1 Introduction

Ivo Giesen, Liesbeth Enneking, François Kristen, Lucas Roorda, Cedric Ryngaert, and Anne-Jetske Schaap

1.1 Introduction

Sneakers, fuel, coffee, smartphones. Many of (the commodities for) our daily products are being produced abroad. Sometimes this takes place under conditions that would be considered unacceptable in the countries where the products involved are put on the market. This raises not only ethical and political questions, but also legal ones. Most of these currently revolve around the legal responsibilities of the companies involved with respect to the detrimental human rights or environmental impacts of business activities in their global value chains. What is the scope of the social responsibility of Western society-based internationally operating business enterprises that have their products manufactured in developing host countries, often at low cost, and put them on the market here? Are they under an obligation to prevent their own activities, or those of their local subsidiaries or suppliers, from having an adverse impact on the human rights of local employees, neighbors, or communities, or on the local environment? And if such adverse impacts do occur, under what circumstances can these internationally operating business enterprises be held liable for this before courts in their Western society home States?[1]

The adverse effects of transnational corporations' business activities, especially on human rights – including labor rights – and the environment in the host country of investment, have been well documented. A consensus has emerged that corporations have societal and environmental responsibilities when operating transnationally. A key development in this respect has been the appointment in 2005 of Prof John Ruggie as Special Representative to the UN Secretary-General on human rights and transnational corporations and other business enterprises.[2] This resulted in the publication of the "Protect, Respect and Remedy" Policy Framework on Business & Human Rights (hereinafter, Policy Framework) in 2008.[3] This policy framework was further operationalized in the 2011 UNGPs.[4] The UNGPs were unanimously endorsed by the UNHRC[5] and have received support from a broad range of stakeholders, including States, international organizations, NGOs, unions, branch organizations, and individual business enterprises.[6]

Together, these two documents constitute an authoritative international soft law instrument, which propagates the message that both States and business enterprises have a role to play in the prevention and remedy of business-related human

rights abuse. The Policy Framework rests on three pillars: 1) the State duty to protect against business-related human rights abuse; 2) the corporate responsibility to prevent, mitigate and/or redress the negative effects of operations pursued by or for them on third parties' human rights; and 3) the need for an effective remedy for victims of business-related human rights abuse. The UNGPs contain standards of conduct for States and business enterprises with regard to what is expected of them in each of the three pillars when it comes to the prevention and remediation of business-related human rights abuse. Even though the documents in themselves are non-binding, their wide acceptance justifies the conclusion that a certain degree of international consensus exists on the standards of conduct laid down therein. Moreover, their subsequent uptake in other international and national legal instruments relating to international responsible business conduct (IRBC), some of which are of a more binding nature, has ensured that they are of great significance not only from a normative but also from a legal perspective.[7]

One of the key points of the UNGPs is that business enterprises have an independent responsibility to check whether their operations entail the risk of human rights abuse, to prevent or mitigate these risks as far as possible, and to remedy possible adverse impacts. This responsibility to respect applies regardless of the location of these operations and regardless of the local legal context. It may also include possible adverse human rights impacts that are directly linked to the business enterprise's operations, products, or services through its business relationships. The UNGPs stipulate that business enterprises should have policy measures and procedures in place that are appropriate to their size and operational context in order to meet their responsibility to respect. These include, in any case: 1) a policy commitment as regards their responsibility to respect human rights; 2) a human rights due diligence procedure; 3) procedures to remedy any adverse human rights impacts the business operations caused or to which they contributed. The due diligence procedure is first of all meant to identify, prevent, and restrict, as well as – where necessary – to remedy the adverse effects of the business operations on third parties' human rights. In addition, it should address the public accountability of business enterprises as regards the policies they pursue to restrict adverse human rights effects.[8]

