner", according to which injuries are to be accepted as part of a generalised risk of life (Kaufmann 2021: 216). In contrast to the common idea of receiving compensation for each injury suffered, tort law dictates the opposite (Bydlinski 2013: 186). On the other hand, the principle of *neminem laedere*—"do no one harm"—requires each person to behave in such a way that they do not injure the legal interests of others (Schall et al. 2023: 213). The legal institution of tort law, then, navigates between these two poles. A specific reason for attribution resting on the principle of *neminem laedere* is required in order to transfer an injury to the injuring party.

The facts of legal cases are varied, as is the institution of tort law. As such, this analysis will confine itself to the claim for compensation that is regularly cited in the cases relevant here: namely, the obligation to compensate due to a non-contractual obligation to avert the risks inherent in a corporation's international supply and value chains.

The first requirement for a transference of injury caused by a corporation's international supply or value chain is an injury. This is only a segment of human rights abuses, since liability often applies only to injury to strictly protected legal interests. Second, an action or omission on the part of the parent or contracting corporation must be the cause of the injury; an omission is reason for damages if the corporation has an obligation to act—a supervisory and monitoring duty pertaining to the local company—which, however, cannot be assumed. Due to the separation principle, it is necessary to be able to accuse a corporation of misconduct directly. However, since parent or contracting corporations are often not required to monitor the activities of subsidiaries or subcontractors in foreign countries, it is often impossible to prove a tort claim against them (Rühl 2023: 35f.; Gehling et al. 2022: 664 f.). The corporate structures or relationship with foreign entities—the fact that a corporation *has* supply and value chains—are, in themselves, not enough to trigger a supervisory and monitoring obligation (Blach 2022: 419; Rühl 2023: 35f.; Schall et al. 2023: 230).

Legal and political discourse is increasingly recognising that accountability does not necessarily end at the borders of a corporate entity. However, it does end where the company has no more influence. Control of risk is the basis for the establishment of supervisory and monitoring duties; the market or bargaining power of a 'global player' is not (Pordzik 2022: 206; Schall et al. 2023: 223f.).

From the point of view of victim protection, this remains a difficult hurdle. It means that a corporation must have enough influence on an independent legal person such that it essentially determines their activity. This can apply only to exceptional cases of blatant dependence of a local company on its parent or contracting company, where contracting companies can expect particularly—and demonstrably—high levels of risk (Kaufmann 2021: 388; Pordzik 2022: 223f.). Even in the case that such a general duty can be proved, the injury of that duty must be the cause of the alleged damage.

In sum, according to existing law, a claim for damages in a typical human-rights lawsuit will be possible, yet not provable, due to the high number of legal and factual hurdles that reduce the chances of success of such lawsuits and indeed keep the (risk) costs high (Kodek/Lewisch 2023: 91; Krajewski/Krajewski et al. 2018: 5; Nitsch/Kalss et al. 2024: 11f., 17). Only in cases of extreme dependency on the part of the local company, provable direct influence, and a demonstrably high level of risk can the omission of a special supervisory duty—assuming it is a violation of a legal obligation of due diligence—form the basis of a claim for damages (Kaufmann 2021: 388; Kodek/Lewisch 2023: 93; Koppensteiner 2024: 206, 208; Pordzik 2022: 224f.). Attempts to force human rights cases into the general mould of tort law misapprehend the basis of this legal institution (Blach 2022: 428).

3. Does the CSDDD overcome the legal hurdles of compensation claims?

The CSDDD is intended to standardise the legal framework for human rights and environmental due diligence in the supply chains of EU corporations.

3.1 Human rights due diligence obligations

The core of the CSDDD is the requirement of human rights due diligence obligations, according to which corporations are required to conduct regular risk analyses as the basis for measures to prevent or reduce negative impacts (Gehling/Gehling et al. 2022: 67). These obligations transcend the separation principle—they are explicitly not bound within the borders of legal entity but do include the activities of subsidiaries and certain business partners. The CSDDD introduces an overall due diligence requirement among legal entities for the activity of chains which includes not only upstream but also parts of downstream activities. Hence, the due diligence is not restricted to the corporation's own individual activities within the narrow boundaries of the corporate identity (Gregor 2024: 34; Heil 2024: 722; Milgotin et al. 2024: 1126; Schäfer et al. 2024: 1098). This can be seen as a positive enhancement that considers a risk-based approach (Milgotin et al. 2024: 1132). However, they do not dissolve the legal entity principle, since everyone is fundamentally responsible for their own actions and a claim against the shareholders for the corporation's liabilities solely on the basis of the ownership structure is not possible (Heil 2024: 720). What is new, however, is that they define obligations for domestic corporate activity that transcend the normal boundaries of legal entity—obligations pertaining to parts of a corporation's supply and value chain that devolve on the corporation itself (Heil 2024: 721; Schäfer et al. 2024: 1098). Consequently, the sanction imposed under private law for infringements of Art. 10 and 11 CSDDD according to Art. 29 CSDDD also applies to subsidiaries whose obligations are performed by their parent company. However, the parent company or the commissioning company must have breached an obligation of its own; it is not sufficient if the damage was only caused by business partners among the chain of activities (Heil 2024: 724; Koppensteiner 2024: 206). Thus, obligations are determined across legal entities; however, the separation principle under corporate law is maintained.

