Part III
Corporate Participation Covered
Chapter Six

Application to TNCs

I. Introduction

International law still predominantly regulates the public sphere: It regulates relations between and among sovereign States. In a still valid definition given in 1928, eminent international law scholar James Leslie Brierly characterized the subject of his research classically “as the body of rules and principles of action which are binding upon civilized states in their relation with one another.”

Torts law is by definition private law aimed at the regulation of private actors within the private sphere. Similarly, TNCs are by nature private business entities; they belong to civil society, understood in a broad sense as encompassing all kinds of private actors and non-government organizations. Naturally, a TNC’s primary goal is to make money and not the exercise of any sovereign police powers usually associated with statehood.

ATS, by requiring not only a “violation of the law of nations” but also a “tort”, combines both the public and the private sphere because it does not only incorporate public international law by reference but equally forms part of federal torts law. As such, it may be labelled as a hybrid statute.


2 ATS as codified in 28 U.S.C. § 1350 provides that district courts shall have “jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”