

Research Article

BEYOND THE STATE-CENTRIC BINARY: EVALUATING THREE PARADIGMS OF MULTINATIONAL CORPORATIONS' INTERNATIONAL LEGAL SUBJECTIVITY

Mohammed Alsudais

ABSTRACT

Background: *The traditional state-centric framework of international law is increasingly inadequate in a globalized landscape where multinational corporations (MNCs) wield economic and regulatory power that rivals sovereign states. This doctrinal lag creates a persistent "governance gap," particularly regarding corporate accountability for human rights and environmental impacts. Employing a doctrinal legal research design, this article analyzes treaties, judicial opinions, and soft law to evaluate how the international legal order can better integrate these non-state actors.*

Method: *The study categorizes the evolving status of MNCs through three paradigms: objects (passive entities fully subordinate to state mediation), partial subjects (context-specific holders of state-granted rights, such as in investment arbitration), and participants (functional actors contributing to a dynamic legal continuum).*

DOI:

<https://doi.org/10.33327/AJEE-18-9.2-a000189>

Date of submission: 27 Nov 2025

Date of acceptance: 16 Feb 2025

Online First publication: 05 May 2026

Disclaimer:

The author declares that their opinion and views expressed in this manuscript are free of any impact of any organizations.

Copyright:

© 2026 Mohammed Alsudais

Results and conclusions: While existing scholarship acknowledges corporate influence, this paper contributes a three-tiered taxonomy that moves beyond the rigid subject-object binary. It ultimately advocates for recognizing MNCs as secondary limited subjects and proposes a novel framework of rebuttable presumptions for normative responsibilities. By aligning legal obligations with functional global impact, this approach seeks to restore international law's relevance in a pluralistic global order.

1 INTRODUCTION

In the traditional framework of public international law, states were regarded as the exclusive subjects, holding sole responsibility for their creation, enforcement, and the attendant rights and obligations.¹ This state-centric, realist paradigm portrayed the international system as fundamentally intergovernmental, confining legal subjectivity to sovereign entities alone. However, the evolving global landscape prompts a critical inquiry: Does this conventional approach demand revision in the modern era? The modern landscape, characterized by deep interconnections via tangible and intangible networks, has introduced greater complexity. While states continue to serve as the primary actors, they coexist with a diverse array of entities, including international organizations that emerged in the Nineteenth Century and proliferated throughout the Twentieth Century,² as well as those possessing partial or full international legal personality, such as quasi-states, quasi-international organizations, sui generis bodies, individuals, and groups.³ In recent decades, non-state actors have gained increasing prominence across domains encompassing military and political security, economic relations, sustainable development, human rights, and environmental protection.⁴ These actors frequently operate beyond robust international legal oversight, leveraging their ambiguous status to pursue private or corporate interests that can undermine foundational principles of international law, particularly those related to security, as articulated in Chapter VIII of the United Nations Charter.⁵

1 Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Batoche Books, 2000); Jack L. Goldsmith and Daryl J. Levinson, 'Law for States: International Law, Constitutional Law, Public Law' (2009) 122(7) *Harvard Law Review* 1791.

2 Akira Iriye, *Global Community: The Role of International Organizations in the Making of the Contemporary World* (University of California Press, 2002).

3 William Thomas Worster, 'Functional Statehood in Contemporary International Law' (2020) 46 *Brooklyn Journal of International Law* 39.

4 Bas Arts, *Non-State Actors in Global Governance: Three Faces of Power* (Preprint No 2003/4, Max-Planck-Projektgruppe Recht der Gemeinschaftsgüter 2003); Claude Bruderlein, *The Role of Non-State Actors in Building Human Security: The Case of Armed Groups in Intra-State Wars* (Centre for Humanitarian Dialogue 2000); Elke Krahnemann, 'From State to Non-State Actors: The Emergence of Security Governance' in Elke Krahnemann (ed), *New Threats and New Actors in International Security* (Palgrave Macmillan 2005) 3.

5 Charter of the United Nations (signed 26 June 1945) <https://www.un.org/en/about-us/un-charter> accessed 20 November 2025; Alan Boyle and Christine Chinkin, *The Making of International Law* (OUP 2007).

For this paper, non-state actors primarily include multinational corporations (MNCs). Given that certain multinational corporations now command greater economic power than some states,⁶ it is almost axiomatic that they are widely regarded as “a major, perhaps the major, phenomenon of the international economy today.”⁷ Furthermore, this category of non-state actors is generally regarded as one of the “driving forces” of globalization.⁸ Their operations are governed by provisions such as Article 2(a) of the 2011 Draft Articles on the Responsibility of International Organizations, which allows states and other entities to form such bodies without restricting their composition.⁹ Although these actors are not typically direct participants in implementing Chapter VIII, their involvement could be apt given the evolving nature of security threats. In this context, it is also critical to address the classification and prosecution of criminal liability for MNCs, as this is essential for maintaining ethical standards in international trade.¹⁰ However, such efforts encounter substantial obstacles, including legal inconsistencies across jurisdictions, cross-border enforcement challenges, and the absence of robust international mechanisms.

This study contributes to understanding the role of MNCs in contemporary international law, including in post-communist and transition economies that have become attractive destinations for foreign direct investment. This dynamic aligns with the broader conceptualization of MNCs as crucial agents of globalization, exerting influence over domestic policies, forging alliances to amplify their political leverage, and occasionally creating strong dependency dynamics that can reduce host nations to highly vulnerable, economically dependent host states. Such influences are especially evident in key sectors such as energy, manufacturing, and technology, mirroring the historical trajectory from colonial-era entities, such as the East India Company, founded in England in 1600, and the Vereenigde Nederlandsche Geoctroyeerde Oostindische Compagnie (known in English as the Dutch East India Company), which was established in 1602, to contemporary MNCs exhibiting traits of international legal personality.

Building on this regional lens, the study critically examines the evolving legal status of MNCs in international law by framing their positions through three core paradigms: objects, partial subjects, and participants. This categorization illustrates the shift from rigid state-centrism toward more inclusive frameworks that better accommodate non-state

- 6 Menno T Kamminga, 'Holding Multinational Corporations Accountable for Human Rights Abuses: A Challenge for the EC' in Philip Alston (ed), *The EU and Human Rights* (OUP 1999) 553, doi:10.1093/oso/9780198298069.003.0017.
- 7 Peter Dicken, *Global Shift: Reshaping the Global Economic Map in the 21st Century* (4th edn, Sage Publications 2003) 198.
- 8 Jörn Kleinert, *The Role of Multinational Enterprises in Globalization* (Kieler Studien - Kiel Studies, Springer 2004) 28.
- 9 ILC, *Draft Articles on the Responsibility of International Organizations, with Commentaries* (UN 2011) <https://www.legal-tools.org/doc/3105dc/> accessed 20 November 2025.
- 10 Khoat Van Nguyen, 'Confronting Transnational Corporate Crime: Urgent Global Measures' (2024) 7(4) *Access to Justice in Eastern Europe* 421, doi:10.33327/AJEE-18-7.4-a000106.

actors' roles in promoting global public goods, including human rights, labor standards, and environmental protection. Specifically, the objectives are: (1) to analyze the limitations of the object paradigm, which denies MNCs independent agency and perpetuates state control; (2) to evaluate the functional and consent-based attributes of the partial subject paradigm as a mechanism for bridging accountability gaps; (3) to assess the participant paradigm's process-oriented approach in overcoming traditional doctrinal binaries; and (4) to advocate for enhanced normative recognition of MNCs as secondary limited subjects, thereby addressing regulatory challenges in transnational operations and proposing adaptive reforms to impose rebuttable presumptions of obligations.

To achieve these objectives, the study employs a doctrinal legal research design. This involves a comprehensive literature review of scholarly works, international treaties, judicial opinions (e.g., the International Court of Justice's (ICJ) Reparation for Injuries advisory opinion), and soft law instruments (e.g., the UN Guiding Principles on Business and Human Rights). The approach is supplemented by critical analysis of historical evolutions, conceptual debates, and pragmatic developments, drawing on sources such as UN reports and academic critiques to evaluate paradigms and propose reforms in the international legal order.

2 THE HISTORICAL EVOLUTION

Long before global bodies, big companies across borders began shaping world ties when organizations such as the Dutch East India Company began sailing in the 1600s. Back then, firms such as England's equivalent gained official powers through a royal charter, turning them into fictional entities able to take risks far away.¹¹ One key shift stood out: investors locked money into ventures that could not leave certain trades, binding capital tightly. With backing now limitless, because money no longer vanishes without reason like it once did in old-style partnerships, businesses could stretch forever, especially when reaching far beyond their starting lands. Such a shift transformed MNCs from rarefied British franchises into genuine global players, beginning roughly two hundred years ago.¹² Now operating machines, powering nations, trading oceans, these modern giants still grow stronger each year, sometimes matching statecraft in reach and impact.

