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**Public Power in Private Enterprises: The Case of
Volkswagen and the Human Rights
Responsibilities of Lower Saxony**

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Abstract

This thesis examines the legal and ethical responsibilities of public shareholders in transnational corporations, focusing on the German federal state of Lower Saxony and its substantial stake in Volkswagen AG. Specifically, it investigates whether and to what extent Lower Saxony can be held accountable for human rights violations linked to Volkswagen's global operations, including in China, Brazil, and Russia. Using a hybrid methodology that combines legal framework analysis, case study research, and critical reflection, the thesis situates the analysis within evolving international, European, and national human rights instruments. These include the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, the German Supply Chain Due Diligence Act, and the EU Corporate Sustainability Due Diligence Directive. Particular attention is paid to the role of supervisory board structures under German corporate law and the unique powers granted to Lower Saxony under the Volkswagen Act. Drawing on academic critique from Nicola Faith Sharpe's analysis of governance failure during the Dieseldgate scandal, the thesis argues that Lower Saxony's structural influence and board-level representation dismisses any claim of having a passive role in Volkswagens business conduct, including but not limited to accountability and responsibility to safeguard certain human right standards. Ultimately, this thesis concludes that public shareholders must be held to a heightened standard of engagement in company's decision-making processes, and that Lower Saxony has a legal duty to proactively monitor and mitigate human rights risks in Volkswagen's operations by fully exercising the rights they are granted by the Volkswagen Act.

Keywords: Business and Human Rights, state responsibility, public shareholders, human rights due diligence

List of Abbreviations

Abbreviation	Full Term
BHR	business and human rights
HRO	Human Rights Office
IHRL	International Human Rights Law
NGO	Non-governmental organisation
UN	United Nations
OECD	Organisation for Economic Co-operation and Development
UNGPs	United Nations Guiding Principles on Business and Human Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ESCR	Economic, social and cultural rights
GC	General Comment
CESCR	Committee on Economic, Social and Cultural Rights
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
ARSIWA	Articles on the Responsibility of States for Internationally Wrongful Acts
HRC	Human Rights Council
ILO	International Labour Organisation
EU	European Union
ENNHRI	European Network of National Human Rights Institutions
CSDDD	Corporate Sustainability Due Diligence Directive
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
CJEU	Court of Justice of the European Union
LkSG	Lieferkettensorgfaltspflichtengesetz (English: Supply Chain Due Diligence Act)
AG	Aktiengesellschaft (joint-stock company under German law)
VW	Volkswagen
FAW	First Automotive Works
AktG	Aktiengesetz (English: German Stock Corporation Act)
ECCHR	European Center for Constitutional and Human Rights
GfvB	Gesellschaft für bedrohte Völker (English: Society for Threatened Peoples)
NCP	National Contact Point

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1. Introduction

The global reach of multinational corporations often outpaces the legal frameworks designed to govern their conduct, particularly concerning human rights, leaving millions of people at the risk of being harmed in their fundamental rights.¹ In recent years, the evolving field of business and human rights (BHR) has increased its focus on the accountability of transnational corporations for human rights violations occurring within their complex supply chains, acknowledging the growing influence multinational enterprises can have on the enjoyment of fundamental rights.² While the primary responsibility rests with states and the companies themselves, the role of a state as shareholders, especially those with substantial influence presents a complex and under-explored dimension of corporate accountability, further complicated by the persistent "accountability gap" in international law.³

This thesis investigates whether and to what extent entities like the German state of Lower Saxony, as a significant public shareholder in the Volkswagen Group, can or should be held partially responsible for human rights violations committed by the company or its affiliates and subsidiaries. This thesis does not examine the obligations of third countries to safeguard human rights. While the primary responsibility of states to protect the fundamental rights of those under their jurisdiction remains of critical importance, it is not the focus of this study. Rather, this thesis proceeds from the understanding that, in the current international order, the effective protection of human rights cannot be universally assumed. Consequently, the analysis centres on the home states' capability to enforce human rights obligations extraterritorially. It is this outward-looking duty to protect, grounded in international human rights law (IHRL), that may offer more immediate and pragmatic avenues to improve the protection of individuals negatively affected by transnational corporate conduct in jurisdictions with weak or absent human rights safeguards.

To explore this, this thesis draws on IHRL and states human rights obligations. It analyses the central UN framework, the UNGPs and its *Protect, Respect and Remedy* framework. To show current limitations of IHRL regarding states obligations, this thesis draws on the work of David Bilchitz in *Fundamental Rights and The Legal obligations of businesses*⁴, to help understand the different approaches towards the states duty to protect and the understanding of a states roles and how those can and need to be expanded upon.

¹ International Labour Organisation, ILO Business case: Achieving decent work in supply chains (<https://webapps.ilo.org/business-case/cases/supply-chains>) accessed 7 July 2025.

² According to the ILO, in Asia alone, more than 25% of all jobs are within company's supply chains

³ Larry Catá Backer, 'State-Owned Enterprises and the Global Human Rights Discourse' (2017) 50 *Vanderbilt Journal of Transnational Law*, 827–828; Amnesty International, *Corporate Accountability ; ImpACT International, Why Voluntary Business Schemes Fail to Protect Human Rights: A Call for Legal Accountability* (June 2025)

⁴ David Bilchitz, *Fundamental Rights and the Legal Obligations of Business* (Cambridge Studies in Constitutional Law, Cambridge University Press 29 October 2021) (<https://doi.org/10.1017/9781108895224>).

In the course of this analysis, the thesis examines key international and regional legal frameworks, including the ongoing UN Treaty on BHR negotiations, the OECD (Organisation for Economic Co-operation and Development) Guidelines for Multinational Enterprises⁵, and EU instruments, such as the Corporate Sustainability Due Diligence Directive (CSDDD)⁶ and the Regulation on products made with forced labour.⁷ Germany's Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz, LkSG)⁸ will be analysed as an example of a concrete legal manifestation of the global developments within the BHR field.

Whilst creating an overview of the currently applicable legal framework is important, it is equally important to investigate some of the current developments of law regarding BHR. Hence, when examining the legal framework, two current trends will be discussed. Those being the Omnibus I European Commission⁹ proposal and its critiques as well as plans by the newly formed German government to weaken the relatively recent LkSG and only apply it in case of *massive* human rights violations. Since these plans to weaken already existing legally binding laws, could constitute a violation of non-retrogression clauses as found in international law instruments such as the ICESCR, these will be also discussed as part of the analysis.

In the end this thesis aims to not only show the gap in regulation and therefore accountability, in public shareholders' responsibilities regarding supply chain due diligence in certain constellations but also show how the lack of publicly available policy papers by both, the German government and the state of Lower Saxony, regarding their influence in decision making in multinational enterprises like Volkswagen (VW) constitute a democratic deficit.

1.1 Methodology

This thesis employs a hybrid methodological approach, combining elements of normative legal research, case study analysis, and critical legal-political reflection. This multidimensional strategy is necessary given the nature of the research question: whether and to what extent the German federal state of Lower Saxony can or should be held responsible for human rights violations arising from the operations of a multinational corporation (i.e. VW) in which it holds significant shares. At its core, the thesis undertakes a legal framework analysis to examine existing international, regional, and national norms in the field of business and human rights. Special attention is paid to identifying legal gaps in accountability and approaches towards mitigating them. The

⁵ UN Human Rights Council, Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights (UN Doc A/HRC/RES/26/9, 14 July 2014).

⁶ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 2024.

⁷ Regulation (EU) 2024/3015 of the European Parliament and of the Council of 27 November 2024 on prohibiting products made with forced labour on the Union market and amending Directive (EU) 2019/1937 2024, [2024] OJ L, 12.12.2024.

⁸ Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz – LkSG) 2021.

⁹ European Commission, Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements (COM(2025) 81 final, February 2025).

dynamic legal context of BHR is crucial, as some relevant legal instruments are still evolving. Therefore, the CSDDD and the European Commission's Omnibus I proposal, the newly elected German Governments' stance on the LkSG and the ongoing development of a UN BHR treaty will be given special attention to. The selection of legal frameworks is based on their relevance to the normative and jurisdictional landscape in which both VW and the state of Lower Saxony operate. Instruments such as the ICESCR, CSDDD and the LkSG not only apply to corporate conduct but also impose direct and indirect duties on state actors as regulators, shareholders, or facilitators of transnational business. Furthermore, a case study approach is used to ground this legal analysis in a concrete and politically salient example: the relationship between VW and the State of Lower Saxony. VW's unique governance structure, characterised by the Volkswagen Act, Lower Saxony's 20% voting stake and supervisory board representation creates a powerful illustration of how state actors influence corporate conduct. This case serves as a proxy to reflect on broader patterns, not only within Germany, but also possibly across other EU Member States where similar ownership and regulatory relationships may exist. The thesis thereby aims to offer insights that are applicable beyond this specific example.

The analysis is built on a wide range of sources, including primary legal materials such as international treaties, general comments, European and national legislation, and case law from the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). It further draws on academic literature dealing with corporate accountability, extraterritorial obligations, and the conceptual framing of state responsibilities, particularly the work of David Bilchitz on direct obligations. In addition, the thesis makes use of commentary and advocacy materials published by credible civil society organisations, including the European Center for Constitutional and Human Rights (ECCHR), Human Rights Watch, OECD Watch, and the Business & Human Rights Resource Centre. Lastly, corporate documents and articles, published by investigative journalists are used especially in relation to VW's conduct in high-risk regions such as Xinjiang and Russia where official company disclosures are limited, and reports from NGOs and the media can help foster public awareness.

The limitations of this thesis must also be acknowledged. Important to acknowledge is the lack of publicly available policy documents or official government statements from either the German federal government or the Lower Saxony state government regarding their approach to human rights responsibilities as shareholders. The thesis, therefore, cannot fully assess whether the state has implemented measures to fulfil its human rights obligations within corporate governance structures such as the supervisory board of VW. As such, some of the conclusions are necessarily based on implications drawn from the available evidence rather than from direct admissions or policy disclosures.

Finally, while this research does not claim to establish definitive legal liability for the State of Lower Saxony or the Federal Republic of Germany under current international law, it does argue that such responsibility may become increasingly plausible, especially in light of emerging legal reforms, normative development, and future binding instruments at the international level.

2. International, regional, and national instruments

In order to critically assess the responsibilities of public shareholders such as the State of Lower Saxony as well as the human rights obligations of MNEs like VW, this chapter provides an overview of the legal frameworks relevant to BHR as well as state responsibilities. The first part focuses on the legal norms that govern the conduct of VW as a corporate actor. These include international and regional frameworks, that establish due diligence obligations for companies operating within global value chains, such as the CSDDD and the German LkSG. These instruments, while varying in legal status and scope, make up the standards of responsible corporate behaviour that companies like VW are expected to uphold. The second part turns to the legal frameworks that concern the responsibilities of states as regulators, shareholders, and participants in global markets.

That section explores whether and to what extent states are legally obligated to prevent, investigate, and remedy corporate-related human rights abuses, with a focus on those committed extraterritorially as those are the most relevant for the case of VW. It draws on the General Comment No. 24 to the ICESCR, ECtHR jurisprudence and the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA). It also incorporates further theoretical contributions from scholar David Bilchitz, whose "expanding state model" challenges minimalist views of state responsibility by emphasising the duty of states to actively regulate corporate actors over which they exercise influence, especially when they hold ownership stakes.

This structure reflects the separation between the duties that bind corporations and those that bind states. While overlapping at times, for instance in instruments like the UNGPs, which articulate both corporate responsibilities and state duties, the distinction allows for a more precise evaluation of the legal and normative expectations placed on VW and its public shareholder, Lower Saxony. By clearly distinguishing between corporate and state responsibilities, this chapter lays the legal groundwork for the critical evaluation in later parts of this thesis, particularly regarding Lower Saxony's role in shaping or failing to shape corporate conduct through its supervisory board representation and veto powers under the Volkswagen Act.

2.1 Business and human rights framework

2.1.1 The United Nations Guiding Principles on business and human rights

The UNGPs, which were unanimously endorsed by the UN Human Rights Council (HRC) in 2011¹⁰, establish a global standard for preventing and addressing the risk of adverse human rights impacts linked to business activity.¹¹ Developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, the UNGPs are structured around three pillars: the state duty to *protect* human rights, the corporate responsibility to *respect* them, and the need to ensure access to *remedy*.¹² In the same year, the OECD has revised its Guidelines for Multinational Enterprises (MNEs) to account for UNGPs.¹³ Despite their non-binding nature, the UNGPs have achieved widespread influence and were at the time ground-breaking.¹⁴ By emphasizing the importance of ongoing due diligence to prevent adverse impacts on human rights, instead of purely providing retroactive measures like remedies, they shaped the modern discourse on BHR significantly.¹⁵ They introduced the notion that businesses do have to meet a *responsibility to respect*, though they did not substantiate the extend of corporate obligations.¹⁶ They only went as far as declaring a minimum level of adherence to the '*International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work*'¹⁷ ¹⁸and introducing '*A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights*'¹⁹, by which they not only shaped the discussion about Human Right Due Diligence but led to its inclusion into hard law instruments (like the CSDDD).²⁰ They also serve as an important reference point for instruments, such as the previously mentioned OECD Guidelines, the CESCR General Comments²¹ and the preamble of the CSDDD.²²

Regarding businesses, the second pillar of the UNGPs sets out the corporate responsibility

¹⁰ UN Human Rights Council, Human rights and transnational corporations and other business enterprises (UN Doc A/HRC/RES/17/4, 6 July 2011).

¹¹ Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework 2011, UN Doc A/HRC/17/31.

¹² Harvard University, 'UN Guiding Principles' (<https://johnruggie.scholars.harvard.edu/un-guiding-principles>) accessed 19 June 2025.

¹³ OECD, OECD Guidelines for Multinational Enterprises, 2011 Edition (OECD Publishing 2011) (<https://doi.org/10.1787/9789264115415-en>) accessed 17 June 2025.

¹⁴ Robert McCorquodale, *Business and Human Rights: Elements of International Law* (Oxford University Press 2024) 4.

¹⁵ Surya Deva, Guiding Principles on Business and Human Rights: Implications for Companies (Social Science Research Network March 2012) (<https://papers.ssrn.com/abstract=2028785>) accessed 23 June 2025.

¹⁶ *ibid* 176; UNGPs, paras 11–15

¹⁷ *ibid* para 12.

¹⁸ consisting of the UDHR, ICESCR and ICCPR.

¹⁹ UNGPs, para 15 b.

²⁰ *ibid* para 17 commentary.

²¹ See for example CESCR GC No. 24 I. 2.

²² CSDDD, Preamble (5), (14), (59), (62).

to respect human rights. Unlike the state duty to protect, this responsibility exists independently of state action and applies to all business enterprises, regardless of size, sector, ownership, or structure.²³ Principle 11²⁵ establishes that businesses should avoid infringing on the human rights of others and address adverse impacts with which they are involved and frames respect of human rights as '*a global standard of expected conduct*'.²⁶ Principle 12 clarifies the understanding of human rights in the UNGPs is as a minimum constituting: the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, while the commentary further states that under certain circumstances (it mentions specific groups or populations that require particular attention like woman, children and persons with disabilities) need to be considered too. Principles 13 to 15 clarify that this includes both direct and indirect impacts, whether through their own operations or through business relationships. Companies are expected to implement human rights due diligence²⁷, which involves identifying, preventing, mitigating, and accounting for how they address their human rights impacts. In addition, businesses are expected to remediate adverse impacts they cause or contribute to²⁸ and to cooperate in providing access to remedy mechanisms²⁹, including mechanisms, ranging from judicial to non-judicial and from company-level to multi-stakeholder approaches. While the remedies' effectiveness can only be as high as the states and companies are willing to make them, the inclusion of a variety of processes is acknowledged as an important step by many.³⁰

Due to their legitimacy among states, businesses, and civil society, the Guiding Principles achieved the status of a widely recognised instrument that establishes an international standard of conduct for business with respect to human rights. However, especially the third pillar, access to remedy, remains particularly weak in practice with the Working Group on the issue of human rights and transnational corporations and other business enterprises advocating for a stronger role for National Human Rights Institutions (NHRIs) in facilitating access to remedies.³¹ Further, scholars like Surya Deva argue that the UNGPs do not manage to ensure compliance with human rights obligations by companies and over-rely on the first pillar, the states duty to protect.³²

To Summarise: While the UNGPs do not create binding legal obligations under international

²³ UNGPs, para 11 commentary.

²⁴ this differentiates them substantially from most supply chain due diligence laws, which as will be discussed under the sections on CSDDD and LkSG, frequently only apply to companies meeting certain thresholds.

²⁵ UNGPs, para 11.

²⁶ *ibid* para 11 commentary.

²⁷ *ibid* para 17–21.

²⁸ *ibid* para 22.

²⁹ *ibid* para 25–31.

³⁰ Guiding Principles on Business and Human Rights (n 15) 104.

³¹ Working Group on the issue of human rights, transnational corporations, and other business enterprises, The Role of National Human Rights Institutions in Facilitating Access to Remedy for Business-Related Human Rights Abuses (UN Doc A/HRC/47/39/Add.3, 22 June 2021).

³² Guiding Principles on Business and Human Rights (n 15) 101; Surya Deva, 'Protect, Respect and Remedy': A Critique of the SRSG's Framework for Business and Human Rights' in Karin Buhmann, Lynn Roseberry, and Mette Morsing (eds), *Corporate Social and Human Rights Responsibilities* (Palgrave Macmillan UK 2011) (http://link.springer.com/10.1057/9780230294615_5) accessed 23 June 2025, 116–124

law, they have become widely accepted as a global standard of expected conduct for businesses (what John Ruggie calls social norm) and have contributed to binding legislation in several jurisdictions, driving initiatives, such as Norway’s CSR White Paper³³ and the efforts towards a binding international treaty on BHR by the HRC as will be discussed in the next chapter. The UNGPs impact, goes beyond legislation too, as is shown by companies who have publicly committed to the UNGPs. The Volkswagen Group has a statement regarding their commitment to the principles on their website that states ‘*We align our business activities with the UN Guiding Principles on Business and Human Rights (UN Global Compact) to ensure sustainable and ethical business practices.*’³⁴ Other significant MNEs have also committed to them. Unilever for example publicly endorsed the principles as the first company to do so in 2011 and published its first stand-alone human rights report in 2015, using the UNGPs Reporting Framework.³⁵ Microsoft states, they have used ‘norms such as the UN Guiding Principles on Business and Human Rights to guide our diligence’.³⁶ Though they are widely accepted by MNEs, legal scholar and professor for Constitutional Law, David Bilchitz argues that the UNGPs (over-)reliance on voluntary compliance undermines the importance of the human rights potentially at stake.³⁷ Bilchitz also critiques the due diligence process, in particular for lacking a clear account of when a human rights impact becomes a rights violation, thus failing to provide substantive guidance for corporate behaviour.³⁸ Moreover, the UNGPs largely avoid recognising positive obligations for corporations, focusing instead on harm avoidance. This according to Bilchitz renders them insufficient in scenarios where proactive engagement is required, such as ensuring living wages or remedying structural discrimination.³⁹ As a sort natural evolution to the UNGPs which became more and more criticised for their non-binding nature and weak enforcement mechanisms, the UN HRC in 2014 agreed on starting the process towards a legally binding Treaty for BHR, which will be elaborated upon in the next section.

