

# МІЖНАРОДНЕ ПРАВО. ПОРІВНЯЛЬНЕ ПРАВознавство

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**G. V. Logvinskyi**, Doctor of Philosophy in Law,  
member of the Ukrainian Bar

## BALANCING INTERNATIONAL INVESTMENTS AND RESPONSIBILITY IN HUMAN RIGHTS CONTEST

*International investment presents a lucrative opportunity. However, it is important to strike a balance between maximizing profits and our responsibility to protect human rights. Therefore, advocating for legal accountability that obligates us to safeguard human rights and ensures that our investments benefit everyone, not just a privileged few, becomes imperative. For centuries, developed countries have gained benefits from exploiting labor and manipulating developing ones. However, the international investment industry lacks binding laws to hold its actors accountable for upholding international human rights standards. This lack of legal accountability has resulted in businesses in developing nations receiving a fraction of the fair compensation they deserve. As a result, developing regions are among the most economically deprived places in the world. These regions often lack basic necessities formulated by the UN SDGs and International human rights standards. International investors, through their local legislation and practices, are attempting to achieve a balance between profits and human rights, thereby decolonizing the system. The EU is also currently considering a corporate due diligence proposal that aims to address these injustices. If implemented, the directive would impose binding due diligence responsibilities on European companies and companies operating within the EU to ensure their supply chain operations meet a certain standard of sustainability and human rights. This represents a significant step towards ensuring fair compensation, better working conditions and basic human rights for producers in developing nations. Nevertheless, despite these advances, significant gaps persist within national criminal laws that fail to hold legal entities, particularly international corporations, fully accountable for their actions. This quasi-responsibility loophole undermines efforts to combat human rights abuses within the realm of international business operations, perpetuating a cycle of exploitation and impunity. To effectively address these shortcomings and promote genuine accountability, it is imperative to prioritize the following key areas: international business practices, supply chain management, human rights protection, quasi-criminal responsibility, sustainability initiatives, and the overarching goal of decolonization.*

**Key words:** international business, chain supply, human rights abuse, quasi-criminal responsibility, sustainability, decolonization.

### **Г. В. Логвинський. Баланс між міжнародними інвестиціями та відповідальністю за дотримання прав людини**

*Міжнародні інвестиції за визначенням повинні бути прибутковими, але важливо збалансувати їх з відповідальністю бізнесу за дотримання прав людини. Саме тому існує необхідність аналізувати юридичну відповідальність, яка зобов'язує інвестора захищати права людини та гарантувати, що міжнародні інвестиції приносять користь усім, а не лише обраним. Протягом історії динаміка міжнародних інвестицій часто сприяла розвиненим країнам за рахунок експлуатації праці та ресурсів країн, що розвиваються. Ця експлуатація, при відсутності заходів легітимної протидії, увічнила систему, в якій підприємства в регіонах, що розвиваються, отримують неадекватну компенсацію і працюють у незадовільних умовах праці. До того ж міжнародній інвестиційній індустрії бракує обов'язкових регуляторів, які б зобов'язували її суб'єктів відповідати за дотримання міжнародних стандартів у сфері захисту прав людини. Відсутність юридичної відповідальності призвела до того, що бізнес у країнах, що розвиваються, отримує лише частину справедливої компенсації, на яку він заслуговує. Як наслідок, регіони, що розвиваються, є одними з найбільш економічно неблагополучних у світі. У цих регіонах часто бракує базових потреб, сформульованих у Цілях сталого розвитку ООН та міжнародних стандартах захисту прав людини. Міжнародні інвестори, використовуючи місцеве законодавство і практику, намагаються досягти балансу між прибутком і правами людини, тим самим деколонізуючи систему. Хоча, на жаль, не усі ці спроби є логічно завершеними та вдосконалими. Наразі ЄС також розглядає пропозицію щодо Директиви про корпоративну належну обачність, яка має на меті усунути цю несправедливість. Якщо ця директива буде реалізована, то на європейські компанії та компанії, що працюють в межах ЄС, буде покладено обов'язкову відповідальність за проведення належної обачності, щоб забезпечити відповідність їхніх операцій у ланцюгах поставок певним стандартам сталого розвитку та дотримання прав людини. Це значний крок до забезпечення справедливої компенсації, кращих умов праці та дотримання основних прав людини для виробників у країнах, що розвиваються. Проте, незважаючи на ці досягнення, в національному кримінальному законодавстві залишаються значні прогалини, які не дозволяють юридичним особам, зокрема міжнародним корпораціям, нести повну відповідальність за свої дії. Ця*