Still, how exactly corporations can be held legally accountable for their transgressions, if at all, remains less clear.[9] The present volume inquires how several distinct regulatory tools stemming from public international law, domestic public law, and/or domestic private law may or may not be used for transnational corporate accountability purposes. Attention is devoted to applicable standards of liability (tort law), institutional, and jurisdictional issues, as well as practical challenges, with a focus on ways to improve the existing legal *status quo*. In addition, there is consideration of the extent to which non-legal regulatory instruments may complement or provide (perhaps more viable) alternatives to these legal mechanisms. This volume emerges from some of the papers that were presented at an international conference on Accountability and International Business Operations, organized at Utrecht University (the Netherlands) on 18–20 May 2017.[10]

1.2 State of the art in the field

The state-of-the-art in the field that this conference and volume departs from can be categorized, in broad terms, as follows. Evidently, the field of business and human rights has seen an increase of academic publications in the last few years, especially after the adoption of the UNGPs put the question on the map of international law. But, at the same time, it is also still very much a field in the early stages of development, if compared to other fields of study. Early publications, such as those of Muchlinski,[11] Joseph,[12] and Zerk,[13] focused on the challenge of regulating business actors generally through international law. These have been followed by more recent general volumes following the renewed interest in the topic,[14] as well as a range of contemporary titles addressing more specific issues such as access to remedies for indigenous peoples,[15] substantive obligations for businesses,[16] prosecution of corporations for genocide,[17] and the upcoming treaty on business and human rights.[18] Most of these contributions, however, focus on issues that concern the adjustment of business behavior toward more human rights-friendly operations and/or focus on the international law dimension of the topic. The current volume, by contrast, aims to contribute to the discussion by focusing on accountability and liability questions that permeate different fields of law, as well as different national legal systems, as will be further explained.

From the more recent literature, only three volumes deal with accountability more conceptually.[19] This book differs from these publications in various respects. Whereas Bernaz takes a more historical perspective and mainly addresses the issue from an international law and policy perspective, this volume tackles more contemporary legal barriers to accountability and liability, and covers both international and domestic trends in doing so. It differs from erni and Van Ho's book in that it is more specifically geared toward *ex post* accountability questions, whereas erni and Van Ho include contributions that address wider issues such as *ex ante* responsibilities of businesses.[20] Furthermore, whereas Khoury and White take a more historical and political economy-oriented approach to the topic, the current volume draws heavily on more recent developments in a very rapidly moving field, including recent legislative initiatives relating to business and human rights issues at the domestic level.

1.3 Goals and ambitions of this volume

As was the case for the conference on Accountability and International Business Operations that was mentioned in section 1.1, this volume seeks to combine legal-doctrinal approaches with comparative, interdisciplinary, and policy insights. It does so in order to attain a dual goal:

(1) To further the legal scholarly debate on these issues, and
(2) To enable higher-quality decision-making by policymakers seeking to implement regulatory measures that enhance corporate accountability.

The common denominator of all chapters in this volume is to provide a timely and important contribution to the scholarly and sociopolitical debate in the field of international CSR and accountability. The papers, taken together, inquire what legal mechanisms could be relied on to create accountability for corporate abuses of public goods and values, and to do so, they bring together (legal) scholars from various backgrounds, in particular from the fields of private law, public law, and international law.

More specifically, this volume, through the different chapters therein, has several ambitions. It sets forth to:

(1) Examine the possibilities to hold transnational corporations (or, more broadly, internationally operating business enterprises) to account under existing legal regimes, and to do so from a *multi-disciplinary* (international law, public law, private law) *multi-level* (international, domestic, corporate) and *multi-State* (comparative) perspective;
(2) Uncover the ways in which mechanisms from different disciplines, levels and States may *interact with* and/or *complement* one another;
(3) Adopt a *holistic approach* as regards corporate violations of standards relating to human rights or the environment that enables cross-learning from issues in these fields;
(4) Provide an assessment of the legal significance and sociopolitical impact of the latest developments in legislation and case law relating to corporate accountability for violations of human rights and environmental standards;
(5) Highlight how the workings of the law may potentially have major *transformative effects* on the conduct of transnational corporations; and finally,
(6) Investigate the feasibility of *legal reform* in those areas where existing law does not offer adequate accountability mechanisms.

