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GAPING HOLE: DARNING INTERNATIONAL CORPORATE LIABILITY FOR ENVIRONMENTAL DISASTERS AND HUMAN RIGHTS

VERONICA THREADGILL*

I. Introduction

Transnational corporations (TNCs) are unique creatures, wielding significant financial and political influence, with the ability to able to escape the consequences that keep nations and other international organizations in line with the laws governing the protection of human rights and the environment. Many TNCs have exploited this blind spot in international law to achieve profit-seeking goals. Before the emergence of corporate social responsibility (CSR) in the late 20th century, corporations served one master – the shareholder – and their single duty was to maximize earnings.¹ As corporations came under fire following various scandals that generated media publicity, the idea that corporations owe more than a simple fiduciary duty to the society in which they operate began to garner support.²

Encouraging corporations to adopt a more socially-conscious mindset, however, is simply that – encouragement. There are no mechanisms in place that *require* corporations to behave in responsible ways, beyond adherence to domestic law. National oversight is inconsistent, and thus the

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1. RICHARD T. DE GEORGE, *Business Ethics*, 10 (7th ed. 2011) (ebook).

2. See *infra* Part III, notes (for a discussion on the BP oil spill in the Gulf of Mexico and Royal Dutch Shell's activities in Nigeria).

range of tolerated behaviors varies significantly. Human rights violations tend to go hand-in-hand with companies operating in the oil, gas, and natural resource industries. The discovery of valuable natural resources, be it oil or cobalt, generally promises an economic windfall for a community; however, such unearthing can lead to destabilization, financial turmoil, violence, and repression. A hopeful harbinger turns into a cruel catalyst for oppression. The discovery of mineral and energy resources has spawned civil wars and violent, economically turbulent eras.³ In ongoing conflict areas, matters are exacerbated. Transnational corporations are frequently involved in human rights violations via two avenues. TNCs may violate rights either directly through the exploitation of labor or the creation of environmental hazards. Such corporations may also be involved in violations indirectly through financial infusions that are redirected to support violent, oppressive regimes or to hire security that commits heinous acts against local populations. Countries, particularly those that are reliant on the infusions of capital brought about from the presence of TNCs, are not keen on giving their golden geese the boot. Accountability, however, must come from somewhere.

By highlighting the interplay of environmental rights and human rights law, there is potential for international organizations to use economic measures and criminal liability to police the actions of TNCs, particularly those which specialize in oil, gas, and natural resources. While the concept of encapsulating environmental rights into human rights law is not new, it is still relatively novel. Through further incorporation of environmental rights into the body of human rights law, more avenues for holding TNCs accountable become viable. By anticipating the growing trend in the international community, TNCs in the oil, gas, and natural resource industries can begin preparations for more stringent environmental and human rights compliance. Such a shift in international law will have sweeping impacts and a particularly poignant effect on TNCs in the extractive industries.

When the Exxon Valdez oil spill occurred in Alaska, it made sense for the United States to press criminal charges against Exxon Mobil.⁴ Exxon is

3. Roy Maconachie et. al., World Bank Group [WBG], *Responding to the Challenge of Fragility and Security in West Africa: Natural Resources, Extractive Industry, Investment, and Social Conflict*, at 5 nn.1-2, 98902 (2015), <http://documents.worldbank.org/curated/en/169321468189569256/pdf/98902-WP-AFR-P148420-Box-393185B-PUBLIC-Extractives-FINAL.pdf>

4. *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 476 (2008).

an American company, and the oil spill happened in U.S. waters.⁵ Prosecution, therefore, was jurisdictionally straightforward. The resulting financial payments to the United States were redirected to clean up efforts. The victims of the oil spill whose livelihoods were negatively impacted by the spill only received compensation nearly 20 years after the incident, and the Supreme Court awarded damages significantly smaller than initially expected.⁶ Had this entity been a foreign oil company or had the oil spill occurred elsewhere in the world, it is unclear who would have been able to hold Exxon accountable. The legal framework needs a serious overhaul to address such blatant gaps in liability.

The difficulty with attempting to regulate TNCs is the absence of any regulatory scheme which gives the appropriate authority for governing agencies to bring charges against corporations and responsible individuals for their crimes. Even when indirectly attacking a TNC, determining the applicable international law to apply is difficult. The World Trade Organization (WTO) has the potential to act as a regulatory body by imposing sanctions on countries. This direction would require the organization to transcend its original purpose of promoting trade while having no direct effect on corporations, and is therefore a potential, but not best suited, avenue. The European Court of Human Rights (ECtHR) and the International Court of Justice (ICJ) also have potential to hold states accountable for human rights violations that occur within their territories and under their jurisdiction, but, again, this method circumvents TNC liability. Therefore, the most promising route is reworking the International Criminal Court and the Rome Statute, which currently addresses individual liability for grievous crimes, to encompass environmental disasters and human rights violations.

II. Environmental law principles

It is important to first understand the core principles of environmental law, both those that are currently customary – and therefore binding – and those that are on track to becoming customary law.

5. *Id.*

6. Kim Murphy, *Exxon Valdez victims finally getting payout*, THE SEATTLE TIMES, Dec. 7, 2008, <https://www.seattletimes.com/seattle-news/exxon-valdez-victims-finally-getting-payout/> (last visited Mar. 24, 2019).

A. “No Harm” Principle

The invigorated environmental movements of the mid-20th century brought revitalized initiatives from international bodies, building on past environmental principles. The cornerstone principle of “No Harm” was concretely championed in the Trail Smelter Arbitration, a dispute between the United States and Canada.⁷ The Canadian corporation Trail Smelter was emitting sulfur dioxide, which caused damage in the form of air pollution in the state of Washington.⁸ Relying on case law from water pollution rights in the United States, as well as a theory on cantonal autonomy from Swiss law, The Arbitral Tribunal monumentally determined:

[N]o State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.⁹

This decision created the foothold for other important environmental law developments to cling. The Arbitral Tribunal solidified a state’s duty to refrain from activities that will negatively impact their neighbors, but also emphasized that States have an additional duty to ensure that private actors within their territory do not cause transboundary harm. This principle of state responsibility for private actors is a key point in linking the responsibility for TNCs to their countries of incorporation. The “No Harm” principle also appears in Principle 21 of the 1972 Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), a comprehensive document linking environmental rights to human rights.¹⁰ The Stockholm Declaration is not legally binding on the international community but is rather an iteration of internationally agreed-upon environmental principles. The Declaration serves in the effort to solidify the slightly-idealistic aspirations of environmental law, paving the way for binding law. The Earth Summit of 1992 birthed the Rio Declaration on Environment and Development (Rio Declaration), which regurgitated many of the principles of the Stockholm Declaration, including the rule of “No

7. Arbitral Trib., 3 U.N. Rep. Int’l Arb. Awards – Trail Smelter Case 1905 (1941).

8. *Id.* at 1917.

9. *Id.* at 1965.

10. U.N. Conference on the Human Environment, *Stockholm Declaration*, U.N. Doc A/CONF.48/14/Rev.I, (1973) [hereinafter *Stockholm Declaration*].

Harm.”¹¹ At that same summit, parties ratified the United Nations Framework Convention on Climate Change (UNFCCC), which also includes the idea that while States have the “sovereign right to exploit their own resources,” they also have “the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”¹²

The International Court of Justice (ICJ) weighed in on the issue with its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons. This document referenced the Rio Declaration to remind States of their obligation to consider the transboundary environmental effects that nuclear weapons are capable of causing.¹³ The ICJ argued that the use of nuclear weapons would violate the instruments relating to the protection of the environment.¹⁴ Today, the “No Harm” principle is part of the body of binding customary international law, due to its pervasive nature and widespread acceptance. This tenet of environmental law is essential in directing responsibility for environmental wrongs to the liable State. At the very least, the onus rests on that State, but ideally, within this paper’s proposed framework, the State would be able to shift responsibility for the causation of trans-boundary harm to a more-accountable TNC.

B. Procedural Rights

There are important environmental procedural rights that carry weight as well. The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) binds parties to its provisional matters concerning procedural rights.¹⁵ Highlighting the document’s importance, the UNECE describes the document as the “only legally binding global instruments on environmental

11. U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc.A/CONF.151/26/Rev.1 (Vol.1) annex I, (Aug. 12, 1992).

12. *United Nations Framework Convention on Climate Change*, 1, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107 (May 9, 1992).

13. *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 95, 4 (July 8).

14. *Id.*

15. U.N. Economic Commission for Europe, *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, June 15, 1998, 2161 UNTS 447; 38 ILM 517 (1999) [hereinafter *Aarhus Convention*].

democracy.”¹⁶ These environmental rights, as indicated in the Convention’s title, require national authorities to make information available to the public regarding a wide variety of environmental issues.¹⁷ The Convention also mandates the manner in which States must create means of redress regarding environmental concerns through a judicial system¹⁸ and provides the public with the right to participate in decision-making regarding certain activities.¹⁹ These rights mirror those found in the International Bill of Rights, namely those in the International Covenant on Civil and Political Rights (ICCPR)²⁰ and the Universal Declaration on Human Rights (UDHR),²¹ both overwhelmingly critical documents in the realm of human rights.

