

Introduction

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doi: <http://dx.doi.org/10.18543/ced-63-2020pp25-29>

Abstract: Liability claims against transnational corporations before the courts are one of the possible steps to take towards ensuring respect for human rights in their conduct of business in third States. As stated in Article 8 of the Universal Declaration of Human Rights and in Article 2 of the International Covenant on Civil and Political Rights, access to justice is a fundamental right. However, the human rights violations committed by corporations have an irretrievable connection with denial of justice. The existing order does not provide an adequate response, as ‘governability gaps’ and the scope of influence of companies escape the regulatory and coercive power of the State of origin. The host countries’ lack of capacity or will to ensure that companies operating in their territory respect human rights; the absence of effective judicial systems; and the legal obstacles created by complicated business structures all lead to the need for complementary, more regularised business behaviour at the operational level.

Keywords: Businesses and human rights, access to justice, claim procedures, corporate social responsibility, extraterritoriality, international trade, certification systems, conflict minerals, international civil procedural law, due diligence, public procurement, road transport.

The internationalisation of corporate business, the protection of human rights, and corporate liability for human rights violations in transnational activities have recently become more closely related and achieved greater national and international prominence. This is currently a burning issue that has involved major advances in the protection of human rights. These changes are not only reflected in different legislative initiatives on the mechanisms for accessing existing legal remedies at the international, regional and state levels, but also in various jurisprudential milestones that suggest there is greater awareness and a trend towards regulating business behaviour that may violate human rights.

In fact, a number of far-reaching initiatives are currently underway, including a draft for a legally binding UN Treaty on Business and Human Rights and a draft for The Hague Rules on Business and Human Rights

Arbitration. In addition, at the European regional level there are some already well-established sectoral regulations, including the EU Regulation on wood, in force since 2013 (the latter requires businesses to carry out a due diligence process to determine the source and legality of wood products), and regulations about to enter into force such as the Conflict Minerals Regulation, which will be a milestone in due diligence for European companies that import tin, tantalum and tungsten from conflict-affected and high-risk areas. Following the French initiative there has been an incessant, gradual implementation of due diligence laws at the national level (Switzerland, Germany, Finland and Luxembourg). This process started with the approval of national plans to implement better prevention and reparation for human rights violations.

In this context, a conference was held on 'Human Rights Claim Mechanisms' at the University of the Basque Country, coordinated by Professors Juan José Álvarez and Nerea Magallón, within the 'Operational level grievance mechanisms' Project; DER 2017-87712-R supported by MINECO and FEDER (2018-2020). Issue 63/2020 of the *Deusto Journal of European Studies (Cuadernos Europeos de Deusto)* contains the papers presented at the conference, which clearly reflect the current and future significance of this matter.

This monographic issue structures the papers sequentially from the general to the specific. First, **Professors Zamora and Marullo** review the latest European court resolutions on corporations and human rights. Their review shows that the European Courts are promisingly well disposed towards access to justice in transnational business and human rights litigation in European jurisdictions where parent companies are domiciled or have their main headquarters for abuses perpetrated by their subsidiaries in third States. They illustrate this by referring to recent decisions taken in two cases, namely *Vedanta Resources PLC and another v Lungowe and others* before English courts, and *Kiobel III* before Dutch courts. In this way, the European courts have followed well-known paths in claiming reparations for victims of human rights violations by companies. This results in the strengthening of aspects such as the *forum necessitatis* and the denial of access to justice when victims cannot assert their rights in other forums, and in courts acknowledging their jurisdiction by considering corporations as unitary agents, whereby the parent company is liable for the abuses committed by its subsidiaries.

Professor Iriarte analyses the Helms-Burton Act and its effect on Spanish practice by looking at one of the first decisions by Spanish courts affected by the Act. In light of its potential application, the vague boundaries of extraterritoriality and the implementation of rules in third

States are questions raised in the face of the hypothetical infringement of human rights by multinational companies in their transnational activities. The difficulties in accepting the jurisdiction of the Spanish courts and the European Union's blocking statute to counteract the illicit effects of extraterritorial sanctions are aptly discussed in connection with the entry into force of the Helms-Burton Act.

