INTRODUCTION

Liability of Multinational Corporations Under International Law: An Introduction

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What is the liability of multinational corporations ('MNCs') for violating international legal standards? When we began the research project that culminates with this book, the stock answer to this question was that MNCs incurred few, if any, liabilities for violating international standards of conduct.[1] But after three years of research, an important part of which was the Colloquium that inspired the present collection, we found that our early response was incorrect, or at least incomplete. The existing international legal system does place obligations on private actors such as MNCs, and the shirking of these obligations can lead to liability. This assertion is not to deny the unsatisfactory state of international law regarding the status of MNCs and their impact – positive or negative – on our society and the environment. Rather, this assertion encapsulates the conclusion of our research, and of the contributions to this volume, that while MNCs still lack international legal responsibility commensurate with their role and influence in international and domestic affairs, the rapid growth of MNC activity and the desire and need to protect their economic activities has now placed MNCs within the ambit of international law, and that this placement is secure and likely to increase. In short, we are now confident that liability of MNCs under international law is necessary, is possible, and is inevitable.

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1 But even 30 years ago, Prof. Vagts could point to the fact that 'as the literature about the MNE [Multinational Enterprise] grows exponentially, the question arises whether the legal profession should not be developing responses to it. As yet it has not; statutory or case law reaction is virtually nonexistent and the secondary coverage is thin'. D.F. Vagts, 'The Multinational Enterprise: A New Challenge for Transnational Law', 83 *Harv. L. Rev.* (1970), p. 739 at p. 739.

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Our research began with the observation that some multinational corporations, in their search for profits around the world, were committing abuses in their host countries either directly through their activities or indirectly by colluding with abusive governments that were unable or unwilling to address such violations, especially in the developing world. With foreign direct investment replacing intergovernmental aid as the most important means of transferring capital and technical know-how from the developed to the developing world, governments in developing countries are tempted to – and in some cases feel compelled to – attract investors by minimizing the potential costs facing investing MNCs. This desire, compounded in many instances by the relative weakness of host States compared to the larger and more experienced MNCs, means that injured citizens of these host States are left without any legal recourse unless they leave the boundaries of their own States, either to seek justice in the MNCs' home States or at some international or regional forum – thus implicating an international legal system that seemingly did not recognize, much less address, the real source of their damages. The problem with this state of affairs, aside from the obvious and intolerable injustice, was that it made a mockery of a system that claimed to embody international law but did not cover the behaviour of actors whose role in international transactions – commercial, cultural, social – already rivalled that of States.

For international law to deal with the problems and promises of MNC activity, it must face a number of complexities peculiar to the nature of multinational corporations and their transboundary activity. Here, we will briefly outline our own research on this discussion within the framework of explaining the terms we have used for the title of this book.

'Multinational Corporation'

The type of entity we have labelled a multinational corporation is also described in different combinations of the terms multinational, transnational, corporation, business and enterprise. Accordingly, we allowed the different contributors to this book to use the term they preferred. But there is little disagreement about the core concept: A business is called an MNC (or TNC or MNE) 'if it has a certain minimum size, if it controls production or service plants outside its home state and if it incorporates these plants into a unified corporation strategy'.[2] Our selection of the term 'multinatio-

2 L. Wildhaber, 'Some Aspects of the Transnational Corporation in International Law', 27 *Neth. Int'l L. Rev.* (1980), p. 79 at p. 80.

nal' as opposed to 'transnational' simply reflects the latter term's close correspondence with the now discredited New International Economic Order movement of the 1970s[3] and our desire to use the former in order to reflect the terminology most frequently used by the MNCs themselves.[4] Regardless of the terms used, it is the ability of MNCs to operate across national borders and outside the effective supervision of domestic and international law that makes them important actors ripe for greater investigation under international law.

An initial consideration was whether to focus on multinational corporations or on all corporations including those that only operate within one country. We chose the former approach, although it is clear that many of the important legal considerations applicable to multinational corporations apply equally to those with domestic operations. For instance, the duty to promote and protect human rights under the language of the Preamble to the Universal Declaration of Human Rights applies to all corporations, as important 'organs of society', regardless of the range of their operations. Similarly, multilateral environmental standards and labour regulations should apply to corporations without consideration of their domestic or multinational nature. Nevertheless, we focused on corporations with multinational operations because their amorphous structure renders them immune to the control of any single State and requires regulation and protection at the international level.