As both products and drivers of globalization, MNCs often surpass states in economic power. Pursuing optimal profits, they form alliances and conglomerates that enhance their economic strength and political power and influence, enabling them to shape national and international affairs. Interactions with states frequently yield collaborations or concessions,

11 Christiane Ahlborn, 'Towards a Theory on the International Legal Personality of Corporations' (2025) 16 *Transnational Legal Theory* 43.

12 Abdul Ghafar Ismail and Noraziah Che Arshad, 'Tracking the Pre-and Post-Colonial Banking: The Quest for Islamic Banking' (2010) 1 *Prosiding Perkem V*, Jilid 173.

at times reducing nations to "banana republics."¹³ On a global scale, MNCs influence not only individual governments but also collective state behavior, while shaping the agenda of international organizations, such as the UN's Global Compact and Sustainable Development Goals, which address human rights and environmental concerns.¹⁴

In a globalized world with porous borders facilitating flows of people, goods, services, technology, and capital, multinational companies increasingly dictate domestic policies in host states and broader regional and global relations. Alongside states and select international organizations, they act as key players in international economic relations, driving trade, foreign direct investment, global supply chains, job creation, technology transfer, and policy development. This crucial role inevitably affects their standing within the international community and its legal framework, with leading corporations displaying clear elements of international legal personality.

While international organizations have long been recognized as international legal persons, corporations occupy a legal gray zone regarding their international rights and obligations, often to their advantage.¹⁵ Parallels exist between the two: until the ICJ's 1949 Advisory Opinion on Reparation for Injuries,¹⁶ the legal personality of international organizations remained controversial. Even today, uncertainties linger about their specific rights and obligations, as illustrated by debates in the United Nations International Law Commission's work on the Articles on the Responsibility of International Organizations, including whether such entities possess a right to self-defense.¹⁷ Comparable issues arise for technology corporations contemplating "hack back" responses to cyber-attacks.¹⁸

Attributing international legal status to international organizations and corporations challenges the primacy of states as the principal subjects of international law, which traditionally exercise inherently sovereign functions and uphold the public character of public international law. Although states themselves are corporate entities, international law has historically struggled to conceptualize the corporate form. As the original subjects of

13 Khalid Zaman, 'Navigating the Perils of a Banana Republic: Lessons from Pakistan's Economic Crisis' (2023) 1(1) *Politica* 33, doi:10.5281/zenodo.7715198.

14 *United Nations Global Compact* (formation 26 July 2000) <https://unglobalcompact.org/what-is-gc> accessed 20 November 2025; *Transforming Our World: The 2030 Agenda for Sustainable Development* (adopted 25 September 2015 UNGA Res 70/1) <https://sdgs.un.org/2030agenda> accessed 20 November 2025; *Sustainable Development Goals* (established 2015) <https://www.un.org/sustainabledevelopment/> accessed 20 November 2025.

15 Ahlborn (n 11).

16 *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion (ICJ, 11 April 1949) Rep 174.

17 ILC, *Draft Articles* (n 9).

18 Nicholas Winstead, 'Hack-Back: Toward a Legal Framework for Cyber Self-Defense' (*American University*, 26 June 2020) <https://www.american.edu/sis/centers/security-technology/hack-back-toward-a-legal-framework-for-cyber-self-defense.cfm> accessed 20 November 2025.

international law, states are presumed to possess international legal personality, with sovereignty linked to territoriality, though this connection has not always been absolute.

The modern concept of legal personality emerged alongside the rise of corporations, as illustrated by the East India Company and the Dutch East India Company. This development did not occur in isolation but emerged alongside early modern corporations amid expanding global trade in the Seventeenth Century. These pioneering joint-stock companies received government charters that conferred artificial personhood, enabling them to undertake large-scale, high-risk overseas ventures, particularly in Asia.¹⁹

Historically, traditional business structures, derived from Roman partnership law, proved inadequate for long-distance sea trade, as partners could withdraw capital at will, often dissolving the venture and hindering long-term resource commitments. The corporate form was innovated by introducing capital "lock-in" mechanisms that secured investors' funds indefinitely until liquidation.²⁰ This represented a legal advancement beyond mere contracts, relying on state-backed charters to ensure permanence and safeguard against arbitrary dissolution or expropriation by rulers.

The ICJ's ruling in *Reparation for Injuries*, affirming the United Nations' international legal personality, was pragmatically driven to secure its status against a non-member state. International law scholarship has only recently begun to theorize international organizations, focusing on their legal status.²¹ This article continues earlier attempts to contribute to theories of personhood in international law by examining MNCs' roles in transnational and international relations.²²

Despite this profound influence, MNCs lack formal status in international law. Private corporations and other non-state actors do not conform to traditional criteria for international legal personality. Nevertheless, legal personality endures as a powerful trope signifying the capacity to bear rights and obligations. Reluctance to extend it to non-state actors stems from equating it with full statehood, ignoring that personality is a binary status rather than a matter of degree. Once recognized, attention turns to the specific

19 Giuseppe Dari-Mattiacci and others, 'The Emergence of the Corporate Form' (2017) 33(2) *Journal of Law, Economics, & Organization* 193.

20 *ibid*

21 Christopher Balding and Daniel Wehrenfennig, 'Theorizing International Organizations: An Organizational Theory of International Institutions' (2011) 2(1) *Journal of International Organization Studies* 7; Ian Hurd, 'Theorizing International Organizations: Choices and Methods in the Study of International Organizations' (2011) 2(2) *Journal of International Organization Studies* 7; Ian Johnstone, 'Law-Making by International Organizations: Perspectives from IL/IR Theory' in Jeffrey L Dunoff and Mark A Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (CUP 2013) 266.

22 Fleur Johns, 'The Invisibility of the Transnational Corporation: An Analysis of International Law and Legal Theory' (1994) 19(4) *Melbourne University Law Review* 893; Peter Muchlinski, *Multinational Enterprises and the Law* (3rd edn, OUP 2021).

capacities, rights, and obligations within the legal order. Thus, personality indicates that a collective entity exceeds the sum of its parts, applying equally to groups and individuals at domestic and international levels.

Given MNCs' active involvement in international relations, this article advocates greater legal status for them. Scholarship, particularly in business and human rights, has debated corporate personhood primarily in terms of potential obligations, with mainstream positions rejecting it, partly due to corporate resistance to international regulation. In contrast, systematic analysis of corporate rights, which, like obligations, evince legal capacity on the international plane, remains limited. Companies hold substantial rights across diverse international regimes, notably under the European Convention on Human Rights (ECHR), where they may invoke protections such as fair-trial and property guarantees. The Bosphorus judgment illustrates that such rights are exercised within an integrated system in which corporate complaints about sanctions or regulatory measures are assessed against a background of UN, EU, and domestic norms, reinforcing the idea that MNCs operate within a dense web of multi-level public authority rather than in a purely bilateral state–corporation relationship. Although this does not automatically bestow general international legal personality, such rights provide strong evidence of their international legal status. The following chapter will discuss in depth the status of MNCs through the prism of three main paradigms.

3 THE INTERNATIONAL LEGAL SUBJECTIVITY OF MULTINATIONAL CORPORATIONS: EVOLVING PERSPECTIVES AND CONTEMPORARY DEVELOPMENTS

3.1. Terminological Diversity

What counts as a multinational corporation isn't always clear: different fields and global groups use varied terms. Even the UN wavers, sometimes calling them multinationals, other times transnationals. Organizations such as the OECD and the ILO tend to say that multinational corporations. In scholarly work, the short form MNC covers a range of forms: massive companies, alliances, or setups shaped by ownership, location, and reach. These organizations start in one country but stretch into two or more, managing operations elsewhere.

Though structured differently, multinational companies stand out because they're run from a single center, answer to investors worldwide, and can move money across borders quickly through seamless transactions. Because of this reach, such firms sometimes act without strong ties to any particular country's economy, revealing gaps in how local laws handle their worldwide effects. Seeing these corporations not just as standard business

organizations but as creations shaped by global politics and economies makes it obvious why they must fit within established international legal structures. Simply put, it just works better that way.

In international legal literature, terms like "transnational" and "multinational" often imply subtle differences, with "corporation" suggesting a specific entity featuring legal personality, transferable shares, limited liability, centralized management, and investor ownership.²³ Nonetheless, these terms are commonly interchanged due to conceptual vagueness and MNCs' heterogeneous legal forms and structures, which lack a singular identity and operate as politico-economic constructs shaped by varied juridical tools.