*квazівідповідальність підриває зусилля по боротьбі з порушеннями прав людини у сфері міжнародних бізнес-операцій, увічнюючи цикл експлуатації та безкарності. Для того, щоб ефективно усунути ці недоліки та сприяти справжній підзвітності, необхідно вжити подальших заходів. Для ефективного усунення цих недоліків і сприяння справжній підзвітності необхідно визначити пріоритети в таких ключових сферах: міжнародна бізнес-практика, управління ланцюгами поставок, захист прав людини, квazікримінальна відповідальність, ініціативи зі сталого розвитку, а також всеосяжна мета деколонізації.*

**Ключові слова:** міжнародний бізнес, ланцюг поставок, порушення прав людини, квazікримінальна відповідальність, сталий розвиток, деколонізація.

**Formulation of the problem.** Throughout history, the dynamics of international investments have often favored developed nations at the expense of exploiting labor and resources in developing countries. This exploitation, facilitated by a lack of stringent laws, has perpetuated a system where businesses in developing regions receive inadequate compensation while enduring substandard working conditions. Consequently, these areas remain among the most economically deprived in the world, struggling to achieve even the basic standards outlined in the Sustainable Development Goals (SDGs). In response, there is a growing movement within the international investment community to foster a more equitable balance between profitability and the protection of human rights, effectively challenging and decolonizing the prevailing system.

The European Union (EU) is at the forefront of this endeavor, actively considering a corporate due diligence proposal designed to rectify these injustices. Should this proposal come to fruition, it would mandate binding due diligence obligations for European companies and those operating within the EU, ensuring that their supply chain activities adhere to established standards of sustainability and respect for human rights. Such measures represent a pivotal step towards achieving fair compensation, improving working conditions, and safeguarding fundamental human rights for producers in developing nations. Policymakers, businesses, civil society organizations, and individuals are urged to take proactive steps to uphold human rights, foster accountability, and drive meaningful change. By prioritizing human dignity, justice, and sustainability, collective efforts can pave the way for a world where human rights are not just ideals but tangible realities.

However, despite these strides, significant gaps persist within national criminal laws that fail to hold legal entities, particularly international corporations, fully accountable for their actions. This quasi-responsibility loophole undermines efforts to combat human rights abuses within the realm of international business operations, perpetuating a cycle of exploitation and impunity.

**Analysis of recent research and publications.** Theoretical and methodological issues of investments, businesses, and human rights are primarily analyzed in different analytical reports and publications like Alevtyna Sanchenko's 2022, State of Implementation of the Business and Human Rights Chapter of the National Human Rights Strategy of Ukraine, Integration of the UN Guiding Principles on Business and Human Rights to National Human Rights, Recovery and Peacebuilding Strategic Documents, report prepared for UNDP [1] or Guiding Principles on Business and Human Rights at 10: taking stock of the first decade: Report 2021 of the Working Group on the issue of human rights and transnational corporations and other business enterprises [2], national legislation [3–5], works of the academia [6–8]. A huge amount of work is done. But some issues ought to be clarified.

**The article aims** to show that the safeguarding and advancement of human rights are crucial in the current era of globalization and international investment practice. This ensures that every person should be treated with fairness, impartiality, and respect. It covers economic, cultural, technological, and environmental domains.

**Presenting main material.** Some of the key challenges in investment misuse include the erosion of labor rights, threats to cultural diversity, privacy concerns in the digital age, and environmental degradation. Notwithstanding these challenges, there are opportunities for progress and positive change. This includes strengthening international cooperation, empowering marginalized communities, and fostering cross-cultural dialogue.

To effectively address these shortcomings and promote genuine accountability, it is imperative to prioritize the following key areas: international business practices, supply chain management, human rights protection, quasi-criminal responsibility, sustainability initiatives, and the overarching goal of decolonization.

