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State responsibility and corporate accountability for environmental harm: Reflections on due diligence from an asian perspective*

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Resumo

O artigo examina a relação entre a responsabilidade do Estado e a responsabilização empresarial por danos ambientais no direito internacional, com especial ênfase na evolução do padrão de devida diligência. Partindo da premissa de que a devida diligência internacional constitui uma obrigação de conduta destinada a enfrentar atividades privadas danosas não diretamente atribuíveis a órgãos estatais nos termos dos artigos 4 a 11 dos Artigos sobre a Responsabilidade dos Estados por Atos Internacionalmente Ilícitos, o problema central da pesquisa consiste em explicar por que o fortalecimento progressivo dos padrões internacionais de devida diligência não produz uma responsabilização ambiental empresarial consistente nos Estados asiáticos em desenvolvimento que recebem investimentos. Para responder a essa questão, o artigo apresenta a hipótese de que a superação dessa lacuna de responsabilização na Ásia exige integrar a obrigação internacional do Estado de regular atores não estatais à responsabilidade direta das empresas no direito interno e a obrigações extraterritoriais de devida diligência nas cadeias de fornecimento. Metodologicamente, em vez de adotar uma abordagem empírica de estudo de caso, a pesquisa emprega análise doutrinária e jurisprudencial de tratados multilaterais, normas costumeiras e decisões de cortes e tribunais internacionais, combinada com uma avaliação institucional comparativa de jurisdições selecionadas, incluindo os marcos dos Estados de origem da União Europeia e os regimes dos Estados receptores na China, Índia, Indonésia, Vietnã, Singapura, Japão e Coreia do Sul, com base em critérios definidos de seleção da literatura. A análise esclarece como o Estado concretiza a devida diligência internacional por meio de exigências legislativas internas, licenciamento administrativo e monitoramento ambiental, ao mesmo tempo que demonstra em que medida as empresas podem ser diretamente responsabilizadas por sanções administrativas internas, reparação civil, responsabilidade objetiva ou penal e obrigações previstas em tratados de investimento. O artigo contribui para a literatura existen-

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te, incluindo os debates em curso na Revista de Direito Internacional sobre deveres empresariais transnacionais e devida diligência em sustentabilidade, ao demonstrar como prioridades de desenvolvimento, conflitos de interesses envolvendo empresas estatais, o regionalismo da ASEAN baseado no consenso e a divulgação ambiental meramente simbólica dificultam a aplicação do direito interno na Ásia. Conclui-se que reduzir a impunidade ambiental empresarial sob uma perspectiva asiática exige fortalecer a autonomia institucional dos órgãos reguladores nacionais, adotar leis internas de devida diligência empresarial obrigatória e estabelecer mecanismos regionais vinculantes de cumprimento.

Palavras-chave: responsabilidade do Estado; responsabilização empresarial; devida diligência; danos ambientais; aplicação do direito interno; governança ambiental asiática; direito internacional.

Abstract

The article examines the relationship between State responsibility and corporate accountability for environmental harm under international law, with particular emphasis on the evolving standard of due diligence. Taking as a foundational premise that international due diligence serves as an obligation of conduct to address private harmful activities not directly attributable to State organs under Articles 4 to 11 of the Articles on Responsibility of States for Internationally Wrongful Acts, the central research problem examined in this study is why the progressive strengthening of international due diligence standards fails to generate consistent corporate environmental accountability in developing Asian host States. To address this problem, the article advances the hypothesis that closing the accountability gap in Asia requires integrating the international obligation of the municipal State to regulate non-State actors with direct domestic corporate liability and extraterritorial supply chain due diligence mandates. Methodologically, rather than adopting an empirical case-study approach, the research employs doctrinal and jurisprudential analysis of multilateral treaties, customary rules, and decisions of international courts and tribunals, combined with a comparative institutional assessment of selected jurisdictions, including European Union home State frameworks and Asian host State regimes in China, India, Indonesia, Vietnam, Singapore, Japan, and South Korea, based on defined literature selection criteria. The analysis clarifies how the municipal State operationalises due diligence under international law through domestic legislative thresholds, administrative licensing, and environmental monitoring, while demonstrating the extent to which corporations can be held directly liable through domestic administrative sanctions, civil tort compensation, strict or criminal liability, and investment treaty obligations. The article contributes to existing scholarship, including ongoing debates in the Brazilian Journal of International Law on transnational corporate duties and sustainability due diligence, by exposing how developmental priorities, state-owned enterprise conflicts of interest, consensus-based ASEAN regionalism, and symbolic environmental disclosure impede municipal enforcement across Asia. The article concludes that reducing corporate environmental impunity from an Asian perspective requires strengthening the institutional autonomy of municipal regulators, enacting mandatory domestic corporate due diligence statutes, and establishing binding regional compliance mechanisms.

Keywords: *State responsibility, corporate accountability, due diligence, environmental harm, municipal enforcement, Asian environmental governance, International Law.*

1 Introduction

1.1 Research context

In the era of globalisation, corporations have increased in both number and influence, gaining significant economic and political power. The International Court of Justice (ICJ) in the *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)*[1] recognised that corporations operate across national boundaries and can exert considerable influence on international relations.[2] Multinational enterprises have emerged as central actors in shaping global environmental outcomes. Industrialisation, global supply chains, and extractive industries have significantly expanded the scale and impact of cor-

[1] *Case Concerning the Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v Spain)* [1970] ICJ Rep 3.

[2] ibid 37; Jackson Rudall, *Responsibility for Environmental Damage Principles of International Environmental Law Series* (Edward Elgar Publishing 2024) 214.

porate activity, often resulting in severe environmental degradation.

From oil spills and deforestation to toxic waste dumping and greenhouse gas (GHG) emissions, corporate conduct has been directly linked to some of the most pressing environmental challenges of the modern era. Their activities contribute to a wide range of environmental problems, such as biodiversity loss, degradation of air, land, and marine environments, and climate change.[3] Traditional international law has yet to treat corporations as direct bearers of legal obligations, particularly in environmental law. Instead, the primary responsibility has rested with States, which are expected to regulate corporate conduct through their domestic legal frameworks, even where those frameworks are shaped by international treaties or customary international law.[4] . In contemporary international legal scholarship, it is already a widely established premise that because private corporate conduct is rarely attributable to the State under Articles 4 to 11 of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA),[5] the primary obligation of States to exercise due diligence serves as the foundational normative mechanism to regulate non-State actors and fill the resulting accountability gap.[6]

Environmental issues and their consequences are often not limited to the borders of the State in which they originate. The rise of multinational corporations may contribute to transboundary environmental harm, in which activities in one State lead to adverse environmental effects in another. The level of environmental protection within a State, or its failure to regulate harmful activity, can therefore produce consequences that extend beyond its own jurisdiction and affect other States.[7] This contextual challenge is particularly acute in Asia, which serves as a primary global hub for industrial manufacturing, resource extraction, infrastructure expansion, and foreign direct investment (FDI). Across developing Asian jurisdictions, municipal States confront a persistent structural tension between attracting international capital to sustain economic growth and enforcing stringent environmental standards against transnational corporations and domestic state-owned enterprises (SOEs). Where municipal regulatory institutions lack administrative independence, technical monitoring capacity, or effective cross-border coordination, the doctrinal bridge between international State responsibility and corporate environmental accountability fractures in practice. Consequently, taking the well-established doctrine of due diligence in general international law as a starting point rather than a final conclusion, it is necessary to examine how municipal States operationalise international due diligence obligations within domestic legal orders and why systemic corporate accountability deficits persist across the Asian region.[8]

1.2 Research problem, core thesis, methodology and structure of the research

From the above context, and taking as its foundational premise that due diligence has progressively consolidated in international environmental law as an obligation of conduct governing State regulation of non-State actors,[9] this article addresses a specific legal research problem: why does the progressive strengthening of international due diligence standards fail to generate consistent corporate environmental accountability in

3 Rudall (n 2) 213.

4 ibid 214.

5 Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries 2001 (UN Doc A/RES/56/83).

6 Alice Ollino (ed), 'The Foundations of Due Diligence in International Law' *Due Diligence Obligations in International Law* (Cambridge University Press 2022) <https://doi.org/10.1017/9781009053082.002> accessed 27 October 2026; Robert Barnidge, 'The Due Diligence Principle Under International Law' (2006) 8 International Community Law Review 81 <https://doi.org/10.1163/187197306779173194>.\\uc0\\u8216{}The Due Diligence Principle Under International Law\\uc0\\u8217{} (2006

7 Peter Gailhofer, 'Functions and Objectives of Corporate Liability for Transboundary Environmental Harm' *in Peter Gailhofer, David Krebs, Alexander Proelss, Kirsten Schmalenbach, Roda Verheyen (eds), Corporate Liability for Transboundary Environmental Harm: An International and Transnational Perspective* (Springer 2023) 10–11.

8 ibid 17; Kirsten Schmalenbach, 'States Responsibility and Liability for Transboundary Environmental Harm' *in Peter Gailhofer, David Krebs, Alexander Proelss, Kirsten Schmalenbach, Roda Verheyen (eds), Corporate Liability for Transboundary Environmental Harm: An International and Transnational Perspective* (Springer 2023) 43–44.

9 International Tribunal for the Law of the Sea, 'Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion Submitted to the Tribunal)' (2024) <https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/> accessed 27 October 2026; International Court of Justice, 'Request for an Advisory Opinion on the Obligations of States in Respect of Climate Change' (2025) <https://www.icj-cij.org/case/187> accessed 24 October 2026.\\uc0\\u8216{}Request for an Advisory Opinion on the Obligations of States in Respect of Climate Change\\uc0\\u8217{} (2025

developing Asian host States, and how can international State responsibility and municipal regulatory mechanisms be legally realigned to close this implementation gap? This question is especially pressing in the Asian context, where investment flows, global supply chains, resource extraction, infrastructure development, and energy transition are increasingly giving rise to transboundary environmental risks. In answering this research problem, the central thesis advanced by this article is that due diligence can only function as an effective bridge between State responsibility and corporate accountability in Asia through a dual legal transformation: first, municipal States must translate international obligations of conduct into autonomous domestic administrative supervision and enforceable civil, administrative, and criminal corporate liability despite developmental pressures and state-enterprise conflicts of interest;[10] and second, host State enforcement limitations must be reinforced by extraterritorial supply chain due diligence legislation and binding regional cooperation frameworks that transcend traditional non-interference norms.[11] By positioning the regulatory and political economy realities of Asia as the central analytical axis of the study, this article contributes to the existing literature, including ongoing scholarly debates in the Brazilian Journal of International Law concerning transnational corporate obligations, investment accountability, and the extraterritorial reach of sustainability due diligence directives,[12] by demonstrating how international primary and secondary norms interact with municipal enforcement structures in developing Asian economies.