Scholarly discourse shows strong resistance to viewing corporate entities as subjects of international law, and until recently, assertions of their international legal personality were rare, with many scholars preferring to leave the issue unresolved.²⁴ Consequently, emphasis is placed on differentiating MNCs from domestic firms, even those involved in international trade, by underscoring MNCs' distinctive traits, such as effortless cross-border relocation of production and assets, management structures that span borders, and tenuous substantive links to any single nation beyond formal incorporation. This flexibility and detachment from national regulations highlight the limitations of domestic legal systems in managing MNC impacts, underscoring the need to integrate them into international law frameworks.

3.2. The Question of Status

The concept of international legal subjectivity, often used interchangeably with international legal personality, refers to an entity's capacity to hold rights and obligations under international law, and to participate in its creation and enforcement. Traditionally, states have served as the primary subjects, while international organizations receive limited personality grounded in functional necessities. For MNCs, economic entities operating across borders, the issue of subjectivity is highly contentious. Scholarly literature spans a range of perspectives: from outright rejection due to international law's state-centric foundations, to advocacy for a limited or functional personality that acknowledges MNCs' substantial global influence, and proposals for a rebuttable presumption of responsibilities in fields like human rights and environmental protection.²⁵ This paper attempts to synthesize core arguments from key scholarly

23 Jan Wouters and Anna-Luise Chané, *Multinational Corporations in International Law* (Working Paper No 129, KU Leuven 2013) doi:10.2139/ssrn.2371216.

24 Andrew Clapham, *Human Rights Obligations of Non-State Actors* (OUP 2006) 76-7.

25 José E Alvarez, 'Are Corporations "Subjects" of International Law?' (2011) 9(1) *Santa Clara Journal of International Law* 1; Jonathan I Charney, 'Transnational Corporations and Developing Public International Law' (1983) 4 *Duke Law Journal* 748, doi:10.2307/1372465; David Adedayo Ijalaye, *The Extension of Corporate Personality in International Law* (Oceana 1978); Muchlinski (n 22); Karsten Nowrot, 'New Approaches to the International Legal Personality of Multinational Corporations Towards a Rebuttable Presumption of Normative Responsibilities' [1993] *Journal of Global Legal Studies* <https://esil-sedi.eu/wp-content/uploads/2018/04/Nowrot.pdf> accessed 20 November 2025.

contributions, underscoring ongoing debates in an era of globalization where MNCs frequently exercise power rivaling or surpassing that of some states.

Conferring international legal subjectivity on any entity, including MNCs, demands evidence that its status and actions fall under international legal regulation, that it possesses rights and duties stemming from such law, and that it actively contributes to global relations and institutions rather than merely benefiting passively. For MNCs, international law increasingly regulates their roles in critical transnational domains, granting specific rights and imposing duties; prominent MNCs also sometimes influence emerging norms and partner with international institutions. These interconnected factors collectively bolster MNCs' evolving standing within the international legal order.

The legal status of corporations, particularly MNCs, sparks greater scholarly debate than that of individuals, largely because individual subjectivity has gained relatively stable acceptance in modern international law, while corporate subjectivity remains fragmented and in flux.²⁶ Individuals are now clearly recognized as direct holders of rights and obligations under international human rights law²⁷ and international criminal law,²⁸ reflecting a post-World War II shift toward protecting human dignity beyond state mediation.²⁹ In contrast, MNCs, economic entities with vast global influence, elicit contention due to their hybrid nature as creations of domestic law yet actors in transnational spheres, raising questions about whether they possess independent legal personality, direct duties, or merely derivative rights. This asymmetry arises from international law's traditional state-centric framework, in which non-state entities, such as corporations, are not automatically endowed with subjectivity, leading to ongoing disputes over their accountability for harms such as labor exploitation or environmental degradation, weighed against their economic contributions. Alvarez, for example, questions whether corporations qualify as subjects of international law, arguing that such labeling is often distracting and risky, potentially equating profit-driven entities with natural persons and distorting accountability mechanisms; he contrasts this with individuals' clearer subjectivity under human rights regimes, cautioning against over-analogizing in areas like investor-state arbitration.³⁰

26 Alvarez (n 25).

27 Frédéric Mégret, 'The Nature of International Human Rights Obligations' in Daniel Moeckli and others (eds), *International Human Rights Law* (OUP 2010) 124, doi:10.2139/SSRN.1472196.

28 Via the Rome Statute of the International Criminal Court, which holds individuals accountable for crimes such as genocide and war crimes, etc. Rome Statute of the International Criminal Court (adopted 17 July 1998) [2004] UNTS 2187/3.

29 Anne Peters, *Beyond Human Rights: The Legal Status of the Individual in International Law* (CUP 2018).

30 Alvarez (n 25).

3.3. Conceptual Clarification: Subjectivity, Personality, and Participation

Looking away from complex scholarly arguments, four concepts matter when placing multinational firms in the wider legal picture: sovereignty, international legal personality, subjectivity, and involvement.³¹ The power to determine global rule? That stays locked within national hands. Only states earn true sovereignty.³² A related concept appears through the lens labeled “international legal personality,” also known as “subjectivity.” This phrase points to those who can claim rights. Or have obligations under international agreements. That part matters, too. When it comes to MNCs, their legal position is not nearly as wide-reaching as that of states.³³ Power over them comes from states choosing to grant rights, not from something automatically given.³⁴ Those rights also apply mainly in narrow spaces, such as corporate accountability or dispute resolution through tribunals. In everyday terms, what “participation” really means is how much real influence these bodies wield.³⁵ This method tracks a company’s actual impact on worldwide rules and choices, separate from its formal legal status.

31 For different approaches to these concepts, see, for example, Robert Jennings and Arthur Watts (eds), *Oppenheim’s International Law*, vol 1: Peace (9th edn, 2008) (classic state-centric account of sovereignty and personality); Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (OUP 1995) doi:10.1093/law/9780198764106.001.0001 (reframing subjects/objects in process terms); and Nowrot (n 25) (arguing for reconceptualizing corporate personality). For personality as the capacity to bear international rights and obligations, see ICJ’s advisory opinion: *Reparation for Injuries Suffered in the Service of the United Nations* (n 16) 179-80 (holding that the UN has rights and obligations and therefore international personality, though it is “certainly not a super-State”).

32 On the classic view of sovereignty and the state as the primary subject of international law, see Jennings and Watts (n 31), and the traditional formulation quoted in Lassa Oppenheim, ‘International Legal Sovereign’ (summarizing the position that “states solely and exclusively are the subjects of international law”).

33 On subjectivity/personality as an entity’s standing as a direct addressee of international norms, see Section 3.2 above; and Kate Parlett, *The Individual in the International Legal System: Continuity and Change in International Law* (CUP 2011) doi:10.1017/CBO9780511921858 (discussing individuals as direct holders of rights and obligations).

34 *ibid*

35 Participation is defined as the functional capacity of an MNC to influence international norms and participate in a “dynamic continuum” of law-making, which in turn justifies the formal recognition of its limited subjectivity. For participation understood as functional influence over law-making and implementation, see Higgins (n 31) (describing international law as a “dynamic” process shaped by authoritative decisions of various actors); and Nowrot (n 25) (linking the *de facto* power of certain MNCs to a rebuttable presumption of normative responsibilities).

On participation and international law as an ongoing decision-making process involving multiple actors, see also Higgins (n 31) (criticizing the rigid subject/object dichotomy and emphasizing practical involvement); and Clapham (n 24) (analyzing the roles of corporations and other non-state actors in norm creation and implementation).

35 Patricia Rinwigati, ‘The Legal Position of Multinational Corporation in International Law’ (2019) 49(2) *Jurnal Hukum & Pembangunan* 376, doi:10.21143/jhp.vol49.no2.2009.

4 THREE MAIN PARADIGMS

Available academic viewpoints categorize MNCs under three main paradigms, as objects, partial subjects, or participants, each illustrating the incremental inclusion of non-state entities in a system long centered on states.³⁶ Moreover, the three principal paradigms illustrate an evolutionary shift, a radical departure, from strict state-centrism toward more adaptable and inclusive views of non-state actors in the global legal landscape.

