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Chair

Mr. Michael Levitt

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• (1305)

[English]

The Chair (Mr. Michael Levitt (York Centre, Lib.)): Happy Thursday, everyone, and welcome to the Subcommittee on International Human Rights. We are continuing our study on human rights surrounding natural resource extraction within Latin America.

We are very pleased to have guests with us today from the Mining Association of Canada. We have Pierre Gratton, the president and CEO, and we also have Ben Chalmers, the vice-president, sustainable development.

Additionally, we have the Prospectors and Developers Association of Canada, represented by Andrew Cheatle, who is the executive director.

Gentlemen, I think we can have each of the two groups do, let's say, eight minutes apiece, and then we can open it up to some questions from the members of this subcommittee.

Mr. Gratton, since you're listed first, I'm going to ask you to lead off, and then, Mr. Cheatle, we'll go to you.

With that, feel free to begin your remarks. Thank you, sir.

Mr. Pierre Gratton (President and Chief Executive Officer, Mining Association of Canada): Thank you very much, Mr. Chair, for the opportunity to speak to you about this important topic.

The Mining Association of Canada is the national organization for Canada's mining industry. Our members account for most of Canada's production of base and precious metals, uranium, diamonds, metallurgical coal, and mined oil sands, and are actively engaged in mineral exploration, mining, smelting, refining, and semi-fabrication across the country. Many of our members are headquartered in Canada, though not all, and are active in Latin America.

We have shared with you our power point presentation that describes for you, first, the reach of Canada's mining sector abroad, and second, information on the research of Professor Paul Haslam, which you have now received directly from him. Third is the considerable work MAC and our members have undertaken to advance responsible mining practices in Canada and abroad. Indeed, I doubt we would find another national association that has a track record anywhere close to comparable in this regard. Finally, fourth is research that provides an illustration of the opportunity for poverty

alleviation and economic and social development that mining offers the developing world. With this as background, let me make the following remarks:

Canada's mining sector is a global leader, one of the few sectors of the Canadian economy that can make this claim. We represent 10% of Canada's outward investment and the largest percentage of that is in Latin America, accounting for 40% of all Canadian investment abroad or \$78 billion in 2016. Within Latin America, the countries of greatest importance in terms of Canadian investment are Mexico, Chile, and Argentina, followed by Peru, Brazil, and the Dominican Republic.

Increasingly however, Canadian investment is facing competition from Australian, South African, Swiss, and Chinese multinationals. Indeed, although Canada's mining sector is still a global leader, we can no longer claim to be the global leader as the world's largest mining companies are headquartered in Australia, the U.K., Switzerland, and South Africa.

In fact, Canada has only one of the top 10 largest mining companies in the world and only eight of the top 50. China has 10 in the top 50. While Australia only has five, they include the top two, BHP Billiton and Rio Tinto, which combined are double in size of all the Canadian companies put together.

This investment abroad brings value back to Canadians. Canada is home to the third largest number of mining supply and services companies in the world behind the United States and Australia. I might note we were second until this year when Australia overtook Canada. These engineering, banking, equipment, geological, and legal knowledge-based firms have expanded their own growth by supporting Canada's mining sector abroad. Of course, Toronto remains the global centre for mine finance.

This leadership and expertise extends to leadership in responsible business practices. Indeed, it is a common refrain whenever I travel abroad, which is quite often, that countries welcome Canadian investment because we, more than others, contribute to raising standards. MAC's own program, towards sustainable mining, TSM, is an example of this. A program developed in Canada over a decade ago, it is now being exported around the world, and sought after by mining sectors on five continents as a tool for driving responsible behaviour and improving the adoption of best practices.

TSM is mandatory for MAC members in Canada and involves site level performance evaluation, independent verification of performance and public reporting. It's also overseen by a national advisory multi-stakeholder panel. Several MAC members apply TSM outside Canada as well. Recently, MAC also made mandatory the implementation of the voluntary principles on security and human rights on a global basis, the first and only industry association in the world to make this commitment.

Against this backdrop, which I would argue is the norm, the committee is aware of troubling examples of conflict involving Canadian mining properties in Latin America. In saying it is the norm, I would draw your attention to the presentation last week from Professor Paul Haslam of the University of Ottawa. As you would have learned from him, the data shows that the vast majority of Canadian investments in Latin America have had no reported cases of conflict and further, that Canadian companies are significantly less likely to experience conflict than multinational firms based in other countries. But examples of conflict exist. In some cases, the conflicts are severe. So, like Professor Haslam, I'm not suggesting that this performance by Canadian companies is a reason for complacency. The question is what do we do about these examples?

• (1310)

You heard testimony from Global Affairs that accurately describes the challenging context that exists in many Latin American countries. Weak governance, corruption, extreme inequality, and pre-existing social strife can make investments in some countries difficult. Expectations that companies provide services and support more appropriately provided by governments are high, and a company's ability to deliver such services is not always straightforward.