Methodologically, rather than employing an empirical case-study approach, this article adopts a doctrinal, jurisprudential, and comparative institutional methodology tailored to its research problem. First, doctrinal legal analysis is applied to examine the interplay between secondary rules of attribution under ARSIWA and primary obligations of prevention and environmental protection under multilateral treaties, customary international law, and soft-law frameworks on business and human rights. Second, the article conducts a systematic jurisprudential analysis of landmark contentious judgments and advisory opinions delivered by the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS), the Permanent Court of Arbitration (PCA), and the Permanent Court of International Justice (PCIJ). These decisions are used not merely as illustrations, but as authoritative interpretive materials that clarify how international tribunals define the standard of care expected of the municipal State in regulating corporate conduct. Third, comparative legal and institutional analysis is employed to evaluate how specific Asian jurisdictions, notably China, India, Indonesia, Vietnam, Singapore, Japan, and South Korea, alongside ASEAN regional instruments and comparative European Union home State legislation, operationalise due diligence and hold corporate entities legally liable.

Structurally, the Asian perspective serves as the overarching analytical thread connecting the four substantive parts of this article. Section 2 analyses the doctrine of State responsibility for corporate-related environmental harm under international law, clarifying the strict limits of direct attribution under Articles 4 to 11 of ARSIWA and elaborating on the concept of due diligence exercised by the municipal State under the ambit of international law. Section 3 examines due diligence as a bridge between State responsibility and corporate accountability, tracing its consolidation in international environmental and climate jurisprudence through 2025 while evaluating the precise extent to which cor-

[10] Volker Roeben and Jianping Guo, 'The Result-Oriented Due Diligence Obligation in the ITLOS Climate Change Advisory Opinion: Developments and Implications' (2026) 35 Review of European, Comparative & International Environmental Law 105 <https://doi.org/10.1111/reel.70041>.with a focus on the requirements due diligence now places on States. Since ITLOS refrained from assessing States' measures in concreto, the article then applies the result-oriented due diligence, substantiating States' obligations and responsibility in combating climate effects on the marine environment. It finds that the objectives and requirements of the result-oriented due diligence not only require States to set an ambitious target in their nationally determined contributions (NDCs

[11] Robert McCorquodale and Penelope Simons, 'Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law' (2007) 70 The Modern Law Review 598 <https://doi.org/10.1111/j.1468-2230.2007.00654.x>.

[12] Nitish Monebhurrun, 'Mapping the Duties of Private Companies in International Investment Law' (2017) 14 Brazilian Journal of International Law <https://doi.org/10.5102/rdi.v14i2.4860> accessed 28 October 2026; Nitish Monebhurrun, 'Should Non-European Union Member States Be Cautious about the E.U Corporate Sustainability Due Diligence Directive?' (2024) 21 Brazilian Journal of International Law <https://doi.org/10.5102/rdi.v21i2.9844> accessed 28 October 2026; Harvey Mpoto Bombaka, 'The EU Corporate Sustainability Due Diligence Directive as an Alternative Legal Framework to Bridge the Identified Gaps at the Regional Level in the Gulf of Guinea? The Case of Marine Resource Exploitation by European Multinationals and Their Subcontractors.' (2024) 21 Brazilian Journal of International Law <https://doi.org/10.5102/rdi.v21i3.9898> accessed 28 October 2026.

porations themselves can be held liable under domestic and transnational legal orders. Section 4 constitutes the core analytical contribution of the study, investigating the specific structural challenges governing due diligence and corporate accountability in Asia—including the tension between FDI attraction and environmental regulation, state-owned enterprise dynamics, the limitations of consensus-based ASEAN frameworks on transboundary haze, global supply chain pressures, and municipal enforcement deficits. Finally, Section 5 synthesises the research findings from an Asian perspective and proposes targeted legal and institutional reforms to align municipal corporate liability and regional cooperation with international due diligence standards.

2 State responsibility for corporate-related environmental harm under international law

2.1 State Obligations to Prevent, Regulate and Remedy Environmental Harm

Under contemporary international law, State responsibility generally arises in two principal ways. *Firstly,* a State may be held responsible for conduct attributable to its organs or officials exercising governmental authority, including situations where those actors exceed their authorised powers. *Secondly,* although the actions of private individuals and corporate entities are not normally attributable to the State, responsibility may nevertheless arise where the State fails to exercise due diligence in preventing, regulating, or responding to harmful conduct committed by non-State actors.[13]

State responsibility arises where environmental harm is linked to an internationally wrongful act. In many instances, although private entities cause environmental damage, a State may still be held responsible where such conduct is attributable to it under international law.[14] State responsibility is established in the ARSIWA.[15] Under the secondary rules codified in Articles 4 to 11 of ARSIWA, attribution establishes the strict normative conditions under which conduct can be legally characterised as an act of the State. According to ARSIWA, any act that is considered internationally wrongful will give rise to responsibility on the part of the State concerned.[16] Such a wrongful act arises where conduct attributable to a State, whether through action or omission, constitutes a breach of an existing international obligation.[17] Breaches may arise in different ways. A State might violate substantive obligations, such as the duty to prevent environmental harm, by allowing activities within its jurisdiction to cause damage. Alternatively, it may fail to comply with procedural requirements established under international environmental law, for instance, by neglecting reporting duties or omitting to carry out an environmental impact assessment (EIA) when required.[18]

In addition to establishing a wrongful act, it is necessary to demonstrate causation before responsibility can arise in claims for reparation. A State may bear responsibility where it breaches its international obligations or fails to adequately regulate private actors, resulting in environmental harm to other States or to areas beyond national jurisdiction. In this context, causation refers to the existence of a link between a particular act or omission and the resulting damage. The ICJ has affirmed this approach in *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua)*[19], that it must determine whether a sufficiently direct and certain causal connection exists between the wrongful conduct and the injury claimed.[20]

Under ARSIWA, attribution is determined by legal criteria established in international law, rather than merely by demonstrating a factual link between conduct and harm. Where conduct in breach of international law is carried out by a State organ under Article 4 of ARSIWA, that conduct is automatically attributed to

[13] Jan Arno Hessbruegge, 'The Historical Development of the Doctrines of Attribution and Due Diligence in International Law' (2004) 36 New York University Journal of International Law and Politics 265, 268–269.

[14] Robert McCorquodale and Penelope Simons, 'Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law' (2007) 70 Modern Law Review 523, 601; Rudall (n 2) 49–50.

[15] International Law Commission (ILC)ILC, 'Articles on Responsibility of States for Internationally Wrongful Acts (2001) UN Doc A/56/10, Ch IV.E.1' (2001).

[16] ibid 1.

[17] ibid 2.

[18] Rudall (n 2) 51; Owen McIntyre, 'The Current State of Development of the No Significant Harm Principle: How Far Have We Come?' [2020] International Environmental Agreements: Politics, Law and Economics 601, 607.

[19] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) (Judgment)* [2015] ICJ Rep 665.

[20] ibid 34; Rudall (n 2) 51–52.

the State, irrespective of the organ's position within the State structure.[21] However, a critical doctrinal challenge, particularly relevant in Asian economies where SOEs dominate the energy, mining, and infrastructure sectors, concerns the status of corporate entities owned or controlled by the State. Under the commentary to Article 5 of ARSIWA, the separate legal personality of parastatal entities and state-owned corporations is respected under international law; their commercial or industrial conduct is not attributable to the State unless they are specifically empowered by the law of that State to exercise elements of governmental authority and are acting in that capacity in the particular instance.

According to Article 8 of ARSIWA, a private or corporate entity's conduct may be attributed to a State in certain circumstances where the private actor is not acting independently, but is instead acting on the State's instructions, or under its direction or control when carrying out the relevant conduct. Instructions given by the State must be precise and directly related to the specific act in question. It is insufficient for a State to have issued broad or general guidance. The private actor must have been specifically directed to engage in the conduct that led to the wrongful act. Additionally, the State must have exercised a high level of control over the operation in which the wrongful act occurred. It is not enough for the State to have general influence, support, majority shareholding, or oversight over the private entity's act. Instead, the State must have had a decisive role in directing or controlling the specific conduct at the time it was carried out. The ICJ rejected a broader overall control test and interpreted direction and control as effective control, confirming this stringent standard in Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)[22] and reaffirming it in Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro).[23] Because corporate environmental degradation in both private and state-owned enterprises rarely occurs under the specific instructions or effective operational control of the State, direct attribution under Articles 4 to 11 of ARSIWA leaves a profound accountability vacuum in transnational environmental governance.[24]

2.2 State Responsibility for Environmental Harm Caused by Corporate and Other Non-State Actors

The dominant position in contemporary legal scholarship and international practice is that acts carried out by private actors are generally not imputable to the State. Instead, it may give rise to responsibility where the State itself fails to fulfil its duties of prevention or enforcement. Thus, responsibility does not stem from the private act, but from the State's omission in not taking reasonable steps to prevent or respond to it.[25] Therefore, in this sense, responsibility may extend to situations involving private actors in which the State is obligated to prevent harmful activities but fails to take appropriate measures.[26] This is reflected in the *Trail Smelter case*[27], in which Canada was held accountable for damage in the United States caused by emissions from a privately operated smelter, due to its failure to adequately control activities within its jurisdiction.[28]

Under international law, States are generally required to refrain from conduct that causes harm beyond their territorial jurisdiction. This principle extends to environmental harm with transboundary effects, particularly where a state has the capacity to regulate or control the activities giving rise to such harm, as evidenced by the *Trail Smelter Arbitration* case.[29] Commonly referred to as the duty of prevention or the no-harm rule, this principle has been consistently affirmed in the jurisprudence of international courts and arbitral tribunals.[30]

[21] Rudall (n 2) 53.

[22] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits)* [1986] ICJ Rep 14.

[23] International Court of Justice, 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)' (2007) <https://www.icj-cij.org/case/91/judgments> accessed 28 October 2026.

[24] Monebhurrun, 'Mapping the Duties of Private Companies in International Investment Law' (n 12); Daniëlla Dam-de Jong and Saskia Wolters, 'Through the Looking Glass: Corporate Actors and Environmental Harm Beyond the ILC' (2020) 10 111.

