QUASI-SUBJECTS OF INTERNATIONAL LAW: MULTINATIONAL CORPORATIONS BETWEEN RIGHTS AND RESPONSIBILITIES

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ABSTRACT:

Multinational Corporations (MNCs) have emerged as dominant actors in the global order, exercising economic power that frequently rivals that of sovereign states. Their role within international law, however, remains conceptually unsettled. Traditionally, international legal personality was confined to states and, later, international organisations. Yet, the reality of MNCs' access to treaty protections, arbitration mechanisms, and global regulatory frameworks suggests that they occupy a liminal space — that of quasi-subjects of international law. This paper interrogates the dual dimensions of this status: the rights that MNCs increasingly assert under investment treaties and dispute settlement mechanisms, and the responsibilities that international law has struggled to impose with equal force. Drawing upon jurisprudence from international arbitration, human rights litigation, and domestic courts, as well as instruments such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines, the study advances the thesis that a rebalancing is imperative. Case studies — ranging from Shell's complicity in human rights abuses in Nigeria, Apple's tax strategies in the European Union, to Facebook's role in data privacy and electoral manipulation — demonstrate the inadequacies of current frameworks. While corporations can be beneficiaries of international law, their obligations remain fragmented, non-binding, and inconsistently enforced. The analysis contends that recognising MNCs as quasi-subjects is no longer optional but necessary; however, such recognition must be accompanied by binding accountability regimes to prevent the legitimisation of unchecked corporate power. The paper ultimately calls for a hybrid model combining hard and soft law, drawing upon emerging instruments such as the EU Corporate Sustainability Due Diligence Directive and ongoing negotiations for a UN Binding Treaty on Business and Human Rights.

Synopsis:

The emergence of multinational corporations (MNCs) as pivotal players in the global economy has challenged orthodox conceptions of international legal personality. Historically, the domain of international law was the preserve of sovereign states, with individuals and international organisations only gradually recognised as subjects. However, the reality of contemporary transnational governance reveals that MNCs exercise unparalleled economic and political influence, commanding revenues greater than the GDP of many states and shaping regulatory, labour, and environmental landscapes across jurisdictions. Despite this, their formal legal status remains ambiguous, occupying what has aptly been described as the position of quasi-subjects of international law.

The present research aims to critically examine this paradox by analysing the rights that MNCs have successfully claimed under international legal frameworks, juxtaposed against the fragmented and often voluntary responsibilities that govern their conduct. On one hand, corporations benefit from robust protections under bilateral investment treaties, international arbitration mechanisms, and property rights regimes. On the other, attempts to hold them accountable for human rights violations, environmental degradation, or exploitative labour practices are often limited to soft law instruments such as the UN Guiding Principles on Business and Human Rights or voluntary corporate social responsibility (CSR) codes. The disparity creates a legal asymmetry: MNCs are shielded by rights enforceable in international fora, yet their duties remain elusive, diluted, or unenforceable.

The paper adopts a doctrinal and analytical methodology, drawing on primary sources such as treaties, arbitral awards, and judicial decisions, complemented by secondary scholarship from leading international law jurists. Case studies form a central part of the analysis, including:

- Shell in Nigeria and its alleged complicity in environmental harm and human rights abuses;
- Union Carbide/Bhopal Gas Tragedy, as an illustration of corporate evasion of accountability;
- Apple and the European Commission, examining tax avoidance strategies within international economic law; and

- Meta (Facebook), highlighting issues of data sovereignty, misinformation, and democratic integrity.

Through these case studies, the research interrogates how international law has addressed — or failed to address — corporate misconduct, while simultaneously providing corporations with enforceable rights in investment and trade law. The paper further engages with ongoing developments, such as the European Union's Corporate Sustainability Due Diligence Directive and the proposed UN Binding Treaty on Business and Human Rights, to assess whether a coherent framework of responsibilities is beginning to emerge.

The central argument advanced is that MNCs must be formally acknowledged as quasi-subjects of international law — not merely as beneficiaries of rights, but as bearers of enforceable obligations. This recognition is essential to correct the structural imbalance between rights and responsibilities and to prevent the consolidation of unaccountable corporate power. Ultimately, the research advocates for a hybrid framework of hard and soft law, blending state responsibility, treaty-based obligations, and transnational regulatory cooperation.

The structure of the paper follows a logical progression: an introduction to the concept of international legal personality; an analysis of the evolution of quasi-subjects; a critical examination of MNCs' rights; a parallel exploration of their responsibilities; detailed case studies; and, finally, a prescriptive section offering recommendations for a more balanced and accountable legal order.

Hypothesis:

The research is premised on the hypothesis that multinational corporations (MNCs), though not full subjects of international law, function as quasi-subjects with both rights and emerging responsibilities, necessitating a recalibration of their legal status.

The hypothesis arises from the observable asymmetry within the international legal framework: while MNCs have been granted substantive rights under investment treaties, trade agreements, and arbitral regimes, their corresponding obligations — particularly in areas of human rights, environmental stewardship, and labour standards — remain fragmented, non-binding, and inconsistently enforced. This imbalance allows MNCs to invoke international law when seeking to protect their commercial interests, yet evade liability when implicated in harmful

conduct.

For instance, arbitral awards under the auspices of the International Centre for Settlement of Investment Disputes (ICSID) have consistently upheld corporate rights against host states, often awarding millions in damages. In contrast, victims of corporate misconduct, such as communities affected by environmental degradation in the Niger Delta or survivors of the Bhopal Gas Tragedy, have struggled to secure justice through international or domestic mechanisms. This discrepancy illustrates a doctrinal lacuna: corporations are beneficiaries of international law but not fully accountable to it.