What we do, therefore, is a very challenging question. There are limits to Canada's extraterritorial reach. In all these cases, we are dealing with complex environments where responsibility is shared and blame can often be hard to assign to any one party. Countries such as Guatemala and Honduras, which have had decades of civil strife, if not outright civil war, weak governance, and high levels of distrust, stand out for much of the controversy in those troubling examples we read about. It is not surprising, therefore, to see MAC members, such as Goldcorp and Hudbay, walk away from investments in those countries.

Is that the answer? Is leaving countries with which we've concluded free trade agreements desirable? If walking away means creating a space for others that do not strive to implement Canadian standards, is that desirable? If walking away means depriving these countries, which struggle with poor economic outcomes and fewer opportunities for economic and social development, is that a desirable outcome? These, I would suggest, are very difficult questions with few easy answers.

What can, and should, Canada do to help reduce conflict and promote respect for human rights in other countries?

First, let's consider what Canada is doing. Canada has been actively promoting and supporting the dissemination of MAC's towards sustainable mining initiative abroad. TSM is being implemented in three other countries—Finland, Botswana, and Argentina—and was recently adopted by a fourth, the Philippines,

due in large part to the promotion of TSM by Canada's trade commissioner service, something that began only a few years ago. In the next six months, at least two new countries, and possibly more, are expected to follow suit, including Norway and Spain.

Canada's mining industry, with the help of its government, is contributing to raising standards around the world, something we should be proud of.

Canada has put in place a CSR strategy that is unique in the world. In large part due to our advocacy, Canada's CSR counsellor and national contact point now include consequences for companies that refuse to participate in mediation when complaints are registered with either body. The consequences, as you know, are withdrawal of trade commissioner support and access to EDC funding, the two consequences that were advocated by the final report of the round tables on corporate social responsibility. These consequences have been actioned in two cases, one in mining and another in real estate. The existence of consequences has been hailed by John Ruggie, the author of the "UN Guiding Principles on Business and Human Rights", as globally leading.

EDC has significantly strengthened its CSR due diligence when making financing decisions, and it is now possible for those companies that choose not to participate in the NCP or CSR counsellor process to lose access to EDC financing.

Last, Canada's trade commissioner service now actively promotes Canada's CSR strategy abroad. In fact, last week the trade commissioner service began a project in partnership with the Centre for Excellence in CSR focused on developing guidance aimed at protecting human rights defenders. The service also recently hosted a discussion on the responsibility of financial institutions to respect human rights.

What else could Canada do? You have received many ideas from the people who have presented to you already. I will conclude by focusing on two that are frequently cited: access to Canadian courts, and the establishment of an ombudsman.

With respect to access to Canadian courts, there are currently three cases before Canadian courts. At issue is the judicial discretion to determine whether Canadian courts are the best place for cases to be heard. Our view is that judges are best placed to make such determinations, and as we have seen, are not afraid to make them. When they do, they are typically cases where there are concerns regarding the impartiality and incorruptibility of the judiciary in the countries of origin. Court processes, though, are lengthy and expensive, another barrier to access that merits discussion.

The establishment of an ombudsman, in our view, should be justified based on whether such an office would offer services not currently provided by the CSR counsellor or the NCP. Such an office should add to the remedies available to help resolve conflicts on the ground. Though such an office might involve the investigation of conflicts, its primary purpose should not be focused on assigning blame or castigating one party or another, particularly since in many cases, conflicts may not be the result of intentional or deliberate action, nor due to a single party. Rather, the focus should be on resolving those conflicts. In this respect we do believe a gap exists that could be filled by an ombudsman focusing on delivering the services of joint fact finding.

• (1315)

Joint fact finding is a well-known implemented process in which a neutral party brings together the complainant and the alleged instigator of the conflict to: (a) reach agreement on the nature of the conflict; (b) find agreement on how to investigate it; (c) get agreement on who should conduct the investigation; and (d) a determination of appropriate remedies. Joint fact finding has been used by the IFC ombudsman for many years with considerable success, and Canada could again prove globally leading by establishing a similar body. Its success is due to the fact that the process of joint fact finding brings both parties together at the outset, thus creating ownership of outcomes and reducing polarization.

If Canada establishes an ombudsman, we believe it should apply to all sectors, not just mining. As Global Affairs can tell you, complaints about mining projects have been declining whilst complaints involving Canada's textile, software, renewable energy, real estate, and weapons sectors have been on the rise. If Canada is truly committed to promoting business and human rights, it should include all industries. Additional resources would be needed for an expanded role in this area.

Last, Canada should establish a multi-stakeholder advisory committee to advise on the promotion of business and human rights and the mechanisms that exist to advance protection of them. John Ruggie, in the same report that hailed Canada for leadership in imposing consequences for non-participation in dispute resolution mechanisms, recognized Switzerland as the only country with such a body. Let's learn from the Swiss and then truly stand alone as the global leader in business and human rights.

Thank you.

The Chair: Thank you very much, Mr. Gratton.

We'll move straight to Mr. Cheadle.