[25] Riccardo Pisillo-Mazzeschi, 'The Due Diligence Rule and the Nature of the International Responsibility of States' (1992) 35 German Yearbook of International Law 9, 124–125.

[26] Rudall (n 2) 53.

[27] *Trail Smelter Case (United States v Canada), Awards of Arbitral Tribunal* [1941] 3 Reports of International Arbitral Awards.

[28] McIntyre (n 18) 604; Rudall (n 2) 53.

[29] McCorquodale and Simons, 'Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law' (n 14) 617–618.

[30] McIntyre (n 18) 602; Medes Malaihollo, 'Due Diligence in International Environmental Law and International Human Rights Law: A Comparative Legal Study of the Nationally Determined Contributions under the Paris Agreement and Positive Obligations under

Trail Smelter Arbitration is widely regarded as the landmark case in international environmental law and a cornerstone for the development of due diligence obligations. The arbitral tribunal laid the groundwork for the no-harm principle, which underpins much of modern environmental law. In this case, the arbitral tribunal endorsed the no-harm rule by establishing that no 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.[31] Although the tribunal did not explicitly frame its reasoning in terms of due diligence, its approach reflects an early articulation of the concept.

In addition to actions, attribution of responsibility may result from omissions. In this regard, liability can stem from a State's failure to regulate or adequately supervise the activities of private actors within its jurisdiction. Where such a failure exists, the conduct of those private entities may engage the State's responsibility.[32] In determining this, the applicable benchmark is the standard of due diligence, which evaluates whether the State took all reasonable and appropriate measures to prevent, control, or mitigate harmful conduct by private parties. If the State falls short of this standard by failing to enact, implement, or enforce necessary regulatory controls, it may be considered to have breached its international obligations.[33] To fully appreciate how this mechanism operates, it is essential to elaborate on the concept of due diligence exercised by the municipal State under the ambit of international law. Because the international legal order lacks a supranational executive agency to police private enterprises directly, international law relies on the domestic legal and institutional apparatus of the municipal State to give effect to international environmental obligations. Under the ambit of international law, municipal State due diligence is not a passive duty of non-interference, but an active, continuing obligation of domestic governance comprising three institutional pillars. First, at the legislative level, the municipal State must enact comprehensive statutory and regulatory frameworks that translate international environmental standards into binding domestic rules applicable to all corporate entities operating within its territory or under its jurisdiction. Second, at the administrative and executive level, the municipal State must establish institutional mechanisms for prior authorisation, mandatory environmental impact assessments, continuous emission and ecological monitoring, and independent on-site inspections to verify that corporate operations comply with statutory thresholds in practice. Third, at the adjudicative and enforcement level, the municipal State must maintain accessible domestic judicial and administrative remedies capable of investigating corporate violations, imposing deterrent administrative, civil, or criminal sanctions, and compelling polluters to remediate environmental damage. Consequently, when a municipal State possesses the legal competence to regulate corporate activities within its territory, as is the case across Asian host States receiving foreign investment or operating state-owned enterprises, its failure to maintain or enforce any of these three domestic institutional pillars constitutes an internationally wrongful omission attributable directly to the State.

From a human-rights-based perspective, environmental degradation caused by corporate activities has increasingly posed significant threats to the enjoyment of human rights worldwide. The recognition of the right to a healthy environment by the United Nations General Assembly in Resolution 76/300 and regional human rights bodies, alongside scholarship examining the intersection of human rights due diligence and environmental protection, has emerged as a crucial legal foundation for holding municipal States accountable for failing to protect individuals and communities against environmental harm and pollution caused by corporate actors.[34]

the European Convention on Human Rights' (2021) 68 Netherlands International Law Review 121, 125.

31 *Trail Smelter Case (United States v. Canada), Awards of Arbitral Tribunal* (n 27) para 1965.

32 McIntyre (n 18) 607.

33 McCorquodale and Simons, 'Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law' (n 14) 618; Rudall (n 2) 54–55; Jonathan Bonnitcha and Robert McCorquodale, 'The Concept of "Due Diligence" in the UN Guiding Principles on Business and Human Rights' (2017) 28 The European Journal of International Law 904–905.

34 UNGA Res 76/300, 'The human right to a clean, healthy and sustainable environment' (28 July 2022) UN Doc A/RES/76/300; John H Knox, 'Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (Human Rights Council 2012) Preliminary Report A/HRC/22/43 <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-43_en.pdf> accessed 15 May 2026; John H Knox, 'Constructing the Human Right to a Healthy Environment' (2020) 16 Annual Review of Law and Social Science 79; Bridget Lewis, 'Environmental Rights or a Right to the

3 Due diligence as a bridge between state responsibility and corporate accountability

3.1 Due diligence as a standard of conduct in environmental protection

The concept of due diligence was incorporated into international law through early legal scholarship by Grotius in the 17th century and has since developed into a key principle governing State responsibility. Due diligence serves as a standard for assessing whether a State has fulfilled its obligations regarding the conduct of private actors.[35] It is a well-established principle primarily concerned with a State's responsibility for regulating the conduct of non-State actors within its territory. This is reflected in the *Case of the S.S. Lotus,* where the Court held that a State has a duty to exercise due diligence in order to prevent criminal acts occurring within its territory that could harm another State or its citizens.[36] A State is not automatically responsible for all actions that occur within its territory where it has taken all reasonable and appropriate measures to prevent such wrongful acts or their recurrence.[37] In other words, due diligence establishes a standard of behaviour that is compulsory for a State to follow to fulfil its underlying legal duties. Its precise requirements are shaped by the primary obligation in question. In general, however, a State will be regarded as having complied if it can demonstrate that it employed all reasonable measures within its capacity, even where those efforts failed to avert the harm.[38] Moreover, adopting a broader understanding, due diligence could be viewed as an obligation requiring States to ensure that activities under their jurisdiction or control do not cause harm to other States.[39]

The due diligence standard is not uniform across all contexts. However, it is applied flexibly, depending on the nature of the activity and the level of environmental risk involved.[40] The focus on conduct in Article 2 of ARSIWA suggests that due diligence standards are often central in determining whether a breach has occurred. However, it has also been emphasised that the relevance of fault or damage depends on the content of the underlying primary rule. If the primary obligation requires proof of fault or harm, then such elements must be established, otherwise, they are unnecessary.[41] Accordingly, the nature and scope of due diligence obligations are determined by primary rules, which are the substantive obligations imposed by treaty or customary international law, rather than by the secondary rules governing State responsibility. Secondary rules determine when a breach of an international obligation occurs and outline the legal consequences resulting from such a breach.[42]

In the context of environmental protection, the relevant primary rules typically impose due diligence obligations. This means that the duty of prevention is not an obligation of result in the sense that States are not required to guarantee that no harm will occur, but rather an obligation of conduct, requiring them to take all reasonable and appropriate measures to prevent or minimise the risk of significant transboundary harm. Therefore, State responsibility does not arise simply because damage has occurred. Alternatively, it depends on whether the State has failed to meet the required standard of care in the circumstances.[43]

Environment? Exploring the Nexus Between Human Rights and Environmental Protection' (2012) 8 Macquarie Journal of International and Comparative Environmental Law 36; Daniella Dam-de Jong and Saskia Wolters, 'Through the Looking Glass: Corporate Actors and Environmental Harm beyond the ILC' (2020) 10 Goettingen Journal of International 111, 127–128.

35 McIntyre (n 18) 603; Bonnitcha and McCorquodale (n 33) 903; Hessbruegge (n 13) 268; Robert Barnidge, 'The Due Diligence Principle Under International Law' (2006) 8 International Community Law Review 81, 81–82.

36 *The Case of the SS Lotus (France v Turkey)* [1927] PCIJ (ser A) No 10 [88] per Justice Moore; Bonnitcha and McCorquodale (n 33) 903.

37 *Wipperman Case (United States v Venezuela)* [1887] 3 Moore International Arbitrations 2655; Bonnitcha and McCorquodale (n 33) 903.

38 Dam-de Jong and Wolters (n 34) 121–122.

39 Malaihollo (n 30) 124.

40 Schmalenbach (n 8) 57; Bonnitcha and McCorquodale (n 33) 905–906.

41 McIntyre (n 18) 604–606.

42 ibid 604; International Law Association (ILA), 'International Law Association (ILA) Study Group on Due Diligence in International Law, First Report' (2014) First Report 4 <https://www.ila-hq.org/en_GB/documents/first-report-washington-dc-2014> accessed 15 May 2026.

43 *Case Concerning Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment)* [2010] ICJ Rep 14 [101 and 197]; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment)* [2007] ICJ Rep 43 [430]; *Corfu Channel (United Kingdom v Albania) (Merits)* [1949] ICJ Rep 4; *Trail Smelter Case (United States v. Canada), Awards of Arbitral Tribunal* (n 27); Pisillo-Mazzeschi (n 25).

The obligation to prevent transboundary environmental harm can also be divided into procedural and substantive components. Procedural obligations primarily concern anticipating and managing risks before potentially harmful activities commence. Substantive obligations, by contrast, relate to the adoption and implementation of concrete measures to prevent or reduce environmental damage.[44] In addition, substantive obligations may include legislative, regulatory, and administrative actions designed to control harmful corporate activities. These obligations are generally characterised as obligations of conduct rather than obligations of result.[45] This means that a State will not be held internationally responsible if it has taken all appropriate and reasonable measures, even if harm ultimately occurs. This approach is closely associated with the precautionary principle, which further reinforces the preventive dimension of due diligence in environmental protection.[46] Procedural obligations, however, are more precise in nature. They include conducting risk assessments, undertaking EIAs where necessary, and, at the international level, notifying and consulting with potentially affected States. A failure to comply with these procedural requirements can give rise to international responsibility regardless of whether any actual environmental harm has materialised. In this sense, procedural obligations require the completion of specific regulatory and administrative steps by the municipal State prior to licensing private or state-owned enterprise projects.[47]

3.2 The emergence of due diligence in international environmental law

The notion of due diligence has developed significantly within international environmental law. Due diligence plays a central role in addressing and preventing transboundary environmental harm and in safeguarding the environment more broadly. It reflects the idea that states are subject to a standard of care regarding activities occurring within their jurisdiction.[48] The obligation of States to avoid causing significant transboundary harm is among the most firmly established principles in international law, particularly within the fields of environmental protection and management.