Accordingly, the paper hypothesises that recognising MNCs as quasi-subjects of international law is both analytically accurate and normatively imperative. Such recognition, however, cannot remain limited to the acknowledgment of rights; it must be accompanied by enforceable responsibilities, either through binding treaties, transnational judicial cooperation, or innovative regulatory regimes. Instruments like the UN Guiding Principles on Business and Human Rights and the OECD Guidelines already sketch the contours of corporate obligations, but their voluntary nature undermines their effectiveness.

The anticipated conclusion of this research is that a hybrid framework — blending hard law obligations with soft law norms, and embedding corporate accountability within both international and domestic legal systems — is essential for ensuring that MNCs contribute positively to global governance rather than undermining it. By situating MNCs firmly within the category of quasi-subjects, international law can evolve to reflect contemporary realities of power and responsibility.

I. Introduction to International Legal Personality:

The cornerstone of international law is the concept of international legal personality, which denotes the capacity of an entity to possess rights and obligations under international law and the competence to enforce such rights and obligations through recognised legal processes. Traditionally, this domain was exclusively reserved for sovereign states, reflecting the statist foundation of international law developed in the post-Westphalian order. States were understood to be the primary and, for a long time, the sole bearers of international rights and duties, capable of entering treaties, maintaining diplomatic relations, and enforcing compliance through international institutions.

Over time, however, the rigid boundaries of international legal personality were tested by the growing involvement of non-state actors in transnational affairs. International organisations, individuals, and, more controversially, multinational corporations (MNCs), have come to occupy increasingly visible roles within the international legal order. The expansion of personality beyond states demonstrates a gradual shift from a strictly intergovernmental system toward a more pluralistic one, where diverse actors wield significant influence.

Evolution of International Legal Personality:

The recognition of new actors has historically been gradual and often contested. International organisations were among the first to be granted partial legal personality. In the landmark Reparations for Injuries Suffered in the Service of the United Nations advisory opinion, the International Court of Justice (ICJ) acknowledged that the United Nations possessed international personality, at least to the extent necessary to perform its functions.[1]This marked a departure from the exclusive state-centric model, affirming that international law could evolve to accommodate entities other than states.

Individuals also gained recognition as subjects of international law, particularly through the development of international criminal law. The Nuremberg and Tokyo Tribunals established the principle that individuals could bear direct responsibility for violations of international norms, such as crimes against humanity and war crimes.[2] This individualisation of responsibility was further solidified by the creation of the International Criminal Court (ICC) under the Rome Statute.

The trajectory of this expansion raises critical questions about MNCs: although they exercise unprecedented economic and political power, their status under international law remains unsettled. Unlike international organisations or individuals, MNCs are not explicitly recognised as subjects of international law. Nonetheless, their participation in treaty arbitration, transnational governance, and global supply chain regulation suggests they enjoy elements of legal personality, albeit incomplete and asymmetrical.

Criteria for International Legal Personality:

[1] Reparations for Injuries Suffered in the Service of the United Nations (Advisory Opinion) [1949] ICJ Rep 174.
[2] Trial of the Major War Criminals before the International Military Tribunal (Nuremberg Judgment) (1947) 41 AJIL 172.

Legal scholarship has identified several criteria for assessing international legal personality:

1. Capacity to Bear Rights and Duties – Entities must be capable of holding rights and being subject to obligations under international law.

2. Capacity to Bring Claims – Entities must have standing before international tribunals or dispute settlement mechanisms.

3. Participation in Treaty-Making or Norm Creation – Entities should contribute to the formation or implementation of international norms.

4. Recognition by States and International Law – Personality is often dependent on the willingness of states and international institutions to recognise and accept new actors.[3]

MNCs partially satisfy these criteria. They can bring claims against states through investment arbitration (e.g., under the ICSID Convention). They hold enforceable rights under bilateral investment treaties (BITs), particularly in relation to property and non-discrimination protections. Yet, their responsibilities under international law remain fragmented, often governed by soft law principles rather than binding obligations.

The Problematic Position of MNCs:

MNCs occupy what can be described as a grey zone: they are neither fully excluded from the realm of international law nor entirely incorporated within it. Their ability to sue states through arbitral mechanisms indicates an active participation in international dispute settlement, a privilege traditionally reserved for states and international organisations. Yet, when MNCs commit transnational harms — such as environmental destruction, human rights violations, or complicity in armed conflict — international law provides limited avenues for accountability.

This asymmetry has led scholars to describe MNCs as quasi-subjects of international law. They are beneficiaries of rights but only partial bearers of obligations. The debate surrounding their recognition has profound implications for global governance, particularly in an era where corporate revenues surpass national budgets and corporate decisions impact fundamental human rights.

[3] Malcolm N Shaw, International Law (9th edn, CUP 2021) 195–200.

II. The Concept of Quasi-Subjects in International Law:

The term quasi-subjects in international law refers to entities that possess a limited or derivative form of international legal personality. Unlike fully recognised subjects — states or international organisations — quasi-subjects can exercise certain rights under international law but lack comprehensive obligations or recognition across the board. Multinational corporations (MNCs) exemplify this category: they operate transnationally, wield economic and political influence, and are increasingly involved in dispute resolution mechanisms, yet they are not fully accountable under binding international norms.

