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EVIDENCE

**Thursday, October 8, 2009**

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**Chair**

**Mr. Kevin Sorenson**



# Standing Committee on Foreign Affairs and International Development

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• (0905)

[English]

**The Chair (Mr. Kevin Sorenson (Crowfoot, CPC)):** Good morning, everyone. This is Thursday, October 8, 2009. The Foreign Affairs and International Development Committee is meeting to discuss and hear testimony on Bill C-300, An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries.

We're very pleased to have with us this morning Ms. Catherine Coumans, the research coordinator for the Asia-Pacific program at MiningWatch Canada. Thank you for coming, Ms. Coumans. We also have Richard Janda, a professor at McGill University. He is accompanied by research assistant Rachel Doran. We thank all three of you for being here today and we look forward to your comments.

I'm not certain if you've had the privilege of appearing before committee before, but we look forward to your opening comments. Try to keep them within a ten minute range, and then we'll be able to have more time for questions.

I would invite Ms. Coumans to open.

**Ms. Catherine Coumans (Research Coordinator and Asia Pacific Program, MiningWatch Canada):** Thank you, Mr. Chair, and my thanks to the members of this committee for providing us this opportunity to speak to you today.

In 2008, John Ruggie, the United Nations special representative on the issue of human rights and transnational corporations and other business enterprises, concluded his first two-year mandate by stating, and I am quoting:

The root cause of the business and human rights predicament today lies in the governance gaps created by globalization—between the scope and the impact of economic forces and actors and the capacity of societies to manage their adverse consequences.

These governance gaps provide the permissive environment for wrongful acts by companies of all kinds, without adequate sanctioning or reparation. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge.

While the high-profile work of Special Representative Ruggie is garnering a lot of international attention, it is appropriate in this context to remember that Ruggie's conclusions of 2008 had already been recognized in the groundbreaking and unanimously endorsed 14th report of this committee in 2005. I am now quoting from this committee's report of 2005:

These hearings have underlined the fact that mining activities in some developing countries have had adverse effects on local host communities, especially where regulations governing the mining sector and its impacts on the economic and

social well-being of employees and local residents, as well as on the environment, are weak or non-existent, or where they are not enforced.

That was the SCIFAIT report of 2005, which is now being echoed by John Ruggie, special representative, in 2008.

I had the privilege of testifying before the subcommittee in 2005, and I am encouraged to see some familiar faces of members of Parliament from that committee around this table today.

I would like to start my presentation by putting a human face on the problem that Ruggie identifies and then to explain why MiningWatch Canada believes that Bill C-300 is an appropriate response.

I was first confronted with the environmental devastation and the human rights and health consequences that can result from irresponsible mining practices when I arrived on the small Philippine island of Marinduque in 1988 to start my Ph.D. fieldwork in religious anthropology. I had never seen a mine or spent one day of my life thinking about the potential consequences of mining.

It was sheer coincidence that a huge copper mine in the central hills of this small island province was owned and operated by a Canadian company, but this fact did not immediately persuade me that I had any role to play in the struggle that was taking place on this small island to protect a critical marine environment, the food security of 12 fishing villages that relied on coral reefs for their food, and the health of local children who were exposed to metals in mine waste being dumped into Calancan Bay.

I lived in one of those fishing villages for over a year and came to understand, as I carried on with my research project, the devastating impact the mine was having on the lives of the people of Calancan Bay. It wasn't until years later that a health study conducted by the Philippine department of health confirmed that the children that I had been surrounded with during my fieldwork had unacceptable levels of lead, cadmium, copper, and zinc in their blood. The Philippine government declared a state of emergency in Calancan Bay for health reasons. This was in 1997.

In 1993, the same year that I completed my Ph.D. in Canada, an earthen dam burst at the same mine site and tons of highly acidic and metal-rich mine waste flooded down the Mogpog River. Villages were inundated with mine waste. Houses and livestock were swept away and two young children of Marites Tagle died. They were smothered by the mine waste.

The Canadian managers of the mine said that the mine bore no legal responsibility for the disaster as it was an act of God, brought on by a typhoon. Mrs. Tagle reportedly received, for compassionate reasons, 1,000 pesos from the mine for each of her two dead children, which in Canadian dollars is about \$23.

● (0910)

The Mogpog River has never recovered. It is heavily silted by mine waste that flows through the dam. Studies have shown that it is acidic and laden with toxic metals.

This past April I was back in Marinduque after 20 years. I helped villagers fill rice bags with waste from the river in an attempt to lower the level of the river and stop the regular flooding of nearby villages with contaminated water.

In 1996 I was at Cornell University doing post-doctoral research when yet another mine waste impoundment in the hills of Marinduque burst. Another river, this time the Boac River, filled with mine tailings from the mountains to the sea.

This third disaster on this small Philippine island finally closed down the mine. But now, more than 10 years later, the tailings are still piled in sandbags along the banks of the Boac River. Canadian engineers Klohn Crippen have warned that further disasters are likely as the dams and structures of the deserted and unrehabilitated mine site in the mountains crumble away.

I've told you this story because it contains elements of many of the stories regarding Canadian mining companies operating overseas that we are dealing with daily at MiningWatch Canada.

MiningWatch started in 1999, so I've now worked at MiningWatch for 10 years. When I first started at MiningWatch, I did not expect, as an employee of that organization—I was the original employee—that I would see cases as bad as the one that set me on this path in my life. But in fact we are dealing with these same situations literally all the time, from all over the world—irresponsible mine practices, environmental degradation, human rights abuses, health impacts, and the complicity of corrupt, inept, or even dictatorial governments.

Philippine dictator Ferdinand Marcos turned out, when he was deposed, to have been a secret partner in that Marinduque mine that was run and owned by a Canadian company. He had a 50% share in that mine.

The other aspect of this story that is common to others that we deal with at MiningWatch Canada is the lack of recourse for the people who have been damaged—the lack of, as Ruggie put it, sanctioning or reparation.

In this case, a lawsuit was launched by the Province of Marinduque in 2005 against Placer Dome, which was the mining company, now taken over by Barrick Gold. This lawsuit is slowly making its way through the courts. It is a potentially precedent-setting case, because the court it is making its way through is in the United States. Just last week a U.S. judge ruled in favour of the province's suit, and sent it to Nevada state court to proceed.

Three similar suits against the company in the Philippines, one dating back to 1996 when the final spill happened, continue to languish and are going nowhere.

Before turning to the merits of Bill C-300, I want to quickly touch on just a few of the mining cases we are engaged in at MiningWatch Canada.

My final submission to this committee on this brief will provide further detail and references for these cases. I only heard that I was presenting for you on Monday, so I haven't had a chance to finalize my brief. I will just run quickly through this, in the interest of time, to give you a sense of how broad this is.

We are engaged in a number of cases right now. The first is in Ecuador. In March of this year, Toronto-based law firm Klippensteins filed another potentially precedent-setting case against the Canadian junior called Copper Mesa Mining Corporation and against the Toronto Stock Exchange on behalf of Ecuadorian villagers who allege that the company's paramilitary agents have resorted to physical assaults, death threats, and other human rights abuses to break opposition to the company's operations.

This committee in fact heard from one of those villagers, Carlos Zorrilla, from the community of Intag, I think a year or two ago.

The second case is in Tanzania. An independent scientific report released just this week supports reports that we have been receiving from communities near the North Mara gold mine regarding serious human health impacts, and even deaths, related to acid mine drainage and heavy metal and cyanide leakage from the mine into the surrounding environment, and particularly into the nearby rivers.

I won't quote from the report, but I have a copy with me. I can do that later.

The third is in Papua New Guinea. This year Norway's government pension fund announced that it has dropped its shares in Canada's Barrick Gold as a result of the Porgera Joint Venture's mine waste disposal into an 800-kilometre-long Strickland River system.

This is a mine that literally dumps its tailings and its waste directly into a huge tropical river system, one of the largest in the world. That waste goes all the way down, 800 kilometres, to the sea.

● (0915)

At the same mine there have been allegations of killings of civilians by the Porgera mine security guards, and these allegations became the subject of a Papua New Guinea government inquiry in 2005 and 2006, but the final report of that inquiry was never released. In 2005 the then-owner of the mine, Placer Dome, did admit in a newspaper article to eight deaths at the hands of its security guards.

Honduras. Tests carried out by an organization in the United Kingdom and Development and Peace here in Canada have shown evidence of dangerous levels of arsenic, cyanide, and other heavy metals in water sources flowing close to or from within the mine boundary. In 2007 the Honduras Secretariat of Natural Resources and Environment fined Goldcorp, a Canadian company, one million lempiras, equivalent in value to about \$26,000 Canadian at the time, for pollution and damage to the environment.