4.1. The Object Paradigm

Under the object approach, big companies act like silent tools, entirely at the government's behest.³⁷ They seem unable to make moves on their own or bring global rules into play without direction. In 1940, the International Court of Justice endorsed this idea in the *Barcelona Traction* case.³⁸ It argued corporate rights come not from where they're used but where they were born. Over time, attempts to shift this framework have emerged, such as the 2003 UN Norms, which aim to compel firms to respect basic human rights.³⁹ Yet those plans never made it, blocked by nations and corporate powers alike. Even after the UN Guiding Principles introduced "responsibility to respect" human rights, those rights stay unenforceable as standards, not real legal duties under international law.⁴⁰

4.2. The Partial Subject Paradigm

In practice, courts often view multinational companies as holding only a fragment of the rights typically seen in global law. For instance, these firms frequently bring claims against the countries where they operate, but this power isn't inherent. It's derived from specific agreements between nations, such as bilateral investment treaties.⁴¹ These

36 *ibid*

37 Michelle Worthington and Peta Spender, 'Constructing Legal Personhood: Corporate Law's Legacy' (2021) 30(3) *Griffith Law Review* 348, doi:10.1080/10383441.2021.2003742.

38 *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)*, 2nd phase (ICJ), 5 February 1970 <https://www.icj-cij.org/case/50> accessed 20 November 2025.

39 ECOSOC, Economic, Social and Cultural Rights: Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (E/CN.4/Sub.2/2003/12/Rev.2, 26 August 2003) <https://docs.un.org/E/CN.4/Sub.2/2003/12/Rev.2> accessed 20 November 2025; David Weissbrodt and Muria Kruger, 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights' (2003) 97(4) *American Journal of International Law* 901, doi:10.2307/3133689.

40 Andreas Rasche and Sandra Waddock, 'The UN Guiding Principles on Business and Human Rights: Implications for Corporate Social Responsibility Research' (2021) 6(2) *Business and Human Rights Journal* 227, doi:10.1017/bhj.2021.2.

41 For a detailed application of this procedural standing in human rights counterclaims, see Case No ARB/07/26 *Urbaser SA and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v The Argentine Republic* (ICSID, 8 December 2016) <https://www.italaw.com/cases/1144> accessed 20 November 2025.

arrangements essentially grant businesses a seat at the table during legal disputes.⁴² This functional approach mirrors the International Court of Justice's famous stance on reparations: that the law must evolve alongside the needs of the community.⁴³ While this allows the system to grant certain powers to non-state groups, it's a far cry from turning them into sovereign, state-like entities.⁴⁴ Through what is often called "principled pragmatism," corporations can step up their responsibilities via non-binding frameworks such as the UN Guiding Principles, all while acknowledging that governments still hold the ultimate authority to set the rules.⁴⁵

4.3. The Participant Paradigm

The participant paradigm represents a transformative shift in international legal theory, redirecting focus from the rigid concept of subjectivity, traditionally reserved for states as full bearers of rights and duties, to a more inclusive notion of participation, emphasizing actors' practical capacity to engage in legal relations, hold rights, and assume obligations.⁴⁶ This approach addresses longstanding limitations in classical doctrines by prioritizing functional involvement over categorical labels, enabling nuanced recognition of non-state entities such as MNCs without equating them with sovereigns. Rather than discarding subjectivity entirely, scholars suggest refining it as an evolving umbrella term that encompasses diverse roles, rights, obligations, and accountabilities, thereby resolving key questions: who qualifies as a participant (e.g., entities with demonstrable impact), what specific entitlements and duties do they hold (e.g., context-specific human rights responsibilities), and how to operationalize accountability (e.g., through adaptive frameworks like voluntary guidelines or dispute mechanisms).⁴⁷ Such refinement fosters pragmatic evolution, enabling international law to better accommodate the complexities of globalization while maintaining conceptual coherence.

42 Clapham (n 24).

43 *ibid.* Also see, Yuen-Li Liang, 'Reparation for Injuries Suffered in the Service of the United Nations' (1949) 43(3) *The American Journal of International Law* 460, doi:10.2307/2193639; William Thomas Worster, 'Relative International Legal Personality of Non-State Actors' (2016) 42(1) *Brooklyn Journal of International Law* 207.

The functional adaptation of personality was foundational in the ICJ's advisory opinion: *Reparation for Injuries Suffered in the Service of the United Nations* (n 16).

44 *ibid.* Scholarship highlighting the state-dependent nature of this status includes Worster (n 43) and Nicola Jägers, 'The Legal Status of the Multinational Corporation Under International Law' in Michael K Addo (ed), *Human Rights Standards and the Responsibility of Transnational Corporations* (Kluwer Law Int'l 1999) 259, doi:10.1163/9789004637566_025.

45 This reflects the 'principled pragmatism' of the UNGPs, which addresses the asymmetry in access to justice between MNCs and individuals. See, OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (UN 2011).

46 Alvarez (n 25); Higgins (n 31).

47 Ijalaye (n 25) 244.

This paradigm fundamentally departs from the orthodox subject-object dichotomy, which has historically confined actors to either plenary subjects, such as states with inherent and unrestricted capacities, or passive objects lacking independent agency.⁴⁸ This binary framework has fueled protracted, often fruitless debates over definitional thresholds, stifling progress in addressing the roles of non-state actors.⁴⁹ To overcome these constraints, scholars have denounced the dichotomy as an "intellectual prison" of limited utility, advocating instead viewing international law as a dynamic decision-making process involving a broad array of participants, including MNCs, NGOs, and individuals, without rigid classifications.⁵⁰ The term "participant" provides a flexible and baggage-free alternative to "subject" or "person," avoiding misleading parallels between corporations, created under domestic law for commercial purposes, and natural persons, who retain certain international rights irrespective of state recognition (e.g., as stateless individuals).⁵¹ By framing MNCs as participants, the paradigm highlights their active contributions to legal processes, such as influencing norms through economic leverage, while sidestepping doctrinal pitfalls that obscure practical realities. Ultimately, labeling a corporate entity as a "subject" or "object" of international law confuses more than it enlightens.⁵²

At its core, the participant paradigm reconceptualizes international law not as a static set of immutable rules imposed hierarchically, but as a fluid "dynamic continuum" shaped by ongoing, authoritative decisions from diverse actors responding to emerging global needs. In this process-oriented view, law emerges through interactive validation by recognized authorities, states, international organizations, and, increasingly, non-state entities like MNCs, allowing norms to adapt over time. Globalization accelerates this dispersion of law-making across sectors, positioning states, intergovernmental bodies, MNCs, NGOs, and individuals as coequal participants based on their tangible influence in decision-making arenas.⁵³ For instance, Higgins argues that entities gain direct rights, obligations, and capacities proportional to their "clout," such as MNCs shaping investment treaties or customary practices through market dominance.⁵⁴ This functional approach echoes the ICJ's reasoning in the *Reparation*, where the Court, addressing the UN's claim for reparations following the death of its agent in Palestine, held that the organization possesses objective international personality to the extent necessary for fulfilling its functions, independent of member states' recognition.⁵⁵ This seminal decision illustrates how

48 Peter Muchlinski, 'Corporations in International Law', *Max Planck Encyclopedia of Public International Law* (2014) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1513> accessed 20 November 2025.

49 Simon Chesterman, 'Lawyers, Guns, and Money: The Governance of Business Activities in Conflict Zones' (2010) 11(2) *Chicago Journal of International Law* 327.

50 Higgins (n 31) 49.

51 Alvarez (n 25) 8.

52 *ibid*

53 Carmen E Pavel, *Law Beyond the State: Dynamic Coordination, State Consent, and Binding International Law* (OUP 2021).

54 Higgins (n 31) 2.

55 See CJ's advisory opinion: *Reparation for Injuries Suffered in the Service of the United Nations* (n 16).

international law pragmatically recognizes entities' capacities based on operational needs rather than formal status, directly supporting the participant paradigm's emphasis on inclusive, role-based involvement. Clapham builds on this by asserting that acknowledging non-state participation is crucial to effective human rights enforcement, as traditional state privileges, such as treaty-making or immunity, are often irrelevant in operational contexts such as corporate supply chains.⁵⁶ Other scholars push for even broader MNC inclusion in norm creation, advocating their direct involvement in regulatory frameworks to reflect their transnational power.⁵⁷ This sociological emphasis over doctrinal rigidity challenges state-centric biases, though it sparks debates on measuring participation, e.g., quantifying influence via economic impact or advocacy, and ensuring equitable appraisal across actors.

