Proceedings of the 4th International Conference on Global Politics and Socio-Humanities
DOI: 10.54254/2753-7048/2026.33309

From Subjective Abuse to Objective Facts: A Comparative Study of German and Chinese Legal Responses to Systemic Harm of Multinational Enterprises

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Abstract. Modern multinational enterprises (MNEs) operate through complex global supply chains that often conceal labor abuses, environmental damage, and other systemic harms. Traditional legal tools were designed for discrete wrongs by single entities and cannot adequately address these diffuse, structural problems. Recent high-profile litigation against parent companies for supply chain human rights violations has exposed this gap: courts applying traditional doctrines have struggled to hold MNEs accountable when harm occurs overseas. This paper compares how Germany and China have responded to this challenge through legal innovation. Germany adopted the Supply Chain Due Diligence Act (LkSG), which shifts parent company liability from subjective intent to the objective breach of statutory due diligence obligations. China, through the 2023 Company Law's horizontal piercing provision and the emerging corporate interest orientation theory, shifts liability from subjective abuse of control to the objective status of benefit attribution. Although the two jurisdictions follow different institutional paths both demonstrate a convergent objective turn in liability logic. This convergence offers complementary insights: Germany's model emphasizes prevention through ex ante obligations, while China's model focuses on remediation through ex post interest tracing, together providing a richer framework for global MNE accountability.

Keywords: multinational enterprises, objective liability, corporate accountability.

1. Introduction

Corporate law was designed for a simpler era: one company, one business, and one set of accounts. Today's multinationals do not fit this model. A single brand can operate through dozens of subsidiaries, contractors, and suppliers across numerous countries. When a child is forced to work on a cocoa farm in Ivory Coast, that child is not an employee of the American parent company. Yet, the parent company sets the prices, dictates production methods, and reaps the profits. Who should be held responsible? The traditional legal toolkit offers no clear answer.

The 2021 Supreme Court ruling in Nestle USA, Inc. v. Doe provides a compelling illustration of these issues [1]. The plaintiffs, six Malian individuals, alleged that they were trafficked to cocoa farms in Côte d'Ivoire during their childhood and subjected to child slavery. Although Nestle does

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not own or operate any cocoa farms in the country, it exerted substantial control over upstream farms through procurement contracts, financial support, and technical training. The plaintiffs claimed that Nestle knew or should have known about forced labor in its supply chain but failed to utilize its economic advantages to eliminate it.

The Supreme Court sided with Nestlé, 8 to 1. That, the Court said, was not enough to tie the case to America. This logic is not unique to Nestlé. In recent cases involving Ford and Cargill, that same strategy has shown up again: corporate defendants argue they are either immune altogether or that courts should slice up their activities by geography, treating each piece in isolation. These cases point to a deeper problem. Traditional legal instruments assume a world of discrete, localized wrongs. But the harm in Nestlé is not discrete. It is not about one fraudulent transaction or one asset transfer. It is about a global supply chain structured to keep prices low and responsibility diffuse. That kind of systemic harm does not respond well to tools designed for isolated corporate misconduct. Veil piercing requires a guilty shareholder. Tort requires a direct causal link. Contract requires privity. None of these fits the reality of modern multinational operations.

This paper compares how two legal systems have responded to this challenge. Germany moved from the old Konzernrecht framework to a new Supply Chain Due Diligence Act (LkSG). China, through its 2023 Company Law revision, introduced horizontal veil piercing and developed a corporate interest orientation theory. Section 2 examines the German evolution. Section 3 focuses on China's approach. Section 4 compares the two, showing how both shift liability from subjective intent objective facts. Section 5 concludes.

2. Institutional evolution of German law

The evolution of German law in addressing the liability issues of multinational corporations reflects a paradigm shift from identification of control relationships to establishment of statutory obligations. This evolution did not occur overnight but rather emerged as a gradual institutional awareness between judicial restraint and legislative responses.

