

Seminar of Legal Experts: Extraterritorial legislation as a tool to improve the accountability of transnational corporations for human rights violations

Co-hosted by the Catholic University of Louvain and the Free University of Brussels for the benefit of the Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises

Brussels, November 3 – 4, 2006

SUMMARY REPORT

BACKGROUND

On 3 – 4 November 2006, the Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises (**SRSG**) attended a seminar of legal experts examining how extraterritorial legislation can be used to improve the accountability of transnational corporations for human rights violations.

The seminar was the third in a series of four legal workshops designed to clarify legal issues relevant to the SRSG's mandate. It was designed to build upon discussions from the June 2006 Chatham House workshop on government regulation in relation to human rights and corporations.

The seminar was co-hosted by Professor Olivier De Schutter from the Catholic University of Louvain and Professor Paul De Hert from the Free University of Brussels. The SRSG is grateful to them both for organizing the seminar. He also thanks the Belgian Federal Public Service - Ministry of Foreign Affairs, External Trade and Development Cooperation and the Human Security Policy Division of the Canadian Department of Foreign Affairs and International Trade for their financial support.

Participants included academic experts, legal practitioners and representatives from non-governmental organizations. Annex 1 contains a full list of participants and their affiliations. Despite their best efforts, the organizers found it difficult to secure optimum regional representation amongst the participants. Accordingly, the SRSG encourages experts from diverse backgrounds to share with him further ideas on this issue as they deem appropriate.

Professor De Schutter prepared a background report for the seminar with the aim of (a) clarifying terminology; (b) questioning the limits public international law places on extraterritorial jurisdiction; and (c) examining procedural challenges in using extraterritorial jurisdiction to improve corporations' human rights accountability, including issues related to corporate "nationality" and "piercing the veil", as well as jurisdictional conflicts between States. This report will be posted on the Business and Human Rights website when it is finalized, likely in late November 2006.

Other background materials included the International Law Association's Final Report on the Exercise of Universal Jurisdiction in respect of Gross Human Rights Offences (2000); the Institute of International Law's Resolution on Universal Criminal Jurisdiction with regard to the Crimes of Genocide, Crimes Against Humanity and War Crimes (17th Commission, 2005); the International Chamber of Commerce's Policy Statement on Extraterritoriality and Business (2006); Africa Legal Aid's Cairo-Arusha Principles on Universal jurisdiction in respect of Gross Human Rights Offences: an African Perspective; and the Princeton Principles on Universal Jurisdiction (2001).

SUMMARY OF PROCEEDINGS

The Seminar was divided into the following areas of discussion:

1. Extraterritorial jurisdiction under international law;
2. Specific questions raised by exercising extraterritorial jurisdiction over corporations; and
3. Sanctions and remedies, including comparisons between criminal, civil and administrative liability and discussion of victims' access to justice.

Participants were designated a particular topic on which to comment but were also asked to contribute to open discussion following each presentation. Annex 2 contains the agenda.

The seminar focused on *prescriptive extraterritorial jurisdiction*, which involves a State regulating persons or activities outside its territory. Prescriptive extraterritorial jurisdiction differs from other categories of extraterritorial jurisdiction, such as situations in private international law where a national court applies another nation's law, and executive (or enforcement) extraterritorial jurisdiction, under which a State deploys its organs overseas.

In order to encourage full and frank discussion, the participants agreed against public attribution of comments. Accordingly, set out below is a general record of what was discussed.

1. Introductory remarks

The SRSG highlighted that extraterritorial jurisdiction is a relatively small part of an extremely broad mandate. He explained that the seminar's focus on extraterritorial jurisdiction did not mean he was neglecting other pertinent issues. The SRSG noted an emerging trend to use extraterritorial responsibility as a potential tool for overcoming weaknesses in corporate accountability but looked forward to constructive debate on the challenges facing this tool.