This last endeavor is undertaken with a focus on the identification of:

(a) The *application in new ways of existing accountability mechanisms* by legal practitioners (e.g., courts and other law-applying agencies, attorneys, legal counsel, NGOs), and
(b) The *introduction of new accountability mechanisms* by policymakers seeking to implement regulatory measures aimed at enhancing corporate accountability.

Whether all these ambitions are (or maybe, can) in fact realized will be analyzed in the concluding chapter of this volume (Chapter 14), as will be explained later in the text.

1.4 Set-up of this volume

In order to reach the goals set out in section 1.3, this volume is separated into five parts: a general part that offers overarching views on the topic (Part 1),

followed by three discipline-specific parts (Parts 2, 3, and 4, respectively) that correspond to the three legal fields that are most relevant to legal accountability in the context of international CSR (i.e., international law, [domestic] public law, and [domestic] private law), and a concluding section (Part 5) with a discussion of the most viable ways forward when it comes to holding international business actors to account for violations of human rights and environmental standards abroad. A more detailed overview[21] of the content of those five separate parts is given in the next sections.

1.4.1 Part 1: general perspectives

In Chapter 2, Björn Fasterling puts the focus on "who" (as in, which corporations or corporate actors) might be (held) responsible under the UNGPs. He argues that corporate responsibility under the UNGPs should be understood as an activity-based concept, according to which business models are to be made compatible with respect for human rights respect. In this light, not the legal entities, but rather business strategy, organizational processes, and managerial routines become constitutive elements of business enterprise. Such business enterprise responsibility also implies individual and collective responsibilities of certain people, who will be referred to as the "function-holders" of an enterprise, to act according to these routines and to take human rights into account when they make decisions. Against the backdrop of the French due diligence law, the *Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*, this chapter will highlight salient differences between the UNGPs' (extra-legal) corporate responsibility to respect human rights and legal due diligence standards. This demonstration aims at revealing the breadth of challenges the law faces when it seeks transform the UNGPs' due diligence concept into a legal norm. It will show to which extent the French law, albeit clearly being inspired by the UNGPs, has poorly captured essential elements of the UNGPs' corporate responsibility.

The core theme of Chapter 3 by Karin Buhmann is the potential role of National Contact Points (NCPs) as accountability institutions. NCPs are State-based, non-judicial remedy institutions in States that adhere to OECD's Guidelines for Multinational Enterprises. The UN highlighted NCPs as an important modality for providing accountability in The Protect, Respect and Remedy Framework (2008). Since the UNGPs do not have remedy institutions of their own, NCPs provide an important accountability modality for transnational economic activity and its societal impact. Each State has discretion in defining the institutional setup for its NCP. This results in a broad variety of, among others, compositions of NCPs, their organization, and of degrees of independence from the government. Studies have indicated that the diversity of institutional setups of NCPs may affect their legitimacy with stakeholders, affecting the trust in NCPs as remedy institutions able to deliver accountability. However, it is also necessary to consider stakeholders' expectations in regards to remedy, and the procedural as well as substantive aspects of remedy. Analyzing the institutional

setup of NCPs against procedural and substantive aspects of "remedy", specific cases, and statistics on home and host State-related specific instances, the chapter provides a critical analysis of the issues set out and recommendations for enhancing the remedial accountability provided by NCPs.

In Chapter 4, Larry Backer sets out to "unpack" accountability when it comes to MEs and the role of the State and the international community. The emerging hard and soft law frameworks for regulating the human rights, labor, and environmental responsibilities of economic enterprises (whether public or private) are to some extent operationalized through mechanisms of accountability. Thus, accountability occupies a central place within the complex of regulatory trends that are shaping the organization of economic (and, to some extent, social, political, and cultural) life within a globalized order. The purpose of this chapter is to unpack the concept of accountability as it is deployed in governance, and then to repack it in a way that makes the concept more useful. The thesis of the chapter is that accountability must be understood as a shorthand for a set of multiple reciprocal relations, manifested in actions responding to expectations that are grounded in normative standards actualized in the context within which the actors are connected, and directed toward general (communal) and specific (individual) ends. A working system of accountability centered on corporate violations of human rights and sustainability requires mutual and simultaneous accounting by all stakeholders to (1) bring each other to account, (2) bring oneself to account, and (3) be brought to account.