2.1. Identification efficacy and limitations of corporate law

German law has long exercised great caution in applying the principle of piercing the corporate veil [2]. Since the 2001 Bremer Vulkan case, German courts have established that the sole sufficient criterion for piercing the corporate veil is destructive interference, meaning the company is on the brink of bankruptcy or facing ruin [3]. The 2007 Triehotel case further solidified this new approach, which differs significantly from traditional piercing the corporate veil both theoretically and practically [4].

From a legal theory perspective, German law bases liability for parent company obligations on tort norms (Article 826 of the German Civil Code) and capital preservation regulations (Articles 30-31 of the German Civil Code), rather than direct piercing of the corporate veil [5]. Consequently, external creditors have long struggled to apply the piercing-the-corporate-veil principle under German law, retaining only indirect claims—asserting rights against the company, which then seeks compensation from partners' personal assets on grounds of their liability for damages.

2.2. Liability framework and remedial approaches of LKSG

The emergence of supply chain law itself demonstrated the necessity of a composite framework through the German Supply Chain Act. The fundamental innovation of LKSG in liability logic lies

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in shifting the basis of parent company liability from subjective intent review of abuse of control to objective factual determination of violation of statutory obligations. According to Article 2(6) of LkSG, Enterprises are legally obligated to conduct due diligence on human rights and environmental risks within their supply chains [6]. When parent companies fail to fulfill this duty, legal liabilities may arise regardless of whether there is subjective malice involving fraud or debt evasion. This framework shifts responsibility from moral judgments about individuals' subjective intentions to adherence to objective behavioral standards—the due diligence obligation itself [7].

LkSG's litigation innovation lies in establishing special litigation qualifications—a solution to address inherent enforcement loopholes in the Enterprise Act. By authorizing external stakeholders to file lawsuits within the parent company's jurisdiction, this mechanism circumvents corporate veil protections and holds the parent company legally accountable for statutory negligence through procedural means alone.

3. Localization evolution of Chinese law

In contrast, Chinese courts exhibit significantly higher tendencies in lifting the corporate veil. Empirical studies show that the rate of corporate veil piercing in China is higher than in common law countries. An analysis of over 300 Chinese cases revealed that courts supported lifting the corporate veil in more than 75% of cases—a success rate markedly higher than that in the UK or the US [8]. The core of this difference lies in China's recognition of horizontal/lateral corporate veil piercing [9]. However, the provisions on horizontal piercing in the new Company Law remain highly abstract, with its judicial application standards long confined to the formal determination of personal identity confusion, failing to achieve a paradigm shift from subjective abuse to objective facts.

3.1. Limitations of personality commingling

China's past judicial practices have overemphasized the fundamental role of asset mixing [10]. In a judicial case study sample, only 7.37% of personality mixing cases in China were unrelated to assets or financial matters [11]. Concepts like confused financial records and asset misuse are often regarded as primary or even decisive factors, with personnel mixing and business mixing serving as supplementary evidence. Such mechanical judgments prove inadequate when addressing systemic damages caused by multinational enterprises (MNEs).

The damage patterns of modern multinationals have undergone profound transformations: Take the case of Nestle USA, Inc. v. Doe, where the dispute involved not merely asset transfers between a Côte d'Ivoire subsidiary and parent company, but systemic issues including labor exploitation and human rights violations across entire supply chains. These damages originate not from fraudulent transactions but from structural risks inherent in multinational corporations' global production models. Using 'asset commingling'—a micro-financial indicator—to assess supply chain liability that spans multiple countries and thousands of suppliers is fundamentally misguided.

3.2. Innovation anchored by corporate interests

In response to the failure of the personality commingling standard in addressing systemic damages caused by MNEs, Chinese scholars proposed the corporate interest orientation theory, which shifts the basis of horizontal piercing from formal commingling to the objective status of benefit attribution. The theory distinguishes three scenarios: normally, a company's interests point to itself;

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when multiple companies are jointly controlled and their interests are sacrificed to serve controlling shareholders, traditional vertical piercing applies; but when one sister company is established and operated entirely for the benefit of another sister company, it is manifestly unfair to let the former bear debts independently—hence horizontal piercing is warranted [12]. This understanding aligns with the instrumentality theory precedents [13].