2. Extraterritorial jurisdiction under international law

(a) Aims and introductory remarks

The main aim was to understand better when States may and/or are required to exercise extraterritorial jurisdiction. While the participants accepted that there was some overlap between these questions and substantive issues, such as what types of human rights obligations should be imposed by extraterritorial legislation, they agreed to focus on jurisdictional issues.

The discussion began at a very practical level with the political feasibility of States exercising extraterritorial jurisdiction over companies. It ranged over various issues including differing national approaches to holding legal persons criminally responsible, the potential role of civil litigation (with the ongoing Bhopal case as an example), and procedural issues such as international cooperation in relation to evidence-gathering.

Participants agreed to focus the discussion mainly on the exercise of extraterritorial jurisdiction by a home State over the overseas activities of corporations with some link to that State.

(b) Is it permissible to exercise extraterritorial jurisdiction?

Participants explored whether States have unlimited latitude under international law to exercise extraterritorial jurisdiction. There was general agreement that a nationality link adds support to the exercise of jurisdiction, unless the State is exercising universal jurisdiction as may be invoked for a limited number of international crimes (crimes against humanity, genocide, war crimes, torture, forced disappearances). There was also broad reference to an overarching requirement of

“reasonableness,” including respect for the principle of non-intervention in the internal affairs of the territorial State.

In exploring this limitation, participants discussed whether exercising extraterritorial jurisdiction with the goal of protecting human rights could amount to intervention through coercion. One participant argued that international law has developed to the extent that such an exercise of extraterritorial jurisdiction would not amount to coercion. Others agreed that until there is a definitive rule prohibiting the exercise of extraterritorial jurisdiction for human rights purposes, States are free to do so. Nevertheless, some participants were less sure and sought more discussion of the meaning of reasonableness and coercion. Regardless, participants generally agreed that apart from the non-intervention principle, there are no significant international legal impediments to exercising extraterritorial jurisdiction.

(c) Are States required to exercise extraterritorial jurisdiction?

The discussion then turned to whether there are any situations in which States are required to exercise extraterritorial jurisdiction. Participants first questioned whether the duty to protect, incorporating the duty to exercise due diligence to prevent abuse and provide an effective remedy, somehow incorporates a duty to exercise extraterritorial jurisdiction.

The participants looked to the concept of “international cooperation” and guidance in international human rights treaties as a starting point. They questioned whether any UN human rights treaty bodies, such as the Human Rights Committee and the Committee on Economic, Social and Cultural Rights (CESCR), as well as any of the regional human rights bodies, provide guidance on whether the duty to protect requires the exercise of extraterritorial jurisdiction, at least where the primary perpetrator is a national.

While some participants considered a duty to exercise extraterritorial jurisdiction could be implied from commentary from UN treaty bodies (namely CESCR) and regional human rights bodies, others were more skeptical. Accordingly, the participants agreed that whether the duty to protect extends extraterritorially is an open question requiring further debate. In this context, the SRSG mentioned that his research team is mapping commentary from the seven core UN human rights treaties on State obligations regarding corporate human rights abuse, including any references to extraterritorial jurisdiction.

The debate then turned to whether other areas of international law support the existence of a general duty to exercise extraterritorial jurisdiction. At the outset, it seemed there was at least some agreement that States should exercise universal jurisdiction for breaches of international humanitarian law where the defendant is present on its territory. However, participants then diverged as to whether there was a wider duty to exercise universal jurisdiction. They also debated which crimes trigger the duty and whether universal jurisdiction requires actions against legal persons rather than individuals.

Participants also discussed from where, and how, obligations other than those related to universal jurisdiction might arise. Little agreement was found on this issue but there was some consensus that even if a general duty did exist, it was unlikely to require a particular form of action (i.e. civil or criminal) against legal persons, even if some kind of criminal regulation was required for natural persons. Rather, the object might be to afford an effective remedy instead of being required to facilitate either civil or criminal action.

Accordingly, the most definitive conclusion one could take out of this discussion is that States have certain obligations under universal jurisdiction, but that otherwise both the source and content of any general duties regarding extraterritorial jurisdiction remain unclear.

