PIERCING THE CORPORATE VEIL: HOLDING PARENT COMPANIES ACCOUNTABLE FOR THE HUMAN RIGHTS VIOLATIONS OF THEIR SUBSIDIARIES

by Aisha Aidossova

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Supervisors: Professor Jessica C. Lawrence

and Professor Tommaso Soave

Central European University

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Abstract

Over the years, the number of transnational corporations (TNC) has significantly increased all over the world. The role of the TNCs in developing countries is important because it is the source of foreign investment. Unfortunately, TNCs' operation in developing countries may sometimes lead to severe human rights violations. As these countries' legal and regulatory frameworks are mostly undeveloped. There is no proper protection against such abuses and victims are not always able to access proper remedies. A major reason for this inability to access remedies is the corporate shield between parent and subsidiary corporation. This thesis argues that currently used corporate veil piercing doctrine is not efficient to make parent company indirectly liable for human rights abuses. It therefore suggests that the corporate veil piercing test ought to be relaxed in human rights violations.

The first part of the thesis is devoted to the comparative analysis of corporate veil piercing in the United States of America, the United Kingdom and the Federal Republic of Germany. A comparative analysis gives different ways of conceiving the corporate veil piercing test in these three jurisdictions. The second part examines the suitability of the given standards in the human rights violation cases and the necessity of balancing between shareholders' limited liabilities and remedies for human rights victims. This thesis recommends establishing looser standards for piercing the veil in the gross human rights abuses by creating a clear two-prong test. Also, it proposes to create a new concept of human rights violation liabilities based on the tort claims.

Introduction

The question of whether a parent corporation ought to be liable for the human rights violations of its subsidiaries is crucial for the effective protection of human rights across the world. Transnational corporations, while ensuring the flow of foreign investment in developing countries, are also capable of causing unimaginable damage for which prompt and robust legal remedies must be available.

For instance, a chemical leak in the city of Bhopal, India was one of the biggest and worst industrial accidents of the 20th century. In the Bhopal disaster, "at least 2000 people died immediately and another 200,000 to 300,000 suffered respiratory and other injuries of varying severity"[1]. The consequences of the gas leak were not only fatal for people but hazardous for the environment. The soil and water were contaminated up until the beginning of 21st century, and resulting in chronic health problems.[2] *Bhopal* is one of those human rights cases in which the victims remained without sufficient remedy because the justice system failed to ascribe responsibility to the parent company. As a result, the victims of the disaster had no proper remedy and could not hold UCC (majority shareholder) accountable for the damages of its subsidiary.[3]

A corporate lawyer may argue that parent corporations have separate legal personalities from those of their subsidiaries, such that the limited liability doctrine applies. This doctrine establishes that a corporation is an independent legal entity separate and distinct from its shareholders. In the parent-subsidiary context, the parent corporation will be shielded from the liabilities of its subsidiary. The limited liability doctrine, however, prevents the victims of human rights violations from obtaining sufficient remedy because the doctrine prevents them from suing

[1] M.J. Peterson, 'Bhopal Plant Disaster – Situation Summary' 2009 Int' l Dimensions of Ethics Education Case Study Series <https://scholarworks.umass.edu/edethicsinscience/4/> accessed 9 March 2020.
[2] The Editors of Encyclopaedia Britannica, 'Bhopal disaster' (*Encyclopædia Britannica*, 10 January 2020) <https://www.britannica.com/event/Bhopal-disaster> accessed 30 March 2020.
[3] Amnesty International, 'First convictions for 1984 Union Carbide disaster in Bhopal too little, too late' (*Amnesty International*, 7 June 2010) <https://www.amnesty.org/en/latest/news/2010/06/first-convictions-1984-union-carbide-disaster-bhopal-too-little-too-late/> accessed 30 March 2020.

a foreign parent corporation for the abuse by its subsidiary.[4] Unfortunately, even in the severe violations such as the Bhopal disaster, courts fail to establish the liability of the parent corporation and "victims are left in a quandary".[5]

The veil piercing doctrine is a corporate law theory which is used to disregard the corporate veil and hold shareholders liable for the obligations of a company. Piercing the corporate veil is one of the frequently discussed topics in the corporate law.[6] As the tests and elements of the doctrine are mostly "incoherent, inconsistent and multifactored", [7] judges have a wide discretionary latitude to determine when and in what circumstance veil piercing is applicable. As a result, the outcome of the cases is unpredictable and uncertain.[8] Courts apply the traditional corporate veil piercing test when all necessary requirements are met. Usually, the standard test requires a lack of separate existence between the parent corporation and its subsidiary, as well as wrongful conduct. Nevertheless, in the tort cases, the courts look at the cases from a broader policy lens and may apply a single factor test because veil piercing is necessary "in order to do justice."[9] However, it should be admitted that limited liability cannot be abolished, because there are several arguments that support this theory. The main argument stated by Frank Easterbrook and Daniel Fischel is that limited liability of the corporation incentives investors to invest in the corporations and create new projects.[10]

The corporate veil piercing is not the only way to establish parent liability. There are alternative methods such as duty of care and agency theories which are used before courts to hold the parent corporations directly accountable for the actions of their subsidiaries and liable for

[4] Gwynne Skinner, 'Rethinking Limited Liability of Parent Corporations for Foreign Subsidiaries' Violations of International Human Rights Law' (2015) 72 Wash. & Lee L Rev 1769, 1769.
[5] Ibid 1777.
[6] Kurt A Strasser, 'Piercing the Veil in Corporate Groups' (2005) 37 Conn L Rev 637, 637.
[7] Jonathan Macey and Joshua Mitts, 'Finding Order in the Morass: The Three Real Justifications for Piercing the Corporate Veil' (2014) 100 Cornell L Rev 99, 106.
[8] Stephen M. Bainbridge, 'Abolishing LLC Veil Piercing' (2005) 2005 U Ill L Rev 77, 77.
[9] Macey (n 7) 106.
[10] Frank H. Easterbrook and Daniel R. Fischel, *The Economic Structure of Corporate La*w (Harvard University Press 1996) 22.

damages. These doctrines illustrate that it is possible to hold parent corporation liable, but only for its own acts and omissions. UK case law and jurisprudence has developed the duty of care doctrine, which establishes direct parent liability for failure of the subsidiary to exercise due care. Duty of care is applicable when the parent corporation is directly liable for the harm. Yet, the doctrine cannot be used for indirect liability. The duty of care is not the part of the veil piercing doctrine, but it is an alternative avenue to hold parent corporations accountable especially in tort cases. The duty of care test shows the injured party may hold a parent company liable for its own failure to act, but does not help in cases where the parent corporation did not take on the responsibility of directing the safety procedures of its subsidiaries, thus is of limited use in helping to provide justice for the victims of human rights abuses.