More importantly, the theory replaces the subjective inquiry of abuse of control with an objective factual determination of whether the subsidiary's operations, profit flows, and risk-taking serve the group's overall interests rather than its own evidenced by profit remittance patterns, unified financial allocation, and group decision-making approvals. This objectification turn echoes the German LkSG's logic of anchoring liability on the breach of due diligence obligations, collectively reflecting the evolving direction of modern corporate law: from pursuing who did wrong subjectively to examining how benefits are distributed objectively.

4. Convergence and complementarity of two objectivization approaches

So where do Germany and China stand? Germany started with Konzernrecht, which focused on identifying control relationships. That was a useful first step, but it only allowed internal claims. The LkSG changed the game: it created a statutory duty of care and gave outsiders a way to sue. China took a different route. Its 2023 Company Law introduced horizontal veil piercing, but the real innovation came from scholars and judges who pushed the standard away from personality commingling and toward corporate interest orientation. Two different legal systems, two different toolkits. Yet both end up in the same place: shifting liability from subjective abuse to objective facts. This section unpacks that convergence and asks what makes each model valuable—not just for its own country, but for global corporate governance.

4.1. Objective reconstruction of responsibility logic

4.1.1. German model: from abuse control to obligation breach

Germany's approach to parent company liability did not start with a new statute. It began in the courts. In Bremer Vulkan and Trihotel, the German Federal Supreme Court tightened the veil-piercing doctrine to the point where it almost disappeared. The only remaining ground was destructive interference—essentially, a company facing imminent ruin. That left a gap. If shareholders could not be reached through veil piercing, then someone had to find another route. The legislature eventually stepped in.

The LkSG was designed to fill a hole that traditional corporate law left open. Its central move is simple but radical: stop asking whether the parent company intended to abuse its control, and start asking whether it failed to do what the law requires. Article 2(6) makes that duty explicit companies must check for human rights and environmental risks in their supply chains. If they do not, they face consequences: fines, and in some cases civil liability. No need to prove fraud or bad intent. That is a genuine paradigm shift. Liability no longer turns on a moral judgment about the company's state of mind. It turns on a factual question: did the company follow the rules? As Habersack and Ehrl put it, the LkSG anchors corporate liability to the objective reality of a company's ability to exert influence over supply chains, finally breaking free from the pathological reliance on subjective fault that plagued traditional corporate law [14].

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4.1.2. Chinese model: from personality commingling to benefit attribution

China's horizontal piercing doctrine has moved in the same direction—away from subjective tests and toward objective ones. For years, courts relied heavily on personality commingling. And within that, they put special weight on property commingling. Money mixed, accounts confused, assets shared—that was the main thing that mattered. However, the application of this standard remains fundamentally constrained by subjective judgments of abuse—whether it is the abuse of corporate legal entity independence in Article 23 of the Company Law or the abuse of control rights emphasized in the Minutes of the Ninth Civil Trial Conference, subjective intent always regarded as a necessary condition for liability establishment [15]. In cross-border disputes with extremely uneven evidence distribution, plaintiffs can hardly prove that the parent company or controller acted with fraudulent intent or malicious intent to evade debts.

The corporate interest orientation theory breaks through this dilemma by shifting the basis of horizontal piercing from subjective review of abuse of control to an objective factual determination of benefit attribution. Under this theory, the legitimacy of horizontal piercing does not lie in formal commingling between affiliated companies, but in whether the corporate interests of sister companies still point to themselves or have abnormally directed toward controlling shareholders or another company within the group [16]. This determination does not require probing the controller's subjective intent; it can be inferred through objective facts—such as profit remittance patterns, unified financial allocation, group decision-making approvals, and supply chain integration. When the entire corporate group's interest orientation consistently serves the group's overall strategy, the legal entities constitute an economic community of interests, thereby providing the legal basis for horizontal piercing.

4.2. Convergence analysis of the two models

Germany and China took different paths, but they are heading in the same direction. Both are moving away from subjective malice—asking what a defendant intended—and toward objective, verifiable facts. That shift shows up in two concrete ways:

First, the liability triggering logic. German law shifts liability triggering from whether there is an intent to abuse to whether due diligence obligations have been fulfilled; China law shifts liability triggering from whether there is abusive behavior to whether corporate interests are directed toward others. Both have abandoned the subjective malice standard, which is difficult to prove, as the core mechanism for liability triggering, and instead established objective facts as the core criterion for liability determination.