1.4.2 Part 2: accountability through international law mechanisms

The fact that many corporations these days operate transnationally does not mean that States have disappeared from view. Corporations always perform their operations on the territory of States, and they are incorporated or headquartered in States. States can use these links to regulate business activities across borders. Pooling their sovereign competences, they may also enter into international agreements to regulate such activities. A number of soft law instruments have been adopted to this end, most notably the OECD Guidelines for Multinational Enterprises.[22] Binding international agreements on responsible business practices are lacking, however, with BITs typically paying only scant attention to the obligations of investors as opposed to those of the host State.[23]

Still, in the wake of the widely accepted UNGPs, a proposal was tabled in 2014 for an international legally binding instrument on internationally operating business enterprises with respect to human rights, which is to impose direct obligations on corporations.[24] Such an instrument is global civil society's hope and corporations' obvious bugbear. For it to be more than a pipedream, the added legal value and effectiveness of imposing binding international obligations on corporations needs to be closely scrutinized. At the same time, the question of what type of existing or to newly established supervisory body should be put in charge of monitoring and enforcing such obligations arises. Given that state of play, this second

part contains three chapters on the potential of international legal instruments to accommodate and further corporate accountability in the field of human rights.

Chapter 5 by Katerina Yiannibas analyzes the potential of, and the skepticism toward, international arbitration to provide effective remedy for business-related human rights abuses. Despite the vast prevalence of international arbitration for the resolution of cross-border commercial and investment disputes, the arbitration mechanism has received increased public scrutiny. While human rights considerations have already emerged in international arbitration cases, the arbitration mechanism must be adapted if it is to be used in cases concerning substantive human rights claims. This chapter begins by setting out the advantages and disadvantages of international arbitration for the resolution of disputes concerning business-related human rights abuses against the effectiveness criteria set out for non-judicial mechanisms in the UNGPs. The chapter then puts forward the specific ways in which the international arbitration mechanism should evolve in cases where the substantive claims involve human rights; in particular, a set of procedural rules that ensure transparency, *amicus curiae* participation, specialized arbitrators, and human rights experts, site visits, collective redress, monitoring of award compliance, and financial assistance.

In Chapter 6, Jennifer Zerk challenges the idea that the "territorial" system of regulation of multinationals is necessarily flawed. She does so by examining the arrangements that have developed thus far for cross-border cooperation in complex corporate cases. Drawing from work done in the course of the Ruggie mandate (i.e., the UN Protect, Respect and Remedy Framework) and the OHCHR Accountability and Remedy Project, the author considers the possibilities arising from different models of cooperation that can be used in cases involving allegations of business-related human rights abuses, and the conditions needed for success. While it is important to have mutual legal assistance arrangements in place, it is argued in this chapter that there is a need for greater emphasis on the practicalities of "operational" level cooperation, and on opening up more dynamic and programmatic avenues for cross-border communication and liaison, for instance, through regulators' networks.

Next, Daniela Dam-de Jong in Chapter 7 explores the possibilities for interaction between CSR and the standards set by international criminal law for holding corporations or their representatives accountable for their wrongdoings, focusing on the illegal exploitation and trafficking of natural resources by armed groups. There have been developments in the field of international criminal law that bear great promise for holding corporations accountable for their involvement in these practices, such as the publication of a policy paper by the ICC Prosecutor on case selection and prioritization, in which the prosecutor clearly stated her determination "to give particular consideration to prosecuting Rome Statute crimes that are committed by means of, or that result in, inter alia . . . the illegal exploitation of natural resources". This statement has raised expectations in the NGO community that the ICC will be more inclined in the future to address corporate involvement in international crimes. Such developments attest to a determination to place acts of illegal exploitation of natural resources under closer

scrutiny. Nevertheless, to what extent would this be viable in practice? So far, contemporary international criminal tribunals have shied away from prosecuting acts of illicit exploitation of natural resources in conflict zones. Also, there are a number of additional hurdles, such as the problem of establishing knowledge and intent on the part of the corporation or its representatives. This chapter analyzes whether and to what extent contemporary standards developed within the framework of CSR would assist in overcoming such obstacles; it argues that an obligation for corporations to conduct due diligence in relation to their suppliers might, under certain conditions, have relevance for international criminal law.

