Transnational Corporations and Human Rights

Edited by

Olivier De Schutter

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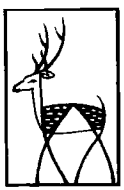

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Contents

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The Challenge of Imposing Human Rights Norms on Corporate Actors

OLIVIER DE SCHUTTER

THIS COLLECTION OF essays offers a broad overview of the questions raised by the imposition of human rights obligations on transnational corporations (TNCs). Section II of this chapter offers an outline of the rest of the chapters contained in the book. First, however, Section I of this chapter, which is conceived as an introduction to the general themes of the volume, presents the general context in which the question of the human rights responsibilities of TNCs has developed. It reviews the push towards improving the accountability of these actors in the United Nations (UN), in the Organization for Economic Cooperation and Development (OECD), and in the International Labour Organization (ILO), as part of the movement in favor of the New International Economic Order during the 1970s or in response to that movement. This introduction then describes the initiatives which are the outcome of the second wave of corporate social responsibility. These more recent initiatives resulted from the critique, especially by civil society organisations, of the form taken by economic globalization since the early 1990s. Despite certain superficial similarities, especially with regard to its outcomes, this second wave of initiatives is markedly different from the first. Developing countries, which were at the forefront of the project of the New International Economic Order, now appear suspicious of, if not hostile to, the imposition of human rights obligations on TNCs. The pressure on companies is also significantly stronger now than previously, both because of the mobilization of non-governmental organizations (NGOs) and the communication tools they now have at their disposal, and because of the threat of legal suits against companies for human rights violations, especially before the United States federal courts. It is in this context that the Secretary-General of the UN proposed a Global Compact in 1999, and that the UN Sub-Commission on the Promotion and Protection of Human Rights adopted, in 2003, a set of Norms on the Human Rights Responsibilities of Transnational Corporations and Other

Business Enterprises. It is also under this pressure to improve the human rights accountability of corporations that voluntary initiatives by business have developed exponentially during recent years. The question today is how to ensure consistency between these different initiatives, and whether the time is ripe for a more ambitious development.

I. THE GENERAL CONTEXT

1. The 1970s: Codifying the Conduct of Transnational Corporations under the New International Economic Order

The debate on the question of the human rights responsibilities of companies is hardly new. The insistence on an improved control of the activities of TNCs has accompanied the vindication of a 'New International Economic Order' in the early 1970s,[1] which the recently decolonized States pushed forward during that period. A draft Code of Conduct on Transnational Corporations[2] was even being prepared up to 1992 within the UN Commission on Transnational Corporations, established as a follow-up to a report prepared by a group of experts upon the request of the Economic and Social Council.[3] The UN Draft Code of Conduct provided, inter alia, that 'Transnational corporations shall respect human rights and fundamental freedoms in the countries in which they operate. In their social and industrial relations, transnational corporations shall not discriminate on the basis of race, colour, sex, religion, language, social, national and ethnic origin or political or other opinion. Transnational corporations shall conform to government policies designed to extend equality of opportunity and treatment.' The Draft Code failed to be adopted, however, because of major disagreements between industrialized and developing countries, in particular on the reference to international law and on the inclusion in the Code of standards of treatment for TNCs:[4]

[1] See the resolution adopted by the General Assembly of the United Nations on 1 May 1974, calling for a New International Economic Order (UN doc A/Res/3201 (S-VI)). This resolution was followed upon, in particular, by GA Res 3281(XXIX) of 15 January 1975, UN GAOR Supp (No 31), UN doc A/9631 (1975), The Charter of Economic Rights and Duties of States, reproduced in (1975) 14 ILM 251–65.

[2] UN doc E/1990/94, 12 June 1990.

[3] Ecosoc Res 1974/1721 of 24 May 1974; 'The Impact of Multinational Corporations on the Development Process and on International Relations, Report of the Group of Eminent Persons to Study the Role of Multinational Corporations in Development and in International Relations', UN doc E/5500/Rev.1/Add 1 (1974).