International law now commonly acknowledges that States are obligated to prevent, reduce, and manage environmental harm that may affect other States and areas beyond national jurisdiction. The ICJ additionally confirmed that this State's obligation constitutes an integral part of environmental law in its *Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons*.[49] The Court reiterated this general obligation in the *Gabčíkovo-Nagymaros Project* to highlight the importance of environmental protection that is not only a concern of individual States but of humanity as a whole.[50] Furthermore, it is generally accepted that a State may incur responsibility for its response to the actions of non-State actors. States' obligation is framed in terms of due diligence, subjecting them to independent duties requiring them to exercise due diligence by taking all appropriate and reasonable steps to prevent violations of international law by non-State actors within their territory or under their authority.[51]

Beyond judicial decisions, due diligence has been increasingly embedded in international environmental governance through treaties, soft law instruments, and policy frameworks. Multilateral environmental agreements frequently incorporate obligations that reflect due diligence principles, such as requirements to adopt national legislation, monitor environmental impacts, and cooperate with other states. Global climate governance is primarily structured around the United Nations Framework Convention on Climate Change (UNFCCC)[52], the Kyoto Protocol[53], and the Paris Agreement[54]. Together, these instruments form the core legal framework for addressing climate change.

44 Schmalenbach (n 8) 57.

45 Malaihollo (n 30) 124; McIntyre (n 18) 604; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment)* (n 43) para 430; *Case Concerning Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment)* (n 43) 186–187.

46 Malaihollo (n 30) 124.

47 Schmalenbach (n 8) 57–58.

48 Malaihollo (n 30) 124.

49 *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226 [29]; McIntyre (n 18) 605.

50 *Gabčíkovo–Nagymaros Project (Hungary v Slovakia) (Judgment)* [1997] ICJ Rep 7 [53]; McIntyre (n 18) 605.

51 Bonnitcha and McCorquodale (n 33) 904; Dam-de Jong and Wolters (n 34) 121; Schmalenbach (n 8) 56–57; Rudall (n 2) 49.

52 United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

53 Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162.

54 Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) TIAS 16-1104.

The UNFCCC establishes the foundational institutional architecture, while the Kyoto Protocol and Paris Agreement build on it by specifying and strengthening State commitments. In particular, the Paris Agreement aims to advance the UNFCCC's overarching objective of responding to climate change, notably through its long--term temperature goal set out in Article 2(1) and operationalised in Article 4. Central to this framework is the system of nationally determined contributions (NDCs), under which states are required to submit and periodically update mitigation and adaptation targets every five years. Although States retain discretion in defining their own commitments, they are expected to demonstrate progression and increasing ambition over time, reflecting an obligation of conduct commonly understood as due diligence.[55] In practice, fulfilling the due diligence standard embedded in NDCs requires municipal States to regulate high-emitting corporate sectors, especially energy, manufacturing, and extractive industries, within their domestic jurisdictions.

Additionally, since the *Trail Smelter Arbitration*, the preventive obligation has been consistently reaffirmed in international instruments and practice. It appears prominently in Principle 21 of the Stockholm Declaration[56] and has been further developed in subsequent soft law instruments, culminating in Principle 2 of the Rio Declaration[57]. These instruments underline that while States retain sovereign rights over the use of their natural resources in accordance with their own policies, they are simultaneously under a duty to ensure that activities within their jurisdiction or control do not cause environmental damage to other States or to areas beyond national jurisdiction.[58]

The ICJ's jurisprudence indicates that the standard of care becomes more stringent where the potential harm is serious or irreversible. The ICJ's decision in *Pulp Mills*[59] represents a more modern and nuanced articulation of due diligence in environmental law. The Court acknowledged the prevention principle under customary international law, holding that a State is obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State.[60] The ICJ adopted a prudent approach when considering environmental matters, given the potentially permanent nature of environmental damage. Although States are expected to employ all means reasonably available to them, the assessment of compliance also takes into account the capacities and resources of the State concerned.[61] In the same vein, the principle of prevention is also reflected in the *Corfu Channel Case, in* which the ICJ established the obligation for States to prevent their territory from being knowingly utilised for conduct that violates the legal rights of other states.[62]

Moreover, the ICJ placed particular emphasis on procedural obligations, especially the requirement to conduct an EIA prior to the project's commencement. In conducting an EIA, the State must consider factors such as the nature and magnitude of the proposed activity, the level of environmental risk involved, and its obligation to act with due diligence. Furthermore, where circumstances require, States must ensure that the environmental effects of the activity are continuously monitored after the project becomes operational, and for as long as such oversight remains necessary.[63] Similarly, in *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*[64], the ICJ explicitly explained that as part of exercising due diligence, a State must first determine whether a proposed activity poses a risk of significant transboundary harm. Where such a risk exists, the State is required to conduct an EIA, which typically includes identifying potential mitigation measures.[65]

Due diligence is additionally established and developed within the framework of the United Nations Con-

55 Malaihollo (n 30) 135–136.

56 'Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) (16 June 1972) UN Doc A/CONF.48/14/Rev.1'.

57 'Rio Declaration on Environment and Development (14 June 1992) UN Doc A/CONF.151/26 (Vol I)'.

58 McIntyre (n 18) 605.

59 *Case Concerning Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment)* (n 43).

60 ibid 101.

61 Schmalenbach (n 8) 57.

62 *Corfu Channel (United Kingdom v Albania) (Merits)* (n 43) 22; International Law Association (ILA), 'International Law Association (ILA) Study Group on Due Diligence in International Law, Second Report' (2016) 5–6 <https://www.ila-hq.org/en_GB/documents/draft-study-group-report-johannesburg-2016> accessed 15 May 2026; Malaihollo (n 30) 126.

63 *Case Concerning Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment)* (n 43) para 205.

64 *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua) (Judgment)* [2015] ICJ Rep 665.

65 ibid 104; Schmalenbach (n 8) 57.

vention on the Law of the Sea (UNCLOS)[66]. Marine environmental obligations are considered due diligence obligations of conduct which first emerged in the *Seabed Advisory Opinion* issued by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea (ITLOS)[67]. This approach was later reaffirmed in the *Sub-Regional Fisheries Commission Advisory Opinion*[68], where the Tribunal, on the basis of both the *Seabed Advisory Opinion* and the *Pulp Mills* case, asserted that a due diligence obligation of conduct is established under Article 192 of UNCLOS.[69] A similar interpretation was adopted in the *South China Sea Arbitration*[70], which held that Articles 192, 194(1), and 194(5) of UNCLOS impose obligations concerning the conduct expected of States rather than guaranteeing particular environmental outcomes.[71] In its Advisory Opinion in response to the request submitted by the Commission of Small Island States on Climate Change and International Law (*COSIS Advisory Opinion*)[72], ITLOS confirmed that States are required to adopt all necessary measures to safeguard the marine environment from climate-related harm, according to Article 192 of UNCLOS. The Tribunal further clarified that the obligations set out in Articles 192, 194(1), and 194(2) of UNCLOS are governed by the principle of due diligence, reinforcing what legal scholarship identifies as the progressive and result-oriented contribution of ITLOS to holding municipal States accountable for regulating private maritime and industrial actors.[73]

In its recent *Advisory Opinion on Climate Change*[74], the ICJ emphasised that the standard of due diligence applicable to climate change is particularly stringent because of the exceptional nature of climate harm.[75] Because the consequences are so serious, the Court suggests that States must exercise a particularly high level of care in addressing climate risks. Thus, the degree of diligence required increases according to the magnitude and foreseeability of the potential harm.[76] Based on the *COSIS Advisory Opinion*[77], the ICJ affirmed that obligations concerning climate protection are not merely aspirational political commitments, but legal obligations requiring effective implementation. In *Pulp Mills,* the Court explains that due diligence entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control over public and private operators[78]. According to the Court, States cannot satisfy their obligations merely by enacting environmental legislation or announcing climate targets. They must also ensure that these measures are effectively implemented, monitored, and enforced through municipal administrative institutions and regulatory mechanisms.[79]

Furthermore, the ICJ clarified that the duty to prevent significant environmental harm is by nature an obligation of due diligence.[80] States are required to take all reasonable and appropriate measures to avoid significant environmental damage, even though they cannot guarantee that harm will never occur. The obligation is therefore one of conduct rather than result. An obligation of result would require States to guarantee the complete prevention of harm regardless of circumstances, whereas an obligation of conduct requires States to take all reasonable measures available to them in pursuit of prevention. A State breaches the duty not simply because environmental harm occurs, but because it failed to exercise the level of care, vigilance, and preventive action reasonably expected in the circums-

66 United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3.

67 *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion) (Seabed Disputes Chamber of the International Tribunal for the Law of the Sea, Case No 17, 1 February 2011)* ITLOS Reports 2011 [211].

68 *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (Advisory Opinion) (International Tribunal for the Law of the Sea, Case No 21, 2 April 2015) ITLOS Reports 2015.*

69 ibid 130.

70 *The South China Sea Arbitration (Philippines v China) (Award) (Permanent Court of Arbitration, Case No 2013-19, 12 July 2016).*

71 ibid 956 and 964; Volker Roeben and Jianping Guo, 'The Result-Oriented Due Diligence Obligation in the ITLOS Climate Change Advisory Opinion: Developments and Implications' [2026] Review of European Comparative & International Environmental Law 105, 106–107, 110.

72 *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Advisory Opinion) (International Tribunal for the Law of the Sea, Case No 31, 21 May 2024).*

73 ibid 237, 395–396, 399, 400, 441(4)(d); Roeben and Guo (n 71) 105 and 107.

74 *Advisory Opinion on Obligations of States in Respect of Climate Change (Advisory Opinion) (International Court of Justice, General List No 187, 23 July 2025).*

75 ibid 138.

76 ibid 275.

77 *COSIS Advisory Opinion* (n 72) paras 241, 243, 248, 398–400, 441.

78 *Case Concerning Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment)* (n 43) para 197.

79 *Advisory Opinion on Obligations of States in Respect of Climate Change (Advisory Opinion) (International Court of Justice, General List No 187, 23 July 2025)* (n 74) para 138.