TNCs, in conjunction with local governments, often pose threats to both the principle of “No Harm” and certain guaranteed procedural rights through their operations. Extractive operations are certain to affect the environment and health of neighboring States, and close relationships with governments are prone to result in either blocked access to the judicial system or diminished chances that grievances will result in favorable outcomes to persons affected by TNC activities. Particularly when TNCs operate in areas with repressive governments, the incentive to protect the oft-lucrative extractive industry incentivizes governments to neglect the local population’s democratic rights in general, nevertheless those regarding environmental justice.

II. Relationship between human rights and environment

Several major international bodies have articulated the connection between human rights and environmental law. The Aarhus Convention’s valuable relationship to human rights stems from part of the statement of purpose, proclaiming that “adequate protection of the environment is essential to...the enjoyment of basic human rights, including the right to life itself.”²² Quick to follow, the Charter of Fundamental Rights of the

16. *Public Participation*, UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE, <http://www.unece.org/env/pp/welcome.html> (last visited Dec. 14, 2018).

17. Aarhus Convention, *supra* note 15, art. 4.

18. *Id.* art. 9.

19. *Id.* art. 6.

20. International Covenant on Civil and Political Rights, Dec. 16, 1966 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20; 6 I.L.M. 368 (1967).

21. .G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

22. Aarhus Convention, *supra* note 15.

European Union explicitly provides for environmental protection in Article 37:

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.²³

UN Human Rights Council Resolution 7/23 of March 2009²⁴ and Resolution 16/11 of April 2011 both highlight how the effects of climate change can have negative effects on the enjoyment of human rights.²⁵ Both Resolutions essentially requested that the Office of the United Nations High Commissioner for Human Rights undertake a “detailed analytical study on the relationship between climate change and human rights,” recognizing that the two areas of law are dependent upon the other.²⁶ Specifically, Resolution 16/11 noted that “sustainable development and the protection of the environment can contribute to human well-being and the enjoyment of human rights” and that “environmental damage can have negative implications...for the effective enjoyment of human rights.”²⁷

The United Nations (UN) broke the interrelationship between environmental rights and human rights into three approaches. First is considering the environment as a prerequisite for the enjoyment of human rights.²⁸ That is to say, the State must maintain a certain level of environmental protection to secure the full exercise of human rights. Conversely, a deteriorating environment can hamper a person’s ability to fully express their rights. Second is the notion that human rights are a prerequisite for a healthy environment; certain human rights must be enjoyed in order for “good environmental decision-making.”²⁹ The rights championed in the Aarhus Convention, for example, qualify as those that involve the public in critical decision-making processes and provide access to judicial redress for grievances. Without such procedures, the public’s

23. Charter of Fundamental Rights of the European Union, art. 47, 2012 O.J. 326.

24. U.N. Human Rights Council Res. 7/23, U.N. Doc. A/HRC/RES/18/22 (Oct. 17, 2011)

25. U.N. Human Rights Council Res. 16/11, U.N. Doc. A/HRC/RES/16/L.7 (orally revised) (March 24, 2011).

26. *Id.*; See also, U.N. Human Rights Council Res. 7/23, *supra* note 24.

27. *Id.*

28. *Human Rights and the Environment*, UNITED NATIONS ENVIRONMENT PROGRAMME, <http://web.unep.org/divisions/delc/human-rights-and-environment> (last visited Dec. 14, 2018).

29. *Id.*

ability to speak and perform their civic duty is crippled. The third and final concept is the idea that the right to “a safe, healthy and ecologically-balanced environment [i]s a human right itself,” which the UN notes is a debated approach.³⁰ This eco-centric approach would list a healthy environment alongside freedom from torture, instead of visualizing the environment as a gateway to human rights expression. The first theory, that a healthy environment is essential to the expression of the full spectrum of human rights, is the most well-founded and is relevant to this paper. Therefore, the other two concepts will not be discussed further.

The use of the right of respect for private and family life to combat environmental wrongs is the best way to exhibit the first model of the dependence of human rights upon the well-being of the environment. Article 12 of the Universal Declaration of Human Rights (1948) articulates that everyone has the right to protection of the law against “arbitrary interference with his privacy, [and] family.”³¹ The European Convention on Human Rights (ECHR) also contains a provision allocating this right.³² Article 8 of the ECHR details the “right to respect for private and family life,” a key source in the crusade for transforming environmental harms into human rights violations for parties to the Convention.³³

The European Court of Human Rights (ECtHR) has applied Article 8 to situations when functions of the state have committed environmental harms. The Court has also used this provision to impose liability when a state has reason to know of environmental harms occurring within its territory or jurisdiction and took no action to combat such detriment. The European Court of Human Rights has affirmed that “Article 8 may apply in environmental cases whether the pollution is directly caused by the State or whether State responsibility arises from the failure to regulate private industry properly.”³⁴ This principle of State responsibility is critical in attempting to create mechanisms for international enforcement of TNCs and justifying State responsibility for private actors’ violations of fundamental rights. States have a limited responsibility for the actions of

30. *Id.*

31. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

32. European Convention on Human Rights, 1953, E.T.S. 5, 213 U.N.T.S. 221 (1953) (hereinafter ECHR).

33. *Id.*

34. *Hatton and Others v. United Kingdom*, 2003-VIII Eur. Ct. H.R. 228, para. 98. This principle is reiterated more specifically in para. 119: “[T]he State’s responsibility in environmental cases may also arise from a failure to regulate private industry in a manner securing proper respect for the rights enshrined in Article 8 of the Convention.”

private industries as they relate to other nations. Case law regarding the application of Article 8 is illuminating.

A. Lopez Ostra v. Spain (1994)

Several local tanneries in Lorca, Spain opened a water treatment plant to combat the pollution problem resulting from the tanneries' operations.³⁵ However, the water treatment plant itself engaged in activities which resulted in the emission of foul odors and fumes – namely hydrogen sulfide emissions which exceeding a permissible limit – that leached into the town.³⁶ During that time, due to a malfunction at the plant, the town council had to evacuate the residents, resulting in a 3-month relocation of Mrs. López Ostra and her family.³⁷ For three years, the López Ostra family dealt with the noxious environment produced by the water treatment plant before ultimately moving as a result of the fumes, smells, and noises having a persistent and detrimental impact on their health.³⁸ The European Court determined that, while the state has a certain amount of leeway in balancing the competing interest of the state's economic objectives against an individual's effective enjoyment of their rights, here Spain failed to achieve that balance.³⁹ The Court found there had been a violation of Mrs. López Ostra's rights under Article 8 of the ECHR as a result of the water treatment plant's activities, emphasizing that "severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely," even without serious health endangerment.⁴⁰ The Court ordered Spain to pay

35. *López Ostra v. Spain* A-303-C Eur. Ct. H.R. 46 (1994).

36. *Id.* at para. 7.

37. *Id.* at para. 8.

38. *Id.* at para. 7-8.

39. *Id.* at para. 58; *see also, Hatton, supra* note 34, which also suggests that a critical element for a successful Article 8 claim is unlawfulness of the complained of activities at the domestic level. It is critical that the State was also not in compliance with an aspect of a domestic regime. That is to say, "the violation [is] predicated on a failure by the national authorities to comply with some aspect of the domestic regime." In *Hatton*, applicants complained of nighttime noise disturbances as a result of night flights into the Heathrow airport. However domestic authorities determined that the policy regulating nighttime flights was in compliance with domestic law. *Hatton* partially predicated its decision to refuse to find a violation of Article 8 on this compliance. This is contrasted in *López Ostra*, wherein the waste water plant was operating without a proper license, and *Guerra and Others*, in which the State failed to provide applicants with information that the State had a statutory obligation to provide.

40. *López Ostra v. Spain* A-303-C Eur. Ct. H.R. 46, at para. 51 (1994).

Mrs. López Ostra four million pesetas in damages, approximately \$48,000 in today's USD.⁴¹

B. Guerra and Others v. Italy (1998)

A chemical factory, one kilometer away from the applicants' town of Manfredonia, produced fertilizers and caprolactam, a chemical compound "used in the manufacture of synthetic fibres such as nylon."⁴² The Italian Government classified the factory as "high risk," based on the potential hazards of certain activities deemed dangerous to the environment and local populations.⁴³ Indeed, the factory did emit large quantities of inflammable gas, including arsenic trioxide. Due to a malfunction-caused explosion, one-hundred and fifty people were hospitalized due to acute arsenic poisoning.⁴⁴ The Court held that Italy failed in its duty to reasonably protect its citizens from risk of harm from private actors.⁴⁵

C. Tatar v. Romania (2009)

Around 100,000 cubic meters of cyanide-contaminated tailings water spilled into the environment following a dam breach at a gold mine, which used sodium cyanide in its gold extraction process.⁴⁶ The Court found that the Romanian authorities "failed in their duty to assess . . . the risks" and neglected to enact "suitable measures in order to protect the rights of those concerned to respect for their private lives and homes . . . and more generally their right to enjoy a healthy and protected environment."⁴⁷ This case also acknowledges the public's right to access information and participate in the decision-making process "prior to issuance of the operating authorization," essentially ensuring the public has a say in nearby operations that could have negative consequences on the environment and thus their health.⁴⁸ The case also touches upon the importance of the relevant principles of the Rio Declaration as well as the Aarhus Convention.