A practical embodiment of this paradigm is the UN Secretary-General's Special Representative on Business and Human Rights (SRSG) adoption of "principled pragmatism," which bypasses abstract subjectivity disputes to advance the "Protect, Respect and Remedy" Framework.⁵⁸ This initiative enhances corporate accountability for human rights abuses by clarifying states' duty to protect, businesses' responsibility to respect, and access to remedies, thereby filling gaps where international law lags behind reality, such as when host states fail to uphold protections. Emerging recognition further extends direct human rights obligations to non-state actors in de facto control scenarios, such as MNCs involved in enforced disappearances or in territorial governance in conflict zones, where they exercise authority akin to that of states.⁵⁹ Persistent vulnerabilities arise in conflict zones and state-business nexuses, intensified by privatization of public functions such as healthcare and security; in privatized conflicts, where states outsource military roles to private firms, accountability blurs, amplifying calls for direct corporate duties, particularly for state-owned entities engaged in hostilities. These dynamics highlight systemic shortfalls when state interests override protections, underscoring the need for reformed norms that bolster governmental oversight, integrate participant roles more effectively, and mainstream human rights in global governance through multijurisdictional regulation, corporate due diligence requirements, transparency mandates, and measures to combat greenwashing.⁶⁰

56 Clapham (n 24).

57 Patricia Rinwigati Waagstein, 'Corporate Human Rights Responsibility: A Continuous Quest for an Effective Regulatory Framework' (PhD thesis, Stockholm University 2009).

58 John Gerard Ruggie, 'Protect, Respect and Remedy: A Framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises' (A/HRC/8/5, 7 April 2008) <https://digitallibrary.un.org/record/625292?ln=en> accessed 20 November 2025.

59 Clapham (n 24).

60 John Ruggie, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises' (A/HRC/17/31, 21 March 2011) <https://docs.un.org/a/hrc/17/31> accessed 20 November 2025; Junaid Sattar Butt and Farzana Kousar, 'Driving Sustainable Growth: The Corporate Sustainability Due Diligence Directive as a Catalyst (CSDDD) for Public Administration Reform and Corporate Accountability in the European Green Deal' (2024) 14(3) *The Journal of Accounting and Management* 7.

This evolving framework is exemplified in the Inter-American Court of Human Rights' Advisory Opinion OC-32/25, requested by Chile and Colombia to clarify state obligations in responding to the climate emergency under human rights law.⁶¹ The Court held that states must adopt measures to prevent, mitigate, and adapt to climate impacts with due diligence, while recognizing that corporations bear direct obligations and responsibilities in addressing the crisis, including through regulated actions to respect human rights. This opinion reinforces the participant paradigm by illustrating how international jurisprudence increasingly imposes functional obligations on non-state actors, such as MNCs, to address interconnected global challenges, thereby promoting accountability without formal subjectivity.

Finally, the paradigm underscores the imperative of prioritizing actors' functions in safeguarding human rights, with states retaining primacy due to their democratic legitimacy and capacity to balance societal interests. As the SRSG notes, states' primary obligations enable them to regulate for collective welfare, while corporations' profit-oriented nature necessitates adaptations of human rights duties to avoid overburdening entities with limited governance capabilities.⁶² Preserving states as chief norm-setters upholds the system's integrity, ensuring that participant inclusion advances rather than undermines equitable global order.

Participation thus encompasses not only norm generation but also preferential access to dispute-resolution forums, where corporations act as repeat players, reinforcing their practical standing as actors whose decisions shape the content and enforcement of international norms.

5 TOWARDS GREATER RECOGNITION OF MNCS

According to the predominant view among international legal scholars, not all entities participating in contemporary international relations qualify as international legal persons, despite their potential influence on the international community.⁶³ Mere de facto participation does not equate to legally relevant action on the international stage and thus does not confer the status of a subject of international law.⁶⁴ Instead, international legal personality requires some form of acceptance by the international community, typically through states granting the entity in question rights and or obligations under international

61 Lucas Carlos Lima, 'Symposium on Advisory Opinion AO-32/25 on the Climate Emergency and Human Rights: The Principle of Common but Differentiated Responsibilities' (*Opinio Juris*, 1 October 2025) <https://opiniojuris.org/2025/10/01/symposium-on-advisory-opinion-ao-32-25-on-the-climate-emergency-and-human-rights-the-principle-of-common-but-differentiated-responsibilities/> accessed 20 November 2025.

62 Ruggie (n 58; 60).

63 Nowrot (n 25) 4.

64 Malcolm N Shaw, *International Law* (8th edn, CUP 2017) 176.

law.⁶⁵ In principle, there are no systematic barriers preventing non-state entities from participating in the international legal system as recognized actors, and no exhaustive list of subjects of international law exists.⁶⁶ Nonetheless, based on these generally acknowledged prerequisites for attaining international legal personality, the prevailing scholarly consensus holds that MNCs cannot be considered subjects of international law in the sense of being direct addressees of international legal obligations to promote global public goods.⁶⁷

From an access-to-justice perspective, the evolving procedural avenues open to MNCs provide particularly salient evidence of their integration into the international legal order. Corporations routinely appear as claimants before investor–state arbitral tribunals and, in regional human rights systems such as the ECHR, may directly bring applications or rely on Convention rights to challenge state measures; yet victims of corporate abuse often lack symmetrical access to comparable international forums. This asymmetry, reflected in cases like *Urbaser and Bosphorus*, strengthens the case for conceptualizing MNCs as secondary limited subjects whose enhanced access to international adjudicatory bodies must be balanced by clearer, directly enforceable obligations and remedial avenues for affected individuals and communities.

Although it has long been argued in the legal literature that international human rights treaties might be interpreted as directly applicable to private actors such as MNCs,⁶⁸ the majority of international legal scholars, drawing on the drafting history of the relevant conventions and teleological methods of treaty interpretation, have persuasively shown that human rights treaties, along with, for example, the growing array of international conventions aimed at combating bribery, impose direct obligations only on the states that are parties to them, and not on other entities.⁶⁹ Moreover, despite noteworthy developments, such as efforts to enforce purported human rights obligations against corporations in domestic courts in the United States⁷⁰ and, in the domain of "soft law," one must concur with the aforementioned dominant view that MNCs have not, under either treaty law or customary international law, save for a limited number of highly specific regulations,

65 Phillip K Menon, 'The International Personality of Individuals in International Law: A Broadening of the Traditional Doctrine' (1992) 1(1) *Florida State University Journal of Transnational Law & Policy* 151; Jägers (n 44).

66 JL Brierly, *The Law of Nations: An Introduction to the International Law of Peace* (4th edn, Clarendon Press 1949); Philip C Jessup, *A Modern Law of Nations: An Introduction* (Macmillan 1948).

67 Hans W Baade, 'The Legal Effects of Codes of Conduct for Multinational Enterprises' (1979) 22 *German Yearbook of International Law* 11; Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (7th edn, Routledge 2002) doi:10.4324/9780203427712.

68 Nicola MCP Jägers, *Corporate Human Rights Obligations: In Search of Accountability* (Intersentia 2002); Jordan J Paust, 'The Reality of Private Rights, Duties, and Participation in the International Legal Process' (2004) 25(4) *Michigan Journal of International Law* 1242.

69 J Delbruck, 'Third-Party Effects of Fundamental Rights Through Obligations Under International-Law' (1975) 12 *Law and State* 61; Sarah Joseph, 'Taming the Leviathans: Multinational Enterprises and Human Rights' (1999) 46(2) *Neth. Int'l L. Rev.* 171, doi:10.1017/S0165070X00002394.

70 Sarah Joseph, *Corporations and Transnational Human Rights Litigation* (Hart Publishing 2004).

attained sufficient normative recognition from states and international organizations to be subjected to direct obligations under international law.⁷¹

The regulation of MNCs is primarily anchored in the domestic laws of the states where they are headquartered and in those where they establish subsidiaries or conduct operations.⁷² As entities formed and registered within sovereign territories rather than through international mechanisms, MNCs are governed by national rules concerning their establishment, operational conditions, legal supervision, and taxation.⁷³ Nevertheless, international law increasingly contributes to their partial regulation, often indirectly via the harmonization of national legislations across states. International law governs MNC activities through treaties that delineate rights and obligations, particularly in their interactions with states and international organizations.⁷⁴ For instance, within the European Union, EU law, despite its supranational traits, is classified as international law and regulates MNC relations.⁷⁵ Beyond regional frameworks, treaties address an expanding range of issues, and MNCs are incorporated into the structures of organizations such as the United Nations. While MNCs may conclude international agreements, enforce claims, and incur liability, their legal personality remains secondary and constrained. Derived from the status conferred by states under domestic law, they operate as extensions of municipal law and lack full state-like attributes, such as sovereign immunity. Their capacity to engage in treaty-making is limited to advancing human rights without impinging on non-derogable obligations.⁷⁶

Furthermore, collusion may emerge between states and MNCs, with governments deriving benefits from lenient human rights enforcement. To attract investment, states may prioritize economic advantages over accountability, thereby diluting norms. Resource and institutional deficiencies, particularly in developing countries, further hamper oversight, enabling MNCs to exploit regulatory gaps or perpetrate violations.⁷⁷ The transnational nature of operations often results in dismissals of lawsuits on grounds of forum non conveniens, depriving victims of justice. Extraterritorial application of laws can provoke tensions in interstate relations and infringe on sovereignty, as exemplified by

71 See e.g., International Convention on Civil Liability for Oil Pollution Damage (adopted 29 November 1969) [1982] UNTS 973/3, art 3 (replaced by 1992 Protocol, as amended 2000); United Nations Convention on the Law of the Sea (adopted 10 December 1982) [1998] UNTS 1833/397, art. 137.