80 ibid 135.

tances.[81] Nevertheless, it is noteworthy that the Court does not interpret this obligation as imposing strict or absolute liability on States for environmental harm. The Court's distinction between obligations of conduct and obligations of result is central to understanding the legal structure of due diligence. Rather, the Court focuses on the quality and adequacy of State conduct, assessing whether the State has exercised due diligence and employed all reasonably available means, rather than whether the harmful outcome was ultimately avoided.[82]

In addition, the precautionary principle is contained in the concept of due diligence as an obligation. Under the prevention principle, a State is obliged to take the necessary measures to prevent environmental harm before it occurs.[83] *Trail Smelter Arbitration* sets out stringent requirements for ascertaining a State to breach its duty of care where the harm reaches a level of serious consequences and is supported by clear and convincing evidence. This evidentiary standard implies that preventive action is generally expected only when reliable scientific evidence indicates that significant environmental harm is likely.[84] Nevertheless, it is challenging to obtain conclusive scientific evidence in practice. This shortcoming of the prevention principle has led to the development of the precautionary principle. The underlying reason for the emergence of this principle is that because environmental damage may be irreversible, impossible to remedy, or extremely costly to address, the absence of full scientific certainty should not be used to delay preventive actions. Accordingly, even where harm has not yet materialised but there is a credible risk of its occurrence, States are expected to adopt precautionary measures to mitigate potential environmental damage.[85] In addition, in its *COSIS Advisory Opinion,* ITLOS emphasised the close relationship between due diligence and the precautionary principle by reaffirming the earlier position of the Seabed Disputes Chamber[86] that the precautionary approach forms an integral component of the general obligation of due diligence[87].

3.3 Due diligence in regulating corporate environmental conduct and the extent of corporate liability

Due diligence now encompasses not only the adoption of formal legal frameworks but also their effective implementation and enforcement. States are increasingly expected to ensure that corporations operating within their jurisdiction comply with environmental standards.

As discussed above, State responsibility through attribution operates as a strict gateway mechanism: only conduct that can be legally characterised as an act of the State triggers direct responsibility. The criteria for attribution, particularly the requirement of effective control, are narrowly defined and rarely satisfied in cases involving corporate actors. Due diligence, by contrast, offers a more flexible framework, focusing on the State's own regulatory conduct rather than on the actions of private entities. Due diligence plays a crucial role in bridging the gap between State responsibility and corporate conduct. Focusing on the State's obligation to regulate and oversee private actors provides a mechanism for addressing environmental harm that cannot be directly attributed to the State.[88] The relationship between due diligence and corporate activity is becoming increasingly significant in light of globalisation. As corporations operate across borders, the question arises whether States have obligations not only within their territory but also in relation to the extraterritorial activities of corporations domiciled within their jurisdiction.

The United Nations Human Rights Office of the High Commissioner (OHCHR) has issued Guiding Principles on Business and Human Rights, in which it states that business enterprises must respect human rights. This duty implicitly requires the prevention of environmental harm that has a negative impact on human populations. It is evident that, as a consequence of this framework, corporate organisations have come to the understanding that human rights and environmental

81 *Case Concerning Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment)* (n 43) paras 101 and 197.

82 *Advisory Opinion on Obligations of States in Respect of Climate Change (Advisory Opinion) (International Court of Justice, General List No 187, 23 July 2025)* (n 74) para 135.

83 *Gabčíkovo–Nagymaros Project (Hungary v Slovakia) (Judgment)* (n 50) para 140.

84 International Law Association (ILA) (n 42) 26; Malaihollo (n 30) 126.

85 Malaihollo (n 30) 126–127; Roeben and Guo (n 71) 111.

86 *COSIS Advisory Opinion* (n 72) para 242.

87 *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion) (Seabed Disputes Chamber of the International Tribunal for the Law of the Sea, Case No 17, 1 February 2011)* (n 67) para 131. Roeben and Guo (n 71) 111.

88 Hessbruegge (n 13) 268–271.

due diligence represent fundamental operational standards. Despite their original conception as voluntary instruments, these principles have precipitated a substantial normative shift in international law. It is evident that these non-binding guidelines are increasingly being translated into binding legal obligations within both domestic and regional jurisdictions. Looking into the legal position in comparative jurisdictions, several European home States have enacted pioneering domestic legislation imposing mandatory supply chain due diligence on large corporations, notably the French Duty of Vigilance Law of 2017[89] and the German Supply Chain Due Diligence Act of 2021.[90] At the regional level, this legislative trajectory culminated in the adoption of the European Union's Corporate Sustainability Due Diligence Directive (Directive 2024/1760).[91] This legislative measure imposes binding duties on large firms, including both European Union companies and third-country corporations meeting specified turnover thresholds in the European market, to identify, prevent, mitigate, and bring to an end adverse human rights and environmental impacts across their global chains of activities.[92]

This regulatory evolution has an extraterritorial dimension, which compels multinational corporations and their suppliers in multiple jurisdictions, including Asian developing countries, to meet elevated environmental standards, as well as transparent reporting mechanisms. Furthermore, it redistributes the regulatory burden from reliance on solely host state enforcement, which is frequently constrained by institutional limitations, to utilisation of the legal apparatus of the home state in which the corporation is domiciled. This indicates that a pivotal regulatory conduit is due diligence, enabling States to systematically monitor transnational corporate activities. The introduction of due diligence requirements into mandatory legislative frameworks has resulted in a gradual narrowing of the traditional divide between state responsibility and corporate accountability. This development ensures that private entities remain legally accountable for transboundary environmental degradation.[93]

However, to fully grasp how this bridge operates in practice, it is essential to examine the precise extent to which corporations themselves can be held legally liable for environmental harm. While customary international law and multilateral environmental agreements still do not confer direct international criminal or civil jurisdiction over corporate entities before international courts, the interaction between international State due diligence and comparative municipal law exposes corporations to four distinct tiers of enforceable legal liability. First, at the level of municipal administrative law in both home and host States, supervisory authorities are empowered to impose substantial administrative fines, suspend or revoke environmental operating licences, mandate public corrective action plans, and exclude non-compliant firms from public procurement when corporations breach environmental impact assessment duties or emission limits.[94] Second, at the level of muni-

[89] 'LOI N° 2017-399 Du 27 Mars 2017 Relative Au Devoir de Vigilance Des Sociétés Mères et Des Entreprises Donneuses d'ordre' (*Légifrance*, 2017) <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/> accessed 28 October 2026.

[90] 'Act on Corporate Due Diligence Obligations in Supply Chains' (*Webseite des Bundesministerium fiir Arbeit und Soziales*, 18 August 2021) <https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.html> accessed 28 October 2026.

[91] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (Text with EEA relevance) 2024.

[92] Jonathan Bonnitcha and Robert McCorquodale, 'The Concept of "Due Diligence" in the UN Guiding Principles on Business and Human Rights' (2017) 28 European Journal of International Law 899 <https://doi.org/10.1093/ejil/chx042>.which establish the main parameters internationally for considering corporate responsibility for human rights violations. However, the Guiding Principles invoke two different concepts of due diligence: the first is a process to manage business risks and the second is the standard of conduct required to discharge an obligation. In this article, we show that the Guiding Principles invoke these two concepts without explaining how they relate to each other. This confusion creates uncertainty about the extent of businesses' responsibility to respect human rights and uncertainty about how that responsibility relates to businesses' correlative responsibility to provide a remedy when they infringe human rights. On this basis, we propose and justify an interpretation of the Guiding Principles that clarifies the relationship between the two concepts of due diligence.","container-title":"European Journal of International Law","DOI":"10.1093/ejil/chx042","ISSN":"0938-5428","issue":"3","journalAbbreviation":"Eur J Int Law","page":"899-919","source":"Silverchair","title":"The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights","volume":"28","author":[{"family":"Bonnitcha","given":"Jonathan"},{"family":"McCorquodale","given":"Robert"}],"issued":{"date-parts":[["2017",11,13]]}}],"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}

[93] Robert McCorquodale and Penelope Simons, 'Responsibility beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law' (2007) 70 The Modern Law Review 598.

[94] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation

cipal civil and tort law, corporations can be held directly liable to compensate victims and fund ecological restoration; significantly, under Article 29 of the European Union Corporate Sustainability Due Diligence Directive and domestic tort doctrines such as the French Duty of Vigilance Law, parent and lead companies can be sued directly before home State civil courts for environmental damage caused in developing host States if the harm resulted from an intentional or negligent failure to comply with mandatory due diligence obligations.[95] Third, across numerous domestic jurisdictions, including developing Asian States such as India, Indonesia, and Vietnam, corporations face strict or absolute civil liability for hazardous industrial activities as well as corporate criminal liability for severe pollution offences, subjecting both the corporate legal person and its responsible directors to criminal prosecution and asset forfeiture. Fourth, corporate environmental accountability is increasingly integrated into international investment law and transnational resource governance: modern bilateral investment treaties and regional frameworks progressively incorporate corporate social responsibility and environmental due diligence clauses, allowing host States to assert investor environmental misconduct to bar treaty claims or to bring counterclaims for environmental damages in investor-State dispute settlement.[96] Consequently, while States bear international responsibility for failing to exercise regulatory due diligence, corporations themselves are increasingly bound by a comprehensive web of domestic administrative, civil, criminal, and transnational investment liabilities.

(EU) 2023/2859 (Text with EEA relevance) (n 91).

95 ibid; Peter Gailhofer, 'Functions and Objectives of Corporate Liability for Transboundary Environmental Harm' in Peter Gailhofer and others (eds), *Corporate Liability for Transboundary Environmental Harm: An International and Transnational Perspective* (Springer International Publishing 2023) <https://doi.org/10.1007/978-3-031-13264-3_2> accessed 28 October 2026."plainCitation":"ibid; Peter Gailhofer, 'Functions and Objectives of Corporate Liability for Transboundary Environmental Harm' in Peter Gailhofer and others (eds

96 Bombaka (n 12); Monebhurrun, 'Mapping the Duties of Private Companies in International Investment Law' (n 12); Monebhurrun, 'Should Non-European Union Member States Be Cautious about the E.U Corporate Sustainability Due Diligence Directive?' (n 12).

4 Due diligence and corporate accountability in Asia: emerging challenges and regulatory implications

Standards of due diligence play a pivotal role in shaping both the substantive meaning of the no-harm rule and the assessment of State responsibility for its violation. At the same time, these standards are often characterised as indeterminate, evolving, and difficult to define with precision. In international law more broadly, due diligence operates as a general benchmark of conduct applied across a variety of legal contexts.[97] Due diligence is considered a standard of reasonable care against which fault or regulatory omission may be evaluated, taking into account both the harmful consequences of conduct and the extent to which such outcomes could realistically have been prevented.[98]

As has been outlined in the preceding sections, the normative evolution of due diligence is subject to the broader framework of the international legal order. However, the success of this evolution is contingent upon the regional and domestic contexts in which it is operationalised by the municipal State. This is particularly evident in the Asian region, where the convergence of State responsibility and corporate accountability gives rise to unique structural challenges, necessitating a detailed analysis of how local priorities and institutional structures influence the implementation of due diligence obligations and the extent of direct corporate liability.