Origins and Theoretical Basis:

The concept of quasi-subjectivity emerges from the recognition that international law must adapt to global realities where non-state actors play influential roles. As legal scholars such as James Crawford and Malcolm Shaw note, the law's capacity to confer limited rights and obligations allows international governance to engage with entities outside the traditional state framework without fully equating them to sovereign powers.[4] Quasi-subjectivity is thus a pragmatic compromise: it enables MNCs to participate in legal frameworks where their rights are significant — such as investment protection — while maintaining the core principle that ultimate legal accountability rests with states and recognised international organisations.

This idea can also be traced to developments in international arbitration and economic law. Bilateral investment treaties (BITs) and multilateral agreements provide MNCs with enforceable rights, including:

- Expropriation protection, preventing states from nationalising corporate assets without compensation.
- Fair and equitable treatment (FET) standards, ensuring non-discrimination and due process.
- Access to international arbitration, particularly through ICSID or UNCITRAL rules.2[5]

[4] James Crawford, Brownlie's Principles of Public International Law (9th edn, OUP 2019) 158–160.
[5] Malcolm N Shaw, International Law (9th edn, CUP 2021) 198–200.

These rights afford MNCs protections akin to those of states in certain contexts, even though they remain legally subordinate in others.

MNCs as Quasi-Subjects:

MNCs exemplify quasi-subjects because their international rights are asymmetrically developed. On the one hand, they enjoy enforceable claims under investment law, enabling them to challenge host states for regulatory measures that allegedly impede corporate profits. Landmark cases illustrate this:

- In Metalclad v Mexico (2000), the tribunal awarded compensation to the corporation for the Mexican government's refusal to grant environmental permits, highlighting MNCs' access to rights without corresponding responsibilities.[6]

- In Urbaser v Argentina (2016), the ICSID tribunal recognised the capacity of a private water company to participate in an international claim, reinforcing the quasi-subjective status of corporations within investment law frameworks.[7]

On the other hand, the obligations of MNCs, particularly in areas like human rights or environmental protection, remain largely non-binding. International law offers only fragmented accountability mechanisms, mostly through soft law instruments such as the UN Guiding Principles on Business and Human Rights (UNGPs) or the OECD Guidelines for Multinational Enterprises.[8]These instruments urge corporations to respect human rights, avoid environmental degradation, and ensure labour rights compliance, but lack enforceable remedies or universal jurisdiction.

Legal and Practical Implications:

The quasi-subjective status of MNCs creates both opportunities and challenges. Legally, it permits corporations to access international remedies and investment protections, effectively granting them power akin to state actors in certain domains. Practically, it enables MNCs to exert influence over domestic and global policy, leveraging economic clout to shape regulatory

[6] Metalclad Corporation v United Mexican States (ICSID Case No ARB(AF)/97/1) Award (30 August 2000).
[7] Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v The Argentine Republic (ICSID Case No ARB/07/26) Award (8 December 2016).
[8] UN Guiding Principles on Business and Human Rights (UN Doc A/HRC/17/31, 2011); OECD Guidelines for Multinational Enterprises (2011).

frameworks in ways that favour corporate interests.[9]

However, this asymmetry produces systemic concerns: when corporations exercise rights without equivalent responsibilities, it undermines principles of accountability, justice, and equity in international law. Communities affected by corporate activity often lack effective legal recourse, particularly in developing countries where domestic courts may be underresourced or influenced by corporate interests. High-profile cases, such as Kiobel v Royal Dutch Petroleum (Nigeria) and the Bhopal Gas Tragedy litigation, illustrate how victims face barriers to redress while corporations defend their investments through international legal mechanisms.[10]

Critiques and Scholarly Debate:

The recognition of quasi-subjectivity is contested. Critics argue that it risks legitimising corporate power without sufficient checks, potentially eroding state sovereignty and undermining global governance norms. Advocates, however, contend that quasi-subjectivity is an accurate reflection of global realities: MNCs are key actors whose economic influence demands recognition in international law, and excluding them entirely would be impractical and normatively unsustainable.[11]

Quasi-subjectivity thus represents a legal compromise: corporations gain rights in specific domains, but full accountability remains aspirational. The challenge for contemporary international law is to bridge the gap, transforming quasi-subjectivity into a balanced framework where MNCs exercise rights alongside enforceable duties.

III. Evolution of Corporate Rights under International Law:

The recognition of corporate rights under international law has evolved significantly over the past century, driven primarily by the expansion of international economic governance and the proliferation of multinational enterprises. While MNCs do not enjoy full international legal personality akin to states, they have gradually acquired enforceable rights through bilateral investment treaties (BITs), multilateral trade agreements, and international arbitration

[9] Peter Muchlinski, Multinational Enterprises and the Law (2nd edn, OUP 2007) 101–110.
[10] Kiobel v Royal Dutch Petroleum Co 569 US 108 (2013); Union Carbide Corporation v Union of India [1991] AIR SC 10.
[11] Surya Deva, 'Regulating Transnational Corporations: Human Rights, Accountability, and Corporate Responsibility' (2012) 28 Northwestern Journal of International Human Rights 1, 14–20.

mechanisms. These rights reflect the increasing integration of corporations into the international legal order and underscore their quasi-subjective status.

Early Foundations and Historical Context:

Historically, corporations were considered purely domestic legal entities with no standing under international law. Their interactions with foreign states were mediated entirely through the state of incorporation, which alone could espouse claims on their behalf. However, postWorld War II economic reconstruction, coupled with the rise of global trade and investment, necessitated the extension of legal protections directly to MNCs. The ICSID Convention of 1965 marked a seminal development by granting corporations the right to initiate arbitration against host states under investment agreements.[12]

BITs, first widely concluded in the 1950s and 1960s, codified the protection of corporate investments across borders. Key rights typically included:

- Protection against expropriation without prompt and adequate compensation;
- Fair and equitable treatment standards;
- National treatment and most-favoured-nation clauses ensuring non-discrimination;
- Access to international arbitration rather than reliance solely on domestic courts.[13]

These instruments effectively allowed corporations to circumvent potential state biases and secure international enforcement of their economic interests.