MNCs may be characterized by the twin criteria of having legal status and profit motive, and our selection of the term 'corporation', as opposed to the broader term 'enterprise', simply reflects the terminology commonly used in the commercial world to refer to particular profitseeking operators. Legally, a corporation refers to a for-profit organization with a legal standing apart from its shareholders and with the ability of transacting business – hence providing such synonyms for 'corporation' as 'legal person', 'legal entity' or '*personne juridique*'. Under this fiction, the law creates a 'corporate' entity and then vests it with certain powers and responsibilities, or rather, rights and duties. In the case of multinational corporations, this

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3 T. Wäelde, 'A Requiem for the "New International Economic Order"', in: G. Hafner et al. (eds.), *Liber Amicorum Ignaz Seidl-Hohenveldern in honour of his 80th Birthday* (1998), p. 771.

4 The term 'transnational' is accordingly still used mostly by the United Nations and its related organs, while the term 'multinational' appears more frequently in institutions more closely associated with the business community itself, for instance the Organisation for Economic Cooperation and Development and the International Chamber of Commerce.

corporate entity is highly peculiar, since no single law creates the MNC and thus no single law delineates the limits of its proper activity. To deal with this peculiarity, the term 'corporation' signifies a unified entity that can be held liable, as opposed to the liability of an MNCs' officers or shareholders as individuals under international law (established since the Nuremberg trials of German industrialists) or the liability of individual business subsidiaries in different States. In this context, it is useful to remember that the term 'corporation' has a significant historical antecedent in describing the commercial guilds that served as quasi-sovereign entities in the medieval world and serves to remind us that the State's exclusive role in international law over the past century is neither inevitable nor permanent, and that corporate entities can and very likely will exist as subjects of international law.[5]

One of the complexities of addressing MNCs is distinguishing them from other multinational groups and organizations. Profiteering criminal organizations could have significant impact on international trade or human rights, but they exist by definition outside the law. On the other hand, legally recognized political groups, such as political parties, may operate across national borders and affect international and domestic affairs, but their avowed aim is not the accumulation of profits. While corporations, *per se*, are the main focus of our research and this volume, most of the conclusions and analyses presented here could just as well apply to other legal commercial forms that are not strictly private corporations, such as banks and partnerships. Finally, and perhaps of most practical significance, the extension of international law to cover MNCs must also address corporations with significant State components – either joint ventures with host States, or, less explicitly but more common, 'national champion' MNCs whose interests are so closely linked with those of their home States as to significantly implicate these States in their operations. While these complexities deserve serious future study, it is important to note here that the basic MNC is fairly easy to identify as the international aggregation of fictional commercial entities with legal status. In the absence of adequate domestic regulation of these entities, it is necessary to create an international regime that can guide their behaviour.

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5 For a development of the philosophical history of this notion, see C.J. Nederman, 'Sovereignty, War and the Corporation: Hegel on the Medieval Foundations of the Modern State', 49 *J. Pol.* (1987), p. 500.

'International Law'

If we can now realistically discuss the possibility of holding MNCs liable under international law it is because international law has already learned to address MNCs in terms of protecting their interests. The existing legal framework for MNCs has developed to facilitate the increasing economic interaction of European States and the US amongst each other and with the developing world. The prevailing legal standard has been the doctrine of State responsibility for injuries to aliens and their property, both as customary international law and as institutionalized in a number of instruments such as the regime under the World Trade Organization, the European Community, the North American Free Trade Agreement, the Organisation for Economic Cooperation and Development, and bilateral investment treaties between those States home to MNCs and those States hosting them. These legal instruments show that the drive for greater international liberalization has not really been towards decreasing the laws applicable to MNCs, but rather increasing the laws protecting MNCs *vis-à-vis* States. The demand by MNCs for deregulation and the departure of the State from many economic and social fields in essence privatized the functions of States; it logically follows that the entities that took over these functions should also assume the ensuing obligations. This concept is familiar in domestic law, where private parties that conduct themselves in a manner resembling a State or pursuant to State authorization are subject to the same constitutional standards as public officials.[6]

The aforementioned international legal instruments, essentially the core of international economic law, clearly show two conceptualizations of MNCs under international law: On the one hand, MNCs are juridical individuals, composed of separate enterprises each (potentially) responsible to domestic legislation in different sovereign States; on the other hand, MNCs are unified entities with common strategy and resources beyond the control of any single State. What is interesting about these two conceptual approaches is that they can be used by proponents of facilitating MNC activity, as well as those advocating regulation of such activity.[7] Not surprisingly, MNCs

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6 M.T. Kamminga, 'Holding Multinational Corporations Accountable for Human Rights Abuses: A Challenge for the EC', in: P. Alston (ed.), *The EU and Human Rights* (1999), p. 554.