The agency doctrine is also used to determine the liability of the parent company. The agency theory involves a principal and agent relationship. The agent works on behalf of the principal. In the parent-subsidiary context, the parent company plays the role of the principal and subsidiary is an agent of the parent company. Agency law is applicable only when the subsidiary acts as an agent of the parent company. It is easier to establish an agency relationship when there is a written contract between two parties. However, the difficulty lies when there is no written agreement and "an agency is implied from conduct of the parent and its subsidiary."[11] The subsidiary has to show that the acts were only for the interest of the parent company. In the human rights violation cases as *Bhopal* it is not useful because it is hard to establish the control of the parent company.

The main subject of the thesis is whether and how the veil piercing doctrine ought to be expanded to allow parent company liability for the human rights violations of their subsidiaries. The thesis covers three main jurisdictions: the United States of America (US), the United Kingdom (UK) and the Federal Republic of Germany (Germany). These three jurisdictions have different

[11] David H. Barber, 'Piercing the Corporate Veil' (1981) 17 Willamette L Rev 371, 401.

standards applicable to pierce the corporate veil. Moreover, all three countries might be the jurisdictions of the parent companies which have subsidiaries in the developing countries.

The research undertakes a review of the primary and secondary sources. The thesis conducts a comparative analysis of the veil piercing theories and standards in the US, UK and Germany. The thesis consists of two chapters. Chapter 1 compares the traditional and non-traditional ways of piercing the corporate veil in the US, UK and Germany. As common law countries, the US and the UK use similar standards to disregard the corporate veil, but Germany has a different statutory approach. Chapter 2 focuses on the suitability of available standards of corporate veil piercing in the US, UK and Germany to the human rights violation litigations to determine whether these standards are efficient to tackle the barriers to liability. Based on these analysis and observations, it is concluded that in certain cases of human rights violations a relaxed veil piercing doctrine should be adopted. The courts should have an option to disregard the corporate veil by applying a looser test or more flexible standards to make parent corporations liable for the conduct of their subsidiaries in the interest of fairness and justice.

Chapter 1.

The Corporate Veil Piercing Doctrine

The corporate veil piercing doctrine is "fact-specific and open-ended."[12] Over the past century, courts have tried to develop their own corporate veil piercing standards. Although, as it can be seen in this chapter, the application of the doctrine in the US, UK and Germany significantly differs.

The US and UK share a common lineage, in that they are based on common law principles.[13] Both systems follow a traditional two-prong veil piercing test, which is applicable, to determine the liability of the parent company. However, US Court adopts a more systematic approach while the English courts have more flexibility. Also, US and English courts show considerable divergence in the application of tort law in the corporate veil piercing cases. English courts have a stricter approach to tort claims.[14]

Unlike the US or the UK, German corporate law has a statutory scheme governing parent-subsidiary liabilities and the circumstances to disregard the corporate veil. However, German courts have, through their jurisprudence, also developed a non-statutory concept of holding parent company liable for the acts of subsidiaries.

Nevertheless, in these three jurisdictions, courts look at the facts of the cases, and they examine whether there is a high level of control from one company over another company. Also, the courts should establish whether there was an abuse of the control and whether it resulted in damages to the third parties.

[12] Thomas K Cheng, 'The Corporate Veil Doctrine Revisited: A Comparative Study of the English and the U.S. Corporate Veil Doctrines' (2011) 34 B C Int'l & Comp L Rev 329, 331.
[13] Ibid 411.
[14] Ibid 362.

An examination of these three different jurisdictions' approach to piercing the corporate veil will give the understanding of advantages and shortcomings of the current standards applied by the courts and whether these standards are useful in the human rights violation cases.

1.1 The US Approach to Piercing the Corporate Veil

The American approach to piercing the corporate veil is known to be the most systematic among other jurisdictions. In the words of Vandekerckhove, "the United States may be considered as the cradle of piercing of the corporate veil doctrine."[15] Indeed, according to Thompson, this doctrine is the most litigated issue in US corporate law.[16] Courts generally apply a two-tier test which has to be met to disregard the corporate veil.[17] They should establish a) an existence of the unity of interest or alter ego; and b) the fraud or injustice made by the subsidiary company.[18] These two determinants are the traditional ways in the US system to hold the parent company liable for the acts of the subsidiary.

1.1.1 Instrumentality and Alter Ego Prong

Instrumentality doctrine is widely used to pierce the corporate veil. This doctrine can be applied when three-tier test requirements are met. Firstly, there should be excessive control or domination of a company.[19] Secondly, this control should be used to commit fraud or wrongful act.[20] Finally, a plaintiff should prove that the loss was caused by that act.[21]

Frederick Powell in 1931 suggested the list of the conditions which might be used to concretize the instrumentality doctrine.[22] This list has eleven factors that identify the doctrine.[23]

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[15] Karen Vandekerckhove, *Piercing the Corporate Veil* (Kluwer International Law 2007) 76.
[16] Robert B. Thompson, 'Piercing the Corporate Veil: An Empirical Study' (1990-1991) 76 Cornell L Rev 1036, 1036.
[17] Sung Bae Kim, 'A Comparison of the Doctrine of Piercing the Corporate Veil in the United States and in South Korea' (1995) 3 Tulsa J Comp & Int'l L 73, 75.
[18] Vandekerckhove (n 15) 79-80.
[19] Carsten Alting, 'Piercing the Corporate Veil in American and German Law – Liability of Individuals and Entities: A Comparative View' (1995) 2 Tulsa J Comp & Int'l L 187, 195.
[20] Ibid.
[21] Ibid.
[22] Vandekerckhove (n 15) 81.
[23] Frederick J. Powell, *Parent and Subsidiary Corporations: Liability of a Parent Corporation for the Obligations of its Subsidiary* (Callaghan 1931) [These circumstances are: (1) the parent corporation owns all or most of the capital

The list of circumstances is broadly used by the courts and the doctrine has been extended not only to parent-subsidiary cases but also to individual shareholders.[24] This list contains the factors where the parent company controls and finances the subsidiary and those circumstances define the instrumentality test.[25]