**The Chair:** Ms. Coumans, you're quite a bit over 10 minutes right now. I'm just wondering how much more you have in your presentation.

**Ms. Catherine Coumans:** Maybe what I'll do is I'll skip over the further cases I have and just come to my concluding remarks.

**The Chair:** Okay, quickly.

**Ms. Catherine Coumans:** Let me first highlight that I believe we have come to an important consensus with industry. The Prospectors and Developers Association of Canada notes that many countries lack the governance and institutional capacity to enforce legislation and to ensure a stable regulatory regime. However, industry's response to this governance gap is to focus on voluntary CSR measures to be taken by corporations, supported by host country capacity-building to be undertaken by northern hemisphere countries like Canada.

Remarkably, this line of argument appears to support a position that extractive industries should remain exempt from effective legal and regulatory mechanisms, at least until the Government of Canada and other northern hemisphere countries have created sufficient capacity to regulate and provide legal accountability in all weak governance and conflict zones around the world where PDAC and its members choose to operate.

Voluntary CSR approaches by extractive companies, while necessary, are not sufficient to ensure respect of human rights and environments by corporations. They do not, for example, deal with the problem of laggards, companies that choose not to apply CSR standards, or apply them inconsistently and not uniformly across all operations. Another key problem with existing CSR codes and instruments is that they are all weak on human rights, referencing only a subset of human rights, if at all. Another key deficit of voluntary CSR instruments, and this is identified by Ruggie, the UN special representative, is that no CSR instruments have effective accountability mechanisms, particularly with respect to sanction and remedy.

If we can agree that there is a governance gap in many host countries in which our corporations operate, and that voluntary CSR measures, while necessary, are not sufficient, and if we recognize that there is no international regulatory system that can deal with corporate abuses in weak governance zones, nor is there an international legal system to which aggrieved parties can turn, then we must come to the conclusion that it is only the home state of multinationals, home states such as Canada, that can address the governance gap identified by Ruggie.

I'll leave it at that. I would say this conclusion is a conclusion this committee came to in 2005 with the report that was issued at that time. It's also a conclusion that 137 members of Parliament must

have come to when they voted in favour of Bill C-300 in the House of Commons on April 22.

Thank you.

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

We'll go next to Mr. Janda.

**Mr. Richard Janda (Professor, McGill University, Canadian Network on Corporate Accountability):** Thank you very much, Mr. Chair and members of Parliament.

It's an honour to participate in these deliberations with you on a matter of considerable importance.

[*Translation*]

With your permission, I would like to begin by acknowledging the work done on this report by my friend and colleague, Charles Gonthier, retired Justice of the Supreme Court. Sadly, Charles has now passed away, but I want you to know that when I asked him to collaborate on the report we have prepared for your committee he firmly committed to doing so, even though he was already in hospital. He wanted to be involved as this work goes to the heart of one of his most cherished principles. He believed that, in addition to the freedom to access markets and the need to ensure equality between all members, a sense of fraternity is also required. Our responsibility to others was Charles Gonthier's pet subject. He saw corporate social responsibility as an example of this sense of fraternity. I would therefore like to dedicate this report to the memory of Charles Gonthier.

● (0920)

[*English*]

The report you have received was prepared for the Canadian Network on Corporate Accountability, which is a group of 20 NGOs that cuts across faith-based groups, human rights groups, and unions. It represents a cross-section of civil society. The work we did, though, was independent, and it was conducted through the Centre for International Sustainable Development Law, for which I am a researcher. I want to underscore that although I am the signatory on the report, it was work that was done with a number of jurists, and the findings we came to unequivocally were considered after a period of some long deliberation.

We were asked to look at what we were told were the most serious concerns being raised from both a legal standpoint and from the point of view of fundamental policy concerns about the bill. We were able to conclude, with no equivocation, that the bill was sound and that it addressed, in a measured way, all the dimensions of the national round tables on CSR strategy that remain to be implemented.

I would like only to underscore four elements of the report. And I welcome your questions about specific further features of it. I think that these are the four ideas that have been most critical to your deliberations on Bill C-300.

First, the question can be put as follows: is there undue prejudice to Canadian companies from this measure that will subject them uniquely to a process of oversight that other companies don't share, either in Canada or abroad? The answer we came to on that question is straightforward. Far from there being prejudice to Canadian companies, we believe there is a very close connection between helping to build the reputation of Canadian companies abroad with respect to their human rights and environmental practices and in fact giving them competitive advantage. I must say that this is something about which I feel quite strongly, because it is the result of some years of research that led to a book I co-authored with Michael Kerr and Chip Pitts on corporate social responsibility.

The drivers of corporate social responsibility are not simply the NGO groups, like those represented by Catherine, that seek to hold corporations accountable. It's also the fact that all the dimensions of Bill C-300 are risk factors for corporations that affect their own picture as investment vehicles. So the ability of this legislation to provide something like distant early warning of risks Canadian companies face is a way of building a reputation for Canadian companies abroad and their competitive advantage.

The second main question that has been raised is related to the first one, and that is whether Canadian companies will face high transaction costs. Will they face an awful lot of trouble associated with the complaints procedure? Will they be subject to tiresome and costly attacks on their reputations? Indeed, will that lead them to perhaps leave the country rather than stay in the country if they are facing such transaction costs? Will they pick up their stakes and move elsewhere? The answer we came to on that question was equally clear but somewhat nuanced, and it is as follows: no, that should not be the result of this legislation. In fact, if anything, the legislation will provide a context within which credible and legitimate airing of public concerns can take place, bearing in mind that Canadian mining companies are already subject to precisely this kind of scrutiny from abroad.

• (0925)

There is such a thing as a court of public opinion internationally. As you know, that court of public opinion internationally has translated into, for example, the Norwegian pension fund withdrawing its investments from Barrick Gold. If there's a credible, transparent, and legitimate process that allows Canadian companies to address concerns, if anything it should allow them to cut their costs and diminish the possible negative impacts of the assessments that are taking place in any event. However, and this is the nuance, it is possible that some companies are unwilling to invest in the process of addressing public concerns. They may indeed seek to escape from scrutiny by moving to other jurisdictions. The question, I suppose, for members of Parliament is, should legislation be framed to address the worst performers? That's the group that would be an issue.

I'll touch briefly upon two final questions. One is extraterritoriality and the other is the problem of sanction.

In simple terms, this is not extraterritorial legislation. It is legislation that applies to the instrumentalities of the Canadian government. It's a matter of keeping the Canadian government itself accountable for the use of public moneys through the Export

Development Corporation and the Canada Pension Plan. Yes, there is the ability to gather information abroad, but that is something the Canadian government does all the time through its embassies and consulates. We see no dimension of this that extends past the point of international law. It's something we can get into in greater detail.

Finally, on the question of sanctions, is this punitive legislation? Is this legislation that would subject Canadian companies to the stick rather than the carrot and as a consequence face them with an inability to improve their performance? The answer to that is no. This legislation has to be seen in the context of all the measures that are being taken by the Canadian government, including, of course, the measures now announced with respect to the counsellor. We have the carrot in place.

The national round table made clear—and my colleague, Mr. Peeling, who will be speaking later, signed off on that document—that we also needed a way of ensuring that Canadian moneys were being spent responsibly and accountably when Canadian companies were failing to act upon the principles and issues. This is not a sanction; this is a matter of finding by ministers, who then turn it over to the Export Development Corporation and the Canada Pension Plan and ask them to implement their standards.

In conclusion, I'm proud as a Canadian citizen that Parliament is considering this legislation. We have an opportunity here to make a real contribution to international discussion. Following this discussion, I was contacted yesterday by a group from Argentina who have been following this debate. I know that groups from around the world are following this debate. The eyes of the world, in a manner of speaking, are on this committee. I very much hope that you will see your way clear to making this legislation a reality.

**The Chair:** Thank you very much, Mr. Janda.

We'll move into our first round of questioning.

Mr. Rae.

**Hon. Bob Rae (Toronto Centre, Lib.):** I have just a couple of questions.

Let me first of all say to both Dr. Coumans and Mr. Janda how much I appreciate the detail of the briefs and the great care and attention that has gone into them to answer I think some of the concerns that certainly have been raised. After 10 o'clock, we'll hear from those who are raising even more and other concerns.

The one question I had that I wanted to give you a chance to respond to is this. There are countries where the rule of law does not apply, where there is a serious gap in terms of regulatory capacity. There are others where that's not the case.

