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**Chair**

Mr. Navdeep Bains

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## Subcommittee on Human Rights and International Development of the Standing Committee on Foreign Affairs and International Trade

Wednesday, June 1, 2005

• (1530)

[English]

**The Chair (Mr. Navdeep Bains (Mississauga—Brampton South, Lib.)):** Good afternoon.

First of all, I'd like to welcome our witnesses and thank them for coming today to speak on a topic that we've done—

[Translation]

**Ms. Diane Bourgeois (Terrebonne—Blainville, BQ):** Excuse me, Mr. Chairman...[Inaudible]

[English]

**The Chair:** I'll get there eventually.

As I was saying, I'd like to welcome the witnesses and thank them for coming today to talk on a very important topic that we've spent some time on. We even sent a draft report to the members earlier on it. We really appreciate what you have to say. It'll provide more insight into mining in developing countries with respect to corporate social responsibility.

In terms of the witnesses, the order I have here is Diana Bronson, Craig Forcese, and then Madelaine Drohan. Is that okay in terms of sequence?

**Ms. Madelaine Drohan (As an Individual):** Actually, we were thinking of moving it around a bit, and going from the specific to the broad.

**The Chair:** If you have come to a consensus, I'm indifferent. I think the members are indifferent to it as well. So whatever order you see fit—

[Translation]

**Ms. Diana Bronson (Coordinator, Globalisation and Human Rights, Rights and Democracy):** Perhaps it would be best if Madelaine went first.

[English]

**The Chair:** Sure. That sounds good. The floor is all yours.

Thank you.

**Ms. Madelaine Drohan:** Thanks very much.

Good afternoon, everyone, and thanks very much for inviting me to speak to the committee.

I'm here because I wrote a book about companies that use armed force as a way of doing business, and actually I've given the clerk two copies of the book for the committee's reference.

The companies I looked at were all resource companies operating in conflict zones in Africa, and some of them were Canadian. I know that others, and including the other presenters today, are going to give you a broader view about the work being done here and abroad to make corporations more accountable, so I'm just going to deal with three specific cases of Canadian companies that I researched and then make some general points based on all of my research.

The first Canadian company I looked at was Ranger Oil of Calgary. It has since been bought by Canadian Natural Resources, so it doesn't exist as a company anymore. Ranger Oil went into Angola in the early 1990s, at a time when Angola was in the midst of a civil war. Oil companies there were operating offshore because this insulated them from the worst of the conflict, but they had to maintain supply bases onshore, and these were vulnerable to attack by rebel forces. Ranger's supply base at Soyo was seized by rebels early in 1993. The company's Angolan subsidiary called in a group of South African mercenaries, the infamous Executive Outcomes, to retake the supply base.

I don't know if the committee is familiar with Executive Outcomes, but they were former South African soldiers who enforced apartheid, and they lost their work when the government changed in South Africa, so they became a private army for hire, and Ranger Oil, a Canadian company, has the dubious distinction of being the first corporation that offered them a foreign contract.

When these mercenaries retook the supply base, of course people were killed. How many died is unclear because no one keeps reliable figures in a conflict zone.

This all happened in 1993, and nothing happened to Ranger as a result of the use of mercenaries. There was no public outcry. There was no follow-up by Parliament, and there is a UN convention against the financing and use of mercenaries. Canada hasn't signed that. So this is one gap right there that we could fill right away.

The second company, or group of companies, I looked at were run by someone called Rakesh Saxena. His story is rather complicated. He's an Indian banker who made his home in Canada, and he's currently under house arrest in Vancouver fighting extradition to Thailand. Mr. Saxena bought a number of shell companies that were trading on the Vancouver Stock Exchange in the mid-1990s, and he did this because he wanted to use them to get diamond concessions in Sierra Leone, which was again in the midst of a civil war, and its president was in exile.

So Mr. Saxena, using these Canadian companies, made a triangular deal. He would pay a group of British mercenaries to restore the Sierra Leonian president to power, and in return the Sierra Leonian president would give Mr. Saxena the diamond concessions. This deal was only partly consummated because Mr. Saxena didn't deliver all the money to the mercenaries, and also because the media caught wind of the arrangement and publicized it.

When it became public, the British Parliament held two public inquiries into this, but Canada, where Mr. Saxena was based and where these companies were headquartered, didn't do anything. There was no public outcry. Again, it seemed to send a clear message that Canadian companies could hire mercenaries and there wasn't going to be any penalty for that.

The Saxena story points out another problem too that I found in looking at a lot of small Canadian resource companies, and this is that just about anyone can set up in Canada and call themselves a Canadian company. The stock exchange people will tell you that they vet all the people behind these various companies, but the very fact that someone like Mr. Saxena could come here and establish these seems to point out some problems with this vetting process.

The final company I looked at in some detail was Talisman Energy of Calgary and its oil operations in Sudan, and I won't say too much about this because I have a feeling that the committee has probably already heard a lot about Talisman.

No? I'll make it a bit longer then.

• (1535)

It was a much larger company than the other two examples that I've just given. Again, it was going after resources in a conflict zone. It did not hire mercenaries; that was not the way it used armed force. Instead, it went into partnership with what is and was a repressive regime in Sudan. And the deal was that Talisman would supply the expertise and the people to help Sudan produce oil, and it was in partnership with Chinese, Malaysians, and a Sudanese company as well. And the other part of the deal was that the Sudanese government would supply security to the oil operations.

The Sudanese government supplied security there in pretty much the same way as it's operating right now in Darfur. Militias were armed and encouraged to keep certain areas of the oil fields clear, and there were multiple documented human rights abuses there. The government also conducted its own bombing runs on villages.

Now, this differs from the other two examples as well in that there was a public response this time and the Canadian government did investigate. Even though the government concluded that Talisman's presence was exacerbating the war in Sudan, nothing further was done. The foreign minister at the time, Lloyd Axworthy, concluded

that he did not have the legal tools to do anything because the ones he had could only be used as part of a multinational effort. So then if this committee does nothing else, it should ensure that Canadian laws are amended so that the government never finds itself in that situation again.

I'll sum up with four general points.

The first is that any company operating in a conflict zone automatically becomes party to a conflict, even if they have the best of intentions. And the reason is that they are paying taxes, royalties, and commissions to one party in that conflict. All of the resource companies will insist they're neutral, but they can't be, in a conflict situation, and that's why they require special scrutiny.

The second is that Canada cannot rely solely on host governments to govern the actions of Canadian companies abroad, as one of your previous presenters suggested. Common sense tells you that governance goes out the window in a conflict zone. A government that is fighting a civil war or a rebel movement doesn't have the time or the inclination to make sure foreign companies are acting responsibly. So steps have to be taken in the home countries of these companies as well as in the places where they're operating.

My third point is that voluntary guidelines and corporate codes of conduct are only useful as steps towards binding codes and laws with real teeth. When companies want to ensure that their international rights are protected, they lobby for laws. So when we're dealing with companies' international obligations, that same standard should apply.

My final point is that the OECD guidelines, which I know you've heard a lot about, are too vague, and they're voluntary. There's no penalty for breaking these guidelines, and we find this when we're looking at the companies that are operating in the Democratic Republic of Congo. The *Commission for Africa* report, which finance minister Ralph Goodale has signed, recommends that these guidelines should be redrafted to include specific provisions on how to avoid creating or exacerbating conflict with companies in mind. I actually don't think that goes far enough, but I think it's a start.

I have to stop there, but thank you. I'd be happy to answer any questions.

• (1540)

**The Chair:** I think in terms of questions, if it's possible, we'll hear all the witnesses and then we'll have questions from members from all parties. Thank you.