72 Larry Catá Backer, 'Multinational Corporations as Objects and Sources of Transnational Regulation' (2007) 14(2) *ILSA Journal of International & Comparative Law* 499.

73 Larry Catá Backer, 'Regulating Multinational Corporations: Trends, Challenges, and Opportunities' (2015) 22(1) *The Brown Journal of World Affairs* 153.

74 Surya Deva, 'Human Rights Violations by Multinational Corporations and International Law: Where from Here?' (2003) 19(1) *Connecticut Journal of International Law* 1.

75 Alexandra Gatto, *Multinational Enterprises and Human Rights: Obligations Under EU Law and International Law* (Edward Elgar 2011).

76 Charney (n 25) 748.

77 Steven R Ratner, 'Corporations and Human Rights: A Theory of Legal Responsibility' (2001) 111 *Yale Law Journal* 443.

the Bhopal disaster.⁷⁸ Finally, inconsistent compliance by states with their human rights obligations generates variability, rendering indirect regulation unreliable. A quintessential example of this regulatory interplay is the Bosphorus case, in which the ECHR examined a company's challenge to the impoundment of its aircraft, an act rooted in UN sanctions, implemented via EU Regulations, and carried out by national authorities. This case highlights how MNCs navigate a multi-layered legal landscape, where the 'equivalent protection' of their rights is contested across international and regional regimes, further complicating their status as mere domestic entities.

Traditionally, international law has recognized only states as subjects, but this perspective is evolving, with non-state entities increasingly acknowledged as legal persons. Although MNCs have not yet been fully accepted in this regard, their status remains a contentious candidate for international personality. This paper advocates for treating MNCs as secondary limited subjects in the context of human rights, distinct from the primary full personality accorded to states. Such recognition would permit them to enter into agreements, enforce claims, and bear direct liability, while remaining derived from domestic law and excluding sovereign privileges. Treaty rights would be confined to the promotion of human rights. Emerging recognition of MNCs' more prominent role in global governance, as reflected in the UN Guiding Principles on Business and Human Rights, underscores this shift by emphasizing corporate responsibility to respect human rights independently of state action. To further this evolution, proposals for treaty revisions could include amending core human rights instruments, such as the International Covenant on Economic, Social, and Cultural Rights, to explicitly bind MNCs directly, or drafting a new multilateral treaty establishing enforceable obligations on corporations for human rights due diligence and remediation.⁷⁹

This recognition is imperative for adapting international law to contemporary societal transformations, wherein power has shifted to non-state actors and states increasingly operate through corporations. A rigidly state-centric focus risks rendering international law obsolete in its promotion of human rights.⁸⁰ The distinction between subjects and objects is blurring in human rights governance, as evidenced by individual accountability for war crimes and claims against states. It has already been noted that this dichotomy serves no functional purpose; if law binds individuals, it should bind influential MNCs as well.⁸¹ For victims, the identity of the perpetrator is immaterial; international law must therefore confront MNC abuses beyond the reach of deficient municipal systems to safeguard human dignity.⁸² This approach finds support in the seminal arbitral decision

78 Hanson Hosein, 'UNSETTLING: Bhopal and the Resolution of International Disputes Involving an Environmental Disaster' (1993) 16(2) 6 Boston College International & Comparative Law Review 285.

79 Rasche and Waddock (n 40).

80 Charney (n 25).

81 Higgins (n 31).

82 Ratner (n 77).

in *Urbaer S.A. v. Argentine Republic*, where Spanish water companies challenged Argentina's measures during an economic crisis, and Argentina counterclaimed that the investors violated the human right to water under international law.⁸³ The ICSID tribunal held that corporations can be directly bound by human rights obligations derived from international treaties, rejecting the claimants' argument that such duties apply solely to states. This ruling is directly relevant as it affirms MNCs' capacity to bear independent international legal responsibilities, reinforcing the thesis that normative recognition of their subjectivity is both feasible and necessary for effective human rights protection. Ultimately, outdated assumptions that only states violate rights and that governments reliably ensure compliance no longer apply, necessitating the elevation of MNCs to the status of subjects.

Accordingly, the question raised earlier in this text regarding the normative integration of multinational corporations into the international legal order can, by invoking this evolving doctrine on subjects of international law, be answered in the affirmative. In both economic and political terms, these non-state actors rank among the most influential participants in the contemporary international system, endowed with substantial potential to contribute positively to, or conversely frustrate, the promotion and protection of global public goods. Therefore, in view of the core objectives of the international legal order and the imperative for international law to align closely with evolving realities in the international system, a presumption, thus far unrebutted by states and international organizations, emerges in favor of multinational corporations being subject to international legal obligations to contribute to, inter alia, the promotion and protection of human rights, core labor and social standards, as well as the environment.

6 CONCLUSIONS

In synthesizing the evolving discourse on the international legal subjectivity of multinational corporations (MNCs), this article reaffirms the imperative to recognize their normative integration within the international legal order, particularly as secondary limited subjects in the realm of human rights. Rooted in the historical terminological diversity that distinguishes MNCs as profit-driven entities with cross-border operations, from early conflations with foreign direct investment to modern distinctions in UN and OECD instruments, this perspective underscores their detachment from national regulations and the consequent need for international frameworks to address their transnational impacts.

Key findings illuminate MNCs' contested status through three principal paradigms. The object paradigm, emblematic of classical state-centrism, relegates MNCs to passive entities under sovereign control, denying them independent rights or duties and channeling regulation through domestic implementation. In contrast, the partial subject paradigm

83 Case No ARB/07/26 (n 41).

attributes functional, state-dependent personality, enabling limited capacities such as invoking treaty protections in investment disputes while preserving state primacy. The participant paradigm further advances this evolution by emphasizing practical engagement over rigid classifications, viewing MNCs as active contributors to legal processes in a dynamic continuum shaped by globalization. Collectively, these paradigms reveal a shift from absolute state exclusivity toward inclusive recognition, evidenced by developments like the UN Guiding Principles on Business and Human Rights, which impose responsibilities to respect rights amid accountability gaps in conflict zones and state-business nexuses.

The implications of this recognition extend profoundly to international relations and globalization, where MNCs' economic power rivals states, necessitating direct obligations to mitigate harms in human rights, labor standards, and environmental protection. Yet, limitations persist, including scholarly resistance rooted in fears of equating corporations with states and the non-binding nature of soft law instruments like the 2003 Draft Norms. Future directions should explore deeper operationalization of participant roles in specific regimes, such as investor-state arbitration or emerging treaties, to resolve these debates.

Ultimately, as power disperses beyond states, embracing MNCs' rebuttable presumption of normative responsibilities ensures international law's relevance, fostering a balanced order that promotes global public goods while adapting to societal transformations.

REFERENCES

1. Ahlborn C, 'Towards a Theory on the International Legal Personality of Corporations' (2025) 16 *Transnational Legal Theory* 43
2. Alvarez JE, 'Are Corporations "Subjects" of International Law?' (2011) 9(1) *Santa Clara Journal of International Law* 1
3. Arts B, *Non-State Actors in Global Governance: Three Faces of Power* (Preprint No 2003/4, Max-Planck-Projektgruppe Recht der Gemeinschaftsgüter 2003)
4. Baade HW, 'The Legal Effects of Codes of Conduct for Multinational Enterprises' (1979) 22 *German Yearbook of International Law* 11
5. Backer LC, 'Multinational Corporations as Objects and Sources of Transnational Regulation' (2007) 14(2) *ILSA Journal of International & Comparative Law* 499
6. Backer LC, 'Regulating Multinational Corporations: Trends, Challenges, and Opportunities' (2015) 22(1) *The Brown Journal of World Affairs* 153
7. Balding C and Wehrenfennig D, 'Theorizing International Organizations: An Organizational Theory of International Institutions' (2011) 2(1) *Journal of International Organization Studies* 7
8. Bentham J, *An Introduction to the Principles of Morals and Legislation* (Batoche Books 2000)