We talk about Argentina, we talk about Chile, and we talk about many countries in Latin America where there are extensive mining activities under way, and where there's an extensive amount of exploration under way and a lot of activity. I think those countries would rather deeply resent the notion that there's a huge governance gap in Chile, say, which is a functioning democracy with a social democratic government that takes some pride in what it's been able to achieve. It doesn't regard itself as a failing state or an area where there's no governance or jurisdiction.

The question I have is with respect to the issue of territoriality. Let's take a company that is doing business in Chile, which has environmental laws, licences, and a whole governmental practice and process. As I understand the legislation as it's proposed, it basically says that's okay, but we don't care about that, and the Canadian minister has an obligation to hear complaints, make a finding, and, upon making a finding, pass on that finding to the Export Development Corporation and the Canada Pension Plan.

Is there a concern that a Canadian company would say, look, we do business in these countries, we have a reasonable record, and they are satisfied with the record, so what more should we be concerned about? Or is the answer that this is not necessarily about whether they comply with Colombian law, Chilean law, or Argentinian law? Is it a question of whether they meet the standard that we have decided, as Canadians, we want to set for our companies and that is independent of anything the country where the activity is taking place might conclude?

The companies have argued that this is a kind of double jeopardy. Do you agree with that? What would be your response to that?

● (0930)

**Mr. Richard Janda:** You've raised a very important question, Mr. Rae. My short answer is that I don't agree with the position that this is double jeopardy.

Let's unwrap it a little bit. First of all, we're talking about international standards that are well recognized that would be applied through the legislation, standards to which Canadian companies are already—

**Hon. Bob Rae:** What are the timelines the ministry would have? What is it, two years or a year to develop?

**Mr. Richard Janda:** Well, it's a year, but these are standards.... By the way, as you know, the national round table made the recommendation that these standards be the ones used because they were well known and well recognized—

**Hon. Bob Rae:** Right.

**Mr. Richard Janda:** They provide a framework that other countries are operating under.

Let's take the example of Argentina. It's a good one. I was just on the phone yesterday with CEDHA, which you may know is an environmental and human rights group that was set up by the former environment minister of Argentina. Why would they welcome this legislation if they believe in the internal environmental process in Argentina? The answer is rather straightforward. First of all, they would hope that Canadian officials, when looking at the performance of Canadian mining companies abroad, would take account of whatever is happening in Argentina. There's nothing that tells the minister, do your own environmental assessment, or do your own hearing on what's happening with the mine. It says, take complaints and inform yourself. Informing yourself could mean, obviously, taking account of the process that is working in those countries.

What's the leverage that CEDHA sees as provided by this legislation? Well, it's at least twofold. First, they can say to a Swiss company or to a Belgian company, look at the standards that Canadian companies are subject to; you should be subject to those standards as well. Second, they can say to their environment

ministry, Canadian companies have undertaken to abide by these standards; these are internationally recognized standards, so enforce them.

So this is not about substituting Canadian enforcement capacity for Argentinian enforcement capacity. It is actually, I think, about providing some appropriate assistance to those who are trying to hold mining companies accountable for the operations they're undertaking.

I would simply say that if one looks, just as a jurist, at the legislation, there isn't anything in the legislation that suggests double jeopardy, that suggests that if, after an Argentinian environmental assessment, you have been found to be conducting your operations fully in compliance with local laws, you have to have a second hearing in Canada on the same issue. That's not the way the complaints process works. If anything, the complaint would be rejected as frivolous and vexatious.

● (0935)

**Hon. Bob Rae:** With respect to the process that you anticipate for a ministerial finding, I expressed some concern when John McKay was testifying, saying that this will immediately become a very litigious process and asking what the criteria will be by which a minister would make a finding. Because the consequences of such a finding are quite dramatic in terms of the potential impact on a company, there's a lot at stake here. We can assume that this will be in the Federal Court, then in the Federal Court of Appeal, etc.

Do you agree with the assumption of mine that this is what will happen, or am I just being...?

**Mr. Richard Janda:** I understand the concern, and I think it's appropriate to do due diligence on legislation of this kind. But with all respect, I don't think that's the character of the legislation.

We have reason to say that it's not the character of the legislation because there are parallel processes. For example, under the International Finance Corporation there is an ombudsman process, and we know what it looks like. When the national round table came up with its recommendation for an ombudsman process, it wasn't to produce something litigious; it was to produce something quite different, which was the ability to canvass complaints and to have a back-and-forth. This is not about going to court; it is not about getting fines or imprisonment. It is about the ability to air concerns. If the minister, and perhaps it could be the counsellor who takes on this function, is doing the job in a sophisticated way, it provides an opportunity for the company to explain itself, to adjust its practices. That's what an ombudsman-like function involves.

Of course, this legislation can't create an ombudsman, we know, for reasons concerning the limits on private members' bills. But this is a close approximation of that kind of process, placed within a ministry.

**The Chair:** Thank you, Mr. Janda.

We'll move now to the Bloc Québécois.

[Translation]

Ms. Deschamps, you have seven minutes.

**Ms. Johanne Deschamps (Laurentides—Labelle, BQ):** Thank you, Mr. Chairman.

Welcome to all of our witnesses. Thank you for your testimony, which has served to amplify our understanding of this subject.

Mr. Janda, Ms. Coumans, were either of you involved in the extensive consultation process—the round tables—which were held over almost two years?

**Mr. Richard Janda:** Before handing over to my colleague, I should say that I held observer status at the round tables, but that was the extent of my involvement.

[English]

**Ms. Catherine Coumans:** I was one of the members of the advisory group, so I helped shape the context of the round tables; I participated in all of the round tables and was very much involved in the drafting of the final report, which we signed on to.

In that context, I would like to say that one of the things we did in the round tables was create a complaints mechanism that would have heard complaints in Canada about practices overseas, including in countries such as Argentina and Chile. We had members of industry associations on the round tables, and they signed off on that complaints mechanism. I want to make that point.

[Translation]

**Ms. Johanne Deschamps:** People from a whole range of backgrounds were involved in these round tables: representatives from NGOs; experts; and the mining and extractive industry. A huge consultation. Consensus was reached on the recommendations contained in the report that was tabled.

To my mind, Bill C-300 constitutes a step in the right direction, a sound idea from a member of Parliament. As parliamentarians, we are empowered to table a private members' bill in an effort to put pressure on the government.

However, Ms. Coumans, you have already pointed out that the bill does not have enough teeth. Is it sufficiently in keeping with the recommendations included in the report issued by the round table?

• (0940)

[English]

**Ms. Catherine Coumans:** Let me answer that question this way. If the government had actually honoured and respected the consensus recommendations that came out of the round table process, I would be very comfortable in going forward in a process that reflected those recommendations and said, let's wait with something regulatory or something legislated; let's let this have a chance to work.

The government's response did not honour or respect the consensus recommendations that were reached. In fact, it's really our opinion that the government's response reflects two years of lobbying by industry, and things that we could not reach consensus on during the round table recommendations—things that industry asked for but that they did not get consensus on—are things that came into the government's response.

What we as civil society now very much feel needs to happen is to go back to the original document that started this process, which was a 2005 report from this committee. That report very clearly recognized the problem and said that there needs to be legislation and legal reform in Canada. This addresses the two things that John

Ruggie has so clearly identified as lacking globally, which are the options for sanction and for remedy. All of us in Canada, if we are hurt or harmed by a corporation in Canada, can go to the courts. We can have sanction; we can have remedy. That's not the case for so many people around the world where our companies are operating.

We're so disappointed with the government's response that we have gone back to say that this is not going to work. There's too much power within this industry to influence government processes such as the one we became involved in in good faith. What we really need is a chance to give the option for sanction and remedy to people around the world.

[Translation]

**Ms. Johanne Deschamps:** I will let you answer, but I just want to ask another question in case I run out of time.

What is it about this bill that, to your mind, scares the mining industry?

**Mr. Richard Janda:** Firstly, Bill C-300 has not simply come out of nowhere. It is an attempt to implement the round table recommendations.

As I suspect the next witness will tell you, what frightens industry is the prospect of moving straightaway from a voluntary approach to a binding approach. They are afraid that the government will step in and legislate.

You need to look carefully at the exact wording of the round table recommendations. The message is clear: it is not simply that there should be a mechanism to allow for funding to be withdrawn when certain principles are violated, but, rather, that in such instances, funding must be withdrawn.

How can that be implemented? We need a framework. It appears that industry would rather see a discretionary approach, a non-transparent process. However, my interpretation of the round table report is that a framework is required to implement this recommendation. The bill does not aim high: it speaks of a complaint process and the implementation of guidelines for federal government agencies. It is, nonetheless, in keeping with the round table recommendations, and industry is mistaken to say otherwise.

