Judicializing Environmental Governance? The Case of Transnational Corporate Accountability

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Abstract

The transnational scope of corporate activities often results in extraterritorial environmental harm elsewhere on the planet. Within the European context, two legal developments are challenging this state of affairs. First, several legislative initiatives seek to establish due diligence standards for corporate activities along global supply chains. Second, domestic courts increasingly assume jurisdiction over environmental damage arising from corporations' subsidiary operations abroad. This article argues that both these developments are emblematic of the transnationalization and judicialization of environmental governance in the twenty-first century. Rather than providing particularized relief only, national judges may become crucial allies in the construction and enforcement of polycentric regimes. However, the advent of unilateral judicial interventions in the environmental affairs of other countries also raises concerns over the international and institutional legitimacy of the emerging corporate accountability apparatus.

On May 26, 2021, a Dutch appeals court in the Hague uprooted corporate, activist, and academic circles alike by instructing oil giant Shell to slash its greenhouse gas emissions by 45 percent until 2030 as compared to 1990 levels (Hösli 2021). The court's ruling is one of the latest and most visible instances of judicial reckoning with the role of large transnational corporations (TNCs) in causing global environmental harm. While TNCs have sought to address such impacts through internal policies and voluntary practices for several decades (Prakash 2000), their constitutive role in the looming environmental crises of our times, including climate change (Heede 2014), biodiversity loss (Hughes 2017), and widespread pollution (McVeigh 2020), evidently calls for more

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stringent approaches. Policing the environmental footprint of corporate actors therefore features prominently within ongoing legal and policy debates (Folke et al. 2019).

A particular challenge in this endeavor arises from the extraterritorial nature of much environmental harm. The transnationality of corporate structures allows businesses to shift their operations to jurisdictions with weak laws or lax enforcement to escape environmental scrutiny and accountability. The international mesh of agreements and norms to which TNCs are currently subjected has largely failed to deliver the desired results and plug the gaping holes in the global environmental governance landscape (Karkkainen 2004). As a result, affected communities, public decision makers, and scholars have turned their gaze toward *trans*national measures that extend beyond state borders (Mason 2008). These processes of transnationalization have been accompanied by an increasing judicialization of environmental governance, as becomes apparent in two parallel but thus far disjointed developments.

First, intent on internalizing extraterritorial harm, several legislatures have recently introduced bills prescribing unilateral due diligence standards along corporations' global supply chains. These acts often reserve a prominent role for the judiciary in enforcing environmental norms. Second, procedural advancements in transnational litigation have opened the gates of some European jurisdictions to environmental claims that involve a notable cross-border element. To be sure, both phenomena have received significant attention in the literature on transnational *law* (see, e.g., Bonnitcha and McCorquodale 2017; Bueno and Bright 2020; van Loon 2018), but they have so far not been conceptualized as part of a larger *political* process through the lens of judicialization (Shapiro and Stone Sweet 2002; Whytock 2009).

This article seeks to shine a light on the overlooked and burgeoning role of the judicial branch in global environmental governance, with a particular focus on corporate accountability. It begins by diagnosing a trend toward judicialization through extraterritorial legislation and litigation in the second and third section, respectively. The next section investigates the ways in which these phenomena intersect and how they jointly recast the role of courts in environmental governance across borders. The fifth section assesses the normative implications of this process. It argues that there are serious concerns regarding the capacity and legitimacy of courts to resolve disputes surrounding extraterritorial environmental damage (Bernstein 2004; Kramarz et al. 2017), akin to ongoing debates about judicial involvement in climate governance (Burgers 2020; Ewing and Kysar 2011). While these concerns need to be confronted head-on, upon closer inspection they do not loom as large as critics allege.

Methodologically, the article builds on a legal analysis of four due diligence laws and two prominent transnational litigation sagas. Because these relatively novel case studies have not yet fully entered the radar of political scientists, the analysis remains largely restricted to their legal substance so as to lay the ground for a deeper contextual exploration by future scholarship. Geographically, the

focus lies on the European Union (EU) and its member states, which have been spearheading the discourse on mandatory due diligence legislation and litigation in past years. Of course, similar processes are unraveling elsewhere, too, including in Norway, New Zealand, Switzerland, and the United States. Moreover, European debates are heavily shaped by the institutional infrastructure of the EU, implying that some of this article's findings may not be applicable to other contexts. At the same time, the multiple layers and institutional complexity of EU governance render it a particularly insightful object of study in the context of environmental governance (Vogler 2003).

Environmental Due Diligence in the EU

In international law, TNCs are regulated under a colorful palette of soft law, self-regulation, and best practices mandating different levels and forms of environmental due diligence, including the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises, the United Nations (UN) Guiding Principles on Business and Human Rights (UNGP), the UN Agenda 2030, and the International Law Commission's Draft Principles on the Protection of the Environment in Relation to Armed Conflict (Davoise 2020; van Loon 2018). While these tools form a much-needed framework for developing shared environmental standards, they do not possess binding force, barring further translation into national legal instruments (Morgera 2020). Under the auspices of the UNGP and its decentralized system of national action plans (Augenstein 2018), several European states have lately introduced or are currently deliberating comprehensive due diligence laws to clarify the rights and obligations of corporate actors in relation to human rights and environmental protection (Bonnitcha and McCorquodale 2017; Nicholson and Chong 2011). A crucial feature of all such policies is that they penetrate global value chains to capture corporate groups and contractual relationships across national boundaries. In other words, their reach is transnational, and their effects are markedly extraterritorial. In the following pages, four such initiatives within the EU are highlighted in more detail: France, Germany, the Netherlands, and the EU. These jurisdictions are not exhaustive of the ongoing due diligence trend, but they are among the most prominent and (potentially) economically impactful.

After years of political and legal haggling, including a constitutional challenge, the French Duty of Vigilance Law of 2017 (*Loi relative au devoir de vigilance*) now subjects companies that employ more than 5,000 workers domestically or more than 10,000 employees globally to stringent due diligence obligations (Cossart et al. 2017). The law requires companies to draw up, publish, and implement comprehensive vigilance plans to identify and prevent human rights abuses and grave environmental harm ("atteintes graves envers … l'environnement") (Lequet 2017, 706). Notably, these obligations are not restricted to a company's own activities but extend to subsidiaries and suppliers under the former's factual, legal, or contractual control. Violations of the duties to publish and adhere

to the vigilance plan are sanctioned through financial penalties and may give rise to civil liability vis-à-vis harmed individuals. Despite its pioneer status, the French law has been severely criticized for lacking stringency and for its toothlessness (Schilling-Vacaflor 2021).