4.1 The Asian context: development, investment and environmental risk

In the context of Asia, environmental due diligence is predominantly propelled by the complex interplay between the rapid pace of industrialisation, the pursuit of economic growth, and the necessity to attract FDI.[99] In many developing jurisdictions throughout the region, stringent environmental regulations are regarded as potentially detrimental to economic competitiveness and the influx of international capital. This developmen-

97 McIntyre (n 18) 608.

98 International Law Association (ILA) (n 62) 2.

99 Monebhurrun, 'Mapping the Duties of Private Companies in International Investment Law' (n 12).

tal orientation gives precedence to economic growth over the stringent enforcement of environmental standards, engendering an environment in which business actors tend to regard compliance with the regulation as a secondary concern. Research indicates significant variations in the patterns of corporate social and environmental responsibility across Asia and other geographical regions. These variations are attributed to the influence of diverse political and social systems on the perception of environmental obligations by businesses and municipal regulators alike.[100]

A salient challenge, particularly within the Asian context, pertains to the institutional milieu, which often exerts a moderating influence on the efficacy of municipal environmental legislation. In countries such as China, a significant discord exists between the central government's regulations concerning environmental protection and the economic objectives of local authorities. The motivation of the SOEs and private enterprises is driven by fiscal considerations and the stability of employment. This has resulted in a prioritisation of production over environmental safeguards, thereby weakening the impact of the national commitment to due diligence.[101] Moreover, while state subsidies have been utilised to encourage environmental expenditure, the efficacy of these subsidies is contingent upon the specific relationship between the enterprise and the state, as well as the prevailing market conditions.[102]

The transition to sustainable governance is complicated by the significant number of organisations complying in a symbolic manner and the absence of transparency in corporate reporting. Evidence from a range of Asian markets suggests that, despite the implementation of environmental, social and governance (ESG) frameworks by numerous firms, these frameworks are frequently constrained by inadequate disclosure and limited engagement with environmentally-based risks. The size and independence of boards have been demonstrated to exert divergent influences on the quality of environmental disclosure. In numerous instances, these entities have been found to be inadequate in impeding the occurrence of greenwashing.[103]

Furthermore, the implementation of these principles in countries such as Indonesia, India, and Vietnam poses significant challenges, given the strict liability, administrative, and criminal sanctions for environmental damage that are enshrined in their respective municipal legislation. In examining the extent to which corporations can be held directly liable in these jurisdictions, domestic statutory and judicial frameworks appear formally robust. In India, the Supreme Court established the doctrine of absolute liability in M.C. Mehta v Union of India,[104] holding enterprises engaged in hazardous or inherently dangerous activities strictly and absolutely liable to compensate all affected persons and restore damaged ecosystems without any statutory exceptions, a standard now enforced alongside the National Green Tribunal Act 2010[105] and mandatory corporate social responsibility provisions under Section 135 of the Companies Act 2013.[106] Similarly, Article 88 of Indonesia's Law No 32 of 2009 on Environmental Protection and Management imposes strict civil liability, alongside administrative and criminal penalties under Articles 97 to 120, on business entities whose activities involve hazardous and toxic materials or produce serious threats to the environment.[107] In Vietnam, the Law on Environ-

100 C Christopher Baughn, Nancy L (Dusty) Bodie and John C McIntosh, 'Corporate Social and Environmental Responsibility in Asian Countries and Other Geographical Regions' (2007) 14 Corporate Social Responsibility and Environmental Management 189 <https://doi.org/10.1002/csr.160>.

101 Xianyan Wang and Lihong Wang, 'State-Enterprise Relation, Local Economic Priority, and Corporate Environmental Responsibility' (2019) 51 Applied Economics 995 <https://doi.org/10.1080/00036846.2018.1524568>; Shaozhen Han and others, 'Differentiated Environmental Regulations and Corporate Environmental Responsibility: The Moderating Role of Institutional Environment' (2021) 313 Journal of Cleaner Production 127870 <https://doi.org/10.1016/j.jclepro.2021.127870>.

102 Yang Wang and Yifei Zhang, 'Do State Subsidies Increase Corporate Environmental Spending?' (2020) 72 International Review of Financial Analysis 101592 <https://doi.org/10.1016/j.irfa.2020.101592>.

103 Faozi Almaqtari and others, 'The Impact of Corporate Environmental Disclosure Practices and Board Attributes on Sustainability: Empirical Evidence from Asia and Europe' (2023) 9 Heliyon <https://doi.org/10.1016/j.heliyon.2023.e18453>.

104 'M.C. Mehta v. Union of India, WP 4677/1985 (1996.12.4) (Delhi Land Use Case: Hazardous Industries, Compenstation for Laid-off Workers)' (*ELAW: Environmental Law Alliance Worldwide*) <https://elaw.org/resource/india-mc-mehta-v-union-india-wp-46771985-1996124-delhi-land-use-case-hazardous-industries-co> accessed 28 October 2026.

105 'National Green Tribunal Act, 2010 (Act No. 19 of 2010)' (*FAOLEX*) <https://faolex.fao.org/en/documents/LEX-FAOC098219/national-green-tribunal-act-2010-act-no-19-of-2010-ind-2010> accessed 28 October 2026.

106 'Companies Act 2013: Steps for Company Registration in India' <https://www.vjmglobal.com/feeds/blog/company-registration-act> accessed 28 October 2026.

107 'UU No. 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup - JDIH BPK' (*Database Peraturan | JDIH BPK*) <https://peraturan.bpk.go.id/Details/38771/uu-no-32-

mental Protection 2020[108] and Article 235 of the 2015 Penal Code (as amended in 2017)[109] explicitly establish direct corporate criminal liability for commercial legal persons committing severe pollution offences, authorizing heavy fines, temporary suspension, or permanent termination of corporate operations.

However, across these Asian jurisdictions, the presence of inadequate enforcement mechanisms, exacerbated by institutional limitations and a paucity of technical expertise in monitoring environmental impacts, engenders a disconnection between the formal legal framework and the actual conduct of corporations.[110] Consequently, the risk of environmental harm remains elevated in extractive industries and global supply chains, where the scale of corporations' activity often outstrips the host State's regulatory capacity. In order to resolve these issues, it is necessary to undertake a comprehensive re-evaluation of the manner in which Asian States can incorporate rigorous due diligence requirements into their development strategies without compromising long-term environmental sustainability.[111]

4.2 Regional Legal Frameworks and State Practice in Transboundary Harm

The field of transboundary environmental harm regulation in Asia demonstrates a contentious area between customary international law and emerging regional institutionalism. Despite the no harm principle having been extensively adopted as a foundational tenet within the domain of international environmental legislation, its implementation within the Asian context is frequently dictated by regional accords that are predicated on consensus and non-interference, as opposed to rigorous enforcement.[112] The primary legal instrument governing transboundary pollution in the region is the ASEAN Agreement on Transboundary Haze Pollution.[113] This agreement has been demonstrated to provide a collective impetus for addressing large-scale atmospheric pollution caused largely by corporate plantation and land-clearing concessions. However, its effectiveness is not guaranteed, as it lacks mandatory compliance instruments and is dependent on upholding national sovereignty. The institutional architecture is contingent on the diligent implementation of regulatory measures by Member States to ensure the governance of land-clearing activities within their respective jurisdictions. Nevertheless, persistent deficiencies in enforcement persist as a significant challenge.[114] In light of the formal legal development of modern regimes, the challenge of transboundary pollution remains one of the most significant issues, despite the establishment of legal frameworks.[115]

The inadequacy of regional instruments has given rise to scholarly and legislative debate about how, in practice, to hold corporate entities directly liable for causing or contributing to transboundary pollution,

tahun-2009> accessed 28 October 2026.

[108] 'Law on Environmental Protection 2020, Law No. 72/2020/QH14' (*LuatVietnam*) <https://english.luatvietnam.vn/law-on-environmental-protection-no-72-2020-qh14-dated-november-17-2020-of-the-national-assembly-195564-doc1.html> accessed 28 October 2026.

[109] 'Bộ luật Hình sự 2015, số 100/2015/QH13' (*LuatVietnam*) <https://luatvietnam.vn/hinh-su/bo-luat-hinh-su-2015-so-100-2015-qh13-101324-d1.html> accessed 28 October 2026.

[110] Ni Komang and others, 'Strict Liability Principles Regulation on Corporate Crimes in Environmental Pollution & Strengthening Criminal Penalties in Indonesia' [2025] Jurnal Daulat Hukum <https://doi.org/10.30659/jdh.v8i1.44878>.

[111] Andreas Tedy Mulyono and others, 'Reinforcing Corporate Accountability in Indonesian Environmental Law: A Dialectical Examination of Strict Liability and Criminal Sanctions' [2024] Law Review 31 <https://doi.org/10.19166/lr.v24i1.9675>.especially in the aspect of applying criminal sanctions against legal entities that commit environmental pollution or destruction. In practice, law enforcement relies more on administrative approaches or civil lawsuits, which often do not provide a deterrent effect and tend to be inadequate in responding to the complexity of environmental damage caused by corporations. This research aims to fill this gap by critically examining how the principle of strict liability can be integrated with the criminal sanction mechanism in national environmental law. With a normative juridical approach and supported by relevant case studies, this study shows that the synergy between the two approaches is able to form a more accountable, effective, and responsive accountability framework to the principles of sustainable development. The results of the analysis recommend the need for a holistic environmental law enforcement model, which not only emphasizes the repressive aspect, but also encourages structural improvements in corporate supervision and active public involvement in overseeing environmental law enforcement in Indonesia.","archive_location":"Indonesia","container-title":"Law Review","DOI":"10.19166/lr.v24i1.9675","ISSN":"2621-1939","language":"en","license":"Copyright (c

[112] Senja Ramadhika and Raditya Pramana Adiguna, 'Legal Perspectives on State Responsibility in Transboundary Environmental Pollution' [2025] Law and Justice research journal <https://doi.org/10.70062/ljrj.v1i1.38>.