Allow me to make one final comment. As an observer, and as a citizen, I am deeply troubled to see industry participate in an extensive consultation process, to see it support the outcome, but then, at the first opportunity, to flip-flop and implement only what suits it, simply discarding the rest.

Why are groups such as Ms. Coumans outraged? Because they get involved in these round tables in good faith, they agree to compromises, and then industry simply walks away saying too bad! It is verging on scandalous.

• (0945)

[English]

**The Chair:** Thank you, Mr. Janda.

We'll move now to Mr. Abbott.

**Hon. Jim Abbott (Kootenay—Columbia, CPC):** Thank you to all the witnesses for being here.



One of the concerns I have is that in your testimony you have not told us specifically which clauses and specifically how Bill C-300 would help. I would suggest, particularly to Ms. Coumans, who is going to be giving us a written submission, which might be very helpful to come from MiningWatch Canada, particularly in light of the testimony that will likely follow, that this committee—and I would say this to all other future witnesses—is probably best served if we have specific references to specific clauses and specifically how it would achieve the objectives that the bill is intended for.

Mr. Janda, I was interested in your testimony about funding sources being stopped.

I need to understand, are both of your organizations at all familiar with the Equator Principles?

For the benefit of the committee, the Export Development Canada signed on to the Equator Principles in 2007. They require financial institutions to sign on and to rank projects by social and environmental risk. They also require borrowers to submit social and environmental assessments and detailed plans for ensuring that risks are mitigated and results are measured. EDC, in this case, will not be providing loans to projects if the borrower cannot comply with these policies.

It seems to me that these are the steps that are called for in Bill C-300, yet as we see, in 2007, the EDC signed on to those principles. So why in the world do we need Bill C-300?

**Mr. Richard Janda:** First of all, with respect to the general point about what difference is made, what the provision in the legislation is that changes anything, we have tried in our report to give you a detailed—almost clause-by-clause—assessment of what is different between the current government CSR strategy and Bill C-300. They're compatible; they can work together. But there is certainly a sense in which Bill C-300 adds a level of transparency and accountability that is not currently in place.

Turning specifically to the Equator Principles and to the implications for EDC, I agree with you that Bill C-300 adds really only a small additional piece to the puzzle. This is not dramatic re-engineering. It says precisely that principles like the Equator Principles and the other principles to which I referred now have to be acted upon by the EDC. They're not just to be taken into account at the outset of a project, but if EDC concludes—and it's held accountable to conclude—that Canadian public moneys are not being spent in a manner consistent with those principles, the funds are to be withdrawn.

That step is implicit, one could argue, in the use of the principles that are now in place. But if I dare say, as a lawyer, I think the specificity is worth having because it places an additional level of accountability onto EDC to the Canadian taxpayer and to Parliament to make sure its moneys are really being used in a manner consistent with the principles. In other words, it's not going to be enough for EDC to say, "Yes, yes, yes, those are principles; we think about them; we thought about them way back then." There is an ongoing watching brief.

• (0950)

**Ms. Catherine Coumans:** If I could answer on both the question you posed to me and this question, just briefly—but I will put it in

my brief in more detail—if we're just looking at the issues of sanction and remedy, this bill does not deal with remedy. What we ultimately will need in Canada at one point is legal reform so that cases against Canadian companies are not heard in the U.S., which is what's happening right now. So remedy is not dealt with. Sanction is dealt with. The withholding of Canadian public funds or political support is a sanction.

With respect to the Equator Principles, they and the IFC performance standards have both been reviewed from the perspective of human rights, including by John Ruggie, the special representative from the UN, and have been found, as have all voluntary principles out there right now—and they've all been reviewed—to only address a subset of human rights. So they're not comprehensive in terms of their addressing human rights. We've discussed this quite extensively in the round tables, and that's why, in the round table report, we specifically address the main UN documents that address human rights. That's also covered off in Bill C-300. That's actually quite an important flaw in the Equator Principles.

Thank you.

**Hon. Jim Abbott:** If I may say, Mr. Janda, I have a far more charitable view of the officials at EDC than perhaps you do, of their intentions and of their accountability in a democracy such as we have. I'm not at all on your page on that issue.

**Mr. Richard Janda:** I appreciate that we may not be on the same page, but I think the remarks I made and the analysis of the legislation don't have to do with casting aspersions upon EDC. They have to do with what the formal mechanisms of accountability are. People can do a great job within the existing structure, in principle. Canadian companies can be good companies. EDC can be a good investor. The Canada Pension Plan Investment Board can be a responsible investor. All that is possible, and I attribute good faith to people. But there are moments at which we have to ask ourselves what the accountability mechanisms are, and this is a piece of accountability.

**The Chair:** Thank you, Mr. Janda.

We'll move to Mr. Dewar.

**Mr. Paul Dewar (Ottawa Centre, NDP):** Thank you, Chair.

And thank you to our guests.

If we could carry on with some of the questions of that round, I'll declare my interest. I obviously support the legislation. If anything, I have lottery envy, because Mr. McKay had his lottery number called before mine and I have a similar bill, so I will be very clear about that.

But in terms of the issue at hand, Mr. Rae did explore the issue of reach and whether or not we were interfering.

Mr. Janda, you're obviously well schooled in what the tools of government are. Would you consider SEMA a tool that is a stick or a carrot? Would you consider the Special Economic Measures Act, which government uses and used in the case of Burma to sanction companies if they invested in Burma—which I fully supported—to be a stick or a carrot?

**Mr. Richard Janda:** Well, it's a stick, but one also hopes its existence can be a carrot in the sense that it sends a signal about what Canadians care about. It allows companies to put procedures in place for themselves to avoid attracting that legislation. I quote a better man than I, who is sitting around the table today, when I say that we're proudest as Canadians when we're setting a standard for the world. I think that's what this legislation can help us do.

**Mr. Paul Dewar:** I mention that simply to enlighten those who say this is going too far, that we are setting up legislation that actually goes beyond the conditions we'd normally have with government's relationship with business. We do this kind of thing already.

My concern is that it's not being underlined that we're trying to move toward comprehension in terms of Canadian standards abroad. We have a Canadian brand, if you will—to use the language of business—and we want to make sure it's preserved. SEMA is used from time to time, but in my opinion it's not comprehensive. And the rules of engagement are not comprehensive. They're ad hoc, if you will. As I said, I supported it when they were used because that's what we had.

Your point about this idea that somehow, if this is implemented... A critique on this legislation has been that we're going to have litigation as a result and not compliance. But you point to the fact that there is already litigation out there.

• (0955)

**Mr. Richard Janda:** Right.

**Mr. Paul Dewar:** So wouldn't this legislation actually have the opposite effect? In other words, we could avoid litigation and actually bring people into a space where we all agree on the standards. And for business, it would avoid business being vulnerable to litigation.

**Mr. Richard Janda:** Absolutely.

Why did the mining industry, the prospectors and the mining associations, support the round table? Because it would provide something other than litigation. It would provide a process through which... Okay, there could be complaints. There would be transparency. But it's the whole argument for ombudsman-style approaches to problems as opposed to heading to the courts. Nobody heads to the court under this legislation. So I think it has precisely that virtue.

**Mr. Paul Dewar:** If you look at our financial investments in extractive industries, we're number one as a country, right? Globally we're number one. I observe that right now there's a lot of litigation going on with big tobacco. I don't know about you, but I'd be worried right now if I owned stock in a mining company. It might not be happening today, but I'll tell you, I've talked to people from other jurisdictions—Mozambique being one most recently—and they're not going to sit back for very much longer when they are seeing economic degradation and human rights abuses. I would think they'd be going to the courts. Would you not see that as a pattern if we don't do something like this soon, that this is going to happen?

**Mr. Richard Janda:** Dare I say that there are some lessons all around us from the rubble of the financial crisis of what it means to think about a problem after the fact rather than before the fact. This is an opportunity for the mining industry and for Canada as a whole

to approach a problem before it gets into crisis mode. We have the danger signs; Catherine has referred to them. The danger signs are clear for all to see. This is a key industry in Canada, one in which we have a critical mass and one where we can do something. We can actually influence practice around the world. It makes entire sense for us to be thinking about how to foreclose the problem for the future rather than address it when it arises.

**Mr. Paul Dewar:** I would also observe that when you look at mining abroad, and your point about where we are in terms of the world economy... In fact, now is the time to put in a foundation of fairness and compliance that everyone agrees on based on the round table, based on the work that was done. Now is not the time, I would argue, to regress. In fact, it's the time to stick with what we've done.