1.4.3 Part 3: accountability through domestic public law mechanisms

States are responsible for the regulation and supervision of the activities of all persons within their territory. The principle of sovereignty allows States to intervene by any means in order to prevent certain acts from happening, to maintain peace and order, to protect human rights as well as other rights and interests, to steer society in a certain direction, and to influence the behavior of persons or organizations. Policy, financial measures (including taxes), and the law are all instruments that states may rely on for such interventions. Corporations that are incorporated or headquartered in a State are subject to these instruments. The law in particular can be used to set standards for the protection and enhancement of human rights and the environment to which corporations, their managers, employees, and subcontractors have to comply.

In case of non-compliance, public law instruments offer a variety of ways to hold those involved responsible; in some instances, those instruments may also be relied on to address corporate misconduct taking place abroad. Reporting obligations, for instance, may play a role in creating transparency on cases of non-compliance, which in turn facilitates monitoring and enforcement through legal instruments as well as through the "courts of public opinion". Administrative or criminal investigations of business operations that are suspected of harming human rights or the environment may result in legal procedures in order to establish the liability of corporations, managers, employees, and subcontractors, and to impose sanctions. In light of the foregoing, this part contains three chapters discussing the potential of domestic public law instruments to regulate global corporate activity and to hold corporations accountable for transnational misbehavior.

In Chapter 8, François Kristen and Jessy Emaus address the question of whether a corporation that is considered "too big to be governed" might also be "too big to be responsible". In today's day and age, a large multinational company's finances may exceed the finances of a (small) country. Such a firm's economic position in principle means "power". In the meantime, the business operations and the societal position of these companies can affect people and planet. In light of this, the aim of this chapter is to find out if "economic power" is an argument to hold large listed companies (LLCs) liable under private law and/or criminal law for violations of local and international norms which protect

people and the planet. The central question is twofold: Can "economic power" provide for a legal basis for holding LLCs responsible for fundamental rights protection" And if so, how? And, subsequently, can LLCs be held liable both under private law and criminal law for not taking responsibility for fundamental rights protection? To answer these questions, attention will be paid to the concepts of LLCs and "economic power", to the position that the use of economic power establishes responsibility, to the duty of care as a potential vehicle to transform responsibility into liability, and more concrete civil and criminal liability in these cases, respectively.

Next, Marjolein Cupido, Mark J Hornman and Wim Huisman raise the question in Chapter 9 of how different types of (causal, motivational, and organizational) remoteness should be tackled when holding business leaders accountable for international crimes. This issue arises because corporate involvement in international crimes is mostly indirect. Businessmen seldom physically perpetrate international crimes, but generally fund or benefit from such crimes in more indirect ways, for example by providing goods, logistical support, or information. Moreover, businessmen normally act with business-related purposes and interests, rather than with the intent to commit international crimes. In particular, when corporations have a complex structure consisting of multiple branches and departments, individual businessmen may also not know exactly what happens within the corporation. This makes it difficult to establish that the businessmen intentionally contributed to the commission of international crimes and thus fulfilled the *actus reus* and *mens rea* requirements of these offenses. This chapter addresses if and how these problems related to remoteness can be tackled in order to prevent impunity, and whether the possible solutions are acceptable from a fair labelling perspective.

Subsequently, Anne-Jetske Schaap in Chapter 10 addresses the potential of domestic criminal law to hold internationally operating corporations legally accountable for the adverse effects of their cross-border activities. This is done by focusing on one particular human rights-related issue that has generated a lot of debate among NGOs, policymakers and scholars recently: the issue of modern slavery. In addressing the potential of domestic criminal law in tackling the issue of modern slavery, the focus will be on Dutch law and the law of England and Wales. Accordingly, the question central to this chapter is whether and to what extent corporations have binding duties under Dutch and English/Welsch criminal law not to commit modern slavery in their cross-border activities. This chapter highlights that domestic criminal law can indeed offer an answer to this question in the case of modern slavery, but potentially also with regard to other transgressions. It can put duties on corporations not to commit modern slavery in their cross-border activities, these duties may also take the shape of duties of care, and domestic criminal law may even offer potential in addressing modern slavery in the supply chain. Thus, domestic criminal law can offer an interesting route to hold corporations legally accountable. However, these possibilities must first be taken up in practice, and therein lies an important task among others lawmakers, policy makers, and legal practitioners.