(d) Ways in which the exercise of extraterritorial jurisdiction could be affected

Participants discussed how extraterritorial jurisdiction could be limited to safeguard the territorial State's interests. In particular, the background report referred to (i) prosecutorial expediency; (ii) the doctrine of *forum non conveniens*¹ and other subsidiarity doctrines to respect primacy of the territorial State; (iii) application of the *non bis in idem*² rule where the territorial State has prosecuted the same acts; (iv) the doctrine of double criminality where a State may decide to exercise jurisdiction over an action only if that action is also criminalized in the territorial State; and (v) situations where jurisdiction is limited because the territorial State mandated the corporation's actions.

Participants highlighted that not all States are equipped to exercise extraterritorial jurisdiction. They gave examples from developing countries where the State lacks both the ability and inclination to exercise jurisdiction, particularly where it seeks to encourage companies registered on its territory to expand their overseas operations. There were also examples of developed countries choosing not to prioritize evidence gathering for extraterritorial cases, especially where such practices are seen as too costly, time-consuming or politically hazardous.

Arguments were raised as to whether a duty to exercise extraterritorial jurisdiction could impose unrealistic expectations on States to keep abreast of every overseas abuse by a "related" corporation. Participants also suggested that another practical consequence could be transnational corporations delegating more activities to local companies to avoid liability.

3. Questions raised by exercising extraterritorial jurisdiction over corporations

(a) Aims and introductory remarks

The discussion then turned to two key issues in holding corporations accountable via extraterritorial jurisdiction, namely: determining a company's nationality and looking beyond its formal legal structure for the purposes of attaching accountability, such as where abuse may have been committed by the corporation's subsidiaries or contractual partners.

(b) Determining the 'nationality' of the corporation

There was general agreement that international law does not prescribe any particular method for determining nationality of legal persons. However, nationality is generally based on places of incorporation, location of registered main office and the principal center of business. Participants debated whether other factors should be considered, such as whether there is a genuine link with the home State. Participants also queried whether investment treaties provide any hints as to nationality and whether the parent company's nationality should be determinative of its subsidiary's nationality.

The requirement for a genuine link was mentioned both regarding a State's ability to exercise jurisdiction, and to protest against regulations imposed on "their" corporations by other States.

¹ Meaning, literally, a forum that is not convenient. The doctrine is often used by defendants in foreign court proceedings to argue that the forum chosen by the plaintiff creates an undue hardship, often because of difficulties in bringing witnesses, evidence etc to the foreign court. The requirements for proving a *forum non conveniens* claim vary amongst common law jurisdictions. The doctrine does not exist in this exact form in civil law jurisdictions though similar balancing tests may be carried out when choosing the most appropriate forum.

² Meaning, literally, not twice for the same thing. The principle applies to limit proceedings where a party has already faced legal proceedings for the same matter. For example, a court in the home State might decide to reject jurisdiction in a case against a corporation if the corporation has already faced legal proceedings in the host State or any other State that has assumed jurisdiction.

(c) Piercing the corporate veil

Three solutions to the problem of the formal legal separation of corporate entities were discussed, together with some of their benefits and disadvantages:

Solution to the separation of legal entities within the multinational group	Description	Advantages/Disadvantages
Classic derivative liability (also known as “piercing the corporate veil”)	Close examination of the factual relationship between the parent and the subsidiary to identify abuse in the corporate form.	Real disincentive for parent companies to control the day-to-day operations of their subsidiaries, and may lead to competing attempts to exercise extraterritorial jurisdiction over foreign companies.
“Integrated enterprise”	Absolute presumption that the subsidiary’s acts are attributable to the parent because of interconnectedness of separate legal personalities.	Clear incentive to the parent to control its subsidiaries but implies extraterritorial jurisdiction being exercised over foreign entities as part of the “integrated” multinational group, which may raise problems in terms of jurisdiction.
Direct liability of parent company	May arise from failure to exercise due diligence in controlling subsidiaries’ acts and therefore may relate to both the parent company’s acts (where there is direct or indirect involvement in the subsidiary’s acts) and omissions through failing to control the subsidiary.	If only actions are relevant and omissions are ignored, there could be a disincentive for parent companies to control day-to-day operations of their subsidiaries.