2.1.2 Negotiations on a United Nations treaty on business and human rights

In June 2014, the UN HRC adopted Resolution 26/9⁴⁰, which initiated the process of elaborating an internationally legally binding instrument to regulate the activities of transnational corporations and other business enterprises with respect to human rights. This resolution mandated

³³ Harvard University (n 12).

³⁴ Volkswagen Group, ‘Human Rights, Policy Statement of Volkswagen AG’ (April 2025) (<https://www.volkswagen-group.com/en/human-rights-16108#policy-statement-of-volkswagen-ag>) accessed 18 June 2025.

³⁵ Unilever, ‘Respect human rights’ (<https://www.unilever.com/sustainability/respect-human-rights/>) accessed 17 June 2025.

³⁶ Microsoft, ‘Microsoft Global Human Rights Statement’ (<https://www.microsoft.com/en-us/corporate-responsibility/human-rights-statement>) accessed 17 June 2025.

³⁷ Bilchitz, *Fundamental Rights and the Legal Obligations of Business* (n 4) 193–195.

³⁸ *ibid* 194–196.

³⁹ *ibid*.

⁴⁰ Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights (n 5).

the establishment of an Open-ended Intergovernmental Working Group (OEIGWG), chaired by Ecuador, and supported predominantly by countries from the Global South, most notably South Africa. The initiative emerged in response to perceived limitations of the UNGPs, particularly their non-binding nature and insufficient enforcement mechanisms.⁴¹

The primary purpose of the proposed treaty on BHR is to clarify the human rights obligations of transnational business enterprises and to prevent and mitigate human rights abuses associated with business activities through effective mechanisms of monitoring and enforceability.⁴² This is intended to fill a governance gap where transnational corporations often intentionally exploit jurisdictional limitations to avoid prosecution for human rights violations in host states. The treaty seeks to directly hold corporations liable under international law for human rights abuses, marking a significant shift from the traditional focus on state accountability.⁴³ Furthermore, it is expected to inspire⁴⁴ and reinforce domestic regulations, thereby strengthening national legal systems and ensuring greater protection and access to justice for victims of corporate-related human rights abuses. Additionally the treaty, in its current draft version, seeks to mandate states to ensure that business actors exercise HRDD (human rights due diligence).⁴⁵ The UN has been actively working towards establishing such a legally binding instrument to regulate the activities of transnational corporations and other business enterprises with respect to human rights.

As previously alluded to, the process towards this binding treaty commenced with the adoption of UN Human Rights Council Resolution 26/9 on June 26, 2014. This resolution established an OEIGWG with the explicit mandate to develop an international legally binding instrument. Since its inception, the OEIGWG has held ten sessions to negotiate the draft treaty.⁴⁶ These sessions involve discussions among member states, civil society organizations, and other stakeholders, leading to the publication of various revised drafts of the instrument with the current draft being the third version.⁴⁷ The negotiation process has been characterized by diverse per-

⁴¹ Radu Mares, 'The United Nations Draft Treaty on Business and Human Rights: an analysis of its emergence, development and potential' in *Research Handbook on Global Governance, Business and Human Rights* (Edward Elgar Publishing March 2022) (<https://www.elgaronline.com/edcollchap/edcoll/9781788979825/9781788979825.00009.xml>) ch 2.

⁴² Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights (n 5) 1; Zgjim Mikullovi, 'An Overview of the Proposed Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises' (9 March 2023) (<https://www.law.georgetown.edu/ctbl/blog/an-overview-of-the-proposed-legally-binding-instrument-to-regulate-in-international-human-rights-law-the-activities-of-transnational-corporations-and-other-business-enterprises/>) accessed 1 July 2025

⁴³ CIVICUS Lens, 'Business and Human Rights Treaty: a decade of struggle for corporate accountability' (20 February 2025) (<https://lens.civicus.org/business-and-human-rights-treaty-a-decade-of-struggle-for-corporate-accountability/>) accessed 1 July 2025.

⁴⁴ similar to how the UNGPs inspired various domestic legislations

⁴⁵ Office of the High Commissioner for Human Rights, Third Revised Draft of a Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (17 August 2021) (<https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf>) accessed 1 July 2025, art 6.

⁴⁶ Office of the High Commissioner for Human Rights, Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights (<https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc>) accessed 1 July 2025.

⁴⁷ Third Revised Draft of a Legally Binding Instrument to Regulate, in International Human Rights Law, the

spectives and ongoing debates on critical issues such as the scope of companies to be covered⁴⁸ and the extent of corporate liability.⁴⁹ Civil society organizations have also played an important role in advocating for the treaty and providing crucial inputs throughout the process. Businesses have also been involved in the drafting process and according to one report published by the Centre for Human Rights Erlangen-Nuremberg, have been favouring less stringent regulations. The report highlighted how the three main organisations, representing some businesses but acting in the name of the majority of businesses, in the drafting process have seemingly contradicted the more recent business-led efforts in favour of mandatory regulations regarding BHR.⁵⁰⁵¹

To contextualise the drafting process and the development of this treaty, the following section will examine an article by legal scholar Oliver De Schutter, published two years after the adoption of UN Resolution 26/9, when the direction of the treaty was less clear and more open regarding which direction it went. In his article '*Towards a New Treaty on Business and Human Rights*', De Schutter outlines four potential models, that he thought could be considered to shape the treaty.⁵² Firstly, he proposes a treaty that would primarily reinforce states' existing obligations under international law, particularly their extraterritorial duties to protect individuals from human rights abuses committed by corporations domiciled in their jurisdiction but operating abroad.⁵³ This model is grounded in the idea that effective state regulation remains central to addressing corporate impunity and De Schutter points out that this model is reflected in General Comments of the UN treaty bodies.⁵⁴ Secondly, De Schutter explores the option of a framework convention that would encourage state parties to adopt national action plans and implement context-specific regulatory mechanisms over time, thereby preserving flexibility while committing states to progressive action.⁵⁵ Thirdly, he considers a treaty that would establish direct human rights obligations for corporate entities themselves, shifting the focus away from state responsibility to corporate accountability through binding international norms.⁵⁶ However, he recognises the political resistance such a model might face.⁵⁷ Lastly, he suggests a treaty focused on mutual legal assistance and international cooperation to improve access to remedies for vic-

Activities of Transnational Corporations and Other Business Enterprises (n 45).

⁴⁸ i.e. whether it should apply to all businesses or only transnationally acting ones

⁴⁹ Business & Human Rights Resource Centre, 'Scope of a UN treaty on business and human rights: which companies should it apply to?' (8 March 2025) (<https://www.business-humanrights.org/en/latest-news/scope-of-a-un-treaty-on-business-and-human-rights-which-companies-should-it-apply-to/>) accessed 1 July 2025.

⁵⁰ Stephanie Regalia and others, Corporations in the UN Business and Human Rights Treaty Negotiations (April 2025) (https://media.business-humanrights.org/media/documents/Corporations_in_the_UN_BHR_Treaty_Negotiations_Final_Report_CHREN_April_2025.pdf) accessed 1 July 2025, 5.

⁵¹ Business & Human Rights Resource Centre, Companies & investors in support of mHREDD (May 2024) (<https://www.business-humanrights.org/en/big-issues/governing-business-human-rights/companies-investors-in-support-of-mhrdd/>) accessed 1 July 2025.

⁵² Oliver De Schutter, 'Towards a New Treaty on Business and Human Rights' (2016) 1(1) Business and Human Rights Journal 41 (<https://doi.org/10.1017/bhj.2015.5>).

⁵³ *ibid* 44–47.

⁵⁴ Specifically, he points to GC No. 31 para. 8

⁵⁵ De Schutter (n 52) 55–58.

⁵⁶ *ibid* 58–62.

⁵⁷ *ibid* 62.

tims, especially in cross-border scenarios where jurisdictional gaps hinder justice.⁵⁸ Ultimately, De Schutter advocates for a hybrid approach that combines the reinforcement of state obligations with provisions on international cooperation. Such a treaty, he argues, would be more politically viable and effective in bridging the implementation gap between voluntary standards such as the UNGPs and enforceable legal frameworks. The current draft version of the Treaty partially reflects his approaches, as it explicitly aims to clarify and facilitate states' obligations to respect, protect, fulfil, and promote human rights in the context of business activities, particularly those of a transnational character.⁵⁹ Furthermore, the draft addresses the imposition of legal obligations on corporations by requiring states to establish comprehensive domestic systems of legal liability for human rights abuses⁶⁰, the treaty also incorporates provisions for mutual legal assistance and international judicial cooperation⁶¹, aligning with De Schutter's emphasis on overcoming jurisdictional barriers to ensure effective remedies for victims. The holistic approach found in the current draft aligns to some degree with De Schutter's vision for a binding treaty that enhances both state accountability and access to justice in cross-border business-related human rights cases.

2.1.3 OECD guidelines for multinational enterprises on responsible business conduct

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct provide a government-backed, quasi-legal framework outlining expectations for MNEs in areas such as human rights, labour, environmental sustainability, and corporate due diligence.⁶² During the earlier stages of the drafting process for the CSDDD, the directive was meant to refer to the guidelines a lot⁶³, but during the development process of the CSDDD, those references became rarer.⁶⁴ For VWs operations, the Guidelines' General Policies are of particular interest. A. 1. states that [Enterprises should] 'Contribute to economic, environmental and social progress with a view to achieving sustainable Development'.⁶⁵ Combined with respect for the internationally recognised human rights of those affected by their activities⁶⁶ and ensuring transparency and integrity in lobbying activities⁶⁷, this could substantiate ground for a complaint before the

⁵⁸ De Schutter (n 52) 63–66.

⁵⁹ Third Revised Draft of a Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (n 45) art 6.1.

⁶⁰ *ibid* art 8.

⁶¹ *ibid* art 12.

⁶² OECD, 'OECD Guidelines for Multinational Enterprises on Responsible Business Conduct' (2023) (<https://doi.org/10.1787/81f92357-en>) accessed 1 June 2025.

⁶³ Monika Feigerlová, 'Influence of the OECD Guidelines and Jurisprudence in the Legislative Process of the EU Directive on Corporate Sustainability Due Diligence' (Otgontuya Davaanyam and Markus Krajewski eds, Springer Nature Switzerland 2025).

⁶⁴ *ibid* 214.

⁶⁵ OECD, '2023 Guidelines' (n 62).

⁶⁶ *ibid* general policies A.2.

⁶⁷ *ibid* A.5.

OECD's complaint mechanism, the National Contact Points (NCPs). While the Guidelines do not create legal obligations, they are operationalised through NCPs, which act as non-judicial grievance mechanisms.⁶⁸ As a multinational corporation headquartered in Germany, an OECD member state, VW is expected to adhere to these standards. VW has publicly committed to the Guidelines, particularly with regard to responsible raw materials sourcing and risk-based supply chain due diligence.⁶⁹ However, the practical implementation of these standards has been contested in the past. In 2007, the NGO Germanwatch submitted a complaint to the German NCP, alleging that VW's climate policies violated the environmental provisions of the Guidelines.⁷⁰ After the complaint's dismissal in 2007, a 2018 published NCP Peer-Review by the OECD criticised that the NCP did not find a violation of the Guidelines while not providing any further reasons as to how it reached that conclusion.⁷¹ Another complaint '*Gesellschaft für bedrohte Völker vs Volkswagen*' was filed on 28 April 2008 by the Society for Threatened Peoples (GfbV), a German human rights organization, against VW. The complaint alleged that VW's sponsorship of the Olympic torch relay in the lead-up to the 2008 Beijing Olympics indirectly supported human rights violations in Tibet. GfbV contended that by sponsoring the torch relay, VW was complicit in China's efforts to legitimize its control over Tibet, thereby violating the OECD Guidelines for Multinational Enterprises. The complaint was submitted to the German NCP. However, the NCP rejected the complaint, determining that VW's sponsorship did not constitute a breach of the OECD Guidelines. The NCP concluded that there was insufficient evidence to establish a direct link between VW's actions and the alleged human rights violations in Tibet.⁷² While the NCPs are "only" a non-judicial complaint mechanism, it would be reasonable to assume that VW's current business practices could again become part of a complaint before the German NCP as for example IV. 2 of the guidelines states that '*Within the context of their own activities, [companies should] avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.*'⁷³

⁶⁸ OECD, 'What are National Contact Points for RBC ?' (<https://mneguidelines.oecd.org/ncps/>) accessed 1 June 2025.

⁶⁹ Volkswagen Group, 'Volkswagen Group Publishes Third Responsible Raw Materials Report' (14 July 2023) (<https://www.volkswagen-group.com/en/press-releases/volkswagen-group-publishes-third-responsible-raw-materials-report-17465>) accessed 1 June 2025.

⁷⁰ Germanwatch, 'OECD Complaint against Volkswagen for Violation of Environmental Guidelines' (2007) (https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2007/20070507_Decided_complaint.pdf) accessed 1 June 2025.

⁷¹ OECD, 'OECD Guidelines for Multinational Enterprises: Germany – National Contact Point Peer Review' (2018) (<https://www.oecd.org/corporate/mne/Germany-NCP-Peer-Review-2018.pdf>) accessed 1 June 2025.

⁷² Gesellschaft für bedrohte Völker, 'Gesellschaft für bedrohte Völker v Volkswagen AG, OECD Watch Complaint' (28 April 2008) (<https://www.oecdwatch.org/complaint/gesellschaft-fur-bedrohte-volker-vs-volkswagen/>) accessed 1 June 2025.

⁷³ OECD, '2023 Guidelines' (n 62) IV. 2.

2.1.4 The EU Corporate Sustainability Due Diligence Directive

The EU's Corporate Sustainability Due Diligence Directive (CSDDD)⁷⁴, adopted in 2024, marks a significant regulatory development at the European level. It establishes mandatory human rights and environmental due diligence obligations for large companies and their subsidiaries operating in the EU, including third-country companies meeting specified thresholds.⁷⁵ As a company employing far more than the required minimum of 1000 and having an annual turnover that far exceeds the minimum of 450 Million Euro, VW falls under the scope, defined in Article 2 of the directive.⁷⁶ The directive obligates companies to implement a due diligence strategy that has to identify and assess actual and potential adverse impacts and need to prioritise them accordingly.⁷⁷ Furthermore, companies have to prevent and mitigate potential adverse impacts and bring actual impacts to an end or (where impossible to end them) minimise their effects.⁷⁸ Companies in the scope of the directive also have to provide remediation for actual adverse impacts as well as carrying out meaningful stakeholder engagement.⁷⁹ The CSDDD also introduces civil liability provisions, empowering affected individuals to bring claims against companies for harm resulting from inadequate due diligence.⁸⁰ Article 29 (1) (7) importantly also includes a provision to prevent companies 'forum shopping' a process where a company operating might try to structure its activities or contracts in a way that, through conflict of law, rules would apply the law of a non-EU country with weaker (or no) corporate due diligence civil liability standards. The CSDDD importantly also allows for penalties to be based on a companies' net worldwide turnover and where a subsidiary is responsible for an adverse impact, the parent companies net turnover is used for calculating the imposed fine⁸¹, which is important in ensuring that imposed fines achieve the goal of being so expensive, they can not reasonably fall within a company's normal operational costs, ensuring that companies comply to their obligations set forth in the CSDDD. Overall the CSDDD, presents an important effort to implement corporate responsibility at the EU level, setting a minimum standard and forcing member states to adopt national Corporate Sustainable Due Diligence legislation and implementing the UNGPs.⁸² Radu Mares, associate professor at the Raoul Wallenberg Institute of Human Rights also pointed out how especially the mitigatory measures included in the directive, are rather advanced and overall praised the CSDDD for the most part.⁸³ Furthermore, while differing opinions exist, many argue that

⁷⁴ CSDDD.

⁷⁵ *ibid* art 1 (1) (a), 5.

⁷⁶ *ibid* art 2.

⁷⁷ *ibid* art 9.

⁷⁸ *ibid* art 10, 11.

⁷⁹ *ibid* art 12, 13.

⁸⁰ *ibid* art 29 (1).

⁸¹ *ibid* art 27 (4).

⁸² OHCHR, 'Commentary on the Omnibus Proposal: 'EU proposal risks backsliding on historic Corporate Sustainability Directive'' (May 2025) (<https://media.business-humanrights.org/media/documents/ohchr-commentary-omnibus.pdf>) accessed 1 June 2025.

⁸³ Radu Mares, 'The Unintended Consequences of Mandatory Due Diligence: The Importance of Supportive Measures in the EU Corporate Sustainability Due Diligence Directive' (13 June 2024) (<https://verfassungsblog>).

the CSDDD does not introduce unnecessary bureaucratic burdens for companies.⁸⁴ However, political negotiations may significantly weaken what many thought to be the final version in 2024. With the European Commission reopening the negotiations about the directive in 2025 and proposing the so called "Omnibus I"⁸⁵ proposal, the directives' implementation timeline was extended to 2028, the scope of applicability narrowed, and the reporting obligations diluted. These proposed changes will be elaborated in the next section of this thesis.