These cases in essence illustrate the deep relationship the environment has to facilitating full expression of human rights. This close linkage is

41. *Id.* at 4.

42. *Guerra v. Italy*, 1998-I Eur. Ct. H.R. 89.

43. *Id.* at para. 13.

44. *Id.* at para. 15.

45. *Id.* at Summary.

46. Press release issued by the Registrar: Chamber Judgment *Tatar v. Romania*, Eur. Ct. H.R. (Jan. 27, 2009), <http://hudoc.echr.coe.int/eng-press?i=003-2615810-2848789> (last accessed Dec. 14, 2018).

47. *Id.*

48. *Id.*

critical to underscore how drastically environmental harms can impact human rights and thus the importance of incorporating such environmental harms into the body of international criminal law. In the efforts to preserve human rights, there must be an international avenue of redress against TNCs that negatively impact the environment.

III. History of TNC accountability for human rights violations and current frameworks

Until this point, the discussion has focused on cases when Courts have deemed States accountable for actors within its territory, so it is necessary to examine how the countries of the European Union, BRICS, and North America have historically handled TNC accountability in order to fully grasp the scope of the current climate. First, it is important to understand corporate responsibility on an international scale. Corporations are not powerless actors.⁴⁹ They are capable entities whose business decisions “directly affect the security or insecurity of local populations.”⁵⁰ When these decisions lead to human rights abuses, such as torture, arbitrary arrest, physical injuries, and death, then the corporation should not be able to escape accountability, though they often do. The current complaint mechanisms available to victims of human rights violations do not offer an avenue of redress against corporate actors. Human rights obligations only bind nations.⁵¹ Additionally, when corporations are only indirectly involved in violations, it may be inappropriate to “excessively expand[] corporate involvement into human rights issues which remain primarily matters of state concern.”⁵² The corporate social responsibility movement is on the rise, and voluntary codes of conduct and self-regulation help manage an image of accountability.⁵³ Often, despite the “intentions of corporate leaders, [corporate codes of conduct] bear only the remotest connection with realities that are often brutal and inhumane.”⁵⁴

49. Scott Pegg, *An Emerging Market for the New Millennium: Transnational Corporations and Human Rights*, in *TRANSNATIONAL CORPORATIONS AND HUMAN RIGHTS* 1, 14 (Jedrezej George Frynas et al. eds.2003) (internal citations omitted).

50. *Id.*

51. *Id.* at 16 (internal citations omitted)

52. *Id.* at 15 (internal citations omitted).

53. *Id.*

54. Charles Woolfson & Matthias Beck, *Corporate social responsibility failures in the oil industry*, in *BUSINESS AND HUMAN RIGHTS: DILEMMAS AND SOLUTIONS* 114, 121 (Rory Sullivan ed., 20013) (E-book).

However, while meaningful legal liability under national and international law is still, at the moment, woefully lacking, “there is no logical reason that corporations cannot bear human rights-related obligations.”⁵⁵ Indeed, this trend is on the uptake. There have been several instances that have drawn international attention, with varying levels of corporate legal liability attached in response.

A. Royal Dutch Shell Nigeria

The activities of Royal Dutch Shell in Nigeria are some of the most well-known in the context of oil companies and human rights violations and serves as a classic example.⁵⁶ Royal Dutch Shell, Nigeria’s largest onshore oil company at the time, worked closely with the government to ensure operations would run smoothly and successfully.⁵⁷ Revenue from oil began filtering into the government, bypassing the natives of the production areas, who suffered the brunt of the company’s damage to the environment and their well-being.⁵⁸ As a result, antagonism against oil industry rose throughout the 1970s and 1980s as oil production also rose and the negative environmental effects of Shell’s presence began to show.⁵⁹ Most notably, oil spills contaminated the water, damaging the livelihoods of farmers and ordinary locals.

As it became abundantly clear to the locals that the Nigerian government would do nothing to impede the environmental degradation resulting from oil spills and seismic disturbances, they shifted their focus to plead to Shell for relief. Villagers requested compensation for their losses as a result of pollution and became understandably disgruntled when these pleas went ignored.⁶⁰

In an effort to shield the interests of the oil industry, the Nigerian government began targeting growing protests by restricting various political and economic rights – such as peaceful assembly – as well as infringing on some of the most fundamental human rights, such as freedom from arbitrary arrest and detention.⁶¹ The Nigerian government indiscriminately arrested

55. Pegg, *supra* note 49, at 16.

56. Jędrzej George Frynas, *The Oil Industry in Nigeria: Conflict between Oil Companies and Local People*, in *TRANSNATIONAL CORPORATIONS AND HUMAN RIGHTS*, 99, 99 (Jędrzej George Frynas et. al ed., 2003).

57. *Id.* at 101-103.

58. *Id.* at 102.

59. *Id.* at 101.

60. *Id.* at 102.

61. *Id.* at 104.

critics of the oil industry and seized the property of locals in the name of furthering oil production.⁶² In this way, the presence of a TNC in Nigeria indirectly contributed to the human rights abuses of the locals.⁶³ More severely, there is documentation to suggest that Shell employed the protection of a Nigerian security force well-known for its brutality to protect its assets against protesters; this security force then massacred a small village on flimsy evidence of an impending attack on Shell's oil facilities.⁶⁴ While the African Commission on Human and Peoples' Rights found Nigeria to be in violation of several provisions of the African Charter of Human and People's Rights, Shell escaped relatively unscathed.⁶⁵ Scattered lawsuits in the United States (see below) and the Netherlands resulted in settlements to compensate the Ogoni community for the environmental and human rights violations sustained.⁶⁶ This legal response likely only occurred because this situation drew extreme attention from the international community.

B. Piper Alpha Disaster

The 1988 Piper Alpha disaster, an explosion of an oil production platform in the North Sea which killed 167 people, resulted due to a laundry list of safety failures on the part of the platform's owner, American company Occidental.⁶⁷ These safety failures directly implicated the company's management in the disaster.⁶⁸ Gross disregards for safety over time also indicated that the regulatory body charged with maintaining oversight of the offshore industry also shouldered some of the blame.⁶⁹ Without the so-called 'regulatory capture' of the regulating agency responsible for monitoring the offshore industry, Occidental's management failures would not have been possible.⁷⁰ This regulatory capture happened when the oversight body came to associate "'the public good' with the interest of the industry."⁷¹ This conflict of interest partially arose when the Health and Safety Executive (HSE), the UK's primary safety agency, was

62. *Id.* at 109.

63. *Id.* at 102.

64. *Id.* at 112 (internal citations omitted).

65. *RE: Communication 155/96*, African Commission on Human and Peoples' Rights, ACHPR/COMM/A044/1 (May 27, 2002).

66. *Id.*

67. Woolfson, *supra* note 54.

68. *Id.*

69. *Id.* at 117.

70. *Id.* at 117.

71. *Id.* at 118.

not given responsibility for monitoring offshore safety.⁷² The Scottish High Court also implicated anti-union practices as part of the oversight problem. As an effect of limiting political rights in the workplace, the “disempowered workforce was unable or reluctant to speak out on safety issues for fear of management retribution.”⁷³ Occidental managed to slip by without a single manslaughter charge against management personnel or prosecution for health and safety legislation breaches.⁷⁴ Only the public outcry surrounding the event brought judicial scrutiny in the form of a judicial report on what went awry. The slow government response, based solely on public reaction, is troubling. The government “essentially cease[s] to play the role of a proactive policy-maker” if the “recognition of regulatory failure with regard to safety or the environment is now dependent on sustained public reaction to disasters.”⁷⁵

Occidental apparently did not learn its lesson from this narrow run-in with human rights violations, likely due to the absolute lack of criminal repercussions. In 2003, U.S. Special Forces began collaborating with the Colombian army in Northern Colombia as ‘advisors.’⁷⁶ Their objective was to “train the Colombian army to protect Occidental’s 500 mile pipeline from leftist guerillas.”⁷⁷ As recently as 2017, rebel group National Liberation Army (ELN) forced Occidental to partially suspend operations.⁷⁸ The ELN “opposes the presence of multinational companies in the mining and oil sector, claiming that they seize natural resources without leaving benefits to the country’s population or economy.”⁷⁹

C. Deepwater Horizon

Similar to the Piper Alpha disaster, the Deepwater Horizon oil spill of 2010 saw BP and its executives escape with little more than clean-up fees and a tarnished reputation. Prosecutors dropped manslaughter charges regarding the eleven deaths, and there was no effective criminal punishment

72. *Id.*

73. *Id.* at 117.

74. *Id.* at 119.

75. *Id.* at 124.

76. *Id.* at 123 (internal citations omitted).

77. *Id.*

78. Luis Jaime Acosta, *Occidental starts to suspend Colombia production after rebel attacks*, REUTERS (March 1, 2017), <https://www.reuters.com/article/colombia-oil/occidental-starts-to-suspend-colombia-production-after-rebel-attacks-idUSL2N1GE1AE> (last visited Jan. 23, 2019).

