# Munich Dispute Resolution Day 2020: Human Rights Lawsuits before Civil and Arbitral Courts in Germany

A spectre is haunting Europe – the spectre of human rights lawsuits. Striking human rights cases have always enjoyed high media attention. But lately, they appear in a new dimension in Europe. The headline-grabbing "KiK" trial before the Regional Court of Dortmund and the current discussion about the adoption of a German Supply Chain Law are proof of this: It has long ceased to be a mere thought that German companies could be held liable in Germany for damage that occurred somewhere in their global supply or value chain. But are civil courts and arbitral tribunals suited at all for enforcing international human rights obligations of business enterprises, which are already highly controversial under substantive law?

On 4 May 2020, the Munich Center of Dispute Resolution (MuCDR) will host a conference that will be dedicated to this phenomenon. It will shed light on fundamental theoretical and dogmatic questions of civil human rights lawsuits as well as their consequences for the legal system, the legal profession, the German economy as well as for potential plaintiffs.

The full conference programme is available  here (in German).

**Date:** Monday, 4 May 2020

**Registration:** Participation in the conference is **free of charge**. Registration is required. Please find the registration form online.

**Venue:** Ludwig Maximilians University, Main Building, Senatssaal E 106, Geschwister-Scholl-Platz 1, 80539 Munich, Germany

**Conference language:** German

# New Article on International Sanctions and Human Rights

Profesor Dr. Francisco Javier Zamora Cabot and Dr. Maria Chiara Marullo (Chair of Private International Law at the Universitat Jaume I de Castellón) have recently published an article on International Sanctions and Human Rights.

Professor Zamora Cabot has kindly provided us with a short introduction to this topic:

The fight for the international protection of human rights is currently being developed on multiple fronts and through a diverse set of instruments and mechanisms. Thus, at the state level we can highlight, for instance, on the one hand, the use of powerful norms of an imperative nature, such as, in the United States, those that deal with serious problems such as torture or human trafficking, along with the emergence of an increasingly important regulation at a comparative level regarding the control of supply chains or the repression of the so-called modern slavery. Also at the state level, it should be noted, on the other hand, the trend that is becoming generalized in favor of facilitating access to justice for victims of human rights violations, being the ambit of the relations of companies with the latter a clear field of choice for it.

For its part, the international community, although it is not living a particularly brilliant time as regards the protection of the aforementioned rights, persists in the application of the body of laws generated in it, especially through the various institutionalized systems, and in the search for new instruments, such as those already adopted or in the process of being adopted in the area of the relations between companies and human rights, key in our days, with the inescapable reference of the role of the United Nations.

In addition, international sanctions have long been playing a relevant role in relation to the two levels we have been managing. The examples are countless, and so is the discussion that often arises, even when they have been conveyed through the international instances. For example, although they are defined and

specified with technical accuracy, they often have a negative impact on those sectors of the population they should actually protect.

Trying to minimize these impacts, and opening up new ways in the international protection of human rights, a number of texts have appeared in recent times, with the pioneering impulse of the United States, along with other countries, which, through well-defined sanctions, combine the fight against the corruption with the fight against the serious violations of the rights above mentioned. This is a very timely approach, insofar as corruption and violations are often intimately related, as, for example, the Committee on Economic, Social and Cultural Rights of the United Nations Economic and Social Council emphasized through its General Comment No. 24,E/C.12/GC/24, in the context of business activities, urging States to take action against such corruption, providing them with the appropriate mechanisms and ensuring their independence and sufficient level of resources.

In short, the paradigm of the aforementioned approach would be the Global Magnitski Act of the United States, Public Law 114-328., 130 Stat. 2533, which covers also legal persons and is already resulting in a practice of prominence, and even reflections in other countries at the regulatory level. A norm that deserves an in-depth analysis and follow-up in its application, herald as it is of a new horizon in the struggle for human rights to which we alluded initially, without losing sight of the rigor and caution with which we must act. And this is due to the intrinsic character of international sanctions as instruments of restricted and exceptional application, complementary, but never substitutable in this order, of those already existing and of which there is evidence in these brief reflections.

The article (in Spanish) is available here.

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# The European Court of Human Rights delivers its advisory opinion

# concerning the recognition in domestic law of legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother.

As previously reported on Conflicts of Laws, the ECtHR was requested an advisory opinion by the French Court of Cassation.