Similar developments are under way in Germany, Europe's economic powerhouse and home to multiple TNCs. In June 2021, the legislature passed the Supply Chain Act (*Lieferkettengesetz*), which is projected to enter into force in 2023 (Ambos 2021). The enacted law differs from its French cousin in significant respects. Most importantly, its scope of environmental duties is limited to two highly specific types of harm—mercury emissions under the Minamata Convention and persistent organic pollutants under the Stockholm Convention (Krebs 2021). This circumscribed application renders the German proposal unlikely to induce environmental due diligence beyond duties relating to the human rights to life, health, and an appropriate standard of life. Given the close connection between environmental harm and human rights, however, the law's environmental scope may turn out to be broader than suggested explicitly by the provisions. In addition, the German law may soon have to be amended to meet the requirements of the planned EU Directive, which will likely include a wider environmental purview.

The Netherlands is another significant hub for global trade and business in Europe. Its first legislative steps in the business and human rights realm came in the form of the 2019 Child Labor Due Diligence Act (*Wet zorgplicht kinderarbeid*). Although the 2019 act has not yet entered into force, a coalition of four political parties recently introduced a comprehensive bill for a Responsible and Sustainable International Business Conduct Act (*Wet verantwoord en duurzaam internationaal ondernemen*) (Wilde-Ramsing et al. 2021). The bill proposes a blanket corporate duty of care to prevent, mitigate, remedy, and refrain from any activities that negatively impact a specified list of human and labor rights or cause "environmental damage."[1] This duty of care is operationalized by means of stringent due diligence requirements that include the publication of various assessments and action plans in six steps. The proposal's personal scope includes all companies incorporated in the Netherlands or selling products and services on the Dutch market that meet two of three criteria; these firms include the large number of "letterbox" companies making use of the favorable Dutch tax regime. In terms of enforcement, the bill foresees an innovative range of "positive" and punitive tools combining regulatory oversight with civil and even criminal liability. If enacted without significant changes, the Dutch bill would undoubtedly mark the most ambitious policy yet, both within Europe and beyond.

The EU has imposed environmental due diligence requirements on vulnerable industry sectors for many years, prominent examples of which are

1. An English translation of the bill can be accessed at https://www.mvoplatform.nl/en/wp-content/uploads/sites/6/2021/03/Bill-for-Responsible-and-Sustainable-International-Business-Conduct-unofficial-translation-MVO-Platform.pdf, last accessed December 10, 2021.

Regulation 1005/2008 on Illegal, Unreported, and Unregulated Fishing and Regulation 995/2010, laying down obligations on timber sellers. Against intensifying international and domestic pressure, the European Parliament has joined the legislative race and passed a resolution, with detailed legislative proposals for a Corporate Due Diligence and Corporate Accountability Directive, by an overwhelming majority in March 2021 (Lindsay and Voland 2021). As is common for EU directives, the draft serves as an outer frame; that is, it sets some important yardsticks and standards that allow for regulatory fine-tuning through national transplantation. Consequently, it does not aim at harmonizing member states' existing laws and bills entirely. Substantively, Article 1(2) of the proposed text addresses adverse impacts on human rights, the environment, and good governance along value chains. Akin to the national initiatives, these obligations are concretized through a meticulous due diligence process consisting of multiple steps with differing formal requirements. Several details are still heavily disputed, however, including the crucial question of which corporations are to fall under the new directive. After intense corporate lobbying, the European Commission has repeatedly delayed the finalization of a legislative proposal, which is now expected in 2022 (Ellena 2021).[2]

In sum, within the EU, due diligence is becoming the preferred politico-legal approach for addressing the transnational environmental harm resulting from corporate activities (Mackie 2021). There are some noteworthy nuances in this process, however. First, the four laws differ in their personal scope. Small undertakings are excluded from due diligence obligations, but what exactly constitutes a large enough undertaking depends on the number of (domestic and global) employees, balance sheet value, net turnover, and exposure to particular risks. Second, the gravity and type of legally actionable environmental harm range from a specific list of internationally defined pollutants (Germany) to open references to "potential or actual" environmental damage (EU, Netherlands). Finally, and crucially, the four bills contain very different enforcement models. The French law relies on a mixed system of injunctions and financial penalties (for failures to respect diligence obligations) as well as civil liability awards (for damage arising from violations of diligence obligations), both of which are entrusted to the courts. Indeed, the first lawsuits over French oil giant Total's plans for oil exploration in Uganda are already pending before the French judiciary (Schilling-Vacaflor 2021, 117). On the other side of the spectrum lies the German law, which delegates enforcement responsibility entirely to an administrative agency, the Federal Office for Economic Affairs and Export Control, and forecloses novel grounds of civil liability arising from the

2. The EU Directive is currently still under development. This article bases its analysis on the European Parliament's draft proposal of March 2021, but it is highly probable that the legislative process will alter the directive in form and substance. The discussions surrounding an EU-wide due diligence law have been ongoing for several years, however, making the most recent parliamentary draft proposal a valuable case study despite its transitory nature.

Table 1
Comparative Overview of Due Diligence Acts and Bills

	Personal Scope	*Environmental Scope*	*Enforcement*
France	>5,000 employees (domestic) or >10,000 employees (globally)	"Grave environmental harm"	Judicial
Germany	>3,000 employees (in 2023) >1,000 employees (after 2023)	Mercury emissions and persistent organic pollutants	Administrative
Netherlands	Two of three criteria: >250 employees or >€20 million balance sheet value or >€40 million net turnover	"Environmental damage"	Administrative + judicial
European Union	"Large undertakings" + "publicly listed" and "high-risk" small and medium-sized undertakings	"Potential or actual adverse impact on the environment"	Administrative + judicial

new law (Ambos 2021). The Dutch draft bill lies somewhere in the middle, as it contains a mix of administrative and judicial enforcement mechanisms. The EU draft directive remains relatively vague on concrete enforcement mechanisms, leaving considerable leeway to national legislatures in choosing their preferred pathways. These features are displayed in Table 1. Notably, due diligence bills do not always lead to a judicialization of environmental governance. As the German example shows, such laws can also exclude court involvement and redirect decision-making powers to administrators.