2.1.5 The Commissions Omnibus I proposal and its critiques

The debate about the effectiveness of the CSDDD has already been immense but when the European Commission introduced its Omnibus I package in February of 2025 with the goal of simplifying the CSDDD, debates got even more heated with companies, NGOs and international institutions providing their own findings on the expected (in-)effectiveness of the amendments proposed to the directive. The OHCHR (Office of the High Commissioner for Human Rights) Working Group in BHR for example stated that the Omnibus I proposal is in fact '*not in alignment with the UNGPs*', criticising the amendment package and stating that '[the Omnibus I is] *representing a step back in advancing business respect for human rights, it backtracks on legal and practical certainty*'.⁸⁶ The Omnibus I package, amending the CSDDD was presented under the banner of '*simplification*'⁸⁷ but in order to achieve this simplification would significantly dilute the obligations set forth by the CSDDD. One proposed shift is in the scope of due diligence obligations. The Omnibus proposal narrows the CSDDD's due diligence requirements, focusing predominantly on a company's direct business partners within its value chain. While companies will still need to conduct in-depth assessments for indirect business partners, this will only be required if plausible information suggests adverse impacts.⁸⁸ This as the European Network of National Human Rights Institutions observed, marks a departure from the CSDDD's comprehensive risk-based approach and risks a regression in corporate accountability by fundamentally deviating from the UNGPs' expectation that companies bear responsibility for their entire supply chain.⁸⁹ The Omnibus I proposal also weakens stakeholder engagement, removing requirements

de/csddd-the-unintended-consequences-of-mandatory-due-diligence/) accessed 9 July 2025.

⁸⁴ ECCHR, 'Koalitionsverhandlungen: Das Lieferkettengesetz ist ein Erfolg' (13 October 2021) (<https://www.ecchr.eu/pressemitteilung/koalitionsverhandlungen-das-lieferkettengesetz-ist-ein-erfolg/>) accessed 1 June 2025.

⁸⁵ European Commission, Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements (COM(2025) 81 final, February 2025).

⁸⁶ The Role of National Human Rights Institutions in Facilitating Access to Remedy for Business-Related Human Rights Abuses (n 31); European Commission, 'Questions and answers on simplification omnibus I and II' (26 February 2025) (https://ec.europa.eu/commission/presscorner/detail/en/qanda_25_615) accessed 18 June 2025

⁸⁷ *ibid.*

⁸⁸ *ibid.* 2.

⁸⁹ European Network of National Human Rights Institutions, 'ENNHRI raises important concerns over the European Commission's Omnibus I proposal' (March 2025) (<https://ennhri.org/wp-content/uploads/2025/03/ENNHRI-statement-on-the-omnibus-proposal-I.pdf>) accessed 1 June 2025.

to consult affected groups or national human rights institutions at key decision points and reduces monitoring of due diligence effectiveness from annually to once every five years.⁹⁰ It also eliminates the CSDDD’s uniform civil liability regime, which would mean abandoning the directive’s EU-wide mechanism for holding companies liable and removing the provision allowing civil society organisations to represent victims in court,⁹¹ something that is of enormous importance for many people seeking civil liability. In the Case of *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*⁹², the Grand Chamber of the ECtHR repeatedly pointed towards the important role that NGOs play in representing victims in courts ‘*Secondly, there has been an evolution in contemporary society as regards recognition of the importance of associations to litigate issues of climate change on behalf of affected persons. Indeed, climate-change litigation often involves complex issues of law and fact, requiring significant financial and logistical resources and coordination [...], associations regularly appear as one of the applicants, or sometimes the sole applicant, or as a key intervener in the case.*’ while recognising a previous communication to Turkmenistan⁹³ ‘*In its findings [...], the Compliance Committee found that ‘Non-governmental organizations, by bringing together expertise and resources, generally have greater ability to effectively exercise their rights under the Convention than individual members of the public*’⁹⁴ Regarding access to justice, the Omnibus proposal also seeks to eliminate the obligation for member states to implement the CSDDD’s civil liability rules as “overriding mandatory provisions” meaning these provisions would no longer automatically apply even if a claim were not governed by the law of a specific member state as is currently the case under Article 29 (1) (7) CSDDD. This move, away from a unified EU civil liability regime represents a significant shift in the enforcement mechanism of the directive.

The OHCHR Working Group on Business and human rights has warned that stripping out these enforcement provisions would exacerbate the risk of legal fragmentation, undermine access to remedy for victims and ultimately weaken protections for workers and communities both in Europe and abroad.⁹⁵ Politically, the Omnibus I proposal has drawn sharp criticism for backtracking on the EU’s own sustainability commitments: it has been denounced by major human rights institutions as a capitulation to corporate lobbying at the expense of fundamental rights. The OHCHR and the ENNHRI have cautioned that the Omnibus I would undercut the “*letter, logic and spirit*” of the CSDDD and international standards, thereby eroding the EU’s credibility as a leader in responsible business conduct.⁹⁶ Even one of the most prominent arguments

⁹⁰ National Human Rights Institutions (n 89) 5.

⁹¹ United Nations Working Group on Business and Human Rights, Statement on Business and Human Rights on the European Commission’s “Omnibus simplification package” (2025) (<https://www.ohchr.org/sites/default/files/documents/issues/business/workinggroupbusiness/wgbhr-statement-19-03-2025.pdf>) accessed 18 June 2025.

⁹² *Verein KlimaSeniorinnen Schweiz and Others v Switzerland: App no 53600/20 (ECtHR, 9 April 2024)*, §497.

⁹³ ACCC/C/2004/05 (Turkmenistan)

⁹⁴ *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* (n 92) §142.

⁹⁵ Statement on Business and Human Rights on the European Commission’s “Omnibus simplification package” (n 91).

⁹⁶ OHCHR (n 82).

in favour of the Omnibus I proposal, economic concerns, are also criticised by economists as short-sighted. In an open letter, 90 economists from across Europe argue that robust due diligence rules are not a hindrance but rather a prerequisite for sustainable long-term growth, warning that any weakening of the CSDDD (and related Green Deal measures) will undermine human rights, environmental protection and Europe’s long-term economic resilience.⁹⁷ In sum, the Omnibus I proposal represents a significant retreat from the CSDDD’s strengths by narrowing its scope, easing pressure on companies to change harmful practices, and removing key legal teeth, a retreat that raises legal, political and economic concerns about the EU’s willingness to hold corporations accountable in the public interest.

The CSDDD, as adopted in 2024, represents a significant milestone in the EU’s establishment of binding standards for corporate human rights and environmental due diligence across global value chains. It obligates large companies such as VW to identify, prevent, mitigate, and remedy adverse impacts not only in their own operations and among Tier 1 suppliers, but also throughout their entire supply chain, including indirect business partners. While the CSDDD does not impose direct legal liability on public shareholders such as Germany or the State of Lower Saxony for domestic companies’ impact on Human Rights, its adoption has important implications for their investments in MNEs, particularly where corporate behaviour may expose these states to political or reputational risks. However, the proposed Omnibus I package, if adopted, poses a serious threat to the effectiveness of the CSDDD, and by extension, to the protection of human rights within EU-regulated business conduct. The proposal suggests substantial rollbacks, narrowing the scope of due diligence to Tier 1 suppliers by default, eliminating the mandatory civil liability regime, weakening stakeholder engagement requirements, and removing the obligation to disengage from high-risk suppliers. As argued by the OHCHR, these amendments risk undermining the international standard as established under the UNGPs. If adopted, Omnibus I would substantially dilute the directive’s regulatory impact, prioritising short-term economic and bureaucratic simplification over long-term sustainability and accountability. Nonetheless, as of July 2025, the proposal remains under negotiation and can still be opposed or revised by EU Member States.

2.1.6 EU Regulation 2024/3015 on Prohibiting Products Made with Forced Labour

In addition to the CSDDD, the European Union has adopted other legislative measures to address corporate involvement in human rights violations. This includes regulations on Conflict

⁹⁷ ‘Beyond Short-Term Profits: Why the EU must defend the Corporate Sustainability Due Diligence Directive and the Green Deal’ (19 May 2025) (https://www.fh-vie.ac.at/uploads/EN-Economists%E2%80%99-Statement-with-signatories-19-May-2025_2025-05-19.pdf) accessed 1 June 2025, (emphasising that far from undermining competitiveness, a strong CSDDD will enhance Europe’s sustainable growth, and cautioning that “weakening (the Directive) would undermine human rights, environmental protection, and Europe’s long-term economic resilience”).

minerals⁹⁸, Batteries⁹⁹ and Deforestation¹⁰⁰, but most importantly to this present study: Regulation (EU) 2024/3015¹⁰¹ on prohibiting products made with forced labour on the Union market. In force as of 13 December 2024, with full application from 14 December 2027 onwards, this regulation introduces a prohibition on products made, wholly or in part, with forced labour being placed or made available on the EU market or exported from the EU. Unlike the CSDDD, which imposes due diligence obligations on companies across their value chains, the forced labour regulation adopts a market access approach. Products found to be linked to forced labour can be investigated and withdrawn from the EU market by competent authorities, regardless of the economic operator's location or the product's origin. The regulation covers all stages of production and applies both to products manufactured within the EU and imported goods. This regulation reflects a growing consensus within EU law and policy that corporate human rights obligations are not limited to procedural due diligence but must also translate into substantive outcomes. The outright ban on forced labour products signals a shift towards harder forms of corporate accountability and the implementation of serious consequences, complementing the process-based obligations of the CSDDD and anticipating stricter enforcement mechanisms in global supply chains. Especially in the context of the Omnibus I proposal for the CSDDD, Regulation 2024/3015 represents an important development for BHR within but also abroad the EU as it introduces direct consequences for products made with forced labour. It exemplifies how different singular regulations in the EU could end up making up for some of the shortcomings of the Omnibus I proposal (if adapted).

2.1.7 The German Supply Chain Due Diligence Act

The German Supply Chain Due Diligence Act (LkSG)¹⁰², which entered into force in 2023 and became applicable to companies with at least 1,000 employees in 2024¹⁰³, is one of the first national laws implementing human rights due diligence in Europe, following the French Duty of vigilance law of 2017 and the Norwegian transparency due diligence act of 2021.¹⁰⁴ The LkSG

⁹⁸ Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas 2017, 2017/821, [2017] OJ L 130/1 (Regulation (EU) 2017/821).

⁹⁹ Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 2023, In force; EEA relevance; entry into application: 30 December 2025 (medium/large operators) and 30 June 2025 (SMEs).

¹⁰⁰ Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC 2023, In force from 18 February 2024; EEA relevance.

¹⁰¹ Regulation (EU) 2024/3015 of the European Parliament and of the Council of 27 November 2024 on prohibiting products made with forced labour on the Union market and amending Directive (EU) 2019/1937 2024.

¹⁰² LkSG.

¹⁰³ same requirement as currently under CSDDD

¹⁰⁴ Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre 2017, (1); Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act) 2021, Entered into force 1 July 2022

requires companies to conduct annual risk assessments, adopt preventative measures, establish complaint mechanisms, and report publicly on their due diligence efforts. It imposes administrative sanctions of up to 2% of global turnover for non-compliance. However, the LkSG is under threat of being repealed by the recently new formed coalition government of CDU/CSU and SPD. According to the coalition agreement, the LkSG will be repealed as part of an "Immediate Program for Bureaucracy Reduction" and replaced by the EU's Corporate Sustainability Due Diligence Directive with the coalition expressing support for the Commission's Omnibus Proposal.¹⁰⁵ However, as described previously, the CSDDD is not expected to take full effect until mid-2028. The planned repeal of the LkSG removes immediate sanctions for non-compliance, except in cases of "severe" human rights violations. The coalition's position itself in favour of the Omnibus I, whilst also claiming that they resolutely oppose all attempts to weaken global freedom and human rights and to restrict human rights defenders and civil society.¹⁰⁶ which seems to be driven by a short-time desire strengthen Germany's struggling economy without much regard for Human Rights globally and long-term. While the coalition and supporters of the repeal cite a reduction in bureaucracy for businesses, opponents like the European Center for Constitutional and Human Rights warn that this decision prioritizes corporate convenience over ethical responsibility.¹⁰⁷ Furthermore, studies from the former German government and the "Initiative Lieferkettengesetz" (Initiative Supply Chain Act) have proven the positive effects of Acts like the LkSG.¹⁰⁸ While for VW a possible repeal of the LkSG presents legal uncertainty, the effect it could have on Germany and how it could be held liable for providing a retrogressive action will be discussed in *The principle of non-retrogression*, in an upcoming section of this thesis, which explores the legal and theoretical framework of states responsibilities.

2.2 The legal doctrine of the state duty to protect

In order to assess whether and to what extent Germany, bears responsibility for human rights impacts linked to the operations of VW (either directly or indirectly, through the actions/omissions of its federal state Lower Saxony), it is necessary to examine the legal doctrine of the state duty to protect. This doctrine is especially relevant where human rights violations are committed by non-state actors, such as transnational corporations, and where state institutions either through action or omission may have enabled or failed to prevent such harms. Given that Lower Saxony

¹⁰⁵ CDU, CSU & SPD, Koalitionsvertrag der 21. Wahlperiode des Deutschen Bundestages – „Verantwortung für Deutschland“ (signed 5 May 2025, 5 May 2025) (<https://www.bundesregierung.de/resource/blob/195906/koalitionsvertrag-data.pdf>) 60.

¹⁰⁶ *ibid* 60.

¹⁰⁷ ECCHR, 'Q&A TWO YEARS INTO THE GERMAN SUPPLY CHAIN ACT' (https://www.ecchr.eu/fileadmin/Q_A_Zwei_Jahre_LkSG_EN.pdf) accessed 11 April 2025.

¹⁰⁸ Daniel Schönfelder and others, 'Lieferkettengesetz: Weniger Aufwand, Mehr Wirkung. Vorschläge Aus Der Praxis' (2025) (https://lieferkettengesetz.de/wp-content/uploads/2025/03/250320_Kurzgutachten_LkSG_Schoenfelder.pdf) accessed 19 June 2025; CSR-in-Deutschland, 'NAP Monitoring' (<https://www.csr-in-deutschland.de/DE/Wirtschaft-Menschenrechte/NAP/Ueber-den-NAP/Monitoring/monitoring.html>) accessed 11 April 2025

holds a significant stake in VW and exercises governance influence through its representation on the Supervisory Board, the question arises whether its passivity on said board, could amount to a breach of this duty or a level of complicity. Furthermore, this section of this thesis shows that these duties can arise extraterritorially when a state controls or exerts influence on a corporation's activities and the company or its suppliers/subsidiaries are involved in human rights violations in a country other than their host-state.

The state duty to protect refers to the obligation of states to take proactive steps to prevent, investigate, punish, and redress human rights abuses committed by private actors, including businesses over which States have jurisdiction.¹⁰⁹ This duty requires states to enact and enforce laws, regulate corporate conduct, and ensure access to effective remedies for affected individuals. Combined with the duty to respect and the duty to fulfil, these three make up the states' obligations towards human rights.¹¹⁰ Scholar David Bilchitz, in his work '*Fundamental Rights and the Legal Obligations of Business*', points out that, one rather prominent shortcoming of this approach is, that international law itself is a (traditionally) state-centred system. While also recognizing that nowadays, not only the state is bound to and by fundamental rights but that since MNEs can directly influence the enjoyment of fundamental rights too, they should be bound to them too.¹¹¹ In his works Bilchitz also points out that regional courts like the ECtHR have applied this doctrine¹¹² and that both individual applications and inter-state cases can only be brought to the ECtHR against state-parties.¹¹³ Since the court often has to deal with cases, wherein non-state actors are involved, it has applied an indirect approach to holding MNEs accountable. The Courts do that that, '*by claiming that states have positive obligations to protect individuals from violations by non-state actors.*'¹¹⁴ A more detailed look into the ECtHR jurisprudence regarding state duties will follow in chapter 2.2.6. *ECtHR jurisprudence.*

GC No. 24 puts an emphasis on state's obligations to respect, fulfil and protect and how a state's failure to ensure MNEs comply with international human rights norms and standards have had negative impacts on individuals' enjoyment of ESC rights.¹¹⁵ The comment only sets forth to clarify state duties under ICESCR which would support the idea that it also adheres to the understanding of the state being the primary duty-bearer.¹¹⁶ Regarding states obligations, it covers the obligation of non-discrimination as well the obligations to respect, to protect and to fulfil.¹¹⁷ In Paragraphs 25–37 the comment specifically goes into detail of extraterritorial

¹⁰⁹ General Comment No 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities 2017, UN Doc E/C.12/GC/24, para 11.

¹¹⁰ *ibid* para 10.

¹¹¹ Bilchitz, *Fundamental Rights and the Legal Obligations of Business* (n 4) 96–98.

¹¹² *ibid* 78.

¹¹³ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1950, ETS No 5, opened for signature 4 November 1950, entered into force 3 September 1953, art 34, 33.

¹¹⁴ Bilchitz, *Fundamental Rights and the Legal Obligations of Business* (n 4) 78.

¹¹⁵ GC No 24, para 1.

¹¹⁶ Which can be further deduced from the high number of GCs including states' (extraterritorial) obligations found in: GC No 15 para 31, 33, GC No 18 para 52, GC No 19 para 54, GC No 23 para 70.

¹¹⁷ GC No 24, para 7–24.

obligations, with Paragraph 25 emphasising the '*significance to the question of extraterritorial human rights obligations of States.*' because of the rising activities of MNEs and globalisation. This general comment goes to show that a state's duty to protect does not simply stop at its territory but must be extended to and applied extraterritorially as well.¹¹⁸

2.2.1 UNGPs approach to the state duty to protect human rights

Pillar I of the UNGPs, The State Duty To Protect affirms that states have the primary duty under international law to protect individuals from human rights abuses by third parties, including businesses. This duty requires states to take appropriate steps to prevent, investigate, punish, and redress human rights harms that occur within their territory and/or jurisdiction.¹¹⁹ The commentary to Principle 1 underscores that the state's role is not limited to passive observation but includes active regulation of business conduct and enforcement of business compliance. It points out that States *may* breach their IHRL obligations by failing to act. Principles 2 through 10 elaborate the operational dimensions of this duty. Notably, Principle 2 encourages states to make explicit their expectation that all businesses domiciled in their territory respect human rights throughout their operations, including abroad.¹²⁰ While this suggests an extraterritorial dimension to the duty, the principle stops short of recognising a binding obligation to regulate corporate conduct extraterritorially, as is clarified in the respective commentary to Principle 2. Principles 3 through 6 address the state-business nexus, particularly where the state exercises ownership, control, or provides substantial support (i.e. procurement, export credits).¹²¹ In such cases, the UNGPs emphasise that states have heightened responsibilities, given their policy leverage over business entities. Principle 4, for example, specifically obliges states to ensure that state-owned or controlled enterprises act in a manner consistent with human rights obligations, though the Principle and its commentary fail to establish clear lines of when these heightened responsibilities come into play. The commentary suggests that the closer the link between state and business, '*the stronger the State's policy rationale becomes for ensuring that the enterprise respects human rights*'¹²² and emphasises the need for states to ensure enterprises respect human rights, where they assert control over or own a business. Though the UNGPs do not establish any clear guidance on how the evaluation of the level of state control in enterprises should be done, it does come with significant implications for Lower Saxony, which will be discussed in the final chapter of this thesis, after it has been established how Lower Saxony is involved in VWs governance.