The instrumentality theory was established by the Court in *Lowendahl v Baltimore & Ohio Railroad*[26]. In this case, the court held that at the time of a transaction between a subsidiary and third parties, the parent company has to become a real actor of the transaction or "where the business and officers of the two corporations have become so inextricably confused that it is impossible or impracticable to identify the corporation that participated in the transaction attacked".[27] Secondly, the control of the parent company must be used to commit fraud or "dishonesty or unjust conduct violating the plaintiff's rights."[28] Finally, the fraudulent or unjust act must result in loss or injury to the plaintiff.[29] From this case, it can be concluded that in order to use the instrumentality doctrine there must be day-to-day control of the subsidiary by the parent company, and as a result, the third parties are unable to differentiate who is a contracting party. In addition, the control by the parent company has to lead to the fraud or injustice resulting in damages to the plaintiff.

stock of the subsidiary; (2) the parent and subsidiary corporations have common directors or officers; (3) the parent corporation finances the subsidiary; (4) the parent corporation subscribes to all of the capital stock of the subsidiary or otherwise causes its incorporation; (5) the subsidiary has grossly inadequate capital; (6) the parent corporation pays the salaries and other expenses or losses of the subsidiary; (7) the subsidiary has substantially no business except with the parent corporation or no assets except the ones conveyed to it by the parent corporation; (8) in the papers of the parent corporation or in the statements of the officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own; (9) the parent corporation uses the property of the subsidiary as its own; (10) the directors or executives of the subsidiary do not act independently in the interest of the subsidiary but take their orders from the parent corporation in the latter's interest; and (11) the formal legal requirements of the subsidiary are not observed.]

[24] Cheng (n 12) 380.

[25] Powell (n 23) 9.

[26] Lowendahl v. Balt. & Ohio R.R., 247 A.D 144, 156–57 (N.Y. App. Div. 1936).

[27] Ibid.

[28] Ibid.

[29] Ibid.

The alter ego doctrine can alternatively be established to satisfy the first part of the test. This doctrine was introduced by the Californian courts in the US.[30] Currently, it is widely used in all US courts to pierce the corporate veil.[31] The alter ego and instrumentality are thought to be closely related doctrines because application of these doctrines does not change the outcome of the case.[32] This doctrine applies when the subsidiary lacks independence from its parent and the parent company treats its subsidiary as its "alter ego".[33] This doctrine consists from two-prong test. Firstly, there should be a lack of independence i.e. shareholder and the company have to be treated as a one.[34] Secondly, there should be "inequitable result" from the companies acts.[35] The alter ego doctrine was illustrated in the case of *Sea-Land Services, Inc. v. the Pepper Source*[36]. In this case, the plaintiff Sea-Land Services brought an action against Gerald J. Marchese, who owned five companies.[37] The plaintiff alleged that Marchese was using the companies as alter egos of each other and was using the corporate veil to commit fraud to the creditors.[38] The court held that to disregard the corporate veil, two requirements must be met:

> [F]irst, there must be such unity of interest and ownership that the separate personalities of the corporation and the individual [or other corporation] no longer exist; and second, circumstances must be such that adherence to the fiction of separate corporate existence would sanction a fraud or promote injustice.[39]

The court agreed that the first part of the test is met and there was "shared control/unity of interest and ownership", because the corporate records have not been done and the assets have been used by one another.[40] However, there was no proof of a fraud or promotion of an injustice,

[30] Vandekerckhove (n 15) 83.
[31] Ibid.
[32] Ibid.
[33] Ibid.
[34] Alting (n 19) 195.
[35] Ibid.
[36] Sea-Land Services, Inc. v. the Pepper Source, 941 F.2d. 519 (7th cir. 1991).
[37] Ibid 520.
[38] Ibid.
[39] Ibid.
[40] Ibid.

therefore, the second part of the test could not be met . In other words, to pierce the corporate veil, there must be not only unity of ownership, but also a fraudulent act that leads to harmful results.[41]

1.1.2 The Fraud or Injustice Prong

As it was mentioned before, strict control and lack of independent existence are not enough to pierce the corporate veil. Most courts need to determine whether there was fraudulent or unjust conduct. Albeit, it should be noted that fraud has a broader meaning in the corporate veil piercing doctrine than in other cases.[42] Some commentators refer to the fraud as "misuse of the corporate privilege."[43] Indeed, the shareholders have a privilege to be shielded from the debts and liabilities of their companies. As Ballantine stated in one of his works, existence of the separation of liabilities between parent and subsidiary is not *per se* dishonest privilege.[44] Although, sometimes shareholders abuse this privilege and use it to promote injustice, fraud or wrongful conduct which results in damages to the company's creditors.[45]

However, there are cases where courts use a looser test to reach the correct result. Some courts might consider tort or breach of a contract as a fraud and decide based on a single factor test.[46]

1.1.3 Piercing the Veil in Tort Litigation

The US courts pierce the corporate veil more often in the contractual disputes than in tort cases.[47] However, there are different views about this approach. Thomas Cheng considers that the corporate veil piercing doctrine has to be applied more in the tort cases because claimants are not able to negotiate *ex ante* for compensation.[48] The claimants in tort cases are often the weaker party

[41] Vandekerckhove (n 15) 87.
[42] Cheng (n 12) 357.
[43] Vandekerckhove (n 15) 80.
[44] Henry W Ballantine, 'Separate Entity of Parent and Subsidiary Corporations' (1925) 14 Calif L Rev 12, 19.
[45] Ibid 20.
[46] Strasser (n 6) 641.
[47] Thompson (n 16) 1038.
[48] Cheng (n 12) 362.

and need sufficient remedy. Still, it has to be proven that the damage has been caused by the act or negligence of the defendant.

US courts pierce the corporate veil in tort law cases more frequently than UK courts.[49] The *In re Silicone Gel Breast Implants Products Liability Litigation*[50] case illustrates a one-tier test applied by the US court to pierce the corporate veil. A motion for summary judgment was filed by the defendant, Bristol-Myers Squibb Co., claiming that the company is not liable for the subsidiary's act and there is no evidence to justify piercing the corporate veil.[51] Medical Engineering Corporation ("MEC") was a subsidiary of the defendant. The defendant exercised a significant amount of control over the subsidiary.[52] The parent and subsidiary shared the departments, staff and vice president of Bristol was in the board of directors of MEC.[53] Based on these facts that court established that MEC was the alter ego of Bristol.[54] The factors considered by judges to establish an alter ego were the same as Powell's list for identification of the instrumentality doctrine. However, Bristol argued that the court should "find fraud or misconduct to pierce the corporate veil."[55] The court held that in tort cases, unlike in a contract situation, the courts do not require the second part of the test if a subsidiary is an instrumentality or alter ego of the parent company, because the tort by itself is a wrongful conduct toward the victim.[56]