On April 10th, the ECtHR delivered its first advisory opinion. It held that:

"In a situation where a child was born abroad through a gestational surrogacy arrangement and was conceived using the gametes of the intended father and a third-party donor, and where the legal parent-child relationship with the intended father has been recognised in domestic law,

1. the child's right to respect for private life within the meaning of Article 8 of the European Convention on Human Rights requires that domestic law provide a possibility of recognition of a legal parent-child relationship with the intended mother, designated in the birth certificate legally established abroad as the "legal mother";
2. the child's right to respect for private life does not require such recognition to take the form of entry in the register of births, marriages and deaths of the details of the birth certificate legally established abroad; another means, such as adoption of the child by the intended mother, may be used".

For a brief summary of the advisory opinion and the case background see the Press Release.

For further details see the Advisory Opinion.

# Greece ratifies Protocol No. 16 to the European Convention on Human Rights

Following the signature of Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms on March 2, 2017, the Hellenic Republic proceeded yesterday to its ratification. Article 1 of Law 4569/2019 reproduces the English version of the Protocol, coupled with a Greek translation. Articles 2-4 regulate formal issues, such as the procedure for submitting a request for advisory opinion (Article 1), the necessary content of the request and the latter's notification to the parties (Article 3), and issues concerning the stay and reopening of national proceedings (Article 4).

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# New Article on Current Developments in Forum access: European Perspectives on Human Rights Litigation

Prof. Dr. Dr. h.c. Burkhard Hess and Ms. Martina Mantovani (Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law) recently posted a new paper in the MPI*Lux* Research Paper Series, titled *Current Developments in Forum Access: Comments on Jurisdiction and Forum Non Conveniens – European Perspectives on Human Rights Litigation*.

The paper will appear in F. Ferrari & D. Fernandez Arroyo (eds.), *The Continuing*

*Relevance of Private International Law and Its Challenges* (Elgar, 2019).

Here is an overview provided by the authors.

"The paper analyses the legal framework governing the exercise of civil jurisdiction over claims brought before European courts by victims of mass torts committed outside the jurisdiction of European States.

The first part of the paper focuses on the private international law doctrine of the forum of necessity, often used by foreign plaintiffs as a "last resort" for accessing a European forum. Ejected from the final version of the Brussels I$^{bis}$ Regulation and thus arguably unavailable in cases involving EU-domiciled defendants, this doctrine has recently been subjected, in domestic case law, to formalistic interpretations which further curtail its applicability *vis-à-vis* non-EU domiciled defendants. The *Comilog* saga in France and the *Naït Liman* case in Switzerland are prime examples of this approach.

Having taken stock of the *Naït Liman* judgment of the Grand Chamber of the European Court of Human Rights, which leaves an extremely narrow scope for reviewing said formalistic interpretations under article 6 ECHR, the second part of the paper assesses alternative procedural strategies that foreign plaintiffs may implement in order to bring their case in Europe.

A first course of action may consist in suing a non-EU domiciled defendant (usually a subsidiary) before the courts of domicile of a EU domiciled co-defendant (often the parent company). Hardly innovative, this procedural strategy is recurrent in recent case law of both civil law and common law courts, and allows therefore for a comparative assessment of the approach adopted by national courts in dealing with such cases. Particular attention is given to the sometimes-difficult coexistence between the hard-and-fast logic of the Brussels I$^{bis}$ Regulation, applicable vis-à-vis the anchor defendant, and the domestic tests applied for asserting jurisdiction over the non-domiciled co-defendant, as well as to the ever-present objections of *forum non conveniens* and of "abuse of rights".

A second course of action may consist in suing, as a single defendant, either a EU domiciled contractual party of the main perpetrator of the abuse (as it happened in the *Kik* case in Germany or in the *Song Mao* case in the UK), or a major player on the international market (e.g. the *RWE* case in Germany). In these cases,

where the Brussels I[bis] Regulation and its hard-and-fast logic may deploy their full potential, the jurisdiction of the seised court is undisputable in principle and never disputed in practice.