I've mentioned around this table before that when I was in the Congo, it was very clear from the people I was talking to on the ground that they can't do this alone. They need us to pick up the pieces that we can. But they were also very... And we haven't touched on this, but the smaller companies are the ones they were most worried about. I wonder if either of you have any opinion on that.

We do have EDC, and with all due respect to my friend, Mr. Abbott, I like what EDC is doing, but it can't make legislation; we can. We want to ensure that its practices are actually ones that everyone follows and they are bought into by everyone.

But the smaller companies are an issue. I just wonder how this legislation would touch on that, and hopefully improve the behaviour of smaller companies that are affecting the reputation of larger Canadian companies, responsible companies, abroad.

**The Chair:** We're already over the seven minutes and we're at 10 o'clock, so please be very brief and concise.

• (1000)

**Mr. Richard Janda:** Very briefly, poor performance by one can affect the reputation of all, and this legislation extends to all. It also means that industry associations will start investing in this problem.

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

According to the clock on the wall and the light and the bells that are sounding, our hour is up. We thank you both for appearing before our committee today. We'll just suspend for one moment to allow our other guests to take their spot at the table.

Thank you very much.

• (1000)

\_\_\_\_\_ (Pause) \_\_\_\_\_

• (1000)

**The Chair:** I call the meeting back to order. In the second hour we have Mr. Gordon Peeling, president and chief executive officer of the Mining Association of Canada. We're certainly pleased to have him here.

We have designated a few minutes for committee business. My understanding is that the one motion that was presented just this past week has been withdrawn. Is there still a pressing need to move into committee business? We have a very short order in that we have to pass a motion in our committee to extend the meetings on the bill that we're debating this morning, Bill C-300, for 30 days. That passed our steering committee and it just calls upon this committee to have the motion. We'll do this later on. Maybe we'll go to 10:50 or whatever; we'll try to keep it to 45 minutes.

Mr. Peeling, welcome. I noted that you were present for part of the discussion in the first hour. We thank you for coming today. You can have approximately ten minutes as an introduction and then field some questions.

**Mr. Gordon Peeling (President and Chief Executive Officer, Mining Association of Canada):** *Merci beaucoup.*

I'm Gordon Peeling, president of the Mining Association of Canada. I do represent the national organization of the mining industry, which represents the major producers of base metals, precious metals, diamonds, iron ore, steel-making coal, uranium, and oil sands, and also the integrated smelting and refining of metals. As well, we represent another 50 suppliers of engineering and environmental technology, service providers, and financial and small companies in the pre-production phase of development.

As an organization, we have a mandatory CSR program for our producing members, called "Towards Sustainable Mining", which is mandatory for domestic operations. It's still voluntary for international operations. I'll come back to the strength of that a little later.

I'll also mention that I was a member of the advisory group for the CSR round table process. As noted by the earlier witnesses, yes, we did sign off. I personally signed off on it.

I want to talk about the round table and its process for a minute just to remind or inform those who didn't take part in this process about what transpired. When we started, there was obviously considerable mistrust and quite different starting points on the nature of finding a solution and making progress.

For many elements in civil society—and forgive me for generalizing—there was an immediate call for sanctions and remedy through extraterritorial application of Canadian law. For industry, there was a sense that improvements were required but that what was needed was an enabling environment that would help industry deal with very complex on-the-ground situations and help improve performance.

Out of those two end points over the course of the round tables, and in hearing from many experts like Mr. Janda, came some remarkable common ground. The advisory group report of recommendations to the government may have dragged all of us beyond our comfort zones at the end, or beyond where we thought we would end up, but that probably indicates that we were pretty much getting to the right point.

Let me turn now to a couple of those key outcomes, because they do bear on our views on Bill C-300. The round table recommendations did not embrace extraterritorial application of Canadian law or a legislative solution. The approach was a policy framework that was enabling for improved performance of industry and for assistance in

capacity building for developing countries' governments, a key point for industry.

The "ombuds" type of function was housed within this policy framework, not within a legislative construct. It was at arm's length from government, and there were very specific reasons for doing that: because they didn't raise some of the issues that members have pointed to around this table.

From our perspective, capacity building was key to treating the disease as opposed to band-aiding the symptoms. If governments had the capacity to enforce environmental regulations, protect their citizens, live up to their international obligations on human rights and indigenous rights, and collect and redistribute taxes, including investing in social and institutional infrastructure, we would probably have nothing to talk about today.

Hence, for us, the most important part of the government response is the commitment to the extractive industry's transparency initiative and the voluntary principles on human rights and security, and a commitment to multilateral and bilateral processes to improve governance and capacity in developing countries as they struggle to manage the resource development process. That was all part of the round table recommendations, which we did sign off on.

Turning more directly to the government response, this may be where we have some differences of opinion amongst the advisory group in our process, but our expectations were not of the kind that thought we would get everything recommended in the report. Very few reports of this kind—indeed, even royal commissions—get everything they recommend.

In our view, the government response is directionally correct. And it is a starting point. We always have to start with those first steps, build upon them, learn from them, and make improvements as we go along. This we see as a first step, not an end point.

The Mining Association of Canada is committed to work in good faith with government and other interested partners to see this successfully implemented. It does put Canada in a leadership position. The path of progress starts with that first step, as I noted, and this, in our view, is an important first step. The government's recent announcement on the counsellor position, in just the last few days, adds further substance to that commitment.

Now let me talk a bit about Bill C-300. From my perspective, Bill C-300 takes us back to the divisive beginning of the round table, something I thought was behind us. From our perspective, the bill is not in keeping with the spirit or intent of the round table report. Also, at its very core, Bill C-300 is based on creating a legislative and punitive approach to corporate accountability that ignores the need for an enabling environment to improve performance.

•(1005)

By creating legislation, the bill also introduces many issues such as, in one sense, in our view, not demonstrating any sensitivity to intruding into the sovereign right of other governments to manage resource development to meet their national needs. MAC member companies remain committed to respecting sovereign right of governments as best placed to make the difficult choices in responding to their societal needs while managing the development of their resources.

There is also the confusion arising as it relates to standards out of Bill C-300, which, in our view, does not bring clarity to the question of standards but serves to add a new and possibly confusing perspective from Canada. MAC supports the federal government's commitment to the extractive industries transparency initiative, the EITI; the voluntary principles on human rights and security; and a commitment to multilateral and bilateral processes to improve governance capacity in developing countries.

Canadian companies need to operate on a level playing field with their competitors, and there are a wide range of international guidelines and standards that provide appropriate reference points for the CSR-related processes and issues.

The IFC is referenced, but the IFC already applies to us, as it does to everyone else. That in essence is a level playing field, but the IFC standards, you have to understand, weren't meant to be the equivalent of a regulatory requirement. That's an important point that maybe we can discuss further in the question and answer time.

On human rights, the Secretary-General of the UN has charged his special representative, John Ruggie, to interpret state obligations of international conventions on human rights for application at the corporate level. He has completed the first part of his work in three years and is in the midst of a further two-year assignment to bring down that detail into the corporate sphere of how a corporation should act to respect human rights that have been written on a state-to-state international convention basis.

That is why, even in the round table process, we did create space, because we all agreed that it was a gap that was, with the intention of Ruggie's work from the UN level, to be filled and to provide some guidance to companies as to how best to respect human rights in that regard. But that indicates that we're not at an end point in this process. Industry is still digesting the first part of Ruggie's report. It is trying to improve its complaint mechanisms itself and is waiting for the next stage in Ruggie's report.

In our view, Bill C-300 misses this dynamic. The bill makes no distinction between trivial and substantive compliance issues. They both presumably result in CPP selling off whatever shares it may have with those corporations and the loss of EDC financing.

The bill creates a huge disincentive to acquiring foreign assets by Canadian resource companies, because if there are problems they are inheriting as a result of past actions of the previous owner, they may well have no time to bring that performance up to standard should a complaint be launched and within eight months of some determination that results in sanctions.

So we see here damage without a lot of balancing aspects to the bill, and the reputational damage can be serious. Yet there are no appeal mechanisms in the bill, and we're not even sure what the evidentiary rules will be.

I want to turn to EDC for a moment. EDC support flows through to Canadian service providers. In other words, when Canadian mining companies engage EDC for a loan action, loan agreements, etc., often that money is a direct flow-through to the purchase of Canadian engineering services, service providers of technology, etc. What then does the EDC decision result in? A breach of all those contracts? Once that litigation starts, what company then would, in the future, seek EDC support? How could the supplier rely on it? Who knows whether that breach of the company might be trivial or substantive?