1.2 UK Jurisprudence on Piercing the Corporate Veil

In the UK, the landmark case *Salomon v. Salomon*[57] in 1897 established the doctrine of separate legal personality and limited liability in English law. In this case, the Court of Appeal decided that Mr. Salomon was liable for the company's debts, but the House of Lords reversed the

[49] Ibid.
[50] In Re Silicone Gel Prod. Liability Litigation, 887 F. Supp. 1447 (N.D. Ala. 1995).
[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] Ibid.
[55] Ibid.
[56] Ibid.
[57] Salomon v A Salomon and Co Ltd [1897] AC 22.

decision and held that if the separate legal personality doctrine applies, then it would appear that Mr. Salomon was personally shielded from the company's liabilities.[58] Based on this precedent, the English courts pierce the corporate veil in rare circumstances.[59] Interestingly, unlike in the US, the English courts pierce the corporate veil more in multiple shareholding companies rather than in the single-shareholding companies.[60]

The English courts do not have a systematic approach to piercing the corporate veil, but it is rather done based on the facts of the specific case.[61] However, many English courts have the similar case analysis used by US courts.[62] The UK approach encompasses the lack of economic independence between parent and subsidiary and presence of misconduct.

1.2.1 The Instrumentality Doctrine

One of the cases, where the court attempted to set a comprehensive test for veil piercing is the *Smith, Stone and Knight v. Birmingham* case decided in 1937.[63] In this case, the Birmingham Waste Co., was a wholly owned subsidiary of Smith, Stone and Knight, Ltd. Birmingham city acquired the land which was occupied by the Birmingham Waste.[64] For the compulsory acquisition of the land, the city of Birmingham had to pay compensation. However, Birmingham city wanted to pay lease costs only to the subsidiary. Hence, the amount of the compensation would have been much less than paying to the parent company.[65] The city of Birmingham claimed that the two companies were separate legal entities and the only the Birmingham Waste was entitled to receive compensation. Smith, Stone and Knight, Ltd brought the claim to the court. The issue was whether the parent company "could claim compensation for disturbance of the business"[66] of its subsidiary. The court's analysis was, the fact that the subsidiary was a wholly owned company does not make

58 Ibid.
59 Cheng (n 12) 331.
60 Ibid 336.
61 Ibid 332.
62 Ibid 379.
63 Smith, Stone and Knight v. Birmingham [1939] 4 All E.R. 116.
64 Ibid 118.
65 Ibid.
66 Ibid 119.

it an agent of the parent company.[67] However, after having looked at other cases, as was mentioned above, the judge, Atkinson, determined the six questions to enable a decision on whether or not to disregard the corporate veil.[68] These six questions are similar to the instrumentality doctrine formulated by Professor Powell mentioned above. The questions determine the existence and the level of control of the subsidiary by the parent company. The parent, Smith, Stone and Knight, Ltd was controlling the subsidiary because there were no separate books, the managers were appointed by the parent company, and the parent company was benefiting from the subsidiary's business.[69] The court held that the subsidiary was an agent of the parent company.[70]

This case illustrates that if the parent company has significant control over the subsidiary and the company acts as an agent of the parent company, the controlling company will be liable for the misconduct of the subsidiary company.[71]

English courts also find that fraud is one of the essential elements to lift the corporate veil. Interestingly, courts may pierce the veil when a shareholder has a fraudulent motive to defraud creditors. These fraudulent motives could be used to avoid liabilities.[72] Fraud has to be committed to "achieve something which it could not otherwise lawfully do."[73]

Another matter which should be taken into account is that the term agent is frequently used by courts to describe parent-subsidiary relations and this term is equal to the instrumentality in the veil piercing test.[74] As seen in *Smith, Stone and Knight* case, judge Atkinson also referred to the

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[67] Ibid.
[68] Ibid. [(1) Who was really carrying on the business? (2) Were the profits treated as the profits of the parent company?; (3) Was the parent company the head and the brain of the trading venture?; (4) Did the parent company decide what should be done and how much investment to make in the business?; (5) Did the parent company make a profit based on its skill and direction?; and (6) Was the parent company in effectual and constant control?]
[69] Ibid.
[70] Ibid.
[71] Ian M Ramsay and David B Noakes, 'Piercing the Corporate Veil in Australia' (2001) 19 Company and Securities L J 250, 258.
[72] Cheng (n 12) 366.
[73] Vandekerckhove (n 15) 71.
[74] Barber (n 11) 400.

subsidiary as an agent of the parent even though he applied instrumentality test to pierce the corporate veil.[75]

1.2.2 Piercing the Veil in Tort Litigation

After the decision in the *Adams*[76] case, the English judiciary's "door to tort claimants bringing veil piercing claims is largely closed."[77] The case illustrates how the corporate veil shields the parent company from the subsidiary's acts resulting in unfairness to the injured party. Cape Industries was an English company with the subsidiary registered in Texas, which was mining asbestos in South Africa. The case was initiated by the employees who had suffered harm from asbestos in the US subsidiary company. According to the case, a court may pierce the corporate veil only when the subsidiary is totally inactive, and the veil cannot be disregarded because justice requires that.[78]

However, in early cases such as *Rainham Chemical Works*[79], the House of Lords imposed tort liabilities on shareholders. The Rainham Chemical Works was a sham company, which was directed by two shareholders, Feldman and Partridge. The House of Lords held tortfeasors liable based on the fact that the defendant acquired dangerous products on their lands.[80]

According to Cheng, who surveyed 35 English cases in his article, only 1 case entailed tort claims.[81]*Vice versa*, in US 266 cases out of 1600 were involved in tort claims.[82] It could be seen that the English courts rarely pierce the corporate veil in tort cases.

[75] *Smith, Stone and Knight* (n 63) 121.
[76] Adams v Cape Industries plc [1990] Ch 433.
[77] Cheng (n 12) 362.
[78] *Adams* (n 76) 543.
[79] Rainham Chemical Works Ltd v Belvedere Fish Guano Co Ltd [1 921] 2 A.C.
[80] Ibid 465.
[81] Cheng (n 12) 364.
[82] Thompson (n 16) 1058.