Transnational Civil Litigation

Parallel to, but largely disconnected from, the forging of new due diligence standards in legislative bodies, a series of lawsuits across European jurisdictions has expanded the environmental accountability of corporations through strategic civil litigation. These cases often exhibit a similar factual pattern. The claimants are usually victims of severe environmental pollution resulting from Western TNCs' subsidiary operations in the Global South. Discouraged by perceived or real barriers to gaining relief in their own countries, the harmed parties bring suit in the parent's home jurisdiction to obtain an effective civil remedy. Substantively, such litigation typically relies on long-standing private law duties of care, mostly in the field of tort law. The innovative and disruptive potential of recent cases is largely procedural and fundamentally rests on the concept

of jurisdiction. As a "meta-ordering" principle of international authority (Blattner 2019, 12), territorial jurisdiction serves a crucial gatekeeping function. In its judicial variant, it prevents domestic courts from adjudicating disputes that are fundamentally centered in a different country, as a matter of deference to the latter's legal institutions (Ryngaert 2017). But litigants have exploited gateways in domestic civil procedure and private international law to persuade courts to exercise *extra*territorial jurisdiction. The latter is already well-established in the United States for cases alleging environmental disasters and human rights abuses, but after several authoritative court decisions restricted its application to corporate defendants, the focus of such litigation has recently shifted to Europe (Kirshner 2012). Two jurisdictions have made particularly high waves in this regard: England and Wales (discussed below as "England"), and the Netherlands.

In England, the watershed case was decided by the UK Supreme Court in early 2019. *Vedanta v. Lungowe* revolved around the chemical pollution inflicted upon Zambian communities by the operator of the Nchanga Copper Mine, KCM, and its English parent, Vedanta. The claimants sought to recover damages from KCM for alleged negligence and breach of statutory duties. The same claims were also lodged against Vedanta and rested on the parent's alleged oversight and control exercised over its subsidiary. Pursuing the claims against Vedanta was also a strategic choice, however. First, there were concerns regarding KCM's liquidity and the enforceability of a ruling in favor of claimants that could be resolved by having recourse to the more resourceful parent. The second reason was jurisdictional. The allocation of judicial authority within the EU (of which the UK was then still a member) is regulated by Regulation 1215/2012 (Brussels I Recast). Although jurisdictional rules are harmonized to a large extent, Article 6(1) of the regulation allows states to determine their own rules as far as non-EU defendants like KCM are concerned. In England's Civil Procedure Rules, Practice Direction 6 B, paragraph 3.1 permits claimants to "serve out" on such foreign defendants where these are a "necessary and proper party" to the claims against a domestic defendant. The core question at stake in Vedanta was therefore whether the "necessary and proper party" condition was fulfilled so as to justify English jurisdiction over the extraterritorial claims. As a proxy, the Supreme Court inquired whether there was a "real and triable" case against Vedanta at all. Given Vedanta's high level of intervention in the subsidiary's operations, including the publication, implementation, and enforcement of environmental standards, the parent was found to have incurred a duty of care (Bradshaw 2020; Van Ho 2020). With the common basis for the claims against the respective English and Zambian defendant established, the case could proceed in England and was ultimately settled for an undisclosed amount in early 2021 (Leigh Day 2021). The Vedanta ruling was upheld two years later in another Supreme Court ruling, *Okpabi v. Shell*, which further expanded the scope of activities that may lead a parent to assume a duty of care (Aristova and Lopez 2021).

For a long time, the Netherlands hardly had any record of transnational civil litigation against corporations (Jägers and van der Heijden 2008). This situation changed rapidly in the last decade, with a preliminary culmination in January 2021, when the Court of Appeal in the Hague issued a final ruling in a string of three lawsuits brought by Nigerian farmers against the Dutch oil giant Royal Dutch Shell (Bertram 2021). Shell's Nigerian subsidiary has long been accused of causing serious human rights violations and ecologically devastating oil spills in the Niger Delta region (Enneking 2019). One recent suit, *Dooh v. Shell*, declared Shell Petroleum Development Company of Nigeria (SPDC) strictly liable for the oil pollution originating from a leak in one of its installations. The claimant, Barizaa Dooh, was a Nigerian farmer and fisherman whose property and livelihood had been severely affected by the contamination. Before assessing the merits, however, the Dutch court encountered a dilemma similar to the one of the *Vedanta* judges: did it possess the jurisdiction to adjudicate on the claims against the Nigerian defendant? Akin to *Vedanta*, the procedural solution to this dilemma lay in the national loophole created by Article 6(1) of the Brussels I Recast Regulation. Article 7(1) of the Dutch Code of Civil Procedure explicitly allows for cases against two defendants to be joined when they are sufficiently connected. The Court determined not only that the claims against the domestic parent and the foreign subsidiary had the same legal basis but that the case against Royal Dutch Shell had realistic chances of success. Against this backdrop, the conditions for a case joinder under Article 7 (1) were satisfied and extraterritorial jurisdiction could be established. The ruling was widely heralded as a landmark precedent for similar litigation (Peltier and Moses 2021).

As this snapshot of procedural legal developments in England and the Netherlands shows, extraterritorial jurisdiction can play an important role in the wider struggle for corporate accountability if and where national procedure allows. The absence of similar litigation in countries like Germany and France is due mostly to the lack of jurisdictional provisions equivalent to the "necessary and proper party" gateway of the English Civil Procedure Rules or the case joinder mechanism of the Dutch Code of Civil Procedure. Both *Vedanta* and *Dooh* are manifestations of active legal mobilization in the face of inadequate political alternatives (McCann 2008; Zemans 1983). Against the apparent failure of voluntary environmental norms and insufficient administrative and judicial enforcement of existing laws at the local and international levels, the affected communities found an unlikely ally in the transnational private litigation landscape. The plaintiffs are aided by resourceful nongovernmental organizations and activist law firms in Northern jurisdictions. On the other hand, this process has not exclusively occurred at a grassroots level. The proliferation of transnational litigation can also be partially attributed to domestic judiciaries' changing attitude toward extraterritorial claims and an increasing diffusion of transnational legal norms and procedures into adjudicatory practice (Kuner 2019; Putnam 2016).

A New Role for Domestic Courts in Global Environmental Governance?

The discussions surrounding environmental due diligence and civil liability have long taken place in separate realms, despite their shared objective of increasing TNCs' environmental and social accountability. While the former discourse is predominantly led by (international) public lawyers and, to a lesser degree, by political scientists and global governance scholars, transnational civil liability is dominated by procedural and private (international) lawyers. This section describes where and how due diligence legislation and transnational litigation intersect, and explores what that dynamic might imply for the role of domestic courts.