9. Boyle A and Chinkin C, *The Making of International Law* (OUP 2007)
10. Brierly JL, *The Law of Nations: An Introduction to the International Law of Peace* (4th edn, Clarendon Press 1949)
11. Bruderlein C, *The Role of Non-State Actors in Building Human Security: The Case of Armed Groups in Intra-State Wars* (Centre for Humanitarian Dialogue 2000)
12. Butt JS and Kousar F, 'Driving Sustainable Growth: The Corporate Sustainability Due Diligence Directive as a Catalyst (CSDDD) for Public Administration Reform and Corporate Accountability in the European Green Deal' (2024) 14(3) *The Journal of Accounting and Management* 7
13. Charney JI, 'Transnational Corporations and Developing Public International Law' (1983) 4 *Duke Law Journal* 748, doi:10.2307/1372465
14. Chesterman S, 'Lawyers, Guns, and Money: The Governance of Business Activities in Conflict Zones' (2010) 11(2) *Chicago Journal of International Law* 321
15. Clapham A, *Human Rights Obligations of Non-State Actors* (OUP 2006)
16. Dari-Mattiacci G and others, 'The Emergence of the Corporate Form' (2017) 33(2) *Journal of Law, Economics, & Organization* 193
17. Delbruck J, 'Third-Party Effects of Fundamental Rights Through Obligations Under International-Law' (1975) 12 *Law and State* 61
18. Deva S, 'Human Rights Violations by Multinational Corporations and International Law: Where from Here?' (2003) 19(1) *Connecticut Journal of International Law* 1
19. Dicken P, *Global Shift: Reshaping the Global Economic Map in the 21st Century* (4th edn, Sage Publications 2003)
20. Gatto A, *Multinational Enterprises and Human Rights: Obligations Under EU Law and International Law* (Edward Elgar 2011)
21. Goldsmith JL and Levinson DJ, 'Law for States: International Law, Constitutional Law, Public Law' (2009) 122(7) *Harvard Law Review* 1791
22. Higgins R, *Problems and Process: International Law and How We Use It* (OUP 1995) doi:10.1093/law/9780198764106.001.0001
23. Hosein H, 'UNSETTLING: Bhopal and the Resolution of International Disputes Involving an Environmental Disaster' (1993) 16(2) 6 *Boston College International & Comparative Law Review* 285
24. Hurd I, 'Theorizing International Organizations: Choices and Methods in the Study of International Organizations' (2011) 2(2) *Journal of International Organization Studies* 7
25. Ijalaye DA, *The Extension of Corporate Personality in International Law* (Oceana 1978)
26. Iriye A, *Global Community: The Role of International Organizations in the Making of the Contemporary World* (University of California Press, 2002)

27. Ismail AG and Arshad NC, 'Tracking the Pre-and Post-Colonial Banking: The Quest for Islamic Banking' (2010) 1 *Prosiding Perkem V*, Jilid 173
28. Jägers N, *Corporate Human Rights Obligations: In Search of Accountability* (Intersentia 2002)
29. Jägers N, 'The Legal Status of the Multinational Corporation Under International Law' in Addo MK (ed), *Human Rights Standards and the Responsibility of Transnational Corporations* (Kluwer Law Int'l 1999) 259, doi:10.1163/9789004637566_025
30. Jennings R and Watts A (eds), *Oppenheim's International Law*, vol 1: Peace (9th edn, 2008).
31. Jessup PC, *A Modern Law of Nations: An Introduction* (Macmillan 1948)
32. Johns F, 'The Invisibility of the Transnational Corporation: An Analysis of International Law and Legal Theory' (1994) 19(4) *Melbourne University Law Review* 893
33. Johnstone I, 'Law-Making by International Organizations: Perspectives from IL/IR Theory' in Dunoff JL and Pollack MA (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (CUP 2013) 266
34. Joseph S, *Corporations and Transnational Human Rights Litigation* (Hart Publishing 2004)
35. Joseph S, 'Taming the Leviathans: Multinational Enterprises and Human Rights' (1999) 46(2) *Neth. Int'l L. Rev.* 171, doi:10.1017/S0165070X00002394
36. Kamminga MT, 'Holding Multinational Corporations Accountable for Human Rights Abuses: A Challenge for the EC' in Alston P (ed), *The EU and Human Rights* (OUP 1999) 553, doi:10.1093/oso/9780198298069.003.0017
37. Kleinert J, *The Role of Multinational Enterprises in Globalization* (Kiel Studies - Kiel Studies, Springer 2004)
38. Krahmman E, 'From State to Non-State Actors: The Emergence of Security Governance' in Krahmman E (ed), *New Threats and New Actors in International Security* (Palgrave Macmillan 2005) 3
39. Liang YL, 'Reparation for Injuries Suffered in the Service of the United Nations' (1949) 43(3) *The American Journal of International Law* 460, doi:10.2307/2193639
40. Lima LC, 'Symposium on Advisory Opinion AO-32/25 on the Climate Emergency and Human Rights: The Principle of Common but Differentiated Responsibilities' (*Opinio Juris*, 1 October 2025) <https://opiniojuris.org/2025/10/01/symposium-on-advisory-opinion-ao-32-25-on-the-climate-emergency-and-human-rights-the-principle-of-common-but-differentiated-responsibilities/> accessed 20 November 2025
41. Malanczuk P, *Akehurst's Modern Introduction to International Law* (7th edn, Routledge 2002) doi:10.4324/9780203427712

42. Mégret F, 'The Nature of International Human Rights Obligations' in Moeckli D and others (eds), *International Human Rights Law* (OUP 2010) 124, doi:10.2139/SSRN.1472196
43. Menon PK, 'The International Personality of Individuals in International Law: A Broadening of the Traditional Doctrine' (1992) 1(1) Florida State University Journal of Transnational Law & Policy 151
44. Muchlinski P, 'Corporations in International Law', *Max Planck Encyclopedia of Public International Law* (2014) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1513> accessed 20 November 2025
45. Muchlinski P, *Multinational Enterprises and the Law* (3rd edn, OUP 2021)
46. Nowrot K, 'New Approaches to the International Legal Personality of Multinational Corporations Towards a Rebuttable Presumption of Normative Responsibilities' [1993] Journal of Global Legal Studies <https://esil-sedi.eu/wp-content/uploads/2018/04/Nowrot.pdf> accessed 20 November 2025
47. Parlett K, *The Individual in the International Legal System: Continuity and Change in International Law* (CUP 2011) doi:10.1017/CBO9780511921858
48. Paust JJ, 'The Reality of Private Rights, Duties, and Participation in the International Legal Process' (2004) 25(4) Michigan Journal of International Law 1229
49. Pavel CE, *Law Beyond the State: Dynamic Coordination, State Consent, and Binding International Law* (OUP 2021)
50. Peters A, *Beyond Human Rights: The Legal Status of the Individual in International Law* (CUP 2018)
51. Rasche A and Waddock S, 'The UN Guiding Principles on Business and Human Rights: Implications for Corporate Social Responsibility Research' (2021) 6(2) Business and Human Rights Journal 227, doi:10.1017/bhj.2021.2
52. Ratner SR, 'Corporations and Human Rights: A Theory of Legal Responsibility' (2001) 111 Yale Law Journal 443
53. Rinwigati P, 'The Legal Position of Multinational Corporation in International Law' (2019) 49(2) Jurnal Hukum & Pembangunan 376, doi:10.21143/jhp.vol49.no2.2009
54. Rinwigati Waagstein P, 'Corporate Human Rights Responsibility: A Continuous Quest for an Effective Regulatory Framework' (PhD thesis, Stockholm University 2009)
55. Shaw MN, *International Law* (8th edn, CUP 2017)
56. Van Nguyen K, 'Confronting Transnational Corporate Crime: Urgent Global Measures' (2024) 7(4) Access to Justice in Eastern Europe 421, doi:10.33327/AJEE-18-7.4-a000106

57. Weissbrodt D and Kruger M, 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights' (2003) 97(4) *American Journal of International Law* 901, doi:10.2307/3133689
58. Winstead N, 'Hack-Back: Toward a Legal Framework for Cyber Self-Defense' (*American University*, 26 June 2020) <https://www.american.edu/sis/centers/security-technology/hack-back-toward-a-legal-framework-for-cyber-self-defense.cfm> accessed 20 November 2025
59. Worster WT, 'Functional Statehood in Contemporary International Law' (2020) 46 *Brooklyn Journal of International Law* 39
60. Worster WT, 'Relative International Legal Personality of Non-State Actors' (2016) 42(1) *Brooklyn Journal of International Law* 207
61. Worthington M and Spender P, 'Constructing Legal Personhood: Corporate Law's Legacy' (2021) 30(3) *Griffith Law Review* 348, doi:10.1080/10383441.2021.2003742
62. Wouters J and Chané AL, *Multinational Corporations in International Law* (Working Paper No 129, KU Leuven 2013) doi:10.2139/ssrn.2371216
63. Zaman K, 'Navigating the Perils of a Banana Republic: Lessons from Pakistan's Economic Crisis' (2023) 1(1) *Politica* 33, doi:10.5281/zenodo.7715198

AUTHOR'S INFORMATION

Mohammed Alsudais

PhD (Law), Assistant Professor, College of Law, Al Yamamah University, Riyadh, Saudi Arabia
M_alsudais@yu.edu.sa

<https://orcid.org/0009-0007-0383-4704>

Corresponding author, solely responsible for preparing the manuscript.