1.4.4 Part 4: accountability through domestic private law mechanisms

The regulation of transnational business practices comprises not only measures to prevent future misconduct, but also measures to establish accountability and remedies for past wrongs. This can be done at the initiative of the State, for instance through criminal law procedures, but also at the initiative of those suffering harm as a result of corporate violations of human rights and/or of civil society organizations.

In the absence of effective State regulation at the domestic or international level, victims of corporate human rights and environmental abuses have increasingly turned to civil law procedures in order to denounce abusive corporate behavior and obtain remedies for their harm over the past two decades. Where local court systems fail, these procedures are often filed abroad, usually in the home countries of the corporate actors involved. The mechanism that is currently most utilized for this is tort law. In addition to the many cases that have been pursued before US federal courts on the basis of the Alien Tort Statute, transnational tort claims relating to corporate human rights and environmental abuse have also been pursued in other jurisdictions, like Canada, Australia, the UK, Germany, The Netherlands, and Sweden.[25]

However, these tort-based claims are not the only option via which accountability and remedies for irresponsible business practices may be sought. Private law mechanisms in the fields of contract law, consumer law, business law, and competition law may also provide possibilities to establish legal accountability for human rights or environmental abuse within the supply chain, at the initiative of shareholders, competitors, or consumers. In addition, non-judicial grievance mechanisms may be relied on to settle disputes and find remedies outside of the courtroom, as is exemplified by the aforementioned contribution by Buhmann on the role that National Contact Points may play in this respect (see section 1.4.1). Yet other private (law) mechanisms may be contemplated for future cases. The fourth part of this volume contains three chapters on how transnational corporations are (or can be) held accountable through private law mechanisms, and on the obstacles faced by those seeking to address irresponsible business practices through such mechanisms.[26]

The purpose of Chapter 11 by Paul Dowling is to is to discuss, from a theoretical and practical perspective, some of the difficulties (i.e., conceptual flaws, accountability gaps) arising from the principles of limited liability (LL) and SCP, particularly in the context of corporate groups and MEs. It starts with a critical analysis of the historical development and theoretical foundation of LL and SCP, followed by a consideration of some of the conceptual difficulties associated with the operation of these principles, e.g., the schizophrenic nature of the corporation as both a commodity and a social entity. It then turns to some of the practical implications of these problems, particularly the manner in which LL and SCP can frustrate the pursuit of legal accountability, followed by a discussion of the potential for reform in this area. Having considered these alternatives, this chapter proposes the adoption of a profit

risk/created risk approach to liability for dangerous activities, which seeks to redress the existing imbalance in the burden of risk that LL and SCP impose on tort victims in the context of overseas operations of MEs and corporate groups.

Next, Nicolas Bueno introduces and discusses in Chapter 12 the Swiss Federal Initiative on Responsible Business. Unless the Swiss Parliament adopts a new law on corporate due diligence, Swiss citizens will decide in 2020 whether to adopt or reject a partial revision of the Constitution of Switzerland that aims to introduce a provision on responsible business. According to the proposal, companies that are based in Switzerland are required to carry out appropriate human rights and environmental due diligence in Switzerland and abroad. The proposal also entails a provision for companies that makes them liable for the harm caused by companies under their control unless they can prove that they took all due care to avoid the harm. This contribution presents and assesses the content of the Swiss Popular Initiative on Responsible Business in light of the UNGPs and the Organisation for Economic Cooperation and Development Guidelines for Multinational Enterprises. It also compares the Swiss popular initiative with the recently adopted French *loi relative au devoir de vigilance* and other recent legislative developments. It identifies a trend toward more precise liability provisions for corporate human rights abuses in international operations.