1.3 The German Approach to Piercing the Corporate Veil

The application of the corporate veil piercing doctrine in Germany differs from that in other jurisdictions. American and English courts extended the application of the common law rules, but German courts apply statutory provisions of stock corporations law (*Aktiengesetz*).[83] These provisions are directly applicable to the corporations (*Aktiengesellschaft*), but it does not apply to the companies with limited liability (*Gesellschaft mit beschränkter Haftung*).[84] However, courts extended the application of the statute to a GmbH as well.[85]

Under German law, corporate veil piercing is referred to as *Durchgriffshaftung.*[86] Similarly to the US and the UK courts, the German courts apply the *Durchgriffshaftung* "only in exceptional cases".[87]

In a parent-subsidiary scenario, control of one company over another does not make controlling company liable for the debts of the subsidiary and it is not sufficient ground for piercing the corporate veil, even in the closely affiliated corporations.[88] However, control may be abused by the parent company and "result in commingling of funds and material undercapitalization of the subsidiary *(konzernbedingte Vermogensaushohlung).*"[89]

German law governing affiliated companies (*Konzernrecht*) tries to protect creditors and shareholders from the fraudulent inter-corporate transactions.[90] The *Konzernrecht* is the rules governing the structure, governance, auditing, and liabilities of the affiliated group companies.[91]

[83] Alting (n 19) 220 [This thesis uses term AktG as a short form of Aktiengesetz].
[84] Ibid [This thesis uses term Gmbh as a short form of Gesellschaft mit beschränkter Haftung].
[85] Ibid.
[86] Vandekerckhove (n 15) 45.
[87] Alting (n 19) 191.
[88] Bernd Singhof, 'Equity Holders' Liability for Limited Liabilities Companies' Unrecoverable Debts—Reflections on Piercing the Corporate Veil under German Law' (1999) 22 Loy. L.A. Int'l & Comp L Rev 143, 163.
[89] Ibid 164.
[90] Ibid.
[91] Sandra K. Miller, 'Piercing the Corporate Veil Among Affiliated Companies in the European Community and in the U.S.: a Comparative Analysis of U.S., German, and U.K. Veil Piercing Approaches' (1998) 36(1) ABLJ 73, 100.

1.3.1 Contractual Konzern

Under the *AktG*, the parent and subsidiary companies may enter into a domination or profit transfer agreement.[92] The domination agreement gives the parent company the right to give instructions to the subsidiary's management. The instructions have to be followed by the directors and officers of the subsidiary. The profit transfer agreement requires a transfer of the entire profit to another enterprise.[93] These agreements are referred to as a contractual *Konzern (Vertragskonzern)*.[94] If any net loss is sustained by of the controlled company during the term of the agreement, the controlling party has to compensate for all losses.[95] Also, the controlling company has to create a legal reserve for loss compensation. The contractual *Konzern* protects creditors by imposing obligations on the controlling company. In other words, the parent company giving the instructions to the subsidiary will be liable for the debts and liabilities of the subsidiary, if the domination agreement has been executed and if the instructions result the loss to the third party.

1.3.2 The De Facto Konzern

If the parent company exercises control over the subsidiary as principal shareholder, but the domination agreement has not been executed, "the German statute creates a *de facto Konzern*."[96] In the absence of a domination agreement, to establish the control of the parent company, the subsidiary company has to provide an annual report on the company's relations. The annual report must indicate all transactions between affiliated companies. Moreover, all transactions have to be analyzed and the report must comply with principles of accounting to determine whether the parent company caused the disadvantage to the subsidiary.[97]

[92] Singhof (n 88) 165.
[93] Miller (n 91) 102.
[94] Ibid 101.
[95] Ibid 102.
[96] Ibid 104.
[97] Ibid.

Unlike in contractual *Konzern*, in *de facto Konzern* "the rights and responsibilities of members of a *de facto Konzern* are not clearly identified."[98] The absence of the agreement will be a burden to determine liability and occurred damages. A court will have to scrutinize the circumstantial evidence more carefully, taking into account all attendant circumstances, given that it cannot rely on the express provisions of the domination agreement.

1.3.3 The Qualified De Facto Konzern

The qualified *de facto Konzern* does not have a statutory basis, but the concept has been developed by the German Federal Supreme Court (*Bundesgerichtshof*). This doctrine typically arises when the controlled company is the private limited liability company or GmbH.[99] The qualified *de facto* corporate group appears when the parent company exercises a long-standing control over its subsidiary, the courts may find the parent company liable for the obligations and liabilities of the subsidiary.[100]

The *Autokran*[101] case illustrates when the German courts disregard the corporate veil. The decisions of some other major cases were made based on the *Autokran* principle.[102] In *Autokran*, Heydemann was a sole shareholder and a director of seven sister companies.[103] The financing and bookkeeping were in the hands of Heydemann.[104] The creditor had leased cranes, but those cranes were used among seven sister companies. When the creditor did not receive the rent money and the lessee company appeared to be insolvent, he sued Heydemann.[105] The Supreme Court held that Heydemann was "permanently and extensively involved in the management of its subsidiary" and it did not show adequate consideration for the subsidiary.[106] Unless the shareholder proves

[98] Ibid 105.
[99] René Reich-Graefe, 'Changing Paradigms: The Liability of Corporate Groups in Germany (2005) 37 Conn L Rev 785, 795.
[100] Ibid 796.
[101]Autokran, BGHZ 95, 330.
[102] Petri Mantysaari, *Comparative Corporate Governance: Shareholders as a Rule-maker* (Springer Science & Business Media 2005) 387.
[103] Vandekerckhove (n 15) 55.
[104] Ibid.
[105] Ibid 56.
[106] Mantysaari (n 102) 387.

otherwise, the creditors have the right to make a direct claim, and the shareholder is liable for the acts of its subsidiary.[107] The Supreme Court in *Autokran* case shifted the burden of proof on shareholder and granted the right to make direct claims against a controlling shareholder.[108]

Chapter 1 Conclusion

Robert Thompson stated that the corporate veil piercing doctrine ranks "among the least understood" issues in corporate law.[109] The courts in all three jurisdictions do not apply the corporate veil piercing doctrine uniformly. As it was stated by Justice Cardozo in the case of *Berkey v. Third Avenue Railway*, the objective of the courts to pierce the corporate veil is to achieve justice.[110] Indeed, the courts should reasonably disregard the corporate veil to reach a just outcome.

However, the veil piercing doctrine is strictly applied by the courts. It is obvious that the courts should not use this doctrine in every case brought by a claimant. Nevertheless, there are some cases where the courts might apply relaxed standards to pierce the corporate veil to reach a fair and just decision. For example, in cases of human rights violation, if the parent company benefits from its subsidiary, the parent company should bear the responsibility for its subsidiary's misconduct.[111] In human right cases, it is more challenging for plaintiffs to hold a parent company liable for its subsidiary's misconduct because it will be difficult to prove economic unity of the companies or as it has been held in *Adams*, the subsidiary should be mere sham company which is not a case in transnational companies.[112]

[107] Ibid.
[108] Ibid.
[109] Thompson (n 16) 1036.
[110]Berkey v. Third Avenue Railway Co 244 N.Y. 602 (1927) [dominion may be so complete, interference so obtrusive, that by the general rules of agency the parent will be a principal and the subsidiary an agent. Where control is less than this, we are remitted to the tests of honesty and justice.]
[111] Miller (n 91) 132.
[112] *Adams* (n 76) 543.