79. *Id.*

for the environmental devastation that wreaked havoc on the Gulf of Mexico.⁸⁰

D. United Kingdom

Common-law countries have also been liberal in allowing foreign suits to be brought against domestic companies. In the United Kingdom, the courts allowed a suit to be brought against a parent company for the actions of its subsidiaries abroad. A uranium mine worker in Namibia, who developed cancer of the larynx allegedly as a result of inhaling silica uranium at the mine,⁸¹ was able to bring a suit in England against Rio Tinto PLC, over the mine's health hazards, despite the court acknowledging Namibia as the proper venue.⁸² The court effectively recognized that the worker would be unable to obtain legal assistance or relief if the case was not heard in England.⁸³ The Court determined that substantial justice could not be carried out in Namibia, making England the more appropriate forum for justice. Similarly, judges allowed a lawsuit against Thor Chemicals, alleging mercury poisoning of its workers, to proceed in an English venue.⁸⁴ Four workers died from exposure to mercury in the factory.⁸⁵ Thor Chemicals eventually settled out of court.⁸⁶

E. Alien Tort Claims Act

The United States, along with the United Kingdom, is in a relatively unique position due to the jurisdictional anomaly of the Alien Tort Claims Act, enacted so that victims of piracy on the high seas could seek redress in the United States. Foreigners have utilized this Act to bring claims against U.S.-based corporations for human rights abuses committed abroad. For example, Burmese residents were successful in bringing a suit in a U.S. District Court against Unocal, a U.S.-based oil company, for allegations that the company was complicit in aiding and abetting Burmese authorities

80. Oliver Milman, Manslaughter charges dropped against two BP employees in Deepwater spill, *THE GUARDIAN* (Dec. 3, 2015), <https://www.theguardian.com/environment/2015/dec/03/manslaughter-charges-dropped-bp-employees-deepwater-horizon-oil-spill> (last accessed Dec. 14, 2018).

81. *Connelly v. RTZ Corporation PLC.*, [1997] APP.L.R. 07/24.

82. *Id.*

83. *Id.*

84. Jędrzej George Frinaz, *Social and environmental litigation against transnational firms in Africa*, 42:3 *J. OF MODERN AFRICAN STUDIES* 363, 367(2004).

85. *Id.*

86. *Id.*

in committing human rights violations.⁸⁷ Other foreigners were also successful in bringing suits against U.S. companies such as in *Botowo v. ChevronTexaco Corp.*, a cause of action against Chevron for its “role in transporting Nigerian military troops on two separate occasions to locations where non-violent protestors were subsequently killed and injured.”⁸⁸ Similarly, a judge allowed a case brought by the son of a Nigerian activist and outspoken critic of Shell in *Wiwa v. Royal Dutch Petroleum Company and Shell Transport and Trading Company PLC* to move forward. *Wiwa* accused Shell of facilitating the writer’s death.⁸⁹ Shell quickly settled *Wiwa*, the most promising of the two cases, shortly before the trial was set to begin, escaping a potential doling of justice.⁹⁰

Indonesia provides another case study regarding mining in conflict zones and the potential for litigious response in the United States. Indonesia had a weak, corrupt institution, which resulted in another clash between human rights and natural resource extraction.⁹¹ U.S. miner Freeport-McMoRan owned and operated one of the world’s largest copper and gold mines and established a mining town in Indonesia to oversee the mine’s operations.⁹² While Freeport owned the mine “all surface and sub-surface resources belonged to the [Indonesian] government.”⁹³ Keeping with tradition, tensions between the mining company and the local population began to escalate. In 1996, the locals had initiated riots in Freeport’s mining town of Tembagapura and the nearby town of Timika.⁹⁴ In one such instance, fighters shot at several company vehicles, killing one employee and wounding several others.⁹⁵ Following this incident, the mining company asked the Indonesian government “to provide sufficient protection to allow the mine to continue operating and for its employees to be able to live and work without fear.”⁹⁶ Eventually, security forces protecting the mining

87. Pegg, *supra* note 49, at 17.

88. *Id.* at 18. See *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 92 (2d Cir. 2000).

89. *Id.* at 18.

90. Jad Mouawad, *Shell to Pay \$15.5 Million to Settle Nigerian Case*, N.Y. TIMES (June 8, 2009), <https://www.nytimes.com/2009/06/09/business/global/09shell.html?ref=global> (last accessed Dec. 14, 2018).

91. Simon Handelsman, *Mining in conflict zones*, in BUSINESS AND HUMAN RIGHTS: DILEMMAS AND SOLUTIONS 125, 125 (Rory Sullivan ed., 2003) (E-book) (internal citations omitted).

92. *Id.* at 126.

93. *Id.*

94. *Id.* at 129.

95. *Id.* at 127.

96. *Id.* at 128.

operations eventually came into conflict with freedom fighters, which brought allegations of human rights violations.⁹⁷ Authorities attributed the attack to the Free Papua Movement (OPM), with whom Freeport had several incidences.⁹⁸ In response to the attack:

In order to facilitate the capture of the OPM operatives the government security forces took about 20 local people into custody, some of whom have never been found and are presumed dead; others, including women, were locked in shipping boxes under inhumane conditions.⁹⁹

In April 1996, two lawsuits were lodged in U.S. courts, “both alleging human rights violations against the local people by the Indonesian security forces supported by Freeport.”¹⁰⁰ One lawsuit was filed in the U.S. District Court in New Orleans and the other was filed in Louisiana state court, on behalf of two indigenous Amungme persons.¹⁰¹ Despite Freeport’s direct involvement in the human rights abuses, the suits alleged that “Freeport supported Indonesian security forces in committing human rights abuses, polluted traditional lands with mine tailings, and attempted ‘cultural genocide’ on the local people.”¹⁰² Many of the locals believed that the existence and operation of the Freeport mine was the catalyst for the human rights abuses; without Freeport operating in the area, none of these abuses would have occurred.¹⁰³ These circumstances again probe the issue of whether the relationship between the extractive company and the

97. *Id.* at 127.

98. *Id.*

99. *Id.*

100. *Id.* at 129.

101. *Id.*

102. *Id.* at 130. *See* Beanal v. Freeport-McMoRan, Inc., 969 F. Supp. 362 (E.D. La. 1997), the district court suit lodged on behalf of the Agmungme tribe. The court ultimately found that, although the plaintiff Beanal had standing to bring his allegations, he only had standing in regard to his own violations, not on behalf of the tribe. The court found that Beanal failed to state a claim pursuant to either the Alien Tort Statute or the Torture Victim Protection Act, the latter of which the Court determined did not apply to corporations. Nor did the Plaintiff state a claim for an environmental tort in violation of the law of nations. *See also* Alomang v. Freeport-McMoran, Inc., 811 So.2d 98 (La. Ct. App. 2002), which similarly alleged foreign environmental violations, international human rights violations, and cultural genocide. The problems with this lawsuit stemmed primarily from pleading deficiencies, not any jurisdictional defects or problems with the substantive law.

103. *Id.* at 129.

government security forces is attenuated enough to indicate complicity on behalf of the TNC.

F. BRICS countries

In the BRICS countries – Brazil, Russia, India, China, and South Africa – there is very little precedent on this issue of corporate liability, which alone should speak to the necessity for an international system that has some form of TNC accountability. It is unlikely that the lack of cases from these countries is due to an absence of violations. It is more conceivable that violations do occur but go unreported, because of either lack of an avenue in which to lodge a complaint or for fear of reprisals. TNCs in the BRICS countries have several commonalities. The largest ones are primarily state-owned, state-operated, or state-influenced, and most of the notable companies have long histories of environmental disasters, such as oil spills or pipeline explosions. Most of the major extractive industry companies are majority state-owned, creating a double-insulation effect against lawsuits and liability. State sovereignty acts as a shield, deterring potential lawsuits. Cases that are able to gain traction are often buried with money. This problem is exacerbated when abuses occur within a State's own borders.

Two major companies in India, Hindustan Zinc Ltd. and National Mineral Development Corporation, both operate exclusively within India's territory.¹⁰⁴ This method of operation makes it difficult for a country to exercise its autonomy and eject a TNC from its borders for its environmental, human rights abuses, as Gabon did with China's Sinopec Limited.¹⁰⁵ Gabon was forced to suspend Sinopec's operations due to concerns regarding its environmentally damaging methods, particularly regarding the company's seismic activities and the corresponding detrimental effects on local gorilla populations.¹⁰⁶ Again, though, this TNC

104. Hindustan Zinc Limited, *Annual Report 2017-2018*, VEDANTA (April 8, 2018), http://www.hzindia.com/latest_news/annual-report-2017-18/ (last accessed Dec. 14, 2018); NATIONAL MINERAL DEVELOPMENT CORPORATION, *Annual Report 2017-2018*, <https://www.nmdc.co.in/docs/NMDC%20AR%202018%20Web%204-9-2018.pdf> (last visited Dec. 14, 2018).

105. JOHANNA JANSSON, CHRISTOPHER BURKE, AND WENRAN JIANG, *Chinese Companies in the Extractive Industries of Gabon & the DRC: Perceptions of Transparency*, CENTER FOR CHINESE STUDIES, UNIVERSITY OF STELLENBOSCH, 17-18 (Jan. 2009), https://eiti.org/sites/default/files/documents/Chinese_Companies_in_the_Extractive_Industries_of_Gabon_and_the_DRC_CCS_report_August_2009.pdf (last visited Dec. 14, 2019).