Mr. Andrew Cheadle (Executive Director, Prospectors and Developers Association of Canada): Good afternoon, Mr. Chair and committee members. My name is Andrew Cheadle and I am the executive director of the Prospectors and Developers Association of Canada, often known as PDAC. Relevant to our discussions today, I am also a former CEO of a Canadian exploration and development company operating in Latin America, searching for minerals there.

On behalf of our board of directors and our members, thank you for the opportunity to speak with you today.

First, I'll provide a few brief words about the PDAC. We are a national association representing more than 8,000 members, of

which 1,000 are corporate, that are involved in the mineral exploration and development industry and supply industry in Canada and around the world. Our membership includes mining companies, junior exploration companies, service companies, consulting firms, geoscientists, prospectors, miners, students, and the financial and investment sector, amongst others. We are well known for our annual convention that 25,000 people attend, from 130 countries, each year. During our convention, we address many of the issues being considered by this committee.

As you heard just now from Mr. Gratton of MAC, Canada's minerals industry is a recognized leader at home and abroad, renowned for our deep exploration and mining expertise, extensive experience, and ability to generate economic opportunities in the areas of the world in which we operate. Indeed, at the end of 2015, the value of Canadian mining assets abroad totalled over \$171 billion Canadian, in 102 countries.

When it comes to exploration specifically, Latin America is indeed the top destination for Canadian exploration dollars and activity. In fact, 28% of all investment in Latin America comes from Canadian-headquartered companies. This is particularly important, because without exploration, mines do not get discovered and they do not get developed, and without mines, the economic benefits of mining, such as well-paid jobs, training, and other matters, do not reach the communities.

Mineral exploration is the vital first stage of the mineral development cycle. This is the stage during which prospectors or small exploration companies, such as the one I was CEO of, search for economic deposits that have the potential to be developed into producing mines. Exploration is a sequential process of information gathering using scientific and various other techniques to assess the mineral potential of any given area. However, what many people are not aware of is that many exploration programs never proceed beyond the preliminary or grassroots stage. The probability that an early exploration project will result in a mine is often considered to be one in 1,000. Consequently, these projects typically involve transitory activities that generally have a minimal footprint and no lasting environmental impact.

Several thousand exploration companies are currently operating in Canada and around the world in search of the next mine. The majority of these companies are Canadian, a testament to the decades of expertise that serves as Canada's foundation for its global leadership in the mineral sector. Our leadership extends beyond scientific, technical, and financial expertise to include leadership, as you've just heard from Pierre, in responsible social, environmental, and safety practices. With PDAC's "e3 plus", the first-ever guidance developed to help companies achieve greater performance in responsible exploration, which includes guidance on early stakeholder engagement, MAC's towards sustainable mining initiative, and the individual efforts of Canadian companies, our industry has made tremendous strides in the area of responsible business conduct over the last several decades.

As the first set of boots on the ground, explorers set the tone for companies' interactions with their host communities. Whether companies are working mineral claims in northern Manitoba on the traditional territory of indigenous communities or in Sierra Leone or Chile, it is well understood by the vast majority of these companies that they are guests and must conduct their business responsibly. Government, industry, and other stakeholders recognize the importance of this, and I am very proud to say that we are very good at it.

However, despite our industry's efforts in doing things the right way, right from the start, we are before you today to discuss instances of conflict in Latin America. These instances represent exceptions and not the rule; nevertheless they warrant our close attention.

● (1320)

While the globalization of the Canadian mineral exploration industry has helped to improve the quality of life for many people around the world, it has also increased the risk of companies becoming directly or indirectly linked to various forms of conflict. Canadian companies operate in some of the most complex jurisdictions in the world: civil conflict, weak governance and rule of law, extreme levels of poverty, etc. Given these circumstances, challenges will continue to arise. This is the case for all companies, foreign or domestic, and yet Canadian companies remain the preferred investors by host governments and communities.

According to University of Ottawa Professor Paul Haslam, who testified before you just last week, most Canadian investments in Latin America have experienced no reported cases of community conflict and Canadian companies are significantly less likely to experience conflict than multinational firms based in other countries. This is a testament to our country's legacy of responsible business conduct and world-recognized leading practices.

However, what remedies do exist when company-community conflict is alleged to have occurred, and what work remains? As an industry, we have been very engaged in how we can work with government, local communities, and civil society to improve relationships and reduce potential conflict. In addition, the Government of Canada has been active in its efforts to reduce conflict and promote respect for human rights abroad.

PDAC participated in the CSR round tables in 2006, endorsed the CSR strategy for the extractive sector in 2009, and strongly supported Canada's enhanced CSR strategy in 2014. Truly a model of progress, Canada's CSR strategy articulates a clear, multi-faceted approach to supporting responsible exploration and mining outside of Canada, with a role for companies, host states, and also home states. The 2014 strategy outlines the government's expectation that Canadian companies will operate according to the highest ethical standards. The 2014 strategy also highlights the importance of technical assistance for host states, including support for countries to undertake land use planning, develop indigenous consultation policies, etc. It also reinforces access to remedy for communities.