[*Translation*]

**Ms. Diana Bronson:** I want to thank the committee for inviting me back once more to give testimony.

I've been asked to talk to you briefly about a matter that you've already discussed at some length, namely OECD guidelines, and to discuss possible alternatives to better safeguard human rights impacted by the activities of Canadian companies abroad.

When the question of human rights arises, the focus is not solely on torture or freedom of expression. The term also encompasses a host of rights, including economic, social and cultural rights, as well as the rights of women and children, and finally, privacy and access to information rights.

It is important to underscore that the current body of international laws designed to protect human rights primarily target the obligations incumbent on States, and not on the private sector.

[English]

However, Canadian companies that are operating abroad, whether we like it or not, are having an impact on human rights in the way they interact with their employees, communities, governments, and frequently with paramilitary or military organizations. It's the belief of Rights and Democracy that the Canadian government has a responsibility to ensure that these companies are not, and will not become, directly or indirectly involved in human rights abuses, and that Canada's diplomatic, financial, political, and technical support should be conditioned upon assurances that such abuses will not take place.

I think Madelaine already mentioned many of the problems with the OECD guidelines. In terms of human rights—this is a very quick quote—just let me read what they say: that enterprises should “Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments”.

Well, problem number one is the word “should”. This is only a suggestion, not an obligation. We created international human rights law because it defines obligations, not desirable outcomes only.

Second, using the host government's obligations as a starting point could be fine in some cases. In other cases, it's setting the bar way too low, and in those cases we must use other standards, including the standards that have been adopted by the Government of Canada and those that are part of customary international law.

Third, the guidelines say nothing about complicity. The Sudan problem: even the Global Compact covers this issue. It's far too weak; this is a critical human rights issue for companies operating abroad and is in fact recognized by many companies in voluntary codes.

Fourth, there's no detail on human rights. There's no detail on how you would go about assessing whether or not a human rights violation has taken place. I want to come back to this when I talk about the project we're working on to develop a human rights impact assessment and how that could be useful.

Finally, violations of the guidelines don't receive any serious sanctions. I'd just like to discuss perhaps one example of what's happened. I'm sure you're familiar, as the human rights subcommittee, with the disastrous human rights situation in the Democratic Republic of Congo and the UN report that came out in the year 2001, which, among other things, identified eight Canadian companies as violating the OECD guidelines. Naturally, this was of great concern to NGOs working on issues of development and human rights in the Congo, and they did write a letter. La Table de concertation sur les droits humains au Congo/Kinshasa did make a formal complaint to

our national contact point, and there was literally no follow-up to that complaint, no active investigation of the allegations.

● (1545)

Even the one case that was left outstanding and unresolved at the end did not receive a response, other than to say that everything was fine in the final report of the UN. The report said that maybe the allegations were false, maybe they had been resolved, maybe the company said it was going to improve its behaviour. In any case, they weren't going to tell us which companies fell into these categories.

Madelaine had written an excellent article in *The Globe and Mail* at that time, and I'm sure she would have comments on that.

So what do we need? We need tools that will allow us to assess, in a more comprehensive way, what the impacts are on human rights. It's not enough to say companies have to respect human rights. Frequently, the issues companies are faced with are not the ones we would expect. For example, issues around the right to housing are often key in resource extraction. People get dispossessed of their land. They don't get adequate compensation. They have no mechanism for appeal. They don't get adequate information about what's going on. These are violations of human rights, and these are the kinds of things we should be looking at.

There are many different models of human rights impact assessments being developed. Some are being done by business. Some are being done in multilateral fora. The one that Rights and Democracy is working on is based on the United Nations Norms of the Responsibilities of Trans-National Corporations and Other Business Enterprises with Regard to Human Rights, which I tabled when I appeared before this committee a couple of months ago. The advantage of using those norms is that they've already been set by a multilateral expert body. They translate human rights into concepts and mechanisms that are relevant to the private sector.

We're developing a series of indicators on each of the articles of the norms. We'll be testing this in three, quite likely five, case studies, given the recent increase in funding that Rights and Democracy has received, partly due to recommendations from members of this committee. We'll be testing this methodology. It's been developed by a group of international experts. Our goal is to show that it's not that difficult. You can have a comprehensive look at human rights. Just as you can comprehensively assess the impact of a corporation's activities on the environment, as you must, so too you can make assessments of human rights.

It's our contention that such a human rights impact assessment should be done as a matter of course. It should certainly be done as a matter of course in particularly controversial industries. If one is exporting surveillance technology to China, supporting mining in the Congo, working on infrastructure in Colombia, or providing security equipment in Iraq, surely such initiatives should be subject to a comprehensive human rights impact assessment before they receive any of the many services that the Canadian government offers to Canadian companies exporting or investing abroad.

Foreign direct investment has the potential to improve human rights by creating jobs, transferring technology, and providing infrastructure. But unless human rights are part of the equation and considered at all phases of the process, we will not be able to harness this potential and actually improve people's lives, ensuring them the life of dignity promised in the Universal Declaration of Human Rights.

I'd like to close with two main recommendations. One would be to strengthen the OECD guidelines by ensuring that complaints are followed up with investigations and public reports of the findings. This would make them much stronger and more effective. Other countries are doing it. Sweden, for example, undertakes investigations on companies that come up as violating the guidelines, and they even called Canadian experts, Canadian academics, to get their opinions on these things.

Second, we recommend making public support for Canadian trade and investment conditional on a comprehensive assessment of human rights impacts, particularly in high-risk sectors and countries. I don't think there's any need to wait for a multilateral consensus on this. This is Canadian public money going abroad, and it is our obligation to ensure that it is in no way violating our human rights obligations.

Thank you.

• (1550)

**The Chair:** Thank you.

Craig Forcese.

**Mr. Craig Forcese (Law Professor, University of Ottawa, As an Individual):** Thanks very much for the invitation today. When I was preparing these remarks I stumbled across a quotation from a Canadian poet by the name of Robin Skelton, who once said that when someone says it's good for business, you may be sure it's bad morality. That's the satirist's view, and I don't necessarily share that view.

I want to point to another citation or quotation before I get into my remarks, and that's a citation from a business ethics expert by the name of Costa. He said, "Business is not perfect, but it represents one of the few bright lights available to people around the world". The key question raised by this committee in its hearings on corporate social responsibility and the Canadian mining industry is how best to ensure that business remains that bright light and not bad morality in countries with troubling human rights records.

Let me propose in the few moments I have today several themes that I believe should guide your deliberations, and then a few solutions to this dilemma.

First, I think it's important to underscore that human rights observance is a competitive advantage to most businesses. Respect for human rights paves the way to good business environments. Business flourishes most readily when good governance, democracy, and human rights create a climate for sustainable economic development.

Indeed, the Fraser Institute—and I love being able to cite the Fraser Institute—has concluded that a strong correlation exists between what's known as economic freedom, which is the extent to which one can pursue business activities without interference from government, and top rankings in the UN human development index, to which can be added this truth: those who rank high on this UN human development index are also the countries with the strongest traditions of human rights observance.

The flip side of this relationship is, of course, the fact that countries with poor human rights environments often present poor business climates. Operating in countries with poor human rights records has a cost for businesses. Repressive governments are often capricious and unaccountable regimes. Doing business in such an environment may put at risk not only a company's assets, but also the lives of its employees.

For instance, there are cases in the United States where foreign business people have been imprisoned and tortured while in human-rights-abusing countries, have brought legal lawsuits in the United States, and they've been imprisoned and abused in these foreign countries sometimes simply in response to contract disputes with local companies. Certainly, companies may try to minimize their risks while operating in unstable countries by incorporating, say, international arbitration provisions into their deals to protect their contracts or purchasing political risk insurance to protect their assets and people, but these devices, too, have a cost.