Second, Multiple criteria for judgment. The German LkSG clarifies the specific content of due diligence obligations, including risk assessment, preventive measures, complaint mechanisms, and remedial actions; China's corporate interest orientation theory attempts to address horizontal piercing through new methods, with its analytical framework's core elements including high degree of unity between interests and ownership, malice, and unfair consequences [17]. Both approaches aim to overcome the chronic issues of vagueness and unpredictability inherent in traditional piercing standards.

4.3. Complementary value of the two models

Although the German model and the China model converge in the objective orientation of responsibility logic, there are differences in their institutional paths and functional positioning,

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which precisely constitute the basis for complementary values.

One way to see the difference is this: Germany focuses on obligations; China focuses on interests. The German model tells parent companies what they must do before anything goes wrong—monitor supply chains, file reports, set up complaint mechanisms. That is prevention. The Chinese model, by contrast, looks at what happened after the fact. It asks: whose interests were really being served? If a subsidiary was run entirely for the benefit of another group company, then liability should follow. That is remediation. The two approaches are not rivals; they fit together. Prevention stops harm before it starts. Remediation cleans up after it occurs. Together, they close the loop.

A second contrast lies in where each system locates responsibility. The German model looks at control: does the parent company call the shots? If yes, it cannot escape responsibility by pointing to separate legal entities. The Chinese model looks at benefit: who actually gained from the arrangement? If a sister company was set up to serve another's interests, the beneficiary should pay. These are not competing theories. In most real-world cases, the parent company both controls and benefits. So, the two anchors converge. The synergy is clear: control creates the ability to prevent harm; benefit creates the incentive to internalize costs. Both models address the core proposition of MNEs' responsibility governance from different perspectives—who has the ability to control risks and should bear responsibilities, who enjoys benefits and should bear risks. The former's legal basis lies in control generates responsibility, while the latter's legal basis lies in benefit attribution generates responsibility. In specific cases, the two models can create synergistic effects: when the parent company's control power and benefit attribution are highly aligned, accountability gains dual legitimacy.

5. Conclusion

This article conducts a comparative study on the institutional evolution of Germany and China in addressing systemic damages caused by multinational corporations, revealing the common essence of the two approaches—the shift toward objectification of liability foundations. The core of this shift lies in replacing traditional corporate law's reliance on subjective malice with objectively verifiable factual standards.

German law anchors parent company liability to legal obligation violations through the LkSG. Regardless of whether the parent company harbors subjective malice such as fraud or debt evasion, legal liability can be triggered if due diligence obligations are not fulfilled. This design liberates liability from moral judgments on the subjective state of actors, shifting focus to the compliance with objective behavioral norms. Chinese law achieves a theoretical reconstruction in the field of horizontal piercing from personal mixing to corporate interest orientation. The legitimacy of horizontal piercing does not depend on whether there is formal mixing between affiliated companies, but rather on whether the corporate interests of sister companies abnormally point toward controlling shareholders or another company within the group. This test does not ask what the controller was thinking. It looks at observable facts: how profits move, how money is managed, who approves major decisions. Germany and China took different routes to get here—Germany through a new statute, China through judicial reinterpretation of its existing company law. But the destination is the same: liability based on objective facts, not subjective intent. That is the real shift, and it is what makes both systems better equipped to handle the complexity of modern multinationals.

Theoretically, this study offers an objective turn paradigm for MNE liability. Practically, it provides a comparative reference for improving China's horizontal piercing regime. However, this study primarily relies on normative analysis and comparative methodology, lacking empirical

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evidence on the implementation effects of institutional frameworks in China and Germany. The judicial application criteria for the corporate interest orientation theory also require further refinement. Future research could focus on conducting empirical analyses of cross-jurisdictional piercing judgments, developing typological studies on operationalizing the control and interest elements, and exploring feasible approaches to localize supply chain due diligence obligations.

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