•(1010)

Now just let me talk about Canadian direct investment abroad in the minerals and metals area. Statistics Canada indicated that, at the end of 2008, \$66.7 billion had been invested as Canadian direct investment abroad from this sector since 1990, and that was an \$11 billion increase from 2007. These numbers are huge relative to official aid flows from Canada and they do much good. They create jobs. They lead to business development, local training, health services improvements, education, improvements in local areas. In our view, this bill puts certainly some of that at risk. So we do have very specific concerns about Bill C-300.

•(1015)

I want to tell you about CSR. We do recognize the voluntary challenges there, absolutely. We have not been idle in the field of CSR, and we have had a program in place for quite some time, albeit mainly with a domestic focus. We have always had the international aspect in mind, but it was getting our own house in order first and then turning attention to some of the international issues. At the end of the day, industry does recognize that you can't have one operating ethic in Canada and a different operating ethic outside of Canada.

TSM is a condition of membership. I'll just say what other people say about TSM. Five Winds is a major international organization that specializes in sustainable development processes. It initially did a contract for the Canadian government to look at a number of CSR processes across the retail council, forest products, etc. We were not included in that, so we asked them to include us. Our results are that we exceed best practice and we're consistent with best practice in all areas. In other words, we have no elements that are below best practice.

The Canadian Business for Social Responsibility recently profiled 11 different frameworks, ranging from the global compact to the OECD guidelines to the global reporting initiative to the IFC performance standards. CCSR—and this was done without our knowledge—ranked TSM the highest, as “more prescriptive, more guidance and stricter compliance provisions”. We are committed to continued evolution of this program with our members, just as we are committed to work with governments, the NGO community and others, to improve performance in all these areas, particularly environmental and human rights, social matters related to benefits to local communities, etc.

At the end of the day, though, we do respect the sovereign right of governments as the best place to make the difficult choices in responding to societal needs while managing the development of resources. We endorse the development of a policy framework that would enable improved industry performance and provide a capacity building for developing countries. We endorse a policy approach that is directed towards finding solutions through mediation, discussion, fact-finding, and problem solving. This was described in the CSR round table report, in which we think the counsellor position takes us some way along that line, as did the national contact point, in its first work.

Thank you.

**The Chair:** Thank you very much, Mr. Peeling.

We'll proceed to the first round.

Mr. Patry.

[*Translation*]

**Mr. Bernard Patry (Pierrefonds—Dollard, Lib.):** Thank you, Mr. Chairman.

Thank you, Mr. Peeling. You signed the round table report on behalf of mining companies. The report advocates introducing an ombudsman with extensive powers.

I have two brief questions. Firstly, would you support the introduction of an ombudsman?

Secondly, how do you perceive the differences between what could be achieved by an ombudsman—as defined by the round tables—and what would be achieved by an advisor such as Ms. Evans, who has just been appointed by the government, but who to my mind has no power?

[*English*]

**Mr. Gordon Peeling:** Yes, I have some comments, and I'll start with the round table recommendation.

It was for an arm's-length position that had an advisory body of industry and NGOs to it, but you have to understand that function was placed within the context of fact-finding, and it had a mediative process, where it tried to bring people and find ways to move forward and make progress and bring companies into compliance—and for the sake of argument over detail, let's just say IFC standard is the primary body of that—and in its findings it would work with the company and other parties to identify gaps in areas for performance improvement. Companies would be given additional time to bring their processes to meet those requirements. There would be another

review 12 months down the road, and the company would report on its progress. It may not have all the elements in place, but if it was getting close, then it would be given more time. Only at the end, if you had companies and no progress was being made, if you had companies that just simply did not wish to make progress or address these realities, then, yes, there were consequences. But it was a very balanced process.

Now, the ombudsman's office or the complaints office administration within the IFC standards looks at it from their process. The IFC standards are written, very generally, to be applied in a hundred different countries, and the environmental aspects are to be applied in everything from desert conditions, water shortage, to tropical rainforest situations. So they have a level of generality, and when you take them to the concept of a regulatory requirement, black and white, CSR, Bill C-300, you're either in full compliance or you're not, trivial or otherwise, and that's a very difficult process to do.

I don't think the bill recognizes just how difficult this is going to be to turn this into a quasi-regulatory requirement, which is why we really wanted to bring that process of working together with companies to get the performance in place.

In regard to the current counsellor position, yes, the government didn't respond, obviously, in its entirety. But even the Mining Association of Canada—take away the fact that I was part of the advisory group and I put my name on the report—when it supported the round table report did note this, because there was the offer and recognition within the round table report that clearly the parties would have to get together in some ongoing dialogue to work out the details of how that office would function, and the devil is in the details, as to whether it's balanced and is perceived to be fair by all parties and the access is appropriate, etc.

Again, that had a process to make sure the details would work out and appropriately recognize the concerns of all parties. In our view, this process in Bill C-300 did not have that type of engagement.

• (1020)

**Mr. Bernard Patry:** In Bill C-300, Mr. McKay's bill, there are many problems, as you just mentioned, but what is the main problem that you see?

**Mr. Gordon Peeling:** The main problem is it's a rush to judgment. It's black and white. There is no balanced process. All the reputational damage is up front. What if the conclusion is wrong in the first instance, or there is no time given to companies to bring their operations into compliance?

This is a very complex world we're living in. The lack of governance in developing countries puts a lot of onus on industry to fill gaps, provide education, provide resources to communities to solve some of their problems, to create economic opportunity, and if you're in an area where there may be three communities nearby, you can get dynamics between communities as to who's getting the bulk of the benefit, etc., and there could be all sorts of reasons for complaint. They can be quite complex, and I don't think this bill gives enough time or recognition to just how complex and difficult some of these issues are.

[Translation]

**Mr. Bernard Patry:** Mr. Peeling, we have heard from numerous groups complaining about Canadian companies. We have heard from Central American groups, South American groups, indeed from groups from all over the world, even from Africa.

Has the group that you represent set up mechanisms so that its member-companies can be better corporate citizens? Do you have any means of encouraging or persuading them to act in a reasonable and human fashion when they are working abroad?

[English]

**Mr. Gordon Peeling:** I actually think there is a dynamic going on.

First of all, if you're using the Multilateral Investment Guarantee Agency related to the World Bank, you're subject to the IFC standards. If you go to those 65 banking institutions around the world—and EDC is one of them, but most of them are private sector banks—all require that companies seeking loans have to meet the Equator Principles, which is just another way of saying the IFC standards. So those are becoming commonplace.

John Ruggie's work will fill a huge gap on the human rights issue, absolutely. But the other reality out there—and this is why we appreciate the fact that government has to come to grips with working with other governments, both in multilateral institutions and on a bilateral basis—is that of improving governance capacity. And it won't be with everyone, because as one of your members has noted already today, there are probably jurisdictions out there that, although they still might be classified within the UN system as developing countries, are quite sophisticated regimes and don't need a lot of help. So we need to target that.

I mentioned the \$10 billion or \$66 billion of investment out there. It's our desire to make that the most productive investment possible for developing countries, to make sure that in actual fact human rights are not abused, and we want to see benefits flow to local communities. That's why we support the EITI. We don't want these benefits ending up in Swiss bank accounts; they should be down to benefit the countries where that development is taking place.

**The Chair:** Thank you, Mr. Peeling.

We'll move to Monsieur Dorion.

[Translation]

**Mr. Jean Dorion (Longueuil—Pierre-Boucher, BQ):** Mr. Peeling, the House of Commons is also currently studying another bill concerning a draft free trade agreement with Colombia. The agreement includes measures to protect Canadian investors in Colombia. Many other free trade agreements that Canada has signed with other countries—often countries which are lagging behind in

terms of social, environmental, and human rights legislation, and so forth—include similar measures.

Do you not think that Bill C-300 could help limit abuse of Canadian investor protection measures?

Under the proposed terms of the free trade agreement, if a Canadian company invests in a country which then introduces legislation, such as environmental or worker protection legislation, etc., and the company's profits fall as a result, it can sue that country's government.

Do you think that Bill C-300 will help curtail abuse by Canadian companies abroad?

• (1025)

[English]

**Mr. Gordon Peeling:** Well, I don't agree with the starting premise that Canadian industry is in the business of delivering abuse abroad. I'd begin from a very different starting point, that we're in the business of trying to do the very best we possibly can in development outcomes.

Things like the free trade agreement we signed with Chile have provisions for side agreements on the environment, and yes, they do include investor protection, etc. Those tools help raise standards in those developing countries, or other countries, Colombia being an example. The Government of Canada is in the process of pursuing a number of foreign investment protection agreements as well. These tools provide at least some protections for industry and investors, but large elements of them are directed towards improving capacity and governance.