7 See, for instance, the seminal article by G. Ball, 'Cosmocorp: The Importance of Being Stateless', 2 *Colum. J. World Bus.* (1967), p. 25, arguing that the lack of adequate international regulations deprives MNCs of their ability to 'pursue the true logic of the global economy'.

emphasize the former view when seeking protection from States, and the latter view when trying to minimize their obligations. While MNCs may be able to exploit in the short term this gap between their international rights and duties, it seems more probable – indeed, inevitable – that the need for greater protection of MNC activity in some areas will entail a corresponding growth in their responsibility in some areas of activity. Perhaps the clearest example of this tension between greater MNC rights and duties was the negotiations surrounding the failed OECD Multilateral Agreement on Investment, which sought to give MNCs standing to bring international legal action against States violating the treaty's provisions. MNCs abandoned the process once it became obvious that the treaty's lopsided pro business stance could have been balanced by some sort of binding standard of behaviour (no matter how weak). Recent public pressure on international economic institutions such as the World Trade Organization, the International Monetary Fund and the World Bank indicates growing demand to balance the rights and duties of MNCs as quasi individual self-interested actors with powerful quasi State powers.

Through this synthesis of the legal thinking about the rights and duties of States and individuals (both of which are well-studied subjects of international law), we can finally discuss MNCs as bearers of both rights and duties under international law without necessarily having to threaten the existing predominance of State sovereignty as the focus of public international law. That is, international law is not a zero-sum system, in which conferring legal subjecthood on one entity denies it to all others; in the particular instance of MNCs, the partaking of private profit-seeking entities of some of the rights and obligations previously granted only to States (and in some instances, individuals) does not deny these rights and obligations to the States (or the individuals). In this view, international legal personality of MNCs points toward growth of a complementary system of law that fills the penumbra of existing State-centred international law and facilitates, as well as regulates, activity undertaken by, through, and with sovereign States and their citizens.

This development obviates the primary objection expressed by States against some degree of international subjecthood for MNCs. The relative absence of MNCs from formal international law discourse in the past reflected common interests on the parts of States and MNCs, since the former were loathe to weaken their monopoly on international status, while the latter were (and remain) reluctant to assume any international legal obligations. Furthermore, the overwhelming majority of MNCs are based in the powerful States that continue to dominate international lawmaking, and these

powerful States have been and continue to be able to regulate their own MNCs domestically, when the need has arisen, while benefiting from the revenue and influence garnered by their MNCs in the absence of any international regulations. Nevertheless, even the most powerful States, and their MNCs, have increasingly turned to international law to facilitate their wealth-generating activities, for instance through international liberalization efforts (the WTO, NAFTA) and multilateral attempts against anti-competitive activity (the OECD anti-corruption convention). Conversely, weaker States, or those historically not benefiting from MNC activity on their territory (or on the territory of their competitors) have not always supported international laws regarding MNCs because these laws, when they have existed, have been to the disadvantage of these States (anti-expropriation laws, protectionist barriers, anti-development measures). But these States too now find international law a useful conduit for their aspirations, via international development rules on technology transfer, trade liberalization measures facilitating their exports and efforts to curb the negative impact of MNCs. An overview of the shifting perceptions of international law and MNCs toward international legal regulation of MNCs appears in the following chapters in the first section of this book.

While there is no question that international law still has a long way to go before it provides clear guidelines for MNC behaviour, it is clear – logically and empirically – that providing clear rules for MNCs operating throughout the world and fostering a uniform competitive field for commercial activity only brings together the process already under way in the fields of private international law, international economic law, international environmental law, international criminal law and international human rights law, and will be of mutual benefit to MNCs, the States in which they operate, and most important, the citizens of these States. As set out in the following chapters, international law can now expand its reach to facilitate the beneficial results of MNC activity while holding MNCs liable for deviating from international norms of conduct.