[113] 'ASEAN Agreement on Transboundary Haze Pollution' (*Climate & Clean Air Coalition*, 2002) <https://www.ccacoalition.org/resources/asean-agreement-transboundary-haze-pollution> accessed 28 October 2026.

[114] Maizatulakma Abdullah and others, 'The Southeast Asian Haze: The Quality of Environmental Disclosures and Firm Performance' (2020) 246 Journal of Cleaner Production 118958 <https://doi.org/10.1016/j.jclepro.2019.118958>.

[115] Han and others (n 101).

even when harmful activities occur beyond immediate territorial borders. A pioneering municipal legislative measure in Southeast Asia addressing the extent of direct corporate liability is Singapore's Transboundary Haze Pollution Act 2014.[116] Under this statute, Singapore exercises extraterritorial jurisdiction to impose both criminal fines and civil liability for damages on any domestic or foreign corporation that engages in, or condones, land-clearing fires outside Singapore which result in unhealthy haze pollution within Singaporean territory, including legal presumptions that hold parent companies accountable for the conduct of their foreign subsidiaries and suppliers. This evolving approach represents a necessary development in State practice, as it operationalises the due diligence standard by emphasising corporate liability for failing to prevent environmental harm.[117] However, the successful implementation of these accountability mechanisms is contingent on cross-border cooperation and the availability of verifiable evidence. The limitations of these prerequisites are frequently attributable to the divergent political economies and unequal institutional capacities of developing nations across the Asian region.[118]

Furthermore, the case law of international tribunals provides a significant lens through which to examine state obligations in Asia. The South China Sea Arbitration provided significant insight into the scope of the due diligence obligation stipulated within the UN Convention on the Law of the Sea. The court made it clear that states have a positive duty to protect and preserve the marine environment. This obligation necessitates the effective oversight of not only the State's organs but also private actors, including fishing vessels and corporate entities engaged in extractive activities. A state's failure to prevent its nationals or flagged vessels from engaging in environmentally destructive practices constitutes a direct violation of international commitments. It is also important to note that due diligence is not merely an aspirational standard, but rather a mandatory obligation of conduct that demands a high level of vigilance and proactive regulatory intervention from the State.[119]

Despite such normative and judicial developments, the governance of transboundary harm in Asia remains plagued by systemic challenges. As demonstrated in the relevant literature, legal frameworks do exist which delineate state responsibility. However, in practice, the impact of these frameworks is mitigated by a number of factors, including local political influences, economic priorities, and the limited operational capacity of supervisory institutions. Transboundary pollution persists due to the theoretical rationale for due diligence not always manifesting in sufficient monitoring, reporting, and enforcement procedures. In order to succeed in effectively closing this accountability gap, Asian States will be required to embrace more comprehensive regional cooperation frameworks that transcend traditional notions of absolute sovereignty, moving instead towards an integrated, result-oriented conception of shared environmental protection.[120]

4.3 Global Supply Chains and Corporate Due Diligence in Asia

As global supply chains have expanded, there has been an increasing focus on the role of production networks as the primary drivers for the adoption of environmental due diligence in Asia. In recent years, environmental standards have become increasingly dictated by the requirements of major importing markets, as evidenced by legislation with extraterritorial reach. This phenomenon is especially prevalent in the absence of strong domestic enforcement mechanisms in many developing countries. The evolution of due diligence from a voluntary concept to a mandatory requirement for Asian companies to remain involved in global value chains is indicative of a growing realisation of the importance of risk management in the contemporary business landscape. This transition is especially evident for multinational enterprises, as international and regional legal frameworks are now establishing codified obligations for these entities concerning their subsidiaries and

[116] 'Transboundary Haze Pollution Act 2014' (*Singapore Statutes Online*) <https://sso.agc.gov.sg/Act/THPA2014> accessed 28 October 2026.

[117] Sakina Latif and A Khan, 'Focus on the Responsibility of States under International Law for Environmental Damages That Cross Borders' [2025] Review of Education, Administration & Law <https://doi.org/10.47067/real.v8i2.420>.

[118] Jun Hu, Huiying Wu and S Ying, 'Environmental Regulation, Market Forces, and Corporate Environmental Responsibility: Evidence from the Implementation of Cleaner Production Standards in China' [2022] Journal of Business Research <https://doi.org/10.1016/j.jbusres.2022.06.049>.

[119] PCA, 'The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)' (2016) <https://pca-cpa.org/cases/> accessed 15 May 2026.

[120] Almaqtari and others (n 103).

suppliers. The regulatory reach of the home State in which a corporation is domiciled frequently compensates for the institutional limitations of the host State in which production takes place rightly cautions that unilateral extraterritorial directives from the European Union also raise complex regulatory adaptation challenges for enterprises and municipal authorities in non-European developing States.[121]

Numerous supply chains established by multinational companies frequently implement due diligence rules whose interpretation by corporate actors is selective and indeterminate. This engenders a substantial lacuna in accountability, whereby deleterious environmental impacts are obscured by conventional reporting structures. However, the extant literature suggests that regulatory pressure – particularly in the form of cleaner production standards – in combination with market forces and public scrutiny, has the potential to significantly enhance corporate environmental responsibility. The prevailing paradigm of corporate social responsibility, characterised by voluntary initiatives, is undergoing a transition towards a new model of mandatory natural resource accountability audits and disclosure measures. In the context of China, for instance, government environmental policies and the utilisation of specific policy instruments have been demonstrated to propel firms towards enhanced environmental performance and green innovation.[122]

The transition towards the establishment of legally binding obligations is, in turn, further compounded by the advancement of environmental, social, and governance (ESG) frameworks. The quality of environmental disclosures is an important determinant of firms' performance and access to international capital in Southeast Asian countries. In the contemporary business environment, corporations are compelled to consider a multifaceted approach to environmental sustainability, as public awareness and governmental oversight mechanisms are undergoing heightened scrutiny. Research indicates that state-owned enterprises and local governmentally-related entities are subject to mounting pressures to incorporate due diligence into their governance in order to address transboundary legal risks. This involves a transition from symbolic compliance to substantive transparency in addressing biodiversity loss and carbon emissions governance.[123]

Furthermore, civil society litigation is established as a supplementary mechanism to support corporate accountability. In several Asian jurisdictions, there has been an increase in legal challenges against corporations for environmental negligence, reflecting a broader social demand for transparency and justice. The practice of lending that is contingent upon climate-related legal risks necessitates that corporations adhere to a more rigorous process of due diligence in order to avert the financial and reputational consequences of environmental violations. Notwithstanding these advancements, due diligence in Asian supply chains is confronted with systemic challenges, including institutional capacity and the absence of unified reporting standards. The divergence between national legal systems and the absence of regional cooperation has the effect of diminishing the ability to hold corporate actors accountable for transboundary environmental harm at the transnational level.

[121] Bonnitcha and McCorquodale (n 92).which establish the main parameters internationally for considering corporate responsibility for human rights violations. However, the Guiding Principles invoke two different concepts of due diligence: the first is a process to manage business risks and the second is the standard of conduct required to discharge an obligation. In this article, we show that the Guiding Principles invoke these two concepts without explaining how they relate to each other. This confusion creates uncertainty about the extent of businesses' responsibility to respect human rights and uncertainty about how that responsibility relates to businesses' correlative responsibility to provide a remedy when they infringe human rights. On this basis, we propose and justify an interpretation of the Guiding Principles that clarifies the relationship between the two concepts of due diligence.","container-title":"European Journal of International Law","DOI":"10.1093/ejil/chx042","ISSN":"0938-5428","issue":"3","journalAbbreviation":"Eur J Int Law","page":"899-919","source":"Silverchair","title":"The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights","volume":"28","author":[{"family":"Bonnitcha","given":"Jonathan"},{"family":"McCorquodale","given":"Robert"}],"issued":{"date-parts":[["2017",11,13]]}}],"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}

[122] Xiaoqian Liu and others, 'Government Environmental Attention and Carbon Emissions Governance: Firm-Level Evidence from China' [2023] Economic Analysis and Policy <https://doi.org/10.1016/j.eap.2023.07.016>.

[123] Abdullah and others (n 114); Qi Wang, Mengdi Liu and Bing Zhang, 'Do State-Owned Enterprises Really Have Better Environmental Performance in China? Environmental Regulation and Corporate Environmental Strategies' [2022] Resources, Conservation and Recycling <https://doi.org/10.1016/j.resconrec.2022.106500>; Yingzheng Yan and others, 'Government Environmental Regulation and Corporate ESG Performance: Evidence from Natural Resource Accountability Audits in China' (2022) 20 International Journal of Environmental Research and Public Health <https://doi.org/10.3390/ijerph20010447>.

The contemporary scientific discoveries and the mounting sense of urgency regarding the climate emergency have served to call into question the standards that were previously deemed adequate. A significant disparity is evident in the pace of development concerning the implementation of mandatory human rights and environmental due diligence in Asian jurisdictions in comparison to those observed in European regions. Examining the comparative legal position across Asian economies reveals a fragmented regulatory landscape. In Northeast Asia, Japan adopted the Guidelines on Respecting Human Rights in Responsible Supply Chains in September 2022, which urge companies to establish human rights and environmental due diligence mechanisms aligned with the UNGPs, yet remain legally non-binding.[124] In South Korea, legislative proposals such as the Bill on the Protection of Human Rights and the Environment for Sustainable Business Management were introduced in the National Assembly to mandate supply chain due diligence and establish administrative sanctions, though comprehensive statutory enactment remains contested by industrial stakeholders.[125] Meanwhile, in export-dependent Southeast Asian jurisdictions such as Vietnam, Thailand, and Malaysia, National Action Plans on Business and Human Rights have been initiated, but binding environmental supply chain due diligence is still predominantly driven by contractual compliance with foreign home State laws rather than autonomous municipal legislation.[126]

Consequently, there is an imperative for Asian jurisdictions to establish domestic frameworks that are compatible with global standards, as well as to deepen enforcement mechanisms that prevent due diligence from merely fulfilling administrative checklists, but instead actually help to achieve genuine environmental protection. In order to address these challenges, it is imperative to re-evaluate the manner in which Asian States can integrate robust due diligence standards into their developmental strategies without compromising long--term environmental sustainability.[127]

4.4 Enforcement Challenges and Regulatory Implications

From the theoretical premise of due diligence to its practical implementation in Asia, there is a discrepancy between the legislative intent and the institutional performance, indicating a mismatch. It is evident that the enforcement of environmental obligations represents the most significant impediment to authentic corporate responsibility, notwithstanding the observed rise in codification within the region. This lacuna in implementation is frequently attributable to the presence of intricate political economy factors, which have the capacity to subvert state responsibility through systemic issues such as corruption, political interference, and insufficient funding for supervisory institutions. Despite the existence of legal frameworks, the effective implementation of international environmental norms into national practice is impeded by persistent enforcement gaps at the state and corporate levels.[128]

In countries such as Indonesia and India, the establishment of strict and criminal liability for environ-

[124] 'Japan Publishes Guidelines on Corporate Human Rights Due Diligence' (*Herbert Smith Freehills Kramer | Global law firm*, 2022) <https://www.hsfkramer.com/insights/2022-09/japan-publishes-guidelines-on-corporate-human-rights-due-diligence> accessed 28 October 2026.