Against this backdrop, the paper concludes that, where the Brussels I[bis] Regulation is triggered, establishing jurisdiction and accessing a forum is quite an easy and straightforward endeavor. Nevertheless, the road to a judgment on the merits remains fraught with difficulty for victims of an extraterritorial harm. Firstly, there are several other procedural hurdles, concerning for example the admissibility of the claim, which may derail a decision on the merits even after jurisdiction has been established. Secondly, the state of development of the applicable substantive law still constitutes a major obstacle to the plaintiff's success. In common law countries, where the existence of a "good arguable case" shall be proven already at an earlier stage, in order to establish jurisdiction over the non-EU domiciled defendant, the strict substantive test to be applied for establishing a duty of supervision of the parent company, as well as its high evidentiary standard, have in most cases determined to the dismissal of the entire case without a comprehensive assessment in the merits, despite the undisputable existence of jurisdiction *vis-à-vis* the domiciled parent company. In civil law countries, the contents of the applicable substantive law, e.g. the statute of limitations, may finally determine an identical outcome at a later stage of the proceedings (as proven by the extremely recent dismissal of the case against *Kik*)."

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# Workshop on the Protection of Human Rights in Transnational Situations, Strasbourg 5th June

*Edited by Delphine Porcheron, Mélanie Schmitt and Juliette Lelieur*

The University of Strasbourg is organizing workshop series on the protection of

Human Rights in transnational situations. The research is conducted in criminal law, labour law, and private international law. After the first meeting which took place last January with the presence of Horatia Muir Watt, Dominique Ritleng and Patrick Wachsmann, the second one will be held **in Strasbourg** on **June 5,** focusing on civil and environmental liabilities and private international law.

***Speakers include :***

- Bénédicte Girard, University of Strasbourg
- Marie-Pierre Camproux, University of Strasbourg
- Pauline Abadie, University of Paris Sud
- Fabien Marchadier, University of Poitiers
- Patrick Kinsch, University of Luxembourg, Attorney at law Luxembourg
- Louis d'Avout, University of Paris II
- Jean-Sylvestre Bergé, University of Lyon III
- Caroline Kleiner, University of Strasbourg

For more information click here.

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# The Supreme Court deals the death blow to US Human Rights Litigation

*Written by Bastian Brunk, research assistant and doctoral student at the Institute for Comparative and Private International Law at the University of Freiburg (Germany)*

On April 24, the Supreme Court of the United States released its decision in *Jesner v Arab Bank* (available here; see also the pre-decision analysis by *Hannah Dittmers* linked here and first thoughts after the decision of *Amy Howe* here) and, in a 5:4 majority vote, shut the door that it had left ajar in its *Kiobel* decision.

Both cases are concerned with the question whether private corporations may be sued under the Alien Tort Statute (ATS).

In *Kiobel*, the Court rejected the application of the ATS to so-called *foreign-cubed* cases (cases in which a foreign plaintiff sues a foreign defendant for acts committed outside the territory of the US), but left the door open for cases that *touch and concern the territory of the US* (see also the early analysis of *Kiobel* by *Trey Childress* here). In *Jesner v. Arab Bank*, the majority now held that – in any case – "foreign corporations may not be defendants in suits brought under the ATS" (p. 27).

The respondent in the present case, Arab Bank, PLC, a Jordanian financial institution, was accused of facilitating acts of terrorism by maintaining bank accounts for jihadist groups in the Middle East and allowing the accounts to be used to compensate the families of suicide bombers. The petitioners further alleged that Arab Bank used its New York branch to clear its dollar-transactions via the so-called Clearing House Interbank Payment System (CHIPS) and that some of these transactions could have benefited terrorists. Finally, the petitioners accused Arab Bank of laundering money for a US-based charity foundation that is said to be affiliated with Hamas.

As in *Kiobel*, the facts of the case barely *touch and concern* the territory of the United States. The Court therefore held that "in this case, the activities of the defendant corporation and the alleged actions of its employees have insufficient connections to the United States to subject it to jurisdiction under the ATS" (p. 11). However, in order to overcome the divided opinions between the Courts of Appeals and to provide for legal certainty, the Supreme Court decided to answer the question of corporate liability under the ATS, but limited its answer to the applicability of the ATS to *foreign* corporations only. *Justice Kennedy*, who delivered the opinion of the majority vote, therefore based his reasoning on a cascade of three major arguments that rely on the precedents in *Sosa* and *Kiobel*.

First, the Court referred to the historic objective of the ATS, which was enacted "to avoid foreign entanglements by ensuring the availability of a federal forum where the failure to provide one might cause another nation to hold the United States responsible for an injury to a foreign citizen" (p. 8 f.). Thus, the goal of the Statute's adoption was to avoid disturbances in foreign relations and not to create them by alienating other countries. This was the main concern with the present

case “that already ha[d] caused significant diplomatic tensions with Jordan for more than a decade” (p. 11).