A March 2003 article by insurer Lloyd's noted that in emerging markets the cost of political risk insurance may reduce the investor's internal rate of return or, at worst, threaten the viability of the project. Those companies that try to reduce their risks by retaining the services of troubling militaries to provide physical protection face their own challenges. Sometimes they may awaken to discover that these forces have turned on them. Questions were raised in 2003, for instance, about the role of the Indonesian military in the shooting death of several employees of a U.S. mining company operating in Indonesia. In other instances the intolerable behaviour of the military stains the reputation of the company affiliating with these forces, affecting everything from the company's relations with its home government to its stock value.

So human rights is good for business because observance of human rights is consistent with good business climates, and failure by countries to adhere to these rights is strongly correlated with awful business environments. Yet, notwithstanding the obvious business advantages that sound human rights standards guarantee businesses, some Canadian companies continue to operate in difficult human rights environments in a deeply problematic fashion. It remains the case that sometimes poor human rights practices or complicity with such practices spell profit.

The other witnesses have described several case studies. I would also commend to you the work of Georgette Gagnon, Audrey Macklin, and Penny Simons in their report *Deconstructing Engagement*.

What is most preoccupying in the work of these and other researchers is instances of so-called militarized commerce, operations in conflict zones where companies sometimes develop close relationships of co-dependency with human-rights-abusing militaries. Where militarized commerce takes place, Canada's reputation risks being sullied. This is an observation shared by some of the government witnesses who have appeared before you.

Where Canadian companies engage in militarized commerce, other important foreign policy objectives may be more difficult to accomplish. Canada's efforts to promote, for instance, human rights, human security, and a responsibility to protect are undermined where other countries can paint Canada as hypocritical.

Canada must, it seems to me, supplement its responsibility to protect doctrine with an obligation to deter. In this case, it must deter militarized commerce and the undermining of other human rights practices by its corporate nationals. There is no legal bar on Canada acting in this fashion. International law clearly authorizes states to prescribe behaviour by their nationals, irrespective of their location.

Let me also urge that Canada has substantial exposure on the militarized commerce issue for several reasons. First, Canadian non-governmental groups and the press have been sensitized to business and human rights issues by the Talisman-Sudan controversy in the late 1990s, and they are now keenly aware of the militarized commerce issue.

Secondly, Canadian companies are key players in the global resource extraction industry, particularly in mining. Critically, past patterns suggest that resource companies are most likely to be implicated in militarized commerce. They have fixed assets that require protection by sometimes abusive security forces. Further, royalties generated by their projects flow directly into the coffers of sometimes repressive regimes, enhancing their staying power and their capacity to engage in abuses.

Thirdly, the government simply has not devised a true strategy for dealing with militarized commerce. As the government witnesses who appeared before you indicated, the government remains committed to promoting corporate social responsibility through admonishment and voluntary codes of conduct. Even here, the government has not followed the lead of the United States and the United Kingdom in supporting a code directed specifically at the use of private and public military forces by resource companies.

Further, the government has repeatedly indicated that it has no legal lever over companies that refuse to abide by the voluntary standards that the government promotes. Its analysis of its powers under the Special Economic Measures Act is dubious for a number of reasons I can go into during questions. The government has effectively reversed the opinion it took on that act when it appeared before Parliament during that act's enactment in 1992.

Suffice it to say here that the government's position on the absence of legal tools creates a real concern. A company actually prepared to engage in militarized commerce is not burdened with many ethical

quibbles. It is not likely to respond favourably to a non-binding government cease-and-desist request. As critics of the government's policy have repeatedly observed, the government has essentially thrown up its hands and said that its toolbox for dealing with rogue companies is empty.

● (1555)

For these reasons, I believe another Talisman-like scenario is inevitable. It is only a matter of time. Let me propose a few solutions.

First, companies complying with a core set of human rights standards should be recognized and acknowledged. To the extent permissible in law, they should be given preferential Government of Canada trade promotion assistance, Export Development Canada support, Team Canada mission access, and government procurement opportunities.

Second, companies proposing projects in countries in which the Government of Canada has strong human rights concerns should be obliged to prepare human rights impact assessments indicating how they will guard against negative human rights impacts before they obtain government support, either directly or through such institutions as Export Development Canada.

Third, those rogue companies that refuse to engage in appropriate behaviour should be disentitled to government support, including access to government contracts. This system has, in effect, been proposed in Belgium via law proposal 648, which I'd be happy to provide to you if you've not seen it already.

The government should also craft an appropriate sanctions law that would enable it to escalate pressure on companies failing to meet human rights standards. Sanctions might range from selective removal of foreign tax credits under the Income Tax Act, to a full-fledged requirement that companies divest from their offending operation.

Last, at the international level, Canada should work with like-minded nations, probably at the G-8 or at the OECD level, to articulate an international treaty on multinational companies and human rights, similar in its reach to the recent OECD convention on corruption of public officials. Such an international agreement would level the playing field for all capital-exporting countries, limiting the potential that poor human rights practices will be used for short-term competitive gain.

If it were to pursue these alternatives, the Government of Canada would remain strongly committed to a corporate community whose business acumen was second to none, and whose ethical practices fully reflected the core values Canada projects to the world. To turn Robin Skelton on his head, with such a business culture, good business will be good morality, and more than that, it will be sound foreign policy.

Thank you.

•(1600)

**The Chair:** Thank you very much. I have quite a few notes, and I'm assuming my colleagues are in the same position as well.

I'd like to start the questions with Mr. Goldring.

**Mr. Peter Goldring (Edmonton East, CPC):** Thank you very much, Mr. Chair.

Thank you very much for your presentations.

I'll start with the human rights impact assessments. You referred to them, and I take it they refer back to what the OECD have come up with on regulations. Would they all be found within the OECD's book of rules, or whatever you want to call it? Would they all be included in there?

**Ms. Diana Bronson:** I think a human rights impact assessment spells out in more detail what that article says. When it says companies must respect human rights, it allows you to say it's going to respect freedom of information, the right to an adequate standard of living, the right to privacy, and procedural rights.

**Mr. Peter Goldring:** Yes, but these are main headings under which there would be sub-information. In other words, I guess what I'm driving at is that we're talking about human rights impact assessments for corporations. I'm sure there have been some done. I'm sure also there must be some standardization on them, or I would hope there are. One of the difficulties here is whose assessment rules and criteria do you use, and would that not already be there by the OECD? Who would hold those sets of human rights impact assessment forms and questionnaires that can be responded to by the corporations?

**Ms. Diana Bronson:** In human rights impact assessment, we are where we were for environmental impact assessment 20 years ago. It's still quite a new and emerging field. All the methodological issues have not been ironed out. This is a problem that the World Bank, the UN, and Rights and Democracy are working on. Several NGOs and several corporate groups are also working on it. Notably, the International Business Leaders Forum, based in London, has a major research project on this.

So there are many different approaches one could take. There's the internal corporate approach, which is my checklist of how I should proceed to ensure I'm not violating human rights as an investor. There's the governmental approach: these are the criteria we're going to impose. There's the civil society approach: this is how a community is going to be able to articulate and evaluate the human rights impacts of, say, a mining investment they're facing.

**Mr. Peter Goldring:** That's where the difficulty comes in. I've heard "or" a lot, and I would imagine that there would be many people's opinion.

I suppose the question is that the United Nations has standards and legislation for many other different issues. Is it not at that level, or is there not an international body that is very close to coming up with a set of these criteria that can be followed internationally by all corporations?

•(1605)

**Ms. Diana Bronson:** I don't think there's any disagreement, really, or very little disagreement, on the normative standards, what

the standards are. Where we're still working on it, frankly, is how you measure that. How do you trace causality? How do you define responsibility? It's those kinds of issues, and to be perfectly frank, it would be the prerogative of the Government of Canada to decide how it's going to do that.