Investment Arbitration and Enforcement of Rights:

International investment arbitration has become the principal mechanism through which corporate rights are enforced. ICSID tribunals, under the auspices of the World Bank, provide a neutral forum where MNCs can pursue claims against sovereign states. Landmark cases illustrate the practical implications:

[12] ICSID Convention, opened for signature 18 March 1965, 575 UNTS 159 (entered into force 14 October 1966).
[13] UNCTAD, Bilateral Investment Treaties 1995–2006 (UNCTAD Series on International Investment Agreements, 2007) 14–18.

- In Metalclad v Mexico (2000), the tribunal found that Mexico's denial of permits to a hazardous waste facility violated the Fair and Equitable Treatment standard under the Mexico–US BIT, awarding damages to Metalclad.[14]

- In Tecmed v Mexico (2003), the tribunal reinforced the principle that states must ensure stable and predictable legal frameworks for foreign investors, recognising a substantive right of corporations to non-arbitrary state regulation.[15]

- Urbaser v Argentina (2016) further affirmed the standing of private corporations in investment disputes, solidifying the practical rights of MNCs to access international adjudication.[16]

Such cases demonstrate that MNCs can invoke international law proactively to protect financial interests, irrespective of domestic legal environments. The quasi-subjective status is therefore operationalised: corporations wield rights in international fora but remain constrained in other domains, particularly regarding duties to affected communities.

Expansion under Multilateral Frameworks:

Beyond BITs, MNCs have also gained rights under multilateral trade and investment frameworks. The World Trade Organization (WTO), while not conferring direct personality to corporations, establishes standards that indirectly benefit MNCs by obliging member states to maintain predictable trade regimes.[17] Similarly, regional trade agreements, such as NAFTA (now USMCA), explicitly grant corporations access to investor-state dispute settlement mechanisms, further embedding their quasi-subject status.

The Role of Soft Law in Reinforcing Rights:

Soft law instruments, while primarily designed to articulate responsibilities, have also facilitated corporate rights by codifying expected standards for dispute resolution, governance, and transnational operations. The OECD Guidelines for Multinational Enterprises and UN

[14] Metalclad Corporation v United Mexican States (ICSID Case No ARB(AF)/97/1) Award (30 August 2000).
[15] Tecnicas Medioambientales Tecmed S.A. v United Mexican States (ICSID Case No ARB(AF)/00/2) Award (29 May 2003).
[16] Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v The Argentine Republic (ICSID Case No ARB/07/26) Award (8 December 2016).
[17] Marrakesh Agreement Establishing the World Trade Organization, opened for signature 15 April 1994, 1867 UNTS 154 (entered into force 1 January 1995).

principles indirectly support corporations' ability to navigate regulatory environments and reduce legal uncertainty.[18]

Critiques and Limitations:

Despite these developments, the recognition of corporate rights under international law remains contested. Critics argue that this asymmetry — rights without enforceable duties — entrenches global inequalities and undermines the legitimacy of international law. While MNCs may invoke BITs to challenge environmental regulations, labour reforms, or public health measures, affected communities often lack comparable access to international remedies.[19] The quasisubjective framework therefore raises fundamental questions about the balance between private economic power and public regulatory authority.

IV. Corporate Responsibilities — Human Rights, Environment, and Labour:

While multinational corporations (MNCs) have secured robust rights under international law, their corresponding responsibilities — particularly in the realms of human rights, environmental protection, and labour standards — remain largely fragmented and non-binding. The notion of corporate responsibility under international law has evolved incrementally, reflecting both normative aspirations and practical constraints imposed by the quasi-subjective status of MNCs.

Evolution of Corporate Accountability:

Corporate accountability gained prominence in the post-World War II era, beginning with the Nuremberg Trials, which held industrialists complicit in war crimes accountable.[20] In the decades that followed, attention shifted to transnational corporate activity in the Global South, particularly the activities of extractive industries, pharmaceutical companies, and agribusinesses. Early attempts to regulate corporate conduct globally, such as the UN Code of Conduct on Transnational Corporations (1970s), were largely aspirational and lacked

[18] OECD Guidelines for Multinational Enterprises (2011).
[19] Surya Deva, 'Regulating Transnational Corporations: Human Rights, Accountability, and Corporate Responsibility' (2012) 28 Northwestern Journal of International Human Rights 1, 14–20.
[20] Trial of the Major War Criminals before the International Military Tribunal (Nuremberg Judgment) (1947) 41 AJIL 172.

enforcement mechanisms.[21]

The modern framework of corporate responsibility coalesces around the UN Guiding Principles on Business and Human Rights (UNGPs, 2011) and the OECD Guidelines for Multinational Enterprises.[22] The UNGPs articulate three pillars:

1. The state duty to protect human rights;
2. The corporate responsibility to respect human rights; and
3. Access to remedies for victims of corporate abuse.

Despite these guidelines, compliance remains largely voluntary, leaving significant gaps in accountability. The quasi-subjective status of MNCs allows them to benefit from enforceable rights while obligations are imposed only through non-binding instruments, creating a legal asymmetry that continues to challenge international law.