'Liability'

In contrast to their great enthusiasm for binding international rules that protect and facilitate their activity, MNCs have argued vociferously against any sort of international rules that would hold them accountable for any damages they cause. MNCs claim that such a development would hamper

their commercial activities.[8] But there is no question that corporations thrive most in the highly regulated, highly litigious environments of North America and Western Europe.[9] Furthermore, corporations were (and remain) very active in promulgating internationally binding standards for the protection of their investments and competitiveness, now securely in place through the WTO system, the macroeconomic regulations of the International Monetary Fund, and the nearly 2,000 bilateral investment treaties in existence.[10] When facing the problem of international bribery, long a bane (and accepted cost) of multinational business operators, corporations were instrumental in the creation and passage of a multilateral convention that makes bribery of public officials by private MNCs illegal, and indeed demands criminal sanctions for such activity. If the unethical and antidemocratic practice of bribery is considered proper for international regulation, it seems disingenuous to argue that other, even less ethical practices, such as profiteering from environmental and human rights abuse, should not be subject to international law in order to maintain a phantom commercial advantage. It now seems possible, indeed highly probable, that a regime of international legal liability for MNCs can and will be developed.

Not all international law can or should be transferred wholesale to cover MNC activity, but it is clear that some international legal standards already apply directly to MNCs while others should serve as guideposts for corporate behaviour. There is now a growing consensus that MNCs are bound by those few rules applicable to all international actors, plus a continuum of obligations that refer specifically to a corporation's activity and influence. Under the category of generally applicable international rules, MNCs must respect the national sovereignty of the States in which they operate to the extent consistent with their international obligations; MNCs are prohibited from engaging directly or indirectly in violations of *jus cogens* principles (such as the prohibition of slavery and forced labour, genocide, torture, extrajudicial murder, piracy, crimes against humanity, and apartheid); MNCs must promote and protect certain human rights and labour principles pertaining to their area of activity (such as the right of their employ-

8 M. Baker, 'Private Codes of Conduct: Should the Fox Guard the Henhouse?', 24 *U. Miami Inter-Am. L. Rev.* (1993), p. 399.

9 UNCTAD, *World Investment Report: Foreign Direct Investment and the Challenge of Development* (1999); OECD, *Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade* (1996).

10 For development of this idea, see K.P. Sauvant and V. Aranda, 'The International Legal Framework for Transnational Corporations', in: A.A. Fatourous (ed.), *Transnational Corporations: The International Legal Framework* (United Nations Library on Transnational Corporations, Vol. 20) (1994), p. 83.

ees to free association and a decent pay, the prohibition of child labour and racial and sexual discrimination in the work place, and the maintenance of a safe work environment); MNCs must observe the principles of sustainable development; and MNCs must not engage in bribery or corruption of government officials. The second category of rules applicable to MNCs is obviously more specific to any given corporation's particular activity and requires a factual analysis of the corporation's influence on the local situation; the greater an MNC's real influence, the greater its obligations to observe international legal standards. This short list is neither exhaustive nor comprehensive. What it does reflect is growing sophistication about the role of MNCs in international affairs and thus under international law, and so it is likely that this list will grow in range and detail.

Beyond the question of the identity of the norms applicable to MNCs, and of greater immediate concern to us, is the development of mechanisms whereby any international legal obligations could be meaningfully enforced on MNCs. It is now fashionable, and strongly encouraged by MNCs themselves, to discuss the responsibilities of corporations in terms of social accountability, good governance, responsible citizenship, or other such formulations, in lieu of international legal obligations. This approach has some value in terms of creating 'soft law' that could gel into 'hard law' regulating the activity of MNCs and the States in which they operate.[11] But through the course of our research, we grew increasingly sceptical about the effectiveness of this approach, which centres on making corporations seem more responsive to their shareholders, or stakeholders, or society in general. While such responsiveness is important, our focus was on protecting the rights of individuals hurt by the activity of multinationals and the assertion of these rights against MNCs – that is, the question of the liability of multinationals. Our research indicated that voluntary codes of conduct are seldom useful in ameliorating the problems caused by MNCs.[12] By

11 The classic development of this idea appears in H.W. Baade, 'The Legal Effects of Codes of Conduct for Multinational Enterprises', in: R.N. Horn (ed.), *Legal Problems of Codes of Conduct for Multinational Enterprises* (1980), p. 3.