**International Business Practices:** As the world becomes more connected, investing internationally has become a crucial aspect of economic progress and advancement. The current landscape of international investments is characterized by a complex web of transactions and relationships spanning across various jurisdictions. While this interconnectedness offers opportunities for economic growth and development, it also creates avenues for exploitation and abuse. Therefore, it is essential to establish clear guidelines and standards that govern the conduct of multinational corporations (MNCs) operating on a global scale. By promoting transparency, accountability, and ethical business practices, stakeholders can mitigate the adverse impacts associated with unchecked corporate power. In 2022, the Business and Human Rights in Ukraine study analyzed the current state of business and human rights in Ukraine. The study identified the following common challenges to business human rights in Ukraine:

Lack of guarantees for occupational safety and health and combating sexual harassment and discrimination in the workplace;

– violation of the minimum wage and subsistence minimum legislation;

- shadow wage payments;
- violations of personal data protection laws;
- negative impact of business on the environment [8–9].

As regulations and regulatory actions related to human rights continue to increase, companies face greater scrutiny over how they address any human rights issues that may arise from their business practices. Failing to do so may put a company's operations in a certain location at risk, and undermine their reputation and purpose. That's why one of the famous international investors, Black Rock, believes that long-term investors can benefit when companies implement processes to identify, manage, and prevent adverse human rights impacts that could expose them to material business risks [10].

**Supply Chain Management:** Supply chains serve as the backbone of global commerce, facilitating the movement of goods and services across borders. However, the dullness inherent in many supply chain operations often obscures the realities faced by workers at the grassroots level. To address this issue, companies must implement robust due diligence mechanisms that trace the origins of their products and ensure compliance with labor rights and environmental regulations. By fostering greater transparency and accountability throughout the supply chain, businesses can mitigate the risk of human rights abuses and promote sustainable development. However, as global supply chains extend beyond borders, they often encounter intricate human rights concerns, which pose a challenge for businesses, governments, and consumers alike. Striking a balance between the pursuit of profit and the protection of human rights has become a vital matter in today's global economy. International investment flows have surged in recent decades, driven by globalization, advances in technology, and trade liberalization. While these investments bring benefits such as job creation, infrastructure development, and economic growth to both host and investing countries, they also raise concerns about their impact on human rights, particularly in the context of colonizing businesses in developing countries and misusing global supply chains. Global supply chains are intricate networks that link producers, suppliers, manufacturers, and consumers across the world. They play a vital role in the global economy, enabling goods to be produced efficiently and cost-effectively. However, these chains often involve multiple countries with varying levels of protection for human rights, labor rights, and environmental standards. One of the most pressing issues in global supply chains is the protection of workers' rights. Many developing countries, where a significant portion of manufacturing takes place, have less stringent labor laws and enforcement mechanisms than developed countries. This can lead to exploitation, including child labor, forced labor, unsafe working conditions, and inadequate wages. Companies sourcing products from these regions face ethical dilemmas and reputational risks associated with human rights abuses in their supply chains. To address these challenges, stakeholders must work together to promote responsible business practices and ensure respect for human rights throughout the supply chain. Governments play a crucial role in establishing and enforcing regulations that protect human rights, labor rights, and the environment. They can also provide incentives for companies to adopt responsible practices and penalize those that fail. While little effective legislation currently exists to address these issues, a new directive has been proposed that, if adopted, would provide more avenues for enforcing human rights due diligence in the supply chain. The implementation of the Unfair Trading Practices Directive and the UN Guiding Principles on Business and Human Rights shows that the European Union is aware of the issues in supply chains. However these actions do provide some essential rights, there is still a long way to go to provide protection of vulnerable producers. While the following section will include potential legislative proposals, it is essential to mention relevant legislation which is currently being reviewed. On 23 February 2022, the European Commission adopted a proposal for a Directive on corporate sustainability due diligence [11] According to a press release published by the commission, the proposal aims to foster sustainable and responsible corporate behavior throughout global value chains. Companies play a key role in building a sustainable economy. Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains. Following implementation, victims may take legal action for damages that could have been avoided with appropriate due diligence, directors' duties will expand to include the establishment and oversight of the implementation of due diligence and to integrate it into the corporate strategy, and Member States will be responsible for supervising new standards and may impose fines in case of non-compliance. However, this proposal has received some criticism. Firstly, it does not cover small and medium-sized enterprises (SMEs). Secondly, some critics are concerned about consolidating corporate rights and responsibilities under a single directive, as it may reduce their accountability for human rights violations.[12].