In essence, there are two pathways by which environmental due diligence legislation and litigation have converged. First, legislators have opted to equip substantive due diligence legislation with civil liability mechanisms, as the French law demonstrates (Cossart et al. 2017). By virtue of its connection to domestic duties of care, the Duty of Vigilance law voids litigation taking place under its umbrella of jurisdictional hurdles—the link to French courts is provided by the control exercised by the French company over its international operations. As such, it lifts the "corporate veil" to assimilate the liability regime with TNCs' economic realities (Bright 2020). Nonetheless, this approach exhibits considerable drawbacks. Among others, the law encompasses only ostensible omissions to comply with vigilance duties. Since such duties concern conduct rather than outcome, however, it may turn out to be excessively difficult for claimants to prove that companies failed to take all steps in their power to prevent harm. A previous draft had foreseen a strict liability rule that would shift the burden of proof to the defendants, but this idea was dropped in the final version after intense business lobbying (Schilling-Vacaflor 2021). In addition, there is significant risk that a due diligence approach to litigation may cast too narrow a scope to capture the complexity of environmental damage resulting from business activities. Transnational environmental harm in particular tends to be polycentric and may not neatly fit the pigeonholes created by substantive legislation (Fisher et al. 2019).

To overcome the drawbacks of a "due dilitigation" approach, others have suggested procedural legal reform aimed at empowering courts to exercise extraterritorial jurisdiction over corporations domiciled within their jurisdictions (Kirshner 2012). Instead of creating, monitoring, and enforcing new substantive obligations, its proponents contend that a procedural fix allows victims of transnational corporate harm to have their existing rights remedied by providing a European forum when access to justice is barred at the place of damage and/or a subsidiary connection links the case to a European member state—without having to establish new substantive rules and add bureaucratic burdens (Roorda and Ryngaert 2016). This idea has a historic precedent. The European Commission's 2010 Proposal for Recasting the Brussels I Regulation on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial

Matters already recognized the need to harmonize jurisdictional rules to provide an appropriate gateway to justice for claimants. Essentially, the proposal foresaw a geographical extension of the regulation's reach to external situations (Gillies 2012). Despite widespread academic endorsement (Weber 2011), however, political opposition by the European Parliament and among the member states prevented the Commission Proposal's jurisdictional changes from being adopted (Nielsen 2013, 512–513).

Interestingly, the procedural solution recently made a comeback in the context of the EU's prospective Due Diligence Directive. A first draft by the European Parliament in September 2020 suggested amendments to the Brussels I Recast Regulation to allow for the extraterritorial jurisdiction of European courts, relieving claimants from having to prove the presence of a narrowly defined "sufficient link" between the extraterritorial damage and the corporate home state in order to bring suit (European Parliament 2020). These amendments were ultimately deleted from the final parliamentary resolution of March 10, 2021 (Kruger 2021). Whether the resolution remains the final word in the heated policy debates is uncertain. If the Commission's stance of 2010 is any indication, the EU's executive branch may attempt to retain the procedural elements in its own legislative proposal. The high pace of regulatory change and the capriciousness of political tides make educated guesses exceedingly difficult, however.

In sum, whereas civil litigation has been traditionally conceptualized in terms of private rights and wrongs between individuals, there is now increasing emphasis on its public dimension in enforcing existing soft and hard law obligations (Bonnitcha and McCorquodale 2017; Bueno and Bright 2020; Weller and Pato 2018). The judges in *Vedanta* and *Dooh* are not operating in a purely legal universe. Through the innovative use of doctrine, they are assuming a new-found role within the corporate accountability agenda. When adjudicating disputes centered elsewhere in the world, domestic courts inevitably become co-opted in the political and regulatory struggle for effective global governance. Evidently, their choices have ripple effects beyond the affected litigants. As Christopher Whytock (2009, 72) observes,

> Domestic court decisions affect the behavior of transnational actors, including strategic behavior such as transnational bargaining and forum shopping. These decisions can either increase or reduce global economic welfare. They also can either foster or hinder the effectiveness of international institutions, such as international law and international courts, and private institutions, such as transnational contracting and transnational arbitration.

Indeed, the "transnational shadow" (Whytock 2009) of rulings such as *Vedanta* and *Dooh* is likely to change the operations of large companies to shield themselves from environmental liability risks (Nestor and Drimmer 2019). In this sense, litigation performs a vital role in judicializing and depoliticizing environmental governance by reallocating legal authority over environmental problems (Kotzé and Paterson 2009; Shapiro and Stone Sweet 2002). The

trends explained in the preceding sections speak to an increasing tendency to co-opt the courts in policing corporate due diligence.

Should Judges Police Global Corporate Conduct?

The diagnosis of a transfer of extraterritorial powers to unelected and largely unaccountable judges almost inevitably begs questions about its desirability and legitimacy, the latter term here being understood in its legal, normative conception (Bernstein 2004, 142). This issue is particularly acute in light of the common view that monocentric, consensual approaches to environmental governance have failed to achieve what they set out for and that a shift toward dispersed polycentricity and institutional fragmentation is required to tackle the world's pressing environmental problems (Dorsch and Flachsland 2017; Ostrom 2010). As Bäckstrand et al. (2018, 339) remind us, "normative legitimacy—centred around criteria and values such as deliberation, accountability, participation and transparency—has featured less in the scholarship on polycentric governance, which has been preoccupied with spurring more effective collective action."

Should judges then fill the dire regulatory gap and police the environmental impact of corporate activities worldwide? Two corollaries may be deduced from this overarching question. The first concern arises from the transnationality of cross-border litigation, which casts doubt on European courts' international legitimacy: is it legitimate for European courts to adjudicate affairs that fall within the remit of another country's authority? In addition, the judicialization of corporate accountability may conflict with ideals of institutional legitimacy: why should it be judiciaries, rather than the executive or legislative branches, that get to decide on pivotal economic and environmental issues? There is no obvious or easy answer to either question, but the following section presents a rough sketch of how they may be approached.