12 A clear example comes from the activity of the Royal Dutch Shell Company. Shell adopted a Code of Conduct widely regarded as pathbreaking in the business community in response to massive public disapproval in the wake of the Brent Spar environmental disaster and the Nigerian crisis highlighted by the execution of activist Ken Saro-Wiwa. Pursuant to this Code, and mindful of public presure, Shell minimized its activity in the Niger delta and transferred much of its operations to competitors, subcontractors and smaller operators. While doing so decreased Shell's visibility and thus vulnerability to public pressure, it did nothing for the people of the Niger delta, who are now subject to the same, and possibly worse, abuses instigated by some of Shell's successors.

focusing on liability, we addressed codes of conduct to the extent that they had solidified or formed semi-legal obligations – obligations that could be applied to MNCs even against their will, obligations that created potential liabilities for MNCs violating them.

The solidifcation of MNC obligations now finds support from a number of recent developments, generally set out in the second part of this book. Although the UN system still seems interested in voluntary codes of conduct, as demonstrated by Secretary General Kofi Annan's Global Compact between MNCs and civil society (launched appropriately during the 1999 annual gathering of capitalists and heads of State at Davos, Switzerland), other UN organs are tentatively discussing the possibility of a more serious approach. For instance, the UN High Commissioner for Human Rights, which has launched a website dedicated exclusively to the impact of corporations on human rights, suggests that corporations agree to independent verification and public reporting procedures.[13] The ILO, which has initiated a reporting procedure for member States under its Declaration on Fundamental Principles and Workers' Rights, points out that labour groups can submit their own comments on the national reports and expect some sort of State response (however in typical fashion the ILO points out that this does not constitute an official complaint procedure).[14] Even the World Bank, at times lambasted (unfairly) as handmaiden to MNC expansionism, is now using its Inspection Panels and the threat of withdrawing loans to force MNCs to comply with the Bank's guidelines on environmental and human rights issues. These developments, while not yet at the level of international liability for MNCs, show the evolution of international regulatory systems towards the creation of norms enforceable on MNCs.

More concrete, and therefore more intriguing, examples come from the use of domestic courts to enforce international norms on MNCs. The advantage of enforcing international law in domestic courts is that they have relatively well-developed systems for addressing corporate entities and levying penalties against them. The disadvantage, of course, is that multinational corporations are set up precisely to avoid domestic jurisdiction over their activities abroad. As set out in this book's final section, this approach is most

13 UN High Commissioner for Human Rights, Business and Human Rights: A Progress Report, (Jan. 2000), <http://www.unhchr.ch/business.htm>, accessed on 6 February 2000, at p. 18.

14 International Labour Organization, Review of Annual Reports Under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work, (March 2000), <www.ilo.org>, accessed on 10 March 2000, p. 13, para. 56.

developed in the United States under the Alien Tort Claims Act. This 200-year-old statute, which was resuscitated to prosecute tyrants like Ferdinand Marcos and Radovan Karadzic, has now been adapted to seek redress from corporate entities that violate customary international law.[15] The effort to bring to justice another infamous dictator, Augusto Pinochet, now raises the possibility of a similar development in other major homes for MNCs, most significantly the UK and member States of the European Union. Since the time of our Colloquium, we have learned of other attempts at using domestic courts to seek redress from MNCs, primarily in Canada and Australia.[16] The extensive legal resources of the home States can thus serve alongside international regulation as a parallel means of addressing the activity of corporate citizens with far-flung operations. At any rate, it seems to us that it is possible to extend the reach of international law to cover the activity of MNCs through a combination of international and domestic regulatory measures.

The Rotterdam Colloquium

Our aim in convening the group of experts that gathered at the Rotterdam Colloquium and contributed to this book was to bring together a group of academicians, practitioners, activists and policy makers who could begin and continue the two-pronged process of creating international standards and supervisory procedures applicable to MNCs as well as juridical precedents useful for establishing the liability of MNCs violating such standards. At this time, developments indicate some early success in our aim as several further meetings on the subject have taken place with various participants of the Rotterdam Colloquium at their nuclei. Even more encouraging are indications that the notion of holding MNCs subject to binding international legal standards is gathering momentum at various fora: The United Nations, through the Sub-Commission on the Promotion and Protection of Human Rights, is (again) discussing the need for creating global standards

15 S. Zia-Zarifi, 'Suing Multinational Corporations in U.S. Courts for Violating International Law', 4 *UCLA J. Int'l L. & For. Aff.* (1999) p. 81.