[4] See the Report by the Secretary General, *The impact of the activities and working methods of transnational corporations on the full enjoyment of all human rights, in particular economic, social and cultural rights and the right to development, bearing in mind existing international guidelines,*

while the industrialized countries were in favor of a Code protecting TNCs from discriminatory treatment or other behavior of host States which would be in violation of certain minimum standards, the developing States primarily sought to ensure that TNCs would be better regulated, and in particular would be prohibited from interfering either with political independence of the investment-receiving States or with their nationally defined economic objectives. Although a compromise solution was found on these differing expectations in 1980, when it was agreed that the Draft Code would comprise two parts, one regulating the activities of TNCs, and the other relating to the treatment of TNCs,[5] the conflicting views about what each of those parts should contain ultimately proved insuperable.

It is also in the context created in the 1970s, where the developed States feared that certain abuses by TNCs, or their interference with local political processes, might lead to hostile reactions from developing States, and possibly to the imposition of restrictions on the rights of foreign investors, and where the 'Group of 77' non-aligned (developing) countries insisted on their permanent sovereignty over natural resources and on the need to improve the supervision of the activities of transnational corporations, that the OECD adopted, on 21 June 1976, the Guidelines for Multinational Enterprises. These Guidelines have been revised on a number of occasions since their initial adoption, and most recently in 2000, when the supervisory mechanism was revitalized and when a general obligation on multinational enterprises to 'respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments' was stipulated.[6] Although they are addressed

rules and standards relating to the subject-matter, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN doc E/CN.4/Sub.2/1996/12, 2 July 1996, paras 61–62. See also on this attempt, SKB Assante, 'United Nations: International Regulation of Transnational Corporations' (1979) 13 *Journal of World Trade Law* 55; W Spröte, 'Negotiations on a United Nations Code of Conduct on Transnational Corporations' (1990) 33 *German Yearbook of International Law* 331; P Muchlinski, 'Attempts to Extend the Accountability of Transnational Corporations: The Role of UNCTAD', in Menno T Kamminga and Saman Zia-Zarifi (eds), *Liability of Multinational Corporations under International Law* (The Hague, Kluwer Law International, 2000), pp 97–117; N Jägers, *Corporate Human Rights Obligations: in Search of Accountability* (Antwerpen, Oxford and New York, Intersentia, 2002), pp 119–24.

[5] P Muchlinski, 'Attempts to Extend the Accountability of Transnational Corporations: The Role of UNCTAD', above n 4, at p 100 (referring to Ecosoc Res 1980/60 of 24 July 1980).

[6] See para 2 of the Chapter on 'General Policies'. On the context in which the OECD launched the revitalization of the Guidelines for Multinational Enterprises, see J. Murray, 'A new phase in the regulation of multinational enterprises: the role of the OECD', 30 *Industrial Law Journal* 255 (2001); Jan Huner, 'The Multilateral Agreement on Investment and the Review of the OECD Guidelines for Multinational Enterprises', in Menno T. Kamminga and Saman Zia-Zarifi (eds), *Liability of Multinational Corporations under International Law*, above n 4, at 197–205.

only to the 30 member States of the OECD and the handful of non-member countries who have chosen to adhere to them, the Guidelines still constitute the most widely used instrument defining the obligations of multinational enterprises.[7] As illustrated by the fact that they were adopted as part of the Declaration on International Investment and Multinational Enterprises, which in its other parts sought to facilitate trade among OECD countries in particular by requiring the parties to adopt the principle of national treatment and by seeking to minimize the risk of conflicting requirements being imposed on multinational enterprises, the Guidelines were seen as a means to encourage the opening up of foreign economies to foreign direct investment. They sought to ensure that all States parties would contribute, by the setting of national contact points and their cooperation with the OECD Investment Committee,[8] to ensuring a certain level of control on the activities of multinational enterprises incorporated under their jurisdiction, even if this supervision remains purely voluntary and may not lead to the imposition of sanctions.