106. LUISIA I. RABANAL, ET. AL., *Oil prospecting and its impact on large rainforest mammals in Loango National Park, Gabon*, 143 *BIOLOGICAL CONSERVATION* 1017, 2013

suffered only a financial setback; no meaningful punishment or retribution for the environmental damage suffered by the people of Gabon ever occurred.¹⁰⁷ Such is the pattern.

To call Russia a major player in the oil and gas industry would be an understatement. The European continent is reliant on Russian-supplied oil and gas. Two major corporations, Lukoil and Gazprom, have mammoth reach around the globe. Lukoil is involved in numerous projects for the exploration and development in countries across the globe. The company carries out oil and natural gas operations, in Azerbaijan, Bulgaria, Italy, the Netherlands, Ghana, Egypt, Iraq, Kazakhstan, Cameroon, Mexico, Nigeria, Norway, Romania, and Uzbekistan.¹⁰⁸ Lukoil sells oil and petroleum products to most of Eastern Europe, and the TNC even conducts geological exploration and production from its subsidiary in Houston, Texas.¹⁰⁹ Even with massive global operations, the majority of Lukoil's operations and exploration occur within Russia's borders¹¹⁰. The company is also primarily responsible for oil leaks from the Usinsk oil field, which total *yearly* to twice the amount of oil emitted in the BP Deepwater Horizon oil spill.¹¹¹ The amount of damage wrought on the environment in northern Russia is currently untold. As the primary licenser for the oil field, the Lukoil bears the corresponding primary responsibility. However, due to poor oversight and easily-paid fines, there is little incentive for the Russian oil giant to mend its ways. Not one to play by the rules, Russia is unlikely to initiate stricter enforcement for its massively profitable oil and natural gas industry, which has average returns "twice as high as in other countries . . . thanks to huge government tax breaks and subsidies."¹¹² And with Russia's recent snub to the ECtHR, strong international oversight and criminal responsibility for corporations seems like the most viable option.¹¹³ Rather

(Feb. 18, 2010), https://www.eva.mpg.de/documents/Elsevier/Rabanal_Oil_BiologCons_2010_1552612.pdf (last visited Mar. 24, 2019).

107. *Id.*

108. LUKOIL, *Geographic reach*, LUKOIL OIL COMPANY, <http://www.lukoil.com/Company/BusinessOperation/GeographicReach> (last visited Jan. 25, 2019).

109. *Id.*

110. *Id.*

111. Alec Luhn, *The town that reveals how Russia spills two Deepwater Horizons of oil each year*, THE GUARDIAN (Aug. 5, 2016), <https://www.theguardian.com/environment/2016/aug/05/the-town-that-reveals-how-russia-spills-two-deepwater-horizons-of-oil-each-year> (last visited Jan. 25, 2019).

112. *Id.*

113. *Russia passes law to overrule European human rights court*, BBC NEWS (Dec. 4, 2015), <https://www.bbc.com/news/world-europe-35007059> (last visited Jan. 24, 2019).

than targeting the contentious country itself, the international community could seek redress through its state-owned interests.

Hindustan Zinc Ltd., referenced earlier, is the second-largest producer of zinc in the world. The corporation was also named to RobecoSAM's Corporate Sustainability Assessment Yearbook in 2018.¹¹⁴ RobecoSAM nominates the most sustainable companies in each major industry. The Yearbook mention makes Hindustan Zinc effectively an 'honorable mention.'¹¹⁵ This accolade came less than two years after a complaint was lodged before the National Green Tribunal against the corporation. The plaintiffs alleged that "as a result of the mining activity and non-compliance of preventative measures," the community has suffered a myriad of environmental problems, including reduced and polluted drinking water.¹¹⁶ The complaint attributed 111 deaths as a result of Hindustan's operations.¹¹⁷ The judgment by the Tribunal indicated the contrary, though the judgment was lukewarm and relatively indefinite.¹¹⁸ At present, India is party to several United Nations human rights treaties but is not a party to either of the Optional Protocols to the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights which allows individual citizens to lodge a complaint against India for alleged human rights violations.¹¹⁹ Unless India becomes a party to the Optional Protocols, there is no individual avenue of redress against the state, nevertheless state-owned corporations.

The presence of Sinopec Limited, has caused aggravated tensions between Somalia and Ethiopia due to its oil exploration into the African continent. The Ogaden National Liberation Front, an ethnic Somali group,

114. Hindustan Zinc Limited, *supra*, note 104.

115. RobecoSAM, "Companies," <https://yearbook.robecosam.com/companies/> (last visited Mar. 24, 2019).

116. *Nath v. Hindustan Zinc, Ltd.*, No. 128/2014 National Green Tribunal (CZ), Judgment, 3 (May 12, 2016) <http://www.indiaenvironmentportal.org.in/files/Hindustan%20Zinc%20Bhilwara%20NGT%20order.pdf> (last visited Mar. 24, 2019). See also *Davan v. Hindustan Zinc, Ltd.*, No. 129/2014 National Green Tribunal (CZ), Judgment, 3 (May 12, 2016) (decided in conjunction with *Nath*).

117. *Id.* at 4.

118. *Id.* at 15-16.

119. *Ratification Status for India*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN.

killed 74 workers at a Sinopec oilfield in 2007.¹²⁰ The oilfield is in part of Ethiopia that is comprised primarily of ethnic Somalis. The rebel group claimed they carried out the attack to discourage the oil industry's operations, which financially benefit the Ethiopian government. The majority of the workers killed were Ethiopian. The company has also been named as a chronic river polluter by a watchdog group in China as a result of its role in polluting some of China's major rivers.¹²¹ The State Environmental Protection Administration gave what was effectively a slap on the wrist in response.¹²²

The China National Petroleum Corporation (CNPC) has an even more woeful environmental record. CNPC has been responsible for several devastating environmental and human rights disasters in the last fifteen years. In 2003, at least 191 people were killed as the result of an explosion in a natural gas field under the control of CNPC.¹²³ It is likely that the accident was a result of "poor safety procedures or faulty rescue operations," indicated by the "high death toll and the long lag in reporting accurate information" regarding the accident.¹²⁴ In 2005, an explosion in Jilin resulted in a "50-mile slick of toxic benzene" that reached the Songhua River.¹²⁵ In 2010, damaged pipeline owned by CNPC resulted in a large oil spill in the Xiangang Port that threatened to pollute the Yellow River.¹²⁶ Chinese authorities were unsurprisingly vague when referencing the extent and cause of the damage, as well as the delayed response.¹²⁷

CNPC's behavior in Chad was so deplorable that the Chad government suspended CNPC's operations after an oil spill in "several sites near a

120. Anita Powell, *Ethnic Somali rebels kill 74 at Chinese oilfield in Ethiopia*, THE GUARDIAN (Apr. 24, 2007), <https://www.theguardian.com/world/2007/apr/25/ethiopia> (last visited Mar. 24, 2019).

121. *Sinopec punished for water pollution*, REUTERS (July 4, 2007), <https://uk.reuters.com/article/china-environment-sinopec/sinopec-punished-for-water-pollution-idUKHKG702120070704> (last visited Jan. 24, 2019).

122. *Id.*

123. Joseph Kahn, *Gas Well Explosion and Fumes Kill 191 in China*, N.Y. TIMES (Dec. 26, 2003), <https://www.nytimes.com/2003/12/26/world/gas-well-explosion-and-fumes-kill-191-in-china.html> (last visited Jan. 26, 2019).

124. *Id.*

125. David Lague, *China blames Oil Company for Benzene Spill in River*, N.Y. TIMES (Nov. 25, 2005), <https://www.nytimes.com/2005/11/25/world/asia/china-blames-oil-company-for-benzene-spill-in-river.html?mtref=www.google.com&gwh=A2910CB69B89586CC64DF90E9CFBD9FE&gwt=pay> (last visited Jan. 26 2019).

126. David Barboza, *Large Oil Spill Reported in China*, N.Y. TIMES (Jan. 3, 2010), <https://www.nytimes.com/2010/01/04/world/asia/04china.html> (last visited Jan. 27, 2019).

127. *Id.*

forest.”¹²⁸ The oil minister of Chad detailed how CNPC “dug huge trenches and let oil flow into them, and then had it removed by local workers without protective gear.”¹²⁹ The Chad government threatened to hold the company’s managers responsible for unspecified criminal violations.¹³⁰

This laundry list of environmental disasters which have all had detrimental impact to the environment and human rights in China are symptomatic of a larger problem for the country, namely the lack of any accountability. China is identical to India in its lack of an individual-complaints procedure for victims of human rights violations at the hands of the government or its TNCs.¹³¹ The ability of the Chinese government to be so well-insulated against any repercussions for the atrocious environmental record of its corporations bespeaks of the larger need for change in the defunct system.