When we had the side deal with Chile and what we called the JPAC and the focus on improving environmental governance there and helping them raise their own standards and to improve their enforcement capacity—that's the type of bilateral relationship we believe works best.

The other reality, and we should not forget this, is that Canadian companies want to work with NGOs. NGOs have a lot of skills that we don't have, particularly in the social area. In working with us—and there are many that do—they can help us make sure that development meets the needs of local communities, that benefits actually flow through and are captured at the local level. Because we're in the mining business, we do need to be working with governments and we do need to be working with civil society to improve those outcomes.

Is this bill an added element to all of that? In our view, in light of the government's response to the CSR round table, this bill is redundant.

**The Chair:** Mr. Dorion, you have three more minutes.

[Translation]

**Mr. Jean Dorion:** Is it not a universal truth that it is rare for those in power not to abuse that power? Is that not a fairly universal truth? Do you think that being Canadian means that this truism does not apply to our companies?

[English]

**The Chair:** Go ahead, Mr. Peeling.

**Mr. Gordon Peeling:** I'm not sure I really understood the question, because they switched interpreters on me in midstream, so I lost the question halfway through.

[Translation]

**Mr. Jean Dorion:** I can speak a little more slowly to help our interpreters. It appears to me that it is a universal truth that—

[English]

**The Chair:** Mr. Dorion, I'm still not getting translation.

Are you getting translation, Mr. Peeling?

**Mr. Gordon Peeling:** I am now, but I keep having to flip around to find it.

**The Chair:** Can we hear the English translation, please? Okay. They've switched channels.

**Mr. Gordon Peeling:** I am now, but it disappears, and I have to find it elsewhere.

Please excuse me, Monsieur Dorion.

[Translation]

**Mr. Jean Dorion:** Not at all, Mr. Chairman.

•(1030)

[English]

**The Chair:** We need French to English.

[Translation]

**Mr. Jean Dorion:** Is it not a universal truth that those who are in a position to abuse their power always end up doing so? Do you think that simply by being Canadian our companies will avoid this pitfall?

[English]

**The Chair:** Mr. Peeling.

**Mr. Gordon Peeling:** Let me make a general comment, and I'm not a lawyer. We had lots of legal discussion at the round table and at various points in our hearings across the country. Common law is evolving, and there are accountabilities. Ms. Coumans referred to several instances of companies in court over historic events and recent historic events. We argued long and hard over how big a barrier *forum non conveniens* is. There were lots of views, but the end point seemed to be, at least from my non-legal view, that this, as a barrier, is shrinking.

Common law will continue to evolve. Legal accountabilities are there, and they are continuing to evolve and are more likely to be there in the future. You know, industry ignores all of that at its peril. We say, and we heard from Mr. Janda, that this is not an extraterritorial application. This is a sanction, not a legal.... So this bill doesn't play on that issue of legal accountabilities.

**The Chair:** Thank you, Mr. Peeling. Thank you, Mr. Dorion.

We'll move to Mr. Weston and then to Ms. Brown.

[Translation]

**M. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, PCC):** Thank you for being here, Mr. Peeling.

[English]

First, let me start by repeating something Professor Janda said. He said that he is proud, as a Canadian citizen, that Parliament is considering this bill and that the eyes of the world are on us. I share that pride. I think we all have to pay tribute to John McKay for his intentions, because his intentions are terrific. I would certainly share my pride, but....

**Hon. John McKay (Scarborough—Guildwood, Lib.):** Yes, here it comes, the “but”.

**Voices:** Oh, oh!

**Mr. John Weston:** Well, the path to hell is paved with good intentions.

What I see here is a multiplication of dispute resolution functions. My colleague, Mr. Rae, mentioned that we would be in the Federal Court looking at this. There's a national contact point for the OECD guidelines for multinational enterprises. We have a CSR counsellor for extractive industries. The sovereign country itself would use these guidelines as a possible reference point in litigation in the sovereign country.

Furthermore, a litigious quagmire.... You mentioned, Mr. Peeling, that there are no evidentiary rules in this bill. There would be an unfair advantage to any competitor that brought frivolous complaints. There are no repercussions for frivolous complainants, just as in the human rights code, under section 13, we see people able to bring frivolous complaints without any repercussions for them.

With all of that confusion in the background, I look at what we have. This government is committed, in its foreign policy, to democracy, accountability, human rights, and the rule of law. You mention NGOs. I chaired Canadian Food for the Hungry International, and I was in the Congo, like Mr. Dewar, not too long ago, and I see the problems there. Certainly, Canadians, generally, want to help the most vulnerable people in Canada and elsewhere.

I'd like you to just comment on what we are doing independent of this bill. We have this counsellor who's been recently appointed by the government, this new Office of the Extractive Sector CSR Counsellor. We've announced a new centre of excellence, a one-stop shop to provide information for companies and NGOs on this type of issue. We continue CIDA assistance to governments to help them manage their extractive sector. We're promoting internationally recognized voluntary CSR performance and export guidelines. So that provides a gold standard for companies that want to voluntarily comply and attract investors.

Can you comment on what this government is doing apart from the proposed bill?

**The Chair:** Thank you, Mr. Weston.

Ms. Brown, maybe you can get your question in, and then Mr. Peeling can respond to both of them.

**Ms. Lois Brown (Newmarket—Aurora, CPC):** Thank you.

Mr. Peeling, were you consulted on this bill? If so, what guidance did you provide? If not, why not? As an association of mining industries in Canada, a very important part of our economy and the global economy, I would think you would have been consulted.

• (1035)

**Mr. Gordon Peeling:** I'll answer the second question first. No, we were not consulted. I don't think you can use the fact that we participated in the round table as a proxy for that consultation. From our perspective, this is not in keeping with the round table outcomes. I don't know why not. I'm not in a position to answer that.

As to other things that are going on globally and why, I'll start by almost echoing some of the previous questioner's comments. Mr. McKay and I have spoken directly. The outcomes we want—improved performance, improved conditions in developing countries—are exactly the same. We have different conceptions of how to get there and how quickly we can move.

The reality is that the international terrain is changing. The IFC guidelines are once again in an amendment process, which is itself a multi-stakeholder engagement process at an international level. Canadian companies will probably have their views submitted through the International Council on Mining and Metals. The international mining community is engaged in bringing in and improving those IFC standards. Yes, they will be working with the Ruggie outcomes to fill some of those human rights gaps that are recognized by all parties, as they were in the round table process. These standards are not now being addressed as directly as they should be, but this is changing quickly.

The legal side continues to evolve. Accountabilities will be increasing. But what's the best answer for industry at the end of the day? The best answer for industry is always to put in place good practices, which we hope will incorporate at least some of our work on TSM. As for the IFC standards, you just cannot get any money to fund a project without being subject to either the IFC standards or the Equator Principles, and they are exactly the same thing. You either have to have a project that's less than \$10 million or you have to be able to fund it entirely yourself, which at the moment only the Chinese seem to be able to do.

I think those accountabilities are there. We'd like to see greater work done at the multilateral level on helping countries build their capacities. I worked for the Government of Canada for many years. I know we have lots of agreements on transport of hazardous waste and informed consent on hazardous materials. We placed a burden of cooperation on developing countries. But did we actually supply them with the support to deliver on their end of the process? The answer was no. So building capacity is hugely important.

**The Chair:** Thank you.

Mr. Weston.

**Mr. John Weston:** I would appreciate more specific comments on what the government is doing now, Mr. Peeling. In other words, this is not a government that's oblivious of human rights concerns. It's not that the Canadian people are uncaring. We created serious impediments for mining companies, with some of the things we've done in the name of human rights. We're doing that to try to open up the competitive capacity of the mining companies. If you can't do

business and you don't pay your taxes in Canada, then we can't maintain our social safety net.

What's your comment on that?

**Mr. Gordon Peeling:** We think the government response is directionally correct—it's what we need. The Government of Canada now supports the extractive industries transparency initiative, which was a round table recommendation. The government also supports the voluntary principles on security and human rights, which was another round table recommendation. The government has placed a person within CIDA to work directly on these issues and to help mining companies. There is support for the development of a centre of excellence. You have to understand that there are a very large number of small companies out there, exploration companies, and they need help. A centre of excellence will help them solve the problem of meeting these commitments and staying competitive. Capacity building, even with industry, is important, and the government is engaged in it.

• (1040)

**The Chair:** Just to update the committee, there will be a vote. It will be held at 11:05 a.m., so I'm going to give Mr. Dewar time. We have to do committee business. There are a few moments we have to have there.

Mr. Dewar.

**Mr. Paul Dewar:** Thank you, and thank you, Mr. Peeling, for coming before the committee. We have spoken before on this issue.