16 In Canada, an NGO unsuccesfully sued a Quebecois mining MNC, Gambior, for a massive cyanide spill in Guayana. *Recherches Internationales du Quebec* v. *Gambior Inc.* [1998] *Q.J.* No. 2554 (Q.L.). In Autralia, plaintiffs from Papua New Guinea sued mining giant Broken Hill Properties for polluting their land. BHP settled when the Australian judge ruled he had jurisdiction over the case. *Dagi* v. *Broken Hill Properties* (No. 2), [1997] 1V.R. 428 (S.C.Vic.). For more information, see S. Seck, 'Environmental Harm in Developing Countries Caused by Subsidiaries of Canadian Mining Corporations: The Interface of Public and Private International Law', 37 *Can. Y.B. Int'l L.* (1999) (forthcoming).

of conduct for MNCs; the European Union is continuing with its efforts to establish some sort of oversight over European MNCs; the World Bank is examining the impact of its Guidelines on controlling MNCs conducting the Bank's projects; and several large NGOs, such as Amnesty International, Human Rights Watch, Friends of the Earth and Oxfam, are coming to grips with the impact of multinational corporations. More concretely, groups in Europe, Africa and South America are now considering ways of marshalling evidence and resources in order to bring legal actions in the home States of MNCs violating basic international standards or at international and regional fora. To the extent that our Colloquium and the contents of this book help this development, we may judge them to be successful.

In choosing the participants at the Rotterdam Colloquium, we tried to bring together people who could take part in one, or both, of the avenues we had judged important for the development of international liability for MNCs: the identification of international standards through international and domestic institutions and the application of these norms to MNCs. During April 29 and 30, 1999, the participants discussed and analyzed the current status of MNCs under international law, especially as pertaining to the protection of human rights and the environment, and the possibility of using international law to regulate some of the abusive practices of MNCs. Our goal was not to produce particular conclusions at this meeting, but rather to create a network of experts who could aid the process of understanding the proper role of MNCs in international affairs. Each participant was invited because we believed they were best equipped in their field to answer the particular questions posed by the activity of MNCs.

Chris Avery, a US-trained lawyer and formerly Legal Adviser at Amnesty International, has been examining the impact of MNCs closely since 1997. During that time, he has spent considerable time talking with business people about their views about their own role, especially in terms of the ability of businesses to have a positive impact on the societies in which they exist and operate. His initial questions regarding the legal basis for placing positive obligations on MNCs was an important early impetus in creating the research project that led to the Colloquium and this book.

Sarah Joseph, a Senior Lecturer at Australia's Monash University, came to our attention through a very strong article on the status of MNCs under public international law she submitted to the Netherlands International Law Review. This article captured precisely the problems associated with MNCs as international actors, while also pointing out the difficulties likely to arise in the process of subjecting these entities to international law.

Prof. Peter Muchlinski, of Queen Mary & Westfield College of the University of London, is undoubtedly one of the most frequently cited authors in the field of MNCs. His seminal work, *Multinational Enterprises and the Law* (1995), remains the most thorough discussion of the legal issues surrounding MNC activity. Furthermore, Prof. Muchlinski is closely involved with the new work of UNCTAD in helping developing countries deal with international trade liberalization and MNCs.

Prof. David Weissbrodt is a longstanding authority on international law and human rights at the University of Minnesota, as well as a member of the UN Sub-Commission on the Promotion and Protection of Human Rights. In that capacity, Prof. Weissbrodt has been very active in examining the positive and negative impact of MNCs on human rights, and in the possibility of drafting an international set of guidelines for businesses and human rights.

Prof. Andrew Clapham is one of the foremost experts on the role of non State actors under international law, as set out in his authoritative survey of this subject, *Human Rights in the Private Sphere* (1993). Prof. Clapham was particularly well-suited to the discussion of the specific issue of MNCs because of his close involvement in the drafting of a provision of the Statute of the International Criminal Court addressing the Court's jurisdiction over legal persons, including corporations.