Today, there are three key mechanisms through which communities outside of Canada can seek access to remedy. Two are non-judicial in nature. They are the office of the CSR counsellor and the national contact point, or NCP, system Canada established 40 years

ago, when Canada became a signatory to the guidelines for multinational enterprises created by the Organisation for Economic Co-operation and Development, the OECD. The third is through our Canadian courts.

Despite these advancements, there have been renewed calls for the establishment of an ombudsperson for the extractive sector. We believe that prior to the creation of any new institution, the Government of Canada should firmly establish the facts regarding alleged community conflict, and that a rigorous analysis of the existing mechanisms for remedy should also be undertaken. This would undoubtedly help identify any real versus perceived gaps within the existing institutions through which communities can seek remedy, and also help outline opportunities for a path forward.

If the Government of Canada is to establish an ombudsperson, and in order to be effective, we strongly recommend that it carefully consider its design. The ombudsperson should apply to all sectors and be tasked with: reviewing allegations using joint fact finding to work to resolve conflicts; providing parties with access to mediation services; and protecting responsible companies and Canada's reputation against frivolous or vexatious claims.

In addition to the above recommendations, PDAC remains committed to its view that the establishment of a multi-stakeholder advisory group is necessary. The mandate of this group would be to provide recommendations to government on the design and functions of the ombudsperson's office, and other options for how the Government of Canada could facilitate access to remedy.

The PDAC looks forward to continuing to participate in the dialogue around business and human rights and access to remedy that both supports Canada's position as a global mining industry leader and reduces the potential for conflict.

Thank you very much. I would be very pleased to take your questions.

● (1325)

The Chair: Thank you very much.

We will move straight to questions.

We'll start with MP Genuis. You have seven minutes.

Mr. Garnett Genuis (Sherwood Park—Fort Saskatchewan, CPC): Okay, great. Thank you, Mr. Chair.

Thank you so much for your testimony.

Mr. Cheadle, you talked about the different mechanisms that exist. There is the CSR counsellor, the NCP, and of course, Canadian courts. What is the proposed gap that an ombudsperson would fill? Maybe you're not the best person to answer that, because it's not principally your proposal, but what would an ombudsperson do that is different from what's being done now?

•(1330)

Mr. Andrew Cheatle: I think this depends very much on the designs that are put forward. It's our belief that an ombudsperson, if constructed in a way that is multi-stakeholder, would be able to have more investigative powers and perhaps, shall we say, a slightly sterner role. The CSR counsellor, if I may, works and operates very much in the way of prevention and addresses conflicts...and tries to address potential conflicts very early and works in the realm of prevention.

Mr. Garnett Genuis: Do you think it would make more sense, though, to increase the resources and the powers available to the existing position? Is there an advantage to having one position that's more preventative and one that's more after the fact, oversight, holding people accountable, or does it make sense to have those functions covered within the same office?

Mr. Andrew Cheatle: I think it's quite possible to have both positions. One could have an ombudsperson, again, that's derived through a multi-stakeholder process, and also retain the CSR counsellor specifically for the mineral sector. I think that office has been doing a very good job.

Mr. Garnett Genuis: Okay. You propose, though, that an ombudsperson should be dealing with corporate social responsibility in general for all sectors, whereas the CSR counsellor can provide advice and be engaged in prevention for the extractive sector—

Mr. Andrew Cheatle: That is correct. That is my statement.

Mr. Garnett Genuis: Mr. Gratton, do you agree with that?

Mr. Pierre Gratton: If we had a good review of the existing mechanisms and where the gaps are, we could probably land in a few different places.

As I've spoken in my remarks, we've identified a tool called joint fact finding which arguably has been within the tool box for years but never used. We think it's a mechanism that, to Andrew's point, could be used in cases where conflicts are more advanced and more serious, but perhaps not quite at the stage where you need to engage the NCP. It's sort of a middle ground or a halfway house. Using those tools that have been used now for a good number of years by the IFC globally to help resolve those disputes when they occur... We see that as a potential area, when you're looking at non-judicial mechanisms where Canada could provide enhanced services.

Mr. Garnett Genuis: I'm just trying to understand. Does it make sense to create additional positions or expand the scope of existing positions from your perspective?

Mr. Pierre Gratton: As the CSR counsellor is currently constituted, the office has neither the resources nor the mandate to provide those types of services. Nor, I think, does the current counsellor want to, or feel that he is the best person to do that. It's a different set of skills.

Mr. Garnett Genuis: Okay.

Mr. Pierre Gratton: I think that if Canada wanted to provide additional options for remedy, this would be something it could do.

Mr. Garnett Genuis: In terms of the issue of access to courts, which is part of the remedy picture, obviously there would be a lot of people who would not have the capacity to bring actions to Canadian courts. Is bringing actions to court something that either the national

contact point or the CSR counsellor can do on people's behalf? If not, is there value in having someone or some office that can bring actions to court on behalf of people who may not have the capacity to do it themselves?