International Legitimacy

The dominant framework for coordinating the relationships between states is enshrined in public international law. The international *legality* of unilateral court interventions in the affairs of foreign states is thus a first proxy to assess its wider *legitimacy*. Conflicts between foreign claimants and foreign state institutions lie at the heart of supply chain justice. Ostensibly, claimants often choose to go the extra mile and seek judicial redress in a foreign country *because* of the perceived or real deficiencies of the domestic court system. For instance, in *Vedanta*, the claimants sought to bring their case in the United Kingdom, whereas the Zambian attorney general insisted on the case being referred to the Zambian courts. Within the purview of public international law, however, extraterritorial jurisdiction is only curtailed at the outer bounds by the doctrine of state sovereignty, as Roorda and Ryngaert (2020, 93) point out:

> Provided that such [extraterritorial] jurisdiction has a legal basis in domestic private law, home States actually exercising it are unlikely to step beyond the limits of jurisdiction under public international law. … Home State adjudicatory jurisdiction may at times even be preferable to host State jurisdiction, although it may go too far to state that there is an obligation under current public international law to provide access to court for foreign plaintiffs in respect of extraterritorial human rights harm.

Foreign states' protests thus have little currency in terms of settled international law. Some scholars have gone as far as to suggest that environmental protection has become so universal an interest that it amounts to an *erga omnes* obligation owed to the global community as a whole (Robinson 2018) and, by its corollary, that violations of that obligation should be redeemed by unilateral intervention (Colón-Ríos 2014). International legitimacy clearly stretches beyond the conceptual grammar of international law, though. For instance, Bodansky (2000, 341) notes that

> what makes unilateralism problematic is the fact that a state's action directly impacts on another state. … Fairness suggests that all those who will be affected by a decision should be able to participate in the decision-making process, and that unilateral action is therefore presumptively illegitimate; it represents a kind of hegemony and imperialism.

These views mirror an input- and throughput-oriented, procedural understanding of legitimacy that focuses on stakeholder participation. At first sight, foreign states, foreign companies, and (prospective) foreign claimants have no such avenues for partaking in the regulatory and judicial processes of domestic corporate accountability mechanisms available to them. But a deeper exploration shows that the alleged legitimacy gap is minimal. In virtually all extraterritorial litigation of the type discussed, European courts are not creating new norms so much as they are enforcing existing standards in foreign and international human rights and environmental law through private legal mechanisms (Enneking 2019, 542–546; van Loon 2018, 302–303). Even though accusations of normative imposition can therefore be dispelled, a residual degree of illegitimacy remains by virtue of the fact that domestic courts follow their own rules of civil procedure, in the creation of which foreign actors had no say (Bertram 2021). This point may seem pedantic, but as the litigations analyzed above show, procedural traditions can have definitive effects on case outcomes and should thus be taken seriously.

Institutional Legitimacy

Concerns over legitimacy also arise with respect to the judiciary's authority in deciding questions of transnational environmental governance that could more adequately be addressed through diplomatic channels or legislative action. Despite legislatures' much criticized inertia in adapting to ever-new types of

transnational harm, it may rightly be asked why environmental *adjudication* should assume such a prominent role in transnational governance. After all, judges are unelected decision makers who routinely deviate from standards of impartiality (Liu 2020). Courts' managerial involvement in environmental policy formulation therefore leads to both horizontal (i.e., vis-à-vis other branches of government) and vertical (i.e., vis-à-vis the polity) accountability losses (Kramarz et al. 2017). From an institutional balance perspective, however, the weight of the legitimacy deficit also hinges upon another important factor: the degree of legislative delegation to judiciaries and, conversely, the amount of judicial discretion in policing TNC behavior. French law, for instance, reserves a rather circumscribed role for the courts, which may act only within a delineated set of factual patterns and choose from a predetermined tool kit of remedies. A more comprehensive procedural solution, such as the Dutch and English civil procedure provisions, leaves courts with significant discretion over what disputes to hear and how to resolve them, thereby exacerbating legitimacy concerns.

These debates are far from new, but as the environmental agenda gains increasing political traction and authoritative enforcement, the legitimacy issue looms larger than ever before—a challenge that many scholars in adjacent fields have addressed head on. For example, with regard to climate litigation, Burgers (2020) engages Jürgen Habermas' political theory of deliberative democracy to argue that environmental rights to a sound environment are so constitutive of and fundamental to our democratic system that their protection by courts—even against the opposition of majoritarian institutions—is sufficiently legitimized. Arguably, Burgers' reasoning applies *mutatis mutandis* to the case of corporate damages, which may be equally harmful as the climate crisis to fundamental constitutional guarantees.

A similar yet slightly different perspective on institutional legitimacy is offered by Ceri Warnock (2017). Her work on specialist environmental courts finds that legitimacy is constructed through an interactional process in which judges respond to the nature of environmental problems, acknowledge their complexity, and develop a legal tool kit to address these challenges (Warnock 2017, 2020). In other words, they develop interactional expertise that puts them in a "privileged" position to resolve questions of transnational environmental accountability more effectively and equitably than other institutions. Expertise and effectiveness are conceptually linked, as they legitimize the authority vested in an institution by reference to the quality of its contribution in line with external criteria, mirroring an output-oriented conception of legitimacy (Bodansky 2012, 718–721).

Rather than ducking politicized environmental cases, Ewing and Kysar (2011) suggest that courts should embrace their institutional responsibility vis-à-vis other branches by engaging with complex issues of environmental causation, attribution, and liability at the merits stage, "even—and sometimes precisely—when they must reject allegations of harm because they do not fit the scheme of proof and liability established by tort" (Ewing and Kysar 2011,

356). Courts' constitutional mandates not only require them to "check and balance" against executive and legislative overreach, but also empower the judiciary to "prod and plead" with the other branches when a social ill is left unaddressed and demands attention. Accordingly, courts can spotlight regulatory opportunities and actively engage in dialogue with the other branches of government.

Conclusions

Global business causes significant environmental harm along its pervasive value chains. The extraterritorial nature of such harm poses a protracted governance challenge to governments. In light of the ostensible ineffectiveness of multilateral and voluntary approaches, several European states are resorting to unilateral due diligence legislation that imposes stringent obligations on corporations and often reserves a pronounced role for judicial enforcement. Simultaneously, the growing importance and impact of transnational civil litigation suggest that courts are not only jumping on the corporate accountability bandwagon; they are taking over the reins. These two related phenomena open opportunities for regulatory synergies between legislative, administrative, and judicial, as well as between national and global, contributions in pursuit of a shared objective. Indeed, the transnationalization and judicialization of corporate due diligence, and the overlapping spheres of authority resulting from it, fit neatly into an increasingly polycentric environmental governance landscape (Bäckstrand et al. 2018; Dorsch and Flachsland 2017).