Ultimately, when you adopt any code—

**Mr. Peter Goldring:** I can certainly appreciate that, that it's only the real tip of the iceberg, coming up with the standards and coming up with the format for them to apply, but I think it would be necessary to have some commonality internationally so that you have a common understanding of where to start—because that really is only the start. Then you have to question who's going to monitor. Is it monitored internationally, and how is it dealt with? I think the suggestion was that this application be filled out before a corporation gets any international assistance on things. But in the real world there has to be a transitional period even on that.

But I would think the most basic element here is, is there a commonality on this human rights impact assessment in a format that can be followed by a variety of industries and a variety of countries on some kind of common basis, to start?

**Ms. Diana Bronson:** My answer to that would be, quite frankly, we're not there yet. We don't have agreement on that yet, but we are getting there. What is clear is that it must be based on international law, treaties that have been negotiated by governments that have voluntarily agreed to respect those treaties. So it's an implementation problem.

Many of the issues you raise are issues that face environmental impact assessments as well—who pays, who it reports to, how do you measure, what methodology, and which scientist? It doesn't at all mean that they're not relevant tools. We absolutely need to develop those tools, and ultimately you build their credibility by using them and seeing how useful they can be in preventing problems—not only in documenting problems that have already occurred, but in preventing those problems from occurring.

Say you're a business and you're going to mine in an area that's populated by indigenous people who have a very specific attachment to their land. If you do a human rights impact assessment prior to undertaking your exploration or your exploitation of the resources, you'll be much better off. You'll establish a much better relationship with that community, and you'll avoid a lot of the problems that we see coming up.

**Mr. Peter Goldring:** I can certainly see that, but also, there must be other countries that have their own form of impact assessments. Is it not a matter of having some kind of common discussion? Is it not presumptuous of Canada to have its own and every other country to have their own? Then you have a checkerboard pattern of assessments around the world, rather than working together with your international bodies and doing it.

In other words, is the emphasis not more on the international bodies than on the Government of Canada?



**Ms. Diana Bronson:** The emphasis is on international law that Canada has joined other countries in endorsing. Those are the standards that we will measure. In fact, there are many examples of social impact assessments. One of the problems with social impact assessments, which are done as a matter of routine by the largest corporations, is that they are lacking rigour. What international human rights law does bring to them is an international agreed-upon norm, legal standards that have been accepted by governments. So my argument would be that a human rights impact assessment helps us to systematize that knowledge and to base it not on what some person thinks, but on whether or not it complies with international law.

**The Chair:** The time is up. You can come back in the next round.

**Mr. Peter Goldring:** Okay.

**The Chair:** Madame Bourgeois.

[*Translation*]

**Ms. Diane Bourgeois:** Thank you, Mr. Chairman.

Ladies and gentlemen, thank you for sharing with us your views on this issue which I find very interesting.

First of all, I'd like to know if you're planning to leave copies of your presentations with us so that we can refer back to them later. Secondly, you seem to be of like mind when it comes to the OECD guidelines. One of you mentioned that the guidelines are too vague and should be reworked, whereas Ms. Bronson believes that any obligations should rest with States, not with private enterprise. Lastly, Mr. Forcese informed us that Canada does not have a law against militarized commerce.

You draw a very bleak picture of these guidelines which served as a backdrop for a motion that I drafted and that I would have liked us to examine today in this forum. On reading these guidelines, I noted a reference to national points of contact. The committee could ask the Canadian government to advance the work of these national points of contact. However, you seem to feel that fundamentally, these OECD principles are so vague that we shouldn't have very high expectations. Is my assessment correct?

• (1610)

[*English*]

**Ms. Madelaine Drohan:** I'd like to mention something about the national contact point that you're talking about, because even though the guidelines are vague right now, there are certain areas that the national contact point could follow up. But there's a problem of attitude there.

I know that you actually had before you Vern MacKay from Foreign Affairs, who was the contact point. When the complaint was made about the eight Canadian companies in the Congo and he was dealing with it, when he was responding to people's requests about this, he basically gave the impression that he saw his job as informing people about the guidelines but not necessarily taking a more aggressive stand than that.

There are some international groups that have looked into this to see what national contact points can do, and they say that they actually can go further than that. But this is not the attitude we have here in Canada. So even with vague guidelines, more could be done,

but it would certainly be better if they were tightened up and made more explicit.

[*Translation*]

**Ms. Diane Bourgeois:** If I understand correctly, the committee would first have to decide on the action to be taken, further to Mr. Forcese's recommendations.

Secondly, there is no law on the books in Canada to deal with companies that engage in exploitative practices in other countries. I'm trying to find the right words to use. You're familiar with this topic, while we're somewhat unaccustomed to discussing it. Canada may not have relevant legislation, but does it nevertheless have guidelines in place? Is there something on which MPs can base themselves to draft a law to stop Canadian companies that disregard human rights in other countries?

[*English*]

**Mr. Craig Forcese:** Let me address the second question concerning the absence of a law.

First of all, the law that's on the books that does allow the Government of Canada to compel a company to divest is called the Special Economic Measures Act. It's been used once to compel Canadian companies to divest. That was in the former Yugoslavia, and it was used in relation to the former Yugoslavia because we had arguably a call from an international organization of which we were a member asking us to stop Canadian companies from operating in the former Yugoslavia during the Kosovo conflict.

The government has refused to use that same power in relation to Burma, where there is a Canadian company in joint venture with the Burmese regime. It has refused to use that law in relation to Talisman. Both times it has said that it cannot use this law unilaterally, absent an international conflict of the scope of the first Gulf War. That's a dubious conclusion, because when the legal adviser to what was then External Affairs came to Parliament in 1992 when this act was first introduced, that legal adviser said that there is no legal trigger in place that would preclude the government using the Special Economic Measures Act unilaterally at its discretion. Now the government says there is such a legal bar.

I have the Hansard transcripts. I wrote a report on this five years ago. Nothing has changed in five years. It's quite damning, I think.

So one possibility is simply to say, government, you're being ridiculous, you do have the power now. The second possibility is to say, you say we don't have the power; let's change the Special Economic Measures Act to make it clearer that you do have the power to unilaterally impose investment sanctions on Canadian companies where there are grave breaches of human rights. And in this report I propose some language as to how that might be done. In fact, that language is based on an amendment that Lloyd Axworthy tried to make in 1992, when the act was first introduced.

So it's an absence of political will. That's the bottom line.

•(1615)

**Ms. Diana Bronson:** If I could just weigh in on the national contact point and the OECD guidelines, I think what we need to do with the OECD guidelines certainly is strengthen them. We do need to strengthen them. It's not a framework that the majority of organizations and civil societies dealing with these problems like, because it's a voluntary framework, but there are nevertheless things that could be done with the OECD guidelines. I think they need to be deepened in their content, to spell out what we mean by that one sentence we have on human rights.

Nothing would prevent us from having a government policy saying that is what this means and this is what we're going to do about it; this is how we interpret it. I'm not sure how you would do that legally, but I'm sure there are some good minds that could help us with that.

It's interesting that there was a meeting this spring in Europe of an organization called OECD Watch, where NGOs from around the world evaluate their national contact points, and all of that information is available on the Internet. Canada got very good points for promotion. What we do well with the contact point is promote it. We send out a lot of pamphlets. A lot of people know about it. We hear about it a lot. What is not done well is the investigative function, the follow-up function, and one could potentially tie or condition EDC, CIDA, other trade promotion activities on respect for the OECD guidelines. It's not the strongest option, but it's an immediate thing that could be done.

Then if one were to condition financing, one would obviously have to have a procedure in place to decide whether or not those had been respected in some kind of contractual agreement with companies to agree to abide by its provisions, but I don't think it's constructive at this point to say we need to promote it more, because we're doing that very well. Canada was the one country that was pointed out as doing the promotion function very well. It has its own website. It has lot of pamphlets. That part is done well.