Professor Font shows the helplessness of victims who are faced with numerous procedural obstacles in international civil lawsuits seeking to establish liability for human rights violations in Spanish courts. Looking at international civil procedural law from the perspective of rights holders' access to justice, there are numerous obstacles that victims and NGOs encounter during the process. These obstacles highlight the unequal conditions that the parties face in these disputes and point to a procedural imbalance that international standards fail to mitigate.

Following the description of the global context provided by these initial doctrinal papers, the focus is then shifted to a sample of sectoral regulatory developments, with the aim of discussing some preliminary developments on the matter and investigating their potential future use. These studies deal with corporations' due diligence obligations as a possible response to the challenges posed by the mechanisms of judicial reparation for human rights violations. Along these lines, **Professor Diago** analyses the EU Conflict Minerals Regulation (which is undoubtedly a turning point in the understanding of corporations' due diligence obligations at the European level) and proposes interesting future improvements to protect human rights, while alerting us to the complicated relationship between trade policies and the successful sectoral regulatory developments in terms of due diligence.

Professor Durán introduces the French Due Diligence Act from a state-level regulatory development point of view. This Act is considered a pioneering comparative law instrument in corporate due diligence. The French experience is used to examine the strengths and weaknesses of the first state regulations on the matter which were marked by an interesting correlation between *lex damni* (which refers to determining the law applicable on the basis of where the damage occurs) and *lex societatis* (related to the choice of the law governing company law relationships), all of it from the perspective of Private International Law.

Professors Sales and Marullo carry out a joint study that seeks to provide further specific measures to establish corporate liability, including some new proposals for the future. Their approach assesses the usefulness of the obligations involving 'sustainability reports and monitoring plans' and 'reporting', which affect not only the parent company but also all the other companies within its corporate group. This would lead to the

reinforcement of the unitary concept of the group and help overcome corporate law barriers that hinder the process.

Professor Agoués focusses public sector contracting and highlights how important it is for public institutions to support 'Fair Trade' in promoting and respecting human rights. Ethical trade and sustainable development policies can be promoted by establishing technical specifications in public contracts that include specific policy requirements in favour of respecting and protecting human rights. The study shows that this would enable companies committed to human rights to be considered favourably in public procurement and contributes to these corporations being seen in a better light by consumers and investors. Ultimately, they would be granted additional value in terms of competition.

To conclude, **Professor Belintxon** addresses the issue of corporate social responsibility in transport companies at the European level. He does so by analysing the effectiveness of the rules aimed at ensuring appropriate employment conditions for workers in the road and air transport sectors from the perspective of European labour law. This is illustrated by jurisprudential decisions and Comparative Law rules, which have sometimes identified difficulties in bringing these requirements in line with the principles of European integration.

About the author

Nerea Magallón Elósegui, is a Ramon y Cajal Researcher and Professor of Private International Law at Basque Country University. Doctor in Law with extraordinary prize by the University of the Basque Country. She has been a visiting scholar at *Max Planck Institut, Für Ausländisches Und Internationales* (Hamburg) at University of Buenos Aires (Argentina), at *L'Ecole doctorale de Droit international, Droit européen, relations internationales et Droit comparé de l'Université Panthéon Assas*, (Paris) and at *International Institute for The Unification of Private Law (UNIDROIT)*, (Rome). She has been teaching (at both BA and Master levels) Private International Law, European Private Law and International Commerce at the University of Buenos Aires, UNED, Basque Country University, at Santiago de Compostela University, at Deusto University and UNIR. She has been involved in several research projects, six of them European Research Projects financed by the European Commission (Directorate-General Justice). She is the author of two books, and several book chapters, and she has published numerous papers in scientific journals. Her current research interests are focused on International Private Law, European Law, Successions Law and

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