Despite its promising regulatory potential, the reshuffling of political authority away from executive and international actors toward judicial and domestic ones raises a host of legitimacy concerns. Depending on the conceptual lens employed and the amount of judicial discretion granted to national courts, these issues can be resolved in theory. This preliminary conclusion must immediately be qualified by the fact that the account provided in this article has been necessarily shallow; myriad other understandings of legitimacy are conceivable and deserve further elaboration. For instance, studies of the sociological—that is, perceived—legitimacy "privileged" of judicial environmental interventions are largely absent, apart from anecdotal accounts. Given the pertinence of scrutinizing evolving policy and court practice, the empirical deployment of multidimensional legitimacy models is a fruitful avenue for future research. Moreover, there is a dire need to study the governance outcomes of court rulings in order to understand their effectiveness in inducing change in corporate attitudes and behavior (Schrempf-Stirling and Wettstein 2017). Attaining a better empirical grasp of these phenomena would in turn allow for a more refined conceptual understanding of judicial governance in relation to regulating the transnational environmental impact of corporate activities.

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References

Ambos, Kai. 2021. Neun Thesen zum Lieferkettensorgfaltspflichtgesetz. *Verfassungsblog*, August 3. Available at: https://verfassungsblog.de/neun-thesen-zum-lieferkettensorgfaltspflichtgesetz/, last accessed December 10, 2021.

Aristova, Ekaterina, and Carlos Lopez. 2021. UK Okpabi et al v Shell: UK Supreme Court Reaffirms Parent Companies May Owe a Duty of Care Towards Communities Impacted by Their Subsidiaries in Third Countries. *Opinio Juris*, February 16. Available at: https://opiniojuris.org/2021/02/16/uk-okpabi-et-al-v-shell-uk-supreme-court-reaffirms-parent-companies-may-owe-a-duty-of-care-towards-communities-impacted-by-their-subsidiaries-in-third-countries/, last accessed December 10, 2021.

Augenstein, Daniel. 2018. Negotiating the Hard/Soft Law Divide in Business and Human Rights: The Implementation of the UNGPs in the European Union. *Global Policy* 9 (2): 254–263. https://doi.org/10.1111/1758-5899.12530

Bäckstrand, Karin, Fariborz Zelli, and Philip Schleifer. 2018. Legitimacy and Accountability in Polycentric Climate Governance. In *Governing Climate Change: Polycentricity in Action?*, edited by Andrew Jordan, Dave Huitema, Harro van Asselt, and Johanna Forster, 338–356. Cambridge, UK: Cambridge University Press. https://doi.org/10.1017/9781108284646.020

Bernstein, Steven. 2004. Legitimacy in Global Environmental Governance. *Journal of International Law and International Relations* 1 (1–2): 139–166.

Bertram, Daniel. 2021. Transnational Experts Wanted: Nigerian Oil Spills Before the Dutch Courts. *Journal of Environmental Law* 33 (2): 423–435. https://doi.org/10.1093/jel/eqab008

Blattner, Charlotte E. 2019. *Protecting Animals Within and Across Borders: Extraterritorial Jurisdiction and the Challenges of Globalization*. Oxford, UK: Oxford University Press. https://doi.org/10.1093/oso/9780190948313.001.0001

Bodansky, Daniel. 2000. What's So Bad About Unilateral Action to Protect the Environment? *European Journal of International Law* 11 (2): 339–347. https://doi.org/10.1093/ejil/11.2.339

Bodansky, Daniel. 2012. Legitimacy. In *The Oxford Handbook of International Environmental Law*, edited by Daniel Bodansky, Jutta Brunnée, and Ellen Hey. Oxford, UK: Oxford University Press.

Bonnitcha, Jonathan, and Robert McCorquodale. 2017. The Concept of "Due Diligence" in the UN Guiding Principles on Business and Human Rights. *European Journal of International Law* 28 (3): 899–919. https://doi.org/10.1093/ejil/chx042

Bradshaw, Carrie. 2020. Corporate Liability for Toxic Torts Abroad: Vedanta v Lungowe in the Supreme Court. *Journal of Environmental Law* 32 (1): 139–150. https://doi.org/10.1093/jel/eqaa005

Bright, Claire. 2020. Creating a Legislative Level Playing Field in Business and Human Rights at the European Level: Is the French Duty of Vigilance Law the Way

Forward? Working paper, European University Institute. Available at: https://cadmus.eui.eu//handle/1814/65957, last accessed December 10, 2021.

Bueno, Nicolas, and Claire Bright. 2020. Implementing Human Rights Due Diligence Through Corporate Civil Liability. *International and Comparative Law Quarterly* 69 (4): 789–818. https://doi.org/10.1017/S0020589320000305

Burgers, Laura. 2020. Should Judges Make Climate Change Law? *Transnational Environmental Law* 9 (1): 55–75. https://doi.org/10.1017/S2047102519000360

Colón-Ríos, Joel. 2014. Constituent Power, the Rights of Nature, and Universal Jurisdiction. *McGill Law Journal/Revue de Droit de McGill* 60 (1): 127–172. https://doi.org/10.7202/1027721ar

Cossart, Sandra, Jérôme Chaplier, and Tiphaine Beau de Lomenie. 2017. The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All. *Business and Human Rights Journal* 2 (2): 317–323. https://doi.org/10.1017/bhj.2017.14

Davoise, Marie. 2020. Business, Armed Conflict, and Protection of the Environment: What Avenues for Corporate Accountability? *Goettingen Journal of International Law* 10 (1): 151–201.

Dorsch, Marcel J., and Christian Flachsland. 2017. A Polycentric Approach to Global Climate Governance. *Global Environmental Politics* 17 (2): 45–64. https://doi.org/10.1162/GLEP_a_00400

Ellena, Silvia. 2021. NGOs Ask von der Leyen to Intervene on Delayed Corporate Human Rights Law. *Euractiv*, December 9. Available at: https://www.euractiv.com/section/economy-jobs/news/ngos-ask-von-der-leyen-to-intervene-on-delayed-corporate-human-rights-law/, last accessed 21 January 2022.

Enneking, Liesbeth F. H. 2019. Transnational Human Rights and Environmental Litigation: A Study of Case Law Relating to Shell in Nigeria. In *Human Rights in the Extractive Industries: Transparency, Participation, Resistance*, edited by Isabel Feichtner, Markus Krajewski, and Ricarda Roesch, 511–551. Cham, Switzerland: Springer. https://doi.org/10.1007/978-3-030-11382-7_17

European Parliament. 2020. Draft Report with Recommendations to the Commission on Corporate Due Diligence and Corporate Accountability. Report 2020/2129(INL). Available at: https://www.europarl.europa.eu/RegData/commissions/juri/projet_rapport/2020/657191/JURI_PR(2020)657191_EN.pdf, last accessed December 10, 2021.