Chapter 2.

Suitability of Corporate Veil Piercing Doctrine in Human Rights Violation Cases

The first chapter examines the differing approaches to pierce the corporate veil in the US, UK and Germany. Each jurisdiction sets its own corporate veil piercing standards and elements. The US jurisprudence and precedents set out a more flexible and clearly structured test than in UK, which is, therefore, more beneficial to victims of human rights violations. Albeit German statutory *de facto Konzern* approach gives more advantages for a damaged party by imposing an obligation to provide annual reports. As it was stated by Sandra Miller: "the corporate shield is not bullet-proof."[113] Indeed, the US, UK and German courts have already extended the application of the corporate veil piercing in different ways. All three jurisdictions have beneficial standards which could be combined to set a new test for corporate veil piercing. This new test could be applied only in gross human rights violation cases which have a similar magnitude to *Bhopal*.

However, the judges should always consider the limited liability of shareholders and providing remedies for the damaged party. The judiciary's decisions on finding parent liability in the cases show that it is challenging to strike a balance between shareholders' limited liability and providing remedies for victims of human rights abuses. On the one hand, the courts are reluctant to pierce the corporate veil in the cases. As it was stated in one of the tort cases, the main objective of the limited liability doctrine is to protect parent company when the subsidiary goes bankrupt and the doctrine is believed to be "socially reasonable and useful."[114] On the other hand, the victims of human rights violations should have sufficient remedies.

This chapter will analyze whether existing corporate veil piercing standards are appropriate for human right violation cases and how corporate veil piercing test can be relaxed or modified to achieve a just and equitable outcome.

[113] Miller (n 91) 117.
[114] Radaszewski v. Telecom Corp., 981 F.2d 305, 311 (8th Cir. 1992).

2.1 Striking a Balance Between Limited Liability and Remedies for Human Rights Abuses

In human rights litigation, victims of violations may sue subsidiary and parent company simultaneously. Hence, a parent company may be liable for human rights abuses. However, it is difficult for victims to establish parent company liability, and in some cases, it is impossible depending on the facts. As it was noticed by Cees Van Dam, "trade has been globalised -justice not yet."[115] There are several reasons for this; apart from the corporate structure, the host jurisdiction also has a role in corporate accountability. Social, economic development, and access to justice considerations are also factors that contribute to victims' inability to hold companies accountable in host jurisdictions.

In the parent-subsidiary scenarios, the parent company is usually incorporated in the developed countries such as US, UK and Germany, but subsidiaries are in developing countries. In the *Bhopal* case referred to in the introduction, the parent company was from US and subsidiary located in India. For developing host counties, it is necessary for countries to make beneficial investment environment for foreign investors. Investors might be unwilling to invest in the country where they would have poor investor protection policy.[116]

The Argentinian case of *Swift-Deltec* illustrates how the decision of courts to disregard corporate veil may affect foreign investment. Cia Swift de la Plata was a company located in Argentina, a subsidiary of Deltec International.[117] The Supreme Court of Argentina refused to apply limited liability doctrine and held the parent liable for the acts of its subsidiary.[118] The judgment was based on the economic unit theory.[119] Deltec controlled personality of the subsidiary

[115] Cees van Dam, 'Tort Law and Human Rights: Brothers in Arms on the Role of Tort Law in the Area of Business and Human Rights' (2011) 2 JETL 221, 221.
[116] Harvey Gelb, 'Piercing the Corporate Veil - The Undercapitalization Factor' (1982) 59 Chi-Kent L Rev 1, 1.
[117] M. W. Gordon, 'Argentine Jurisprudence: The Parke Davis and Deltec Cases' (1974) 6 U Miami Inter-A L Rev 320, 320.
[118] Ibid.
[119] Michael Wallace Gordon, 'Argentine Jurisprudence: Deltec Update' (1979) 11 U Miami Inter-A L Rev 43, 43.

to make Cia Swift act against third parties.[120] That is why, Deltec was found liable for the acts of Cia Swift. This case has been criticized: Karl Hofstetter in one of his works was of the view that the decision of the Supreme Court discouraged investors from investing and carrying their businesses to Argentina as "new foreign investment in Argentina came to a temporary standstill."[121] This case shows that it is important to balance the interests of investors and victims. The strict parent liability may shock the investment community and lead to disinvestment in developing countries. To strike a balance between limited liability of the companies and providing sufficient remedies for the victims of human rights abuses, there should be clear conditions of application corporate veil piercing doctrine.

2.2 Factors that Courts Must Consider in Establishing Parent Company Indirect Liability

2.2.1 Excessive Control

A subsidiary company is a separate legal entity, and as a rule parent company is not liable for subsidiaries acts. The parent company often acts as a shareholder of the subsidiary and may have a right to vote and make decisions on composition of the latter's board of directors. The board will make decisions and control the company. The courts should thoroughly analyze the existence of excessive control of parent company over subsidiary because there could be a question of what is meant to be an excessive control. When a parent corporation performs its regular obligations and acts as a mere investor, corporate veil piercing is not applicable. As Robert Thompson discussed in his article, the parent corporations are more than passive investors.[122] Unless the shareholders go beyond the regular participation in their company, they are considered to be on

[120] José Maria Lezcano, *Piercing the Corporate Veil in Latin American Jurisprudence: A Comparison with the Anglo-American Method* (Routledge 2015).
[121] Karl Hofstetter, 'Multinational Enterprise Parent Liability: Efficient Legal Regimes in a World Market Environment' (1990) 15 NCJ Int'l L & Comp Reg 299, 333.
[122] Robert B Thompson 'Piercing the Veil within Corporate Groups: Corporate Shareholders as Mere Investors' (1999) 13 Conn J Int'l L 379, 389.

the safe side and have no liabilities. However, when the parent company exceeds "honest or passive investment"[123] the liabilities can be attached to the company.

