Out Now: Aristova, Tort Litigation against Transnational Corporations. The Challenge of Jurisdiction in English Courts

Ekaterina Aristova (Bonavero Institute of Human Rights, University of Oxford) is the author of the 'Tort Litigation against Transnational Corporations: The Challenge of Jurisdiction in English Courts' (OUP 2024), which has just been published in the *Oxford Private International Law* series. She has kindly shared the following summary with us:

The book examines the approach of the English courts to the question of jurisdiction in civil liability claims brought against English-based parent companies and their foreign subsidiaries as co-defendants (e.g., Lubbe v Cape, Lungowe v Vedanta, Okpabi v Shell, etc.). While the book is written from the perspective of English law, the book also draws on examples of similar cases in Australia, Canada, EU Member States, and the US to broaden the discussion.

The assertion of jurisdiction in parent company liability claims based on a nexus with the forum state presents a challenge to the courts. The territorial focus of the adjudicative jurisdiction is often contrary to the transnational nature of cross-border business activities. Transnational corporations (TNCs) have the flexibility to spread operations over multiple jurisdictions and create a legal separation between the subsidiary's activities and the home state of the parent company. Courts rely on various private international law rules and doctrines to resolve the question of jurisdiction in parent company liability claims, including forum non conveniens doctrine in common law legal systems, the mandatory rule of domicile under EU law, and the presumption against extraterritoriality in US jurisprudence. The broad disparities in the issues of civil jurisdiction among domestic legal regimes and the considerable controversy surrounding the exercise of extraterritorial regulation over corporate operations often lead to the creation of a 'jurisdictional veil' for the parent company and a significant degree

of autonomy, largely free from the control of any national jurisdiction.

To address this puzzle, this book seeks to answer three questions: 1) To what extent can English courts, under existing rules, exercise jurisdiction over English parent companies and their foreign subsidiaries as co-defendants? 2) Is England a suitable forum for deciding parent company liability claims? 3) Should the jurisdictional competence of the English courts be broadened through a new connecting factor derived from the 'economic enterprise' theory?

The book aims to offer a new angle to the discourse by placing the discussion of parent company liability claims in the context of the topical debate about the changing role of private international law in a globalised world. The transnational adjudication of disputes, cross-border activities of non-state actors and expansion of private law-making challenge several conventional assumptions of the discipline of private international law, including its focus on territoriality and geographical connecting factors and its capacity to interact with public mechanisms. Home state courts have become the fora for struggles between TNCs and vulnerable communities from the host states, raising complex questions about (il)legitimate forum shopping, the appropriate forum, and the limits of judicial discretion. Parent company liability claims impact how we think about private international law and its function, and the reader is invited to explore these challenging dynamics.

The Bonavero Institute of Human Rights in Oxford will celebrate the publication of the book by hosting a (hybrid) book launch and wine reception on 5 June 2024.