Mr. Ben Chalmers (Vice-President, Sustainable Development, Mining Association of Canada): The best way that we can answer that question is that we've expressed a willingness to explore what the barriers are to access in the courts right now. The courts have moved a long way in the last few years in terms of what they're willing to hear. It's still a lengthy, expensive process, and we've certainly expressed a willingness to be part of the conversation around understanding what those barriers are and how to overcome them.

Mr. Garnett Genuis: Intuitively, it would seem that at least some of the barriers are fairly obvious.

If you're a poor person living in another country, who may not even speak the language or have any experience of a justice system that respects your rights, where do you start?

Do you have thoughts on the idea of some agency or individual in Canada having the capacity to bring actions on behalf of people?

•(1335)

Mr. Ben Chalmers: Not specifically in those terms yet.

Mr. Garnett Genuis: This might seem like a bit of a different track, but I'm kind of curious. For your members who are operating in other countries around the world, where there are weak justice systems, what do they do? Presumably they have robust strategies for protecting their own interests, their own property, and their own security. What are the strategies that they follow for protecting their own interests in countries with relatively weak justice systems and policing?

Mr. Ben Chalmers: This is a big part of why our association took on the commitment to the voluntary principles. The voluntary principles on security and human rights are focused exactly on that. How do you manage those parts of your business in a way that you can legitimately and effectively protect your own interests but also do so in a way that is respectful of human rights? That's why our members were very willing to take this commitment on collectively and to implement it across the board.

Mr. Andrew Cheatle: A lot of the smaller junior companies that operate extensively in Latin America, we record their access to our e3 plus, our early stakeholder engagement guides, our training systems, at our convention.

These days, it's not possible really to be outside of observation, given all the technology. No matter where we go, everyone's always got a mobile phone. It's incumbent upon everyone, when they go into areas, to respect the local environment, take on that responsibility, and build the relationships, again working towards prevention and partnership rather than aiming towards conflict. But if conflict does arise, often it's best to work on resolving that locally between the parties involved, and in my experience, it has often involved sitting down, talking, and working through the issue at hand.

The Chair: Thank you very much.

We're now going to move to MP Fragiskatos.

Mr. Peter Fragiskatos (London North Centre, Lib.): Thank you very much.

I want to pick up on that last point, in fact. You mentioned conflicts arising, and the causes of conflict—we don't have to say here; we all know them—are multi-faceted and complex, but gaps in terms of socio-economic equality and lack of access to basic needs factor into it in a major way.

I wonder if you could tell us about corporate social responsibility activities that mining firms are involved in, construction of schools, roads, and the like, that are helping to improve lives for inhabitants. In fact, do you have numbers on the percentage of Canadian mining firms that are engaged in this sort of work?

Mr. Pierre Gratton: I guess I would speak about two issues. One, the construction of schools, hospitals, and so on is arguably not where companies should be, because those are services that ought to be provided by—

Mr. Peter Fragiskatos: I'm sorry to interrupt. You understand, though, that time is limited. I'm thinking of situations where a mining company is operating in a particular area and wishes to, either on the basis of good will, good business, or whatever it might be.... The motivation does not matter as much to me as the outcome. What contributions are being made? I think there have been contributions made. I'm not coming at it from that perspective. I want you to speak to that.

Mr. Pierre Gratton: No, I understand that.

Mr. Peter Fragiskatos: It's about making the lives of those inhabitants better.

Mr. Pierre Gratton: No, I understand that. There are two answers to that question that I would focus on.

First of all, the contribution is one aspect, but it's how you operate, which is another. That's at the core of our towards sustainable mining initiative, where we have put in place standards of good practice across a range of issues that matter at the local level, including how you involve local stakeholders in your projects, including how you protect biodiversity, including how you ensure your tailings facilities are managed safely, and including how you protect your workers. Ensuring that you operate to those high standards is, to me, the first demonstration of social responsibility.

Also in the power point presentation we shared with you, you'll find just one example where we look at how benefits are distributed from mining investments. You'll have a snapshot. If you look at slide 5, for example, this is just one illustration from one of our members, Kinross Gold, their property in Mauritania. You can look at the difference over two years in terms of per capita income, populations in poverty, and perceptions of poverty—which is also an important value—for the communities in the affected area around the mine versus communities further away. You can see the dramatic improvement in income standards and poverty alleviation that result from mining.

• (1340)

Mr. Peter Fragiskatos: I appreciate that, Mr. Gratton, but I asked a question about percentages, the percentage of Canadian mining firms that are engaged in concrete CSR activities. I mentioned assisting in road construction, helping to build schools. As you can

understand, and you know probably better than most since you're operating in this sector, the states in Latin America, whether it's Guatemala or Honduras or any number of examples, are weak states and can't often carry out these sorts of activities. You're operating in those areas. One could argue that there's a responsibility to give back. Can you give me the percentage of Canadian mining firms engaged in that kind of work?

Mr. Pierre Gratton: Do you want to take that?