Human Rights Responsibilities:

MNCs are increasingly implicated in human rights violations, particularly in conflict-affected or governance-poor regions. Cases such as Kiobel v Royal Dutch Petroleum highlight the difficulty of holding corporations accountable under the Alien Tort Statute (ATS) in the United States.[23] Allegations against Shell in the Niger Delta involve complicity in extrajudicial killings, environmental degradation, and forced displacement, illustrating the real-world impact of corporate actions on vulnerable populations.[24] Similarly, in Vedanta Resources plc v

Lungowe (2019, UK Supreme Court), communities in Zambia successfully brought claims against a parent corporation for environmental harm caused by its subsidiary, representing a rare instance of corporate accountability in domestic courts.[25]

Environmental Responsibilities:

Environmental accountability is a central dimension of corporate responsibility. The Bhopal

[21] UN Code of Conduct on Transnational Corporations, UN Doc A/34/583 (1976).
[22] UN Guiding Principles on Business and Human Rights (UN Doc A/HRC/17/31, 2011); OECD Guidelines for Multinational Enterprises (2011).
[23] Kiobel v Royal Dutch Petroleum Co 569 US 108 (2013).
[24] Peter Muchlinski, Multinational Enterprises and the Law (2nd edn, OUP 2007) 101–110.
[25] Vedanta Resources plc v Lungowe [2019] UKSC 20.

Gas Tragedy (1984), caused by Union Carbide's pesticide plant in India, remains emblematic of the catastrophic consequences of inadequate regulatory oversight and corporate

negligence.[26] More recently, climate litigation against Shell (Milieudefensie v Royal Dutch Shell, 2021) has highlighted the role of courts in imposing obligations on corporations to reduce greenhouse gas emissions, signalling a gradual evolution toward enforceable environmental duties.[27]

Labour and Social Responsibilities:

MNCs' responsibilities also encompass labour rights, including fair wages, safe working conditions, and freedom of association. Global supply chains have exposed systemic issues, such as sweatshop conditions in apparel manufacturing or hazardous conditions in electronic assembly plants. While instruments such as the OECD Guidelines provide frameworks for corporate due diligence, the enforcement largely depends on domestic mechanisms and voluntary corporate compliance.[28]

Soft Law as a Mechanism for Responsibility:

Soft law instruments, including the UNGPs, OECD Guidelines, and the ILO Tripartite Declaration on Multinational Enterprises, play a crucial role in shaping corporate conduct.[29] These frameworks articulate expected standards and provide guidance for due diligence, reporting, and stakeholder engagement. However, their voluntary nature means that corporate adherence is inconsistent, and victims of corporate misconduct often face limited remedies.

V. Contemporary Case Studies:

The quasi-subjective status of multinational corporations (MNCs) manifests most clearly in contemporary case studies, which reveal the asymmetry between corporate rights and responsibilities. Examining real-world examples illustrates how international law, both hard and soft, interacts with corporate power, and highlights the challenges in enforcing

[26] Union Carbide Corporation v Union of India [1991] AIR SC 10.
[27] Milieudefensie et al v Royal Dutch Shell Plc (2021) C/09/571932 / HA ZA 19-379.
[28] OECD Guidelines for Multinational Enterprises (2011).
[29] ILO, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (5th edn, 2017).

accountability.

1. Shell in Nigeria

Royal Dutch Shell's operations in the Niger Delta exemplify the tension between corporate rights and responsibilities. Shell has long enjoyed legal protection under investment treaties, allowing it to operate in Nigeria and challenge regulatory interventions. However, local communities have accused Shell of environmental degradation, oil spills, and complicity in human rights abuses, including extrajudicial killings and forced displacement.[30] Despite repeated litigation in both domestic and foreign courts, achieving meaningful remedies has been challenging due to jurisdictional complexities, corporate structure, and the quasisubjective status of the corporation under international law.[31]

The case underscores the limitations of soft law instruments. While Shell has adopted corporate social responsibility policies and adheres to OECD Guidelines, these measures do not provide enforceable accountability mechanisms for affected communities, demonstrating the gap between corporate rights and responsibilities.

2. Union Carbide and the Bhopal Gas Tragedy

The 1984 Bhopal disaster, caused by a gas leak at Union Carbide's pesticide plant in India, remains a seminal example of corporate negligence with catastrophic human and environmental consequences.[32] Victims sought justice through domestic courts, but the parent company in the United States largely evaded liability. This case illustrates the difficulties in holding MNCs accountable transnationally, particularly when they exploit corporate structures to limit liability. The tragedy also highlights the need for binding international regulations to ensure that MNCs cannot invoke international legal protections while evading their obligations.
3. Apple Inc. and International Taxation

Apple's tax strategies in the European Union highlight another dimension of MNC rights and responsibilities: the ability to leverage international law for financial advantage. The European Commission ruled that Apple benefited from illegal state aid arrangements in Ireland, leading

[30] Peter Muchlinski, Multinational Enterprises and the Law (2nd edn, OUP 2007) 105–110.
[31] Kiobel v Royal Dutch Petroleum Co 569 US 108 (2013).
[32] Union Carbide Corporation v Union of India [1991] AIR SC 10.

to a €13 billion recovery order.[33] While Apple exercised rights under corporate law and investment treaties to contest the ruling, critics argued that its operations undermined equitable tax governance, raising questions about the ethical responsibilities of corporations in exploiting legal frameworks for profit maximisation.

4. Meta (Facebook) and Data Governance

Meta's operations in global digital markets illustrate corporate responsibilities in the context of data privacy, electoral integrity, and content regulation. Cases such as the Cambridge Analytica scandal and violations of the General Data Protection Regulation (GDPR) in Europe demonstrate that corporate influence extends beyond economic transactions into societal and political domains.[34] Meta's quasi-subjective status allows it to operate across jurisdictions with considerable autonomy, while enforcement of responsibilities often relies on domestic regulators, soft law norms, or civil litigation — mechanisms that remain limited in scope and effectiveness.