Second, the Court emphasized the “strictly jurisdictional” character of the ATS and asked for a proper cause of action to impose liability on corporations in accordance with the test established in the *Sosa*-decision. The *Sosa*-test allows for the recognition of a cause of action for claims based on international law (p. 10), but requires the international legal provision to be “specific, universal and obligatory” (p. 11 f.). The majority concluded that it could not recognize such a norm as almost every relevant international law statute (e.g. the Rome Statute and the statutes of the ICTY and the ICTR) excludes corporations from its jurisdictional reach and, accordingly, limits its scope of application to individuals.

Thirdly, even if there was a legal provision justifying corporate liability in international law, the Supreme Court found that US courts should refrain from applying it without any explicit authorization from Congress. In this way, the Supreme Court upheld the separation-of-powers doctrine stating that it is the task of the legislature, not the judiciary, to create new private rights of action, especially when these pose a threat to foreign relations. From this reasoning, courts are required to “exercise ‘great caution’ before recognizing new forms of liability under the ATS” (p. 19). In doing so, courts should not create causes of action out of thin air but by analogous application of existing (and therefore Congress-approved) laws. However, neither the Torture Victim Protection Act (TVPA) nor the Anti-Terrorism Act (as the most analogous statutes) are applicable because the former limits liability to individuals whereas the latter provides a cause of actions to US-citizens only (thus being irreconcilable with the ATS, which is available only for claims brought by “*an alien*”; see p. 20-22).

*Justice Sotomayor*, who wrote a 34-page dissent, criticized the majority for absolving “corporations from responsibility under the ATS for conscience-shocking behavior” and argues that “[t]he text, history, and purpose of the ATS, as well as the long and consistent history of corporate liability in tort, confirm that tort claims for law-of-nations violations may be brought against corporations under the ATS” (*Sotomayor*, p. 1). However, the dissenting opinion could not prevail over the conservative majority.

Thus, for now, *Jesner v Arab Bank* has rendered human rights litigation against foreign corporations before US courts impossible. However, in contrast to this

post's title, the decision is not necessarily the end of the *US human rights litigation*. The ATS is still applicable if the defending corporation has its seat in the territory of the US. Moreover, the Court emphatically calls upon Congress to provide for legislative guidance. "If Congress and the Executive were to determine that corporations should be liable for violations of international law, that decision would have special power and force because it would be made by the branches most immediately responsive to, and accountable to, the electorate" (p. 27 f.). It remains to be seen whether Congress answers this call.

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# Cross-border Human Rights and Environmental Damages Litigation in Europe: Recent Case Law in the UK

Over the last few years, litigation in European courts against gross human rights violations and widespread environmental disasters has intensified. Recent case law shows that victims domiciled in third States often attempt to sue the local subsidiary and/or its parent company in Europe, which corresponds to the place where the latter is seated. In light of this, national courts of the EU have been asked to determine whether the parent company located in a Member State may serve as an anchor defendant for claims against its subsidiary – sometimes with success, sometimes not:

For example, in *Okpabi & Ors v Royal Dutch Shell Plc & Anor*, the English High Court, Queen's Bench Division, by its Technology and Construction Court, decided that it had no international jurisdiction to hear claims in tort against the Nigerian subsidiary (SPDC) of Royal Dutch Shell (RDC) in connection with environmental and health damages due to oil pollution in the context of the group's oil production in Nigeria. To be more specific, Justice Fraser concluded that the Court lacked jurisdiction over the action, inasmuch as the European

parent company did not owe a duty of care towards the claimants following the test established in *Caparo Industries Plc v Dickman*. Under the Caparo-test, a duty of care exists where the damage was foreseeable for the (anchor) defendant; imposing a duty of care on it must be fair, just, and reasonable; and finally, there is a certain proximity between the parent company and its subsidiary, which shows that the first exercises a sufficient control over the latter.