Sustainability initiatives refer to long-term efforts that prioritize environmental sustainability and social responsibility in addition to addressing immediate human rights concerns. In recent years, there has been growing recognition of the importance of integrating human rights considerations into international investment agreements and corporate policies. Initiatives such as the United Nations Guiding Principles on Business and Human Rights provide a framework for businesses to prevent and address human rights abuses in their operations and supply chains. Similarly, the Sustainable Development Goals (SDGs) call for action to promote inclusive and sustainable economic growth that respects human rights and protects the environment. Sustainable development is a comprehensive approach that involves not only economic growth but also environmental stewardship and social equity. Companies can contribute to sustainable development by integrating sustainability principles into their business models. This can lead to mitigating their environmental footprint, promoting inclusive growth, and fostering



resilience in the face of global challenges like climate change and resource depletion. By aligning corporate interests with sustainable development goals, businesses can simultaneously generate value for shareholders and advance the well-being of society as a whole. It should be of special interest to promote SDG-s protection with the help of international criminal policy as well as in substantial criminal law issues focusing on investments and abuse of law. From addressing poverty through criminal law reforms case studies and best Practices, the nexus between criminal law and hunger while combating food crimes and agricultural exploitation to the role of criminal law in promoting partnerships. enhancing global cooperation and capacity building through combating illicit financial flows and money laundering. Promoting responsible business practices in international investment is essential.

**Human Rights Protection:** At the heart of the international investment debate lies the fundamental principle of human rights protection. First of all, it is a number of international documents: The Universal Declaration of Human Rights adopted by the UN General Assembly, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights. At the national level, human rights are enshrined in the Constitution of Ukraine – Section II Rights, Freedoms and Duties of Man and Citizen. Civil and political human rights include: the right to life, the right to liberty, security of person, the right to freedom of movement and free choice of residence, prohibition of discrimination, the right to respect for private and family life, freedom of expression, the right to freedom of thought and conscience, prohibition of slavery, torture, and other rights. Despite the widespread recognition of these rights, vulnerable populations continue to face exploitation and discrimination in the pursuit of profit. To uphold the dignity and well-being of all individuals, it is imperative to integrate human rights considerations into every facet of business operations. This entails conducting comprehensive human rights impact assessments, engaging with local communities, and remedying any violations that may arise. By prioritizing human rights protection, businesses can foster inclusive growth and contribute to the realization of a more just and equitable society. It is important for companies to provide comprehensive disclosures on the processes they have in place to address human rights-related issues. However, it is also essential to recognize that the risks associated with human rights violations can vary based on factors such as industry, location, and the company itself. Therefore, there is no one-size-fits-all approach to addressing human rights concerns. Some of the risks associated with human rights violations can include poor working conditions, substandard wages, the use of forced or child labor, either by the company or their suppliers. This can expose a company to supply chain disruptions, health and safety incidents, strikes, international trade issues, and reputational damage. In addition, harm to a community or displacement, especially when using contested land or infringing on the rights of indigenous peoples, can damage community support and access to resources important to a company's operations. A discriminatory or hostile work environment can lead to legal issues and hinder a company's ability to attract and retain talent, overcome business challenges, and drive innovation and competitive differentiation. Finally, failure to manage content that encourages human rights violations or adhere to applicable privacy laws, standards, or expectations can lead to regulatory penalties and erode stakeholder trust [10]. Therefore, international investment policy should be based on helpful to our understanding of how companies manage human rights-related risks and impacts inherent in their businesses: Companies should also adhere to relevant mandatory and voluntary frameworks such as the UNGPs, OECD Guidelines, UN Global Compact, UN Sustainable Development Goals, the EU Corporate Sustainability Reporting Directive, and relevant Modern Slavery Acts of the UK and Australian Governments. Companies should engage also with affected stakeholders and provide access to remedies to address actual human rights impacts. This includes obtaining and maintaining the free, prior, and informed consent of Indigenous Peoples for business decisions that affect their rights, protecting cultural heritage sites, and providing access to resources and/or compensation in the event of displacement or destruction [10].