Competing interests: No competing interests were disclosed.

Disclaimer: The author declares that their opinion and views expressed in this manuscript are free of any impact of any organizations.

RIGHTS AND PERMISSIONS

Copyright: © 2026 Mohammed Alsudais. This is an open-access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

EDITORS

Managing editor – Mag. Yuliia Hartman. **English Editor** – Robert Reddin.

Ukrainian language Editor – Mag. Liliia Hartman.

Arabic language Editor – Mag. Alaa Abdel.

ABOUT THIS ARTICLE

Cite this article

Alsudais M, 'Beyond the State Centric Binary: Evaluating Three Paradigms of Multinational Corporations' International Legal Subjectivity' (2026) 9(2) Access to Justice in Eastern Europe 1-28 <<https://doi.org/10.33327/AJEE-18-9.2-a000189>> Published Online 05 May 2026

DOI: <https://doi.org/10.33327/AJEE-18-9.2-a000189>

Summary: 1. Introduction. – 2. The Historical Evolution. – 3. The International Legal Subjectivity of Multinational Corporations: Evolving Perspectives and Contemporary Developments. – 3.1. *Terminological Diversity*. – 3.2. *The Question of Status*. – 3.3. *Conceptual Clarification: Subjectivity, Personality, and Participation*. – 4. Three Main Paradigms. – 4.1. *The Object Paradigm*. – 4.2. *The Partial Subject Paradigm*. – 4.3. *The Participant Paradigm*. – 5. Towards Greater Recognition of MNCS. – 6. Conclusions.

Keywords: *multinational corporations, international law, legal personality, object paradigm, partial subjects, participant paradigm.*

DETAILS FOR PUBLICATION

Date of submission: 27 Nov 2025

Date of acceptance: 16 Feb 2025

Online First publication: 05 May 2026

Last publication: May 2026

Was the manuscript fast-tracked? - No

Number of reviewer reports submitted in the first round: 2 reports

Number of revision rounds: 3 rounds

Technical tools were used in the editorial process:

Plagiarism checks - Turnitin from iThenticate

<https://www.turnitin.com/products/ithenticate/>

Scholastica for Peer Review

<https://scholasticahq.com/law-reviews>

<https://ajee-journal.com/responsible-use-of-ai-tools-in-publishing-with-ajee>

AI DISCLOSURE STATEMENT

The manuscript was written by the author. AI tools were used exclusively for spelling, grammar, and stylistic refinement, including addressing editorial feedback regarding scholarly tone and conciseness. No generative AI was used to create original content, research ideas, or legal analyses.

АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ЗА МЕЖАМИ ДЕРЖАВОЦЕНТРИЧНОЇ БІНАРНІСТІ: ОЦІНКА ТРЬОХ ПАРАДИГМ МІЖНАРОДНОЇ ПРАВОСУБ'ЄКТНОСТІ БАГАТОНАЦІОНАЛЬНИХ КОРПОРАЦІЙ

Мохаммед Алсудайс

АНОТАЦІЯ

Вступ. Традиційна державоцентрична система міжнародного права дедалі менше відповідає вимогам глобалізованого середовища, де багатонаціональні корпорації (БНК) мають економічну та регуляторну владу, що конкурує з суверенними державами. Це доктринальне відставання створює постійний «прогалину в управлінні», особливо щодо корпоративної відповідальності за права людини та вплив на навколишнє середовище. Використовуючи доктринальний дизайн правового дослідження, ця стаття аналізує договори, судові висновки та «м'яке» право, щоб оцінити, як міжнародний правопорядок може краще інтегрувати ці недержавні суб'єкти.

Методи. У дослідженні еволюція статусу БНК класифікується за трьома парадигмами: об'єкти (пасивні суб'єкти, повністю підпорядковані державному посередництву), часткові суб'єкти (контекстно-специфічні носії прав, наданих державою, наприклад, в інвестиційному арбітражі) та учасники (функціональні суб'єкти, що сприяють динамічному правовому континууму).

Результати та висновки. Хоча наявні наукові дослідження визнають корпоративний вплив, ця стаття пропонує трирівневу таксономію, яка виходить за межі жорсткої бінарності суб'єкт-об'єкт. Зрештою, вона виступає за визнання БНК як вторинних обмежених суб'єктів та пропонує нову систему спростованих презумпцій для нормативної відповідальності. Узгоджуючи правові зобов'язання з функціональним глобальним впливом, цей підхід прагне відновити актуальність міжнародного права в плюралістичному світовому порядку.

Ключові слова. Багатонаціональні корпорації, міжнародне право, правосуб'єктність, об'єктна парадигма, часткові суб'єкти, парадигма учасника.

ABSTRACT IN ARABIC*

مقال بحثي

ما وراء الثنائية المتمحورة حول الدولة: تقييم ثلاثة نماذج للذاتية القانونية الدولية للشركات متعددة الجنسيات

السديس محمد

الملخص:

أولاً: تمهيد: يواجه الإطار التقليدي للقانون الدولي العام، المرتكز على سيادة الدولة كشخص قانوني وحيد، تحديات متصاعدة في ظل تنامي نفوذ الشركات متعددة الجنسيات التي أضحت كيانات اقتصادية تضاهي الدول في قدراتها. وقد أدى هذا التحول إلى بروز "فجوة حوكمة" هيكلية تظهر بوضوح في عجز الآليات الدولية الحالية عن مساءلة هذه الشركات عن انتهاكات المعايير الدولية، لاسيما في مجالات الأضرار البيئية العابرة للحدود وحقوق الإنسان. لذا، تبرز هذه الدراسة لمعالجة ضرورة فقهية ملحة تقضي بمراجعة المركز القانوني لهذه الشركات بما يتواءم مع معطيات النظام الدولي المعاصر.

ثانياً: المنهجية تعتمد الدراسة منهجاً قانونياً تحليلياً نقدياً لفحص المعاهدات الدولية والاجتهادات القضائية، مع التركيز على أدوات "القانون الرخو" (Soft Law) كالمبادئ التوجيهية للأمم المتحدة. وتقوم الدراسة ببناء نموذج تصنيفي ثلاثي الأبعاد لرصد التطور القانوني لهذه الشركات:

1. نموذج "محل القانون": الذي يعتبر الشركات كيانات سلبية تخضع للوساطة السيادية للدولة.
2. نموذج "الشخص القانوني الجزئي": الذي يمنحها أهلية مشتقة ومحدودة (كما في التحكيم الاستثماري).
3. نموذج "المشارك": الذي يركز على الدور الوظيفي الفعلي للشركات كفاعل ديناميكي في صياغة الحوكمة العالمية.

ثالثاً: النتائج والخاتمة: تخلص الدراسة إلى حتمية إدماج الشركات متعددة الجنسيات ككيانات فاعلة ذات "ولاية قانونية مفيدة" لموازنة حقوقها مع التزاماتها المعيارية. وتقدم الدراسة إسهاماً نوعياً من خلال طرح إطار معياري مبتكر يقوم على مبدأ القرائن القابلة للدحض (Rebuttable Presumptions؛ حيث يفترض هذا الإطار التزام الشركات بالمعايير الدولية الكونية (كحماية البيئة ومعايير العمل) بناءً على

*. The publication metadata in Arabic is presented as submitted by the authors.

حجم أثرها العالمي، ما لم يتم إثبات خلاف ذلك، مما ينقل عبء الإثبات القانوني ويضمن المساءلة دون المساس بمركزية الدولة كصاحبة شرعية تنظيمية عليا. تهدف هذه المقاربة إلى تعزيز فاعلية القانون الدولي وربطه بالواقع المعاصر لنظام متعدد الأطراف لا تقتصر فيه صياغة المسارات القانونية على الدول وحدها.

الكلمات الرئيسية: الشركات متعددة الجنسيات، القانون الدولي العام، الشخصية القانونية الدولية، حوكمة الشركات، القوانين.