The operations of two of Brazil’s largest TNCs offer a dichotomous view that reflects the behavior of TNCs in BRICS countries in general. In 2011, Vale (S.A.), a multinational corporation involved in mining iron ore, nickel, and other minerals, announced it would invest “an estimated \$2 billion in the world’s most controversial hydroelectric dam project.”¹³² Critics of the Belo Monte dam in the Brazilian Amazon have alleged that Brazil’s government was dismissive of native tribes and locals regarding the environmental impact the dam would have on the surrounding areas.¹³³

In contrast, Petrobras, a corporation majority-owned by the Brazilian government with a global reach, was responsible for a stream of major oil spills from the mid-70s until 2001, when the company undertook a major corporate social overhaul. Since then, Petrobras has become a member of the National Oil Spill Contingency Plan for Brazil, conducts emergency drills to respond to spills,¹³⁴ and adopted a Zero Spill plan to minimize oil

128. *Chad suspends China firm CNPC over oil spill*, BBC NEWS (Aug. 14, 2013), <https://www.bbc.com/news/world-africa-23697269>

129. *Id.*

130. *Id.*

131. *Ratification status for China*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx (last visited Jan. 27, 2019).

132. Kenneth Rapoza, *Brazil’s Vale Joins “Avatar” Battle as Belo Monte Dam Investor*, FORBES (April 28, 2011), <https://www.forbes.com/sites/kenrapoza/2011/04/28/brazils-vale-joins-avatar-battle-as-belo-monte-dam-investor/#23ba78051379> (last visited Jan. 27, 2018).

133. *Id.*

134. *Brazil*, INTERNATIONAL TANKER OWNERS POLLUTION FEDERATION LIMITED (2018), <https://www.itopf.org/knowledge-resources/countries-territories-regions/countries/brazil/> (last visited Jan. 27, 2019).

spill risk.¹³⁵ The company has also doubled down on other commitments to environmental safety, undertaking an active and successful conservation effort to rebuild the humpback whale population in Brazilian waters. Petrobras also funds the Tamar Project, which protects sea turtle habitats in Brazil. This level of corporate social responsibility does not just materialize. The public image overhaul landed Petrobras on the Dow Jones Sustainable Index from 2006-2015 due to its environmental philanthropy.

Setting Brazil apart from the other BRICS countries is Brazil's relatively clean record regarding oil and gas, and extractive resource companies' operations. While the hydroelectric dam in the Amazon is sure to raise human rights issues in the future, there is little to be found to implicate a checkered history of violating human rights by oil companies in similar ways as Russia and China. Setting Brazil further apart is the fact that Brazil has accepted the Additional Protocol to the International Covenant on Civil and Political Rights which allows for individual complaints to potentially be heard by the Human Rights Council.¹³⁶ In the future, should human rights or indigenous groups have complaints against Brazil for its operations, there is a direct avenue of redress against the country, though still not the corporations themselves.

South Africa, the last of the BRICS countries, is home to one of the largest gold producers in the world – AngloGold Ashanti. The company began gold mining in the Democratic Republic of the Congo after establishing a relationship with the Nationalist and Integrationist Front (FNI), “an armed group responsible for serious human rights abuses including war crimes and crimes against humanity.”¹³⁷ AngloGold's partnership with FNI provided AngloGold with “security for its operations and staff” while AngloGold provided “logistical and financial support” to FNI.¹³⁸ When FNI asked for money, they got it.¹³⁹ HRW claims the company “knew, or should have known, that the FNI armed group had committed grave human rights abuses against civilians and was not a party to the transitional government” in the DRC. This direct involvement with a

135. *Operating Safety*, PETROBRAS (2019) <http://www.petrobras.com.br/en/society-and-environment/environment/operating-safety/> (last visited Mar. 24, 2019).

136. *Ratification Status for Brazil*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx (last visited Jan. 27, 2019).

137. *The Curse of Gold: Democratic Republic of Congo*, HUMAN RIGHTS WATCH, 10 (2005).

138. *Id.*

139. *Id.* at 2.

group committing human rights abuses in the extreme is the most heinous example from the five countries. South Africa is party to the Additional Protocol allowing for acceptance of individual complaints under the International Covenant on Civil and Political Rights, which would provide avenues of redress for some of the victims of FNI's conduct.¹⁴⁰

Beyond countries with relatively accessible records, there also lies the problem where an information vacuum impacts the ability to act. In countries such as Angola, Algeria, Burma, Cameroon, Chad, Colombia, Ecuador, Gabon, Iran, Iraq, Nigeria, Peru, Venezuela, "collaboration between repressive regimes and oil multinationals has been documented only incompletely."¹⁴¹ Thus the need for human rights aid and a more direct avenue to justice against these multinationals is not fully realized.

The current system allows for deflection by secondarily-responsible countries, or financial penalties are taken after the fact, doing little to deter infringements in the first place. There must be accountability, which the current system is failing to provide, for the actions of international companies which devastate both the environment and basic human rights. Companies are complacent and neglect environmental human rights until the public's outcry is too loud to ignore or until tragedy has struck. In either instance, governments are failing in their duties. Governments are either incapable of policing TNC behavior, due to poor political infrastructure or a lack of resources, or because of the government's complicity in the corporation's operations. Money acts as an escape hatch from the rare opportunities for true legal reprisals. A separate and independent regime is needed for meaningful accountability.

IV. How to hold TNCs internationally accountable for their actions?

Transnational corporations should be interested in preventing human rights violations, even beyond potential international pressure. TNCs humanitarianism should logically stem, first and foremost, from the benevolent desire to do good. Nongovernmental organizations have recognized the role that TNCs could play in improving human rights conditions surrounding their businesses.¹⁴² Unfortunately, such public-

140. *Ratification Status for South Africa*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx (last visited Jan. 27, 2019).

141. Woolfson, *supra* note 54, at 122.

142. Frans-Paul van der Putten, Gemma Crijns, and Harry Hummels, *The ability of corporations to protect human rights in developing countries*, in BUSINESS AND HUMAN RIGHTS: DILEMMAS AND SOLUTIONS, 82, 83 (Rory Sullivan ed., 2003).

mindedness often conflicts with the usual profit agenda. There are certain countries in which corporations cannot possibly invest without directly contributing to serious human rights violations, and again, absent a “mandate to be autonomous actors in international relations,” TNCs lack incentive to comply where corporate profits deviate from preserving human and environmental rights.¹⁴³

The justification that “rich and developing countries do not make the same demands in respect of human rights,” and therefore TNCs can somehow rationalize operating at some lower standard wholly misses the crux of human rights law.¹⁴⁴ All persons are entitled to a basic level of treatment that bears no justification for deviation. The existence of an international system with the ability “to enforce a legal obligation on [TNCs] to take human rights related action... would be in the interest of the controlling shareholders for the company to comply with these legal rules.”¹⁴⁵ Absent such a supervisory system, however, controlling stakeholders are not under pressure to comply with a regime that has no direct effect on their operations. It is only when the overall corporate interest becomes dependent upon human rights promotion, that the company’s nature will shift to emphasize compliance.¹⁴⁶ At current, it is mostly reputational damage with consumers – social pressures – that result in lost business that shapes corporate thinking.¹⁴⁷ Thus TNCs need to be accountable to a higher power with the authority to mete punishment and administer justice.

It is optimistic, and perhaps juvenile, to expect that *all* TNCs would be focal points of any scheme imposing liability for abuses. Those TNCs that have the potential to be subjects of international liability for human rights violations and environmental wrongs should conform to a particular set of characteristics. First, the company “originated in a developed country, where its head office is still located...[and] controls assets or operations in

143. *Id.*

144. *Id.* at 84.

145. *Id.* at 87.

146. *Id.* at 86.

147. For example, Nike has faced intense backlash for its child labor practices abroad, which has forced the company to overhaul its manufacturing procedures. See JOHN. H CUSHMAN JR., *International Business; Nike Pledges to End Child Labor and Apply U.S. Rules Abroad*, N. Y. TIMES, May 13, 1998 <https://www.nytimes.com/1998/05/13/business/international-business-nike-pledges-to-end-child-labor-and-apply-us-rules-abroad.html> (last visited Jan. 23, 2019). Despite an overhaul in the early aughts, Nike remains synonymous with child labor violations.

a developing country where human rights abuses take place.”¹⁴⁸ The accumulation of the TNC’s operations makes it one of the largest market participants in at least one of its operating fields, including, but not limited to resource extraction of manufacturing.¹⁴⁹ Potential TNCs include not just the “usual suspects’ in human rights literature such as oil and mining firms, but the whole range of manufacturing, extractive and services companies.”¹⁵⁰

The assumption that human rights initiatives by TNCs would be warmly welcomed by the local population is also problematic.¹⁵¹ Particularly in countries with histories of colonialism and imperialism, local populations might be reluctant to embrace foreign human rights intervention.¹⁵² This problem is exacerbated by the fact that the originators of human rights protection and intervention are the former colonizers and imperialists themselves, which understandably causes skepticism amongst formerly dominated areas.¹⁵³ When the entities exerting human rights influences are those that previously participated in violations, such efforts would be considerably undermined. At the very worst, “should they emerge as tools of foreign political influence . . . certain human rights activities might easily be interpreted as mere excuses for political domination.”¹⁵⁴ Local populations, can be relatively accepting of foreign influence “as long as they believe that it is beneficial,” and would accept engagement in “subtle forms of human rights promotion” from corporations with whom the communities have longstanding relationships.¹⁵⁵ These are rare and precarious circumstances, and, thus far, allowing corporations to self-police for human rights violations has proven ineffective. It is farcical for the international community to continue to rely on self-governance and public criticisms to curb this disturbing trend. Instead of reliance on TNCs themselves for accountability, other avenues must be explored.