Almost simultaneously, the ILO adopted the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.[9] As stated in its Preamble, the Tripartite Declaration is based on the finding that 'the advances made by multinational enterprises in organizing their operations beyond the national framework may lead to abuse of concentrations of economic power and to conflicts with national policy objectives and with the interest of the workers. In addition, the complexity of multinational enterprises and the difficulty of clearly perceiving their diverse structures, operations and policies sometimes give rise to concern either in the home or in the host countries, or in both.' The aim of the Tripartite Declaration of Principles, then, is to 'encourage the positive contribution which multinational enterprises can make to economic and social progress and to minimize and resolve the difficulties to which their various operations may give rise, taking into account the United Nations resolutions advocating the Establishment of a New International Economic

[7] The Guidelines are addressed to the governments of the 30 States parties of the Organisation, but have also been adopted by the governments of Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania and Slovenia. These governments 'recommend to multinational enterprises operating in or from their territories the observance of the Guidelines' (Declaration on International Investment and Multinational Enterprises, 27 June 2000, I). There is therefore no territorial limitation to the application of the Guidelines. As most multinational enterprises are domiciled in industrialized countries that are members of the OECD, the Guidelines are practically of almost universal applicability to transnational business enterprises.

[8] Previously called the Committee on International Investment and Multinational Enterprises (CIME).

[9] Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the ILO at its 204th Session (November 1977), and revised at the 279th Session (November 2000).

Order.'[10] Apart from specific references to fundamental workers' rights as guaranteed under conventions and recommendations adopted within the ILO—including the ILO Declaration on Fundamental Principles and Rights at Work, adopted in June 1998 by the International Labor Conference[11]—such as references to the principles of freedom of association[12] and the right to collective bargaining,[13] the prohibition of arbitrary dismissals,[14] or the protection of health and safety at work,[15] the Tripartite Declaration contains a general provision relating to the obligation to respect human rights. Paragraph 8 of the chapter on General Policies states that:

> All the parties concerned by this Declaration should respect the sovereign rights of States, obey the national laws and regulations, give due consideration to local practices and respect relevant international standards.[16] They should respect the Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly of the United Nations as well as the Constitution of the International Labour Organization and its principles according to which freedom of expression and association are essential to sustained progress. They should contribute to the realization of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted in 1998.[17] They should also honour commitments which they have freely entered into, in conformity with the national law and accepted international obligations.

It is also noteworthy that, although the Tripartite Declaration insists on the requirement that all parties to the Declaration—including, thus, the employers—'respect the sovereign rights of States', and states that multinational enterprises 'take fully into account established general policy objectives of the countries in which they operate' and that their activities should be 'in harmony with the development priorities and social aims and structure of the country in which they operate',[18] the standards on

[10] Para 2.
[11] Para 8.
[12] Paras 42–48.
[13] Paras 49–56.
[14] Para 27.
[15] Paras 37-40.
[16] This has led to the following interpretation by the ILO, under the procedure for the interpretation of the Tripartite Declaration set out below: 'There is no reasonable basis for interpreting the Declaration to permit the exemption of any party from complying with substantive safeguards under either domestic laws or international standards. This would be inconsistent with the Declaration's ultimate goal, laid out in paragraph 5, of furthering social progress. (GB.272/MNE/1 confidential, para 21)' (*Belgian Case no 2* (1997–1998)).
[17] This sentence was added in para 8 when the Tripartite Declaration was revised, in November 2000.
[18] Para 10.

social policy developed under ILO conventions and recommendations are to be complied with, even where the host country either would not be bound by certain of those instruments, or where, even though bound, the host government would be acting in violation of those international obligations.[19] In this respect, the ILO Tripartite Declaration goes even beyond the provision of the OECD Guidelines for Multinational Enterprises: by referring to the obligation of multinational enterprises to 'respect the human rights of those affected by their activities *consistent with the host government's international obligations and commitments*', the OECD Guidelines suggest that the foreign investor should comply with any international instruments ratified by the host country, even if local regulations or local practice are not themselves in conformity with those instruments ; the ILO Tripartite Declaration states that, even where certain core ILO instruments have not been ratified by the host State, they nevertheless should be 'referred to' by these investors 'for guidance in their social policy'.