5. ICSID Arbitration Cases

Investment arbitration provides a lens into corporate rights at the international level. Cases like Metalclad v Mexico and Urbaser v Argentina illustrate that corporations can enforce their rights against states even when regulatory measures are enacted for public benefit.[35] These precedents demonstrate the legal asymmetry: corporations enjoy enforceable rights through international tribunals, while the communities affected by corporate actions rely largely on voluntary standards or domestic law for protection.

Critical Analysis:

Collectively, these case studies illuminate a central tension: MNCs operate in a complex transnational legal environment where their economic influence enables them to assert rights effectively, while accountability mechanisms lag behind. The asymmetry is particularly stark in developing countries, where domestic institutions may be under-resourced or vulnerable to

[33] European Commission, State aid: Ireland gave illegal tax benefits to Apple worth up to €13 billion (Apple, 30 August 2016)
[34] GDPR, Regulation (EU) 2016/679; Cambridge Analytica Investigation, UK Information Commissioner's Office (2018).
[35] Metalclad Corporation v United Mexican States (ICSID Case No ARB(AF)/97/1) Award (30 August 2000); Urbaser v Argentina (ICSID Case No ARB/07/26) Award (8 December 2016).

corporate pressure. Consequently, international law's recognition of MNC rights without parallel enforcement of responsibilities reinforces structural inequities and undermines global justice.

VI. Challenges in Attributing Responsibility:

One of the central dilemmas in regulating multinational corporations (MNCs) is the challenge of attributing responsibility. While MNCs exercise extensive rights under international law, the assignment of corresponding obligations remains fragmented, creating significant legal and practical gaps. This asymmetry is particularly evident in areas such as human rights violations, environmental harm, and labour abuses, where corporate actions often cross multiple jurisdictions and involve complex ownership structures.

Legal Challenges:

At the core of the problem is the lack of clear legal recognition of MNCs as full subjects of international law. Unlike states or international organisations, corporations do not have inherent international obligations; instead, their duties are derived from domestic laws, contractual agreements, and soft law frameworks.[36] This creates a situation where MNCs can be held liable only under limited circumstances, often requiring victims to navigate multiple jurisdictions to secure remedies.

Furthermore, the doctrine of corporate separateness complicates accountability. Parent companies and their subsidiaries are often treated as legally distinct entities, allowing the parent to avoid liability for actions undertaken by subsidiaries. Cases such as Vedanta v Lungowe demonstrate that while courts may sometimes pierce the corporate veil, such instances remain exceptional and highly fact-specific.[37]

Jurisdictional and Enforcement Issues:

MNCs' global operations exacerbate jurisdictional challenges. A violation may occur in a developing country with weak legal institutions, while the corporation is headquartered in a jurisdiction with more robust protections for investors. Consequently, affected communities

[36] UN Guiding Principles on Business and Human Rights (UN Doc A/HRC/17/31, 2011).
[37] Vedanta Resources plc v Lungowe [2019] UKSC 20.

often face barriers in accessing justice, including procedural delays, high litigation costs, and the limited reach of domestic courts.[38]

International mechanisms, such as the Alien Tort Statute (ATS) in the United States or investment arbitration tribunals, provide some avenues for redress, but they are unevenly applied. For example, in Kiobel v Royal Dutch Petroleum, the U.S. Supreme Court limited the extraterritorial application of the ATS, restricting the ability of foreign plaintiffs to hold corporations accountable for overseas human rights violations.[39]

Structural and Institutional Limitations:

Structural features of international law further impede the attribution of responsibility. MNCs operate within complex supply chains, often subcontracting activities to third parties, making direct responsibility difficult to establish. The lack of binding international treaties that explicitly regulate corporate conduct leaves enforcement largely dependent on voluntary compliance with guidelines like the UNGPs or OECD Principles.[40]

Additionally, soft law instruments, while normative, do not create enforceable rights for victims. Compliance mechanisms, such as reporting or stakeholder engagement requirements, are largely non-punitive. This structural limitation enables MNCs to avoid substantive accountability, even in cases where their actions cause widespread harm.

Ethical and Normative Challenges:

Beyond legal and structural issues, normative questions also arise. The quasi-subjective status of MNCs raises ethical concerns about the balance between corporate power and social responsibility. When corporations can assert enforceable rights internationally while evading obligations, global justice is undermined, and public trust in both corporate governance and international law diminishes.[41]

[38] Peter Muchlinski, Multinational Enterprises and the Law (2nd edn, OUP 2007) 115–120.
[39] Kiobel v Royal Dutch Petroleum Co 569 US 108 (2013).
[40] OECD Guidelines for Multinational Enterprises (2011).
[41] Surya Deva, 'Regulating Transnational Corporations: Human Rights, Accountability, and Corporate Responsibility' (2012) 28 Northwestern Journal of International Human Rights 1, 15.

Attempts to Address Responsibility:

Efforts to mitigate these challenges include initiatives like the proposed UN Binding Treaty on Business and Human Rights, which aims to create legally enforceable obligations for MNCs, and regional measures such as the European Union's Corporate Sustainability Due Diligence Directive (CSDDD).[42] These frameworks seek to establish clearer duties, including mandatory human rights and environmental due diligence, reporting requirements, and civil liability provisions. While promising, implementation remains uneven, and enforceability across jurisdictions continues to be a major hurdle.