**The Chair:** Thank you very much.

Ms. Torsney.

**Hon. Paddy Torsney (Burlington, Lib.):** At least we got points for something.

We're talking about different layers of doing things, and I think we're not just talking about places that are under conflict. Mr. Forcese, I think you were focusing more on when there is actually a conflict in terms of the Special Economic Measures Act, but I think the committee's more interested in going beyond that. Clearly those are special circumstances, and if we have an act, we'd better look into why we're not using that.

In terms of what is there and the investigative power of the NCP, the national contact point, is that who should be doing the investigation, Ms. Bronson, or should someone else be doing it if it's not being done to a satisfactory measure?

**Ms. Diana Bronson:** Others may have other opinions on this. I'm just saying that the NCP currently has the mandate to do that, and other NCPs are doing that. Clearly, if I was going to set up, or suggest to you, a more comprehensive framework for investigating

human rights abuses, I'd be much more ambitious than simply doing that.

But I refer you in particular to—and it's a document you might be interested in anyway—a professor of political science, Bonnie Campbell, at UQAM, who presented to the Senate Standing Committee on Foreign Affairs on April 19. Almost her entire presentation focuses on Canadian mining companies in Africa. She was the academic I was referring to who gets calls from the Swedish contact point to provide her with information about what companies are doing in countries in which she has expertise.

I just think we can be more aggressive in that regard, and transparent also in reporting back to the public what we've done.

**Hon. Paddy Torsney:** Yes, certainly I'd recommend that we circulate that information.

The report that Marcus did talks about the contacts the NCP has had with the companies. But you're right, it doesn't really say who did what; it talks about them as a group, and that perhaps isn't strong enough.

•(1620)

**Mr. Marcus Pistor (Committee Researcher):** Just to clarify, the document that's circulated today is part of the government response to the Africa report.

**Hon. Paddy Torsney:** Yes, it was the government's response to the last report, specifically about the Congo and what the eight companies you mentioned were suggested to be doing.... The subcommittee “urges the Panel to complete it's work on corporate complicity in the plundering of the country's natural wealth”. The government's response to that talked about how the NCP had had follow-up meetings with the companies, etc. It also talked about how they were “currently considering ways to improve their promotion of the OECD Guidelines”, so we'll get them to focus on investigation, perhaps.

Vern MacKay did sort of appear here, but the committee process didn't necessarily continue because there were some games that day. I wonder if we could actually get his team back so we could have a more full discussion.

**The Chair:** We'll have to see in terms of timing, but I'll make a note of it. We'll talk about it in camera.

**Hon. Paddy Torsney:** Okay.

I wondered, as you were describing the process and some of the choices that could occur in Mr. Goldring's response, Ms. Bronson, you said you could do this, or you could do that, or you could do the other. But they're not mutually exclusive. Couldn't you do a series of things? Some of them could be more applicable to countries in conflict, and some of the things Mr. Forcese was suggesting could complement that. You could create a web of initiatives that would reinforce what we want as human rights goals and as obligations for companies. Am I right?

**Ms. Diana Bronson:** Absolutely. The danger always when we come before these committees is that we come with 45 recommendations for things you could do, so I tried to restrain myself in that regard. But there is indeed an extensive list of things that can be done. There's quite a menu. Many papers have been written by academics and NGO experts with a variety of ways to increase corporate accountability and legal measures. Craig, in particular, has a paper.

Maybe you want to refer to that, Craig.

**Mr. Craig Forcese:** The one from 1997?

**Ms. Diana Bronson:** The CLAIHR one, yes, from 2000 maybe.

**Mr. Craig Forcese:** It's directed principally at the Burma-Sudan scenario, but I can leave a copy of that with you to read about the legal measures.

**Hon. Paddy Torsney:** Okay.

**Mr. Craig Forcese:** Can I make a comment on your first comment about the capacity of the national contact point to actually do anything?

If I was a company and I received a little missive from the national contact point and I talked to my lawyers, my lawyers would probably tell me they have no powers—they have no powers to investigate, they have no subpoena powers, they have no capacity to call upon you to present evidence, etc.

The national contact point, if you want an effective one, should have at least some investigatory powers, maybe equivalent to a public inquiry. Alternatively, I think this committee has done a very important job in relation to actually investigating these matters, calling companies forward, and you do have subpoena powers, you do have the capacity to compel some accountability.

I would encourage giving the national contact point more of a legislative basis, maybe. I would also encourage this committee to continue to play that oversight role. And I would also suggest to you that it might be worth having the national contact point appear before you annually to account for their activities, because they sort of drift off there at Foreign Affairs. If you're lucky, you can find their web page and see their annual report, but there's no real probing of that annual report.

**Hon. Paddy Torsney:** My last question to you—

**Ms. Diana Bronson:** If I could comment here, another thing that other national contact points have done is to have set up reference groups from civil society and business to increase transparency and have a broader kind of stakeholder process. That's another suggestion of what could be done.

**Hon. Paddy Torsney:** Mr. Forcese, you were talking about some of the ways we could compel companies, ways we could act against them. Clearly, the stuff about their not getting EDC funding if they don't have a social impact or a human rights impact is easier, compared to some of the other measures you were talking about.

But what's to prevent a company from moving its head office south of the border, or to another area, so that we lose the ability to act against it? Would you extend it so that, if companies have any operations in Canada, we can act against their operations if they don't comply, or would it just be where their national office is?

**Mr. Craig Forcese:** The first prong of an answer to this question is that it would be preferable if we had some type of multilateral regime to ensure that there wasn't this patchwork quilt of regulations, but we don't have that.

Should we be concerned that a Canadian company pulls up stakes in response to our efforts to regulate its overseas conduct and move somewhere else? I'm not sure I would lose any sleep over some of these junior mining companies, who are essentially “flag of convenience” companies. They're here because they have easy access to capital on our exchanges.

As far as some of these companies pulling up stakes and moving somewhere else goes, they're not providing any competitive advantage to Canada. More than that, they're sully our reputation. So if that were the response, it would be fine by me.

● (1625)

**Hon. Paddy Torsney:** But what would happen if it was a company that did have operations in Canada? I'd hate to name any, but let's just say that the company had a mine in Sudbury but moved its head office to another environment.... And the chair is looking at me to say my time's up.

But how would you operate in that environment? Would you create the law so you actually could move against its assets in Canada, even if its head office was somewhere else?

**The Chair:** I'm sorry to interrupt, but if it's possible, please keep the answer short.

**Hon. Paddy Torsney:** Yes, he's going to keep the answer short.

**The Chair:** Otherwise we definitely can come back again. We'll do whatever is more convenient to do.

**Mr. Craig Forcese:** That's a complicated question. It would really depend on the facts and the scenario. Has the company actually moved its incorporation? Is it no longer incorporated in Canada, irrespective of its head office location? It would be a complicated answer. I'd have to think it through.

**Hon. Paddy Torsney:** Okay.

**The Chair:** Thank you.

Mr. Broadbent, please.

**Hon. Ed Broadbent (Ottawa Centre, NDP):** I'll add my appreciation to what has already been said to all three for their presentations.

I'd like to pick up on the distinction between companies that operate in conflict zones. You've all had something, from my point of view, very useful and important to say about that. But to get at what one might call a normal situation, i.e., a non-conflict situation, having listened to you, I heard references to Sweden, Belgium, the U.K., and the U.S. in different contexts, all having, if you like, superior law to that which exists in Canada in terms of dealing with badly performing companies.

On the specific issue of meeting either international or human rights norms, or health and safety standards—and sometimes there's an overlap between the two, sometimes there isn't—are there any countries that you know of that have put in place a rigorous law to ensure that their companies meet these standards?