Although of high moral significance because of its adoption by consensus by the ILO Governing Body at which governments, employers and workers are represented, the Tripartite Declaration remains, as such, a non-binding instrument: the Declaration, we are told in its introductory chapter, 'sets out principles in the fields of employment, training, conditions of work and life and industrial relations which governments, employers' and workers' organizations and multinational enterprises are recommended to observe on a voluntary basis; its provisions shall not limit or otherwise affect obligations arising out of ratification of any ILO Convention.'[20] Governments, however, are to report on a quadriennial

[19] See, in particular, para 9 of the Tripartite Declaration : 'Governments which have not yet ratified Conventions Nos 87 [concerning Freedom of Association and Protection of the Right to Organise], 98 [concerning the Application of the Principles of the Right to Organise and to Bargain Collectively], 111 [concerning Discrimination in Respect of Employment and Occupation], 122 [concerning Employment Policy], 138 [concerning Minimum Age for Admission to Employment] and 182 [concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour] are urged to do so and in any event to apply, to the greatest extent possible, through their national policies, the principles embodied therein and in Recommendations Nos. 111 [concerning Discrimination in Respect of Employment and Occupation], 119 [concerning Termination of Employment at the Initiative of the Employer], 122 [concerning Employment Policy], 146 [concerning Minimum Age for Admission to Employment] and 190 [concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour]. Without prejudice to the obligation of governments to ensure compliance with Conventions they have ratified, in countries in which the Conventions and Recommendations cited in this paragraph are not complied with, all parties should refer to them for guidance in their social policy'.

[20] Para 7. The Addendum to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy adopted by the Governing Body of the International Labour Office at its 238th Session (Geneva, November 1987) and 264th Session (November 1995) states that '[i]n keeping with the voluntary nature of the Declaration all of its provisions, whether derived from ILO Conventions and Recommendations or other sources, are recommendatory, except of course for provisions in Conventions which are binding on the member States which have ratified them.'

basis to the Governing Body on the implementation of the Declaration, and the Governing Body may make recommendations on the basis of the examination of these reports by the the Subcommittee on Multinational Enterprises of the Committee on Legal Issues and International Labour Standards.[21] Moreover, under the *Procedure for the Examination of Disputes concerning the Application of the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy by Means of Interpretation of Its Provisions*,[22] governments may request an interpretation of the Tripartite Declaration, either on their own initiative or upon a request made by workers' or employers' international or representative national organizations.[23] This request is transmitted to the Subcommittee on Multinational Enterprises, a subcommittee of the ILO Governing Body's Committee on Legal Issues and International Labour Standards, the three officers of which (representing respectively the governments, the workers and the employers) may decide that the request is admissible (or 'receivable', in the jargon of the Declaration),[24] leading it to ask the ILO for the interpretation requested. Once the draft reply of the ILO is received, the proposed interpretation of the Tripartite Declaration is voted upon within the Subcommittee on Multinational Enterprises, and if approved by the Governing Body of the ILO, will be forwarded to the parties

[21] This Subcommittee is composed of 18 members (six from each of the three groups – governments, workers and employers – which reflect the tripartite structure of the ILO).

[22] Adopted by the Governing Body of the ILO, at its 232nd Session (Geneva, March 1986). Para 1 of this *Procedure* states that its purpose is 'to interpret the provisions of the Declaration when needed to resolve a disagreement on their meaning, arising from an actual situation, between parties to whom the Declaration is commended.' In interpreting this paragraph, the ILO has considered that '[t]here must be an actual dispute, arising out of a factual situation, between the parties for an interpretation to be necessary. Therefore, requests for interpretation must be supported by factual evidence to show that there is a dispute. (GB.229/13/13, Appendix, para 13)' (*BIFU Case*, 1984–1985). In April 1992, the International Union of Food and Allied Workers' Associations (IUF) submitted, on behalf of one of its members, a formal request for an interpretation of the Tripartite Declaration, complaining about the decision of a multinational enterprise to expand its investment in a country where, according to the IUF, there was a total disregard for all workers' and human rights, so that in the view of the IUF such an investment could not be said to contribute to 'economic and social progress' (paras 2 and 8 of the Tripartite Declaration). The Subcommittee on Multinational Enterprises considered, however, that the request was not receivable, insofar as 'a situation that did not relate to an actual dispute between workers and management or between the enterprise and the government was not an "actual situation" requiring an interpretation. There was no evidence of an actual dispute between workers and management or government leading to a disagreement over the interpretation of the Declaration (...). (GB.255/10/12)'.