At a more practical level, there was genuine interest in the proposal that home countries should consider requiring their companies to conduct HRIAs and to report periodically on issues materially related to their human rights performance through their subsidiaries (and possibly also their contract partners). However, participants recognized the obvious issues of inconsistent reporting standards and accountability mechanisms, associated costs and the need to consider whether such reporting could jeopardize commercial secrets.

Several participants also presented examples from their own countries, including situations where corporate culture is becoming increasingly relevant in deciding whether a corporation has the requisite knowledge element of a crime.

4. Sanctions and remedies – criminal, civil or administrative liability

(a) Aims and introductory remarks

Day Two turned to the issue of sanctions and remedies. The aim was to discuss whether States are obliged to ensure “their” transnational corporations operating abroad are subject to effective, proportionate and dissuasive sanctions, whether criminal or civil, for human rights abuses.

Participants were also asked to explore the principle of *non bis in idem* and more generally how to resolve situations where more than one State seeks to exercise jurisdiction over alleged abuse.

The discussion began with questions regarding the implications of choosing one type of remedy and also the types of penalties that could best deter corporations. Participants mentioned penalties such as depriving companies of export credits, disqualifying directors from certain activities, placing the corporation under supervision and closing certain corporate establishments.

(b) Type of liability

Participants suggested that there was uncertainty as to whether a requirement exists to provide victims with a civil remedy for torts committed abroad, where a corporation of the nationality of the forum State is involved. They also debated whether one form of liability is more likely to be permissible under international law — i.e. because it is less likely to be viewed as an intrusion into sovereignty. One participant argued that civil liability could be seen as more acceptable than criminal liability in this regard.

Regional differences were also discussed, including whether some States were more likely to impose criminal or civil liability simply because of more experience in using either type. Participants suggested that one benefit of administrative liability was that it did not require either an individual plaintiff or a willing and able prosecutor. They also debated whether it was better to leave States with discretion in choosing the type of liability, provided it is clear that an effective process should be chosen. Some participants were unconcerned about the type of liability or whether the liability attaches to a natural or legal person, provided some person or entity is held responsible. Participants mentioned the importance of looking to the market for accountability and provided examples of market forces that could deter companies, such as share price drops and shareholder motions to further investigate certain officers.

The concept of “contractualizing” human rights was highlighted — with the suggestion that States could then allege breach of contract where a corporation fails to abide by its contractual promises regarding human rights. The implication was that a contractual action could be more effective than a civil tort action as there would be no need for a willing plaintiff. As part of this discussion, participants also spoke of making the provision of export insurance and other government services conditional on human rights compliance.

(c) Jurisdictional conflicts

The background report mentioned a number of ways to resolve such disputes, such as utilizing the principle of *forum non conveniens* and even entering into agreements with other States which set out when jurisdiction should be exercised. Participants suggested that such agreements could specify the types of corporations each State intends to regulate, including whether regulation would extend to foreign subsidiaries and the scope of consultation with other States, particularly before a prosecution commences.

In relation to *non bis in idem*, the debate also focused on whether States are obliged to respect another State’s decisions if they are contrary to human rights. One participant referred to the Rome Statute of the International Criminal Court as establishing a clear precedent for the proposition that States should be permitted to disregard other States’ decisions where they are contrary to the pursuit of justice and would frustrate human rights.

Participants also wondered whether jurisdictional conflicts are probable — they argued that the problem is generally that there are no States willing to prosecute or accept a civil case rather than States competing for the same cases. The Total litigations in Belgium and France were mentioned as examples of where there was little connection between the victims and either State and where,

particularly in relation to France, the State had close ties with the corporation, likely making it even more unwilling to exercise jurisdiction. Participants also mentioned that pressure from the business community in general can be a powerful deterrent to States exercising jurisdiction. Participants suggested more creative thinking was needed on incentives to exercise jurisdiction.