VII. Soft Law & Institutional Frameworks:

The quasi-subjective status of multinational corporations (MNCs) necessitates reliance on soft law and institutional frameworks to regulate corporate conduct where binding obligations are absent. Soft law instruments, though non-enforceable in the strict sense, serve as crucial normative guides, establishing standards for corporate behaviour and promoting accountability in the spheres of human rights, environmental protection, and labour law.

UN Guiding Principles on Business and Human Rights (UNGPs):

The UNGPs (2011) are the most influential soft law framework governing corporate responsibilities.[43] They rest on three pillars: the state duty to protect human rights, the corporate responsibility to respect human rights, and access to remedies for victims of abuse. While the UNGPs are not legally binding, they provide a global standard that shapes corporate policies, investor expectations, and state regulatory measures.

Corporations are expected to implement human rights due diligence, identify potential impacts, prevent harm, and provide remediation where violations occur. The UNGPs also guide institutional investors and civil society in evaluating corporate behaviour.[44] However, their voluntary nature means that adherence is inconsistent, and enforcement mechanisms are largely reputational or market-driven rather than judicial.

[42] European Commission, Proposal for a Directive on Corporate Sustainability Due Diligence COM(2022) 71 final.
[43] UN Guiding Principles on Business and Human Rights (UN Doc A/HRC/17/31, 2011).
[44] Surya Deva, Business and Human Rights: History, Law and Policy (Routledge 2012) 72–85.

OECD Guidelines for Multinational Enterprises:

The OECD Guidelines provide a complementary framework addressing economic, environmental, and social responsibilities.[45] They cover areas such as anti-bribery, consumer protection, disclosure, taxation, and supply chain management. The OECD system includes National Contact Points (NCPs) that facilitate mediation and conciliation in cases of alleged violations, offering a form of accountability without judicial authority.[46]

Although OECD Guidelines influence corporate conduct, they do not create legally enforceable obligations. The reliance on voluntary compliance and limited sanctions means that corporations with substantial resources can avoid meaningful accountability, reinforcing the asymmetry between rights and responsibilities.

ILO Frameworks and Labour Standards:

The International Labour Organization (ILO) provides a set of instruments that govern labour rights and social standards, including the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.[47] This framework outlines the responsibilities of MNCs regarding wages, working conditions, freedom of association, and collective bargaining. While influential in shaping corporate practices and supply chain management, the ILO framework also relies heavily on voluntary compliance and state enforcement mechanisms, which can be weak or uneven.

Regional and National Soft Law Initiatives:

Regional initiatives, such as the European Union's Corporate Sustainability Reporting Directive (CSRD) and the upcoming Corporate Sustainability Due Diligence Directive (CSDDD), seek to embed soft law norms within binding domestic frameworks.[48] These instruments require companies to conduct human rights and environmental due diligence, disclose risks, and provide remediation for adverse impacts. Though legally enforceable, they

[45] OECD Guidelines for Multinational Enterprises (2011).
[46] OECD, National Contact Points for the OECD Guidelines (2019)
[47] ILO, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (5th edn, 2017).
[48] European Commission, Proposal for a Directive on Corporate Sustainability Due Diligence COM(2022) 71 final.

largely apply to companies operating within specific jurisdictions and leave gaps for global operations outside regulatory reach.

Similarly, voluntary codes such as the Global Reporting Initiative (GRI) and the UN Global Compact encourage corporations to adopt ethical and sustainable practices, but enforcement relies on corporate self-reporting and stakeholder pressure.[49]

Effectiveness and Limitations of Soft Law:

Soft law has played an essential role in norm creation and shaping corporate behaviour. It establishes expectations, facilitates stakeholder engagement, and provides guidance for due diligence practices. However, it has critical limitations:

1. Non-binding Nature: Corporations may choose not to comply without facing formal legal consequences.

2. Fragmentation: Multiple overlapping instruments create inconsistency and uncertainty.

3. Limited Remedies: Victims of corporate misconduct often cannot rely solely on soft law for redress.

4. Jurisdictional Gaps: Enforcement is limited to regions or sectors where frameworks are adopted.[50]

Despite these limitations, soft law remains a cornerstone of corporate governance, offering a foundation for emerging hard law measures and international treaty negotiations. The ongoing development of a UN Binding Treaty on Business and Human Rights exemplifies the potential evolution from voluntary soft law to binding obligations, aiming to reconcile corporate rights with enforceable duties.

VIII. Critical Perspectives and Balancing Rights & Responsibilities:

The quasi-subjective status of multinational corporations (MNCs) in international law has generated significant debate among scholars, policymakers, and practitioners. While MNCs

[49] UN Global Compact, The Ten Principles (2010)
[50] Surya Deva, 'From Soft Law to Binding Treaty: The Evolution of Corporate Accountability' (2015) 20 Business and Human Rights Journal 1, 22–30.

enjoy substantial enforceable rights, particularly through investment treaties and arbitration, their obligations remain fragmented, voluntary, or inconsistently enforced. This asymmetry raises fundamental questions about justice, legitimacy, and the role of corporations in global governance.

The Asymmetry Between Rights and Responsibilities:

MNCs operate in a legal landscape that privileges their economic interests. Bilateral investment treaties (BITs), ICSID arbitration, and multilateral trade agreements provide corporations with powerful mechanisms to protect property and secure remedies against states.[51] Yet, when these corporations engage in harmful activities — from environmental destruction to human rights violations — international law often lacks enforceable instruments to hold them accountable.