[23] These organisations may make such a request themselves if the government refuses to do so or has failed to react within three months of having received such a request. See para 6 of the *Procedure for the Examination of Disputes concerning the Application of the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy by Means of Interpretation of Its Provisions*, above n 22.

[24] If the three officers cannot reach an agreement unanimously, the question shall be referred to the full Committee for decision (see para 4).

concerned and made public in the *Official Bulletin* of the ILO, although the names of any specific corporations concerned are withheld.

Neither the 1976 OECD Guidelines for Multinational Enterprises nor the 1977 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy may be described as effective instruments imposing human rights obligations on transnational enterprises.[25] These instruments impose on States certain obligations of a procedural nature: in particular, States must set up national contact points (NCPs) under the OECD Guidelines in order to promote the Guidelines and to receive 'specific instances', or complaints by interested parties in cases of non-compliance by companies; they must report on a quadriennal basis under the ILO Tripartite Declaration on the implementation of the principles listed therein. However, both these instruments are explicitly presented as non-binding instruments, with respect to the multinational enterprises whose practices they ultimately seek to address. The statements adopted by the NCPs at the close of procedures initiated under the revised OECD Guidelines for Multinational Enterprises are generally weak, and the procedure itself before the NCPs is mostly considered as unsatisfactory by the NGOs which, across some 45 'specific instances' they have presented to the NCPs since 2000, have relied on this mechanism: the NCPs have no investigative powers;[26] the procedures followed lack transparency and are seen as biased towards the interests of business; and, as they belong to the governmental apparatus, the NCPs are neither independent[27] nor even, in most cases, impartial in the consideration of the complaints they

[25] For a comparison of these tools, see Bob Hepple, *Labour Laws and Global Trade* (Oxford and Portland, Oregon, Hart Publishing, 2005), at pp 78–85.

[26] Although para 20 of the 'Commentary on the Implementation Procedures of the OECD Guidelines on Multinational Enterprises' (in *The OECD Guidelines on Multinational Enterprises*, revision 2000, at p 57) refers to the fact that the NCP may 'pursue enquiries and engage in other fact finding activities', this statement must be replaced in its context: it is made in order to encourage NCPs to receive 'specific instances' even where Guidelines-related questions arise in non-adhering countries. It is in order to emphasize that the NCPs may nevertheless contribute to compliance with the Guidelines in such a situation that the Commentary mentions that it remains possible in such an instance for the NCP to 'take steps to develop an understanding of the issues involved.'

[27] The States adhering to the OECD Guidelines on Multinational Enterprises are recognized a broad margin of appreciation in how to set up their national contact point. However, in conformity with the principle of 'functional equivalence', a set of core criteria has been laid down which they should take into account in organising the NCPs: 'Since governments are accorded flexibility in the way they organise NCPs, NCPs should function in a visible, accessible, transparent, and accountable manner. These criteria will guide NCPs in carrying out their activities and will also assist the CIME in discussing the conduct of NCPs' (para 8 of the 'Commentary on the Implementation Procedures of the OECD Guidelines on Multinational Enterprises' (above, n 26)). Neither the principles of independence nor that of impartiality are mentioned among those core criteria.

receive.[28] Moreover, no sanctions may be imposed on multinational enterprises which either refuse to cooperate with the NCP, or are found to be in violation of the Guidelines. Under the OECD Guidelines, the only incentive for companies to comply resides in the adverse publicity they will be subjected to if they refuse to cooperate in identifying a solution to the 'specific instance' presented to an NCP.[29] Such an incentive is even absent from the procedures for the supervision and interpretation of the ILO Tripartite Declaration.