Of further importance to Lower Saxony's involvement in VW is Principle 7 of the UNGPs as it addresses business conduct in conflict-affected areas. Principles' 7 commentary specific-

¹¹⁸ The importance of which is reflected in GC No. 24 para 28.

¹¹⁹ UNGPs, principle 1.

¹²⁰ *ibid* principle 2.

¹²¹ *ibid* principle 3–6.

¹²² *ibid* commentary to principle 4.

ally states that '*Some of the worst human rights abuses involving business occur amid conflict over the control of territory, resources or a Government itself – where the human rights regime cannot be expected to function as intended.*'.¹²³ This acknowledgment is crucial, as it recognises the limitations of relying on host-state governance in jurisdictions where rule of law is fragile, or political interests are hostile to human rights enforcement. In such contexts, the burden on home states to provide guidance, oversight, and where necessary, restrict business activity becomes significantly greater. This observation is directly relevant to VW's sustained presence in China, including its joint venture in the Xinjiang region, and its (alleged) continued operations in Russia following the 2022 invasion of Ukraine, both regions where human rights institutions are either severely compromised or strategically repressed. The risks in such environments are not hypothetical but structural and raise questions about Germany's fulfilment of its duty to protect as it is set forth in the UNGPs, in line with the IHRL doctrine. This demonstrates that the normative expectations set by the UNGPs due to their non-binding nature can fail to be more than rhetorical. For example, in the case of VW's joint venture in Xinjiang, China, where severe human rights abuses have been documented, the UNGPs provide no binding mechanism for enforcing corporate obligations or compelling public shareholders like Lower Saxony to act.

2.2.2 General Comment No. 24 to the ICESCR

General Comment No. 24¹²⁴ (GC No. 24) by the Committee on Economic, Social and Cultural Rights (CESCR) affirms the traditional position under international human rights law that legal obligations are primarily borne by states. While the Comment recognises the impacts business activities can have on economic, social, and cultural (ESC) rights¹²⁵, it does not establish direct human rights obligations for corporate actors. Instead, it reiterates that states must respect, protect, and fulfil ESC rights, including via the regulation of business enterprises operating within their jurisdiction or under their control even extraterritorially.¹²⁶ Interestingly GC No. 24, para 5 stipulates that '*The present general comment therefore also seeks to assist the corporate sector in discharging their human rights **obligations** and assuming their responsibilities, thus mitigating any reputational risks that may be associated with violations of Covenant rights within their sphere of influence.*'¹²⁷ Traditionally under IHRL and Treaty Law, obligations are only imposed on duty bearers (states), meaning that states bear a duty to protect people from human rights violations. This traditional view, which can for example be found in the UNGPs comes with the notion that only states can *violate* human rights, while other actors adversely *impact* (the enjoyment of) human rights.¹²⁸ The wording by the CESCR could suggest a shift towards broadening the definition of duty-bearers, imposing obligations on businesses or, equally plausible, CESCR

¹²³ UNGPs, commentary to principle 7.

¹²⁴ GC No 24.

¹²⁵ *ibid* para 1.

¹²⁶ GC No 24, para 25–37.

¹²⁷ *ibid* para 5, emphasis added.

¹²⁸ UNGPs, para 17.

meant corporate human rights obligations under customary IHRL. However, while speculating about the exact wording of the CESCR and reasoning behind it would certainly be interesting, this thesis will continue to assess some of the General Comments, important to the discussion of state's duties. Paragraph 12 presents an important interpretation of the ICESCR and the obligation to respect in stating that '*The obligation to respect economic, social and cultural rights is violated when States parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights*'.¹²⁹ If found that Germany prioritized VWs interests, without sufficient justification, this could substantiate a complaint against Germany for violating the obligation to respect ESC rights.

Furthermore, the General Comment makes clear that states are obliged to provide *effective* access to remedies for victims of corporate infringements on ESC rights.¹³⁰ In light of the Omnibus I proposal as well as the proposed repeal of the LkSG and the significant limitations these developments would mean for victims regarding their effective access to remedies, this could substantiate a complaint against Germany for violating the obligations set forth by the Covenant.

This framework is important in the case of Germany, which has ratified both the ICESCR and the Optional Protocol to the ICESCR¹³¹, thereby accepting the competence of the CESCR to receive individual communications and inter-state complaints. This means that, should Germany fail to prevent or respond adequately to human rights violations linked to corporate actors, especially where it holds direct influence, such as through its shareholding in VW it could be held accountable. Lisa Pitz, legal advisor for the European Center for Constitutional and Human Rights further emphasised the importance of non-retrogression clauses contained in both the EU CSDDD¹³² and the ICESCR.¹³³ Especially regarding the ongoing development of CSDDD and LkSG, this could in the future be further ground for an inter-state complaint to the CESCR.

2.2.3 The principle of non-retrogression

The principle of non-retrogression is an important doctrine in international human rights law, particularly within the realm of ESC rights. It stipulates, that once a state has achieved a certain level of human rights protection, it must not take deliberate backward steps unless they are fully justified under the most stringent conditions. Such a clause can be found in Art. 2 (1) of the ICESCR, which stipulates that '*Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic*

¹²⁹ GC No 24, para 12.

¹³⁰ *ibid* para 14.

¹³¹ UN Treaty Collection, Status of Treaties: Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&clang=_en) accessed 18 June 2025.

¹³² CSDDD, art 1 2.

¹³³ International Covenant on Economic, Social and Cultural Rights 1966, 993 UNTS 3, adopted 16 December 1966, entered into force 3 January 1976, art 2 1.

and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.’, in essence, the term *progressively* creates a presumption against legal or policy measures that reduce the enjoyment of already guaranteed rights. In fact, General Comment No. 3 to the ICESCR elaborates *‘Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.’*¹³⁴ Furthermore important for Germany is Art. 1 (2) of the CSDDD, which includes a clause similar to, but more explicit than the non-regression clause in Art. 2 (1) ICESCR. The article declares *‘This Directive shall not constitute grounds for reducing the level of protection of human, employment and social rights, or of protection of the environment or of protection of the climate provided for by the national law of the Member States or by the collective agreements applicable at the time of the adoption of this Directive.’*¹³⁵, emphasising a preventative safeguarding function against the directive being used as an excuse to lower national standards.

The LkSG’s repeal as it currently stands would leave a three-year regulatory gap, given that the CSDDD is not expected to come into full force until 2028 and since the coalition plans to only sanction grave human rights violations, could present a case of retrogression. Critically, the government citing bureaucratic simplification and economic competitiveness as justifications, would likely not meet the high threshold required under General Comment No. 3.¹³⁶ GC No. 3 demands that any backward step be justified in the *‘light of the overall objective’* of the covenant.¹³⁷ As presented earlier, GC No. 24 to the ICESCR also states that *‘The obligation to respect economic, social and cultural rights is violated when States parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights.’*¹³⁸ Furthermore Germany would have to demonstrate to the CESCR that the criteria for a retrogression (most careful consideration) are fulfilled.¹³⁹ The German National Human Rights Institute released a press statement concerning the compatibility of a possible repeal of the LkSG, even if only temporary until the CSDDD’s implementation, concluding that the repeal *‘would therefore most likely violate the prohibition of regression in the UN Social Covenant and place the interests of companies above those of*

¹³⁴ UN Economic and Social Council, General Comment No. 3: The Nature of States Parties’ Obligations (art 2, para 1, of the Covenant) (UN Doc E/1991/23, CESCR., 14 December 1990) (<https://www.refworld.org/legal/general/cescr/1990/en/5613>) accessed 9 June 2025, art 2 1.

¹³⁵ CSDDD, art 1 (2).

¹³⁶ Social UN Committee on Economic and Cultural Rights, An Evaluation Of The Obligation To Take Steps To The “Maximum Of Available Resources” Under An Optional Protocol To The Covenant (UN Doc E/C.12/2007/1, 2007).

¹³⁷ General Comment No. 3: The Nature of States Parties’ Obligations (art 2, para 1, of the Covenant) (n 134) para 9.

¹³⁸ GC No 24, para 12.

¹³⁹ An Evaluation Of The Obligation To Take Steps To The “Maximum Of Available Resources” Under An Optional Protocol To The Covenant (n 136) No 9.

rights holders without sufficient justification.'¹⁴⁰

In light of Germany's ratification of the ICESCR and its Optional Protocol, affected individuals or organisations may in principle bring a communication to the CESCR, arguing that Germany's repeal of the LkSG constitutes an unjustified retrogressive measure in violation of Article 2(1) ICESCR. Though the Committee's views are not legally binding, they are authoritative interpretations of the treaty obligations and could fuel legal and political pressure on Germany's government. At the EU level, the non-regression clause in Article 1(2) of the CSDDD reads '*This Directive shall not constitute grounds for reducing the level of protection of human, employment and social rights [...]*'¹⁴¹ and constitutes another legal constraint on Germany's move to repeal the LkSG. While it is unlikely that the European Commission would bring infringement proceedings purely on this basis, civil society organisations could invoke the clause in litigation or advocacy, especially once evidence emerges that rights protections have materially deteriorated as a result of the repeal and the regulatory gap it could cause.

Referring to the treaty process for a UN Treaty on BHR, the current third draft version notable also includes a non-retrogression clause in Art. 4.3. of the third draft it stipulates that '*Nothing in this provision shall be construed to derogate from any higher level of recognition and protection of any human rights of victims or other individuals under international, regional, or national law.*'¹⁴² Should this clause remain in the finalised Treaty on BHR and should Germany ratify it, this could create another international, legal way to keep Germany responsible for retrogressing on their level of human rights protection.

2.2.4 Articles on the Responsibility of States for Internationally Wrongful Acts

To fully assess the potential legal responsibility of the State under international law, this section provides an assessment of the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA). The ARSIWA, adopted by the International Law Commission (ILC) in 2001 and subsequently commended by the UN General Assembly, represent a comprehensive codification of customary international law on state responsibility.¹⁴³ While not a binding treaty in themselves, like the previously examined ICESCR, the ARSIWA can be regarded as customary international law, applied to human rights issues.¹⁴⁴ The articles also define conditions that

¹⁴⁰ German Institute for Human Rights, 'Schutzniveau Des Lieferkettengesetzes Erhalten – Zum Rückschrittsverbot Des UN-Sozialpaktes' (November 2024) (<https://www.institut-fuer-menschenrechte.de/publikationen/detail/schutzniveau-des-lieferkettengesetzes-erhalten>) accessed 9 June 2025, translated from German to English using DeepL.

¹⁴¹ CSDDD, art 2 (1).

¹⁴² Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights, Third revised draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises (2021) (<https://www.ohchr.org/sites/default/files/LBI3rdDRAFT.pdf>) accessed 19 June 2025, art 4 3.

¹⁴³ Responsibility of States for Internationally Wrongful Acts 2001, Adopted by the International Law Commission at its 53rd session, UN Doc A/56/10.

¹⁴⁴ McCorquodale (n 14) 19.

have to be met, under which a state can be held international responsibility for its actions or omissions.

The foundational principle of state responsibility is articulated in Article 1, which states that *“Every internationally wrongful act of a State entails the international responsibility of that State.”*¹⁴⁵ An internationally wrongful act, as defined in Article 2, consists of conduct (an act or omission) that is attributable to the State under international law and constitutes a breach of an international obligation of that State.¹⁴⁶ The most relevant element for the present analysis lies in the rules of attribution, which determine *when* the conduct of an individual or entity can be considered an act of the State.¹⁴⁷ Firstly, Article 4 (Conduct of organs of a State): This is the primary rule for attribution, stipulating that the conduct of any State organ shall be considered an act of that State under international law, regardless of its position in the State’s hierarchy or its character as governmental. Article 5 (Conduct of persons or entities exercising elements of governmental authority): This article extends attribution to the conduct of persons or entities (e.g., private companies) that are not organs of the State but are empowered by the law of that State to exercise elements of governmental authority, provided they are acting in that capacity in the particular instance. Article 8 (Conduct directed or controlled by a State): This provision attributes to a State the conduct of a person or group of persons if they are in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

The International Court of Justice (ICJ) in the Bosnian Genocide Case established a high threshold for “effective control” under this article, requiring the State to have directed or controlled the specific operation in the course of which the wrongful act was committed, not merely general control over the entity.¹⁴⁸ Article 16 (Aid or assistance in the commission of an internationally wrongful act): This article addresses complicity, holding a State responsible if it aids or assists another State in the commission of an internationally wrongful act, provided it does so with knowledge of the circumstances and the act would be internationally wrongful if committed by the aiding State. While typically applied to inter-state relations, its underlying principle of complicity could conceptually extend to a State’s involvement in a private entity’s wrongful acts if the conditions are met. Furthermore, it could be argued that a state-owned company making use of state-sponsored forced labour (like in the Xinjiang region) in a state, different to their home-state could be indirectly aid in the commission of internationally wrongful acts.

In the context of VW, a private corporation, the direct attribution of its human rights violations to the German State (or Lower Saxony) under ARSIWA presents a challenge. VW is not a direct organ of the State under Article 4, nor does it generally exercise governmental authority under Article 5 in its commercial operations. Furthermore, meeting the high “effective control” threshold of Article 8, would require Lower Saxony to have directed or controlled the specific acts constituting the human rights violations (e.g., in Brazil, Xinjiang, or Russia) and

¹⁴⁵ ARSIWA, art 1.

¹⁴⁶ *ibid* art 2.

¹⁴⁷ *ibid* art 4-11.

¹⁴⁸ McCorquodale (n 14) 54.

is exceptionally difficult to prove in practice.¹⁴⁹ Thus, under a strict, traditional interpretation of ARSIWA, the direct actions of VW would likely not be attributable to Lower Saxony or the Federal Republic of Germany. However, this thesis argues that while the stringent attribution criteria of ARSIWA may not be directly met for VW's operational conduct, domestic constitutional jurisprudence, particularly the German Federal Constitutional Court's (BVerfGE) *Fraport* decision¹⁵⁰, offers a complementary and more expansive lens through which to view state responsibility in publicly influenced enterprises. As will be discussed in section 2.2.7, *Fraport* held that companies under "controlling influence" of the state can be directly bound by fundamental rights. This domestic standard suggests a heightened level of state engagement and oversight, implying a robust duty to protect human rights by such entities, even if their specific wrongful acts do not automatically trigger international attribution under ARSIWA. This interplay between international attribution rules and domestic constitutional obligations forms a crucial part of the argument for Lower Saxony's enhanced responsibilities.

2.2.5 German shareholder rights and supervisory board responsibilities

After a look into non-retrogression clauses in the last section, this section turns to the underlying structures of German corporate law, shareholder rights and the responsibilities of supervisory boards in order to assess the legal means through which public shareholders such as the State of Lower Saxony can influence corporate conduct. Understanding the national legal framework is essential for this thesis, as it seeks to determine whether Lower Saxony's role as a shareholder in VW entails not only formal rights but also normative and potentially legal responsibilities to prevent or address human rights violations within the company's global operations. German corporate law operates through a dual-board system. The Management Board (Vorstand) conducts daily business, while the Supervisory Board (Aufsichtsrat), regulated under §§ 95–116 AktG¹⁵¹, oversees its actions. The supervisory board appoints and monitors the management board¹⁵², approves key transactions, and is empowered to reserve consent rights for certain decisions. It also receives regular reports and may request additional information at any time.¹⁵³ The supervisory board's importance is further emphasised in its task of monitoring the management board and approving major business decisions. Supervisory board members are bound by fiduciary duties, including the duty of care (Sorgfaltspflicht) and loyalty (Treuepflicht), and may be held liable for failing to act in the company's best interest.¹⁵⁴ This obligation requires them to act diligently and in the best interest of the company as a whole. These duties encompass the responsibility to monitor risk management systems, compliance structures, and internal controls. German courts have recognised that supervisory boards must ensure the establishment of

¹⁴⁹ McCorquodale (n 14) 63-70.

¹⁵⁰ BVerfGE, 22 February 2011 - 1 BvR 699/06 - *Fraport*.

¹⁵¹ Stock Corporation Act (Aktengesetz – AktG) 1965, 93, 95–116.

¹⁵² *ibid* 111.

¹⁵³ *ibid* 131.

¹⁵⁴ *ibid* 116.

effective compliance programmes to prevent legal and ethical violations. The Federal Court of Justice's ARAG/Garmenbeck¹⁵⁵ ruling confirmed that supervisory boards may even be obliged to initiate claims against management for misconduct as part of their monitoring function.

Furthermore, the LkSG also emphasises the responsibility to implement risk management measures of the company's leadership¹⁵⁶, introducing both the supervisory and management boards in ensuring effective compliance.

Before going into an analysis of this structure at VW, it is important to mention that while most of the structural framework for companies applies to VW, the so called *Volkswagen Act*¹⁵⁷ enables VW to operate somewhat different to other German companies, something that will be discussed in more detail in *Lower Saxony's Stake in Volkswagen and the Volkswagen Act*, later in this thesis.

VW's dual-board structure and its implementation for the company have been structurally analysed and critically evaluated by Nicola Faith Sharpe in 2017.¹⁵⁸ Sharpe, analysing VW's governance during the Dieselgate scandal, argues that the company's supervisory board failed to fulfil its oversight role in part because of a dysfunctional application of codetermination principles.¹⁵⁹ Codetermination, designed to democratise corporate governance by including labour representation, instead led to institutional stagnation and consensus-driven decision-making that hindered critical scrutiny and failed to properly oversee the management. Lower Saxony's representatives, reportedly contributed to this passivity, opting for corporate loyalty over accountability, despite their dual mandate.¹⁶⁰ Sharpe's analysis underscores the limitations of formal corporate structures when they are not paired with a robust internal culture of dissent and transparency. Her findings support the argument that shareholder influence, must be exercised actively and ethically to prevent corporate misconduct. Since Sharpe does not focus on Human Rights, she does not go into that but arguably, the failure of the supervisory board to fulfil their legal obligations set forth in German Corporate Law, also enabled some of the Due Diligence problems, VW faced in the past and still faces today with regard to human rights. In this context it becomes clear that significant shareholders cannot hide behind being "just another shareholder". Having permanent seats in the supervisory board not only *empowers* them but *requires* them by law to exert influence and bear at least a partial responsibility for ensuring that the companies they co-govern act with respect for human rights and international norms.