The requirements are "appropriate and proportional measures" that a company can reasonably be expected to implement, and which are oriented on the seriousness and probability of the occurrence of an agreed-upon risk; whereby the economic sector and the influence of society on the other company are among the considerations when determining the proportionality of the measures (Spindler 2022: 772). Additionally, internal complaint mechanisms must be established, and reporting on the overarching management of human rights must be submitted (Gehling et al. 2022: 67).

Art. 29 of the CSDDD concerns the civil, non-contractual system of liability and compensation and contains the applicable substantive law (Lutz-Bachmann et al. 2022: 835; Schroeter 2023: 143): it prescribes a corporation's liability for damages in cases where it has, intentionally or through negligence, violated its due diligence obligations for the avoidance of potential adverse impacts (Art. 10 CSDDD), or for the cessation of actual adverse impacts (Art. 11 CSDDD) on the human rights enumerated in Annex I of the CSDDD (Rühl 2023: 38).

3.2 Adverse impacts on human rights and damage

Liability for damages according to Art. 29 CSDDD is predicated on an adverse impact on human rights or the environment. Protected legal positions include the human rights positions detailed in Annex I of the CSDDD. This is an ingenious bit of jurisprudence, translating as it does a set of standards in international law into a fundamental 'human-rights compliance framework' for corporations, requiring companies to ensure that their business activities do not violate these human rights (Grabosch 2021: 22; Johann et al. 2023: 5; Schall et al. 2023: 232).

The human rights catalogue in Annex I contains a variety of rights, ranging from workers' rights to a reasonable wage and a ban on dangerous child labour to the prohibition of forced labour, and therefore includes various legally protected goods that were also subject of the strategic human rights lawsuits (Bell et al. 2024: 375; Heil 2022: 443f.; Spindler 2022: 769). It does not, however, contain human rights treaties such as the United Nations Declaration on the Rights of Indigenous Peoples, the International Labor Organization's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, and the International Labor Organization's Indigenous and Tribal Peoples' Convention 169.

The inclusion of human rights from international law presents the legal problem of these rights high degree of abstraction and lack of clarity (Spindler 2022: 768 f.). None of the cited human rights catalogues contain a coherent policy amenable to use by corporations, thus leaving ample room for interpretation (Gehling et al. 2022: V). As such, it is not clear whether the inclusion of human rights in the CSDDD in this manner leads to greater legal security. The scope of risk analysis is limited to serious adverse impacts, leading to the limiting of liability claims governed by the directives in Art. 29 CSDDD.

3.3 Violation of the obligation of risk prevention and elimination

When an adverse impact on human rights or the environment in the definition of the CSDDD leads to damage, a further prerequisite for a liability action according to Art. 29 CSDDD is a violation of the obligations descripted in Art. 10 or 11 CSDDD, such as a failure to prevent and eliminate risk as defined in the directive (König 2022: 1188; Schroeter 2023: 142).

The measures to be taken by a corporation must avoid or minimise negative impacts on human rights; however, they are explicitly not duties to ensure that *no* injury to human rights or the environment occurs. This expression, it should be noted, has close analogues in the LkSG and other national supply chain laws (Hübner 2022: 524; König 2022: 1190; Schall et al. 2023: 231; Spindler 2022: 772f.).

3.4 Double causality requirement

Ultimately, the injury of a corporation's duties must be 'doubly causal': the damage must result from the adverse impact, which must itself be a result of corporate dereliction of duty—for instance, the omission or insufficient implementation of a preventive measure. The omission of due diligence obligations by itself does not necessarily fulfill the double causality requirement; the injured party must be able to prove, in the end, that a specific preventive measure would have substantially reduced the risk of damage, and this measure must also have been within the power, and been reasonably expectable, of the corporation (König 2022: 1188; Spindler 2022: 774). Hence, as a causal contribution, a breach of duty must therefore justify this damage. Art. 29 CSDDD therefore corresponds to the general principles of imputation and is embedded in the tort law doctrine outlined in chapter 2.4 (Heil 2024: 724f.; Kieninger 2024: 1045).