2. The 1990s: the Second Wave of Corporate Responsibility

The question of the human rights responsibilities of TNCs has been spectacularly revived, however, since the mid 1990s, and the improvements brought to the OECD Guidelines on Multinational Enterprises in 2000, especially with respect to the treatment of complaints by the NCPs established by each adhering government, may be seen as illustrative of a much broader development. This revival in turn is part of a more general critique of the path taken by economic globalization. It also has more immediate causes. Certain highly visible legal suits have been filed before United States and European courts against parent companies whose subsidiaries or affiliates were accused of directly committing human rights violations, or—more frequently—of being complicit in human rights violations committed by the States in which they operated. In the United States in particular, such suits have been based on an inventive use by litigants, relying often on the class action mechanism,[30] of the

[28] These critiques are developed in the report released in September 2005 by OECD Watch, an international network of NGOs promoting corporate accountability: see OECD Watch, *Five Years On. A Review of the OECD Guidelines and the National Contact Points*, available at www.oecdwatch.org.

[29] Under the terms of the 'Procedural Guidance' given to the NCPs by the Decision of the OECD Council of 27 June 2000 (OECD doc DAFFE/IME/WPG (2000)9), '[i]f the parties involved do not reach agreement on the issues raised, [the NCP may] issue a statement, and make recommendations as appropriate, on the implementation of the Guidelines.' Moreover, 'after consultation with the parties involved, [the NCP may] make publicly available the results of these procedures unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines.' Finally, 'At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues,' although 'information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure.'

[30] See more generally, on the specific procedural advantages which potential plaintiffs in such cases are recognized under the Federal Rules of Civil Procedure, which imply that the usefulness of the Alien Tort Claims Act may be limited as a model to be followed by other jurisdictions, Beth Stephens, 'Translitigating *Filartiga*: A Comparative and International Law Analysis of Domestic Remedies For International Human Rights Violations' (2002) 27 *Yale Journal of International Law* 1.

Alien Tort Claims Act 1789 (ATCA). That statute, a part of the First Judiciary Act 1789, provides that '[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.'[31] The United States federal courts have agreed to read this provision as implying that they have jurisdiction over enterprises either incorporated in the United States or having a continuous business relationship with the United States, where foreigners, victims of violations of international law[32] wherever such violations have taken place, seek damages from enterprises which have committed those violations or are complicit in such violations as they may have been committed by State agents.[33] Although its practical consequences remain to be seen, and although the procedural hurdles in using the ATCA should not be underestimated, the litigation following its revival has served to shed light on the risks involved in the activities of TNCs operating in States where human rights may be violated on a routine basis.[34]

The debate on how to improve the human rights accountability of TNCs has gained further momentum at the international level since two developments have occured. First, at the 1999 Davos World Economic Forum, the UN Secretary General Kofi Annan proposed to the world of business a Global Compact based on shared values in the areas of human rights, labour, and the environment, to which anti-corruption was added in 2004. The ten principles to which participants in the Global Compact adhere are derived from the Universal Declaration of Human Rights, the ILO's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the UN Convention Against Corruption. The process is voluntary. It is based on the idea that good practices should be rewarded by being publicized, and that they

[31] 28 USC §1350.

[32] The United States Supreme Court considers that, when confronted with such suits, the US federal courts should 'require any claim based on the present-day law of nations to rest on a norm of international character accepted by the civilized world and defined with a specificity comparable to the features of the 18th-century paradigms (violation of safe conducts, infringement of the rights of ambassadors, and piracy) which Congress had in mind when adopting the First Judiciary Act 1789 (*Sosa v Alvarez-Machain*, No 03-339, slip op at 30–31 (US Sup Ct, 2004)).

[33] See in particular *John Doe I v Unocal Corp*, 395 F.3d 932, 945–46 (9th Cir, 2002) (complicity of Unocal with human rights abuses committed by the Burmese military); and *Wiwa v Royal Dutch Petroleum Co*, 2002 WL 319887, *2 (SDNY, 2002) (complicity of Shell Nigeria and its parent companies Shell UK and Royal Dutch in the human rights abuses committed by the Nigerian police).

[34] For a synthesis of the litigation against companies based on the ATCA, see chs 2, 3 and 4 of Sarah Joseph, *Corporations and Transnational Human Rights Litigation* (Oxford and Portland, Oregon, Hart Publishing, 2004). In the other chapters of the book, the author also seeks to provide an overview of the litigation against companies for human rights abuses under other jurisdictions.