Mr. Ben Chalmers: I would say that we represent a small segment of the industry that's operating abroad, and we don't have a lot of detailed contact with those who aren't our members. I can tell you that every one of our members that's operating abroad is doing something firm and concrete with communities. I could give you a list of examples if you want—

Mr. Peter Fragiskatos: If you could table that with the committee, that would be helpful.

Mr. Ben Chalmers: —right now. Is it off the record or, sorry—

Mr. Peter Fragiskatos: No, it's definitely on the record. Just send it in afterwards.

Mr. Ben Chalmers: Absolutely, I can compile a number of examples.

Mr. Peter Fragiskatos: My last question is, if I understand things correctly here as far as the CSR—

Go ahead.

Mr. Andrew Cheatle: Sorry for the interruption, but it's a fabulous question and I could actually answer both from a personal experience and otherwise.

I do sit at mining investment conferences where there are quite literally dozens and sometimes hundreds of companies presenting, and we also do go through the websites of our members and just general industry, and I can tell you that you'd be very hard pressed to find one company that is not doing something. Everybody recognizes that they have to do something.

These things are often very scale-specific. One would have to appreciate that a small company of a market capitalization of, say, \$10 million or \$20 million, is going to have a very different program, for example, from that of a multinational like Goldcorp or Barrick. Let me just talk about what a small company can do. I would also point you to the UNDP atlas that maps mining to the SDGs. In there, actually the company that I was CEO of is recorded and recognized. We can do simple things. I'll give you a couple of examples.

We were working in an area and it became apparent to us that one of the rural schools in the community didn't have running water from the central well into the school. It actually happened that one of our geologists had those skills. On a Sunday afternoon, she simply came and asked if she could have 500 feet of plastic tubing because this is what she used to do during her youth. Alternatively, we had been importing plastic core trays to store the core that we drilled during the exploration. We were importing the trays from Canada, through Miami, and all through the port systems. Yet in the area there were forestry plantations, wood mills, and we were able to transfer that set of skills and requirements to the local forestry people and carpenters to make core trays for us—

Mr. Peter Fragiskatos: Those are great examples. I don't mean to interrupt you here, but I'm guessing there are probably only about 30 seconds left.

The Chair: There's actually no time left, so I'm going to interrupt you.

Mr. Peter Fragiskatos: Thank you very much, as I think that speaks to the points.

Perhaps in further answers you may wish to expand upon that and show us how it's not a one-off type of thing. I think there's sometimes criticism brought back that there may be just a few companies doing this, but if it's wide-ranging, then our committee should know that.

• (1345)

Mr. Andrew Cheatle: It is wide-ranging.

The Chair: Thank you very much, Mr. Fragiskatos.

We will now move to MP Hardcastle.

Ms. Cheryl Hardcastle (Windsor—Tecumseh, NDP): Thank you very much, Mr. Chair.

I've been involved in international human rights for a long time and I'm very aware of the role that Canadian mining companies have played in the development in Latin America in preparation for these sessions. First of all, I know all of you have worked with various NDP members over previous Parliaments, and some of them have massive mining projects in their ridings, so I'd just like to know quickly, do any of you characterize the NDP as anti-mining?

Mr. Pierre Gratton: No, I wouldn't say that the NDP... I think certain MPs in all parties may have issues with mining, but I think most MPs support mining.

Ms. Cheryl Hardcastle: Thank you very much for that answer.

Now, on the presentations, I was very intrigued to hear both of you, Mr. Gratton and Mr. Cheatle, in your own way express that what you're recommending and what is needed is enforceability. We need something that is enforceable. Even with a joint fact finding task force, how would we compel all of these mining companies to buy into something like this?

I believe Mr. Chalmers has had this experience within the Mining Association. Within the membership, you have those vanguard and champion members for different reasons. You have a junior mining company that's just starting up; their capital, human resources, and ability to connect with a local government, for a variety of different reasons, are vast and varied. Before we get into some of the other

aspects and recommendations, I would like to hear what you're envisioning moving forward.

Is there a role for us to find words beyond it being voluntary—beyond these being voluntary mechanisms—so we have a fact finding mechanism for an ombudsman that compels the participation of all parties? In other words, should there be a means of ensuring that people are partaking in this? That's a question I'd like to hear you candidly discuss.

Mr. Pierre Gratton: The original round tables which I personally participated in recommended consequences for companies—well, actually, for all parties—if they were seen to be acting in bad faith. When the 2009 strategy first came about, it had no such mechanisms. As a consequence, the strategy was dead on arrival and was severely criticized.

Then in 2014, with a lot of our advocacy, our members also came to share the view that it didn't have any teeth and that there should be consequences. Collectively, our members said that if they were one of the companies involved in this, they would want to see it through, and if there's a company that would not, then, frankly, they should pay a price for that. Consequences make sense, and that's what we now have. The consequences that have been put in place are the ones that were recommended by the round tables, namely, withdrawal of trade commissioner support and access to EDC financing.