When evaluating TNC liability, it is necessary to first examine the extent of TNC’s involvement with environmental human rights abuses to determine what level of responsibility is borne by the corporation. There are four major factors to consider regarding a transnational corporation’s

148. Putten, *supra* note 142, at 84.

149. *Id.* at 85

150. *Id.*

151. *Id.* at 89.

152. *Id.* at 89.

153. *Id.* at 91.

154. *Id.* at 90.

155. *Id.*

involvement in potential human rights abuses. First is the matter of degree – whether the violations are sporadic and isolated, or planned, systematic, and continuous.¹⁵⁶ While isolated incidents are still inexcusable, they differ strongly from the pattern of a repressive government. Repetitive conduct is less likely to be the product of a one-off accident or lapse in judgement; systematic violations indicate awareness and perhaps complicity.

Second is the nature of the violations – are they the direct result of government activities or is the government merely impotent when securing human rights?¹⁵⁷ If a government is merely too weak to effectively protect and ensure certain rights, those violations seem to be of a lesser degree than when a government is actively seeking to deprive its residents of their rights. Some governments are ineffective to the point that they cannot respond to human rights violations, regardless of their desire to do so. This situation differs from when a government is either participating in the human rights abuses or is actively turning a blind eye in order to reap the benefits of a TNC's operations. China, for example, is more than capable of responding to the environmental degradation resulting from CNPC's operations but is choosing instead to allay concerns to the best of its ability.

Third, is the breach regarding fundamental or lesser rights?¹⁵⁸ There is theoretically no hierarchy within the rights protected in the area of human rights law. The fact remains, however, that some rights are 'non-derogable' during national emergencies, which contradicts that principle. Therefore it is important to consider if the corporation violated a right that is non-derogable or one that is similarly essential such that a violation speaks of egregious conduct.

Lastly, what is the proximity of the corporation to the violations?¹⁵⁹ Is the connection direct, as through a company's operations or products, or indirect, as through financial infusions into an abusive governing regime?¹⁶⁰ A corporation's role in creating or worsening violations against local populations can be demonstrated either through a corporation's catalytic effect in bringing about conflict with military forces or directly through physical abuses by the corporation or through utilizing military assistance.¹⁶¹ The level of a corporation's involvement and complicity with human rights violations is critical in assessing their liability. For example,

156. Pegg, *supra* note 49, at 11-12 (internal citations omitted).

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.* at 12-13.

Shell's actions in Nigeria were indirect but highly aggravated the situation. It is possible that without the presence of Shell and its requests for assistance and security that certain violations would not have occurred, differing from a situation where the TNC is mostly liable through its financial infusions which indirectly fund a corrupt, oppressive regime.

Two distinct pathways emerge when considering how to hold TNCs accountable for their environmental human rights violations: through economic sanctions or by pursuing criminal liability, with preferability for the latter. While taking economic measures might seem enticing, there are a multitude of drawbacks that make this method ultimately undesirable. Trade sanctions grapple with political obstacles and the unintended consequence of intensifying the behavior the economic punishment seeks to discourage. Both pathways, trade sanctions and criminal liability, are typically aimed at impacting states. It would be effectively inconceivable for an international trade organization to individually target a TNC, but it is not so far-fetched to consider expanding international criminal jurisdiction for environmental human rights violations to cover corporate liability. Given that the ICC can already hold individuals responsible for specific international crimes, the concept of expanding the Court's jurisdiction to encompass TNCs and their environmental human rights crimes is not a far-fetched concept. Nor is it unrealistic in the modern climate for countries to support modifications to their human rights treaties to hold TNCs accountable, rather than be the scapegoat themselves.

A. Trade Sanctions

It is in the interest of trade organizations to pursue long-term human rights goals, which are preconditions for successful trade. Human rights not only make individuals better democratic citizens but also better economic actors.¹⁶² The UN General Assembly in 1999 emphasized the need to analyze the consequences of globalization for human rights:

[While] increased trade and investment has brought significant benefits to many nations and people...trade liberalization can lead to widening disparities between and within nations, increase people's vulnerability to external economic variations and

162. Ernst-Ulrich Petersmann, World Trade Forum, *Human Rights, Markets and Economic Welfare: Constitutional Functions of the Emerging UN Human Rights Constitution*, in INTERNATIONAL TRADE AND HUMAN RIGHTS 29, 32-33) (Frederick M. Abbott et al. ed., vol. 5, 2009) (ebook).

shocks and as a result put at risk the realization of fundamental human rights.¹⁶³

International organizations must look to human rights standards as the foundational basis from which they create their policies.¹⁶⁴ While the World Trade Organization Agreements currently have limited exceptions in their frameworks to allow for deviations from Member obligations, there is room to expand the organization's emphasis on human rights. Article XX of the General Agreement on Tariffs and Trade (GATT) allows unilateral actions by WTO Members to make exceptions to protect health and conservation. Specifically, Members can take trade-restrictive measures on products that are "necessary to protect public morals," "necessary to protect human, animal or plant life or health," or "relating to the conservation of exhaustible natural resources."¹⁶⁵ The Panel in *US Gambling* interpreted the term public morals to mean as the "standards of right and wrong conduct maintained by or on behalf of a community or nation," and public order as "the preservation of the fundamental interests of a society, as reflected in public policy and law."¹⁶⁶ While this interpretation arguably allows for countries to make allowances to protect environmental, human rights, it also requires individual nations to act responsibly. This kind of individualized response does not have the magnitude of impact necessary to deter, resolve, or amend human rights violations, unless the countries are major trading partners. In that case, though, the sanctioning country would also suffer economic consequences for wishing to discipline the other's human rights abuses – not a realistic avenue.

The European Union has long acknowledged the institutional linkage between market access and human rights, as this concept was established as a condition of accession to the Union.¹⁶⁷ The European Communities have also established "links between trade and human rights in domestic trade

163. Stephanie Grant, *Functional Distinction or Bilingualism? Human Rights and Trade: The UN Human Rights System*, in INTERNATIONAL TRADE AND HUMAN RIGHTS 133, 136 (Frederick M. Abbott et al. ed., vol. 5, 2009) (ebook) (internal citations omitted).

164. *Id.* at 139.

165. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 art. XX [hereinafter GATT].

166. Panel Report, *United States – Measures Affecting the Cross-Border Supply of Gambling And Betting Services*, WTO Doc. WT/DS285/R (adopted 20 April 2005), as modified by Appellate Body Report WT/DS285/AB/R, DSR 2005:XII.

167. Treaty on European Union (Maastricht text), July 29, 1992, 1992 O.J. C 191/1 (see particularly TITLE XVII, Article 130u(2)).

regulations in the context of granting preferential treatment.”¹⁶⁸ Currently, the World Trade Organization and its agreements do not establish comparable explicit linkages between human rights and trade, but the WTO has the power to modify its standards to emphasize compliance with environmental, human rights.¹⁶⁹ However, the “question arises whether, on this basis, institutional links between trade regulation, the rule of law and human rights *should* be institutionally and legally expanded within the multilateral trading system of the WTO.”¹⁷⁰

Product-based trade measures in the form of import restrictions appear to be an easy way to target products linked to human rights abuses. These restrictions could be in the form of ‘inward measures,’ to prevent harms the product could cause the restricting State’s population, such as asbestos products known to cause cancer.¹⁷¹ ‘Outward measures’ target human rights abuses linked to specific products from an exporting State.¹⁷² For example, products manufactured in conflict conditions and are associated with gross human rights violations might be the measure’s targets. Another problematic aspect of economic sanctions is that they “treat human beings as pawns in a geopolitical game, contrary to the bottom line of human rights which treats human beings and ends rather than means.”¹⁷³ The drawbacks to the imposition of economic sanctions on a country as a result of the actions of a TNC for whom the state has liability are far-reaching.

The largest trade giants, such as the US and the EU, would be able to impose the strongest unilateral sanctions.¹⁷⁴ This impact is the strongest when there has been a large pre-existing trade partnership with the sanctioned country.¹⁷⁵ Additionally, once one country has made the first move to condemn another country’s actions through trade sanctions, other countries are more likely to follow, increasing the sanction’s effectiveness.¹⁷⁶

168. THOMAS COTTIER, *Governance, Trade, and Human Rights* in INTERNATIONAL TRADE AND HUMAN RIGHTS 93, 95 (Frederick M. Abbott et al. ed., vol. 5, 2009) (ebook).

169. *Id.*

170. *Id.* (emphasis added).

171. SARAH JOSEPH, BLAME IT ON THE WTO? A HUMAN RIGHTS CRITIQUE 127, 268 (2011) (ebook).

172. *Id.*

173. *Id.* at 94 (internal citations omitted).

174. *Id.*

175. *Id.*

176. *Id.*

U.N. Security Council trade sanctions are incredibly harsh, as “they deprive the target State of alternative trading partners.”¹⁷⁷ The entirety of the U.N. is weighted behind these sanctions, giving them incredible weight. It is because of this severity that the Security Council rarely resorts to such measures. It is worth noting that Security Council sanctions

[A]re normally limited rather than comprehensive. Furthermore, comprehensive trade sanctions can have the effect of provoking nationalistic backlashes and entrenching regimes, rather than their presumed desired effect of prompting a disgruntled population to force a regime to change its ways.¹⁷⁸

When a government decides it would rather double down than cave to the international community’s pressure, the citizens are the ones who suffer the consequences. Food shortages, for example, could be prolonged, and in an effort to maintain control, governments might further restrict rights. Countries should consider expanding criminal responsibility rather exposing vulnerable populations to a higher risk of violations in a misguided attempt to sanction the responsible entities.