¹⁵⁵ *BGH*, 21 April 1997 - II ZR 175/95 - ARAG/Garmenbeck.

¹⁵⁶ LkSG, 4 (3).

¹⁵⁷ Volkswagen Act (Volkswagen-Gesetz) 1960, last amended by Act of 9 December 2008 (BGBl I 2008, 2366).

¹⁵⁸ Nicola Faith Sharpe, 'Volkswagen's Bad Decisions & Harmful Emissions: How Poor Process Corrupted Codetermination in Germany's Dual Board Structure' (2017) 7(1) *Michigan Business & Entrepreneurial Law Review* 49 (<https://repository.law.umich.edu/mbelr/vol7/iss1/3/>).

¹⁵⁹ *ibid* 77, 87.

¹⁶⁰ *ibid* 67–68.

2.2.6 ECtHR jurisprudence

Another legal framework that could impose legal obligations on Germany, Lower Saxony or/and VW regarding its business operations outside of Germany could come from judgements of the European Court of Justice (ECtHR) in its application of the European Convention on Human Rights (ECHR). In her chapter "Are European Home States of Transnational Corporations Responsible for Their Impacts Abroad under the ECHR?", Claire Methven O'Brien critically evaluates whether the ECHR imposes a legal obligation on European home states to regulate the extraterritorial human rights impacts of transnational corporations under their jurisdiction. She finds that despite evolving soft-law expectations, like the UNGPs, there is no general obligation under the ECHR for home states to control corporate conduct abroad. O'Brien anchors her argument in ECtHR jurisprudence, which recognises extraterritorial jurisdiction only in narrowly defined contexts. She distinguishes the spatial model (effective overall control over foreign territory), established in *Loizidou v Turkey* and reaffirmed in *Cyprus v Turkey*, from the personal model (state agent authority and control), applied in *Öcalan v Turkey* and *Al-Skeini and Others v United Kingdom* [2011] ECHR 1093. These cases involve situations of military occupation, detention, or direct control over individuals, conditions she finds inapplicable to the general operations of private corporations abroad. Moreover, she notes that positive obligations under Article 1 ECHR require a "sufficient nexus" between the state and the rights-holder, which is rarely met in transnational corporate structures due to the legal separation between parent and subsidiary entities and the regulatory sovereignty of host states. A problem that has been resolved in the CSDDD by applying a broad subject matter, Article 1 (1) (a) includes 'their own operations, the operations of their subsidiaries, and the operations carried out by their business partners in the chains of activities of those companies'.¹⁶¹

Citing *Fadeyeva v Russia* and *Moldovan v Romania*, O'Brien argues that mere corporate domicile or shareholder ties do not suffice to engage extraterritorial duties. O'Brien concludes that although policy coherence may favour home state regulation, the ECtHR's jurisprudence does not support the existence of a binding obligation to do so, except perhaps in limited cases involving state-controlled enterprises.¹⁶² This argumentation is further supported by Haeck, Burbano Herrera, and Ghulam Farag, who observe that the Court has moved beyond strict territoriality by applying the Convention to situations where states exercise effective control over persons or territories abroad, as in *Al-Skeini* (also mentioned by O'Brien) or *Issa*, establishing a jurisdictional model that accommodates human rights accountability in extraterritorial contexts.¹⁶³ Though this model remains case-specific and generally the Court adheres to Art. 1 of the ECHR,

¹⁶¹ CSDDD, art 1 (1) (a).

¹⁶² Clare Methven O'Brien, 'Are European Home States of Transnational Corporations Responsible for Their Impacts Abroad under the ECHR?' in *Business and Human Rights in Europe: International Law Challenges* (Routledge 2018) (<https://www.researchgate.net/publication/324834593>) accessed 19 June 2025.

¹⁶³ Yves Haeck, Clara Burbano Herrera, and Hannah Ghulam Farag, 'Extraterritorial Obligations in the European Human Rights System' in Mark Gibney and others (eds), *The Routledge Handbook on Extraterritorial Human Rights Obligations* (Routledge 2021).

which defines the scope of application of the ECHR to be within the state's jurisdiction.¹⁶⁴

This thesis will take a deeper dive into a possible argument for VW constituting exactly such an edge case at a later stage. For the purpose of the argument of developed in this section, it is important to conclude that as demonstrated by O'Brien and Haeck et Al., the ECtHR does not generally refrain from the idea of applying states' obligations extraterritorially and if a close enough link between VW, their actions abroad and the states action (or inaction, regarding its role in the supervisory board of VW) were found to be existing, this could constitute a possible case in front of the ECtHR, at least making it through the stage of admissibility since jurisprudence could be found to be established.

2.2.7 BVerfG jurisprudence

In the *Fraport*¹⁶⁵ judgment, the German Federal Constitutional Court held that a company in majority public ownership (in this case the company operating the Frankfurt Airport) is directly bound by fundamental rights when exercising public authority.¹⁶⁶ The case concerned a ban on political leafleting in the airport, and the Court ruled that *Fraport*, as a majority state-owned enterprise, must respect the constitutional right to freedom of expression.

The Court clarified that enterprises under majority public ownership are directly bound by the constitutional fundamental rights regime. The court held that '*The direct binding force of the fundamental rights does not only apply to enterprises which are completely in public ownership, but also to enterprises owned both by private shareholders and the state over which the state has a controlling influence.*'¹⁶⁷ This is grounded in a '*fundamental duty of accountability to citizens*'¹⁶⁸, and reflects the idea that where the state exercises controlling influence through shareholding, it must ensure that its operations remain consistent with the rights guarantees of the German Constitution.¹⁶⁹ Importantly for the evaluation of Lower Saxony's stake in VW is, that the court found that '*[...] public enterprises that are in the sole ownership of the state and are organised in the forms of private law, enterprises owned both by private owners and the state on which the public authority has a controlling influence, are directly bound by the fundamental rights.*'¹⁷⁰ The court however did not establish a clear boundary what constitutes such '*controlling influence*' but asserts that *generally* it is the case if more than half of the shares are publicly owned, though it explicitly leaves room for exceptions by stating that '*Whether or not this criterion should be expanded on in special cases does not need to be decided here.*'¹⁷¹ Lastly, the court also asserts that the indirect binding force of the fundamental rights on private

¹⁶⁴ ECHR, art 1; Haeck, Herrera, and Farag (n 163) 125

¹⁶⁵ *BVerfGE*, 22 February 2011 - 1 BvR 699/06 - *Fraport* (n 150).

¹⁶⁶ *ibid* headnote 1.

¹⁶⁷ *ibid* para 49.

¹⁶⁸ *ibid* para 59.

¹⁶⁹ Basic Law for the Federal Republic of Germany (Grundgesetz – GG) 1949, art 1 3.

¹⁷⁰ *BVerfGE*, 22 February 2011 - 1 BvR 699/06 - *Fraport* (n 150) headnote 1.

¹⁷¹ *ibid* para 53.

persons may be equivalent to the binding force of the fundamental rights on the state, depending on the content of the guarantee and the circumstances of the case.¹⁷²

In the context of VW, where the State of Lower Saxony holds over 20% of the voting shares but is enjoys further means of influence through the Volkswagen Act, this jurisprudence raises the important question as to whether such influence may amount to "controlling influence" within the meaning of the Court's doctrine, thereby activating constitutional responsibilities.

2.3 Competing theories of corporate responsibility and their implications for public shareholders

The preceding sections outlined the responsibilities of corporations and states in the BHR field, as currently expressed through international and regional frameworks. These instruments largely reflect an indirect model of corporate responsibility, in which businesses are expected to respect human rights (*Responsibility to Respect*), but enforcement is mediated through state regulation on the domestic level and the implementation of due diligence mechanisms. However, some scholars have argued that this model is normatively and legally insufficient particularly when corporations exercise significant power over the realisation or denial of human rights. Among the most prominent critics is David Bilchitz, who proposes a framework of direct obligations for corporations grounded in fundamental rights theory and comparative constitutional law. His model challenges the state-centric structure of the UNGPs and similar instruments by asserting that transnational corporations can and should be treated as primary duty-bearers under international human rights law.

The regulation of business conduct in the field of human rights has traditionally focused on the *duties of states* to prevent, punish, and redress abuses by corporate actors. This state-centric approach is reflected in many legal instruments and frameworks. However, the growing global influence of MNEs, their complex governance structures, and their ability to affect fundamental rights independently of state involvement have prompted scholars to question whether this reliance on state duties alone is sufficient for effective protection of fundamental rights. Among them is, David Bilchitz, who has worked on a *direct obligations model* that treats corporations as independent duty-bearers under fundamental rights law, looking to resolve the accountability gap found in BHR today. This chapter maps these competing approaches, contrasting indirect, compliance-based regimes with Bilchitz' normative model which seeks to embed human rights obligations directly into the legal identity of the corporate entity.

Many current legislative frameworks adopt a model of indirect corporate responsibility, where human rights obligations are mediated through due diligence, reporting duties, and state enforcement mechanisms. The CSDDD, for instance, requires in-scope companies to identify, prevent, and mitigate adverse impacts on human rights and the environment throughout their op-

¹⁷² BVerfGE, 22 February 2011 - 1 BvR 699/06 - Fraport (n 150) para 59.

erations and value chains.¹⁷³ The directive, while binding, does not itself impose human rights obligations on companies in the normative sense but instead legislates a process of risk management. Similarly, the LkSG imposes legal obligations on large German companies to conduct due diligence with regard to human rights and environmental risks.¹⁷⁴ The law operates primarily through regulatory oversight and fines imposed by administrative authorities rather than giving direct access to remedies for victims. These instruments mark significant progress from earlier soft-law approaches, yet they remain tied to a procedural and state-mediated conception of corporate responsibility.

One major critique of these frameworks is that they often stop short of identifying substantive human rights obligations. They tend to focus on company processes rather than outcomes and rarely define clear thresholds for what constitutes an impermissible rights impact. As such, they risk allowing corporations to comply formally without achieving meaningful human rights protection.¹⁷⁵

2.3.1 Bilchitz' proposal for corporate human rights obligations

David Bilchitz gives an account of different models of corporate obligations and critiques the current human rights regime for its failure to impose substantive obligations on corporations. He argues that while due diligence regimes (such as those in the UNGPs and CSDDD) provide procedural guidance, they lack normative clarity about when a corporate action constitutes a rights violation. These instruments define what companies should do (e.g., conduct risk assessments), but not what they should achieve in human rights terms. Furthermore, he explores, what falls within the domain of the state and argues that it should include the corporate sphere, when corporations perform public functions or are closely linked to the state, which directly addresses the behaviour of states when they have influence over businesses.

To address the current limitations in the human rights regime, Bilchitz explores several doctrinal models for understanding corporate obligations. The *Indirect Application Model*¹⁷⁶, under which corporations are bound by human rights obligations only through domestic legislation enacted by states. The state acts as the conduit for applying international norms to private entities. The *Expanding the State Model*¹⁷⁷, broadens the conceptual boundaries of the state to encompass private actors that perform public functions or operate under significant state influence. It is especially relevant in situations where corporations are partially state-owned or operate in sectors traditionally managed by public authorities. A central concern of Bilchitz's critique is the normative gap in current regulatory frameworks: they specify what companies (and states when they act as business enterprises or exert influence within companies), must do (conduct-

¹⁷³ CSDDD, art 5–11.

¹⁷⁴ LkSG, art 3.

¹⁷⁵ Bilchitz, *Fundamental Rights and the Legal Obligations of Business* (n 4) 193–195.

¹⁷⁶ *ibid* 99–134.

¹⁷⁷ *ibid* 135–174.

ing HRDD for example), but not what they must achieve in human rights terms.¹⁷⁸ Chirwa and Amodu use an alternative but very fitting way of expressing this distinction. They differentiate between obligations of means/conduct/compliance and obligations of result, emphasising an aspect that often ends up coming short - actual results.¹⁷⁹ This result-oriented approach, is for example reflected in the ESCRs within the ICESCR. They include obligations of conduct and obligations of result that must be realised by duty bearers.¹⁸⁰

The third model he explores is the *Direct Obligations Model*.¹⁸¹ He argues in favour of this approach, in which corporations themselves are direct subjects of fundamental rights obligations.¹⁸² The direct obligations model does that by establishing that fundamental rights, by their very nature, impose duties not only on states but also on non-state actors with the capacity to affect those rights. The direct obligations model addresses the accountability gap, created in the currently employed approaches, by demanding a principled articulation of corporate duties, including both negative obligations (to avoid harming rights) and positive obligations (to help realise them, where appropriate). In developing the Direct Obligations Model, Bilchitz draws on constitutional jurisprudence from South Africa and Colombia, where courts have recognised that private entities can be directly bound by fundamental rights.¹⁸³ He distinguishes between negative obligations (to avoid infringing on rights) and positive obligations (to take steps to fulfil them). For negative obligations, Bilchitz proposes a proportionality-based test to determine whether a corporation has breached its duties, evaluating the severity of harm, the company's, and the availability of less harmful alternatives.¹⁸⁴ For positive obligations, he introduces a seven-step test, which assesses the importance of the right at stake, the extent of the company's impact, its capacity to act, the foreseeability of harm, the burden of prevention or fulfilment, the availability of alternatives, and the urgency and irreversibility of the harm. This multi-factoral method, he argues, enables a context-sensitive, normatively grounded evaluation of corporate conduct.¹⁸⁵ It offers a principled way to determine when corporations should be expected to take action in support of human rights, rather than relying on vague concepts like a company's 'sphere of influence'.¹⁸⁶

¹⁷⁸ Bilchitz, *Fundamental Rights and the Legal Obligations of Business* (n 4) 193–196.

¹⁷⁹ Danwood Chirwa and Nojeem Amodu, 'Economic, Social and Cultural Rights, Sustainable Development Goals, and Duties of Corporations: Rejecting the False Dichotomies' (2021) 6(1) *Business and Human Rights Journal* 21.

¹⁸⁰ *ibid* 24.

¹⁸¹ Bilchitz, *Fundamental Rights and the Legal Obligations of Business* (n 4) 175–215.

¹⁸² *ibid* 175–178.

¹⁸³ *ibid* 198, 204 respectively.

¹⁸⁴ An approach, similar to the ones used by the ECtHR and BVerfG when balancing competing, clashing fundamental rights.

¹⁸⁵ Bilchitz, *Fundamental Rights and the Legal Obligations of Business* (n 4) 223–224.

¹⁸⁶ *ibid* 188–192.

2.3.2 Closing the accountability gap

The direct human rights obligations of businesses model, advocated for by Bilchitz offers a compelling path toward closing the accountability gap in the BHR field. By clarifying when a corporate impact constitutes a rights violation and introducing proportionality as a legal test, it bridges the current disconnect between process and substance. The current reliance on due diligence alone allows companies to comply formally without substantively safeguarding human rights. This is particularly problematic in complex supply chains or conflict-affected areas, where harm is systemic, indirect, or outsourced.¹⁸⁷ In these contexts, Bilchitz's model provides a tool to assess when corporate influence is significant enough to justify assigning obligations directly especially if companies profit from, or enable, harm. In cases where public shareholders, hold governance power, the stakes are even higher. The Expanding the State Model and the Direct Obligations Model both suggest that such entities cannot passively defer to due diligence reports or corporate self-regulation. Instead, they share legal and moral responsibility when they possess institutional leverage but fail to prevent harm. Bilchitz' framework tries to provide a more rigorous standard for accountability, capable of responding to some of the complexities of transnational corporate power structures. Though creating a system that is based on civil liabilities to a higher degree could also lead to hurdles in regards to access to remedy, since court procedures present victims with a multitude of problems (high costs, long processes, complex legal procedures). Angela Müller offers a complementary ethical foundation for this argument. She maintains that in an interdependent global economy, states can no longer claim moral neutrality for harms caused beyond their borders when they are in a position to prevent them. In her view, states when they profit from, enable, or structurally support transnational business operations bear a moral duty to exercise due diligence extraterritorially. Essentially, she argues for the need for a firmer normative basis for extraterritorial obligations (ETOs), which she believes can improve their practical standing.¹⁸⁸ She critically analyses common sceptical arguments against the extraterritorial application of human rights and, based on this critique, outlines a normative justification for ETOs.¹⁸⁹ She then indicates how these ethically oriented reflections can be integrated at the legal level, particularly in the interpretation of the concept of "jurisdiction" in international human rights law. This reinforces Bilchitz's claim that legal minimalism is an insufficient framework for evaluating state behaviour in corporate contexts. Instead, Müller suggests that the legitimacy of democratic states requires them to ensure their institutions—including companies under their influence do not undermine rights abroad.¹⁹⁰ Ap-

¹⁸⁷ Izabela Jędrzejowska-Schiffauer, Daria Nagaiwska, and Jan Minkszty, 'Learning from the Conflict Dynamics in Ukraine: Towards a Conceptual Framework for Heightened Human Rights Due Diligence' in *Business and Human Rights: Emerging Challenges, Issues, and Trends* (International and Comparative Business Law and Public Policy, Brill January 2025-01-15) vol 8, 78, 89–91.

¹⁸⁸ Angela Müller, 'Justifying Extraterritorial Human Rights Obligations: An Ethical Perspective' in Mark Gibney and others (eds), *The Routledge Handbook on Extraterritorial Human Rights Obligations* (Routledge 2021).

¹⁸⁹ *ibid* 61–62.

¹⁹⁰ *ibid* 59–60.

plying an approach, oriented on Bilchitz's and Müllers reflections, would mean not only evaluating whether VW performed its HRDD obligations but whether it acted (or failed to act) in ways that foreseeably harmed human rights and whether its public shareholder enabled or tolerated this conduct. Before illustrating, just how much influence a company's operations can have on individuals and even support oppressive regimes in chapter 4, the following chapter will turn to VW's structure, governance and internal human rights policies. It begins by analysing the company's shareholder composition and the legal architecture of the Volkswagen Act, before examining how supervisory board appointments, corporate culture, and the Human Rights Office (HRO) function.

