Tort Litigation against Multinational Corporations for Violation of Human Rights: An Overview of the Position Outside the United States

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Over the past 17 years, conventional tort litigation has been increasingly successful in holding multinational corporations (MNCs) accountable for human rights violations in developing countries. Further utilisation and development of this approach is all the more imperative in light of uncertainty over the future of such claims in the United States under the Alien Tort Statute 1789.

The notion of MNC parent company ‘duty of care’ has gained increasing recognition, notwithstanding the ‘corporate veil’ obstacle. There is no reason in principle why, like any other legal entity or person, a parent company which is responsible for, or in control of, specific functions at overseas subsidiary operations should not be liable for damage arising from those functions or deficiencies in them.

The scale, complexity and media attention arising from these cases constitutes a potentially powerful deterrent against bad practices by MNCs. However, awards of compensation based on those of MNC host states may diminish this deterrent effect.

Various factors are critical to victims' access to a legal remedy against a parent MNC. Forum non conveniens is a key barrier in most common law states, but not in the European Union. Of fundamental importance is the availability of funding and lawyers willing and able to represent victims in this complex, hugely expensive and risky type of litigation. This is dependent on assessment of the financial viability of cases by victims' lawyers, which is in turn influenced, among others, by the existence of legal procedural mechanisms such as class actions, financial costs incentives for victims' lawyers, damages levels and global collaboration between victims' representatives.

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If cases survive inevitable legal procedural challenges, MNC cases to-date have been settled before trial due to the high stakes, especially for the MNC, of a trial. Binding legal precedents in this area are generally limited to procedural issues which, albeit of tangential relevance to the substance of a case, are frequently decisive. Drawing on insights gained from tort litigation over the years, this article provides a reflection on these issues.