[125] 'South Korea Reintroduces Human Rights and Due Diligence Act' (2025) <https://www.lw.com/en/insights/south-korea-reintroduces-human-rights-and-due-diligence-act> accessed 28 October 2026.

[126] 'Business and Human Rights in Asia' (*UNDP*) <https://www.undp.org/asia-pacific/bizhumanrights> accessed 28 October 2026.

[127] Mulyono and others (n 111); Zehua Tian, 'China's Due Diligence Legislation for Environmental Governance on Transnational Corporations: History and Future' (2024) 66 Environment: Science and Policy for Sustainable Development 7 <https://doi.org/10.1080/00139157.2024.2319570>; Dahliani Dahliani and Hadi Tuasikal, 'Corporate Responsibility for Environmental Damage from The Perspective of Unlawful Acts and Environmental Justice' [2025] Jurnal Ius Constituendum <https://doi.org/10.26623/jic.v10i2.12020>.especially in the aspect of applying criminal sanctions against legal entities that commit environmental pollution or destruction. In practice, law enforcement relies more on administrative approaches or civil lawsuits, which often do not provide a deterrent effect and tend to be inadequate in responding to the complexity of environmental damage caused by corporations. This research aims to fill this gap by critically examining how the principle of strict liability can be integrated with the criminal sanction mechanism in national environmental law. With a normative juridical approach and supported by relevant case studies, this study shows that the synergy between the two approaches is able to form a more accountable, effective, and responsive accountability framework to the principles of sustainable development. The results of the analysis recommend the need for a holistic environmental law enforcement model, which not only emphasizes the repressive aspect, but also encourages structural improvements in corporate supervision and active public involvement in overseeing environmental law enforcement in Indonesia.","archive_location":"Indonesia","container-title":"Law Review","DOI":"10.19166/lr.v24i1.9675","ISSN":"2621-1939","language":"en","license":"Copyright (c

[128] Dahliani and Tuasikal (n 127); Wang, Liu and Zhang (n 123).

mental crimes could be a theoretically robust response to environmental harm. However, such doctrines are subject to substantial detection and enforcement barriers in reality. To illustrate this point, consider the application of strict liability in Indonesian forest fire cases. Here, it is evident that even when the legal burden of proof is transferred in favour of environmental protection, the institutional capacity to investigate and prosecute corporate actors remains significantly constrained. Furthermore, due to the absence of independence in administrative bodies, the impartial enforcement of environmental sanctions is frequently not assured. Consequently, local economic considerations frequently supersede environmental protection.[129]

A pivotal factor in this enforcement deficit is the moderating role of the institutional environment. Empirical evidence indicates a strong correlation between the effectiveness of environmental regulations and the quality of local governance, as well as the presence of market forces. The enforcement of due diligence can prove challenging in regions where state-owned enterprises hold a dominant role, given the state's dual role as both the regulator and the regulated entity. This dual role can result in a conflict of interest, wherein executive accountability systems are prioritised solely when they are aligned with broader political or economic objectives, rather than environmental sustainability.[130]

Indeed, as the prevalence of symbolic compliance, often termed 'greenwashing', intensifies, it poses a direct threat to the integrity of due diligence frameworks. Numerous Asian corporations adhere to environmental disclosure practices in the name of stakeholder legitimacy without implementing meaningful operational change. The extant literature suggests that board characteristics and corporate governance structures may contribute to transparency. However, the influence of these factors is often less apparent in Asia than in European jurisdictions. In the absence of robust oversight mechanisms and substantial penalties for the misreporting of data, the implementation of mandatory disclosure laws may result in symbolic progress rather than substantive progress.[131]

The regulatory implications of these issues reflect a structural change to the governance of the environment in Asia. Firstly, it is imperative that states prioritise the independence and technical capacity of environmental regulators to ensure that monitoring is grounded in scientific principles and not driven by political expediency. Secondly, the adoption of result-oriented due diligence, which focuses on the objective capability of measures to prevent harm, should be integrated into domestic laws to counteract symbolic compliance. In light of the escalating challenges posed by transboundary pollution and the expanding influence of global supply chains, it is imperative for Asian jurisdictions to enhance their regional collaborative efforts. This is to ensure the effective mitigation of enforcement gaps that corporations exploit by relocating their detrimental activities to regions with less stringent regulatory oversight. It is imperative to establish a robust connection between due diligence and legal liability in the context of environmental governance. This transformation is necessary to transition environmental governance from an administrative checklist to a dynamic instrument for sustainable development.[132]

5 Conclusion

Taking as an established premise in contemporary international law that the principle of due diligence operates as the primary normative conduit for engaging State responsibility when private corporate conduct cannot be directly attributed to State organs under Articles 4 to 11 of ARSIWA, this article has investigated why the progressive consolidation of international due diligence standards has not yet eliminated corporate environmental impunity across developing Asian host States. As multinational corporations increasingly operate across borders and engage in activities capable of causing significant environmental damage, international

[129] Sujono Sujono and Istianingsih Istianingsih, 'Corporate Accountability in Environmental Crimes: Lessons from Indonesia's Forest Fires and Beyond' [2025] Siber International Journal of Advanced Law (SIJAL) <https://doi.org/10.38035/sijal.v2i2.131>; Wang and Wang (n 101).

[130] Lihua Liu, Yi Chen and Mingli Xu, 'Executive Accountability Systems and the Environmental Violations of State-Owned Enterprises in China' <https://consensus.app/papers/executive-accountability-systems-and-the-environmental-liu-chen/298cfbf6f76e5bbdb8ac7b8f5a94fb31/>.

[131] Almaqtari and others (n 103); Precious Oluwaseun Okedele and others, 'Corporate Accountability in Environmental Degradation: An International Legal Perspective on Global Sustainable Practices' [2024] Finance & Accounting Research Journal <https://doi.org/10.51594/farj.v6i12.1770>.

[132] Latif and Khan (n 117); Ramadhika and Adiguna (n 112).

jurisprudence, culminating in the recent ITLOS and ICJ advisory opinions on climate change, confirms that States bear a stringent, result-oriented obligation of conduct to regulate non-State actors. However, this study has demonstrated that under the ambit of international law, the operational effectiveness of due diligence depends entirely on the domestic legislative, administrative, and judicial apparatus of the municipal State.

Viewed from an Asian perspective, the central finding of this article is that the persistent accountability gap between international State responsibility and corporate environmental conduct is sustained by four region-specific structural barriers identified in Section 4. First, the developmental dilemma between rapid industrialisation, foreign direct investment attraction, and environmental protection frequently leads municipal authorities in developing Asian jurisdictions to subordinate regulatory enforcement to short-term economic competitiveness. Second, the prominent position of state-owned enterprises and politically connected conglomerates in major Asian economies such as China, Indonesia, and Vietnam generates an institutional conflict of interest wherein the municipal State acts simultaneously as environmental regulator and enterprise owner, weakening administrative vigilance despite the formal non-attributability of corporate commercial conduct under Articles 5 and 8 of ARSIWA. Third, at the regional level, environmental governance frameworks such as the ASEAN Agreement on Transboundary Haze Pollution remain constrained by strict adherence to consensus and non-interference norms, which impede cross-border evidentiary cooperation and joint enforcement against corporate polluters. Fourth, while extraterritorial supply chain due diligence mandates from the European Union and rising ESG disclosure requirements have compelled Asian suppliers to adopt corporate due diligence procedures, weak domestic verification mechanisms frequently result in symbolic compliance and greenwashing rather than substantive ecological protection.

In answering the question of the extent to which corporations themselves can be held legally liable, the comparative analysis in Sections 3 and 4 demonstrates that although corporations are not direct subjects of international environmental adjudication, the interplay between international due diligence and municipal legal orders subjects enterprises to four enforceable tiers of liability: domestic administrative sanctions and licence revocation; civil tort liability, including parent-company liability before home State courts under statutes such as the French Duty of Vigilance Law and the European Union Corporate Sustainability Due Diligence Directive; domestic strict or absolute civil liability and corporate criminal liability as codified in India, Indonesia, Vietnam, and Singapore; and investor accountability mechanisms in international investment law as examined in scholarship published in the Brazilian Journal of International Law. Across developing Asian jurisdictions, therefore, the primary obstacle to corporate accountability is no longer the absence of formal domestic liability doctrines, but rather institutional deficits in independent technical monitoring, local administrative autonomy, and cross-border judicial enforcement.

Ultimately, transforming due diligence from a doctrinal rule of State responsibility into an effective instrument of corporate environmental accountability in Asia requires three interconnected legal and institutional reforms. First, Asian municipal States must strengthen the institutional independence, budgetary resources, and scientific monitoring capacity of domestic environmental agencies, insulating regulatory inspection and judicial prosecution from local fiscal pressures and state-enterprise protectionism. Second, building upon transitional soft-law initiatives in Japan and legislative debates in South Korea, Asian jurisdictions should enact mandatory domestic human rights and environmental due diligence statutes that align host State regulatory thresholds with global supply chain standards while imposing deterrent administrative and civil penalties for greenwashing and non-compliance. Third, Asian States must modernise regional environmental governance, particularly within ASEAN and maritime frameworks in the East Sea, by moving beyond strict non-interference towards binding mechanisms for transboundary environmental impact assessment, satellite and concession data sharing, and mutual legal assistance in enforcing civil and criminal judgments against corporate polluters. Only through this dual alignment of autonomous municipal enforcement and binding regional cooperation can international due diligence effectively bridge the divide between State responsibility and corporate environmental accountability in Asia.

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