Perhaps none of our participants have been as closely involved with the international lawmaking role of MNCs as Mr. Jan Huner of the Dutch Ministry of Economic Affairs, and secretary of the drafting committee of the Multinational Agreement on Investment ('MAI'). Mr. Huner has also been active in the process of revising the OECD's Guidelines on Multinational Enterprises. His extensive understanding of the background of the need to facilitate MNC activity and the pressures faced by governments were invaluable in discussions.

Prof. Beth Stephens, of Rutgers University/Camden, was also invaluable in discussing her years of experience at the New York-based Center for Constitutional Rights, which pioneered the use of the Alien Tort Claims Act ('ATCA') and its application to MNCs. Prof. Stephens, along with her colleagues Jennifer Green, a leading litigator at the Center for Constitutional Rights, and Paul Hoffman, a premier human rights litigator and former Chair of Amnesty International USA, were instrumental in reviving the ATCA and continue their groundbreaking work in applying the statute on behalf of victims of MNC excesses.

Prof. Michael Byers, now of Duke University, was a member of the British Branch of the International Law Association's Committee dedicated to examining how UK courts could replicate the successes of the ATCA. Prof. Byers was also a key player in the effort to bring Gen. Augusto Pinochet to justice, and could offer his insights into the difficulties and advantages of using UK courts as a potential forum for victims of atrocities committed outside the UK.

Similarly, Richard Meeran, of the UK law firm of Leigh, Day & Co., offered his hard won experiences as one of the leading British practitioners involved in bringing lawsuits against UK-based corporations for injuries inflicted outside the UK. These lawsuits remain at the forefront of efforts to hold international businesses accountable for their transboundary activities.

Prof. Andre Nollkaemper of the University of Amsterdam and Gerrit Betlem of Exeter University examined the possibility of using similar litigation tactics in the Netherlands – and by extension, other continental European jurisdictions. Prof. Nollkaemper, an expert on environmental and marine law, has been examining the use of public international law in domestic jurisdictions. Betlem brought to bear his experience in the newest developments in the field of private international law and the specialized European system of recognizing jurisdiction.

Along with the authors whose work appears in this volume, we also hosted several other speakers whose contributions enriched the Colloquium.

Richard Howitt, Member of the European Parliament from England, was author of the Parliament's recent Resolution on the Creation of a European Code of Conduct for European MNCs Operating Abroad. Howitt, whose work focused on the sometimes unsavoury nature of activity undertaken by European companies, is now involved in the process of possibly creating a European level body to monitor MNC activity.

Prof. Anita Ramasastry of the University of Washington has analyzed the use of lawsuits by victims of the Nazi Holocaust against MNCs that used them as slave labourers or banks who financed these MNCs.

Richard Dicker, who heads the campaign on MNCs at Human Rights Watch, discussed the organization's efforts to address the responsibility of businesses in protecting and promoting human rights, as well as the shift in the strategy of NGOs as they adapt to an international system no longer completely dominated by States.

It is also appropriate here to address some omissions in the roster of the Colloquium's participants. Despite our efforts, the ILO decided not to send a representative to the Colloquium. While there is no question that labour rights are a key component of any international system of regulating MNCs, the ILO has not to date exhibited its interest in a broader discussion of the role of MNCs under international law. We hope that the prominence of the ILO's recent Declaration of Fundamental Principles and Rights at Work will encourage the organization to embrace a wider section of civil society in its future work.

Also unfortunately, we could not convince any lawyers representing major MNCs (either in house or from outside law firms) to attend the Colloquium. While we appreciate the busy schedule of practitioners serving the corporate world, we had hoped that at least Dutch MNCs would welcome the opportunity to learn about new legal developments. However, our invitations were answered by public relations departments, indicating that lawyers in the business world still do not take the international legal obligations of MNCs very seriously.

Since the Colloquium – and in large part because of it – we have learned of many more experts who can contribute to the international legal discussion regarding MNCs. Unfortunately we could not include every relevant development, given the constraints of producing a book. In preparing this volume we tried to provide the most recent information possible, and we checked the sources and materials in December 1999 and February 2000. Nevertheless, recent events have undoubtedly superseded some of the information presented here. We gladly accept this inevitable shortcoming in our work and look forward to the day that more concrete legal results will render obsolete our early discussions on the liability of multinational corporations under international law.