On 14 February 2018, the Court of Appeal validated the first instance Court's reasoning by rejecting the claimants appeal (the judgment is available here). In a majority opinion (Justice Sales dissenting), the second instance Court confirmed that the victims' claims had no prospect of success. Nevertheless, Justice Simon provided a different assessment of the proximity requirement: after analysing the corporate documents of the parent company, he observed that RDS had established standardised policies among the Shell group. According to the Court, however, this did not demonstrate that RDS actually exercised control over the subsidiary. At paragraph 89 of the judgment, Justice Simon states that it is "important to distinguish between a parent company which controls, or shares control of, the material operations on the one hand, and a parent company which issues mandatory policies and standards which are intended to apply throughout a group of companies (…). The issuing of mandatory policies plainly cannot mean that a parent has taken control of the operations of a subsidiary (…) such as to give rise to a duty of care". Therefore, the Court of Appeal set a relatively high jurisdictional threshold that will be difficult for claimants to pass in the future.

Conversely, in *Lungowe v Vedanta*, a case that involved a claim against a parent company (Vedanta) seated in the UK and its foreign subsidiary for the pollution of the Kafue River in Zambia, as well as the adverse consequences of such an occurrence on the local population, the Court of Appeal concluded that there was a real issue to be tried against the parent company. Moreover, the Court considered that the subsidiary was a necessary and proper party to claim and that England and Wales was the proper place in which to bring the claims. Apparently, this case involved greater proximity between the parent company and its subsidiary compared to *Okpabi*. In particular, the fact that Vedanta hold 80% of its subsidiary' shares played an important role. The same can be said as regards the degree of control of Vedanta's board over the activities of the subsidiary (see the analysis of Sir Geoffrey Vos at paragraph 197 of the *Okpabi* appeal).

Unsatisfied with the current landscape, some States adopted –or are in the

process of adopting– legislations that establish or reinforce the duty of care or vigilance of parent companies directly towards victims. In particular, France adopted the Duty of Vigilance Law in 2017, according to which parent companies of a certain size have a legal obligation to establish a vigilance plan (*plan de vigilance*) in order to prevent human rights violations. The failure to implement such a plan will incur the liability of parent companies for damages that a well-executed plan could have avoided. In Switzerland, a proposal of amendment of the Constitution was recently launched, the goal of which consists in reinforcing the protection of human rights by imposing a duty of due diligence on companies domiciled in Switzerland. Notably, the text establishes that the obligations designated by the proposed amendment will subsist even where conflict of law rules designate a different law than the Swiss one (overriding mandatory provision). Finally, some other States, such as Germany, propose voluntary measures through the adoption of a National Action Plan, as this was suggested by the EU in its CSR Strategy.

For further thoughts see Matthias Weller / Alexia Pato, "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" forthcoming in Uniform Law Review 2018, Issue 2, preprint available at SSRN.

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# Business and Human Rights (Empresas y Derechos Humanos)

A new book co-edited by Prof. F.J. Zamora Cabot and M.C. Marullo has just been published in the field of human rights and business by the Italian publisher house Editoriale Scientifica, as part of the collection "La ricerca del diritto nella comunità internazionale". The diversity of the approaches of the contributions – constitutional law, International Public Law, investment arbitration, Procedural Law, Private International Law-, makes it worth for specialists in the different areas. The index and Foreword can be looked up here.

# Court of Appeal allows in England claims against English-based multinational for overseas human rights violations

*Written by Ekaterina Aristova,* PhD in Law Candidate, University of Cambridge

On 14 October 2017, the London's Court of Appeal passed its long awaited decision in *Lungowe v Vedanta* confirming that foreign citizens can pursue in England legal claims against English-based multinationals for their overseas activities.

In 2015, Zambian villagers commenced proceedings against Vedanta, an English-based mining corporation, and its indirect Zambian subsidiary, KCM, alleging responsibility of both companies for the environmental pollution arising out of the operation in Zambia of the Nchanga Copper Mine by KCM. In 2016, the High Court allowed claims against both companies to be heard in England. The overall analysis of the judgement (see the author's earlier post on this blog) suggested that (1) claims against the parent company on the breach of duty of care in relation to the overseas operations of the foreign subsidiary can be heard in the English courts and (2) the existence of an arguable claim against the English-domiciled parent company also establishes jurisdiction of the English courts over the subsidiary even if the factual basis of the case occurs almost exclusively in the foreign state. The Court of Appeal has entirely upheld a High Court ruling.