3.5 No exclusion of liability

If all of the aforementioned conditions are fulfilled, it must further be established that no exclusion of liability applies. The directive specifies, for example, that where multiple risk factors are present, the corporation should prioritise their handling. Liability is excluded, if the risk has been recognised, but nothing has been done about it, because the potential negative impact was further down in the ranking and has not yet been addressed (Heil 2023: 101). It is further specified that liability does not exist if the negative impact was effected solely by a business partner in their area of activity. Finally, further liability claims against the corporation are specified as being unaffected by the regulation, with the legal hurdles described in chapter 2.

3.6 Mandatory use of EU regulation

On the question of applicable substantive law (International Private Law), the CSDDD requires that the standard liability for Art. 29 CSDDD be developed into a so-called mandatory norm, according to the definition of Art. 16 of the Rome II Regulation. That means that human rights suits will continue to be tried according to foreign substantive law; however, the mandatory liability norm for breach of duty in the form of a violation of human rights due diligence obligations must be observed, in accordance with numerous recommendations from legal scholars and civil society (Görgen 2019: 501; Hübner 2022: 522, 525; Schroeter 2023: 145; Steinbrück/Gehling et al. 2022: 648).

3.7 No regulation on international jurisdiction and international private law of the third country

The CSDDD does not include a regulation on international jurisdiction. Concerning corporations established in the EU, this does not cause a problem since there is international jurisdiction according to Art. 4 para. 1 in conjunction with Art. 63 para. 1 of Brussels Ia Regulation (Schäfer et al. 2024: 1093).

Concerning corporations established in a third country, foreign courts will generally have jurisdiction. In accordance with its international private law, the competent court will also assess which law applies to the possible claim for damages. As a result, the law of an EU member state will consistently not be applied because the damage but also the omission occurs in the third state (Heil 2024: 725f.).

4. Implementation in the EU member states

When transposing the CSDDD into national law, the EU member states can adopt stricter rules in order to enhance the impact of the CSDDD. Such principle of "partial full harmonization" (Schäfer et al. 2024: 1092) is not applicable in all areas; nevertheless, it can be applied with regard to the specification of due diligence or thresholds for application. In this sense, the adoption of the CSDDD provides a certain flexibility for the EU member states, which could at least help to partially compensate for the weaknesses of the CSDDD.

5. Conclusion: Disillusionment for advocates of remedial victim protection

This analysis has shown that claims brought by victims of corporate disaster in countries in the Global South *de lege lata* have little hope of compensation from parent or contracting companies in the Global North. The CSDDD was intended to close these legal loopholes and effect a significant improvement in the situation of the victims of these disasters. Among the legal hurdles detailed above, the CSDDD offers a plausible answer to the question of applicable law, since liability according to Art. 29 CSDDD must be applied in supranational human rights cases—a legal 'trick' (Lutz-Bachmann et al. 2022: 843), that assures the enforcement of these rules, at least for EU-based corporations.

The integration of human rights catalogues in private law via the Annex is legally interesting and incorporates into the catalogue of obligations a high number of human rights violations by corporations among their supply chain, but presents major challenges for legal practitioners in the area of clarity and practicability. The exclusion of human rights, such as the protection of indigenous rights, from applicability in the directive results in legal protection for corporations in those areas (Schall et al. 2023: 198). However, a possible assessment of the included human rights positions and a possible enhancement is explicitly intended.

The CSDDD standardises due diligence obligations which transcend the separation principle without creating corresponding liability mechanisms. On the contrary, it creates a unique and limited standard for selected, still vaguely defined, human rights, and for specific due diligence obligations, with no promise of success. If the victims of corporate disasters can prove that the neglect of such obligations led to the adverse impact on human rights, and if they can further prove that this specific impact caused the damages, a liability claim can be established. Still, the causality of the breach of the duty of due diligence concerning the specific damage will probably be the biggest practical hurdle (Kieninger 2024: 1045). The risk and costs of such a claim will be high, so enforcement of supply-chain responsibility in this form is not likely to be particularly effective. Besides the aforementioned legal hurdles, there are also known actual hurdles that seem to have caused the European legislator to determine facilitations for the enforcement, such as the expansion of the right of action to NGOs and labour unions and regulations on interim legal protection and the disclosure of evidence–which can be considered as a positive development (Gregor 2024: 34; Heil 2024: 726).