Ewing, Benjamin, and Douglas Kysar. 2011. Prods and Pleas: Limited Government in an Era of Unlimited Harm. *Yale Law Journal* 121 (2): 350–424.

Fisher, Elizabeth, Bettina Lange, and Eloise Scotford. 2019. *Environmental Law: Text, Cases and Materials*. 2nd ed. Oxford, UK: Oxford University Press. https://doi.org/10.1093/he/9780198811077.001.0001

Folke, Carl, Henrik Österblom, Jean-Baptiste Jouffray, Eric F. Lambin, W. Neil Adger, Marten Scheffer, Beatrice I. Crona, Magnus Nyström, Simon A. Levin, Stephen R. Carpenter, John M. Anderies, Stuart Chapin III, Anne-Sophie Crépin, Alice Dauriach, Victor Galaz, Line J. Gordon, Nils Kautsky, Brian H. Walker, James R. Watson, James Wilen, and Aart de Zeeuw. 2019. Transnational Corporations and the Challenge of Biosphere Stewardship. *Nature Ecology and Evolution* 3 (10): 1396–1403. https://doi.org/10.1038/s41559-019-0978-z, PubMed: 31527729

Gillies, Lorna. 2012. Creation of Subsidiary Jurisdiction Rules in the Recast of Brussels I: Back to the Drawing Board? *Journal of Private International Law* 8 (3): 489–512. https://doi.org/10.5235/JPRIVINTL.8.3.489

Heede, Richard. 2014. Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854–2010. *Climatic Change* 122 (1): 229–241. https://doi.org/10.1007/s10584-013-0986-y

Hösli, Andreas. 2021. Milieudefensie et al. v. Shell: A Tipping Point in Climate Change Litigation Against Corporations? *Climate Law* 11 (2): 195–209. https://doi.org/10.1163/18786561-11020005

Hughes, Alice C. 2017. Understanding the Drivers of Southeast Asian Biodiversity Loss. *Ecosphere* 8 (1): e01624. https://doi.org/10.1002/ecs2.1624

Jägers, Nicola, and Marie-Jose van der Heijden. 2008. Corporate Human Rights Violations: The Feasibility of Civil Recourse in the Netherlands. *Brooklyn Journal of International Law* 33 (3): 833–870.

Karkkainen, Bradley C. 2004. Post-sovereign Environmental Governance. *Global Environmental Politics* 4 (1): 72–96. https://doi.org/10.1162/152638004773730220

Kirshner, Jodie A. 2012. Why Is the U.S. Abdicating the Policing of Multinational Corporations to Europe: Extraterritoriality, Sovereignty, and the Alien Tort Statute. *Berkeley Journal of International Law* 30 (2): 259–302.

Kotzé, Louis J., and Alexander R. Paterson. 2009. *The Role of the Judiciary in Environmental Governance: Comparative Perspectives*. Alphen aan den Rijn, Netherlands: Kluwer Law.

Kramarz, Teresa, David Cosolo, and Alejandro Rossi. 2017. Judicialization of Environmental Policy and the Crisis of Democratic Accountability. *Review of Policy Research* 34 (1): 31–49. https://doi.org/10.1111/ropr.12218

Krebs, David. 2021. Immerhin ein Kompromiss. *Verfassungsblog*, February 21. Available at: https://verfassungsblog.de/immerhin-ein-kompromiss/, last accessed December 10, 2021.

Kruger, Thalia. 2021. European Parliament Resolution on Corporate Due Diligence and Corporate Accountability. *Conflict of Laws*, April 14. Available at: https://conflictoflaws.net/2021/european-parliament-resolution-on-corporate-due-diligence-and-corporate-accountability/, last accessed December 10, 2021.

Kuner, Christopher. 2019. The Internet and the Global Reach of EU Law. In *EU Law Beyond EU Borders: The Extraterritorial Reach of EU Law*, edited by Marise Cremona and Joanne Scott. Oxford, UK: Oxford University Press. https://doi.org/10.1093/oso/9780198842170.003.0004

Leigh Day. 2021. Legal Claim by More than 2,500 Zambian Villagers in a Case Against Vedanta Resources Limited. January 19. Available at: https://www.leighday.co.uk/latest-updates/news/2021-news/legal-claim-by-more-than-2-500-zambian-villagers-in-a-case-against-vedanta-resources-limited/, last accessed December 10, 2021.

Lequet, Pierre. 2017. Loi "devoir de vigilance": de l'intérêt des normes de management des risques. *Revue juridique de l'environnement* 42 (4): 705–725.

Lindsay, Rae, and Thomas Voland. 2021. European Parliament Adopts Position on Corporate Due Diligence and Accountability, Now Hands Baton to Commission. *Clifford Chance Business and Human Rights Insights*, March 11. Available at: https://www.cliffordchance.com/content/cliffordchance/insights/resources/blogs/business-and-human-rights-insights/european-parliament-adopts-position-on-corporate.html, last accessed December 10, 2021.

Liu, Chelsea. 2020. Judge Political Affiliation and Impacts of Corporate Environmental Litigation. *Journal of Corporate Finance* 64: 101670. https://doi.org/10.1016/j.jcorpfin.2020.101670

Mackie, Colin. 2021. Due Diligence in Global Value Chains: Conceptualizing "Adverse Environmental Impact." *Review of European, Comparative, and International Environmental Law* 30 (3): 297–312. https://doi.org/10.1111/reel.12406

Mason, Michael. 2008. The Governance of Transnational Environmental Harm: Addressing New Modes of Accountability/Responsibility. *Global Environmental Politics* 8 (3): 8–24. https://doi.org/10.1162/glep.2008.8.3.8

McCann, Michael. 2008. Litigation and Legal Mobilization. In *The Oxford Handbook of Law and Politics*, edited by Gregory A. Caldeira, R. Daniel Kelemen, and Keith E. Whittington, 522–540. Oxford, UK: Oxford University Press.

McVeigh, Karen. 2020. Coca-Cola, Pepsi and Nestlé Named Top Plastic Polluters for Third Year in a Row. *The Guardian*, December 7. Available at: https://www.theguardian.com/environment/2020/dec/07/coca-cola-pepsi-and-nestle-named-top-plastic-polluters-for-third-year-in-a-row, last accessed December 10, 2021.