I wouldn't diminish the significance of that. Trade commissioner support is extremely valued by our industry and many other industries. Canada's trade commissioner service is extremely helpful to industries around the world. To lose that, and not only to lose it but to—because this is also part of the process and maybe this is some aspect that could be strengthened—have it made public that a company that refused to participate is no longer able to access that support, I think, sends a pretty strong message.

That is where it currently sits and probably where we want to keep it. We've made recommendations now for the past number of years that the whole transparency of the process can be enhanced and more resources made available to make sure we're better able to deal with complaints that come up, but there should be consequences if you refuse to engage.

• (1350)

Ms. Cheryl Hardcastle: Thank you very much.

You are all probably familiar with the international Committee on the Elimination of Discrimination against Women, which had a specific recommendation in November 2016 for the introduction of “effective mechanisms to investigate complaints filed against those corporations, including by establishing an extractive sector ombudsperson with the mandate to, among other things, receive complaints and conduct independent investigations.”

Do you think that maybe this recommendation is going a little further than what you have just described, Mr. Gratton?

Mr. Pierre Gratton: There is an awful lot that appears to be hanging on certain words.

Ms. Cheryl Hardcastle: Yes.

Mr. Pierre Gratton: We talk about joint fact finding, which involves investigation. The process through which you get to investigation is what's important for us. Often, with independent investigation, I think the image is of some super-ombudsman who goes in-country and does an investigation, and the goal is to find out who is at fault and pronounce, and—

Ms. Cheryl Hardcastle: Let me just help you, so that my time is used wisely. We don't have that now, so for us to move forward that aspiration—

Mr. Pierre Gratton: The reason we are recommending joint fact finding is that, initially, the IFC went down the unilateral investigation route, and they found that they themselves were becoming part of the problem. They were going in independently and adjudicating in a complex environment, and finding that they were contributing to conflict because their pronouncements, their findings, were not recognized by either party. So joint fact finding—

Ms. Cheryl Hardcastle: Okay. I have only a few more seconds. Really quickly, what are some of the ways the Canadian government provides assistance to mining companies in other countries? You said earlier that, through the trade commissioner, the state support... What are some examples of how they help?

Mr. Pierre Gratton: Well, they can provide information on how the country works. They can provide support in liaising with the government. There is a lot of support that embassies can provide.

The Chair: Thank you.

We are now going to move to MP Khalid, please.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you, Chair.

Mr. Gratton, you can finish the answer to Ms. Hardcastle's question, if you'd like.

Mr. Pierre Gratton: Yes, I would, thank you.

The reason why the IFC moved to joint fact finding is that, with this mechanism, you are bringing the parties together at the outset. You have the ombudsman in place, or whatever you want to call that person, and they are bringing the parties together. They are working towards an agreement on what the issue is, how it should be investigated, and who should investigate it. There is still an investigation role, but the parties are part of the process. Then, when you get to the end and you've identified the problem and the remedies that are appropriate, everyone buys in. It's much harder to walk away from that kind of a process than when someone goes in independently.

This is not new stuff. I mean, we do this in Canada. This is just a better way of getting to an outcome that... It contributes to bringing parties together and resolving disputes. That's our view.

•(1355)

Ms. Iqra Khalid: Thank you, Mr. Gratton.

I just want some points of clarification from you. Do all extractive companies become a part of the Mining Association of Canada when they're out, especially in Latin America? Is this a voluntary...?

Mr. Pierre Gratton: MAC is a membership organization. You have to pay to be a member. Also, if you are a member, you have to implement our initiative towards sustainable mining. It's probably

interesting for the committee to know that, since TSM, our membership has grown. We have companies joining us now because they see the value of this program. Our membership is the largest it has ever been.

Ms. Iqra Khalid: How do you hold companies accountable if they violate the TSM?

Mr. Pierre Gratton: We have a process for removing members if they (a), refuse to implement the program, and (b), fail to show progress in performance over time.

Ms. Iqra Khalid: What kind of repercussions do companies face if they're removed from membership?

Mr. Pierre Gratton: It would be a bad name. There aren't other consequences. We're a membership organization, but frequently when groups look to organizations like that, NGOs and others, that's what they look for: will you kick somebody out if they refuse to abide by your standards? The answer in our case is yes.

Ms. Iqra Khalid: When you were setting up your guiding principles for TSM, was a gender analysis conducted? Different communities and different groups where mining companies operate are obviously impacted in different ways.

Mr. Pierre Gratton: The guiding principles, no, not at that time. The implementation of the aboriginal community engagement protocol certainly would take those types of issues into account, but it wasn't done explicitly, no.

Ms. Iqra Khalid: What kind of challenges stop or inhibit mining companies when they're on the ground in how they operate in valuing and respecting human rights and local and indigenous communities?

Mr. Pierre Gratton: I would make one more comment on your previous question. We do go through a process of reviewing our performance standards in each of the categories every year. Community engagement is up next year, and we've identified gender as one of the issues that we should consider revising. I should just make that point.

Ms. Iqra Khalid: Thank you for that.

Mr. Ben Chalmers: The issues you're asking about are wide and far ranging.