**Quasi-Criminal Responsibility:** One of the greatest challenges in holding international corporations accountable for human rights abuses is the absence of clear legal frameworks governing their conduct. While traditional criminal law primarily targets individuals, the transnational nature of corporate entities complicates efforts to assign culpability. As such, there is a pressing need to explore innovative approaches to quasi-criminal responsibility, whereby corporations can be held liable for their actions under international law [13]. By establishing mechanisms for legal redress and enforcement, policymakers can deter corporate misconduct and ensure that perpetrators are held to account [14]. One key challenge is the lack of harmonization and transparency in legal persons' responsibility procedures across different countries [15]. Varying regulations and bureaucratic hurdles can hinder the efficient movement of goods and capital. This not only affects the bottom line but also creates opportunities for unethical practices, such as market abuse and smuggling, which can undermine human rights and environmental protections. Interesting that criminal policy on the responsibility of foreign investors differs in Ukrainian substantial criminal law. Para 1 of Article 96-4 of the Ukrainian Criminal Code noting legal entities subject to criminal law measures deletes international organizations from the list of the subjects of money laundering, drug abuse and some illegal commercial practices. An international organization is understood as any group or association that extends beyond the borders of one country and has a permanent structure of bodies. It seems that the broader interpretation implies that transnational corporations could be considered as international organizations. It is believed that in this context, the term "international organizations" should refer to intergovernmental organizations that were formed by a group of states based on an international treaty for specific purposes. These organizations have a system of permanent

bodies, and international legal jurisdiction, and should be established under international law. By the way, para 2 of the abovementioned article proclaims that in other cases the court may apply criminal law measures to private and public law entities of residents and non-residents of Ukraine, including international organizations, other legal entities established in accordance with the requirements of national or international law.

Therefore, criminal systems often lack mechanisms to verify the sourcing of goods and capitals, and ensure compliance with market abuse, money laundering, labor rights and environmental standards. This leaves gaps in accountability and oversight, allowing exploitation and environmental degradation to occur unchecked. As a result, products entering global market may be tainted by human rights abuses.

**Decolonization:** By centering the voices and perspectives of marginalized communities, policymakers and practitioners can chart a path towards a more just and sustainable future, free from the legacies of colonial exploitation. Colonial investments have often resulted in negative economic impacts on the colonized nations. These investments were usually made with the primary goal of benefitting the colonial powers, often at the expense of the local populations. One of the major negative impacts of colonial investments was the extraction of natural resources from the colonized regions. Colonizers would exploit the natural resources of these lands, often depleting them without regard for the long-term consequences. This led to environmental degradation and loss of resources that could have been utilized for the benefit of the local populations. Additionally, colonial investments often disrupted local economies and traditional industries. Colonizers would impose their own systems of governance and economic structures, which frequently marginalized and disadvantaged the local populations. This led to a dependence on the colonial powers for trade and economic stability, perpetuating a cycle of unequal economic and political relationships. Furthermore, colonial investments typically did not prioritize the development of local infrastructure or industries. Instead, investment was focused on projects that would directly benefit the colonial powers, such as plantations or mines. This lack of investment in local infrastructure hindered the economic growth and development of the colonized nations, leaving them at a significant disadvantage even after decolonization. Summarizing that we could point out that, the adverse economic effects of colonial investments continue to have long-term consequences for previously colonized countries. By recognizing and dealing with these legacies of exploitation, policymakers and practitioners can strive toward a fairer and more sustainable future that uplifts marginalized communities and promotes economic self-reliance and development.

**Conclusions.** In conclusion, international investment has the potential to drive economic development and improve living standards around the world. One crucial aspect that influences the integrity of international investments is the system of clearance and responsibility, which encompasses customs procedures, trade regulations, and compliance standards. Understanding how clearance systems interact with international investment and sustainability is essential for fostering responsible business practices and promoting social and environmental well-being on a global scale. However, this must be done in a manner that respects and protects human rights through standard due diligence in business procedures. By collaborating, governments, businesses, civil society, and consumers can establish a fair and sustainable global economy that upholds human rights and benefits all stakeholders.

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