There was also some skepticism about the use of *forum non conveniens* and the ways in which both corporations and State institutions might seek to exploit the concept in order for the former to forum shop and for the latter to avoid taking a case, whether for political or other reasons.

5. Sanctions and remedies – access to justice by victims

(a) Aims and introductory remarks

The final session aimed to discuss three issues inherent in home States granting remedies to foreign victims:

- (i) What mechanisms would ensure that victims who are geographically distant from the home State actually have effective access to justice?
- (ii) Where such remedies are provided, should they be provided without any restrictions or with a subsidiarity requirement, i.e. only where there is no domestic remedy?
- (iii) Whether the principle of mutual assistance is relevant in ensuring that territorial countries assist in evidence gathering and facilitating victims to file complaints in other jurisdictions.

From the outset, participants agreed that practical measures were required to ensure victims have access to home State processes. There was also support for mutual legal assistance and inter-State cooperation to facilitate such access, although it was noted that, in general, one should not assume that the host State authorities will cooperate.

(b) Accessibility issues

Participants discussed practical impediments to victims seeking remedies in home States, such as facilitating travel by witnesses, finding advocates and raising funds. Both local and international non-government organizations were highlighted as key players in helping to solve these issues.

Participants also mentioned the difficulty in knowing against whom to take action, particularly in the case of “disappearing corporations” where it becomes almost impossible to track the original entity responsible for the harm. Some participants were concerned about tactics sometimes used by corporations to intimidate victims or to stall processes and called for both territorial and home States to address this issue.

There was also a reminder to think carefully about the types of victims generally involved in such cases and their lack of access to institutions that make and enforce the law. In this regard, it was suggested more attention should be paid to access to lawmakers rather than simply access to courts after the abuse has already occurred.

(c) Avoiding restrictions on remedies

There was a suggestion that one should not assume that home States are the best forum for a remedy — where the victims’ priority is to strengthen accountability mechanisms, an action in the territorial State could be more effective even if monetary damages are unlikely. However, there was also a sense that home States might have a role to play where remedies in the territorial State are unlikely to be effective. While territorial legal systems should be respected and strengthened, the overall aim should be providing victims with some form of justice.

6. Concluding comments

The SRSG noted that due to their complexity, it would take time to resolve many of the issues addressed by the seminar. He suggested that any conclusions drawn from the discussion for the mandate would need to reflect the concerns of multiple stakeholders to be successful. In this regard, the SRSG spoke of building bridges among these stakeholders to facilitate common language and interests.

Finally, the SRSG emphasized the importance of focusing not only on improving corporate conduct but also strengthening State institutions in order to ensure that governance institutions keep pace with corporate globalization.

Annex 1 – list of Seminar participants

SRSB and members of his team

- Gerald Pachoud – Special Advisor to the SRSB;
- Lene Wendland – Office of the High Commissioner for Human Rights;
- Rachel Davis – SRSB’s legal research team;
- Amy Lehr – SRSB’s legal research team;
- Vanessa Zimmerman – SRSB’s legal research team.

Academics

Name	Affiliation
Ms. L. André	Catholic University of Louvain, BELGIUM
Prof. D. Cassel	Northwestern University School of Law, USA
Prof. A. Clapham	Graduate Institute of International Studies, SWITZERLAND
Prof. P. d’Argent	Catholic University of Louvain, BELGIUM
Prof. E. David	Free University of Brussels, BELGIUM
Prof. P. De Hert	Free University of Brussels, BELGIUM and University of Tilburg, NETHERLANDS
Mr. B. Demeyere	Katholieke Universiteit Leuven, BELGIUM
Prof. O. De Schutter	Catholic University of Louvain and College of Europe, BELGIUM
Mr. C. Forcese	University of Ottawa, CANADA
Prof. M. Sornarajah	National University of Singapore, SINGAPORE
Prof. R. Steinhardt	George Washington University, USA
Ms V Van der Plancke	Catholic University of Louvain, BELGIUM