3. Volkswagen

This chapter provides an examination of Volkswagen's governance structure and the implications of its partial public ownership. Section 3.1 outlines the company's corporate governance under the German dual-board system, emphasizing the interplay between management and supervisory bodies. Section 3.2 explores the legal and historical foundations of Lower Saxony's stake and the enduring relevance of the Volkswagen Act, after which follows a dive into alleged corporate mismanagement and how the VW management suffers from ineffective structures. Section 3.4 critically assesses Volkswagen's human rights governance mechanisms, including the establishment of the HRO and the company's due diligence strategies. Finally, Section 3.5 shows the exceptional standing VW enjoys within German domestic politics and how they have been closely involved in politics in numerous occasions.

As one of the world's largest automotive manufacturers, VW employs around 650.000 people worldwide and is currently the world's number one car manufacturer regarding revenue.¹⁹¹ What sets VW apart, especially regarding the other German car manufacturers (Mercedes Benz and BMW) is not only its size, but the exceptional degree of state involvement both historically and ongoing. The German federal state of Lower Saxony holds a significant minority share in the company and retains privileged decision-making powers under the special legal framework of the Volkswagen Act. This constellation blurs the lines between private enterprise and public authority, raising fundamental questions about state responsibility, shareholder duties, and the limits of human rights due diligence.

Before proceeding, it is important to clarify terminology. The Volkswagen Group refers to the umbrella entity comprising a wide range of automotive brands, including Audi, Porsche, Škoda, SEAT, and others, operating under a common corporate structure. The term Volkswagen is often used informally to refer to the group as a whole or to the Volkswagen brand specifically. This thesis, however, focuses on Volkswagen AG (Aktiengesellschaft/public limited company), the central publicly traded corporation. Volkswagen AG, headquartered in Wolfsburg, Lower Saxony, Germany, is the parent company of the Volkswagen Group, one of the world's leading automotive groups. The company's structure is complex, involving various regional divisions, brands, and subsidiaries. VW operates through two main divisions: the Automotive Division, which is responsible for the development, production, and sale of vehicles, including passenger cars, commercial vehicles, and power engineering products, and the Financial Services Division, which provides financial services such as leasing, banking, insurance, and fleet management. The Automotive Division is further divided into several business areas, including Passenger Cars, (encompassing brand like Volkswagen, Audi, SEAT, ŠKODA, Porsche, Lamborghini, and Bentley) and Commercial Vehicles including Scania and MAN.¹⁹² The organizational structure

¹⁹¹ Companies Market Cap, 'Largest Automakers by Revenue' (2025) (<https://companiesmarketcap.com/automakers/largest-automakers-by-revenue>) accessed 13 June 2025.

¹⁹² Volkswagen Group, 'Brands and Brand Groups' (2024) (<https://www.volkswagen-group.com/en/brands-and->

of Volkswagen AG includes a Board of Management, comprising nine members, each responsible for specific functions such as Technology, Finance or Human Resources. Additionally, there is a Supervisory Board that appoints, monitors, and advises the Board of Management, playing a crucial role in strategic decisions.¹⁹³ Volkswagen AG is a subsidiary of Porsche Automobil Holding SE, which is controlled by the Porsche and Piëch families. Understanding this structure is essential for evaluating Lower Saxony's stake in Volkswagen, as it highlights the company's complexity and its role in the regional economy. The company's presence in Lower Saxony is significant, given its historical roots and current operations in the region, which contribute substantially to employment and economic development.

3.1 Volkswagens shareholder structure

The shareholder structure of Volkswagen AG is characterized by a unique distribution of ownership and voting rights, with significant implications for the decision-making process within the company. At the forefront of this structure is Porsche Automobil Holding SE, which holds a majority stake of 53.3% of the voting rights, effectively making it the dominant shareholder in the company, which Porsche recently confirmed they wish to maintain in the future.¹⁹⁴ Following Porsche SE, who have been invested in the Volkswagen Group since 2005, the State of Lower Saxony holds a substantial 20% of the voting rights, positioning it as the second-largest shareholder in terms of voting power.¹⁹⁵ Since 2009, the Qatar Holding LLC, with 17% of the voting rights, is the third largest single-party shareholder.¹⁹⁶

Lower Saxony's stake in VW is not only significant due to its size but also because it grants the state a veto right over certain critical decisions. According to the Volkswagen Law¹⁹⁷, decisions that typically require a three-quarters majority at the annual general meeting must be passed by more than four-fifths of shareholders. This means that Lower Saxony, with its 20% voting stake, holds a blocking minority, allowing it to veto major decisions such as changes in the company's structure or significant investments. Qatar Holding LLC's stake, while significant, does not provide the same level of veto power as Lower Saxony's. However, Qatar's investment in VW is strategic and reflects Qatar's broader diversification efforts into global industrial

brand-groups-15811) accessed 23 June 2025.

¹⁹³ Volkswagen Group, 'Executive Bodies' (2024) (<https://www.volkswagen-group.com/en/executive-bodies-15790>) accessed 23 June 2025.

¹⁹⁴ Reuters, 'Porsche SE says it is not considering sale of Volkswagen shares' (16 March 2025) (<https://www.reuters.com/business/autos-transportation/porsche-se-says-it-is-not-considering-sale-volkswagen-shares-2025-03-16/>) accessed 18 June 2025.

¹⁹⁵ Porsche SE, 'Investment Strategy' (<https://www.porsche-se.com/en/company/investments>) accessed 18 June 2025.

¹⁹⁶ Volkswagen Group, 'Group Management Report, Shareholder Structure' (<https://annualreport2023.volkswagen-group.com/group-management-report/shares-and-bonds/shareholder-structure.html>) accessed 13 June 2025; Reuters, 'Qatar Becomes Major Shareholder in Volkswagen' (20 December 2009) (<https://www.reuters.com/article/business/autos-transportation/qatar-becomes-major-shareholder-in-volkswagen-idUSTRE5BJ0ZH/>) accessed 18 June 2025

¹⁹⁷ Volkswagen Act, 4 (3).

companies, preparing the country for a future without its oil-reserves while still having some influence with two people from Qatar at the supervisory board.¹⁹⁸ Porsche SE, as the largest shareholder, maintains a long-term commitment to Volkswagen, viewing it as a core investment and a key component of its automotive portfolio.¹⁹⁹ The influence of these shareholders is further complicated by the dual class share structure of Volkswagen, with preferred shares being more liquid and only common shares carrying voting rights.²⁰⁰ It is this structure, which concentrates voting power in the hands of VWs three major shareholders Lower Saxony, Qatar Investment LLC and Porsche SE. This significantly impacts the company's governance and strategic directions. Lower Saxony's role on the Supervisory Board, to which it can appoint two members²⁰¹, also enhances its ability to shape Volkswagen's policies and ensure that political interests like those of the region are represented.

3.2 Lower Saxony's stake in Volkswagen and the Volkswagen Act

The history of Volkswagen is long and could merit extensive research and analytical work. For the sake of this thesis however, the focus will be on the most important events that lead to Lower Saxony's stake in Volkswagen.

VW was founded in 1937 as a state-owned enterprise under the German Labour Front²⁰² and was revitalized after World War II as a British Trusteeship in 1945, where it quickly became the most important employer of the region, returning to the production of civilian vehicles.²⁰³ On October 8, 1949, the German Federal Government took over the trusteeship of VW from the British Military Government, and the State of Lower Saxony was given control of its management.²⁰⁴ By the late 1950s, debates around privatizing VW gained momentum, driven by the federal government's desire to align with free-market principles. Despite resistance, the privatization of Volkswagenwerk GmbH was finalized in 1960, transforming it into Volkswagenwerk AG. The privatization aimed to distribute shares widely among the public to prevent concentrated ownership, but it also ensured that both the federal government and Lower Saxony

¹⁹⁸ Matt Smith, 'Volkswagen's Troubles Sour Qatari Investment' (*AGBI*, 5 November 2024) (<https://www.agbi.com/analysis/markets/2024/11/volkswagens-troubles-sour-qatari-investment/>) accessed 18 June 2025.

¹⁹⁹ SE (n 195).

²⁰⁰ X-Trade Brokers, 'Green transformation or financial catastrophe? Volkswagen's turbulent path into the future' (2025) (<https://www.xtb.com/en/market-analysis/green-transformation-or-financial-catastrophe-volkswagens-turbulent-path-into-the-future>) accessed 30 June 2025.

²⁰¹ Volkswagen Group, 'Information on the Board of Management and Supervisory Board - Volkswagen Group Annual Report 2024' (2024) (<https://annualreport2024.volkswagen-group.com/sustainability-report/general-information/information-on-the-board-of-management-and-supervisory-board.html>).

²⁰² Volkswagen Group, '1937 to 1945 – Founding of the Company and Integration into the War Economy' (<https://www.volkswagen-group.com/en/volkswagen-chronicle-17351/1937-to-1945-founding-of-the-company-and-integration-into-the-war-economy-17354>).

²⁰³ Volkswagen Group, '1945 to 1949 – The Work of the British' (<https://www.volkswagen-group.com/en/volkswagen-chronicle-17351/1945-to-1949-the-work-of-the-british-17355#>) accessed 10 April 2025.

²⁰⁴ *ibid.*

retained a 20% stake each, reflecting their strategic interest in safeguarding Germany's largest automaker.²⁰⁵

Lower Saxony's stake was particularly significant, as it granted the state a unique position in Volkswagen's governance. The Volkswagen Act, enacted alongside privatization, codified this influence by giving Lower Saxony veto rights over major corporate decisions through its 20% voting share. This blocking minority is supposed to allow Lower Saxony to protect its economic interests and prevent hostile takeovers.²⁰⁶ Over the decades, this stake has been instrumental in maintaining Volkswagen's operations within Lower Saxony, preserving jobs and supporting the region. The Act also enabled Lower Saxony to appoint two members to Volkswagen's Supervisory Board, ensuring direct representation of its interests in the company's most important board-body.

The privatization process set the stage for decades of legal battles surrounding the Volkswagen Act. In its decision on Case C-112/05, the Court of Justice of the European Union ruled parts of the Volkswagen Act unlawful in 2007, deeming the law protectionist and contrary to EU principles of free movement of capital.²⁰⁷²⁰⁸ Despite amendments to two provisions (§ 4(1) of the VW Law and § 2(1)) to address these concerns, Lower Saxony retained its veto power under a revised version of the law in 2012. The EU Commission still saw a violation in the amended version of the Act and brought another lawsuit before the CJEU, which in 2013 ruled in favour of Germany (Case C-95/12), ruling that Germany has fully complied with the initial judgement from 2007 by amending the Act to the degree wherein the State kept its blocking minority but repealed Art. 4(1) Art. 2(1) of the Volkswagen Act, which were found unlawful by the court in its initial decision.²⁰⁹ While the Volkswagen Act was originally designed to safeguard the public interest, promote broad shareholder participation, and prevent the undue concentration of economic power, its current effect appears paradoxical. Although it continues to grant Lower Saxony structural influence, the majority of Volkswagen's voting rights are now controlled by Porsche Automobil Holding SE, which is in turn dominated by the Porsche–Piëch family. In this light, the Volkswagen Act, once a tool to defend against private dominance has enabled a governance structure in which public oversight is formally preserved but substantively weakened, and private family ownership has taken over. This development raises the question of the Act's ongoing relevance and whether it still serves its intended purpose of protecting the

²⁰⁵ Volkswagen Group, '1950 to 1960 – Internationalisation and Mass Production in the Era of Germany's Economic Miracle' (16 June 2023) (<https://www.volkswagen-group.com/en/volkswagen-chronicle-17351/1950-to-1960-internationalisation-and-mass-production-in-the-era-of-germanys-economic-miracle-17356#1950>) accessed 10 April 2025.

²⁰⁶ *Case C-112/05 Commission of the European Communities v Federal Republic of Germany*: [2005] 2007 I-08995.

²⁰⁷ European Commission, MEMO/11/826: Free movement of capital: Commission refers Germany back to the Court for failure to fully comply with the Volkswagen law judgement – Background (https://ec.europa.eu/commission/presscorner/detail/en/memo_11_826) accessed 19 June 2025.

²⁰⁸ European Commission, 'The Volkswagen Law restricts the free movement of capital' (23 October 2007) (https://ec.europa.eu/commission/presscorner/detail/en/cje_07_74) accessed 19 June 2025.

²⁰⁹ *Case C-95/12 European Commission v Federal Republic of Germany*: [2013] ECLI:EU:C:2013:676.

public interest in the governance of one of Germany's most strategically important corporations, especially in light of deficits in Volkswagens management, which will be the next part of this thesis.

3.3 Structural deficits in Volkswagen's management

A Structural analysis of Volkswagen Groups management, done in the aftermath of the Volkswagens involvement in the "Dieselgate" in 2017 by Nicola Faith Sharpe, strongly suggests that the supervisory board of VW failed at their job of actually effectively supervising the managements decisions.²¹⁰ In her work, Sharpe suggests that *'Without effective processes, directors are watchers asleep at their post, uninformed, dormant, and ineffective in preventing gross failures of corporate integrity. Unless German boards adopt and implement a Process-Oriented Approach, the VW emission scandal will simply be another mark on a timeline for a century plagued by corporate failure.'*²¹¹ This corporate failure in my opinion extends to the discussed breaches of international law, be it the by means of Forced Labour exploitation in Xinjiang, China or the alleged continuing exports of the Jetta branded Volkswagen Automobiles to the Russian market amidst sanctions and EU Law prohibiting such acts. Further, *"It [the supervisory board] has been described as performing a 'watch dog' function to prevent serious abuses."*²¹², making it a role of very high importance. While this role bears potential for the State to promote good labour conditions and practices around the world, it seems like the two seats on the board are usually reserved for high-ranking politicians from Lower Saxony, usually the Minister-President plus one of their Ministers. Without doubt qualified people but the question arises if they are capable to *meaningfully* engage with and assess the operations at a company the size of VW whilst working in demanding positions in the political landscape. Adding to this, the involvement of public officials in company affairs, such as the editing of a minister-president's speech by VW-lawyers²¹³²¹⁴ further blurs the line between public governance and corporate interest. Ethically, such entanglement undermines public trust and raises concerns about undue influence, accountability and democratic shortcomings.

3.4 The Volkswagen human rights office

The HRO at VW was established on August 1, 2022, as the first company listed on the German stock exchange to create such an office. The creation was driven in light of the then emer-

²¹⁰ Sharpe (n 158).

²¹¹ *ibid.*

²¹² *ibid* 63.

²¹³ NDR, 'Weil Legt Skript Mit VW-Änderungsvorschlägen Vor' (August 2017) (https://www.ndr.de/nachrichten/niedersachsen/hannover_weser-leinegebiet/Weil-legt-Skript-mit-VW-Aenderungsvorschlaegen-vor,dieselaffaere100.html) accessed 18 June 2025.

²¹⁴ Die Zeit, 'VW soll Regierungserklärung umgeschrieben haben' (Berlin, 6 August 2017) (<https://www.zeit.de/politik/deutschland/2017-08/niedersachsen-stephan-weil-volkswagen>) accessed 4 June 2025.

ging obligations of Germany’s Supply Chain Due Diligence Act, which mandates companies to implement comprehensive measures to identify, mitigate, and report human rights and environmental risks within their operations and supply chains.²¹⁵ The role of Human Rights Officer encompasses risk management and supervision, ensuring compliance with due diligence obligations under the LkSG.²¹⁶ Within Volkswagen, the HRO further oversees preventive measures²¹⁷, grievance mechanisms²¹⁸, and remedial actions²¹⁹ across Volkswagen’s entire business areas and supply chain, including 24 other companies belonging to the Volkswagen Group.²²⁰ The Human Rights Officer, is a theoretically independent position, reporting directly to the Group Board of Management, specifically the Finance Manager/COO²²¹ and is meant to serve as the first point of contact for human rights-related issues from authorities, NGOs, and the public. In tandem with the Human Rights Office, VW appointed Dr. Kerstin Waltenberg as the company’s first Human Rights Officer.

3.4.1 Critiques of Volkswagen’s HRO

The institutional design and governance culture at VW raise serious concerns about the actual effectiveness of the company’s Human Rights Office. While the establishment of the office in 2022 can be regarded as a proactive step towards meeting the obligations of the German Supply Chain Due Diligence Act, its structural placement within the company’s power hierarchy significantly limits its potential impact. The HRO reports directly to the Group Board of Management, as discussed in 2.2.6 *Shareholder rights and supervisory board responsibilities under German Corporate Law*, the same body historically criticised for centralising decision-making and discouraging internal dissent. Sharpe argues that the company’s dual board structure while formally balanced has in practice devolved into a system where the supervisory board consistently defers to the decisions of the management board, resulting in a governance culture “corrupted” by process deficiencies and executive dominance.²²² In this setting, the HRO’s mandate to monitor and respond to human rights risks appears institutionally compromised. Although the LkSG requires the appointment of an authority to oversee risk management and complaints mechanisms, the law itself does not grant this role any enforcement powers nor does it prescribe safeguards to guarantee functional independence. Consequently, the HRO at Volkswagen, though formally independent, is embedded within a corporate structure that has repeatedly shown its hesitancy to face internal criticism or to prioritise ethical concerns over strategic and financial objectives. Its inception also coincided with the then emerging legal obligations under the LkSG. This temporal

²¹⁵ LkSG, 4 (1).

²¹⁶ *ibid* 4 (3).

²¹⁷ *ibid* as required per art 6.

²¹⁸ *ibid* as required per art 8.

²¹⁹ *ibid* as required per art 7.

²²⁰ Volkswagen Group, ‘Human Rights, Policy Statement of Volkswagen AG’ (n 34).

²²¹ *ibid* 2.

²²² Sharpe (n 158) 103.

alignment suggests that external regulatory pressures, rather than an intrinsic movement towards HRDD, may have been the primary spark for establishing the HRO. After discussing VW's HRO establishment and its shortcomings, the next section will shed a light on Volkswagens far reaching involvements and influence on domestic politics and how it raises further doubts about the genuineness of its commitments towards respecting human rights.