**Mr. Craig Forcese:** I can tell you that the Belgian proposal that I mentioned does incorporate health and safety and labour standards as part of the human rights reference point against which it will determine whether public support should be given to a company in relation to its overseas operations. But in terms of direct extraterritorial regulation of these matters, I'm not aware of any country that does this, which may reflect the bounds of my knowledge.

**Ms. Madelaine Drohan:** May I just add something here? I'm a little bit concerned with a point that was made. We're talking about companies in conflict zones and how those are the exceptions; but I actually don't think, for the purpose of this committee, that they are the exception.

I think your previous testimony has shown that a lot of the problems arise with small companies, and those companies are tending to operate in conflict zones. The end of the Cold War and the fall of the Soviet Union opened up whole areas of the world that people couldn't go into before, but if you think about the former Soviet Union, Africa, parts of Latin America, Southeast Asia, there are all sorts of conflicts going on there. So I'd hate to rule them out or make those the exceptions, when in fact they're pretty much the rule for what you're looking at.

**Hon. Ed Broadbent:** I don't disagree with that on a factual basis. I'm just saying that conceptually it seems to me it's an important distinction to make. I want Canadian companies, for example, to meet international human rights standards and health and safety standards whether or not they are in a conflict zone.

Let me get into that issue. I think the three of you will know that Parliament last year adopted what has come to be known as the Westray bill, which imposes standards of behaviour on Canadian companies domestically, up to and including compliance requirements with the Criminal Code. My view would be that this is an excellent example for the protection of the health and safety of Canadian workers, and if it's good enough for Canadian workers, why isn't it good enough for any worker anywhere in the world where Canadian companies are operating?

Maybe the question should come to you, Craig, as the lawyer of the three. It seems to me—and I think you made the point—there's nothing stopping Canada from taking unilateral action. I want you to elaborate. One of the things I've been looking at is internationalizing the Westray bill, simply applying the same conditions to other countries in terms of that law in Canada. What's your reaction to this?

•(1630)

**Mr. Craig Forcese:** From the perspective of international law, there's no bar to Canada doing that. International law does allow extraterritorial regulation by a state of its nationals, plain and simple, and we've done that in a couple of places in the Criminal Code. It's also part of the OECD convention on bribery. It's part of the sexual tourism provisions in the Criminal Code. It's a choice the state makes, and European states, those with a civil law tradition, tend to use that extraterritorial regulation of their nationals much more aggressively than do states of a common law tradition—Canada, the United States.

**Hon. Ed Broadbent:** But have any of them applied it to corporations?

**Mr. Craig Forcese:** I don't have the factual basis to answer that. I'm not sure.

**Hon. Ed Broadbent:** Would either of the other witnesses like to comment on that issue?

**Ms. Diana Bronson:** I would just say that it would strike me that it's symbolically extremely important to do such a thing, because it sends a very strong message about the government not expecting companies to do overseas what they are outlawed from doing in Canada, particularly when what is at stake.... I mean, the whole gist of the Westray bill is that it's the right to life that is at stake; ultimately there were miners killed there. So it strikes me of symbolic importance to take that kind of a step.

**Ms. Madelaine Drohan:** When you're talking about this it makes me think of the U.S. experience with the Foreign Corrupt Practices Act, where they basically led the way by outlawing bribery by American corporations anywhere.

But it was interesting, before the OECD actually caught up with the American legislation, American companies used to complain all the time about this, that they were being handicapped vis-à-vis their competitors in other places.

So I think that while I would like to see Canada move on this, we would have to anticipate that there would be complaints by Canadian corporations that in some way this is handicapping them. We would have to think of some way to deal with those complaints if you were going to move that way.

**Hon. Ed Broadbent:** Let me pursue it, if I still have time.

Two of the three of you recommended under certain circumstances requiring companies to do human rights impact assessments, and then we got into a discussion about what are the norms that would be used. It seems to me that norms do exist, and it's up to a democratic state like Canada to set its own standards, to draw from international laws but put in a framework of Canadian domestic law, if you like, vis-à-vis corporations. We had a company before us, TVI Pacific, that, to say the least, raised a lot of concern for a lot of members of this committee.

I want to ask you this. Isn't it practical to give the appropriate department three months to come up with what would be required in terms of Canadian corporations abroad, what we would accept in the human rights impact assessment? Would that be such a complex thing to ask the government to do?

**The Chair:** Again, could you please keep the response brief? We want to go on to the next member.

**Ms. Diana Bronson:** It would be my experience that three months might be a bit rapid. You'd probably get a research paper written by a consultant in three months and not much more, but...the world is going this way. The world is going this way, and we can either be leaders on it or we can be laggards on it. There's definitely a movement. I can tell you I've talked to very senior people in the business community, the World Bank, and the International Finance Corporation. The progressive financial institutions, the banks, are looking at it, and that's why we're working on it—because we, as a human rights institution, have something to offer in setting those standards and in developing the methodology.

So those recommendations exist. They keep on popping up. One of the mandates of the Special Advisor to the Secretary General of the United Nations, as mandated by the resolution at the commission on human rights, is to look into the development of human rights impact assessments.

So yes, I think it should most definitely be a recommendation of this committee. There could easily be an interdepartmental process structured to do it, and Rights and Democracy would certainly be happy to feed into such an initiative.

•(1635)

**The Chair:** Thank you very much.

There is a very quick point of clarification, I think, by Ms. Torsney, and then we'll go to the next one.

**Hon. Paddy Torsney:** Yes, I just wanted to clarify for Ms. Drohan that I didn't think those were necessarily the exception. I was trying to say the committee was interested in the broadest possible application. The case that came before us was actually the Philippines, which isn't a conflict zone. I was appreciating that Craig was saying there were some laws to address conflict specifically; we were more interested in the broader aspect, but we're not without interest in the conflict zone.

**The Chair:** Thank you, Ms. Torsney.

Next is Ms. Smith.

**Mrs. Joy Smith (Kildonan—St. Paul, CPC):** I have some questions in listening to all this. When I looked over all the information...how did all this information come about? How did you get this information about exactly what the companies were doing? Was it documented through people who were on the ground? Was it documented through officials? How did it actually come about?

**Ms. Madelaine Drohan:** That research basically came from a number of sources. It came from... I don't even know where to start on this. I had a research fellowship at Oxford for a year. I was looking into the use of mercenaries; from there, I started to note when corporate financing of mercenaries came up.

I then got another research grant and began making trips back and forth to Africa. I was interviewing people in Canada and people in Africa and people in Europe. I was talking to companies here, but also to some of the mercenaries and warlords they were using in Africa as well, and to the communities that were impacted. I tried to get information for it from as many sources as possible.

**The Chair:** You still have a couple of minutes.

**Mrs. Joy Smith:** Thank you.

Do we have a copy of your presentation, a written copy? Can we get a documented, written copy of the presentations you gave today? There was some very compelling information in them. Usually there is a bibliography at the bottom of the presentation that allows us to follow up some of the research, just to do some follow-up on some of the allegations made here. They're very compelling and very serious and will have a major impact on the laws and the things that come out of committee.

Can anyone comment on that for me?

**Ms. Diana Bronson:** This may be more in the realm of anecdote, but you have in the kits that I distributed the call for proposals that we put out for case studies to test our human rights impact assessment methodology—with actually quite restricted distribution. We didn't publish it in any newspapers and we didn't really.... We got 45 responses from all over the world.

You know, you've hit the nail on the head in this committee, because the vast majority of the cases that came in to us were in extractive industries, either mining or oil and gas. We also had cases in ICT and agriculture and various other fields, but really the vast majority were in extractive industries. We've narrowed that list down to about a dozen cases now. They come from NGOs, from indigenous peoples' groups.