Morgera, Elisa. 2020. *Corporate Environmental Accountability in International Law*. 2nd ed. Oxford, UK: Oxford University Press. https://doi.org/10.1093/oso/9780198738046.001.0001

Nestor, Peter, and Jonathan Drimmer. 2019. How Companies Should Respond to the Vedanta Ruling. *BSR Blog*, April 30. Available at: https://www.bsr.org/en/our-insights/blog-view/how-companies-should-respond-to-the-vedanta-ruling, last accessed December 10, 2021.

Nicholson, Simon, and Daniel Chong. 2011. Jumping on the Human Rights Bandwagon: How Rights-Based Linkages Can Refocus Climate Politics. *Global Environmental Politics* 11 (3): 121–136. https://doi.org/10.1162/GLEP_a_00072

Nielsen, Peter Arnt. 2013. The New Brussels I Regulation. *Common Market Law Review* 50 (2): 503–528.

Ostrom, Elinor. 2010. Polycentric Systems for Coping with Collective Action and Global Environmental Change. *Global Environmental Change* 20 (4): 550–557. https://doi.org/10.1016/j.gloenvcha.2010.07.004

Peltier, Elian, and Claire Moses. 2021. A Victory for Farmers in a David-and-Goliath Environmental Case. *New York Times*, January 29. Available at: https://www.nytimes.com/2021/01/29/world/europe/shell-nigeria-oil-spills.html, last accessed December 10, 2021.

Prakash, Aseem. 2000. *Greening the Firm: The Politics of Corporate Environmentalism*. Cambridge, UK: Cambridge University Press. https://doi.org/10.1017/CBO9780511491863

Putnam, Tonya L. 2016. *Courts Without Borders: Law, Politics, and US Extraterritoriality*. Cambridge, UK: Cambridge University Press. https://doi.org/10.1017/CBO9781316480304

Robinson, Nicholas A. 2018. Environmental Law: Is an Obligation Erga Omnes Emerging? Available at: https://www.iucn.org/sites/dev/files/content/documents/2018/environmental_law_is_an_obligation_erga_omnes_emerging_interamcthradvisoryopinionjune2018.pdf, last accessed December 10, 2021.

Roorda, Lucas, and Cedric Ryngaert. 2016. Business and Human Rights Litigation in Europe and Canada: The Promises of Forum of Necessity Jurisdiction. *Rabels Zeitschrift für Ausländisches und Internationales Privatrecht/Rabel Journal of Comparative and International Private Law* 80 (4): 783–816. https://doi.org/10.1628/003372516X14697686262600

Roorda, Lucas, and Cedric Ryngaert. 2020. Public International Law Constraints on the Exercise of Adjudicatory Jurisdiction in Civil Matters. In *Universal Civil Jurisdiction: Which Way Forward?*, edited by Serena Forlati and Pietro Franzina, 74–98. Leiden, Netherlands: Brill Nijhoff. https://doi.org/10.1163/9789004408579_006

Ryngaert, Cedric. 2017. Territory in the Law of Jurisdiction: Imagining Alternatives. In *Netherlands Yearbook of International Law 2016: The Changing Nature of Territoriality in International Law*, edited by Martin Kuijer and Wouter Werner, 49–82. The Hague, Netherlands: T. M. C. Asser Press. https://doi.org/10.1007/978-94-6265-207-1_3

Schilling-Vacaflor, Almut. 2021. Putting the French Duty of Vigilance Law in Context: Towards Corporate Accountability for Human Rights Violations in the Global South? *Human Rights Review* 22 (1): 109–127. https://doi.org/10.1007/s12142-020-00607-9

Schrempf-Stirling, Judith, and Florian Wettstein. 2017. Beyond Guilty Verdicts: Human Rights Litigation and Its Impact on Corporations' Human Rights Policies. *Journal of Business Ethics* 145 (3): 545–562. https://doi.org/10.1007/s10551-015-2889-5

Shapiro, Martin, and Alec Stone Sweet. 2002. *On Law, Politics, and Judicialization*. Oxford, UK: Oxford University Press. https://doi.org/10.1093/0199256489.001.0001

Van Ho, Tara. 2020. Vedanta Resources Plc and Another v. Lungowe and Others. *American Journal of International Law* 114 (1): 110–116. https://doi.org/10.1017/ajil.2019.77

van Loon, Hans. 2018. Principles and Building Blocks for a Global Legal Framework for Transnational Civil Litigation in Environmental Matters. *Uniform Law Review* 23 (2): 298–318. https://doi.org/10.1093/ulr/uny020

Vogler, John. 2003. Taking Institutions Seriously: How Regime Analysis Can Be Relevant to Multilevel Environmental Governance. *Global Environmental Politics* 3 (2): 25–39. https://doi.org/10.1162/152638003322068191

Warnock, Ceri. 2017. Reconceptualising Specialist Environment Courts and Tribunals. *Legal Studies* 37 (3): 391–417. https://doi.org/10.1111/lest.12161

Warnock, Ceri. 2020. *Environmental Courts and Tribunals: Powers, Integrity and the Search for Legitimacy*. Oxford, UK: Hart. https://doi.org/10.5040/9781509940097

Weber, Johannes. 2011. Universal Jurisdiction and Third States in the Reform of the Brussels I Regulation. *Rabels Zeitschrift für Ausländisches und Internationales Privatrecht/Rabel Journal of Comparative and International Private Law* 75 (3): 619–644. https://doi.org/10.1628/003372511796351340

Weller, Matthias, and Alexia Pato. 2018. Local Parents as "Anchor Defendants" in European Courts for Claims Against Their Foreign Subsidiaries in Human Rights and Environmental Damages Litigation: Recent Case Law and Legislative Trends. *Uniform Law Review* 23 (2): 397–417. https://doi.org/10.1093/ulr/uny018

Whytock, Christopher A. 2009. Domestic Courts and Global Governance. *Tulane Law Review* 84 (1): 67–124.

Wilde-Ramsing, Joseph, Manon Wolfkamp, and David Ollivier de Leth. 2021. The Next Step for Corporate Accountability in the Netherlands: The New Bill for Responsible and Sustainable International Business Conduct. *Nova BHRE Blog*, March 18. Available at: https://novabhre.novalaw.unl.pt/new-bill-for-responsible-sustainable-international-business-conduct-netherlands/, last accessed December 10, 2021.

Zemans, Frances Kahn. 1983. Legal Mobilization: The Neglected Role of the Law in the Political System. *American Political Science Review* 77 (3): 690–703. https://doi.org/10.2307/1957268