3.5 Volkswagens entanglements in politics

To demonstrate Volkswagens entanglements in both international and domestic politics, this section will examine some of the lobbying efforts of VW regarding the CSDDD legislation and also one specific example that made headlines in German News in 2017, uncovering how far-reaching Volkswagens influence into high-ranking German politics goes. During the Dieselgate scandal, Stephan Weil, Prime Minister of Lower Saxony and member of Volkswagen's Supervisory Board, faced public scrutiny for reportedly allowing VW lawyers to review and propose edits to a government statement before it was delivered to the Lower Saxony parliament.²²³ In August 2017, it was revealed that a speech Weil planned to deliver concerning Dieselgate had been shared with VW for "factual review" and was subsequently altered at the company's suggestion.²²⁴ The Prime Minister's office claimed this was a routine procedure aimed at ensuring factual correctness, but critics and the opposition argued that it blurred the line between public accountability and corporate self-preservation. While the edits were not officially published in their entirety, media reports indicated that the tone of the speech became noticeably more conciliatory after corporate input²²⁵ with one anonymous VW-source claiming 'We have rewritten the speech and softened it up'²²⁶

VW has actively engaged in lobbying efforts to shape the CSDDD, aiming to curtail the directive's scope and mitigate its potential impact on the company. Notably, VW participated in a joint position paper with Germany's BDI, Italy's Confindustria, and France's MEDEF, advocating for the removal of civil liability provisions and the limitation of due diligence responsibilities to direct suppliers.²²⁷ These lobbying activities contributed to the dilution of the directive, including the postponement of reporting requirements and the exemption of companies with fewer than 1,000 employees.²²⁸ Despite the significance of these lobbying efforts, Volkswagen's disclosures regarding its policy advocacy remain limited. In its 2024 sustainability report, Volk-

²²³ NDR (n 213).

²²⁴ Die Zeit (n 214).

²²⁵ DER SPIEGEL, 'Diese Passagen Wurden Auf Wunsch von VW Geändert' (6 August 2017) (<https://www.spiegel.de/politik/deutschland/stephan-weil-diese-rede-passagen-liess-volkswagen-aendern-a-1161593.html>) accessed 5 June 2025.

²²⁶ DW, 'Die Kritik an VW Ist Drin Geblieben' (6 August 2017) (<https://www.dw.com/de/weil-die-kritik-an-vw-ist-drin-geblieben/a-39985571>) accessed 5 June 2025, translated from German to English using DeepL.

²²⁷ Arthur Neslen, 'Most firms advising the EU on its Omnibus sustainability reforms accused of supply chain abuses' (*Equal Times*, 7 March 2025) (<https://www.equaltimes.org/most-firms-advising-the-eu-on-its>) accessed 18 June 2025.

²²⁸ *ibid.*

swagen claimed a "positive impact" through lobbying activities but failed to provide measurable outcomes or detailed assessments of these impacts.²²⁹ This lack of transparency has drawn criticism from stakeholders, including institutional investors who have initiated legal action against Volkswagen, demanding greater disclosure of its lobbying activities and their alignment with the company's stated sustainability goals.²³⁰²³¹

Volkswagen's lobbying efforts to dilute the CSDDD and LkSG present a conflict of interest to say the least, especially significant influence over corporate decisions. Its ownership structure raises critical questions about the role of the state as both a regulator and a shareholder. On the one hand, the German government has a duty to uphold and promote human rights, both domestically and internationally. On the other hand, its stake in VW implicates it in corporate strategies that may undermine these very obligations. The inherent conflict in such arrangements has been highlighted by some institutions and scholars like David Bilchitz. The German Institute for Human Rights for example has urged the government to support robust human rights due diligence legislation, emphasizing that failing to do so undermines the state's commitment to human rights.²³² Meanwhile David Bilchitz has emphasised the need for Germany to work towards a BHR treaty and recognizing a certain historic, moral obligation.²³³ Moreover, the decision of the Court of Justice of the EU in *Commission v Germany (C-112/05)* underscores the tension between state interests and corporate governance, particularly concerning the state's ability to influence corporate decisions in companies where it holds significant shares.²³⁴ In this landmark case, the CJEU ruled that provisions granting the German federal state and the Land of Lower Saxony disproportionate control over Volkswagen, such as a 20% voting rights cap and an 80% majority requirement for key decisions, constituted an unlawful restriction on the free movement of capital. This judgment highlighted how state-retained special powers, even if in the name of public interest, can violate fundamental EU freedoms. Volkswagen's lobbying against stricter due diligence laws, therefore, not only reflects a corporate strategy to minimize regulatory burdens but also implicates the state in actions that contravene its human rights obligations. This duality of the state both as a protector of human rights and a corporate stakeholder necessitates a re-evaluation of governance structures to ensure that especially those enterprises,

²²⁹ Volkswagen Group, 'Lobbying Activities - Annual Report 2024' (<https://annualreport2024.volkswagen-group.com/sustainability-report/business-conduct-information/lobbying-activities.html>) accessed 18 June 2025.

²³⁰ Reuters, 'Investors File Lawsuit against VW over Climate-Change Related Lobbying Disclosures' (October 2022) (<https://www.reuters.com/business/autos-transportation/investors-file-lawsuit-against-vw-over-climate-change-related-lobbying-2022-10-20/>) accessed 18 June 2025.

²³¹ Sarah Hillebrand, Stefanie Spancken-Monz, and Timo Piller, 'Shareholders requesting information about climate lobbying: Volkswagen is facing new kind of ESG-related claims' (*Freshfields Sustainability*, 11 January 2023) (<https://sustainability.freshfields.com/post/102i4xk/shareholders-requesting-information-about-climate-lobbying-volkswagen-is-facing>) accessed 6 June 2025.

²³² German Institute for Human Rights, 'EU Member States Should Agree to the EU Due Diligence Directive' (7 March 2024) (<https://www.institut-fuer-menschenrechte.de/aktuelles/detail/eu-member-states-should-agree-to-eu-due-diligence-directive>) accessed 29 April 2025.

²³³ David Bilchitz, 'Germany's Moral Responsibility to Support a Treaty on Business and Human Rights' (*Verfassungsblog*, 18 July 2018) (<https://verfassungsblog.de/germanys-moral-responsibility-to-support-a-treaty-on-business-and-human-rights/>) accessed 30 June 2025.

²³⁴ *Case C-112/05 Commission of the European Communities v Federal Republic of Germany* (n 206).

that the state is significantly involved in align with Germany's human rights commitments.

4. Human rights violations within Volkswagen's supply chain

In the globalised economy, multinational corporations wield significant influence over the realization of fundamental rights.²³⁵ Volkswagen, as a leading global automotive manufacturer, is no exception. While the company publicly asserts its commitment to human rights through initiatives like the aforementioned Human Rights Office and the implementation of a Human Rights Focus System in 2022, allegations suggest a dissonance between corporate declarations and operational realities. This discrepancy is particularly evident further down in VW's supply chain, where various instances of human rights violations, both historical and ongoing have been alleged. This chapter will introduce some of those violations in an attempt to make VW's influence on the enjoyment of Human Rights more comprehensible and show how past wrongdoings and acknowledgement of those wrongdoings, do not seem to carry a deep meaning for the companies conduct. It also is important to keep in mind that the State of Lower Saxony holds and has always held approximately 20% of VW's voting rights, maintaining considerable influence through a blocking minority and direct representation on the Supervisory Board. So, when elaborating on instances of Human Rights violations in VW's supply chain, the government of Lower Saxony should legally have certainly known or anticipated some of the associated risks of the operations.

The three cases presented in this thesis were chosen on the consideration of firstly, the VW do Brazil case being the first case after the Second World war of Volkswagen acknowledging their complicity in Human Rights violations. Volkswagens operations in China and the alleged use of forced labour by the Uygur people was chosen to demonstrate the lack of serious learnings that could have been drawn from the Brazil case. It also goes to show how different Brazil's and China's governments respectively deal with these issues. With the former starting formal investigations via a Truth Commission and trying to bring justice to those affected by Volkswagens operations in Brazil and the latter not doing anything, since they themselves are promoting forced labour in the re-education camps. Lastly, the case of Volkswagen allegedly continuing operations via a Joint Venture in Russia shows how modern company structures can diffuse responsibilities and how the supervisory board of VW once again does not seem to be asking the right questions to their board of managers, nor taking their role seriously enough.

4.1 Complicity in Brazil's military dictatorship

During Brazil's 1964-1985 military dictatorship, *Volkswagen do Brazil*, a subsidiary of the Volkswagen Group became complicit in serious human rights abuses against its own workers. Invest-

²³⁵ GC No 24, I 1; UNGPs, commentary to principle 12

igations by Brazil's National Truth Commission found that Volkswagen's security department actively collaborated with the regime's security forces to identify, spy on and punish employees deemed "dissident" such as trade unionists and left-wing activists.²³⁶ The company's security personnel handed over the information to the Department of Political and Social Order (DOPS) who then carried out arrests on Volkswagen's São Bernardo do Campo factory premises. Detained workers were subjected to torture and prolonged imprisonment by state agents, with Volkswagen's knowledge or complicity.²³⁷ Some targeted employees were reportedly dismissed and blacklisted, barring them from employment elsewhere.²³⁸

Beyond surveillance and denunciations, further investigations have uncovered that Volkswagen's complicity extended to forced labour during the dictatorship.²³⁹ In the 1970s, VW owned a vast cattle ranch in the Amazonas region of Brazil as part of a government incentivized project. On this Fazenda Vale do Rio Cristalino ranch (1974–1986), hundreds of rural workers were subjected to "slavery-like" conditions.²⁴⁰ Local contractors recruited labourers to clear rainforest, where they were forced to buy their own tools, food and even plastic for shelter at exorbitant prices, trapping them in involuntary servitude. Testimonies gathered by prosecutors describe harsh working hours, degrading conditions without clean water or sanitation, and armed guards preventing escapes.²⁴¹ The findings, especially those by the Brazilian Truth Commission, reveal not only forced labour but also illegal detentions and physical abuse on Volkswagen's property.²⁴²

In light of this information becoming public, Brazilian authorities have moved toward accountability. In 2024, federal labour prosecutors formally charged Volkswagen do Brasil over its role in subjecting farm workers to slave-like practices, seeking collective damages for these abuses.²⁴³ This lawsuit came after failed settlement talks between Volkswagen do Brasil and the prosecutors; it alleges that Volkswagen's local subsidiary bore responsibility for the forced labour and unlawful deprivation of liberty on the Amazon ranch. Separately, a prior civil action by former factory workers led to a 2020 settlement in which VW agreed to pay 36 million

²³⁶ Thierry Ogier, 'In Brazil, It's Reparation Time for Volkswagen' (*JusticeInfo.net*, 6 October 2020) (<https://www.justiceinfo.net/en/45592-brazil-reparation-time-volkswagen.html>) accessed 3 June 2025; Grace Livingstone and Matheus Faustino, 'Brazil May Sue VW amid Claims Firm Used 'Slave Labour' under Military Rule' (*The Guardian*, 30 March 2023) (<https://www.theguardian.com/global-development/2023/mar/30/brazil-to-sue-volkswagen-over-claims-of-slavery-during-military-dictatorship>) accessed 3 June 2025

²³⁷ Kate Connolly and Dom Phillips, 'Volkswagen to Pay Compensation for Collaborating with Brazil's Dictatorship' (*The Guardian*, 24 September 2020) (<https://www.theguardian.com/world/2020/sep/24/volkswagen-brazil-ex-employees-persecuted-military-dictatorship-compensation#>) accessed 3 June 2025.

²³⁸ *ibid.*

²³⁹ Dom Phillips, 'Brazil Confronts Horrors of the Past with Torture Report's Release' (*TIME*, 10 December 2014) (<https://time.com/3629031/brazil-torture-report-truth-commission/>) accessed 3 June 2025.

²⁴⁰ Alberto Alerigi and Andre Romani, 'Brazil Charges Volkswagen Unit with Treating Farm Workers like Slaves Decades Ago' (*Reuters*, 5 December 2024) (<https://www.reuters.com/business/autos-transportation/brazil-charges-volkswagen-unit-with-treating-farm-workers-like-slaves-decades-2024-12-05/>) accessed 3 June 2025.

²⁴¹ Livingstone and Faustino (n 236).

²⁴² *ibid.*

²⁴³ Alerigi and Romani (n 240).

reais in reparations for its collaboration with the dictatorship's persecution of employees. *'It [the settlement] would be the first time that a German company accepts responsibility for human rights violations against its own workers for events that happened after the end of National Socialism'*²⁴⁴ said the Historian Christopher Kopper from the University of Bielefeld, who has been commissioned by VW to *'shed light on the dark years of the military dictatorship and shed light on the behaviour of those responsible in Brazil and, if necessary, Germany at the time.'*²⁴⁵ Volkswagen's conduct during Brazil's military dictatorship violated both Brazilian law and international human rights law. Under Brazil's domestic law, even during the 1970s, practices now identified as slave labour were illegal. The Brazilian Penal Code 1940 explicitly criminalizes reducing a person to a condition analogous to slavery encompassing forced labour, debt bondage, or servitude under Article 149.²⁴⁶ The abuses at Volkswagen's ranch, where workers were held in debt bondage and coerced by threat of force, meet this definition. In addition, Brazil is a state party to key international instruments against forced labour and slavery. It ratified the ILO Forced Labour Convention in 1957 and the ILO Abolition of Forced Labour Convention in 1965, obligating the elimination of all forms of forced or compulsory labour.²⁴⁷ These ILO conventions define forced labour as *"all work or service which is exacted from any person under the menace of any penalty and for which the person has not offered himself voluntarily"*²⁴⁸, a standard clearly breached by Volkswagen's practices in Brazil. Volkswagen's collaboration with the regime underscores how businesses can be complicit in human rights crimes.

4.2 Forced labour in Xinjiang, China

VW has faced serious allegations of direct and indirect involvement in forced labour programs targeting Uyghur Muslims in China's Xinjiang region. The company's joint venture with China-owned SAIC operates a facility in Urumqi, Xinjiang, which opened in 2013 and remained in operation through the period of China's mass internment and forced labour of Uyghurs from 2017 onward. Human rights organizations have documented that it is nearly impossible for any company to operate responsibly in Xinjiang's repressive environment, where the Chinese government is committing crimes against humanity and using state-imposed forced labour for industrial production.²⁴⁹ VW was one of the only global auto-makers maintaining a presence

²⁴⁴ Julia Brock, 'Volkswagen to Pay Compensation to Victims of Brazil's Dictatorship | IELR Blog' (*Official Blog of the International Enforcement Law Reporter*, 28 September 2020) (<https://ielrblog.com/index.php/2020/09/28/volkswagen-to-pay-compensation-to-victims-of-brazils-dictatorship/>) accessed 3 June 2025.

²⁴⁵ DER SPIEGEL, 'Volkswagen Soll Militärdiktatur in Brasilien Unterstützt Haben' (*DER SPIEGEL*, 24 July 2017) (<https://www.spiegel.de/wirtschaft/unternehmen/brasilien-volkswagen-soll-militaerdiktatur-unterstuetzt-haben-a-1159357.html>) accessed 3 June 2025, translated from German to English using DeepL.

²⁴⁶ Antislavery in Domestic Legislation database, 'Brazil – Antislavery in Domestic Legislation (ADLD)' (<https://www.antislaverylaw.ac.uk/country/brazil/?dataset=adld>) accessed 19 June 2025.

²⁴⁷ *ibid.*

²⁴⁸ Forced Labour Convention (No 29) 1930, Adopted 28 June 1930, entered into force 1 May 1932, 39 UNTS 55, art 2 1.

²⁴⁹ Human Rights Watch, 'Volkswagen's China Joint Venture to Exit Xinjiang' (13 February 2025) (<https://www.hrw.org/news/2024/12/02/volkswagens-china-joint-venture-exit-xinjiang>) accessed 19 June 2025; The New

in Xinjiang during this period, and activists accused the company of giving "moral cover" to Beijing's abuses.²⁵⁰ VW denied that any forced labour occurred at its Urumqi plant, but evidence suggests the company failed to adequately investigate or address the risk. In 2023, under public pressure, VW commissioned an audit of the Xinjiang facility. The audit claimed to find "no indications" of forced labour, but it was widely criticized as "deeply flawed".²⁵¹ Notably, the German official who led the audit admitted it was based solely on reviewing documents, without any free worker interviews, an approach of very limited credibility given Xinjiang's climate of surveillance and fear. The auditor concluded that workers would be unlikely to report abuse due to risk of retaliation.²⁵² Separate reporting indicated that several forced labour camps are located close to VW's plant, underscoring the atmosphere of coercion in the region.²⁵³ Further allegations claimed, that Uyghur forced labour may have been used to construct a test track for the facility in 2019.²⁵⁴ But beyond the plant itself, Volkswagen's supply chains in China have been exposed to Xinjiang forced labour. Research by Human Rights Watch and others shows that key materials used in car manufacturing for example, aluminium are produced in Xinjiang by companies associated with forced-labour transfer programs.²⁵⁵ Under Section 3 of Public Law No: 117-78²⁵⁶, products made using forced labour in the Xinjiang Uyghur Autonomous Region of the People's Republic of China are prohibited from being imported into the USA, which in one case led to U.S. authorities in late 2023 impounding thousands of VW vehicles after discovering a component sourced from a Chinese sub-supplier suspected of using Uyghur forced labour. VW had to remove and replace that part in all affected cars worldwide.²⁵⁷ The company later acknowledged that it had not previously traced that sub-supplier, exemplifying the consequences, due diligence gaps in supply chains can have for companies. Yet it took VW until late 2024 to finally decide to pull out of Xinjiang, announcing the sale of its Xinjiang asset after 12 years of operating there, something that can only be called long overdue.²⁵⁸

York Times, 'U.S. Says China's Repression of Uighurs Is 'Genocide'' (19 January 2021) (<https://www.nytimes.com/2021/01/19/us/politics/trump-china-xinjiang.html?smid=url-share>) accessed 1 May 2025

²⁵⁰ Stuart Lau, Joshua Posaner, and Hans Von Der Burchard, 'What Genocide? Volkswagen's Morally Expensive Bet on China' (*POLITICO*, 20 June 2023) (<https://www.politico.eu/article/volkswagen-china-xinjiang-forced-labor-how-to-get-away-with-genocide/>) accessed 19 June 2025.

²⁵¹ Human Rights Watch, 'Volkswagen's China Joint Venture to Exit Xinjiang' (n 249).

²⁵² *ibid.*

²⁵³ Lau, Posaner, and Burchard (n 250).