My interpretation of that is that this whole project of the human rights impact assessment is striking a chord with groups around the world who are living with human rights abuses and who feel that they also need help in articulating their problems in human rights terms. Not everybody understands the international framework and not everybody has read even the universal declaration. So they want help to be able to do this.

Some of the proposals that came in to us were, for example, from women in Peru who said, "We wash our clothes in the river, and the river is poisoned. Our children have skin diseases, and we don't know what's going on. We're trying to talk to the company and we can't get access to information". There are all different kinds of cases. That's just one. Some of them are very professional, very legalistic in their approaches, but there's definitely an appetite for this. There are lots of things going on around the world.

•(1640)

**The Chair:** Thank you.

Do you have any more questions?

**Mrs. Joy Smith:** So just to clarify, we will get that written documentation, the backing up of the presentation today? It's very important documentation to have. That will be provided to the committee?

**Ms. Diana Bronson:** Yes, absolutely.

**Mrs. Joy Smith:** Thank you.

**Hon. Ed Broadbent:** You can buy Madelaine's book.

**Ms. Diana Bronson:** Which I would recommend. It's the best understanding you can have.

**The Chair:** I was going to do my sales pitch at the end, but I might be inclined to do it now.

**Ms. Diana Bronson:** You can always table the book and distribute a copy to each committee member.

**Hon. Ed Broadbent:** Each member could buy one.

**Ms. Diana Bronson:** Thank you.

**The Chair:** Mr. Khan.

**Mr. Wajid Khan (Mississauga—Streetsville, Lib.):** My question will be a little more basic.

How systemic do you think the complicity of Canadian corporations is in human rights violations, and what is the scope of this problem for Canadian companies? That's number one.

I think, Ms. Bronson, you mentioned the United States' objecting or complaining that they were handicapped by the Foreign Corrupt Practices Act. Were they?

What kind of impact do you think we'll likely see by unilaterally putting in place human rights legislation with Canadian companies?

**Ms. Diana Bronson:** Go ahead. You take that.

**Ms. Madelaine Drohan:** Actually, it was me who mentioned the handicapping of the Foreign Corrupt Practices Act. They used to make that complaint. There's a World Economic Forum that meets every year in Davos. I covered it for a number of years, and without fail, there was a U.S. representative every year who got up to complain about this.

But basically, what they did was work quite hard on the other OECD members until there was a multinational agreement on this. They worked hard to bring the rest of the world up to them. It would seem to me that if Canada decided to move unilaterally on something like human rights assessments with corporations, again, there would be nothing to stop us from working hard within the OECD to bring the rest of world up to us, as well.

It's a hard argument for companies to make, too. You know, we must be allowed to abuse human rights for competitive advantage, right? So they might not be speaking...although bribery was equally bad at the time.

When I was saying that, I was not saying it is a valid argument, rather that you should be prepared for it to be made by corporations. These sorts of things, agreements that are going to involve companies, work best when you get the corporate sector involved in actually drawing them up as well, because then they have buy-in and they can point out things that won't work properly. So I would suggest that if you are going to go down that road, make sure there is a route for corporations to also be involved in the process.

**Mr. Wajid Khan:** You haven't answered the second question yet, about the scope of the problem for Canadian companies.

There's another thing. Is there a possibility to bring about some laws or regulations for countries, not just companies? I can cite the example of Bhopal. Union Carbide was there...devastation. Even today, people are drinking the same water, the children are born.... You know the whole scope. It's terrible, and nothing is happening. I don't know if Canada can do anything about it. We have to have far-reaching laws to perhaps even influence the countries that are not taking action despite settlements, etc.

What would you say to that?

**Ms. Diana Bronson:** It's very difficult to know what the scope is and how you would quantify that.

On the issue of how systemic it is, the systemic problem that I would underline is the following. We have created an illegal architecture internationally where we have clear—I'm sorry if this sounds jargonistic—justiciable rights, rights you can go to court about, rights you can get compensated for, for investment and trade, for intellectual property. We have now somewhere around 2,000 bilateral investment treaties in the world that give corporations the right to sue governments when they have undertaken actions that compromise their ability to make a profit.

I'm simplifying this somewhat, but as someone said, we've basically taken out the right to property from the universal declaration, and we said we're going to afford it this extraordinary protection, and we failed to do that with most of the other rights that are there. So that's the systemic problem, and the same exists in terms of promotion of trade and investment internationally.

I think when the government officials appeared before you last week, they said more or less that they have a thousand people working on this internationally, promoting trade. Why don't we have a thousand people working internationally promoting human rights? We have about twelve people in the Department of Foreign Affairs working on this issue, and we have one person working on corporate social responsibility, who works with a part-time interdepartmental committee. So we need to strengthen that; we need to make them much more equal.

Of course, the good news story, both in terms of making these rights applicable and in terms of Canada's ability to lead, despite the opposition of other governments—in this instance, the United States—is the International Criminal Court. It's now up and running. It has yet to prove what it can do, and it will confront enormous challenges, but who would have thought, 10 years ago, that we would have had an International Criminal Court that would deal with crimes against humanity and war crimes?

I'm sure Craig would have other things to say about that.

• (1645)

**The Chair:** Again, in terms of timing, keep the response brief.

We'll go to the next member, please.

**Mr. Craig Forcece:** On the scope of complicity, the last time I sat down and counted, in the late 1990s, I came up with about 10 examples of Canadian mining companies that were accused of various nefarious undertakings. Reports were of mixed quality, so I can't assess the validity. Is this the tip of the iceberg? Sometimes I sit down, when I'm really bored, with a few annual reports of companies, and I leaf through them. I find little anecdotes in those annual reports saying, for instance, that a given mining company has retained the services of the Ugandan military to provide security at its facilities. Now, if that's in the annual report, that nice sanitized venue, you wonder what the on-the-ground reality is.

**The Chair:** Thank you very much.

Mr. Goldring, five minutes.

**Mr. Peter Goldring:** Ms. Bronson, you said earlier when you were speaking about the Congo that eight companies had violated the OECD guidelines, and then a couple of minutes later, you said that they were allegations. Then we talked about the fact that, well, the OECD guidelines are very vague. I hope you can appreciate that with all the vagueness and unknown...and then it was followed up by saying that we have so many bilateral treaties. I would think that the bilateral treaties would be very well detailed and have a lot of specifics on them, and there would be very little vagueness to it.

So perhaps would you agree that the area to concentrate on, if there is one initially, is for us to flesh out what we believe would bring clarity to the OECD, as a suggestion under their guidelines? I don't have any idea what these guidelines read like now, but bring clarity to them as one way to proceed on this.

As we said before, you would have to detail, with clarity, what an impact assessment would have to be comprised of, because that also is forming on this. Then to encourage companies, you would have to recognize some kind of vehicle that the companies could subscribe to, to have an interest in doing this, whether it's leveraged with government assistance or whatever. There would have to be some type of vehicle, like an ISO-9000 model, if you like, that would give the company a distinction in their operating field that they have qualified, and this really is meaning that the Canadian government is supportive of their work. You can have inspections to follow that along, to keep it current, because of course you would have to monitor and inspect it, and you have dispute resolutions.

Here we have a very clear example of where eight companies are said to have violations, and then there are allegations. Surely somebody has to be able to step in and intelligently say whether they have or not, and then have an enforcement structure for it. But we're all starting from the very basis of the vague OECD guidelines. Is that not the place to really bring clarity to it first?

**Ms. Diana Bronson:** My comment on the OECD guidelines' vagueness was specifically on their provision dealing with human rights. They also deal with taxation and corruption and a number of other issues. I agree that we need more detail on the OECD guidelines. I wouldn't want to see us get caught up in a process where we're forever finessing the details of something that is only going to end up being voluntary. This would be my problem with that.