Nevertheless, it has to be mentioned that, from the point of view of remedial victim protection, the CSDDD does not offer a final solution to the legal hurdles entailed by claims for damages under existing law. The CSDDD also offers no incentive for corporations to curb their liability-limiting diversification of supply chains or founding of subsidiary companies. In general, the liability provision seems to be unfamiliar with tort law (König 2022: 1190; Schall et al. 2023: 231). It seems as if the compensation provisions are no more than a means to the end of providing a disincentive to violating the directive (König 2022: 1186; Lutz-Bachmann et al. 2022: 842). For example, the establishment of due diligence obligations without a duty to prevent the effect is foreign to tort law. The risk-based approach, prioritising risk according to its likelihood of occurring, belongs more to the realm of corporate governance than to the principle of *neminem laedere*. The communications, rulings, and directives of the European Union also place the CSDDD (correctly) in a long line of directives on corporate transparence and sustainability. This approach is understandable from the point of view of prevention, but deficient in terms of remedial victim protection: in a way, remediation has been sacrificed for the benefit of strengthened prevention (König 2022: 1190).

Regarding its preventative function, the CSDDD can be considered innovative. However, practice will show if this approach brings behavioural changes.

Since no fundamental changes were made to the principles of damages, there is no intention to dissolve the separation principle. Still, it is possible to enhance the victim protection if the directive is interpreted more strictly at a national level than required–hence, if over-fulfilled. Further, it is questionable, whether this is the right approach, since tort law does not aim to punish offenders or to fundamentally change social conditions (Falkenhausen 2020: 303).

To return to our starting point: after decades of neoliberal hegemony on the subject of 'business and human rights', the juridification of human rights obligations is seen by many as a major step. The question of whether such a directive will have a lasting preventive effect is not the subject of this article. Clearly, if it is not over-fulfilled by the member states, the CSDDD will neither bring fundamental improvements to the curative claims of the victims, nor the promised justice for the victims at the end of a long chain of complex corporation relationships, nor will it allow emblematic, strategic human rights claims to result in compensation for victims in the Global South.

1 Selected standard works: USA – Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act), 2010; EU – Timber Trade Directive, 2010; It is about the guideline: UN Principles on Business and Human Rights, 2011; EU – CSR Communication, 2011; EU – Sustainability Directive, 2014; UK - Modern Slavery Act 2015; EU – Conflict Mineral Directive, 2017; France – *Loi de Vigilance*, 2017; Netherlands – Child Labor Due Diligence Act, 2019; Germany – *Lieferkettensorgfaltspflichtengesetz*, 2021; Switzerland – indirect alternative draft of the *Konzernverantwortungsinitiative*, 2021; Norway – transparency law, 2022. Legislative processes are being attempted in countries including Austria, Belgium, and Finland (Gehling/Ott 2022: 54).

2 Suggestions to accord transnational corporations legal subjects of international law imply the democratically problematic recognition of their factual power, and transmuting it into legal power. The question of legal entity under international law must be separated from the question of whether international human rights conventions can form the basis of corporate human rights obligations—in principle the answer is yes, but in the human rights treaties relevant here and under existing law, this cannot be assumed (Kaufmann 2021: 70ff., 116).

3 So-called "absolutely protected legal interests" governed in Austria by § 1295 para. 1 ABGB, are legal interests binding on all parties, such as life, body, health, and property.

4 An example is the explosion on the BP oil drilling rig Deepwater Horizon, which led to roughly 800 million tons of crude oil flowing into the Gulf of Mexico. The damages were estimated *prima facie* at 40 billion US dollars; this amount was later used in other cases (for example, the 2015 dam disaster in Mariana, Brazil) as a reference (Kaufmann 2021: 399).

5 In practice, the opinion of a jurist is solicited and included as expert testimony in the case. In Jabir et al. v. KIK Textil und NonFood GmbH, a British jurist offered an opinion on Pakistani law for the case, and the court followed his recommendation. The witness explained in his testimony that, due to a lack of knowledge of German, he was unable to read all of the court documents, and did not have complete access to jurisprudence in similar cases in Pakistan. He gave his opinion in a strictly personal capacity, declining all liability. This example is not intended as a reproach to the jurist; it is meant to demonstrate the objective difficulty of judging the facts of a case according to foreign law (Kaufmann 2021: 163f. and further examples).

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Abstract *Wenn EU-Unternehmen im Rahmen ihrer internationalen Liefer- und Wertschöpfungskette an Menschenrechtsverletzungen beteiligt sind, stellt sich die Frage, inwiefern die Opfer Schadenersatzansprüche diesen gegenüber geltend machen können. Der Artikel untersucht wesentliche rechtliche Hürden für Geschädigte aus den Ländern des Globalen Südens nach geltendem Recht und analysiert, inwiefern die EU-Lieferkettenrichtlinie CSDDD diese Hürden schließt. Im Ergebnis wird festgestellt, dass die neue Haftungsregelung nur teilweise die ausgemachten rechtlichen Hürden überwindet. Die Stärke der CSDDD wird daher eher in der präventiven denn in der kurativen Wirkung gesehen, wobei eine strengere Regulierung durch die EU-Mitgliedsstaaten in Teilbereichen möglich ist, deren Umsetzung abzuwarten bleibt.*

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