The German statutory law provides contractual *Konzern* concept which is based on the domination agreement. This agreement ensures that creditors will be compensated by the parent company if the subsidiary is not able to pay to its creditors. However, in the human rights violation cases, it is unlikely that parent and subsidiary companies will have a domination agreement. Nevertheless, in light of the absence of the contract, the German courts may establish *de facto Konzern* where subsidiary's annual reports are essential to establish the control between two companies because it would show the level of dominance of the parent company. At the same, the annual reports will not show the existence of excessive control of the parent company, because it is challenging to establish "detrimental interference on a transaction-by-transaction basis."[124] This approach has been criticized by commentators because it is "easier and cheaper for a parent company to organize and document itself in order to rebut its liability, than for a creditor to establish detailed patterns of parent misconduct."[125] Notwithstanding this criticism, a company's account and an annual report is an important consideration in the court's examination of the facts though not exclusively.

The doctrine of alter ego developed by US courts can also be effective in closely held companies or some other small companies because the claimant has to show that shareholder treats the company as an "alter ego". If the shareholder and company have a single office, the same phone line and bank account, it could be established that shareholder treats the company as an alter ego. However, in the parent-subsidiary situation, it is almost impossible to apply alter ego doctrine. Yet, the US courts interchangeably use an alter ego and instrumentality theories.[126] The concept

[123] Hofstetter (n 121) 313.
[124] Karl Hofstetter, 'Parent Responsibility for Subsidiary Corporations: Evaluating European Trends' (1990) 39(3) The Int'l & Comp L Q 576, 582.
[125] Ibid 595.
[126] Philip I. Blumberg, Kurt A. Strasser, Nicholas L. Georgakopoulos and Eric J. Gouvin, *Blumberg on Corporate Groups* (Aspen Publishers Online 2005) 11-8.1.

of instrumentality shows not only a lack of independence of the subsidiary but also it means that the subsidiary acts as a parent company's "puppet or tool."[127]

As it was suggested by Professor Powell, to establish instrumentality or alter ego doctrine, eleven factors can be taken into consideration.[128] However, all these eleven factors are not sufficient to show a significant level of control. Factors such as when the parent company owns all or substantially all stocks of the subsidiary or having common directors in both companies show that the parent has a control in the subsidiary. However, it is questionable to establish absolute control or domination of the parent company. In these scenarios, the courts should carefully analyze the connection between two companies. Nevertheless, Professor Powell proposed other circumstances when the parent company could be found as a controlling body.[129] These factors could be a promising track for the victims. If the subsidiary is undercapitalized and the contribution of the parent company is inadequate to carry out the operation of the subsidiary, the parent company might be found liable for the debts. In US and Germany, undercapitalization is a major factor leading to disregard the corporate veil.[130]

Asset stripping is an alternative way to establish control of the parent company. Even in the situations where the parent company is adequately capitalized, a parent company and its subsidiary can be involved in direct or indirect assets transfers which could lead to insolvency of the subsidiary. Disguised assets transfers could be an element of fraud or wrongful conduct.[131] In the above-mentioned cases as *Land Services, Inc. v. the Pepper Source* and *Smith, Stone and Knight v. Birmingham,* the courts took into consideration whether there was a commingling of the assets and parent company benefited from the operations of the subsidiary. Commingling of the assets could be accompanied by the failure of corporate formalities in the companies.[132]

[127] Gordon, 'Argentine Jurisprudence: The Parke Davis and Deltec Cases' (n 117) 327.
[128] Powell (n 23) 9.
[129] Ibid.
[130] Vandekerckhove (n 15) 105.
[131] Ibid 179.
[132] Ibid.

The circumstances mentioned in Powell's test based on the financial and operational imbalance, which leads to the loss for the third parties. This test appears to be sufficient to establish control of the company. Moreover, commentators critically emphasize that the parent company is not an independent shareholder, then a parent company "has very real control over the operations and decisions of the subsidiary."[133] The control of the parent company has to be based on the business strategies of the companies.[134] Also, the other main consideration in establishing control has to be an interference of the parent company in the management and systematic involvement in the operations of the subsidiary.

However, when the judges analyze the facts of the case, the elements of establishing excessive control have to be considered cumulatively. The reason is that the parent company may have control as a majority shareholder in the company, but it would not be a touchstone to impose liability for the subsidiary's wrongs. Facts such as undercapitalization, assets stripping, and involvement in the management of the subsidiary might be more efficient to show the domination of the parent company.

2.2.2 Human Rights Violation Cases as a New Concept in Corporate Law

The doctrine of corporate veil piercing has been criticized by some commentators. One of them claimed this doctrine to be an ineffective way to solve the issues in cases like *Bhopal* and suggested that tort law would better suit in this type of cases.[135] However, there could arise a question of whether corporations could be liable under human rights obligations. Usually, only states could be responsible for human violations. The question of whether the corporation should have human rights obligations is still open.[136] There is no statute that would indicate a

[133] Strasser (n 6) 638.
[134] Ibid.
[135] Hofstetter, 'Multinational Enterprise Parent Liability' (n 121) 320.
[136] Van Dam (n 115) 225.

corporation's direct human rights liabilities.[137] That is why it appears that tort law would be more suitable to hold a corporation liable for human rights violations.

Tort law comes into play when there has been civil wrongdoing, for instance, when one party is injured by the acts or omissions of another party. The liability may arise when tortfeasor "intentionally or negligently engages in conduct which falls below socially accepted standards of due care for another's legally protected rights and interests."[138] The claims occur from non-contractual liabilities. The victims of the tortuous act can claim for compensation for the cost incurred in connection with the act.[139] Compensation could be for material damage and non-material damages such as pain and suffering.[140] The principles of tort law can be found in domestic norms.[141]

In the tort-based claims the victims of human rights abuses may face additional challenge such as weak judicial system. The tort claims might not provide sufficient remedies. As it was discussed in the first chapter, the US and UK courts treat tort claims differently. The US courts are more lenient for tort claims. Whereas, in the UK court doors are only ajar open. The victims might not receive sufficient remedies if the case is entertained before UK courts. Also, there is high a chance that the cases might be brought to the courts of host states. In some of these jurisdictions, litigation of the tort-based corporate veil piercing cases might be not efficient because a host state legislation "may limit or not even recognize such novel claims."[142]

[137] Nicolás Carrillo-Santarelli, 'Corporate Human Rights Obligations: Controversial but Necessary' (Business and Human Rights Resource Centre) < https://www.business-humanrights.org/en/corporate-human-rights-obligations-controversial-but-necessary> accessed 20 May 2020.
[138] Liesbeth F.H. Enneking, *Foreign Direct Liability and Beyond: Exploring the Role of Tort Law in Promoting International Corporate Social Responsibility and Accountability* (The Hague: Eleven International Publishing 2012) 523.
[139] Ibid 551.
[140] Ibid.
[141] Ibid 107.
[142] Skinner (n 4) 1846.