Let me read the one sentence it has on human rights. It's pretty brief when you think about what human rights law contains. It says "enterprises should"—why not "must?"—"respect the human rights of those affected by their activities". And then it says "consistent with the host government's international obligations and commitments". Maybe it should be standard to say "or that of the home country, whichever is higher". All kinds of creative things could be done, but we are caught in a situation where the OECD guidelines are already negotiated and have been reviewed.

• (1650)

**Mr. Peter Goldring:** In the absence of teeth or laws, which could take considerable time to bring about, what type of leverage do you have? In other words, what type of government services are you talking about that you can withhold, or suggest withholding, from companies that don't conform to our vision of human rights? What is

the Canadian government contributing? Is there something you could use as a leverage if there's not compliance?

**Mr. Craig Forcese:** Well, we've mentioned various government procurements. We've mentioned the EDC. Here's another example: Canadian companies operating overseas pay income tax to foreign regimes. Under Canadian income tax law they get a credit for the income tax they pay, irrespective of any tax treaty between the two states. This way they are able to deduct from their Canadian taxes the taxes they're paying to the foreign regime. So a Canadian company operating in Sudan and paying tax to the Sudanese government essentially receives a Canadian-funded taxpayer subsidy for its operations in Sudan.

**Mr. Peter Goldring:** The leveraging can be considerable, without resorting to laws and drafting legislation and whatever. It's mainly a matter of giving it what I call an ISO-9000. It is common in industry; most companies advertise with it. It is indicative of the standards these corporations have accepted. If they lose that standard, it's quite onerous for their future business. If it was a government-approved standard, it would provide a substantial leveraging factor, without drafting legislation.

**Mr. Craig Forcese:** That would require a change to the Income Tax Act. Another example is simply exposure. Part of the reason Talisman is the best documented case of militarized commerce is that the government chose to send a mission to Sudan. Why not have the national contact point sort of a standing Harker commission? The Harker commission was a commission that went to Sudan. This national contact point would go abroad and actually talk to people on the ground and then write a public report.

**Mr. Peter Goldring:** You said that one of the companies hired the military for security or protection. I'm not so sure that's a devious act; maybe there's a good reason for it. So that's where you come into the dispute resolution and having some rules and understanding of engagement that can be addressed and reviewed.

**The Chair:** Thank you.

Are there any other final remarks anybody wants to make?

Ms. Torsney.

**Hon. Paddy Torsney:** We've been talking about this from the side of bad companies and getting tough with them. But isn't there a flip side? There are companies that are doing good work and don't want to be tarred by this brush of all mining companies being bad. Would it not be in the extraction industry's interest to have a legal regime that could more clearly distinguish between the bad guys and the good guys, that would allow falsely accused companies to clear their name?

**Ms. Diana Bronson:** Yes, of course. There are all kinds of incentives that could be given, government incentives, to encourage good behaviour. At the same time, I don't think we necessarily have to reward companies for abiding by the law, right? I just want to be clear about that.

I think the role of the export credit agencies such as EDC is absolutely critical in forcing these kinds of conditionalities on public support. That is what is before the Belgian Parliament now, that their export credit agency, which is called DuCroire, would be subject to these kinds of standards. It's before Parliament, it's being debated, the different parties have different positions on it; and it's not yet passed as legislation, but it's definitely a key lever.

Another key factor is what Canadian embassies do abroad in terms of facilitation. It's incredible, the amount of services you get when you're a business looking to export to a market. In my view, you should not get those services if you're in any way violating human rights. The onus is on you to show that you're not. Currently there's no legislation or policy document that prohibits Canadian officials, ministers, or ambassadors from assisting Canadian corporations that are involved in human rights abuses.

• (1655)

**The Chair:** Thank you.

Very quickly.

**Hon. Paddy Torsney:** But you were the one, Ms. Bronson, who suggested some kind of reward. I wasn't actually suggesting a reward.

**Ms. Diana Bronson:** I think it was Craig, actually.

**Hon. Paddy Torsney:** I think that just having access to the current regime is reward in and of itself, and clearing out the bad guys from the ambassador's office, and that you have access to them, is a reward in itself.

But actually, it would also be the opposite. Say there was a process where, if someone had accused you of something and we have strong investigative powers, we could actually file a report saying no, really, we've gone there and we've seen this is not exactly the case. That would be helpful for some companies. It would be clearer to those who want to invest in this area, who believe there could be some good coming out of trade, if there is an opportunity to distinguish between companies and there is a regime people have faith in.

Thank you.

**The Chair:** Thank you very much.

A couple of minutes, that's all we have.

[*Translation*]

**Ms. Diane Bourgeois:** My question is directed to the three witnesses.

This week, our research analyst sent us the June 2003 report of the Standing Committee on Foreign Affairs and International Trade. The focus of that report was HIV-AIDS and the human tragedy unfolding in sub-Saharan Africa.

The committee had recommended at the time that the government take every possible legal means to ensure that Canadian companies

complied with international rules of proper conduct. Furthermore, it identified the eight companies that you mentioned earlier. The Government of Canada responded by saying that it communicated on a regular basis with six of the eight Canadian companies in question, given that one had been dissolved and another had ceased to be active in the mining sector.

Can you tell me if there have been any positive changes with respect to these six companies? Do you know if they took steps to comply after they were contacted by the Canadian government? It would appear that Canada made a considerable effort on this front.

[*English*]

**Ms. Madelaine Drohan:** I went to the Congo a year ago to look into the Canadian mining companies that were operating there, and actually there was only one that was really operating, which was First Quantum. The rest of them that were named by the UN panel of experts had been in there to explore. They were named because of actions they had taken while they were exploring, but they weren't actually operating at the time.

As far as First Quantum is concerned, I believe they were named by the UN panel of experts because there were allegations they had offered a bribe to a government official. They hadn't offered it directly but through an agent.

Diana was explaining before—it seems like a complicated process—that there was one UN panel of experts that went in during the war and basically came out with a report and named a whole list of companies. I think there were several hundred they said were suspected of breaking the OECD guidelines, and they asked for follow-up. Then a second panel was constituted with very few of the same members, and they went and looked at it. They looked at all these cases and moved some of them over to the “resolved” column because the companies had stopped doing whatever activity it was they had done. Well, if you had offered a bribe and it was a one-time thing, you could be moved over to the “resolved” column and nothing else would happen, you see? That was the follow-up.

The UN panel of experts' report was very vague. They said it didn't necessarily mean that these companies hadn't done what the panel had said they were doing but that they'd stopped doing it, so it's a very unsatisfactory result on all counts.

Does that answer the question?

• (1700)

**The Chair:** Yes. Thank you very much.

[*Translation*]

**Ms. Diana Bronson:** We also have a letter written in October 2004 by the Round Table on Human Rights in the Congo-Kinshasa which raises some very specific questions that in my view have yet to be answered. If you like, I can leave a copy for you.

**Ms. Diane Bourgeois:** Thank you very much.

[*English*]

**The Chair:** Thank you very much.

As you can see, the time is up.



We do appreciate your coming here today and really providing us with some meaningful information, allowing us, I think, a lot of food for thought. With respect to the draft report we had prepared for today, I think there are remarks you made as recommendations that will definitely assist us. I want to thank you, Professor Forcese and Madelaine Drohan.

I think I'll do a little plug here. She provided two copies of her book. One was nominated for the National Business Book Award, and it was also the winner of the Ottawa Book Award. If you want a good read, you're more than welcome to try it.

Diana Bronson as well, thank you very much. I do appreciate your taking the time.

We're going to go in camera, so take a break and we'll resume in a couple of minutes.

Thank you.

*[Proceedings continue in camera]*

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