Legal practitioners

Name	Affiliation
Mr. C. Abrahams	Abrahams Kiewitz Attorneys, SOUTH AFRICA
Prof. N. Angelet	Liedekerke Wolters Waelbroeck Kirkpatrick, BELGIUM
Prof. M. Henzelin	Barrister (Lalive avocats associés), SWITZERLAND
Mr. D. Hubert	Human Security Policy Division of Department of Foreign Affairs and International Trade, CANADA
Ms. R. Nicolson	Allens Arthur Robinson, AUSTRALIA
Mr. E. Williamson	Sullivan & Cromwell, USA
Dr. J. Zerk	CSR Vision, UK

NGO Representatives

Name	Affiliation
Ms. A. Reidy	Human Rights Watch
Ms. J. Schurr	Fédération Internationale des ligues des Droits de l'Homme
Ms. A. Shemberg	International Commission of Jurists
Dr. U. Ramanatha	International Environmental Law Research Centre, India
Mr. I Seiderman	Amnesty International

Annex 2 – Agenda

**Seminar of legal experts
Extraterritorial legislations as a tool to improve the accountability of transnational
corporations for human rights violations
Brussels (Belgium), Château de Val-Duchesse, on 3-4 November 2006**

Day 1 – Friday 3 November 2006

Opening session

Presentation of the aims of the seminar and the outline of the programme

I. Extraterritorial jurisdiction under international law

It is generally recognized that States may regulate the activities of their nationals abroad, under the so-called principle of active personality justifying the exercise of extraterritorial jurisdiction. It is also generally recognized that States may exercise extraterritorial jurisdiction in order to contribute to combating serious crimes of international law (genocide, war crimes, crimes against humanity, torture), under the principle of universality, irrespective of not only the place where the crime has been committed, but also the nationality of the victims or of the author. However, the precise scope of both these principles remains in dispute, in particular as concerns the respect of the sovereignty of the territorial State (or host State), where the situation has occurred. And there still is debate about whether States may adopt extraterritorial legislation beyond these circumstances, where the situation presents no connecting factor to the State concerned, and where the abuse does not constitute a universally recognized crime under international law. The state of international law should be precisely identified in order to arrive at a better understanding of the conditions under which the State may, or may not, exercise extraterritorial jurisdiction.

Of course, this question cannot be separated entirely from the question of which human rights obligations are to be imposed on transnational corporations by extraterritorial legislation being adopted by the home State. Indeed, the more universally recognized the substantive norms are (for example, because they implement the values recognized in the 1998 ILO Declaration on Fundamental Principles and Rights at Work), the more acceptable the exercise of extraterritorial jurisdiction as defined above will appear. Nevertheless the seminar – which will focus on jurisdictional rather than on substantive issues – will not discuss the substantive content of the obligations imposed on transnational corporations, although the participants may examine the question of the admissibility of extraterritorial jurisdiction being exercised by taking this variable into account.

Commentators :

Prof. Eric David, Free University of Brussels, Belgium

Prof. Jan Wouters, Katholieke Universiteit Leuven, Belgium

Prof. Andrew Clapham, Graduate Institute of International Studies, Switzerland

Prof. Ralph Steinhardt, George Washington University, U.S.A.

Prof. Pierre d'Argent, Catholic University of Louvain

II. Questions raised by the implementation of extraterritorial jurisdiction exercised over corporations

Determining the 'nationality' of the corporation. One condition for the exercise of extraterritorial jurisdiction under the principle of active personality referred to above is, per definition, that the corporation be considered to be subject to the 'personal' jurisdiction of its 'home' State. But it has been observed that 'the concept of nationality in relation to companies does not have the legislative basis in national laws which exists in the case of individuals, and is thus much more open to a pragmatic assessment on the basis of the extent of a company's attachment to a state'.³ While the principle is that each State determines for the purposes of the application of its own laws and regulations which companies it considers as having its nationality, the question arises whether criteria need to be more broadly applicable principles in this regard, and if so, what such principles should be.