B. Criminal Responsibility

Although trade sanctions are theoretically feasible, the potential to exacerbate on-going human rights violations disqualifies this route as a viable option. Expanding criminal responsibility is possible on either the international level through the International Criminal Court (ICC) or regional levels through various human rights treaties. These options are preferable to the more politically-minded UN International Court of Justice, which also only hears state-brought suits.¹⁷⁹ Modifying the ICC’s jurisdiction to incorporate liability for corporations as well as expanding the subject-matter jurisdiction to cover environmental human rights violations is the best, slightly idealistic, option. The alternative is incentivizing countries to agree to enlarge their regional human rights treaties to include corporate responsibility for human rights violations, as Africa is already keen to do.

The concept of corporate criminal liability is not a foreign concept. Virtually all developed countries have some form of criminal liability for corporations, at the very least for the prohibition of bribes. The ability to

177. *Id.*

178. *Id.*

179. Statute of the International Court of Justice, art. 34.

hold a corporation and its respective employees liable for their cohesive illegal actions easily translates into the realm of international criminal law. At present, under the Rome Statute governing the ICC, only natural persons can be prosecuted.¹⁸⁰

Other international actors are flirting with the idea of including legal persons in the list of potential targets. Special Court for Lebanon, an international tribunal, has already charged corporate persons with the “willful interference with the administration of justice when disclosing confidential information regarding protected witnesses among other things.”¹⁸¹ International Humanitarian Law recognizes and binds non-state actors to maintaining peace and respecting the rules of war.¹⁸² Should the African Union’s Malabo Protocol come into operation, it would expand the jurisdiction of the African Court of Justice and Human and People’s Rights to corporations liable for serious crimes in Africa.¹⁸³ The Special Court of Sierra Leone examined the trafficking of ‘blood diamonds’ in exchange for arms *Prosecutor v. Charles Taylor*, the first instance of an African leader facing an international tribunal.¹⁸⁴ From there “it is not a far stretch to imagine a future case in which a business director could stand trial for trafficking conflict materials for arms or charges of enslavement in the mining of the materials under a theory of indirect co-perpetration.”¹⁸⁵

180. Rome Statute, art. 25(1).

181. David Martini, *Corporate Criminal Responsibility at the ICC*, ACADEMIC FORESIGHTS, http://www.academic-foresights.com/Corporate_Criminal_Responsibility_at_the_ICC.html (last visited Dec. 14, 2018). Stating that the Special Court for Lebanon recently charged...corporate persons (New TV S.A.L and Akhbar Beirut S.A.L.) with the willful interference with the administration of justice when disclosing confidential information regarding protected witnesses among other things.”

182. CHRISTIANE BOURLOYANNIS, *The Security Council of the United Nations and the Implementation of International Humanitarian Law*, 20 DENV. J. INT’L L. & POL’Y 335, 337 (1992). *See also*, Martini, *supra* note 181, stating that the inclusion of non-state actors as subjects of International Humanitarian Law is evident in the London Charter (also known as the Nuremberg Charter, or, formally, Charter of the International Military Tribunal – Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis).

183. Joanna Kyriakakis, *Corporations before International Criminal Courts: Implications for the International Criminal Justice Project*, 30 LEIDEN JOURNAL OF INTERNATIONAL LAW 221, 222 (2017).

184. *Prosecutor v. Taylor*, SCSL-03-01-A-1389, Special Court for Sierra Leone (Sept. 26, 2013) <http://www.rscsl.org/Documents/Decisions/Taylor/Appeal/1389/SCSL-03-01-A-1389.pdf>.

185. Martini, *supra* note 181.

It rather seems a matter of time before the Rome Statute is up for modification to expand the relevant personhood requirement to include corporate entities. Such an expansion would be a major step to closing the holes in addressing international corporate liability. There would finally be an international body to whom TNCs are directly accountable. The European Court of Human Rights, which has been dodging the debate on human rights and business, could also see a modification to its Convention, officially incorporating corporate criminal liability into the Court's agenda. ICC Jurisdiction can either be exercised because a person is a national of a party to the Rome Statute or because the alleged conduct took place within the territory of a state party.¹⁸⁶ Therefore, the nationality of the relevant perpetrators within a company would play a key role; typically, this designation would turn on the nationality of the CEO or director. One scholar has a theory that would resolve the potential problem that would arise should the head of a company not be a national to a state party of the Rome Statute that was never physically present in the territory of a state party.

This concern can be addressed by utilizing a theory of a co-perpetration liability, one who plans, instigates, or orders another can be held liable, even if that act was not within the territorial confines of a state party so long as the action took place within the territory.¹⁸⁷

This method clears the important jurisdictional hurdle posed by the 42 non-signatory, non-party states.

Another concern regarding the operation of TNCs that violate human rights abuses are the auxiliary crimes that facilitate the carrying out of violations. Such crimes include "illegal exploitation of resources, land grabbing, corruption, embezzlement, money laundering, or the illegal trafficking in arms, human beings, minerals, and drugs."¹⁸⁸ The Rome Statute needs to be able to account for these secondary crimes' contribution to the more egregious violations, as they are integral parts to holding TNCs, particularly in the extractive industries, responsible.

Parties to the Rome Statute would need to expand the subject matter jurisdiction of the ICC. At present, only crimes against humanity, war crimes, genocide, and the crime of aggression are covered in the ICC's

186. Rome Statute, art. 12.

187. Martini, *supra* note 181.

188. *Id.*

catalogue of crimes.¹⁸⁹ It is possible that particularly egregious acts of a company, committed either directly or indirectly with the company's support, fit the requirements for crimes against humanity.¹⁹⁰ However, for the ICC to have a full scope of power to properly hold TNCs accountable for environmental human rights abuses, "ecocide" should be added to the list of substantive crimes. Defined as a "crime of wanton destruction of the environment[,] [ecocide] fits within Article 5's definition as 'the most serious crimes of concern to the international community as a whole.'" This characterization leaves a wide-enough berth to respect the jurisdiction of the regional human rights courts, while finally allocating the power to punish corporations for their environmental devastation and the resulting infringements on human rights. Environmental destruction has the capacity to diminish the human rights of entire populations. The safeguarding of the environment is an essential task in ensuring that individuals can fully enjoy their rights, but no international court yet has the explicit power to hold persons responsible for environmental degradation and the resulting effects on communities. Incorporating environmental protection and individual liability in tandem would force TNCs to adopt better business practices that benefit the environment and local populations

V. Conclusion

The search for an international system to hold TNCs liable for the various environmental and human rights abuses that have become almost synonymous with those in the extractive industries begins with examining the successful avenues of redress for victims. The European Court of Human Rights has been successful in using Article 8 of the European Convention on Human Rights to hold countries responsible for the environmental wrongs originating within its jurisdiction. While the ECtHR is limited in holding corporations directly responsible, the solidification of state responsibility for TNC activity helps highlight the legal safe place in which corporations are untouchable.

When trying to reconcile the international legal system with corporate accountability, two potential pathways emerge. Relying on the "No Harm" principle of state responsibility, the WTO, its Member States, and the United Nations could use unilateral, regional, and international trade sanctions to hold nations responsible for the actions of private corporations for whom States are vicariously responsible. This tactic, however, is

189. Rome Statute, art. 5.

190. *Id.* art. 7.

dangerous. Adding economic pressure to an already instable and oppressive situation would more than likely lead to intensified human rights violations by aggravating critical conditions for an already-vulnerable population. This approach could pressure reluctant states toward the alternative option, and away from unsavory economic sanctions.

The second route involves expanding the criminal jurisdiction of the ICC to allow States or individuals to bring suit against TNCs for their destructive operations and complicity in human rights violations. As the only international court of its kind, allowing international prosecution for individual's crimes, the International Criminal Court is the perfect venue and ripe for an overhaul to follow suit with more recent criminal tribunals. The Rome Statute would also benefit from an expansion of its subject matter jurisdiction for an effective, comprehensive approach to TNC liability. Expanding the crimes for which individuals and corporations could be prosecuted to include environmental crimes directly, rather than relying on human rights violations as a proxy, the ICC could pioneer a new international focus on environmental wrongs and the human rights violations that accompany them. Rather than solely focusing on the involvement of States and oppressive regimes, this method seeks to sew up the gaping holes in international law which let TNCs often continue their cyclical pattern of harmful behavior.

This paper serves to identify potential methods that the international community could use to police the oft-egregious behavior of TNCs. Its purpose is to gently nudge the actors of the extractive industries into compliance with human rights violations, noting that the international community is slowly warming up to the idea of crossing the traditional norms of international responsibility to check the relatively unfettered corporate world. While such a radical overhaul is not likely to happen in the next several decades, common-law countries in particular are showing a surprisingly brazen acceptance of foreign corporate liability, which should, at the very least, nudge oil and gas corporations operating internationally to reexamine their operations.