The cases which involve human rights violations such as *Bhopal* litigation, *Akpan*[143] and *Kiobel*[144] cases were tort-based civil claims. However, all these cases are not typical tort law cases, because they have more serious consequences on society. These cases involve human rights violations, environmental damages and sometimes an intervention of military forces. The number of victims could be high, and the harm caused by the subsidiary companies could be severe. For example, the decision in the case of *Kiobel* illustrates the limitations of the Alien Tort Statute (ATS)[145], an ancient US law that allows non-US victims to litigate claims for the human rights violations committed by US corporations around the globe. The plaintiff's claim was dismissed on the grounds of extraterritoriality principle.[146] The *Kiobel* case is widely seen as closing the door to this type of ATS litigation in the future.

Nevertheless, some commentators argue that specifically in the tort cases, the courts should abolish limited liability and find shareholders always liable for the acts of the companies.[147] Moreover, Professor Lowenfeld proposes that a parent company should be liable for the tortious conduct of its subsidiary, especially in mass disasters caused by a wholly-owned subsidiary.[148] However, these approaches seem to be superfluous with respect to shareholders' limited liability. The courts should have the discretion to choose whether to pierce the corporate veil in the tort cases or not. If the courts use the extreme way purposed by these authors, it might cause investment deterioration which could be problematic for the developing host countries.

In the interest and protection of public policy, tort law in the human right cases should be expanded and have a new level of protection in all jurisdictions in the same manner. Human rights violation cases should be brought under expanded tort law which would be equally applied in all

[143] AF Akpan & Anor v Royal Dutch Shell plc & Anor District Court of Hague 30 January 2013 LJN BY9854/HA ZA 09-1580.
[144] Kiobel v. Royal Dutch Petroleum Co., 133 **S.** Ct. 1659 (2013).
[145] The Alien Tort Statute (28 U.S.C. § 1350; ATS)
[146] *Kiobel* (n 144) 1669.
[147] Vandekerckhove (n 15) 536.
[148] Ibid 537.

jurisdictions to pierce the corporate veil. Improvement and using broader standards of tort law in human rights violation cases would play a huge role in the application of corporate veil piercing doctrine. The expansion of tort law will give victims a chance to receive sufficient remedies. The United Nations Guiding Principles on Business and Human Rights indicate that the business enterprises that contribute to gross human rights abuses should provide adequate remedies.[149] The sufficient remedies could be provided only if flexible standards for the corporate veil piercing test are universally adopted. The looser standards should be applicable only; a) when the parent company benefits from its subsidiary directly and/or indirectly by possessing sufficient control; b) when a subsidiary's acts causes human rights violations; c) when the victims are unable to receive adequate remedies from the subsidiary company. Still, the courts will have discretion to analyse and balance shareholders' and victims' interests.

Chapter 2 Conclusion

The first chapter brings to the forefront that, the US, UK and Germany offer different ways to pierce the corporate veil and make parent companies liable for the misconduct of subsidiaries. The approaches used in all three countries have similarities and differences. However, the veil piercing tests in the US, UK and Germany do not offer sufficient means to tackle the problem of holding parent companies accountable for the human rights violations of their subsidiaries. This primary reason for this barrier to accountability is that the facts are more complex, and stakes are higher than in other corporate and tort law cases. Therefore, in cases of human rights violations, there should be exceptional conditions where the veil piercing test should be relaxed for justice and fairness.

Firstly, human rights abuses may result in tremendous loses and substantial damage, which subsidiary corporation may not have the financial ability to fulfill on its own. In these

[149] UN Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, UN Doc A/HRC/17/31, 21 March 2011, principle 22.

circumstances the victims may also hold the parent company liable for the financial obligations of its subsidiary. For this purpose, an understanding of human rights violation cases should be broader than tort or other contractual wrongful acts. The courts should treat these cases as a different type of a tort law which could be universally applicable in all jurisdictions.

Secondly, the courts must consider a wide range of elements to determine excessive control of the parent company over its subsidiary. Establishing excessive control by a cumulative set of factors instead of a set standard is also crucial because proof of significant control is essential to establishing grounds to litigate. However, courts should always bear in mind that only in situations of a lack of independence and human rights abuses, the corporate veil could be disregarded. These relaxed standards of corporate veil piercing test as opposed to abolishing the limited liability doctrine will maintain a balance between shareholders' interests and availability of adequate remedies for human rights victims.

Conclusion

Separate legal personality and limited liability of parent companies are the most problematic obstacles for the victims of human rights violations. These doctrines clearly define that there could be no liability between parent and subsidiary companies. However, as an exception to these doctrines, the corporate veil piercing doctrine plays a significant role in holding parent company accountable for the acts of its subsidiary.[150] According to the case law, courts do not always pierce the corporate veil and the victims of the human rights violations do not receive sufficient remedies. Different standards do not establish precise circumstances where the courts may disregard corporate veil. As an example, I have chosen three different jurisdictions with advanced law system and different corporate veil piercing tests. The US, UK and Germany provide different criteria to apply this doctrine. However, the common circumstances to pierce the corporate veil are the existence of excessive control and injustice prong. These rules are criticized for being "abstract, malleable, and vague to allow some courts to reach good results."[151] That is why the courts should have broader standards of the corporate veil piercing test. It should be noted that the US courts practice a single-factor veil piercing test when there is a tort, but the case law shows that the one-tier test is not applicable in every jurisdiction equally. For this reason, the corporate veil piercing test should be substantially reformed.

Although, as it was discussed in the second chapter, there should be a balance between equity for victims of human rights violations and investor protection policies. The balance could be reached only with unambiguous standards of the doctrine. The facts which courts have to consider are the lack of independence or excessive control and a new concept of human rights violation liabilities which arises from non-contractual relations. This new concept would be applicable in all jurisdictions equally in situations of gross human rights violations because common tort claims are not always sufficient and human rights obligations are not directly

[150] Cheng (n 12) 332.
[151] Strasser (n 6) 639.

applicable to corporations. The application of flexible standards would grant victims a more procurable way to hold the parent liable for the acts of its subsidiary.

Lastly, it is admitted that there could be several other issues arising from the human rights violation cases involving TNC's operations. This thesis tackles the issue of the suitability of the corporate veil piercing doctrine in human rights violations cases based on the comparative analysis of three different jurisdictions. Accordingly, several recommendations have been suggested. Nevertheless, there might be other issues related to the choice of law, choice of forum, the liabilities of the host state and how liabilities could be divided into multiple shareholder parent companies. These questions could be addressed in further legal papers to help and protect victims of human rights violations.

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