Piercing the corporate veil. The internationalization of the activities of transnational corporations most frequently involve their creating subsidiaries in the States in which they invest, which they own either partially or completely, and which they control either by being the majority stakeholder or by exercising otherwise control on the composition of the management board. The question arises to which extent the parent company may be imputed the acts of the subsidiary, in situations where, although the relationship between the two legal entities is not purely of a contractual nature (as is the relationship between a company and its suppliers or clients), these entities nevertheless have distinct legal personalities and may possess a certain degree of autonomy vis-à-vis one another. It would be important to identify the different legal doctrines which have been put forward, for instance in competition law, in consumer law or in environmental law, in order to pierce the corporate veil (to go beyond the separation of legal personalities), and to examine whether these techniques may or should be transposed in human rights law.

Commentators :

Prof. M. Sornarajah, National University of Singapore, Singapore

Prof. Marc Henzelin, Barrister (Lalive avocats associés), Switzerland

Mr. Charles Abrahams, Attorney at Abrahams Kiewitz Attorneys, South Africa

Ms. Rachel Nicolson, Allens Arthur Robinson, Australia

Ms. Andrea Shemberg, International Commission of Jurists

Prof. Nicolas Angelet, Free University of Brussels, Of Counsel, Liedekerke and Wolters

Day 2 – Saturday 4 November 2006

III. Sanctions and remedies

Criminal, civil or administrative liability. What is the obligation, if any, on States to ensure that their transnational corporations operating abroad are subject to effective, proportionate and dissuasive sanctions, whether criminal or non-criminal, including monetary sanctions, for human rights abuses? And is there an obligation to ensure that victims of human rights violations may benefit from civil remedies against the corporation, in order to seek reparation for the torts committed in violation of human rights. The seminar will examine these questions, including respective advantages and disadvantages of each form of sanction.

³ Watts & Jennings, *Oppenheim's International Law*, vol. I, 9th ed., 1996, p. 861.

The seminar will also examine the question of extraterritorial jurisdiction and the principle of *non bis in idem* where the corporation has already been facing legal proceedings in the host State or in any other State whose courts assumed jurisdiction. More generally, it should examine the question of how to resolve situations where more than one State has jurisdiction over an alleged abuse committed by a transnational corporation.

Commentators :

Mr. Edwin Williamson, Washington, D.C. USA.
Mr. Craig Forcese, University of Ottawa, Canada
Dr. Jennifer Zerk, Barrister, CSR Vision, U.K.
Mr. Don Hubert, Department of Foreign Affairs, Canada
Mr. Bruno Demeyere, Katholieke Universiteit Leuven, Belgium

Access to justice by the victims. Extraterritorial jurisdiction by the home State implies that the victims of human rights violations will be granted a remedy before the courts of that State, and that these courts will apply the norms to which extraterritorial reach has been given. Three problems need to be examined in this connection. First, where the victims are geographically distant from the competent courts, what mechanisms could ensure that they will nevertheless have effective access to justice? Secondly, where the home State provides for remedies against the activities of the transnational corporation abroad, these remedies may be available without any restrictions to aggrieved victims, or they may be subject to a subsidiarity requirement, i.e., a requirement under which those remedies may only be used (and the jurisdictions of the home State accept jurisdiction) if no remedy is available before the local jurisdictions in the host (or territorial) State. The doctrine of *forum non conveniens* is a variant of this subsidiarity. The participants of the seminar may discuss the implications of each approach. Third, the seminar may discuss obligations of mutual assistance which might assist the victims in seeking reparation or in filing complaints before the courts of the home State of the transnational corporation, as such procedures may be greatly facilitated by the provision, by the authorities of the host State, of any information and documents which may be required for the procedure to develop speedily and effectively.

Commentators :

Dr Usha Ramanatha, International Environmental Law Research Centre, India
Mr. Doug Cassel, Northwestern University School of Law, U.S.A.
Ms. Aisling Reidy, Human Rights Watch
Ms. Jürgen Schurr, Fédération Internationale des ligues des Droits de l'Homme