I want to get right to your point. The problem you seem to have most with the bill is that somehow this is going to be putting us back, and maybe you don't say this, but certainly I interpreted that you sense this is regressive. Is that fair to say?

**Mr. Gordon Peeling:** That's fair to say.

**Mr. Paul Dewar:** One of the points you suggest is that there's this kind of black and white, in or out, and I'm just wondering if you can point to where in the bill that is your biggest concern. What point in the bill leads you to believe that this would be regressive?

**Mr. Gordon Peeling:** It's black and white in the sense that you're either in compliance or out of compliance, and you're using as your standard for compliance the IFC guidelines for the most part, which, as I said, have been written to be quite general and allow for a good margin of interpretation, because they have to be applied in a hundred different countries, with different jurisdictional requirements, by the World Bank or anybody who has World Bank support or the IFC support or MIGA, as I mentioned. On the environmental side, they have to be applicable to any type of ecosystem globally, so they are at a level of generality that, when you come to very specific instances of are you in compliance or are you out of compliance, make it very difficult to know, within the context of this bill the way it's written, how you would come to a judgment and then how you would decide whether that compliance issue is trivial or substantial.



**Mr. Paul Dewar:** I understand that. I'm just asking you to point directly to the bill. It's a pop quiz, so if you can give that to the committee later—

**Mr. Gordon Peeling:** Yes, I will. We can come up with some specific answers.

**Mr. Paul Dewar:** There are a couple of reasons why I ask that. One is that this country has a proud tradition of John Humphrey creating the idea of the Universal Declaration of Human Rights. We have I think been very progressive, and I thank you for the work you've done to reach out to others, to work with people who have been concerned about this issue from civil society. But I have to say that when we look at environmental compliance and when we look at human rights compliance—and this government talks a lot about the rule of law; laws aren't suggestions. For me, where I come from, I'm from Missouri: show me. Show me that there are clear rules. You've even outlined that the industry has been following a new process. My friends at EDC over here will tell me all the good things they're doing, which I think is great, and that's fair for you to say we're doing everything we can and should and for EDC to say we're doing everything we can and should.

We have a different position here, and you probably can appreciate that. We are the ones who oversee laws being made. When I look at this bill, subclause 4(4) says the complaints come to the minister and the minister “may” receive them. In fact, I'd like to say the minister “shall”, so that both sides can put it into the positive. They have a compliance advisor. I think both of us would agree it should be an ombudsman.

**Mr. Gordon Peeling:** Just where placed?

**Mr. Paul Dewar:** Arm's length.

**Mr. Gordon Peeling:** The round table wanted it at arm's-length.

**Mr. Paul Dewar:** Absolutely. I'm with you on that. I don't want another one of those appointments happening that we might not agree with.

I want it at arm's length, and I want a public appointments commission to do that, which one day they'll get around to. But I think it's absolutely critical that we be very clear on the bill itself, and the bill itself right now, and that's why I wanted to ask you directly, because we agree on a lot. We have talked about things under CSR and we agree a lot, but on this bill, when I hear you say it's black or white, I'm not seeing that in the bill, because the bill says under clause 4 that the minister “may” receive complaints and deal with them, and I think we've got a fairly good brief, which we heard just before you, about extraterritorial concerns, about litigation.

I'm just saying that I don't see the bill the way you do under clause 4, because “the minister is receiving” doesn't mean they're saying laying hands on anyone.

**The Chair:** Mr. Peeling.

**Mr. Gordon Peeling:** I'll just go back to subclause 4(4), if you want specifics. Eight months to deliver in subclause 4(6)—but what are the powers of examination and cross-examination of witnesses outside of Canada?

•(1045)

**Mr. Paul Dewar:** We heard that already, from the previous witness.

**Mr. Gordon Peeling:** Well, you know, I think you will find quite a range of legal views on that, separate from Mr. Janda's. I would hope that you're going to hear from other legal entities.

I'm not a lawyer—

**Mr. Paul Dewar:** No, I appreciate that.

**Mr. Gordon Peeling:** —so I'm not going to argue that point. Certainly it's an issue that our members are concerned about. It's also why in the round table report there was a platform to come together and work out the details.

And even, what's the definition of frivolous and vexatious? I can go to the *Oxford English Dictionary* and I will have my guidance on frivolous and vexatious. But what are the legal implications, and how long is it going to take? Anybody, literally anywhere, can make a complaint. There doesn't need to be direct effect. They don't have to be affected by the party or by the event, etc.

So how much—

**Mr. Paul Dewar:** What I am trying to get at is that it's not where the minister is sitting there, on a throne, saying yes or no. I don't see that in the bill.

We do have this other process. We both agree that we wish it were different in terms of the ombudsman, but there is a counsellor there.

I don't think, and I'm not sure how to put this, in terms of what we have already—

**Mr. Gordon Peeling:** Just go to subclause 4(6). It says “eight months”.

**Mr. Paul Dewar:** Yes, there's a time limit.

**Mr. Gordon Peeling:** You're going to have a timeline when you have to complete an investigation.

**Mr. Paul Dewar:** Of course. You don't think there's enough time for a response in that timeline?

**Mr. Gordon Peeling:** It's an either/or: you're either in compliance or you're not in compliance.

**Mr. Paul Dewar:** But you would agree, you have to have some time, right? Can we talk about what a reasonable timeline is?

**Mr. Gordon Peeling:** Well, ideally, but you—

**Mr. Paul Dewar:** That's an amendment.

Thank you, Mr. Chair.

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

Unfortunately, our time is up here.

Thank you very much, Mr. Peeling, for your testimony today. You certainly answered many of the questions; there are others that we look forward to hearing other opinions on.

We will move now to committee business.

First of all, when we passed our steering committee report, part of that report asked that the committee pass a motion for an extension of 30 sitting days to consider Bill C-300.

I would welcome a motion on that.

(Motion agreed to [See *Minutes of Proceedings*])

**The Chair:** We will have our clerk draft up the report. We will deliver that as soon as possible so that they know.

The second item is our steering committee report. When we come back from our break of next week, we have allocated two days, October 20 and 22, to the treatment of Canadians abroad.

Now, that's wonderful—except no one has put forward any witnesses.

If you remember, we wanted to stick with themes, certain kinds of themes, so please get those in. Usually we have time to peruse the witness list, but unfortunately you aren't giving the clerk or the committee much time to do that.

Mr. Obhrai.

**Mr. Deepak Obhrai (Calgary East, CPC):** Talking about themes, there is a motion from me in reference to Canadians abroad and child custody. That is a theme we want to study.

So there is a motion there already.

**The Chair:** Okay. We can take that into account.

Again, we could probably start with the departments. That gives some indication to our clerk of whom to call.

**Hon. Bob Rae:** We could certainly hear from the departments.

**The Chair:** Yes. We'll definitely have them up first, because they're the easiest to get a hold of.

**Hon. Bob Rae:** We need to hear from the consular division, we need to hear from the ADMs—we need to hear from the government.

**The Chair:** Okay.

That gives us some indication, but I'm here mainly to prompt you in the submission of names.

Mr. Dewar, on that point.

**Mr. Paul Dewar:** I had provided a name before, but it was lost in the mix. I'll make sure I get that to you.

**The Chair:** Please, and thank you.

Mr. Dewar has one more very quick thing to mention.

**Mr. Paul Dewar:** Yes, it's very quick.

This is a follow-up on the meeting we had with the folks who were working on the border of Burma and Thailand. I was hoping to have it today, but because of the calendar—

**The Chair:** It can go into committee business.

**Mr. Paul Dewar:** I know, yes.

I was hoping to have a motion for this committee to consider unanimous support for the program. The funding is going to end March 31, 2010. Basically, it's just putting a motion forward to say that this committee supports the extension of the funding for the cross-border programs, which we heard witnesses from.

Actually, it's just to notify; I just wanted...if we could deal with that when we come back.

**An hon. member:** Yes.

• (1050)

**The Chair:** Yes.

So that motion has come in and it's getting translated.

**Mr. Paul Dewar:** Okay. Thank you.

**The Chair:** Madam Deschamps.

[*Translation*]

**Ms. Johanne Deschamps:** The bells are ringing, and so we only have a little time left. Duty calls.

Ms. Lalonde has drafted a motion addressing the troubling situation in Honduras, and I would like it to be given priority status at the next committee meeting.

[*English*]

**The Chair:** When motions come in they go to the bottom of the list. Then we debate if we want the motion to be moved up. We'll have committee business at the next meeting, so that's when we can deal with that.

Thank you, everyone.

We're adjourned.







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