This imbalance has been aptly described as "rights without obligations," highlighting the structural inequities inherent in the current system.[52]

The asymmetry is particularly pronounced in developing countries, where domestic legal institutions may lack resources, independence, or enforcement capacity. Cases such as Shell in the Niger Delta or Union Carbide in Bhopal demonstrate how corporations can effectively assert rights while limiting exposure to responsibility, often leaving affected communities without adequate legal recourse.[53]

Scholarly Critiques:

Legal scholars have critiqued the quasi-subjective framework on multiple grounds:

1. Erosion of State Sovereignty: By allowing corporations to challenge state regulatory measures through international arbitration, MNCs can influence domestic policy, potentially undermining the sovereign authority of host states.[54]

[51] UNCTAD, Bilateral Investment Treaties 1995–2006 (UNCTAD Series on International Investment Agreements, 2007) 14–18.
[52] Surya Deva, 'From Soft Law to Binding Treaty: The Evolution of Corporate Accountability' (2015) 20 Business and Human Rights Journal 1, 15.
[53] Union Carbide Corporation v Union of India [1991] AIR SC 10; Peter Muchlinski, Multinational Enterprises and the Law (2nd edn, OUP 2007) 105–110.
[54] Malcolm N Shaw, International Law (9th edn, CUP 2021) 198–200.

2. Global Inequality: The preferential treatment of corporate interests reinforces economic asymmetries between powerful corporations and vulnerable communities, raising ethical and normative concerns about justice and equity.[55]

3. Fragmentation of Accountability: The reliance on soft law instruments, such as the UNGPs or OECD Guidelines, creates a patchwork system of obligations that lacks uniformity and enforceability.[56]

Conversely, proponents argue that recognising MNCs as quasi-subjects is necessary to reflect the realities of global economic power. MNCs control vast resources, cross-border supply chains, and technological innovations; excluding them from international legal frameworks would be both impractical and normatively inconsistent.[57]

Balancing Rights and Responsibilities:

Balancing corporate rights with enforceable responsibilities requires a multi-layered approach:

1. Hybrid Legal Frameworks: Combining hard law obligations with soft law guidance can provide clarity and accountability. For instance, binding legislation at the national or regional level, such as the European Union's Corporate Sustainability Due Diligence Directive (CSDDD), can operationalise principles outlined in the UNGPs.[58]

2. Transnational Cooperation: International collaboration among states, regulators, and civil society can strengthen oversight mechanisms and harmonise standards, reducing regulatory arbitrage by corporations.[59]

3. Access to Remedies: Strengthening judicial and quasi-judicial avenues for affected communities is essential. Mechanisms should ensure that victims of corporate abuse can seek redress across jurisdictions, rather than being limited to voluntary corporate compliance.[60]

[55] Surya Deva, Business and Human Rights: History, Law and Policy (Routledge 2012) 72–85.
[56] UN Guiding Principles on Business and Human Rights (UN Doc A/HRC/17/31, 2011).
[57] Peter Muchlinski, Multinational Enterprises and the Law (2nd edn, OUP 2007) 101–110.
[58] European Commission, Proposal for a Directive on Corporate Sustainability Due Diligence COM(2022) 71 final.
[59] OECD, National Contact Points for the OECD Guidelines (2019)
[60] Surya Deva, 'Regulating Transnational Corporations: Human Rights, Accountability, and Corporate Responsibility' (2012) 28 Northwestern Journal of International Human Rights 1, 20–25.

4. Incentives and Sanctions: Integrating reputational, economic, and legal incentives for compliance — alongside credible sanctions for violations — can encourage corporations to adhere to both rights and responsibilities.

Policy Implications:

Policymakers and international institutions face the challenge of reconciling corporate influence with accountability. Emerging initiatives, such as the UN Binding Treaty on Business and Human Rights, demonstrate a recognition that quasi-subjectivity must evolve toward a more balanced legal framework. Such developments seek to embed enforceable obligations alongside existing corporate rights, ensuring that international law reflects contemporary economic and social realities.[61]

Conclusion:

The examination of multinational corporations within the framework of international law demonstrates both the adaptability and the limitations of the discipline. While MNCs have acquired enforceable rights through bilateral investment treaties, arbitral mechanisms, and transnational commercial arrangements, their obligations remain fragmented, weak, and often confined to voluntary soft law instruments. This imbalance entrenches a structural asymmetry whereby corporations enjoy quasi-sovereign privileges without bearing commensurate responsibilities.

In my view, the persistence of this asymmetry reflects more than a lacuna in doctrine; it exposes the normative hesitation of international law to confront the realities of global economic power. The traditional state-centric model resists extending full subjectivity to corporations, yet at the same time facilitates their participation in governance through rights that approximate those of states. This selective recognition risks hollowing out the legitimacy of international law by privileging corporate mobility and investment protection over accountability to affected communities and the environment.

A critical engagement with this problem suggests that the continued reliance on soft law is no longer sufficient. While such frameworks provide guidance and promote normative

[61] UN Human Rights Council, Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (2014) UN Doc A/HRC/26/9.

development, they cannot substitute for binding mechanisms that impose real accountability. The challenge, therefore, is to construct a coherent framework that aligns corporate rights with enforceable duties—whether through a binding treaty on business and human rights, strengthened domestic adjudication, or hybrid transnational mechanisms.

As a student of public international law, I am persuaded that the future credibility of the discipline depends on addressing this imbalance. Recognising MNCs as quasi-subjects may have been a pragmatic compromise in the past, but it is increasingly inadequate in the face of complex global challenges. If international law is to remain both effective and legitimate, it must evolve toward a model that holds corporations to account with the same rigor with which it protects their rights. Only then can international law fulfil its dual role as both a facilitator of global commerce and a guardian of justice.

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