Vedanta has focused their argument on the fact that Article 4 of the Brussels I Regulation Recast does not automatically allow an English-domiciled parent company to be sued in England and, despite the CJEU's ruling in *Owusu v Jackson*, there is always discretion as to whether the English court should allow the claims to be tried in England. In response, the three appeal judges were very clear in confirming the univocal effect of *Owusu* decision which precludes English

courts from declining a mandatory jurisdiction to try claims against the English-domiciled defendant. Logically, analysis further moved to KCM's applications. KCM as a foreign defendant was brought into proceedings on the basis of a 'necessary or proper party' gateway under the English traditional rules of jurisdictions. It allows service out of the jurisdiction subject to two additional conditions: (1) there is between the claimant and English-domiciled defendant a real issue which it is reasonable for the court to try; and (2) England is the proper forum for trying the claims. Unsurprisingly, an initial question of whether uncustomary claims alleging liability of the local parent company for overseas damages are viable in England was a major stumbling block for the corporate defendants.

First of all, Lord Justice Simon, who delivered a leading judgement, confirmed that absence of the reported cases on the breach of duty of care by the parent company owed to the persons affected by its subsidiary's operations does not automatically render such a claim unarguable. He then relied on several well-known English cases to derive basic principles for the imposition of such duty of care on the parent company: (1) The three-part test of foreseeability, proximity and reasonableness set out in *Caparo Industries Plc v Dickman* constitutes a starting point of the analysis; 2) A duty of care may be owed, in appropriate circumstances, to the employees of the parent company and those directly affected by the subsidiary's operations; 3) Such a duty of care arises when the parent company has taken direct responsibility for devising a material health and safety policy the adequacy of which is the subject of the claim, or controls the operations which give rise to the claim; 4) Some of the circumstances in which the existence of the duty of care may, or may not, be established can be traced in *Chandler v Cape* and *Thompson v The Renwick Group*; 5) It is necessary to determine whether the parent company was well placed, because of its knowledge and expertise to protect the claimants; proving that parent company and the subsidiary run the same business is not sufficient; (6) The evidence sufficient to establish the duty may not be available at the early stages of the case. Following these principles, it was concluded that, irrespective of the strength or the weakness of the claim against the parent company (as opposed to the claim against the subsidiary as an operator of the mine) and in light of the supporting evidence already presented by the claimants, the claim against Vedanta cannot be dismissed as not properly arguable.

The Court of Appeal's decision is particularly interesting for two reasons. The first issue relates to how its conclusions should be approached in the context of similar environmental litigation against English-based multinational in *Okpabi v Shell*. Earlier this year, Fraser J, sitting as a judge in the Technology and Construction Court, ruled that a claim against English-based parent company and the Nigerian subsidiary of the Shell group for oil pollution in Nigeria will not proceed in the English courts. The judge himself did not make any conclusions which would question the ultimate decision reached by the two instances in *Lungowe v Vedanta*. More importantly, his analysis fairly suggests that determination of the parent company liability should be approached on a case-by-case basis weighing the particular characteristics of the corporate organisation of the group and the nexus between the parent company and its subsidiaries (see the author's earlier post on this blog). Nevertheless, the reasoning of Fraser J could be criticised for the scrupulousness of identifying whether sufficient evidence on each factor of the duty of care test was presented by the claimants at such an early stage of the proceedings. The jurisdictional inquiry into existence of an arguable claim against the parent company should not substitute the determination of the substantive argument and the trial itself. This approach was rightly emphasised by the Court of Appeal in *Vedanta*. By contrast, thorough analysis of the liability argument carried by Fraser J in *Okpabi v Shell* is arguably very close to the resolution of the case on the merits. The decision was appealed by the claimants, the Nigerian citizens, on these very grounds.

The second set of issues arises from the Court of Appeal's reluctance to engage in the discussion of the regulatory significance of the litigation against major transnational corporations for their overseas operations in the English courts. In the course of appeal's hearing Vedanta argued that allowing cases against English multinationals in their home state was not in the public interest. The judgement itself refrained to consider whether public interest factors have any impact on the jurisdictional inquiry in the disputes concerned with the private interests of the litigants. Therefore, foreign direct liability claims against powerful corporate groups were placed in the context of conventional theoretical public/private divide of the rules of private international law. The Parliament and the Government have at least twice engaged into discussion of the UK role in promoting responsibility and ensuring accountability of its companies in the course of 2009 and 2017 human rights and business inquiries. Further increase in the number of legal claims against English-based transnational corporations

brought by the foreign citizens in the English courts may revive interest in the role of the discipline of private international law to take part in the global governance debate.