Subsequently, Martijn Scheltema, in Chapter 13, reflects on the possibilities that contract law might offer in fostering corporate accountability for human rights issues in global value chains. To date, 84% of the large internationally operating companies avails over some form of a CSR/Business Human Rights (BHR) policy. However, these corporate policies have not proven to be very effective so far. This might be partially explained by a mismatch between law and policy, especially in connection with contractual management of these issues. Most of the BHR/CSR policies do not, or in rather limited manner, address the way in which contractual mechanisms might be helpful in enhancing human rights compliance in supply chains, although they seem to recognize the need for contractual mechanisms as part of the solution (i.e., better BHR/CSR compliance). As it becomes clear that rather ineffective contractual measures have been implemented, NGOs and governments might question the effectiveness of the corporate policies mentioning contractual arrangements and might even expect the non-financial reports to be more specific on the types of contractual measures implemented. Overall, strengthening these instruments seems pivotal to enhance human rights compliance in supply chains. Thus, corporate policies should be elaborated in connection with contractual management of CSR/BHR issues, and several ways to do so are elaborated upon in this chapter.

1.4.5 Part 5: conclusion

In Chapter 14, the editors conclude this volume by trying to envisage "The Way Forward" in regards to accountability, international business operations, and the law. This concluding chapter will, on the basis of the foregoing chapters, draw conclusions as to the most viable ways forward when it comes to holding

international business actors to account for violations of human rights and environmental standards abroad. Returning to the six ambitions mentioned in section 1.2, this chapter will highlight existing accountability mechanisms that are applied in new ways by legal practitioners in the field, as well as new accountability mechanisms that are considered as an addition or alternative to those already-existing mechanisms. It will speculate on the extent to which these mechanisms can have transformative effects on the way in which transnational business operations are conducted, and will address potential thresholds and/or side effects. It will also discuss the sociopolitical sensitivities inherent in the introduction of new mechanisms and/or the optimization of existing ones. It will close off with some recommendations for legal scholars in regards to topics that warrant further research, for legal practitioners in regards to legal avenues that warrant further development through case law, and for policymakers in regards to accountability mechanisms that warrant realization and/or optimization.

1.5 Looking forward . . .

As set out in section 1.3, this volume is compiled with the dual aim to further the scholarly legal debate on international business actors and their accountability for human rights violations and environmental transgressions in host countries, in order to reach higher-quality decision-making by policymakers that seek to implement regulatory measures to enhance corporate accountability in this respect. The chapters that will follow will no doubt provide a valuable contribution to the scholarly legal debate on these issues. Whether the second aim of enhancing the decision-making process at the policy level will also be achieved is a question we cannot answer. We do see all sorts of potential in the following chapters to be of significant influence also on the sociopolitical debate on issues relating to the adverse effects of transnational corporations' business activities on human rights and the environment in host countries, but the receptions of the ideas contained therein is beyond our control. We do look forward, however, to see what might happen with the ideas expressed in this volume and which future developments will be indebted to the work compiled in this volume.

Notes

1 See in more detail: Liesbeth Enneking et al., *Zorgplichten van Nederlandse ondernemingen inzake Internationaal Maatschappelijk Verantwoord Ondernemen – Een rechtsvergelijkend en empirisch onderzoek naar de stand van het Nederlandse recht in het licht van de UN Guiding Principles* (Boom Juridisch 2016). Based on a study commissioned by the Dutch Ministries of Foreign Affairs and Security and Justice, <wodc.nl/onderzoeksdatabase/2531-maatschappelijk-verantwoord-ondernemen-in-het-buitenland.aspx> accessed 22 August 2019.

2 OHCHR, 'Human Rights and Transnational Corporations and Other Business Enterprises: Human Rights Resolution 2005/69' (20 April 2005) UN Doc E/CN.4/RES/2005/69.

3 Special Representative of the UN Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, 'Protect,

Respect and Remedy: A Framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises' [2008] UN doc A/HRC/8/5.