²⁵⁴ Human Rights Watch, 'Volkswagen: Address Uyghur Forced Labor' (24 May 2024) (<https://www.hrw.org/news/2024/05/27/volkswagen-address-uyghur-forced-labor>) accessed 30 June 2025.

²⁵⁵ *ibid.*; Human Rights Watch, 'EU Should Add Xinjiang, Aluminum to Forced Labor Database' (11 July 2024) (<https://www.hrw.org/news/2024/07/10/eu-should-add-xinjiang-aluminum-forced-labor-database>) accessed 19 June 2025

²⁵⁶ Uyghur Forced Labor Prevention Act 2021, Public Law 117-78, Enacted by the 117th United States Congress.

²⁵⁷ Watch (n 254).

²⁵⁸ Business & Human Rights Resource Centre, 'China: Volkswagen confirms plans to sell Xinjiang plant & two test tracks amid forced labour allegations' (<https://www.business-humanrights.org/it/ultime-notizie/china-volkswagen-sells-xinjiang-plant-two-test-tracks/>) accessed 22 March 2025.

4.3 Continued business operations in Russia

Despite Volkswagen's official withdrawal from the Russian market in 2023, recent developments indicate an indirect continuation of its presence through the Chinese joint venture FAW-Volkswagen. The brand Jetta, established in 2019 as a collaboration between VW and FAW Group, has begun re-entering the Russian market. Jetta vehicles, such as the VS5 and VA3 models, are produced in China and have been observed in Russia, looking rather similar to Volkswagen's Tiguan and Polo models.²⁵⁹ These vehicles are manufactured by FAW-Volkswagen in Chengdu and are being imported into Russia through FAW's Eastern Europe division. While VW has officially denied involvement in this re-entry, the structural and technological similarities between Jetta and VW models suggest correlation between the parent company and its joint venture.²⁶⁰ Furthermore, there are reports of brand-new cars from German car manufacturers like Mercedes Benz, BMW, Audi (part of VW) and VW arriving in Russia, most commonly through Chinese exports.²⁶¹ Exports of cars from China to Russia have increased more than seven times from 2022 to 2023²⁶² and in an interview member of the board of Transparency International, Heribert Hirte said *"It kind of blows your mind when you see how German cars are sold on in Russia as a matter of course, while we are told that the export of German cars is forbidden. And they are sold here as normal, as if they could go to the supermarket and nothing would have happened, as if there was no war."*²⁶³

This situation raises critical questions about the ethical responsibilities of multinational corporations especially when working within joint ventures and in contexts where geopolitical tensions and human rights considerations are at play the way they are in Russia. The indirect continuation of Volkswagen's presence through the FAW-VW joint venture in Russia if found to be true, would come with serious consequences for the brand as well as a foreseeable reputational damage. Especially if it became clear the high-ranking managers at VW knew about these practices as is claimed, it should have serious consequences for the responsible individuals and could spark a debate on Lower Saxony's complicity by potentially knowing or not investigating despite having reasonable grounds to do so.

These situations bear troubling resemblances to one another: in all three cases, a powerful corporation's operations align with an authoritarian regime's interests and make use of regimes

²⁵⁹ Maxim Kireev, 'Volkswagen in Russland: Deutsche Technik für Russlands Straßen' (*ZEIT Online*, 5 August 2024) (<https://www.zeit.de/wirtschaft/unternehmen/2024-07/volkswagen-russland-china-vw-jetta-autoindustrie>) accessed 1 May 2025.

²⁶⁰ Andreas Wolter, 'Wie Deutsche Autos Trotz EU-Sanktionen Nach Russland Kommen' (*Tagesschau*, 14 August 2024) (<https://www.tagesschau.de/wirtschaft/weltwirtschaft/autobauer-russland-sanktionen-100.html>) accessed 18 June 2025.

²⁶¹ Tim Zadorozhnyy, 'Russia Moves to Curb Chinese Car Imports with Higher Fees, Tighter Regulations' (*The Kyiv Independent*, 10 March 2025) (<https://kyivindependent.com/russia-moves-to-curb-chinese-car-imports-with-higher-fees-tighter-regulations/>) accessed 2 May 2025.

²⁶² Thomas Spirtlet, 'China Is Selling Loads of Cars in Russia — and Moscow Is Not Too Happy' (*Business Insider*, 11 March 2025) (<https://www.businessinsider.com/china-auto-exports-russia-chery-geely-sales-2025-3?IR=T>) accessed 2 May 2025.

²⁶³ Wolter (n 260) translated from German to English using DeepL.

deliberately violating International Human Rights Law, raising serious questions about corporate responsibility for human rights abuses in its sphere of influence. The VW case illustrates the challenge of preventing corporate complicity in forced labour and repression from the supply chains of the past dictatorship in Brazil to the present-day supply chain links in Xinjiang and alleged ongoing operations in Russia, underscoring the need for more rigorous human rights due diligence, both from VW but also the state of Lower Saxony as part of VW's supervisory board.

5. Evaluating Lower Saxony's stake in Volkswagen

This chapter critically evaluates the role of the State of Lower Saxony as a public shareholder in the Volkswagen Group. Building on the preceding analysis of legal frameworks and factual findings, it aims to assess whether Lower Saxony bears legal responsibility or at least a normative obligation to prevent or address human rights violations linked to Volkswagen's operations. Given the complexity of this question, the evaluation is divided into two parts.

Section 5.1 engages with moral and ethical considerations. It examines the broader expectations placed on democratic governments that act not only as regulators but also as shareholders in powerful multinational enterprises. While legal thresholds for responsibility may not always be met, the entanglement of Lower Saxony in Volkswagen's governance, particularly through its supervisory board representation and blocking minority raise important normative questions. This section reflects on concepts such as democratic accountability, transparency, and the public interest, arguing that public shareholders should not only be held to a higher ethical standard than private investors but that this should apply to Lower Saxony's stake in Volkswagen. Section 5.2 turns to the legal perspective. It analyses whether, under existing legal instruments and jurisprudence, Lower Saxony (and by extension the Federal Republic of Germany) could be held responsible for failing to prevent or respond to human rights harms committed by Volkswagen. This includes an assessment of international and regional human rights law, domestic corporate law, and recent court decisions. It will also evaluate whether Lower Saxony's influence, enabled by the Volkswagen Act, meets the threshold of "controlling influence" sufficient to trigger direct obligations under German constitutional law and international human rights standards.

5.1 Ethical and moral considerations

5.1.1 Public Shareholding and Democratic Responsibility

Public shareholders are not simply economic actors but also democratic institutions. In the case of Lower Saxony, its role as a major shareholder in Volkswagen brings with it an obligation to act transparently and in alignment with democratic values. Unlike private investors, public shareholders are accountable to citizens. The lack of publicly available policy documents concerning Lower Saxony's approach towards governance within Volkswagen constitutes a democratic deficit. Where the state holds voting rights and permanent seats on a supervisory board, passivity is not neutrality but a political and moral choice that in this case reflects poorly on Lower Saxony. While Lower Saxony's blocking minority was and still is meant to protect domestic jobs and make "hostile" takeovers more complicated, this power bears a strong responsibility too. Since

Lower Saxony maintains two seats on the supervisory board of Volkswagen at all times, they should not only represent their domestic interests (especially those in the region of Lower Saxony) but also incorporate Germany's commitments to Human Rights by meaningfully assessing critical risks in important decisions like the construction of new facilities in other countries.

5.1.2 Historical Responsibility and the Ethics of Non-Repetition

Germany's and Volkswagen's historical involvement in systematic human rights violations during the Nazi regime, especially the use of forced labour, should create a heightened moral obligation to prevent similar patterns of abuse today. As demonstrated in Chapter 4, VW is currently linked to allegations of forced labour in China and maintains business operations in Russia through a joint venture despite the war of aggression against Ukraine. These developments are not merely unfortunate coincidences; they point to an ethical failure to internalise and act on the lessons of the past. In this context, Germany's modern-day commitments to human rights instruments such as the UNGPs heighten the expectation that public actors like Lower Saxony should actively ensure that companies they co-govern uphold these standards. Scholar David Bilchitz for example argues in favour of Germany strongly supporting a UN Treaty on BHR, due to a moral obligation arising from the atrocities committed in World War II by the German State but also German companies²⁶⁴ like VW who were using forced labour in their factories, taking advantage of the concentration camps build by the Nazi regime.²⁶⁵

5.1.3 Engagement with Authoritarian Regimes

It must be acknowledged that certain business operations, particularly in sectors dependent on critical raw materials may require engagement with countries like China, where access to essential resources or strategic markets is difficult to avoid. However, this economic necessity does not absolve companies of their ethical responsibilities. On the contrary, operating in jurisdictions with well-documented human rights shortcomings demands heightened vigilance, robust due diligence, and a clear commitment to avoiding complicity in abuses. Volkswagen's continued engagement with authoritarian regimes, particularly in China and Russia, raises the question whether management at VW are aware of their moral responsibilities regarding these endeavours. These regimes are characterised by systemic repression and severe limitations on civil liberties, making them high-risk environments for human rights abuses. State-linked investors such as Lower Saxony cannot plead ignorance or powerlessness in such contexts. The expectation that public shareholders conduct enhanced human rights due diligence is not just a matter of best practice but reflects a basic ethical principle: that public power should not be complicit in repression, even indirectly. The fact that VW may be sustaining operations in Russia via its

²⁶⁴ Bilchitz, 'Germany's Moral Responsibility to Support a Treaty on Business and Human Rights' (n 233).

²⁶⁵ United States Holocaust Memorial Museum, 'The "People's Car" and the Nazi State' (<https://encyclopedia.ushmm.org/content/en/article/volkswagen-1>) accessed 17 June 2025.

Chinese joint venture, despite international sanctions and widespread abuses, reflects a serious normative gap between Germany's human rights commitments and the behaviour of its public investments.

5.1.4 Moral Leadership and the Role of Public Shareholders

The state and its organs should be leveraging their influence to elevate the standard of corporate human rights adherence in businesses, particularly in areas where it has a substantial impact. Lower Saxony, due to its unique legal and structural position in Volkswagen, is well-placed to lead by example. By failing to take a visible and proactive stance on Volkswagen's human rights obligations, the state not only diminishes its own credibility but risks legitimising a status quo of minimal compliance. In a global context where corporate accountability is still largely voluntary, the moral authority of public shareholders should be regarded as a non-optional tool.

5.2 Legal perspective

This section evaluates whether and to what extent the State of Lower Saxony, by virtue of its 20% voting stake and board representation in Volkswagen, may carry legal responsibility for actual or potential human rights violations linked to the company's global operations. While Germany's federal structure may formally separate federal-state conduct from federal obligations, under international law, such distinctions are irrelevant for the attribution of responsibility: acts by subnational entities such as Lower Saxony are attributable to the Federal Republic of Germany. The core question is therefore whether, under existing legal frameworks, Lower Saxony's involvement in Volkswagen's governance can give rise to positive obligations under IHRL or German constitutional law, and whether its inaction or silence could constitute a failure to meet such an obligation.

5.2.1 Attribution and the State Duty to Protect

As established in General Comment No. 24 to the ICESCR and reflected in the UNGPs, states are required to take appropriate steps to prevent and address human rights violations by business enterprises over which they exercise influence or control. The state duty to protect extends extraterritorially where such influence is significant, and where human rights impacts occur as a foreseeable consequence of a company's operations abroad. Lower Saxony's formal powers under the Volkswagen Act, including its ability to appoint members to the Supervisory Board and block strategic decisions through its voting rights, provide it with a unique level of influence not typically available to minority shareholders. From a legal standpoint, this constellation strongly suggests that Germany exercises jurisdiction over Volkswagen's conduct abroad. If human rights harms result from that conduct, and Lower Saxony as a shareholder with governance powers,

failed to exercise its leverage to prevent or mitigate them, Germany could be seen as having violated its duty to protect.

5.2.2 German Constitutional Law

The jurisprudence of the BVerfG also supports the proposition that enterprises under significant public control are directly bound by fundamental rights. In the Fraport decision, the Court held that entities in majority or controlling public ownership must comply with fundamental rights as if they were state actors. While VW is not majority-owned by the state, the BVerfG left open the possibility that “controlling influence” could trigger similar obligations even below the 50% threshold. Given Lower Saxony’s entrenched rights under the Volkswagen Act, it is arguable that such influence amounts to functional control, sufficient to activate constitutional obligations. Furthermore, the BVerfG recognised, in the same case, that public authority must act in line with democratic accountability and fundamental rights protections, particularly when exercising influence over enterprises.²⁶⁶ This reinforces the argument that Lower Saxony is not merely a passive shareholder, but an actor within a corporation whose decisions can have far-reaching human rights implications, therefore creating additional constitutional obligations.

5.2.3 Corporate Law and Supervisory Duties

Under German corporate law, supervisory board members are bound by fiduciary duties, including the duty of care and loyalty, and may be held liable for failing to prevent corporate misconduct. These duties are arguably heightened where the supervisory board includes representatives of public authorities, who must also act in accordance with their public law obligations. As such, Lower Saxony’s representatives on Volkswagen’s board cannot act solely in the company’s economic interest, but must balance shareholder interests with the state’s human rights commitments.²⁶⁷ This dual mandate creates a legal expectation, if not yet an enforceable obligation, that public shareholders act to ensure adequate corporate due diligence, particularly in light of binding and soft-law instruments such as the LkSG, the (non-omnibus) CSDDD, and the UNGPs. Inaction in the face of credible human rights risks, such as those documented in Volkswagen’s operations in Xinjiang and Russia, may therefore constitute a failure of both corporate oversight and state responsibility.

²⁶⁶ *BVerfGE*, 22 February 2011 - 1 BvR 699/06 - *Fraport* (n 150) para 49, 59.

²⁶⁷ Furthermore, it could also be argued that VW being complicit in human rights violations by virtue of legal liability and reputational risks could end up being costly to them, making good human rights compliance an economic interest

5.2.4 The Volkswagen Act as a Historical Irregularity

The continued existence of the Volkswagen Act²⁶⁸ raises broader questions about the legitimacy of maintaining exceptional governance frameworks in a democratic society and a legally standardised corporate landscape. Originally enacted in the context of post-war reconstruction and aimed at preventing a concentration of private capital in one of Germany's most strategically important industrial enterprises, the Volkswagen Act granted the State of Lower Saxony a unique position as a public shareholder.²⁶⁹ While historically justifiable, the Volkswagen Act now appears increasingly out of step with a globalised world and governance expectations. In a modern legal and political context and with regards to commitments to transparency, shareholder equality, and human rights due diligence, the legal exception that is the Volkswagen Act, seems difficult to defend. As this thesis has shown, Lower Saxony failed to use its privileged position to uphold higher human rights standards or to ensure meaningful democratic oversight over Volkswagen's global operations. Instead, the legal facilitation of state influence has enabled a form of passive shareholder conduct that blurs public and private roles without delivering on the ethical obligations that public ownership entails. In this light, the Volkswagen Act functions less as a tool for safeguarding the public interest and more as a relic of a different era, especially considering that the act, meant to safeguard VW from private takeovers is now held in majority by the German-Austrian Porsche-Piëch family. Repealing or fundamentally reforming the Act would help, normalising Volkswagen's governance structure in line with other large German corporations.

²⁶⁸ Volkswagen Act.

²⁶⁹ As mentioned in 3.2 Lower Saxony's stake in Volkswagen and the Volkswagen Act

6. Conclusion

This thesis examined the legal and ethical responsibilities of public shareholders in transnational corporations, specifically examining Lower Saxony's stake in VW and its implications for human rights accountability. Through detailed analysis of international, European, and national legal frameworks, including the UNGPs, OECD Guidelines, German Supply Chain Due Diligence Act, and the EU Corporate Sustainability Due Diligence Directive, this thesis established a clear normative basis for increased responsibilities for state actors involved in corporate governance. Lower Saxony's significant influence on Volkswagen's governance structure, facilitated by the historic exception that is the Volkswagen Act, granting Lower Saxony representation on the supervisory board, dispels any notion of regarding Lower Saxony as a passive shareholder. Instead, it affirms that Lower Saxony actively shapes corporate decisions, thereby implicating it ethically and legally in the company's global human rights practices. Historical and contemporary instances, notably Volkswagen's complicity during Brazil's military dictatorship, its continued operations in regions with documented human rights abuses such as Xinjiang and persistent business engagement in Russia, underscore the critical need for rigorous oversight by public shareholders. Furthermore, this thesis explored competing theoretical approaches to corporate accountability, particularly David Bilchitz's proposal on direct corporate human rights obligations. Bilchitz's approach emphasizes the necessity of holding corporations directly accountable for human rights violations, highlighting significant shortcomings in the current state-centred framework. This critique aligns closely with Olivier De Schutter's analysis of the limitations of existing international frameworks, particularly concerning the insufficient strength of states' current duty to protect human rights and the limited direct obligations placed on corporations. By combining these theoretical insights with the concrete example of Lower Saxony and Volkswagen, this thesis exemplifies the accountability gap inherent in current international standards and underscores the ongoing necessity for a more robust and legally binding instrument to effectively address these critical gaps. Legally, this thesis also reflected on Germany's extraterritorial human rights obligations under international and constitutional law, specifically highlighting the significance of the German Constitutional Court's Fraport decision. This landmark ruling underscores that public ownership or substantial state influence within enterprises carries direct obligations under fundamental rights principles. The decision's implications are profound, as it clarifies the binding nature of human rights obligations on publicly influenced enterprises, affirming that both Lower Saxony and Germany bear direct responsibility to ensure compliance with human rights standards within Volkswagen's global operations. Ultimately, this thesis concludes that substantial governance reforms are needed within VW and Lower Saxony's supervisory board representation. Lower Saxony should implement clear and transparent policies for evaluating and addressing human rights risks, require detailed public reporting on Volkswagen's human rights impacts and responses, and enforce rigorous due diligence procedures

with independent oversight. Furthermore, Lower Saxony's representation on Volkswagen's supervisory board should explicitly incorporate human rights expertise to more effectively guide corporate decisions. By adopting these measures, Lower Saxony could set an example for similarly involved public shareholders, promoting enhanced transparency, accountability, and ethical business practices. Additionally, this would also increase Volkswagen's standing regarding their human rights obligations and, as shown, it would potentially avoid legal consequences for Germany failing to fulfil its duty to protect.

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