Ms. Iqra Khalid: Can you give a few examples?

Mr. Ben Chalmers: Paul had them when he was here. Distribution of benefits is a key factor that's very complicated to deal with. Water is often cited as a major source of conflict, artisanal mining, small-scale mining, security issues, indigenous rights. The list is long, and you'd probably find them all in our industry, which is why it's so difficult and why the companies have taken on such efforts to try to understand how to do things like implement the UN guiding principles on business and human rights, the voluntary principles on security and human rights, which I spoke about earlier, and continue to look for tools on how to understand these issues and deal with them more proactively.

Mr. Pierre Gratton: Weak governance is probably at the top of that list. One of the biggest problems is if communities don't feel the government's providing them with a voice, companies have to fill that void too.

The Chair: Thank you, Mr. Gratton.

We have a couple of minutes left, and we're going to move to MP Sweet.

Mr. David Sweet (Flamborough—Glanbrook, CPC): Thank you very much, Mr. Chair.

My concerns about this go back almost 12 years. We've been seized with this at the committee on three separate occasions, I think. I was seized with it at the industry committee twice. There were private members' bills in the past. I'm certain you're familiar with those. I sympathize with the people on the ground who feel victimized. I sympathize with the Mining Association. It appears to me, from your testimony and all that I've heard, that you're trying to do the best you can to have your members participate in this sustainable mining program so the reputation is upheld and people understand that Canadian mines are doing all they can to make sure that not only are they socially responsible but also environmentally responsible. They're doing the best they can to contribute to the communities they're investing in, while at the same time, making a profit and making sure that the countries at large benefit from that resource extraction as well.

There's another player now, the United Nations. We had Mr. Pesce as a witness. He mentioned that he noticed Canadian companies referenced the international social, economic, and environmental standards, but he said they weren't sufficiently implemented. He said, "Our finding is that you should push your standards up to put more emphasis on implementation and monitoring effective implementation."

Would you agree that some work still needs to be done as far as implementing and measuring the responsibility on the ground are concerned? He didn't mention TSM so I don't know if he was talking about that. He did mention interviews that he had back in June in Canada, I believe.

• (1400)

Mr. Pierre Gratton: Yes, I listened to his testimony as well. He wasn't actually here, and we spent all of maybe an hour with the two representatives who did come, so I don't know the extent to which they understood TSM or undertook an examination of what industry is doing.

I will certainly acknowledge that this is a work in progress for many companies. Was Goldcorp, I think, not the first to do a human rights impact assessment? That was a few years ago. The voluntary principles on security and human rights were started by Madeleine Albright, but it really only started to achieve the kind of prominence it has in the last five or six years. This is a work in progress, but I certainly see across our membership more and more building of due diligence and taking the protection of human rights, the training of employees and security personnel in human rights, advancing that every day, and making progress in those areas.

Mr. David Sweet: Thank you. I think we've run out of time.

I didn't get a chance to look. I was listening to your testimony, which is why I didn't look through it. Do you have an executive summary of the TSM so we can see the broader scope of it and the benchmarks you have for the companies? Could you table that with the committee so we could see exactly what the framework of it is?

Mr. Ben Chalmers: Yes, we definitely can. It's very focused on doing exactly what the gentleman from the UN talked about in terms of demonstrating implementation, so it's reporting and verification. The voluntary principles commitment that we made also includes reporting, so we're very focused on that.

The Chair: Thank you. There are a couple of documents being tabled.

I'm going to take another minute and a half here. There's been an issue that's come up a number of times, and I think it would be helpful for our study to get some information from you. It's come up in our studies on Berta Cáceres and other situations that have occurred in Latin American mining conflict, and it's the role of private security. I see that MAC member companies have undertaken as part of the voluntary principles certain codes of conduct, and they're going to be reporting back.

Can you tell us how the issues related to private security are being handled, and what you see is going to be happening in terms of this reporting mechanism that seems will be starting next year, in your 2018 progress report? This is something that's come up repeatedly for us.

Mr. Ben Chalmers: The voluntary principles set out guidelines and principles around how companies should work with both public and private security. They talk about training. They talk about engagement with communities around these things and a number of other factors. The implementation of these principles is really intended to drive performance improvement around how we work with security forces where they are used.

For our part, the commitment requires our companies to implement security management systems consistent with the voluntary principles. Starting next year, the companies that are using security forces will start to report through us, through our TSM annual report, describing their approach to implementation and describing their approach to assurance, that the principles are being used appropriately. That will be included publicly in our annual report.

The other thing we've also done is to create a communities of practice of security practitioners within the industry to facilitate knowledge transfer, sharing of best practices, and discussions of how issues are dealt with.

•(1405)

The Chair: Thank you very much to all three of you.

With that, we're running a few minutes over.

MP Hardcastle.

Ms. Cheryl Hardcastle: Mr. Chair, I will also table a document that references the international human rights authority that I referred to, when I quoted them in my question. Thank you.

The Chair: Thank you very much.

With that, we shall adjourn.

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