4 OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (UN 2011).

5 UNHRC Res. 17/4, UN Doc. A/HRC/RES/17/4, signed on 16 June 2011.

6 See in more detail, for example: Nadia Bernaz. *Business and Human Rights History, Law and Policy: Bridging the Accountability Gap* (Routledge 2016).

7 See in more detail, for example, the publications mentioned in section 1.2 below (n 11–9).

8 UNGPs (n 4) Guiding Principles 11–24. See also OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* (UN 2012).

9 On the above, see for example Liesbeth Enneking, *Foreign Direct Liability and Beyond: Exploring the Role of Tort Law in Promoting International Corporate Social Responsibility and Accountability* (Eleven International Publishing 2012).

10 See <http://blog.ucall.nl/index.php/2017/06/accountability-and-international-business-operations-some-conclusions-of-the-2017-ucall-conference/> for more information on this event. The editors of this volume and authors of this introductory chapter were the organizers of the conference.

11 Peter Muchlinski, *Multinational Enterprises and the Law* (Oxford University Press 1995, revised 2007).

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

13 Jennifer Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (Cambridge University Press 2006).

14 These include, for instance: Robert Bird et al. (eds.), *Law, Business and Human Rights: Bridging the Gap* (Edward Elgar Press 2014); Dorothée Baumann-Pauly and Justine Nolan (eds.), *Business and Human Rights: From Principles to Practice* (Routledge 2016).

15 Cathal Doyle, *Business and Human Rights: Indigenous Peoples' Experiences with Access to Remedy: Case Studies from Africa, Asia and Latin America Asia* (Indigenous Peoples Pact, ALMÁCIGA and IWGIA 2015).

16 Surya Deva and David Bilchitz (eds.), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge University Press 2013).

17 Michael Kelly, *Prosecuting Corporations for Genocide* (Oxford University Press 2016).

18 Surya Deva and David Bilchitz (eds.), *Building a Treaty on Business and Human Rights: Context and Contours* (Cambridge University Press 2017); Jernej Letnar Černič and Nicolás Carrillo-Santarelli, *The Future of Business and Human Rights: Theoretical and Practical Considerations for a UN Treaty* (Intersentia 2018).

19 See Nadia Bernaz, *Business and Human Rights: History, Law and Policy: Bridging the Accountability Gap* (Routledge 2016); Jernej Letnar Černič and Tara Van Ho (eds.), *Human Rights and Business: Direct Corporate Accountability for Human Rights* (Wolf Legal Publishers 2015); Stefanie Khoury and David Whyte, *Corporate Human Rights Violations: Global Prospects for Legal Action* (Routledge 2017).

20 See for example Rivera's chapter on the responsibility to respect, and Carrillo's chapter on the existence of direct obligations, in Černič and Van Ho (n 19).

21 The following overviews are highly indebted to and largely based on (sometimes severely abridged) versions of the abstracts of the contributions that the authors themselves have provided to the editors; we haven't changed too much in its wordings, in order to avoid doing injustice of any kind to the focus that the authors themselves have chosen.

22 OECD, *OECD Guidelines for Multinational Enterprises* (OECD Publishing 2011).

23 See however the developments described in, for example: Niccolò Zugliani, 'Human Rights in International Investment Law: The 2016 Morocco-Nigeria Bilateral Investment Treaty', (2019) 68(3) *International & Comparative Law Quarterly* 761; Yulia Levashova, 'The Accountability and Corporate Social Responsibility of Multinational Corporations for Transgressions in Host States through International Investment Law', (2018) 14(2) *Utrecht Law Review* 40.
24 See for the latest developments and further references: Business & Human Rights Resource Centre, 'Binding treaty' <www.business-humanrights.org/en/binding-treaty> accessed 22 August 2019.
25 See in more detail, for example: Enneking et al. (n 1); Enneking (n 9).
26 Such obstacles may include, but are not limited to domestic courts' competence to adjudicate claims, lack of applicable standards, legal representation and funding, evidential matters, follow-up to non-judicial dispute settlements, and enforcement of awards. See in general Enneking (n 9).

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